

PUBLIC

Court File No. CV-23-00710259-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
Commercial List**

IN THE MATTER OF THE COMPANIES' CREDITORS
ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS
AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF MASTERMIND GP INC.

Applicant

**MOTION RECORD OF THE APPLICANT MASTERMIND GP INC.
(RETURNABLE NOVEMBER 30, 2023)**

November 29, 2023

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**ONTARIO
SUPERIOR COURT OF JUSTICE
Commercial List**

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT
ACT, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF MASTERMIND GP INC.

Applicant

MOTION RECORD OF THE APPLICANT MASTERMIND GP INC.

INDEX

Tab	Description	Page No.
1.	Notice of Motion dated November 29, 2023	1 – 19
2.	Affidavit #2 of Lucio Milanovich sworn November 29, 2023	20 – 45
A.	Exhibit “A” – Affidavit of Lucio Milanovich sworn November 22, 2023 (Without Exhibits)	46 – 97
B.	Exhibit “B” – Initial Order dated November 23, 2023	98 – 122
C.	Exhibit “C” – Endorsement of the Honourable Justice Steele dated November 23, 2023	123 – 132
D.	Exhibit “D” – Consulting Agreement between Mastermind LP and Gordon Brothers Canada ULC dated November 24, 2023, appending the Sale Guidelines	133 – 162
E.	Exhibit “E” – Blackline of Liquidation Sale Approval Order Sought by Mastermind Entities to Sale Approval Order in Bed Bath & Beyond Insolvency Proceedings	163 – 183
F.	Exhibit “F” – Blackline of Liquidation Sale Approval Order Sought by Mastermind Entities to Sale Approval Order in Nordstrom Insolvency Proceedings	184 – 207
G.	Exhibit “G” – Letter dated November 24, 2023 Sent to Landlords of the Mastermind Entities’ Retail Locations, Corporate Office and the Distribution Centre	208 – 228
H.	Exhibit “H (1)” – Distribution List as at November 24, 2023	229 - 241
	Exhibit “H (2)” – Distribution List as at November 27, 2023	242 – 252
	Exhibit “H (3)” – Distribution List as at November 28, 2023	253 - 263

Tab	Description	Page No.
I.	Exhibit “I” – Letter dated November 27, 2023 Sent to Landlords of the Mastermind Entities’ Retail Locations, Corporate Office and the Distribution Centre	264 – 280
J.	Exhibit “J” – Cash Flow Forecast for the 10-Week Period Ending January 28, 2024	281 – 284
K.	Exhibit “K” – Liberty Mutual Insurance Company Policy dated November 29, 2022	285 – 346
L.	Exhibit “L” – Chubb Insurance Company of Canada Policy dated November 15, 2023	347 – 376
M.	Exhibit “M” – Forbearance Agreement between CIBC and the Mastermind Entities	377 – 408
N.	Exhibit “N” – Blocked Accounts Agreement dated October 24, 2014	409– 420
O.	Exhibit “O” – Confidential Exhibit	421 – 423
P.	Exhibit “P” – Form of KERP Award Letter	424 - 429
3.	Blackline of Draft Amended and Restated Initial Order to Initial Order	430 – 460
4.	Blackline of Draft Amended and Restated Initial Order to Model CCAA Order	461 – 490
5.	Draft Amended and Restated Initial Order	491 – 520
6.	Draft Liquidation Sale Approval Order	521 – 536

TAB 1

**ONTARIO
SUPERIOR COURT OF JUSTICE
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IN THE MATTER OF THE COMPANIES' CREDITORS
ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS
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ARRANGEMENT OF MASTERMIND GP INC.

Applicant

NOTICE OF MOTION

The Applicant, Mastermind GP Inc. ("**Mastermind GP**"), will make a motion before the Honourable Madam Justice Steele of the Ontario Superior Court of Justice (Commercial List) on Thursday, November 30, 2023 at 10:00 a.m., or as soon thereafter as the motion can be heard.

PROPOSED METHOD OF HEARING:

The motion is to be heard orally by videoconference, the details of which will be provided by the Court.

THE MOTION IS FOR:

1. An Amended and Restated Initial Order (the "**ARIO**"), substantially in the form attached at Tab 5 of the Applicant's Motion Record, which, among other things:
 - (a) abridges the time for service of this Notice of Motion and the Motion Record and dispenses with service on any person other than those served;

- (b) extends the stay of proceedings to January 26, 2024 (the “**Stay**”);
- (c) extends and increases the amount of the charge granted over the assets and property of the Mastermind Entities (as defined below) in favour of the Monitor, counsel to the Monitor and counsel to the Mastermind Entities (the “**Administration Charge**”) from \$750,000 to \$1,000,000;
- (d) extends and increases the amount of the charge granted over the assets and property of the Mastermind Entities in favour of the officers and directors of the Mastermind Entities (the “**D&O Charge**”) from \$4,000,000 to \$5,000,000;
- (e) approves a forbearance agreement (the “**Forbearance Agreement**”) between Mastermind GP and Mastermind LP (collectively, the “**Mastermind Entities**”) and the Canadian Imperial Bank of Commerce (“**CIBC**”) and related relief, including granting CIBC a charge (the “**DIP Charge**”) up to the maximum amount of \$36,250,000;
- (f) approves a key employee retention plan (“**KERP**”) for six non-store employees of Mastermind LP and an incentive pool for in-store employees;
- (g) grants a KERP charge (the “**KERP Charge**”) against the property of the Mastermind Entities as security for the amounts that may become payable under the KERP, up to the maximum amount of \$286,000;
- (h) grants a sealing order in relation to the KERP; and

- (i) approves the following priority of charges: (a) Administration Charge; (b) D&O Charge; (c) DIP Charge; and (d) KERP Charge.

2. A liquidation sale approval order (the “**Liquidation Sale Approval Order**”) substantially in the form attached at Tab 6 of the Applicant’s Motion Record, which, among other things:

- (a) abridges the time for service of this Notice of Motion and the Motion Record and dispenses with service on any person other than those served;
- (b) approves, authorizes and ratifies the Consulting Agreement entered into by Gordon Brothers Canada ULC (the “**Consultant**”) and Mastermind LP dated November 24, 2023 (the “**Consulting Agreement**”) and the sale guidelines appended to the Consulting Agreement (the “**Sale Guidelines**”), as well as the transactions contemplated thereunder;
- (c) authorizes Mastermind LP, with the assistance of the Consultant, to undertake a liquidation process in accordance with the terms of the Liquidation Sale Approval Order, the Consulting Agreement and the Sale Guidelines;
- (d) extends the Stay to the Consultant for the purpose of conducting the Sale (as defined below) and grants certain other protections from liability in favour of the Consultant; and

3. Such further and other relief as may be requested by the Applicant and as this Honourable Court considers just.

THE GROUNDS FOR THE MOTION ARE:

Background of the CCAA Proceeding

4. The Applicant, Mastermind GP, is the general partner of Mastermind LP (collectively defined above as the “**Mastermind Entities**”). Mastermind LP is a limited partnership and Canada’s largest specialty toy and children’s book retailer operating with 66 locations across the country under the “Mastermind Toys” banner.

5. The Mastermind Entities are currently facing financial difficulties as a result of declining sales, gross margins, increased competition, commoditization of the toy category and other macro-economic trends facing many Canadian retailers. Despite implementing cost reduction and other initiatives to improve profitability, Mastermind LP’s revenues and profitability have declined over the past several years.

6. Given their liquidity position and an inability to meet their obligations as they became due, the Mastermind Entities commenced these proceedings to obtain the flexibility and breathing space afforded by the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”) to: (i) permit them the opportunity to pursue a potential sale of some or all of the business on a going concern basis through the CCAA proceeding (the “**Potential Transaction**”); and (ii) retain the flexibility to liquidate inventory, furniture and fixtures at certain stores operated by Mastermind LP, all with the goal of maximizing recoveries for the stakeholders of the Mastermind Entities.

7. On November 23, 2023, the Applicant sought and obtained relief under the CCAA pursuant to the Initial Order of the Honourable Madam Justice Steele (the “**Initial Order**”). The Initial Order expressly extended the benefits of the Initial Order, including the stay of proceedings, to Mastermind LP.

8. Pursuant to the Initial Order, among other things:

- (a) Alvarez & Marsal Canada Inc. was appointed Monitor of the Mastermind Entities in the CCAA proceedings (the “**Monitor**”);
- (b) an initial 8-day stay of proceedings was granted in favour of the Mastermind Entities, until and including November 30, 2023 (the “**Stay Period**”);
- (c) the Administration Charge was granted in the amount of \$750,000 and the D&O Charge was granted in the amount of \$4,000,000; and
- (d) a hearing date of November 30, 2023 was set for the comeback motion.

Extension of Stay of Proceedings

9. The Mastermind Entities request an extension of the Stay Period up to and including January 26, 2024 so that the Mastermind Entities may continue to have the breathing room necessary to undertake, with the assistance of the Consultant, the proposed Sale (as defined below). The Sale is anticipated to be complete by January 14, 2024.

10. In addition, the extension of the Stay Period will allow for the Mastermind Entities to continue negotiations in connection with the Potential Transaction, which remain ongoing.

11. The Mastermind Entities have acted, and continue to act, in good faith and with due diligence during the course of the CCAA proceedings.

12. Since the granting of the Initial Order, among other things, the Mastermind Entities have, among other things: (i) settled the terms of the Consulting Agreement; (ii) made significant progress in settling the terms of the Potential CCAA Transaction; (iii) settled the terms of the Forbearance Agreement with CIBC, their largest secured creditor, which permits, among other things, the Mastermind Entities to continue to access the credit facilities on certain conditions, including that this Court grants the DIP Charge; and (iv) given notice of these CCAA proceedings their stakeholders, including landlords.

13. Accordingly, the Mastermind Entities' activities since the granting of the Initial Order have all been made with a view to maximizing the value of the business, for the benefit of their stakeholders.

14. The cash flow statement prepared by the Mastermind Entities demonstrate that the Mastermind Entities have sufficient liquidity to fund the operations during the requested extension of the Stay Period.

15. The Monitor and CIBC are both supportive of the proposed extension of the Stay Period.

Increase in the Amount of the Administration Charge

16. The Initial Order granted a first priority charge in the amount of \$750,000 to reflect the fees and disbursements to be incurred by the Mastermind Entities' counsel, the Monitor and the Monitor's counsel up to the date of this comeback motion.

17. The Mastermind Entities now seek to extend the Administration Charge and increase it to \$1,000,000 to reflect fees that will be incurred after the initial Stay Period. The quantum of the increased charge was determined by the Mastermind Entities in conjunction with the Monitor and is of the view that it is reasonable and appropriate in the circumstances.

Increase in the Amount of the D&O Charge

18. The Initial Order approved a D&O Charge in the amount of \$4,000,000 to reflect those indemnification obligations and liabilities that the Mastermind Entities expected its directors and officers could face up to this comeback motion.

19. The Mastermind Entities seek to extend the D&O Charge and increase it to \$5,000,000 to reflect the increased liabilities that the Mastermind Entities' directors may incur in these CCAA proceedings. The quantum of the increased charge was determined to be reasonable in conjunction with the Monitor.

Approval of Forbearance Agreement and DIP Charge

20. The Mastermind Entities are currently in default of their obligations under the credit agreement dated October 24, 2014 with CIBC, the agent under such credit agreement and Mastermind LP's primary secured creditor. The Mastermind Entities seek the

approval of the Forbearance Agreement with CIBC and approval of the related DIP Charge.

21. The Forbearance Agreement sets out the terms and conditions upon which CIBC has agreed to continue to make the credit facilities available to Mastermind LP during these CCAA proceedings, including the granting of the DIP Charge and other relief set out in the ARIO.

22. As of the date of this motion, the Mastermind Entities expect to run out of cash in the short term. Additionally, CIBC has advised the Mastermind Entities that, in the absence of the Forbearance Agreement, they will exercise their enforcement remedies in respect of the Mastermind Entities' default under the credit agreement. Therefore, there is an urgent need for this Court to authorize the Forbearance Agreement and grant the related relief sought in the ARIO, including granting the DIP Charge.

Approval and Sealing of the Key Employee Retention Plan

23. The Mastermind Entities seek approval of the KERP and related KERP Charge. The Mastermind Entities developed the KERP with the Monitor to provide a one-time lump sum payment to eligible employees as an incentive to continue their employment throughout these CCAA proceedings.

24. The beneficiaries of the KERP are employees with in-depth expertise in the areas of merchandising, logistics, human resources and information technology, and will play a critical role in operating the business throughout the CCAA proceedings. If these

individuals left their positions, then the Mastermind Entities' ability to navigate the liquidation Sale process and these CCAA proceedings would be compromised.

25. The Mastermind Entities also seek to have the KERP sealed, as it reveals individually identifiable information, including, among other things, compensation information. Disclosure of such sensitive personal and compensation information may cause harm to the key employees in the KERP and to the Mastermind Entities, and the protection of such information is an important commercial and privacy interest that should be protected.

26. The Monitor is supportive of the proposed KERP, corresponding KERP Charge, and the sealing of the KERP.

Priority of Charges

27. The proposed ARIO provides that the Charges, as among them, shall be as follows:

- (a) First, the Administration Charge (to a maximum amount of \$1,000,000);
- (b) Second, the D&O Charge (to a maximum amount of \$5,000,000);
- (c) Third, the DIP Charge (to a maximum of \$36,250,000); and
- (d) Fourth, the KERP Charge (to a maximum of \$286,000).

28. The Monitor and CIBC are in support of the proposed ranking.

Liquidation Sale Approval Order

29. As part of the proposed Liquidation Sale Approval Order, the Mastermind Entities are seeking, among other things, approval of the Consulting Agreement and related Sale Guidelines, as well as the transactions contemplated thereunder.

30. The Consulting Agreement contemplates that the Consultant will serve as the exclusive liquidator for the purpose of selling (i) the inventory located in certain retail stores and the distribution centres operated in connection with Mastermind LP's business, and (ii) the FF&E (as defined in the Consulting Agreement) located in such retail stores, Mastermind LP's corporate office and the distribution centres (the "**Sale**").

31. If approved, the Consulting Agreement provides that the Sale will run for an approximately eight-week term, commencing no later than December 1, 2023 and ending no later than January 31, 2024 – although it is expected that the Sale will be completed by January 14, 2024.

32. The Sale is intended to maximize the value of the inventory and assets owned by the Mastermind Entities for the benefit of its stakeholders. Accordingly, it is imperative that the Sale be commenced as soon as possible to allow the Sale to run during the lucrative holiday season.

33. Both the Monitor and the Mastermind Entities' only secured creditors—CIBC and the Birch Hill Lenders—support the Consulting Agreement and the Sale Guidelines, including the proposed timeline of the proposed liquidation sale.

OTHER GROUNDS FOR THE MOTION

34. The provisions of the CCAA and the statutory, inherent and equitable jurisdiction of this Court;

35. Rules 1.04, 1.05, 2.01, 2.03, 3.02, 16, 37 and 39 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended.

36. Sections 97, 106 and 137 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;

37. Such further and other grounds as counsel may advise and this Honourable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

38. The Affidavit of Lucio Milanovich sworn November 22, 2023 and the Exhibits referred to therein;

39. The Supplementary Affidavit of Lucio Milanovich sworn November 29, 2023 and the Exhibits referred to therein;

40. The Pre-Filing Report of the Monitor dated November 22, 2023 and the First Report of the Monitor and the Appendices attached thereto;

41. Such further and other evidence as counsel may advise and this Honourable Court may permit.

November 29, 2023

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(AS AT NOVEMBER 29, 2023)**

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IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF MASTERMIND GP INC.

Applicant

Court File No. CV-23-00710259-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

PROCEEDING COMMENCED AT
TORONTO

NOTICE OF MOTION

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Lawyers for the Applicant, Mastermind GP Inc.

TAB 2

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

IN THE MATTER OF THE COMPANIES' CREDITORS
ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF MASTERMIND GP INC.

APPLICANT

**AFFIDAVIT #2 OF LUCIO MILANOVICH
SWORN NOVEMBER 29, 2023**

I, **Lucio Milanovich**, of the City of Toronto, in the Province of Ontario, MAKE
OATH AND SAY:

1. The Applicant is Mastermind GP Inc. ("**Mastermind GP**" or the "**Applicant**"). The sole purpose of Mastermind GP is to act as the general partner of Mastermind LP (together with Mastermind GP, the "**Mastermind Entities**"), which operates retail stores under the "Mastermind Toys" banner. I am the Interim Chief Financial Officer ("**CFO**") of Mastermind LP. I began this position in October 2022. In my capacity as CFO, I oversee the financial activities of Mastermind LP, and my responsibilities include leading the corporate accounting, financial planning and cash management of the business. By virtue of my position as CFO, I have knowledge of the matters deposed to herein. Where I do not have personal knowledge of the matters set out herein, I have stated the source of my information and, in all such cases, believe it to be true.

2. I swore an affidavit on November 22, 2023 (the “**Initial Affidavit**”) in support of Mastermind GP’s application for an initial order under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985 c. C-36 (the “**CCAA**”). My Initial Affidavit outlined the business operations of Mastermind LP and the financial position of the Mastermind Entities. The factual and financial circumstances related to the Mastermind Entities as set out in my Initial Affidavit are still very much applicable, and I continue to rely on the contents of my Initial Affidavit.

3. The capitalized terms used, but not defined herein, have the meanings ascribed to them in my Initial Affidavit.

4. This Affidavit is made in support of the Applicant’s motion for:

- (a) an order (the “**Liquidation Sale Approval Order**”), *inter alia*, approving the Consulting Agreement and Sale Guidelines (each as defined below) for the liquidation of inventory and furniture, fixtures and equipment (“**FF&E**”) located in certain of Mastermind LP’s stores and other locations, and authorizing and directing the Mastermind Entities to enter into and complete the transactions contemplated by the Consulting Agreement; and
- (b) an Amended and Restated Initial Order (the “**ARIO**”), *inter alia*:
 - (i) extending the stay of proceedings to January 26, 2024 (the “**Stay**”);
 - (ii) extending and increasing the amount of the Administration Charge (as defined below) from \$750,000 to \$1,000,000;
 - (iii) extending and increasing the amount of the D&O Charge (as defined below) from \$4,000,000 to \$5,000,000;

- (iv) approving a forbearance agreement between the Mastermind Entities and the Canadian Imperial Bank of Commerce (“**CIBC**”) and the related relief contemplated therein, including granting a DIP Charge (as defined below) in favour of CIBC up to the maximum amount of \$36,250,000, plus interest, fees and expenses;
- (v) approving a key employee retention plan (the “**KERP**”) for six non-store employees of Mastermind LP and an incentive pool (the “**Incentive Pool**”) for certain in-store managerial employees;
- (vi) granting a KERP charge against the property of the Mastermind Entities (the “**KERP Charge**”) as security for the amounts that may become payable under the KERP, up to the maximum amount of \$286,000;
- (vii) granting a sealing order in relation to the KERP; and
- (viii) approving the following priority of the charges: (a) Administration Charge; (b) D&O Charge; (c) DIP Charge; and (d) KERP Charge.

A. BACKGROUND AND OVERVIEW

5. Mastermind LP is Canada’s largest specialty toy and children’s book retailer operating with 66 locations across the country under the “Mastermind Toys” banner.

6. As described in greater detail in my Initial Affidavit, which is attached as **Exhibit “A”** to my Affidavit (without the exhibits referred to therein), over the past several years, the Mastermind Entities have incurred substantial operating losses as a result of declining sales, dwindling gross margins, increased competition, commoditization of the toy category and other macro-economic trends facing many Canadian retailers. The Mastermind Entities’ financial difficulties were exacerbated by the COVID-19 pandemic,

including as a result of store closures and an increase in shoppers making online purchases. Despite implementing cost reduction and other initiatives to improve profitability, including a months-long out-of-Court sale process, the revenues of the Mastermind Entities continued to decline.

7. As a result, on November 23, 2023 (the “**Filing Date**”), the Mastermind Entities sought protection under the CCAA pursuant to an Initial Order (the “**Initial Order**”). A copy of the Initial Order is attached hereto as **Exhibit “B”** and the endorsement in connection with the Initial Order is attached hereto as **Exhibit “C”**.

8. The Initial Order, among other things: (a) granted a stay of proceedings against the Mastermind Entities until November 30, 2023; (b) appointed Alvarez & Marsal Canada Inc. (“**A&M**”) as monitor within these CCAA proceedings (in such capacity, the “**Monitor**”); (c) granted charges over the assets and property of the Mastermind Entities (i) in favour of the Monitor, counsel to the Monitor and counsel to the Mastermind Entities (the “**Administration Charge**”) in the amount of \$750,000, and (ii) in favour of the officers and directors of the Mastermind Entities (the “**D&O Charge**”) in the amount of \$4,000,000; and (d) set a hearing date of November 30, 2023 for the Comeback Hearing.

9. The principal purpose of these CCAA proceedings is to enable the Mastermind Entities to have the opportunity to pursue a potential sale of some or all of the business on a going concern basis through the CCAA proceeding (the “**Potential Transaction**”) and retain the flexibility to liquidate certain stores operated by Mastermind LP, all with the goal of maximizing recoveries for the stakeholders of the Mastermind Entities. Negotiations in connection with two potential Potential Transactions are ongoing. The

Mastermind Entities hope to be in a position to advise the Court as to whether there is a Potential Transaction at the Comeback Hearing.

10. In the interim, the Mastermind Entities are seeking this Court's approval of the Consulting Agreement and Sale Guidelines to allow Mastermind LP to pursue a liquidation sale in respect of certain of the inventory and FF&E owned by Mastermind LP. The liquidation sale will not prejudice the Mastermind Entities' ability to close either of the Potential Transactions. I understand that the Monitor and the Mastermind Entities' secured creditors, CIBC and the Birch Hill Lenders, support the proposed liquidation sale.

11. The Mastermind Entities are also asking this Court to amend and restate the Initial Order to extend the Stay to January 26, 2024 and provide the Mastermind Entities with the expanded protections and relief they require to complete the liquidation sale, continue negotiations in connection with a Potential Transaction and secure financing that is critically needed to fund operations in the interim.

12. The Mastermind Entities' need for continued protection under the CCAA continues to be acute, and the relief sought under the Liquidation Sale Approval Order and ARIO is essential in order to survive the holiday shopping season, which is the Mastermind Entities' best chance to maximize recoveries for all stakeholders.

B. LIQUIDATION SALE APPROVAL ORDER

(i) The Process for Identifying the Consultant

13. As described in my Initial Affidavit, in the months leading up to the Filing Date, the Mastermind Entities, with the help of Alvarez & Marsal Canada ULC and Alvarez & Marsal Securities ULC (collectively, "**A&M Corporate Finance**"), made various efforts to find a purchaser for their assets on a going concern basis through an out-of-Court sale process. The Mastermind Entities and A&M Corporate Finance were able to structure a transaction

arising from the sale process that would have seen Mastermind LP's business continue as a going concern, but that transaction was subject to mandatory pre-merger notification requirements under the *Competition Act* that ultimately proved too difficult to satisfy in a timely manner.

14. Once it became clear that the transaction could not proceed, the Mastermind Entities began to focus on other alternatives to maximize value for their stakeholders. As described in my Initial Affidavit, historically over one-quarter of Mastermind LP's annual sales are generated during the Holiday Period.¹ Accordingly, prior to the Filing Date, the Mastermind Entities, in consultation with A&M Corporate Finance, began soliciting bids from professional, third party liquidators to liquidate Mastermind LP's store inventory and FF&E.

15. In total, five third party liquidators (the "**Potential Liquidators**") with experience in retail liquidations were solicited and were requested to submit proposals with respect to the proposed liquidation. Each of the Potential Liquidators entered into non-disclosure agreements with the Mastermind Entities and received access to a data room with details relevant to the proposed liquidation sale. The Potential Liquidators engaged in discussions with the Mastermind Entities and A&M Corporate Finance. Additionally, some of the Potential Liquidators opted to visit certain of Mastermind LP's retail stores to gain further insights on the inventory, FF&E and operations that would be subject to the potential liquidation. Ultimately, each of the Potential Liquidators submitted proposals for the liquidation sale. With the assistance of A&M Corporate Finance, the Mastermind

¹ The Holiday Period began in the days leading up to Black Friday (November 24) and will continue through Boxing Day (December 26) (the "**Holiday Period**").

Entities decided to proceed with the offer submitted by Gordon Brothers Canada ULC (the “**Consultant**”).

16. The Consultant has extensive experience in conducting retail store liquidations. The Consultant has led inventory dispositions for a wide variety of current and former retailers, including David’s Bridal and Party City, and has been a part of the syndicates that implemented the liquidations of Bed Bath & Beyond and Nordstrom Canada.

17. The Mastermind Entities considered the Consultant’s offer to be superior based on underlying economics, the Consultant’s prior experience conducting sales of this type, and the Consultant’s familiarity and prior working experience within the toy retail industry.

(ii) The Material Terms of the Consulting Agreement

18. On November 24, 2023, Mastermind LP and the Consultant entered into the consulting agreement (the “**Consulting Agreement**”) attached to my Affidavit as **Exhibit “D”**.

19. The Consulting Agreement contemplates that the Consultant will serve as the exclusive liquidator for the purpose of conducting a sale (the “**Sale**”) of (i) the inventory (the “**Merchandise**”) located in certain retail stores and the distribution centre leased by Mastermind LP (the “**Distribution Centre**”), and (ii) the FF&E located in such retail stores, Mastermind LP’s corporate office (the “**Corporate Office**”) and the Distribution Centre.

20. The Consulting Agreement provides that the Sale will run for approximately an eight-week term (the “**Sale Term**”) commencing no later than December 1, 2023 and ending no later than January 31, 2024 (the “**Sale Termination Date**”) – although the parties currently anticipate that the Sale will end by January 14, 2014. The Sale Term may be varied as agreed to by Mastermind LP and the Consultant, in consultation with the Monitor.

21. Initially, the Mastermind Entities intend to conduct the Sale at the following 18 stores, but have the right under the Consulting Agreement to add stores at any time during the Sale Term (any such stores being the “**Liquidating Stores**”):

#	Store Name
265	Barrie, ON
252	Vaughan, ON
338	Owen Sound, ON
261	Hurontario, ON
342	Ajax, ON
316	Lethbridge, AB
324	Saint John, NB
292	Red Deer, AB
326	Medicine Hat, AB
277	Kingston, ON
297	Cambridge, ON
325	Fredericton, NB
331	Hamilton, ON
327	Sudbury, ON
335	Prince George, BC
332	Sydney, NS
321	Kildonan, MB
290	Windermere Currents, AB

22. If the Mastermind Entities are unable to settle the terms of a Potential Transaction before the date of the Comeback Hearing, they anticipate that they will be expanding the Sale to include all 66 stores as Liquidating Stores in order to maximize recoveries for their stakeholders.

23. The consideration payable to the Consultant under the Consulting Agreement is as follows:

- (a) **Merchandise Fee:** a fee equal to two percent (2.0%) of the gross proceeds (net of sales taxes) including gift cards or gift certificates (net of sales taxes) from sales of Merchandise sold during the Sale Term (the “**Merchandise Fee**”);
- (b) **FF&E Fee:** a commission of 15% of the gross proceeds (net of sales taxes) of the sale of FF&E (the “**FF&E Fee**”); and

- (c) **Special Purpose Payment:** an amount equal to \$475,000 (the “**Special Purpose Payment**”) to compensate the Consultant for any costs incurred if this Court does not approve the Consulting Agreement by December 1, 2023. If the Consulting Agreement is approved by such date, the Consultant will hold the Special Purpose Payment until after the Sale Termination Date and use the funds to offset any amounts owing to the Consultant following the final reconciliation of the amounts payable under the Consulting Agreement. The Consultant will thereafter return the remaining balance of the Special Purpose Payment, if any, to Mastermind LP.

24. A summary of the other key terms of the Consulting Agreement is as follows:

- (a) the Consulting Agreement and the transactions described therein, including the Sale Guidelines, are to be approved by the Court;
- (b) Mastermind LP is responsible for all of the expenses of the Sale as follows:
 - (i) **Merchandise:** all store-level operating expenses and all of the Consultant’s reasonable and documented out-of-pocket expenses in connection with the Sale of Merchandise. However, to control costs, Mastermind LP is not obligated to pay any costs that are not included in an expense budget of up to \$1,775,000 that was established with the Consultant, in consultation with the Monitor (the “**Expense Budget**”). The Expense Budget may only be varied by written agreement of Mastermind LP and the Consultant, with the consent of the Monitor; and
 - (ii) **FF&E:** all of the reasonable and documented costs and expenses incurred by the Consultant in connection with the sale of FF&E pursuant to a written budget (in addition to the Expense Budget), which will be established by mutual agreement of Mastermind LP and the Consultant, with the consent of the Monitor;
- (c) if there is Merchandise remaining following the Sale Termination Date, Mastermind LP has the option to request that the Consultant sell or dispose of any such remaining Merchandise in consultation with the Monitor. The costs and expenses of doing so will be paid by Mastermind LP in accordance with a budget (in addition to the Expense Budget) to be established by the parties. The gross receipts (net of sales taxes) of any sales of the remaining Merchandise will be included in the calculation of the Merchandise Fee; and
- (d) if there is any FF&E owned by Mastermind LP that has not been sold by the Consultant by the Sale Termination Date, such FF&E will not be removed but will be abandoned by the Consultant in a neat and orderly manner; and

- (e) each of Mastermind LP and the Consultant has agreed to indemnify the other for certain matters that arise in connection with the Sale.

25. Under the Consulting Agreement and with Mastermind LP's consent, the Consultant has the right to supplement the Merchandise in the Liquidating Stores with additional goods procured by the Consultant that are of like kind and no lesser quality to the Merchandise in the Liquidating Stores ("**Additional Consultant Goods**"). The Mastermind Entities believe that by allowing the Consultant to sell Additional Consultant Goods during the Sale, creditor recovery will be maximized as traffic to the Liquidating Stores may increase, and Mastermind LP will earn additional revenues through an "Additional Consultant Goods Fee". The Consultant is required to pay Mastermind LP the Additional Consultant Goods Fee in an amount equal to five percent (5%) of the gross proceeds (net of sales taxes) from the sale of any Additional Consultant Goods. The Consultant will retain all remaining amounts from the sale of Additional Consultant Goods.

26. The Consulting Agreement is also subject to the Sale Guidelines attached as Exhibit "B" to the Consulting Agreement. The Sale Guidelines stipulate, among other things, that the Sale will be conducted in accordance with the terms of the leases for the Liquidating Stores, Distribution Centre and Corporate Office (in the case of the sale of FF&E) during each Liquidating Store's normal hours of operation. The Sale Guidelines may be amended on a Liquidating Store-by-Store basis with the consent of the parties and the applicable landlord, in consultation with the Monitor. The Sale Guidelines also contain the following key terms:

- (a) neither the Mastermind Entities nor the Consultant will conduct any auctions of Merchandise or FF&E at the Liquidating Stores;
- (b) the Sale may be advertised as an "Everything on Sale", "Everything Must Go", "Store Closing" or similar themed sale at the Liquidating Store, provided, however, that no signs may advertise the Sale as a "Bankruptcy",

“Liquidation” or “Going out of Business” sale, unless agreed by the Consultant and applicable landlord;

- (c) subject to receiving Mastermind LP’s prior written consent, the Consultant may include the Additional Consultant Goods in the Sale, provided that they are of like kind and category and no lesser quality to the Merchandise;
- (d) the Consultant must make commercially reasonable efforts to arrange walk-throughs with any requesting landlord to identify Mastermind LP’s FF&E that is subject to the Sale;
- (e) at the conclusion of the Sale in each Liquidating Store, the Consultant will leave the store in a “broom-swept” and clean condition; and
- (f) if a dispute arises concerning the conduct of the Sale that cannot be resolved, the applicable landlord or Mastermind LP may schedule a “status hearing” before the Court on no less than two days’ written notice to the other party or parties and the Monitor.

27. In addition, the Consulting Agreement specifically contemplates the possibility of a Potential Transaction and requires the Consultant and the Mastermind Entities to work cooperatively and in good faith to modify the transactions contemplated under the Consulting Agreement if there is a Potential Transaction. For instance if there is a Potential Transaction, the parties will agree on an appropriate allocation of Merchandise from the Distribution Centre to the Liquidating Stores and appropriate advertising to be included on Mastermind LP’s website regarding the Sale.

(iii) The Liquidation Sale Approval Order

28. The proposed Liquidation Sale Approval Order requested by the Mastermind Entities, among other things:

- (a) ratifies the Consulting Agreement, the Sale Guidelines and the transactions contemplated therein and authorizes Mastermind LP, with the assistance of the Consultant, to conduct the Sale in accordance with the Sale Guidelines;

- (b) extends the Stay to the Consultant for the purpose of conducting the Sale and grants certain other protections in favour of the Consultant, including that (i) the Consultant shall not be deemed to be an owner in possession, care, control or management of the Liquidating Stores, Distribution Centre or Corporate Office; (ii) the Consultant shall not be deemed to be an employer, or a joint or successor employer or a related or common employer or payor within the meaning of any legislation; and (iii) Mastermind LP shall bear all responsibility for any liability whatsoever (including without limitation, losses, costs, damages, fines or awards) relating to claims of customers, employees and any other Persons arising from events occurring at the Liquidating Stores during and after the term of the Sale, except to the extent that such claims arise from or relate to matters that the Consultant has indemnified Mastermind LP for pursuant to the Consulting Agreement (the “**Consultant Indemnity**”);
- (c) grants the Consultant access to the Liquidating Stores, the Distribution Centre and the Corporate Office, in accordance with the terms of the applicable leases or other applicable contractual arrangements; and
- (d) authorizes Mastermind LP, with the assistance of the Consultant to market and sell the Merchandise, FF&E and Additional Consultant Goods in accordance with the Sale Guidelines, free and clear of all Claims (as defined in the Liquidation Sale Approval Order), provided that any sale of the FF&E is subject to the requirement to give the applicable landlords advanced notice under the ARIO.

29. I am advised by the Mastermind Entities' counsel at Davies Ward Phillips & Vineberg LLP ("**Davies**") and believe that the form of the Liquidation Sale Approval Order sought in this Motion is substantially the same as sale approval orders granted by the Court in other insolvency proceedings; namely, (a) the Bed Bath & Beyond CCAA proceedings brought by BBB Canada Ltd. (the "**BBB Order**"); and (b) the Nordstrom CCAA proceedings brought by Nordstrom Canada Retail Inc., Nordstrom Canada Holdings LLC and Nordstrom Canada Holdings II LLC (the "**Nordstrom Order**"). Attached to this Affidavit as **Exhibits "E"** and "**F**" are "blackline" documents comparing each of the BBB Order and the Nordstrom Order to the proposed Liquidation Sale Approval Order that the Mastermind Entities are seeking on this Motion.

(iv) Engagement with Landlords

30. Since the Filing Date, the Mastermind Entities have made considerable efforts to engage with landlords (the "**Landlords**") of their 66 retail locations, Corporate Office and the Distribution Centre to apprise them of these CCAA proceedings and the Sale. I am advised by counsel at Davies that after the Initial Order was granted, Davies sent letters to the Landlords that enclosed a copy of the Initial Order, advised the Landlords of the commencement of these CCAA proceedings and directed the Landlords to the Monitor's website to access the Application materials. The Landlords were also invited to file a Notice of Appearance if they wished to participate in these CCAA proceedings. A copy of the letter that was sent to each Landlord is attached to this Affidavit as **Exhibit "G"**. Copies of the distribution lists, setting out the recipients of the letter are attached to this Affidavit as **Exhibit "H"**. I am advised by Davies that any parties represented by counsel or who have filed a Notice of Appearance are included on the Service List.

31. I am also advised by counsel at Davies that in respect of any such letters returned as undeliverable, alternative addresses were sought and the letter was re-sent to the alternative addresses as soon as reasonably practicable. To the extent that any letters or communications continue to be returned as undeliverable, I am advised by Davies that efforts are being made to find current addresses of Landlords in order to provide them with notice of the Initial Order and these CCAA proceedings.

32. On November 27, 2023, Davies sent each of the Landlords and counsel representing certain of the Landlords a letter in the form attached to this Affidavit as **Exhibit "I"**, which enclosed a draft Liquidation Sale Approval Order and the Sale Guidelines appended thereto.

33. The Mastermind Entities, through their counsel, have undertaken discussions with counsel for certain Landlords in respect of the Sale and have made efforts to address any concerns or comments such Landlords may have on the draft Liquidation Sale Approval Order that was circulated. The Mastermind Entities will continue to consult and work cooperatively with each Landlord throughout the entirety of the Sale, and to make commercially reasonable efforts to address any concerns raised by the Landlords to the extent possible.

34. It is my understanding that the Consultant has good relationships with some of the Landlords from prior transactions and is experienced in dealing with the types of landlord concerns that could arise in a liquidation sale.

(v) Support for the Approval of the Liquidation Sale

35. As described above, it is a condition of the Consulting Agreement that the Sale commence by no later than December 1, 2023. The Mastermind Entities believe that the Sale must be commenced as soon as possible to maximize recoveries available to their

respective stakeholders and to limit ongoing operating costs, thereby ensuring that the Mastermind Entities can exit from the applicable Liquidating Stores as soon as practicable. In the circumstances, any delay in commencing the Sale could compromise the net recoveries generated from the sale of the Merchandise and FF&E.

36. The realization process set out in the Consulting Agreement and the Sale Guidelines was designed by the Mastermind Entities and the Consultant, in consultation with the Monitor. Importantly, the Consulting Agreement was designed to be flexible and provides the Mastermind Entities with the ability to continue to pursue a Potential Transaction, or increase the number of Liquidating Stores at any time prior to the Sale Termination Date.

37. Given the process undertaken by the Mastermind Entities and A&M Corporate Finance prior to the Filing Date to select a liquidator, I believe that the Consulting Agreement represents the best available offer for the Merchandise and FF&E of Mastermind LP.

38. I also believe that engaging a professional liquidator to sell the Merchandise and FF&E during the Holiday Period is the best way to maximize the amounts available for the Mastermind Entities stakeholders and will produce better results than an attempt by Mastermind LP to sell such assets on its own.

39. I am advised by the Monitor and verily believe that the Monitor supports the proposed Sale, including the proposed timeline for completion of same, the Consulting Agreement and the Sale Guidelines.

40. Accordingly, the Mastermind Entities respectfully request this Court to approve the Consulting Agreement, the transactions contemplated therein, and the Sale Guidelines.

C. THE AMENDED AND RESTATED INITIAL ORDER

(i) The Extension of the Stay

41. The Initial Order granted a Stay until November 30, 2023. The Mastermind Entities are seeking this Court's approval to extend the Stay until January 26, 2024. The Stay extension is necessary and appropriate in the circumstances so that the Mastermind Entities may continue to have the breathing room necessary to carry out the proposed Sale, which is anticipated to be completed by January 14, 2024 (notwithstanding that the Consulting Agreement provides that the end of the Sale Term will be no later January 31, 2024). In addition, the extension of the Stay will allow for the Mastermind Entities to continue negotiations in connection with a Potential Transaction, which remain ongoing.

42. I am of the view that the Mastermind Entities have acted, and continue to act, in good faith and with due diligence in these CCAA proceedings since the Filing Date. During this time, the Mastermind Entities settled the terms of the Consulting Agreement and significant progress has been made in settling terms of a Potential Transaction. The Mastermind Entities have given notice of these CCAA proceedings to stakeholders including, most significantly, their employees, Landlords, and vendors. The Mastermind Entities have had, and intend to continue, discussions with key stakeholders throughout these CCAA proceedings.

43. The Approved Cash Flow (as defined below) for Mastermind LP is attached to this Affidavit as **Exhibit "J"**.² These projections demonstrate that the Mastermind Entities will have access to sufficient liquidity to fund the operations during the extended Stay period.

² The Approved Cash Flow accounts for funds up to Friday, January 26, 2024. It is dated January 28, 2024 as the Mastermind Entities' accounting practices are calculated on a weekly basis ending on the Sunday of each week.

44. I understand that the Monitor and CIBC support the proposed extension of the Stay.

(ii) Increase to the Administration Charge

45. The Initial Order granted a first priority Administration Charge in the amount of \$750,000. The quantum of the Administration Charge was intended to reflect the fees and disbursements to be incurred by the Mastermind Entities' counsel, the Monitor and the Monitor's counsel up to the date of the Comeback Hearing. The Mastermind Entities now seek to increase the Administration Charge to \$1,000,000.

46. As described in my Initial Affidavit, the ability of the Mastermind Entities to rely on their counsel, the Monitor, and the Monitor's counsel is crucial in these CCAA proceedings as the Mastermind Entities and Consultant implement the Sale, engage with their stakeholders and continue to pursue a Potential Transaction.

47. The Mastermind Entities determined the quantum of the increased Administration Charge in conjunction with the Monitor and believe it to be reasonable.

(iii) Increase to the D&O Charge

48. The Initial Order approved a D&O Charge in the amount of \$4,000,000. As stated in my Initial Affidavit, the quantum of the D&O Charge was limited to those indemnification obligations and liabilities that the Mastermind Entities expected its directors and officers could face up to the Comeback Hearing. The Sale, if approved, will lead to the closure of certain of the Liquidating Stores and the officers and directors of the Mastermind Entities may face increased liabilities related to employee terminations and sales tax remittances.

49. As described in my Initial Affidavit, the AIG Policy (attached as Exhibit R to my Initial Affidavit), Liberty Mutual Policy (attached as **Exhibit "K"** to this Affidavit) and Chubb Policy (attached as **Exhibit "L"** to this Affidavit) have exclusions and contractual

contingencies, which may lead to uncertainty associated with possible coverage. The Mastermind Entities have not been able to obtain adequate supplemental indemnification insurance in respect of these additional potential liabilities at a reasonable cost. As a result, the Mastermind Entities are seeking to increase the quantum of the D&O Charge to \$5,000,000, which amount was determined to be reasonable in conjunction with the Monitor. In my Initial Affidavit, I advised that the Mastermind Entities would be seeking an increase in the D&O Charge from \$4,000,000 to \$7,250,000. The Mastermind Entities ultimately determined, in consultation with the Monitor, to only seek an increase to \$5,000,000. This number was arrived at because, as more particularly described in paragraph 56(e) below, pursuant to the terms of the Forbearance Agreement, Mastermind LP is required to pay or remit HST on at least a bi-weekly basis, which will reduce directors' and officers' potential liabilities in this regard.

(iv) Forbearance Agreement and DIP Charge

50. As described in my Initial Affidavit, Mastermind LP's primary and senior secured creditor is CIBC pursuant to a credit agreement dated October 14, 2014 with Mastermind LP, as borrower, and Mastermind GP, as guarantor (the "**Credit Agreement**"). Under the Credit Agreement, CIBC has committed, among other things: (a) a \$30,000,000 revolving credit facility (the "**Revolving Loan Facility**"); and (b) a Business Credit Availability Program revolving loan in the amount of \$6,250,000 (the "**BCAP Loan**" and together with the Revolving Loan Facility, the "**Credit Facilities**").

51. The Mastermind Entities are indebted to CIBC in the amount of approximately \$11,587,815 under the Revolving Loan Facility as of November 27, 2023. With respect to the BCAP Loan, although I described it as a "BCAP Term Loan" in my Initial Affidavit, it is actually a revolver loan, and it is currently fully drawn in the amount of \$6,250,000.

52. The Mastermind Entities are seeking this Court's approval to enter into a forbearance agreement (the "**Forbearance Agreement**") that sets out the terms upon which CIBC will continue to make the Credit Facilities available to Mastermind LP during these CCAA proceedings. The Forbearance Agreement is attached to my Affidavit as **Exhibit "M"**.

53. Pursuant to the terms of the Forbearance Agreement, CIBC has agreed to allow the Mastermind Entities to borrow under the Credit Facilities in accordance with the terms of the Credit Agreement, including the ongoing use of Mastermind LP's Cash Management System.

54. As described in my Initial Affidavit, Mastermind LP has four bank accounts with CIBC that comprise the Cash Management System: two deposit accounts, which are swept by CIBC daily; and two disbursement accounts, which are funded from the Credit Facilities. Both of the deposit accounts are subject to a blocked accounts agreement in favour of CIBC dated October 24, 2014 (the "**Blocked Accounts Agreement**"), which is attached to my Affidavit as **Exhibit "N"**.

55. It is a condition of the Forbearance Agreement that Mastermind LP will continue its use of the Cash Management System in accordance with the Credit Agreement, including to pay down the balance of the Credit Facilities through the daily sweeping of the Canadian dollar deposit account (in which Mastermind LP's post-filing receipts will be deposited). The Forbearance Agreement expressly provides, however, that any borrowings under the Credit Facilities after the Filing Date shall not be used to pay pre-filing indebtedness under the Credit Facilities.

56. The Forbearance Agreement is also subject to the following key terms and conditions:

- (a) **Fees:** the payment of all fees and expenses payable to CIBC, including a fee in an amount equal to 1.25% of the outstanding balance of the Credit Facilities as of the close of business on the date the ARIO is issued;
- (b) **Approved Cash Flow:** the proceeds of the Credit Facilities may only be used in accordance with the 10-week cash flow forecast for the period of November 23, 2023 to January 28, 2024 that is appended to the this Affidavit as Exhibit “J”³ (the “**Approved Cash Flow**”);
- (c) **Milestones:** the Mastermind Entities are required to achieve certain milestones (the “**Milestones**”) set out in Schedule 4 to the Forbearance Agreement, which schedule may be amended by the Mastermind Entities with the agreement of CIBC, in consultation with the Monitor. The Milestones include (i) obtaining the ARIO and Liquidation Sale Approval Order on or before December 1, 2023, (ii) either, obtaining this Court’s approval of a going concern sale of Mastermind LP’s business, or amending the Consulting Agreement to extend the Sale to all of its Stores, by the week of December 11, 2023, and (iii) completing the Sale on or before January 28, 2024;
- (d) **Terminating Events:** CIBC may terminate the Forbearance Agreement upon the failure of the Mastermind Entities to comply with certain terms and

³ The Approved Cash Flow is also attached as Schedule 5 to the Forbearance Agreement

conditions of the Forbearance Agreement, including failure to comply with the Milestones described above;

- (e) **HST Account:** Mastermind LP and CIBC will establish a deposit account (the “**HST Account**”), pursuant to which Mastermind LP will deposit, on a weekly basis, amounts collected on account of HST. Mastermind LP will remit the HST collected to Canada Revenue Agency on a bi-weekly basis from the HST Account.
- (f) **Amended and Restated Initial Order:** the Mastermind Entities shall obtain the ARIO, which shall:
 - (i) authorize and approve the execution and performance of the Forbearance Agreement by the Mastermind Entities;
 - (ii) provide that CIBC shall be treated as an “unaffected creditor” in these CCAA proceedings;
 - (iii) authorize the Mastermind Entities to use proceeds obtained after the Filing Date (other than borrowings under the Credit Facilities) to pay Mastermind LP’s pre-filing indebtedness under the Credit Facilities (the “**Pre-Filing Payments Order**”);
 - (iv) order that the blocked account arrangements currently in place in respect of the CIBC bank accounts that comprise the Cash Management System and are subject to the Blocked Accounts Agreement will continue throughout these CCAA proceedings;

- (v) require CIBC to provide five days prior notice prior to exercising any rights or remedies against the Mastermind Entities or their property; and
- (vi) grant a priority charge over the assets of the Mastermind Entities in favour of CIBC (described and defined below as the DIP Charge).

57. The Forbearance Agreement requires the Mastermind Entities to grant CIBC a charge (the “**DIP Charge**”) over their assets up to the maximum amount of availability under the Credit Facilities, which is \$36,250,000, plus interest, costs and expenses. The DIP Charge will only secure the amounts that are actually borrowed under the Credit Facilities after the granting of the ARIO.

58. The DIP Charge will rank behind the Administration Charge and the D&O Charge, and rank ahead of the KERP Charge (described below).

59. As described in my Initial Affidavit, the approval of the Forbearance Agreement and continued availability of the Credit Facilities is urgently required. The Mastermind Entities are in default of their obligations under the Credit Agreement and related security, and CIBC has advised the Mastermind Entities that they will exercise their enforcement remedies in the absence of the Forbearance Agreement. Mastermind LP has an upcoming payroll obligation of \$1,000,000 that is due on November 30, 2023, and the rent on all of its stores is due on December 1, 2023. In addition, the Mastermind Entities have ongoing payables to shipping and logistics providers. If the Mastermind Entities do not have the ability to access the Credit Facilities, Mastermind LP will not be able to meet these obligations.

(v) Key Employee Retention Plan and KERP Charge

60. As described in my Initial Affidavit at paragraphs 136 and 137, the Mastermind Entities are seeking approval of a key employee retention plan (“**KERP**”) for certain employees who will be crucial in helping to facilitate the Sale and pursuing a Potential Transaction. The Mastermind Entities are also seeking a charge over their property in the amount of \$286,000 to secure the amounts payable under the KERP (the “**KERP Charge**”). I am advised by the Monitor that it supports both the KERP and the KERP Charge.

61. The KERP contemplates that six head office employees will be paid a retention payment in the aggregate amount of \$285,250. In addition, the Mastermind Entities will establish a separate Incentive Pool in the amount of \$200,000 for certain store-level managerial employees.⁴ There is no overlap between the recipients of the KERP and the intended recipients of the Incentive Pool.

62. The KERP contains highly sensitive, confidential information relating to a select group of Mastermind LP’s employees, including their compensation. For this reason, the Mastermind Entities intend to file the proposed KERP under seal, of which I understand the Monitor is in favour. A copy of the KERP, to be filed under seal, is attached to this Affidavit as **Exhibit “O”**.

63. The Mastermind Entities developed the KERP with the Monitor to provide a one-time lump sum payment to eligible employees as a retention payment to continue their employment throughout these CCAA proceedings. The six employees listed in the KERP have in-depth expertise in the areas of merchandising, logistics, human resources and

⁴ The Approved Cash Flow indicates a total amount of \$485,250, which includes the KERP plus the discretionary Incentive Pool.

information technology, and will play a critical role in operating the business throughout these CCAA proceedings. If these individuals left their positions, then the Mastermind Entities' ability to navigate the Sale and these CCAA proceedings would be compromised.

64. The KERP incentive payments are calculated as a percentage of the employee's base salary, based on the particular individual's level of responsibilities. An explanation for the compensation for each employee is included in the KERP that will be filed under seal. The payments are conditional upon the terms and conditions set out in the KERP award letter to be provided to eligible employees, a form of which is attached to this Affidavit as **Exhibit "P"**.

(vi) Ranking of the Charges

65. The proposed priority ranking of the various charges sought by the Mastermind Entities is as follows:

- (a) the Administration Charge;
- (b) the D&O Charge;
- (c) the DIP Charge; and
- (d) the KERP Charge.

66. The Monitor and CIBC are in support of the proposed ranking.

D. CONCLUSION

67. For the reasons set out above and as stated in my Initial Affidavit, I continue to believe that the relief requested in this motion is in the best interests of the Mastermind Entities and their stakeholders. Without the requested relief, including the approval of the Sale, Consulting Agreement and Sale Guidelines, the value of the Mastermind Entities' assets are at risk of deteriorating and recovery to their stakeholders will be reduced.

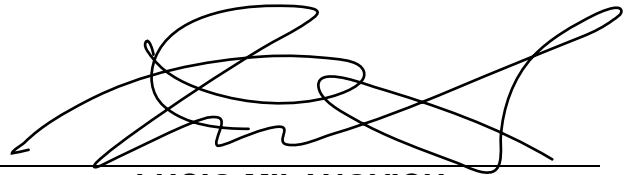
68. I swear this Affidavit in support of the Mastermind Entities' motion for relief under the CCAA and for no other or improper purpose.

**SWORN BEFORE ME at the City of
Toronto, in the Province of Ontario this
29th day of November 2023**



Commissioner for Taking Affidavits
Kristine Spence (LSO #66099S)

}



LUCIO MILANOVICH

TAB A

This is **Exhibit "A"** referred to in the
Affidavit #2 of LUCIO MILANOVICH,
sworn before me, this 29th day of
November, 2023.



Commissioner for taking affidavits
Kristine Spence (LSO #66099S)

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

**IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT
ACT, R.S.C. 1985, C.C-36, AS AMENDED**

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
MASTERMIND GP INC.**

**AFFIDAVIT OF LUCIO MILANOVICH
SWORN NOVEMBER 22, 2023**

I, **Lucio Milanovich**, of the City of Toronto, in the Province of Ontario, MAKE
OATH AND SAY:

1. The Applicant is Mastermind GP Inc. ("**Mastermind GP**" or the "**Applicant**"). The sole purpose of Mastermind GP is to act as the general partner of Mastermind LP (together with Mastermind GP, the "**Mastermind Entities**"), which operates retail stores under the "Mastermind Toys" banner. I am the Interim Chief Financial Officer ("**CFO**") of Mastermind LP. I began this position in October 2022. In my capacity as CFO, I oversee the financial activities of Mastermind LP, and my responsibilities include leading the corporate accounting, financial planning and cash management of the business. Although I am CFO at Mastermind LP, I am also an employee of Birch Hill Equity Partners Management Inc. ("**BHEPMI**"), which is the majority shareholder of Mastermind LP. I do not draw a salary from Mastermind LP or Mastermind GP. By virtue of my position as CFO, I have knowledge of the matters deposed to herein. Where I do not have personal knowledge of the matters set out herein, I have stated the source of my information and, in all such cases, believe it to be true.

2. This Affidavit is made in support of the Application by Mastermind GP for relief under the *Companies' Creditor Arrangement Act*, R.S.C. 1985, c. C-36 as amended (the "**CCAA**").

3. As part of its Application, the Applicant is seeking an initial order (the "**Initial Order**"), *inter alia*:

- (a) declaring that Mastermind GP is a party to which the CCAA applies and that Mastermind LP shall be bound by the Initial Order and enjoy the protections, authorizations and benefits thereof;
- (b) granting a stay of proceedings against the Mastermind Entities for a period of not more than eight (8) days, subject to further order of the Court;
- (c) appointing Alvarez & Marsal Canada Inc. ("**A&M**" or the "**Proposed Monitor**") as the Court-appointed monitor of the Applicant;
- (d) permitting the Mastermind Entities' continued use of the Cash Management System (as defined below);
- (e) granting charges against the property of the Mastermind Entities, in the following priority:
 - (i) an administration charge in the amount of \$750,000 to secure the fees and disbursements of the Proposed Monitor, counsel to the Proposed Monitor and counsel to the Mastermind Entities (the "**Administration Charge**"); and
 - (ii) an indemnity and priority charge in the amount of \$4 million to indemnify the directors and officers for any obligations and liabilities they may incur in such capacities (the "**D&O Charge**");

- (f) setting a hearing date within eight (8) days of the Initial Order, and in any event, by no later than November 30, 2023 (the “**Comeback Hearing**”) for the Mastermind Entities to return to Court to seek approval of an Amended and Restated Initial Order (the “**ARIO**”).

4. At the Comeback Hearing, and subject to change, the Mastermind Entities intend to seek an ARIO, *inter alia*:

- (a) extending the stay of proceedings against the Mastermind Entities until January 28, 2024;
- (b) approving a forbearance agreement between the Mastermind Entities and the Canadian Imperial Bank of Commerce (“**CIBC**”) and granting a lender’s charge in favour of CIBC (the “**Lender’s Charge**”);
- (c) approving the consulting agreement to be entered into by Gordon Brothers Canada ULC (the “**Agent**”) and the Mastermind Entities (the “**Consulting Agreement**”) for the liquidation of inventory, furniture, fixtures and equipment located in certain of the Mastermind Entities’ store locations and authorizing and directing the Mastermind Entities to enter into and complete the transactions contemplated by the Consulting Agreement;
- (d) approving the sale guidelines appended to the Consulting Agreement (the “**Sale Guidelines**”);
- (e) approving a key employee retention plan (“**KERP**”) in respect of certain of Mastermind LP’s employees;
- (f) granting a KERP charge against the property of the Mastermind Entities as security for the amounts that may become payable under the KERP;

- (g) granting other relief related to the *Wage Earner Protection Program Act* (“**WEPPA**”);
- (h) extending and increasing the amount of Administration Charge and D&O Charge granted under the Initial Order, to the extent necessary; and
- (i) granting such other relief as may be required.

OVERVIEW

5. Mastermind LP is a beloved Canadian retail company, operating the country’s largest, independent specialty toy and children’s book retailer with 66 locations across the country under the “Mastermind Toys” banner. Mastermind LP is the operating entity, and Mastermind GP is its general partner. The principal purpose of this CCAA proceeding is to facilitate an orderly liquidation and wind-down of the “Mastermind Toys” business and pursue the possibility of a going concern sale transaction.

6. Over the past several years, Mastermind LP has incurred substantial operating losses as a result of declining sales and gross margins, increased competition, commoditization of the toy category and other macro-economic trends generally affecting many Canadian retailers, all of which were exacerbated by the impacts resulting from the COVID-19 pandemic. Most recently, the post-pandemic retail landscape has been further impacted by deteriorating consumer sentiment as consumers face a poor economic outlook, high inflation, increased costs of borrowing and geo-political instability. Despite implementing a series of cost reduction and other initiatives to improve profitability (as described in detail below), Mastermind LP’s revenues and profitability have continued to decline, resulting in a significant liquidity and working capital shortfall in the business.

7. In March 2023, Mastermind LP retained Alvarez & Marsal Canada ULC and Alvarez & Marsal Canada Securities ULC (together, “**A&M Corporate Finance**”) to review and advise on strategic alternatives and ultimately conduct a comprehensive out-of-Court sale process. As described further below, the sale process initially resulted in interest from a number of potential going concern purchasers, which submitted non-binding letters of interest (“**LOIs**”). However, as Mastermind LP’s financial position worsened, each of these going concern bidders, with the exception of one party (the “**Strategic Bidder**”), withdrew from the sale process. Working with the Strategic Bidder, A&M Corporate Finance, Mastermind LP and BHEPMI structured a transaction that would have seen Mastermind LP’s business continue as a going concern and avoid the need to seek protection under the CCAA. Mastermind LP and the Strategic Bidder executed an equity purchase agreement on September 22, 2023 (the “**Equity Purchase Agreement**”) with certain equity holders of Mastermind LP and the shareholders of Mastermind GP (the “**Going Concern Transaction**”). The Equity Purchase Agreement specifically included a deadline of November 24, 2023, by which the Going Concern Transaction had to be consummated (the “**Outside Date**”) so that Mastermind LP would receive the capital and liquidity that it critically needed to fund its obligations through the Holiday Period (as defined below) and stave off insolvency.

8. The Going Concern Transaction was subject to mandatory pre-merger notification under the *Competition Act* because it satisfied applicable notification thresholds.¹ Given Mastermind LP’s relatively insignificant market share and the vigorous retail and

¹ I have been advised by A&M Corporate Finance on the facts deposed to in this Affidavit concerning the mandatory pre-merger notification process, including the Mastermind Entities’ interactions with the Competition Bureau, and in all cases I believe these facts to be true.

wholesale competition in the Canadian toy category, the parties were optimistic that the transaction would satisfy all *Competition Act* requirements in advance of the Outside Date. As part of its submissions that the transaction would not result in a substantial prevention or lessening of competition, Mastermind LP engaged in numerous discussions with and submitted a comprehensive set of materials to the Competition Bureau demonstrating Mastermind LP's financial position had deteriorated beyond repair and underscoring the urgency of completing the transaction by the Outside Date. Mastermind LP explained to the Competition Bureau that, absent the Going Concern Transaction, it would have no choice but to enter insolvency proceedings. This would result in the liquidation of a substantial number of stores, the loss of hundreds of jobs and hundreds of unpaid creditors such as merchants, landlords and other suppliers.

9. On November 8, 2023, the Commissioner of Competition (the "**Commissioner**") issued a number of Supplemental Information Requests ("**SIRs**") to the Mastermind Entities and the Strategic Bidder. Responses to the SIRs and compliance with the subsequent statutory waiting period would have taken several months and imposed prohibitive costs on the parties. It was also not certain that the Commissioner would grant clearance to the transaction following compliance with the SIRs. In light of the SIRs and the significant commercial risks and uncertainties they presented to the Going Concern Transaction, and with the Mastermind Entities facing increasing liquidity pressure, the parties terminated the contemplated transaction as of November 8, 2023.

10. Since November 8, 2023, A&M Corporate Finance has worked tirelessly to find a new buyer for some or all of the business, including through a CCAA proceeding, if necessary. A&M Corporate Finance continues advanced discussions with one such

potential purchaser in connection with a potential going concern transaction for a portion of the business (the “**Potential CCAA Transaction**”). The Potential CCAA Transaction would see the purchaser acquire certain assets of the Mastermind Entities, including a large number of Mastermind LP’s stores, and continue to operate the business at a reduced scale after exiting certain markets and after implementing certain restructuring initiatives in these CCAA proceedings.

11. Due to their lack of liquidity, the Mastermind Entities took the prudent step to commence these CCAA proceedings. This step will ensure that the Mastermind Entities retain flexibility to explore the Potential CCAA Transaction, while benefiting from the stay of proceedings and other relief required due to the Mastermind Entities’ inability to service their outstanding debt, address their current default under their senior secured credit facility and pay their vendors in the ordinary course of business.

12. The urgency of this Application is of particular importance given the upcoming holiday shopping season, which begins in the days leading up to Black Friday (November 24) through Boxing Day (December 26) (the “**Holiday Period**”). The volume of sales that Mastermind LP typically generates during the Holiday Period (approximately one month) accounts for over one-quarter of its annual sales. The Mastermind Entities’ ability to take advantage of these holiday sales volumes through the proposed liquidation is their only chance to maximize recovery for their creditors. Mastermind LP no longer has sufficient cash to pay its vendors and cannot continue to operate throughout the Holiday Period unless the Mastermind Entities receive relief under the CCAA.

13. The Mastermind Entities therefore seek Court-ordered protection under the CCAA to provide Mastermind LP with a stable operational environment to enable it to complete

a Court-approved liquidation led by the Agent and pursue other strategic options, including the Potential CCAA Transaction or, failing that, a potential sale of its intellectual property, leases and other assets.

14. The remainder of this Affidavit is presented in two parts, being the Mastermind Entities' financial circumstances and the relief sought, as set out below:

PART I – THE MASTERMIND ENTITIES' FINANCIAL CIRCUMSTANCES 9

A.	Corporate Structure	9
B.	The Mastermind Entities' Business	10
C.	Financial Position of the Mastermind Entities	18
D.	Indebtedness	22
	(i) Secured Obligations	22
	(ii) Defaults under the Credit Agreement	26
	(iii) Unsecured Creditors	27
	(iv) Total Indebtedness	28
E.	The Deteriorating Financial Circumstances of the Mastermind Entities ...	29
F.	Response to Financial Difficulties	32
G.	Urgency of the Application	36

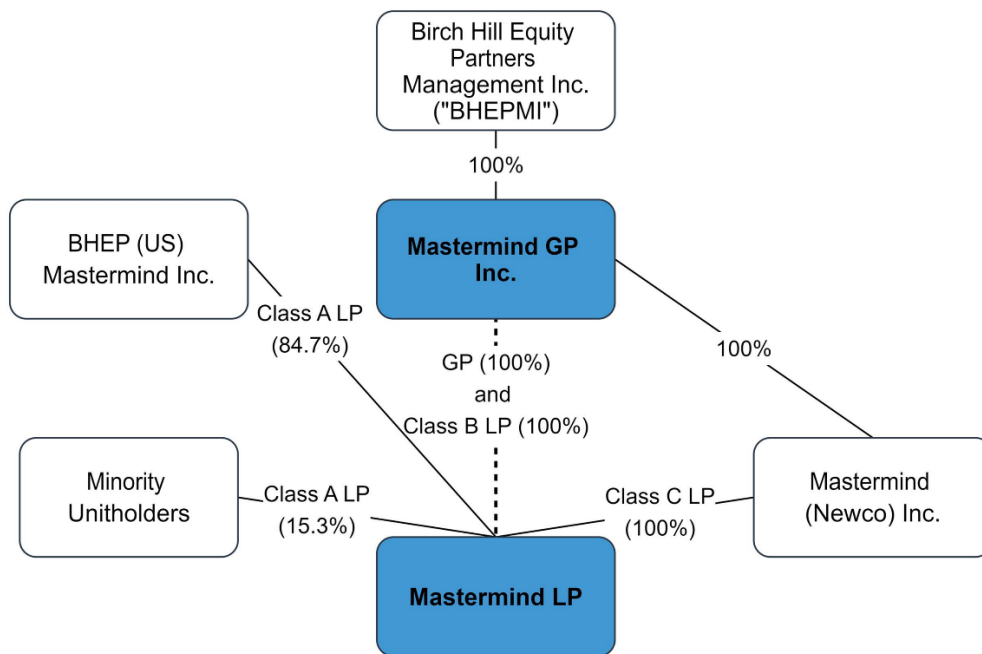
PART II – RELIEF SOUGHT 39

A.	The Initial Order	39
	(i) Stay of Proceedings	39
	(ii) The Proposed Monitor	40
	(iii) Cash Management System	41
	(iv) Consulting Agreement and Liquidation Sale .. Error! Bookmark not defined.	
	(v) The Sale Guidelines	Error! Bookmark not defined.
	(vi) Priority Charges	43
B.	Comeback Hearing	46
	(i) Forbearance Agreement and Lender's Charge	46
	(ii) Key Employee Retention Plan ("KERP")	47
	(iii) Priority Charges	48
C.	Conclusion	49

PART I – THE MASTERMIND ENTITIES’ FINANCIAL CIRCUMSTANCES

A. CORPORATE STRUCTURE

15. As noted above, the Mastermind Entities are comprised of Mastermind LP and Mastermind GP, each of which is formed under the laws of Ontario with registered head offices in Ontario.² The ultimate parent of the Mastermind Entities is BHEPMI. A simplified chart of the Mastermind Entities’ corporate structure is as follows:



Mastermind LP

16. The “Mastermind Toys” business is operated by Mastermind LP, a limited partnership formed under the laws of Ontario. The Class A limited partnership units in Mastermind LP are held by the following limited partners: (a) BHEP (US) Mastermind Inc., a holding company incorporated under the laws of Ontario; and (b) minority unitholders,

² Mastermind GP and Mastermind LP have their registered head offices at 81 Bay Street, Toronto, Ontario.

including various corporations³ owned by Mastermind LP employees (the “**EmployeeCos**”) and a former board member of Mastermind GP. In order to finance, in whole or in part, their subscription price for Class A limited partnership units in Mastermind LP, each of the EmployeeCos issued redeemable, preferred shares to Mastermind LP. A copy of the profile report for Mastermind LP is attached to this Affidavit as **Exhibit “A”**.

Mastermind GP Inc.

17. Mastermind GP is an Ontario corporation and the general partner of Mastermind LP. Mastermind GP holds the sole general partnership unit and all Class B limited partnership units of Mastermind LP. Mastermind GP does not have any operations and exists for the sole purpose of acting as general partner of Mastermind LP. Mastermind GP is a wholly-owned subsidiary of BHEPMI. A copy of the corporate profile report for Mastermind GP is attached to this Affidavit as **Exhibit “B”**.

B. THE MASTERMIND ENTITIES’ BUSINESS

18. The Canadian toy retail market is a multi-billion dollar industry, having generated sales of approximately \$2.39 billion in 2022.⁴ The Canadian toy industry is extremely competitive, not only because of speciality retailers such as Toys R Us and Indigo but also due to the increasing market penetration of multiline retailer conglomerates such as Walmart, Amazon, Costco and Canadian Tire. Mastermind LP currently holds approximately 3% of the Canadian market and is forced to compete with a large number of conglomerates who have the benefit of scale and certain omni-channel capabilities, which makes

³ The EmployeeCos are 2458684 Ontario Inc., RDJCO Inc., Myhan Inc., 1814729 Ontario Inc., 2596788 Ontario Inc. and 2596648 Ontario Inc.

⁴ Erick Bauer “[The NPD Group: Canada Toy Industry Retail Sales Continue to Grow in 2022](#)” The NPD Group (26 Jan 2023).

maintaining this market share an increasingly insurmountable challenge. Multiline retailers have a particular competitive advantage during the Holiday Period, when they offer discounts on toy products to drive traffic to stores, all while recouping revenues through sales in other categories. As a retailer focusing exclusively on the toy category, Mastermind LP cannot adopt the same strategy.

19. Mastermind LP has historically differentiated itself in the market by employing dedicated, passionate and knowledgeable staff, called “Play Experts”. These Play Experts promote the power of play to children’s development and are instrumental in upholding the brand and in engaging Mastermind LP’s loyal customer base. Mastermind LP’s culture is focused on inclusivity, social awareness and giving back to its community and employees.

20. Mastermind LP is centrally managed from Ontario, where its headquarters and distribution centre are located, along with the majority of its retail stores. Mastermind LP has always had a strong presence in Ontario. Indeed, in 2010, when BHEPMI acquired its majority interest in the business, Mastermind LP had 11 locations in the Greater Toronto Area.

21. Over the past decade, BHEPMI and other minority equity holders have invested significant capital in the business, allowing Mastermind LP to professionalize its management team and e-commerce capabilities while expanding its store footprint up to 69 locations in eight provinces at its peak. Despite these efforts, along with various cost containment initiatives, Mastermind LP has continued to incur significant losses and negative cash flow, and as a result, it is no longer a viable business in its present form.

Leases and Retail Stores

22. The Mastermind Entities do not own any real property. Mastermind LP currently operates its retail business in 66 leased stores across eight provinces, with an average store size of 5,000 square feet. The majority of Mastermind LP's stores are outside of shopping malls, with 30 stores located in power centres, 25 stores located in shopping plazas, six stand-alone stores and five stores in shopping malls. The rent for the 66 locations totals approximately \$1,250,000 per month, all of which is paid current.

23. Mastermind LP operates six stores in British Columbia, 13 stores in Alberta, three in Saskatchewan, two in Manitoba, 35 in Ontario, three in Nova Scotia, three in New Brunswick and one in Newfoundland and Labrador. A chart setting out the retail store locations and details of the Mastermind Entities' leases is set out in **Schedule "1"**.

24. Both the main headquarters and distribution centre for Mastermind LP operate out of leased premises at 415-419 Milner Avenue, Toronto ON M1B 2L1. The annual rent associated with this leased premises from August 1, 2023 to July 31, 2024 is approximately \$900,000.

25. Mastermind LP is the tenant under some of the leases, and Mastermind GP is the tenant under others. The leases vary with respect to the remaining term of the lease and any renewal rights thereunder. The landlords for each lease also vary. Some landlords are large corporate owners of power centres, shopping malls and plazas that lease multiple retail locations to the Mastermind Entities. The remainder of the retail stores are leased from smaller independent landlords. A list of the Mastermind Entities' landlords is included at **Schedule "2"**.

26. The Mastermind Entities have paid all rent due under their leases and, to my knowledge, have not defaulted under any lease. The majority of rent is paid on the first of each month.

Employees

27. Mastermind LP currently employs approximately 800 employees, consisting of 625 part-time store associates and 175 full-time employees. The employees are not unionized. Each store generally staffs a full-time store manager in addition to an average of 9 Play Experts, comprised of both part-time and full-time employees.

28. During the upcoming Holiday Period, bi-weekly payroll for store employees is expected to be approximately \$800,000. Mastermind LP provides health, dental, life insurance and vision benefits to certain of its employees, but it does not provide or administer any pension plans or RRSP. Mastermind LP's obligations to employees are current, as are employee source deductions.

29. In addition to Mastermind LP's approximately 800 employees, Mastermind LP relies on certain "staffing agencies" to provide temporary staffing at its distribution centre during the Holiday Period.

Senior Management

30. Mastermind LP has a board of directors consisting of two BHEPMI representatives.

31. Mastermind LP employs a dedicated and highly experienced management team.

In addition to my role as CFO, the leadership team consists of the following people:

- (a) Frank Zita is the President and Chief Merchant ("**President**"). Mr. Zita joined Mastermind LP in 2022 as Vice President of Merchandising and Curation, leading the merchandising and curation teams in addition to the supply

chain team. Mr. Zita was appointed President in May 2023. Prior to his time at Mastermind LP, Mr. Zita held executive roles at a large grocery company.

- (b) Paula Stephens is the Head of Merchandising Strategy & Planning. In this role, she oversees Mastermind LP's go-to market strategy and store allocations. Ms. Stephens began working at Mastermind LP in June 2022.
- (c) Michael Vlasov is the Head of Logistics. Mr. Vlasov joined Mastermind LP in April 2023, and is responsible for all logistical functions, including inbound, warehouse management, web fulfillment and outbound freight.
- (d) Raquel Demakos is the Head of Human Resources. She manages the human resources department, including recruitment, payroll and employee relations. She has been working at Mastermind LP since November 2022.
- (e) Manzar Syed is the IT Infrastructure Manager and oversees all IT services at Mastermind LP. He joined Mastermind LP in April 2021.
- (f) Joanne Tobin is the IT Support Services, Manager. She manages the daily operations of the IT support team and is primarily focused on in store point-of-sale support. She joined Mastermind LP in July 1999.

32. Historically, Mastermind LP paid regular management fees to BHEPMI in exchange for advisory and consulting services, business development functions and other corporate support. In 2020, the annual management fee of approximately \$280,000 (inclusive of HST) was not billed to Mastermind LP given the impact of the COVID-19 pandemic on Mastermind LP's financial performance. BHEPMI subsequently resumed its regular practice by billing management fees in 2021 and 2022, which have been paid.

BHEPMI has not billed any management fees for 2023 due to the financial difficulties facing Mastermind LP.

Merchandising and Supply

33. Mastermind LP focuses on science, technology, robotics, education, arts and math-based toys, games and books. To that end, Mastermind LP sells both branded and private label products. Some of the branded merchandise that Mastermind LP sells includes Hape, Play-Doh, Paw Patrol, Magna-Tiles, Farber-Castell, Snap Circuits and Original Squishmallows. In addition, Mastermind LP has longstanding relationships with several key trade partners, including Lego, Hasbro, Mattel, Spin Master, and Ravensburger. Mastermind LP has focused on negotiating exclusive relationships with manufacturers and distributors and “first-to-market launches” in respect of several branded products, which has helped Mastermind LP develop a niche in the Canadian toy retail market.

34. Mastermind LP sources the majority of its inventory from Canadian, American and international suppliers on a purchase order basis. Approximately 30% of Mastermind LP’s merchandise purchases are procured from overseas vendors. Historically, Mastermind LP has received 30- to 60-day payment terms and, with particular higher volume vendors, participates in certain rebate and marketing spend programs.

35. In addition, and as set out above, Mastermind LP also sells private label products. One of Mastermind LP’s material vendors sources white-label products from various manufacturers in Asia to be branded “Mastermind Toys” and coordinates the delivery of such goods to Mastermind LP.

Distribution

36. On an annual basis, Mastermind LP creates a merchandising plan, including a schedule for purchasing products from various vendors. Specific seasonal strategies are employed, including specialized summer programs, holiday seasons, back-to-school programs and brand promotional opportunities.

37. The vast majority of products are received at Mastermind LP's distribution centre, at which time they are picked, packed and allocated across the store network. Mastermind LP uses third party logistic operators ("**3PLs**") to receive and ship inventory to stores. Mastermind LP has continued to pay its key 3PLs in the ordinary course. On occasion, Mastermind LP uses a 3PL for short-term storage of off-season overstock. During the Holiday Period, Mastermind LP uses a 3PL to receive and process inventory, which is then picked and packed out of the distribution centre. Certain 3PLs are also used for warehousing to address the inventory overflow, and Mastermind LP's primary 3PL, ASL Distribution Services Ltd., will be doing so for 2023.

38. Online orders are either shipped from Mastermind LP's distribution centre or can be picked up in store by customers. The Mastermind Entities are current with key 3PLs and intend to pay all critical 3PLs throughout the course of the proceedings.

E-Commerce

39. Mastermind LP's online platform is accessible at: www.mastermindtoys.com. In 2023 to date, approximately 10% of total sales have been generated online. Mastermind LP estimates that it has approximately 2% of the online toy market share.

Loyalty Programs

40. Mastermind LP launched its “Perks” loyalty program in 2018 to leverage and reward Mastermind LP’s loyal customer base. The program quickly gained a devoted following and, as of today, has over 1.2 million members.

41. Member benefits include early access to sales and “Perk Days”, where discounts or other promotions are offered exclusively to members, such as free shipping days, surprise birthday gifts for kids, special in-store events and free loot-bag assembly.

42. The Perks loyalty program has been successful. Perks members open Mastermind LP email distributions 18-24% of the time that email promotions are sent to members. In addition, Perks members spend more per in-store transaction than regular customers.

Gift Cards

43. Mastermind LP customers can purchase gift cards (“**Gift Cards**”) in-store, online or through other retail outlets, to be redeemed for merchandise either in Mastermind LP’s brick-and-mortar stores or through its website. The Gift Cards are managed by a third party pursuant to various agreements with Blackhawk Network (Canada) Ltd., attached to this Affidavit as **Exhibit “C”**.

44. Mastermind LP receives payment as soon as a Gift Card is purchased. On October 31, 2023, Mastermind LP had a net liability for outstanding Gift Cards of approximately \$5.6 million, net of breakage, or net of any revenues retained by Mastermind LP due to unredeemed Gift Cards.

45. The Gift Card program is designed to increase sales. Consequently, the Mastermind Entities are seeking an Initial Order authorizing Mastermind LP to continue

to honour outstanding Gift Cards at its retail locations until December 24, 2023, but further Gift Cards will not be sold or activated.

Return Policies

46. Prior to the commencement of these CCAA proceedings, Mastermind LP offered full refunds on as-new returns accompanied by the original receipt, consistent with the market practice that retail consumers have come to expect. While Mastermind LP's existing return policies were designed to improve the customer experience, given the proposed liquidation of the business, Mastermind LP will not allow returns after the Initial Order is granted.

Merchant Fees

47. Mastermind LP pays merchant fees to various merchants when its customers use credit cards to pay for products in store or online. These merchant fees apply to all credit card purchases and amount to an average of 1.5 to 2.0% of Mastermind LP's sales. Such fees are paid in the ordinary course and are current as of the date of this Affidavit.

Cost-curtailment

48. Through the liquidation and wind-down process, Mastermind LP will seek to minimize its operating expenses to maximize recovery for its creditors. To that end, I expect that there will be employee terminations in the interim period before the Comeback Hearing.

C. FINANCIAL POSITION OF THE MASTERMIND ENTITIES

49. Mastermind LP's most recent financial statements were prepared as of December 31, 2022, copies of which are attached to this Affidavit as **Exhibit "D"**. While Mastermind

LP historically obtained audited financial statements, the December 31, 2022 audit was not finalized.

50. Since December 31, 2022, Mastermind LP has prepared unaudited financial statements on a monthly basis for the 2023 fiscal year to date, up to October 31, 2023. The most recent figures set out in these documents are summarized below.

Unaudited Income Statement		<i>\$CAD (000s)</i>
Revenue		65,478
Cost of Sales		37,504
Gross Profit		27,974
Wages		14,662
Benefits		2,677
Temporary Wages		746
Rent		12,006
Utilities		1,322
Customer Delivery		640
Gift Bags & Wrapping		132
Merchant Fees		1,141
Marketing		677
Professional Fees		366
Supplies		531
Travel & Entertainment		182
Repairs & Maintenance		383
IT Support		1,244
Security		121
Freight Costs		2,166
Third Party Logistics		366
Insurance		253
Service Charges		201
General & Administrative Expenses		566
Operating Expenses		40,381
EBITDA		(12,407)
Bonuses		(0)
Separation Costs		(132)
Reported EBITDA		(12,275)
Amortization		2,715
BHEPMI Cost Reimbursements		967
Interest		1,201

Other Expenses	1,000
Income from Investments	(23)
Non-Operating Expenses	5,861
Net Comprehensive Income (Loss)	(18,135)

Unaudited Balance Sheet	\$CAD (000s)
Cash	2,023
Accounts Receivable	860
Prepaid Expenses	1,476
Prepaid Inventory	1,303
Inventory	35,727
Inventory Provision	(758)
Current Assets	40,631
Due From Related Parties	238
Fixed Assets, net	6,754
Goodwill	11,664
Intangible Assets	6,000
Non-Current Assets	24,656
Total Assets	65,287
A/P - Trade	22,146
A/P - Government	48
Accrued Liabilities	3,289
Gift Cards Outstanding	5,639
Deferred Revenue	116
CIBC Revolver	19,460
BCAP Term Loan	6,250
BHEP GRID Note	1,555
Accrued BHEP Interest	104
Deferred Lease Obligations	3,516
Total Liabilities	62,124
Partners' Capital Contribution	44,753
Partners' Income	(21,836)
Partners' Distribution	(1,169)
Investment in Preferred Shares	(450)
Net Income	(18,135)
Partners' Equity	3,162
Total Liabilities + Partners' Equity	65,287

Assets

51. As of October 31, 2023, the assets of Mastermind LP have a book value of approximately \$65.3 million and consist of the following:

	<i>\$CAD (000s)</i>
Cash	2,023
Accounts Receivable	860
Prepaid Expenses	1,476
Prepaid Inventory	1,303
Inventory	35,727
Inventory Provision	(758)
Current Assets	40,631
Due From Related Parties	238
Fixed Assets, net	6,754
Goodwill	11,664
Intangible Assets	6,000
Non-Current Assets	24,656
Total Assets	65,287

Liabilities

52. As of October 31, 2023, the liabilities of Mastermind LP are approximately \$62.1 million and consist of the following:

	<i>\$CAD (000s)</i>
A/P - Trade	22,146
A/P - Government	48
Accrued Liabilities	3,289
Gift Cards Outstanding	5,639
Deferred Revenue	116
CIBC Revolver	19,460
BCAP Term Loan	6,250
BHEP GRID Note	1,555
Accrued BHEP Interest	104
Deferred Lease Obligations	3,516
Total Liabilities	62,124

53. As set out in the following table, Mastermind LP has been operating at a loss for several years, despite efforts to cut costs and increase revenues. Mastermind LP is in a

negative working capital position, and Mastermind LP is suffering from a liquidity crisis. It is unable to meet its obligations as they become due.

\$CAD (000s)	2018	2019	2020	2021	2022	YTD2023¹
Sales	137,795	120,819	107,721	143,443	129,592	65,478
EBITDA	5,812	520	598	6,618	(3,988)	(12,407)
Net Income (Loss)	(875)	(5,313)	(7,402)	1,272	(9,031)	(18,135)

¹Based on unaudited financial results as of October 31, 2023

D. INDEBTEDNESS

(i) Secured Obligations

The CIBC Facilities

54. CIBC is the senior secured lender to Mastermind LP under a credit agreement dated October 24, 2014 between, *inter alia*, CIBC, Mastermind LP, as borrower, and Mastermind GP, as guarantor, (as such agreement was amended from time to time⁵, the “**Credit Agreement**”), which is attached to this Affidavit as **Exhibit “E”**.

55. During 2020, as a result of the pandemic, all stores were closed at various periods of time. Sales were materially and adversely impacted and had decreased 11% compared to 2019. At the same time, the Government of Canada introduced the Business Credit Availability Program (“**BCAP**”) through the Export Development Corporation (Canada) (the “**EDC**”) to provide additional liquidity to support businesses during the pandemic. Mastermind LP applied for the BCAP to inject much needed liquidity into the business.

⁵ Pursuant to CIBC Credit Agreement dated October 24, 2014; CIBC 1st Amending Agreement dated July 29, 2015; CIBC 2nd Amending Agreement dated April 4, 2016; CIBC 3rd Amending Agreement dated September 26, 2016; CIBC 4th Amending Agreement dated April 24, 2017; CIBC 5th Amending Agreement dated July 25, 2017; CIBC 6th Amending Agreement dated January 14, 2019; CIBC 7th Amending Agreement dated January 22, 2020; CIBC 8th Amending Agreement dated June 11, 2020; CIBC 9th Amending Agreement dated May 20, 2021 and effective as of January 1, 2021; CIBC 10th Amending Agreement dated July 23, 2021; CIBC 11th Amending Agreement dated May 19, 2022.

56. On June 11, 2020, the Credit Agreement was amended pursuant to an amending agreement (the “**Amending Agreement**”) to accommodate Mastermind LP’s request for \$6.25 million under the BCAP (the “**BCAP Term Loan**”), with CIBC as lender and EDC as guarantor.⁶ A copy of the Amending Agreement is attached to this Affidavit as **Exhibit “F”**.

57. Under the Credit Agreement, as amended, CIBC has committed a total loan facility of \$36,250,000, including: (i) \$30,000,000 in the form of a revolving credit facility (the “**Revolving Loan Facility**”); and (ii) the BCAP Term Loan in the amount of \$6.25 million.

58. The Revolving Loan Facility is a borrowing base facility. Availability under the facility is based on the value of inventory in possession of Mastermind LP, inventory in transit and credit card accounts receivables, less certain deductions and reserves. Consequently, as Mastermind LP’s financial circumstances and ability to purchase inventory have deteriorated, the availability under the Revolving Loan Facility has decreased.

59. As general partner of Mastermind LP, Mastermind GP is liable for any of Mastermind LP’s defaults under the Credit Agreement. In addition, Mastermind GP is a guarantor of the obligations of Mastermind LP under the Credit Agreement on a secured basis pursuant to a guarantee dated October 24, 2014 (the “**Guarantee**”). A copy of the Guarantee is attached to this Affidavit as **Exhibit “G”**.

60. As further described below, Mastermind LP has defaulted under the Credit Agreement.

⁶ Pursuant to the Credit Agreement, EDC has guaranteed repayment of 80% of the principal amount of the BCAP Term Loan.

Grid Promissory Notes

61. On June 11, 2020, Mastermind LP issued grid promissory notes on a secured basis in favour of: (i) Birch Hill Equity Partners (Entrepreneurs) IV, LP ("**ELP**") in the amount of \$13,182; (ii) Birch Hill Equity Partners IV, LP, ("**Canadian LP**") in the amount of \$500,190; and (iii) Birch Hill Equity Partners (US) IV, LP ("**US LP**") in the amount of \$736,628. The purpose of the grid notes was to inject cash flow into the business and facilitate access to the BCAP Term Loan.

62. Each of the grid promissory notes issued to ELP, Canadian LP and US LP (collectively, the "**Birch Hill Lenders**") is interest bearing at a rate equal to 10% per annum. Interest on the grid promissory notes accrues daily and is payable in arrears on December 31. Copies of the original grid promissory notes are attached to this Affidavit as **Exhibit "H"**. At each fiscal year end on December 31, the interest outstanding on the notes is payable in kind by issuing a new promissory note in the principal amount of the unpaid interest (each, a "**PIK Note**"). Attached to this Affidavit as **Exhibit "I"** are copies of the PIK Notes and an excel spreadsheet setting forth the dates on which they were issued.

Personal Property Security

63. The obligations of Mastermind LP and Mastermind GP under the Credit Agreement and Guarantee, respectively, are secured by (a) a general security agreement between CIBC and Mastermind GP dated October 24, 2014, and (b) a general security between CIBC and Mastermind LP dated October 24, 2014 (collectively, the "**Security**"). Attached to this Affidavit at **Exhibit "J"** is a copy of the Security. Pursuant to the terms of the

Security, Mastermind LP and Mastermind GP granted CIBC a security interest in all of their present and after acquired personal property.

64. CIBC registered the Security under the personal property regimes in: Ontario, British Columbia and Alberta on October 16, 2014; Saskatchewan on March 3, 2016; Manitoba on July 24, 2015; and Nova Scotia, New Brunswick and Newfoundland and Labrador on June 3, 2020.

65. Attached to this Affidavit as **Exhibit “K”** is a copy of *Personal Property Security Act* searches with a file currency of November 12, 2023 against both Mastermind LP and Mastermind GP in the personal property registers in each of the Provinces stated above (collectively, the “**Searches**”).⁷ The Searches show no registrations against Mastermind LP or Mastermind GP other than those in favour of: (i) CIBC; and (ii) the Birch Hill Lenders.

66. On June 11, 2020, Mastermind LP and the Birch Hill Lenders entered into a subordination and postponement agreement with CIBC (the “**Subordination Agreement**”), agreeing to subordinate and postpone their subordinate indebtedness to the indefeasible repayment of in full by Mastermind LP of the obligations of Mastermind LP in favour of CIBC. A copy of the Subordination Agreement is attached to this Affidavit as **Exhibit “L”**.

Bank Act Security

67. On October 22, 2014, Mastermind LP gave CIBC security under section 427 of the *Bank Act (Canada)* to CIBC (the “**Bank Act Security**”). A copy of the documents in connection with the Bank Act Security are attached to this Affidavit as **Exhibit “M”**.

⁷ I am advised of this fact by Lisa Hughes, a law clerk at Davies Ward Phillips & Vineberg LLP, who conducted the Searches, and believe this to be true.

68. *Bank Act* searches against Mastermind LP dated November 13, 2023 in Ontario showed no registrations against Mastermind LP other than those in favour of CIBC.⁸ *Bank Act* searches against Mastermind LP and Mastermind GP in all of the Provinces⁹ where Mastermind LP has store locations showed no registrations. Attached as **Exhibit “N”** to this Affidavit is a copy of the *Bank Act* searches.

(ii) Defaults under the Credit Agreement

69. Since October 2022, Mastermind LP has been in default under the Credit Agreement for failure to maintain certain financial covenants. Specifically, Mastermind LP has been in breach of its Fixed Charge Coverage Ratio (as defined in the Credit Agreement) covenant since December 31, 2022 and has failed to maintain the minimum EBITDA covenant from April 30, 2023 onward (together, the “**Defaults**”).

70. The Credit Agreement provides that upon an “Event of Default” (as defined thereunder), CIBC can, *inter alia*, reduce or terminate its commitments, adjust any elements used in computing the borrowing base, restrict the amounts of or refuse to make available the Revolving Loan Facility or the BCAP Term Loan, or declare any and all obligations to be immediately due and payable. Moreover, the Credit Agreement and the Guarantee both provide that upon an “Event of Default” (as defined in the Credit Agreement), the obligations of the Guarantor shall be due and owing.

71. On November 13, 2023, counsel for CIBC sent notice of the Defaults to Mastermind LP and indicated that CIBC was reserving all rights in that regard. A copy of the letter is attached to this Affidavit as **Exhibit “O”**.

⁸ I am advised of this fact by Lisa Hughes, a law clerk at Davies Ward Phillips & Vineberg LLP, who conducted the *Bank Act* searches, and believe this to be true.

⁹ British Columbia, Alberta, Saskatchewan, Manitoba, Nova Scotia, New Brunswick, Newfoundland and Labrador.

72. As of October 31, 2023, Mastermind LP and Mastermind GP were indebted to CIBC under the Credit Agreement in the following principal amounts:

(a) Revolving Loan Facility: \$19,460,000

(b) BCAP Term Loan: \$6,250,000

(iii) **Unsecured Creditors**

Trade Creditors

73. As of October 31, 2023, Mastermind LP owes approximately \$22,146,000 in accounts payable to trade creditors. These amounts are unsecured. The majority of this balance relates to merchandise vendors, as well as shipping and logistics providers.

Employee Liabilities

74. As of November 16, 2023, there is approximately \$120,000 outstanding in accrued vacation pay, a relatively modest obligation as the majority of Mastermind LP's store-level employees do not accrue vacation days but are instead paid such amounts in cash as part of the regular bi-weekly payroll. Mastermind LP also provides benefits to certain of its employees through the following benefits providers: (i) The Canada Life Assurance Company (at a cost of approximately \$53,000 per month); (ii) RBC Life Insurance Company (at a cost of approximately \$12,000 per month); and (iii) Telus Health (Canada) Ltd. (at a cost of approximately \$1,700 per quarter). Mastermind LP's payments to the foregoing benefit providers are current as of the date of this Affidavit.

75. The payroll cycle for store and non-store employees is bi-weekly, one-week in arrears. As a result, for each pay period, payroll is funded to Ceridian on Thursday and remitted to employees on Friday in respect of the employee's pay for the prior week.

Employee payroll is expected to amount to approximately \$1 million bi-weekly during the Holiday Period.

Litigation/Contingent Liabilities

76. As of November 13, 2023, neither Mastermind LP nor Mastermind GP are party to any litigation that materially impacts the business or the planned liquidation.

(iv) Total Indebtedness

77. The total of Mastermind LP's obligations as of October 31, 2023 is as follows:

	\$CAD (000s)
A/P - Trade	22,146
A/P - Government	48
Accrued Liabilities	3,289
Gift Cards Outstanding	5,639
Deferred Revenue	116
CIBC Revolver	19,460
BCAP Term Loan	6,250
BHEP GRID Note	1,555
Accrued BHEP Interest	104
Deferred Lease Obligations	3,516
Total Liabilities	62,124

Charity Collections

78. In the ordinary course, Mastermind LP collects money for various charities as part of its "Play to Give" program. As of October 31, 2023, Mastermind LP holds approximately \$40,000 that it collected for such charities, which include Right to Play, Canada's Children's Hospital Foundations, Kids Help Phone and Books that Give Back Canada. Mastermind LP plans to remit any money collected for the purpose of a specific charity to that charity and will stop collecting on behalf of those charities once the Initial Order is granted

E. THE MASTERMIND ENTITIES' DETERIORATING FINANCIAL CIRCUMSTANCES

79. In recent years, the toy industry experienced a significant shift as buyers began making online purchases with greater frequency, and, in particular, as Amazon gained significant market share at the expense of independent retailers.

80. Mastermind LP's profitability increased until it peaked in 2017. Thereafter, profitability began to decline as input costs continued to rise and revenue stagnated. As the toy industry has become increasingly commoditized and competitive, Mastermind LP's margins have continued to diminish.

81. In response to these troublesome market trends, Mastermind LP launched a number of initiatives to restore market share, revenues and profitability. In 2018, Mastermind LP launched its Perks loyalty program. In 2019, four new stores opened in Ontario and British Columbia as part of an overall expansion effort. However, Mastermind LP's market share continued to decline. In 2019, revenue declined over 12% from \$138 million in 2018 to \$121 million in 2019.

82. Following two poorly performing financial years, in early 2020 Mastermind LP transitioned its senior leadership team with a focus on being digitally competitive and introducing a private label product line to increase customer loyalty. Unfortunately, when the COVID-19 pandemic arose shortly thereafter, sales decreased significantly due to government-mandated store closure orders.

83. The pandemic resulted in all Mastermind LP brick-and-mortar locations being closed at different periods of time throughout 2020 and 2021. Mandated closures and capacity restrictions limited sales. As a result, Mastermind LP launched "buy online pick-up in-store" ("**BOPIS**") to ameliorate lower sales. Although Mastermind LP received industry awards

in 2020 for these efforts, including “Most Innovative Retailer of the Year” at the Tagie Awards and the Game International Excellence Award, sales and profitability continued to decline.

84. The shift to online shopping has been a perpetual obstacle. Online platforms require significant upfront and ongoing IT investments to remain competitive, and the cost of delivery is also significant. The impact of these two factors materially reduces profit margins, making the e-commerce business less profitable than the brick-and-mortar channel. E-commerce businesses require significant scale to be profitable, which Mastermind LP has not yet achieved, making it difficult to compete against online behemoths such as Amazon and Walmart. As of the end of the 2020 financial year, total revenues were down by approximately 11% to \$107.7 million when compared to 2019.

85. The long-term inflationary impacts of the pandemic have severely impacted Mastermind LP and other Canadian retailers. Since the COVID-19 pandemic, the cost of raw inputs to build toys, including plastic resin, and freight costs have increased. As a result, vendors are increasing costs, which are passed onto consumers who are increasingly cost sensitive.¹⁰

86. Despite these challenges, Mastermind LP continued to make every effort to win back market share and increase revenues and profitability. In 2021, Mastermind LP launched “Mastermind Toys Baby”, a private-label for baby toys. Mastermind Toys Baby targets new parents by offering a curated selection of toys, books and baby products

¹⁰ Brett Bundale “[Consumers opting for cheaper toys as inflation soars, toymaker Spin Master says](#)” The Canadian Press (5 May 2022).

suitable for infants under 24 months old. By 2022, Mastermind Toys Baby achieved a 5.5% share of the Canadian baby toy market.¹¹

87. In 2022, Mastermind LP's private brand was launched, which had margins of approximately 57%. In comparison, all other products had average margins of 44%. The private brand was launched to leverage Mastermind LP's loyal customer base. The ideation for private brand products are curated by Mastermind LP: some are developed and designed specifically for Mastermind LP, and others are generic white-label products manufactured overseas and labelled with "Mastermind Toys" branding.

88. As of June 2022, sales in the first half of the year were consistent with the first half of 2021; however, the second half of 2022 saw an approximate 20% reduction in sales compared to the same period in 2021. This was an industry wide issue that was not unique to Mastermind LP. Further impacting Mastermind LP's costs were increased freight charges of \$2 million due to supply chain issues and increased temporary labour expenses of \$200,000 due to floorplan repositioning in the warehouse. Reduced sales, gross margin pressures and material one-time costs resulted in negative EBITDA. In 2022, Mastermind LP's gross revenue was down approximately 10% from 2021, and EBITDA margin was approximately (3%) on account of costs, including back office, management, warehouse, freight and IT infrastructure costs. Profit margins also declined substantially in 2022.

¹¹ Circana (NPD) 2022 Industry Reports.

F. RESPONSE TO FINANCIAL DIFFICULTIES

Operational Changes

89. Due to Mastermind LP's ongoing financial troubles, management actioned several initiatives to improve operational efficiencies as identified above. In addition, Mastermind LP began to identify stores to be closed due to poor performance and high fixed costs. During 2023, Mastermind LP decided to close two such store locations (St. Laurent, Ontario and London South, Ontario), which had maturing leases and were underperforming. In addition, Mastermind LP undertook significant cost reductions in February 2023 in response to decreasing sales trends that emerged in 2022 and early 2023.

90. In March 2023, after margins, profits and revenues continued to trend negatively compared to prior years, Mastermind LP sought out advisors to assist in preserving liquidity and identifying strategic alternatives, including a potential going concern sale of the business, as outlined below.

Pre-filing Sale Process

91. On March 8, 2023, Mastermind LP engaged A&M Corporate Finance to advise on available strategic alternatives and to commence a robust sale process for the business (the "**Sale Process**").

92. The Sale Process was structured in two phases. The table below summarizes the key dates and milestones in relation to each phase of the Sale Process:

Sale Process	Date (2023)	Days (Cumulative)
Phase 1		
Commencement of the Sale Process	April 10	44
Phase 1 due diligence	April 10 to May 24	

Provision of Phase 1 Process Letter	May 1	
Phase 1 LOI bid date	May 24	
Analysis of LOIs and selection of Phase 2 participants	May 25 to 29	
Phase 2		
Phase 2 due diligence	Commenced May 30	75 (119)
Provision form of APA	June 16	
Withdrawal of remaining Phase 2 Participants	Mid-August	
Execution of Equity Purchase Agreement with the Strategic Buyer	September 22	

93. I am advised by A&M Corporate Finance that the timeline established for the Sale Process was similar to timelines typically undertaken within sales processes conducted for distressed entities.

Phase 1 of the Sale Process

94. The first phase (“**Phase 1**”) of the Sale Process commenced on April 10, 2023. During Phase 1, A&M Corporate Finance contacted 95 potential bidders throughout Canada, the United States, and Europe. Of these bidders, 32 executed non-disclosure agreements (“**NDAs**”) and received diligence information.

95. On May 24, 2023, four parties submitted Phase 1 non-binding LOIs. I am advised by A&M Corporate Finance that the parties who did not submit LOIs refrained from doing so for the following reasons: (i) Mastermind LP’s recent financial performance; (ii) the business’ overleveraged position, including the heavily utilized Revolving Loan Facility and the BCAP Term Loan, which would require a substantial investment to recover liquidity; and (iii) a general lack of interest in the competitive, retail toy category.

96. Of the four parties who submitted LOIs, two qualified to advance to the second phase (“**Phase 2**”) of the Sale Process because they were identified as higher value bidders and capable of closing a transaction (the “**Qualified Bidders**”).

Phase 2 of the Sale Process

97. Phase 2 commenced on May 30, 2023. During the months of June through August, each of the two Qualified Bidders conducted extensive due diligence, participated in management meetings and engaged financial and legal advisors to advance a potential transaction. Unfortunately, during this period, Mastermind LP’s business continued to underperform, with negative trends in sales and a worsening liquidity position. Indeed, Mastermind LP’s sales were trending approximately 25% below the prior year. Primarily as a result of this underperformance and Mastermind LP’s liquidity and working capital profile at that time, both of the Qualified Bidders withdrew from the Sale Process.

98. After both Qualified Bidders withdrew from the Sale Process, A&M Corporate Finance recanvassed the market for a going concern purchaser. At that time, the Strategic Bidder was the only remaining party who expressed an interest in purchasing Mastermind LP and that had the financial capability and willingness to assume all of its liabilities. The Strategic Bidder ultimately proposed the Going Concern Transaction and signed the Equity Purchase Agreement on September 22, 2023, agreeing to purchase all equity interests in Mastermind LP and Mastermind GP by the Outside Date.

99. The Going Concern Transaction was subject to mandatory pre-merger notification under the *Competition Act* because it satisfied applicable notification thresholds.¹² On

¹² As noted above, I have been advised by Davies Ward Phillips & Vineberg LLP as to the facts related to the pre-merger notification process and subsequent interactions with the Competition Bureau, and I believe these facts to be true.

September 26, 2023, the Strategic Bidder submitted a request for an advance ruling certificate, or in the alternative a “no-action letter”, in respect of the Going Concern Transaction to the Commissioner. Shortly thereafter, on October 10, 2023, the Mastermind Entities and the Strategic Bidder filed their respective pre-merger notifications, commencing a 30-day statutory waiting period.

100. Over the course of the waiting period, the parties engaged in numerous discussions with and submitted significant volumes of information to the Competition Bureau to assist in the Competition Bureau’s review of the Going Concern Transaction. Among other discussions and submissions, Mastermind LP made submissions to the Competition Bureau: (i) in support of its status as a “failing firm” within the meaning of the Competition Bureau’s Merger Enforcement Guidelines;¹³ (ii) asserting that it did not have the time or resources to comply with a SIR given its liquidity constraints; (iii) that the issuance of a SIR would likely result in the Going Concern Transaction being terminated and the Mastermind Entities being required to commence CCAA proceedings; and (iv) that if the Commissioner did not issue a SIR and allowed the 30-day statutory period to lapse, the parties could close the Going Concern Transaction, which would preserve the Mastermind LP assets as a standalone business and preserve the Commissioner’s ability to challenge the Going Concern Transaction up to one year following closing if, in theory, the Commissioner ultimately concluded that a remedy was required. It was made clear to the Competition Bureau that the Strategic Bidder was the only party willing to acquire Mastermind LP in its entirety, assuming responsibility for all employees, store leases and

¹³ See: https://ised-isde.canada.ca/site/competition-bureau-canada/en/how-we-foster-competition/education-and-outreach/publications/merger-enforcement-guidelines#s13_0.

creditors (both secured and unsecured). The Going Concern Transaction was the only potential transaction that would have preserved value for all stakeholders.

101. Despite these efforts, on November 8, 2023, the Commissioner issued SIRs, to the Mastermind Entities and the Strategic Bidder. The SIR issued to the Mastermind Entities is attached to this Affidavit as **Exhibit “P”**. Issuance of the SIRs meant that the statutory waiting period was extended such that the parties were prohibited from closing the Going Concern Transaction until 30 days after the parties had complied with the requirements of the SIRs. In light of the time-sensitive liquidity problems that Mastermind LP faced (and continues to face), compliance with the SIRs would have been unduly time consuming and burdensome. As noted above, responses to the SIRs and compliance with the subsequent statutory waiting period would have taken several months and imposed prohibitive costs on the parties. Mastermind LP would not be able to continue operating for the length of time that would be required to respond to the SIR. In addition, it was also not certain that the Commissioner would grant clearance to the transaction following compliance with the SIRs. The effect of the Bureau issuing the SIRs was to preclude closing of the Going Concern Transaction by November 24, 2023, which was the only option that could have saved the Mastermind Entities from formal insolvency proceedings and prevented many of Mastermind LP’s over 800 employees from losing their jobs as a result. The Going Concern Transaction was terminated as of November 8, 2023.

G. URGENCY OF THE APPLICATION

102. The Mastermind Entities are facing exceptional circumstances that require urgent and immediate relief.

103. Following the Sale Process and the failed Going Concern Transaction (described above), the Mastermind Entities, alongside A&M Corporate Finance, evaluated their limited remaining options and ultimately concluded that their financial position could not support furthering the Sale Process. Mastermind LP does not have sufficient free cash flow and liquidity to continue running its business in the ordinary course, and its revenues continue on a downward trajectory. With no prospect of improvement, the Mastermind Entities will run out of cash before they are able to pursue a new potential transaction, and it is unlikely that any more parties would be interested in purchasing the business outside of the context of these proceedings at this time. Indeed, given the lack of cash and downward sales trends, relief under the CCAA is the only option to provide Mastermind LP with the protections it needs to complete a liquidation of its business and the Potential CCAA Transaction or pursue other strategic options.

104. Mastermind LP has materially reduced its merchandise inventory purchases, reduced certain variable costs and has delayed a material amount of payments to merchandise suppliers. Specifically, as compared to Mastermind LP's average vendor terms of approximately 45 days, Mastermind LP has stretched its current days payable in excess of 85 days. The minimal liquidity that Mastermind LP does have is only available because it has delayed payments to suppliers, which Mastermind LP did in anticipation of closing the Going Concern Transaction and knowing that those suppliers would be paid under new ownership.

105. As at October 31, 2023, Mastermind LP is holding approximately \$35.0 million in inventory as compared to \$41.3 million at this time last year. In addition, there is approximately \$1 million of overseas product held at the border pending payment from

Mastermind LP. Typically, when Mastermind LP submits a purchase order to an international vendor, it is required to pay a deposit, with the balance payable upon receipt of the goods. As a result, Mastermind LP cannot take possession of products sourced from overseas, and they will not be released from the border, until any outstanding amounts are paid. Mastermind LP has not been able to pay its international suppliers. The reduction in inventory in Mastermind LP's possession has negatively impacted the borrowing base under the Revolving Loan Facility and by extension, reduced the availability of credit to Mastermind LP.

106. Mastermind LP is currently operating on a week-to-week basis from a cash-flow perspective. In addition, Mastermind LP is in default under the Credit Agreement and Mastermind GP does not have the ability to inject any capital into Mastermind LP.

107. As described above, the primary purpose of this CCAA proceeding is to seek this Court's approval of the Consulting Agreement to be entered into to enable the Mastermind Entities to conduct an orderly liquidation of the "Mastermind Toys" business (described and defined below as the Liquidation Sale) and to provide the Mastermind Entities the flexibility needed to pursue other strategic options. Specifically, the Mastermind Entities are seeking this Application on an urgent basis so that they can continue to pursue the Potential CCAA Transaction while preparing for the proposed liquidation as quickly as possible during the Holiday Period, such that the Mastermind Entities can take advantage of the high sales volume generated during the holiday shopping period for the benefit of their stakeholders.

PART II – RELIEF SOUGHT

A. THE INITIAL ORDER

108. As described in paragraph 3 above, the Applicant is seeking an Initial Order, among other things:

- (a) declaring that Mastermind GP is a party to which the CCAA applies and that Mastermind LP shall be bound by the Initial Order and enjoy the protections, authorizations and benefits thereof;
- (b) granting a stay of proceedings against the Mastermind Entities;
- (c) appointing the Proposed Monitor;
- (d) permitting the Mastermind Entities' continued use of the Cash Management System;
- (e) granting the Administration Charge and D&O Charge and the priorities of such charges; and
- (f) setting a hearing date for the Comeback Hearing.

(i) Stay of Proceedings

109. The Mastermind Entities, which are currently in default of many of their ordinary course obligations, require a stay of proceedings and the other protections afforded by the CCAA to provide them with the breathing room needed to implement the liquidation sale and pursue other strategic options, such as the Potential CCAA Transaction. It would be highly disruptive and potentially detrimental to such liquidation sale if rights or remedies were executed against the Mastermind Entities while the liquidation sale was underway.

110. The Mastermind Entities are requesting a short eight (8) day stay until the Comeback Hearing but anticipate requesting a further stay until January 28, 2024 at the Comeback Hearing.

111. With the assistance of the Proposed Monitor, the Mastermind Entities have conducted a cash flow analysis to determine the amount required to finance their business operations and the costs of these CCAA proceedings, assuming the Initial Order is granted, over the 10-week period from November 23, 2023 to January 28, 2024 (the “**Cash Flow Projection**”). I understand that the Cash Flow Projection will be appended to the Proposed Monitor’s pre-filing report and will demonstrate that the Mastermind Entities have sufficient cash to fund their operations and the costs of these CCAA proceedings during the requested 10-week period provided the relief contemplated under the Initial Order and the ARIO is granted. The cash flow forecast will be included in the report of the Proposed Monitor.

(ii) The Proposed Monitor

112. Pursuant to the Initial Order, the Applicant is asking this Court to appoint A&M as monitor. A&M has extensive experience in large and complex insolvency proceedings under the CCAA, including a number of recent retail insolvencies and restructurings.

113. As described herein, A&M Corporate Finance, which is affiliated with A&M, has been involved with the Mastermind Entities since early 2023 and is intimately familiar with the “Mastermind Toys” business, the financial position of the Mastermind Entities and the relief requested by the Mastermind Entities. Under each of its previous engagements, A&M Corporate Finance billed at its standard hourly rates and was not engaged on a success fee or contingency fee basis.

114. I am advised by A&M that it is a “trustee” within the meaning of subsection 2(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, and that it is not otherwise precluded from acting as monitor under subsection 11.7(2) of the CCAA. A&M has consented to act as monitor in these proceedings, if appointed. A copy of A&M’s consent is attached to this Affidavit as **Exhibit “Q”**.

(iii) Cash Management System

115. In the ordinary course of business, Mastermind LP uses a centralized cash management system administered by its treasury group from its head office in Scarborough, which collects, transfers and disburses funds generated by its store network and webstore platform (the “**Cash Management System**”).

116. Mastermind LP has four bank accounts, each maintained with CIBC: two deposits accounts and two disbursements accounts. In addition to these primary accounts, Mastermind LP also holds “CIBC Rapidtrans” accounts at certain store locations to collect all cash and credit card receipts. Cash receipts collected by CIBC Rapidtrans accounts are automatically moved into the main collections account on a daily basis and applied against the Revolving Loan Facility.

117. An overview of Mastermind LP’s four bank accounts is as follows:

- (a) a Canadian dollar deposit account, which receives store deposits from the CIBC Rapidtrans accounts, as well as other collections from vendors and other sources. The proceeds from the sale of inventory or other property is deposited in the Canadian dollar deposit account and automatically applied against the balance of the Revolving Loan Facility daily;
- (b) a Canadian dollar disbursement account, which is directly funded from the Revolving Loan Facility. Mastermind LP uses this account as its primary

disbursements account for all Canadian dollar merchandise and non-merchandise disbursements, and to fund payroll via Ceridian;

- (c) a U.S. dollar disbursement account, which is funded from the Revolving Loan Facility, converted into U.S. dollars by CIBC at its prevailing exchange rate. These funds are used to make U.S. dollar merchandise and non-merchandise disbursements; and
- (d) a U.S. dollar deposit account, which is maintained to collect any U.S. dollar receipts.

118. Mastermind LP's treasury department reviews and maintains the Cash Management System on a daily basis, and reviews and reconciles all cash activity on a monthly basis. Interest and bank fees are automatically applied against the Revolving Loan Facility on a monthly basis.

119. The Mastermind Entities are still settling the terms upon which CIBC will continue to make the Revolving Loan Facility available to the Mastermind Entities during the course of these CCAA proceedings. The Mastermind Entities anticipate that for the period between the date of the Initial Order and the date of the Comeback Hearing, they will continue to utilize the Revolving Loan Facility on a limited basis in accordance with its terms. Accordingly, the Mastermind Entities will continue to pay down the balance of the Revolving Loan Facility on a daily basis through the use of the Cash Management System and daily sweeping of the Canadian dollar deposit account.

120. The Cash Management System is critical to the orderly management of the Mastermind Entities' business affairs and continued availability of the Revolving Loan Facility. Accordingly, the Mastermind Entities are seeking to continue to operate the Cash

Management System post-filing in substantially the same manner as before the commencement of these CCAA proceedings.

(iv) Priority Charges

121. In order to ensure the continued operation of the Mastermind Entities during the CCAA proceedings, the Mastermind Entities are seeking certain charges over the assets of the Mastermind Entities in the following priority: (a) the Administration Charge; and (b) the D&O Charge.

(a) Administration Charge

122. As the Mastermind Entities navigate these CCAA proceedings and implement a liquidation of Mastermind LP, they will need to rely on their counsel, the Proposed Monitor and the Proposed Monitor's counsel. Accordingly, the Mastermind Entities are seeking that the Proposed Monitor (and its lawyers) and their lawyers be granted a court-ordered charge on present and future assets, property and undertakings of the Mastermind Entities as security for any respective fees and disbursements up to a maximum of \$750,000 for the Initial Order. The Administration Charge is proposed to rank ahead of, and have priority over, the D&O Charge. None of the proposed beneficiaries of the Administration Charge currently have retainers.

123. The expertise and continued participation of the beneficiaries of the Administration Charge is essential to the success of these CCAA proceedings. The Mastermind Entities, in consultation with the Proposed Monitor, determined the quantum of the Administration Charge required until the Comeback Hearing, having regard for the professionals' accrued fees and retainers. Such quantum is commensurate with the fees and disbursements expected to be incurred by the beneficiaries of the Administration Charge

by the Comeback Hearing. The quantum of the Administration Charge is proposed to be increased at the Comeback Hearing.

(b) Directors & Officers Charge

124. The Mastermind Entities seek a D&O Charge on their assets in favour of their directors and officers in an amount not to exceed \$4,000,000 to indemnify them in respect of liabilities they may incur as directors and officers during these CCAA proceedings. The D&O Charge will rank behind the Administration Charge.

125. I am advised that the Mastermind Entities maintain director and officer insurance but the insurance may include contractual contingencies and uncertainty associated with possible coverage. Mastermind LP has a director and officer insurance policy through AIG Insurance Company of Canada (the **"AIG Policy"**). The limit of liability under the AIG Policy is \$5,000,000 per claim per policy period in the aggregate, including defence costs. The AIG Policy affords coverage to the directors and officers of Mastermind LP for any matter claimed against them by reason of their status as directors or officers except when and to the extent that Mastermind LP has indemnified any such matter. The AIG Policy excludes payment for any loss in connection with any claim that includes, among others, the refusal, failure or inability to pay wages or overtime pay, worker's compensation, disability benefits, unemployment compensation or similar law. A copy of the AIG Policy is attached to this Affidavit as **Exhibit "R"**.

126. In addition, BHEPMI has director and officer insurance policies through Liberty Mutual Insurance Company of Canada (the **"Liberty Mutual Policy"**) and Chubb Insurance Company of Canada (the **"Chubb Policy"**). Both policies cover the directors and officers of BHEPMI's subsidiaries, such as the Mastermind Entities, up to, respectively, \$10 million and \$5 million per claim per policy period in the aggregate,

including defence costs. In addition, both policies afford coverage to directors and officers for any matter claimed against them by reason of their status as directors and officers, except when and to the extent that the Mastermind Entities have indemnified any such matter. The Liberty Mutual Policy excludes coverage for, among other things, any loss based upon the valuation of salary, wages, commission, benefits, bonus, compensation or any other remuneration.

127. The Mastermind Entities have agreed to indemnify the directors and officers of Mastermind LP for all liabilities arising post-filing except due to their gross negligence or wilful misconduct. However, the Mastermind Entities do not have sufficient funds to satisfy those indemnities should the directors or officers of Mastermind LP be found responsible for potential liabilities. Moreover, the Mastermind Entities were unable to obtain adequate additional indemnification insurance at a reasonable cost.

128. Given the Mastermind LP's current financial position, the directors and officers of the Mastermind LP have indicated that they will not stay in office without being offered full protection from liability. As such, the Mastermind Entities request that the D&O Charge be granted pursuant to the Initial Order to protect their directors and officers against obligations and liabilities they may incur to the degree that they cannot satisfy their indemnification obligations.

129. The quantum of the D&O Charge was determined by the Mastermind Entities, in collaboration with the Proposed Monitor, and is limited to the indemnification obligations and liabilities that the Mastermind Entities' directors and officers may face during the initial eight days of these CCAA proceedings. The amount of the D&O Charge is proposed to be increased at the Comeback Hearing.

B. COMEBACK HEARING

130. If the Initial Order is granted, the Mastermind Entities are requesting a Comeback Hearing to be scheduled within eight days of the granting of the Initial Order, and, in any event, by no later than November 30, 2023. Subject to any changes that may occur between now and the date of the Comeback Hearing, at the hearing the Mastermind Entities intend to address their liquidity needs during the CCAA proceeding and their need to retain certain key employees, among other things, which are more particularly described below. The Mastermind Entities will also seek the priority of the Court-ordered charges set out below.

(i) Forbearance Agreement and Lender's Charge

131. The Mastermind Entities will seek the approval of a Forbearance Agreement with CIBC (the "**Forbearance Agreement**") at the Comeback Hearing. As described above, the Mastermind Entities anticipate that they will continue to use the Revolving Loan Facility on a limited basis until the Comeback Hearing and the approval of the Forbearance Agreement. CIBC has advised the Mastermind Entities that unless a forbearance agreement is agreed upon, it will have no choice but to enforce its rights against the Security, as indicated in the Notice of Default.

132. The parties are still diligently working to settle the terms of the Forbearance Agreement pursuant to which CIBC will continue to make the Revolving Loan Facility available to Mastermind LP during the course of these CCAA proceedings. Its key terms are expected to include the following:

- (a) a priority charge in favour of CIBC in respect of any amounts advanced to the Mastermind Entities under the Revolving Loan Facility during the course of these CCAA proceedings (such amounts being the "**DIP Loan**");

- (b) ongoing cash receipts in the ordinary course of business will be used to pay down the accrued balance under the Revolving Loan Facility; and
- (c) the proceeds of the DIP Loan will only be used to pay post-filing expenses and cannot be used to pay down pre-filing debt obligations under the Revolving Loan Facility.

133. The DIP Loan's approval at the Comeback Hearing will be urgently required for the Mastermind Entities to continue to meet their rent (due on the first day of the month) and payroll obligations (funded on the 30th of the month) while the Mastermind Entities negotiate the Potential CCAA Transaction and commence the Liquidation Sale (as defined below). The Mastermind Entities will also have significant payables to their shipping and logistics providers to ensure the delivery of inventory that was ordered prior to the CCAA filing. Payroll is funded on a bi-weekly basis and Mastermind LP has an upcoming payroll obligation of \$1,000,000 due on November 30, 2023. If the Mastermind Entities do not have continued access to the Revolving Loan Facility through the approval of the Forbearance Agreement, Mastermind LP will be unable to meet these obligations.

(ii) Consulting Agreement and Liquidation Sale

134. As soon as it was apparent that the Sale Process failed to yield a viable sale transaction for Mastermind LP or its assets, the Mastermind Entities began to focus on other alternatives to maximize value for their stakeholders. Accordingly, between November 10, 2023 and November 17, 2023, the Mastermind Entities, in consultation with A&M Corporate Finance, began soliciting bids from professional, third-party liquidators to liquidate the "Mastermind Toys" store inventory, furniture, fixtures and equipment (the "**Liquidation Sale**"). The Mastermind Entities are in the process of entering into a Consulting Agreement with Gordon Brothers Canada ULC, as Agent,

subject to this Court's approval. The Liquidation Sale will commence on November 30, 2023 and end on January 28, 2024.

135. Although the Proposed Monitor is currently engaged with a potential going concern purchaser on the Potential CCAA Transaction, the Mastermind Entities also intend to liquidate certain underperforming stores - and may have to liquidate all of their stores if the Potential CCAA Transaction is unsuccessful. Accordingly, the Mastermind Entities intend to seek approval of the Liquidation Sale at the Comeback Hearing, subject to any change between now and that time.

(iii) Key Employee Retention Plan ("KERP")

136. Subject to any changes between now and the Comeback Hearing, the Mastermind Entities also intend to seek Court-approval of a KERP that applies to those Mastermind LP employees who are crucial in facilitating the Liquidation Sale. The parties contemplated to be included in the KERP have critical industry and factual knowledge of the operations that will assist in the Liquidation Sale. In the absence of a retention plan, it is highly likely these individuals would resign and look for alternative employment, which would exacerbate the challenges of liquidation.

137. As part of the relief at the Comeback Hearing, the Mastermind Entities intend to seek this Court's permission to seal the identities and titles of the recipients of the KERP and to seek other relief under the *WEPPA*.

(iv) Priority Charges

138. At the Comeback Hearing, subject to any changes, the Mastermind Entities intend to seek approval of the following charges in priority:

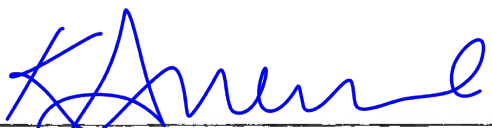
- (a) an increase in the Administration Charge granted in favour of the Proposed Monitor (and its lawyers) and the Mastermind Entities' lawyers, to a maximum of \$1,000,000;
- (b) an increase in the D&O Charge granted in favour of the Mastermind Entities' directors and officers, to a maximum amount of \$7,250,000;
- (c) the Lender's Charge in the amount of \$30,000,000; and
- (d) a KERP charge on the assets of the Mastermind Entities in the amount of \$485,250, which ranks behind the Lender's Charge, the Administration Charge and the D&O Charge.

C. CONCLUSION

139. For the reasons set out above, I believe that the relief requested on this Application is in the best interests of the Mastermind Entities and their stakeholders. Without the requested relief, including the approval of the Consulting Agreement and the Liquidation Sale, the value of the Mastermind Entities' assets are at risk of deteriorating and recoveries to their stakeholders would be reduced.

140. I swear this Affidavit in support of Mastermind GP's and Mastermind LP's Application for relief under the CCAA and for no other or improper purpose.

SWORN REMOTELY by Kristine Spence
in the City of Toronto, in the Province of
Ontario this 22nd day of November, 2023
in accordance with O. Reg. 431/20
Administering Oath or Declaration
Remotely



Commissioner for Taking Affidavits

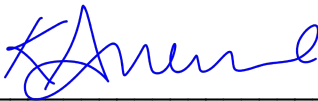
KRISTINE SPENCE



LUCIO MILANOVICH

TAB B

This is **Exhibit "B"** referred to in the
Affidavit #2 of LUCIO MILANOVICH,
sworn before me, this 29th day of
November, 2023.



Commissioner for taking affidavits
Kristine Spence (LSO #66099S)

Court File No.

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE)	THURSDAY, THE 23 RD DAY
)	
JUSTICE STEELE)	OF NOVEMBER, 2023

IN THE MATTER OF THE *COMPANIES' CREDITORS
ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS
AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF MASTERMIND GP INC.

(the "**Applicant**")

INITIAL ORDER

THIS APPLICATION, made by the Applicant, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") was heard this day by videoconference.

ON READING the affidavit of Lucio Milanovich sworn on November 22, 2023 (the "**Milanovich Affidavit**") and the Exhibits thereto, the pre-filing report of Alvarez & Marsal Canada Inc. ("**A&M**") as the proposed monitor dated November 22, 2023 (the "**Pre-Filing Report**"), and on being advised that the secured creditors who are likely to be affected by the charges created herein were given notice, and on hearing the submissions of counsel for the Applicant and Mastermind LP (collectively, the "**Mastermind Entities**"), counsel for A&M, and counsel for Canadian Imperial Bank of Commerce, in its capacity as administrative agent for the lenders under the Credit Agreement (in such capacity, the "**Agent**"), and on reading the consent of A&M to act as the Court-appointed monitor of the Mastermind Entities in these CCAA proceedings (in such capacity, the "**Monitor**");

SERVICE AND DEFINITIONS

1. **THIS COURT ORDERS** that the time for service of the Notice of Application and the Application Record is hereby abridged and validated so that this Application is properly returnable today and hereby dispenses with service thereof.

2. **THIS COURT ORDERS** that capitalized terms used but not defined in this Order shall have the meanings given to them in the Milanovich Affidavit.

APPLICATION

3. **THIS COURT ORDERS AND DECLARES** that the Applicant is a company to which the CCAA applies. Although not an Applicant, Mastermind LP shall enjoy the benefits of the protections and authorizations provided by this Order.

POSSESSION OF PROPERTY AND OPERATIONS

4. **THIS COURT ORDERS** that the Mastermind Entities shall remain in possession and control of their respective current and future assets, licenses, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the “**Property**”). Subject to further Order of this Court, the Mastermind Entities shall continue to carry on business in a manner consistent with the preservation of their business (the “**Business**”) and Property. Each of the Mastermind Entities is authorized and empowered to continue to retain and employ its employees, consultants, contractors, agents, experts, accountants, counsel and such other persons (collectively “**Assistants**”) currently retained or employed by it, with liberty to retain such further Assistants as it deems reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

5. **THIS COURT ORDERS** that the Mastermind Entities shall be entitled, subject to the terms of the Credit Agreement, to continue to utilize the central cash management system currently in place as described in the Milanovich Affidavit or, with the prior consent of the Monitor and the Agent, replace it with another substantially similar central cash management system (the “**Cash Management System**”) and that any present or future bank providing the Cash Management System (each, a “**Cash Management Bank**”), including the Agent, shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the Mastermind Entities of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as hereinafter defined) other than the Mastermind Entities, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as provider of the Cash Management System, an unaffected creditor in any plan of arrangement or compromise under the CCAA with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.

6. **THIS COURT ORDERS** that in accordance with the Approved Cash Flow, the Mastermind Entities shall be entitled but not required to pay the following expenses whether incurred prior to, on or after the date of this Order:

- (a) all outstanding and future wages, salaries, employee and pension benefits, vacation pay and employee expenses payable on or after the date of this Order, in each case incurred in the ordinary course of

business and consistent with existing compensation policies and arrangements;

- (b) up until December 24, 2023, all amounts relating to honouring gift cards issued before the date of this Order, subject to further Order of this Court;
- (c) the fees and disbursements of any Assistants retained or employed by any of the Mastermind Entities in respect of these proceedings, at their standard rates and charges; and
- (d) with the consent of the Monitor, amounts owing for goods or services actually supplied to the Mastermind Entities prior to the date of this Order by (i) providers of credit, debit and gift card processing related services; (ii) logistics, warehouse or supply chain providers, such as transportation providers, customs brokers and freight forwarders, (iii) providers of information, internet and other technology, including ecommerce providers and related services, and (iv) other suppliers or service providers if, in the opinion of the Mastermind Entities, following consultation with the Monitor, such payment is necessary to maintain the uninterrupted operations of the Business.

7. **THIS COURT ORDERS** that, except as otherwise provided to the contrary herein the Mastermind Entities shall be entitled but not required to pay all reasonable expenses incurred by the Mastermind Entities in carrying on the Business in the ordinary course after this Order in accordance with the Approved Cash Flow, and in

carrying out the provisions of this Order, which expenses shall include, without limitation:

- (a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors and officers insurance), IT services, data services, maintenance and security services; and
- (b) payment for goods or services actually supplied to the Mastermind Entities following the date of this Order.

8. **THIS COURT ORDERS** that the Mastermind Entities shall, in accordance with legal requirements, remit or pay:

- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, and (iii) income taxes;
- (b) all goods and services taxes, harmonized sales taxes, or other applicable sales taxes (collectively, "**Sales Taxes**") required to be remitted by the Mastermind Entities in connection with the sale of goods and services by the Mastermind Entities, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were

accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order; and

- (c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the Mastermind Entities.

9. **THIS COURT ORDERS** that until a real property lease is disclaimed in accordance with the CCAA, the Mastermind Entities shall pay all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under the lease, but for greater certainty, excluding accelerated rent or penalties, fees or other charges arising as a result of the insolvency of any of the Mastermind Entities, the making of this Order or the commencement of any insolvency proceedings) or as otherwise may be negotiated between the applicable Mastermind Entity and the landlord from time to time ("**Rent**"), for the period commencing from and including the date of this Order, twice monthly in equal payments on the first and fifteenth day of each month, in advance (but not in arrears) in the amounts set out in the applicable lease or, with the consent of the Monitor, at such other intervals and dates as may be agreed to between the applicable Mastermind Entity and landlord. On the date of the first of such payments, any Rent relating to the period commencing from and including the date of this Order shall also be paid.

10. **THIS COURT ORDERS** that, except as specifically permitted herein, the Mastermind Entities are hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by any of the Mastermind Entities to any of their creditors as of this date; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of their Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business. Notwithstanding the foregoing, the Mastermind Entities shall be entitled to continue to operate the Cash Management System, including the blocked account arrangements, in accordance with the Credit Agreement and as described in the Milanovich Affidavit.

RESTRUCTURING

11. **THIS COURT ORDERS** that the Mastermind Entities shall, subject to such requirements as are imposed by the CCAA or as otherwise ordered by this Court, have the right to:

- (a) permanently or temporarily cease, downsize or shut down any of their business or operations, and to dispose of redundant or non-material assets not exceeding \$25,000 in any one transaction or \$50,000 in the aggregate;
- (b) sell inventory in the ordinary course of business consistent with past practice, or otherwise with the consent of the Monitor and the Agent;
- (c) terminate the employment of their employees or temporarily lay off such of their employees as they deem appropriate;

- (d) refuse to honour any existing return policies, refunds, discounts or other similar customer programs or obligations; and
- (e) pursue all avenues of financing, restructuring, sale or reorganizing the Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing, restructuring, sale or reorganizing,

all of the foregoing to permit the Mastermind Entities to proceed with an orderly restructuring of the Mastermind Entities or the Business (the “**Restructuring**”).

12. **THIS COURT ORDERS** that the Mastermind Entities shall provide each of the relevant landlords with notice of the Mastermind Entities intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Mastermind Entities’ entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Mastermind Entities, or by further Order of this Court upon application by the Mastermind Entities on at least two (2) days notice to such landlord and any such secured creditors. If any of the Mastermind Entities disclaims the lease governing such leased premises in accordance with Section 32 of the CCAA, they shall not be required to pay Rent under such lease pending resolution of any such dispute (other than Rent payable for the notice period provided for in Section 32(5) of the CCAA), and the disclaimer of the lease shall be without prejudice to the Mastermind Entities’ claim to the fixtures in dispute.

13. **THIS COURT ORDERS** that if a notice of disclaimer is delivered pursuant to Section 32 of the CCAA, then (a) during the notice period prior to the effective time of the disclaimer, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the Mastermind Entities and the Monitor 24 hours' prior written notice, and (b) at the effective time of the disclaimer, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the Mastermind Entities in respect of such lease or leased premises, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

NO PROCEEDINGS AGAINST THE MASTERMIND ENTITIES OR THE PROPERTY

14. **THIS COURT ORDERS** that until and including November 30, 2023 or such later date as this Court may order (the "**Stay Period**"), no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**") shall be commenced or continued against or in respect of any of the Mastermind Entities or the Monitor or their respective employees and representatives acting in such capacities, or affecting the Business or the Property, except with the written consent of the Mastermind Entities and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of any of the Mastermind Entities or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court or the prior written consent of the Mastermind Entities and the Monitor.

NO EXERCISE OF RIGHTS OR REMEDIES

15. **THIS COURT ORDERS** that during the Stay Period, all rights and remedies of any individual, firm, corporation, organization, governmental unit, body or agency, or any other entities (all of the foregoing, collectively being “**Persons**” and each being a “**Person**”) against or in respect of any of the Mastermind Entities or the Monitor or their respective employees and representatives acting in such capacities, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the Mastermind Entities and the Monitor, or leave of this Court, provided that nothing in this Order shall (i) empower the Mastermind Entities to carry on any business which the Mastermind Entities are not lawfully entitled to carry on, (ii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH RIGHTS

16. **THIS COURT ORDERS** that during the Stay Period, no Person shall accelerate, suspend, discontinue, fail to honour, alter, interfere with, repudiate, rescind, terminate or cease to perform any right, renewal right, contract, agreement, lease, sublease, licence, authorization or permit in favour of or held by any of the Mastermind Entities, except with the prior written consent of the Mastermind Entities and the Monitor, or leave of this Court.

CONTINUATION OF SERVICES

17. **THIS COURT ORDERS** that during the Stay Period, all Persons having oral or written agreements or arrangements with any of the Mastermind Entities or statutory or

regulatory mandates for the supply or license of goods and/or services, including without limitation all computer software, communication and other data services, centralized banking services, cash management services, payroll and benefit services, insurance, freight services, logistics services, transportation services, customs clearing and importing services, warehouse services, security services, management services, merchandise or procurement sourcing services, utility or other services to the Business or any of the Mastermind Entities, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with, suspending or terminating the supply or license of such goods or services as may be required by any of the Mastermind Entities, and that the Mastermind Entities shall be entitled to the continued use of their current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Mastermind Entities in accordance with normal payment practices of the applicable Mastermind Entity or such other practices as may be agreed upon by the supplier or service provider and the applicable Mastermind Entity and the Monitor, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

18. **THIS COURT ORDERS** that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to any of the Mastermind Entities. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

NO PRE-FILING VERSUS POST-FILING SET-OFF

19. **THIS COURT ORDERS** that no Person shall be entitled to set off any amounts that (a) are or may become due to any Mastermind Entity in respect of obligations arising prior to the date hereof with any amounts that are or may become due from such Mastermind Entity in respect of obligations arising on or after the date of this Order, or (b) are or may become due from any Mastermind Entity in respect of obligations arising prior to the date hereof with any amounts that are or may become due to such Mastermind Entity in respect of obligations arising on or after the date of this Order, each without the consent of the Mastermind Entities and the Monitor or further Order of this Court.

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

20. **THIS COURT ORDERS** that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Mastermind Entities with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Mastermind Entities whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the Mastermind Entities, if one is filed, is sanctioned by this Court or is refused by the creditors of the Mastermind Entities or this Court.

DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

21. **THIS COURT ORDERS** that the Mastermind Entities shall indemnify their respective directors and officers against obligations and liabilities that they may incur as directors or officers of the Mastermind Entities after the commencement of the within proceedings, except to the extent that, with respect to any officer or director, the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

22. **THIS COURT ORDERS** that the directors and officers of each of the Mastermind Entities shall be entitled to the benefit of and are hereby granted a charge (the "**Directors' Charge**") on the Property, which charge shall not exceed an aggregate amount of \$4,000,000, unless permitted by further Order of this Court, as security for the indemnity provided in paragraph 21 of this Order. The Directors' Charge shall have the priority set out in paragraphs 33 and 35 herein.

23. **THIS COURT ORDERS** that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) the Mastermind Entities' directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 21 of this Order.

APPOINTMENT OF MONITOR

24. **THIS COURT ORDERS** that A&M is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Mastermind Entities with the powers and obligations set out in the CCAA or set forth herein and that the Mastermind Entities and their respective shareholders or partners (as applicable), officers, directors, and Assistants shall advise the Monitor of all material steps taken by any of the Mastermind Entities pursuant to this Order, and shall cooperate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

25. **THIS COURT ORDERS** that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- (a) monitor the Mastermind Entities' receipts and disbursements;
- (b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;
- (c) assist the Mastermind Entities, to the extent required by the Mastermind Entities, in continuing negotiations with any Person in an effort to pursue the Restructuring;
- (d) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Mastermind Entities, wherever located and to the extent

that is necessary to adequately assess the Mastermind Entities' business and financial affairs or to perform its duties arising under this Order;

- (e) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order; and
- (f) perform such other duties as are required by this Order or by this Court from time to time.

26. **THIS COURT ORDERS** that the Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

27. **THIS COURT ORDERS** that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act, 1999*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the

“Environmental Legislation”), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor’s duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

28. **THIS COURT ORDERS** that the Monitor shall provide any creditor of the Mastermind Entities with information provided by the Mastermind Entities in response to reasonable requests for information made in writing by such creditor and addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Mastermind Entities is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Mastermind Entities may agree.

29. **THIS COURT ORDERS** that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, neither the Monitor nor its employees and representatives acting in such capacities shall incur any liability or obligation as a result of the Monitor’s appointment or the carrying out by it of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

30. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor and counsel to the Mastermind Entities, shall be paid their reasonable fees and disbursements, in each

case at their standard rates and charges, whether incurred prior to, on or after the date of this Order, by the Mastermind Entities as part of the costs of these proceedings. The Mastermind Entities are hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and counsel for the Mastermind Entities on a weekly basis or as otherwise agreed among the parties.

31. **THIS COURT ORDERS** that the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

32. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor and counsel to the Mastermind Entities shall be entitled to the benefit of and are hereby granted a charge (the “**Administration Charge**”) on the Property, which charge shall not exceed an aggregate amount of \$750,000, unless permitted by further Order of this Court, as security for their professional fees and disbursements incurred at their standard rates and charges, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 33 and 35 herein.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

33. **THIS COURT ORDERS** that the priorities of the Directors’ Charge and the Administration Charge (collectively, the “**Charges**”), as among them, shall be as follows:

First - Administration Charge (to the maximum amount of \$750,000); and

Second - Directors’ Charge (to the maximum amount of \$4,000,000).

34. **THIS COURT ORDERS** that the filing, registration or perfection of the Charges shall not be required, and that the Charges shall be effective as against the Property and shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

35. **THIS COURT ORDERS** that each of the Charges shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, “**Encumbrances**”) in favour of any Person notwithstanding the order of perfection or attached, provided that the Charges shall rank behind Encumbrances in favour of any Person that has not been served with notice of this Application. The Mastermind Entities and the beneficiaries of the Charges shall be entitled to seek priority ahead of such Encumbrances on a subsequent motion, including, without limitation, on the Comeback Date, on notice to those Persons likely to be affected thereby.

36. **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court on notice to parties in interest, the Mastermind Entities shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Charges, unless the Mastermind Entities also obtain the prior written consent of the Monitor and the other beneficiaries of the Charges, or further Order of this Court.

37. **THIS COURT ORDERS** that the Charges shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the

Charges (collectively, the “**Chargees**”) shall not otherwise be limited or impaired in any way by: (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to the BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan document, lease, sublease, offer to lease or other agreement (collectively, an “**Agreement**”) which binds any of the Mastermind Entities, and notwithstanding any provision to the contrary in any Agreement:

- (a) the creation of the Charges shall not create or be deemed to constitute a breach by any Mastermind Entity of any Agreement to which it is a party;
- (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the creation of the Charges; and
- (c) the payments made by the Mastermind Entities pursuant to this Order and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

38. **THIS COURT ORDERS** that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the applicable Mastermind Entity’s interest in such real property leases.

SERVICE AND NOTICE

39. **THIS COURT ORDERS** that the Monitor shall (i) without delay, publish in *The Globe and Mail* (National Edition) a notice containing the information prescribed under the CCAA, and (ii) within five days after the date of this Order, (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, or cause to be sent, in the prescribed manner or by electronic message to the e-mail addresses as last shown on the records of the Mastermind Entities, a notice to every known creditor who has a claim against any of the Mastermind Entities of more than \$1,000, and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Subsection 23(1)(a) of the CCAA and the regulations made thereunder, provided that the Monitor shall not make the claims, names and addresses of the individuals who are creditors publicly available.

40. **THIS COURT ORDERS** that the E-Service Guide of the Commercial List (the “**Guide**”) is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Guide (which can be found on the Commercial List website at <https://www.ontariocourts.ca/scj/practice/regional-practice-directions/eservice-commercial/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the *Rules of Civil Procedure*. Subject to Rule 3.01(d) of the *Rules of Civil Procedure* and paragraph 13 of the Guide, service of documents in accordance with the Guide will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Guide with the following URL: <https://www.alvarezandmarsal.com/Mastermind>.

41. **THIS COURT ORDERS** that if the service, distribution or notice of documents in accordance with the Guide or the CCAA and the regulations thereunder is not practicable, the Mastermind Entities, the Monitor and their respective counsel are at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding copies thereof by prepaid ordinary mail, courier, personal delivery, facsimile transmission or electronic message to the Mastermind Entities' creditors or other interested parties at their respective addresses (including e-mail addresses) as last shown in the books and records of the Mastermind Entities and that any such service, distribution or notice shall be deemed to be received on the earlier of (a) the date of forwarding thereof, if sent by electronic message on or prior to 5:00 p.m. (Eastern Time), (b) the next business day following the date of forwarding thereof, if sent by courier, personal delivery, facsimile transition or electronic message sent after 5:00 p.m. (Eastern Time), or (c) on the business day following the date of forwarding thereof, if sent by ordinary mail.

42. **THIS COURT ORDERS** that the Mastermind Entities, the Monitor and their respective counsel are at liberty to serve or distribute this Order, any other materials and orders as may be reasonably required in these proceedings, including any notices, or other correspondence, by forwarding copies thereof by electronic message (including by e-mail) to the Mastermind Entities' creditors or other interested parties and their advisors, as applicable. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of legal or judicial obligation, and notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations* (SOR/2013-221).

COMEBACK DATE

43. **THIS COURT ORDERS** that the comeback motion shall be heard by a Commercial List Judge at 10:00 a.m. on November 30, 2023 (the “**Comeback Date**”).

GENERAL

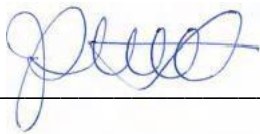
44. **THIS COURT ORDERS** that, notwithstanding paragraph **Error! Reference source not found.** of this Order, each of the Mastermind Entities or the Monitor may from time to time apply to this Court to amend, vary or supplement this Order or for advice and directions in the discharge of their respective powers and duties hereunder or in the interpretation of this Order.

45. **THIS COURT ORDERS** that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of any of the Mastermind Entities, the Business or the Property.

46. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Mastermind Entities, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Mastermind Entities and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Mastermind Entities and the Monitor and their respective agents in carrying out the terms of this Order.

47. **THIS COURT ORDERS** that each of the Mastermind Entities and the Monitor be at liberty and are hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

48. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. (Eastern Time) on the date of this Order without the need for entry or filing.

A handwritten signature in blue ink, appearing to be "J. H. H.", is written over a horizontal line.

TAB C

This is **Exhibit "C"** referred to in the
Affidavit #2 of LUCIO MILANOVICH,
sworn before me, this 29th day of
November, 2023.



Commissioner for taking affidavits
Kristine Spence (LSO #66099S)



SUPERIOR COURT OF JUSTICE

COUNSEL/ENDORSEMENT SLIP

COURT FILE NO.: No Court File# assigned

DATE: November 23, 2023

NO. ON LIST: 4

TITLE OF PROCEEDING: Re: Mastermind GP Inc. vs Alvarez&Marsal Canada Inc. et al

BEFORE: JUSTICE STEELE

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party:

Name of Person Appearing	Name of Party	Contact Info
Natasha MacParland	Mastermind GP Inc.	NMacParland@dwpv.com
Natalie Renner	Mastermind GP Inc	NRenner@dwpv.com
Kristine Spence	Mastermind GP Inc	KSpence@dwpv.com

For Defendant, Respondent, Responding Party:

Name of Person Appearing	Name of Party	Contact Info
Sean Zweig	ALVAREZ& MARSAL CANADA INC.	zweigs@bennettjones.com
Joshua Foster	ALVAREZ& MARSAL CANADA INC.	fosterj@bennettjones.com
Evan Cobb	Canadian Imperial Bank of Commerce	evan.cobb@nortonrosefulbright.com

For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info

ENDORSEMENT OF JUSTICE STEELE:

- [1] This is an application by Mastermind GP Inc. for an initial order under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (the "CCAA").
- [2] The Applicant also seeks to have the benefits of the initial order extended to Mastermind LP, a limited partnership formed under the laws of Ontario (Mastermind GP and Mastermind LP are referred to collectively as the "Mastermind Entities").
- [3] The proposed monitor is Alvarez & Marsal Canada Inc. (the "Proposed Monitor" or "A&M").
- [4] The evidence before the Court is set out in an affidavit of Lucio Milanovich, sworn November 22, 2023. Mr. Milanovich is the Interim Chief Financial Officer of Mastermind LP and the Pre-Filing Report of the Proposed Monitor, dated November 22, 2023.
- [5] On November 23, 2023, having reviewed the material filed and heard oral submissions, I granted the relief sought with reasons to follow. These are my reasons.

Background

- [6] Mastermind Toys is a specialty retailer, which sells curated toys, games, puzzles and books. The sole purpose of Mastermind GP is to act as the general partner of Mastermind LP, which operates retail stores under the retail name "Mastermind Toys".
- [7] The sole shareholder of Mastermind GP is Birch Hill Equity Partners Management Inc.
- [8] Mastermind Toys operates through 66 retail locations in eight provinces. The Mastermind Entities lease the real property used in their business.
- [9] Mastermind LP currently employs approximately 800 non-unionized employees (consisting of approximately 625 part-time and 175 full-time employees). Mastermind LP's obligations to its employees, and employee source deductions are current.
- [10] Even though the Mastermind Entities have undertaken concerted efforts to cut costs and increase revenues, over the past six years Mastermind LP has reported increasingly large net losses (other than 2021). The business is in a liquidity crisis, because of challenging market conditions, which were exacerbated by the COVID-19 pandemic. The Mastermind Entities are in default of their senior secured credit facilities and Mastermind LP can no longer pay its vendors in the ordinary course.
- [11] The Mastermind Entities, with the assistance of A&M, have explored various strategies to save the business, including a sale that recently fell through because of certain requirements under the *Competition Act* that unfortunately could not be met in a timely manner. The Mastermind Entities are in ongoing

discussions with an interested party in connection with a potential sale of a portion of the business in the CCAA proceedings.

- [12] The Mastermind Entities have determined that the only way forward is through a CCAA proceeding to provide Mastermind LP with protection so that it may pursue other strategic options (including the potential sale of a portion of the business) or the completion of a liquidation of the business.
- [13] The only secured lenders of the Mastermind Entities are Birch Hill and CIBC, both of which were present at the initial hearing.
- [14] Mastermind LP's primary secured creditor is CIBC pursuant to a credit agreement guaranteed by Mastermind GP. As of October 31, 2023, the Mastermind Entities are indebted to CIBC in the amount of \$19,460,000 under a revolving loan facility and \$6,250,000 under a business credit availability program loan.
- [15] Mastermind LP's unsecured creditors include (i) trade creditors, to which it owes approximately \$22.15 million; (ii) employees to whom it owes \$120,000 in accrued vacation pay and approximately \$65,000 per month in employee benefits; and (iii) certain charities to which it owes approximately \$40,000 that Mastermind LP has collected on their behalf.
- [16] Mastermind LP is in default of its obligations under the credit agreement with CIBC and the guarantee from Mastermind GP has become due and enforceable. CIBC has put the Mastermind Entities on notice of the defaults.
- [17] CIBC and the Mastermind Entities are working together to settle terms of a forbearance agreement. The Mastermind Entities anticipate that at the Comeback Hearing they will be seeking approval of the forbearance agreement and certain ancillary relief.

Analysis

Jurisdiction and Application of the CCAA

- [18] Under section 9 of the CCAA a debtor company may apply for protection under the CCAA in the province where its registered head office or principal place of business in Canada is located. The Mastermind Entities' chief place of business is Ontario; over half of Mastermind LP's retail stores are in Ontario. The registered head office for both Mastermind LP and Mastermind GP is in Toronto, Ontario.
- [19] I am satisfied that Ontario is the most appropriate venue for these proceedings.
- [20] I am also satisfied that the Applicant qualifies for protection under the CCAA.
- [21] The CCAA applies to a "debtor company" where the total claims against it exceed \$5 million: s. 3(1) CCAA. Mastermind GP is liable for the liabilities of Mastermind LP: *Limited Partnerships Act*, R.S.O., C.L. 16, ss. 8-9. As noted in *Lehndorff General Partner Ltd., Re*, [1993] OJ No 14 [commercial list] at para. 17: "a general partner is fully liable to each creditor of the business of the limited partnership." As

noted above, under the CIBC credit facilities alone, the Mastermind Entities have claims against them in excess of \$5 million.

[22] Section 2 of the CCAA defines a “debtor company” to include a “company” that is bankrupt or insolvent.

[23] The Applicant is a “company” as defined in the CCAA. Section 2 of the CCAA defines a “company” to mean any company, corporation or legal person incorporated by or under an Act of Parliament or of the legislature of a province, among other entities. The Applicant, Mastermind GP is a corporation under Ontario’s *Business Corporations Act*. Its sole purpose is as a general partner of Mastermind LP.

[24] For the CCAA to apply, a debtor company must be bankrupt or insolvent. Although not defined in the CCAA, the Court may interpret this term by reference to the definition of “insolvent person” in s. 2(1) of the *Bankruptcy and Insolvency Act*: *Stelco Inc., Re*, 2004 CarswellOnt 1211, at para. 22; *Nordstrom Canada Retail Inc.*, 2023 ONSC 1422, at para. 26. Section 2(1) of the BIA defines insolvent person as follows:

... “insolvent person” means a person who is not bankrupt and who resides, carries on business or has property in Canada, and whose liability to creditors provable as claims under this act amount to one thousand dollars, and

(a) who is for any reason unable to meet his obligations as they generally become due,

(b) who has ceased paying his current obligations in the ordinary course of business as they generally become due, or

(c) the aggregate of whose property is not, at a fair valuation, sufficient, or if disposed of at a fairly conducted sale under legal process, would not be sufficient to enable payment of all his obligations, due and accruing due.

[25] In *Stelco* the Court recognized the “rescue” purpose of the CCAA and broadened the definition of “insolvent” in the CCAA context. Under the CCAA, an “insolvent person” may include a “financially troubled corporation ... if it is reasonably expected to run out of liquidity within a reasonable proximity of time as compared with the time reasonably required to implement a restructuring:” *Stelco*, at para. 26.

[26] Mastermind LP cannot pay its vendors in the ordinary course. Mastermind LP is unable to meet its obligations as they become due, as demonstrated in Mastermind LP’s most recent financial statements. The Mastermind Entities are in default of their senior secured credit facilities. As a result, some vendors have halted supply.

[27] The Mastermind Entities are insolvent and unable to meet their liabilities as they become due.

[28] I am satisfied that the Applicant qualifies for protection under the CCAA.

Application of Order to Mastermind LP

- [29] As noted above, the Applicant also seeks to extend the stay and other benefits and protections of the initial order to Mastermind LP, the operating entity. The Court has broad jurisdiction to grant such an order under s. 11 and 11.02(1) of the CCAA, which permits the Court make an initial order “on any terms that it may impose.”
- [30] The Court has extended CCAA protection to limited partnerships in other cases, where the operation of the partnership is integral and closely related to that of the applicant’s business operations: *Gesco Industries Inc. (Re)*, 2023 ONSC 3050, at paras. 19-20; *Nordstrom Canada Retail, Inc.*, 2023 ONSC 1422, at para. 30.
- [31] In the instant case, Mastermind LP is the operating entity of the retail business. Mastermind LP is also the employer of the employees of the business and is a party to the majority of the business’ leases. Mastermind GP is the general partner of Mastermind LP and holds the sole general partnership unit and all Class B limited partnership units. Mastermind GP does not have operations. Mastermind GP exists for the sole purpose of acting as Mastermind LP’s general partner. Clearly the operation of Mastermind LP is integral and closely related to Mastermind GP.
- [32] I agree with the Applicant’s submission that it would be neither just nor appropriate to grant the stay to Mastermind GP and not extend the relief to Mastermind LP.
- [33] I am satisfied that it is appropriate to extend the CCAA protection and Initial Order to Mastermind LP.

Stay of Proceedings

- [34] On an initial application, the Court may grant a stay of proceedings of up to 10 days, provided that the Court is satisfied that circumstances exist that make the order appropriate, and the Applicant has acted in good faith and with due diligence: CCAA, 11.02(1), (3).
- [35] I am satisfied that the requested initial stay of proceedings of eight days is necessary for the Mastermind Entities to provide them with the breathing room necessary to, among other things: (1) organize their affairs in preparation for the busiest season in their industry and continue operations during this season; and (2) negotiate the potential CCAA going concern transaction and prepare for the proposed liquidation of certain stores. Further, the stay will prevent creditors of the Mastermind Entities from taking immediate action against them and will allow the Mastermind Entities to continue to manage their day-to-day operations pending the Comeback Hearing.
- [36] The Comeback Hearing is scheduled for November 30, 2023 at 10 am.

Appointment of Proposed Monitor

- [37] Section 11.7 of the CCAA provides that when granting the initial order, the Court must also appoint a monitor. A&M is the proposed monitor and is a licensed insolvency trustee within the meaning of s. 2(1) of the BIA.
- [38] A&M has consented to act as Monitor and is not subject to any restriction to act as monitor under s. 11.7(2) of the CCAA.

[39] I appoint A&M as Monitor in these CCAA proceedings.

The Administration Charge

[40] The Mastermind Entities seek an Administration Charge of \$750,000 to secure the professionals' fees and disbursements.

[41] The Court has jurisdiction to grant the Administration Charge pursuant to s. 11.52 of the CCAA. In *Canwest Publishing Inc./Publications Canwest Inc., Re*, 2010 ONSC 222 at para. 54, the Court identified the following non-exhaustive factors that the Court may consider when granting an administration charge:

- a. The size and complexity of the business being restructured;
- b. The proposed role of the beneficiaries of the charge;
- c. Whether there is unwarranted duplication of roles;
- d. Whether the quantum of the proposed charge appears to be fair and reasonable;
- e. The position of the secured creditors likely to be affected by the charge; and
- f. The position of the Monitor.

[42] The Mastermind Entities submit that the proposed Administration Charge is appropriate and necessary in the circumstances for the following reasons:

- a. The Mastermind Entities have a strong presence in eight provinces. Accordingly, the partial liquidation and potential going-concern transaction of Mastermind LP's business will involve a complex, multi-jurisdictional coordination;
- b. The beneficiaries of this charge will provide essential financial and legal advice;
- c. The Applicant anticipates that there will not be any unwarranted duplication of roles;
- d. The Applicant has worked with the professionals to estimate the proposed quantum of the charge. Both the Applicant and A&M believe the amount sought to be reasonable and appropriate in the circumstances; and
- e. The only secured creditors of the Mastermind Entities that will be affected by the charge, CIBC and Birch Hill, do not oppose the charge.

[43] I am satisfied that the Administration Charge is warranted, necessary, and appropriate in the circumstances.

Directors' and Officers' Charge

- [44] The Mastermind Entities seek a charge in favour of the officers and directors of the Mastermind Entities in an amount not exceeding \$4,000,000.
- [45] Section 11.51 of the CCAA provides the Court with the express statutory jurisdiction to grant the D&O charge in an amount the Court considers appropriate, provided that notice is given to the secured creditors who are likely to be affected by it.
- [46] In *Canwest Global Communications Corp. (Re)*, 2009 CanLII 55114 (ON SC) the Court held, at para. 48, that the purpose of a directors' and officers' charge is to "keep the directors and officers in place during the restructuring by providing them with protection against liabilities they could incur during the restructuring."
- [47] In *Jaguar Mining Inc., Re*, 2014 ONSC 494, at para. 45, the Court identified the following four factors that must be satisfied before granting a directors' charge:
- a. Notice has been given to the secured creditors that are likely to be affected;
 - b. The amount is appropriate;
 - c. The applicant could not obtain adequate indemnification insurance for the director or officer at a reasonable cost; and
 - d. The charge does not apply in respect of any obligation incurred as a result of the director's or officer's gross negligence or wilful misconduct.
- [48] I am satisfied that the factors set out in *Jaguar Mining* have been met in this case. Specifically,
- a. CIBC and Birch Hill, the only secured lenders likely to be affected by the D&O Charge, had notice and appeared at the initial hearing;
 - b. The directors and officers of Mastermind LP have indicated that they will resign if court approval to the D&O Charge in the amount sought is not granted;
 - c. The amount of the D&O Charge is reasonable in the circumstances and is limited to any potential exposure during the initial stay period;
 - d. The D&O Charge will only apply to amounts that are not otherwise covered under the directors' and officers' existing insurance policy; and
 - e. The D&O Charge would only cover liabilities incurred during these proceedings and would not cover liability incurred as a result of the directors' or officers' gross negligence or wilful misconduct.
- [49] The Proposed Monitor is of the view that the D&O Charge is "required and reasonable" in the circumstances.

[50] I am satisfied that the D&O Charge is reasonable and appropriate in the circumstances.

Comeback Hearing

[51] As required under s. 11.001 of the CCAA, the Applicant has limited the relief sought on this initial application to only that which is reasonably necessary in the circumstances for the continued operation of the business. Additional requested relief will be addressed at the comeback hearing.

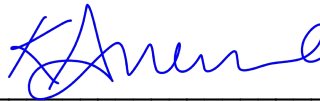
[52] The Comeback Hearing is scheduled for November 30, 2023 at 10 am.

A handwritten signature in blue ink, appearing to be 'J. H. H.', is located on the right side of the page.

Date: November 24, 2023

TAB D

This is **Exhibit "D"** referred to in the
Affidavit #2 of LUCIO MILANOVICH,
sworn before me, this 29th day of
November, 2023.



Commissioner for taking affidavits
Kristine Spence (LSO #66099S)

CONSULTING AGREEMENT

This Consulting Agreement, dated as of November 24, 2023 (this “**Agreement**”) is made by and between Mastermind LP (“**Merchant**”) and Gordon Brothers Canada ULC (the “**Consultant**”, and together with the Merchant, the “**Parties**”), under which the Consultant shall act as the exclusive consultant for the purpose of conducting a sale of Merchandise (as defined below) at Merchant’s stores set forth on Exhibit “1A” (each a “**Store**” and collectively, the “**Stores**”, as such Exhibit may be amended by the Merchant to add or remove Stores until and including November 29, 2023 or add Stores any time thereafter (as amended, the “**Updated Store List**”)) and at the distribution centre set forth on Exhibit “1B” annexed hereto (the “**Distribution Centre**”) through a “Store Closing”, “Everything Must Go”, “Everything on Sale”, “Going out of Business” or similar themed sale (the “**Sale**”) in accordance with the terms of the sale guidelines substantially in the form attached hereto as Exhibit “B” (the “**Sale Guidelines**”). Only Merchant approved Sale terminology, including the foregoing advertising handles, will be utilized at each Store.

1. Merchandise

For purposes hereof, “**Merchandise**” shall mean all inventory that is owned by Merchant and actually sold in the Stores or via Merchant’s website or other e-commerce channels (the “**Website**”) during the Sale Term (as defined below), the aggregate amount of which shall be determined using the gross rings inventory taking method, which includes goods saleable in the ordinary course, located at or in transit to the Stores on the Sale Commencement Date (as defined below) and/or located in or in transit to a Distribution Centre on the Sale Commencement Date and thereafter delivered to the Stores, as mutually agreed by the Merchant and the Consultant, or sold via the Website. “Merchandise” does not mean and shall not include: (a) goods that belong to sublessees, licensees or concessionaires of the Merchant, or that are leased or licensed from third parties by the Merchant; (b) owned, partially owned, third party owned and/or leased furnishings, trade fixtures, equipment and/or improvements to real property that are located in the Stores, the Merchant’s corporate office (the “**Corporate Office**”) and the Distribution Centre leased by the Merchant (the “**Merchant DC**”) (collectively, “**FF&E**”); (c) damaged or defective goods that cannot be sold; (d) goods held by the Merchant on memo, consignment or pursuant to license or similar arrangements with third parties, unless otherwise agreed by the Merchant, the Consultant and the applicable third party (which, for certainty, shall, with such agreement, constitute “Merchandise” hereunder); (e) gift cards (third party and Merchant branded) or gift certificates issued by the Merchant; and (f) Additional Consultant Goods (as defined below).

2. Sale Term

- (a) For each Store, the Sale shall commence on the first business day following the granting of the Liquidation Sale Approval Order (the “**Sale Commencement Date**”, which is expected to be on or before December 1, 2023), and conclude no later than January 31, 2024 (the “**Sale Termination Date**”); provided, however, that the Parties may, in consultation with the Monitor, mutually agree in writing to extend the Sale Termination Date or to terminate the Sale at any Store prior to the Sale Termination Date. The period between the Sale Commencement Date and the Sale Termination Date shall be referred to as the “**Sale Term**”.

- (b) At the conclusion of the Sale Term, the Consultant shall surrender the premises for each Store to Merchant (i) in “broom swept” and clean condition subject to the Consultant’s right pursuant to Section 6 below to abandon in a neat and orderly manner all unsold FF&E; and (ii) if requested by the Merchant, in accordance with the lease requirements for such premises unless otherwise agreed with the landlord for such Store;¹ provided, however, that, if the Merchant requests that the Consultant surrender any premises in accordance with the lease requirements, except for costs in respect of damage caused by the Consultant (including by its employees, agents or representatives) for which the Consultant is in law responsible, the Merchant shall bear all other costs and expenses associated with surrendering the premises in accordance with the lease requirements for such premises to the extent such expenses were incurred by the Consultant in accordance with a budget mutually agreed to in writing between the Consultant and the Merchant prior to surrender of the premises. At the conclusion of the Sale at each Store, the Consultant shall photographically document the condition of each Store and provide such photographs to the Merchant within ten (10) days. Photographs shall reference with specificity each Store by number, name and/or location.
- (c) At the conclusion of the Sale Term, to the extent there is any Merchandise remaining on the Sale Termination Date (the “**Remaining Merchandise**”), if requested by the Merchant, such Remaining Merchandise shall, subject to the terms hereof, be sold on behalf of Merchant or otherwise disposed of by the Consultant as directed by the Merchant, in consultation with the Monitor. The costs and expenses of removing and disposing of the Remaining Merchandise shall be incurred pursuant to a written budget or budgets (in addition to the Expense Budget (as defined below)), to be established from time to time by mutual agreement of the Parties with the consent of the Parties (the “**Remaining Merchandise Costs**”). Any associated expenses shall be paid by the Merchant as Remaining Merchandise Costs and in accordance with the budget referred to herein, and the gross receipts thereof (net of sales taxes) shall be included in the calculation of the Merchandise Fee (as defined below) due to the Consultant. To the extent any proceeds from any sale or disposition of any Remaining Merchandise is received by the Consultant after the Sale Termination Date, such proceeds shall be treated in accordance with Section 5. For certainty, in the event of the sale of any Remaining Merchandise subsequent to the Sale Termination Date, the Merchandise Fee shall apply.
- (d) Notwithstanding anything contained herein, the Merchant shall be entitled at any time to sell any or all of the then-remaining Merchandise (including Remaining Merchandise) in one or more bulk sales to a third party acquirer. The gross receipts of any such bulk sale (net of sales taxes) shall be included in the calculation of the Merchandise Fee (as defined below) due to the Consultant.

¹ Merchant shall be responsible for directing Consultant with respect to any applicable lease requirements.

3. Project Management

(a) Consulting Services

The Merchant will seek from the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) an order approving this Agreement and the Sale contemplated herein (the “**Liquidation Sale Approval Order**”). Subject to the entry of and the terms of the Liquidation Sale Approval Order, the Merchant hereby retains the Consultant and the Consultant hereby agrees to serve as an independent consultant to the Merchant in connection with the conduct of the Sale as set forth herein. With respect to the Sale, the Consultant shall serve as the sole and exclusive consultant to the Merchant relative thereto throughout the Sale Term and may not be compensated by any other party, except as provided for herein.

(b) Consultant’s Undertakings

During the Sale Term, the Consultant shall, in collaboration with the Merchant, (i) provide qualified supervisors (the “**Supervisors**”) engaged by the Consultant and approved in advance by Merchant to oversee the management of the Stores and the Sale; (ii) recommend appropriate point-of-sale and external advertising (including signage) for the Stores, approved in advance by the Merchant; (iii) recommend appropriate discounts of Merchandise, staffing levels for the Stores, and appropriate bonus and incentive programs, if any, for the Stores’ employees, in each case approved in advance by the Merchant in consultation with the Monitor; (iv) oversee display of Merchandise for the Stores, subject to the terms hereof; (v) maintain the confidentiality of all proprietary or non-public information regarding the Merchant, the Stores and underlying leases in accordance with the provisions of any confidentiality agreements signed by the Parties (the “**Confidentiality Agreements**”); (vi) to the extent that information is available, evaluate sales of Merchandise by category and sales reporting and monitor expenses; (vii) assist the Merchant in connection with managing and controlling loss prevention and employee relations matters; (ix) to the extent necessary, assist the Merchant in obtaining all required permits and governmental consents required to conduct the Sale, except as otherwise provided in the Liquidation Sale Approval Order; and (x) provide such other related services deemed necessary or appropriate by the Merchant and the Consultant, in consultation with the Monitor.

The Consultant shall provide qualified supervision to oversee the conduct of the Sale in the Stores as may be required to maximize sales, the expense for which is included in the Expense Budget (as defined below). In connection with the Sale, the Consultant shall indirectly retain and engage the Supervisors. The Supervisors shall not be deemed to be employees or consultants of the Merchant in any manner whatsoever; nor do the Supervisors have any relationship with the Merchant by virtue of this Agreement or otherwise which creates any liability or responsibility on behalf of the Merchant for the Supervisors. During the Sale Term, the Supervisors shall perform the services provided for herein during normal Store operating hours and for the period of time prior to the Stores opening and subsequent to the Stores closing, as required in connection with the Sale, in the Consultant’s discretion and direction. In consideration of the Consultant’s engagement of the Supervisors, the Merchant agrees to pay the Consultant, as a Sale Cost (as defined below), the amount of the reasonable and documented Supervisor-related wages, fees paid to arm’s length third parties, travel, expenses, deferred compensation and third-party payroll costs and expenses, in accordance with and subject to the Expense Budget (collectively, the “**Supervisor**

Costs”). The Supervisor Costs set forth in the Expense Budget include, among other things, industry standard deferred compensation. The Merchant shall reimburse the Consultant for all Supervisor Costs weekly, based upon invoices or other documentation reasonably satisfactory to Merchant and the Monitor. The Consultant has agreed that without prior written consent from the Merchant, the Expense Budget (inclusive of Supervisor Costs) shall not exceed CAD\$1,775,000.

All right, title and interest of the Merchant in and to its Merchandise, FF&E and Remaining FF&E (as defined below) shall remain with Merchant at all times during the Sale Term until such Merchandise, FF&E and Remaining FF&E, as applicable, is sold. For the avoidance of doubt, Consultant shall not have any right, title or interest in the Merchandise, FF&E or Remaining FF&E at any time during or after the Sale Term. Although the Consultant shall undertake its obligations under this Agreement in a manner designed to achieve the desired results of the Sale and to maximize the benefits to the Merchant, the Merchant expressly acknowledges that the Consultant is not guaranteeing the results of the Sale. All sales of Merchandise and FF&E in the Stores, the Corporate Office and the Merchant DC shall be made in the name and on behalf of the Merchant, and all sales during the Sale Term shall be “as is, where is” and final with no returns accepted or allowed following the Sale Commencement Date (including with respect to any items purchased prior to the Sale).

Without limiting the generality of the foregoing or the terms of the Confidentiality Agreements, all information of a business nature relating to the pricing, sales, promotions, marketing, assets, liabilities or other business affairs of the Merchant, its customers, employees, or affiliated entities (for purposes of this paragraph and the paragraph that follows immediately hereafter, all such entities are including with each reference to “**Mastermind Entities**”) constitutes the Mastermind Entities’ confidential, trade secret information (the “**Mastermind Entities Confidential Information**”), which is and shall remain the exclusive intellectual property of the Mastermind Entities and shall be treated as strictly confidential by the Consultant in accordance with and subject to the Confidentiality Agreements. The Consultant agrees to maintain strict confidentiality in accordance with the Confidentiality Agreements and agrees that it may use Mastermind Entities Confidential Information only as reasonably necessary to the performance of its obligations related to the Sale. If and to the extent the use or other handling of any Personal Information (as defined below) is necessary for the Consultant to perform its obligations hereunder, the Consultant shall comply with all Data Security Requirements (as defined below) and such other reasonable restrictions requested by the Mastermind Entities. For purposes of this Agreement, “**Personal Information**”) means any natural person’s name, street address, telephone number, e-mail address, social insurance number, driver’s license number, passport number, credit card number, or user or account number, or any other piece of information that, individually or when combined with other information, allows the identification of a natural person or is otherwise considered personally identifiable information or personal data protected under any applicable Data Security Requirement. For purposes of this Agreement, “**Data Security Requirements**” means, collectively, all of the following to the extent relating to privacy, security, or security breach notification requirements: (i) the Mastermind Entities’ own rules, policies and procedures; (ii) all applicable statutes and regulations; (iii) industry standards applicable to the industry in which the Mastermind Entities’ business is conducted; and (iv) contracts into which the Mastermind Entities have entered or by which they are otherwise bound, provided such contracts (or the requirements of such contracts) are provided to the Consultant.

The Parties expressly acknowledge and agree that the Mastermind Entities shall have no liability to the Supervisors for debts, wages, bonuses, benefits, severance pay, termination pay, vacation pay, pay in lieu of termination or any other liability arising from the hiring or engagement of the Supervisors, and the Supervisors shall not be considered employees of the Mastermind Entities.

(c) Merchant's Undertakings

During the Sale Term, the Merchant shall: (i) be the employer of the Stores' employees, other than the Supervisors; (ii) be responsible for all taxes, costs, expenses, accounts payable, and other liabilities relating to the Stores, the Stores' employees and other representatives of the Merchant (excluding, for greater certainty, the Supervisors); (iii) prepare and process all tax forms and other documentation with respect thereto; (iv) collect all sales taxes and other applicable taxes assessed on the sale of the Merchandise, Additional Consultant Goods, and FF&E and pay them to the appropriate taxing authorities for the Stores, Corporate Office and/or Merchant DC, as applicable; (v) use reasonable efforts to cause the Merchant's employees to cooperate with the Consultant and the Supervisors; (vi) execute all agreements mutually determined by the Merchant and the Consultant, in consultation with the Monitor, to be necessary or desirable for the operation of the Stores during the Sale; (vii) arrange for the ordinary maintenance of all point-of-sale equipment required for the Stores; (viii) ensure that there are no restrictions on Consultant's use of Merchant's trademarks, logos and other intellectual property to be used in connection with the Sale, subject to the terms of this Agreement; and (ix) use commercially reasonable efforts to ensure that the Consultant may access and use the Stores and Distribution Centre for the Sale Term in order to perform its obligations under this Agreement.

The Merchant shall provide throughout the Sale Term central administrative services necessary for the Sale, including (without limitation) customary point-of-sale administration, sales audit, cash reconciliation, accounting, and payroll processing, as currently available through the Merchant's existing accounting and IT systems, all at no cost to the Consultant.

The Parties expressly acknowledge and agree that the Consultant shall have no liability to the Merchant's employees for wages, bonuses, benefits, severance pay, termination pay, vacation pay, pay in lieu of notice of termination or any other liability arising from the Merchant's employment, hiring or retention of its employees, and such employees shall not be considered employees of the Consultant, nor shall the Consultant be or be deemed to be a successor employer in respect of the Merchant's employees.

4. The Sale

All sales of Merchandise shall be made on behalf of the Merchant. The Consultant does not have, nor shall it have, any right, title or interest in the Merchandise. All sales of Merchandise shall be by cash, active gift card or gift certificate issued by the Merchant, or credit or debit card, in accordance with the Merchant's policies, and shall be "final" with no returns accepted or allowed, unless otherwise directed by the Merchant. The Parties acknowledge and agree that the Stores shall accept cash, and credit and debit cards, during the Sale, and will accept active gift cards and gift certificates issued by the Merchant until and including December 24, 2023. The Merchant and the Consultant shall not sell gift cards or gift certificates during the Sale Term and the Merchant shall cause all third party vendors of gift cards, if any, to cease the sale of gift cards or gift certificates within one day of the granting of the Initial Order.

In the event of a full chain liquidation, Merchant shall cease all e-commerce sales on the Website as soon as reasonably practicable following the granting of the Liquidation Sale Approval Order. Merchant shall continue to maintain the Website for purposes of advertising the Sale to the satisfaction of the Consultant.

5. Consultant Fee and Expenses in Connection with the Sale

In consideration of its services hereunder, the Consultant shall earn a fee equal to two percent (2.0%) of the Gross Proceeds (as defined below) of Merchandise sold at the Stores during the Sale Term (the "**Merchandise Fee**"). For purposes of this Agreement, "**Gross Proceeds**" means gross receipts (including without limitation gift card or gift certificates issued by the Merchant) from sales of Merchandise during the Sale Term, net of applicable sales taxes.

The Merchant shall be responsible for all expenses of the Sale, including, without limitation, all Store operating expenses and all of the Consultant's reasonable and documented out-of-pocket expenses incurred pursuant to the Expense Budget (the "**Sale Costs**"). To control Sale Costs, the Merchant and the Consultant, in consultation with the Monitor, have established an aggregate budget in connection with the transactions contemplated hereunder (the "**Expense Budget**") of certain delineated expenses, including, without limitation, payment of the costs of supervision (including Supervisor Costs), advertising and signage costs, and other miscellaneous expenses expected to be incurred by the Consultant, including reasonable legal fees. The Expense Budget for the Sale is attached hereto as Exhibit "C". Without the written consent of the Merchant, the Expense Budget shall not exceed CAD\$1,775,000. The Expense Budget may only be modified by mutual written (including email) agreement of the Consultant and the Merchant with the consent of the Monitor. Notwithstanding anything to the contrary herein, unless otherwise agreed to by the Merchant in writing with the consent of the Monitor, the Merchant shall not be obligated to pay any Sale Costs that are not included or provided for in the Expense Budget, as it may be amended in accordance with this Agreement. The Merchant shall reimburse the Consultant for all Sale Costs incurred by the Consultant up to the aggregate budgeted amount set forth in the Expense Budget.

Concurrently with the execution of, and as a condition to the Consultant's obligations under, this Agreement, the Merchant shall fund to the Consultant CAD\$475,000 (the "**Special Purpose Payment**"), which shall be held by the Consultant on account of any final amounts owing

to the Consultant hereunder until the Final Reconciliation (as defined below), and the Merchant shall not apply the Special Purpose Payment to, or otherwise offset any portion of the Special Purpose Payment against, any weekly reimbursement, payment of fees, or other amount owing to the Consultant under this Agreement prior to the Final Reconciliation; provided, however, in the event the Liquidation Sale Approval Order is not granted by the Court on or before December 1, 2023, Consultant shall be entitled to apply the Special Purpose Payment to the payment of any Sale Costs incurred on or before such date. Without limiting any of Consultant's other rights, the Consultant may apply the Special Purpose Payment to any unpaid obligation owing by the Merchant to the Consultant under this Agreement following the completion of the Final Reconciliation on prior written notice to the Monitor or upon the Court's failure to grant the Liquidation Sale Approval Order by December 1, 2023. Any portion of the Special Purpose Payment not so applied shall be returned to the Merchant within five (5) business days following the Final Reconciliation.

6. Furniture, Fixtures and Equipment

- (a) The Consultant shall also undertake to sell during the Sale Term, on an "as is where is" basis, the FF&E located at the Stores, the Corporate Office and the Merchant DC. The Consultant shall advertise in the context of advertising for the Sale that such FF&E is available for sale, and shall contact and solicit known purchasers and dealers of furniture, fixtures and equipment. The Consultant shall have the right to abandon at the Stores and the Merchant DC any unsold FF&E on the expiry of the Sale Term.
- (b) The Merchant shall be responsible for all reasonable and documented costs and expenses incurred by the Consultant in connection with the sale of FF&E, which costs and expenses shall be incurred pursuant to a written budget or budgets (in addition to the Expense Budget) to be established from time to time by mutual agreement of the Parties with the consent of the Monitor (such costs and expenses, not including the Sale Costs, shall be referred to as the "**FF&E Costs**").
- (c) In consideration for providing the services set forth in this Section 6, the Consultant shall be entitled to a commission from the sale of all such FF&E equal to fifteen percent (15%) of the gross proceeds of the sale of such FF&E, net of applicable sales taxes (the "**FF&E Fee**").
- (d) During the Sale Term, the Merchant shall, at each Store, the Corporate Office and the Merchant DC, provide the Consultant and its invitees with access to such Store, Corporate Office and Merchant DC solely for purposes of selling, disposing, and/or removing the FF&E.
- (e) Any FF&E that is owned, in whole or in part, by the Merchant that is not sold by the Consultant at each Store or the Corporate Office by the Sale Termination Date (the "**Remaining FF&E**") shall not be removed but such Remaining FF&E shall be abandoned by the Consultant in place, in a neat and orderly manner and title thereto shall remain with the Merchant.

- (f) The terms and conditions regarding the access to, timing of, sale and removal of the FF&E located in the Merchant DC, if any, shall be agreed by the Merchant, the Consultant and the owner of the Merchant DC, in consultation with the Monitor.
- (g) Notwithstanding anything in this Agreement to the contrary, the Consultant shall not have any obligation whatsoever to cap any electrical or plumbing outlets or purchase, sell, make, store, handle, treat, dispose, or remove any hazardous materials from the Stores, Corporate Office, Merchant DC, or otherwise. The Consultant shall have no liability to any party for any environmental action brought: (i) that is related to the storage, handling, treatment, disposition, generation, or transportation of hazardous materials, or (ii) in connection with any remedial actions associated therewith or the Stores, Corporate Office or Merchant DC, in each case, save and except for any gross negligence or wilful misconduct on its part.

7. Payments & Accounting

All proceeds of sales of Merchandise and FF&E through the Sale shall be collected by Merchant's Store management personnel and deposited into Merchant's existing deposit accounts.² During the Sale Term, all accounting matters (including, without limitation, the determination of the Merchandise Fee, Sale Costs, FF&E Fee, FF&E Costs and all other fees, expenses, or other amounts reimbursable or payable hereunder) shall be reconciled by the Parties, in consultation with the Monitor, on every Wednesday for the prior calendar week and the amounts determined to be owing for such prior calendar week pursuant to such reconciliation shall be paid within seven (7) days after each such weekly reconciliation.

The Parties shall, in consultation with the Monitor, complete a final reconciliation and settlement of all amounts payable pursuant to this Agreement, including, without limitation, the determination of the Merchandise Fee, Sale Costs, FF&E Fee, FF&E Costs and all other fees, expenses, or other amounts reimbursable or payable hereunder (the "**Final Reconciliation**"), no later than fifteen (15) days following the earlier of: (a) the Sale Termination Date for the last Store; or (b) the date upon which this Agreement is terminated in accordance with its terms. Within three (3) days after the completion of the Final Reconciliation, (i) any amounts that are determined to be owing by the Merchant to the Consultant shall be paid by the Merchant to the Consultant pursuant to this Agreement, and (ii) any amounts that are determined to be owing by the Consultant to the Merchant pursuant to this Agreement (including any full or partial refund of the Special Purpose Payment) shall be paid by the Consultant to the Merchant.

8. Additional Consultant Goods.

Subject to the Liquidation Sale Approval Order and only with the prior written consent of the Merchant, Consultant shall have the right to supplement the Merchandise in the Sale at the

² With respect to sales of FF&E at the Corporate Office or Merchant DC, Merchant will either install a point-of-sale system for Consultant's use to process FF&E sale transactions and the collection of FF&E sale proceeds or Consultant and Merchant shall mutually agree upon procedures for Consultant's collection of FF&E sale proceeds.

Stores with additional goods procured by Consultant which are of like kind and no lesser quality to the Merchandise in the Sale at the Stores (“**Additional Consultant Goods**”). The Additional Consultant Goods shall be purchased by Consultant as part of the Sale, and delivered to the Stores. Sales of Additional Consultant Goods shall be run through Merchant’s point of sale system; provided, however, that Merchant shall assist with marking, and Consultant shall mark the Additional Consultant Goods, using either a “dummy” SKU or department number, or in such other manner so as to distinguish the sale of Additional Consultant Goods from the sale of Merchandise. For the avoidance of doubt, if Additional Consultant Goods are to be utilized, Merchant shall provide Consultant with “dummy” SKUs. Consultant and Merchant shall also cooperate so as to ensure that the Additional Consultant Goods are marked in such a way that a reasonable consumer could identify the Additional Consultant Goods as non-Merchant goods. Additionally, Consultant shall provide signage in the Stores notifying customers that the Additional Consultant Goods have been included in the Sale.

Consultant shall pay to Merchant an amount equal to five percent (5%) of the gross proceeds (excluding sales taxes) from the sale of Additional Consultant Goods completed during the Sale Term (the “**Additional Consultant Goods Fee**”), and Consultant shall retain all remaining amounts from the sale of the Additional Consultant Goods. Any amount due from Consultant to Merchant in respect of the sale of Additional Consultant Goods in accordance with this Section 8 shall be paid in connection with each weekly reconciliation with respect to sales of Additional Consultant Goods sold during the prior week and any remaining amounts owed shall be paid in connection with the Final Reconciliation.

Consultant and Merchant intend that the transactions relating to the Additional Consultant Goods are, and shall be construed as, a true consignment from Consultant to Merchant in all respects and not a consignment for security purposes. Subject solely to Consultant’s obligations to pay to Merchant the Additional Consultant Goods Fee, at all times and for all purposes the Additional Consultant Goods and their proceeds shall be the exclusive property of Consultant, and no other person or entity shall have any claim against any of the Additional Consultant Goods or their proceeds. Merchant shall, at Consultant’s sole cost and expense, insure the Additional Consultant Goods and, if required, promptly file any proofs of loss with regard to same with Merchant’s insurers. Consultant shall be responsible for payment of any deductible under any such insurance in the event of any casualty affecting the Additional Consultant Goods.

Merchant acknowledges, and the Liquidation Sale Approval Order shall provide, that the Additional Consultant Goods shall be consigned to Merchant as a true consignment under applicable law. Subject to the Court’s issuance of the Liquidation Sale Approval Order, the Consultant is hereby granted a first priority security interest in and lien upon (i) the Additional Consultant Goods and (ii) the Additional Consultant Goods proceeds, and Consultant is hereby authorized to make any filings and provide notifications to any prior secured parties and which security interest shall be deemed perfected pursuant to the Liquidation Sale Approval Order without the requirement of any such filings or providing notifications to any prior secured parties (provided that Consultant is hereby authorized to deliver all required notices and file all necessary financing statements and amendments thereof under applicable law identifying Consultant’s interest in the Additional Consultant Goods as consigned goods thereunder and the Merchant as the consignee therefor, and Consultant’s security interest in and lien upon such Additional Consultant Goods and Additional Consultant Goods proceeds).

9. Indemnification

(a) Merchant's Indemnification

The Merchant shall indemnify, defend, and hold the Consultant and its consultants, members, managers, partners, officers, directors, employees, attorneys, advisors, representatives, principals, affiliates, and Supervisors (collectively, "**Consultant Indemnified Parties**" and each a "**Consultant Indemnified Party**") harmless from and against all liabilities, claims, demands, damages, costs and expenses (including reasonable attorneys' fees) arising from or related to: (i) the willful or negligent acts or omissions of or by the Merchant Indemnified Parties (as defined below); (ii) the material breach of any provision of this Agreement by the Merchant, or the failure to perform any obligation under, this Agreement by Merchant; (iii) any liability or other claims, including, without limitation, product liability claims, asserted by customers, any Store employees (under a collective bargaining agreement or otherwise), any lessor of a Store, the Corporate Office or the Merchant DC or any other person (excluding the Consultant Indemnified Parties) against the Consultant or a Consultant Indemnified Party, except claims arising from the negligence, willful misconduct, gross negligence, or unlawful behavior of the Consultant or the Consultant Indemnified Party; (iv) any harassment, discrimination or violation of any laws or regulations or any other unlawful, tortious or otherwise actionable treatment of the Consultant Indemnified Parties or the Merchant's customers by the Merchant Indemnified Parties; and (v) the Merchant's failure to pay over to the appropriate taxing authority any taxes required to be paid by the Merchant during the Sale Term in accordance with applicable law.

(b) Consultant's Indemnification

The Consultant shall indemnify, defend and hold the Merchant and its consultants, members, managers, partners, officers, directors, employees, attorneys, advisors, representatives, principals, and affiliates (other than the Consultant or the Consultant Indemnified Parties) (collectively, "**Merchant Indemnified Parties**" and each a "**Merchant Indemnified Party**") harmless from and against all liabilities, claims, demands, damages, costs and expenses (including reasonable attorneys' fees) arising from or related to (i) the willful or negligent acts or omissions of the Consultant Indemnified Parties; (ii) the material breach of any provision of, or the failure to perform any obligation under, this Agreement by the Consultant; (iii) any harassment, discrimination or violation of any laws or regulations or any other unlawful, tortious or otherwise actionable treatment of Merchant Indemnified Parties, or Merchant's customers by the Consultant or any of the Consultant Indemnified Parties; and (iv) any claims made by any party engaged by the Consultant as an employee, agent, representative or independent contractor arising out of such engagement, including, without limitation, the Supervisors.

10. Insurance

(a) Merchant's Insurance Obligations

The Merchant shall maintain throughout the Sale Term all liability insurance policies (including, without limitation, products liability, comprehensive public liability and auto liability insurance) covering injuries to persons and property in or in connection with the Stores that are maintained by the Merchant and in effect as of the date of this Agreement, and shall cause the

Consultant to be named an additional insured with respect to all such policies. At the Consultant's request, the Merchant shall provide the Consultant with a certificate or certificates evidencing the insurance coverage required hereunder. In addition, the Merchant shall maintain throughout the Sale Term, in such amounts as it currently has in effect, workers compensation insurance in compliance with all statutory requirements.

(b) Consultant's Insurance Obligations

The Consultant shall maintain (at its sole cost and expense) throughout the Sale Term, commercial general liability insurance, in such amounts as are reasonable and consistent with its ordinary practices, covering injuries to persons and property in connection with the Consultant's provision of services hereunder, and shall cause the Merchant to be named as an additional insured with respect to all such policies. At the Merchant's request, the Consultant shall provide the Merchant with a certificate evidencing the insurance coverage required hereunder. In addition, the Consultant shall maintain throughout the Sale Term, workers' compensation insurance in compliance with all statutory requirements. Further, should the Consultant employ or engage third parties to perform any of the Consultant's undertakings with regard to this Agreement, the Consultant will ensure that such third parties are covered by the Consultant's insurance or maintain all of the same insurance as the Consultant is required to maintain pursuant to this paragraph and name the Merchant as an additional insured under the policy for each such insurance.

11. Going Concern Sale

The Parties acknowledge and agree that in the event of a going concern third party transaction for the business or a certain portion thereof, the Parties shall work cooperatively and in good faith to modify the transaction contemplated hereunder appropriately and the Parties shall:

- (a) ensure that the only Stores subject to the Sale are the Stores included on the Updated Store List, as the same may be amended by the Merchant to add or remove Stores until and including November 29, 2023 or to add Stores any time thereafter;
- (b) agree to a revised Expense Budget to reflect the costs of running the Sale at the Stores included on the Updated Store List;
- (c) agree on an appropriate allocation of the Merchandise from the Distribution Centre to the Stores included on the Updated Store List;
- (d) agree on appropriate advertising regarding the Sale to be included on the Website, including, without limitation, with respect to store locator and a headline banner promoting the Sale; and
- (e) Merchant shall not, and shall use commercially reasonable efforts to ensure that any going concern buyer does not, offer for sale through the Website or other e-commerce platform, any goods included among the Merchandise at an effective price, determined on an item-by-item and SKU basis (after accounting for all

applicable discounts, promotions, coupons, programs), less than the price offered in the Stores for such items as part of the Sale.

12. Representations, Warranties, Covenants and Agreements

(a) Representations and Covenants of Merchant

The Merchant represents, warrants, covenants and agrees that, subject to the issuance of the Liquidation Sale Approval Order: (i) it is duly organized, validly existing and in good standing under the laws of its province of organization, with full power and authority to execute and deliver this Agreement and to perform its obligations hereunder; (ii) the execution, delivery and performance of this Agreement has been duly authorized by all necessary actions of it and this Agreement constitutes a valid and binding obligation of it enforceable against it in accordance with its terms and conditions, and the consent of no other entity or person is required for it to fully perform all of its obligations herein; (iii) all ticketing of Merchandise at the Stores has been and will be done in accordance with the Merchant's customary ticketing practices; (iv) all normal course hard markdowns on the Merchandise have been, and will be, taken consistent with Merchant's customary practices; and (v) subject to the Initial Order and any other Order of the Court, the Sale Guidelines and this Agreement, the Stores will be operated in the ordinary course of business in all respects, except as otherwise expressly agreed to by the Merchant and the Consultant, in consultation with the Monitor.

(b) Representations and Covenants of the Consultant

The Consultant represents, warrants, covenants and agrees that: (i) the Consultant is a company duly organized, validly existing and in good standing under the laws of its jurisdiction of organization, with full power and authority to execute and deliver this Agreement and to perform the Consultant's obligations hereunder; (ii) the execution, delivery and performance of this Agreement has been duly authorized by all necessary actions of the Consultant and this Agreement constitutes a valid and binding obligation of the Consultant enforceable against the Consultant in accordance with its terms and conditions, and the consent of no other entity or person is required for the Consultant to fully perform all of its obligations herein; (iii) the Consultant shall comply with and act in accordance with any and all applicable federal, provincial and local laws, rules, and regulations, and other legal obligations of all governmental authorities; (iv) no non-emergency repairs or maintenance in the Stores will be conducted without the Merchant's prior written consent; (v) the Consultant will not take any disciplinary action against any employee of Merchant; and (vi) the Consultant is not a non-resident of Canada pursuant to the *Income Tax Act* (Canada) and shall provide Merchant with its relevant sales tax numbers prior to the Sale.

(c) Confirmations of the Parties

- (i) Except as may be provided otherwise in the Liquidation Sale Approval Order or any order of the Court, the Consultant shall assist the Merchant with respect to the legal requirements of effecting the Sale as a "store closing", "everything must go", "everything on sale", "going out of business" or other mutually agreed upon theme in compliance, if required with applicable provincial and local "going out of business" laws and assist

in obtaining all permits and governmental consents required in order to conduct the Sale under such laws.

- (ii) Merchant shall seek Court approval of this Agreement and the Sale Guidelines pursuant to the Liquidation Sale Approval Order. The Parties expressly acknowledge and agree that the entering into of this Agreement by the Merchant is subject to the issuance of the Liquidation Sale Approval Order approving, among other things, this Agreement, the Sale Guidelines and the conduct of the Sale and that should the Liquidation Sale Approval Order not be obtained, this Agreement shall be deemed terminated as of the date the Court denies the request for entry of the Liquidation Sale Approval Order.
- (iii) The Consultant shall conduct the Sale in accordance with the terms of this Agreement, the Liquidation Sale Approval Order, and the Sale Guidelines.

13. Termination

The following shall constitute “**Termination Events**” hereunder:

- (a) The Merchant’s or the Consultant’s failure to perform any of their respective material obligations hereunder, which failure shall continue uncured seven (7) days after receipt of written notice thereof to the defaulting Party;
- (b) Any representation or warranty made by the Merchant or the Consultant is untrue in any material respect as of the date made or at any time and throughout the Sale Term; or
- (c) The Sale is terminated or materially interrupted or impaired for any reason, including but not limited to an order of the Court, other than as a result of an Event of Default (as defined below) by the Consultant or the Merchant.

If a Termination Event occurs, (i) the non-defaulting Party in the event of a Termination Event arising under subparagraphs (a) or (b) above (an “**Event of Default**”), or (ii) either Party in the event of a Termination Event arising under subparagraph (c) above, may, in its discretion, elect to terminate this Agreement by providing seven (7) business days’ written notice thereof to the other Party and, in the case of an Event of Default, in addition to terminating this Agreement, pursue any and all rights and remedies and damages resulting from such Event of Default. If this Agreement is terminated, the Merchant shall be obligated to pay the Consultant all amounts due and owing by the Merchant to the Consultant under this Agreement through and including the termination date of the Agreement, subject to the rights of the Merchant in the event of an Event of Default by the Consultant.

14. Notices

All notices, certificates, approvals, and payments provided for herein shall be sent by electronic mail or by recognized overnight delivery service as follows: (a) to the Merchant, c/o

Davies Ward Phillips & Vineberg LLP, 155 Wellington St W, 40th Floor, Toronto, ON M5V 3J7, Attn: Natasha MacParland, Email: nmacparland@dwpv.com and Natalie Renner, Email: nrenner@dwpv.com; (b) to the Consultant: Gordon Brothers Canada, ULC c/o Gordon Brothers Retail Partners, LLC, 101 Huntington Avenue, Suite 1100, Boston, MA 02465, Attention: Rick Edwards and David Braun, Email: redwards@gordonbrothers.com and dbraun@gordonbrothers.com; (c) counsel to the Consultant, Osler Hoskin & Harcourt LLP, 1 First Canadian Place, Toronto ON M5X 1B8 Attention: Tracy C. Sandler, Email: tsandler@osler.com; or (d) such other address as may be designated in writing by the Merchant or the Consultant, and in either case, with a copy to the Monitor at: Alvarez and Marsal Canada Inc., Royal Bank Plaza, South Tower, 2900 – 200 Bay Street, Toronto, ON M5J 2J1, Attn: Josh Nevsky, Email: jnevsky@alvarezandmarsal.com with a copy to Bennett Jones LLP, 3400-1 First Canadian Place, Toronto, ON M5X 1A4, Attention: Sean Zweig, Email: zweigs@bennettjones.com and Josh Foster, Email: fosterj@bennettjones.com.

15. Independent Consultant

The Consultant's relationship to the Merchant is that of an independent contractor without the capacity to bind the Merchant in any respect. No employer/employee, principal/agent, joint venture or other such relationship is created by this Agreement. The Merchant shall have no control over the hours that the Consultant or its employees or assistants or the Supervisors work or the means or manner in which the services that will be provided are performed and the Consultant is not authorized to enter into any contracts or agreements on behalf of the Merchant or to otherwise create any obligations of the Merchant to third parties, unless authorized in writing to do so by the Merchant. Nothing herein constitutes any form of landlord and tenant relationship between the Merchant and the Consultant or grants the Consultant any interest in the Stores, Corporate Office or Merchant DC or the underlying leases.

16. Non-Assignment

Subject to section 16 below, neither this Agreement nor any of the rights hereunder may be transferred or assigned by either Party without the prior written consent of the other Party and the Monitor. No modification, amendment or waiver of any of the provisions contained in this Agreement, or any future representation, promise or condition in connection with the subject matter of this Agreement, shall be binding upon any Party to this Agreement unless made in writing and signed by a duly authorized representative or agent of such Party. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective legal representatives, successors and permitted assigns.

17. Syndication of Transaction

Consultant shall have the right, but not the obligation, to syndicate the transaction contemplated by this Agreement subject to the prior written consent of Merchant, and if syndicated, this Agreement shall be deemed amended and restated to expressly name such parties as parties hereto and such parties shall thereafter be deemed to be included in references to "Consultant" hereunder for all purposes.

18. Severability

If any term or provision of this Agreement, as applied to either Party or any circumstance, for any reason shall be declared by a court of competent jurisdiction to be invalid, illegal, unenforceable, inoperative or otherwise ineffective, that provision shall be limited or eliminated to the minimum extent necessary so that this Agreement shall otherwise remain in full force and effect and enforceable. If the surviving portions of the Agreement fail to retain the essential understanding of the Parties, the Agreement may be terminated by mutual consent of the Parties.

19. Governing Law, Venue, Jurisdiction and Jury Waiver

This Agreement, and its validity, construction and effect, shall be governed by and enforced in accordance with the laws of the Province of Ontario (without reference to the conflicts of laws provisions therein) and the laws of Canada applicable therein. The Merchant and the Consultant waive their respective rights to trial by jury of any cause of action, claim, counterclaim or cross-complaint in any action, proceeding and/or hearing brought by either the Consultant against the Merchant or the Merchant against the Consultant on any matter whatsoever arising out of, or in any way connected with, this Agreement, the relationship between the Merchant and the Consultant, any claim of injury or damage or the enforcement of any remedy under any law, statute or regulation, emergency or otherwise, now or hereafter in effect (an “**Agreement Related Dispute**”). The Parties hereby attorn to the exclusive jurisdiction of the Court to determine any Agreement Related Dispute.

20. Entire Agreement

Other than with respect to the Confidentiality Agreements, this Agreement, together with all additional schedules and exhibits attached hereto, constitutes a single, integrated written contract expressing the entire agreement of the Parties concerning the subject matter hereof. No covenants, agreements, representations or warranties of any kind whatsoever have been made by any Party except as specifically set forth in this Agreement. All prior agreements, discussions and negotiations are entirely superseded by this Agreement.

21. Execution

This Agreement may be executed simultaneously in counterparts (including by means of electronic mail or portable document format (pdf) signature pages), any one of which need not contain the signatures of more than one party, but all such counterparts taken together shall constitute one and the same instrument. This Agreement, and any amendments hereto, to the extent signed and delivered by means of electronic mail or electronic transmission in portable document format (pdf), shall be treated in all manner and respects as an original thereof and shall be considered to have the same binding legal effects as if it were the original signed version thereof delivered in person.

22. Canadian Dollars

The Expense Budget expresses amounts in Canadian dollars. All references to monetary amounts in this Agreement are in Canadian dollars.

[Remainder of page intentionally left blank. Signature page follows.]

IN WITNESS WHEREOF, the undersigned have duly executed this Agreement as of the date first written above.

GORDON BROTHERS CANADA ULC

DocuSigned by:
By: Richard Edwards
Name: Richard Edwards
Title: Vice President

MASTERMIND LP

By: _____
Name: Anna Wu
Title: Director of Mastermind GP

IN WITNESS WHEREOF, the undersigned have duly executed this Agreement as of the date first written above.

GORDON BROTHERS CANADA ULC

By: _____
Name: Richard Edwards
Title: Vice President

MASTERMIND LP

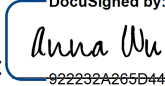
By:  _____
Name: Anna Wu
Title: Director of Mastermind GP

Exhibit “1A”

List of Stores

#	Store Name
265	Barrie, ON
252	Vaughan, ON
338	Owen Sound, ON
261	Hurontario, ON
342	Ajax, ON
316	Lethbridge, AB
324	Saint John, NB
292	Red Deer, AB
326	Medicine Hat, AB
277	Kingston, ON
297	Cambridge, ON
325	Fredericton, NB
331	Hamilton, ON
327	Sudbury, ON
335	Prince George, BC
332	Sydney, NS
321	Kildonan, MB
290	Windermere Currents, AB

Exhibit “1B”

List of Distribution Centre

Mastermind Toys

Exhibit 1B

DC List

Store No.	Store	Concept	Address	City	Province	Zip Code
DC	DC/HQ	DC/HQ	415 Milner Ave	Scarborough	ON	M1B2L1
3PL	3PL Warehouse	3PL	2160 Buckingham Road	Oakville	ON	L6H 6M7

Exhibit “B”

Sale Guidelines

SALE GUIDELINES

The following procedures shall apply to the sale (the “**Sale**”) of merchandise, furniture, fixtures and equipment at Mastermind LP’s (the “**Merchant**”) retail stores (individually, a “**Store**” and, collectively, the “**Stores**”).

Terms capitalized but not defined in these Sale Guidelines have the meanings ascribed to them in the initial order of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) granted on November [23], 2023 in connection with the proceedings under the *Companies’ Creditors Arrangement Act* (Canada) (the “**CCAA Proceedings**”) (as may be amended and restated from time to time, the “**Initial Order**”), or the Consulting Agreement (as defined below), as applicable.

1. Except as otherwise expressly set out herein, and subject to: (i) the Order of the Court granted on November 30, 2023 in the CCAA Proceedings (the “**Approval Order**”), approving the Consulting Agreement between Gordon Brothers Canada ULC (the “**Consultant**”) and Merchant, dated November 24, 2023 (the “**Consulting Agreement**”) and the transactions contemplated thereunder, (ii) any further Order of the Court, or (iii) any subsequent written agreement between the Merchant and its applicable landlord(s) (individually, a “**Landlord**” and, collectively, the “**Landlords**”) and approved by the Consultant, the Sale shall be conducted in accordance with the terms of the applicable leases/or other occupancy agreements for each of the affected Stores (individually, a “**Lease**” and, collectively, the “**Leases**”). However, nothing contained herein shall be construed so as to create or impose upon the Merchant or the Consultant any additional restrictions not contained in the applicable Lease.
2. The Sale shall be conducted so that each of the Stores remain open during their normal hours of operation provided for in the respective Leases for the Stores until the applicable premises vacate date for each Store under the Consulting Agreement (the “**Vacate Date**”), and in all cases no later than [DATE] (such date, or such other date as determined in accordance with the Approval Order, the “**Sale Termination Date**”). Rent payable under the respective Leases shall be paid as provided in the Initial Order.
3. The Sale shall be conducted in accordance with applicable federal, provincial and municipal laws and regulations, unless otherwise set out herein or ordered by the Court.
4. All display and hanging signs used by the Consultant in connection with the Sale shall be professionally produced and all hanging signs shall be hung in a professional manner. Notwithstanding anything to the contrary contained in the Leases, the Consultant may advertise the Sale at the Stores as a “Everything on Sale”, “Everything Must Go”, “Store Closing” or similar theme sale at the Stores (provided, however, that no signs shall advertise the Sale as a “Bankruptcy”, “Liquidation” or “Going out of Business”, unless otherwise agreed between the Consultant and applicable Landlord, it being understood that the French equivalent of “clearance” is “liquidation” and is permitted to be used). Forthwith upon request from a Landlord, the Landlord’s counsel, the Merchant or the Monitor, the Consultant shall provide the proposed signage packages along with proposed dimensions by email or facsimile to the applicable Landlord or to its counsel of record and the applicable Landlord shall notify the Consultant of any requirement for such signage to otherwise comply with the terms of the Lease and/or the Sale Guidelines and where the provisions of the Lease conflicts with these Sale Guidelines, these Sale Guidelines shall govern. The Consultant shall not use neon or day-glow signs or any handwritten signage (save that handwritten “you pay” or “topper” signs may be used). If a Landlord is concerned with “Store Closing” signs being placed in the front window of a Store or with the number or size of the signs

in the front window, the Merchant, the Consultant and such Landlord will work together to resolve the dispute. Furthermore, with respect to enclosed mall Store locations without a separate entrance from the exterior of the enclosed mall, no exterior signs or signs in common areas of a mall shall be used unless explicitly permitted by the applicable Lease. In addition, the Consultant shall be permitted to utilize exterior banners/signs at stand alone or strip mall Stores or enclosed mall Store locations with a separate entrance from the exterior of the enclosed mall; provided, however, that: (i) no signage in any other common areas of a mall shall be used; and (ii) where such banners are not explicitly permitted by the applicable Lease and the applicable Landlord requests in writing that banners are not to be used, no banners shall be used absent further Order of the Court, which may be sought on an expedited basis on notice to the recipients listed in the service list in respect of the CCAA Proceedings (the “**Service List**”). Any banners used shall be located or hung so as to make clear that the Sale is being conducted only at the affected Store and shall not be wider than the premises occupied by the affected Store. All exterior banners shall be professionally hung and to the extent that there is any damage to the facade of the premises of a Store as a result of the hanging or removal of the exterior banner, such damage shall be professionally repaired at the expense of the Consultant.

5. The Consultant shall be permitted to utilize sign-walkers and street signage; provided, however, such sign-walkers and street signage shall not be located on the shopping centre or mall premises.
6. Subject to the Approval Order and only with the prior written consent of the Merchant, the Consultant shall be entitled to include Additional Consultant Goods in the Sale, provided that the Additional Consultant Goods are of like kind and category and no lesser quality to the Merchandise (as defined in the Consulting Agreement).
7. Conspicuous signs shall be posted in the cash register areas of each Store to the effect that all sales are “final” and customers with any questions or complaints are to call the Merchant’s hotline number.
8. The Consultant shall not distribute handbills, leaflets or other written materials to customers outside of any of the Stores on a Landlord’s property, unless explicitly permitted by the applicable Lease or, if distribution is customary in the shopping centre in which the Store is located. Otherwise, the Consultant may solicit customers in the Stores themselves. The Consultant shall not use any giant balloons, flashing lights or amplified sound to advertise the Sale or solicit customers, except as explicitly permitted under the applicable Lease or agreed to by the applicable Landlord, and no advertising trucks shall be used on a Landlord’s property or mall ring roads, except as explicitly permitted under the applicable Lease or agreed to by such Landlord.
9. At the conclusion of the Sale in each Store, the Consultant shall arrange that the premises for each Store are in “broom-swept” and clean condition, and shall arrange that the Stores are in the same condition as on the commencement of the Sale, ordinary wear and tear excepted. No property of any Landlord of a Store shall be removed or sold during the Sale. No permanent fixtures (other than Merchant FF&E (as defined below) for clarity) may be removed without the applicable Landlord’s written consent unless otherwise provided by the applicable Lease and in accordance with the Initial Order and the Approval Order. Any trade fixtures or personal property left in a Store after the applicable Vacate Date in respect of which the applicable Lease has been disclaimed by the Merchant shall be deemed abandoned, with the applicable Landlord having the right to dispose of the same as the Landlord chooses, without any liability whatsoever on the part of such Landlord. Nothing in this paragraph shall derogate from or expand upon the Consultant’s obligations under the Consulting Agreement.

10. Subject to the terms of paragraph 9 above, the Consultant may sell furniture, fixtures and equipment owned by the Merchant (“**Merchant FF&E**”) and located in the Stores during the Sale. For greater certainty, Merchant FF&E does not include any portion of any of the Stores’ HVAC system, fire suppression system and fire alarm or sprinkler system. The Merchant and the Consultant may advertise the sale of Merchant FF&E consistent with these Sale Guidelines on the understanding that the applicable Landlord may require such signs to be placed in discreet locations within the Stores reasonably acceptable to such Landlord. Additionally, the purchasers of any Merchant FF&E sold during the Sale shall only be permitted to remove such Merchant FF&E either through the back shipping areas designated by the applicable Landlord or through other areas after regular Store business hours or, through the front door of the Store during Store business hours if Merchant FF&E can fit in a shopping bag, with the applicable Landlord’s supervision as required by such Landlord and in accordance with the Initial Order and the Approval Order. The Consultant shall repair any damage to the Stores resulting from the removal of any Merchant FF&E by the Consultant or by third party purchasers of Merchant FF&E from the Consultant.
11. The Consultant shall not make any alterations to interior or exterior Store lighting, except as authorized pursuant to the affected Lease. The hanging of exterior banners or other signage, where permitted in accordance with the terms of these Sale Guidelines, shall not constitute an alteration to a Store.
12. The Merchant hereby provides notice to the Landlords of the Merchant’s and the Consultant’s intention to sell and remove Merchant FF&E from the Stores. The Consultant shall make commercially reasonable efforts to arrange with each Landlord represented by counsel on the Service List and with any other Landlord that so requests, a walk-through with the Consultant to identify Merchant FF&E subject to the Sale. The relevant Landlord shall be entitled to have a representative present in the applicable Store(s) to observe such removal. If the relevant Landlord disputes the Consultant’s entitlement to sell or remove any Merchant FF&E under the provisions of the applicable Lease, such Merchant FF&E shall remain on the premises and shall be dealt with as agreed between the Merchant, the Consultant and such Landlord, or by further Order of the Court upon application by the Merchant on at least two (2) days’ notice to such Landlord and the Monitor. If the Merchant has disclaimed or resiliated the Lease governing such Store in accordance with the CCAA Proceedings and the Initial Order, it shall not be required to pay rent under such Lease pending resolution of any such dispute (other than rent payable for the notice period provided for in the CCAA Proceedings and the Initial Order), and the disclaimer or resiliation of the Lease shall be without prejudice to the Merchant’s or the Consultant’s claim to Merchant FF&E in dispute.
13. If a notice of disclaimer or resiliation is delivered pursuant to the CCAA Proceedings and the Initial Order to a Landlord while the Sale is ongoing and the Store in question has not yet been vacated, then: (i) during the notice period prior to the effective time of the disclaimer or resiliation, such Landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the Merchant, the Monitor and the Consultant twenty-four (24) hours’ prior written notice; and (ii) at the effective time of the disclaimer or resiliation, such Landlord shall be entitled to take possession of any such Store without waiver of or prejudice to any claims or rights such Landlord may have against the Merchant in respect of such Lease or Store, provided that nothing herein shall relieve such Landlord of any obligation to mitigate any damages claimed in connection therewith.
14. The Consultant and its agents and representatives shall have the same access rights to each Store as the Merchant under the terms of the applicable Lease, and each of the Landlords shall have the rights of access to each applicable Store during the Sale provided for in the applicable Lease

(subject, for greater certainty, to any applicable stay of proceedings and the terms of the Initial Order).

15. The Merchant and the Consultant shall not conduct any auctions of Merchandise or Merchant FF&E at any of the Stores.
16. The Consultant shall designate a party to be contacted by the Landlords should a dispute arise concerning the conduct of the Sale. The initial contact person for the Consultant shall be David Braun or Durien Sanchez, who may be reached by email at dbraun@gordonbrothers.com or dsanchez@gordonbrothers.com. If the parties are unable to resolve the dispute between themselves, the applicable Landlord or the Merchant shall have the right to schedule a "status hearing" before the Court on no less than two (2) days' written notice to the other party or parties and the Monitor, during which time the Consultant shall cease all activity in dispute other than activity expressly permitted herein, pending determination of the matter by the Court; provided, however, subject to paragraph 4 of these Sale Guidelines, if a banner has been hung in accordance with these Sale Guidelines and is the subject of a dispute, the Consultant shall not be required to take any such banner down pending determination of any dispute.
17. Nothing herein or in the Consulting Agreement is, or shall be deemed to be a consent by any Landlord to the sale, assignment or transfer of any Lease, or shall, or shall be deemed to, or grant to any Landlord any greater rights than already exist under the terms of any applicable Lease.
18. These Sale Guidelines may be amended by written agreement between the Consultant, the Merchant and the applicable Landlord, in consultation with the Monitor; provided, however, that such amended Sale Guidelines shall not affect or bind any other Landlord not privy thereto without further Order of the Court approving such amended Sale Guidelines.

Exhibit “C”

Expense Budget

Mastermind Toys
GBRP's Controlled Expenses
Exhibit C

Stores : 66
Sale Term : 11/30/23 - 1/28/24
Weeks : 8.6

	\$
Advertising	831,288
Supervision	783,712
Miscellaneous	160,000
Total Expenses	1,775,000

This expense budget is based upon the above start and end dates.
Any changes in these dates may result in adjustments to the expense
budget, which will be agreed upon by Consultant and Merchant.

TAB E

This is **Exhibit "E"** referred to in the
Affidavit #2 of LUCIO MILANOVICH,
sworn before me, this 29th day of
November, 2023.



Commissioner for taking affidavits
Kristine Spence (LSO #66099S)

Court File No. ~~CV-23-00694493-00CL~~CV-
23-00710259-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE _____)

CHIEF JUSTICE MORAWETZ _____)

)

~~TUESDAY, THE 21ST DAY OF FEBRUARY, 2023~~

THE HONOURABLE

)

THURSDAY, THE 30th

JUSTICE STEELE

)

DAY OF NOVEMBER, 2023

)

IN THE MATTER OF THE COMPANIES' CREDITORS
ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS
AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF ~~BBB CANADA LTD~~ MASTERMIND GP
INC.

(the "**Applicant**")

LIQUIDATION SALE APPROVAL ORDER

THIS MOTION, made by the Applicant pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") for an order, among other things, approving the transactions contemplated under a consulting agreement between ~~a contractual joint venture comprised of Hilco Merchant Retail Solutions ULC, Gordon Brothers Canada ULC, Tiger Asset Solutions Canada, ULC and B. Riley Retail Solutions LLC,~~ (collectively, the "**Consultant**") and ~~Bed Bath & Beyond Canada L.P. ("BBB L.P.",~~ Mastermind LP ("Mastermind LP" and together with the Applicant, the "**BBB Mastermind Entities**") dated as of ~~February 15~~ November 24, 2023 (the "**Consulting Agreement**") and certain related relief, was heard this day via videoconference.

ON READING the Notice of Motion of the Applicant, the Affidavit of ~~Holly Etlin~~ Lucio Milanovich sworn on ~~February 15~~ November 29, 2023 ~~including and~~ the exhibits thereto ~~(the "Second Etlin Affidavit"), and~~ the First Report of Alvarez & Marsal Canada Inc., in its capacity as Court-appointed monitor (~~in such capacity,~~ the "**Monitor**"), dated ~~February 15~~ November 29, 2023, ~~filed~~, and on hearing the submissions of respective

counsel for the ~~BBB-Mastermind~~ Entities, the Monitor, Canadian Imperial Bank of Commerce, in its capacity as administrative agent for the lenders under the credit agreement dated October 24, 2014 with Mastermind LP as borrower and the Applicant as guarantor, the Consultant, and such other counsel as were present, no one else appearing although duly served as appears from the Affidavit-[s] of Service ~~of~~ ~~February~~ ~~2023~~, filed:

SERVICE AND DEFINITIONS

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record herein is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS** that ~~any~~ all capitalized term used and not defined herein shall have the meaning ascribed thereto in the Consulting Agreement or the Amended and Restated Initial Order in these proceedings dated February 21 November 30, 2023 (as amended and restated from time to time, the "Initial Order"), ~~the Sale Guidelines (as defined below) or the Consulting Agreement (attached as Exhibit "F" to the Second Etlin Affidavit)~~, as applicable.

THE CONSULTING AGREEMENT

3. **THIS COURT ORDERS** that the Consulting Agreement, including the sale guidelines attached hereto as Schedule "A" (the "**Sale Guidelines**"), and the transactions contemplated thereunder are hereby approved, authorized and ratified, and that the execution of the Consulting Agreement by ~~BBB L.P.~~ Mastermind LP is hereby approved, authorized, and ratified with such minor amendments as ~~BBB L.P.~~ Mastermind LP (with the consent of the Monitor) and the Consultant may agree to in writing. Subject to the provisions of this Order and the Initial Order, ~~BBB L.P.~~ Mastermind LP is hereby authorized and directed to take any and all actions as may be necessary or desirable to implement the Consulting Agreement and each of the transactions contemplated therein. Without limiting the foregoing, ~~BBB L.P.~~ Mastermind LP is authorized to execute any other agreement, contract, deed or ~~any~~ other document, or take any other action, which could be required or be useful to give full and complete effect to the Consulting Agreement.

THE LIQUIDATION SALE

4. **THIS COURT ORDERS** that ~~BBB-L.P.~~Mastermind LP, with the assistance of the Consultant, is authorized to conduct the Sale in accordance with this Order, the Consulting Agreement and the Sale Guidelines and to advertise and promote the Sale in accordance with the Sale Guidelines. If there is a conflict between this Order, the Consulting Agreement and the Sale Guidelines, the order of priority of documents to resolve such conflicts is as follows: (1) this Order; (2) the Sale Guidelines; and (3) the Consulting Agreement.

5. **THIS COURT ORDERS** that, subject to paragraph 12 of the Initial Order, ~~BBB L.P.~~Mastermind LP, with the assistance of the Consultant, is authorized to market and sell the Merchandise, FF&E and Additional Consultant Goods (~~as such terms are defined in the Consulting Agreement~~) in accordance with the Sale Guidelines, free and clear of all liens, claims, encumbrances, security interests, mortgages, charges, trusts, deemed trusts, executions, levies, financial, monetary or other claims, whether or not such claims have attached or been perfected, registered or filed and whether secured, unsecured, quantified or unquantified, contingent or otherwise, whensoever and howsoever arising, and whether such claims arose or came into existence prior to the date of this Order or came into existence following the date of this Order (in each case, whether contractual, statutory, arising by operation of law, in equity or otherwise) (all of the foregoing, collectively, “Claims”), including, without limitation, ~~the~~ Administration Charge, the ~~Directors’~~D&O Charge, the KERP Charge and the ~~KERP-DIP~~ Charge and any other charges hereafter granted by this Court in these proceedings (collectively, the ~~“CCAA~~ “Charges”), and all Claims, charges, security interests or liens evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario), or any other personal or movable property registration system (all of such Claims, charges (including the ~~CCAA~~ Charges), security interests and liens collectively referred to herein as **“Encumbrances”**), which Encumbrances will attach instead to the proceeds of the Sale (other than amounts specified in paragraph 15 of this Order) in the same order and priority as they existed immediately prior to such Sale.

6. **THIS COURT ORDERS** that, subject to the terms of this Order, the Initial Order and the Sale Guidelines, or any greater restrictions in the Consulting Agreement or the Sale Guidelines, the Consultant shall have the right to enter and use the Stores and all related store services and all facilities and all furniture, trade fixtures and equipment, including the FF&E, located at the Stores, and other assets of ~~BBB L.P.~~ Mastermind LP as designated under the Consulting Agreement, for the purpose of conducting the Sale and for such purposes, the Consultant shall be entitled to the benefit of ~~BBB L.P.'s~~ Mastermind LP's stay of proceedings provided under the Initial Order, as such stay of proceedings may be extended by further Order of the Court.

7. **THIS COURT ORDERS** that until the Sale Termination Date for each Store (~~which shall in no event be later than April 30, 2023, subject to further Order of the Court~~), which date shall be no later than February 29, 2024, or such other as may be agreed upon by Mastermind LP, the Consultant, the Monitor and the applicable landlord, the Consultant shall have access to (a) the Stores in accordance with the applicable Leases-Lease (as such term is defined in the Sale Guidelines)-and-, (b) the Distribution Centre in accordance with the applicable contractual agreements between Mastermind LP and the third party operator of the Distribution Centre, and (c) the Corporate Office in accordance with the applicable Lease, in each case in accordance with the Sale Guidelines-, as applicable, and on the basis that the Consultant is assisting ~~BBB L.P.~~ Mastermind LP and ~~BBB L.P.~~ Mastermind LP has granted the right of access to the applicable Stores-, the Distribution Centre and Corporate Office to the Consultant. To the extent that the terms of the applicable Leases are in conflict with any term of this Order or the Sale Guidelines, the terms of this Order and the Sale Guidelines shall govern.

8. **THIS COURT ORDERS** that nothing in this Order shall amend or vary, or be deemed to amend or vary the terms of the Leases. Nothing contained in this Order or the Sale Guidelines shall be construed to create or impose upon ~~BBB L.P.~~ Mastermind LP or the Consultant any additional restrictions not contained in the applicable Lease.

9. **THIS COURT ORDERS** that, subject to and in accordance with the Consulting Agreement, the Sale Guidelines and this Order, the Consultant is authorized to advertise and promote the Sale, without further consent of any Person (~~as defined in the Initial Order~~)

other than ~~BBB L.P.~~ Mastermind LP and the Monitor as provided under the Consulting Agreement or a Landlord (as defined in the Sale Guidelines) as provided under the Sale Guidelines.

10. **THIS COURT ORDERS** that until the Sale Termination Date, the Consultant shall have the right to use, without interference by any Person (including intellectual property licensor), any ~~of BBB L.P.'s~~ and all of Mastermind LP's trade names, trademarks and logos relating to and used in connection with the operation of the Stores, as well as any and all licenses and rights granted to ~~BBB L.P.~~ Mastermind LP to use the trade names, trademarks, and logos of third parties, solely for the purpose of advertising and conducting the Sale of the Merchandise, FF&E and Additional Consultant Goods in accordance with the terms of the Consulting Agreement, the Sale Guidelines, and this Order.

CONSULTANT LIABILITY

11. **THIS COURT ORDERS** that the Consultant shall act solely as an independent consultant to ~~BBB L.P.~~ Mastermind LP and that it shall not be liable for any claims against ~~BBB L.P.~~ Mastermind LP other than as expressly provided in the Consulting Agreement (including the Consultant's indemnity obligations thereunder) or the Sale Guidelines and, for greater certainty:

- (a) the Consultant shall not be deemed to be an owner or in possession, care, control or management of the Stores, the Distribution Centre or Corporate Office, of the assets located therein or associated therewith or of ~~BBB L.P.'s~~ Mastermind LP's employees located at the Stores, the Distribution Centre or Corporate Office or any other property of ~~BBB L.P.;~~ Mastermind LP;
- (b) the Consultant shall not be deemed to be an employer, or a joint or successor employer or a related or common employer or payor within the meaning of any legislation governing employment or labour standards or pension benefits or health and safety or other statute, regulation or rule of law or equity for any purpose whatsoever in relation to the employees of

Mastermind LP, and shall not incur any successorship liabilities whatsoever; and

- (c) ~~BBB L.P.~~ Mastermind LP shall bear all responsibility for any liability whatsoever (including without limitation, losses, costs, damages, fines or awards) relating to ~~claims~~ Claims of customers, employees and any other Persons arising from events occurring at the Stores during and after the term of the Sale, or otherwise in connection with the Sale, except to the extent that such ~~claims are the result of events or circumstances caused or contributed to by the gross negligence or wilful misconduct of the Consultant, its employees, agents or other representatives, or otherwise in accordance with~~ liability or Claims arise from or relate to matters that the Consultant has indemnified the Merchant Indemnified Parties for pursuant to section 9(b) of the Consulting Agreement.

~~12. THIS COURT ORDERS that, to the extent any Landlord may have a claim against BBB~~
~~13.12. L.P.~~ **THIS COURT ORDERS** ~~that, to the extent any Landlord may have a Claim~~
against Mastermind LP arising solely out of the conduct of the Consultant in conducting the Sale for which ~~BBB L.P.~~ Mastermind LP has one or more ~~claims~~ Claims against the Consultant under the Consulting Agreement, ~~BBB L.P.~~ Mastermind LP shall be deemed to have assigned such ~~claims~~ Claims free and clear to the applicable Landlord (the “Assigned Landlord Rights”); provided that each such Landlord shall only be permitted to advance each such ~~claims~~ Claims against the Consultant if written notice, including the reasonable details of such ~~claims~~ Claims, is provided by such Landlord to the Consultant, ~~BBB L.P.~~ Mastermind LP and the Monitor during the period from the Sale Commencement Date to the date that is thirty (30) days following the Sale Termination Date, provided however, ~~that~~ that the Landlords shall be provided with access to the Stores to inspect the Stores within fifteen (15) days following the Sale Termination Date.

CONSULTANT AN UNAFFECTED CREDITOR

~~14.13.~~ **THIS COURT ORDERS** that the Consulting Agreement shall not be repudiated, resiliated or disclaimed by ~~BBB L.P.~~ Mastermind LP nor shall the ~~claims~~ Claims of the Consultant pursuant to the Consulting Agreement be compromised or arranged pursuant

to any plan of arrangement or compromise among the ~~BBB~~ Mastermind Entities and their creditors (a “**Plan**”) and, for greater certainty, the Consultant shall be treated as an unaffected creditor in these proceedings and under any Plan.

~~15.~~ 14. **THIS COURT ORDERS** that ~~BBB L.P.~~ Mastermind LP is hereby authorized and directed, in accordance with the Consulting Agreement, to remit all amounts that become due to the Consultant thereunder.

~~16.~~ 15. **THIS COURT ORDERS** that no Encumbrances shall attach to any amounts payable or to be credited or reimbursed to, or retained by, the Consultant pursuant to the Consulting Agreement, including, without limitation, any amounts to be reimbursed by ~~BBB L.P.~~ Mastermind LP to the Consultant pursuant to the Consulting Agreement, and at all times the Consultant will retain such amounts, free and clear of all Encumbrances, notwithstanding any enforcement or other process or Claims, all in accordance with the Consulting Agreement.

~~17.~~ 16. **THIS COURT ORDERS** that notwithstanding:

- (a) the pendency of these proceedings;
- (b) any application for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) (“**BIA**”) in respect of the ~~BBB~~ Mastermind Entities, or any bankruptcy order made pursuant to any such applications;
- (c) any assignment in bankruptcy made in respect of the ~~BBB~~ Mastermind Entities;
- (d) the provisions of any federal or provincial statute; or
- (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of encumbrances, contained in any existing loan documents, lease, mortgage, security agreement,

debenture, sublease, offer to lease or other document or agreement to which the ~~BBB~~ Mastermind Entities are a party;

the Consulting Agreement and the transactions and actions provided for and contemplated therein, including without limitation, the payment of amounts due to the Consultant and the Assigned Landlord Rights shall be binding on any trustee in bankruptcy that may be appointed in respect of the ~~BBB~~ Mastermind Entities and shall not be void or voidable by any Person, including any creditor of the ~~BBB~~ Mastermind Entities, nor shall they, or any of them, constitute or be deemed to be a preference, fraudulent conveyance, transfer at undervalue or other challengeable reviewable transaction, under the BIA or any applicable law, nor shall they constitute oppressive or unfairly prejudicial conduct under any applicable law.

~~7~~

OTHER

~~18.~~ 17. **THIS COURT ORDERS** that the ~~BBB~~ Mastermind Entities are authorized and permitted to transfer to the Consultant ~~personal information~~ the Personal Information in the ~~BBB~~ Mastermind Entities' custody and control solely for the purposes of assisting with and conducting the Sale and only to the extent necessary for such purposes.

GENERAL

~~19.~~ 18. **THIS COURT ORDERS** that this Order shall have full force and effect in all provinces and territories in Canada.

~~20.~~ 19. **THIS COURT HEREBY REQUESTS** the aid and recognition of any Court, tribunal, regulatory or administrative bodies, having jurisdiction in Canada or in the United States of America, to give effect to this Order and to assist the ~~BBB~~ Mastermind Entities, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the ~~BBB~~ Mastermind Entities and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist

the ~~BBB~~-Mastermind Entities and the Monitor and their respective agents in carrying out the terms of this Order.

~~21.~~20. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of the date of this Order without the need for entry or filing.

**SCHEDULE “A”
SALE GUIDELINES**

(See attached)

SALE GUIDELINES

The following procedures shall apply to ~~any Sale to be held at Bed Bath & Beyond Canada L.P.'s (the sale (the "Sale") of merchandise, furniture, fixtures and equipment at Mastermind LP's (the "Merchant")~~ retail stores (individually, a "Store" and, collectively, the "Stores").

Terms capitalized but not defined in these Sale Guidelines have the meanings ascribed to them in the initial order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") granted on ~~February 10~~ November 23, 2023 in ~~the connection with the proceedings under the Companies' Creditors Arrangement Act (Canada) (the "CCAA Proceedings")~~ (as may be amended and restated from time to time, the "**Initial Order**"), or the Consulting Agreement (as defined below), as applicable.

1. ~~Except as otherwise expressly set out herein, and subject to: (i) the Order of the Court granted on February 10~~ November 30, 2023 in the CCAA Proceedings (the "**Approval Order**"), approving the Consulting Agreement between ~~a contractual joint venture comprised of Hileo Merchant Retail Solutions, ULC, Gordon Brothers Canada ULC, Tiger Asset Solutions, ULC, and B. Riley Retail Canada, ULC (collectively, the~~ "**Consultant**") and Merchant, dated ~~February 15~~ as of November 24, 2023 (the "**Consulting Agreement**") and the transactions contemplated thereunder, (ii) any further Order of the Court, or
1. (iii) any subsequent written agreement between the Merchant and its applicable landlord(s) (individually, a "**Landlord**" and, collectively, the "**Landlords**") and approved by the Consultant, the Sale shall be conducted in accordance with the terms of the applicable leases/or other occupancy agreements for each of the affected Stores (individually, a "**Lease**" and, collectively, the "**Leases**"). However, nothing contained herein shall be construed so as to create or impose upon the Merchant or the Consultant any additional restrictions not contained in the applicable Lease.
2. The Sale shall be conducted so that each of the Stores remain open during their normal hours of operation provided for in the respective Leases for the Stores until the applicable premises vacate date for each Store under the Consulting Agreement (the "**Vacate Date**"), and in all cases no later than ~~the~~ February 29, 2024, or such other date as may be agreed upon by the Consultant, the Merchant, the Monitor and the applicable landlord, the "Sale Termination Date". Rent payable under the respective Leases shall be paid as provided in the Initial Order.
3. The Sale shall be conducted in accordance with applicable federal, provincial and municipal laws and regulations, unless otherwise ~~set out herein or~~ ordered by the Court.
4. ~~All display and hanging signs used by the Consultant in connection with the Sale shall be professionally produced and all hanging signs shall be hung in a professional manner. Notwithstanding anything to the contrary contained in the Leases, the Consultant may advertise the Sale at the Stores as a "everything on sale", "everything must go", "store closing"~~ Everything on Sale", "Everything Must Go", "Store Closing" or similar theme sale at the Stores (provided, however, that no signs shall advertise the Sale as a "bankruptcy", a "liquidation" or a "going out of business" sale Bankruptcy", "Liquidation", "Going out of Business" or refer to a court as having approved the Sale

- or refer to a “Trustee” and/or “Receiver”, unless otherwise agreed between the Consultant and applicable Landlord, it being understood that the French equivalent of “clearance” is “liquidation” and is permitted to be used). Forthwith upon request from a Landlord, the Landlord’s counsel, the Merchant or the Monitor, the Consultant shall provide the proposed signage packages along with proposed dimensions by email or facsimile to the applicable ~~Landlords~~ Landlord or to ~~their~~ its counsel of record and the applicable Landlord shall notify the Consultant of any requirement for such signage to otherwise comply with the terms of the Lease and/or the Sale Guidelines and where the provisions of the Lease conflicts with these Sale Guidelines, these Sale Guidelines shall govern. The Consultant shall not use neon or day-glow signs or any handwritten signage (save that handwritten “you pay” or “topper” signs may be used). If a Landlord is concerned with “Store Closing” signs being placed in the front window of a Store or with the number or size of the signs in the front window, the Merchant, the Consultant and ~~the~~ such Landlord will work together to resolve the dispute. Furthermore, with respect to enclosed mall Store locations without a separate entrance from the exterior of the enclosed mall, no exterior signs or signs in common areas of a mall shall be used unless explicitly permitted by the applicable Lease. In addition, the Consultant shall be permitted to utilize exterior banners/signs at stand alone or strip mall Stores or enclosed mall Store locations with a separate entrance from the exterior of the enclosed mall; provided, however, that: (i) no signage in any other common areas
- 2.4. of a mall shall be used; and (ii) where such banners are not explicitly permitted by the applicable Lease and the applicable Landlord requests in writing that banners are not to be used, no banners shall be used absent further Order of the Court, which may be sought on an expedited basis on notice to the recipients listed in the service list in respect of the CCAA Proceedings (the “Service List”). Any banners used shall be located or hung so as to make clear that the Sale is being conducted only at the affected Store and shall not be wider than the premises occupied by the affected Store. All exterior banners shall be professionally hung and to the extent that there is any damage to the facade of the premises of a Store as a result of the hanging or removal of the exterior banner, such damage shall be professionally repaired at the expense of the Consultant.
5. The Consultant shall be permitted to utilize sign-walkers and street signage; provided, however, such sign-walkers and street signage shall not be located on the shopping centre or mall premises.
6. Subject to the Approval Order and only with the prior written consent of the Merchant, the Consultant shall be entitled to include Additional Consultant Goods in the Sale, provided that the Additional Consultant Goods are of like kind and category and no lesser quality to the Merchandise (as defined in the Consulting Agreement).
- 6.7. Conspicuous signs shall be posted in the cash register areas of each Store to the effect that all sales are “final” and customers with any questions or complaints are to call the Merchant’s hotline number.
- 7.8. The Consultant shall not distribute handbills, leaflets or other written materials to customers outside of any of the Stores on a Landlord’s property, unless explicitly permitted by the applicable Lease or, if distribution is customary in the shopping centre in which the Store is located. Otherwise, the Consultant may solicit customers in the

Stores themselves. The Consultant shall not use any giant balloons, flashing lights or amplified sound to advertise the Sale or solicit customers, except as explicitly permitted under the applicable Lease or agreed to by the applicable Landlord, and no advertising trucks shall be used on ~~Landlord a Landlord's~~ property or mall ring roads, except as explicitly permitted under the applicable Lease or agreed to by ~~the-such~~ Landlord.

~~8.9.~~ At the conclusion of the Sale in each Store, the Consultant shall arrange that the premises for each Store are in "broom-swept" and clean condition, and shall arrange that the Stores are in the same condition as on the commencement of the Sale, ordinary wear and tear excepted. No property of any Landlord of a Store shall be removed or sold during the Sale. No permanent fixtures (other than Merchant FF&E (as defined below) for clarity) may be removed without the applicable Landlord's written consent unless otherwise provided by the applicable Lease and in accordance with the Initial Order and the Approval Order. Any trade fixtures or personal property left in a Store after the applicable Vacate Date in respect of which the applicable Lease has been disclaimed by the Merchant shall be deemed abandoned, with the applicable Landlord having the right to dispose of the same as the Landlord chooses, without any liability whatsoever on the part of ~~the-such~~ Landlord. Nothing in this paragraph shall derogate from or expand upon the Consultant's obligations under the Consulting Agreement.

~~9.10.~~ Subject to the terms of paragraph ~~8-9~~ above, the Consultant may sell furniture, fixtures and equipment owned by the Merchant ("**Merchant FF&E**") and located in the Stores during the Sale. For greater certainty, Merchant FF&E does not include any portion of any of the Stores' HVAC system, fire suppression system and fire alarm or sprinkler system. The Merchant and the Consultant may advertise the sale of Merchant FF&E consistent with these Sale Guidelines on the understanding that the applicable Landlord may require such signs to be placed in discreet locations within the Stores reasonably acceptable to ~~the-such~~ Landlord. Additionally, the purchasers of any Merchant FF&E sold during the Sale shall only be permitted to remove such Merchant FF&E either through the back shipping areas designated by the applicable Landlord or through other areas after regular Store business hours or, through the front door of the Store during Store business hours if Merchant FF&E can fit in a shopping bag, with the applicable Landlord's supervision as required by ~~the-such~~ Landlord and in accordance with the Initial Order and the Approval Order. The Consultant shall repair any damage to the Stores resulting from the removal of any Merchant FF&E by the Consultant or by third party purchasers of Merchant FF&E from the Consultant.

~~10.11.~~ The Consultant shall not make any alterations to interior or exterior Store lighting, except as authorized pursuant to the affected Lease. The hanging of exterior banners or other signage, where permitted in accordance with the terms of these Sale Guidelines, shall not constitute an alteration to a Store.

~~11.12.~~ The Merchant hereby provides notice to the Landlords of ~~Merchant~~ the Merchant's and the Consultant's intention to sell and remove Merchant FF&E from the Stores. The Consultant shall make commercially reasonable efforts to arrange with each Landlord represented by counsel on the Service List and with any other Landlord that so requests, a walk-through with the Consultant to identify Merchant FF&E subject to the Sale. The relevant Landlord shall be entitled to have a representative present in the applicable ~~Stores~~ Store(s) to observe such removal. If the relevant Landlord disputes the Consultant's entitlement to sell or remove any Merchant FF&E under the provisions of the applicable Lease, such Merchant FF&E shall remain on the premises and shall be dealt with as agreed between the Merchant, the Consultant and such Landlord, or by

further Order of the Court upon application by the Merchant on at least two (2) days' notice to such Landlord and the Monitor. If the Merchant has disclaimed or resiliated the Lease governing such Store in accordance with the CCAA Proceedings and the Initial Order, it shall not be required to pay rent under such Lease pending resolution of any such dispute (other than rent payable for the notice period provided for in the CCAA Proceedings and the Initial Order), and the disclaimer or resiliation of the Lease shall be without prejudice to the Merchant's or the Consultant's claim to Merchant FF&E in dispute.

- ~~12.~~ 13. If a notice of disclaimer or resiliation is delivered pursuant to the CCAA Proceedings and the Initial Order to a Landlord while the Sale is ongoing and the Store in question has not yet been vacated, then: (i) during the notice period prior to the effective time of the disclaimer or resiliation, ~~the-such~~ Landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the Merchant, the Monitor and the Consultant twenty-four (24) hours' prior written notice; and (ii) at the effective time of the disclaimer or resiliation, ~~the-relevant-such~~ Landlord shall be entitled to take possession of any such Store without waiver of or prejudice to any claims or rights such Landlord may have against the Merchant in respect of such Lease or Store, provided that nothing herein shall relieve such Landlord of any obligation to mitigate any damages claimed in connection therewith.
- ~~13.~~ 14. The Consultant and its agents and representatives shall have the same access rights to each Store as the ~~Stores-as~~ Merchant under the terms of the applicable Lease, and each of the Landlords shall have the rights of access to ~~the-Stores~~ each applicable Store during the Sale provided for in the applicable Lease (subject, for greater certainty, to any applicable stay of proceedings and the terms of the Initial Order).
- ~~14.~~ 15. The Merchant and the Consultant shall not conduct any auctions of Merchandise or Merchant FF&E at any of the Stores.
- ~~15.~~ 16. The Consultant shall designate a party to be contacted by the Landlords should a dispute arise concerning the conduct of the Sale. The initial contact person for the Consultant shall be ~~Steven E. Fox, Esq., Riemer & Braunstein LLP, times Square Tower, Seven Times Square, Suite 2506, New York, NY 10036, who may be reached by phone at 212.789.3150 or email at sfox@riemerlaw.com.~~ David Braun or Durien Sanchez, who may be reached by email at dbraun@gordonbrothers.com or dsanchez@gordonbrothers.com. If the parties are unable to resolve the dispute between themselves, the applicable Landlord or the Merchant shall have the right to schedule a "status hearing" before the Court on no less than two (2) days' written notice to the other party or parties and the Monitor, during which time the Consultant shall cease all activity in dispute other than activity expressly permitted herein, pending determination of the matter by the Court; provided, however, subject to paragraph 4 of these Sale Guidelines, if a banner has been hung in accordance with these Sale Guidelines and is the subject of a dispute, the Consultant shall not be required to take any such banner down pending determination of any dispute.
- ~~16.~~ ~~Consultant shall be entitled, as agent for Merchant pursuant to and in accordance with the Consulting Agreement, to include in the Sale additional inventory and other goods from similar vendors not currently supplying goods to Merchant ("Additional Consultant Goods") to the extent permitted under the Consulting Agreement, provided that (i) the Additional Consultant Goods sold as part of the Sale will not exceed \$15,000,000 at cost in the aggregate; (ii) the Additional Consultant Goods are of like kind and category and no lesser quality to the Merchandise,~~

~~and consistent with any restriction on usage of the Stores set out in the applicable Leases;~~
~~(iii) the Additional Consultant Goods will be distributed amongst the Stores such that no Store receives Additional Consultant Goods aggregating more than 10% (determined by measuring the cost of such goods relative to the total retail value of the Merchandise).~~

17. Nothing herein or in the Consulting Agreement is, or shall be deemed to be a consent by any Landlord to the sale, assignment or transfer of any Lease, or shall, or shall be deemed to, or grant to ~~the~~any Landlord any greater rights than already exist under the terms of any applicable Lease.
18. These Sale Guidelines may be amended by written agreement between the Consultant, the Merchant and the applicable Landlord, in consultation with the Monitor; provided, however, that such amended Sale Guidelines shall not affect or bind any other Landlord not privy thereto without further Order of the Court approving such amended Sale Guidelines.

~~IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT,~~

~~R.S.C. 1985, C. C-36, AS AMENDED~~

~~Court File No: CV-23-00694493-00CL~~

~~AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF BBB
CANADA LTD.~~

~~Applicant~~

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT
ACT, R.S.C. 1985, C. C-36, AS AMENDED

Court File No. CV-23-00710259-
00CL

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF MASTERMIND GP INC.

Applicant

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at Toronto

SALE APPROVAL ORDER

DAVIES WARD PHILLIPS & VINEBERG LLP
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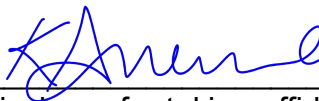
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Lawyers for Mastermind GP Inc.

TAB F

This is **Exhibit "F"** referred to in the
Affidavit #2 of LUCIO MILANOVICH,
sworn before me, this 29th day of
November, 2023.



Commissioner for taking affidavits
Kristine Spence (LSO #66099S)

Court File No. ~~CV-23-00695619-00CL~~CV-
23-00710259-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE _____)

CHIEF JUSTICE MORAWETZ _____)

)

~~MONDAY, THE 20TH DAY OF MARCH, 2023~~

THE HONOURABLE

)

THURSDAY, THE 30th

JUSTICE STEELE

)

DAY OF NOVEMBER, 2023

)

IN THE MATTER OF THE COMPANIES' CREDITORS
ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS
AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF ~~NORDSTROM CANADA RETAIL, INC.,~~
~~NORDSTROM CANADA HOLDINGS, LLC and NORDSTROM~~
~~CANADA HOLDINGS II, LLC~~ MASTERMIND GP INC.

(the "Applicant")

LIQUIDATION SALE APPROVAL ORDER

THIS MOTION, made by ~~Nordstrom Canada Retail, Inc. ("Nordstrom Canada"),~~
~~Nordstrom Canada Holdings, LLC and Nordstrom Canada Holdings II, LLC~~ (collectively, the
"**Applicants**"), the Applicant pursuant to the *Companies' Creditors Arrangement Act*,
R.S.C. 1985, c. C-36, as amended (the "**CCAA**"), ~~for an order, among other things, (i)~~
approving the transactions contemplated under a consulting agreement between
~~Nordstrom Canada and Nordstrom Canada Leasing LP ("Canada Leasing LP", and together with~~
~~Nordstrom Canada, the "Merchant") and a contractual joint venture comprised of Hilco Merchant~~
~~Retail Solutions ULC and Gordon Brothers Canada, ULC~~ (collectively, the "**Consultant**")
~~dated as of March 14, 2023 (as may be amended and restated in accordance with the terms thereof,~~
and Mastermind LP ("Mastermind LP" and together with the Applicant, the "Mastermind
Entities") dated as of November 24, 2023 (the "**Consulting Agreement**") and ~~the~~

~~transactions contemplated thereby, and~~ certain related relief, was heard this day via videoconference.

~~(ii) granting certain related relief, was heard this day at 330 University Avenue, Toronto, Ontario.~~

ON READING the Notice of Motion of the ~~Applicants~~ Applicant, the Affidavit of ~~Misti Heckel~~ Lucio Milanovich sworn on ~~March 14~~ November 29, 2023 ~~including and~~ the exhibits thereto ~~(the “Third Heckel Affidavit”)~~, ~~the Second~~ and the First Report of Alvarez & Marsal Canada Inc., in its capacity as ~~Monitor~~ Court-appointed monitor (the “**Monitor**”), ~~filed~~ dated November 29, 2023, and on hearing the submissions of respective counsel for the ~~Applicants and Canada Leasing LP (collectively, the “Nordstrom Canada Entities”)~~, ~~the Monitor,~~ Mastermind Entities, the Monitor, Canadian Imperial Bank of Commerce, in its capacity as administrative agent for the lenders under the credit agreement dated October 24, 2014 with Mastermind LP as borrower and the Applicant as guarantor, the Consultant, and such other counsel as were present, no one else appearing although duly served as appears from the Affidavit [s] of Service ~~of~~ sworn, 2023, filed:

SERVICE AND DEFINITIONS

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record herein is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS** that ~~any~~ all capitalized term used and not defined herein shall have the meaning ascribed thereto in the Consulting Agreement or the Amended and Restated Initial Order in these proceedings dated ~~March 10~~ November 30, 2023 (as amended and restated from time to time, ~~the “Amended and Restated Initial Order”)~~, ~~the Sale Guidelines (as defined below), or the Consulting Agreement (attached as Exhibit “A” to the Third Heckel Affidavit)~~, as applicable.

THE CONSULTING AGREEMENT

3. **THIS COURT ORDERS** that the Consulting Agreement, including the sale guidelines attached hereto as Schedule “A” ~~hereto~~ (the “**Sale Guidelines**”), and the transactions contemplated thereunder are hereby approved, authorized and ratified, and that the execution of the Consulting Agreement by ~~the Merchant~~ Mastermind LP is hereby approved, authorized, and ratified, ~~nunc pro tunc,~~ with such minor amendments ~~to the~~

~~Consulting Agreement (but not the Sale Guidelines) as the Merchant~~ as Mastermind LP (with the consent of the Monitor) and the Consultant may agree to in writing. Subject to the provisions of this Order and the ~~Amended and Restated~~ Initial Order, ~~the Merchant~~ Mastermind LP is hereby authorized and directed to take any and all actions as may be necessary or desirable to implement the Consulting Agreement and each of the transactions contemplated therein. Without limiting the foregoing, ~~the Merchant~~ Mastermind LP is authorized to execute any other agreement, contract, deed or other document, or take any other action, ~~that is necessary or desirable~~ which could be required or be useful to give full and complete effect to the Consulting Agreement. ~~The Consultant shall have the right to syndicate and partner with additional entities to serve as "Consultant" under the Consulting Agreement in accordance with the terms thereof.~~

THE LIQUIDATION SALE

4. **THIS COURT ORDERS** that ~~the Merchant~~ Mastermind LP, with the assistance of the Consultant, is authorized to conduct the Sale in accordance with this Order, the Consulting Agreement and the Sale Guidelines and to advertise and promote the Sale ~~within the Stores~~ in accordance with the Sale Guidelines. If there is a conflict between this Order, the Consulting Agreement ~~or~~ and the Sale Guidelines, the order of priority of documents to resolve such conflicts is as follows: (1) this Order; (2) the Sale Guidelines; and (3) the Consulting Agreement.

5. **THIS COURT ORDERS** that, subject to paragraph ~~13~~ 12 of the ~~Amended and Restated~~ Initial Order, ~~the Merchant~~ Mastermind LP, ~~with the assistance of the Consultant, is authorized to market and sell, or otherwise dispose of, the Merchandise, FF&E and Additional Consultant Goods on a "final sale" and/or "as is" basis and in accordance with the~~ assistance of the Consultant, is authorized to market and sell the Merchandise, FF&E and Additional Consultant Goods in accordance with the Sale Guidelines ~~and the Consulting Agreement~~, free and clear of all liens, claims, encumbrances, security interests, mortgages, charges, trusts, deemed trusts, executions, levies, ~~and~~ financial, monetary or other claims, whether or not such claims have attached or been perfected, registered or filed and whether secured, unsecured, quantified or unquantified, contingent or otherwise, whensoever and howsoever arising, and whether such claims arose or came into existence prior to ~~or~~ the

date of this Order or came into existence following the date of this Order (in each case, whether contractual, statutory, arising by operation of law, in equity or otherwise) (all of the foregoing, collectively, “**Claims**”), including, without limitation, ~~(a) the Administration Charge, the Directors’ D&O Charge, the KERP Charge and the DIP Charge and any other charges hereafter granted by this Court in these proceedings (collectively, the “CCAA Charges”);~~ and ~~(b) all Claims,~~ charges, security interests or liens evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario), ~~*Personal Property Security Act* (Alberta), *Personal Property Security Act* (British Columbia),~~ or any other personal or movable property registration system (all of such Claims, charges (including the CCAA Charges) ~~,~~ security interests and liens collectively referred to herein as ~~the~~ “**Encumbrances**”), which Encumbrances will attach instead to the proceeds of the Sale (other than amounts specified in paragraph 15 of this Order) in the same order and priority as they existed immediately prior to ~~the~~ such Sale.

6. THIS COURT ORDERS that, subject to the terms of this Order, the ~~Amended and Restated~~ Initial Order and the Sale Guidelines, or any greater restrictions in the Consulting Agreement or the Sale Guidelines, the Consultant shall have the right to enter and use the Stores ~~and Distribution Centre~~ and all related store services and all facilities and all furniture, trade fixtures and equipment,

~~7.6.~~ including the FF&E, located at the Stores ~~and Distribution Centre~~ and other assets of ~~the Merchant~~ Mastermind LP as designated under the Consulting Agreement, for the purpose of conducting the Sale and for such purposes, the Consultant shall be entitled to the benefit of ~~the~~ Mastermind LP’s stay of proceedings ~~granted in favour of the Nordstrom Canada Entities~~ provided under the ~~Amended and Restated~~ Initial Order, as such stay of proceedings may be extended by further Order of the Court.

~~8.7.~~ **THIS COURT ORDERS** that until the ~~FF&E Removal Deadline for each Store (which shall in no event be later than July 21, 2023, or such later date as may be ordered by this Court) and the Distribution Centre~~ Sale Termination Date for each Store, which date shall be no later than February 29, 2024, or such other as may be agreed upon by Mastermind LP, the Consultant, the Monitor and the applicable landlord, the Consultant shall have access to (a) the Stores in accordance with the applicable ~~Leases and~~ Lease (as defined in the

Sale Guidelines; ~~and~~), (b) the Distribution Centre in accordance with the applicable contractual agreements between ~~the Merchant~~ Mastermind LP and the third party operator of the Distribution Centre, ~~and (c) the Corporate Office in accordance with the applicable Lease,~~ in each case in accordance with the Sale Guidelines, as applicable, and on the basis that the Consultant is assisting ~~the Merchant, and the Merchant~~ Mastermind LP and Mastermind LP has granted ~~its~~ the right of access to the applicable Stores ~~and~~, the Distribution Centre and Corporate Office to the Consultant. To the extent that the terms of the applicable Leases are in conflict with any term of this Order or the Sale Guidelines, the terms of this Order and the Sale Guidelines shall govern. ~~With respect to the Distribution Centre, the Consultant shall be deemed to be the Merchant's authorized representative.~~

~~9.8.~~ **THIS COURT ORDERS** that nothing in this Order shall amend or vary, or be deemed to amend or vary, ~~the terms of the Leases; provided that, the Merchant shall not be in breach or default of the Leases where it takes any action in accordance with and as permitted by the terms of this Order, the Sale Guidelines or the Consulting Agreement.~~ Nothing contained in this Order or the Sale Guidelines shall be construed to create or impose upon ~~the Merchant~~ Mastermind LP or the Consultant any additional restrictions not contained in the applicable Lease.

~~10.9.~~ **THIS COURT ORDERS** that, subject to and in accordance with the Consulting Agreement, the Sale Guidelines and this Order, the Consultant is authorized to advertise and promote the Sale, without further consent of any Person other than ~~(a) the Merchant~~ Mastermind LP and the Monitor as provided under the Consulting Agreement; ~~or (b) or a~~ Landlord (as defined in the Sale Guidelines) as provided under the Sale Guidelines.

~~11.10.~~ **THIS COURT ORDERS** that until the Sale Termination Date, the Consultant shall have the right to use, without interference by any Person (including ~~any licensor~~), intellectual property licensor), any and all of Mastermind LP's trade names, trademarks and logos relating to and used in connection with the operation of the Stores, as well as any and all licenses and rights granted to ~~the Merchant~~ Mastermind LP to use the trade names, trademarks, and logos, ~~copyrights or other intellectual property of any Person of third parties~~, solely for the purpose of advertising and conducting the Sale of the Merchandise,

FF&E and Additional Consultant Goods in accordance with the terms of the Consulting Agreement, the Sale Guidelines, and this Order.

CONSULTANT LIABILITY

~~12.11.~~ **THIS COURT ORDERS** that the Consultant shall act solely as an independent consultant to ~~the Merchant~~ Mastermind LP and that it shall not be liable for any claims against ~~the Merchant~~ Mastermind LP other than as expressly provided in the Consulting Agreement (including the Consultant's indemnity obligations thereunder) or the Sale Guidelines and, for greater certainty:

- (a) the Consultant shall not be deemed to be an owner or in possession, care, control or management of the Stores ~~or~~ the Distribution Centre or Corporate Office, of the assets located therein or associated therewith or of ~~the Merchant's~~ Mastermind LP's employees located at the Stores ~~or~~ the Distribution Centre or Corporate Office or any other property of ~~the Merchant~~ Mastermind LP;
- (b) the Consultant shall not be deemed to be an employer, or a joint or successor employer, ~~or a~~ related or common employer or payor within the meaning of any legislation, ~~governing employment or labour standards or pension benefits or health and safety or other statute or~~ regulation or rule of law or equity governing employment, labour standards, pension benefits or health and safety for any purpose whatsoever in relation to the employees of ~~Nordstrom Canada~~ Mastermind LP, and shall not incur any successorship liabilities whatsoever ~~(including without limitation losses, costs, damages, fines or awards)~~; and
- (c) ~~subject to and without limiting the Consultant's indemnification of the Nordstrom Canada Indemnified Parties pursuant to the Consulting Agreement, the Consultant~~ Mastermind LP shall bear ~~no~~ all responsibility for any liability whatsoever (including without limitation ~~losses, costs, damages, fines or awards~~) relating to Claims of customers, employees and any other Persons arising from events occurring at the Stores during and after the term of the Sale, or

~~at the Distribution Centre, or~~ otherwise in connection with the Sale, except to the extent that such ~~Claims are the result of events or circumstances caused or contributed to by the gross negligence or wilful misconduct of the Consultant, its employees, Supervisors, independent contractors,~~ liability or Claims arise from or relate to matters that the Consultant has indemnified the Merchant Indemnified Parties for pursuant to section 9(b) of the Consulting Agreement.

~~agents or other representatives, or otherwise in accordance with the Consulting Agreement.~~

~~13.12.~~ **THIS COURT ORDERS** that, to the extent ~~(a) any Landlord has a claim~~ may have a Claim against ~~the Merchant~~ Mastermind LP arising solely out of the conduct of the Consultant in conducting the Sale; ~~and (b) the Merchant has a claim~~ for which Mastermind LP has one or more Claims against the Consultant under the Consulting Agreement ~~arising from such conduct, the Merchant~~ Mastermind LP shall be deemed to have assigned such ~~claim against the Consultant under the Consulting Agreement~~ Claims free and clear to the applicable Landlord (the “**Assigned Landlord Rights**”); provided that, ~~—~~ each such Landlord shall only be permitted to advance ~~the Assigned Landlord Rights~~ each such Claims against the Consultant if written notice, including the reasonable details of such ~~claim~~ Claims, is provided by such Landlord to the Consultant, ~~the Merchant~~ Mastermind LP and the Monitor during the period ~~commencing on~~ from the Sale Commencement Date ~~and ending on~~ to the date that is thirty (30) days following the ~~FF&E Removal Deadline;~~ Sale Termination Date, provided, ~~—~~ however, that, ~~—~~ the Landlords shall be provided with access to the Stores to inspect the Stores within fifteen (15) days following the ~~FF&E Removal Deadline~~ Sale Termination Date.

CONSULTANT AN UNAFFECTED CREDITOR

~~14.13.~~ **THIS COURT ORDERS** that the Consulting Agreement shall not be repudiated, resiliated or disclaimed by ~~the Merchant~~ Mastermind LP nor shall the ~~claims~~ Claims of the Consultant pursuant to the Consulting Agreement be compromised or arranged pursuant to any plan of arrangement or compromise among the ~~Merchant~~ Mastermind Entities and

~~its~~ their creditors (a “Plan”) and, for greater certainty, the Consultant shall be treated as an unaffected creditor in these proceedings and under any Plan.

~~15.~~ 14. **THIS COURT ORDERS** that ~~the Merchant~~ Mastermind LP is hereby authorized and directed, in accordance with the Consulting Agreement, to remit all amounts that become due to the Consultant thereunder.

~~16.~~ 15. **THIS COURT ORDERS** that no Encumbrances shall attach to any amounts payable or to be credited or reimbursed to, or retained by, the Consultant pursuant to the Consulting Agreement, including ~~_,~~ without limitation, any amounts to be reimbursed by ~~any Nordstrom Canada Entity~~ Mastermind LP to the Consultant pursuant to the Consulting Agreement, and at all times the Consultant will retain such amounts, free and clear of all Encumbrances, notwithstanding any enforcement or other process or Claims, all in accordance with the Consulting Agreement.

~~17.~~ 16. **THIS COURT ORDERS** that notwithstanding:

- (a) the pendency of these proceedings;
- (b) any application for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) (“BIA”) in respect of ~~any Nordstrom Canada Entity~~ the Mastermind Entities, or any bankruptcy order made pursuant to any such applications;
- (c) any assignment in bankruptcy made in respect of ~~any Nordstrom Canada Entity~~ the Mastermind Entities;
- (d) the provisions of any federal or provincial statute; or
- (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of encumbrances, contained in any existing loan documents, lease, mortgage, security agreement, debenture, sublease, offer to lease or other document or agreement to which ~~any Nordstrom Canada Entity is~~ the Mastermind Entities are a party;

the Consulting Agreement and the transactions and actions provided for and contemplated therein, including without limitation, the payment of amounts due to the Consultant and the Assigned Landlord Rights shall be binding on any trustee in bankruptcy that may be appointed in respect of the ~~Nordstrom Canada~~ Mastermind Entities and shall not be void or voidable by any Person, including any creditor of the ~~Nordstrom Canada~~ Mastermind Entities, nor shall they, or any of them, constitute or be deemed to be a preference, fraudulent conveyance, transfer at undervalue or other challengeable ~~or~~ reviewable transaction, under the ~~CCAA or~~ BIA or any applicable law, nor shall they constitute oppressive or unfairly prejudicial conduct under any applicable law.

OTHER

BULK SALES ACT AND OTHER LEGISLATION

~~18. THIS COURT ORDERS AND DECLARES that the transactions contemplated under the Consulting Agreement shall be exempt from the application of any applicable federal or provincial “bulk sales” legislation.~~

~~19.17. THIS COURT ORDERS that the Merchant is~~ THIS COURT ORDERS that the Mastermind Entities are authorized and permitted to transfer to the Consultant ~~personal information in the Merchant’s~~ the Personal Information in the Mastermind Entities’ custody and control solely for the purposes of assisting with and conducting the Sale and only to the extent necessary for such purposes ~~and the~~.

~~Consultant is hereby authorized to make use of such personal information solely for the purposes as if it were the Merchant, subject to and in accordance with the Consulting Agreement.~~

STAY EXTENSION

~~20. THIS COURT ORDERS that (a) the Stay Period is hereby extended until and including June 30, 2023; and (b) the stay of proceedings granted in favour of Nordstrom~~

~~US pursuant to paragraph 17 of the Amended and Restated Initial Order is hereby extended until and including June 30, 2023.~~

GENERAL

~~24.~~18. **THIS COURT ORDERS** that this Order shall have full force and effect in all provinces and territories in Canada.

~~22.~~19. **THIS COURT HEREBY REQUESTS** the aid and recognition of any Court, tribunal, ~~agency or~~ regulatory or administrative bodies, having jurisdiction in Canada, ~~or in~~ the United States of America ~~or any other jurisdiction~~, to give effect to this Order and to assist the ~~Nordstrom Canada~~ Mastermind Entities, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, ~~agencies and~~ regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the ~~Nordstrom Canada~~ Mastermind Entities and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the ~~Nordstrom Canada~~ Mastermind Entities and the Monitor and their respective agents in carrying out the terms of this Order.

~~23.~~20. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of the date of this Order without the need for entry or filing.

SCHEDULE "A"
SALE GUIDELINES

~~(Attached)~~

(See attached)

SALE GUIDELINES

~~Capitalized terms used but not defined in these Sale Guidelines shall have the meanings ascribed to them in the Consulting Agreement (as defined below) or the Initial Order of the Ontario Superior Court of Justice (Commercial List) (the “Court”) dated March 2, 2023 (as amended and restated from time to time, the “Initial Order”) made in the proceedings involving, *inter alia*, Nordstrom Canada Retail, Inc. and Nordstrom Canada Leasing LP (collectively, the “Merchant”) under the Companies’ Creditors Arrangement Act (“CCAA”).~~

The following procedures shall apply to the sale (the “Sale”) of merchandise, ~~inventory~~, furniture, fixtures and equipment at ~~the Merchant’s Mastermind LP’s (the “Merchant”)~~ retail stores (individually, a “Store” and, collectively, the “Stores”).

Terms capitalized but not defined in these Sale Guidelines have the meanings ascribed to them in the initial order of the Ontario Superior Court of Justice (Commercial List) (the “Court”) granted on November 23, 2023 in connection with the proceedings under the Companies’ Creditors Arrangement Act (Canada) (the “CCAA Proceedings”) (as may be amended and restated from time to time, the “Initial Order”), or the Consulting Agreement (as defined below), as applicable.

1. Except as otherwise expressly set out herein, and subject to: (i) the Order of the Court ~~dated March 20, 2023~~ granted on November 30, 2023 in the CCAA Proceedings (the “Approval Order”), approving, ~~*inter alia*, the Consulting Agreement between the Merchant and a contractual joint venture comprised of Hilco Merchant Retail Solutions ULC and Gordon Brothers Canada, ULC (collectively, the “Consultant”) and Merchant,~~ dated as of ~~March 14, 2023 (as amended and restated from time to time)~~ November 24, 2023 (the “Consulting Agreement”) and the transactions contemplated thereunder ~~(the “Liquidation Sale Approval Order”);~~, (ii) any further Order of the Court; ~~and,~~ or (iii) any subsequent written agreement between the Merchant and its ~~Landlord(s)~~ applicable landlord(s) (individually, a “Landlord” and, collectively, the “Landlords”) and approved by the Consultant, the Sale shall be conducted in accordance with the terms of the applicable ~~Leases~~ leases/or other occupancy agreements for each of the affected Stores (individually, a “Lease” and, collectively, the “Leases”). However, nothing contained herein shall be construed so as to create or impose upon the Merchant or the Consultant any additional restrictions not contained in the applicable Lease.
2. The Sale shall be conducted so that each ~~Store remains of the Stores remain~~ open during ~~its/their~~ normal hours of operation provided for in ~~its respective Lease, until the respective Sale Termination Date of each Store. The Sale at the Stores shall end by no later than June 30, 2023 (such date, or such other date as determined in accordance with the Consulting Agreement and the Liquidation Sale Approval Order)~~ the respective Leases for the Stores until the applicable premises vacate date for each Store under the Consulting Agreement (the “Vacate Date”), and in all cases no later than February 29, 2024, or such other date as may be agreed upon by the Consultant, the Merchant, the Monitor and the applicable landlord, the “Sale Termination Date”). Rent payable under the respective Leases shall be paid as provided in the Initial Order.
3. The Sale shall be conducted in accordance with applicable federal, provincial and municipal laws and regulations, unless otherwise ~~set out herein or~~ ordered by the Court.

4. — All display and hanging signs used by the Consultant in connection with the Sale shall be professionally produced and all hanging signs shall be hung in a professional manner. Notwithstanding anything to the contrary contained in the Leases, the Consultant may advertise the Sale at the Stores as a ~~“everything on sale”, “everything must go”, “store closing” and~~ “Everything on Sale”, “Everything Must Go”, “Store Closing” or similar theme sale at the Stores (~~provided, however,~~ that no signs shall advertise the Sale as a ~~“bankruptcy”, a “liquidation” or a “going out of business” sale~~ Bankruptcy”, “Liquidation”, “Going out of Business” or refer to a court as having approved the Sale or refer to a “Trustee” and/or “Receiver”, unless otherwise agreed between the Consultant and applicable Landlord, it being understood that the French equivalent of “clearance” is “liquidation” and is permitted to be used). Forthwith upon request from a Landlord, the Landlord’s counsel, the Merchant or the Monitor, the Consultant shall provide the proposed signage packages along with proposed dimensions by ~~e-mail~~ email or facsimile to the applicable ~~Landlords~~ Landlord or to ~~their~~ its counsel of record and the applicable Landlord shall notify the Consultant of any requirement for such signage to otherwise comply with the terms of the Lease and/or ~~these~~ the Sale Guidelines and where the provisions of the Lease ~~conflict~~ conflicts with these Sale Guidelines, these Sale Guidelines shall govern. The Consultant shall not use neon or ~~day-day~~ glow signs or any handwritten signage (save that handwritten “you pay” or “topper” signs may be used). If a Landlord is concerned with “Store Closing” signs being placed in the front window of a Store or with the number or size of the signs in the front window, the Merchant,
- ~~1.4.~~ the Consultant and ~~the~~ such Landlord will work together to resolve the dispute. Furthermore, with respect to enclosed mall Store locations without a separate entrance from the exterior of the enclosed mall, no exterior signs or signs in common areas of a mall shall be used unless explicitly permitted by the applicable Lease. In addition, the Consultant shall be permitted to utilize exterior banners/signs at stand alone, ~~or~~ strip mall Stores or enclosed mall Store locations with a separate entrance from the exterior of the enclosed mall; provided, however, that: (i) no signage in any other common areas of a mall shall be used; and (ii) where such banners are not explicitly permitted by the applicable Lease and the applicable Landlord requests in writing that banners are not to be used, no banners shall be used absent further Order of the Court, which may be sought on an expedited basis on notice to the recipients listed in the service list in respect of the CCAA Proceedings (the “Service List”). Any banners used shall be located or hung so as to make clear that the Sale is being conducted only at the affected Store and shall not be wider than the premises occupied by the affected Store. All exterior banners shall be professionally hung and to the extent that there is any damage to the facade of the premises of a Store as a result of the hanging or removal of the exterior banner, such damage shall be professionally repaired at the expense of the Consultant.
5. The Consultant shall be permitted to utilize sign-walkers and street signage; provided, however, such sign-walkers and street signage shall not be located on the shopping centre or mall premises.
- ~~6. — The Consultant shall be entitled to include additional merchandise of the Merchant in the Sale, including (i) additional merchandise that is currently in the possession or control of the Merchant (including in any distribution centre used by the Merchant) or has previously~~

- been ordered by or on behalf of the Merchant and is currently in transit to the Merchant (including any distribution centre used by the Merchant) or a Store; and (ii) the additional merchandise is of like kind and category and no lesser quality to the Merchandise.
- ~~7.6.~~ In addition, the Consultant shall be entitled, as agent of the Merchant, pursuant to and in accordance with the Consulting Agreement, to include in the Sale at the Full Line Stores ~~the Additional Consultant Goods to the extent permitted under the terms of the Consulting Agreement, which terms include that (i) the Additional Consultant Goods sold as part of the Sale will not exceed \$10 million at cost in the aggregate; and (ii)~~ Subject to the Approval Order and only with the prior written consent of the Merchant, the Consultant shall be entitled to include Additional Consultant Goods in the Sale, provided that the Additional Consultant Goods are of like kind and category and no lesser quality to the Merchandise, ~~and consistent with any restriction on usage of the Full Line Stores set out in the applicable Leases. (as defined in the Consulting Agreement).~~
- ~~8.7.~~ Conspicuous signs shall be posted in the cash register areas of each ~~of the Stores~~ Store to the effect that all sales are “final” and customers with any questions or complaints are to call the Merchant’s ~~customer care number, and such signs shall be in addition to any other caution signage of the Merchant in the cash register areas~~ hotline number.
- ~~9.8.~~ The Consultant shall not distribute handbills, leaflets or other written materials to customers outside of any of the Stores on a Landlord’s property, unless explicitly permitted by the applicable Lease or, if distribution is customary in the shopping centre in which the Store is located. Otherwise, the Consultant may solicit customers in the Stores themselves. The Consultant shall not use any giant balloons, flashing lights or amplified sound to advertise the Sale or solicit customers, except as explicitly permitted under the applicable Lease or agreed to by the applicable Landlord, and no advertising trucks shall be used on ~~Landlord a~~ Landlord’s property or mall ring roads, except as explicitly permitted under the applicable Lease or agreed to by ~~the~~ such Landlord.
- ~~10.9.~~ At the conclusion of the Sale ~~and the FF&E Removal Period~~ in each Store, the Consultant shall arrange that the premises for each Store are in “broom-swept” and clean condition, and shall arrange that the Stores are in the same condition as on the commencement of the Sale, ordinary wear and tear excepted. No property of any Landlord of a Store shall be removed or sold during the Sale. No permanent fixtures (other than ~~the Merchant~~ FF&E (as defined below) for clarity) may be removed without the applicable Landlord’s written consent unless otherwise provided by the applicable Lease and in accordance with the Initial Order and the ~~Liquidation Sale~~ Approval Order. Any trade fixtures or personal property left in a Store after the applicable ~~FF&E Removal Deadline~~ Vacate Date in respect of which the applicable Lease has been disclaimed by the Merchant shall be deemed abandoned, with the applicable Landlord having the right to dispose of the same as the Landlord chooses, without any liability whatsoever on the part of ~~the~~ such Landlord. Nothing in this paragraph shall derogate from or expand upon the Consultant’s obligations under the Consulting Agreement.
- ~~11.~~ ~~Notwithstanding the foregoing, the Merchant shall only exercise its rights to abandon Remaining FF&E pursuant to Section 6(f) of the Consulting Agreement if: (i) the applicable Landlord has consented thereto; (ii) such abandonment is not prohibited under the applicable Lease; or (iii) upon further Order of the Court. Subject to the terms of paragraph 10 above, the Consultant may also sell furniture, fixtures and equipment located in the Stores during the Sale and the FF&E Removal Period that are~~

- ~~2.10.~~ (i) ~~fully owned by the Merchant; (ii) owned jointly by the Merchant and one or more third-party vendors of the Merchant, as directed by the Merchant with the consent of the Monitor and agreed to by such third parties; or (iii) fully owned by a third party if agreed to by such third party and the Merchant with the consent of the Monitor (collectively, the “FF&E”)~~ Subject to the terms of paragraph 9 above, the Consultant may sell furniture, fixtures and equipment owned by the Merchant (“Merchant FF&E”) and located in the Stores during the Sale. For greater certainty, Merchant FF&E does not include any portion of ~~a any of the Stores’ mechanical, electrical, plumbing, security, HVAC, sprinkler~~ HVAC system, fire suppression, ~~or system and fire alarm systems (including related fixtures and affixed equipment) or sprinkler system.~~ The Merchant and the Consultant may advertise the sale of ~~the Merchant~~ Merchant FF&E consistent with these Sale Guidelines on the understanding that the applicable Landlord may require such signs to be placed in discreet locations within the Stores reasonably acceptable to ~~the such~~ the applicable Landlord. Additionally, the purchasers of any Merchant FF&E sold during the Sale shall only be permitted to remove ~~the such Merchant~~ the applicable FF&E either through the back shipping areas designated by the applicable Landlord or through other areas after regular Store business hours or, through the front door of the Store during Store business hours if ~~the Merchant~~ the applicable FF&E can fit in a shopping bag, with the applicable Landlord’s supervision ~~if as~~ required by ~~the such~~ the applicable Landlord and in accordance with the Initial Order and the ~~Liquidation Sale~~ Approval Order. The Consultant shall repair any damage to the Stores resulting from the removal of any ~~FF&E or personal property of the Merchant~~ Merchant FF&E by the Consultant or by third party purchasers of Merchant FF&E ~~or personal property~~ from the Consultant.
- ~~12.11.~~ The Consultant shall not make any alterations to interior or exterior Store lighting, except as authorized pursuant to the affected Lease. The hanging of exterior banners or other signage, where permitted in accordance with the terms of these Sale Guidelines, shall not constitute an alteration to a Store.
- ~~13.12.~~ The Merchant hereby provides notice, ~~including for purposes of the Initial Order,~~ to the Landlords of the Merchant’s and the Consultant’s intention to sell and remove Merchant FF&E from the Stores. The Consultant shall make commercially reasonable efforts to arrange with each Landlord represented by counsel on the Service List and with any other Landlord that so requests, a walk-through with the Consultant to identify ~~any Merchant~~ any Merchant FF&E ~~that is~~ subject to the Sale. The relevant Landlord shall be entitled to have a representative present in the applicable ~~Stores~~ Store(s) to observe such removal. If the relevant Landlord disputes the Consultant’s entitlement to sell or remove any Merchant FF&E under the provisions of the applicable Lease, such Merchant FF&E shall remain on the premises and shall be dealt with as agreed between the Merchant, the Consultant and such Landlord, or by further Order of the Court upon application by the Merchant on at least two (2) ~~business~~ business days’ notice to such Landlord and the Monitor. If the Merchant has disclaimed or resiliated the Lease governing such Store in accordance with the CCAA Proceedings and the Initial Order, it shall not be required to pay rent under such Lease pending resolution of any such dispute (other than rent payable for the notice period provided for in the CCAA Proceedings and the Initial Order), and the disclaimer or resiliation of the Lease shall be without prejudice to the Merchant’s or the Consultant’s claim to ~~the Merchant~~ the Merchant FF&E in dispute.

14. — If a notice of disclaimer ~~of Lease or~~ resiliation is delivered pursuant to the CCAA Proceedings and the Initial Order to a Landlord while the Sale is ongoing and the Store in question has not yet been vacated, then:
- 3.13. (i) during the notice period prior to the effective ~~date-time~~ of the disclaimer or resiliation, ~~the-such~~ Landlord may show the affected ~~Store-leased premises~~ to prospective tenants during normal business hours, on giving the Merchant, the Monitor and the Consultant ~~at least~~ twenty-four (24) hours' prior written notice; and (ii) at the effective ~~date-time~~ of the disclaimer or resiliation, ~~the-relevant-such~~ Landlord shall be entitled to take possession of any such Store without waiver of or prejudice to any claims or rights such Landlord may have against the Merchant ~~or any of its affiliates~~ in respect of such Lease or Store; ~~provided that,~~ nothing herein shall relieve such Landlord of any obligation to mitigate any damages claimed in connection therewith.
- 15.14. The Consultant and its agents and representatives shall have the same access rights to ~~the Stores~~ each Store as the Merchant under the terms of the applicable Lease, and each of the Landlords shall have the rights of access ~~rights to the Stores as to each applicable Store during the Sale~~ provided for in the applicable Lease (subject, for greater certainty, to any applicable stay of proceedings and the terms of the Initial Order ~~and the Liquidation Sale Approval Order~~).
- 16.15. The Merchant and the Consultant shall not conduct any auctions of Merchandise or Merchant FF&E at any of the Stores.
- 17.16. The Consultant shall designate a party to be contacted by the Landlords should a dispute arise concerning the conduct of the Sale. The initial contact person for the Consultant shall be ~~Cassels Broek & Blackwell LLP, Suite 2100, Scotia Plaza, 40 King St. W., Toronto, ON M5H 3C2 Canada, Attn: Jane Dietrich, Esq., Email: jdietrich@cassels.com. David Braun or Durien Sanchez, who may be reached by email at dbraun@gordonbrothers.com or dsanchez@gordonbrothers.com.~~ If the parties are unable to resolve the dispute between themselves, the applicable Landlord or the Merchant shall have the right to schedule a "status hearing" before the Court on no less than two (2) days' written notice to the other party or parties and the Monitor, during which time the Consultant shall ~~suspend-cess~~ all activity in dispute other than activities activity expressly permitted herein, pending determination of the matter by the Court; provided, however, subject to paragraph 4 of these Sale Guidelines, if a banner has been hung in accordance with these Sale Guidelines and is the subject of a dispute, the Consultant shall not be required to take any such banner down pending determination of any dispute.
- 18.17. Nothing herein or in the Consulting Agreement is, or shall be deemed to be, ~~a sale, assignment or transfer of any Lease to the Consultant nor~~ a consent by any Landlord to the sale, assignment or transfer of any Lease, or shall, or shall be deemed to, or grant to ~~the-any~~ Landlord any greater rights ~~in relation to the sale, assignment or transfer of any Lease~~ than already exist under the terms of any ~~such~~ applicable Lease.
- 19.18. These Sale Guidelines may be amended ~~on a Store-by-Store basis,~~ by written agreement between the ~~Merchant, the~~ Consultant, the Merchant and the applicable Landlord, in consultation with ~~the consent of~~ the Monitor; ~~provided,~~ however, that such amended Sale Guidelines shall not affect or bind any other Landlord not privy thereto without further Order of the Court approving such amended Sale Guidelines.

~~IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985,
c. C-36, AS AMENDED~~

~~AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
NORDSTROM CANADA RETAIL, INC., NORDSTROM CANADA HOLDINGS, LLC and
NORDSTROM CANADA HOLDINGS II, LLC~~

Court File No: ~~CV-23-00695619-00CL~~

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Ontario

~~SUPERIOR COURT OF JUSTICE~~ IN THE MATTER OF THE COMPANIES'
CREDITORS ARRANGEMENT ACT, R.S.C. 1985, C. C-36, AS AMENDED

Court File No. CV-23-00710259-
00CL

COMMERCIAL LIST

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF MASTERMIND GP INC.

Applicant

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

Proceeding commenced at Toronto

~~LIQUIDATION~~ SALE APPROVAL ORDER

OSLER, HOSKIN & HARCOURT LLP

DAVIES WARD PHILLIPS & VINEBERG LLP

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Marleigh Dick (LSO# 79390S)

Tel: 416.862.4725

Email: mdick@osler.com

Lawyers for the
Applicants

TAB G

This is **Exhibit "G"** referred to in the
Affidavit #2 of LUCIO MILANOVICH,
sworn before me, this 29th day of
November, 2023.



Commissioner for taking affidavits
Kristine Spence (LSO #66099S)

November 24, 2023

TO DISTRIBUTION LIST

To Whom It May Concern:

Mastermind GP Inc. and Mastermind LP – Initial Order under the *Companies' Creditors Arrangement Act*, R.S.C., 1985 c. C-36 ("CCAA"), Court File No. CV-23-00710259-00CL

On November 23, 2023, the Honourable Justice Steele of the Ontario Superior Court of Justice (Commercial List) granted an Initial Order pursuant to the CCAA (the "**Initial Order**"), extending creditor protection to Mastermind GP Inc. and Mastermind LP and appointing Alvarez & Marsal Canada Inc. as Monitor.

A copy of the issued and entered Initial Order is enclosed, and all materials related to the CCAA proceedings are available at the Monitor's website:

<https://www.alvarezandmarsal.com/Mastermind>

If you wish to participate in these CCAA proceedings, please file a Notice of Appearance.

Yours very truly,



Kristine Spence

Enclosure

cc Natasha MacParland and Natalie Renner, *Davies Ward Phillips & Vineberg LLP*
Sean Zweig, Joshua Foster and Milan Singh-Cheema, *Bennett Jones LLP*
Evan Cobb, *Norton Rose Fulbright Canada LLP*
Joshua Nevsky, Mitchell Binder and Ryan Gruneir, *Alvarez & Marsal Canada Inc.*
Tracy Sandler and Hannah Davis, *Osler Hoskin & Harcourt LLP*

ONTARIO
SUPERIOR COURT OF JUSTICE
Commercial List

IN THE MATTER OF THE COMPANIES' CREDITORS
ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF MASTERMIND GP INC.

Applicants

DISTRIBUTION LIST
(AS AT NOVEMBER 24, 2023)

Landlords:

TO:	0948523 B.C. LTD. #900-1200 West 73rd Avenue Vancouver, BC V6P 6G5 Attention: Kyle Shury Kyle Shury Email: kyle@platformproperties.ca
AND TO:	1133 YONGE STREET PROPERTY INC. c/o Clifton Blake Asset Management Ltd. 370 King Street West Box 35, Suite 805 Toronto, ON M5V 1J9
AND TO:	1308645 ONTARIO INC. 25 Tremont Drive St. Catharines ON L2T 3A7 Attention: Aziz Sheik Aziz Sheik Email: aziz@pendale.ca
AND TO:	15320 BAYVIEW HOLDINGS LIMITED at Trinity Development Group Inc. 359 Kent Street Suite 400 Ottawa, ON K2P 0R6 Attention: President
AND TO:	15320 BAYVIEW HOLDINGS LIMITED at Park Lane Developments

	180 Steels Avenue West Suite 206 Thornhill, ON L4J 2L1 Attention: Mr. Herb Frieberg
AND TO:	1885181 ONTARIO LIMITED PO Box 31087 DTPC, 8889 Yonge St., Richmond Hill, On L4C 0V3
AND TO:	222 & 223 BASELINE ROAD INC. c/o Fiera Real Estate Limited 1 Adelaide Street East Toronto, ON M5C2V9 Attn: Asset Manager Email: info@fierarealestate.com
AND TO:	2241039 ONTARIO INC. c/o Longo Brother's Fruit Markets Inc. 8800 Huntington Road Vaughn, ON L4H 3M6 Attention: Anthony Longo
AND TO:	30 EGLINTON AVENUE WEST LTD. c/o Crown Property Management Inc. 400 University Avenue Suite 1900 Toronto, ON M5G 1S5 Attention: Leasing Department
AND TO:	3088409 NOVA SCOTIA LIMITED by its authorized agents, Creit Management Limited General Partner of Creit Management L.P. 1801 Hollis Street, Suite 1100 Halifax, NS B3J 3N4
AND TO:	ABERDEEN WHITE ROSE HOLDINGS LIMITED 6-2400 Dundas St. W. Mississauga, ON L5K 2R8
AND TO:	ANTHEM CENTRE VILLAGE MALL LTD. Suite 300, Burrard Street Vancouver, BC V6C 2B5 Attention: Asset Manager Email: info@anthemproperties.com
AND TO:	BCIMC REALTY CORPORATION c/o Bentall Kennedy (Canada) LP North Hill Shopping Centre – Administration Office Suite 1665, 1632 – 14th Avenue N.W. Calgary, AB T2N 1M7
AND TO:	BCIMC REALTY CORPORATION c/o Bentall Kennedy (Canada) Limited Partnership Suite 1800 – 1055 Dunsmuir Street Four Bentall Centre P.O. Box 49001

	Vancouver, BC V7X 1B1 Attention: Vice President Operations
AND TO:	BCIMC REALTY CORPORATION (BAYVIEW) Bayview Village Management Office Unit C-105, 2901 Bayview Avenue Toronto, ON M2K 1E6
AND TO:	BK PRIME ALBERTA I LP c/o BentallGreenOak (Canada) Limited Partnership Suite 1750 – 10303 Jasper Avenue Edmonton, AB T5J 3N6
AND TO:	BRANT-PLAINS HOLDINGS INC. 4950 Yonge Street Suite 1010 Toronto, ON M2N 6K1
AND TO:	CALLOWAY REAL ESTATE INVESTMENT TRUST INC. 700 Applewood Crescent Suite 200 Vaughan, ON L4K 5X3
AND TO:	CALLOWAY REAL ESTATE INVESTMENT TRUST INC. 3200 Highway 7 Vaughan, ON L4K 5Z5
AND TO:	CALLOWAY REIT (REGINA E2) INC. 3200 Highway 7 Vaughan, ON L4K 5Z5
AND TO:	CALLOWAY REIT (SAINT JOHN) INC. 3200 Highway 7 Vaughan, ON L4K 5Z5
AND TO:	CALLOWAY REIT (SASKATOON) INC. 3200 Highway 7 Vaughan, ON L4K 5Z5
AND TO:	CALLOWAY REIT (WINNIPEG SW) INC. 3200 Highway 7 Vaughan, ON L4K 5Z5
AND TO:	Canuck Properties Ltd. and Fineway Properties Limited 95 St. Clair Avenue West Suite 1403 Toronto, ON M4V 1N6
AND TO:	CAPITAL CITY SHOPPING CENTRE LIMITED c/o Cushman & Wakefield Asset Services ULC 161 Bay Street, Suite 1500 Toronto, ON M5J 2S1 Email: legalnotices@cushwake.com
AND TO:	CAPITAL CITY SHOPPING CENTRE LIMITED c/o Cushman & Wakefield Asset Services ULC 1610 – 37 Street S.W. Suite 201 Calgary, AB T3C 3P1 Email: legalnotices@cushwake.com
AND TO:	CAPITAL CITY SHOPPING CENTRE LIMITED

	c/o Cushman & Wakefield Asset Services ULC 161 Bay Street, Suite 1500 Toronto, ON M5J 2S1 Email: legalnotices@cushwake.com
AND TO:	CAPITOL MANAGEMENT CORP. 340 Sheppard Avenue E Suite 100 Toronto, ON M2N 3B4
AND TO:	CHOICE PROPERTIES LIMITED PARTNERSHIP 3225 12th Street, NE Calgary, AB T2E 7S9 Attention: VP Real Estate & operations, Western Canada
AND TO:	CHOICE PROPERTIES LIMITED PARTNERSHIP 22 St. Clair Avenue East Suite 1990 Toronto, ON M4T 2S7 Attention: VP Real Estate & General Counsel
AND TO:	CLEARBROOK TOWN CENTRE LTD. c/o RioCan Real Estate Investment Trust 2300 Young Street, Suite 500 P.O. Box 2386 Toronto, ON M4P 1E4 Attention: Assistant Vice President, Lease Administration
AND TO:	COLONNADE BRIDGEPORT ITF 1195493 ONTARIO LTD. 16 Concourse Gate Suite 200 Ottawa, ON K2E 7S8
AND TO:	DARTMOUTH CROSSING LIMITED c/o Centrecorp Management Services Limited 2851 John Street, Suite One Markham, ON L3R 5R7 Attention: executive Vice President
AND TO:	DURHAM HOLDINGS INC. c/o RioCan Real Estate Investment Trust 2300 Young Street, Suite 500 P.O. Box 2386 Toronto, ON M4P 1E4 Attention: Senior Vice President, General Counsel and Corporate Secretary
AND TO:	EDCON PROPERTIES LTD. 54-209 Wicksteed Avenue East York, ON M4G 2C1
AND TO:	GLENDALE PROPERTIES INC. as agent for Fiona Strachan 112 Sheppard Avenue West Toronto, ON M2N 1M5
AND TO:	IVANHOE CAMBRIDGE INC. 95 Wellington Street West Suite 300 Toronto, ON M5J 2R2

	Attention: Legal Affairs Department
AND TO:	JELI HOLDINGS INC. 2100 Bloor St. W., #6130 Toronto ON M6S 5A5
AND TO:	JUDELL LTD. 141 Adelaide Street W Suite 1500 Toronto, ON M5H 3L5
AND TO:	KANATA ENTERTAINMENT HOLDINGS INC. c/o PenEquity Realty Corporation 33 Yonge Street, Suite 901 Toronto, ON M5E 1G4
AND TO:	KILDONAN PLACE LTD. 1 Adelaide Street East Suite 900, P.O. Box 194 Toronto, ON M5C 2V9 Attention: Vice President, Legal Retail
AND TO:	L&G ENTERPRISES (WATERLOO) CORP. 4119 Sherbrooke St W Westmount, QC H3Z 1A7
AND TO:	MAPLETON HOLDINGS INC. P.O. Box 928 Moncton, NB E1C 8N8
AND TO:	MEDICINE HAT HWY 1 PROPERTIES INC. Suite 1407 TD Tower 10088 – 102 Avenue, Edmonton AB T5J 2Z1
AND TO:	MISSION HILL LP c/o BentallGreenOak (Canada) Limited Partnership Suite 1750 – 10303 Jasper Avenue Edmonton, AB T5J 3N6
AND TO:	NSAHOPP MAYFLOWER INC. & HOOPP REALTY INC. C/o McCOR Management (East) 21 St. Clair Ave East Suite 500 Toronto, ON M4T 1L9
AND TO:	NUMOUNT ANCASTER INC. 40 Pleasant Boulevard Suite 800 Toronto, ON M4T 1J9
AND TO:	OPB REALTY INC. c/o Cushman & Wakefield Asset Services ULC 161 Bay Street, Suite 1500 P.O. Box 602 Toronto, ON M5J 2S1 Email: legalnotices@cushwake.com
AND TO:	OPB REALTY INC. c/o Cushman & Wakefield Asset Services ULC 1 Prologis Boulevard 3rd Floor Mississauga, ON L5W 0B3

	Email: legalnotices@cushwake.com
AND TO:	OXFORD PROPERTIES GROUP Royal Bank Plaza North tower 200 Bay Street Suite 900 Toronto, ON M5J 2J2 Attention: Real Estate Management Legal Services Department
AND TO:	PLACE D'ORLEANS 110 Place d'Orleans Drive Orleans, ON K1C 2L9 Attention: General Manager
AND TO:	PLACE D'ORLEANS HOLDINGS INC. c/o Primaris Management Inc. 26 Wellington St E Suite 400 Toronto, ON M5E 1S2 Attention: Vice President Legal
AND TO:	PLAZACORP PROPERTY HOLDINGS INC. 98 Main Street Fredericton, NB E3A 9N6
AND TO:	PRESTON CROSSING PROPERTIES INC. c/o Harvard Property Management Inc. Suite 2000, 1874 Scarth Street Regina, SK S4P 4B3
AND TO:	PROJECT KILDONAN PLACE SHOPPING CENTRE 1555 Regent Avenue West Winnipeg, MB R2C 4J2 Attention: General Manager
AND TO:	REALTRIUM HOLDINGS 2 INC. 8545 McCowan Rd Markham, ON L3P 1W9
AND TO:	RIOCAN HOLDINGS (HAMILTON) INC. c/o RioCan Real Estate Investment Trust 2300 Young Street, Suite 500 P.O. Box 2386 Toronto, ON M4P 1E4 Attention: Assistant Vice President, Lease Administration
AND TO:	RIOCAN HOLDINGS INC. c/o RioCan Real Estate Investment Trust 2300 Young Street, Suite 500 P.O. Box 2386 Toronto, ON M4P 1E4 Attention: Assistant Vice President, Lease Administration
AND TO:	RIOCAN PROPERTY SERVICES 700 Lawrence Avenue West, Suite 315 Toronto, ON M6A 3B4
AND TO:	RIOCAN PROPERTY SERVICES #257, 495 – 36 Street N.E.

	Calgary, Alberta T2A 6K3
AND TO:	RIOKIM HOLDINGS (ALBERTA) INC. c/o RioCan Real Estate Investment Trust 2300 Young Street, Suite 500 P.O. Box 2386 Toronto, ON M4P 1E4 Attention: Assistant Vice President, Lease Administration
AND TO:	RIOKIM HOLDINGS (LANGLEY GATE) INC c/o RioCan Real Estate Investment Trust 2300 Young Street, Suite 500 P.O. Box 2386 Toronto, ON M4P 1E4 Attention: Assistant Vice President, Lease Administration
AND TO:	RIOKIM HOLIDNGS (ONTARIO) INC. c/o RioCan Real Estate Investment Trust 2300 Young Street, Suite 500 P.O. Box 2386 Toronto, ON M4P 1E4 Attention: Senior Vice President, General Counsel and Corporate Secretary
AND TO:	RIOTRIN PROPERTIES (BARRHAVEN) INC. c/o RioCan Real Estate Investment Trust 2300 Young Street, Suite 500 P.O. Box 2386 Toronto, ON M4P 1E4 Attention: Assistant Vice President, Lease Administration
AND TO:	RIOTRIN PROPERTIES (FREDERICTON) INC. c/o RioCan Real Estate Investment Trust 2300 Young Street, Suite 500 P.O. Box 2386 Toronto, ON M4P 1E4 Attention: Assistant Vice President, Lease Administration
AND TO:	RIOTRIN PROPERTIES (VAUGHAN 3) INC. c/o RioCan Real Estate Investment Trust 2300 Young Street, Suite 500 P.O. Box 2386 Toronto, ON M4P 1E4 Attention: Assistant Vice President, Lease Administration
AND TO:	ROUNDHOUSE CENTRE WINDSOR INC. c/o Terracap Management Inc. 100 Sheppard Avenue East, Suite 502 Toronto, ON M2N 2N5
AND TO:	SAB REALTY LIMITED 279 Wharncliffe Road, N London, ON N6H 2C2
AND TO:	SASOR PROPERTIES LIMITED 240 Regent Street Sudbury, ON P3C 4C5
AND TO:	SALTHILL CAPITAL 300 – 130 Bloor Street West Toronto, ON M5S 1N5

	Peter Kafka Email: pkafka@strathallen.com
AND TO:	SEABROOKE HOLDINGS LIMITED 999 Lansdowne St. #5 Peterborough, ON K9J 8N2
AND TO:	SHOPPING CENTRE MANAGEMENT OFFICE Hillcrest Mall 9350 Yonge Street Richmond Hill, ON L4C 5G2 Attention: General Manager
AND TO:	SMARTREIT (OSHAWA NORTH) INC. 3200 Highway 7 Vaughan, ON L4K 5Z5 Email: legalnotices@smartcentres.com
AND TO:	SPI QUEEN HOLDINGS INC. 5734 Yonge Street 5th Floor Toronto, ON M2M 4E7
AND TO:	Splinter Family Trust Rentals Co. c/o Braebury Homes 400-366 King St. E Kingston, ON K7K 6Y3
AND TO:	STERLING KARAMAR PROPERTY MANAGEMENT 53 The Links Road Toronto, ON M2P 1T7
AND TO:	THE CANADA LIFE ASSURANCE COMPANY c/o GWL Realty Advisors Inc. One City Centre Drive, Suite 300 Mississauga, ON L5B 1M2
AND TO:	UPPER OAKVILLE SHOPPING CENTRE LIMITED 1011 Upper Middle Road E Oakville, ON L6H 4L2
AND TO:	WAM DEVELOPMENT GROUP #200, 12420 – 104th Avenue NW Edmonton, AB T5N 3Z9 Attention: Vice President, Retail Leasing
AND TO:	WESTHILLS EQUITIES INC. c/o Shape Properties Corp. 707-10th Avenue S.W. Suite 300 Calgary, Alberta T2R 0B3 Attention: Director of Leasing Email: mitchell.mowatt@shape.ca
AND TO:	WINDERMERE COMMERCIAL LANDS LTD.

	c/o Harvard Property Management Inc. Suite 005, 11523 100 Avenue Edmonton, AB T5K 0J8
AND TO:	YONGE & GREEN LANE SOUTH DEVELOPMENTS CORP. c/o Fieldgate Commercial Properties Limited 5400 Yonge St 5th Floor Toronto, ON M2N 5R5

Ministries/Regulatory Authorities:

AND TO:	ATTORNEY GENERAL OF CANADA DEPARTMENT OF JUSTICE Ontario Regional Office, Tax Law Section 120 Adelaide Street West, Suite 400 Toronto, Ontario M5H 1T1 Diane Winters General Counsel Tel: 416.973.3172 Email: diane.winters@justice.gc.ca Fax: 416.973.0810 Attorney General of Canada on behalf of His Majesty the King in Right of Canada as represented by the Minister of National Revenue
AND TO:	CANADA REVENUE AGENCY 1 Front Street West Toronto, Ontario M5J 2X6 Pat Confalone Tel: 416.954.6514 Email: pat.confalone@cra-arc.gc.ca Fax: 416.964.6411
AND TO:	DEPARTMENT OF JUSTICE (NOVA SCOTIA) Legal Services Division 1690 Hollis Street P.O. Box 7 Halifax, Nova Scotia B3J 2L6 Andrew Hill Tel: 902.220.6623 Email: andrew.hill@novascotia.ca
AND TO:	HIS MAJESTY THE KING IN RIGHT OF ONTARIO REPRESENTED BY THE MINISTER OF FINANCE – INSOLVENCY UNIT Ontario Ministry of Finance – Legal Services Branch 11-777 Bay Street Toronto, Ontario M5G 2C8 Leslie Crawford Email: leslie.crawford@ontario.ca Copy to: Email: insolvency.unit@ontario.ca

	Fax: 416.325.1460
TO:	HIS MAJESTY THE KING IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA REPRESENTED BY THE MINISTRY OF ATTORNEY GENERAL Legal Services Branch 1001 Douglas Street, 2nd Floor Victoria, British Columbia V8W 2C5 Email: AGLSBRevTaxInsolvency@gov.bc.ca Fax: 250.387.0700
AND TO:	MINISTRY OF JUSTICE AND SOLICITOR GENERAL (ALBERTA) Legal Services 2nd Floor, Peace Hills Trust Tower 10011 – 109 Street Edmonton, Alberta T5J 3S8 General Enquiries: Tel: 780.427.2711 Email: ministryofjustice@gov.ab.ca Fax: 780.427.2789
AND TO:	MINISTRY OF THE ATTORNEY GENERAL (MANITOBA) 104 Legislative Building 450 Broadway Winnipeg, Manitoba R3C 0V8 Matt Wiebe, Minister of Justice Tel: 204.945.3728 Email: minjus@leg.gov.mb.ca Fax: 204.945.2517
AND TO:	MINISTRY OF THE ATTORNEY GENERAL (NEW BRUNSWICK) Chancery Place, 2nd Floor, Room: 2001 P. O. Box 6000 Fredericton, New Brunswick E3B 1E0 General Enquiries: Tel: 506.462.5100 Email: justice.comments@gnb.ca Fax: 506.453.3651
AND TO:	MINISTRY OF THE ATTORNEY GENERAL (SASKATCHEWAN) 300-1874 Scarth St. Regina, Saskatchewan S4P 4B3 Bronwyn Eyre, Minister of Justice and Attorney General Email: jus.minister@gov.sk.ca
AND TO:	OFFICE OF THE ATTORNEY GENERAL DEPARTMENT OF JUSTICE AND PUBLIC SAFETY 4th Floor, East Block Confederation Building P.O. Box 8700 St. John's, NL A1B 4J6

	John Hogan Tel: (709) 729-2869 Email:justice@gov.nl.ca Fax: (709) 729-0469
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ONTARIO
SUPERIOR COURT OF JUSTICE
Commercial List

IN THE MATTER OF THE COMPANIES' CREDITORS
ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF MASTERMIND GP INC.

Applicant

SERVICE LIST
(AS AT NOVEMBER 24, 2023)

TO:	DAVIES WARD PHILLIPS & VINEBERG LLP 155 Wellington St W, Toronto, ON M5V 3J7 Natasha MacParland (LSO #42383G) Email: NMacParland@dwpv.com Tel: 416.367.7489 Natalie Renner (LSO #55954A) Email: NRenner@dwpv.com Tel: 416.863.5567 Kristine Spence (LSO #66099S) Email: KSpence@dwpv.com Tel: 416.863.0900 Counsel for the Applicant, Mastermind GP Inc.
------------	--

AND TO:	<p>ALVAREZ & MARSAL CANADA INC. Royal Bank Plaza, South Tower, 200 Bay Street, Suite 2900, P.O. Box 22, Toronto, ON, M5J 2J1</p> <p>Joshua Nevsky Tel: 416.847.5161 Email: jnevsky@alvarezandmarsal.com</p> <p>Mitchell Binder Tel: 416.847.5202 Email: mbinder@alvarezandmarsal.com</p> <p>Ryan Gruneir Tel: 416.847.5151 Email: rgruneir@alvarezandmarsal.com</p> <p>The Monitor</p>
AND TO:	<p>BENNETT JONES LLP 100 King St W, Suite 3400, Toronto, ON, M5X 1A4</p> <p>Sean Zweig Tel: 416.777.6254 Email: zweigs@bennettjones.com</p> <p>Joshua Foster Tel: 416.777.7906 Email: fosterj@bennettjones.com</p> <p>Milan Singh-Cheema Tel: 416.777.5527 Email: singhcheema@bennettjones.com</p> <p>Counsel to the Monitor</p>
AND TO:	<p>NORTON ROSE FULBRIGHT LLP TD Centre 222 Bay St., Suite 3000, Toronto, ON, M5K 1E7</p> <p>Evan Cobb Tel: 416.216.1929 Email: evan.cobb@nortonrosefulbright.com</p> <p>Counsel to the Canadian Imperial Bank of Commerce</p>

AND TO	OSLER, HOSKIN & HARCOURT LLP 100 King Street West 1 First Canadian Place Suite 6200, P.O. Box 50 Toronto ON M5X 1B8 Tracy Sandler Tel: 416.862.5890 Email: tsandler@osler.com Hannah Davis Tel: 416.862.4605 Email: hdavis@osler.com Counsel to Gordon Brothers Canada ULC
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singcheema@bennettjones.com; evan.cobb@nortonrosefulbright.com; tsandler@osler.com;
hdavis@osler.com

Landlords Email

Subject line: Update on Mastermind Toys CCAA Proceedings

I am writing to inform you that on November 23, 2023, Mastermind GP Inc. and Mastermind LP (together, “Mastermind Toys”) sought and obtained protection under the *Companies’ Creditors Arrangement Act* (“CCAA”) pursuant to an Initial Order of the Ontario Superior Court of Justice (Commercial List) (the “Court”). Alvarez & Marsal Canada Inc. has been appointed as the monitor of Mastermind Toys in the CCAA proceedings (in such capacity, the “Monitor”).

Over the past several years, Mastermind Toys has faced a range of challenges including increasing competition, disruptions from the COVID-19 pandemic, and more recently, a deteriorating macro-economic environment. The decision to seek creditor protection under the CCAA was made following careful evaluation of all reasonably available alternatives and in consultation with Mastermind Toys’ legal and financial advisors. Though difficult, we believe this decision is the right one for Mastermind Toys. I want to assure you that the relationship that we have with your company has been very important to us, and that we do not take lightly the impact that this decision may have on you.

As of today, Mastermind Toys will continue to operate its business throughout the holiday shopping season. All 66 Mastermind Toys stores across Canada remain open for business, and all of Mastermind Toys’ current sales and holiday promotions (including our Black Fri-Play event) will continue, in stores and online.

As part of the CCAA proceedings, Mastermind Toys intends to seek the Court’s authorization to commence a store closure process for an initial group of stores, while it explores certain strategic alternatives for the remainder of its stores. Mastermind Toys is required to return to the Court for a comeback hearing at 10:00 a.m. on November 30, 2023 and will provide additional information regarding the CCAA proceedings at that time.

Please note that any liabilities for rent and other services provided from and after the date of the Initial Order will be paid in due course and according to our pre-existing arrangements, except as those arrangements may have been affected by the Initial Order. In this regard, please note that paragraph 9 of the Initial Order provides that rent shall be paid twice-monthly in equal payments on the first and fifteenth day of each month, in advance (but not in arrears).

Additional Information

Further information relating to the CCAA proceedings, including a copy of the Initial Order, is available on the Monitor’s case website at: www.alvarezandmarsal.com/Mastermind.

Thank you again for your partnership and for your continued support. If you have any questions, please let me know.

<<NAME>>

NON-KEY VENDORS / SUPPLIERS

Subject line: Update on Mastermind Toys CCAA Proceedings

I am writing to inform you that on November 23, 2023, Mastermind GP Inc. and Mastermind LP (together, “Mastermind Toys”) sought and obtained protection under the *Companies’ Creditors Arrangement Act* (“CCAA”) pursuant to an Initial Order of the Ontario Superior Court of Justice (Commercial List) (the “Court”). Alvarez & Marsal Canada Inc. has been appointed as the monitor of Mastermind Toys in the CCAA proceedings (in such capacity, the “Monitor”).

Over the past several years, Mastermind Toys has faced a range of challenges including increasing competition, disruptions from the COVID-19 pandemic, and more recently a deteriorating macro-economic environment. The decision to seek creditor protection under the CCAA was made following careful evaluation of all reasonably available alternatives and in consultation with Mastermind Toys’ legal and financial advisors. Though difficult, we believe this decision is the right one for Mastermind Toys. I want to assure you that the relationship that we have with your company has been very important to us, and that we do not take lightly the impact that this decision may have on you.

At this time, all 66 Mastermind Toys stores across Canada remain open for business, and all of Mastermind Toys’ current sales and holiday promotions (including our Black Fri-Play event) will continue, in stores and online.

As part of the CCAA proceedings, Mastermind Toys intends to seek the Court’s authorization to commence a store closure process for an initial group of stores, while it explores certain strategic alternatives for the remainder of its stores. Mastermind Toys is required to return to the Court for a comeback hearing at 10:00 a.m. on November 30, 2023 and will provide additional information regarding the CCAA proceedings at that time.

What the CCAA proceedings mean for you

To provide Mastermind Toys with the breathing room necessary to stabilize its business and advance its restructuring initiatives, the Initial Order contains a stay of proceedings that prevents all parties from enforcing any rights against Mastermind Toys, its property or its business, and from discontinuing, altering, interfering with, or terminating the supply of goods or services required by Mastermind Toys.

Mastermind Toys plans to pay for all goods and services provided after the date of the Initial Order in the ordinary course. However, Mastermind Toys is not permitted to pay amounts owing as of the date of the Initial Order (i.e., November 23, 2023).

With respect to any goods or services ordered but to which Mastermind Toys has not taken title, those orders are cancelled effective immediately.

Additional Information

Further information relating to the CCAA proceedings, including a copy of the Initial Order, is available on the Monitor’s case website at: www.alvarezandmarsal.com/Mastermind.

Thank you again for your partnership and for your continued support. If you have any questions, please let me know.

<<NAME>>

VENDORS / SUPPLIERS

Key Vendor / Supplier Letter Template

November [], 2023

DELIVERED VIA EMAIL

[Vendor]

[Address]

[City, Province]

[Postal Code]

Attention: []

Dear Sir/Madame:

On November 23, 2023 (the “**Filing Date**”), Mastermind GP Inc. and Mastermind LP (together, “**Mastermind**” or the “**Company**”) obtained protection under the *Companies’ Creditors Arrangement Act* (Canada) (the “**CCAA**”) pursuant to an Initial Order (the “**Initial Order**”) of the Ontario Superior Court of Justice (Commercial List). Pursuant to the Initial Order, Alvarez & Marsal Canada Inc. was appointed as the monitor in the CCAA proceedings (in such capacity, the “**Monitor**”).

Subject to the terms and conditions of this letter agreement (this “**Agreement**”), Mastermind is prepared to make a payment to you of \$● (inclusive of HST) in respect of goods and/or services contracted for and delivered to Mastermind prior to the Filing Date (the “**Pre-Filing Payment**”) in accordance with paragraph 6 of the Initial Order. The Monitor has consented to the Pre-Filing Payment as required by the Initial Order, subject to the terms of this Agreement.

Mastermind expects that [vendor name] will comply with the Initial Order, including, without limitation, paragraphs 16 and 17 of the Initial Order, which prohibit vendors from, among other things, discontinuing or otherwise altering the supply of goods and/or services as may be required by Mastermind. A copy of the Initial Order is enclosed for your reference.

Should you fail to comply with the Initial Order, including the paragraphs referenced above, or the terms of this Agreement, the Company reserves all of its rights at law, equity or otherwise, including, without limitation, to seek repayment of the Pre-Filing Payment and to take such actions and seek such relief as may be necessary to ensure your compliance with the terms of this Agreement. This Agreement and the obligations arising hereunder shall be governed by the laws of the province of Ontario and the federal laws of Canada applicable therein.

We trust that the foregoing is satisfactory and we look forward to the continuation of our strong working relationship with you. Please acknowledge your acceptance of the terms and conditions of this Agreement by executing a copy of this Agreement where indicated below, and returning it to Frank Zita.

Yours truly,

Per: _____

Date: _____

Frank Zita, President

By:

AGREED AND ACCEPTED this ____ day of _____, 2023.

[Company Name]

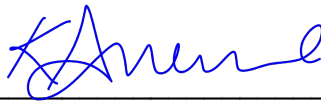
Per: _____

Name:

Title:

TAB H

This is **Exhibit "H"** referred to in the
Affidavit #2 of LUCIO MILANOVICH,
sworn before me, this 29th day of
November, 2023.



Commissioner for taking affidavits
Kristine Spence (LSO #66099S)

ONTARIO
SUPERIOR COURT OF JUSTICE
Commercial List

IN THE MATTER OF THE COMPANIES' CREDITORS
ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF MASTERMIND GP INC.

Applicants

DISTRIBUTION LIST
(AS AT NOVEMBER 24, 2023)

Landlords:

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AND TO:	1133 YONGE STREET PROPERTY INC. c/o Clifton Blake Asset Management Ltd. 370 King Street West Box 35, Suite 805 Toronto, ON M5V 1J9
AND TO:	1308645 ONTARIO INC. 25 Tremont Drive St. Catharines ON L2T 3A7 Attention: Aziz Sheik Aziz Sheik Email: aziz@pendale.ca
AND TO:	15320 BAYVIEW HOLDINGS LIMITED at Trinity Development Group Inc. 359 Kent Street Suite 400 Ottawa, ON K2P 0R6 Attention: President
AND TO:	15320 BAYVIEW HOLDINGS LIMITED at Park Lane Developments

	180 Steels Avenue West Suite 206 Thornhill, ON L4J 2L1 Attention: Mr. Herb Frieberg
AND TO:	1885181 ONTARIO LIMITED PO Box 31087 DTPC, 8889 Yonge St., Richmond Hill, On L4C 0V3
AND TO:	222 & 223 BASELINE ROAD INC. c/o Fiera Real Estate Limited 1 Adelaide Street East Toronto, ON M5C2V9 Attn: Asset Manager Email: info@fierarealestate.com
AND TO:	2241039 ONTARIO INC. c/o Longo Brother's Fruit Markets Inc. 8800 Huntington Road Vaughn, ON L4H 3M6 Attention: Anthony Longo
AND TO:	30 EGLINTON AVENUE WEST LTD. c/o Crown Property Management Inc. 400 University Avenue Suite 1900 Toronto, ON M5G 1S5 Attention: Leasing Department
AND TO:	3088409 NOVA SCOTIA LIMITED by its authorized agents, Creit Management Limited General Partner of Creit Management L.P. 1801 Hollis Street, Suite 1100 Halifax, NS B3J 3N4
AND TO:	ABERDEEN WHITE ROSE HOLDINGS LIMITED 6-2400 Dundas St. W. Mississauga, ON L5K 2R8
AND TO:	ANTHEM CENTRE VILLAGE MALL LTD. Suite 300, Burrard Street Vancouver, BC V6C 2B5 Attention: Asset Manager Email: info@anthemproperties.com
AND TO:	BCIMC REALTY CORPORATION c/o Bentall Kennedy (Canada) LP North Hill Shopping Centre – Administration Office Suite 1665, 1632 – 14th Avenue N.W. Calgary, AB T2N 1M7
AND TO:	BCIMC REALTY CORPORATION c/o Bentall Kennedy (Canada) Limited Partnership Suite 1800 – 1055 Dunsmuir Street Four Bentall Centre P.O. Box 49001

	Vancouver, BC V7X 1B1 Attention: Vice President Operations
AND TO:	BCIMC REALTY CORPORATION (BAYVIEW) Bayview Village Management Office Unit C-105, 2901 Bayview Avenue Toronto, ON M2K 1E6
AND TO:	BK PRIME ALBERTA I LP c/o BentallGreenOak (Canada) Limited Partnership Suite 1750 – 10303 Jasper Avenue Edmonton, AB T5J 3N6
AND TO:	BRANT-PLAINS HOLDINGS INC. 4950 Yonge Street Suite 1010 Toronto, ON M2N 6K1
AND TO:	CALLOWAY REAL ESTATE INVESTMENT TRUST INC. 700 Applewood Crescent Suite 200 Vaughan, ON L4K 5X3
AND TO:	CALLOWAY REAL ESTATE INVESTMENT TRUST INC. 3200 Highway 7 Vaughan, ON L4K 5Z5
AND TO:	CALLOWAY REIT (REGINA E2) INC. 3200 Highway 7 Vaughan, ON L4K 5Z5
AND TO:	CALLOWAY REIT (SAINT JOHN) INC. 3200 Highway 7 Vaughan, ON L4K 5Z5
AND TO:	CALLOWAY REIT (SASKATOON) INC. 3200 Highway 7 Vaughan, ON L4K 5Z5
AND TO:	CALLOWAY REIT (WINNIPEG SW) INC. 3200 Highway 7 Vaughan, ON L4K 5Z5
AND TO:	Canuck Properties Ltd. and Fineway Properties Limited 95 St. Clair Avenue West Suite 1403 Toronto, ON M4V 1N6
AND TO:	CAPITAL CITY SHOPPING CENTRE LIMITED c/o Cushman & Wakefield Asset Services ULC 161 Bay Street, Suite 1500 Toronto, ON M5J 2S1 Email: legalnotices@cushwake.com
AND TO:	CAPITAL CITY SHOPPING CENTRE LIMITED c/o Cushman & Wakefield Asset Services ULC 1610 – 37 Street S.W. Suite 201 Calgary, AB T3C 3P1 Email: legalnotices@cushwake.com
AND TO:	CAPITAL CITY SHOPPING CENTRE LIMITED

	c/o Cushman & Wakefield Asset Services ULC 161 Bay Street, Suite 1500 Toronto, ON M5J 2S1 Email: legalnotices@cushwake.com
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AND TO:	CHOICE PROPERTIES LIMITED PARTNERSHIP 22 St. Clair Avenue East Suite 1990 Toronto, ON M4T 2S7 Attention: VP Real Estate & General Counsel
AND TO:	CLEARBROOK TOWN CENTRE LTD. c/o RioCan Real Estate Investment Trust 2300 Young Street, Suite 500 P.O. Box 2386 Toronto, ON M4P 1E4 Attention: Assistant Vice President, Lease Administration
AND TO:	COLONNADE BRIDGEPORT ITF 1195493 ONTARIO LTD. 16 Concourse Gate Suite 200 Ottawa, ON K2E 7S8
AND TO:	DARTMOUTH CROSSING LIMITED c/o Centrecorp Management Services Limited 2851 John Street, Suite One Markham, ON L3R 5R7 Attention: executive Vice President
AND TO:	DURHAM HOLDINGS INC. c/o RioCan Real Estate Investment Trust 2300 Young Street, Suite 500 P.O. Box 2386 Toronto, ON M4P 1E4 Attention: Senior Vice President, General Counsel and Corporate Secretary
AND TO:	EDCON PROPERTIES LTD. 54-209 Wicksteed Avenue East York, ON M4G 2C1
AND TO:	GLENDALE PROPERTIES INC. as agent for Fiona Strachan 112 Sheppard Avenue West Toronto, ON M2N 1M5
AND TO:	IVANHOE CAMBRIDGE INC. 95 Wellington Street West Suite 300 Toronto, ON M5J 2R2

	Attention: Legal Affairs Department
AND TO:	JELI HOLDINGS INC. 2100 Bloor St. W., #6130 Toronto ON M6S 5A5
AND TO:	JUDELL LTD. 141 Adelaide Street W Suite 1500 Toronto, ON M5H 3L5
AND TO:	KANATA ENTERTAINMENT HOLDINGS INC. c/o PenEquity Realty Corporation 33 Yonge Street, Suite 901 Toronto, ON M5E 1G4
AND TO:	KILDONAN PLACE LTD. 1 Adelaide Street East Suite 900, P.O. Box 194 Toronto, ON M5C 2V9 Attention: Vice President, Legal Retail
AND TO:	L&G ENTERPRISES (WATERLOO) CORP. 4119 Sherbrooke St W Westmount, QC H3Z 1A7
AND TO:	MAPLETON HOLDINGS INC. P.O. Box 928 Moncton, NB E1C 8N8
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AND TO:	MISSION HILL LP c/o BentallGreenOak (Canada) Limited Partnership Suite 1750 – 10303 Jasper Avenue Edmonton, AB T5J 3N6
AND TO:	NSAHOPP MAYFLOWER INC. & HOOPP REALTY INC. C/o McCOR Management (East) 21 St. Clair Ave East Suite 500 Toronto, ON M4T 1L9
AND TO:	NUMOUNT ANCASTER INC. 40 Pleasant Boulevard Suite 800 Toronto, ON M4T 1J9
AND TO:	OPB REALTY INC. c/o Cushman & Wakefield Asset Services ULC 161 Bay Street, Suite 1500 P.O. Box 602 Toronto, ON M5J 2S1 Email: legalnotices@cushwake.com
AND TO:	OPB REALTY INC. c/o Cushman & Wakefield Asset Services ULC 1 Prologis Boulevard 3rd Floor Mississauga, ON L5W 0B3

	Email: legalnotices@cushwake.com
AND TO:	OXFORD PROPERTIES GROUP Royal Bank Plaza North tower 200 Bay Street Suite 900 Toronto, ON M5J 2J2 Attention: Real Estate Management Legal Services Department
AND TO:	PLACE D'ORLEANS 110 Place d'Orleans Drive Orleans, ON K1C 2L9 Attention: General Manager
AND TO:	PLACE D'ORLEANS HOLDINGS INC. c/o Primaris Management Inc. 26 Wellington St E Suite 400 Toronto, ON M5E 1S2 Attention: Vice President Legal
AND TO:	PLAZACORP PROPERTY HOLDINGS INC. 98 Main Street Fredericton, NB E3A 9N6
AND TO:	PRESTON CROSSING PROPERTIES INC. c/o Harvard Property Management Inc. Suite 2000, 1874 Scarth Street Regina, SK S4P 4B3
AND TO:	PROJECT KILDONAN PLACE SHOPPING CENTRE 1555 Regent Avenue West Winnipeg, MB R2C 4J2 Attention: General Manager
AND TO:	REALTRIUM HOLDINGS 2 INC. 8545 McCowan Rd Markham, ON L3P 1W9
AND TO:	RIOCAN HOLDINGS (HAMILTON) INC. c/o RioCan Real Estate Investment Trust 2300 Young Street, Suite 500 P.O. Box 2386 Toronto, ON M4P 1E4 Attention: Assistant Vice President, Lease Administration
AND TO:	RIOCAN HOLDINGS INC. c/o RioCan Real Estate Investment Trust 2300 Young Street, Suite 500 P.O. Box 2386 Toronto, ON M4P 1E4 Attention: Assistant Vice President, Lease Administration
AND TO:	RIOCAN PROPERTY SERVICES 700 Lawrence Avenue West, Suite 315 Toronto, ON M6A 3B4
AND TO:	RIOCAN PROPERTY SERVICES #257, 495 – 36 Street N.E.

	Calgary, Alberta T2A 6K3
AND TO:	RIOKIM HOLDINGS (ALBERTA) INC. c/o RioCan Real Estate Investment Trust 2300 Young Street, Suite 500 P.O. Box 2386 Toronto, ON M4P 1E4 Attention: Assistant Vice President, Lease Administration
AND TO:	RIOKIM HOLDINGS (LANGLEY GATE) INC c/o RioCan Real Estate Investment Trust 2300 Young Street, Suite 500 P.O. Box 2386 Toronto, ON M4P 1E4 Attention: Assistant Vice President, Lease Administration
AND TO:	RIOKIM HOLIDNGS (ONTARIO) INC. c/o RioCan Real Estate Investment Trust 2300 Young Street, Suite 500 P.O. Box 2386 Toronto, ON M4P 1E4 Attention: Senior Vice President, General Counsel and Corporate Secretary
AND TO:	RIOTRIN PROPERTIES (BARRHAVEN) INC. c/o RioCan Real Estate Investment Trust 2300 Young Street, Suite 500 P.O. Box 2386 Toronto, ON M4P 1E4 Attention: Assistant Vice President, Lease Administration
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AND TO:	RIOTRIN PROPERTIES (VAUGHAN 3) INC. c/o RioCan Real Estate Investment Trust 2300 Young Street, Suite 500 P.O. Box 2386 Toronto, ON M4P 1E4 Attention: Assistant Vice President, Lease Administration
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AND TO:	SAB REALTY LIMITED 279 Wharncliffe Road, N London, ON N6H 2C2
AND TO:	SASOR PROPERTIES LIMITED 240 Regent Street Sudbury, ON P3C 4C5
AND TO:	SALTHILL CAPITAL 300 – 130 Bloor Street West Toronto, ON M5S 1N5

	Peter Kafka Email: pkafka@strathallen.com
AND TO:	SEABROOKE HOLDINGS LIMITED 999 Lansdowne St. #5 Peterborough, ON K9J 8N2
AND TO:	SHOPPING CENTRE MANAGEMENT OFFICE Hillcrest Mall 9350 Yonge Street Richmond Hill, ON L4C 5G2 Attention: General Manager
AND TO:	SMARTREIT (OSHAWA NORTH) INC. 3200 Highway 7 Vaughan, ON L4K 5Z5 Email: legalnotices@smartcentres.com
AND TO:	SPI QUEEN HOLDINGS INC. 5734 Yonge Street 5th Floor Toronto, ON M2M 4E7
AND TO:	Splinter Family Trust Rentals Co. c/o Braebury Homes 400-366 King St. E Kingston, ON K7K 6Y3
AND TO:	STERLING KARAMAR PROPERTY MANAGEMENT 53 The Links Road Toronto, ON M2P 1T7
AND TO:	THE CANADA LIFE ASSURANCE COMPANY c/o GWL Realty Advisors Inc. One City Centre Drive, Suite 300 Mississauga, ON L5B 1M2
AND TO:	UPPER OAKVILLE SHOPPING CENTRE LIMITED 1011 Upper Middle Road E Oakville, ON L6H 4L2
AND TO:	WAM DEVELOPMENT GROUP #200, 12420 – 104th Avenue NW Edmonton, AB T5N 3Z9 Attention: Vice President, Retail Leasing
AND TO:	WESTHILLS EQUITIES INC. c/o Shape Properties Corp. 707-10th Avenue S.W. Suite 300 Calgary, Alberta T2R 0B3 Attention: Director of Leasing Email: mitchell.mowatt@shape.ca
AND TO:	WINDERMERE COMMERCIAL LANDS LTD.

	c/o Harvard Property Management Inc. Suite 005, 11523 100 Avenue Edmonton, AB T5K 0J8
AND TO:	YONGE & GREEN LANE SOUTH DEVELOPMENTS CORP. c/o Fieldgate Commercial Properties Limited 5400 Yonge St 5th Floor Toronto, ON M2N 5R5

Ministries/Regulatory Authorities:

AND TO:	ATTORNEY GENERAL OF CANADA DEPARTMENT OF JUSTICE Ontario Regional Office, Tax Law Section 120 Adelaide Street West, Suite 400 Toronto, Ontario M5H 1T1 Diane Winters General Counsel Tel: 416.973.3172 Email: diane.winters@justice.gc.ca Fax: 416.973.0810 Attorney General of Canada on behalf of His Majesty the King in Right of Canada as represented by the Minister of National Revenue
AND TO:	CANADA REVENUE AGENCY 1 Front Street West Toronto, Ontario M5J 2X6 Pat Confalone Tel: 416.954.6514 Email: pat.confalone@cra-arc.gc.ca Fax: 416.964.6411
AND TO:	DEPARTMENT OF JUSTICE (NOVA SCOTIA) Legal Services Division 1690 Hollis Street P.O. Box 7 Halifax, Nova Scotia B3J 2L6 Andrew Hill Tel: 902.220.6623 Email: andrew.hill@novascotia.ca
AND TO:	HIS MAJESTY THE KING IN RIGHT OF ONTARIO REPRESENTED BY THE MINISTER OF FINANCE – INSOLVENCY UNIT Ontario Ministry of Finance – Legal Services Branch 11-777 Bay Street Toronto, Ontario M5G 2C8 Leslie Crawford Email: leslie.crawford@ontario.ca Copy to: Email: insolvency.unit@ontario.ca

	Fax: 416.325.1460
TO:	HIS MAJESTY THE KING IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA REPRESENTED BY THE MINISTRY OF ATTORNEY GENERAL Legal Services Branch 1001 Douglas Street, 2nd Floor Victoria, British Columbia V8W 2C5 Email: AGLSBRevTaxInsolvency@gov.bc.ca Fax: 250.387.0700
AND TO:	MINISTRY OF JUSTICE AND SOLICITOR GENERAL (ALBERTA) Legal Services 2nd Floor, Peace Hills Trust Tower 10011 – 109 Street Edmonton, Alberta T5J 3S8 General Enquiries: Tel: 780.427.2711 Email: ministryofjustice@gov.ab.ca Fax: 780.427.2789
AND TO:	MINISTRY OF THE ATTORNEY GENERAL (MANITOBA) 104 Legislative Building 450 Broadway Winnipeg, Manitoba R3C 0V8 Matt Wiebe, Minister of Justice Tel: 204.945.3728 Email: minjus@leg.gov.mb.ca Fax: 204.945.2517
AND TO:	MINISTRY OF THE ATTORNEY GENERAL (NEW BRUNSWICK) Chancery Place, 2nd Floor, Room: 2001 P. O. Box 6000 Fredericton, New Brunswick E3B 1E0 General Enquiries: Tel: 506.462.5100 Email: justice.comments@gnb.ca Fax: 506.453.3651
AND TO:	MINISTRY OF THE ATTORNEY GENERAL (SASKATCHEWAN) 300-1874 Scarth St. Regina, Saskatchewan S4P 4B3 Bronwyn Eyre, Minister of Justice and Attorney General Email: jus.minister@gov.sk.ca
AND TO:	OFFICE OF THE ATTORNEY GENERAL DEPARTMENT OF JUSTICE AND PUBLIC SAFETY 4th Floor, East Block Confederation Building P.O. Box 8700 St. John's, NL A1B 4J6

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ONTARIO
SUPERIOR COURT OF JUSTICE
Commercial List

IN THE MATTER OF THE COMPANIES' CREDITORS
ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF MASTERMIND GP INC.

Applicants

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(AS AT NOVEMBER 27, 2023)

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AND TO:	ABERDEEN WHITE ROSE HOLDINGS LIMITED 6-2400 Dundas St. W. Mississauga, ON L5K 2R8
AND TO:	ANTHEM CENTRE VILLAGE MALL LTD. Suite 300, Burrard Street Vancouver, BC V6C 2B5 Attention: Asset Manager Email: info@anthemproperties.com
AND TO:	BCIMC REALTY CORPORATION c/o Bentall Kennedy (Canada) LP North Hill Shopping Centre – Administration Office Suite 1665, 1632 – 14th Avenue N.W. Calgary, AB T2N 1M7
AND TO:	BCIMC REALTY CORPORATION c/o Bentall Kennedy (Canada) Limited Partnership Suite 1800 – 1055 Dunsmuir Street Four Bentall Centre P.O. Box 49001

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AND TO:	CALLOWAY REAL ESTATE INVESTMENT TRUST INC. 3200 Highway 7 Vaughan, ON L4K 5Z5
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AND TO:	CALLOWAY REIT (SAINT JOHN) INC. 3200 Highway 7 Vaughan, ON L4K 5Z5
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AND TO:	CHOICE PROPERTIES LIMITED PARTNERSHIP 22 St. Clair Avenue East Suite 1990 Toronto, ON M4T 2S7 Attention: VP Real Estate & General Counsel
AND TO:	CLEARBROOK TOWN CENTRE LTD. c/o RioCan Real Estate Investment Trust 2300 Young Street, Suite 500 P.O. Box 2386 Toronto, ON M4P 1E4 Attention: Assistant Vice President, Lease Administration
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AND TO:	DARTMOUTH CROSSING LIMITED c/o Centrecorp Management Services Limited 2851 John Street, Suite One Markham, ON L3R 5R7 Attention: executive Vice President
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AND TO:	EDCON PROPERTIES LTD. 54-209 Wicksteed Avenue East York, ON M4G 2C1
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AND TO:	IVANHOE CAMBRIDGE INC. 95 Wellington Street West Suite 300 Toronto, ON M5J 2R2

	Attention: Legal Affairs Department
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AND TO:	KANATA ENTERTAINMENT HOLDINGS INC. c/o PenEquity Realty Corporation 10 Dundas Street East, Suite 1002, Toronto, Ontario M5B 2G9
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AND TO:	L&G ENTERPRISES (WATERLOO) CORP. 4119 Sherbrooke St W Westmount, QC H3Z 1A7
AND TO:	MAPLETON HOLDINGS INC. P.O. Box 928 Moncton, NB E1C 8N8
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AND TO:	OPB REALTY INC.

	c/o Cushman & Wakefield Asset Services ULC 1 Prologis Boulevard 3rd Floor Mississauga, ON L5W 0B3 Email: legalnotices@cushwake.com
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AND TO:	PLACE D'ORLEANS 110 Place d'Orleans Drive Orleans, ON K1C 2L9 Attention: General Manager
AND TO:	PLACE D'ORLEANS HOLDINGS INC. c/o Primaris Management Inc. 26 Wellington St E Suite 400 Toronto, ON M5E 1S2 Attention: Vice President Legal
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AND TO:	SASOR PROPERTIES LIMITED 240 Regent Street Sudbury, ON P3C 4C5

AND TO:	SALTHILL CAPITAL 300 – 130 Bloor Street West Toronto, ON M5S 1N5 Kristen Escobar Email: kescobar@salthillcapital.com Terra Attard Email: tattard@salthillcapital.com
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AND TO:	UPPER OAKVILLE SHOPPING CENTRE LIMITED 1011 Upper Middle Road E Oakville, ON L6H 4L2
AND TO:	WAM DEVELOPMENT GROUP #200, 12420 – 104th Avenue NW Edmonton, AB T5N 3Z9 Attention: Vice President, Retail Leasing
AND TO:	WESTHILLS EQUITIES INC. c/o Shape Properties Corp. 707-10th Avenue S.W. Suite 300

	<p>Calgary, Alberta T2R 0B3 Attention: Director of Leasing</p> <p>Lauren Elliott Email: lauren.elliott@shape.ca</p>
AND TO:	<p>WINDERMERE COMMERCIAL LANDS LTD. c/o Harvard Property Management Inc. Suite 005, 11523 100 Avenue Edmonton, AB T5K 0J8</p>
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AND TO:	<p>CANADA REVENUE AGENCY 1 Front Street West Toronto, Ontario M5J 2X6</p> <p>Pat Confalone Tel: 416.954.6514 Email: pat.confalone@cra-arc.gc.ca Fax: 416.964.6411</p>
AND TO:	<p>DEPARTMENT OF JUSTICE (NOVA SCOTIA) Legal Services Division 1690 Hollis Street P.O. Box 7 Halifax, Nova Scotia B3J 2L6</p> <p>Andrew Hill Tel: 902.220.6623 Email: andrew.hill@novascotia.ca</p>
AND TO:	<p>HIS MAJESTY THE KING IN RIGHT OF ONTARIO REPRESENTED BY THE MINISTER OF FINANCE – INSOLVENCY UNIT Ontario Ministry of Finance – Legal Services Branch 11-777 Bay Street Toronto, Ontario M5G 2C8</p> <p>Email: insolvency.unit@ontario.ca Fax: 416.325.1460</p>

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AND TO:	MINISTRY OF THE ATTORNEY GENERAL (MANITOBA) 104 Legislative Building 450 Broadway Winnipeg, Manitoba R3C 0V8 Matt Wiebe, Minister of Justice Tel: 204.945.3728 Email: minjus@leg.gov.mb.ca Fax: 204.945.2517
AND TO:	MINISTRY OF THE ATTORNEY GENERAL (NEW BRUNSWICK) Chancery Place, 2nd Floor, Room: 2001 P. O. Box 6000 Fredericton, New Brunswick E3B 1E0 General Enquiries: Tel: 506.462.5100 Email: justice.comments@gnb.ca Fax: 506.453.3651
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ONTARIO
SUPERIOR COURT OF JUSTICE
Commercial List

IN THE MATTER OF THE COMPANIES' CREDITORS
ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF MASTERMIND GP INC.

Applicants

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(AS AT NOVEMBER 28, 2023)

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AND TO:	1308645 ONTARIO INC. 25 Tremont Drive St. Catharines ON L2T 3A7 Attention: Aziz Sheik Aziz Sheik Email: aziz@pendale.ca
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AND TO:	15320 BAYVIEW HOLDINGS LIMITED at Park Lane Developments 180 Steels Avenue West

	Suite 206 Thornhill, ON L4J 2L1 Attention: Mr. Herb Frieberg
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AND TO:	QRPG LP ITF Westshore Town Centre QuadReal Property Group Westshore Town Ctr Admin 2945 Jacklin Road Victoria, BC V9B 5E3
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AND TO:	CALLOWAY REIT (WINNIPEG SW) INC. 3200 Highway 7 Vaughan, ON L4K 5Z5
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	Attention: VP Real Estate & operations, Western Canada
AND TO:	CHOICE PROPERTIES LIMITED PARTNERSHIP 22 St. Clair Avenue East Suite 1990 Toronto, ON M4T 2S7 Attention: VP Real Estate & General Counsel
AND TO:	Choice REIT 700-22 St Clair Avenue East Toronto, ON M4T 2S5 Attention: 3088409 Nova Scotia Limited Melinda Constant melinda.constant@choicereit.ca
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AND TO:	Skyline Commercial Management Inc. 5 Douglas Street, Suite 301 Guelph, ON N1H 2S8 Attention: Skyline Retail Real Estate Holdings Inc. Aleks Baranov Tel: 416.444.5229 x 338 Email: abaranov@SkylineGRP.ca Julie Blamauer Tel: 416.444.5229 x 381 Email: jblamauer@SkylineGRP.ca
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AND TO:	NUMOUNT ANCASTER INC. 40 Pleasant Boulevard Suite 800 Toronto, ON M4T 1J9
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AND TO:	RIOCAN HOLDINGS (HAMILTON) INC. c/o RioCan Real Estate Investment Trust 2300 Young Street, Suite 500

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AND TO:	RIOKIM HOLIDNGS (ONTARIO) INC. c/o RioCan Real Estate Investment Trust 2300 Young Street, Suite 500 P.O. Box 2386 Toronto, ON M4P 1E4 Attention: Senior Vice President, General Counsel and Corporate Secretary
AND TO:	RIOTRIN PROPERTIES (BARRHAVEN) INC. c/o RioCan Real Estate Investment Trust 2300 Young Street, Suite 500 P.O. Box 2386 Toronto, ON M4P 1E4 Attention: Assistant Vice President, Lease Administration
AND TO:	RIOTRIN PROPERTIES (FREDERICTON) INC. c/o RioCan Real Estate Investment Trust 2300 Young Street, Suite 500 P.O. Box 2386 Toronto, ON M4P 1E4 Attention: Assistant Vice President, Lease Administration
AND TO:	RIOTRIN PROPERTIES (VAUGHAN 3) INC. c/o RioCan Real Estate Investment Trust 2300 Young Street, Suite 500 P.O. Box 2386 Toronto, ON M4P 1E4

	Attention: Assistant Vice President, Lease Administration
AND TO:	ROUNDHOUSE CENTRE WINDSOR INC. c/o Terracap Management Inc. 100 Sheppard Avenue East, Suite 502 Toronto, ON M2N 2N5
AND TO:	SASOR PROPERTIES LIMITED 240 Regent Street Sudbury, ON P3C 4C5
AND TO:	SEABROOKE HOLDINGS LIMITED 5-999 Lansdowne St. Peterborough, ON K9J 8N2
AND TO:	SHOPPING CENTRE MANAGEMENT OFFICE Hillcrest Mall 9350 Yonge Street Richmond Hill, ON L4C 5G2 Attention: General Manager
AND TO:	SMARTREIT (OSHAWA NORTH) INC. 3200 Highway 7 Vaughan, ON L4K 5Z5 Email: legalnotices@smartcentres.com
AND TO:	SPI QUEEN HOLDINGS INC. c/o Silvercore Properties Inc 5734 Yonge Street 5th Floor Toronto, ON M2M 4E7
AND TO:	Splinter Family Trust Rentals Co. c/o Braebury Homes 400-366 King St. E Kingston, ON K7K 6Y3
AND TO:	STERLING KARAMAR PROPERTY MANAGEMENT 53 The Links Road Toronto, ON M2P 1T7
AND TO:	THE CANADA LIFE ASSURANCE COMPANY c/o GWL Realty Advisors Inc. One City Centre Drive, Suite 300 Mississauga, ON L5B 1M2
AND TO:	UPPER OAKVILLE SHOPPING CENTRE LIMITED 1011 Upper Middle Road E Oakville, ON L6H 4L2
AND TO:	1651051 Alberta Ltd ONE Properties Suite 2500, 10111 - 104 Avenue NW Edmonton, AB T5J 0J4
AND TO:	WESTHILLS EQUITIES INC. c/o Shape Properties Corp. 707-10th Avenue S.W. Suite 300 Calgary, Alberta T2R 0B3 Attention: Director of Leasing

	Lauren Elliott Email: lauren.elliott@shape.ca
AND TO:	Windermere Commercial Lands Ltd Harvard Developments Inc, 202-200 Barclay Parade S.W Calgary, AB T2P 4R5
AND TO:	Harvard Property Management Inc. 400-10109 106th Street Edmonton, AB T5J 3L7 Attention: Windermere Commercial Lands Ltd.
AND TO:	YONGE & GREEN LANE SOUTH DEVELOPMENTS CORP. c/o Fieldgate Commercial Properties Limited 5400 Yonge St 5th Floor Toronto, ON M2N 5R5

Ministries/Regulatory Authorities:

AND TO:	ATTORNEY GENERAL OF CANADA DEPARTMENT OF JUSTICE Ontario Regional Office, Tax Law Section 120 Adelaide Street West, Suite 400 Toronto, Ontario M5H 1T1 Email: AGC-PGC.Toronto-Tax-Fiscal@justice.gc.ca Attorney General of Canada on behalf of His Majesty the King in Right of Canada as represented by the Minister of National Revenue
AND TO:	CANADA REVENUE AGENCY 1 Front Street West Toronto, Ontario M5J 2X6 Pat Confalone Tel: 416.954.6514 Email: pat.confalone@cra-arc.gc.ca Fax: 416.964.6411
AND TO:	DEPARTMENT OF JUSTICE (NOVA SCOTIA) Legal Services Division 1690 Hollis Street P.O. Box 7 Halifax, Nova Scotia B3J 2L6 Andrew Hill Tel: 902.220.6623 Email: andrew.hill@novascotia.ca
AND TO:	HIS MAJESTY THE KING IN RIGHT OF ONTARIO REPRESENTED BY THE MINISTER OF FINANCE – INSOLVENCY UNIT Ontario Ministry of Finance – Legal Services Branch 11-777 Bay Street Toronto, Ontario M5G 2C8 Email: insolvency.unit@ontario.ca

	Fax: 416.325.1460
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AND TO:	MINISTRY OF THE ATTORNEY GENERAL (MANITOBA) 104 Legislative Building 450 Broadway Winnipeg, Manitoba R3C 0V8 Matt Wiebe, Minister of Justice Tel: 204.945.3728 Email: minjus@leg.gov.mb.ca Fax: 204.945.2517
AND TO:	MINISTRY OF THE ATTORNEY GENERAL (NEW BRUNSWICK) Chancery Place, 2nd Floor, Room: 2001 P. O. Box 6000 Fredericton, New Brunswick E3B 1E0 General Enquiries: Tel: 506.462.5100 Email: justice.comments@gnb.ca Fax: 506.453.3651
AND TO:	MINISTRY OF THE ATTORNEY GENERAL (SASKATCHEWAN) 300-1874 Scarth St. Regina, Saskatchewan S4P 4B3 Bronwyn Eyre, Minister of Justice and Attorney General Email: jus.minister@gov.sk.ca
AND TO:	OFFICE OF THE ATTORNEY GENERAL DEPARTMENT OF JUSTICE AND PUBLIC SAFETY 4th Floor, East Block Confederation Building P.O. Box 8700 St. John's, NL A1B 4J6

	John Hogan Tel: (709) 729-2869 Email:justice@gov.nl.ca Fax: (709) 729-0469
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TAB I

This is **Exhibit "I"** referred to in the
Affidavit #2 of LUCIO MILANOVICH,
sworn before me, this 29th day of
November, 2023.



Commissioner for taking affidavits
Kristine Spence (LSO #66099S)

November 27, 2023

TO DISTRIBUTION LIST AND SERVICE LIST

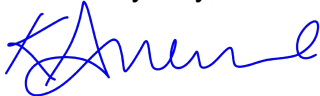
To Whom It May Concern:

Mastermind GP Inc. and Mastermind LP | RE: proceedings under the *Companies' Creditors Arrangement Act*, R.S.C., 1985 c. C-36 ("CCAA"), Court File No. CV-23-00710259-00CL

I write further to my letter dated November 24, 2023.

At the comeback hearing in the above-noted matter, scheduled for November 30, 2023 at 10:00 a.m., Mastermind GP Inc. will seek approval of a Liquidation Sale Approval Order. Please find enclosed a draft form of order for your review.

Yours very truly,



Kristine Spence

Enclosures

cc Natasha MacParland and Natalie Renner, *Davies Ward Phillips & Vineberg LLP*
Linda Galessiere, *Camelino Galessiere LLP*
Carol Liu, Timothy Dunn, Vita Hurley, *Minden Gross LLP*

ONTARIO
SUPERIOR COURT OF JUSTICE
Commercial List

IN THE MATTER OF THE COMPANIES' CREDITORS
ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF MASTERMIND GP INC.

Applicant

SERVICE LIST
(AS AT NOVEMBER 27, 2023)

TO:	DAVIES WARD PHILLIPS & VINEBERG LLP 155 Wellington St W, Toronto, ON M5V 3J7 Natasha MacParland (LSO #42383G) Email: NMacParland@dwpv.com Tel: 416.367.7489 Natalie Renner (LSO #55954A) Email: NRenner@dwpv.com Tel: 416.863.5567 Kristine Spence (LSO #66099S) Email: KSpence@dwpv.com Tel: 416.863.0900 Counsel for the Applicant, Mastermind GP Inc.
------------	--

AND TO:	<p>ALVAREZ & MARSAL CANADA INC. Royal Bank Plaza, South Tower, 200 Bay Street, Suite 2900, P.O. Box 22, Toronto, ON, M5J 2J1</p> <p>Joshua Nevsky Tel: 416.847.5161 Email: jnevsky@alvarezandmarsal.com</p> <p>Ryan Gruneir Tel: 416.847.5151 Email: rgruneir@alvarezandmarsal.com</p> <p>Mitchell Binder Tel: 416.847.5202 Email: mbinder@alvarezandmarsal.com</p> <p>The Monitor</p>
AND TO:	<p>BENNETT JONES LLP 100 King St W, Suite 3400, Toronto, ON, M5X 1A4</p> <p>Sean Zweig Tel: 416.777.6254 Email: zweigs@bennettjones.com</p> <p>Joshua Foster Tel: 416.777.7906 Email: fosterj@bennettjones.com</p> <p>Milan Singh-Cheema Tel: 416.777.5527 Email: singhcheema@bennettjones.com</p> <p>Counsel to the Monitor</p>
AND TO:	<p>NORTON ROSE FULBRIGHT LLP TD Centre 222 Bay St., Suite 3000, Toronto, ON, M5K 1E7</p> <p>Evan Cobb Tel: 416.216.1929 Email: evan.cobb@nortonrosefulbright.com</p> <p>Counsel to the Canadian Imperial Bank of Commerce</p>

AND TO	OSLER, HOSKIN & HARCOURT LLP 100 King Street West 1 First Canadian Place Suite 6200, P.O. Box 50 Toronto ON M5X 1B8 Tracy Sandler Tel: 416.862.5890 Email: tsandler@osler.com Hannah Davis Tel: 416.862.4605 Email: hdavis@osler.com Counsel to Gordon Brothers Canada ULC
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ONTARIO
SUPERIOR COURT OF JUSTICE
Commercial List

IN THE MATTER OF THE COMPANIES' CREDITORS
ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF MASTERMIND GP INC.

Applicants

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(AS AT NOVEMBER 27, 2023)

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AND TO:	1308645 ONTARIO INC. 25 Tremont Drive St. Catharines ON L2T 3A7 Attention: Aziz Sheik Aziz Sheik Email: aziz@pendale.ca
AND TO:	15320 BAYVIEW HOLDINGS LIMITED at Trinity Development Group Inc. 359 Kent Street Suite 400 Ottawa, ON K2P 0R6 Attention: President
AND TO:	15320 BAYVIEW HOLDINGS LIMITED at Park Lane Developments

	180 Steels Avenue West Suite 206 Thornhill, ON L4J 2L1 Attention: Mr. Herb Frieberg
AND TO:	1885181 ONTARIO LIMITED PO Box 31087 DTPC, 8889 Yonge St., Richmond Hill, On L4C 0V3
AND TO:	222 & 223 BASELINE ROAD INC. c/o Fiera Real Estate Limited 1 Adelaide Street East Toronto, ON M5C2V9 Attn: Asset Manager Email: info@fierarealestate.com
AND TO:	2241039 ONTARIO INC. c/o Longo Brother's Fruit Markets Inc. 8800 Huntington Road Vaughn, ON L4H 3M6 Attention: Anthony Longo
AND TO:	30 EGLINTON AVENUE WEST LTD. c/o Crown Property Management Inc. 400 University Avenue Suite 1900 Toronto, ON M5G 1S5 Attention: Leasing Department
AND TO:	3088409 NOVA SCOTIA LIMITED by its authorized agents, Creit Management Limited General Partner of Creit Management L.P. 1801 Hollis Street, Suite 1100 Halifax, NS B3J 3N4
AND TO:	ABERDEEN WHITE ROSE HOLDINGS LIMITED 6-2400 Dundas St. W. Mississauga, ON L5K 2R8
AND TO:	ANTHEM CENTRE VILLAGE MALL LTD. Suite 300, Burrard Street Vancouver, BC V6C 2B5 Attention: Asset Manager Email: info@anthemproperties.com
AND TO:	BCIMC REALTY CORPORATION c/o Bentall Kennedy (Canada) LP North Hill Shopping Centre – Administration Office Suite 1665, 1632 – 14th Avenue N.W. Calgary, AB T2N 1M7
AND TO:	BCIMC REALTY CORPORATION c/o Bentall Kennedy (Canada) Limited Partnership Suite 1800 – 1055 Dunsmuir Street Four Bentall Centre P.O. Box 49001

	Vancouver, BC V7X 1B1 Attention: Vice President Operations
AND TO:	BCIMC REALTY CORPORATION (BAYVIEW) Bayview Village Management Office Unit C-105, 2901 Bayview Avenue Toronto, ON M2K 1E6
AND TO:	BK PRIME ALBERTA I LP c/o BentallGreenOak (Canada) Limited Partnership Suite 1750 – 10303 Jasper Avenue Edmonton, AB T5J 3N6
AND TO:	BRANT-PLAINS HOLDINGS INC. 4950 Yonge Street Suite 1010 Toronto, ON M2N 6K1
AND TO:	CALLOWAY REAL ESTATE INVESTMENT TRUST INC. 700 Applewood Crescent Suite 200 Vaughan, ON L4K 5X3
AND TO:	CALLOWAY REAL ESTATE INVESTMENT TRUST INC. 3200 Highway 7 Vaughan, ON L4K 5Z5
AND TO:	CALLOWAY REIT (REGINA E2) INC. 3200 Highway 7 Vaughan, ON L4K 5Z5
AND TO:	CALLOWAY REIT (SAINT JOHN) INC. 3200 Highway 7 Vaughan, ON L4K 5Z5
AND TO:	CALLOWAY REIT (SASKATOON) INC. 3200 Highway 7 Vaughan, ON L4K 5Z5
AND TO:	CALLOWAY REIT (WINNIPEG SW) INC. 3200 Highway 7 Vaughan, ON L4K 5Z5
AND TO:	Canuck Properties Ltd. and Fineway Properties Limited 95 St. Clair Avenue West Suite 1403 Toronto, ON M4V 1N6
AND TO:	CAPITAL CITY SHOPPING CENTRE LIMITED c/o Cushman & Wakefield Asset Services ULC 161 Bay Street, Suite 1500 Toronto, ON M5J 2S1 Email: legalnotices@cushwake.com
AND TO:	CAPITAL CITY SHOPPING CENTRE LIMITED c/o Cushman & Wakefield Asset Services ULC 1610 – 37 Street S.W. Suite 201 Calgary, AB T3C 3P1 Email: legalnotices@cushwake.com
AND TO:	CAPITAL CITY SHOPPING CENTRE LIMITED

	c/o Cushman & Wakefield Asset Services ULC 161 Bay Street, Suite 1500 Toronto, ON M5J 2S1 Email: legalnotices@cushwake.com
AND TO:	CAPITOL MANAGEMENT CORP. 340 Sheppard Avenue E Suite 100 Toronto, ON M2N 3B4
AND TO:	CHOICE PROPERTIES LIMITED PARTNERSHIP 3225 12th Street, NE Calgary, AB T2E 7S9 Attention: VP Real Estate & operations, Western Canada
AND TO:	CHOICE PROPERTIES LIMITED PARTNERSHIP 22 St. Clair Avenue East Suite 1990 Toronto, ON M4T 2S7 Attention: VP Real Estate & General Counsel
AND TO:	CLEARBROOK TOWN CENTRE LTD. c/o RioCan Real Estate Investment Trust 2300 Young Street, Suite 500 P.O. Box 2386 Toronto, ON M4P 1E4 Attention: Assistant Vice President, Lease Administration
AND TO:	COLONNADE BRIDGEPORT ITF 1195493 ONTARIO LTD. 16 Concourse Gate Suite 200 Ottawa, ON K2E 7S8
AND TO:	DARTMOUTH CROSSING LIMITED c/o Centrecorp Management Services Limited 2851 John Street, Suite One Markham, ON L3R 5R7 Attention: executive Vice President
AND TO:	DURHAM HOLDINGS INC. c/o RioCan Real Estate Investment Trust 2300 Young Street, Suite 500 P.O. Box 2386 Toronto, ON M4P 1E4 Attention: Senior Vice President, General Counsel and Corporate Secretary
AND TO:	EDCON PROPERTIES LTD. 54-209 Wicksteed Avenue East York, ON M4G 2C1
AND TO:	GLENDALE PROPERTIES INC. as agent for Fiona Strachan 112 Sheppard Avenue West Toronto, ON M2N 1M5
AND TO:	IVANHOE CAMBRIDGE INC. 95 Wellington Street West Suite 300 Toronto, ON M5J 2R2

	Attention: Legal Affairs Department
AND TO:	JELI HOLDINGS INC. 2100 Bloor St. W., #6130 Toronto ON M6S 5A5
AND TO:	JUDELL LTD. c/o Realspace Management Group Inc. 3790 Victoria Park Ave Suite 100 Toronto, ON M2H 3H7
AND TO:	KANATA ENTERTAINMENT HOLDINGS INC. c/o PenEquity Realty Corporation 10 Dundas Street East, Suite 1002, Toronto, Ontario M5B 2G9
AND TO:	KILDONAN PLACE LTD. Primaris Management Inc. Re: Kildonan Place 26 Wellington Street East Suite 400 ATTN: VP, Legal Toronto ON M5E 1S2
AND TO:	L&G ENTERPRISES (WATERLOO) CORP. 4119 Sherbrooke St W Westmount, QC H3Z 1A7
AND TO:	MAPLETON HOLDINGS INC. P.O. Box 928 Moncton, NB E1C 8N8
AND TO:	MEDICINE HAT HWY 1 PROPERTIES INC. Suite 1407 TD Tower 10088 – 102 Avenue, Edmonton AB T5J 2Z1
AND TO:	MISSION HILL LP c/o BentallGreenOak (Canada) Limited Partnership Suite 1750 – 10303 Jasper Avenue Edmonton, AB T5J 3N6
AND TO:	NSAHOPP MAYFLOWER INC. & HOOPP REALTY INC. C/o McCOR Management (East) 21 St. Clair Ave East Suite 500 Toronto, ON M4T 1L9
AND TO:	NUMOUNT ANCASTER INC. 40 Pleasant Boulevard Suite 800 Toronto, ON M4T 1J9
AND TO:	OPB REALTY INC. c/o Cushman & Wakefield Asset Services ULC 161 Bay Street, Suite 1500 P.O. Box 602 Toronto, ON M5J 2S1 Email: legalnotices@cushwake.com
AND TO:	OPB REALTY INC.

	c/o Cushman & Wakefield Asset Services ULC 1 Prologis Boulevard 3rd Floor Mississauga, ON L5W 0B3 Email: legalnotices@cushwake.com
AND TO:	MONTEZ HILLCREST INC. and HILLCREST HOLDINGS INC. c/o Oxford Properties Group Suite 900 100 Adelaide Street West Toronto, ON M5H 0E2 Attention: Real Estate Management Legal Services Department
AND TO:	PLACE D'ORLEANS 110 Place d'Orleans Drive Orleans, ON K1C 2L9 Attention: General Manager
AND TO:	PLACE D'ORLEANS HOLDINGS INC. c/o Primaris Management Inc. 26 Wellington St E Suite 400 Toronto, ON M5E 1S2 Attention: Vice President Legal
AND TO:	PLAZACORP PROPERTY HOLDINGS INC. 98 Main Street Fredericton, NB E3A 9N6
AND TO:	PRESTON CROSSING PROPERTIES INC. c/o Harvard Property Management Inc. Suite 2000, 1874 Scarth Street Regina, SK S4P 4B3
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AND TO:	RIOCAN HOLDINGS (HAMILTON) INC. c/o RioCan Real Estate Investment Trust 2300 Young Street, Suite 500 P.O. Box 2386 Toronto, ON M4P 1E4 Attention: Assistant Vice President, Lease Administration
AND TO:	RIOCAN HOLDINGS INC. c/o RioCan Real Estate Investment Trust 2300 Young Street, Suite 500 P.O. Box 2386 Toronto, ON M4P 1E4 Attention: Assistant Vice President, Lease Administration
AND TO:	RIOCAN PROPERTY SERVICES 700 Lawrence Avenue West, Suite 315

	Toronto, ON M6A 3B4
AND TO:	RIOCAN PROPERTY SERVICES #257, 495 – 36 Street N.E. Calgary, Alberta T2A 6K3
AND TO:	RIOKIM HOLDINGS (ALBERTA) INC. c/o RioCan Real Estate Investment Trust 2300 Young Street, Suite 500 P.O. Box 2386 Toronto, ON M4P 1E4 Attention: Assistant Vice President, Lease Administration
AND TO:	RIOKIM HOLDINGS (LANGLEY GATE) INC c/o RioCan Real Estate Investment Trust 2300 Young Street, Suite 500 P.O. Box 2386 Toronto, ON M4P 1E4 Attention: Assistant Vice President, Lease Administration
AND TO:	RIOKIM HOLDINGS (ONTARIO) INC. c/o RioCan Real Estate Investment Trust 2300 Young Street, Suite 500 P.O. Box 2386 Toronto, ON M4P 1E4 Attention: Senior Vice President, General Counsel and Corporate Secretary
AND TO:	RIOTRIN PROPERTIES (BARRHAVEN) INC. c/o RioCan Real Estate Investment Trust 2300 Young Street, Suite 500 P.O. Box 2386 Toronto, ON M4P 1E4 Attention: Assistant Vice President, Lease Administration
AND TO:	RIOTRIN PROPERTIES (FREDERICTON) INC. c/o RioCan Real Estate Investment Trust 2300 Young Street, Suite 500 P.O. Box 2386 Toronto, ON M4P 1E4 Attention: Assistant Vice President, Lease Administration
AND TO:	RIOTRIN PROPERTIES (VAUGHAN 3) INC. c/o RioCan Real Estate Investment Trust 2300 Young Street, Suite 500 P.O. Box 2386 Toronto, ON M4P 1E4 Attention: Assistant Vice President, Lease Administration
AND TO:	ROUNDHOUSE CENTRE WINDSOR INC. c/o Terracap Management Inc. 100 Sheppard Avenue East, Suite 502 Toronto, ON M2N 2N5
AND TO:	SAB REALTY LIMITED 279 Wharncliffe Road, N London, ON N6H 2C2
AND TO:	SASOR PROPERTIES LIMITED 240 Regent Street Sudbury, ON P3C 4C5

AND TO:	SALTHILL CAPITAL 300 – 130 Bloor Street West Toronto, ON M5S 1N5 Kristen Escobar Email: kescobar@salthillcapital.com Terra Attard Email: tattard@salthillcapital.com
AND TO:	SEABROOKE HOLDINGS LIMITED 999 Lansdowne St. #5 Peterborough, ON K9J 8N2
AND TO:	SHOPPING CENTRE MANAGEMENT OFFICE Hillcrest Mall 9350 Yonge Street Richmond Hill, ON L4C 5G2 Attention: General Manager
AND TO:	SMARTREIT (OSHAWA NORTH) INC. 3200 Highway 7 Vaughan, ON L4K 5Z5 Email: legalnotices@smartcentres.com
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AND TO:	STERLING KARAMAR PROPERTY MANAGEMENT 53 The Links Road Toronto, ON M2P 1T7
AND TO:	THE CANADA LIFE ASSURANCE COMPANY c/o GWL Realty Advisors Inc. One City Centre Drive, Suite 300 Mississauga, ON L5B 1M2
AND TO:	UPPER OAKVILLE SHOPPING CENTRE LIMITED 1011 Upper Middle Road E Oakville, ON L6H 4L2
AND TO:	WAM DEVELOPMENT GROUP #200, 12420 – 104th Avenue NW Edmonton, AB T5N 3Z9 Attention: Vice President, Retail Leasing
AND TO:	WESTHILLS EQUITIES INC. c/o Shape Properties Corp. 707-10th Avenue S.W. Suite 300

	<p>Calgary, Alberta T2R 0B3 Attention: Director of Leasing</p> <p>Lauren Elliott Email: lauren.elliott@shape.ca</p>
AND TO:	<p>WINDERMERE COMMERCIAL LANDS LTD. c/o Harvard Property Management Inc. Suite 005, 11523 100 Avenue Edmonton, AB T5K 0J8</p>
AND TO:	<p>YONGE & GREEN LANE SOUTH DEVELOPMENTS CORP. c/o Fieldgate Commercial Properties Limited 5400 Yonge St 5th Floor Toronto, ON M2N 5R5</p>

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AND TO:	<p>ATTORNEY GENERAL OF CANADA DEPARTMENT OF JUSTICE Ontario Regional Office, Tax Law Section 120 Adelaide Street West, Suite 400 Toronto, Ontario M5H 1T1</p> <p>Email: AGC-PGC.Toronto-Tax-Fiscal@justice.gc.ca</p> <p>Attorney General of Canada on behalf of His Majesty the King in Right of Canada as represented by the Minister of National Revenue</p>
AND TO:	<p>CANADA REVENUE AGENCY 1 Front Street West Toronto, Ontario M5J 2X6</p> <p>Pat Confalone Tel: 416.954.6514 Email: pat.confalone@cra-arc.gc.ca Fax: 416.964.6411</p>
AND TO:	<p>DEPARTMENT OF JUSTICE (NOVA SCOTIA) Legal Services Division 1690 Hollis Street P.O. Box 7 Halifax, Nova Scotia B3J 2L6</p> <p>Andrew Hill Tel: 902.220.6623 Email: andrew.hill@novascotia.ca</p>
AND TO:	<p>HIS MAJESTY THE KING IN RIGHT OF ONTARIO REPRESENTED BY THE MINISTER OF FINANCE – INSOLVENCY UNIT Ontario Ministry of Finance – Legal Services Branch 11-777 Bay Street Toronto, Ontario M5G 2C8</p> <p>Email: insolvency.unit@ontario.ca Fax: 416.325.1460</p>

TO:	HIS MAJESTY THE KING IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA REPRESENTED BY THE MINISTRY OF ATTORNEY GENERAL Legal Services Branch 1001 Douglas Street, 2nd Floor Victoria, British Columbia V8W 2C5 Email: AGLSBRevTaxInsolvency@gov.bc.ca Fax: 250.387.0700
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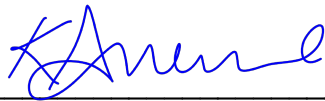
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tattard@salthillcapital.com; legalnotices@smartcentres.com; lauren.elliott@shape.ca; AGC-
PGC.Toronto-Tax-Fiscal@justice.gc.ca; pat.confalone@cra-arc.gc.ca;
andrew.hill@novascotia.ca; insolvency.unit@ontario.ca; AGLSBRevTaxInsolvency@gov.bc.ca;
ministryofjustice@gov.ab.ca; minjus@leg.gov.mb.ca; justice.comments@gnb.ca;
jus.minister@gov.sk.ca; justice@gov.nl.ca

TAB J

This is **Exhibit "J"** referred to in the
Affidavit #2 of LUCIO MILANOVICH,
sworn before me, this 29th day of
November, 2023.



Commissioner for taking affidavits
Kristine Spence (LSO #66099S)

Cash Flow Forecast for the 10-Week Period Ending January 28, 2024

Mastermind

10-Week Cash Flow Forecast ending January 28, 2024

Unaudited \$CAD 000's

Cash Flow Week: Week Ending:	Notes	Week 1 26-Nov-23	Week 2 03-Dec-23	Week 3 10-Dec-23	Week 4 17-Dec-23	Week 5 24-Dec-23	Week 6 31-Dec-23	Week 7 07-Jan-24	Week 8 14-Jan-24	Week 9 21-Jan-24	Week 10 28-Jan-24	10-Week Total
Receipts												
Sales	1	890	4,951	5,665	6,936	8,247	7,124	3,937	1,957	1,018	1,099	41,824
Sales tax collections		138	619	746	951	897	500	252	112	125	123	4,463
Total Receipts		1,028	5,571	6,411	7,887	9,144	7,624	4,189	2,069	1,142	1,222	46,287
Disbursements												
Merchandise vendors		-	-	-	-	-	-	-	-	-	-	-
Non-merchandise vendors	2	(461)	(1,452)	(1,182)	(627)	(250)	(250)	(100)	(100)	(100)	(100)	(4,622)
Rent	3	-	(683)	-	(683)	-	-	(683)	-	(558)	-	(2,607)
Payroll & benefits	4	-	(996)	-	(1,103)	-	(1,103)	-	(1,047)	-	(818)	(5,066)
Proposed KERP	5	-	-	-	-	-	-	-	(485)	-	-	(485)
Restructuring professional fees	6	-	-	(511)	-	(496)	-	-	(480)	-	(976)	(2,462)
Consultant fees	7	-	(700)	(99)	(363)	(139)	(415)	(142)	(329)	(39)	(292)	(2,519)
Sales tax remittances		(34)	(1,085)	-	(6)	-	-	(3,223)	-	-	(864)	(5,211)
Other expenditures		(20)	(266)	(20)	(20)	(20)	(20)	(646)	(20)	(20)	(81)	(1,133)
Total Disbursements		(515)	(5,182)	(1,812)	(2,802)	(904)	(1,788)	(4,794)	(2,461)	(717)	(3,130)	(24,105)
Net Cash Flow		514	389	4,599	5,085	8,239	5,836	(605)	(392)	425	(1,908)	22,182
Pre-Filing Revolver												
Opening revolver position		15,298	14,680	9,110	2,698	-	-	-	-	-	-	15,298
Total receipts		(1,028)	(5,571)	(6,411)	(2,698)	-	-	-	-	-	-	(15,708)
Total disbursements		411	-	-	-	-	-	-	-	-	-	411
Ending Pre-Filing Revolver		14,680	9,110	2,698	-	-	-	-	-	-	-	-
Post-Filing Revolver												
Opening revolver position		-	-	6,207	8,019	5,633	(2,606)	(8,443)	(7,810)	(7,418)	(7,844)	-
Total receipts		-	-	-	(5,189)	(9,144)	(7,624)	(4,189)	(2,069)	(1,142)	(1,222)	(30,578)
Total disbursements		-	5,182	1,812	2,802	904	1,788	4,794	2,461	717	3,130	23,590
Interest and fees		-	1,025	-	-	-	-	27	-	-	-	1,053
Ending Post-Filing Revolver		-	6,207	8,019	5,633	(2,606)	(8,443)	(7,810)	(7,418)	(7,844)	(5,935)	(5,935)

Cash Flow Forecast for the 10-Week Period Ending January 28, 2024

Mastermind

10-Week Cash Flow Forecast ending January 28, 2024

Assumptions

Disclaimer

*In preparing this illustrative cash flow forecast (the “**Forecast**”), Mastermind has relied upon unaudited financial information and has not attempted to further verify the accuracy or completeness of such information. The Forecast reflects assumptions including those discussed below with respect to the requirements and impact of a potential filing in Canada under the Companies’ Creditors Arrangement Act (“**CCAA**”). Since the Forecast is based on assumptions about future events and conditions that are not ascertainable, the actual results achieved will vary from the Forecast, even if the assumptions materialize, and such variations may be material. There is no representation, warranty or other assurance that any of the estimates, forecasts or projections will be realized.*

The Forecast is presented in thousands of Canadian dollars.

Note 1 Sales

Includes receipts from the sale of goods through the Applicants' bricks-and-mortar store network, net of a provision for inventory shrinkage and anticipated gift card redemptions.

Note 2 Non-merchandise vendors

Non-merchandise vendors are forecast based on historical run-rates and include logistics, software, store level expenses, overhead costs and other similar expenses.

Note 3 Rent

Rent includes disbursements for all store locations as well as the corporate office. Disbursements are inclusive of monthly rent, CAM and utilities.

Note 4 Payroll & benefits

Payroll & benefits include salaries, wages, remittances and employee benefits for salaried and part-time employees across the Company's store network, head office and warehouse.

Note 5 Proposed KERP

Payments to key personnel retained by the Company, in accordance with a proposed Key Employee Retention Program.

Note 6 Restructuring professional fees

Professional fees disbursements include fees paid to the Applicant's legal counsel; the Monitor and its legal counsel; and the Lender's/DIP Lender's counsel.

Note 7 Consultant fees

Includes estimated commissions as well as advertising and sale supervision costs to be reimbursed to the Consultant during the sale period.

TAB K

This is **Exhibit "K"** referred to in the
Affidavit #2 of LUCIO MILANOVICH,
sworn before me, this 29th day of
November, 2023.



Commissioner for taking affidavits
Kristine Spence (LSO #66099S)

LIBERTY MUTUAL INSURANCE COMPANY

PRIVATE EQUITY ADVANTAGE POLICY





Private Equity Advantage Declarations

THIS IS A CLAIMS MADE POLICY. This **Policy** covers only **Claims** first made against an **Insured** during the **Policy Period** or **Discovery Period** and reported to Liberty Mutual Insurance Company (hereinafter referred to as "Liberty") as soon as practicable. Please read the attached **Policy** terms carefully.

Item I PARENT ORGANIZATION:

Birch Hill Equity Partners Management Inc. and
Birch Hill Equity Partners Inc.

Parent Organization's Address: Suite 4510, 81 Bay Street, PO Box 45,
Toronto, ON
M5J 0E7

Item II POLICY PERIOD:

(A) From 12:01 a.m. November 15, 2022
(B) To 12:01 a.m. November 15, 2023
Both at local time at the address shown in Item I

Item III LIMITS OF LIABILITY:

(A)	Insuring Agreements 1.1, 1.2 and 1.5:	\$10,000,000
(B)	Insuring Agreement 1.3:	\$250,000
(C)	Insuring Agreement 1.4:	\$1,000,000
(D)	Policy Aggregate	\$10,000,000

Item IV RETENTIONS:

Insuring Agreements 1.1 (i), 1.3, 1.4, 1.5 (i):	NIL
Insuring Agreement 1.1 (ii) and 1.5 (ii):	\$100,000
Insuring Agreement 1.2:	\$100,000

Item V PRIOR AND PENDING LITIGATION DATE

December 22, 2006

Item VI DISCOVERY PERIOD:

Discovery Period:	365 Days
Discovery Period Premium	125% of Policy Premium



Item VII PREDETERMINED ALLOCATION:

80%

Item VIII POLLUTION DEFENCE COSTS SUB-LIMIT OF LIABILITY:

\$5,000,000

Item IX ENDORSEMENT(S):

1-18

Item X PREMIUM:

Annual Premium

\$65,000

This **Policy** (consisting of the Declarations, the **Application**, the attached **Policy** terms, the endorsement(s) referred to in Item IX and any endorsements added during the **Policy Period**) is valid only if, in addition to the facsimile signatures of the President and Secretary of Liberty Mutual Insurance Company, it is dated and signed below by a duly authorized representative of Liberty Mutual Insurance Company.

A handwritten signature in black ink, appearing to read "K. Kunk".

Authorized Representative of Liberty Mutual Insurance Company

November 29, 2022

Date

For purposes of the Insurance Companies Act (Canada), this document was issued in the course of Liberty Mutual Insurance Company's insurance business in Canada.



POLICY TERMS

(Words and expressions, other than in the headings, printed in **Bold** are defined in Paragraph 25 below.)

In reliance upon the statements made in the **Application**, in consideration of and subject to the payment of premium when due, and subject to all the terms, conditions, and exclusions of this **Policy**, Liberty and the **Insured** agree as follows:

1. INSURING AGREEMENTS:

1.1 **DIRECTOR/OFFICER AND EMPLOYEES LIABILITY:** Liberty shall pay on behalf of:

- (i) an **Insured Person** all **Loss** resulting from a **Wrongful Act** which an **Insured Person** becomes legally obligated to pay on account of any **Claim** first made against an **Insured Person** during the **Policy Period** or **Discovery Period** and provided such **Insured Person** is not indemnified by the **Insured Organization**; and
- (ii) an **Insured Organization** all **Loss** resulting from a **Wrongful Act** which an **Insured Person** becomes legally obligated to pay on account of any **Claim** first made against an **Insured Person** during the **Policy Period** or **Discovery Period** and provided the **Insured Organization** has granted indemnification to such **Insured Person**.

Coverage provided by Insuring Agreement 1.1 (i) shall not be rescinded by Liberty in whole or in part for any reason.

1.2 **INSURED ORGANIZATION LIABILITY:** Liberty shall pay on behalf of an **Insured Organization** all **Loss** resulting from a **Wrongful Act** which an **Insured Organization** becomes legally obligated to pay on account of any **Claim** first made against an **Insured Organization** during the **Policy Period** or **Discovery Period**.

1.3 **INVESTIGATION COSTS COVERAGE FOR A DERIVATIVE DEMAND:** Liberty shall pay on behalf of the **Insured Organization** **Investigation Costs** which an **Insured Organization** becomes legally obligated to pay on account of a **Derivative Demand** first made during the **Policy Period** or **Discovery Period**

1.4 **ADDITIONAL NON-INDEMNIFIABLE COVERAGE FOR INDEPENDENT DIRECTORS:** : Liberty shall pay on behalf of an **Insured Person** all **Loss** resulting from a **Wrongful Act** which an **Insured Person** becomes legally obligated to pay on account of any **Claim** first made against an **Insured Person** during the **Policy Period** or **Discovery Period** and provided such **Insured Person** is not indemnified by an **Insured Organization** and only when the Limit of Liability stated in Item III (A) of the Declarations is exhausted through the payment of **Loss**.

Any coverage afforded under this **Policy** pursuant to this Paragraph 1.4 shall not apply to any **Claim** alleging, based upon, arising out of or attributable to the same or similar



related facts or **Wrongful Acts** alleged in any **Claim**, which eroded or exhausted the Limit of Liability stated in Item III (A) of the Declarations.

Any coverage afforded under this **Policy** pursuant to this Paragraph 1.4 shall also be specifically excess of:

- (i) the Limit of Liability stated in Item III (A) of the Declarations, and
- (ii) the Limit of Liability under any other policy that is written specifically excess of this **Policy**, including but not limited to any excess difference in conditions policy.

1.5 **OUTSIDE INDIVIDUAL COVERAGE:** Liberty shall pay on behalf of:

- (i) an **Insured Person** all **Loss** resulting from a **Wrongful Act** which an **Insured Person** becomes legally obligated to pay on account of any **Claim** first made against an **Insured Person** during the **Policy Period** or **Discovery Period** and provided such **Insured Person** is not indemnified by the **Insured Organization** or any **Outside Organization Indemnification and Insurance**; or
- (ii) an **Insured Organization** all **Loss** resulting from a **Wrongful Act** which an **Insured Person** becomes legally obligated to pay on account of any **Claim** first made against them during the **Policy Period** or **Discovery Period** and provided the **Insured Organization** has granted indemnification to such **Insured Person**.

2. **EXCLUSIONS APPLICABLE TO ALL INSURING AGREEMENTS:** Liberty shall not be liable to make any payment for **Loss** in connection with any **Claim** or **Derivative Demand**:

- 2.1 based upon, arising from, or in any way related to any litigation, claims, demands, causes of action, legal or quasi-legal proceedings, decrees or judgments against any **Insured** in their capacity as such, occurring prior to, or pending as of the date stated in Item V of the Declarations or any subsequent litigation, claims, demands, causes of action, legal or quasi-legal proceedings, decrees or judgments against any **Insured** in their capacity as such, arising from or based upon substantially the same matters as alleged in such prior or pending litigation, claims, demands, causes of action, legal or quasi-legal proceedings, decrees or judgments against any **Insured** in their capacity as such.
- 2.2 based upon, arising from, or in any way related to any claims or circumstance, if written notice of such circumstance has been given and accepted by another insurer as a claim or notice of potential claim (or would have been accepted except for the exhaustion of the limits of liability) by any policy or coverage section of which this **Policy** is a renewal or replacement.
- 2.3 for any actual or alleged **Wrongful Act** occurring against an **Investment Fund, Subsidiary**, or against any **Insured Person** of an **Investment Fund, Subsidiary** or **Portfolio Company** at any time prior to such entity becoming an **Investment Fund, Subsidiary** or **Portfolio Company**.

2.4 based upon, arising from, or in any way related to:

- (i) any deliberately dishonest, malicious, criminal or fraudulent act or omission or any willful violation of any statute, rule or regulation by an **Insured** (other than a judgment or adjudication in any action or proceeding initiated by Liberty to determine coverage under the **Policy**), if a final, non-appealable, judgment or adjudication establishes that such act, omission or willful violation occurred and was material to the outcome of such judgment or adjudication; or
- (ii) an **Insured** gaining any personal profit, remuneration or advantage to which they were not legally entitled (other than a judgment or adjudication in any action or proceeding initiated by Liberty to determine coverage under the **Policy**), if a final, non-appealable, judgment or adjudication establishes that such **Insured** gained such personal profit, remuneration or advantage.

2.5 brought or maintained by or on behalf of any **Insured Organization**, however, this exclusion shall not apply:

- (i) to a **Derivative Action** against an **Insured Person** that is instigated and continued completely independent of, and entirely without the solicitation, material assistance or active participation of an **Insured Person** other than the assistance, active participation, or intervention for which “whistleblower” protection is afforded under Section 425.1 of the Criminal Code, R.S.C. 1985, c. C-46, United States Code Title 18 § 1514A (a), or any similar protection provision of any applicable federal, provincial, territorial, state or other governmental statute, law, regulation or ordinance;
- (ii) to a **Derivative Action** against an **Insured Person** that is instigated and continued with the solicitation, material assistance or active participation of an **Insured Person**, provided the **Insured Person** has not served in their capacity as an **Insured Person** for at least one year;
- (iii) to an **Insured Person** in the event of an **Insured Organization’s Financial Impairment**, brought on behalf of such **Insured Organization** by a creditors’ committee, or by a receiver, monitor, liquidator or trustee appointed on behalf of the **Insured Organization** by a court or creditor by virtue of the provisions of the Companies’ Creditors Arrangement Act, R.S.C. 1985, c. C-36, or of the Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, or of any similar federal, provincial, territorial, state or other governmental statute, law, regulation or ordinance, or by a debtor-in-possession, as defined in Title 11 of the United States Bankruptcy Code, or equivalent position under any similar federal, provincial, territorial, state or other governmental statute, law, regulation or ordinance; or
- (iv) to an **Insured Person**, if such **Insured Person** has not served in their capacity as an **Insured Person** for at least one year;
- (v) to an **Insured Person** of a **Subsidiary**, which operates outside of Canada or

the United States, if the **Claim** is brought outside the United States, Canada or any other common law country (including territories thereof).

2.6 for bodily injury, sickness, disease, death, false arrest, or imprisonment, malicious prosecution, defamation, violation or invasion of any right of privacy or private occupancy, trespass, nuisance or wrongful entry or eviction, or for injury to or destruction of any tangible property including loss of use thereof. However this exclusion shall not apply to:

- (i) defamation, emotional distress or mental anguish arising out of **Professional Services** or an **Employment Practices Claim**;
- (ii) invasion of privacy arising out of an **Employment Practices Claim**; or
- (iii) **Defence Costs** on account of a criminal proceeding pursuant to section 217.1 of the Criminal Code, R.S.C. 1985, c. C-46, or any similar federal, provincial, territorial, state or other governmental statute, legislation, law, regulation or ordinance, against any **Insured Person** and which is commenced by either the return of an indictment or the laying of any information.

2.7 where all or any part of such **Claim** or **Derivative Demand** is alleging, arising out of, based upon, attributable to, causally connected to, or in any way relating to, directly or indirectly:

- (i) the actual, alleged or threatened seepage, discharge, dispersal, release, or escape of **Pollutants** in contravention of; or
- (ii) any direction or request to test for, monitor, clean up, remove, contain, treat, detoxify, or neutralize **Pollutants** under,

the Canadian Environmental Protection Act, 1999, S.C. 1999, c. 33, the Comprehensive Environmental, Compensation, and Liability Act of 1980, 42 U.S.C. ch. 103 or any federal, provincial, territorial, state, municipal or other governmental statute, law, regulation or ordinance, common law (including but not limited to nuisance and trespass), civil law or equity, including but not limited to any **Claim** or **Derivative Demand** for financial loss to the **Insured Organization** or **Outside Organization**, its security holders or its creditors based upon, arising from, or in consequence of the matters described in Paragraph 2.7 (i) and (ii).

However, this exclusion does not apply to:

- a. Paragraph 1.1 (i), 1.4 or 1.5 (i);
- b. **Defence Costs** under Paragraph 1.1 (ii), brought or conducted anywhere in the world except the United States of America, subject to the Sub-Limit of Liability stated in Item VIII of the Declarations; or
- c. any **Claim** brought by an investor of an **Investment Fund** as a result of diminished value of such **Investment Fund**;

- d. any **Securities Claim**; or
 - e. any **Employment Practices Claim** for retaliatory treatment.
- 2.8 for any actual or alleged violation of or failure to comply with any obligation imposed under legislation relating to any benefits or compensation program created by statute of which the funds are held or managed by a government or governmental body, including workers' compensation, employment insurance, pension and social insurance programs. However, this exclusion does not apply to any **Employment Practices Claim** for retaliatory treatment of any claimant by any **Insured** based upon such claimant exercise of rights pursuant to any laws referenced in this exclusion 2.8.
- 2.9 for any actual or alleged violation of responsibilities, obligations or duties imposed upon trustees or fiduciaries of an **Employee Benefits Plan** by the Pension Benefits Standards Act, 1985, R.S.C. 1985, c 32 (2nd Supp.), the Employee Retirement Income Security Act of 1974, 29 U.S.C. ch. 18., or any similar federal, provincial, territorial, state, municipal or other governmental statute, law, regulation or ordinance, or by common law, civil law or equity.
3. **ADDITIONAL EXCLUSIONS APPLICABLE TO EMPLOYMENT PRACTICES CLAIM:** In addition to the exclusions in Paragraph 2 Liberty shall not be liable to make any payment for **Loss** in connection with any **Employment Practices Claim** arising under any Insuring Agreement:
- 3.1 based upon, arising from, in consequence of, or related to any actual or alleged violation of or obligation, responsibility, duty, or right imposed under or with respect to the Canada Labour Code, Part I, the National Labour Relations Act of the United States of America, or any federal, provincial, territorial, state, local, or other statutory, common or civil law anywhere in the world pertaining to unionized labour, or any collective bargaining agreement including any amendments or additions to such agreement, and without limiting the foregoing, this exclusion applies to any **Claim** arising from or out of a lockout, strike, picket line, hiring of replacement workers, or other similar action in connection with a unionized labour dispute or negotiation.
- 3.2 for pay equity, including a **Claim** for an actual or alleged violation of or obligation, responsibility, or duty imposed under or with respect to the:
- (i) Canadian Human Rights Act, Section 11;
 - (ii) Pension Benefits Standards Act (Canada);
 - (iii) Canada Labour Code, Part II;
 - (iv) Pay Equity Act (Ontario);
 - (v) Employment Retirement Income Securities Act of 1974 (except Section 510);
 - (vi) Fair Labor Standards Act (except the Equal Pay Act);

- (vii) Workers Adjustment and Retraining Notification Act;
- (viii) Consolidated Omnibus Budget Reconciliation Act;
- (ix) Occupational Safety and Health Act,

or any statutory, common, or civil laws or collective bargaining agreements anywhere in the world similar to those referenced in sub paragraph (i) to (ix) above.

This Exclusion shall not apply to any **Claim** for retaliatory treatment of any claimant by any **Insured** because of the claimant's actual or alleged protected lawful activity under the laws or agreements noted above.

- 3.3 for an actual or alleged breach of any written employment contract, if the **Insured** would not have been liable for such **Loss** in the absence of such written employment contract, but this exclusion shall not apply to **Defence Costs**.
- 3.4 based upon, arising from, in consequence of, or related to any dispute with respect to the valuation of salary, wages, commission, **Benefits**, bonus, compensation, or any other remuneration whatsoever provided for in an employment contract.
- 3.5 for **Benefits** due or to become due or the equivalent value, but this exclusion does not apply to **Defence Costs**.
- 3.6 for an actual or alleged failure or refusal of an **Insured Organization** to:
 - (i) collect, retain, return, pay or remit taxes, deductions at source, pension, retirement savings or other employee benefit contributions, or union dues;
 - (ii) pay, reimburse or indemnify salary, wages, commissions, bonuses, fees, **Benefits**, expenses, or remuneration of any kind actually or allegedly due to a claimant for services performed for or rendered to any **Insured Organization** or **Outside Organization**, prior to the claimant's termination or while the claimant was employed with the **Insured Organization** or **Outside Organization**; or
 - (iii) grant, issue, give effect to, replace, honour, terminate, value, or in any manner whatsoever address stock or share options, whether or not such stock or share options are issued by any **Insured Organization** or **Outside Organization**.
- 3.7 for any amounts due or payable or allegedly due or payable under or with respect to the Canada Labour Code, Part III or the Ontario Employment Standards Act or similar provisions of any provincial, territorial, state, local, or other statutory or common law anywhere in the world, including without limitation any vacation, notice, termination, or severance pay due or payable or allegedly due or payable under any statute or common law. However, this exclusion does not apply to:
 - (i) **Defence Costs**,

- (ii) any **Equal Pay Claim**, or

any claim for any retaliatory treatment of any claimant by any **Insured** because of such claimant's exercise of rights under any employment standards, statutory law, or common law referenced in this paragraph 3.7.

- 3.8 based upon, arising from, in consequence of, or related to the **Financial Impairment** of an **Insured Organization** or **Outside Organization**, except that this exclusion does not apply to any **Claim** made in the United States of America.

4. **REPRESENTATIONS AND SEVERABILITY:** : The **Insured(s)** represent that the particulars and statements contained in the **Application** are true and shall be deemed material to the acceptance of the risk or the hazard assumed by Liberty under this **Policy**. This **Policy** is issued in reliance upon the truth of such representations.

The **Application** shall be construed as a separate **Application** for coverage by each **Insured Person**. No statement in the **Application** or knowledge possessed by any one **Insured Person** shall be imputed to any other **Insured Person** for the purpose of determining the availability of coverage under this **Policy**. With respect to applicability of the exclusions in Paragraphs 2, 3, and 4, the **Wrongful Act** or knowledge of any one **Insured Person** shall not be imputed to any other **Insured Person**.

It is further understood that any particulars and statements in the **Application** or knowledge possessed by the person(s) who signed the **Application** or any past, present or future Chief Executive Officer, Managing Partner or Director of Finance of the **Insured Organization** shall be imputed to the **Insured Organization**. With respect to applicability of the exclusions in Paragraphs 2 and 3, the **Wrongful Act** or knowledge of any past, present or future Chief Executive Officer, Managing Partner or Director of Finance shall be imputed to the **Insured Organization**.

5. **REPORTING REQUIREMENTS:**

- 5.1 The **Insured**, as a condition precedent to their rights under this **Policy**, shall report any **Claim** or **Derivative Demand** to Liberty as soon as practicable.

- 5.2 Notice of any **Claim**, **Derivative Demand**, circumstance or **Wrongful Act** pursuant to Paragraph 6, shall be forwarded to Liberty Mutual Insurance Company, 181 Bay St., Suite 1000, Toronto, Ontario M5J 2T3, Attention: Specialty Casualty Claims, or to LMCanadaClaims@libertymutual.com.

- 5.3 All notices under this **Policy** shall be sent in writing by mail, prepaid express courier, facsimile or e-mail and shall be effective upon receipt thereof by the addressee.

6. **NOTICE OF CIRCUMSTANCE OR WRONGFUL ACT:** If during the **Policy Period** or **Discovery Period** an **Insured** becomes aware of any circumstance (including but not limited to a request to toll a statute of limitations) or **Wrongful Act** that could reasonably give rise to a **Claim** or **Derivative Demand** and:



6.1 if such circumstance or **Wrongful Act** is reported to Liberty in writing during the **Policy Period** or **Discovery Period** with particulars as to the reasons for anticipating such a **Claim** or **Derivative Demand**, the nature and dates of the alleged **Wrongful Act**, the alleged injuries or damages sustained, the names of potential claimants, the **Insured** involved in the alleged **Wrongful Act** and the manner in which the **Insured** first became aware of the **Wrongful Act**; and

6.2 Liberty accepts this reported information as a potential **Claim** or **Derivative Demand**;

then any **Claim** or **Derivative Demand** subsequently arising from such circumstance or **Wrongful Act** duly reported in accordance with this paragraph shall be deemed under this **Policy** to be a **Claim** or **Derivative Demand** made during the **Policy Period** or **Discovery Period**.

7. LIMITS OF LIABILITY AND RETENTION:

7.1 Liberty's maximum Limit of Liability for all **Loss** under Paragraph 1.1, Paragraph 1.2 and Paragraph 1.5 of this **Policy** shall be the amount stated in Item III (A) of the Declarations.

Liberty's maximum Limit of Liability for all **Investigation Costs** under Insuring Agreement 1.3 shall be the amount stated in Item III (B) of the Declarations, and is part of and not in addition to the amount stated in Item III (A) of the Declarations.

Liberty's maximum Limit of Liability for all **Loss** under Insuring Agreement 1.4 of this **Policy** shall be the amount stated in Item III (C) of the Declarations.

Liberty's maximum Limit of Liability for all **Loss** under Paragraph 2.7 b., shall be the Pollution Defence Costs Sub-Limit of Liability amount stated in Item VIII of the Declarations and is part of and not in addition to the Limit of Liability in Item III (A) of the Declarations.

Notwithstanding the above, Liberty's maximum Limit of Liability for all **Loss** and **Investigation Costs** under all Insuring Agreements in this **Policy** shall be the **Policy** Aggregate amount stated in Item III (D) of the Declarations.

7.2 If a Loss is subject to more than one Retention amount, the largest of the applicable Retention amounts set forth in Item IV of the Declarations shall be the maximum Retention applicable to such Loss.

7.3 Liberty's liability in respect of each **Loss** is only to pay the amount which is excess of the applicable Retention set forth in Item IV of the Declarations. The Retention amount shall be borne by the **Insured** uninsured and at their own risk.

This **Policy** presumes that the **Insured Organization**, as applicable, has indemnified the **Insured Person** to the full extent permitted or required by applicable law. The certificate of incorporation, by-laws, limited partnership agreement, joint venture or LLC agreement, trust indenture or any similar document or agreement and the shareholder and board of directors' resolutions of the **Insured Organization**, as

applicable, shall be deemed to provide indemnification to the **Insured Person** to the fullest extent permitted. However, if the **Insured Organization** refuses to indemnify the **Insured Person** or is unable to pay the Retention under this **Policy** due to **Financial Impairment**, then Liberty shall advance such Retention on behalf of the **Insured Organization**, no later than 60 days after Liberty has received details of such refusal, failure or inability to pay in writing, with a full right of recovery against the **Insured Organization**.

7.4 All **Claims** or **Derivative Demands** arising out of the same **Wrongful Act** or **Interrelated Wrongful Acts** shall be deemed one **Claim** or **Derivative Demand** and shall be deemed first made on the date the earliest of such **Claim** or **Derivative Demand** is first made, regardless of whether such date is before or during the **Policy Period** or **Discovery Period**.

7.5 The Limits of Liability available to pay judgments or settlements shall be reduced by **Defence Costs**. In no event shall Liberty be liable for **Defence Costs** or any other **Loss** in excess of the Limit of Liability as set forth in Item III (D) of the Declarations.

8. **DEFENCE COSTS, SETTLEMENTS AND COOPERATION::**

8.1 It shall be the duty of the **Insured**, not Liberty, to defend a **Claim** or **Derivative Demand**. No **Defence Costs** or **Investigation Costs** shall be incurred or settlements made, contractual obligations assumed or liability admitted with respect to any **Claim** or **Derivative Demand** without Liberty's written consent, which shall not be unreasonably withheld. Liberty shall not be liable for any **Defence Costs**, **Investigation Costs**, settlement, assumed obligation, or loss resulting from any admission to which it has not consented.

8.2 Liberty shall have the right to associate itself in the defence and settlement of any **Claim** or the investigation or evaluation of a **Derivative Demand** that appears reasonably likely to result in a **Loss** or **Investigation Costs** under this **Policy**. Liberty may make any investigation it deems appropriate.

8.3 Liberty shall advance **Defence Costs** and **Investigation Costs**, excess of the Retention amount stated in Item IV of the Declarations, on a current basis, and no later than 60 days after Liberty has received acceptable documentation of such request for advancement. Any amounts which are subsequently determined as not being payable by Liberty because there is no coverage under this **Policy** shall be promptly repaid by the **Insured** on whose behalf it was advanced.

8.4 As a condition precedent to the **Insured's** rights under this **Policy**, the **Insured** shall provide to Liberty all information and cooperation as Liberty reasonably may require and shall do nothing that may prejudice Liberty's position or its rights of recovery. The failure of an **Insured** to provide information and cooperate with Liberty shall not impact the rights of any other **Insured** under this **Policy** in any manner.

9. **ALLOCATION:** Where a **Claim** involves a **Loss** covered by this **Policy** and a loss or payment not covered by this **Policy**, the **Insured** and Liberty have agreed to allocation in the following manner, subject to Paragraph 8:

- 9.1 Solely with respect to **Defence Costs** covered under Insuring Agreement 1.1 or 1.4, Liberty shall advance payment on a current basis, the percentage of **Defence Costs** stated in Item VII of the Declarations; the remaining percentage shall be allocated to uncovered loss. However, no **Defence Costs** shall be allocated to the **Insured** to the extent that the **Insured** is unable to pay by reason of **Financial Impairment**. The allocation of **Defence Costs** shall be final and binding and shall not apply to or create any presumption with respect to the allocation of any other **Loss**.
- 9.2 With respect to a **Securities Claim** against an **Insured**, Liberty shall allocate the percentage stated in Item VII of the Declarations to covered **Loss**. The remaining percentage shall be allocated to uncovered loss.
- 9.3 With respect to the predetermined allocation provided in Paragraphs 9.1 or 9.2, if:
- (i) Liberty and the **Insured(s)** negotiate and mutually agree to a higher allocation; or
 - (ii) a court of competent jurisdiction has determined a higher allocation is more applicable;
- then the percentage agreed to or determined in paragraphs i. or ii. above will replace the percentage used in Paragraphs 9.1 or 9.2 as agreed or determined. Any amount agreed or determined with respect to **Defence Costs** shall not apply to or create any presumption with respect to the allocation of any other **Loss**.
- 9.4 With respect to all other **Loss** in connection with any **Claim** not addressed in 9.1 or 9.2, the **Insured** and Liberty will in good faith negotiate an allocation on the basis of the relative legal exposure of the **Insured(s)** in relation to both the exposure of non-insured parties and to covered and uncovered matters between such covered **Loss** and uncovered loss.
- 9.5 If the **Insured** and Liberty cannot agree on an allocation under Paragraph 9.1, 9.2, or 9.3, no presumption as to allocation shall exist in any arbitration, action or other proceeding. Liberty, if requested, shall submit the allocation dispute to mediation or binding arbitration.

Liberty shall advance **Defence Costs** and **Investigation Costs** on a current basis, which Liberty believes to be covered under this **Policy** until a different allocation is negotiated, arbitrated or judicially determined; and any negotiated, arbitrated or judicially determined allocation of **Defence Costs** or **Investigation Costs** on account of a **Claim** or **Derivative Demand** shall be applied retroactively to all **Loss** or **Investigation Costs** on account of such **Claim** or **Derivative Demand**, notwithstanding any prior advancement to the contrary. Any allocation or advancement of **Defence Costs** or **Investigation Costs** on account of a **Claim** or **Derivative Demand** shall not apply to or create any presumption with respect to the allocation of other loss on account of such **Claim** or **Derivative Demand**. Any mediation or arbitration agreed to by the **Insured** and Liberty shall take place in Toronto, Ontario, unless both the **Insured** and Liberty agree to conduct the mediation or arbitration in

another location. The mediation or arbitration shall be conducted in English.

Mediations will be conducted by a mediator agreed upon by the **Insured** and by Liberty. The mediator shall have knowledge of the insurance issues relevant to the matters in dispute.

Arbitration shall be governed by the provisions of the Arbitration Act, 1991 (Ontario), rules, orders in counsel, or regulations promulgated thereunder and regulations thereto except with respect to the selection of the arbitration panel. In each case, the arbitration panel shall consist of one arbitrator selected by the **Insured**, one arbitrator selected by Liberty and a third independent arbitrator who will be the umpire of the panel and who is selected by the first two arbitrators.

In all cases, the parties shall share equally the expenses of the mediation or arbitration process. If the parties are unable to agree on a mediation or binding arbitration process, no arbitration or mediation shall take place.

10. **ORDER OF PAYMENTS:** In the event of **Loss** arising from any **Claim** or **Derivative Demand** which in the aggregate exceeds the available or remaining available Limit of Liability, then at the written request of the Chief Executive Officer, Managing Partner, or Director of Finance of the **Parent Organization**, Liberty shall in all events::

- 10.1 first, pay **Loss** under Paragraph 1.1 (i) or 1.5 (i) on behalf of the **Insured Person** or **Outside Individual**;
- 10.2 then, only after payment of **Loss** has been made pursuant to Paragraph 10.1 above, with respect to whatever remaining amount of the Limit of Liability is available after such payment, pay **Loss** for which coverage is provided under any other Insuring Agreements.

The **Financial Impairment** of any **Insured Organization** or **Insured Person** shall not relieve Liberty of any of its obligations to prioritize payment of **Loss** under this **Policy** pursuant to this Paragraph 10.

11. **OTHER INSURANCE:** If any other valid and collectible insurance policy(ies) covers a **Loss** or any amount of a **Loss** which, but for this Paragraph 11, would be covered by this **Policy**, then this **Policy** shall cover the **Loss** (subject to the terms, limitations, exclusions and conditions of this **Policy**) which is in excess of the coverage provided by such other insurance policy(ies) (regardless of whether they are stated to be primary, umbrella, contributory, excess or otherwise), provided that the limitation in this Paragraph 11 shall not apply to any insurance policy(ies) that expressly refer to this **Policy** and that is specifically written as excess to the Limit of Liability of this **Policy**.

Coverage provided by this **Policy** under Insuring Agreement 1.5 shall be excess of any applicable **Outside Organization Indemnification and Insurance**. However, if the **Outside Organization** wrongfully refuses to indemnify the **Insured Person** and no other insurance is available to the **Insured Person**, then Liberty shall provide coverage on a primary basis (subject to the terms, limitations, exclusions and conditions of this **Policy**) with a full right of recovery against the **Outside Organization** and or its insurer.

12. **TERRITORY AND CURRENCY:**

- 12.1 This **Policy** extends to **Wrongful Acts** taking place or **Claims** or **Derivative Demands** made anywhere in the world.
- 12.2 Unless expressly stated in the Declarations, all dollar amounts in this **Policy** refer to Canadian currency and all **Loss** paid shall be payable in Canadian currency. Should another currency be shown on the Declarations, payment under this **Policy** shall be made at the rate of exchange published in the Globe and Mail on the date the judgment becomes final or the date **Loss** is due in the event of a settlement.

13. **DISCOVERY PERIOD:**

- 13.1 If Liberty refuses to renew or the **Parent Organization** terminates or refuses to renew this **Policy**, there shall be an automatic extension of the coverage granted by this **Policy** for a period of 60 days following the effective date of termination of this **Policy**, but only for any **Wrongful Act** occurring prior to the effective date of termination of this **Policy** and only if there is no replacement policy obtained providing coverage anytime during such 60 day period.

If Liberty refuses to renew or the **Parent Organization** terminates or refuses to renew this **Policy**, then with respect to **Insured Persons** who are retired and/or who have not been re-elected as a director of an **Insured Organization** prior to the date of termination of this **Policy**, there shall be an automatic extension of the coverage granted by this **Policy** for a period of 12 months following the effective date of termination of this **Policy**, but only for any **Wrongful Act** occurring prior to the effective date of such **Insured Persons** retirement, and/or failure to be re-elected, but only if there is no replacement policy obtained providing coverage for such retired or non-re-elected **Insured Persons** anytime during such 12 month period, in which case the automatic extension provided for in this Paragraph 13.1 shall terminate at the inception date of such replacement policy.

“Replacement policy” means any directors and officers liability insurance policy, professional liability policy, or Private Equity policy, whether or not its terms, conditions, and premiums are comparable to those offered by Liberty.

- 13.2 If Liberty refuses to renew or if the **Parent Organization** terminates or non-renews this **Policy**, the **Insured**, by giving written notice to Liberty together with payment of the Discovery Period Premium stated in Item VI of the Declarations within 60 days following the effective date of non-renewal or termination of this **Policy**, may extend the coverage granted by this **Policy** for the **Discovery Period** following the effective date of non-renewal or termination of this **Policy**, but only for any **Wrongful Act** occurring prior to the effective date of non-renewal or termination of this **Policy**.

The **Discovery Period** is deemed to be part of the then immediately preceding **Policy Period** and does not increase the Limits of Liability under Paragraph 7 of this **Policy**.

14. **CHANGES IN EXPOSURE: NEW INVESTMENT FUND/SUBSIDIARY OR**



PARENT ORGANIZATION ACQUISITION:

- 14.1 If during the **Policy Period** an **Insured Organization** acquires securities or voting rights in another entity or creates another entity, which as a result of such acquisition or creation such entity becomes a **Subsidiary**, then coverage shall extend to such **Subsidiary** and its **Insured Persons** but only with respect to **Wrongful Acts** taking place after such acquisition or creation.

However, if the fair value of (i) all cash, securities, assumed liabilities and other consideration paid by the **Insured Organization**, or (ii) all assets acquired or liabilities assumed by the **Insured Organization**, in any single transaction or series of related transactions, exceeds 35% of the total consolidated assets or liabilities, as reflected in the last audited consolidated financial statements of the **Parent Organization**, prior to such acquisition, the **Parent Organization** shall give written notice of such acquisition or assumption to Liberty as soon as practicable but in no event more than ninety (90) days after the effective date of such acquisition or assumption, together with such information as Liberty may require, and shall pay any additional premium so required by Liberty. If the **Parent Organization** fails to comply with this condition, coverage otherwise afforded by this Paragraph 14.1 shall terminate ninety (90) days after the effective date of such transaction.

- 14.2 If during the **Policy Period**, an **Insured Organization** creates or acquires control of a new **Investment Fund**, coverage shall extend to such newly created or newly controlled **Investment Fund** and its **Insured Persons** but only with respect to **Wrongful Acts** taking place after such creation or control.

However, if:

- (i) the offering amount of any newly created fund, or the current size of any newly controlled **Investment Fund** or the aggregate amount of the offerings or acquisitions of all **Investment Funds** which are newly created or newly controlled during the **Policy Period** exceeds 150% of the offering size of the largest existing **Investment Fund** as at the inception date of this **Policy**, or
- (ii) the investment objectives (as set forth in the private placement memorandum, prospectus or similar document issued by the **Insured Organization**) of any newly created or newly controlled **Investment Fund** differ materially from the investment objectives of the **Investment Fund(s)** currently covered by this **Policy**,

then the **Parent Organization** shall give written notice of such newly created or newly controlled **Investment Fund** and such general partner entity, managing general partner entity or managing member entity to Liberty as soon as practicable but in no event more than ninety (90) days after the effective date of the acquisition of control, or offering or private placement memorandum, together with such information as Liberty may require, and shall pay any additional premium so required by Liberty. If the **Parent Organization** fails to comply with such condition precedent, coverage otherwise afforded by this Paragraph 14.2 shall terminate ninety (90) days after the effective date of creation.



14.3 If during the **Policy Period**:

- (i) the **Parent Organization** merges into or consolidates with another entity such that the **Parent Organization** is not the surviving entity; or
- (ii) another entity, person, group of entities or persons acting in concert acquires securities or voting rights which result in ownership or voting control by the other entity(ies) or person(s) of more than 50% of the outstanding securities representing the present right to vote for the election of directors or to select general partners or managing members of the **Parent Organization**, then

the **Parent Organization** shall give written notice of such merger, consolidation or acquisition to Liberty as soon as practicable, together with such information as Liberty may reasonably require. Upon completion of such transaction described above the Policy Premium shall be fully earned and coverage under this **Policy** shall continue until termination of the **Policy Period** but only with respect to **Wrongful Acts** taking place prior to such merger or acquisition.

- 15. **CESSATION OF SUBSIDIARIES OR INVESTMENT FUNDS:** If before or during the **Policy Period** an entity ceases to be a **Subsidiary** or **Investment Fund**, coverage with respect to such **Subsidiary** or **Investment Fund** and its **Insured Persons** shall only apply with respect to **Claims** for **Wrongful Acts** taking place prior to the date such entity ceased to be a **Subsidiary** or **Investment Fund**.
- 16. **CHANGE OF CONTROL OF FUND MANAGER:** If before or during the **Policy Period** any **Subsidiary** which manages or controls an **Investment Fund** is replaced by an entity not otherwise covered under this **Policy** or any renewal **Policy** issued by Liberty, then coverage with respect to such **Investment Fund** and the **Subsidiary** which managed or controlled the **Investment Fund** and its **Insured Persons** shall only apply with respect to **Wrongful Acts** taking place prior to such replacement. Further, there shall be no coverage for the general partner or managing member that replaced the covered **Subsidiary** or its **Insured Person**.
- 17. **SUBROGATION:** Liberty shall be subrogated to the extent of any payment under this **Policy** to all the rights of recovery of any **Insured** and shall be entitled to seek recovery in the name(s) of any **Insured**. The **Insured** shall execute all papers required and shall do everything that may be necessary to secure and preserve such rights to enable Liberty effectively to bring suit in the name of the **Insured**. The obligations of the **Insured** pursuant to this Paragraph 17 survive the termination of the **Policy Period**. Liberty shall use its best efforts to advise the **Insured** of any instance of subrogation.
- 18. **TERMINATION OF POLICY:** This **Policy** terminates at the earlier of the following times:
 - 18.1 upon the date set forth in Item II (B) of the Declarations;
 - 18.2 the later of the date of receipt by Liberty of written notice of termination from the **Parent Organization** or the date specified in such notice. However, this **Policy** cannot be terminated by the **Parent Organization** in the event of **Financial Impairment** of the **Parent Organization**. Only the Chief Executive Officer, Managing Partner or



Director of Finance of the **Parent Organization** shall have the authority to terminate this **Policy** on behalf of any or all of the **Insured(s)**;

- 18.3 for non-payment of premium, upon the date that is fifteen (15) days after receipt of deemed receipt by the **Parent Organization** of Liberty's written notice of termination; or
- 18.4 upon such other date as may be mutually agreed upon by Liberty and the **Parent Organization**.

If this **Policy** is terminated pursuant to Paragraph 18.2 or 18.4, Liberty shall refund any unearned premium computed pro rata. If this **Policy** is extended pursuant to Paragraph 13, the premium collected, pursuant to Item VI of the Declarations shall be fully earned.

- 19. **NOTICE OF NON-RENEWAL:** Liberty has no obligation to renew this **Policy**. However, if Liberty refuses to renew this **Policy**, it will provide written notice of non-renewal to the **Parent Organization** no less than 90 days prior to the effective date of termination of the **Policy**. An offer by Liberty of renewal terms and conditions or premiums different from those in effect prior to the effective date of termination of this **Policy** shall not constitute refusal to renew.
- 20. **AMENDMENT OR ASSIGNMENT:** Any amendment or change to or assignment of an interest in this **Policy**, in whole or in part, shall only be effective if made in writing and signed by an authorized representative of Liberty.
- 21. **ESTATE ENUREMENT:** This **Policy** shall be binding upon and enure to the benefit of the estates, heirs, executors, administrators and legal representatives of any **Insured Person** but only in respect of the **Wrongful Act** of such **Insured Person**.
- 22. **BANKRUPTCY:** The **Financial Impairment** of any **Insured Organization** or **Insured Person** shall not relieve Liberty of any of its obligations under this **Policy**.

In the event of **Financial Impairment** the **Insured Organization** and the **Insured Persons** agree:

- (i) to cooperate with any efforts by Liberty, the **Insured Organization** or any **Insured Person** to obtain relief from any stay or injunction applicable to the distribution of proceeds under this **Policy** to any **Insured Person**,
 - (ii) not to oppose or object to any efforts by Liberty, the **Insured Organization** or any **Insured Person** to obtain relief from any stay or injunction applicable to the distribution of proceeds under this **Policy** to any **Insured Person**.
- 23. **PARENT ORGANIZATION AS AUTHORIZED REPRESENTATIVE:** The **Parent Organization**, unless specifically stated otherwise in this **Policy**, shall act on behalf of all **Insured(s)** for the giving and receiving of any notices, the payment or return of premiums, the receiving of any return premiums that may become due under this **Policy**, and the delivery and acceptance of endorsements; and by accepting this **Policy** the **Parent Organization** represents and warrants to Liberty that it is authorized to so act on behalf of all **Insured(s)**. The **Parent**



Organization is not an agent of Liberty.

24. **ACTION AGAINST LIBERTY:** No action shall be taken against Liberty unless, as a condition precedent thereto, there shall have been full compliance with all of the terms of this **Policy**, and the amount of the **Insured**'s obligation(s) to pay shall have been finally determined either by judgment against the **Insured** after actual trial, or by written agreement of the **Insured**, the claimant and Liberty.

25. **DEFINITIONS:**

25.1 **"Application"** means all signed applications, including attachments and materials submitted therewith or as a part thereof, or incorporated therein, for this **Policy** and for any prior policy as part of an uninterrupted series of policies issued by Liberty of which this **Policy** is a direct or indirect renewal or replacement. All such materials are deemed attached to and incorporated into this **Policy**.

25.2 **"Benefits"** means perquisites, fringe benefits, payments in connection with an employee benefit plan and any other payment, other than salary, wages, or commission, to or for the benefit of an **Employee** or employee of an **Outside Organization** arising out of the employment relationship.

25.3 **"Claim"** means:

- (i) a written demand for monetary or non-monetary relief, including but not limited to injunctive relief, against an **Insured**;
- (ii) a civil or criminal proceeding, alternative dispute resolution, arbitration or mediation against an **Insured**;
- (iii) a formal administrative or regulatory proceeding against an **Insured**;
- (iv) a formal criminal, administrative, or regulatory investigation against an **Insured Person** once the investigating authority has indicated in writing (including summons, subpoena, investigation order, Wells Notice, or target letter) that such **Insured Person** is the subject of such an investigation and formal proceeding may commence;
- (v) A formal inquiry, investigation, commission or hearing conducted or appointed pursuant to statute, including but not limited to legislation governing securities, occupational health and safety, pensions, and competition, and which may reasonably be expected to result in findings relevant to the **Insured Person(s)** potential civil, penal or criminal liability for a **Wrongful Act**;
- (vi) an official request for extradition or the execution of a warrant for the arrest of an **Insured Person** where such execution is an element of extradition; or
- (vii) an **Employment Practices Claim**,

made or brought anywhere in the world alleging a **Wrongful Act**, including any appeal

therefrom.

However, **Claim** does not include any professional disciplinary investigation or proceeding, any routine regulatory audit, or any investigation, inquiry, commission or hearing relating to or in connection with labour relations, labour standards or collective bargaining, alleging a **Wrongful Act**, including any appeal therefrom.

A **Claim** will be deemed first made on the earliest date any **Insured** receives a document initiating any of the events described in (i) through (vii) above.

25.4 **“Derivative Action”** means an action or intervention in an action against any **Insured Person** brought by a complainant in the name of and on behalf of an **Insured Organization** or **Outside Organization**, within the meaning of and in accordance with the terms of the Canada Business Corporations Act, R.S.C. 1985, c. C-44 or similar provisions of any federal, provincial, territorial, state or other governmental statute, law, regulation or ordinance.

25.5 **“Derivative Demand”** means any written demand, by one or more complainants, upon the board of directors of such **Insured Organization**, to bring a **Derivative Action**.

25.6 **“Defence Costs”** means reasonable and necessary costs, charges, fees (including lawyer and expert fees) and expenses incurred in the defense of a **Claim** and the premium for appeal, attachment or similar bonds, but shall not include the regular or overtime wages, salaries, or benefits of any **Insured Person**. **Defence Costs** shall also mean any reasonable and necessary fees, costs, and expenses (including costs of any extradition bonds) incurred through legal counsel and consented to by Liberty resulting from an **Insured Person** lawfully:

- (i) opposing, challenging, resisting, or defending against any request for or any effort to obtain the extradition of such **Insured Person**; or
- (ii) appealing any order or other grant of extradition of such **Insured Person**

Defence Costs shall also include the cost of any extradition or similar bonds as a result of (i) or (ii) above.

25.7 **“Director/Officer”** means:

- (i) any individual who was, is, or shall become during the **Policy Period**, a duly appointed or elected director, officer, general partner, trustee, investment committee member, or equivalent executive of an **Insured Organization**;
- (ii) any individual who was, is, or shall become during the **Policy Period**, a de facto, shadow, or acting director or officer of the **Insured Organization**;
- (iii) any individual who was, is, or shall become during the **Policy Period**, a member of any committee of an **Insured Organization**, including but not limited to any, advisory, technical, executive, special board, valuation, audit, financial asset

management, ethics or any equivalent committee, of an **Insured Organization**;

- (iv) any individual who was, is, or shall become during the **Policy Period**, an observer to the board, or any committee outlined in (iii) above, provided such individual is observing at the request and on behalf of the **Insured Organization**; or
 - (v) any individual who formerly, currently, or shall hold during the **Policy Period**, a title or position in any **Insured Organization** located outside Canada or the United States of America which is equivalent to the individuals listed in paragraph 25.7 (i), (ii), (iii), or (iv) of the **Insured Organization**.
- 25.8 “**Discovery Period**” means the period stated in Item VI of the Declarations provided all conditions under Paragraph 13 have been satisfied.
- 25.9 “**Employee**” means:
- (i) an individual who in the past, present, or future performs regular service for an **Insured Organization** in the ordinary course of the **Insured Organization**’s business, and whom an **Insured Organization** compensates by salary, wages and/or commission, and has the right to govern and direct in the performance of such services, including but not limited to risk manager and in-house counsel; or
 - (ii) any individual acting in the capacity as trustee of the **Insured Organization** while performing acts coming within the scope of the usual duties of an **Employee** as defined in (i) above.
- 25.10 “**Employee Benefits Plan**” means any plan so defined in the Income Tax Act of Canada or any registered pension plan, group sickness or accident insurance plan, private health services plan, supplementary employment benefit plan, deferred profit-sharing plan, employee profit-sharing plan, income maintenance insurance plan, vacation pay trust, employee trust, retirement compensation arrangements or salary deferral arrangements; all as may be defined in the Income Tax Act of Canada, applicable provincial employment standards legislation, and relevant provisions of the Canada Pension Benefits Standards Act, 1985, the Ontario Pension Benefits Act, R.S.O. 1990, c. P. 8 or the Employee Retirement Income Security Act of 1974 of the United States of America.
- 25.11 “**Employment Practices Claim**” means a **Claim** brought by an **Employee** or applicant for employment of an **Insured Organization**, or an employee of, or an applicant for employment of an **Outside Organization** arising out of one or more of the following:
- (i) wrongful dismissal, discharge or termination of employment (whether actual or constructive);
 - (ii) sexual or other harassment in the workplace;

- (iii) unlawful employment discrimination or violation of an individual's employment-related civil rights based upon age, gender, race, colour, national origin, religion, sexual orientation or preference, pregnancy, disability, or other class, status, or characteristic protected under applicable federal, provincial, state or local law, including wrongful failure or refusal to hire or promote, wrongful discipline or demotion, wrongful deprivation of a career-opportunity, or failure to grant tenure;
 - (iv) invasion of privacy, employment-related defamation, employment-related wrongful infliction of emotional distress, or negligent employment evaluation, or any employment-related misrepresentation
 - (v) failure to create, apply, or enforce employment-related policies or procedures at or with respect to the workplace; or
 - (vi) retaliatory treatment by an **Insured** against an **Employee** or employee of an **Outside Organization** arising from the exercise or attempted exercise of his or her employment-related rights under law or arising from such individual's involvement with or report to a governmental or regulatory agency with respect to the operation of an **Insured Organization's** or **Outside Organization's** business.
- 25.12 “**Equal Pay Claim**” means a **Claim** for an actual or alleged differential in pay for the same work or substantially similar work, but does not include a **Claim** for pay equity.
- 25.13 “**Financial Impairment**” means the financial position of an entity as a debtor, as that term is defined and used in Canada within the provisions of the Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3 and without limiting the generality of the foregoing shall occur when: (i) any receiver, conservator, liquidator, trustee, sequestrator or similar official has been appointed by a federal, provincial, territorial, state or other governmental court, agency, or official or by a creditor to take control of, supervise, manage or liquidate the entity, (ii) a reorganization proceeding relating to the entity is brought under the Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36, or any similar federal, provincial, territorial, state or other governmental statute, law, regulation or ordinance, or (iii) the entity becomes a debtor-in- possession under Title 11 of the United States Bankruptcy Code or any similar federal, provincial, territorial, state or other governmental statute, law, act, rule, regulation or ordinance. However, for the purposes of Paragraph 11, **Financial Impairment** shall not include any reference to an **Outside Organization**.
- 25.14 “**Independent Director**” means any individual who is, was, or shall become during the **Policy Period**, a director (or equivalent foreign position) of an **Insured Organization** who has no direct or indirect material relationship with the **Insured Organization**, as defined in Section 1.4 (2) of the Canadian Securities Administrators' Multilateral Instrument 52-110 or similar provisions of any federal, provincial, territorial, state or other governmental statute, law, regulation or ordinance.
- 25.15 “**Insured**” means any **Insured Person** or **Insured Organization**.

- 25.16 “**Insured Person**” means any:
- (i) for the purposes of Insuring Agreement 1.1, **Director/Officer** or **Employee**;
 - (ii) for the purposes of Insuring Agreement 1.4, **Independent Director**;
 - (iii) for the purposes of Insuring Agreement 1.5, **Outside Individual**; or
 - (iv) **Spouse** but solely by reason of such status as a **Spouse** or because the claimant seeks to obtain recovery against property in which the **Spouse** has an interest.
- 25.17 “**Insured Organization**” means the **Parent Organization**, any **Investment Fund** or any **Subsidiary**.
- Insured Organization** shall not include any **Outside Organization**.
- 25.18 “**Interrelated Wrongful Acts**” means **Wrongful Acts** that have as a common nexus any fact, circumstance, situation, event, transaction, cause or series of causally connected facts, circumstances, situations, events, transactions, or causes.
- 25.19 “**Investigation Costs**” means reasonable costs, charges, fees, including but not limited to lawyer and expert fees and expenses (other than regular or overtime wages, salaries or fees of the **Insured Person**) incurred by the **Insured Organization**, including its board of directors or any committee of the board of directors, in connection with the investigation or evaluation of a **Derivative Demand**.
- 25.20 “**Investment Fund**” means an entity, including a pooled investment vehicle, which is controlled or managed directly or indirectly by an **Insured Organization** consisting of a sum of money whose principal is invested pursuant to the objectives set forth in such entity’s private placement, prospectus, or similar document.
- 25.21 “**Investment Holding Company**” means any entity whose purpose is to provide debt or equity investment to one or more **Portfolio Company** on behalf of an **Investment Fund**, the limited partners of an **Investment Fund**, or any co-investors of an **Investment Fund**.
- 25.22 “**Loss**” means amounts which an **Insured** is legally obligated to pay solely as a result of a **Claim** or **Derivative Demand** covered by this **Policy**, including:
- (i) **Defence Costs**;
 - (ii) any amounts payable by an **Insured Person** by virtue of any statute arising out of the failure of the **Insured Organization** or **Outside Organization** to: (i) deduct, withhold or remit taxes (including but not limited to non-resident withholding taxes, goods and services taxes, salary or withholding taxes and employee source deductions), employment insurance contributions or pension plan contributions; or (ii) pay debts for services performed by an **Employee** of the **Insured Organization** or employee of an **Outside Organization** in respect of salary, wages, commissions, earned bonuses and expenses incurred

by an **Employee** on behalf of the **Insured Organization** or employee on behalf of the **Outside Organization**, unpaid vacation pay, and interest on outstanding wages;

- (iii) damages, judgments, settlement amounts, pre-judgment and post-judgment interest, legal fees and costs awarded pursuant to judgments; or
- (iv) punitive or exemplary damages, the multiple portion of any multiplied damage award and civil penalties (including but not limited to violations of the United States Foreign Corrupt Practices Act or the Canadian Corruption of Foreign Public Officials Act or similar federal, provincial, territorial, state or other governmental statute, law, regulation or ordinance) where insurable by law.

It is understood and agreed that with respect to the insurability of punitive or exemplary damages, the multiple portion of any multiplied damage award and civil penalties, of all the jurisdictions applicable to a **Claim**, the jurisdiction with the most favourable laws to the **Insured Organization** concerning the insurability of such damages or penalties shall apply to determine whether coverage is available for such damages or penalties. If the **Insured Organization** determines in good faith that such damages or penalties are insurable under applicable law, Liberty will not raise a defence to coverage the insurability of such damages or penalties. However, in the event of a challenge to such a determination by any other person or entity, Liberty shall be obligated to pay such damages or penalties only if a court of competent jurisdiction specifically determines that such damages or penalties are insurable.

Loss shall not include:

- a. fines, penalties (other than the civil penalties referred to in (iv) above);
- b. taxes, other than amounts assessed against an **Insured Person** by virtue of any statute arising out of the failure of the **Insured Organization** or **Outside Organization** to: (i) deduct, withhold or remit taxes (including but not limited to non-resident withholding taxes, goods and services taxes, salary or withholding taxes, and employee source deductions), employment insurance contributions or pension plan contributions; or (ii) pay debts for services performed by an **Employee** of the **Insured Organization** or an employee of the **Outside Organization** in respect of salary, wages, commissions, earned bonuses, and expenses incurred by an **Employee** on behalf of the **Insured Organization** or by an employee on behalf of an **Outside Organization**, unpaid vacation pay, and interest on outstanding wages;
- c. costs associated with the monitoring, clean up, removal, containment, treatment, detoxification, or neutralization of **Pollutants**;
- d. dividends or distributions of profits or other assets of the **Insured Organization**;
- e. any amount allocated to uncovered loss pursuant to Paragraph 9;

- f. commissions, fees, including carried interest, interest, or principal in relation to any acquisition, loan, lease, extension of credit, equity contribution, equity investment;
- g. amounts for which there is no legal recourse against the **Insured**;
- h. costs to comply with any injunctive or non-monetary relief;
- i. amounts or matters uninsurable pursuant to any applicable law, including but not limited to damages or settlements which are in the nature of restitution, disgorgement, the return of ill-gotten gains, or the return of any contribution of capital to any **Insured**;
- j. any amount not indemnified by any **Insured Organization** or **Outside Organization** for which an **Insured** is absolved from payment by reason of any covenant, agreement, or court order;
- k. solely with respect to an **Employment Practices Claim**, the future salary, wages, commission, **Benefits**, bonuses, or other remuneration whatsoever of a claimant who has been or shall be hired, promoted, or reinstated to employment, whose employment has been or shall be continued, or whose salary, wages, commission, **Benefits**, bonuses, or other remuneration has been increased pursuant to a settlement, order or other resolution.

Notwithstanding the foregoing paragraph, and subject to Paragraph 9, Liberty shall not assert that the portion of any settlement in a **Securities Claim** attributable to allegations of violations of Sections 11 and/or 12 or liability imposed under section 15 of the United States Securities Act of 1933 or similar provisions of any federal, provincial, territorial, state or other governmental statute, law, regulation or ordinance in the public offering of securities issued by the **Insured Organization** constitutes uninsurable **Loss**.

- 25.23 “**Non-Profit Entity**” means any not-for-profit corporation incorporated in Canada under Part II of the Canada Corporations Act or the Canada Not-for-profit Corporations Act or amendments thereto, or any similar provisions of any provincial or territorial statutory law.
- 25.24 “**Outside Organization**” means:
 - (i) **Non-Profit Entity**; or
 - (ii) **Portfolio Company**.
- 25.25 “**Outside Organization Indemnification and Insurance**” means:
 - (i) any indemnification which an **Outside Organization** is legally permitted or required to provide to an **Outside Individual**, except to the extent that such **Outside Organization** fails to provide such indemnification by reason of its

Financial Impairment; and

- (ii) any valid and collectible insurance, including but not limited to, directors and officers, errors & omissions, or employment practices liability insurance, provided for the benefit of the director, officer, trustee, de facto director, member of an advisory, technical committee, executive committee, or any equivalent committee or observer to the board, or advisory, technical, executive committee, or any equivalent committee of any **Outside Organization**.

25.26 “**Outside Individual**” means:

- (i) any **Insured Person**; or
- (ii) any individual who the **Insured Organization** has agreed to indemnify;

who was, is, or shall become during the **Policy Period**, a director, officer, trustee, de facto director, member of an advisory, technical, executive committee, or any equivalent committee or observer to the board, or any advisory, technical, executive committee, or any equivalent committee, or equivalent position outside Canada or the United States of America of an **Outside Organization** provided always that the **Outside Individual** acted at the request and on behalf of the **Insured Organization**.

25.27 “**Parent Organization**” means the entity named in Item I of the Declarations.

25.28 “**Policy**” means the **Application**, the Declarations, the **Policy** terms, the endorsement(s) referred to in Item IX of the Declarations, and any endorsements added during the **Policy Period**.

25.29 “**Policy Period**” means the period set forth in Item II (A) of the Declarations subject to the date of termination of the **Policy** under Paragraph 18.

25.30 “**Pollutants**” means any substance exhibiting hazardous characteristics as defined by or identified by the Canadian Environmental Protection Act, 1999 or the United States Environmental Protection Agency or any federal, provincial, territorial, state, municipality, locality, or foreign counterpart thereof, including, but not limited to, any solid, liquid, gaseous, or thermal irritant or contaminant, including without limitation smoke, vapor, soot, fumes, acids, alkalis, chemicals, odors, noise, lead, oil or oil products, radiation, asbestos or asbestos-containing products, waste and any electric, magnetic or electromagnetic field of any frequency. Waste includes, but is not limited to, material to be recycled, reconditioned or reclaimed.

25.31 “**Portfolio Company**” means any entity in which an **Investment Fund** or an **Investment Holding Company** on behalf of an **Investment Fund** has or had a financial interest pursuant to the investment objectives set forth in any private placement memorandum, prospectus or similar document issued by the **Insured Organization**.

25.32 “**Professional Services**” means management, advisory, administrative, consultative, or other services provided by the **Insured** in the usual course of the **Insured’s** business

activities for or on behalf of any actual or prospective client or any **Investment Fund**, including the following:

- (i) management, advisory, administrative, or consultative services performed by an **Insured** directly or indirectly to, or for the benefit of, an **Insured Organization**;
- (ii) any oversight, asset allocation, investment management, or portfolio management services provided to an **Investment Fund**, including the selection and oversight of investment advisors and any outside service providers;
- (iii) the creation, administration, management, capitalization, purchase, sale, or winding up of an **Investment Fund** or **Investment Holding Company**;
- (iv) the purchase or sale, or offer to purchase or sell securities issued by a **Portfolio Company** on behalf of an **Investment Fund**;
- (v) management, advisory, or consultative services provided to a **Portfolio Company** or a potential **Portfolio Company** for the benefit of an **Investment Fund**, including any advice or consultation provided with respect to:
 - a. capital structure;
 - b. financing; or
 - c. amalgamation, merger, acquisition, consolidation, or disposal of a **Portfolio Company** or its assets including any subsidiaries of such **Portfolio Company**; or
- (vi) any action taken by an **Insured** in their capacity as a controlling shareholder of a **Portfolio Company** for the benefit of an **Investment Fund**.

25.33 **"Securities Claim"** means any **Claim**, including but not limited to an action under section 241 of the Canada Business Corporations Act or similar provisions of any federal, provincial, territorial, state or other governmental statute, law, regulation or ordinance, which:

- (i) arises from an actual or alleged violation of the Ontario Securities Act, R.S.O., c.S.5, the United States Securities Act of 1933, the United States Securities Exchange Act of 1934, any similar federal, provincial, territorial, state, municipal or other governmental statute, regulation, rule or ordinance, or of common or civil law, including a violation in connection with the purchase or sale of, or offer to purchase or sell, any securities of an **Insured Organization**, whether such purchase, sale or offer involves a transaction with an **Insured Organization** or occurs in the open market, or arises from a public or private offering of securities by an **Insured Organization**; or
- (ii) is brought, directly or by class action, by a securities holder of an **Insured Organization**, other than by an individual who at the time the **Securities Claim**



is brought, was or is an **Insured Person(s)** as defined only by Paragraphs (i.), (ii.) or (iii.) of Paragraph 25.16, based upon such securities holder's interest in such securities.

25.34 “**Spouse**” means an individual, regardless of their gender, who:

- (i) is married to an **Insured Person**;
- (ii) entered in good faith into a marriage with an **Insured Person** that is voidable or void;
- (iii) cohabited continuously in a conjugal relationship outside marriage with an **Insured Person** for a period of at least one (1) year; or
- (iv) cohabited continuously in a conjugal relationship of some permanence outside marriage with an **Insured Person**, if they are the natural or adoptive parents of the same children.

25.35 “**Subsidiary**” means any for-profit entity of which the **Parent Organization** either directly or indirectly:

- (i) owns or owned issued or outstanding securities representing the right to elect more than 50% of the board of directors, managing partners, general partners or equivalent, or
- (ii) holds or held the right pursuant to any written contract, by-laws, charter, shareholder agreement, trust indenture, joint venture agreement, limited liability company operating agreement, limited partnership agreement, or similar documents of an entity, to elect, appoint, or designate a majority of the board of directors, managing partners, general partners, or equivalent, including:
 - a. an **Investment Holding Company**;
 - b. a general partner entity, managing general partner entity, or managing member entity of one or more **Investment Fund**;
 - c. an investment manager entity or management entity as set out in a partnership agreement or operating agreement of an **Investment Fund**; or
 - d. the foreign equivalent of any entity outlined in paragraphs a., b., or c. above.

Subsidiary shall not include any **Portfolio Company** or **Investment Fund**.

25.36 “**Wrongful Act**” means any actual or alleged error, misstatement, misleading statement, omission, neglect, breach of duty committed or attempted or allegedly committed or attempted:



- (i) for the purposes of Insuring Agreements 1.1 (i) and (ii), by a **Director/Officer** or **Employee** but only in their capacity as such, including the performance of or failure to perform **Professional Services** on behalf of an **Insured Organization**;
- (ii) for the purposes of Insuring Agreement 1.2, by or on behalf of an **Insured Organization** but only arising from **Professional Services**, an **Employment Practices Claim** or a **Securities Claim**;
- (iii) for the purposes of Insuring Agreements 1.4, by an **Independent Director** but only in their capacity as such and in the performance of duties for an **Insured Organization**; or
- (iv) for the purposes of Insuring Agreement 1.5, by an **Outside Individual** but only in their capacity as such and in the performance of duties for an **Outside Organization**.

26. **NOTICE OF MEMBERSHIP IN LIBERTY MUTUAL HOLDING COMPANY INC.:**

While this **Policy** is in effect, the **Parent Organization** first named in Item I of the Declarations is a member of Liberty Mutual Holding Company Inc. and is entitled to vote either in person or by proxy at any and all meetings of the members of said company. The Annual Meeting of Liberty Mutual Holding Company Inc. is in Boston, Massachusetts, on the second Wednesday in April each year at ten o'clock in the morning.

The **Parent Organization** first named in Item I of the Declarations shall participate in the distribution of any dividends declared by Liberty Mutual Holding Company Inc. for this **Policy**. The amount of such **Parent Organization's** participation is determined by the decision of Liberty Mutual Holding Company Inc.'s Board of Directors in compliance with any laws that apply.

IN WITNESS WHEREOF, the Insurer has caused this Policy to be signed by its President and Secretary, but this Policy shall not be valid unless countersigned by a duly authorized representative of the Insurer.

A handwritten signature in black ink, appearing to be "G. J. [unclear]".

President

A handwritten signature in black ink, appearing to be "M. [unclear]".

Secretary



Endorsement No. 1

PORTFOLIO COMPANY AMENDED

(exclude US listed companies)

Effective Date:	November 15, 2022
Policy Number:	IMTOAAW3EA010
Issued to:	Birch Hill Equity Partners Management Inc. and Birch Hill Equity Partners Inc.
Issued by:	Liberty Mutual Insurance Company

IT IS HEREBY UNDERSTOOD AND AGREED:

Paragraph 25.31 is amended to include the following:

Portfolio Company shall not include any entity that is publically-listed on any regulated stock exchange in the United States of America.

ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED

A handwritten signature in black ink, appearing to read "K. Kunk", written over a light yellow rectangular background.

Authorized Representative of Liberty Mutual Insurance Company

November 29, 2022
Date



Endorsement No. 2

POLLUTION EXCLUSION REMOVED

Effective Date:	November 15, 2022
Policy Number:	IMTOAAW3EA010
Issued to:	Birch Hill Equity Partners Management Inc. and Birch Hill Equity Partners Inc.
Issued by:	Liberty Mutual Insurance Company

IT IS HEREBY UNDERSTOOD AND AGREED:

Paragraph 2.7 of this **Policy** is deleted in its entirety.

ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED

A handwritten signature in black ink, appearing to read "K. Kunk".

Authorized Representative of Liberty Mutual Insurance Company

November 29, 2022
Date



Endorsement No. 3

AMENDED DEFINITION OF APPLICATION

Effective Date:	November 15, 2022
Policy Number:	IMTOAAW3EA010
Issued to:	Birch Hill Equity Partners Management Inc. and Birch Hill Equity Partners Inc.
Issued by:	Liberty Mutual Insurance Company

IT IS HEREBY UNDERSTOOD AND AGREED THAT:

Paragraph 25.1, "**Application**", is deleted in its entirety and replaced with the following:

25.1 "**Application**" means:

- (i) all signed applications, including attachments and materials submitted therewith or as a part thereof, or incorporated therein, for this **Policy**. All such materials are deemed attached to and incorporated into this **Policy**; and
- (ii) if applicable, any warranty statement provided to Liberty within the past three (3) years with respect to this **Policy**.

ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED

A handwritten signature in black ink, appearing to read "K. Kunk".

Authorized Representative of Liberty Mutual Insurance Company

November 29, 2022
Date



Endorsement No. 4

INSURING AGREEMENT 1.4 AMENDED

Applies to Director(s) and Officer(s)

Effective Date:	November 15, 2022
Policy Number:	IMTOAAW3EA010
Issued to:	Birch Hill Equity Partners Management Inc. and Birch Hill Equity Partners Inc.
Issued by:	Liberty Mutual Insurance Company

IT IS HEREBY UNDERSTOOD AND AGREED THAT:

1. Paragraph 1.4, **ADDITIONAL NON-INDEMNIFIABLE COVERAGE FOR INDEPENDENT DIRECTORS**, is deleted in its entirety and replaced with the following:

- 1.4 **ADDITIONAL NON-INDEMNIFIABLE COVERAGE FOR DIRECTOR(S)/OFFICER(S):** Liberty shall pay on behalf of an **Insured Person** all **Loss** resulting from a **Wrongful Act** which an **Insured Person** becomes legally obligated to pay on account of any **Claim** first made against an **Insured Person** during the **Policy Period** or **Discovery Period** and provided such **Insured Person** is not indemnified by an **Insured Organization** and only when the Limit of Liability stated in Item III (A) of the Declarations is exhausted through the payment of **Loss**.

Any coverage afforded under this **Policy** pursuant to this Paragraph 1.4 shall not apply to any **Claim** alleging, based upon, arising out of or attributable to the same or similar related facts or **Wrongful Acts** alleged in any **Claim**, which eroded or exhausted the Limit of Liability stated in Item III (A) of the Declarations.

Any coverage afforded under this **Policy** pursuant to this Paragraph 1.4 shall also be specifically excess of:

- (i) the Limit of Liability stated in Item III (A) of the Declarations, and
 - (ii) the Limit of Liability under any other policy that is written specifically excess of this **Policy**, including but not limited to any excess difference in conditions policy.

2. Paragraph 25.16 is deleted in its entirety and replaced with the following:



25.16 “**Insured Person**” means any:

- (i) for the purposes of Insuring Agreement 1.1, **Director/Officer** or **Employee**;
- (ii) for the purposes of Insuring Agreement 1.4, **Director/Officer**;
- (iii) for the purposes of Insuring Agreement 1.5, Outside Individual; or
- (iv) **Spouse** but solely by reason of such status as a **Spouse** or because the claimant seeks to obtain recovery against property in which the **Spouse** has an interest.

ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED

A handwritten signature in black ink, appearing to read "K. Kunk", written over a light blue horizontal line.

Authorized Representative of Liberty Mutual Insurance Company

November 29, 2022
Date



Endorsement No. 5

REPRESENTATIONS AND SEVERABILITY AMENDED

Effective Date: November 15, 2022
Policy Number: IMTOAAW3EA010
Issued to: Birch Hill Equity Partners Management Inc. and
Birch Hill Equity Partners Inc.
Issued by: Liberty Mutual Insurance Company

IT IS HEREBY UNDERSTOOD AND AGREED THAT:

Paragraph 4 is deleted and replaced as follows:

4. **REPRESENTATIONS AND SEVERABILITY:** The **Insured(s)** represent that the particulars and statements contained in the **Application** are true and shall be deemed material to the acceptance of the risk or the hazard assumed by Liberty under this **Policy**. This **Policy** is issued in reliance upon the truth of such representations.

The **Application** shall be construed as a separate **Application** for coverage by each **Insured Person**. No statement in the **Application** or knowledge possessed by any one **Insured Person** shall be imputed to any other **Insured Person** for the purpose of determining the availability of coverage under this **Policy**. With respect to applicability of the exclusions in Paragraphs 2, 3, and 4, the **Wrongful Act** or knowledge of any one **Insured Person** shall not be imputed to any other **Insured Person**.

It is further understood that any fact pertaining to, knowledge possessed by, and/or declaration, statement, or disclosure made in this **Application** for this **Policy** by the person(s) who signed the **Application** for this **Policy** and/or any past, present or future Chief Executive Officer, Managing Partner or Director of Finance of any **Insured Organization** shall be imputed to the **Insured Organization**. With respect to applicability of the exclusions in Paragraphs 2 and 3, the **Wrongful Act** or knowledge of any past, present or future Chief Executive Officer, Managing Partner or Director of Finance shall be imputed to the **Insured Organization**.



ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED

A handwritten signature in black ink, appearing to read "K. Kunk".

Authorized Representative of Liberty Mutual Insurance Company

November 29, 2022

Date



Endorsement No. 6

PROFESSIONAL SERVICES AMENDED

Effective Date:	November 15, 2022
Policy Number:	IMTOAAW3EA010
Issued to:	Birch Hill Equity Partners Management Inc. and Birch Hill Equity Partners Inc.
Issued by:	Liberty Mutual Insurance Company

IT IS HEREBY UNDERSTOOD AND AGREED THAT:

Paragraph 25.32 is deleted and replaced as follows:

25.32 “**Professional Services**” means management, advisory, administrative, consultative, or other services provided by the **Insured** in the usual course of the **Insured’s** business activities for or on behalf of any actual or prospective client or any **Investment Fund**, including but not limited to the following:

- (i) management, advisory, administrative, or consultative services performed by an **Insured** directly or indirectly to, or for the benefit of, an **Insured Organization**;
- (ii) any oversight, asset allocation, investment management, or portfolio management services provided to an **Investment Fund**, including the selection and oversight of investment advisors and any outside service providers;
- (iii) the creation, administration, management, capitalization, purchase, sale, or winding up of an **Investment Fund** or **Investment Holding Company**;
- (iv) the purchase or sale, or offer to purchase or sell securities issued by a **Portfolio Company** on behalf of an **Investment Fund**;
- (v) management, advisory, or consultative services provided to a **Portfolio Company** or a potential **Portfolio Company** for the benefit of an **Investment Fund**, including any advice or consultation provided with respect to:
 - a. capital structure;
 - b. financing; or



- c. amalgamation, merger, acquisition, consolidation, or disposal of a **Portfolio Company** or its assets including any subsidiaries of such **Portfolio Company**; or
- (vi) any action taken by an **Insured** in their capacity as a controlling shareholder of a **Portfolio Company** for the benefit of an **Investment Fund**.

ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED

A handwritten signature in black ink, appearing to read "K. A. Kunk".

Authorized Representative of Liberty Mutual Insurance Company

November 29, 2022

Date



Endorsement No. 7

PORTFOLIO COMPANY AMENDED

Effective Date:	November 15, 2022
Policy Number:	IMTOAAW3EA010
Issued to:	Birch Hill Equity Partners Management Inc. and Birch Hill Equity Partners Inc.
Issued by:	Liberty Mutual Insurance Company

IT IS HEREBY UNDERSTOOD AND AGREED THAT:

Paragraph 25.31 is deleted and replaced as follows:

25.31 **“Portfolio Company”** means any entity in which an **Investment Fund** or an **Investment Holding Company** on behalf of an **Investment Fund**:

- (i) has or had a financial interest pursuant to the investment objectives set forth in any private placement memorandum, prospectus or similar document issued by the **Insured Organization**; or
- (ii) owns or controls outstanding securities or voting rights through application and in accordance with an investment contract representing the present right to vote for the election of directors or to select managing partners; or
- (iii) has an equity interest through the creation of a special purpose vehicle with its research partners, as formally set forth in the articles of incorporation of that special purpose vehicle.



ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED

A handwritten signature in black ink, appearing to read "K. Kunk".

Authorized Representative of Liberty Mutual Insurance Company

November 29, 2022

Date



Endorsement No. 8

NOTICE OF CIRCUMSTANCE OR WRONGFUL ACT AMENDED

Effective Date:	November 15, 2022
Policy Number:	IMTOAAW3EA010
Issued to:	Birch Hill Equity Partners Management Inc. and Birch Hill Equity Partners Inc.
Issued by:	Liberty Mutual Insurance Company

IT IS HEREBY UNDERSTOOD AND AGREED THAT:

Paragraph 6 is deleted and replaced as follows:

6. **NOTICE OF CIRCUMSTANCE OR WRONGFUL ACT:** If during the **Policy Period** or **Discovery Period** the Chief Executive Officer, Chief Financial Officer or in House General Counsel becomes aware of any circumstance (including but not limited to a request to toll a statute of limitations) or **Wrongful Act** that could reasonably give rise to a **Claim** or **Derivative Demand** and:

- 6.1 if such circumstance or **Wrongful Act** is reported to Liberty in writing during the **Policy Period** or **Discovery Period** with particulars as to the reasons for anticipating such a **Claim** or **Derivative Demand**, the nature and dates of the alleged **Wrongful Act**, the alleged injuries or damages sustained, the names of potential claimants, the **Insured** involved in the alleged **Wrongful Act** and the manner in which the Chief Executive Officer, Chief Financial Officer or in House General Counsel first became aware of the **Wrongful Act**; and
- 6.2 Liberty accepts this reported information as a potential **Claim** or **Derivative Demand**;

then any **Claim** or **Derivative Demand** subsequently arising from such circumstance or **Wrongful Act** duly reported in accordance with this paragraph shall be deemed under this **Policy** to be a **Claim** or **Derivative Demand** made during the **Policy Period** or **Discovery Period**.



ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED

A handwritten signature in black ink, appearing to read "K. Kunk".

Authorized Representative of Liberty Mutual Insurance Company

November 29, 2022

Date



Endorsement No. 9

EXCLUSION 2.5 AMENDED

Effective Date:	November 15, 2022
Policy Number:	IMTOAAW3EA010
Issued to:	Birch Hill Equity Partners Management Inc. and Birch Hill Equity Partners Inc.
Issued by:	Liberty Mutual Insurance Company

IT IS HEREBY UNDERSTOOD AND AGREED THAT:

Paragraph 2.5 is amended to include the following:

(vi) a Claim under Paragraph 1.1 (i) for Defence Costs only

ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED

A handwritten signature in black ink, appearing to read "K. Kunk", written over a light gray horizontal line.

Authorized Representative of Liberty Mutual Insurance Company

November 29, 2022
Date



Endorsement No. 10

ORDER OF PAYMENTS AMENDED

Effective Date: November 15, 2022
Policy Number: IMTOAAW3EA010
Issued to: Birch Hill Equity Partners Management Inc. and
 Birch Hill Equity Partners Inc.
Issued by: Liberty Mutual Insurance Company

IT IS HEREBY UNDERSTOOD AND AGREED THAT:

Paragraph 10 is deleted and replaced as follows:

10. **ORDER OF PAYMENTS:** In the event of **Loss** arising from any **Claim** or **Derivative Demand** which in the aggregate exceeds the available or remaining available Limit of Liability, then at the written request of the Chief Executive Officer, Managing Partner, or Director of Finance of the **Parent Organization**, Liberty shall in all events:
- 10.1 first, pay **Loss** under Paragraph 1.1 (i) or 1.5 (i) on behalf of the **Insured Person** or **Outside Individual**;
 - 10.2 then, only after payment of **Loss** has been made pursuant to Paragraph 10.1 above, with respect to whatever remaining amount of the Limit of Liability is available after such payment, at the written request of the Chief Executive Officer, Managing Partner, or Director of Finance of the **Parent Organization**; either pay or withhold payment on behalf of the **Insured Organization**, all **Loss** covered under Paragraph 1.1 (ii) and 1.5 (ii) of this **Policy**; and
 - 10.3 then, only after payment of **Loss** has been made pursuant to Paragraphs 10.1 and 10.2 above, with respect to whatever remaining amount of the Limit of Liability is available after such payment, at the written request of the Chief Executive Officer, Managing Partner, or Director of Finance of the **Parent Organization**; either pay or withhold payment on behalf of the **Insured Organization**, all **Loss** covered under Paragraph 1.2 of this **Policy**.

In the event Liberty withholds payment pursuant to Paragraphs 10.1 through 10.3 above, then Liberty shall at such time and in such manner set forth in written instructions of the Chief Executive Officer, Managing Partner, or Director of Finance of the **Parent Organization**, remit such payment to an **Insured Organization** or directly to or on behalf of a **Director/Officer**.



The **Financial Impairment** of any **Insured Organization** or **Insured Person** shall not relieve any of its obligations to prioritize payment of **Loss** under this **Policy** pursuant to this paragraph 10.

ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED

A handwritten signature in black ink, appearing to read "K. Kunk", written over a light gray horizontal line.

Authorized Representative of Liberty Mutual Insurance Company

November 29, 2022

Date



Endorsement No. 11

ALLOCATION AMENDED

Effective Date:	November 15, 2022
Policy Number:	IMTOAAW3EA010
Issued to:	Birch Hill Equity Partners Management Inc. and Birch Hill Equity Partners Inc.
Issued by:	Liberty Mutual Insurance Company

IT IS HEREBY UNDERSTOOD AND AGREED THAT:

Paragraph 9.1 of this **Policy** is deleted in its entirety and replaced with the following:

- 9.1 Solely with respect to **Defence Costs** covered under Insuring Agreement 1.1, 1.4 or 1.5, Liberty shall advance payment on a current basis, the percentage of **Defence Costs** stated in Item VII of the Declarations; the remaining percentage shall be allocated to uncovered loss. However, no **Defence Costs** shall be allocated to the **Insured** to the extent that the **Insured** is unable to pay by reason of **Financial Impairment**. The allocation of **Defence Costs** shall be final and binding and shall not apply to or create any presumption with respect to the allocation of any other **Loss**.

ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED

A handwritten signature in black ink, appearing to read "K. Kunk".

Authorized Representative of Liberty Mutual Insurance Company

November 29, 2022
Date



Endorsement No. 12

EMPLOYEE AMENDED TO INCLUDE INDEPENDENT CONTRACTOR

Effective Date: November 15, 2022
Policy Number: IMTOAAW3EA010
Issued to: Birch Hill Equity Partners Management Inc. and
Birch Hill Equity Partners Inc.
Issued by: Liberty Mutual Insurance Company

IT IS HEREBY UNDERSTOOD AND AGREED THAT:

1. Paragraph 25.9 is hereby amended to include the following:

Employee shall also include an **Independent Contractor**.

2. Paragraph 25 is amended to include the following definition:

"Independent Contractor" means any individual who is contracted in writing to perform services for the **Insured Organization** in the conduct or operation of the **Insured Organization's** business, provided that such individual shall be deemed an **Employee** only to the extent that he or she renders services for the benefit of the **Insured Organization's** business.

ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED

A handwritten signature in black ink, appearing to read "K. Kunk", written over a light gray horizontal line.

Authorized Representative of Liberty Mutual Insurance Company

November 29, 2022
Date



Endorsement No. 13

OUTSIDE INDIVIDUAL AMENDED

Effective Date: November 15, 2022
Policy Number: IMTOAAW3EA010
Issued to: Birch Hill Equity Partners Management Inc. and
Birch Hill Equity Partners Inc.
Issued by: Liberty Mutual Insurance Company

IT IS HEREBY UNDERSTOOD AND AGREED THAT:

Paragraph 25.26, "**Outside Individual**", is deleted in its entirety and replaced with the following:

25.26 "**Outside Individual**" means:

- (i) any **Director/Officer, Employee, or Independent Director**; or
- (ii) any individual who the **Insured Organization** has agreed to indemnify;

who was, is, or shall become during the **Policy Period**, a director, officer, general partner, trustee, de facto director, de facto officer, shadow director, shadow officer, acting director, acting officer, member of an advisory, technical, executive committee, or any equivalent committee or observer to the board, or any advisory, technical, executive committee, or any equivalent committee, or equivalent position outside Canada or the United States of America of an **Outside Organization** provided always that the **Outside Individual** acted at the request and on behalf of the **Insured Organization**.

ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED

A handwritten signature in black ink, appearing to read "K. Kunk".

Authorized Representative of Liberty Mutual Insurance Company

November 29, 2022

Date



Endorsement No. 14

PRE-CLAIM INQUIRY COST COVERAGE

Effective Date: November 15, 2022
Policy Number: IMTOAAW3EA010
Issued to: Birch Hill Equity Partners Management Inc. and
Birch Hill Equity Partners Inc.
Issued by: Liberty Mutual Insurance Company

IT IS HEREBY UNDERSTOOD AND AGREED THAT:

1. Paragraph 1.1, **DIRECTOR/OFFICER AND EMPLOYEES LIABILITY**, of this **Policy**, is deleted in its entirety and replace with the following:

1.1 **DIRECTOR/OFFICER AND EMPLOYEES LIABILITY:** Liberty shall pay on behalf of:

(i)

- a. an **Insured Person** all **Loss** resulting from a **Wrongful Act** which an **Insured Person** becomes legally obligated to pay on account of any **Claim** first made against an **Insured Person** during the **Policy Period** or **Discovery Period** and provided such **Insured Person** is not indemnified by the **Insured Organization**;
- b. an **Insured Person** all **Pre-Claim Inquiry Costs** which an **Insured Person** incurs resulting from a **Pre-Claim Inquiry** first made against an **Insured Person** during the **Policy Period** or **Discovery Period** and provided such **Insured Person** is not indemnified by the **Insured Organization**; and

(ii)

- a. an **Insured Organization** all **Loss** resulting from a **Wrongful Act** which an **Insured Person** becomes legally obligated to pay on account of any **Claim** first made against an **Insured Person** during the **Policy Period** or **Discovery Period** and provided the **Insured Organization** has granted indemnification to such **Insured Person**;
- b. an **Insured Organization** all **Pre-Claim Inquiry Costs** which an



Insured Person incurs resulting from a **Pre-Claim Inquiry** first made against an **Insured Person** during the **Policy Period** or **Discovery Period** and provided the **Insured Organization** has granted indemnification to such **Insured Person**.

Coverage provided by Insuring Agreement 1.1 (i)(a) shall not be rescinded by Liberty in whole or in part for any reason.

2. The lead in language for Paragraph 2 of this **Policy**, is deleted in its entirety and replaced with the following:

EXCLUSIONS APPLICABLE TO ALL INSURING AGREEMENTS: Liberty shall not be liable to make any payment for **Loss** or **Pre-Claim Inquiry Costs** in connection with any **Claim** or **Derivative Demand**:

3. The lead in language for Paragraph 3 of this **Policy**, is deleted in its entirety and replaced with the following:

ADDITIONAL EXCLUSIONS APPLICABLE TO EMPLOYMENT PRACTICES CLAIM: In addition to the exclusions in Paragraph 2 Liberty shall not be liable to make any payment for **Loss** or **Pre-Claim Inquiry Costs** in connection with any **Employment Practices Claim** arising under any Insuring Agreement:

4. Paragraph 5.1 of this **Policy**, is deleted in its entirety and replace with the following:

- 5.1 The **Insured**, as a condition precedent to their rights under this **Policy**, shall report any **Claim** or **Derivative Demand**, other than a **Pre-Claim Inquiry**, to Liberty as soon as practicable.

5. Paragraph 5 of this **Policy**, is amended by adding the following:

- 5.4 If the **Insured** first becomes aware of a **Pre-Claim Inquiry** and if such circumstance is reported to Liberty in writing with information as to the **Enforcement Unit** conducting the **Pre-Claim Inquiry**, the circumstances by which the **Insured** first became aware of the **Pre-Claim Inquiry** and particulars as to dates and persons involved, as soon as practicable after the chief executive officer or chief financial officer of the **Insured Organization** first becomes aware of such **Pre-Claim Inquiry**, but no later than 60 days after the end of the **Policy Period** or **Discovery Period**, if applicable, and Liberty accepts this reported circumstance as a **Pre-Claim Inquiry**, then such **Pre-Claim Inquiry** shall be treated as a **Claim** under this **Policy**, subject to the other terms, conditions and limitations of this **Policy**. Any other **Claim** or **Derivative Demand** subsequently arising from such **Pre-Claim Inquiry** duly reported in accordance with this paragraph shall be deemed to have been first made at the time such written notice was received by Liberty. However, if the **Insured** elects not to report a **Pre-Claim Inquiry**, then any subsequent **Claim** or **Derivative Demand** which arises out of the **Pre-Claim Inquiry** shall be subject to the reporting requirements of Paragraph 5 of



this **Policy**, and coverage for such subsequent **Claim** or **Derivative Demand** will not be denied because of the **Insured's** failure to report such **Pre-Claim Inquiry** pursuant to this paragraph.

6. Paragraph 7.1 of this **Policy**, is amended to include the following:

Liberty's maximum Limit of Liability for all **Pre-Claim Inquiry Costs** under Paragraph 1.1 of this **Policy** shall be the amount stated in Item III (A) of the Declarations.

7. Paragraphs 7.2, 7.3, 10, 11 and 12 of this **Policy**, are amended by deleting the phrase "**Loss**" and replacing it with the phrase "**Loss or Pre-Claim Inquiry Costs.**"

8. Paragraph 7.5 of this **Policy**, is deleted in its entirety and replaced with the following:

The Limits of Liability available to pay judgments or settlements shall be reduced by **Defence Costs** and **Pre-Claim Inquiry Costs**. In no event shall Liberty be liable for **Defence Costs**, **Pre-Claim Inquiry Costs** or any other **Loss** in excess of the Limit of Liability as set forth in Item III (D) of the Declarations.

9. Paragraph 8.1 of this **Policy**, is deleted in its entirety and replaced with the following:

- 8.1 It shall be the duty of the **Insured**, not Liberty, to defend a **Claim** or **Derivative Demand**. No **Defence Costs**, **Pre-Claim Inquiry Costs** or **Investigation Costs** shall be incurred or settlements made, contractual obligations assumed or liability admitted with respect to any **Claim** or **Derivative Demand** without Liberty's written consent, which shall not be unreasonably withheld. Liberty shall not be liable for any **Defence Costs**, **Pre-Claim Inquiry Costs**, **Investigation Costs**, settlement, assumed obligation, or loss resulting from any admission to which it has not consented.

10. Paragraph 8.3 of this **Policy**, is deleted in its entirety and replaced with the following:

- 8.3 Liberty shall advance **Defence Costs**, **Pre-Claim Inquiry Costs** and **Investigation Costs**, excess of the Retention amount stated in Item IV of the Declarations, on a current basis, and no later than 60 days after Liberty has received acceptable documentation of such request for advancement. Any amounts which are subsequently determined as not being payable by Liberty because there is no coverage under this **Policy** shall be promptly repaid by the **Insured** on whose behalf it was advanced.

11. Paragraph 25.3 of this **Policy**, "**Claim**", is amended to include the following:

Claim shall also include **Pre-Claim Inquiry**.

12. Strictly for the purpose of this endorsement, Paragraph 25.11 of this **Policy**, "**Employment Practices Claim**", is amended to include the following:

Employment Practices Claim shall also include a **Pre-Claim Inquiry** brought by an



Enforcement Unit against and **Insured Organization** based on the matters stated in (i) through (vi) above.

13. Paragraph 25 of this **Policy**, is amended to include the following definitions:

“**Enforcement Unit**” means any federal, provincial, territorial, state, local or other governmental regulatory authority worldwide (including the Ontario Securities Commission, the U.S. Department of Justice, the U.S. Securities and Exchange Commission and any attorney general) or the enforcement unit of any securities exchange or similar self-regulatory organization.

“**Pre-Claim Inquiry**” means:

- (i) a written request or demand by an **Enforcement Unit** for an **Insured Person** to appear at a meeting, deposition or interview, or produce documents with respect to the **Insured Organization’s** business activities or the **Insured Person**, in their capacity as such; or
- (ii) a written request or demand by or on behalf of the **Insured Organization**, the **Insured Organization’s** board of directors (or similar management body), or any committee of the **Insured Organization’s** board of directors (or similar management body) for an **Insured Person** to appear at a meeting, deposition or interview, or produce documents with respect to the **Insured Organization’s** business activities or the **Insured Person**, in their capacity as such: (a) arising out of a request or demand set forth in subparagraph (i) above; or, (b) which is part of the **Insured Organization’s** investigation and evaluation of a **Derivative Demand**.

However, **Pre-Claim Inquiry** shall not include any routine or regularly scheduled regulatory or internal supervision, inspection, compliance, review, examination, production or audit, including any request for mandatory information from an **Enforcement Unit**, conducted in the normal review or compliance process of the **Insured Organization**.

A **Pre-Claim Inquiry** will be deemed first made on the earliest date any **Insured** receives a document initiating any of the events described above.

“**Pre-Claim Inquiry Costs**” means any reasonable and necessary costs, charges and expenses consented to by Liberty and incurred by an **Insured Person** solely in connection with his/her preparation for and response to a **Pre-Claim Inquiry**.

However, **Pre-Claim Inquiry Costs** shall not include the costs of complying with any formal or informal discovery or other request seeking documents, records or electronic information in the possession or control of an **Insured Organization**, the requestor or any other third party.



ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED

A handwritten signature in black ink, appearing to read "Kurt Kunk".

Authorized Representative of Liberty Mutual Insurance Company

November 29, 2022

Date



Endorsement No. 15

NEWLY ACQUIRED OR CREATED INVESTMENT FUND AMENDED

Effective Date:	November 15, 2022
Policy Number:	IMTOAAW3EA010
Issued to:	Birch Hill Equity Partners Management Inc. and Birch Hill Equity Partners Inc.
Issued by:	Liberty Mutual Insurance Company

IT IS HEREBY UNDERSTOOD AND AGREED THAT:

Paragraph 14.2 is deleted in its entirety and replaced with the following:

- 14.2 If during the **Policy Period**, an **Insured Organization** creates or acquires control of a new **Investment Fund**, coverage shall extend to such newly created or newly controlled **Investment Fund** and its **Insured Persons** but only with respect to **Wrongful Acts** taking place after such creation or control.

However, if:

- (i) the offering amount of any newly controlled **Investment Fund** or the aggregate amount of the offerings or acquisitions of all **Investment Funds** which are newly controlled during the **Policy Period** exceeds 175% of the offering size of the largest existing **Investment Fund** as at the inception date of this **Policy**, or
- (ii) the investment objectives (as set forth in the private placement memorandum, prospectus or similar document issued by the **Insured Organization**) of any newly created or newly controlled **Investment Fund** differ materially from the investment objectives of the **Investment Fund(s)** currently covered by this **Policy**,

then the **Parent Organization** shall give written notice of such newly created or newly controlled **Investment Fund** and such general partner entity, managing general partner entity or managing member entity to Liberty as soon as practicable but in no event more than ninety (90) days after the effective date of the acquisition of control, or offering or private placement memorandum, together with such information as Liberty may require, and shall pay any additional premium so required by Liberty. If the **Parent Organization** fails to comply with such condition precedent, coverage otherwise afforded by this Paragraph 14.2 shall terminate ninety (90) days after the effective date of creation.



ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED

A handwritten signature in black ink, appearing to read "K. Kunk".

Authorized Representative of Liberty Mutual Insurance Company

November 29, 2022
Date



Endorsement No. 16

SUCCESSOR IN INTEREST COVERAGE

Effective Date: November 15, 2022
Policy Number: IMTOAAW3EA010
Issued to: Birch Hill Equity Partners Management Inc. and
Birch Hill Equity Partners Inc.
Issued by: Liberty Mutual Insurance Company

IT IS HEREBY UNDERSTOOD AND AGREED THAT:

- 1 Paragraph 1, **INSURING AGREEMENTS**, of this **Policy** is amended to include the following:
 - 1.6 **SUCCESSOR IN INTEREST COVERAGE:** Liberty shall pay on behalf of an **Insured** all **Defence Costs** resulting from any **Claim** made against an **Insured**:
 - (i) for any actual or alleged error, misstatement, misleading statement, omission, neglect, breach of duty committed or attempted or allegedly committed or attempted by any entity prior to such entity becoming an **Insured Organization** or **Portfolio Company**; and
 - (ii) as a “successor in interest” of any **Insured Organization** or solely by reason of such **Insured’s** capacity as a controlling shareholder.
2. Paragraph 7.1, of this **Policy** is amended to include the following:

Liberty’s maximum Limit of Liability for all **Defence Costs** under Insuring Agreement 1.6 shall be \$250,000, and is part of and not in addition to the amount stated in Item III (D) of the Declarations.
3. Paragraph 11, of this **Policy** is amended to include the following:

Coverage provided by this **Policy** under Insuring Agreement 1.6 shall be excess of any:

 - (i) applicable run-off coverage for the entity that becomes an **Insured Organization** or **Portfolio Company**; and
 - (ii) indemnification provided in the Purchase and Sale Agreement provided by the seller of the entity.



ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED

A handwritten signature in black ink, appearing to read "Kait Kunk".

Authorized Representative of Liberty Mutual Insurance Company

November 29, 2022
Date



Endorsement No. 17

OUTSIDE INDIVIDUAL COVERAGE AMENDED

Effective Date:	November 15, 2022
Policy Number:	IMTOAAW3EA010
Issued to:	Birch Hill Equity Partners Management Inc. and Birch Hill Equity Partners Inc.
Issued by:	Liberty Mutual Insurance Company

IT IS HEREBY UNDERSTOOD AND AGREED:

1. Item IV, **RETENTIONS**, of the Declarations, is deleted in its entirety and replaced with the following:

Item IV **RETENTIONS:**

Insuring Agreements 1.1 (i), 1.3, 1.4 and 1.5	NIL
Insuring Agreements 1.1 (ii)	\$150,000
Insuring Agreement 1.2	\$150,000

2. Paragraph 1.5, **OUTSIDE INDIVIDUAL COVERAGE**, of this **Policy**, is deleted in its entirety and replaced with the following:

1.5 OUTSIDE INDIVIDUAL COVERAGE: LIBERTY SHALL PAY ON BEHALF OF AN INSURED PERSON ALL LOSS RESULTING FROM A WRONGFUL ACT WHICH AN INSURED PERSON BECOMES LEGALLY OBLIGATED TO PAY ON ACCOUNT OF ANY CLAIM first made against an **Insured Person** during the **Policy Period** or **Discovery Period**.

ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED

Authorized Representative of Liberty Mutual Insurance Company

November 29, 2022

Date



Endorsement No. 18

EMPLOYED LAWYERS SUBLIMIT

Effective Date: November 15, 2022
Policy Number: IMTOAAW3EA010
Issued to: Birch Hill Equity Partners Management Inc. and
Birch Hill Equity Partners Inc.
Issued by: Liberty Mutual Insurance Company

IT IS HEREBY UNDERSTOOD AND AGREED:

1. Paragraph 25.16 of this **Policy**, is deleted in its entirety and replaced with the following:

25.16 “**Insured Person**” means any:
 - (i) for the purposes of Insuring Agreement 1.1, **Director/Officer, Employee, or Employed Lawyer**;
 - (ii) for the purposes of Insuring Agreement 1.4, **Independent Director**;
 - (iii) for the purposes of Insuring Agreement 1.5, **Outside Individual**; or
 - (iv) **Spouse** but solely by reason of such status as a **Spouse** or because the claimant seeks to obtain recovery against property in which the **Spouse** has an interest.
2. Paragraph 2 of this **Policy**, is amended to include the following:

against any **Employed Lawyer** based upon, arising from, or in any way related to the performance of services as a licensed lawyer or attorney for the benefit of or on behalf of any **Client**, even if such service is at the request of the **Insured Organization** or part of the regularly assigned duties of the **Employed Lawyer**.
3. Paragraph 25 of this **Policy**, is amended to include the following:

“**Employed Lawyer**” means any **Employee** who performs services as a licensed lawyer or attorney for the **Insured Organization** as part of their regularly assigned duties.

“**Client**” means any person or entity other than the **Insured Organization**, any **Employee** and/or **Insured Person** in their capacity as such



4. Liberty's maximum liability for **Loss** under this Endorsement shall be \$1,000,000. This shall be a Sub-Limit of Liability and is part of and not in addition to the Limit of Liability in Item III (A) of the Declarations.

ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED

A handwritten signature in black ink, appearing to read "Kurt Kunk", written over a horizontal line.

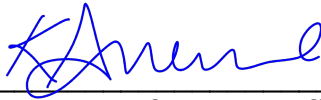
Authorized Representative of Liberty Mutual Insurance Company

November 29, 2022

Date

TAB L

This is **Exhibit "L"** referred to in the
Affidavit #2 of LUCIO MILANOVICH,
sworn before me, this 29th day of
November, 2023.



Commissioner for taking affidavits
Kristine Spence (LSO #66099S)

POLICYHOLDER NOTICE REGARDING HIGH POLITICAL RISK
JURISDICTIONS AND ECONOMIC SANCTIONS LAWS

This Policyholder Notice shall be construed as part of your **Policy** but no coverage is provided by this Policyholder Notice nor can it be construed to replace any provisions of your **Policy**. While no coverage is provided by this Policyholder Notice, bolded terms in this Policyholder Notice shall have the meaning set forth in your **Policy**. You should read your **Policy** and review your Declarations page for complete information on the coverages you are provided.

This notice is intended to inform you of: the difficulties we may have in servicing claims in jurisdictions with high political risk or instability; and, the consequences of our obligations to comply with Canadian and international economic sanctions laws. Though your coverage may apply on a world-wide basis, claims arising from events in certain jurisdictions may be very difficult to service. Such difficulties could include our inability to: retain appropriate third parties to assist with the adjustment of the claim; investigate or confirm the circumstances of the claim; and, process transactions with respect to claim investigation and payment. Furthermore, many countries are subject to Canadian, United States and international economic sanctions laws. Economic sanctions laws are legal measures imposed by countries to promote their foreign policy by prohibiting or restricting trade, travel or economic activity with particular countries or targeted entities or individuals. Insurance policies and transactions are often the subject of economic sanctions. Whether economic sanctions laws apply to any particular policy or claim may depend on several factors including where the policy was issued, the nationality, place of residence or place of incorporation of you, your parent company, your subsidiaries, other or additional insureds or the insurer as well as the location where events leading to a claim occur. We will strictly comply with Canadian and applicable international economic sanctions laws. Particularly with respect to international economic sanctions laws, as a wholly owned subsidiary of a United States based corporation, we may be subject to United States economic sanctions laws. Furthermore, services provided to us by our United States based parent which are critical to our ability to conduct business may not be available to us if United States economic sanctions laws apply. It is important that our customers are aware that the servicing difficulties and economic sanctions laws described above may have serious consequences on their coverage. Such consequences could include:

- delays and difficulties in the processing and payment of claims;
- delays and difficulties in responding to underwriting requests;
- the “freezing” of policies, resulting in the inability to process any transactions, including claims payments;
- the denial of claims; or,
- the voiding or cancellation of policies (with or without refunded premium).

**CODA Premier® Directors and Officers Liability Excess
DIC Policy
Premium Bill**

Policy Period	From: November 15, 2022	To: November 15, 2023
Effective Date	November 15, 2022	
Policy Number	99930351	
Insured	Birch Hill Equity Partners Management Inc. and Birch Equity Partners Inc.	
Name of Company	Chubb Insurance Company of Canada	
Date Issued	November 15, 2022	

Date Payment Due	Premium
	\$19,500



Authorized Representative

Policy is issued by the stock insurance company listed above.

THIS POLICY IS A CLAIMS MADE POLICY. EXCEPT AS OTHERWISE PROVIDED HEREIN, THIS POLICY COVERS ONLY CLAIMS FIRST MADE AGAINST THE INSURED DURING THE POLICY PERIOD. PLEASE READ THIS POLICY CAREFULLY.

THE LIMITS OF LIABILITY AVAILABLE TO PAY INSURED LOSS SHALL BE REDUCED BY AMOUNTS INCURRED FOR DEFENSE COSTS.

TERMS THAT APPEAR IN CAPITAL LETTERS HAVE SPECIAL MEANING. PLEASE REFER TO CLAUSE 2, DEFINITIONS.

This policy contains a clause that may or which may limit the amount payable

Policy No: 99930351

Item I.	Company	Birch Hill Equity Partners Management Inc. and Birch Equity Partners Inc.
	Principal Address	Suite 4510, 81 Bay Street, PO Box 45 Toronto, Ontario M5J 0E7

Item II.	Policy Period	
	From: November 15, 2022	To: November 15, 2023
	(12:01 AM local time at the address shown in Item 1.)	

Item III.	Limit of Liability:	\$5,000,000
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Aggregate Limit of Liability for all LOSS paid on behalf of all INSUREDS arising from all CLAIMS first made during the POLICY PERIOD.

FIRST REINSTATED LIMIT OF LIABILITY:	\$5,000,000 (in the aggregate)
SECOND REINSTATED LIMIT OF LIABILITY:	NIL (in the aggregate)
Maximum Limit of Liability under III.A, III.B and III.C combined	\$10,000,000

The limits of liability in Items III.A, III.B and III.C are separate and independent. Please refer to Clause 4 of this POLICY for the details on how the reinstatements operate.

Item IV.	CODA Access Fund	\$25,000
	Public Relations Fund:	\$25,000
	Enforcement Fund:	\$25,000

The amount stated for the CODA Access Fund is in addition to the Limit of Liability and any applicable reinstatements set forth in Item III above and the maximum amount the INSURER shall pay for such CODA Access Fund.

The Public Relations Fund and Enforcement Fund are sublimits that are part of, and not in addition to, the Limit of Liability and any applicable reinstatements set forth in Item III above.

Item V.	POLICY Premium:	\$19,500
	Discovery Period Premium:	125% of POLICY Premium

Item VI. Notice to COMPANY:

Any notice to the COMPANY or, except in accordance with Clause 16 (Authority) of this POLICY, to the INSUREDS, shall be given or made to the individual listed above, if any, or otherwise to the individual designated in the APPLICATION, if any, or otherwise to the signer of the APPLICATION, and shall be given or made in accordance with Clause 15 (Notice) of this POLICY.

Item VII. Notice to INSURER

Any notice to be given or payment to be made to the INSURER under this POLICY shall be given or made in accordance with Clause 15 (Notice) of this POLICY to:

A. Notice of CLAIM or WRONGFUL ACT:

Attention: Specialty Products Claims

Chubb Insurance Company of Canada
199 Bay Street, Suite 2500, PO Box 139, Commerce Court Postal Station
Toronto, Ontario, M5L 1E2
Canada

B. All payments or other notices:

Chief Underwriting Officer
Chubb Insurance Company of Canada
199 Bay Street, Suite 2500, PO Box 139, Commerce Court Postal Station
Toronto, Ontario, M5L 1E2
Canada

INFORMATION SUBMITTED TO THE INSURER WHICH IS NOT PROPERLY ADDRESSED TO THE CLAIMS DEPARTMENT SHALL NOT CONSTITUTE A VALID NOTICE OF CLAIM.


Item VIII. Schedule of Underlying Directors' and Officers' insurance:

	<u>Carrier</u>	<u>Policy No.</u>	<u>Policy Period</u>	<u>Limits</u>	<u>Attachment</u>
Primary Policy:	Liberty Mutual Insurance Company	IMTOAAW3E A010	November 15, 2022 to November 15, 2023	\$10,000,000	
Excess Policy:	AIG Insurance Company of Canada	01-817-58-45	November 15, 2022 to November 15, 2023	\$5,000,000	\$10,000,000

Authorization

IN WITNESS WHEREOF, the INSURER has caused this POLICY to be countersigned by a duly authorized representative of the INSURER.

Chubb Insurance Company of Canada



Authorized Representative

Table Of Contents

Clause	Page
1. INSURING CLAUSE	2
2. DEFINITIONS	4
3. CONDUCT EXCLUSION	10
4. LIMITS OF LIABILITY	11
5. ALTERNATIVE DISPUTE RESOLUTION	12
6. ASSISTANCE, COOPERATION AND CONSENT	12
7. RENEWAL	13
8. CANCELLATION	13
9. CHANGES AND ASSIGNMENTS	14
10. ADVANCEMENT OF DEFENCE COSTS	14
11. CURRENCY	15
12. HEADINGS	15
13. INSUREDS' REPORTING DUTIES	15
14. OTHER INSURANCE	17
15. NOTICE	17
16. AUTHORITY	17
17. NON-RESCISSION	17
18. SPOUSAL LIABILITY	18
19. SUBROGATION	18
20. ACQUISITION, CREATION OR DISPOSITION OF A SUBSIDIARY	19
21. DISCOVERY PERIOD	19
22. BANKRUPTCY	20
23. APPEALS	20
24. TERRITORY	20
25. SEVERABILITY	21
26. LIBERALIZATION	21
27. PROVINCIAL AMENDATORY INCONSISTENCY	21

Subject to all terms, definitions, conditions, exclusions and limitations of this POLICY, the COMPANY, the INSUREDS, and the INSURER agree as follows:

1. INSURING CLAUSE

- (a) The INSURER shall pay on behalf of the INSUREDS any and all NON-INDEMNIFIABLE LOSS that the INSUREDS become legally obligated to pay by reason of any CLAIM first made against the INSUREDS during the POLICY PERIOD or, if elected, the DISCOVERY PERIOD, for any WRONGFUL ACTS that are actually or allegedly caused, committed, or attempted prior to the end of the POLICY PERIOD by the INSUREDS, but only if:
1. the insurer(s) of the UNDERLYING INSURANCE:
 - i. refuses to indemnify the INSUREDS as required under the terms of the UNDERLYING INSURANCE; or
 - ii. fails to indemnify the INSUREDS within 60 days after the INSUREDS request such indemnification; or
 - iii. is financially unable to indemnify the INSUREDS; or
 - iv. rescinds, voids or cancels, or attempts to rescind, void or cancel, the UNDERLYING INSURANCE; or
 - v. as a result of a liquidation or reorganization proceeding commenced by or against the COMPANY pursuant to:
 - (A) in Canada: the Bankruptcy and Insolvency Act R.S.C. 1985, c. B-3, the Companies' Creditors Arrangement Act R.S.C. 1985, c. 11, the Winding Up Act R.S.C. 1985, c. W-11 (the "Acts");
 - (B) in the United States: the U.S. Bankruptcy Code, as amended; or
 - (C) any equivalent provincial, territorial, federal, state, foreign or common law (A, B and C collectively referred to as "Bankruptcy Law");fails or refuses to indemnify the INSUREDS because the proceeds of such UNDERLYING INSURANCE are subject to the automatic stay or similar payment prohibition under Bankruptcy Law; or
 2. according to the terms and conditions of the UNDERLYING INSURANCE, the insurer(s) of the UNDERLYING INSURANCE is not liable for such portion of the LOSS; or
 3. the limit(s) of liability or any applicable sublimit(s) of liability of the UNDERLYING INSURANCE has been exhausted by reason of:
 - i. the insurer(s) of the UNDERLYING INSURANCE, the INSUREDS or any other party paying thereunder the full amount of such underlying limit(s) of liability or sublimit(s); or
 - ii. a provision in the UNDERLYING INSURANCE which exhausts or reduces the limit of liability in the UNDERLYING INSURANCE by reason of any amount paid or payable under another policy issued by the insurer(s) of the UNDERLYING INSURANCE or a subsidiary, associate, affiliate or parent of the insurer(s) of the UNDERLYING INSURANCE.

- (b) In the event any UNDERLYING INSURANCE affords broader coverage for an INSURED than is afforded under this POLICY, then notwithstanding anything in this POLICY to the contrary, except:

Clause 4 (Limits Of Liability), Clause 5 (Alternative Dispute Resolution), Clause 6 (Assistance, Cooperation And Consent), Clause 8 (Cancellation), Clause 10 (Advancement of DEFENCE COSTS), Clause 11 (Currency), Clause 13 (INSUREDS' Reporting Duties), Clause 14 (Other Insurance), Clause 15 (Notice), Clause 16 (Authority), Clause 19 (Subrogation), Clause 23 (Appeals), Clause 27 (State Amendatory Inconsistency), and any endorsement to this POLICY,

this POLICY is amended to follow and be subject to the terms and conditions of such UNDERLYING INSURANCE only in respect of and to the extent of such broader coverage for the INSURED; provided this POLICY shall not cover any claim against the COMPANY or any amounts indemnified, advanced or paid by the COMPANY.

- (c) In addition to the Limit of Liability and any applicable reinstatement(s) set forth in Item III of the Declarations, the INSURER shall pay a maximum of the amount set forth in Item IV of the Declarations, CODA Access Fund, for reasonable costs, charges, fees and expenses incurred by INSUREDS who are directors of the COMPANY to defend against efforts by other INSUREDS or third parties to seize or attach this POLICY, or otherwise enjoin the INSUREDS who are directors of the COMPANY from gaining access to the limits of liability provided by this POLICY; provided the UNDERLYING INSURANCE and/or COMPANY fails, refuses or is financially unable to indemnify, advance or pay such costs, charges, fees and expenses ("CODA Access Fund").
- (d) As part of and not in addition to the Limit of Liability and any applicable reinstatements(s) set forth in Item III of the Declarations, the INSURER shall pay a maximum of the amount set forth in Item IV of the Declarations, Public Relations Fund, for reasonable costs, charges, fees and expenses incurred by INSUREDS in connection with using a public relations firm to mitigate the adverse effects to the reputation of an INSURED from (i) an EXTRADITION PROCEEDING against such INSURED, if such EXTRADITION PROCEEDING is covered under this POLICY, or (ii) any negative public statement regarding such INSURED by any ENFORCEMENT AUTHORITY relating to or arising out of a CLAIM covered under this POLICY; provided the UNDERLYING INSURANCE and/or COMPANY fails, refuses or is financially unable to indemnify, advance or pay such costs, charges, fees and expenses ("Public Relations Fund").
- (e) As part of and not in addition to the Limit of Liability and any applicable reinstatements(s) set forth in Item III of the Declarations, the INSURER shall pay a maximum of the amount set forth in Item IV of the Declarations, Enforcement Fund, for reasonable costs, charges, fees and expenses (including but not limited to a premium for a bond) incurred by INSUREDS:
1. to oppose any efforts by any ENFORCEMENT AUTHORITY to seize or otherwise enjoin the personal assets or real property of an INSURED in connection with a CLAIM covered under this POLICY, or to revoke, overturn or set aside a court order in or relating to a CLAIM covered under this POLICY which in any way impairs the use of such assets or property; or

2. to seek the release of an INSURED from any arrest, detainment or incarceration by an ENFORCEMENT AUTHORITY in or relating to a CLAIM covered under this POLICY,

if such costs, charges, fees and expenses relate to a WRONGFUL ACT by such INSURED and are not otherwise covered under this POLICY; provided the UNDERLYING INSURANCE and/or COMPANY fails, refuses or is financially unable to indemnify, advance or pay such costs, charges, fees and expenses ("Enforcement Fund").

2. DEFINITIONS

- (a) "APPLICATION" shall mean:

1. All underwriting data submitted by the COMPANY or the INSUREDS to the INSURER during the 12 months preceding inception of this POLICY; and
2. all publicly available documents filed by the COMPANY with Canadian securities administrators or the U.S. Securities and Exchange Commission during the 12 months preceding inception of this POLICY.

All such applications and materials are deemed attached to and incorporated into this POLICY.

- (b) "CLAIM" shall mean:

1. any written demand, or any civil, criminal, arbitration, judicial, administrative, or regulatory proceeding, for monetary damages or non-monetary or injunctive relief, or any investigation, including a Wells Notice, against any INSURED for a WRONGFUL ACT, including any appeal therefrom;
2. an EXTRADITION PROCEEDING;
3. the arrest, detainment or incarceration for more than 24 hours of any INSURED by an ENFORCEMENT AUTHORITY in connection with a WRONGFUL ACT, if reported to the INSURER at the option of the INSURED(S) pursuant to Clause 13(c) (INSUREDS' Reporting Duties);
4. a written notice, as described in Clause 13(b) (INSUREDS' Reporting Duties), to the INSURER by the INSUREDS and/or the COMPANY describing circumstances that may reasonably be expected to give rise to a CLAIM, if reported to the INSURER at the option of the INSUREDS pursuant to Clause 13(b) (INSUREDS' Reporting Duties);
5. a PRELIMINARY INVESTIGATION, if reported to the INSURER at the option of the INSUREDS pursuant to Clause 13(c) (INSUREDS' Reporting Duties); and
6. any written demand that an INSURED toll or waive a limitation period or other defence based on timeliness with respect to a potential or threatened claim against the INSURED for a WRONGFUL ACT, if reported to the INSURER at the option of the INSUREDS pursuant to Clause 13(c) (INSUREDS' Reporting Duties).

- (c) "COMPANY" shall mean:

1. the company named in Item I of the Declarations;
2. any company that, prior to the inception of the POLICY PERIOD, merged into or consolidated with the company named in Item I of the Declarations and was not the surviving entity;
3. any SUBSIDIARY;

4. any SUBSIDIARY if covered in accordance with Clause 20(a) (Acquisition, Creation Or Disposition Of A SUBSIDIARY) below;
 5. in Canada, any non-profit organization or corporation, agricultural organization, board of trade, chamber of commerce or registered amateur sports organization exempt from tax under Part I of the Income Tax Act R.S.C. 1985 (5th Supp.) sections 149 and 149.1, or, in the United States, any foundation, charitable trust or political action committee controlled or exclusively sponsored by one or more organizations described in 1 through 4 above; and
 6. any organization described in 1 through 5 above as a debtor-in-possession under Bankruptcy Law.
- (d) "DEFENCE COSTS" shall mean that portion of LOSS consisting of reasonable costs, charges, fees (including but not limited to legal fees and experts' fees) and expenses incurred in the defence, investigation or appeal of a CLAIM, whether or not such CLAIM is ultimately settled or adjudicated, including but not limited to:
1. defending or appealing an EXTRADITION PROCEEDING;
 2. the premium for appeal, attachment or similar bonds, including a bail bond if such is available for an EXTRADITION PROCEEDING in the country at issue, but the INSURER shall be under no obligation to provide a bond;
 3. reasonable fees and expenses incurred by the INSUREDS to defend or investigate a CLAIM pursuant to Section 304(a) of the Sarbanes-Oxley Act of 2002 or Sections 210 or 954 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, or any rules or regulations pursuant to such Sections;
 4. reasonable fees and expenses incurred by the INSUREDS at the INSURER'S request to assist the INSURER in investigating the CLAIM; and
 5. costs assessed against the INSUREDS.
- In no event shall DEFENCE COSTS include wages, salaries, fees, benefits or office expenses of INSUREDS or employees of the COMPANY.
- (e) "DISCOVERY PERIOD" shall mean the continuation of the reporting period of this POLICY for the time periods set forth in Clause 21(a)-(c) (Extended Discovery Period, Insolvency Discovery Period and FORMER INSURED Discovery Period) in respect of any CLAIMS first made against an INSURED during such extended reporting period after the end of the POLICY PERIOD, but only if such CLAIMS are based on WRONGFUL ACTS alleged to have been committed prior to the end of the POLICY PERIOD.
- (f) "DOMESTIC PARTNER" shall mean any natural person qualifying as a common law or domestic partner under the provisions of any applicable federal, provincial, territorial, state or local law or under the provisions of any formal program established by the COMPANY.
- (g) "ENFORCEMENT AUTHORITY" shall mean any law enforcement or other governmental enforcement official or authority, or the enforcement unit of any self-regulatory organization.
- (h) "EXTRADITION PROCEEDING" shall mean any formal process by which an INSURED located in any country is or is sought to be surrendered to any other country for trial or otherwise to answer a WRONGFUL ACT.

- (i) "FORMER INSURED" shall mean a director or officer of the company named in Item I of the Declarations who, prior to the expiration of the POLICY PERIOD, has ceased to hold any position as an INSURED.
- (j) "INDEPENDENT DIRECTORS" shall mean one or more past, present or future directors or MANAGERS of the COMPANY who are not and have never been an officer or employee of any COMPANY.
- (k) "INSUREDS" shall mean one or more of the following:
 - 1. all natural persons who were, now are, or shall be:
 - i. duly elected or appointed directors (including shadow and de facto directors), trustees, governors, officers, management committee members, MANAGERS (in Canada and the United States), in-house general counsel, or comptrollers of the COMPANY;
 - ii. serving as a representative of an entity that serves as a director of the COMPANY;
 - iii. prospective directors of the COMPANY named as such in any listing particulars, prospectus or similar offering document;
 - iv. defined as insureds, insured persons, outside entity directors or outside entity insured persons or the equivalent in the UNDERLYING INSURANCE;
 - v. directors of investor relations, directors of human resources, risk managers or other managers serving in a functionally equivalent or comparable position with the COMPANY; or
 - vi. with respect to any COMPANY chartered outside Canada or the United States, natural person(s) serving in a position with such COMPANY which is functionally equivalent or comparable to any position described in i through v above;
 - 2. all other natural persons not described in 1 above who were, now are, or shall be full-time or part-time, seasonal or temporary employees of the COMPANY, provided coverage for such other persons shall apply only if and while:
 - i. the COMPANY agrees to advance DEFENCE COSTS and indemnify such other persons with respect to the CLAIM to the same extent as the COMPANY agrees to advance DEFENCE COSTS for and indemnify the persons described in 1 above; or
 - ii. the CLAIM is:
 - (A) by securities holders of the COMPANY in their capacity as such, including without limitation any shareholder derivative or securities class action lawsuit; or
 - (B) made and continuously maintained against a person described in 1 above;
 - 3. all natural persons who were, now are, or shall be serving as directors, officers, trustees, governors, or the equivalent thereof, for any OUTSIDE ENTITY if:
 - i. such activity is part of their duties regularly assigned by the COMPANY; or
 - ii. such activity is at the specific direction or request of the COMPANY; or

- iii. such persons are a member of a class of persons so directed to serve by the COMPANY; and
 - 4. the estates, heirs, legal representatives or assigns of deceased INSUREDS and the legal representatives or assigns of INSUREDS in the event of their incompetency, insolvency or bankruptcy.
 - (l) "INSURER" shall mean the insurance company indicated in the Declarations.
 - (m) "LOSS" shall mean any and all amounts that the INSUREDS are legally obligated to pay by reason of a CLAIM made against the INSUREDS for any WRONGFUL ACT, and shall include but not be limited to:
 - 1. compensatory, exemplary, punitive and multiple damages, judgements, settlements, pre-judgement and post-judgement interest;
 - 2. DEFENCE COSTS;
 - 3. reasonable costs, charges, fees and expenses (including the premium or origination fee for a loan or bond) solely to facilitate the return of amounts incurred and required to be repaid by the chief executive officer or chief financial officer of the company named in Item I of the Declarations pursuant to Section 304(a) of the Sarbanes-Oxley Act of 2002, or any INSURED pursuant to Sections 210 or 954 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, or any rules or regulations pursuant to such Sections. Such amounts do not include the payment, return, reimbursement, disgorgement or restitution of any such amounts requested or required to be repaid by such persons pursuant to such Section 304(a) or Sections 210 or 954;
 - 4. reasonable costs, charges, fees and expenses incurred in connection with the CODA Access Fund, the Public Relations Fund and the Enforcement Fund as set forth in Clause 1(c)–(e) respectively; and
 - 5. U.K. CORPORATE MANSLAUGHTER ACT DEFENCE COSTS.
- Provided, however, LOSS shall not include:
- i. taxes, other than:
 - (A) taxes imposed upon a COMPANY for which the INSUREDS are legally liable solely by reason of the COMPANY's insolvency, or
 - (B) taxes, including national insurance contributions, imposed upon an INSURED solely by reason of the INSURER's payment of LOSS incurred by such INSURED;
 - ii. fines or penalties imposed by law, other than:
 - (A) punitive, exemplary, or multiple damages. The insurability of punitive, exemplary and multiple damages shall be governed by the law of the applicable jurisdiction that most favours coverage for such punitive, exemplary and multiple damages. If the INSUREDS present to the INSURER a written opinion from legal counsel that such punitive, exemplary or multiple damages are insurable under such applicable law, the INSURER shall not challenge that determination; and

- (B) civil fines or penalties assessed against an INSURED for a violation of any federal, provincial, territorial, state, local or foreign law, if such violation is neither intentional nor wilful, including without limitation any such violation of the Corruption of Foreign Officials Act of Canada, Foreign Corrupt Practices Act at 15 U.S.C. § 78dd-2(g)(2)(B) or 15 U.S.C. § 78ff(c)(2)(B), of the United States of America any similar provisions of the United Kingdom Bribery Act 2010, and the United States Federal Food, Drug and Cosmetic Act.

Subparagraphs (i) and (ii) immediately above shall not apply to DEFENCE COSTS.

- iii. matters that may be deemed uninsurable under the law pursuant to which this POLICY shall be construed. The INSURER shall not assert that any LOSS incurred by an INSURED is uninsurable due to the INSURED's actual or alleged violation of Section 11, 12 or 15 of the Securities Act of 1933, or asserting liability under Section 130 of the Securities Act (Ontario) or any similar provisions of other Canadian, federal, provincial, territorial, state or territorial securities laws, as amended.

Notwithstanding the foregoing, in Canada only, LOSS shall include any liability imposed on the INSUREDS by virtue of a failure of the COMPANY to have paid any taxes to the government of Canada or any provincial or territorial government in Canada, subject to the terms and conditions of this POLICY.

- (n) "MANAGERS" shall mean any one or more natural persons who were, now are or shall be:

1. managers, members of the board of managers or functionally equivalent or comparable executives of a COMPANY that is a limited liability company; or
2. general partners, managing partners or functionally equivalent or comparable executives of a COMPANY that is a partnership;

including without limitation any such natural persons serving in a management position in such limited liability company or partnership in accordance with such organization's operating agreement or partnership agreement.

- (o) "NON-INDEMNIFIABLE LOSS" shall mean LOSS for which the COMPANY or, with respect to INSUREDS described in Clause 2(k)(3) above, the OUTSIDE ENTITY, refuses to indemnify or advance DEFENCE COSTS or other LOSS as required or permitted, or is financially unable to indemnify, or fails to indemnify within 60 days after the INSUREDS request such indemnification; and the INSUREDS comply with Clause 19 (Subrogation) below.
- (p) "OUTSIDE ENTITY" shall mean any not-for-profit or for-profit organization.
- (q) "POLICY" shall mean this insurance policy, including the APPLICATION, the Declarations, and any endorsements hereto issued by the INSURER.
- (r) "POLICY PERIOD" shall mean the period of time stated in Item II of the Declarations. If this POLICY is cancelled in accordance with Clause 8(b) (Cancellation) below, the POLICY PERIOD shall end upon the effective date of such cancellation.

(s) "PRELIMINARY INVESTIGATION" shall mean a request or demand for an INSURED to appear at a meeting, deposition or interview, or produce documents, relating to a WRONGFUL ACT or the business of the COMPANY, where such request or demand is:

1. by any ENFORCEMENT AUTHORITY; or
2. by or on behalf of the COMPANY, the COMPANY'S board of directors (or similar management body), or any committee of the COMPANY'S board of directors (or similar management body) arising out of a request or demand set forth in 1 immediately above; or which is part of the COMPANY'S investigation and evaluation of a SHAREHOLDER DERIVATIVE DEMAND. For the purpose of this subparagraph 2, a SHAREHOLDER DERIVATIVE DEMAND means a written demand on the board of directors (or similar management body) by one or more shareholders of the COMPANY to assert a CLAIM on behalf of the COMPANY against one or more INSUREDS for a WRONGFUL ACT.

PRELIMINARY INVESTIGATION shall not include any routine or regularly scheduled regulatory or internal supervision, inspection, compliance, review, examination, production or audit, including any request for mandatory information from a regulated entity conducted in the normal review or compliance process of the COMPANY by an ENFORCEMENT AUTHORITY.

(t) "SUBSIDIARY" shall mean any entity which the company named in Item I of the Declarations and/or one or more other SUBSIDIARIES, directly or indirectly, in any combination:

1. owns interests representing more than 50% of the voting, appointment or designation power for the selection of a majority of the board of directors if such entity is a corporation, the management committee members or members of the management board if such entity is a joint venture, limited liability company, or partnership, or functionally equivalent or comparable executives of such entity; or
2. has the right, pursuant to written contract or the by-laws, charter, operating agreement, partnership agreement or similar documents of a COMPANY, to elect, appoint or designate a majority of the board of directors if such entity is a corporation, the management committee members or the members of the management board if such entity is a joint venture, limited liability company, or partnership, or functionally equivalent or comparable executives of such entity,

on or before the inception date of the POLICY; provided, however, a partnership shall be a SUBSIDIARY only if such partnership is specifically included as a SUBSIDIARY by an endorsement to this POLICY and such partnership agrees to indemnify its INSUREDS to the fullest extent permitted by law.

(u) "UNDERLYING INSURANCE" shall mean the directors and officers liability insurance policies scheduled in Item VIII of the Declarations.

(v) "U.K. CORPORATE MANSLAUGHTER ACT DEFENCE COSTS" shall mean DEFENCE COSTS incurred by an INSURED that result solely from the investigation, adjustment, defence and/or appeal of a claim against a COMPANY for a violation of the United Kingdom Corporate Manslaughter and Corporate Homicide Act of 2007, or any similar statute in any jurisdiction.

(w) "WRONGFUL ACT" shall mean:

1. any actual or alleged error, misstatement, misleading statement, act, omission, neglect, or breach of duty by the INSUREDS while acting, individually or collectively, in their capacities as INSUREDS, or
2. any other matter claimed against them by reason of their serving in such capacities, provided this subparagraph 2 shall not apply with respect to any INSUREDS of a COMPANY that is a partnership.

All such errors, misstatements, misleading statements, acts, omissions, neglects or breaches of duty actually or allegedly caused, committed, or attempted by or claimed against one or more of the INSUREDS arising out of or relating to the same or series of related facts, circumstances, situations, transactions or events shall be deemed to be a single WRONGFUL ACT.

3. CONDUCT EXCLUSION

(a) The INSURER shall not be liable to make any payment for LOSS in connection with that portion of any CLAIM based upon or attributable to the INSUREDS having:

1. gained any personal financial profit or financial remuneration to which they were not legally entitled, or
2. committed any deliberate fraud or deliberate criminal act,

if a final and non-appealable adjudication in an underlying proceeding (which shall not include a proceeding brought by or against the INSURER) adverse to such INSUREDS establishes that such INSUREDS gained any such personal financial profit or financial remuneration, or committed such deliberate fraud or deliberate criminal act. However, this exclusion shall not apply to DEFENCE COSTS, INDEPENDENT DIRECTORS, any employment-related CLAIM or, with respect to subparagraph 1 immediately above, any actual or alleged violation of Section 11, 12 or 15 of the Securities Act of 1933, or asserting liability under Section 130 of the Securities Act (Ontario) or any similar provisions of other Canadian federal, provincial, territorial, or state securities laws, as amended.

(b) For purposes of this exclusion, "final and non-appealable adjudication" means when:

1. the last court, tribunal, executive, legislative or regulatory agency, body or entity with jurisdiction over the CLAIM denies any further appeal, recourse or other relief from any adverse finding, judgement or decree; or
2. the INSURED has waived or abandoned all rights of appeal from any adverse finding, judgement or decree with respect to the CLAIM; or
3. the time for filing, asserting or pleading any appeal from any adverse finding, judgement or decree has lapsed or is otherwise exhausted.

(c) Any fact pertaining to or any act, omission, knowledge, intent or WRONGFUL ACT of any INSURED or the COMPANY shall not be imputed to any other INSURED for the purpose of determining the application of this exclusion.

- (d) For acts or omissions which are deemed to be a criminal violation in a jurisdiction outside of Canada or the United States and such acts or omissions would not be deemed to be a criminal violation if such acts or omissions took place in a jurisdiction inside of Canada or the United States, the imposition of a criminal sanction or fine in such jurisdiction outside of Canada or the United States will not, by itself, be conclusive proof that a deliberate fraudulent or deliberate criminal act occurred for purposes of this exclusion.

4. LIMITS OF LIABILITY

The maximum aggregate liability of the INSURER under this POLICY for all LOSS arising out of each CLAIM and all CLAIMS first made during the POLICY PERIOD and, if elected, the DISCOVERY PERIOD shall be the Limit of Liability set forth in Item III of the Declarations, subject to the following:

- (a) In the event the Limit of Liability of this POLICY is exhausted, this POLICY's Limit of Liability shall be reinstated in the amount set forth in Item III of the Declarations, FIRST REINSTATED LIMIT OF LIABILITY, solely for LOSS incurred by INSUREDS as defined in Clause 2(k)(1), Definitions. Such FIRST REINSTATED LIMIT OF LIABILITY shall not apply to any CLAIM for which there has been any payment of LOSS under the Limit of Liability of this POLICY or any other CLAIM based upon, arising out of or related in any way to such CLAIM, and such FIRST REINSTATED LIMIT OF LIABILITY shall be excess of amounts payable under all other insurance policies that are specifically excess of this POLICY and all UNDERLYING INSURANCE providing a similar reinstated limit of liability.
- (b) In the event the FIRST REINSTATED LIMIT OF LIABILITY of this POLICY is exhausted, this POLICY's Limit of Liability shall be reinstated a second time in the amount set forth in Item III of the Declarations, SECOND REINSTATED LIMIT OF LIABILITY, solely for LOSS incurred by duly elected or appointed directors (including shadow and de facto directors) of the company named in Item I of the Declarations. Such SECOND REINSTATED LIMIT OF LIABILITY shall not apply to any CLAIM for which there has been any payment of LOSS under the Limit of Liability of this POLICY or the FIRST REINSTATED LIMIT OF LIABILITY of this POLICY or any other CLAIM based upon, arising out of or related in any way to such CLAIMS, and such SECOND REINSTATED LIMIT OF LIABILITY of this POLICY shall be excess of amounts payable under all other insurance policies that are specifically excess of this POLICY and all UNDERLYING INSURANCE providing a similar reinstated limit of liability.
- (c) Upon exhaustion of the Limit of Liability and, if applicable, the FIRST REINSTATED LIMIT OF LIABILITY, SECOND REINSTATED LIMIT OF LIABILITY, CODA Access Fund, Public Relations Fund and/or Enforcement Fund, for the POLICY PERIOD by reason of payment of LOSS by the INSURER, the INSURER shall have no further obligations or liabilities under this POLICY with respect to such applicable limit (or sublimit) of liability for the POLICY PERIOD.
- (d) With respect to exhaustion for purposes of the FIRST REINSTATED LIMIT OF LIABILITY and the SECOND REINSTATED LIMIT OF LIABILITY, the limits of liability under any UNDERLYING INSURANCE and any insurance policies excess of this POLICY shall be reduced or exhausted by payments by an insurer, an INSURED and/or a third party.

- (e) DEFENCE COSTS shall be part of and not in addition to the Limit of Liability and, if applicable, the FIRST REINSTATED LIMIT OF LIABILITY, SECOND REINSTATED LIMIT OF LIABILITY, CODA Access Fund, Public Relations Fund and/or Enforcement Fund, as stated in Items III and IV of the Declarations, and payment by the INSURER of DEFENCE COSTS shall reduce such applicable limit of liability for the POLICY PERIOD.
- (f) Multiple demands, suits or proceedings arising out of the same WRONGFUL ACT shall be deemed to be a single CLAIM, which shall be treated as a CLAIM first made during the POLICY PERIOD in which the first of such multiple demands, suits or proceedings is made against any INSURED or in which notice of circumstances relating thereto is first given in accordance with Clause 13(b) (INSUREDS' Reporting Duties) below, whichever occurs first.

**5. ALTERNATIVE
DISPUTE RESOLUTION**

Only if requested by the INSUREDS, the INSURER shall submit any dispute, controversy or claim arising out of or relating to this POLICY or the breach, termination or invalidity thereof to non-binding mediation and/or to non-binding arbitration pursuant to such rules and procedures as the parties may agree. If the parties cannot agree on the arbitration rules and procedures, the arbitration shall be administered by the American Arbitration Association in accordance with its then prevailing commercial arbitration rules. The arbitration panel shall consist of one arbitrator selected by the INSUREDS, one arbitrator selected by the INSURER, and a third independent arbitrator selected by the first two arbitrators. In any such arbitration, each party will bear its own legal fees and expenses.

In the event that the INSUREDS prevail in an arbitration proceeding, then the INSURER shall pay to such INSUREDS the legal fees, expert fees and other necessary out of pocket costs and expenses reasonably incurred by the such INSUREDS in the arbitration proceeding and shall pay the fees and expenses of the arbitration panel, such payment to be in addition to and not part of any applicable Limit Of Liability under this POLICY. In the event the INSURER prevails in an arbitration proceeding, then such fees and expenses of the INSURER and the arbitration panel shall be paid as may be ordered by the arbitration panel within its sole discretion.

**6. ASSISTANCE,
COOPERATION AND
CONSENT**

The INSUREDS shall provide to the INSURER all information, assistance and cooperation which the INSURER may reasonably request, and the INSUREDS shall use diligence and prudence in the investigation, defence, negotiation of settlement and settlement of any CLAIM. In the event of a CLAIM, the INSUREDS shall do nothing that could prejudice the INSURER'S position or its potential or actual rights of recovery with respect to such CLAIM.

The INSURER has no duty to defend any CLAIM and shall not be called upon to assume charge of the investigation, settlement or defence of any CLAIM. However, the INSURER shall have the right, but not the duty, and shall be given the opportunity to fully and effectively associate with the INSUREDS, and shall be consulted in advance, regarding the control, investigation, defence, negotiation of settlement and settlement of any CLAIM that is reasonably likely to be covered in whole or in part by, or that is reasonably likely to cause liability to attach under, this POLICY.

The INSURED shall not offer to settle or settle, assume any obligation, admit any liability or stipulate to any judgement with respect to any CLAIM that is reasonably likely to be covered in whole or in part by, or that is reasonably likely to cause liability to attach under, this POLICY without the INSURER'S prior written consent, which shall not be unreasonably withheld or delayed. The INSURER shall not be liable for or as a result of any offer to settle, settlement, assumed obligation, admission of liability or stipulated judgement to which it has not given its prior written consent.

The INSURER is entitled to pay LOSS as it becomes due and payable by the INSURED, without considering the potential for other future LOSS.

The failure of any INSURED or the COMPANY to comply with his or her obligations under this Clause shall not impair the rights of any other INSURED under this POLICY.

The INSURER shall fulfill its obligations in accordance with the terms and conditions of this POLICY notwithstanding the issuance of any insurance by another member of the ACE Group.

7. RENEWAL

Except in the event this POLICY is cancelled in whole or in part in accordance with Clause 8 (Cancellation) below, on the expiration date of this POLICY, upon delivery of the renewal application or submission and payment of the premium, this POLICY shall be renewed to a date one year beyond the expiration date of this POLICY, unless written notice is given by the INSURER to the COMPANY, or by the COMPANY to the INSURER, that such POLICY extension is not desired. Such written notice must be given at least 30 days prior to the expiration date of this POLICY.

The premium charged on renewal of this POLICY shall be determined by the underwriting guidelines and rating plan of the INSURER in force at such expiration date. If during the POLICY PERIOD the INSURER announces amendments to this standard policy form, which amendments are generally applicable to all similar policies issued by the INSURER, such amendments shall be applicable to any applicable renewal.

8. CANCELLATION

This POLICY shall not be subject to cancellation except as follows:

(a) In the event during the POLICY PERIOD:

1. the company named in Item I of the Declarations shall merge into or consolidate with another organization in which the company named in Item I of the Declarations is not the surviving entity, or
2. any person or entity or group of persons and/or entities acting in concert shall acquire securities or voting rights which results in ownership or voting control by such person or entity or group of persons or entities of more than 50% of the outstanding securities representing the present right to vote for election of directors or MANAGERS or functionally equivalent or comparable executives of the company named in Item I of the Declarations,

this POLICY shall remain in force until the later of:

- i. the termination of the POLICY PERIOD, or
- ii. any subsequent date to which the INSURER may agree by endorsement,

but only with respect to CLAIMS for WRONGFUL ACTS actually or allegedly taking place before the effective date of said merger, consolidation or acquisition. If the POLICY remains in force beyond the period of time stated in Item II of the Declarations by reason of this Clause 8(a), the Limit of Liability for such extension is part of and not in addition to the Limit of Liability applicable to the POLICY PERIOD. All premiums paid or due at the time of said merger, consolidation or acquisition shall be fully earned and in no respect refundable.

- (b) This POLICY may be cancelled by the INSURER for nonpayment of premium by sending notice, in accordance with Clause 15 (Notice) below, to the company named in Item I of the Declarations stating when, not less than 10 days thereafter, the cancellation shall be effective. The effective date of cancellation stated in the notice shall become the end of the POLICY PERIOD. All premiums paid or due for this POLICY shall be fully earned at the time of said end of the POLICY PERIOD.
- (c) If this POLICY is terminated by the company identified in Item I of the Declarations, the INSURER shall refund the premium computed at the customary short rate. If this POLICY is terminated by the INSURER, the INSURER shall refund the unearned premium computed pro rata. This POLICY may be cancelled by the company named in Item I of the Declarations because of a downgrade of the financial strength rating of the INSURER of this POLICY, as established by A.M. Best, below A-, within 30 days of such downgrade. In such event, the INSURER shall:
 - 1. refund the unearned premium computed pro rata, if the INSUREDS have not, prior to such termination, provided to the INSURER notice of a CLAIM or notice of facts or circumstances which may reasonably give rise to a future CLAIM covered under this POLICY; or
 - 2. refund the unearned premium computed at the customary short rate, if the INSUREDS have, prior to such termination, provided to the INSURER notice of a CLAIM or notice of facts or circumstances which may reasonably give rise to a future CLAIM covered under this POLICY.

**9. CHANGES AND
ASSIGNMENTS**

The terms and conditions of this POLICY shall not be waived or changed, nor shall an assignment of interest under this POLICY be binding, except by an endorsement to this POLICY issued by the INSURER.

**10. ADVANCEMENT OF
DEFENCE COSTS**

Except in those instances when the INSURER has denied liability for the CLAIM because of the application of one or more coverage issues, if the COMPANY fails, refuses or is financially or legally unable to advance DEFENCE COSTS, and if the insurer(s) of the UNDERLYING INSURANCE fails or refuses to advance such costs as described in Clause 1(a) (Insuring Clause) above, the INSURER shall, upon request and if proper documentation accompanies the request, advance on behalf of the INSUREDS, or any of them, such DEFENCE COSTS on a current basis, but no later than 60 days after the receipt by the INSURER of such properly documented DEFENCE COSTS invoices. In the event that the INSURER so advances DEFENCE COSTS and it is finally established that the INSURER has no liability hereunder for such DEFENCE COSTS, the INSUREDS on whose behalf such advances have been made and the COMPANY, to the fullest extent legally permitted, agree to repay to the INSURER, severally according to their respective interests, all such advanced DEFENCE COSTS.

11. CURRENCY

If all premium, limits, retentions, and other amounts referenced in this POLICY are expressed in the currency of Canada then all LOSS is payable in the currency of Canada. If all premium, limits, retentions, and other amounts referenced in this POLICY are expressed in the currency of the United States then all LOSS is payable in the currency of the United States. If judgement is rendered, settlement is denominated or another element of LOSS under this POLICY is stated in a currency other than Canadian or American dollars, payment under this POLICY shall be made in Canadian dollars at the closing rate of exchange published on the Bank of Canada website for the date the judgment becomes final, the amount of the settlement is agreed upon or the other element of LOSS is due, respectively.

12. HEADINGS

The descriptions in the headings and sub-headings of this POLICY are inserted solely for convenience and do not constitute any part of the terms or conditions hereof.

**13. INSUREDS'
REPORTING DUTIES**

(a) The INSUREDS and/or the COMPANY shall give written notice to the INSURER of any of the following as soon as practicable after the in-house general counsel or risk manager of the company named in Item I of the Declarations first learns thereof:

1. any CLAIM described in Clause 2(b)(1) or (2), Definitions, above;
2. any event described in Clause 8(a) (Cancellation) above;
3. any material change in the terms or conditions of the UNDERLYING INSURANCE occurring during the POLICY PERIOD or the DISCOVERY PERIOD (if elected pursuant to Clause 21 below); or
4. any nonrenewal or cancellation of the UNDERLYING INSURANCE occurring during the POLICY PERIOD or the DISCOVERY PERIOD (if elected pursuant to Clause 21 below).

If the INSUREDS and/or the COMPANY fail to provide notice of any such CLAIM to the INSURER as specified in 1 immediately above, the INSURER shall not be entitled to deny coverage for the CLAIM based solely upon late notice unless the INSURER can demonstrate its interests were materially prejudiced by reason of such late notice.

If the INSURED provides notice of events specified in subparts 3 and 4 above, any additional premium reasonably required by the INSURER as a result of such events shall be paid as soon as practicable after notice of such additional premium by the INSURER.

- (b) If, during the POLICY PERIOD or, if elected, the DISCOVERY PERIOD, but in no event later than 60 days after the termination of the POLICY PERIOD, or if elected the DISCOVERY PERIOD, the INSUREDS first become aware of any circumstances that may reasonably be expected to give rise to a CLAIM described in Clause 2(b)(1) or (2) above being made against the INSUREDS, as set forth in Clause 2(b)(4), and if the INSUREDS or the COMPANY give written notice to the INSURER of such circumstances and the reasons for anticipating such a CLAIM, with particulars as to dates and persons involved, the nature of the WRONGFUL ACT, the alleged injury, the names of the claimants, and the manner in which the INSUREDS or the COMPANY first became aware of the circumstances; then such notice of circumstances shall be a CLAIM under this POLICY and any LOSS incurred by an INSURED solely in connection with his or her response to such circumstances shall be covered, subject to the other terms, conditions and limitations of this POLICY. Any other CLAIM which arises out of such circumstances shall be deemed to have been first made at the time such written notice of circumstances was received by the INSURER. However, if the INSUREDS elect not to report such circumstances, then any subsequent CLAIM which arises out of the circumstances shall be subject to the reporting requirements set forth in 13(a) above, and coverage for such subsequent CLAIM will not be denied because of the INSUREDS' failure to report the circumstances pursuant to this Clause 13(b).
 - (c) Any arrest, detainment or incarceration, PRELIMINARY INVESTIGATION, or demand described in subparts 3, 5 or 6 of Clause 2(b), Definitions, shall be a CLAIM under this POLICY only if during the POLICY PERIOD, the COMPANY or the INSUREDS, in their sole option, report such circumstance, PRELIMINARY INVESTIGATION, or demand to the INSURER as a CLAIM.
 - (d) No coverage is afforded for any LOSS incurred in connection with any circumstance, PRELIMINARY INVESTIGATION, or demand described in Clause 2(b)(3), (4), (5) or (6), Definitions, prior to the time written notice as described in (b) or (c) above is given to the INSURER.
 - (e) The time when a CLAIM shall be made for purposes of determining the application of Clause 1 (Insuring Clause) above shall be (i) with respect to a CLAIM described in Clause 2(b)(1), (2), (3) and (6) above, the date on which the CLAIM is first made against the INSURED, and (ii) with respect to a CLAIM described in Clause 2(b)(4) and (5) above, the date on which notice of such CLAIM is given to the INSURER.
-

14. OTHER INSURANCE

If any LOSS covered under this POLICY is covered under any other valid and collectible insurance, then this POLICY shall cover the LOSS, subject to its terms and conditions, only to the extent that the amount of the LOSS is in excess of the amount of such other insurance, whether such other insurance is stated to be primary, contributory, excess, contingent or otherwise, unless such other insurance is UNDERLYING INSURANCE or is written only as specific excess insurance over the Limit of Liability provided by this POLICY. Such insurance as is provided by this POLICY shall apply as primary to any personal "umbrella" excess liability insurance purchased by an INSURED.

If LOSS covered under this POLICY is also covered under but not paid by such other valid and collectible insurance, this POLICY will respond on behalf of the INSUREDS without regard to such other insurance, subject to the terms, conditions and limitations of this POLICY and without prejudice to the INSURER's right to recover LOSS paid under this POLICY from the issuers of such other insurance.

15. NOTICE

All notices under any provision of this POLICY shall be in writing and given by prepaid express courier or email properly addressed to the appropriate party at the respective addresses as shown in Items VI and VII of the Declarations, and notice so given shall be deemed to be received and effective upon actual receipt thereof by the party or one day following the date such notice is sent, whichever is earlier, subject to proof of transmittal. Notice to the INSURER of any CLAIM shall be directed to the attention of the INSURER's claims department. All other notices to the INSURER shall be directed to the attention of the INSURER's underwriting department.

16. AUTHORITY

By acceptance of this POLICY, the company named in Item I of the Declarations and the INSUREDS agree that the INSURER may treat the company named in Item I of the Declarations as the authorized representative of INSUREDS with respect to all matters under this POLICY, including, but not limited to, the giving and receiving of notice of CLAIM or cancellation or desire not to extend the POLICY or election of the DISCOVERY PERIOD, the payment of premiums, the receiving of LOSS payments and any return premiums that may become due under this POLICY, the requesting, receiving, and acceptance of any endorsement to this POLICY, and the submission of a dispute to arbitration.

The INSUREDS agree that said company shall represent them but, for purposes of the investigation, defence, settlement, or appeal of any CLAIM, all similarly situated INSUREDS who are named as defendants in the CLAIM may, upon notice to the INSURER, replace said company with another agent to represent them with respect to the CLAIM, including giving and receiving of notice of CLAIM and other correspondence, the receiving of LOSS payments, and the submission of a dispute to arbitration.

17. NON-RESCISSION

Coverage under this POLICY shall not be rescinded or voided by the INSURER in whole or in part for any reason.

18. SPOUSAL LIABILITY

If a CLAIM against an INSURED includes a claim against the INSURED's lawful spouse or DOMESTIC PARTNER solely by reason of (a) such spouse's or DOMESTIC PARTNER's status as a spouse or DOMESTIC PARTNER of the INSURED; or (b) such spouse's or DOMESTIC PARTNER's ownership interest in property which the claimant seeks as recovery for alleged WRONGFUL ACTS of the INSURED, all loss which such spouse or DOMESTIC PARTNER becomes legally obligated to pay by reason of such CLAIM shall be treated for purposes of this POLICY as LOSS which the INSURED becomes legally obligated to pay by reason of the CLAIM made against the INSURED. Such spousal or DOMESTIC PARTNER loss shall be covered under this POLICY only if and to the extent such loss would be covered if incurred by the INSURED.

The coverage extension afforded by this Clause 18 does not apply to the extent such CLAIM alleges a wrongful act or omission by the INSURED's spouse or DOMESTIC PARTNER.

19. SUBROGATION

- (a) Inasmuch as this POLICY is excess insurance, the INSUREDS' right of recovery against any person or organization cannot be exclusively subrogated to the INSURER. It therefore is understood and agreed that in case of any payment hereunder, the INSURER will act in concert with all other interests concerned (including the INSUREDS'), in the exercise of such rights of recovery. The apportioning of any amounts that may be so recovered shall follow the principle that any interest (including the INSUREDS') that has paid an amount over and above any payment hereunder, shall first be reimbursed up to the amount paid by it; the INSURER is then to be reimbursed out of any balance then remaining up to the amount paid hereunder; lastly, the interests (including the INSUREDS') of which this coverage is in excess are entitled to claim the residue, if any. Expenses necessary to the recovery of any such amounts shall be apportioned between the interests concerned (including the INSUREDS'), in the proportion of their respective recoveries as finally settled. If there should be no recovery in proceedings instituted solely on the initiative of the INSURER, the expenses thereof shall be borne by the INSURER.
- (b) The INSUREDS shall execute all papers reasonably required and shall take all reasonable actions that may be necessary to secure the rights of the INSURER, including the execution of such documents necessary to enable the INSURER effectively to bring suit in the name of the INSUREDS, including but not limited to an action against the COMPANY or the insurer(s) of the UNDERLYING INSURANCE for nonpayment of indemnity due and owing to the INSUREDS by the COMPANY or the insurer(s), respectively.
- (c) In no event shall the INSURER exercise its right of subrogation against an INSURED unless and to the extent Clause 3, Conduct Exclusion, applies to such INSURED.
- (d) Payment by the INSURER under Insuring Clause 1(a)(1)(v) above ("Bankruptcy Payment") is not intended to be a payment in satisfaction of the obligations under the UNDERLYING INSURANCE, but, rather, an advance of funds subject to repayment as provided in this Clause 19. Subject to reinstatement pursuant to subparagraph (e) immediately below, all Bankruptcy Payments shall reduce and/or exhaust the limits of liability of this POLICY to the same extent as any payment of LOSS by the INSURER to the INSUREDS hereunder. In the event of any Bankruptcy Payment, INSUREDS hereby assign to the INSURER all their rights under the UNDERLYING INSURANCE to obtain payment of the amounts of the Bankruptcy Payment.

- (e) Any recoveries by the INSURER pursuant to this Clause 19 of LOSS paid under this POLICY shall be the sole property of the INSURER, but an amount equal to the amount of such recoveries, minus all costs incurred by the INSURER to obtain such recoveries, shall reinstate, in such amount and as of the date each recovery is received by the INSURER, the limits of liability of this POLICY that were eroded or exhausted by such payment.

**20. ACQUISITION,
CREATION OR
DISPOSITION OF A
SUBSIDIARY**

- (a) If, during the POLICY PERIOD, the COMPANY acquires interests in or rights with respect to another organization, or creates another organization, which as a result of such acquisition or creation becomes a SUBSIDIARY, or acquires any organization by merger into or consolidation with the COMPANY, and if, as a result of such acquisition or creation, such organization's INSUREDs are included as insureds under the primary policy of UNDERLYING INSURANCE, then such organization's insureds shall also be included as INSUREDs under this POLICY but only with respect to CLAIMS for WRONGFUL ACTS taking place after such acquisition or creation, unless the INSURER agrees to provide coverage by endorsement for WRONGFUL ACTS taking place prior to such acquisition or creation.
- (b) Coverage shall not apply to directors, MANAGERS, officers and employees of any subsidiary, including a SUBSIDIARY as defined in Clause 2 (Definitions) above, for CLAIMS for WRONGFUL ACTS actually or allegedly taking place subsequent to the date that the SUBSIDIARY ceases to be a SUBSIDIARY.

21. DISCOVERY PERIOD

- (a) If the INSURER or the company identified in Item I of the Declarations elects not to renew this POLICY, then the company identified in Item I of the Declarations and the INSUREDs shall have the right, upon payment of an additional premium set forth in Item V of the Declarations, to a continuation of the reporting period of this POLICY in respect of any CLAIMS first made against an INSURED during the one-year period after the end of the POLICY PERIOD, but only if the CLAIMS are based on WRONGFUL ACTS alleged to have been committed prior to the end of the POLICY PERIOD ("Extended Discovery Period"). Such CLAIMS shall be deemed to have been made during the POLICY PERIOD, provided that notification of each such CLAIM is in accordance with Clause 13 (INSURED's Reporting Duties) above. The right to elect the Extended Discovery Period shall terminate, however, unless written notice of such election together with the additional premium is received by the INSURER within 60 days after the end of the POLICY PERIOD. Any premium paid for the Extended Discovery Period is not refundable.
- (b) If nonrenewal of this POLICY follows the commencement during the POLICY PERIOD of a liquidation or reorganization proceeding described in Clause 22 below, then any DISCOVERY PERIOD elected by the COMPANY or the INSUREDs shall be 6 years from the date of such nonrenewal ("Insolvency Discovery Period") for CLAIMS first made during such Insolvency Discovery Period based on WRONGFUL ACTS alleged to have occurred prior to such nonrenewal. No additional premium shall be required for the Insolvency Discovery Period.

- (c) In the event the COMPANY does not renew this POLICY, FORMER INSUREDS shall receive, instead of the DISCOVERY PERIOD set forth in paragraph (a) or (b) above, a discovery period of unlimited duration from the effective date of such nonrenewal ("FORMER INSURED Discovery Period") for CLAIMS first made against the FORMER INSURED during such FORMER INSURED Discovery Period based on WRONGFUL ACTS alleged to have occurred prior to such nonrenewal. No additional premium shall be required for the FORMER INSURED Discovery Period. The FORMER INSURED Discovery Period shall not apply to any INSURED who ceased to serve as an INSURED on account of an event described in Clause 8(a)1 or Clause 8(a)2.
- (d) The offer by the INSURER of renewal at a premium different from the premiums for the expiring POLICY PERIOD shall not constitute an election by the INSURER not to renew this POLICY.
- (e) The Limit of Liability provided during any DISCOVERY PERIOD is part of and not in addition to the Limit of Liability provided during the POLICY PERIOD, and there shall be no separate or additional Limit of Liability for the DISCOVERY PERIOD.

22. BANKRUPTCY

In the event a liquidation or reorganization proceeding is commenced by or against the COMPANY or any INSURED, pursuant to Bankruptcy Law, such proceeding shall not relieve the INSURER of its obligations nor deprive the INSURER of its rights or defences under this POLICY. In the event of such liquidation or reorganization proceeding the COMPANY and the INSUREDS hereby: (i) waive and release any automatic stay or similar payment prohibition which may apply in such proceeding to this POLICY or its proceeds under such Bankruptcy Law; and (ii) agree not to oppose or object to any efforts by the INSURER, the COMPANY or any INSURED to obtain relief from any such stay or payment prohibition.

In the event the COMPANY becomes a debtor-in-possession or equivalent status under Bankruptcy Law and the aggregate LOSS due under this POLICY exceeds the remaining available Limit of Liability, the INSURER shall:

- (a) first pay such LOSS allocable to WRONGFUL ACTS that are actually or allegedly caused, committed, or attempted prior to the COMPANY becoming a debtor-in-possession or such equivalent status, then
- (b) with respect to whatever remaining amount of the Limit of Liability is available after payment under (a) above, pay such LOSS allocable to WRONGFUL ACTS that are actually or allegedly caused, committed, or attempted after the COMPANY became a debtor-in-possession or equivalent status under Bankruptcy Law.

23. APPEALS

In the event the INSUREDS or the insurer(s) of the UNDERLYING INSURANCE elect not to appeal a judgement, the INSURER may elect to make such appeal at its own expense, and shall be liable for any increased award, taxable costs and disbursements and any additional interest incidental to such appeal, to the extent such payments are not covered by other valid and collectible insurance.

24. TERRITORY

This POLICY shall apply to any WRONGFUL ACT taking place, LOSS incurred or CLAIM made against any INSURED anywhere in the world.

25. SEVERABILITY

The APPLICATION for coverage shall be construed as a separate APPLICATION for coverage by each INSURED. With respect to the declarations and statements contained in such APPLICATION for coverage, no statement in the APPLICATION or knowledge possessed by any one INSURED shall be imputed to any other INSURED for the purpose of determining the availability of coverage with respect to CLAIMS made against any other INSURED. Any fact pertaining to, or any act, omission, knowledge, or intent of any INSURED or COMPANY shall not be imputed to any other INSURED with respect to coverage under this POLICY.

26. LIBERALIZATION

Where legally permissible, for LOSS from that portion of any CLAIM maintained in a FOREIGN JURISDICTION or to which the law of a FOREIGN JURISDICTION is applied, the INSURER shall apply to such CLAIM those terms and conditions (and related provisions) of the FOREIGN POLICY in such FOREIGN JURISDICTION that are more favourable to such INSURED than the terms and conditions of this POLICY. However, this paragraph shall not apply to any provision of this POLICY or the FOREIGN POLICY addressing limits of liability (primary, excess or sublimits), other insurance, non-renewal, duty to defend, defence within or without limits, taxes, conformance to law or excess liability coverage, any claims made coverage provisions, arbitration and any endorsement to this POLICY that excludes or limits coverage for specific events or litigation or that specifically states that it will have worldwide effect.

For the purpose of this Clause:

FOREIGN JURISDICTION means any jurisdiction, other than Canada or any of its territories or possessions.

FOREIGN POLICY means the INSURER'S or any other member company of the Chubb Group of Companies' ("Chubb") standard directors' and officers' liability policy (including all mandatory endorsements, if any) approved by Chubb to be sold within a FOREIGN JURISDICTION that provides difference-in-conditions coverage for non-indemnifiable loss of a natural person insured substantially similar to the coverage afforded under this POLICY. If more than one such policy exists, then "FOREIGN POLICY" means the standard policy most recently registered in the local language of the FOREIGN JURISDICTION, or if no such policy has been registered, then the policy most recently registered in that FOREIGN JURISDICTION.

**27. PROVINCIAL
AMENDATORY
INCONSISTENCY**

If there is an inconsistency between a provincial amendatory endorsement attached to this POLICY and any other term or condition of this POLICY, the INSURER shall apply, where permitted by law, those terms and conditions either of such provincial amendatory endorsement or the POLICY form which are more favourable to the INSURED's coverage.

Policy Period	From: November 15, 2022	To: November 15, 2023
Effective Date	November 15, 2022	
Policy Number	99930351	
Insured	Birch Hill Equity Partners Management Inc. and Birch Equity Partners Inc.	
Name of Company	Chubb Insurance Company of Canada	
Date Issued	November 15, 2022	Endorsement No. 1

This Endorsement applies to the following forms:

PFC-41160 CODA Premier® Directors and Officers Liability Excess DIC Policy

AMENDATORY ENDORSEMENT AS REQUIRED BY THE ALBERTA, BRITISH COLUMBIA, AND MANITOBA
INSURANCE ACTS

In consideration of the premium charged, it is agreed that:

IF THERE IS ANY CONFLICT BETWEEN THE POLICY, OTHER ENDORSEMENTS TO THE POLICY AND THIS ENDORSEMENT, THE TERMS PROVIDING THE BROADEST COVERAGE INSURABLE UNDER APPLICABLE LAW SHALL PREVAIL.

It is agreed that this Policy is amended by adding the following provisions:

1. Every action or proceeding against an insurer for the recovery of insurance money payable under the contract is absolutely barred unless commenced within the time set out in the *Insurance Act*.

2. **Statutory Conditions:**

i. **Property of others**

The insurer is not liable for loss or damage to property owned by a person other than the insured unless

- (a) otherwise specifically stated in the contract, or
- (b) the interest of the insured in that property is stated in the contract.

ii. **Change of interest**

The insurer is liable for loss or damage occurring after an authorized assignment under the *Bankruptcy and Insolvency Act* (Canada) or a change of title by succession, by operation of law or by death.

iii. **Material change in risk**

- (1) The insured must promptly give notice in writing to the insurer or its agent of a change that is
 - (a) material to the risk, and
 - (b) within the control and knowledge of the insured.
- (2) If an insurer or its agent is not promptly notified of a change under subparagraph (1) of this condition, the contract is void as to the part affected by the change.
- (3) If an insurer or its agent is notified of a change under subparagraph (1) of this condition, the insurer may
 - (a) terminate the contract in accordance with Statutory Condition iv, or
 - (b) notify the insured in writing that, if the insured desires the contract to continue in force, the insured must, within 15 days after receipt of the notice, pay to the insurer an additional premium specified in the notice.
- (4) If the insured fails to pay an additional premium when required to do so under subparagraph (3) (b) of this condition, the contract is terminated at that time and Statutory Condition iv (2) (a) applies in respect of the unearned portion of the premium.

iv. Termination of insurance

- (1) The contract may be terminated
 - (a) by the insurer giving to the insured 15 days' notice of termination by registered mail or 5 days' written notice of termination personally delivered, or
 - (b) by the insured at any time on request.
- (2) If the contract is terminated by the insurer,
 - (a) the insurer must refund the excess of premium actually paid by the insured over the prorated premium for the expired time, but in no event may the prorated premium for the expired time be less than any minimum retained premium specified in the contract, and
 - (b) the refund must accompany the notice unless the premium is subject to adjustment or determination as to amount, in which case the refund must be made as soon as practicable.
- (3) If the contract is terminated by the insured, the insurer must refund as soon as practicable the excess of premium actually paid by the insured over the short rate premium for the expired time specified in the contract, but in no event may the short rate premium for the expired time be less than any minimum retained premium specified in the contract.
- (4) The 15 day period referred to in subparagraph (1) (a) of this condition starts to run on the day the registered letter or notification of it is delivered to the insured's postal address.

v. Notice

- (1) Written notice to the insurer may be delivered at, or sent by registered mail to, the chief agency or head office of the insurer in the province.
- (2) Written notice to the insured may be personally delivered at, or sent by registered mail addressed to, the insured's last known address as provided to the insurer by the insured.

The title and any headings in this endorsement are solely for convenience and form no part of the terms and conditions of coverage.

All other terms, conditions and limitations of this POLICY shall remain unchanged.



Authorized Representative

**CODA Premier® Directors and Officers Liability
Excess DIC Policy
Endorsement**

Policy Period	From: November 15, 2022	To: November 15, 2023
Effective Date	November 15, 2022	
Policy Number	99930351	
Insured	Birch Hill Equity Partners Management Inc. and Birch Equity Partners Inc.	
Name of Company	Chubb Insurance Company of Canada	
Date Issued	November 15, 2022	Endorsement No. 2

This Endorsement applies to the following forms:

PFC-41160 CODA Premier® Directors and Officers Liability Excess DIC Policy

TRADE OR ECONOMIC SANCTIONS ENDORSEMENT

In consideration of the premium charged, it is agreed that this insurance does not apply to the extent that trade or economic sanctions or other laws or regulations prohibit us from providing insurance, including, but not limited to, the payment of claims.

The title and any headings in this endorsement are solely for convenience and form no part of the terms and conditions of coverage.

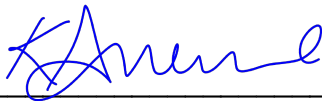
All other terms, conditions and limitations of this POLICY shall remain unchanged.



Authorized Representative

TAB M

This is **Exhibit "M"** referred to in the
Affidavit #2 of LUCIO MILANOVICH,
sworn before me, this 29th day of
November, 2023.



Commissioner for taking affidavits
Kristine Spence (LSO #66099S)

FORBEARANCE AGREEMENT

THIS AGREEMENT is dated as of November [___], 2023.

AMONG:

MASTERMIND LP
(the "**Borrower**")

- and -

MASTERMIND GP INC.
(the "**Guarantor**" and together with the Borrower, the "**Credit Parties**")

- and -

CANADIAN IMPERIAL BANK OF COMMERCE, as Agent
(the "**Agent**")

- and -

THE LENDERS FROM TIME TO TIME PARTY TO THE CREDIT AGREEMENT
(the "**Lenders**")

CONTEXT:

- A.** The Agent and the Lenders have provided certain financing arrangements under a Credit Agreement dated as of October 24, 2014 among the Borrower, the Guarantor, the Agent and the lenders party thereto from time to time (as amended, restated, supplemented, revised, replaced or otherwise modified from time to time, the "**Credit Agreement**").
- B.** As of the date of this forbearance agreement (this "**Agreement**"), the Credit Parties are in default under the Credit Agreement and the other Loan Documents, which default constitutes one or more events of default thereunder as set out in Schedule 3 hereto.
- C.** The conditions to the obligation of the Lenders to continue to make Loans, as set out in Section 4.2 of the Credit Agreement, are not satisfied at this time (the "**Draw Conditions**"). As a result, the Lenders are not obligated at this time to make further advances of Loans under the Credit Agreement.
- D.** The Credit Parties have obtained an initial order (the "**Initial Order**") from the Ontario Superior Court of Justice (Commercial List) (the "**CCAA Court**") under the *Companies' Creditors Arrangement Act* (Canada) (the "**CCAA**") (such proceedings being referred to as the "**CCAA Proceedings**") and the Credit Parties have requested ongoing support of the Agent and the Lenders during the CCAA Proceedings.
- E.** The Credit Parties require funding for the CCAA Proceedings and have concluded that the Agent and the Lenders are the most cost effective and timely source of working capital funding that is available and appropriate in the circumstances of the Credit Parties.
- F.** The Credit Parties have requested that the Agent and the Lender continue to make available to the Borrower credit facilities under the Credit Agreement to fund working capital requirements during the CCAA Proceedings.

- G.** The Credit Parties have further requested that the Agent and the Lenders forbear from exercising the Agent's and the Lenders' rights arising as a result of (i) the Existing Defaults (as defined below); and (ii) the commencement and existence of the CCAA Proceedings.
- H.** The Borrower, the Agent and the Lenders have agreed, subject to the terms and conditions herein, that the Lenders will continue to make available to the Borrower certain Borrowings under the Credit Agreement during the Forbearance Period (as defined below), subject to the terms and conditions set out herein, for the Borrower's working capital purposes, notwithstanding the failure of the Borrower to satisfy the Draw Conditions as a result of, among other things, the Existing Defaults.
- I.** The Credit Parties intend to amend and restate the Initial Order (the "**Amended and Restated Initial Order**") no later than November 30, 2023 and as part of that relief, will ask the CCAA Court to ratify this Agreement and grant the relief set out in Section 7.1(a)(v) of this Agreement.
- J.** The Agent and the Lenders are willing to forbear from exercising their rights and remedies and to provide certain Borrowings to the Borrower during the Forbearance Period (as defined below) subject to the terms and conditions set out herein.

THEREFORE, the Parties agree as follows:

ARTICLE 1 INTERPRETATION

1.1 Credit Agreement Definitions

Each capitalized term used and not otherwise defined in this Agreement will have the meaning assigned to it in the Credit Agreement.

1.2 Other Definitions

In this Agreement the following terms have the following meanings:

- (a) "**ABL DIP Fee**" is defined in Section 3.3(a).
- (b) "**ABL DIP Priority Charge**" is defined in Section 7.1(a)(v)c.
- (c) "**Additional Default**" means: (i) a Credit Party's default or failure to comply with any of the terms, conditions or covenants under this Agreement, or (ii) the occurrence of a Default prior to or on or after the date of this Agreement (other than an Existing Default), but shall not include any Default arising from the insolvency of the Credit Parties, the commencement of or continuation of the CCAA Proceedings or the Liquidation Sale.
- (d) "**Administration Charge**" is defined in the Initial Order.
- (e) "**Agent**" is defined in the preamble above.
- (f) "**Agreement**" means this agreement, including all Schedules, as it may be modified, amended, revised, restated, replaced, supplemented or otherwise changed from time to time and at any time hereafter, in writing, by the Parties.
- (g) "**Amended and Restated Order**" is defined under "Context" above.
- (h) "**Approved Cash Flow**" means the approved (by the Agent) 10-week cash flow forecast of the Credit Parties in form and substance satisfactory to the Agent, which forecast shall also include the

forecasted inventory, forecasted Borrowings and forecasted Borrowing Base for each week, which is attached as Schedule 5 hereto, as may be amended from time to time in accordance with Section 4.1(g).

- (i) **"Blocked Accounts Order"** is defined in Section 4.1(h)(iii).
- (j) **"Borrower"** is defined under "Context" above.
- (k) **"CCAA"** is defined under "Context" above.
- (l) **"CCAA Court"** is defined under "Context" above.
- (m) **"CCAA Proceedings"** is defined under "Context" above.
- (n) **"Claims"** and **"Claim"** are defined in Section 8.3(a).
- (o) **"Communication"** means any notice, demand, request, consent, approval or other communication, which is required or permitted by this Agreement to be given or made by a Party.
- (p) **"Conditions Precedent"** is defined in Section 7.1.
- (q) **"Court Order"** means an order of the CCAA Court.
- (r) **"Credit Agreement"** is defined under "Context" above.
- (s) **"Credit Parties"** is defined under "Context" above.
- (t) **"D&O Charge"** is defined in the Initial Order.
- (u) **"Draw Conditions"** is defined under "Context" above.
- (v) **"Effective Date"** is defined in Section 7.1.
- (w) **"Existing Defaults"** means the Defaults or Events of Default under the Credit Agreement set out in Schedule 3 attached hereto, and any Default or Event of Default arising solely as a result of the commencement of the CCAA Proceedings, the Liquidation Sale, or any necessary consequences of the CCAA Proceedings and the Liquidation Sale in accordance with the terms hereof.
- (x) **"Existing Indebtedness"** means the outstanding Obligations existing as at the date hereof as more particularly described in Schedule 1.
- (y) **"Existing Security"** is defined in Section 2.4.
- (z) **"Filing Date"** means November 23, 2023.
- (aa) **"Forbearance Period"** is defined in Section 3.1(a).
- (bb) **"Guarantor"** is defined under "Context" above.
- (cc) **"HST Account"** is defined in Section 4.1(i)(i).
- (dd) **"Initial Order"** is defined under "Context" above.
- (ee) **"Lenders"** is defined under "Context" above.

- (ff) **"Liquidation Sale"** means a liquidation sale approved by the CCAA Court for the sale of certain of the Borrower's inventory, furniture, fixtures and equipment.
- (gg) **"Loan Documents"** has the meaning given thereto in the Credit Agreement and includes, without limitation, this Agreement.
- (hh) **"Monitor"** is defined in Section 2.3(e).
- (ii) **"Net Cash Flow"** means the net cash flow of the Borrower measured and reported weekly on a weekly and cumulative basis.
- (jj) **"Parties"** means, collectively, the Credit Parties, the Agent and the Lenders; and **"Party"** means any one of them.
- (kk) **"Pre-Filing Payments Order"** is defined in Section 4.1(d)(iv).
- (ll) **"Releasees"** and **"Releasee"** are defined in Section 8.3(a).
- (mm) **"Termination Date"** is defined in Section 5.3.
- (nn) **"Terminating Event"** is defined in Section 5.4.

1.3 Entire Agreement

This Agreement, together with the Credit Agreement, the other Loan Documents and the other agreements and documents to be delivered under this Agreement, constitute the entire agreement between the Parties pertaining to the subject matter of this Agreement and supersede all prior agreements, understandings, negotiations and discussions, whether oral or written, of the Parties, and there are no representations, warranties or other agreements between the Parties in connection with the subject matter of this Agreement except as specifically set out in this Agreement, the Credit Agreement, the other Loan Documents or the other agreements and documents delivered under this Agreement.

1.4 Business Day

Whenever any payment to be made or action to be taken under this Agreement is required to be made or taken on a day other than a Business Day, the payment is to be made or action taken on the next Business Day following.

1.5 Certain Rules of Interpretation

- (a) In this Agreement, words signifying the singular number include the plural and vice versa, and words signifying gender include all genders. Every use of the word "including" in this Agreement is to be construed as meaning "including, without limitation".
- (b) The division of this Agreement into Articles and Sections and the insertion of headings are for convenience of reference only and do not affect the construction or interpretation of this Agreement.
- (c) References in this Agreement to an Article, Section, Schedule or Exhibit are to be construed as references to an Article, Section, Schedule or Exhibit of or to this Agreement unless the context requires otherwise.
- (d) Unless otherwise specified in this Agreement, time periods within which or following which any payment is to be made or act is to be done will be calculated by excluding the day on which the

period commences and including the day on which the period ends. If the last day of a time period is not a Business Day, the time period will end on the next Business Day.

- (e) Unless otherwise specified, any reference in this Agreement to any (a) statute includes all regulations made under that statute, and is to be construed as a reference to that statute as amended, supplemented or replaced from time to time, and (b) to any agreement means such agreement as amended, supplemented, restated, or replaced subject to compliance with any restrictions thereon in the Loan Documents.
- (f) Unless otherwise specified, the word “dollar” and the “\$” sign refer to Canadian currency, and all amounts to be advanced, paid, tendered or calculated under this Agreement are to be advanced, paid, tendered or calculated in Canadian currency.

1.6 Schedules and Exhibits

The following is a list of the Schedules and Exhibits attached hereto:

Schedule	Subject Matter
Schedule 1	Existing Indebtedness
Schedule 2	Existing Security
Schedule 3	Existing Defaults
Schedule 4	Restructuring Timeline
Schedule 5	Approved Cash Flow

ARTICLE 2 ACKNOWLEDGMENT

2.1 Acknowledgement of Obligations

Each Credit Party confirms, acknowledges and agrees that the Existing Indebtedness as of the date of this Agreement is as set out in Schedule 1 attached hereto.

2.2 Continuing Effect of Amendments

The Parties hereto each acknowledge, confirm and agree that the Credit Agreement and the other Loan Documents remain in full force and effect as at the date hereof, except as specifically amended by this Agreement. The Credit Agreement shall hereafter be read and construed in conjunction with this Agreement.

2.3 Other Confirmations and Acknowledgements

Each Credit Party confirms, acknowledges and agrees that:

- (a) each of the recitals in the “Context” is true and correct;
- (b) the Existing Defaults (other than any Default or Event of Default arising solely from the commencement of the CCAA Proceedings, the Liquidation Sale or events that are a necessary consequence of the CCAA Proceedings or the Liquidation Sale) have occurred and are continuing

and, as of the date of this Agreement, no Default or Event of Default, other than the Existing Defaults, exists under the Credit Agreement or any other Loan Document;

- (c) the Agent and the Lenders have not waived the Existing Defaults and nothing contained in this Agreement or the transactions contemplated by this Agreement will be deemed to constitute any such waiver, and the Credit Parties acknowledge, confirm and agree that the Agent and the Lenders shall be under no obligation to continue the Commitments following the Forbearance Period and shall only continue the Commitments during the Forbearance Period subject to the terms and conditions of this Agreement;
- (d) interest and fees will accrue on the Existing Indebtedness under the Credit Agreement and the other Loan Documents in accordance with the terms set out herein and therein;
- (e) Alvarez & Marsal Canada Inc. is the monitor under the Initial Order in the CCAA Proceedings (in such capacity, the **"Monitor"**);
- (f) subject to the notice procedures to be included in the Amended and Restated Initial Order, each Credit Party consents to the enforcement of all or any part of the rights and remedies accorded to the Agent and the Lenders under the Credit Agreement and the other Loan Documents and Applicable Law in any manner determined by the Agent and the Lenders upon the expiry of the Forbearance Period;
- (g) each Credit Party will grant all access and provide, on reasonable notice during regular business hours, all information and documentation to, and will otherwise cooperate fully with, the Agent and the Lenders, and pay all reasonable fees and disbursements of each consultant or advisor appointed by the Agent as the Agent may require, and pay all reasonable fees and disbursements of the Monitor and the Monitor's counsel in accordance with the Amended and Restated Initial Order, as applicable;
- (h) as at the date of this Agreement, the Credit Parties have paid or caused to be paid and satisfied when due all amounts in respect of income taxes, provincial sales taxes and other excise taxes, GST, HST, employee payroll remittances, employee wages, and other obligations which have or may constitute a Priority Payable to the extent due and payable as of the date hereof;
- (i) the Agent has and will continue to have valid, enforceable and perfected first ranking Liens, subject to Permitted Liens and any prior ranking court-ordered charge(s) in the Amended and Restated Initial Order, over and in respect of the Collateral as continuing and collateral security for the Obligations and all other amounts owing from time to time under this Agreement, the Credit Agreement and the other Loan Documents;
- (j) the Credit Parties do not have any valid claim for set-off, counter-claim, damages or other defence on any basis whatsoever against the Agent and the Lenders and if there are any such claims, then each Credit Party hereby expressly waives and releases them to the fullest extent permitted under Applicable Law;
- (k) the Agent and the Lenders are and will be entitled to the rights, remedies and benefits provided for in this Agreement, the Credit Agreement and the other Loan Documents subject to Applicable Law;
- (l) the Approved Cash Flow existing as at the date hereof covers the period from November 23, 2023 to January 28, 2024; and
- (m) this Agreement constitutes a Loan Document for all purposes of the Credit Agreement and the other Loan Documents.

2.4 Security

The Credit Parties acknowledge and agree that, in addition to the security created pursuant to the ABL DIP Priority Charge, the Security Documents delivered to, and Liens granted therein to, the Agent (including, without limitation, the Guarantee delivered by the Guarantor) as listed in Schedule 2 attached hereto (collectively, the “**Existing Security**”) shall stand as security for the payment and performance of each and every one of the Credit Parties’ obligations and indebtedness to the Agent and the Lenders under the Loan Documents, provided that the ABL DIP Priority Charge shall only secure the aggregate of any Borrowings under the Credit Agreement (as amended by this Agreement), including BCAP Loans, made on or after the Effective Date.

2.5 Agent/Lenders Confirmation

The Agent and the Lenders acknowledge and confirm that they have not received notice from the Credit Parties of the occurrence and continuance of any Default or Event of Default other than the Existing Defaults.

ARTICLE 3 FORBEARANCE, FEES AND INTEREST, AND COMMITMENTS

3.1 Forbearance

- (a) In reliance upon the acknowledgments, confirmations, representations, warranties and covenants of the Credit Parties contained in this Agreement, and subject to the terms and conditions of this Agreement and any documents or instruments executed in connection with this Agreement, the Agent and the Lenders agree to forbear from exercising their rights and remedies under the Credit Agreement and the other Loan Documents and/or Applicable Law in respect of or arising out of or relating to the Existing Defaults, subject to the conditions, amendments and modifications contained in this Agreement, during the period (the “**Forbearance Period**”) commencing on the date of this Agreement and ending on the Termination Date.
- (b) On the last day of the Forbearance Period, the agreement of the Agent and the Lenders to forbear will automatically and without further action terminate and be of no further force or effect, it being expressly agreed that subject to the notice requirements in the Amended and Restated Initial Order the effect of that termination will be to permit the Agent and the Lenders to exercise all or any part of their rights and remedies under this Agreement, the Credit Agreement, the other Loan Documents and Applicable Law (whether against all or any combination of the Credit Parties), including without limitation:
 - (i) to immediately terminate the Commitments and cease to permit any further Borrowings, upon which no further credit will be available thereunder;
 - (ii) to demand immediate payment of all of the Obligations and enforce all of the Agent’s rights and remedies under this Agreement, the Credit Agreement, the other Loan Documents and Applicable Law, in each case without any further notice, passage of time or forbearance of any kind; and
 - (iii) to appoint a receiver, interim receiver or receiver and manager of any of the Credit Parties pursuant to this Agreement, the Credit Agreement, the other Loan Documents or Applicable Law (or apply to a court of competent jurisdiction to do so).

3.2 No Other Waivers; Reservation of Rights

The Agent and the Lenders have not waived, and are not by this Agreement or the implementation of this Agreement waiving, any Existing Default or any Additional Default (whether the same or similar to the

Existing Defaults or otherwise), and the Agent and the Lenders have not agreed to forbear with respect to any of their rights or remedies concerning any Additional Default (whether the same or similar to the Existing Defaults or otherwise) which may have occurred or be continuing as of the date of this Agreement or which may occur or be continuing after the date of this Agreement. The Agent and the Lenders have not waived any of such rights or remedies, and nothing in this Agreement, and no delay on their part in exercising any such rights or remedies, should be construed as a waiver of those rights or remedies.

3.3 Fees and Interest

- (a) In consideration of the agreements set out in this Agreement, the Borrower agrees to pay to the Agent, a fee for the benefit of the Lenders in the amount of 1.25% of the outstanding balance of the Loans (including the BCAP Loans) as of the close of business on the date the Amended and Restated Initial Order is issued, which shall be fully earned upon execution of this Agreement (the “**ABL DIP Fee**”).
- (b) The ABL DIP Fee is in addition to all other fees (including legal fees), interest, costs, expenses and other amounts payable in connection with this Agreement, the Credit Agreement and the other Loan Documents (including fees contemplated in the Credit Agreement to the extent that payment has not been received by the Agent as at the date hereof) and may be charged by the Agent to any account of the Borrower maintained by the Lenders. The ABL DIP Fee will be fully earned by the Agent despite any failure by any Credit Party to comply with any other term of this Agreement.

ARTICLE 4 OBLIGATIONS OF THE CREDIT PARTIES DURING FORBEARANCE PERIOD

4.1 Covenants of the Credit Parties

During the Forbearance Period, each Credit Party covenants and agrees as follows:

- (a) **Loan Document Obligations:** Each Credit Party will strictly adhere to all the terms, conditions and covenants of this Agreement, the Credit Agreement and the other Loan Documents including, without limitation, terms requiring prompt payment to the Agent and the Lenders of principal and interest amounts when due, except to the extent that those terms, conditions and covenants are otherwise specifically amended by this Agreement, the Amended and Restated Initial Order or modified and agreed to in writing by the parties to such agreement and acknowledged and approved in writing by the Agent;
- (b) **Asset Sales and Payments:** Notwithstanding anything to the contrary contained in this Agreement, the Credit Agreement or any other Loan Document:
 - (i) unless otherwise agreed to by the Agent in writing on or after the date hereof, or contemplated in connection with those steps set out in Schedule 4, the Credit Parties will not transfer, lease, sell or otherwise dispose of all or any part of their property, assets or undertaking (excluding dispositions of inventory in the ordinary course of business) other than pursuant to the transfer, lease, sale or other disposition of property, assets or undertaking not exceeding \$25,000 for any single transaction or \$50,000 in the aggregate;
 - (ii) each Credit Party agrees that no Restricted Payment or Capital Expenditure shall be incurred or paid, in each case unless such payment is expressly identified and included in the Approved Cash Flow or has been approved by the Agent in writing on or after the date hereof; and
 - (iii) unless otherwise agreed to by the Agent in writing on or after the date hereof, or contemplated in connection with those steps set out in Schedule 4, the Credit Parties shall not pay any key employee any bonus, incentive or retention payments, whether such

payment was an obligation arising from a contract executed prior to the date of this Agreement or otherwise unless such payment is expressly identified and included in the Approved Cash Flow.

- (c) **Information Sharing:** The Credit Parties will forthwith provide to the Agent, with a contemporaneous copy to the Monitor:
- (i) a copy of all reports and information respecting the business, financial condition or prospects of the Credit Parties within two Business Days following request by the Agent, or such other time period as agreed to by the Agent acting reasonably;
 - (ii) the following reporting information certified by the Chief Executive Officer (unless otherwise specified) of the applicable Credit Party and in form and substance satisfactory to the Agent:
 - a. the reporting information required under the Credit Agreement (and, in particular, Section 5.1 thereof);
 - b. promptly after a Credit Party learns of the receipt or occurrence thereof, a certificate of such Credit Party, signed by a senior officer of such Credit Party specifying:
 - (i) notice of the institution of or any material adverse development in any action, suit or proceeding or any governmental investigation or any arbitration before any court or arbitrator or any Governmental Authority or official against such Credit Party which would reasonably be expected to have a Material Adverse Effect;
 - (ii) any official notice of any violation, possible violation, non-compliance or possible non-compliance, or claim made by any Governmental Authority or licensor pertaining to all or any part of the properties or intellectual property rights of such Credit Party which would reasonably be expected to have a Material Adverse Effect;
 - (iii) except for the Existing Defaults, any event which constitutes a Default or Event of Default, together with a detailed statement specifying the nature thereof and the steps (if any) being taken to cure such Default or Event of Default;
 - (iv) the receipt of any notice from, or the taking of any other action by, the holder of any promissory note, debenture or other evidence of Indebtedness of such Credit Party with respect to an actual or alleged default, together with a detailed statement specifying the notice given or other action taken by such holder and the nature of the claimed default and what action such Credit Party is taking or proposes to take with respect thereto;
 - (v) the receipt of any notice from, or the taking of any other action by, a party to a Material Contract or material indebtedness with respect to an actual or alleged default, together with a detailed statement specifying the notice given or other action taken by such party and the nature of the claimed default and what action such Credit Party is taking or proposes to take with respect thereto; and

- (vi) any other event, development or condition which could reasonably be expected to have a Material Adverse Effect;
 - (iii) promptly:
 - a. after receipt by a Credit Party, a copy of any notice received by such Credit Party in which any creditor, landlord, licensor or other third party delivers a notice of defect, default, demand, acceleration or enforcement in respect of any obligation of such Credit Party; and
 - b. any written restructuring, liquidation or sale proposal that is received by a Credit Party or their respective advisors including in respect of the Liquidation Sale;
 - (iv) promptly, all other reports and information required to be provided under this Agreement, the Credit Agreement or any other Loan Document or as may be otherwise reasonably required by the Agent from time to time.
- (d) **CCAA Proceedings:**
- (i) all motions, applications, affidavits, Court Orders and other pleadings and related documents filed or submitted to the CCAA Court by any Credit Party shall be consistent with the terms hereof and all Court Orders shall not be inconsistent with or have an adverse impact in any material respect on the rights, remedies or interests of the Agent or the Lenders unless otherwise agreed to by the Agent and the Lenders;
 - (ii) drafts of any motions, applications, affidavits, Court Orders and other pleadings and related documents to be filed or sought by any Credit Party, shall be provided to the Agent not less than two Business Days prior to service and filing (unless not practicable in the circumstances, in which case as much notice as practicable will be provided), to be confirmed in advance to be satisfactory to the Agent and the Lenders, acting reasonably, subject to any amendments that are required by the Court that are acceptable to the Agent and the Lenders, acting reasonably;
 - (iii) the Credit Parties agree to comply with the timeline set forth in Schedule 4 hereto, with such amendments as may be agreed to by the Agent and the Lenders, in consultation with the Monitor;
 - (iv) the Credit Parties shall seek and obtain, as part of the Amended and Restated Initial Order, an Order of the CCAA Court, in form and substance satisfactory to the Agent and the Lenders, authorizing and directing the Credit Parties to pay, in accordance with the Credit Agreement, as amended hereby, any and all amounts owing by the Credit Parties to the Agent and the Lenders on account of the Credit Parties' pre-filing outstanding Borrowings under the Credit Agreement from time to time (including any obligations in connection with the BCAP Loan), whether such Borrowings arose prior to or after the date of the Amended and Restated Initial Order, provided that (A) no advances of funds made by the Agent or the Lenders to the Credit Parties under the Credit Agreement (as amended) made on or after the date of the Amended and Restated Initial Order shall be used to pay outstanding Borrowings under the Credit Agreement (as amended) existing prior to the date of the Amended and Restated Initial Order and (B) no funds in the HST Account shall be used to pay outstanding Borrowings under the Credit Agreement (as amended) (the "**Pre-filing Payments Order**");
 - (v) the Credit Parties will enforce, collect and receive at their expense all amounts owing on their accounts in the ordinary course of their business and any proceeds they receive shall be subject to the terms of the Credit Agreement and this Section 4.1(d).

- (vi) the Credit Parties will not disclaim any contract that is material to the Credit Parties' business except on prior notice to and with the written consent of the Agent and the Monitor;
- (e) **Security:** The Credit Parties will from time to time execute and deliver additional Guarantees and such supplements, amendments or additions as may be requested by the Agent to any of the existing Liens held by the Agent (together with supporting resolutions, certificates and other documentation as may be reasonably required) in order to better effect the intent of this Agreement, the Credit Agreement and the other Loan Documents.
- (f) **No Non-arm's Length Payments:** Without derogation to any negative covenants contained in the Credit Agreement, no Credit Party shall make any payments of interest, principal, bonuses, management fees, incentives, payments or salary or other distributions of cash or assets to any Person with which it does not deal with at arm's length unless such payment is expressly identified and included in the Approved Cash Flow.
- (g) **Approved Cash Flow:** The Credit Parties agree that:
 - (i) the cash flow forecast attached hereto as Schedule 5 is the Approved Cash Flow for the period November 23, 2023 to January 28, 2024;
 - (ii) by 5:00 p.m. (Toronto time) on the fourth Business Day of each week, the Credit Parties shall provide the Agent with an updated Borrowing Base calculation and a variance report that shows the actual receipts and actual cash disbursements against the Approved Cash Flow on both a trailing weekly period basis and cumulative basis over the entirety of the Approved Cash Flow period to date, as well as an explanation of variances for individual line items in excess of the greater of 5% or \$100,000 from the Approved Cash Flow;
 - (iii) on each month anniversary of the date of this Agreement (or the first Business Day thereafter) the Credit Parties shall provide the Agent with an update of the Approved Cash Flow, which shall reflect the Borrower's good faith projections and be in form and detail consistent with the initial Approved Cash Flow. For greater certainty, no such updated cash flow shall replace the Approved Cash Flow for the purposes of this Agreement unless and until the Agent has provided notice in writing to the Borrower, with a copy to the Monitor, confirming its consent to such updated Approved Cash Flow;
 - (iv) the Credit Parties shall deliver to the Agent promptly such additional information as the Agent may from time to time reasonably request respecting any such Approved Cash Flow; and
 - (v) the Credit Parties shall hold a weekly conference call with the Monitor and the Agent, at a time to be agreed by the Credit Parties, the Monitor and the Agent, to provide updates on the past and anticipated future performance of the business relative to the Approved Cash Flow.

Unless otherwise agreed to by the Agent in writing, the Credit Parties will not make any payments outside the ordinary course of their business, other than payments in connection with the Liquidation Sale.

- (h) **Blocked Accounts:** Each Credit Party agrees as follows:
 - (i) that it will enforce, collect and receive at its expense all amounts owing on its accounts in the ordinary course of its business and any proceeds it so receives shall be subject to the terms of the Credit Agreement and this Section 4.1(h)(i);

- (ii) that, on the Effective Date and at all times thereafter until the indefeasible repayment in full of the Obligations (including the BCAP Loans): (a) each of the Credit Parties' deposit accounts, other than the HST Account, that receive proceeds of property subject to a Lien in favour of the Agent or otherwise are and shall be Blocked Accounts subject to duly executed and delivered Blocked Account Agreements and complying in all respects with the terms set forth in the Credit Agreement, and (b) each of the Credit Parties shall have delivered to the Agent evidence satisfactory to the Agent that blocked account and cash management systems with all such Persons complying in all respects with the terms set forth in the Credit Agreement have been established and are currently being maintained in the manner set forth in the Credit Agreement;
 - (iii) that the Credit Parties will seek and obtain, as part of the Amended and Restated Initial Order, an Order of the CCAA Court, in form and substance satisfactory to the Agent and the Lenders, authorizing and directing the Credit Parties to enter into and perform under the above described Blocked Accounts arrangements (the "**Blocked Accounts Order**") from and after the Effective Date. The Parties hereto hereby acknowledge, confirm and agree that the continuing implementation of the cash management arrangements is a contractual right provided to the Agent hereunder and under the Credit Agreement in order for the Agent to manage and monitor its collateral position and not a proceeding for enforcement or recovery of a claim, or pursuant to, or an enforcement of, any security or remedies whatsoever, that the cash management arrangements contemplated herein are critical to the structure of the lending arrangements contemplated herein, that the Agent is relying on this acknowledgement, confirmation and agreement with respect to such cash management arrangements in making accommodations of credit available to the Borrower and in particular that any accommodations of credit are being provided by the Agent and the Lenders to the Borrower strictly on the basis of a borrowing base calculation to fully support and collateralize any such accommodations of credit hereunder,
- (i) **HST:** Each Credit Party agrees as follows:
 - (i) Mastermind LP will work with the Agent to establish a deposit account (the "**HST Account**") pursuant to which Mastermind LP will, on at least a weekly basis, deposit an amount equal to the HST collected each week during the Forbearance Period; and
 - (ii) On at least a bi-weekly basis, Mastermind LP will remit the funds in the HST Account to Canada Revenue Agency and provide the Agent and Monitor evidence of such remittance.
- (j) **Rent Payments:** Subject to any pre-filing amounts that are subject to a stay of proceedings in favour of the Credit Parties or applicable Court Order, the Credit Parties must maintain as current all payments under any lease or any mortgage of any premises out of which any Credit Party operates, or contracts for storage or bailment, and will otherwise not permit any default or event of default under any such lease, mortgage or contract for storage or bailment, other than defaults arising by virtue of the insolvency of the Credit Parties, the commencement of or continuation of the CCAA Proceedings or the Liquidation Sale, for which remedies are stayed, or forthwith obtain a waiver in writing from the relevant landlord, storer or bailee. Notwithstanding the foregoing, the Credit Parties shall be permitted to disclaim or resiliate any contracts or leases in the course of the CCAA Proceedings with the prior written consent of the Monitor.
- (k) **Further Assurances:** Each Credit Party will provide any further or additional documents, whether provided for in this Agreement, the Credit Agreement, any other Loan Documents or otherwise, that the Agent may require to ensure that the Agent has and continues to have full and complete Guarantees from each Credit Party and a first ranking Lien, subject to Permitted Liens and any prior-ranking court-ordered charge(s) in the Amended and Restated Initial Order or otherwise approved by the Agent and the Lender and granted by the CCAA Court, against such assets, properties and undertaking of the Credit Parties as the Agent requires (including all amendments

or supplements to any of this Agreement, the Credit Agreement or any other Loan Document (including all Security Documents) and all additional or supplemental debentures, hypothecs, mortgages, charges, assignments, pledges and/or other security deemed necessary or desirable by the Agent).

4.2 Covenants in the Credit Agreement and the other Loan Documents

Except as expressly modified in this Agreement by specific reference, all of the covenants in this Agreement are in addition to and not in substitution for the covenants of the Credit Parties in the Credit Agreement and the other Loan Documents.

ARTICLE 5 AMENDMENTS TO LENDING ARRANGEMENTS

5.1 Amendments to Credit Agreement

- (a) The Borrower agrees to provide the Agent with information detailing the proposed use of proceeds for Borrowings after the date of this Agreement, which information shall accompany each Borrowing Request and be in form satisfactory to Agent.
- (b) Except to the extent otherwise set forth in this Agreement, the credit facilities shall continue in accordance with their terms and conditions as set forth in the Credit Agreement.

5.2 Purpose

The proceeds of Borrowings by the Borrower (including under the BCAP Loan) shall, subject to the provisions of this Agreement, be used to fund the operations of the Credit Parties in the ordinary course and for such other purposes as may be agreed to by the Agent in writing; all in accordance with the Approved Cash Flow.

5.3 Termination Date

All amounts owing to the Agent and the Lenders by the Borrower in connection with the Credit Agreement and otherwise in connection with this Agreement and all other Loan Documents shall, subject to the notice requirements in the Amended and Restated Initial Order, be paid by the Credit Parties to the Agent in full on the Termination Date. The “**Termination Date**” shall be the date which is the earliest of:

- (a) notice in accordance with the Amended and Restated Initial Order by the Agent to the Borrower of an Event of Default (other than an Existing Default);
- (b) February 14, 2024, or such other date as may be agreed to by the Borrower and the Agent, in consultation with the Monitor; and
- (c) the occurrence or existence of any Terminating Event.

5.4 Terminating Events

Other than as provided in this Agreement or as may otherwise be consented to in writing by the Agent, the occurrence of any of the following events will constitute a “**Terminating Event**” under this Agreement (and, for purposes of greater certainty, a Default or an Event of Default under the Credit Agreement and the other Loan Documents):

- (a) if the Amended and Restated Initial Order is not obtained in form and substance acceptable to the Agent on or prior to December 1, 2023;

- (b) if any of the Credit Parties fail to comply with any Court Order;
- (c) if any Credit Party fails to achieve any of the steps set out in Schedule 4 by the dates set out therein, as such schedule may be amended from time to time with the consent of the Agent and the Monitor;
- (d) if any updated cash flow projection provided to the Agent pursuant to Section 4.1(g) is not acceptable to the Agent, acting reasonably;
- (e) if, in any given week during the Forbearance Period: (i) the actual cumulative Net Cash Flow (as so described in the Approved Cash Flow) are more than 5% below the forecasted cumulative Net Cash Flow amount (as shown on the Approved Cash Flow) for the given week, or (ii) the actual weekly Net Cash Flow is more than 15% below forecasted weekly Net Cash Flow amount (as shown in the Approved Cash Flow) for a given week;
- (f) if a Credit Party creates, incurs, assumes or permits to exist any Lien on any of its property, undertaking or assets now owned or hereafter acquired, or the CCAA Court makes any order declaring that all or part of a Credit Party's property is subject to a Lien in favour of any party other than the Agent and such court ordered charge purports to rank in any manner whatsoever in priority to or *pari passu* with any claim of the Agent under its Liens in the Security Documents (including liens securing the obligations in connection with the BCAP Loan) or the ABL DIP Priority Charge, in each case, other than (i) Permitted Liens and (ii) any court-ordered charge(s) in the Amended and Restated Initial Order, or otherwise, in each case approved by the Agent and granted by the CCAA Court in the CCAA Proceedings;
- (g) if, on or after the date of this Agreement:
 - (i) the CCAA Proceedings are terminated without the prior or concurrent consent of the Agent;
 - (ii) any Order of the CCAA Court is sought by a Credit Party or granted by the CCAA Court that could reasonably be expected to adversely affect the interests of the Agent and the Lenders; or
 - (iii) the Monitor reports to the CCAA Court that there has been a material adverse change in respect of the Credit Parties taken as a whole and/or the CCAA Proceedings;
- (h) if any Credit Party shall fail to observe or perform any covenant, condition or agreement contained in this Agreement;
- (i) if any notice of garnishment that is not stayed by the Amended and Restated Initial Order is received by any Credit Party from any Governmental Authority;
- (j) the occurrence of any event listed in Section 4.1(c)(ii)b; that is not stayed by the Amended and Restated Initial Order;
- (k) if any representation, warranty or other statement made or deemed to be made by any Credit Party in this Agreement, the Credit Agreement or any of the other Loan Documents or in any of the documents or instruments to be delivered to the Agent and the Lenders as contemplated by this Agreement (other than a representation, warranty or other statement of a general economic or industry nature) is untrue in any material respect or, in the case of any representation stated to be made as at a particular earlier date, was untrue in any material respect when made;
- (l) if there occurs any: (i) closure of all or any material part of any of the business or operations of any of the Credit Parties or any suspension of all or a material part of the business or operations of any of the Credit Parties (other than in connection with those steps set out in Schedule 4); and/or (ii)

disposition or sale of all or any material part of the business or operations of the Credit Parties (other than in connection with those steps set out in Schedule 4);

- (m) if any action, claim or proceeding is formally commenced, filed or lodged against any of the Credit Parties which is not stayed by the CCAA Proceedings and the same gives rise to, or could reasonably be expected to give rise to, indebtedness, liabilities or obligations in excess of \$250,000, and such action, claim or proceeding continues undismissed or unstayed for a period of ten calendar days after the institution thereof;
- (n) if any creditor or encumbrancer of any Credit Party takes possession of any of the Credit Parties' property or assets, or if distress or execution, foreclosure or power of sale, or any similar process is levied or enforced against such property or assets;
- (o) if any of the Credit Parties contests or denies in any manner the legality, validity, binding nature or enforceability of this Agreement, the Credit Agreement or any of the other Loan Documents or any liabilities and obligations to the Agent or the Lenders under or relating to this Agreement, the Credit Agreement or any of the other Loan Documents;
- (p) if the Agent determines that a material adverse change in the financial or business condition, or prospects of, the Credit Parties taken as a whole has occurred or that a material adverse change in the value of the Collateral relative to the Obligations has occurred;
- (q) if the stay imposed under the CCAA Proceedings is lifted, in whole or in part, is terminated or lapses without extension, unless the Agent consents thereto;
- (r) if any step is taken or event occurs that would materially prejudice or jeopardize the Agent's or the Lenders' rights under this Agreement, the Credit Agreement, and the other Loan Documents or a material portion of the Collateral secured by the Loan Documents; or
- (s) if, other than the CCAA Proceedings, any action is taken by or against or consented to by a Credit Party to institute proceedings to be adjudicated a bankrupt or insolvent or consent to the institution of bankruptcy, insolvency or similar proceedings against a Credit Party or file a petition (or similar action or proceeding) or consent seeking reorganization, arrangement, or relief from creditors, or take or commence any other steps or proceedings under any one or more of the applicable insolvency, liquidation, bankruptcy or analogous statutes or laws unless, in the case of any action taken against a Credit Party in connection with any of the foregoing, such petition, application or proceeding is contested by the Credit Parties and is dismissed or stayed within five (5) Business Days after the institution thereof (and in the case of a stay, such stay is continuing).

Upon the occurrence of a Terminating Event, the Forbearance Period will terminate without requirement for any further notice to any Credit Party or any other action whatsoever by the Agent and the Agent and the Lenders shall, subject to the notice requirements in the Amended and Restated Initial Order be entitled to exercise any and all rights and remedies under the Credit Agreement and the other Loan Documents without further notice to the Credit Parties.

ARTICLE 6 REPRESENTATIONS AND WARRANTIES

Each of the Credit Parties represents, warrants and covenants with and to the Agent and the Lenders as follows:

6.1 Representations in Loan Documents

Except for any representation and warranty set out in any of the Loan Documents relating to the non-existence of an Existing Default, or stated to be made as at a particular date, each of the representations

and warranties made by or on behalf of the Credit Parties to the Agent in the Credit Agreement or any of the other Loan Documents was true and correct in all material respects when made, and in all material respects is, true and correct on the date of this Agreement, with the same full force and effect as if each of those representations and warranties had been made by the applicable Credit Parties on the date of, and within, this Agreement.

6.2 Full Effect of Documents

This Agreement, the Credit Agreement and the other Loan Documents are in full force and effect, except as modified by this Agreement.

6.3 No Conflict

The execution and delivery and performance of this Agreement by each Credit Party will not violate any requirement of Applicable Law, and will not result in, or require, the creation or imposition of any Lien on any of its properties or revenues except as expressly contemplated herein.

6.4 Lender May Pursue Rights and Remedies

Nothing in this Agreement will prejudice the Agent's and the Lenders' rights to pursue any of their rights or remedies including, without limitation, enforcing their rights under any of this Agreement, the Credit Agreement or any of the other Loan Documents or under Applicable Law following the expiry or termination of the Forbearance Period subject to the notice requirements in the Amended and Restated Initial Order.

ARTICLE 7 CONDITIONS PRECEDENT TO THIS AGREEMENT

7.1 Conditions Precedent

- (a) The forbearance and other accommodations contemplated hereunder shall only be granted by the Agent if the following conditions precedent (the "**Conditions Precedent**") have been satisfied or complied with in a manner satisfactory to the Agent on or before 5:00 p.m. (Toronto Time) on December 1, 2023 (the date that all Conditions Precedent are satisfied, the "**Effective Date**") or such other time or date as specified below:
 - (i) the Agent has received a duly authorized, executed and delivered PDF copy of this Agreement executed by each of the Credit Parties;
 - (ii) the payment of all fees, disbursements and taxes owing to the Agent's and the Lenders' legal counsel at such time pursuant to a delivered invoice; it being acknowledged and agreed by the Credit Parties that, in satisfying this condition precedent, each such amount shall be automatically debited by the Agent from the operating accounts of the Borrower (other than the HST Account) without any further consent or agreement of the Credit Parties being required in respect thereof;
 - (iii) the Agent shall have confirmed to the Credit Parties that the Approved Cash Flow prepared by the Borrower to be filed in the CCAA Proceedings is satisfactory to the Agent;
 - (iv) the Agent shall have received, drafts of the Amended and Restated Initial Order and drafts of all supporting affidavits and reports to be filed in the CCAA Proceedings and the Approved Cash Flow and such materials shall be in form and substance satisfactory to the Agent and the Lenders, acting reasonably;
 - (v) the Amended and Restated Initial Order shall have been granted in form and substance satisfactory to the Agent and the Lenders and shall, *inter alia*,:

- a. approve or ratify the Credit Parties' execution and performance of this Agreement;
 - b. provide that the Agent shall at all times be treated as an "unaffected creditor" in the CCAA Proceedings and/or in any other insolvency, restructuring, reorganization and/or arrangement proceeding with respect to any Credit Party thereafter including, without limitation, proceedings under the CCAA or the BIA and any stay of proceedings ordered by the CCAA Court in the CCAA Proceedings shall not apply to the Agent and the Lenders (subject to the notice requirements in the Amended and Restated Initial Order);
 - c. provide that the aggregate of any Borrowings under the Credit Agreement (as amended by this Agreement) made on or after the time of the granting of the Amended and Restated Initial Order shall be secured by a CCAA Court ordered security and charge in favour of the Agent (the "**ABL DIP Priority Charge**") which security and charge shall rank in priority to every other claim, Lien and security interest against the Credit Parties' property, assets and undertaking, other than the Administration Charge and D&O Charge, without any need or requirement for any further steps for attachment, perfection, opposability against third parties, registration, publication or other notice thereof required to be taken by the Agent;
 - d. provide that except as may be expressly consented to by the Agent, at no time on or after the Filing Date shall all or part of a Credit Party's property be the subject of a court ordered security or charge in favour of any party where such security or charge is purported to rank in any manner whatsoever in priority to or *pari passu* with any claim of the Agent or the Lenders in respect of the Liens under the Security Documents (including liens securing obligations in connection with the BCAP Loan), other than the Administration Charge (to a maximum of \$1,000,000), the D&O Charge (to a maximum amount of \$5,000,000), the ABL DIP Priority Charge (to a maximum of \$36,250,000), and the KERP Charge (to a maximum amount of \$286,000);
 - e. include the Pre-filing Payments Order; and
 - f. include the Blocked Accounts Order.
- (vi) the Agent shall have received all other documentation reasonably required by the Agent and its counsel in connection with this Agreement (including, without limitation, such further assurances, resolutions, opinions and additional confirmations or other agreements relating to the Agent's Liens), all duly authorized, executed and delivered in form and substance satisfactory to the Agent in its sole discretion;
- (vii) other than the Existing Defaults, no event shall have occurred and be continuing, or will result from the consummation of the transactions contemplated by this Agreement that would constitute a Default or an Event of Default; and
- (viii) a form of liquidation sale agreement in respect of the Liquidation Sale in form and substance acceptable to the Agent in its sole discretion shall have become effective.
- (b) The Conditions Precedent are for the sole benefit of the Agent and the Lenders and may be waived only by the Agent in writing. If the Conditions Precedent are not complied with to the satisfaction of the Agent as provided for above, and the Agent will not waive satisfaction thereof at its sole discretion, then the Agent shall have no obligation to grant the forbearance and other accommodations contemplated herein.

ARTICLE 8 GENERAL

8.1 Effect of this Agreement

Except as modified by this Agreement, no other changes or modifications to the Credit Agreement or the other Loan Documents are intended or implied, and in all other respects the Credit Agreement and the other Loan Documents are specifically acknowledged, ratified and confirmed by the Credit Parties. To the extent of conflict between the terms of this Agreement, the Credit Agreement and the other Loan Documents, the terms of this Agreement will govern.

8.2 Costs and Expenses

The Credit Parties hereby absolutely and unconditionally jointly and severally agree to pay to and fully indemnify the Agent, on demand by the Agent at any time and as often as may be required, whether or not all or any of the transactions contemplated by this Agreement are consummated, all documented fees and disbursements of the Agent, all counsel to the Agent, any financial advisor retained by the Agent, all other consultants to and agents of the Agent and all other documented expenses incurred by the Agent in connection with this Agreement, the Credit Agreement and the other Loan Documents including without limitation: (a) documented legal expenses in connection with the preparation, negotiation and interpretation of this Agreement, the other agreements or documents contemplated by this Agreement, the Credit Agreement and the other Loan Documents and the administration of this Agreement, the Credit Agreement and the other Loan Documents generally; (b) all documented expenses of advisors and consultants to and agents of the Agent (including legal expenses on a full indemnity basis) incurred in connection with the protection and enforcement of this Agreement, the Credit Agreement or any of the other Loan Documents or in connection with any proceeding in respect of bankruptcy, insolvency, winding up, receivership, dissolution, reorganization, liquidation, moratorium, arrangement or assignment for the benefit of creditors involving any Credit Party; in each of the foregoing events whether under the laws of Canada, Ontario, Alberta or other applicable jurisdiction, or any local or foreign bankruptcy, insolvency, reorganization, receivership or similar law. Each Credit Party specifically authorizes the Agent to debit from any of its accounts with the Agent the amount of any such existing and future fees and disbursements, and other expenses and the Agent agrees to use commercially reasonable efforts to notify such Credit Party of such anticipated debit and the amount thereof at least two (2) Business Days in advance.

8.3 Release

- (a) In consideration of this Agreement and for other good and valuable consideration, each Credit Party, on its own behalf and on behalf of its respective successors, assigns, and other legal representatives, absolutely, unconditionally and irrevocably releases the Agent, the Lenders, and their present and former affiliates, subsidiaries, divisions, predecessors, directors, officers, legal counsel, consultants, employees, agents and other representatives, and their successors and assigns (all of which are referred to collectively as the “**Releasees**” and individually as a “**Releasee**”), of and from all demands, actions, causes of action, suits, covenants, contracts, controversies, agreements, promises, sums of money, accounts, bills, reckonings, damages and any and all other claims, counterclaims, defences, rights of set-off, demands and liabilities (individually, a “**Claim**” and collectively, “**Claims**”) known or unknown, both at law or in equity, that such Credit Party or any of their respective successors, assigns, or other legal representatives may now or later have or claim against any of the Releasees by reason of any circumstance, action, cause or thing which arises at any time on or prior to the date of this Agreement, including for or on account of, or in relation to, or in any way in connection with (i) this Agreement, the Credit Agreement or any of the other Loan Documents or any transactions under or related to, this Agreement, the Credit Agreement or any of the other Loan Documents, and (ii) any and all proposed refinancings of any Credit Party by the Lenders (past or present), including, without limitation, any and all prior proposed offers of finance (whether consummated or not), term sheets,

indicative and non-binding term sheets or negotiations for financing, between any of the Lenders and any Credit Party;

- (b) each Credit Party understands, acknowledges and agrees that the release set out in Section 8.3(a) may be pleaded as a full and complete defence and may be used as a basis for an injunction against any action, suit or other proceeding which may be instituted, prosecuted or attempted in breach of the provisions of that release; and
- (c) each Credit Party agrees that no fact, event, circumstance, evidence or transaction which could now be asserted or which may later be discovered will affect in any manner the final, absolute and unconditional nature of the release set out in Section 8.3(a).

8.4 Survival of Representations and Warranties

All representations and warranties made in this Agreement or any other document delivered in connection with this Agreement will survive the execution and delivery of this Agreement and the other documents and no investigation by the Agent or any closing will affect the representations and warranties or the right of the Agent to rely upon them.

8.5 Governing Law

This Agreement is governed by, and is to be construed and interpreted in accordance with, the laws of the Province of Ontario and the federal laws of Canada effective therein.

8.6 Reviewed by Legal Counsel

Each Credit Party represents and warrants to the Agent and the Lenders that it:

- (a) understands fully the terms of this Agreement and the consequences of the execution and delivery of this Agreement;
- (b) has been afforded an opportunity to have this Agreement reviewed by, and to discuss this Agreement and any documents executed in connection herewith with, such lawyers and other persons as such Credit Party may wish; and
- (c) has entered into this Agreement and executed and delivered all documents in connection herewith of its own free will and accord and without threat, duress or other coercion of any kind by any Person.

The Parties hereto acknowledge and agree that neither this Agreement nor the other documents or instruments executed pursuant hereto will be construed more favourably in favour of one than the other based upon which Party drafted the same, it being acknowledged that all Parties hereto contributed substantially to the negotiation and preparation of this Agreement and the other documents and instruments executed pursuant hereto or in connection herewith.

8.7 Submission to Jurisdiction

Without prejudice to the ability of any Party to enforce this Agreement in any other proper jurisdiction, each of the Parties irrevocably submits and attorns to the non-exclusive jurisdiction of the CCAA Court to determine all issues, whether at law or in equity arising from this Agreement. To the extent permitted by Applicable Law, each of the Parties irrevocably waives any objection (including any claim of inconvenient forum) to the venue of any legal proceeding arising out of or relating to this Agreement in the courts of that province, or that the subject matter of this Agreement may not be enforced in those courts, and irrevocably agrees not to seek, and hereby waives any right to, judicial review by any court which may be called upon to enforce the judgment of the courts referred to in this Section 8.7, of the substantive merits of any such

suit, action or proceeding. To the extent a Party has or hereafter may acquire any immunity from the jurisdiction of any court or from any legal process (whether through service or notice, attachment prior to judgment, attachment in aid of execution, execution or otherwise) with respect to itself or its property, that Party irrevocably waives that immunity in respect of its obligations under this Agreement.

8.8 Mutual Waiver of Jury Trial

Because disputes arising in connection with complex financial transactions are most quickly and economically resolved by an experienced and expert person and the Parties wish applicable provincial and federal laws to apply (rather than arbitration rules), the Parties desire that their disputes be resolved by a judge applying those Applicable Laws. Therefore, to achieve the best combination of the benefits of the judicial system, the Parties waive all rights to trial by jury in any action, suit, or proceeding brought to resolve any dispute, whether arising in contract, tort, or otherwise between the Agent and any Credit Party, arising out of, connected with, or related or incidental to, the relationship established between them in connection with this Agreement, the Credit Agreement or any of the other Loan Documents or the transactions related to this Agreement, the Credit Agreement or any of the other Loan Documents.

8.9 Time of Essence

Time is of the essence in all respects of this Agreement.

8.10 Notices

Any Communication or notice must be in writing and delivered in accordance with the Credit Agreement.

8.11 Further Assurances

Each Credit Party will, at its own cost, execute and deliver all further agreements and documents and provide all further assurances as may be reasonably required by the Agent to give effect to this Agreement and, without limiting the generality of the foregoing, will do or cause to be done all acts and things, execute and deliver or cause to be executed and delivered all agreements and documents and provide such assurances, undertakings and information as may be required from time to time by all regulatory or governmental bodies or stock exchanges having jurisdiction over the affairs of a Party or as may be required from time to time under applicable securities legislation.

8.12 Confirmation of Documents and Terms

Each of the Credit Parties hereby agrees to the terms of this Agreement and confirms to and agrees with the Agent and the Lenders that its liabilities and obligations, and the Liens created under or pursuant to all Security Documents, Loan Documents and other documents and instruments executed in connection with the Credit Agreement and accommodations provided for or contemplated in the Credit Agreement continue in full force and effect in accordance with their respective terms and that all Security Documents and other Loan Documents executed by it secure and shall continue to secure the Obligations.

8.13 No Merger or Novation

All Security Documents, other Loan Documents and other documents and instruments provided to the Agent or otherwise entered into by the Credit Parties prior to the date hereof in connection with the Credit Agreement and accommodations provided for or contemplated in the Credit Agreement, there being no novation or merger of the Credit Agreement (as amended pursuant to this Agreement), any of the Agent's Liens under the Security Documents or any of the other Loan Documents, and all Obligations continue under the Credit Agreement (as amended by this Agreement) and the other Loan Documents.

8.14 Amendment and Waiver

No supplement, modification, amendment, waiver, discharge or termination of this Agreement is binding unless it is executed in writing by the Party to be bound. No waiver of, failure to exercise or delay in exercising, any provision of this Agreement constitutes a waiver of any other provision (whether or not similar) nor does such waiver constitute a continuing waiver unless otherwise expressly provided.

8.15 Assignment and Enurement

No Credit Party will be entitled to assign this Agreement or any right or obligation under this Agreement without the prior consent of the Agent. The Agent may assign this Agreement and any of their rights and obligations under this Agreement without the consent of or notice to any Credit Party. This Agreement enures to the benefit of and is binding upon the Parties and their respective successors and permitted assigns.

8.16 Severability

Each provision of this Agreement is distinct and severable. If any provision of this Agreement, in whole or in part, is or becomes illegal, invalid or unenforceable in any jurisdiction by a court of competent jurisdiction, the illegality, invalidity or unenforceability of that provision will not affect:

- (a) the legality, validity or enforceability of the remaining provisions of this Agreement; or
- (b) the legality, validity or enforceability of that provision in any other jurisdiction.

8.17 Counterparts

This Agreement may be executed and delivered by the Parties in one or more counterparts, each of which when so executed and delivered will be an original and such counterparts will together constitute one and the same instrument.

8.18 Electronic Signatures

Delivery of this Agreement by facsimile or other electronic transmission (including through "pdf" format via email) constitutes valid and effective delivery.

8.19 Paramountcy

In the event of any conflict or inconsistency between the provisions of this Agreement and the provisions of the Credit Agreement or any other Loan Document, the provisions of this Agreement shall prevail.

THE REMAINDER OF THIS PAGE HAS BEEN INTENTIONALLY LEFT BLANK.

Each of the Parties has executed and delivered this Agreement effective as of the date first written above.

MASTERMIND LP, by its general partner,
MASTERMIND GP INC.,
as Borrower

By: _____
Name:
Title:

MASTERMIND GP INC.,
as Guarantor

By: _____
Name:
Title:

CANADIAN IMPERIAL BANK OF COMMERCE, as
Agent and as Lender

Per _____
Name:
Title:

Per _____
Name:
Title:

SCHEDULE 1
EXISTING INDEBTEDNESS UNDER THE CREDIT AGREEMENT

SEE ATTACHED

SCHEDULE 2
EXISTING SECURITY

1. General Security Agreement dated as of October 24, 2014 between Mastermind LP, as Borrower, and Canadian Imperial Bank of Commerce, as Agent.
2. Assignment of Insurance dated as of October 24, 2014, made by Mastermind LP, as Borrower, in favour of Canadian Imperial Bank of Commerce, as Agent.
3. Notice of Intention to Give Security Under Section 427 of the Bank Act (Canada) to Canadian Imperial Bank of Commerce, dated October 22, 2014, from Mastermind LP.
4. Application for Credit and Promise to Give Security Under Section 427 of the Bank Act (Canada), dated October 22, 2014, from Mastermind LP to Canadian Imperial Bank of Commerce.
5. Agreement As To Powers of Canadian Imperial Bank of Commerce In Relation To Security Under Section 427 of the Bank Act (Canada), dated October 24, 2014, from Mastermind LP to Canadian Imperial Bank of Commerce.
6. Special Security In Respect of Specified Property or Classes of Property Described in Section 427 of the Bank Act (Canada), dated October 24, 2014, from Mastermind LP to Canadian Imperial Bank of Commerce.
7. Blocked Accounts Agreement dated October 24, 2014, among Mastermind LP, Canadian Imperial Bank of Commerce, as depository bank, and Canadian Imperial Bank of Commerce, as Agent.
8. Guarantee dated as of October 24, 2014 made by Mastermind GP Inc., as Guarantor, in favour of Canadian Imperial Bank of Commerce, as Agent.
9. General Security Agreement dated as of October 24, 2014 between Mastermind GP Inc., as Guarantor, and Canadian Imperial Bank of Commerce, as Agent.

**SCHEDULE 3
EXISTING DEFAULTS**

1. Commencing in December 31, 2022, and in all months thereafter, the Borrower's Fixed Charge Coverage Ratio was less than 1.0:1.0 as at the last day of each month, in breach of Section 5.14 (Fixed Charge Coverage Ratio) of the Credit Agreement, which breach continued for a period of more than 30 days after notice thereof, resulting in an Event of Default under section 7.1(e) of the Credit Agreement.
2. In addition, the Borrower has failed to maintain the minimum required year to date EBITDA from April 30, 2023 forward, which breach continued for a period of more than 30 days after notice thereof, resulting in an Event of Default under Section 7.1(e) of the Credit Agreement.

**SCHEDULE 4
RESTRUCTURING TIMELINE**

Date	Milestone
December 1, 2023	Amended and Restated Initial Order is Granted by the CCAA Court
December 1, 2023	Liquidation Sale and Sale Guidelines to be Used Therein are Approved by the CCAA Court
Week of December 11, 2023	(a) CCAA Court approval of a going concern sale of the Borrower's business and assets on terms acceptable to the Agent; or (b) Amendment of Liquidation Sale to include all inventory, furniture, fixtures and equipment of the Borrower on terms acceptable to the Agent.
January 28, 2024	Completion of Liquidation Sale
March 31, 2024	Termination of the CCAA Proceedings

SCHEDULE 5
APPROVED CASH FLOW

SEE ATTACHED

Cash Flow Forecast for the 10-Week Period Ending January 28, 2024

Mastermind

10-Week Cash Flow Forecast ending January 28, 2024

Unaudited \$CAD 000's

Cash Flow Week: Week Ending:	Notes	Week 1 26-Nov-23	Week 2 03-Dec-23	Week 3 10-Dec-23	Week 4 17-Dec-23	Week 5 24-Dec-23	Week 6 31-Dec-23	Week 7 07-Jan-24	Week 8 14-Jan-24	Week 9 21-Jan-24	Week 10 28-Jan-24	10-Week Total
Receipts												
Sales	1	890	4,951	5,665	6,936	8,247	7,124	3,937	1,957	1,018	1,099	41,824
Sales tax collections		138	619	746	951	897	500	252	112	125	123	4,463
Total Receipts		1,028	5,571	6,411	7,887	9,144	7,624	4,189	2,069	1,142	1,222	46,287
Disbursements												
Merchandise vendors		-	-	-	-	-	-	-	-	-	-	-
Non-merchandise vendors	2	(461)	(1,452)	(1,182)	(627)	(250)	(250)	(100)	(100)	(100)	(100)	(4,622)
Rent	3	-	(683)	-	(683)	-	-	(683)	-	(558)	-	(2,607)
Payroll & benefits	4	-	(996)	-	(1,103)	-	(1,103)	-	(1,047)	-	(818)	(5,066)
Proposed KERP	5	-	-	-	-	-	-	-	(485)	-	-	(485)
Restructuring professional fees	6	-	-	(511)	-	(496)	-	-	(480)	-	(976)	(2,462)
Consultant fees	7	-	(700)	(99)	(363)	(139)	(415)	(142)	(329)	(39)	(292)	(2,519)
Sales tax remittances		(34)	(1,085)	-	(6)	-	-	(3,223)	-	-	(864)	(5,211)
Other expenditures		(20)	(266)	(20)	(20)	(20)	(20)	(646)	(20)	(20)	(81)	(1,133)
Total Disbursements		(515)	(5,182)	(1,812)	(2,802)	(904)	(1,788)	(4,794)	(2,461)	(717)	(3,130)	(24,105)
Net Cash Flow		514	389	4,599	5,085	8,239	5,836	(605)	(392)	425	(1,908)	22,182
Pre-Filing Revolver												
Opening revolver position		15,298	14,680	9,110	2,698	-	-	-	-	-	-	15,298
Total receipts		(1,028)	(5,571)	(6,411)	(2,698)	-	-	-	-	-	-	(15,708)
Total disbursements		411	-	-	-	-	-	-	-	-	-	411
Ending Pre-Filing Revolver		14,680	9,110	2,698	-	-	-	-	-	-	-	-
Post-Filing Revolver												
Opening revolver position		-	-	6,207	8,019	5,633	(2,606)	(8,443)	(7,810)	(7,418)	(7,844)	-
Total receipts		-	-	-	(5,189)	(9,144)	(7,624)	(4,189)	(2,069)	(1,142)	(1,222)	(30,578)
Total disbursements		-	5,182	1,812	2,802	904	1,788	4,794	2,461	717	3,130	23,590
Interest and fees		-	1,025	-	-	-	-	27	-	-	-	1,053
Ending Post-Filing Revolver		-	6,207	8,019	5,633	(2,606)	(8,443)	(7,810)	(7,418)	(7,844)	(5,935)	(5,935)

Cash Flow Forecast for the 10-Week Period Ending January 28, 2024

Mastermind

10-Week Cash Flow Forecast ending January 28, 2024

Assumptions

Disclaimer

In preparing this illustrative cash flow forecast (the "Forecast"), Mastermind has relied upon unaudited financial information and has not attempted to further verify the accuracy or completeness of such information. The Forecast reflects assumptions including those discussed below with respect to the requirements and impact of a potential filing in Canada under the Companies' Creditors Arrangement Act ("CCAA"). Since the Forecast is based on assumptions about future events and conditions that are not ascertainable, the actual results achieved will vary from the Forecast, even if the assumptions materialize, and such variations may be material. There is no representation, warranty or other assurance that any of the estimates, forecasts or projections will be realized.

The Forecast is presented in thousands of Canadian dollars.

Note 1 Sales

Includes receipts from the sale of goods through the Applicants' bricks-and-mortar store network, net of a provision for inventory shrinkage and anticipated gift card redemptions.

Note 2 Non-merchandise vendors

Non-merchandise vendors are forecast based on historical run-rates and include logistics, software, store level expenses, overhead costs and other similar expenses.

Note 3 Rent

Rent includes disbursements for all store locations as well as the corporate office. Disbursements are inclusive of monthly rent, CAM and utilities.

Note 4 Payroll & benefits

Payroll & benefits include salaries, wages, remittances and employee benefits for salaried and part-time employees across the Company's store network, head office and warehouse.

Note 5 Proposed KERP

Payments to key personnel retained by the Company, in accordance with a proposed Key Employee Retention Program.

Note 6 Restructuring professional fees

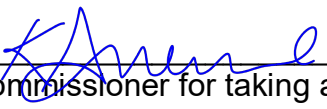
Professional fees disbursements include fees paid to the Applicant's legal counsel; the Monitor and its legal counsel; and the Lender's/DIP Lender's counsel.

Note 7 Consultant fees

Includes estimated commissions as well as advertising and sale supervision costs to be reimbursed to the Consultant during the sale period.

TAB N

This is **Exhibit "N"** referred to in the
Affidavit #2 of LUCIO MILANOVICH,
sworn before me, this 29th day of
November, 2023.



Commissioner for taking affidavits
Kristine Spence (LSO #66099S)

BLOCKED ACCOUNTS AGREEMENT

October 24, 2014

Canadian Imperial Bank of Commerce
CIBC Business Contact Centre
5650 Yonge Street
14th Floor
Toronto, Ontario
M2M 4G3

Attention: Michelle Ne Ville

– and to –

Canadian Imperial Bank of Commerce
199 Bay St. 4th floor
Toronto, Ontario
M5L 1A2

Attention: Senior Director Portfolio Management

Dear Sirs/Mesdames:

Re: Mastermind LP (the “Customer”)

The Customer has or is about to enter into a credit agreement (the “**Credit Agreement**”) with, *inter alios*, various lenders and Canadian Imperial Bank of Commerce as agent for the lenders (in such capacity, the “**Agent**”) pursuant to which the Customer has granted a continuing security interest to CIBC as agent for the lenders in substantially all of its property, including, without limitation, all present and future accounts receivable, money, bank accounts, contract rights, instruments, documents, chattel paper and general intangibles of the Customer and proceeds of such property.

The Customer maintains the bank accounts listed in Schedule “A” hereto with the Canadian Imperial Bank of Commerce (in its capacity as deposit bank, “**CIBC**”) (collectively, the “**Accounts**”) into which all of the Customer’s accounts receivable, instruments and money are to be deposited from time to time.

In order for the Customer to comply with the Agent’s requirements under the financing arrangements with the Customer, the Customer requests that CIBC acknowledge and agree with the Customer and Agent for their benefit, as follows:

1. Establishment of the Accounts.

CIBC has established and will maintain the Accounts in the name of the Customer, subject to the rights of the Agent as provided for in this Agreement.

2. Deposits to the Accounts.

The Customer agrees that all payments on account of services rendered and all payments over which the Agent has a security interest, whether in cash, cheque or other instrument or otherwise received by the Customer from their customers shall be deposited by the Customer into the Accounts, duly endorsed for deposit in a manner satisfactory to CIBC.

3. Withdrawals.

Except as otherwise provided for in this Agreement, CIBC shall be entitled to operate the Accounts in the normal course of its business with the Customer and CIBC shall be permitted to honour all withdrawals, debit memos, cheques, promissory notes, payment orders, wire transfers, items and other forms of payment in accordance with the applicable banking resolutions, authorizations and agreements governing the operation of the Accounts.

4. Authorizations and Directions to CIBC.

CIBC is authorized and directed that upon receipt of the Block Notice from the Agent, CIBC shall block the Accounts and (except as otherwise provided for in Section 7 of this Agreement) CIBC shall accept only the instructions of the Agent with respect to permitting withdrawals from or the debiting of fees, charges and other amounts to the Accounts. In this regard, the parties hereto acknowledge that the Agent hereby issues a Block Notice with the same effective date as the date of this Agreement.

"Business Day" means a day that the CIBC branch named herein is open for business and that is not a Saturday or Sunday.

5. Transfer of Funds.

From and after receipt by CIBC of the Block Notice, CIBC will, at the end of each Business Day on which CIBC is open for business, arrange to initiate the transfer of funds deposited into and collected in the Accounts to the account of the Agent as follows:

Account Name:	CIBC, Asset-Based Lending Suspense a/c
Bank:	Canadian Imperial Bank of Commerce
Branch:	00002
Account Number:	CAD 09-68617
	USD 05-38507

or such other account as the Agent may direct in writing.

6. Fees.

The Customer agrees that it is responsible to pay CIBC for all fees, charges and expenses relating to the establishment and operation of the Accounts (including CIBC's reasonable out-of-pocket legal fees) and all other normal and customary fees, charges and expenses for services that may be provided to the Customer by CIBC, including, but not limited to, VISA discounts, debit fees, terminal and other equipment charges and/or maintenance costs, and other normal and customary charges, fees and expenses in connection with wire transfers, business banking services and the operation of the Accounts (all such amounts referred to as **"Fees"**).

7. Operation of the Accounts.

(a) From and after receipt by CIBC of the Block Notice, CIBC shall not charge, debit, compensate or offset against any cheques, drafts or other items received for deposit in or against any amounts in the Accounts, provided that CIBC retains the right at all times to debit the Accounts for the amount of any Fees or for any cheques or other forms of payment deposited in the Accounts and subsequently returned to CIBC unpaid for any reason (whether in accordance with the rules of the Canadian Payment Association or otherwise), the amount of any required adjustment due to clerical error or calculation error relating to the Accounts, and any other debit that CIBC would process against the Accounts in the ordinary course of operating the Accounts (all such amounts referred to as “**Chargeback Amounts**”).

(b) If debiting the Accounts for any Fees or Chargeback Amounts creates a debit balance in the Accounts, CIBC shall be entitled to offset or compensate any cheques, drafts or any other forms of payment (including cash deposits received) for deposit in the Accounts against any overdraft that is created.

(c) If CIBC is not able to recover any Fees or Chargeback Amounts (or any portion of such Fees or Chargeback Amounts) from the Accounts, from the Customer after making demand or from other accounts of the Customer at CIBC, the Agent will promptly reimburse CIBC upon receiving CIBC’s written demand for all such unpaid Fees or Chargeback Amounts.

(d) Notwithstanding any other term of this Agreement, CIBC will have the right to act in accordance with its standard procedures, policies and practices and to debit the Accounts upon receipt of and in accordance with any third party demand, including, but not limited to, any court order, notice of garnishment, execution, seizure or governmental direction to pay which is received by CIBC.

8. Statements/Advices.

From and after receipt by CIBC of the Block Notice, CIBC shall provide the Customer with monthly statements of accounts, debit and credit advices and copies of all relevant and other communications issued or received by CIBC in the normal course of operating the Accounts. Prior to and after the delivery of the Block Notice to CIBC from the Agent, the Customer will be bound alone by the terms and conditions of the operation of account agreement governing the Accounts. The Customer hereby authorizes and directs CIBC to provide the Agent with electronic access to balance and transaction reporting of the Accounts and any other information concerning the Accounts the Agent may require.

9. Liability.

CIBC undertakes to perform only those duties that are expressly set forth in this Agreement. The Customer and Agent agree that CIBC will not be liable for any act or omission taken or made by CIBC or its directors, officers, employees or agents in connection with this Agreement other than for acts or omissions constituting gross negligence or wilful misconduct of CIBC. In the case of gross negligence or wilful misconduct with any act or omission taken or made by CIBC under this Agreement, CIBC will be liable for no more than the actual damages directly caused by such gross negligence or wilful misconduct. In no event will CIBC be liable for any indirect, special or consequential damages even if informed of the possibility of such damages or for any losses or delays resulting from acts of god, computer malfunctions, interruption of communication facilities,

labour difficulties, legal impediments beyond CIBC's control that expressly limit CIBC's power under this Agreement or other causes beyond CIBC's control.

10. Indemnity.

The Customer agrees to indemnify and save CIBC harmless from and against any and all liabilities, obligations, losses, damages, claims (including, without limitation, any third party claims), penalties, actions, judgments, suits, costs, reasonable expenses or disbursements of any kind or nature whatsoever (including, without limitation, reasonable legal fees) sustained or incurred by CIBC as a result of entering into this Agreement, the performance by CIBC of any of its obligations hereunder, including, without limitation, complying with any notice, except for any liability, loss, damage or expense resulting from CIBC's gross negligence or wilful misconduct.

11. No Duty to Inquire.

Any notice or instruction given by the Agent under this Agreement will be conclusive authority for CIBC to act in accordance with that notice or instruction, whether or not the Agent is acting in good faith. CIBC is not obliged or required to monitor any requirements or obligations of the Customer pursuant to this Agreement and has no duty to question any notice or instruction provided by the Agent to CIBC. The Customer authorizes CIBC to act on any such notice or instruction and waives any claim or action against CIBC in connection therewith.

12. Termination/Closing of the Accounts.

Termination of this Agreement ("**Termination Date**") will occur under the following circumstances:

- (a) CIBC may terminate this Agreement for any reason by providing ten (10) Business Days' prior written notice to the Customer and the Agent. CIBC may close the Accounts in accordance with its usual banking practice and upon written notice to the Customer and the Agent; or
- (b) the Agent may terminate this Agreement by providing ten (10) Business Days' prior written notice to the Customer and CIBC.
- (c) The Accounts will be closed on the Termination date.

13. Assignment.

Neither the Agent nor the Customer shall have the right to assign this Agreement provided that this Agreement shall enure to the benefit of the parties' respective successors and permitted assigns. CIBC may assign its rights and obligations under this Agreement without the approval of the Agent or the Customer to an affiliate of CIBC or any entity which acquires all or substantially all of assets of CIBC or to any subsidiary or affiliate or successor in a merger, amalgamation or acquisition of CIBC.

14. CIBC is not a Fiduciary or Trustee.

Nothing in this Agreement constitutes CIBC as a trustee or a fiduciary in respect of either the Customer or Agent. The Customer and the Agent agree that CIBC will have no other obligations in respect of the Accounts or the funds held in the Accounts except for those obligations set out in this Agreement.

15. Notices.

All notices, including, without limitation, statements of account, debit and credit advices, returned items, general correspondence and termination notices, may be sent by to the following addresses, or to such other address as any party receiving notices shall designate to the other parties, in writing from time to time:

Customer:

Mastermind LP
415 Milner Avenue
Toronto, ON M1B 2L1

Attention: Chief Financial Officer
Facsimile: (416) 321-8988

CIBC:

Canadian Imperial Bank of Commerce
CIBC Business Contact Centre
5650 Yonge Street
14th Floor
Toronto, Ontario
M2M 4G3

Attention: Michelle Ne Ville
Facsimile: (416) 224-3888

Agent:

Canadian Imperial Bank of Commerce,
Asset Based Lending Group
199 Bay St. 4th floor
Toronto, ON M5L 1A2

Attention: Senior Director Portfolio Management
Facsimile: (416) 861-9422

All communications contemplated in this Agreement shall be sent to CIBC, the Agent and the Customer by certified mail, return receipt requested or by overnight or local delivery courier. All communications provided under this Agreement will be effective when actually received by the addressee, except for faxes which are effective when the addressee telephonically confirms receipt to the sender.

16. Modification.

This Agreement and the authorization contained herein may not be changed, modified or waived orally.

17. Conflicts.

In the event of any conflict or inconsistency between this Agreement and any banking resolution or account operation agreement governing the Accounts, this Agreement will prevail.

18. Survival.

(a) Subject to paragraph 18(b) below, the obligations of the Customer and the Agent under Sections 7, 9 and 10 of this Agreement shall survive termination of this Agreement.

(b) Any obligation of the Agent for unpaid Fees or Chargeback Amounts under paragraphs 7(c) or 10 above shall terminate sixty (60) days following the Termination Date.

19. Governing Law.

This Agreement shall be governed by and construed in accordance with the laws of the Province where the CIBC Branch named herein is situated.

20. Quebec Language Clause.

It is the express wish of the parties that this document and any related documents be drawn up in English. Les parties aux presentes ont expressement demande que ce document et tous les documents s'y rattachant soient rediges en anglais.

Kindly indicate your agreement to the foregoing by signing the enclosed copy of this Agreement in the space provided for below and returning it to us.

Yours very truly,

**MASTERMIND LP, by its general partner,
MASTERMIND GP INC.**

Per:  _____

Pinder Basi
Executive Vice-President and Chief Financial Officer

Per: _____

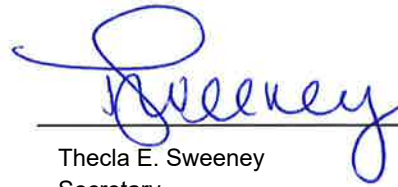
Kindly indicate your agreement to the foregoing by signing the enclosed copy of this Agreement in the space provided for below and returning it to us.

Yours very truly,

**MASTERMIND LP, by its general partner,
MASTERMIND GP INC.**

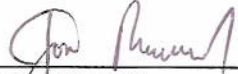
Per: _____

Per:


Thecla E. Sweeney
Secretary


ACKNOWLEDGED AND AGREED AS OF THE DATE FIRST WRITTEN ABOVE

CANADIAN IMPERIAL BANK OF COMMERCE

Per: 
Jomo Russell
Authorized Signatory

Per: 
Darryl Lalach
Authorized Signatory

CANADIAN IMPERIAL BANK OF COMMERCE
(as Agent)

Per: 
Jomo Russell
Authorized Signatory

Per: 
Darryl Lalach
Authorized Signatory

SCHEDULE "A"

ACCOUNTS

Name of Account – Currency	Account Number	Transit Number
MASTERMIND LP – Canadian \$	52-86212	00002
MASTERMIND LP – United States \$	05-95713	00002

TAB O

This is **Exhibit "O"** referred to in the
Affidavit #2 of LUCIO MILANOVICH,
sworn before me, this 29th day of
November, 2023.

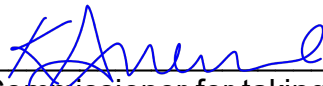


Commissioner for taking affidavits
Kristine Spence (LSO #66099S)

CONFIDENTIAL EXHIBIT

TAB P

This is **Exhibit "P"** referred to in the
Affidavit #2 of LUCIO MILANOVICH,
sworn before me, this 29th day of
November, 2023.



Commissioner for taking affidavits
Kristine Spence (LSO #66099S)

[ON MASTERMIND LETTERHEAD]

[DATE]

STRICTLY PRIVATE AND CONFIDENTIAL

[Employee Full Name]

[Address]

Dear [First Name]:

Re: Key Employee Retention Payment

As you are aware, Mastermind LP (the "**Company**") and its affiliate, Mastermind GP Inc. (together with the Company, the "**Mastermind Group**"), have sought and obtained creditor protection under the *Companies' Creditors Arrangement Act* (the "**CCAA**") pursuant to an initial order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**"). During this challenging period of its operations, the Company would like to assure you that your contributions continue to be valued. We truly appreciate your continued hard work and importance to the Company, particularly at this time.

In consideration of your ongoing loyalty to the Company at a time when you may be exploring other employment opportunities, the Company is offering you a special retention payment as part of a key employee retention program (the "**KERP**"). The terms of this KERP letter agreement (this "**Agreement**") between you and the Company are as follows:

1. For purposes of this Agreement, the "**Target Date**" means the earlier of: (A) [●], 2024; and (B) the date on which the earliest of the following events occur: (i) the implementation of a plan of compromise or arrangement in the CCAA proceedings of the Mastermind Group; (ii) the completion of the sale or liquidation of all or substantially all of the assets of the Mastermind Group or other restructuring transaction; (iii) the assignment of the Mastermind Group into bankruptcy under the *Bankruptcy and Insolvency Act*; (iv) the appointment of a receiver or receiver and manager over the assets of the Mastermind Group; and (v) the termination of the CCAA proceedings in respect of the Mastermind Group, including, without limitation, the issuance of an order by the Court declaring that the CCAA proceedings in respect of the Mastermind Group is terminated.
2. Subject to the terms and conditions in this Agreement, the Company shall pay you a \$[●] cash payment (the "**Retention Payment**"), less applicable deductions within ten (10) business days of the Target Date.
3. It is a condition of the Retention Payment that:
 - a. you must not have disclosed the terms of the KERP or this Agreement to any person other than your spouse, personal financial advisor and legal advisors (other than any disclosure required by law or permitted by applicable regulatory whistleblowing legislation), provided however, that nothing shall prevent the

Company or the Mastermind Group from publicly disclosing the terms of this KERP, including in any Court filing;

- b. before the time the Retention Payment would be payable in accordance with Section 2 of this Agreement you have not:
 - i. resigned from your employment with the Company;
 - ii. had your employment with the Company terminated with cause, and if applicable, any statutory notice period required in the circumstances of your termination from employment has expired; or
 - iii. failed to perform your duties and responsibilities diligently, faithfully and honestly, including, without limitation, engaged in any financial or other malfeasance or wrongdoing during the course of your employment with the Company;
 - c. you execute a release of all claims you may have against the Mastermind Group and its affiliates, and each of their respective employees, directors and officers relating to your employment up to the date such Retention Payment is payable, provided however, that such release shall not include any claims for termination pay, severance pay or compensation in lieu of notice you may have related to the termination of your employment with the Company; and
 - d. the Court issues an order, among other things, approving the KERP, which order becomes a final order of the Court that is not subject to appeal.
4. If your employment is terminated without cause following the date of your acceptance of this Agreement, you will be entitled to receive the full amount of the Retention Payment in accordance with Section 2 of this Agreement.

This offer shall remain open for your acceptance until [DATE], 2023, at which time it shall be automatically withdrawn if not accepted. Please acknowledge your acceptance of the terms and conditions of this Agreement by executing a copy of this Agreement where indicated below, and returning it to [NAME] on or before [DATE], 2023.

Sincerely,

MASTERMIND LP

Accepted on: [DATE], 2023

I have had the opportunity to obtain independent legal advice and hereby confirm that I have read, understand and voluntarily agree to the terms and conditions of this Agreement as outlined above:

By: [NAME]

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c.C-36, AS AMENDED
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF MASTERMIND GP INC.

Applicant

Court File No. CV-23-00710259-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

PROCEEDING COMMENCED AT
TORONTO

**AFFIDAVIT #2 OF LUCIO MILANOVICH
(SWORN NOVEMBER 29, 2023)**

DAVIES WARD PHILLIPS & VINEBERG LLP
155 Wellington Street West
Toronto ON M5V 3J7

Natasha MacParland (LSO #42383G)
Email: NMacParland@dwpv.com

Natalie Renner (LSO #55954A)
Email: NRenner@dwpv.com

Kristine Spence (LSO #66099S)
Email: KSpence@dwpv.com

Tel: 416.863.0900
Fax: 416.863.0871

Lawyers for the Applicants, Mastermind GP Inc.

TAB 3

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE) THURSDAY, THE ~~23RD~~ 30th DAY
)
JUSTICE STEELE) OF NOVEMBER, 2023

IN THE MATTER OF THE *COMPANIES' CREDITORS
ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS
AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF MASTERMIND GP INC.

(the "**Applicant**")

AMENDED AND RESTATED INITIAL ORDER
(amending the Initial Order dated November 23, 2023)

THIS APPLICATION, made by the Applicant, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") was heard this day by videoconference.

ON READING the affidavit of Lucio Milanovich sworn on November 22, 2023 (the "**Milanovich Affidavit**") and the Exhibits thereto, the ~~pre-filing report~~ affidavit of Lucio Milanovich sworn on November 29, 2023 and the Exhibits thereto (the "**Second Milanovich Affidavit**" and together with the Milanovich Affidavit, the "**Milanovich Affidavits**"), the Pre-Filing Report of Alvarez & Marsal Canada Inc. ("**A&M**") as the proposed monitor dated November 22, 2023 (the "**Pre-Filing Report**"), and the First Report of A&M in its capacity as Court-appointed monitor (in such capacity, the "**Monitor**"), and on being advised that the secured creditors who are likely to be affected by the charges created herein were given notice, and on hearing the submissions of counsel for the Applicant and Mastermind LP (collectively, the "**Mastermind Entities**"),

counsel for ~~A&M~~[the Monitor](#), and counsel for Canadian Imperial Bank of Commerce, in its capacity as administrative agent for the lenders under the Credit Agreement (in such capacity, the “**Agent**”), and on reading the consent of A&M to act as the ~~Court-appointed monitor of the Mastermind Entities in these CCAA proceedings (in such capacity, the “**Monitor**”)~~[Monitor](#):

SERVICE AND DEFINITIONS

1. **THIS COURT ORDERS** that the time for service of the Notice of Application and the Application Record is hereby abridged and validated so that this Application is properly returnable today and hereby dispenses with [further](#) service thereof.

2. **THIS COURT ORDERS** that capitalized terms used but not defined in this Order shall have the meanings given to them in the Milanovich Affidavit [or the Second Milanovich Affidavit, as applicable](#).

APPLICATION

3. **THIS COURT ORDERS AND DECLARES** that the Applicant is a company to which the CCAA applies. Although not an Applicant, Mastermind LP shall enjoy the benefits of the protections and authorizations provided by this Order.

[PLAN OF ARRANGEMENT](#)

[4. **THIS COURT ORDERS** the Mastermind Entities shall have the authority to file and may, subject to further order of this Court, file with this Court one or more plans of compromise or arrangement \(hereinafter referred to as the “**Plan**”\).](#)

POSSESSION OF PROPERTY AND OPERATIONS

5. ~~4.~~ **THIS COURT ORDERS** that the Mastermind Entities shall remain in possession and control of their respective current and future assets, licenses, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the “**Property**”). Subject to further Order of this Court, the Mastermind Entities shall continue to carry on business in a manner consistent with the preservation of their business (the “**Business**”) and Property. Each of the Mastermind Entities is authorized and empowered to continue to retain and employ its employees, consultants, contractors, agents, experts, accountants, counsel and such other persons (collectively “**Assistants**”) currently retained or employed by it, with liberty to retain such further Assistants as it deems reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

6. ~~5.~~ **THIS COURT ORDERS** that the Mastermind Entities shall be entitled, subject to the terms of the Credit Agreement and the Forbearance Agreement and paragraph 39 of this Order, to continue to utilize the central cash management system currently in place as described in the Milanovich ~~Affidavit~~ Affidavits or, with the prior consent of the Monitor and the Agent, replace it with another substantially similar central cash management system (the “**Cash Management System**”) and that any present or future bank providing the Cash Management System ~~(each, a “Cash Management Bank”),~~ including the Agent, shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the Mastermind Entities of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System

without any liability in respect thereof to any Person (as ~~hereinafter~~ defined below) other than the Mastermind Entities, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as provider of the Cash Management System, an unaffected creditor ~~in any plan of arrangement or compromise~~ under the ~~CCAA~~ Plan with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.

7. ~~6.~~ **THIS COURT ORDERS** that in accordance with the Forbearance Agreement and Approved Cash Flow, the Mastermind Entities shall be entitled but not required to pay the following expenses whether incurred prior to, on or after ~~the date of this Order~~ November 23, 2023 (the “Filing Date”):

- (a) all outstanding and future wages, salaries, employee and pension benefits, vacation pay and employee expenses payable on or after the ~~date of this Order~~ Filing Date, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements;
- (b) up until December 24, 2023, all amounts relating to honouring gift cards issued before the ~~date of this Order~~ Filing Date, subject to further Order of this Court;
- (c) the fees and disbursements of any Assistants retained or employed by any of the Mastermind Entities in respect of these proceedings, at their standard rates and charges; and

- (d) with the consent of the Monitor, amounts owing for goods or services actually supplied to the Mastermind Entities prior to the ~~date of this Order~~ Filing Date by (i) providers of credit, debit and gift card processing related services; ~~;~~ (ii) logistics, warehouse or supply chain providers, such as transportation providers, customs brokers and freight forwarders, (iii) providers of information, internet and other technology, including ecommerce providers and related services, and (iv) other suppliers or service providers if, in the opinion of the Mastermind Entities, following consultation with the Monitor, such payment is necessary to maintain the uninterrupted operations of the Business.

8. ~~7.~~ **THIS COURT ORDERS** that, except as otherwise provided to the contrary herein and subject to the Forbearance Agreement, the Mastermind Entities shall be entitled but not required to pay all reasonable expenses incurred by the Mastermind Entities in carrying on the Business in the ordinary course after this Order in accordance with the Approved Cash Flow, and in carrying out the provisions of this Order, which expenses shall ~~;~~ subject to the Forbearance Agreement include, without limitation:

- (a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors and officers insurance), IT services, data services, maintenance and security services; and
- (b) payment for goods or services actually supplied to the Mastermind Entities following the ~~date of this Order~~ Filing Date.

9. ~~8.~~ **THIS COURT ORDERS** that the Mastermind Entities shall, in accordance with legal requirements and subject to the Forbearance Agreement, remit or pay:

- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, and (iii) income taxes;
- (b) all goods and services taxes, harmonized sales taxes, or other applicable sales taxes (collectively, "**Sales Taxes**") required to be remitted by the Mastermind Entities in connection with the sale of goods and services by the Mastermind Entities, but only where such Sales Taxes are accrued or collected after the ~~date of this Order~~ Filing Date, or where such Sales Taxes were accrued or collected prior to the ~~date of this Order~~ Filing Date but not required to be remitted until on or after the ~~date of this Order~~ Filing Date; and
- (c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the Mastermind Entities.

10. ~~9.~~ **THIS COURT ORDERS** that until a real property lease is disclaimed in accordance with the CCAA, the Mastermind Entities shall pay all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under the lease, but for greater certainty, excluding accelerated rent or penalties, fees or other charges arising as a result of the insolvency of any of the Mastermind Entities, the making of this Order or the commencement of any insolvency proceedings) or as otherwise may be negotiated between the applicable Mastermind Entity and the landlord from time to time ("**Rent**"), for the period commencing from and including the ~~date of this Order~~ Filing Date, twice monthly in equal payments on the first and fifteenth day of each month, in advance (but not in arrears) in the amounts set out in the applicable lease or, with the consent of the Monitor, at such other intervals and dates as may be agreed to between the applicable Mastermind Entity and landlord. On the date of the first of such payments, any Rent relating to the period commencing from and including the ~~date of this Order~~ Filing Date shall also be paid.

11. ~~10.~~ **THIS COURT ORDERS** that, except as specifically permitted herein or in the Forbearance Agreement and the Credit Agreement, the Mastermind Entities are hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by any of the Mastermind Entities to any of their creditors as of ~~this date~~ the Filing Date, other than payments of principal, interest or amounts otherwise owing by the Mastermind Entities pursuant to the Credit Agreement; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of their Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business. ~~Notwithstanding the~~

~~foregoing, the Agent shall be entitled to continue to operate the Cash Management System, including the blocked account arrangements, in accordance with the Credit Agreement and as described in the Milanovich Affidavit;~~ provided that with respect to real property leases, the Mastermind Entities may, subject to the provisions of the CCAA and paragraphs 9,12 and 13 herein, vacate, abandon or quit the whole (but not part of) and may permanently (but not temporarily) cease, downsize or shut down any of the Business or operations in respect of any leased premises.

RESTRUCTURING

12. ~~41.~~ **THIS COURT ORDERS** that the Mastermind Entities shall, subject to such requirements as are imposed by the CCAA, such covenants as may be contained in the Credit Agreement or the Forbearance Agreement or as otherwise ordered by this Court, have the right to:

- (a) permanently or temporarily cease, downsize or shut down any of their business or operations, and to dispose of redundant or non-material assets not exceeding \$25,000 in any one transaction or \$50,000 in the aggregate;
- (b) vacate, abandon or quit the whole but not any part of any leased premises and/or disclaim any real property lease, and all ancillary agreements relating to any leased premises;
- (c) sell inventory in the ordinary course of business consistent with past practice, or otherwise with the consent of the Monitor and the Agent;

- (d) terminate the employment of their employees or temporarily lay off such of their employees as they deem appropriate;
- (e) refuse to honour any existing return policies, refunds, discounts or other similar customer programs or obligations; and
- (f) pursue all avenues of financing, restructuring, sale or reorganizing the Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing, restructuring, sale or reorganizing,

all of the foregoing to permit the Mastermind Entities to proceed with an orderly restructuring of the Mastermind Entities or the Business (the “**Restructuring**”).

13. ~~12.~~ **THIS COURT ORDERS** that the Mastermind Entities shall provide each of the relevant landlords with notice of the Mastermind Entities’ intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Mastermind Entities’ entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Mastermind Entities, or by further Order of this Court upon application by the Mastermind Entities on at least two (2) days’ notice to such landlord and any such secured creditors. If any of the Mastermind Entities ~~disclaims~~ disclaim the lease governing such leased premises in accordance with Section 32 of the CCAA, they shall not be required to pay Rent under such lease pending resolution of any such dispute (other than Rent payable for the

notice period provided for in Section 32(5) of the CCAA), and the disclaimer of the lease shall be without prejudice to the Mastermind Entities' claim to the fixtures in dispute.

14. ~~13.~~ **THIS COURT ORDERS** that if a notice of disclaimer is delivered pursuant to Section 32 of the CCAA, then (a) during the notice period prior to the effective time of the disclaimer, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the Mastermind Entities and the Monitor 24 hours' prior written notice, and (b) at the effective time of the disclaimer, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the Mastermind Entities in respect of such lease or leased premises, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

NO PROCEEDINGS AGAINST THE MASTERMIND ENTITIES OR THE PROPERTY

15. ~~14.~~ **THIS COURT ORDERS** that until and including ~~November 30~~ January 26, 2023 ~~2023~~ 2024 or such later date as this Court may order (the "**Stay Period**"), no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**") shall be commenced or continued against or in respect of any of the Mastermind Entities or the Monitor or their respective employees and representatives acting in such capacities, or affecting the Business or the Property, except with the written consent of the Mastermind Entities and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of any of the Mastermind Entities or affecting the Business or the Property are hereby stayed and suspended pending

further Order of this Court or the prior written consent of the Mastermind Entities and the Monitor.

NO EXERCISE OF RIGHTS OR REMEDIES

16. ~~15.~~ **THIS COURT ORDERS** that during the Stay Period, all rights and remedies of any individual, firm, corporation, organization, governmental unit, body or agency, or any other entities (all of the foregoing, collectively being “**Persons**” and each being a “**Person**”) against or in respect of any of the Mastermind Entities or the Monitor or their respective employees and representatives acting in such capacities, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the Mastermind Entities and the Monitor, or leave of this Court, provided that nothing in this Order shall (i) empower the Mastermind Entities to carry on any business which the Mastermind Entities are not lawfully entitled to carry on, (ii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA, (iii) prevent the filing of any registration to preserve or perfect a security interest, ~~or~~ (iv) prevent the registration of a claim for lien, or (v) subject to paragraph 42 hereof, prevent the Agent from exercising any rights or remedies against the Mastermind Entities or the Property under or pursuant to the Credit Agreement, the Blocked Accounts Agreement, the Forbearance Agreement or any other Loan Document (as defined in the Credit Agreement) or the DIP Charge (as defined below).

NO INTERFERENCE WITH RIGHTS

17. ~~16.~~ **THIS COURT ORDERS** that during the Stay Period, no Person shall accelerate, suspend, discontinue, fail to honour, alter, interfere with, repudiate, rescind, terminate or cease to perform any right, renewal right, contract, agreement, lease,

sublease, licence, authorization or permit in favour of or held by any of the Mastermind Entities, except with the prior written consent of the Mastermind Entities and the Monitor, or leave of this Court.

CONTINUATION OF SERVICES

| 18. ~~17.~~ **THIS COURT ORDERS** that during the Stay Period, all Persons having oral or written agreements or arrangements with any of the Mastermind Entities or statutory or regulatory mandates for the supply or license of goods and/or services, including without limitation all computer software, communication and other data services, centralized banking services, cash management services, payroll and benefit services, insurance, freight services, logistics services, transportation services, customs clearing and importing services, warehouse services, security services, management services, merchandise or procurement sourcing services, utility or other services to the Business or any of the Mastermind Entities, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with, suspending or terminating the supply or license of such goods or services as may be required by any of the Mastermind Entities, and that the Mastermind Entities shall be entitled to the continued use of their current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the ~~date of this Order~~ Filing Date are paid by the Mastermind Entities in accordance with normal payment practices of the applicable Mastermind Entity or such other practices as may be agreed upon by the supplier or service provider and the applicable Mastermind Entity and the Monitor, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

19. ~~18.~~ **THIS COURT ORDERS** that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided on or after the ~~date of this Order~~ Filing Date, nor shall any Person be under any obligation on or after the ~~date of this Order~~ Filing Date to advance or re-advance any monies or otherwise extend any credit to any of the Mastermind Entities. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

APPROVAL OF KEY EMPLOYEE RETENTION PLAN

20. **THIS COURT ORDERS** that the Key Employee Retention Plan (the “KERP”) as described in the Second Milanovich Affidavit and attached as confidential Exhibit “O” thereto, is hereby approved and the Mastermind Entities are authorized to make the payments contemplated thereunder in accordance with the terms and conditions of the KERP.

21. **THIS COURT ORDERS** that the key employees referred to in the KERP (the “KERP Employees”) shall be entitled to the benefit of and are hereby granted a charge on the Property (the “KERP Charge”), which charge shall not exceed the aggregate amount of \$286,000, to secure any payments to the KERP Employees under the KERP. The KERP Charge shall have the priority set out in paragraphs 44 and 46 herein.

NO PRE-FILING VERSUS POST-FILING SET-OFF

22. ~~19.~~ **THIS COURT ORDERS** that no Person shall be entitled to set off any amounts that (a) are or may become due to any Mastermind Entity in respect of

obligations arising prior to the ~~date hereof~~ Filing Date with any amounts that are or may become due from such Mastermind Entity in respect of obligations arising on or after the ~~date of this Order~~ Filing Date, or (b) are or may become due from any Mastermind Entity in respect of obligations arising prior to the ~~date hereof~~ Filing Date with any amounts that are or may become due to such Mastermind Entity in respect of obligations arising on or after the ~~date of this Order~~ Filing Date, each without the consent of the Mastermind Entities and the Monitor or further Order of this Court.

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

23. ~~20.~~ **THIS COURT ORDERS** that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Mastermind Entities with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Mastermind Entities whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a ~~compromise or arrangement~~ Plan in respect of the Mastermind Entities, if one is filed, is sanctioned by this Court or is refused by the creditors of the Mastermind Entities or this Court.

DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

24. ~~21.~~ **THIS COURT ORDERS** that the Mastermind Entities shall indemnify their respective directors and officers against obligations and liabilities that they may incur as directors or officers of the Mastermind Entities after the commencement of the within proceedings, except to the extent that, with respect to any officer or director, the

obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

25. ~~22.~~ **THIS COURT ORDERS** that the directors and officers of each of the Mastermind Entities shall be entitled to the benefit of and are hereby granted a charge (the "~~Directors'~~ D&O Charge") on the Property, which charge shall not exceed an aggregate amount of \$~~4,000,000~~5,000,000, unless permitted by further Order of this Court, as security for the indemnity provided in paragraph ~~22-24~~ of this Order. The ~~Directors'~~ D&O Charge shall have the priority set out in paragraphs ~~34-44~~ and ~~36-46~~ herein.

26. ~~23.~~ **THIS COURT ORDERS** that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the ~~Directors'~~ D&O Charge, and (b) the Mastermind Entities' directors and officers shall only be entitled to the benefit of the ~~Directors'~~ D&O Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph ~~22-24~~ of this Order.

APPOINTMENT OF MONITOR

27. ~~24.~~ **THIS COURT ORDERS** that A&M is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Mastermind Entities with the powers and obligations set out in the CCAA or set forth herein and that the Mastermind Entities and their respective shareholders or partners (as applicable), officers, directors, and Assistants shall advise the Monitor of all material steps taken by any of the Mastermind Entities pursuant to this Order, and shall co-

operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

28. ~~25.~~ **THIS COURT ORDERS** that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- (a) monitor the Mastermind Entities' receipts and disbursements;
- (b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, the Restructuring, and such other matters as may be relevant to the proceedings herein;
- (c) assist the Mastermind Entities, to the extent required by the Mastermind Entities, with the Restructuring, including in continuing negotiations with any Person in an effort to pursue the Restructuring;
- (d) liaise and consult with the Mastermind Entities, any liquidation agents or consultants that are approved by this Court, and any Assistants, to the extent required, with respect to all matters relating to the Property, the Business, the Restructuring, and such other matters as may be relevant to the proceedings herein;
- (e) assist the Mastermind Entities, to the extent required by the Mastermind Entities, in their dissemination to the Agent and its counsel of financial and other information as agreed to between the Mastermind Entities and the

Agent pursuant to the Credit Agreement, the Forbearance Agreement, or otherwise;

(f) advise the Mastermind Entities in their development of the Plan and amendment to the Plan, if applicable;

(g) assist the Mastermind Entities, to the extent required by the Mastermind Entities, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;

(h) ~~(d)~~ have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Mastermind Entities, wherever located and to the extent that is necessary to adequately assess the Mastermind Entities' business and financial affairs or to perform its duties arising under this Order;

(i) ~~(e)~~ be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order; and

(j) ~~(f)~~ perform such other duties as are required by this Order or by this Court from time to time.

29. ~~26.~~ **THIS COURT ORDERS** that the Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

| 30. ~~27.~~ **THIS COURT ORDERS** that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, “**Possession**”) of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act, 1999*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the “**Environmental Legislation**”), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor’s duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

| 31. ~~28.~~ **THIS COURT ORDERS** that the Monitor shall provide any creditor of the Mastermind Entities with information provided by the Mastermind Entities in response to reasonable requests for information made in writing by such creditor and addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Mastermind Entities is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Mastermind Entities may agree.

32. ~~29.~~ **THIS COURT ORDERS** that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, neither the Monitor nor its employees and representatives acting in such capacities shall incur any liability or obligation as a result of the Monitor's appointment or the carrying out by it of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

33. ~~30.~~ **THIS COURT ORDERS** that the Monitor, counsel to the Monitor and counsel to the Mastermind Entities, shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, whether incurred prior to, on or after the ~~date of this Order~~ Filing Date, by the Mastermind Entities as part of the costs of these proceedings. The Mastermind Entities are hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and counsel for the Mastermind Entities on a weekly basis or as otherwise agreed among the parties.

34. ~~31.~~ **THIS COURT ORDERS** that the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

35. ~~32.~~ **THIS COURT ORDERS** that the Monitor, counsel to the Monitor and counsel to the Mastermind Entities shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on the Property, which charge shall not exceed an aggregate amount of \$~~750,000~~ 1,000,000, unless permitted by further Order of this Court, as security for their professional fees and disbursements incurred at their

standard rates and charges, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs ~~34~~ 44 and ~~36~~ 46 herein.

FORBEARANCE AGREEMENT AND DIP CHARGE

36. THIS COURT ORDERS that the execution, delivery and performance by the Mastermind Entities of the Forbearance Agreement is hereby authorized and approved, with such minor amendments as the Mastermind Entities and the Agent, with the approval of the Monitor may agree upon. The Mastermind Entities are hereby authorized and directed to comply with and perform the provisions of the Forbearance Agreement and the Credit Agreement.

37. THIS COURT ORDERS that the Mastermind Entities' compliance with, and performance of, the Blocked Accounts Agreement from and after the date of this Order is hereby authorized and approved.

38. THIS COURT ORDERS that Mastermind LP shall be entitled, subject to the terms of the Forbearance Agreement and the Credit Agreement and paragraphs 6 and 39 of this Order, to continue to obtain and borrow, repay and re-borrow monies under the Revolving Loan Facility pursuant to the Forbearance Agreement and Credit Agreement in order to finance Mastermind LP's working capital requirements.

39. THIS COURT ORDERS that subject to the provisions of the Credit Agreement, the Forbearance Agreement and the Blocked Accounts Agreement and paragraph 39 of this Order, the Mastermind Entities are hereby authorized and directed to pay all of their indebtedness, interest, fees, liabilities and obligations to the Agent under and pursuant

to the Credit Agreement and the Forbearance Agreement, whether such indebtedness arose before or after the Filing Date.

40. **THIS COURT ORDERS** that the Agent may, in accordance with the terms of the Credit Agreement, the Forbearance Agreement and the Blocked Accounts Agreement, and as described in the Milanovich Affidavits, apply the proceeds of inventory or other property subject to a lien in favour of the Agent deposited in the Mastermind Entities' bank accounts (other than the HST Account), whether directly or through blocked accounts, against the indebtedness of the Mastermind Entities under the Credit Agreement and the Forbearance Agreement, whether such indebtedness arose before or after the Filing Date, provided that no advance of funds made under the Credit Agreement on or after the date of this Order shall be used to reduce any pre-filing obligations of the Mastermind Entities under the Credit Agreement or Forbearance Agreement.

41. **THIS COURT ORDERS** that the Agent shall be entitled to the benefit of and is hereby granted a charge (the "**DIP Charge**") on the Property as security for any advances made under the Credit Agreement from and after the date of this Order, which DIP Charge shall not secure an obligation that exists before the date of this Order and shall not exceed the aggregate amount of \$36,250,000, plus interest, costs and expenses. The DIP Charge shall have the priority set out in paragraphs 44 and 46 herein.

42. **THIS COURT ORDERS** that, the Agent may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP Charge, and upon the earlier of the occurrence of a Terminating Event or the last day of

the Forbearance Period (each as defined in the Forbearance Agreement) notwithstanding any other provision of this Order:

(a) the Agent may cease making advances to Mastermind LP;

(b) the Agent may, upon five (5) days prior written notice to the Mastermind Entities and the Monitor:

(i) exercise any and all rights or remedies against the Mastermind Entities or the Property under or pursuant to the Credit Agreement, the Blocked Accounts Agreement, the Forbearance Agreement or any other Loan Document (defined in the Credit Agreement) or the DIP Charges;

(ii) set off and/or consolidate any amounts owing by the Agent to the Mastermind Entities against the obligations of the Mastermind Entities to the DIP Lender under the Credit Agreement, the Blocked Accounts Agreement, the Forbearance Agreement or any other Loan Document (defined in the Credit Agreement) and make demand, accelerate payment and give other notices;

(iii) exercise any and all rights or remedies against the Mastermind Entities or the Property under or pursuant to the Credit Agreement, the Blocked Accounts Agreement, the Forbearance Agreement or any other Loan Document (defined in the Credit Agreement); and

(iv) apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the

Mastermind Entities and for the appointment of a trustee in
bankruptcy of the Mastermind Entities;

(c) the foregoing rights and remedies of the Agent shall be enforceable
against any trustee in bankruptcy, interim receiver, receiver or receiver
and manager of the Mastermind Entities or the Property.

43. THIS COURT ORDERS AND DECLARES that the Agent shall be treated as
unaffected in the Plan (if any) filed by the Mastermind Entities under the CCAA, or any
proposal filed by the Mastermind Entities under the *Bankruptcy and Insolvency Act*,
R.S.C. 1985, c. B-3 (the “BIA”), with respect to any obligations outstanding under the
Credit Agreement or the Forbearance Agreement as of, from or after the Filing Date.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

44. ~~33.~~ THIS COURT ORDERS that the priorities of the ~~Directors’~~ KERP Charge ~~and~~
, the D&O Charge, the Administration Charge and the DIP Charge and (collectively, the
“Charges”), as among them, shall be as follows:

First - Administration Charge (to the maximum amount of
~~\$750,000~~ 1,000,000); and

Second ~~—Directors’—~~ D&O Charge (to the maximum amount of
~~\$4,000,000~~ 5,000,000);

Third – DIP Charge (to the maximum amount of \$36,250,000, plus
interest, fees and expenses);

Fourth – KERP Charge (to the maximum amount of \$286,000);.

45. ~~34.~~ **THIS COURT ORDERS** that the filing, registration or perfection of the Charges shall not be required, and that the Charges shall be effective as against the Property and shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

46. ~~35.~~ **THIS COURT ORDERS** that each of the Charges shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, "**Encumbrances**") in favour of any Person notwithstanding the order of perfection or attached, ~~provided that the Charges shall rank behind Encumbrances in favour of any Person that has not been served with notice of this Application. The Mastermind Entities and the beneficiaries of the Charges shall be entitled to seek priority ahead of such Encumbrances on a subsequent motion, including, without limitation, on the Comeback Date, on notice to those Persons likely to be affected thereby.~~

47. ~~36.~~ **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court on notice to parties in interest, the Mastermind Entities shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Charges, unless the Mastermind Entities also obtain the prior written consent of the Monitor and the other beneficiaries of the Charges, or further Order of this Court.

48. ~~37.~~ **THIS COURT ORDERS** that the Charges shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the “**Chargees**”) shall not otherwise be limited or impaired in any way by: (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to the BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan document, lease, sublease, offer to lease or other agreement (collectively, an “**Agreement**”) which binds any of the Mastermind Entities, and notwithstanding any provision to the contrary in any Agreement:

- (a) neither the creation of the Charges ~~shall not~~ nor the execution, delivery, perfection, registration or performance of the Credit Agreement or the Forbearance Agreement shall create or be deemed to constitute a breach by any Mastermind Entity of any Agreement to which it is a party;
- (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the creation of the Charges or the Mastermind Entities entering into the Forbearance Agreement or the execution, delivery or performance of the Credit Agreement, Forbearance Agreement or any other Loan Document;
and

- (c) the payments made by the Mastermind Entities pursuant to this Order and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

49. ~~38.~~ **THIS COURT ORDERS** that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the applicable Mastermind Entity's interest in such real property leases.

SEALING

50. **THIS COURT ORDERS** that the KERP and related payment information attached as confidential Exhibit "O" to the Second Milanovich Affidavit are hereby sealed and shall not form part of the Court record, subject to further order of this Court.

SERVICE AND NOTICE

51. ~~39.~~ **THIS COURT ORDERS** that the Monitor shall (i) without delay, publish in *The Globe and Mail* (National Edition) a notice containing the information prescribed under the CCAA, and (ii) within five (5) days after the ~~date of this Order~~ Filing Date, (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, or cause to be sent, in the prescribed manner or by electronic message to the e-mail addresses as last shown on the records of the Mastermind Entities, a notice to every known creditor who has a claim against any of the Mastermind Entities of more than \$1,000, and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Subsection 23(1)(a) of the CCAA and the regulations

made thereunder, provided that the Monitor shall not make the claims, names and addresses of the individuals who are creditors publicly available.

| 52. ~~40.~~ **THIS COURT ORDERS** that the E-Service Guide of the Commercial List (the “**Guide**”) is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Guide (which can be found on the Commercial List website at <https://www.ontariocourts.ca/scj/practice/regional-practice-directions/eservice-commercial/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the *Rules of Civil Procedure*. Subject to Rule 3.01(d) of the *Rules of Civil Procedure* and paragraph 13 of the Guide, service of documents in accordance with the Guide will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Guide with the following URL: <https://www.alvarezandmarsal.com/Mastermind>.

| 53. ~~41.~~ **THIS COURT ORDERS** that if the service, distribution or notice of documents in accordance with the Guide or the CCAA and the regulations thereunder is not practicable, the Mastermind Entities, the Monitor and their respective counsel are at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding copies thereof by prepaid ordinary mail, courier, personal delivery, facsimile transmission or electronic message to the Mastermind Entities’ creditors or other interested parties at their respective addresses (including e-mail addresses) as last shown in the books and records of the Mastermind Entities and that any such service, distribution or notice shall be deemed to be received on the earlier of (a) the date of forwarding thereof, if sent by

electronic message on or prior to 5:00 p.m. (Eastern Time), (b) the next business day following the date of forwarding thereof, if sent by courier, personal delivery, facsimile transition or electronic message sent after 5:00 p.m. (Eastern Time), or (c) on the business day following the date of forwarding thereof, if sent by ordinary mail.

54. ~~42.~~ **THIS COURT ORDERS** that the Mastermind Entities, the Monitor and their respective counsel are at liberty to serve or distribute this Order, any other materials and orders as may be reasonably required in these proceedings, including any notices, or other correspondence, by forwarding copies thereof by electronic message (including by e-mail) to the Mastermind Entities' creditors or other interested parties and their advisors, as applicable. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of legal or judicial obligation, and notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations* (SOR/2013-221).

COMEBACK DATE

~~43. THIS COURT ORDERS that the comeback motion shall be heard by a Commercial List Judge at on November 30, 2023 (the "Comeback Date").~~

GENERAL

55. ~~44.~~ **THIS COURT ORDERS** that any interested party that wishes to amend or vary this Order shall be entitled to appear or bring a motion before this Court ~~on the Comeback Date, and any such interested party shall give~~ to vary or amend this order on not less than ~~two business~~ seven (7) days' notice to ~~the Service List and~~ any other party or parties likely to be affected by the ~~Order~~ order sought ~~in advance of the Comeback~~

~~Date~~ or upon such other notice, if any, as this Court may order; provided, however, that the Chargees shall be entitled to rely on this Order as granted and on the Charges and priorities set forth in paragraphs ~~34~~ 44 and ~~36~~ 46 hereof with respect to any advances made and payments received under the Credit Agreement and Forbearance Agreement, and any fees, expenses and disbursements incurred, as applicable, until the date this Order may be amended, varied or stayed.

56. ~~45.~~ **THIS COURT ORDERS** that, notwithstanding paragraph ~~45~~ 55 of this Order, each of the Mastermind Entities or the Monitor may from time to time apply to this Court to amend, vary or supplement this Order or for advice and directions in the discharge of their respective powers and duties hereunder or in the interpretation of this Order.

57. ~~46.~~ **THIS COURT ORDERS** that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of any of the Mastermind Entities, the Business or the Property.

58. ~~47.~~ **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Mastermind Entities, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Mastermind Entities and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Mastermind Entities and the Monitor and their respective agents in carrying out the terms of this Order.

| 59. ~~48.~~ **THIS COURT ORDERS** that each of the Mastermind Entities and the Monitor be at liberty and are hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

| 60. ~~49.~~ **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. (Eastern Time) on the date of this Order without the need for entry or filing.

TAB 4

Court File No. ~~_____~~ CV-23-00710259-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE) ~~WEEKDAY~~ THURSDAY, THE #
JUSTICE ~~_____~~ STEELE) 30th DAY
)
OF ~~MONTH~~ NOVEMBER, ~~20YR~~
2023

IN THE MATTER OF THE COMPANIES' CREDITORS
ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS
AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF ~~[APPLICANT'S NAME]~~ MASTERMIND
GP INC.

(the "Applicant")

AMENDED AND RESTATED INITIAL ORDER
(amending the Initial Order dated November 23, 2023)

THIS APPLICATION, made by the Applicant, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA") was heard this day ~~at 330 University Avenue, Toronto, Ontario~~ by videoconference.

ON READING the affidavit of ~~[NAME] sworn [DATE]~~ Lucio Milanovich sworn on November 22, 2023 (the "Milanovich Affidavit") and the Exhibits thereto, the affidavit of Lucio Milanovich sworn on November 29, 2023 and the Exhibits thereto (the "Second Milanovich Affidavit") and together with the Milanovich Affidavit, the

“Milanovich Affidavits”), the Pre-Filing Report of Alvarez & Marsal Canada Inc. (“A&M”) as the proposed monitor dated November 22, 2023 (the “Pre-Filing Report”), and the First Report of A&M in its capacity as Court-appointed monitor (in such capacity, the “Monitor”), and on being advised that the secured creditors who are likely to be affected by the charges created herein were given notice, and on hearing the submissions of counsel for [NAMES], ~~no one appearing for [NAME]¹ although duly served as appears from the affidavit of service of [NAME] sworn [DATE]~~ the Applicant and Mastermind LP (collectively, the “Mastermind Entities”), counsel for the Monitor, and counsel for Canadian Imperial Bank of Commerce, in its capacity as administrative agent for the lenders under the Credit Agreement (in such capacity, the “Agent”), and on reading the consent of [MONITOR’S NAME] A&M to act as the Monitor, ~~—~~;

SERVICE AND DEFINITIONS

1. **THIS COURT ORDERS** that the time for service of the Notice of Application and the Application Record is hereby abridged and validated² so that this Application is properly returnable today and hereby dispenses with further service thereof.

2. **THIS COURT ORDERS** that capitalized terms used but not defined in this Order shall have the meanings given to them in the Milanovich Affidavit or the Second Milanovich Affidavit, as applicable.

APPLICATION

~~2.3.~~ **THIS COURT ORDERS AND DECLARES** that the Applicant is a company to which the CCAA applies. Although not an Applicant, Mastermind LP shall enjoy the benefits of the protections and authorizations provided by this Order.

¹ ~~Include names of secured creditors or other persons who must be served before certain relief in this model Order may be granted. See, for example, CCAA Sections 11.2(1), 11.3(1), 11.4(1), 11.51(1), 11.52(1), 32(1), 32(3), 33(2) and 36(2).~~

² ~~If service is effected in a manner other than as authorized by the Ontario Rules of Civil Procedure, an order validating irregular service is required pursuant to Rule 16.08 of the Rules of Civil Procedure and may be granted in appropriate circumstances.~~

PLAN OF ARRANGEMENT

~~3.4.~~ **THIS COURT ORDERS** ~~that the Applicant–Mastermind Entities~~ shall have the authority to file and may, subject to further order of this Court, file with this Court ~~a plan one or more plans~~ of compromise or arrangement (hereinafter referred to as the “**Plan**”).

POSSESSION OF PROPERTY AND OPERATIONS

~~4.5.~~ **THIS COURT ORDERS** that the ~~Applicant–Mastermind Entities~~ shall remain in possession and control of ~~its–their respective~~ current and future assets, licenses, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the “**Property**”). Subject to further Order of this Court, the ~~Applicant–Mastermind Entities~~ shall continue to carry on business in a manner consistent with the preservation of ~~its their~~ business (the “**Business**”) and Property. ~~The Applicant~~ Each of the Mastermind Entities is authorized and empowered to continue to retain and employ ~~the–its~~ employees, consultants, contractors, agents, experts, accountants, counsel and such other persons (collectively “**Assistants**”) currently retained or employed by it, with liberty to retain such further Assistants as it deems reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

~~5.6.~~ **[THIS COURT ORDERS** that the ~~Applicant–Mastermind Entities~~ shall be entitled–, subject to the terms of the Credit Agreement and the Forbearance Agreement and paragraph 39 of this Order, to continue to utilize the central cash management system³ currently in place as described in the ~~Affidavit of [NAME] sworn [DATE] or–Milanovich Affidavits or, with the prior consent of the Monitor and the Agent~~, replace it with another substantially similar central cash management system (the “**Cash Management System**”) and that any present or future bank providing the Cash Management System–, including the Agent, shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the ~~Applicant–Mastermind Entities~~ of funds transferred, paid, collected or otherwise dealt with in the

³ ~~This provision should only be utilized where necessary, in view of the fact that central cash management systems often operate in a manner that consolidates the cash of applicant companies. Specific attention should be paid to cross-border and inter-company transfers of cash.~~

Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as ~~hereinafter~~ defined below) other than the ~~Applicant~~Mastermind Entities, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as provider of the Cash Management System, an unaffected creditor under the Plan with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System. }

~~6.7.~~ **THIS COURT ORDERS** that ~~the Applicant~~in accordance with the Forbearance Agreement and Approved Cash Flow, the Mastermind Entities shall be entitled but not required to pay the following expenses whether incurred prior to ~~-, on~~ or after ~~this Order~~November 23, 2023 (the “Filing Date”):

(a) all outstanding and future wages, salaries, employee and pension benefits, vacation pay and employee expenses payable on or after the ~~date of this Order~~Filing Date, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements; ~~and~~

(b) up until December 24, 2023, all amounts relating to honouring gift cards issued before the Filing Date, subject to further Order of this Court;

~~(b)~~(c) the fees and disbursements of any Assistants retained or employed by any of the Applicant~~Mastermind Entities~~ in respect of these proceedings, at their standard rates and charges; ~~and~~

(d) with the consent of the Monitor, amounts owing for goods or services actually supplied to the Mastermind Entities prior to the Filing Date by (i) providers of credit, debit and gift card processing related services, (ii) logistics, warehouse or supply chain providers, such as transportation providers, customs brokers and freight forwarders, (iii) providers of information, internet and other technology, including ecommerce providers and related services, and (iv) other suppliers or service providers if, in the

opinion of the Mastermind Entities, following consultation with the Monitor,
such payment is necessary to maintain the uninterrupted operations of the
Business.

~~7.8.~~ **THIS COURT ORDERS** that, except as otherwise provided to the contrary herein, ~~the Applicant-~~ and subject to the Forbearance Agreement, the Mastermind Entities shall be entitled but not required to pay all reasonable expenses incurred by the ~~Applicant-~~ Mastermind Entities in carrying on the Business in the ordinary course after this Order in accordance with the Approved Cash Flow, and in carrying out the provisions of this Order, which expenses shall ~~-, subject to the Forbearance Agreement~~ include, without limitation:

- (a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors and officers insurance), IT services, data services, maintenance and security services; and
- (b) payment for goods or services actually supplied to the ~~Applicant-~~ Mastermind Entities following the ~~date of this Order~~ Filing Date.

~~8.9.~~ **THIS COURT ORDERS** that the ~~Applicant-~~ Mastermind Entities shall ~~remit~~, in accordance with legal requirements and subject to the Forbearance Agreement, remit or pay:

- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, ~~(iii) Quebec Pension Plan,~~ and ~~(iv)~~ (iii) income taxes;
- (b) all goods and services taxes, harmonized sales taxes, or other applicable sales taxes (collectively, "**Sales Taxes**") required to be remitted by the ~~Applicant-~~ Mastermind Entities in connection with the sale of goods and services by the ~~Applicant-~~ Mastermind Entities, but only where such Sales

Taxes are accrued or collected after the ~~date of this Order~~Filing Date, or where such Sales Taxes were accrued or collected prior to the ~~date of this Order~~Filing Date but not required to be remitted until on or after the ~~date of this Order~~Filing Date; and

- (c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the ~~Applicant~~Mastermind Entities.

~~9.10.~~ **THIS COURT ORDERS** that until a real property lease is disclaimed ~~[or resiliated]~~⁴ in accordance with the CCAA, the ~~Applicant~~Mastermind Entities shall pay all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under the lease, but for greater certainty, excluding accelerated rent or penalties, fees or other charges arising as a result of the insolvency of any of the Mastermind Entities, the making of this Order or the commencement of any insolvency proceedings) or as otherwise may be negotiated between the ~~Applicant~~applicable Mastermind Entity and the landlord from time to time (“Rent”), for the period commencing from and including the ~~date of this Order~~Filing Date, twice-monthly in equal payments on the first and fifteenth day of each month, in advance (but not in arrears) in the amounts set out in the applicable lease or, with the consent of the Monitor, at such other intervals and dates as may be agreed to between the applicable Mastermind Entity and landlord. On the date of the first of such payments, any Rent relating to the period commencing from and including the ~~date of this Order~~Filing Date shall also be paid.

~~10.11.~~ **THIS COURT ORDERS** that, except as specifically permitted herein, ~~the Applicant is or in the Forbearance Agreement and the Credit Agreement, the Mastermind Entities are~~ hereby

⁴ ~~The term "resiliate" should remain if there are leased premises in the Province of Quebec, but can otherwise be removed.~~

directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by any of the Applicant-Mastermind Entities to any of ~~its-their~~ creditors as of ~~this-date~~the Filing Date, other than payments of principal, interest or amounts otherwise owing by the Mastermind Entities pursuant to the Credit Agreement; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of ~~its~~ their Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business; provided that with respect to real property leases, the Mastermind Entities may, subject to the provisions of the CCAA and paragraphs 9,12 and 13 herein, vacate, abandon or quit the whole (but not part of) and may permanently (but not temporarily) cease, downsize or shut down any of the Business or operations in respect of any leased premises.

RESTRUCTURING

~~11.12.~~ **THIS COURT ORDERS** that the Applicant-Mastermind Entities shall, subject to such requirements as are imposed by the CCAA ~~and~~, such covenants as may be contained in the ~~Definitive Documents (as hereinafter defined)~~Credit Agreement or the Forbearance Agreement or as otherwise ordered by this Court, have the right to:

- (a) permanently or temporarily cease, downsize or shut down any of ~~its-their~~ business or operations, ~~[~~and to dispose of redundant or non-material assets not exceeding \$●-25,000 in any one transaction or \$●-50,000 in the aggregate~~]~~⁵;
- (b) vacate, abandon or quit the whole but not any part of any leased premises and/or disclaim any real property lease, and all ancillary agreements relating to any leased premises;
- (c) sell inventory in the ordinary course of business consistent with past practice, or otherwise with the consent of the Monitor and the Agent;

⁵~~-Section 36 of the amended CCAA does not seem to contemplate a pre-approved power to sell (see subsection 36(3)) and moreover requires notice (subsection 36(2)) and evidence (subsection 36(7)) that may not have occurred or be available at the initial CCAA hearing.~~

~~(b)(d)~~ terminate the employment of ~~such of its~~ their employees or temporarily lay off such of ~~its~~ their employees as ~~it deems~~ they deem appropriate]; ~~and;~~

(e) refuse to honour any existing return policies, refunds, discounts or other similar customer programs or obligations; and

~~(e)(f)~~ pursue all avenues of ~~refinancing of its~~ financing, restructuring, sale or reorganizing the Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing, restructuring, sale or reorganizing,

all of the foregoing to permit the ~~Applicant~~ Mastermind Entities to proceed with an orderly restructuring of the Mastermind Entities or the Business (the “**Restructuring**”).

~~12.13.~~ **THIS COURT ORDERS** that the ~~Applicant~~ Mastermind Entities shall provide each of the relevant landlords with notice of the ~~Applicant's~~ Mastermind Entities' intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the ~~Applicant's~~ Mastermind Entities' entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the ~~Applicant~~ Mastermind Entities, or by further Order of this Court upon application by the ~~Applicant~~ Mastermind Entities on at least two (2) days-' notice to such landlord and any such secured creditors. If ~~the Applicant disclaims [or resiliates]~~ any of the Mastermind Entities disclaim the lease governing such leased premises in accordance with Section 32 of the CCAA, ~~it-they~~ shall not be required to pay Rent under such lease pending resolution of any such dispute (other than Rent payable for the notice period provided for in Section 32(5) of the CCAA), and the disclaimer ~~[or resiliation]~~ of the lease shall be without prejudice to the ~~Applicant's~~ Mastermind Entities' claim to the fixtures in dispute.

~~13.14.~~ **THIS COURT ORDERS** that if a notice of disclaimer ~~[or resiliation]~~ is delivered pursuant to Section 32 of the CCAA, then (a) during the notice period prior to the effective time of the disclaimer ~~[or resiliation]~~, the landlord may show the affected leased premises to

4142-1079-3293.1

prospective tenants during normal business hours, on giving the ~~Applicant~~ Mastermind Entities and the Monitor 24 hours' prior written notice, and (b) at the effective time of the disclaimer ~~for~~ **resiliation**, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the ~~Applicant~~ Mastermind Entities in respect of such lease or leased premises, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

NO PROCEEDINGS AGAINST THE ~~APPLICANT~~ MASTERMIND ENTITIES OR THE PROPERTY

~~14.15.~~ **THIS COURT ORDERS** that until and including ~~[DATE — MAX. 30 DAYS]~~, January 26, 2024 or such later date as this Court may order (the “**Stay Period**”), no proceeding or enforcement process in any court or tribunal (each, a “**Proceeding**”) shall be commenced or continued against or in respect of any of the ~~Applicant~~ Mastermind Entities or the Monitor or their respective employees and representatives acting in such capacities, or affecting the Business or the Property, except with the written consent of the ~~Applicant~~ Mastermind Entities and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of any of the ~~Applicant~~ Mastermind Entities or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court or the prior written consent of the Mastermind Entities and the Monitor.

NO EXERCISE OF RIGHTS OR REMEDIES

~~15.16.~~ **THIS COURT ORDERS** that during the Stay Period, all rights and remedies of any individual, firm, corporation, organization, governmental unit, body or agency, or any other entities (all of the foregoing, collectively being “**Persons**” and each being a “**Person**”) against or in respect of any of the ~~Applicant~~ Mastermind Entities or the Monitor or their respective employees and representatives acting in such capacities, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the ~~Applicant~~ Mastermind Entities and the Monitor, or leave of this Court, provided that nothing in this Order shall (i) empower the ~~Applicant~~ Mastermind Entities to carry on any business which the ~~Applicant is~~ Mastermind Entities are not lawfully entitled to carry on, (ii) affect such

4142-1079-3293.1

investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA, (iii) prevent the filing of any registration to preserve or perfect a security interest, ~~or~~ (iv) prevent the registration of a claim for lien, or (v) subject to paragraph 42 hereof, prevent the Agent from exercising any rights or remedies against the Mastermind Entities or the Property under or pursuant to the Credit Agreement, the Blocked Accounts Agreement, the Forbearance Agreement or any other Loan Document (as defined in the Credit Agreement) or the DIP Charge (as defined below).

NO INTERFERENCE WITH RIGHTS

~~16.17.~~ **THIS COURT ORDERS** that during the Stay Period, no Person shall accelerate, suspend, discontinue, fail to honour, alter, interfere with, repudiate, rescind, terminate or cease to perform any right, renewal right, contract, agreement, lease, sublease, licence-, authorization or permit in favour of or held by any of the ApplicantMastermind Entities, except with the prior written consent of the ApplicantMastermind Entities and the Monitor, or leave of this Court.

CONTINUATION OF SERVICES

~~17.18.~~ **THIS COURT ORDERS** that during the Stay Period, all Persons having oral or written agreements or arrangements with any of the ApplicantMastermind Entities or statutory or regulatory mandates for the supply or license of goods and/or services, including without limitation all computer software, communication and other data services, centralized banking services, cash management services, payroll and benefit services, insurance, freight services, logistics services, transportation services, customs clearing and importing services, warehouse services, security services, management services, merchandise or procurement sourcing services, utility or other services to the Business or any of the ApplicantMastermind Entities, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with-, suspending or terminating the supply or license of such goods or services as may be required by any of the ApplicantMastermind Entities, and that the ApplicantMastermind Entities shall be entitled to the continued use of ~~its-their~~ current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the ~~date of this Order~~ Filing Date are paid by the ApplicantMastermind Entities in accordance with normal payment practices of the Applicant

4142-1079-3293.1

applicable Mastermind Entity or such other practices as may be agreed upon by the supplier or service provider and ~~each of the Applicant~~ the applicable Mastermind Entity and the Monitor, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

~~18.~~ 19. **THIS COURT ORDERS** that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of ~~lease~~ leased or licensed property or other valuable consideration provided on or after the ~~date of this Order~~ Filing Date, nor shall any Person be under any obligation on or after the ~~date of this Order~~ Filing Date to advance or re-advance any monies or otherwise extend any credit to any of the Applicant Mastermind Entities. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.⁶

APPROVAL OF KEY EMPLOYEE RETENTION PLAN

20. THIS COURT ORDERS that the Key Employee Retention Plan (the “KERP”) as described in the Second Milanovich Affidavit and attached as confidential Exhibit “O” thereto, is hereby approved and the Mastermind Entities are authorized to make the payments contemplated thereunder in accordance with the terms and conditions of the KERP.

21. THIS COURT ORDERS that the key employees referred to in the KERP (the “KERP Employees”) shall be entitled to the benefit of and are hereby granted a charge on the Property (the “KERP Charge”), which charge shall not exceed the aggregate amount of \$286,000, to secure any payments to the KERP Employees under the KERP. The KERP Charge shall have the priority set out in paragraphs 44 and 46 herein.

⁶ ~~This non-derogation provision has acquired more significance due to the recent amendments to the CCAA, since a number of actions or steps cannot be stayed, or the stay is subject to certain limits and restrictions. See, for example, CCAA Sections 11.01, 11.04, 11.06, 11.07, 11.08, 11.1(2) and 11.5(1).~~

NO PRE-FILING VERSUS POST-FILING SET-OFF

22. THIS COURT ORDERS that no Person shall be entitled to set off any amounts that (a) are or may become due to any Mastermind Entity in respect of obligations arising prior to the Filing Date with any amounts that are or may become due from such Mastermind Entity in respect of obligations arising on or after the Filing Date, or (b) are or may become due from any Mastermind Entity in respect of obligations arising prior to the Filing Date with any amounts that are or may become due to such Mastermind Entity in respect of obligations arising on or after the Filing Date, each without the consent of the Mastermind Entities and the Monitor or further Order of this Court.

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

~~19.~~**23. THIS COURT ORDERS** that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the ~~Applicant~~ Mastermind Entities with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the ~~Applicant~~ Mastermind Entities whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a ~~compromise or arrangement~~ Plan in respect of the ~~Applicant~~ Mastermind Entities, if one is filed, is sanctioned by this Court or is refused by the creditors of the ~~Applicant~~ Mastermind Entities or this Court.

DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

~~20.~~**24. THIS COURT ORDERS** that the ~~Applicant~~ Mastermind Entities shall indemnify ~~its~~ their respective directors and officers against obligations and liabilities that they may incur as directors or officers of the ~~Applicant~~⁷ Mastermind Entities after the commencement of the

⁷ ~~The broad indemnity language from Section 11.51 of the CCAA has been imported into this paragraph. The granting of the indemnity (whether or not secured by a Directors' Charge), and the scope of the indemnity, are discretionary matters that should be addressed with the Court.~~

within proceedings, except to the extent that, with respect to any officer or director, the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

~~21-25.~~ **THIS COURT ORDERS** that the directors and officers of each of the Applicant Mastermind Entities shall be entitled to the benefit of and are hereby granted a charge (the "~~Directors'~~ D&O Charge")⁸ on the Property, which charge shall not exceed an aggregate amount of \$~~5,000,000~~, unless permitted by further Order of this Court, as security for the indemnity provided in paragraph ~~[20]-24~~ of this Order. The ~~Directors'~~ D&O Charge shall have the priority set out in paragraphs ~~[38]-44~~ and ~~[40]-46~~ herein.

~~22-26.~~ **THIS COURT ORDERS** that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the ~~Directors'~~ D&O Charge, and (b) the ~~Applicant's Mastermind Entities'~~ directors and officers shall only be entitled to the benefit of the ~~Directors'~~ D&O Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph ~~[20]-24~~ of this Order.

APPOINTMENT OF MONITOR

~~23-27.~~ **THIS COURT ORDERS** that ~~[MONITOR'S NAME]-A&M~~ is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the ~~Applicant Mastermind Entities~~ with the powers and obligations set out in the CCAA or set forth herein and that the ~~Applicant and its Mastermind Entities and their respective~~ shareholders or partners (as applicable), officers, directors, and Assistants shall advise the Monitor of all material steps taken by any of the Applicant Mastermind Entities pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

⁸~~Section 11.51(3) provides that the Court may not make this security/charging order if in the Court's opinion the Applicant could obtain adequate indemnification insurance for the director or officer at a reasonable cost.~~

~~24.~~28. **THIS COURT ORDERS** that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- (a) monitor the ~~Applicant's~~ Mastermind Entities' receipts and disbursements;
- (b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, the Restructuring, and such other matters as may be relevant to the proceedings herein;

(c) assist the Mastermind Entities, to the extent required by the Mastermind Entities, with the Restructuring, including in continuing negotiations with any Person in an effort to pursue the Restructuring;

(d) liaise and consult with the Mastermind Entities, any liquidation agents or consultants that are approved by this Court, and any Assistants, to the extent required, with respect to all matters relating to the Property, the Business, the Restructuring, and such other matters as may be relevant to the proceedings herein;

~~(c)(e) assist the Applicant, to the extent required by the Applicant, in its~~ assist the Mastermind Entities, to the extent required by the Mastermind Entities, in their dissemination, to the DIP Lender Agent and its counsel on a [TIME INTERVAL] basis of financial and other information as agreed to between the Applicant and the DIP Lender which may be used in these proceedings including reporting on a basis to be agreed with the DIP Lender Mastermind Entities and the Agent pursuant to the Credit Agreement, the Forbearance Agreement, or otherwise;

~~(d) advise the Applicant in its preparation of the Applicant's cash flow statements and reporting required by the DIP Lender, which information shall be~~

~~reviewed with the Monitor and delivered to the DIP Lender and its counsel on a periodic basis, but not less than [TIME INTERVAL], or as otherwise agreed to by the DIP Lender;~~

~~(e)(f)~~ advise the Applicant in its advise the Mastermind Entities in their development of the Plan and ~~any amendments~~ amendment to the Plan, if applicable;

~~(f)(g)~~ assist the Applicant Mastermind Entities, to the extent required by the Applicant Mastermind Entities, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;

~~(g)(h)~~ have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Applicant Mastermind Entities, wherever located and to the extent that is necessary to adequately assess the ~~Applicant's~~ Mastermind Entities' business and financial affairs or to perform its duties arising under this Order;

~~(h)(i)~~ be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order; and

~~(i)(j)~~ perform such other duties as are required by this Order or by this Court from time to time.

~~25.~~ 29. **THIS COURT ORDERS** that the Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

~~26.~~ 30. **THIS COURT ORDERS** that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, "Possession") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the

protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, 1999, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the “**Environmental Legislation**”), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor’s duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

~~27.~~31. **THIS COURT ORDERS** ~~that~~ that the Monitor shall provide any creditor of the ~~Applicant and the DIP Lender~~ Mastermind Entities with information provided by the ~~Applicant~~ Mastermind Entities in response to reasonable requests for information made in writing by such creditor and addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the ~~Applicant~~ Mastermind Entities is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the ~~Applicant~~ Mastermind Entities may agree.

~~28.~~32. **THIS COURT ORDERS** that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, neither the Monitor nor its employees and representatives acting in such capacities shall incur ~~no~~ any liability or obligation as a result of ~~its~~ the Monitor’s appointment or the carrying out by it of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

~~29.~~33. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor and counsel to the ~~Applicant~~ Mastermind Entities, shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, ~~by the Applicant~~ whether incurred prior to, on or after the Filing Date, by the Mastermind Entities as part of the costs of these proceedings. The

~~Applicant is~~ Mastermind Entities are hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and counsel for the ~~Applicant on a [TIME INTERVAL] basis~~ and, ~~in addition, the Applicant is hereby authorized to pay to the Monitor, counsel to the Monitor, and counsel to the Applicant, retainers in the amount[s] of \$● [, respectively,]~~ ~~to be held by them as security for payment of their respective fees and disbursements outstanding from time to time~~ Mastermind Entities on a weekly basis or as otherwise agreed among the parties.

~~30.~~34. **THIS COURT ORDERS** that the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

~~31.~~35. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor, ~~if any, and the Applicant's~~ counsel to the Mastermind Entities shall be entitled to the benefit of and are hereby granted a charge (the “**Administration Charge**”) on the Property, which charge shall not exceed an aggregate amount of \$●1,000,000, unless permitted by further Order of this Court, as security for their professional fees and disbursements incurred at ~~the~~ their standard rates and charges ~~of the Monitor and such counsel~~, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs **[38]** ~~and [40] hereof.~~44 and 46 herein.

FORBEARANCE AGREEMENT AND DIP CHARGE

36. THIS COURT ORDERS that the execution, delivery and performance by the Mastermind Entities of the Forbearance Agreement is hereby authorized and approved, with such minor amendments as the Mastermind Entities and the Agent, with the approval of the Monitor may agree upon. The Mastermind Entities are hereby authorized and directed to comply with and perform the provisions of the Forbearance Agreement and the Credit Agreement.

37. **THIS COURT ORDERS** that the Mastermind Entities' compliance with, and performance of, the Blocked Accounts Agreement from and after the date of this Order is hereby authorized and approved.

38. **THIS COURT ORDERS** that Mastermind LP shall be entitled, subject to the terms of the Forbearance Agreement and the Credit Agreement and paragraphs 6 and 39 of this Order, to continue to obtain and borrow, repay and re-borrow monies under the Revolving Loan Facility pursuant to the Forbearance Agreement and Credit Agreement in order to finance Mastermind LP's working capital requirements.

39. **THIS COURT ORDERS** that subject to the provisions of the Credit Agreement, the Forbearance Agreement and the Blocked Accounts Agreement and paragraph 39 of this Order, the Mastermind Entities are hereby authorized and directed to pay all of their indebtedness, interest, fees, liabilities and obligations to the Agent under and pursuant to the Credit Agreement and the Forbearance Agreement, whether such indebtedness arose before or after the Filing Date.

40. **THIS COURT ORDERS** that the Agent may, in accordance with the terms of the Credit Agreement, the Forbearance Agreement and the Blocked Accounts Agreement, and as described in the Milanovich Affidavits, apply the proceeds of inventory or other property subject to a lien in favour of the Agent deposited in the Mastermind Entities' bank accounts (other than the HST Account), whether directly or through blocked accounts, against the indebtedness of the Mastermind Entities under the Credit Agreement and the Forbearance Agreement, whether such indebtedness arose before or after the Filing Date, provided that no advance of funds made under the Credit

Agreement on or after the date of this Order shall be used to reduce any pre-filing obligations of the Mastermind Entities under the Credit Agreement or Forbearance Agreement.

DIP FINANCING

~~32. THIS COURT ORDERS that the Applicant is hereby authorized and empowered to obtain and borrow under a credit facility from [DIP LENDER'S NAME] (the "DIP Lender") in order to finance the Applicant's working capital requirements and other general corporate purposes and capital expenditures, provided that borrowings under such credit facility shall not exceed \$● unless permitted by further Order of this Court.~~

~~33. THIS COURT ORDERS THAT such credit facility shall be on the terms and subject to the conditions set forth in the commitment letter between the Applicant and the DIP Lender dated as of [DATE] (the "Commitment Letter"), filed.~~

~~34. THIS COURT ORDERS that the Applicant is hereby authorized and empowered to execute and deliver such credit agreements, mortgages, charges, hypothecs and security documents, guarantees and other definitive documents (collectively, the "Definitive Documents"), as are contemplated by the Commitment Letter or as may be reasonably required by the DIP Lender pursuant to the terms thereof, and the Applicant is hereby authorized and directed to pay and perform all of its indebtedness, interest, fees, liabilities and obligations to the DIP Lender under and pursuant to the Commitment Letter and the Definitive Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order.~~

~~35.41. THIS COURT ORDERS that the DIP Lender~~ THIS COURT ORDERS that the Agent shall be entitled to the benefit of and is hereby granted a charge (the “**DIP Lender's Charge**”) on the Property as security for any advances made under the Credit Agreement from and after the date of this Order, which DIP ~~Lender's~~ Charge shall not secure an obligation that exists before the date of this Order ~~is made. The DIP Lender's and shall not exceed the~~

aggregate amount of \$36,250,000, plus interest, costs and expenses. The DIP Charge shall have the priority set out in paragraphs ~~[38]~~ 44 and ~~[40] hereof~~ 46 herein.

~~36. THIS COURT ORDERS that, notwithstanding any other provision of this Order:~~

~~(a) 42. the DIP Lender~~ THIS COURT ORDERS that, the Agent may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP Lender's Charge or any of the Definitive Documents; Charge, and upon the earlier of the occurrence of a Terminating Event or the last day of the Forbearance Period (each as defined in the Forbearance Agreement) notwithstanding any other provision of this Order:

(a) the Agent may cease making advances to Mastermind LP;

(b) the Agent may, upon five (5) days prior written notice to the Mastermind Entities and the Monitor:

(i) exercise any and all rights or remedies against the Mastermind Entities or the Property under or pursuant to the Credit Agreement, the Blocked Accounts Agreement, the Forbearance Agreement or any other Loan Document (defined in the Credit Agreement) or the DIP Charges;

(ii) set off and/or consolidate any amounts owing by the Agent to the Mastermind Entities against the obligations of the Mastermind Entities to the DIP Lender under the Credit Agreement, the Blocked Accounts Agreement, the Forbearance Agreement or any other Loan Document (defined in the Credit Agreement) and make demand, accelerate payment and give other notices;

(iii) exercise any and all rights or remedies against the Mastermind Entities or the Property under or pursuant to the Credit Agreement, the Blocked Accounts Agreement, the Forbearance Agreement or any other Loan Document (defined in the Credit Agreement); and

~~(b)(iv) upon the occurrence of an event of default under the Definitive Documents or the DIP Lender's Charge, the DIP Lender, upon ● days notice to the Applicant and the Monitor, may exercise any and all of its rights and remedies against the Applicant or the Property under or pursuant to the Commitment Letter, Definitive Documents and the DIP Lender's Charge, including without limitation, to cease making advances to the Applicant and set off and/or consolidate any amounts owing by the DIP Lender to the Applicant against the obligations of the Applicant to the DIP Lender under the Commitment Letter, the Definitive Documents or the DIP Lender's Charge, to make demand, accelerate payment and give other notices, or to~~ apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the ~~Applicant~~ Mastermind Entities and for the appointment of a trustee in bankruptcy of the ~~Applicant~~ Mastermind Entities; and

(c) the foregoing rights and remedies of the ~~DIP Lender~~ Agent shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the ~~Applicant~~ Mastermind Entities or the Property.

~~37.43.~~ **THIS COURT ORDERS AND DECLARES** that the ~~DIP Lender~~ Agent shall be treated as unaffected in ~~any plan of arrangement or compromise~~ the Plan (if any) filed by the ~~Applicant~~ Mastermind Entities under the CCAA, or any proposal filed by the ~~Applicant~~ Mastermind Entities under the *Bankruptcy and Insolvency Act* ~~of Canada~~, R.S.C. 1985, c. B-3 (the "BIA"), with respect to any ~~advances made under the Definitive Documents~~ obligations outstanding under the Credit Agreement or the Forbearance Agreement as of, from or after the Filing Date.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

~~38.44.~~ **THIS COURT ORDERS** that the priorities of the ~~Directors' KERP Charge, the D&O Charge, the Administration Charge and the DIP Lender's Charge~~ and (collectively, the "Charges"), as among them, shall be as follows⁹:

First ~~—~~ Administration Charge (to the maximum amount of \$~~●~~1,000,000);
and

Second – ~~DIP Lender's Charge; and Third — Directors' D&O Charge~~ (to the maximum amount of \$~~●~~5,000,000);

Third – DIP Charge (to the maximum amount of \$36,250,000, plus interest, fees and expenses);

Fourth – KERP Charge (to the maximum amount of \$286,000);.

~~39.45.~~ **THIS COURT ORDERS** that the filing, registration or perfection of the ~~Directors' Charge, the Administration Charge or the DIP Lender's Charge (collectively, the "Charges")~~ shall not be required, and that the Charges shall be effective as against the Property and shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

~~40.46.~~ **THIS COURT ORDERS** that each of the ~~Directors' Charge, the Administration Charge and the DIP Lender's Charge (all as constituted and defined herein)~~ Charges shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, "**Encumbrances**") in favour of any Person notwithstanding the order of perfection or attached.

⁹ ~~The ranking of these Charges is for illustration purposes only, and is not meant to be determinative. This ranking may be subject to negotiation, and should be tailored to the circumstances of the case before the Court. Similarly, the quantum and caps applicable to the Charges should be considered in each case. Please also note that the CCAA now permits Charges in favour of critical suppliers and others, which should also be incorporated into this Order (and the rankings, above), where appropriate.~~

~~41.47.~~ **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court, ~~the Applicant~~ on notice to parties in interest, the Mastermind Entities shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the ~~Directors' Charge, the Administration Charge or the DIP Lender's Charge~~ Charges, unless the ~~Applicant~~ Mastermind Entities also ~~obtains~~ obtain the prior written consent of the Monitor, ~~the DIP Lender~~ and the other beneficiaries of the ~~Directors' Charge and the Administration Charge~~ Charges, or further Order of this Court.

~~42.48.~~ **THIS COURT ORDERS** that the ~~Directors' Charge, the Administration Charge, the Commitment Letter, the Definitive Documents and the DIP Lender's Charge~~ Charges shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the “Chargees”) ~~and/or the DIP Lender thereunder~~ shall not otherwise be limited or impaired in any way by: (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to the BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan ~~documents~~ document, lease, sublease, offer to lease or other agreement (collectively, an “Agreement”) which binds any of the Applicant Mastermind Entities, and notwithstanding any provision to the contrary in any Agreement:

- (a) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of the ~~Commitment Letter or the Definitive Documents~~ Credit Agreement or the Forbearance Agreement shall create or be deemed to constitute a breach by ~~the Applicant~~ any Mastermind Entity of any Agreement to which it is a party;
- (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the ~~Applicant entering into the Commitment Letter, the~~ creation of the Charges,

or the Mastermind Entities entering into the Forbearance Agreement or the execution, delivery or performance of the ~~Definitive Documents~~Credit Agreement, Forbearance Agreement or any other Loan Document; and

- (c) the payments made by the ~~Applicant~~ Mastermind Entities pursuant to this Order, ~~the Commitment Letter or the Definitive Documents,~~ and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

~~43.49.~~ **THIS COURT ORDERS** that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the ~~Applicant's~~ applicable Mastermind Entity's interest in such real property leases.

SEALING

~~50.~~ **THIS COURT ORDERS** that the KERP and related payment information attached as confidential Exhibit "O" to the Second Milanovich Affidavit are hereby sealed and shall not form part of the Court record, subject to further order of this Court.

SERVICE AND NOTICE

~~44.51.~~ **THIS COURT ORDERS** that the Monitor shall (i) without delay, publish in ~~[newspapers specified by the Court]~~ The Globe and Mail (National Edition) a notice containing the information prescribed under the CCAA, and (ii) within five (5) days after the ~~date of this Order~~ Filing Date, (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, or cause to be sent, in the prescribed manner or by electronic message to the e-mail addresses as last shown on the records of the Mastermind Entities, a notice to every known creditor who has a claim against any of the ~~Applicant~~ Mastermind Entities of more than ~~\$4000~~ 1,000, and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with ~~Section-Subsection~~ 23(1)(a) of the CCAA and the

regulations made thereunder, provided that the Monitor shall not make the claims, names and addresses of the individuals who are creditors publicly available.

~~45.52.~~ **THIS COURT ORDERS** that the E-Service ~~Protocol-Guide~~ of the Commercial List (the “~~Protocol~~Guide”) is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the ~~Protocol-Guide~~ (which can be found on the Commercial List website at ~~http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/)~~—https://www.ontariocourts.ca/scj/practice/regional-practice-directions/eservice-commercial/) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the *Rules of Civil Procedure*. Subject to Rule 3.01(d) of the *Rules of Civil Procedure* and paragraph ~~21-13~~ of the ~~Protocol~~Guide, service of documents in accordance with the ~~Protocol-Guide~~ will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the ~~Protocol—Guide~~ with the following URL—~~‘<@>’~~: https://www.alvarezandmarsal.com/Mastermind.

~~46.53.~~ **THIS COURT ORDERS** that if the service-~~or~~, distribution or notice of documents in accordance with the ~~Protocol-Guide~~ or the CCAA and the regulations thereunder is not practicable, the ~~Applicant and~~ Mastermind Entities, the Monitor and their respective counsel are at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding ~~true~~ copies thereof by prepaid ordinary mail, courier, personal delivery-~~or~~, facsimile transmission or electronic message to the ~~Applicant's~~ Mastermind Entities’ creditors or other interested parties at their respective addresses (including e-mail addresses) as last shown ~~on-in~~ the books and records of the ~~Applicant-Mastermind Entities~~ and that any such service-~~or~~, distribution ~~by courier, personal delivery or facsimile transmission—~~or notice shall be deemed to be received on the earlier of (a) the date of forwarding thereof, if sent by electronic message on or prior to 5:00 p.m. (Eastern Time), (b) the next business day following the date of forwarding thereof, or-if sent by courier, personal delivery, facsimile transition or electronic message sent after 5:00 p.m. (Eastern Time), or (c) on the business day following the date of forwarding thereof, if sent by ordinary mail,~~on the third business day after mailing.~~

54. **THIS COURT ORDERS** that the Mastermind Entities, the Monitor and their respective counsel are at liberty to serve or distribute this Order, any other materials and orders as may be reasonably required in these proceedings, including any notices, or other correspondence, by forwarding copies thereof by electronic message (including by e-mail) to the Mastermind Entities' creditors or other interested parties and their advisors, as applicable. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of legal or judicial obligation, and notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations* (SOR/2013-221).

GENERAL

55. **THIS COURT ORDERS** that any interested party that wishes to amend or vary this Order shall be entitled to appear or bring a motion before this Court to vary or amend this order on not less than seven (7) days' notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order; provided, however, that the Chargees shall be entitled to rely on this Order as granted and on the Charges and priorities set forth in paragraphs 44 and 46 hereof with respect to any advances made and payments received under the Credit Agreement and Forbearance Agreement, and any fees, expenses and disbursements incurred, as applicable, until the date this Order may be amended, varied or stayed.

~~47.56. THIS COURT ORDERS that the Applicant~~ **THIS COURT ORDERS** that, notwithstanding paragraph 55 of this Order, each of the Mastermind Entities or the Monitor may from time to time apply to this Court to amend, vary or supplement this Order or for advice and

directions in the discharge of ~~its~~ their respective powers and duties hereunder or in the interpretation of this Order.

~~48.~~57. **THIS COURT ORDERS** that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of any of the ApplicantMastermind Entities, the Business or the Property.

~~49.~~58. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the ApplicantMastermind Entities, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the ApplicantMastermind Entities and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the ApplicantMastermind Entities and the Monitor and their respective agents in carrying out the terms of this Order.

~~50.~~59. **THIS COURT ORDERS** that each of the ApplicantMastermind Entities and the Monitor be at liberty and ~~is~~ are hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

~~51. THIS COURT ORDERS that any interested party (including the Applicant and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.~~

~~52.~~60. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. (Eastern ~~Standard/Daylight~~ Time-) on the date of this Order without the need for entry or filing.

| ~~4142-1079-3293.1~~

| 4128-2970-6061.5

Summary Report	
Title	Davies compareDocs Comparison Results
Date & Time	2023-11-29 10:26:32 AM
Comparison Time	1.86 seconds
compareDocs version	v5.1.200.4

Sources	
Original Document	[#4142-1079-3293] [v1] Initial Order - Mastermind.doc
Modified Document	[#4128-2970-6061] [v5] Amended and Restated Initial Order - MM.doc

Comparison Statistics	
Insertions	143
Deletions	78
Changes	211
Moves	34
Font Changes	0
Paragraph Style Changes	0
Character Style Changes	0
TOTAL CHANGES	466

Word Rendering Set Markup Options	
Name	DWPV(with Strikethrough for delete)
Insertions	
Deletions	
Moves / Moves	
Font Changes	
Paragraph Style Changes	
Character Style Changes	
Inserted cells	
Deleted cells	
Merged cells	
Changed lines	Mark left border.

compareDocs Settings Used	Category	Option Selected
Open Comparison Report after saving	General	Always
Report Type	Word	TrackChanges
Character Level	Word	False
Include Comments	Word	False
Include Field Codes	Word	True
Flatten Field Codes	Word	True
Include Footnotes / Endnotes	Word	True
Include Headers / Footers	Word	True
Image compare mode	Word	Insert/Delete
Include List Numbers	Word	True
Include Quotation Marks	Word	False
Show Moves	Word	True
Include Tables	Word	True
Include Text Boxes	Word	True
Show Reviewing Pane	Word	True
Summary Report	Word	End
Detail Report	Word	Separate (View Only)
Document View	Word	Print

TAB 5

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE) THURSDAY, THE 30th DAY
)
JUSTICE STEELE) OF NOVEMBER, 2023

IN THE MATTER OF THE *COMPANIES' CREDITORS*
ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS
AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF MASTERMIND GP INC.

(the "**Applicant**")

AMENDED AND RESTATED INITIAL ORDER
(amending the Initial Order dated November 23, 2023)

THIS APPLICATION, made by the Applicant, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") was heard this day by videoconference.

ON READING the affidavit of Lucio Milanovich sworn on November 22, 2023 (the "**Milanovich Affidavit**") and the Exhibits thereto, the affidavit of Lucio Milanovich sworn on November 29, 2023 and the Exhibits thereto (the "**Second Milanovich Affidavit**" and together with the Milanovich Affidavit, the "**Milanovich Affidavits**"), the Pre-Filing Report of Alvarez & Marsal Canada Inc. ("**A&M**") as the proposed monitor dated November 22, 2023 (the "**Pre-Filing Report**"), and the First Report of A&M in its capacity as Court-appointed monitor (in such capacity, the "**Monitor**"), and on being advised that the secured creditors who are likely to be affected by the charges created herein were given notice, and on hearing the submissions of counsel for the Applicant and Mastermind LP (collectively, the "**Mastermind Entities**"), counsel for the Monitor,

and counsel for Canadian Imperial Bank of Commerce, in its capacity as administrative agent for the lenders under the Credit Agreement (in such capacity, the “**Agent**”), and on reading the consent of A&M to act as the Monitor:

SERVICE AND DEFINITIONS

1. **THIS COURT ORDERS** that the time for service of the Notice of Application and the Application Record is hereby abridged and validated so that this Application is properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS** that capitalized terms used but not defined in this Order shall have the meanings given to them in the Milanovich Affidavit or the Second Milanovich Affidavit, as applicable.

APPLICATION

3. **THIS COURT ORDERS AND DECLARES** that the Applicant is a company to which the CCAA applies. Although not an Applicant, Mastermind LP shall enjoy the benefits of the protections and authorizations provided by this Order.

PLAN OF ARRANGEMENT

4. **THIS COURT ORDERS** the Mastermind Entities shall have the authority to file and may, subject to further order of this Court, file with this Court one or more plans of compromise or arrangement (hereinafter referred to as the “**Plan**”).

POSSESSION OF PROPERTY AND OPERATIONS

5. **THIS COURT ORDERS** that the Mastermind Entities shall remain in possession and control of their respective current and future assets, licenses, undertakings and properties of every nature and kind whatsoever, and wherever situate including all

proceeds thereof (the “**Property**”). Subject to further Order of this Court, the Mastermind Entities shall continue to carry on business in a manner consistent with the preservation of their business (the “**Business**”) and Property. Each of the Mastermind Entities is authorized and empowered to continue to retain and employ its employees, consultants, contractors, agents, experts, accountants, counsel and such other persons (collectively “**Assistants**”) currently retained or employed by it, with liberty to retain such further Assistants as it deems reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

6. **THIS COURT ORDERS** that the Mastermind Entities shall be entitled, subject to the terms of the Credit Agreement and the Forbearance Agreement and paragraph 39 of this Order, to continue to utilize the central cash management system currently in place as described in the Milanovich Affidavits or, with the prior consent of the Monitor and the Agent, replace it with another substantially similar central cash management system (the “**Cash Management System**”) and that any present or future bank providing the Cash Management System, including the Agent, shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the Mastermind Entities of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as defined below) other than the Mastermind Entities, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as provider of the Cash Management System, an unaffected creditor under the Plan

with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.

7. **THIS COURT ORDERS** that in accordance with the Forbearance Agreement and Approved Cash Flow, the Mastermind Entities shall be entitled but not required to pay the following expenses whether incurred prior to, on or after November 23, 2023 (the **“Filing Date”**):

- (a) all outstanding and future wages, salaries, employee and pension benefits, vacation pay and employee expenses payable on or after the Filing Date, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements;
- (b) up until December 24, 2023, all amounts relating to honouring gift cards issued before the Filing Date, subject to further Order of this Court;
- (c) the fees and disbursements of any Assistants retained or employed by any of the Mastermind Entities in respect of these proceedings, at their standard rates and charges; and
- (d) with the consent of the Monitor, amounts owing for goods or services actually supplied to the Mastermind Entities prior to the Filing Date by (i) providers of credit, debit and gift card processing related services, (ii) logistics, warehouse or supply chain providers, such as transportation providers, customs brokers and freight forwarders, (iii) providers of information, internet and other technology, including ecommerce providers and related services, and (iv) other suppliers or service providers if, in the

opinion of the Mastermind Entities, following consultation with the Monitor, such payment is necessary to maintain the uninterrupted operations of the Business.

8. **THIS COURT ORDERS** that, except as otherwise provided to the contrary herein and subject to the Forbearance Agreement, the Mastermind Entities shall be entitled but not required to pay all reasonable expenses incurred by the Mastermind Entities in carrying on the Business in the ordinary course after this Order in accordance with the Approved Cash Flow, and in carrying out the provisions of this Order, which expenses shall, subject to the Forbearance Agreement include, without limitation:

- (a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors and officers insurance), IT services, data services, maintenance and security services; and
- (b) payment for goods or services actually supplied to the Mastermind Entities following the Filing Date.

9. **THIS COURT ORDERS** that the Mastermind Entities shall, in accordance with legal requirements and subject to the Forbearance Agreement, remit or pay:

- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without

limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, and (iii) income taxes;

- (b) all goods and services taxes, harmonized sales taxes, or other applicable sales taxes (collectively, “**Sales Taxes**”) required to be remitted by the Mastermind Entities in connection with the sale of goods and services by the Mastermind Entities, but only where such Sales Taxes are accrued or collected after the Filing Date, or where such Sales Taxes were accrued or collected prior to the Filing Date but not required to be remitted until on or after the Filing Date; and
- (c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the Mastermind Entities.

10. **THIS COURT ORDERS** that until a real property lease is disclaimed in accordance with the CCAA, the Mastermind Entities shall pay all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under the lease, but for greater certainty, excluding accelerated rent or penalties, fees or other charges arising as a result of the insolvency of any of the Mastermind Entities, the making of this Order or the commencement of any insolvency proceedings) or as otherwise may be negotiated between the applicable Mastermind

Entity and the landlord from time to time ("**Rent**"), for the period commencing from and including the Filing Date, twice monthly in equal payments on the first and fifteenth day of each month, in advance (but not in arrears) in the amounts set out in the applicable lease or, with the consent of the Monitor, at such other intervals and dates as may be agreed to between the applicable Mastermind Entity and landlord. On the date of the first of such payments, any Rent relating to the period commencing from and including the Filing Date shall also be paid.

11. **THIS COURT ORDERS** that, except as specifically permitted herein or in the Forbearance Agreement and the Credit Agreement, the Mastermind Entities are hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by any of the Mastermind Entities to any of their creditors as of the Filing Date, other than payments of principal, interest or amounts otherwise owing by the Mastermind Entities pursuant to the Credit Agreement; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of their Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business; provided that with respect to real property leases, the Mastermind Entities may, subject to the provisions of the CCAA and paragraphs 9,12 and 13 herein, vacate, abandon or quit the whole (but not part of) and may permanently (but not temporarily) cease, downsize or shut down any of the Business or operations in respect of any leased premises.

RESTRUCTURING

12. **THIS COURT ORDERS** that the Mastermind Entities shall, subject to such requirements as are imposed by the CCAA, such covenants as may be contained in the

Credit Agreement or the Forbearance Agreement or as otherwise ordered by this Court, have the right to:

- (a) permanently or temporarily cease, downsize or shut down any of their business or operations, and to dispose of redundant or non-material assets not exceeding \$25,000 in any one transaction or \$50,000 in the aggregate;
- (b) vacate, abandon or quit the whole but not any part of any leased premises and/or disclaim any real property lease, and all ancillary agreements relating to any leased premises;
- (c) sell inventory in the ordinary course of business consistent with past practice, or otherwise with the consent of the Monitor and the Agent;
- (d) terminate the employment of their employees or temporarily lay off such of their employees as they deem appropriate;
- (e) refuse to honour any existing return policies, refunds, discounts or other similar customer programs or obligations; and
- (f) pursue all avenues of financing, restructuring, sale or reorganizing the Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing, restructuring, sale or reorganizing,

all of the foregoing to permit the Mastermind Entities to proceed with an orderly restructuring of the Mastermind Entities or the Business (the “**Restructuring**”).

13. **THIS COURT ORDERS** that the Mastermind Entities shall provide each of the relevant landlords with notice of the Mastermind Entities' intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Mastermind Entities' entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Mastermind Entities, or by further Order of this Court upon application by the Mastermind Entities on at least two (2) days' notice to such landlord and any such secured creditors. If any of the Mastermind Entities disclaim the lease governing such leased premises in accordance with Section 32 of the CCAA, they shall not be required to pay Rent under such lease pending resolution of any such dispute (other than Rent payable for the notice period provided for in Section 32(5) of the CCAA), and the disclaimer of the lease shall be without prejudice to the Mastermind Entities' claim to the fixtures in dispute.

14. **THIS COURT ORDERS** that if a notice of disclaimer is delivered pursuant to Section 32 of the CCAA, then (a) during the notice period prior to the effective time of the disclaimer, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the Mastermind Entities and the Monitor 24 hours' prior written notice, and (b) at the effective time of the disclaimer, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the Mastermind Entities in respect of such lease or leased premises, provided that nothing

herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

NO PROCEEDINGS AGAINST THE MASTERMIND ENTITIES OR THE PROPERTY

15. **THIS COURT ORDERS** that until and including January 26, 2024 or such later date as this Court may order (the “**Stay Period**”), no proceeding or enforcement process in any court or tribunal (each, a “**Proceeding**”) shall be commenced or continued against or in respect of any of the Mastermind Entities or the Monitor or their respective employees and representatives acting in such capacities, or affecting the Business or the Property, except with the written consent of the Mastermind Entities and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of any of the Mastermind Entities or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court or the prior written consent of the Mastermind Entities and the Monitor.

NO EXERCISE OF RIGHTS OR REMEDIES

16. **THIS COURT ORDERS** that during the Stay Period, all rights and remedies of any individual, firm, corporation, organization, governmental unit, body or agency, or any other entities (all of the foregoing, collectively being “**Persons**” and each being a “**Person**”) against or in respect of any of the Mastermind Entities or the Monitor or their respective employees and representatives acting in such capacities, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the Mastermind Entities and the Monitor, or leave of this Court, provided that nothing in this Order shall (i) empower the Mastermind Entities to carry on any business which the Mastermind Entities are not lawfully entitled to carry on, (ii) affect such

investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA, (iii) prevent the filing of any registration to preserve or perfect a security interest, (iv) prevent the registration of a claim for lien, or (v) subject to paragraph 42 hereof, prevent the Agent from exercising any rights or remedies against the Mastermind Entities or the Property under or pursuant to the Credit Agreement, the Blocked Accounts Agreement, the Forbearance Agreement or any other Loan Document (as defined in the Credit Agreement) or the DIP Charge (as defined below).

NO INTERFERENCE WITH RIGHTS

17. **THIS COURT ORDERS** that during the Stay Period, no Person shall accelerate, suspend, discontinue, fail to honour, alter, interfere with, repudiate, rescind, terminate or cease to perform any right, renewal right, contract, agreement, lease, sublease, licence, authorization or permit in favour of or held by any of the Mastermind Entities, except with the prior written consent of the Mastermind Entities and the Monitor, or leave of this Court.

CONTINUATION OF SERVICES

18. **THIS COURT ORDERS** that during the Stay Period, all Persons having oral or written agreements or arrangements with any of the Mastermind Entities or statutory or regulatory mandates for the supply or license of goods and/or services, including without limitation all computer software, communication and other data services, centralized banking services, cash management services, payroll and benefit services, insurance, freight services, logistics services, transportation services, customs clearing and importing services, warehouse services, security services, management services, merchandise or procurement sourcing services, utility or other services to the Business

or any of the Mastermind Entities, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with, suspending or terminating the supply or license of such goods or services as may be required by any of the Mastermind Entities, and that the Mastermind Entities shall be entitled to the continued use of their current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the Filing Date are paid by the Mastermind Entities in accordance with normal payment practices of the applicable Mastermind Entity or such other practices as may be agreed upon by the supplier or service provider and the applicable Mastermind Entity and the Monitor, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

19. **THIS COURT ORDERS** that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided on or after the Filing Date, nor shall any Person be under any obligation on or after the Filing Date to advance or re-advance any monies or otherwise extend any credit to any of the Mastermind Entities. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

APPROVAL OF KEY EMPLOYEE RETENTION PLAN

20. **THIS COURT ORDERS** that the Key Employee Retention Plan (the “**KERP**”) as described in the Second Milanovich Affidavit and attached as confidential Exhibit “O” thereto, is hereby approved and the Mastermind Entities are authorized to make the

payments contemplated thereunder in accordance with the terms and conditions of the KERP.

21. **THIS COURT ORDERS** that the key employees referred to in the KERP (the “**KERP Employees**”) shall be entitled to the benefit of and are hereby granted a charge on the Property (the “**KERP Charge**”), which charge shall not exceed the aggregate amount of \$286,000, to secure any payments to the KERP Employees under the KERP. The KERP Charge shall have the priority set out in paragraphs 44 and 46 herein.

NO PRE-FILING VERSUS POST-FILING SET-OFF

22. **THIS COURT ORDERS** that no Person shall be entitled to set off any amounts that (a) are or may become due to any Mastermind Entity in respect of obligations arising prior to the Filing Date with any amounts that are or may become due from such Mastermind Entity in respect of obligations arising on or after the Filing Date, or (b) are or may become due from any Mastermind Entity in respect of obligations arising prior to the Filing Date with any amounts that are or may become due to such Mastermind Entity in respect of obligations arising on or after the Filing Date, each without the consent of the Mastermind Entities and the Monitor or further Order of this Court.

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

23. **THIS COURT ORDERS** that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Mastermind Entities with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Mastermind Entities whereby the

directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a Plan in respect of the Mastermind Entities, if one is filed, is sanctioned by this Court or is refused by the creditors of the Mastermind Entities or this Court.

DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

24. **THIS COURT ORDERS** that the Mastermind Entities shall indemnify their respective directors and officers against obligations and liabilities that they may incur as directors or officers of the Mastermind Entities after the commencement of the within proceedings, except to the extent that, with respect to any officer or director, the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

25. **THIS COURT ORDERS** that the directors and officers of each of the Mastermind Entities shall be entitled to the benefit of and are hereby granted a charge (the "**D&O Charge**") on the Property, which charge shall not exceed an aggregate amount of \$5,000,000, unless permitted by further Order of this Court, as security for the indemnity provided in paragraph 24 of this Order. The D&O Charge shall have the priority set out in paragraphs 44 and 46 herein.

26. **THIS COURT ORDERS** that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the D&O Charge, and (b) the Mastermind Entities' directors and officers shall only be entitled to the benefit of the D&O Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent

that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 24 of this Order.

APPOINTMENT OF MONITOR

27. **THIS COURT ORDERS** that A&M is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Mastermind Entities with the powers and obligations set out in the CCAA or set forth herein and that the Mastermind Entities and their respective shareholders or partners (as applicable), officers, directors, and Assistants shall advise the Monitor of all material steps taken by any of the Mastermind Entities pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

28. **THIS COURT ORDERS** that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- (a) monitor the Mastermind Entities' receipts and disbursements;
- (b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, the Restructuring, and such other matters as may be relevant to the proceedings herein;
- (c) assist the Mastermind Entities, to the extent required by the Mastermind Entities, with the Restructuring, including in continuing negotiations with any Person in an effort to pursue the Restructuring;

- (d) liaise and consult with the Mastermind Entities, any liquidation agents or consultants that are approved by this Court, and any Assistants, to the extent required, with respect to all matters relating to the Property, the Business, the Restructuring, and such other matters as may be relevant to the proceedings herein;
- (e) assist the Mastermind Entities, to the extent required by the Mastermind Entities, in their dissemination to the Agent and its counsel of financial and other information as agreed to between the Mastermind Entities and the Agent pursuant to the Credit Agreement, the Forbearance Agreement, or otherwise;
- (f) advise the Mastermind Entities in their development of the Plan and amendment to the Plan, if applicable;
- (g) assist the Mastermind Entities, to the extent required by the Mastermind Entities, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;
- (h) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Mastermind Entities, wherever located and to the extent that is necessary to adequately assess the Mastermind Entities' business and financial affairs or to perform its duties arising under this Order;

- (i) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order; and
- (j) perform such other duties as are required by this Order or by this Court from time to time.

29. **THIS COURT ORDERS** that the Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

30. **THIS COURT ORDERS** that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act, 1999*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything

done in pursuance of the Monitor's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

31. **THIS COURT ORDERS** that the Monitor shall provide any creditor of the Mastermind Entities with information provided by the Mastermind Entities in response to reasonable requests for information made in writing by such creditor and addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Mastermind Entities is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Mastermind Entities may agree.

32. **THIS COURT ORDERS** that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, neither the Monitor nor its employees and representatives acting in such capacities shall incur any liability or obligation as a result of the Monitor's appointment or the carrying out by it of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

33. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor and counsel to the Mastermind Entities, shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, whether incurred prior to, on or after the Filing Date, by the Mastermind Entities as part of the costs of these proceedings. The Mastermind Entities are hereby authorized and directed to pay the accounts of the

Monitor, counsel for the Monitor and counsel for the Mastermind Entities on a weekly basis or as otherwise agreed among the parties.

34. **THIS COURT ORDERS** that the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

35. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor and counsel to the Mastermind Entities shall be entitled to the benefit of and are hereby granted a charge (the “**Administration Charge**”) on the Property, which charge shall not exceed an aggregate amount of \$1,000,000, unless permitted by further Order of this Court, as security for their professional fees and disbursements incurred at their standard rates and charges, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 44 and 46 herein.

FORBEARANCE AGREEMENT AND DIP CHARGE

36. **THIS COURT ORDERS** that the execution, delivery and performance by the Mastermind Entities of the Forbearance Agreement is hereby authorized and approved, with such minor amendments as the Mastermind Entities and the Agent, with the approval of the Monitor may agree upon. The Mastermind Entities are hereby authorized and directed to comply with and perform the provisions of the Forbearance Agreement and the Credit Agreement.

37. **THIS COURT ORDERS** that the Mastermind Entities' compliance with, and performance of, the Blocked Accounts Agreement from and after the date of this Order is hereby authorized and approved.

38. **THIS COURT ORDERS** that Mastermind LP shall be entitled, subject to the terms of the Forbearance Agreement and the Credit Agreement and paragraphs 6 and 39 of this Order, to continue to obtain and borrow, repay and re-borrow monies under the Revolving Loan Facility pursuant to the Forbearance Agreement and Credit Agreement in order to finance Mastermind LP's working capital requirements.

39. **THIS COURT ORDERS** that subject to the provisions of the Credit Agreement, the Forbearance Agreement and the Blocked Accounts Agreement and paragraph 39 of this Order, the Mastermind Entities are hereby authorized and directed to pay all of their indebtedness, interest, fees, liabilities and obligations to the Agent under and pursuant to the Credit Agreement and the Forbearance Agreement, whether such indebtedness arose before or after the Filing Date.

40. **THIS COURT ORDERS** that the Agent may, in accordance with the terms of the Credit Agreement, the Forbearance Agreement and the Blocked Accounts Agreement, and as described in the Milanovich Affidavits, apply the proceeds of inventory or other property subject to a lien in favour of the Agent deposited in the Mastermind Entities' bank accounts (other than the HST Account), whether directly or through blocked accounts, against the indebtedness of the Mastermind Entities under the Credit Agreement and the Forbearance Agreement, whether such indebtedness arose before or after the Filing Date, provided that no advance of funds made under the Credit Agreement on or after the date of this Order shall be used to reduce any pre-filing

obligations of the Mastermind Entities under the Credit Agreement or Forbearance Agreement.

41. **THIS COURT ORDERS** that the Agent shall be entitled to the benefit of and is hereby granted a charge (the “**DIP Charge**”) on the Property as security for any advances made under the Credit Agreement from and after the date of this Order, which DIP Charge shall not secure an obligation that exists before the date of this Order and shall not exceed the aggregate amount of \$36,250,000, plus interest, costs and expenses. The DIP Charge shall have the priority set out in paragraphs 44 and 46 herein.

42. **THIS COURT ORDERS** that, the Agent may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP Charge, and upon the earlier of the occurrence of a Terminating Event or the last day of the Forbearance Period (each as defined in the Forbearance Agreement) notwithstanding any other provision of this Order:

- (a) the Agent may cease making advances to Mastermind LP;
- (b) the Agent may, upon five (5) days prior written notice to the Mastermind Entities and the Monitor:
 - (i) exercise any and all rights or remedies against the Mastermind Entities or the Property under or pursuant to the Credit Agreement, the Blocked Accounts Agreement, the Forbearance Agreement or any other Loan Document (defined in the Credit Agreement) or the DIP Charges;

- (ii) set off and/or consolidate any amounts owing by the Agent to the Mastermind Entities against the obligations of the Mastermind Entities to the DIP Lender under the Credit Agreement, the Blocked Accounts Agreement, the Forbearance Agreement or any other Loan Document (defined in the Credit Agreement) and make demand, accelerate payment and give other notices;
 - (iii) exercise any and all rights or remedies against the Mastermind Entities or the Property under or pursuant to the Credit Agreement, the Blocked Accounts Agreement, the Forbearance Agreement or any other Loan Document (defined in the Credit Agreement); and
 - (iv) apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Mastermind Entities and for the appointment of a trustee in bankruptcy of the Mastermind Entities;
- (c) the foregoing rights and remedies of the Agent shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Mastermind Entities or the Property.

43. **THIS COURT ORDERS AND DECLARES** that the Agent shall be treated as unaffected in the Plan (if any) filed by the Mastermind Entities under the CCAA, or any proposal filed by the Mastermind Entities under the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the “**BIA**”), with respect to any obligations outstanding under the Credit Agreement or the Forbearance Agreement as of, from or after the Filing Date.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

44. **THIS COURT ORDERS** that the priorities of the KERP Charge, the D&O Charge, the Administration Charge and the DIP Charge and (collectively, the “**Charges**”), as among them, shall be as follows:

First - Administration Charge (to the maximum amount of \$1,000,000);
and

Second – D&O Charge (to the maximum amount of \$5,000,000);

Third – DIP Charge (to the maximum amount of \$36,250,000, plus interest, fees and expenses);

Fourth – KERP Charge (to the maximum amount of \$286,000);.

45. **THIS COURT ORDERS** that the filing, registration or perfection of the Charges shall not be required, and that the Charges shall be effective as against the Property and shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

46. **THIS COURT ORDERS** that each of the Charges shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, “**Encumbrances**”) in favour of any Person notwithstanding the order of perfection or attached.

47. **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court on notice to parties in interest, the Mastermind

Entities shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Charges, unless the Mastermind Entities also obtain the prior written consent of the Monitor and the other beneficiaries of the Charges, or further Order of this Court.

48. **THIS COURT ORDERS** that the Charges shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the “**Chargees**”) shall not otherwise be limited or impaired in any way by: (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to the BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan document, lease, sublease, offer to lease or other agreement (collectively, an “**Agreement**”) which binds any of the Mastermind Entities, and notwithstanding any provision to the contrary in any Agreement:

- (a) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of the Credit Agreement or the Forbearance Agreement shall create or be deemed to constitute a breach by any Mastermind Entity of any Agreement to which it is a party;
- (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the creation of the Charges or the Mastermind Entities entering into the

Forbearance Agreement or the execution, delivery or performance of the Credit Agreement, Forbearance Agreement or any other Loan Document; and

- (c) the payments made by the Mastermind Entities pursuant to this Order and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

49. **THIS COURT ORDERS** that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the applicable Mastermind Entity's interest in such real property leases.

SEALING

50. **THIS COURT ORDERS** that the KERP and related payment information attached as confidential Exhibit "O" to the Second Milanovich Affidavit are hereby sealed and shall not form part of the Court record, subject to further order of this Court.

SERVICE AND NOTICE

51. **THIS COURT ORDERS** that the Monitor shall (i) without delay, publish in *The Globe and Mail* (National Edition) a notice containing the information prescribed under the CCAA, and (ii) within five (5) days after the Filing Date, (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, or cause to be sent, in the prescribed manner or by electronic message to the e-mail addresses as last shown on the records of the Mastermind Entities, a notice to every known creditor who has a claim against any of the Mastermind Entities of more than \$1,000, and (C) prepare a list

showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Subsection 23(1)(a) of the CCAA and the regulations made thereunder, provided that the Monitor shall not make the claims, names and addresses of the individuals who are creditors publicly available.

52. **THIS COURT ORDERS** that the E-Service Guide of the Commercial List (the “**Guide**”) is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Guide (which can be found on the Commercial List website at <https://www.ontariocourts.ca/scj/practice/regional-practice-directions/eservice-commercial/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the *Rules of Civil Procedure*. Subject to Rule 3.01(d) of the *Rules of Civil Procedure* and paragraph 13 of the Guide, service of documents in accordance with the Guide will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Guide with the following URL: <https://www.alvarezandmarsal.com/Mastermind>.

53. **THIS COURT ORDERS** that if the service, distribution or notice of documents in accordance with the Guide or the CCAA and the regulations thereunder is not practicable, the Mastermind Entities, the Monitor and their respective counsel are at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding copies thereof by prepaid ordinary mail, courier, personal delivery, facsimile transmission or electronic message to the Mastermind Entities’ creditors or other interested parties at their

respective addresses (including e-mail addresses) as last shown in the books and records of the Mastermind Entities and that any such service, distribution or notice shall be deemed to be received on the earlier of (a) the date of forwarding thereof, if sent by electronic message on or prior to 5:00 p.m. (Eastern Time), (b) the next business day following the date of forwarding thereof, if sent by courier, personal delivery, facsimile transmission or electronic message sent after 5:00 p.m. (Eastern Time), or (c) on the business day following the date of forwarding thereof, if sent by ordinary mail.

54. **THIS COURT ORDERS** that the Mastermind Entities, the Monitor and their respective counsel are at liberty to serve or distribute this Order, any other materials and orders as may be reasonably required in these proceedings, including any notices, or other correspondence, by forwarding copies thereof by electronic message (including by e-mail) to the Mastermind Entities' creditors or other interested parties and their advisors, as applicable. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of legal or judicial obligation, and notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations* (SOR/2013-221).

GENERAL

55. **THIS COURT ORDERS** that any interested party that wishes to amend or vary this Order shall be entitled to appear or bring a motion before this Court to vary or amend this order on not less than seven (7) days' notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order; provided, however, that the Chargees shall be entitled to rely on this Order as granted and on the Charges and priorities set forth in paragraphs 44 and 46 hereof

with respect to any advances made and payments received under the Credit Agreement and Forbearance Agreement, and any fees, expenses and disbursements incurred, as applicable, until the date this Order may be amended, varied or stayed.

56. **THIS COURT ORDERS** that, notwithstanding paragraph 55 of this Order, each of the Mastermind Entities or the Monitor may from time to time apply to this Court to amend, vary or supplement this Order or for advice and directions in the discharge of their respective powers and duties hereunder or in the interpretation of this Order.

57. **THIS COURT ORDERS** that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of any of the Mastermind Entities, the Business or the Property.

58. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Mastermind Entities, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Mastermind Entities and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Mastermind Entities and the Monitor and their respective agents in carrying out the terms of this Order.

59. **THIS COURT ORDERS** that each of the Mastermind Entities and the Monitor be at liberty and are hereby authorized and empowered to apply to any court, tribunal,

regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

60. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. (Eastern Time) on the date of this Order without the need for entry or filing.

TAB 6

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE) THURSDAY, THE 30th
)
JUSTICE STEELE) DAY OF NOVEMBER, 2023

IN THE MATTER OF THE *COMPANIES' CREDITORS*
ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS
AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF MASTERMIND GP INC.

(the "**Applicant**")

LIQUIDATION SALE APPROVAL ORDER

THIS MOTION, made by the Applicant pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") for an order, among other things, approving the transactions contemplated under a consulting agreement between Gordon Brothers Canada ULC (the "**Consultant**") and Mastermind LP ("**Mastermind LP**" and together with the Applicant, the "**Mastermind Entities**") dated as of November 24, 2023 (the "**Consulting Agreement**") and certain related relief, was heard this day via videoconference.

ON READING the Notice of Motion of the Applicant, the Affidavit of Lucio Milanovich sworn on November 29, 2023 and the exhibits thereto and the First Report of Alvarez & Marsal Canada Inc., in its capacity as Court-appointed monitor (the "**Monitor**"), dated November 29, 2023, and on hearing the submissions of respective counsel for the Mastermind Entities, the Monitor, Canadian Imperial Bank of Commerce, in its capacity as administrative agent for the lenders under the credit agreement dated October 24, 2014 with Mastermind LP as borrower and the Applicant as guarantor, the Consultant,

and such other counsel as were present, no one else appearing although duly served as appears from the Affidavit[s] of Service, filed:

SERVICE AND DEFINITIONS

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record herein is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

2. **THIS COURT ORDERS** that all capitalized term used and not defined herein shall have the meaning ascribed thereto in the Consulting Agreement or the Amended and Restated Initial Order in these proceedings dated November 30, 2023 (as amended and restated from time to time the “**Initial Order**”) as applicable.

THE CONSULTING AGREEMENT

3. **THIS COURT ORDERS** that the Consulting Agreement, including the sale guidelines attached hereto as Schedule “A” (the “**Sale Guidelines**”), and the transactions contemplated thereunder are hereby approved, authorized and ratified, and that the execution of the Consulting Agreement by Mastermind LP is hereby approved, authorized, and ratified with such minor amendments as Mastermind LP (with the consent of the Monitor) and the Consultant may agree to in writing. Subject to the provisions of this Order and the Initial Order, Mastermind LP is hereby authorized and directed to take any and all actions as may be necessary or desirable to implement the Consulting Agreement and each of the transactions contemplated therein. Without limiting the foregoing, Mastermind LP is authorized to execute any other agreement, contract, deed or other document, or take any other action, which could be required or be useful to give full and complete effect to the Consulting Agreement.

THE LIQUIDATION SALE

4. **THIS COURT ORDERS** that Mastermind LP, with the assistance of the Consultant, is authorized to conduct the Sale in accordance with this Order, the Consulting Agreement and the Sale Guidelines and to advertise and promote the Sale in accordance with the Sale Guidelines. If there is a conflict between this Order, the Consulting Agreement and

the Sale Guidelines, the order of priority of documents to resolve such conflicts is as follows: (1) this Order; (2) the Sale Guidelines; and (3) the Consulting Agreement.

5. **THIS COURT ORDERS** that, subject to paragraph 12 of the Initial Order, Mastermind LP, with the assistance of the Consultant, is authorized to market and sell the Merchandise, FF&E and Additional Consultant Goods in accordance with the Sale Guidelines, free and clear of all liens, claims, encumbrances, security interests, mortgages, charges, trusts, deemed trusts, executions, levies, financial, monetary or other claims, whether or not such claims have attached or been perfected, registered or filed and whether secured, unsecured, quantified or unquantified, contingent or otherwise, whensoever and howsoever arising, and whether such claims arose or came into existence prior to the date of this Order or came into existence following the date of this Order (in each case, whether contractual, statutory, arising by operation of law, in equity or otherwise) (all of the foregoing collectively, “**Claims**”), including, without limitation, the Administration Charge, the D&O Charge, the KERP Charge and the DIP Charge and any other charges hereafter granted by this Court in these proceedings (collectively, the “**Charges**”), and all Claims, charges, security interests or liens evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario), or any other personal or movable property registration system (all of such Claims, charges (including the Charges), security interests and liens collectively referred to herein as “**Encumbrances**”), which Encumbrances will attach instead to the proceeds of the Sale (other than amounts specified in paragraph 15 of this Order) in the same order and priority as they existed immediately prior to such Sale.

6. **THIS COURT ORDERS** that, subject to the terms of this Order, the Initial Order and the Sale Guidelines, or any greater restrictions in the Consulting Agreement or the Sale Guidelines, the Consultant shall have the right to enter and use the Stores and all related store services and all facilities and all furniture, trade fixtures and equipment, including the FF&E, located at the Stores, and other assets of Mastermind LP as designated under the Consulting Agreement, for the purpose of conducting the Sale and for such purposes, the Consultant shall be entitled to the benefit of Mastermind LP’s stay of proceedings provided under the Initial Order, as such stay of proceedings may be extended by further Order of the Court.

7. **THIS COURT ORDERS** that until the Sale Termination Date for each Store, which date shall be no later than February 29, 2024, or such other as may be agreed upon by Mastermind LP, the Consultant, the Monitor and the applicable landlord, the Consultant shall have access to (a) the Stores in accordance with the applicable Lease (as defined in the Sale Guidelines), (b) the Distribution Centre in accordance with the applicable contractual agreements between Mastermind LP and the third party operator of the Distribution Centre, and (c) the Corporate Office in accordance with the applicable Lease, in each case in accordance with the Sale Guidelines, as applicable, and on the basis that the Consultant is assisting Mastermind LP and Mastermind LP has granted the right of access to the applicable Stores, the Distribution Centre and Corporate Office to the Consultant. To the extent that the terms of the applicable Leases are in conflict with any term of this Order or the Sale Guidelines, the terms of this Order and the Sale Guidelines shall govern.

8. **THIS COURT ORDERS** that nothing in this Order shall amend or vary, or be deemed to amend or vary the terms of the Leases. Nothing contained in this Order or the Sale Guidelines shall be construed to create or impose upon Mastermind LP or the Consultant any additional restrictions not contained in the applicable Lease.

9. **THIS COURT ORDERS** that, subject to and in accordance with the Consulting Agreement, the Sale Guidelines and this Order, the Consultant is authorized to advertise and promote the Sale, without further consent of any Person other than Mastermind LP and the Monitor as provided under the Consulting Agreement or a Landlord (as defined in the Sale Guidelines) as provided under the Sale Guidelines.

10. **THIS COURT ORDERS** that until the Sale Termination Date, the Consultant shall have the right to use, without interference by any Person (including intellectual property licensor), any and all of Mastermind LP's trade names, trademarks and logos relating to and used in connection with the operation of the Stores, as well as any and all licenses and rights granted to Mastermind LP to use the trade names, trademarks, and logos of third parties, solely for the purpose of advertising and conducting the Sale of the Merchandise, FF&E and Additional Consultant Goods in accordance with the terms of the Consulting Agreement, the Sale Guidelines, and this Order.

CONSULTANT LIABILITY

11. **THIS COURT ORDERS** that the Consultant shall act solely as an independent consultant to Mastermind LP and that it shall not be liable for any claims against Mastermind LP other than as expressly provided in the Consulting Agreement (including the Consultant's indemnity obligations thereunder) or the Sale Guidelines and, for greater certainty:

- (a) the Consultant shall not be deemed to be an owner or in possession, care, control or management of the Stores, the Distribution Centre or Corporate Office, of the assets located therein or associated therewith or of Mastermind LP's employees located at the Stores, the Distribution Centre or Corporate Office or any other property of Mastermind LP;
- (b) the Consultant shall not be deemed to be an employer, or a joint or successor employer or a related or common employer or payor within the meaning of any legislation governing employment or labour standards or pension benefits or health and safety or other statute, regulation or rule of law or equity for any purpose whatsoever in relation to the employees of Mastermind LP, and shall not incur any successorship liabilities whatsoever; and
- (c) Mastermind LP shall bear all responsibility for any liability whatsoever (including without limitation, losses, costs, damages, fines or awards) relating to Claims of customers, employees and any other Persons arising from events occurring at the Stores during and after the term of the Sale, or otherwise in connection with the Sale, except to the extent that such liability or Claims arise from or relate to matters that the Consultant has indemnified the Merchant Indemnified Parties for pursuant to section 9(b) of the Consulting Agreement.

12. **THIS COURT ORDERS** that, to the extent any Landlord may have a Claim against Mastermind LP arising solely out of the conduct of the Consultant in conducting the Sale for which Mastermind LP has one or more Claims against the Consultant under the

Consulting Agreement, Mastermind LP shall be deemed to have assigned such Claims free and clear to the applicable Landlord (the “**Assigned Landlord Rights**”); provided that each such Landlord shall only be permitted to advance each such Claims against the Consultant if written notice, including the reasonable details of such Claims, is provided by such Landlord to the Consultant, Mastermind LP and the Monitor during the period from the Sale Commencement Date to the date that is thirty (30) days following the Sale Termination Date, provided however, that the Landlords shall be provided with access to the Stores to inspect the Stores within fifteen (15) days following the Sale Termination Date.

CONSULTANT AN UNAFFECTED CREDITOR

13. **THIS COURT ORDERS** that the Consulting Agreement shall not be repudiated, resiliated or disclaimed by Mastermind LP nor shall the Claims of the Consultant pursuant to the Consulting Agreement be compromised or arranged pursuant to any plan of arrangement or compromise among the Mastermind Entities and their creditors (a “**Plan**”) and, for greater certainty, the Consultant shall be treated as an unaffected creditor in these proceedings and under any Plan.

14. **THIS COURT ORDERS** that Mastermind LP is hereby authorized and directed, in accordance with the Consulting Agreement, to remit all amounts that become due to the Consultant thereunder.

15. **THIS COURT ORDERS** that no Encumbrances shall attach to any amounts payable or to be credited or reimbursed to, or retained by, the Consultant pursuant to the Consulting Agreement, including, without limitation, any amounts to be reimbursed by Mastermind LP to the Consultant pursuant to the Consulting Agreement, and at all times the Consultant will retain such amounts, free and clear of all Encumbrances, notwithstanding any enforcement or other process or Claims, all in accordance with the Consulting Agreement.

16. **THIS COURT ORDERS** that notwithstanding:

- (a) the pendency of these proceedings;

- (b) any application for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) ("**BIA**") in respect of the Mastermind Entities, or any bankruptcy order made pursuant to any such applications;
- (c) any assignment in bankruptcy made in respect of the Mastermind Entities;
- (d) the provisions of any federal or provincial statute; or
- (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of encumbrances, contained in any existing loan documents, lease, mortgage, security agreement, debenture, sublease, offer to lease or other document or agreement to which the Mastermind Entities are a party;

the Consulting Agreement and the transactions and actions provided for and contemplated therein, including without limitation, the payment of amounts due to the Consultant and the Assigned Landlord Rights shall be binding on any trustee in bankruptcy that may be appointed in respect of the Mastermind Entities and shall not be void or voidable by any Person, including any creditor of the Mastermind Entities, nor shall they, or any of them, constitute or be deemed to be a preference, fraudulent conveyance, transfer at undervalue or other challengeable reviewable transaction, under the BIA or any applicable law, nor shall they constitute oppressive or unfairly prejudicial conduct under any applicable law.

OTHER

17. **THIS COURT ORDERS** that the Mastermind Entities are authorized and permitted to transfer to the Consultant the Personal Information in the Mastermind Entities' custody and control solely for the purposes of assisting with and conducting the Sale and only to the extent necessary for such purposes.

GENERAL

18. **THIS COURT ORDERS** that this Order shall have full force and effect in all provinces and territories in Canada.

19. **THIS COURT HEREBY REQUESTS** the aid and recognition of any Court, tribunal, regulatory or administrative bodies, having jurisdiction in Canada or in the United States of America, to give effect to this Order and to assist the Mastermind Entities, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Mastermind Entities and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Mastermind Entities and the Monitor and their respective agents in carrying out the terms of this Order.

20. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of the date of this Order without the need for entry or filing.

SCHEDULE "A"
SALE GUIDELINES

(See attached)

SALE GUIDELINES

The following procedures shall apply to the sale (the “**Sale**”) of merchandise, furniture, fixtures and equipment at Mastermind LP’s (the “**Merchant**”) retail stores (individually, a “**Store**” and, collectively, the “**Stores**”).

Terms capitalized but not defined in these Sale Guidelines have the meanings ascribed to them in the initial order of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) granted on November 23, 2023 in connection with the proceedings under the *Companies’ Creditors Arrangement Act* (Canada) (the “**CCAA Proceedings**”) (as may be amended and restated from time to time, the “**Initial Order**”), or the Consulting Agreement (as defined below), as applicable.

1. Except as otherwise expressly set out herein, and subject to: (i) the Order of the Court granted on November 30, 2023 in the CCAA Proceedings (the “**Approval Order**”), approving the Consulting Agreement between Gordon Brothers Canada ULC (the “**Consultant**”) and Merchant, dated as of November 24, 2023 (the “**Consulting Agreement**”) and the transactions contemplated thereunder, (ii) any further Order of the Court, or (iii) any subsequent written agreement between the Merchant and its applicable landlord(s) (individually, a “**Landlord**” and, collectively, the “**Landlords**”) and approved by the Consultant, the Sale shall be conducted in accordance with the terms of the applicable leases/or other occupancy agreements for each of the affected Stores (individually, a “**Lease**” and, collectively, the “**Leases**”). However, nothing contained herein shall be construed so as to create or impose upon the Merchant or the Consultant any additional restrictions not contained in the applicable Lease.
2. The Sale shall be conducted so that each of the Stores remain open during their normal hours of operation provided for in the respective Leases for the Stores until the applicable premises vacate date for each Store under the Consulting Agreement (the “**Vacate Date**”), and in all cases no later than February 29, 2024, or such other date as may be agreed upon by the Consultant, the Merchant, the Monitor and the applicable landlord, the “**Sale Termination Date**”). Rent payable under the respective Leases shall be paid as provided in the Initial Order.
3. The Sale shall be conducted in accordance with applicable federal, provincial and municipal laws and regulations, unless otherwise ordered by the Court.
4. All display and hanging signs used by the Consultant in connection with the Sale shall be professionally produced and all hanging signs shall be hung in a professional manner. Notwithstanding anything to the contrary contained in the Leases, the Consultant may advertise the Sale at the Stores as a “Everything on Sale”, “Everything Must Go”, “Store Closing” or similar theme sale at the Stores (provided, however, that no signs shall advertise the Sale as a “Bankruptcy”, “Liquidation”, “Going out of Business” or refer to a court as having approved the Sale or refer to a “Trustee” and/or “Receiver”, unless otherwise agreed between the Consultant and applicable Landlord, it being understood that the French equivalent of “clearance” is “liquidation” and is permitted to be used). Forthwith

upon request from a Landlord, the Landlord's counsel, the Merchant or the Monitor, the Consultant shall provide the proposed signage packages along with proposed dimensions by email or facsimile to the applicable Landlord or to its counsel of record and the applicable Landlord shall notify the Consultant of any requirement for such signage to otherwise comply with the terms of the Lease and/or the Sale Guidelines and where the provisions of the Lease conflicts with these Sale Guidelines, these Sale Guidelines shall govern. The Consultant shall not use neon or day-glow signs or any handwritten signage (save that handwritten "you pay" or "topper" signs may be used). If a Landlord is concerned with "Store Closing" signs being placed in the front window of a Store or with the number or size of the signs in the front window, the Merchant, the Consultant and such Landlord will work together to resolve the dispute. Furthermore, with respect to enclosed mall Store locations without a separate entrance from the exterior of the enclosed mall, no exterior signs or signs in common areas of a mall shall be used unless explicitly permitted by the applicable Lease. In addition, the Consultant shall be permitted to utilize exterior banners/signs at stand alone or strip mall Stores or enclosed mall Store locations with a separate entrance from the exterior of the enclosed mall; provided, however, that: (i) no signage in any other common areas of a mall shall be used; and (ii) where such banners are not explicitly permitted by the applicable Lease and the applicable Landlord requests in writing that banners are not to be used, no banners shall be used absent further Order of the Court, which may be sought on an expedited basis on notice to the recipients listed in the service list in respect of the CCAA Proceedings (the "**Service List**"). Any banners used shall be located or hung so as to make clear that the Sale is being conducted only at the affected Store and shall not be wider than the premises occupied by the affected Store. All exterior banners shall be professionally hung and to the extent that there is any damage to the facade of the premises of a Store as a result of the hanging or removal of the exterior banner, such damage shall be professionally repaired at the expense of the Consultant.

5. The Consultant shall be permitted to utilize sign-walkers and street signage; provided, however, such sign-walkers and street signage shall not be located on the shopping centre or mall premises.
6. Subject to the Approval Order and only with the prior written consent of the Merchant, the Consultant shall be entitled to include Additional Consultant Goods in the Sale, provided that the Additional Consultant Goods are of like kind and category and no lesser quality to the Merchandise (as defined in the Consulting Agreement).
7. Conspicuous signs shall be posted in the cash register areas of each Store to the effect that all sales are "final" and customers with any questions or complaints are to call the Merchant's hotline number.
8. The Consultant shall not distribute handbills, leaflets or other written materials to customers outside of any of the Stores on a Landlord's property, unless explicitly permitted by the applicable Lease or, if distribution is customary in the shopping centre in which the Store is located. Otherwise, the Consultant may solicit customers in the Stores themselves. The Consultant shall not use any giant

balloons, flashing lights or amplified sound to advertise the Sale or solicit customers, except as explicitly permitted under the applicable Lease or agreed to by the applicable Landlord, and no advertising trucks shall be used on a Landlord's property or mall ring roads, except as explicitly permitted under the applicable Lease or agreed to by such Landlord.

9. At the conclusion of the Sale in each Store, the Consultant shall arrange that the premises for each Store are in "broom-swept" and clean condition, and shall arrange that the Stores are in the same condition as on the commencement of the Sale, ordinary wear and tear excepted. No property of any Landlord of a Store shall be removed or sold during the Sale. No permanent fixtures (other than Merchant FF&E (as defined below) for clarity) may be removed without the applicable Landlord's written consent unless otherwise provided by the applicable Lease and in accordance with the Initial Order and the Approval Order. Any trade fixtures or personal property left in a Store after the applicable Vacate Date in respect of which the applicable Lease has been disclaimed by the Merchant shall be deemed abandoned, with the applicable Landlord having the right to dispose of the same as the Landlord chooses, without any liability whatsoever on the part of such Landlord. Nothing in this paragraph shall derogate from or expand upon the Consultant's obligations under the Consulting Agreement.
10. Subject to the terms of paragraph 9 above, the Consultant may sell furniture, fixtures and equipment owned by the Merchant ("**Merchant FF&E**") and located in the Stores during the Sale. For greater certainty, Merchant FF&E does not include any portion of any of the Stores' HVAC system, fire suppression system and fire alarm or sprinkler system. The Merchant and the Consultant may advertise the sale of Merchant FF&E consistent with these Sale Guidelines on the understanding that the applicable Landlord may require such signs to be placed in discreet locations within the Stores reasonably acceptable to such Landlord. Additionally, the purchasers of any Merchant FF&E sold during the Sale shall only be permitted to remove such Merchant FF&E either through the back shipping areas designated by the applicable Landlord or through other areas after regular Store business hours or, through the front door of the Store during Store business hours if Merchant FF&E can fit in a shopping bag, with the applicable Landlord's supervision as required by such Landlord and in accordance with the Initial Order and the Approval Order. The Consultant shall repair any damage to the Stores resulting from the removal of any Merchant FF&E by the Consultant or by third party purchasers of Merchant FF&E from the Consultant.
11. The Consultant shall not make any alterations to interior or exterior Store lighting, except as authorized pursuant to the affected Lease. The hanging of exterior banners or other signage, where permitted in accordance with the terms of these Sale Guidelines, shall not constitute an alteration to a Store.
12. The Merchant hereby provides notice to the Landlords of the Merchant's and the Consultant's intention to sell and remove Merchant FF&E from the Stores. The Consultant shall make commercially reasonable efforts to arrange with each Landlord represented by counsel on the Service List and with any other Landlord that so requests, a walk-through with the Consultant to identify Merchant FF&E

subject to the Sale. The relevant Landlord shall be entitled to have a representative present in the applicable Store(s) to observe such removal. If the relevant Landlord disputes the Consultant's entitlement to sell or remove any Merchant FF&E under the provisions of the applicable Lease, such Merchant FF&E shall remain on the premises and shall be dealt with as agreed between the Merchant, the Consultant and such Landlord, or by further Order of the Court upon application by the Merchant on at least two (2) days' notice to such Landlord and the Monitor. If the Merchant has disclaimed or resiliated the Lease governing such Store in accordance with the CCAA Proceedings and the Initial Order, it shall not be required to pay rent under such Lease pending resolution of any such dispute (other than rent payable for the notice period provided for in the CCAA Proceedings and the Initial Order), and the disclaimer or resiliation of the Lease shall be without prejudice to the Merchant's or the Consultant's claim to Merchant FF&E in dispute.

13. If a notice of disclaimer or resiliation is delivered pursuant to the CCAA Proceedings and the Initial Order to a Landlord while the Sale is ongoing and the Store in question has not yet been vacated, then: (i) during the notice period prior to the effective time of the disclaimer or resiliation, such Landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the Merchant, the Monitor and the Consultant twenty-four (24) hours' prior written notice; and (ii) at the effective time of the disclaimer or resiliation, such Landlord shall be entitled to take possession of any such Store without waiver of or prejudice to any claims or rights such Landlord may have against the Merchant in respect of such Lease or Store, provided that nothing herein shall relieve such Landlord of any obligation to mitigate any damages claimed in connection therewith.
14. The Consultant and its agents and representatives shall have the same access rights to each Store as the Merchant under the terms of the applicable Lease, and each of the Landlords shall have the rights of access to each applicable Store during the Sale provided for in the applicable Lease (subject, for greater certainty, to any applicable stay of proceedings and the terms of the Initial Order).
15. The Merchant and the Consultant shall not conduct any auctions of Merchandise or Merchant FF&E at any of the Stores.
16. The Consultant shall designate a party to be contacted by the Landlords should a dispute arise concerning the conduct of the Sale. The initial contact person for the Consultant shall be David Braun or Durien Sanchez, who may be reached by email at dbraun@gordonbrothers.com or dsanchez@gordonbrothers.com. If the parties are unable to resolve the dispute between themselves, the applicable Landlord or the Merchant shall have the right to schedule a "status hearing" before the Court on no less than two (2) days' written notice to the other party or parties and the Monitor, during which time the Consultant shall cease all activity in dispute other than activity expressly permitted herein, pending determination of the matter by the Court; provided, however, subject to paragraph 4 of these Sale Guidelines, if a banner has been hung in accordance with these Sale Guidelines and is the

subject of a dispute, the Consultant shall not be required to take any such banner down pending determination of any dispute.

17. Nothing herein or in the Consulting Agreement is, or shall be deemed to be a consent by any Landlord to the sale, assignment or transfer of any Lease, or shall, or shall be deemed to, or grant to any Landlord any greater rights than already exist under the terms of any applicable Lease.
18. These Sale Guidelines may be amended by written agreement between the Consultant, the Merchant and the applicable Landlord, in consultation with the Monitor; provided, however, that such amended Sale Guidelines shall not affect or bind any other Landlord not privy thereto without further Order of the Court approving such amended Sale Guidelines.

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT*
ACT, R.S.C. 1985, C. C-36, AS AMENDED

Court File No. CV-23-00710259-
00CL

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF MASTERMIND GP INC.

Applicant

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at Toronto

SALE APPROVAL ORDER

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IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF MASTERMIND GP INC.

Applicant

Court File No. CV-23-00710259-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT
TORONTO

**MOTION RECORD
(RETURNABLE NOVEMBER 30, 2023)**

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