

**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.**

**FIRST REPORT OF THE MONITOR
ALVAREZ & MARSAL CANADA INC.**

NOVEMBER 29, 2023

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1.0 INTRODUCTION

- 1.1 On November 23, 2023 (the “**Filing Date**”), Mastermind GP Inc. (“**Mastermind GP**” or the “**Applicant**”) was granted protection under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”) pursuant to an initial order (the “**Initial Order**”) of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”). The proceedings commenced by the Applicant under the CCAA are referred to herein as the “**CCAA Proceedings**”.
- 1.2 The Stay (as defined below) and other protections and authorizations of the Initial Order were extended to Mastermind LP (together with Mastermind GP, the “**Mastermind Entities**”). Mastermind LP is a Canadian toy retailer, with 66 stores and approximately 800 employees across the country. Mastermind LP’s stores operate in Ontario, Alberta, British Columbia, Saskatchewan, Manitoba, New Brunswick, Nova Scotia, and Newfoundland and Labrador. Mastermind LP also operates an e-commerce platform.
- 1.3 Mastermind GP is the general partner of Mastermind LP and holds all of the Class B limited partnership units in Mastermind LP. The ultimate parent company of Mastermind GP is Birch Hill Equity Partners Management Inc. (“**BHEPMI**”), which is not an Applicant in the CCAA Proceedings.
- 1.4 Facing several unique challenges, a liquidity crisis and the imminent holiday sales season, the Mastermind Entities commenced the CCAA Proceedings to provide the breathing room, stability and flexibility necessary to allow the Mastermind Entities to conduct an immediate liquidation and closure of a sub-set of their store locations while they actively pursued a going concern sale transaction. Since the commencement of the CCAA

Proceedings, the Mastermind Entities have advanced discussions with a potential arm's length purchaser (the "**Potential Purchaser**") interested in acquiring a majority of the Mastermind Entities' store locations and have taken steps to ensure that their partial liquidation and store closure process can, subject to the Court's approval, be initiated immediately. As of the date of this first report (the "**First Report**"), the Mastermind Entities remain in advanced negotiations with the Potential Purchaser.

1.5 Additional details regarding the Mastermind Entities as well as their business and financial circumstances are set out in the Pre-Filing Report of the Proposed Monitor dated November 22, 2023 (the "**Pre-Filing Report**") filed by Alvarez & Marsal Canada Inc. ("**A&M**") prior to the commencement of the CCAA Proceedings. The Pre-Filing Report and other Court-filed documents in the CCAA Proceedings are available on the Monitor's (as defined below) case website at: www.alvarezandmarsal.com/Mastermind (the "**Case Website**"). A copy of the Pre-Filing Report is attached hereto as **Appendix "A"**.

1.6 The Initial Order, among other things:

- (i) appointed A&M as monitor of the Mastermind Entities in the CCAA Proceedings (in such capacity, the "**Monitor**");
- (ii) granted a stay of proceedings (the "**Stay**") up to and including November 30, 2023, in favour of the Mastermind Entities;
- (iii) authorized the Mastermind Entities' continued use of the Cash Management System (as defined in the Initial Order), including the blocked account

arrangements (the “**Blocked Accounts Agreement**”) in accordance with the CIBC Credit Agreement; and

- (iv) granted the Administration Charge and the D&O Charge over the Property (each as defined below).

2.0 PURPOSE OF THIS REPORT

2.1 The purpose of this First Report is to provide the Court with information, and where applicable, the Monitor’s views on:

- (i) certain updates since the granting of the Initial Order, including regarding Mastermind LP’s ongoing efforts to pursue a potential going concern transaction for a large number of the Mastermind Entities’ store locations;
- (ii) the Applicant’s proposed sale approval order (the “**Liquidation Sale Approval Order**”), among other things, approving the Consulting Agreement and the Sale Guidelines (each as defined below), and authorizing Mastermind LP, with the assistance of the Consultant (as defined below), to conduct a sale (the “**Sale**”) of the merchandise (the “**Merchandise**”) and furniture, fixtures and equipment (“**FF&E**”) at a sub-set of the Mastermind Entities’ store locations, in accordance with the Liquidation Sale Approval Order;
- (iii) the Applicant’s proposed amended and restated Initial Order (the “**ARIO**”), which, among other things:
 - (a) extends the Stay to and including January 26, 2024;

- (b) increases the quantum of the Administration Charge to \$1 million, and the D&O Charge to \$5.0 million;
 - (c) approves the Forbearance Agreement (as defined below) and grants various related relief, including a super-priority charge over the Property as security for advances under the CIBC Credit Agreement from and after the granting of the ARIO (the “**DIP Charge**”);
 - (d) approves a key employee retention plan (the “**KERP**”) and grants a super-priority charge over the Property (the “**KERP Charge**”) as security for payments to be made in accordance with the KERP; and
 - (e) seals the KERP and related payment information subject to further order of the Court;
- (iv) the activities of the Monitor since its appointment; and
 - (v) the Monitor’s conclusions and recommendations in connection with the foregoing.

3.0 TERMS OF REFERENCE AND DISCLAIMER

3.1 In preparing this First Report, A&M, in its capacity as Monitor, has been provided with, and has relied upon, unaudited financial information, books and records and financial information prepared by the Mastermind Entities and has held discussions with management of the Mastermind Entities and their legal counsel, as well as certain individuals at BHEPMI (collectively, the “**Information**”). Except as otherwise described in this Report in respect of the Mastermind Entities’ cash flow forecast:

- (i) the Monitor has reviewed the Information for reasonableness, internal consistency and use in the context in which it was provided. However, the Monitor has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Canadian Auditing Standards (“CASs”) pursuant to the *Chartered Professional Accountants Canada Handbook* (the “CPA Handbook”) and, accordingly, the Monitor expresses no opinion or other form of assurance contemplated under CASs in respect of the Information; and
- (ii) some of the information referred to in this Report consists of forecasts and projections. An examination or review of the financial forecasts and projections, as outlined in the CPA Handbook, has not been performed.

3.2 Future oriented financial information referred to in this Report was prepared based on the Mastermind Entities’ estimates and assumptions. Readers are cautioned that since projections are based upon assumptions about future events and conditions that are not ascertainable, actual results will vary from the projections, even if the assumptions materialize, and the variations could be significant.

3.3 This Report should be read in conjunction with the Pre-Filing Report and the Affidavit of Lucio Milanovich, the Interim Chief Financial Officer of Mastermind LP, sworn November 29, 2023 (the “**Second Milanovich Affidavit**”), and filed in support of the Applicant’s motion for the proposed ARIO and Liquidation Sale Approval Order. Capitalized terms used and not defined in this Report have the meanings given to them in the Pre-Filing Report or the Second Milanovich Affidavit, as applicable.

- 3.4 Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian dollars.

4.0 LIQUIDATION SALE APPROVAL ORDER

Liquidation Consultant Solicitation Process

- 4.1 As described in the Pre-Filing Report, Alvarez & Marsal Canada Securities Inc. (“**A&M Corporate Finance**”) was originally engaged to act as a financial advisor to the Mastermind Entities.
- 4.2 Prior to the Filing Date, the Mastermind Entities, with the assistance of A&M Corporate Finance, contacted five third party liquidators (collectively, the “**Potential Liquidators**”) identified as having the requisite expertise, qualifications and capability to implement a retail liquidation of all or a sub-set of the Mastermind Entities’ Merchandise and FF&E. The Potential Liquidators were requested to submit a consulting fee proposal and/or an equity proposal in respect of a potential liquidation contemplated as part of the CCAA Proceedings by November 15, 2023 (the “**Proposal Deadline**”).
- 4.3 In order to facilitate and assist the Potential Liquidators in conducting necessary due diligence in order to prepare and submit proposals: (i) A&M Corporate Finance and the Mastermind Entities established an electronic data room (the “**Data Room**”), which was populated with information relevant to the proposed liquidation, including detailed accounts of the Mastermind Entities’ inventory, operations and financial information; and (ii) each of the Potential Liquidators was given the opportunity to request further information and, if it so chose, conduct visits of the Mastermind Entities’ retail stores.

- 4.4 Following execution of a non-disclosure agreement: (i) the Potential Liquidators were granted access to the Data Room; (ii) additional information and clarification was provided to the Potential Liquidators upon request by the Mastermind Entities, with the assistance of A&M Corporate Finance; and (iii) certain of the Potential Liquidators had representatives attend store locations, to enable them to better understand the Merchandise, FF&E and general store operations. Ultimately, each of the Potential Liquidators submitted a consulting fee proposal before the Proposal Deadline.
- 4.5 After reviewing the Potential Liquidators' proposals, the Mastermind Entities, in consultation with its legal counsel, A&M Corporate Finance and CIBC, selected the proposal from Gordon Brothers Canada ULC (the "**Consultant**") as the most favourable proposal. The Monitor is supportive of the Consultant and is satisfied that: (i) the Consultant's services will assist the Mastermind Entities in conducting an efficient and value-maximizing Sale; and (ii) the Consultant is qualified, experienced and capable of performing its obligations under the Consulting Agreement in accordance with the Sale Guidelines.

Proposed Consulting Agreement and Sale Guidelines¹

- 4.6 A copy of the Consulting Agreement is attached as Exhibit "D" to the Second Milanovich Affidavit. The salient terms of the Consulting Agreement and the proposed sale guidelines for the Sale of the Mastermind Entities' Merchandise and FF&E (the "**Sale Guidelines**") are summarized in the following table:

¹ Capitalized terms used in this section of the First Report and not otherwise defined herein having the meaning ascribed to them in the Consulting Agreement or the Sale Guidelines, as applicable.

Summary of Terms of Consulting Agreement and Sale Guidelines	
Exclusive Consultant	<ul style="list-style-type: none"> The Consultant will act as the exclusive consultant of Mastermind LP for the purpose of conducting the Sale.
Timing	<ul style="list-style-type: none"> The Consulting Agreement will be deemed to be terminated in the event that Mastermind LP does not obtain the proposed Liquidation Sale Approval Order, approving the Consulting Agreement and the Sale. The Sale will commence on the first business day following the entry of the proposed Liquidation Sale Approval Order (the “Sale Commencement Date”). The Sale will end no later than January 31, 2024 (the “Sale Termination Date”), provided, however, that the Consultant and Mastermind LP may, in consultation with the Monitor, mutually agree to terminate the Sale at any store location prior to the Sale Termination Date.
Sales	<ul style="list-style-type: none"> All sales will be “final” with no returns allowed. The Consulting Agreement provides the Consultant with the right to supplement the Merchandise in the retail stores with additional goods (the “Additional Consultant Goods”) procured by the Consultant that are of like kind and category, and no lesser quality to the Merchandise in the stores, provided, however, that such Additional Consultant Goods are subject to consent by Mastermind LP. The Consultant must pay Mastermind LP an amount equal to 5% of the gross proceeds (net only of sales taxes) from the sale of all Additional Consultant Goods.
Consultant Fees & Expenses	<ul style="list-style-type: none"> On the sale of Merchandise, the Consultant will earn a fee equal to 2% of gross proceeds (the “Merchandise Fee”), net of applicable sales taxes. On the sale of FF&E, the Consultant will earn a commission of 15% of gross proceeds, net of applicable sales taxes. Mastermind LP will reimburse the Consultant for its fees and expenses, pursuant to an approved budget not to exceed \$1,775,000 (the “Expense Budget”), including supervision and related costs, and advertising costs. The Expense Budget is included as Exhibit “C” to the Consulting Agreement. The Consulting Agreement does not contemplate a “net-minimum guarantee” or other floor recovery for Mastermind LP.
Services Provided By Consultant	<ul style="list-style-type: none"> The Consultant will provide qualified supervisors approved by Mastermind LP to oversee the management of the stores and the Sale. The Consultant will recommend appropriate advertising, discounts, and staffing levels, oversee display of Merchandise, and assist Mastermind LP in connection with managing and controlling loss prevention and employee relation matters. The Consultant will provide other related services deemed necessary or appropriate by Mastermind LP and the Consultant, in consultation with the Monitor.
Sale Guidelines	<ul style="list-style-type: none"> The Consulting Agreement is also subject to the Sale Guidelines, which are attached as Exhibit “B” to the Consulting Agreement. The Sale Guidelines provide, among other things, that: <ul style="list-style-type: none"> (a) except as otherwise set out in any Court Order, the Sale Guidelines or any subsequent written agreement between Mastermind LP and the applicable landlord(s), the Sale will be conducted in accordance with the terms of the applicable Leases;

Summary of Terms of Consulting Agreement and Sale Guidelines	
	<ul style="list-style-type: none">(b) the Sale will be conducted so that the locations remain open during the normal hours of operation provided for in the applicable Leases until the applicable premises Vacate Date, and in all cases no later than the Sale Termination Date;(c) all display and hanging signs used in connection with the Sale will be professionally produced and hung in a professional manner. No signs will advertise the Sale as a “Bankruptcy”, a “Liquidation” or a “Going Out of Business” sale unless otherwise agreed between the Consultant and the applicable landlord;(d) the purchasers of FF&E will only be permitted to remove FF&E through the back shipping areas designated by the Landlord or through other areas after regular store business hours or through the front door during regular store business hours if the FF&E can fit in a shopping bag, with the applicable Landlord’s supervision as required by the applicable Lease; and(e) at the conclusion of the Sale in each store, the Consultant will arrange that the premises are in “broom-swept” and clean condition, subject to the Consultant’s right to abandon in a neat and orderly manner all unsold FF&E.

4.7 The Consulting Agreement was negotiated among the Consultant, Mastermind LP and their respective legal counsel, in consultation with the Monitor and its legal counsel. In negotiating the terms of the Consulting Agreement, including the Sale Guidelines, Mastermind LP and the Monitor were cognizant of the interests of landlords commonly expressed in similar situations.

4.8 The Monitor recommends that the Court grant the proposed Liquidation Sale Approval Order, approving the Consulting Agreement and the Sale Guidelines, given that, among other things:

- (i) as described in the Second Milanovich Affidavit, the Consultant has extensive experience in conducting retail liquidations;
- (ii) the Consulting Agreement and the Sale Guidelines account for the interests of the Mastermind Entities’ landlords in a manner consistent with similar agreements previously approved by the Court in CCAA retail liquidations;

- (iii) the terms of the Consulting Agreement and the Sale Guidelines are consistent with industry standards under similar circumstances;
- (iv) the Consulting Agreement and the Sale Guidelines are anticipated to maximize net realizations during the CCAA Proceedings for the benefit of the Mastermind Entities' stakeholders, both by maximizing proceeds and minimizing costs, on a timely basis; and
- (v) the Consulting Agreement affords Mastermind LP the flexibility necessary to continue to pursue a going-concern transaction and, if necessary, increase the number of the Mastermind Entities' stores subject to the Sale at any time prior to the Sale Termination Date.

5.0 AMENDED AND RESTATED INITIAL ORDER

Key Employee Retention Plan

- 5.1 To facilitate and encourage the continued participation of a limited number of non-store employees during the CCAA Proceedings, the Applicant seeks approval of: (i) a KERP for six employees who are considered by the Mastermind Entities to be critical to the success of the CCAA Proceedings (collectively, the "**KERP Participants**"); and (ii) the granting of the KERP Charge to secure the payments expected to become due under the KERP.
- 5.2 Under the KERP, the KERP Participants are entitled to retention bonuses of a percentage of the KERP Participants' annual salary, totaling \$286,000 in the aggregate across the six KERP Participants. Such retention bonuses are payable on the date (the "**Target Date**") that is the earliest of: (i) the implementation of a plan of compromise or arrangement in the

CCAA Proceedings; (ii) the completion of the liquidation or sale of all or substantially all of the assets of the Mastermind Entities or other restructuring transaction; (iii) the assignment of the Mastermind Entities into bankruptcy; (iv) the appointment of a receiver or receiver and manager over the Mastermind Entities; (v) the termination of the CCAA Proceedings; or (iv) the outside date, being January 26, 2024.

5.3 The foregoing entitlements under the KERP are conditional upon, among other things, the applicable KERP Participant continuing to provide services to the Mastermind Entities until the Target Date.

5.4 As part of its review and consideration of the KERP, the Monitor examined key employee retention plans that have recently been approved by the Court in similar proceedings.

5.5 The Monitor supports the approval of the proposed KERP as:

- (i) the KERP will provide stability to the business and facilitate the successful completion of the CCAA Proceedings and the Sale by encouraging the KERP Participants to remain with the Mastermind Entities;
- (ii) the KERP Participants are considered by the Mastermind Entities, exercising their business judgement, to be crucial to maximizing realizations in the CCAA Proceedings for the benefit of the Mastermind Entities' stakeholders;
- (iii) given the contemplated liquidation and potential going-concern transaction, the KERP Participants cannot be easily and expediently replaced;

- (iv) the Monitor understands that CIBC has consented to the proposed KERP and the KERP Charge; and
- (v) the terms of the KERP and the quantum of the payments expected to be made thereunder are reasonable both in the circumstances and when compared to other key employee retention and incentive plans previously approved by the Court.

5.6 Pursuant to the proposed ARIO, the Applicant is requesting that the KERP and related payment information be sealed, subject to further order of the Court. The proposed KERP contains private and commercially sensitive information regarding the identities and compensation of the KERP Participants. As a result and given that the aggregate maximum amount payable under the KERP has been disclosed, the Monitor recommends that the proposed KERP be sealed, subject to further order of this Court. In the circumstances, the sealing of the proposed KERP will protect the privacy interests of the KERP Participants and Mastermind LP's commercial interests in maintaining the confidentiality of their respective compensation.

5.7 In addition to the proposed KERP, the Mastermind Entities intend to establish an incentive pool in the amount of \$200,000 for the purposes making discretionary incentive payments to store-level employees. None of the KERP Participants are beneficiaries of the incentive pool.

KERP Charge

- 5.8 The proposed ARIO provides for a KERP Charge over the Property in an amount not to exceed \$286,000 in favour of the KERP Participants. The KERP Charge represents the maximum aggregate amount payable to the KERP Participants. As noted above, the Monitor understands that CIBC has consented to the granting of the KERP Charge.
- 5.9 The Monitor supports the granting of the KERP Charge in light of the certainty it provides to the KERP Participants.

Court-ordered Charges Sought in the ARIO

- 5.10 The ARIO seeks increases to the quantum of the Administration Charge and the D&O Charge (collectively with the DIP Charge and the KERP Charge, the “**Charges**”) over the Property, as described below.

Administration Charge

- 5.11 The Initial Order provides for a super-priority charge over the Property in an amount not to exceed \$750,000 in favour of the Monitor, counsel to the Monitor and counsel to the Mastermind Entities (the “**Administration Charge**”). For the purposes of the Initial Order, the Administration Charge was limited to the amount reasonably necessary during the initial 10-day Stay period. The Mastermind Entities are seeking an increase in the amount of the Administration Charge in the ARIO to \$1 million.
- 5.12 The Monitor assisted the Mastermind Entities in the calculation of the Administration Charge and is of the view that the amount of the charge is reasonable and appropriate in the circumstances, having regard to the nature of the proceedings, potential work involved at peak times, and the size of charges approved in similar CCAA proceedings.

D&O Charge

- 5.13 The Initial Order provides that the Mastermind Entities shall indemnify their respective directors and officers against obligations and liabilities that they may incur as directors and officers of the Mastermind Entities after the commencement of the CCAA Proceedings, except to the extent that the obligation or liability was incurred as a result of an officer's or director's gross negligence or wilful misconduct. The Initial Order provides for a super-priority charge over the Property in the amount of \$4.0 million in favour of the Mastermind Entities' directors and officers as security for such indemnity (the "**D&O Charge**"). For the purposes of the Initial Order, the D&O Charge was limited to the amount reasonably necessary during the initial 10-day Stay period. The Applicant is seeking an increase in the amount of the D&O Charge to \$5.0 million in the ARIO.
- 5.14 The Monitor understands that the Mastermind Entities and BHEPMI hold directors' and officers' insurance policies that provide coverage for certain director and officer obligations. However, these policies contain certain exceptions, exclusions and carve-outs, and as a result, the policies may not provide adequate coverage to the Mastermind Entities' directors and officers during the CCAA Proceedings. The Mastermind Entities' directors and officers will only be entitled to the benefit of the D&O Charge to the extent they do not have coverage under directors' and officers' insurance policies or to the extent such coverage is insufficient to pay an indemnified amount.
- 5.15 The Monitor assisted the Mastermind Entities in the calculation of the D&O Charge, taking into consideration the amount of the Mastermind Entities' payroll, vacation pay and federal and provincial sales tax liabilities. The components that comprise the D&O Charge are as follows:

Revised D&O Charge	\$000's
Provision for sales taxes (HST, GST, PST)	\$3,000
Provision for employee wages and source deductions	\$1,650
Provision for accrued vacation pay	\$120
Provision for employee benefits, EHT and other similar amounts	\$230
Total	\$5,000

5.16 The Monitor is of the view that the proposed increase to the D&O Charge is required and reasonable in the circumstances. The Monitor notes that, as a result of the proposed creation of the HST Account (as defined below) and the Mastermind Entities' collection and remittance commitments under the Forbearance Agreement related thereto, the quantum of the D&O Charge is approximately \$2.25 million *less than* what the Mastermind Entities had previously anticipated requiring.

Lender's Charge

5.17 As discussed below, it is a condition precedent to the effectiveness of the Forbearance Agreement that the Court issue the proposed ARIO, among other things, granting the DIP Charge up to the maximum amount of \$36.25 million (being the current total commitment under the CIBC Credit Agreement). The DIP Charge does not secure any of the Mastermind Entities' obligations under the CIBC Credit Agreement existing prior to the date of the proposed ARIO.

5.18 Notwithstanding the proposed maximum amount of the DIP Charge, the Mastermind Entities are not anticipated to, at any point within the Cash Flow Forecast from and after the granting of the ARIO, have more than approximately \$12 million of new advances

drawn under the Credit Facilities. For the reasons set out below, the Monitor is of the view that the DIP Charge is appropriate in the circumstances.

Priority of Charges in the ARIO

5.19 The priorities of the Charges under the ARIO are proposed to be as follows:

- (i) First – Administration Charge (to the maximum amount of \$1.0 million);
- (ii) Second – D&O Charge (to the maximum amount of \$5.0 million);
- (iii) Third – DIP Charge (to the maximum of \$36.25 million, plus interest, costs and expenses); and
- (iv) Fourth – KERP Charge (to the maximum amount of \$286,000).

5.20 As described above, the Monitor believes that the Charges are reasonable in the circumstances. If granted, the Charges under the ARIO will rank in priority to all other secured creditors.

Extension of the Stay Period

5.21 The Stay period under the Initial Order expires on November 30, 2023. Pursuant to the proposed ARIO, the Applicant is seeking an extension of the Stay period to and including January 26, 2024.

5.22 The Monitor supports the Mastermind Entities' request to extend the Stay for the following reasons:

- (i) the proposed Stay extension will permit the Mastermind Entities to conduct the Sale in accordance with the Sale Guidelines with a view to maximizing the value of the Mastermind Entities' Merchandise and FF&E in an orderly and efficient manner;
- (ii) the proposed Stay extension will provide the Mastermind Entities with the time and stability necessary to pursue a going concern sale transaction in earnest and, if successful in this regard, return to Court to seek approval of such transaction;
- (iii) the Mastermind Entities have acted, and continue to act in good faith and with due diligence to advance their restructuring efforts and the CCAA Proceedings;
- (iv) as reflected in the Mastermind Entities' 10-week Cash Flow Forecast attached to the Pre-Filing Report as Appendix "A", the Mastermind Entities are expected to have sufficient liquidity to fund their operations and the costs of the CCAA Proceedings during the extended Stay period, provided that the proposed ARIO is granted; and
- (v) the Monitor is not aware of any party that would be materially prejudiced by the proposed Stay extension.

6.0 FORBEARANCE

6.1 As described in the Pre-Filing Report, CIBC is the main operating and senior secured lender to the Mastermind Entities. Since October 2022, Mastermind LP has been in default of the CIBC Credit Agreement as a result of its failure to maintain a specified fixed charge coverage ratio required thereunder. Since April 2023, Mastermind LP has also been in default of the CIBC Credit Agreement for failure to maintain the minimum EBITDA

covenant required thereunder. On November 13, 2023, counsel for CIBC sent notice of such defaults to Mastermind LP and indicated that CIBC was reserving all of its rights with respect to such defaults.

6.2 In the days leading up to the commencement of the CCAA Proceedings, CIBC and the Mastermind Entities commenced discussions in connection with a forbearance agreement that would provide the Mastermind Entities with access to the CIBC Revolving Loan Facility (as described in the Pre-Filing Report) and CIBC's continued support during the CCAA Proceedings. These discussions culminated in CIBC's and the Mastermind Entities' decision to negotiate and enter into a forbearance agreement (the "**Forbearance Agreement**").

6.3 The Forbearance Agreement is expected to be executed on November 30, 2023, promptly following CIBC's receipt of credit approval. A copy of the Forbearance Agreement is attached as Exhibit "M" to the Second Milanovich Affidavit.

6.4 A summary of the key terms of the Forbearance Agreement are as follows:

- (i) **Forbearance Fee** – Mastermind LP has agreed to pay CIBC a forbearance fee for the benefit of CIBC in the amount of 1.25% of the outstanding balance under the CIBC Revolving Loan Facility and the BCAP Loan (together, the "**Credit Facilities**") as of the close of business on the date the ARIO is issued (i.e., November 30, 2023, assuming the ARIO is granted that day), which shall be fully earned upon execution of the Forbearance Agreement;

- (ii) **Interest** – The interest rate on the CIBC Revolving Credit Facility shall remain at CIBC’s prime interest rate plus 0.75%;
- (iii) **Receipts and the DIP Charge** – Post-filing receipts will be applied to reduce the Mastermind Entities’ pre-filing debt under the Credit Facilities and new advances to the Mastermind Entities from and after the date of the ARIO during the CCAA Proceedings are to be secured by a Court-ordered super-priority charge over the Property in favour of CIBC in an amount not to exceed \$36.25 million, plus interest, costs and expenses (the “**DIP Charge**”);
- (iv) **Milestones** – The Mastermind Entities are required to adhere to various restructuring milestones (collectively, the “**Milestones**”) as more fully detailed in the Forbearance Agreement, including, among others: (a) obtaining the Court’s approval of the proposed ARIO and the Liquidation Sale Approval Order on or before December 1, 2023; (b) obtaining the Court’s approval of a going concern sale of Mastermind LP’s business and assets or amending the Sale to include all of the Mastermind Entities’ Merchandise and FF&E, in each case on terms acceptable to CIBC in the week of December 11, 2023; and (c) completing the Sale by no later than January 28, 2024. The Mastermind Entities may amend the Milestones with the consent of CIBC and in consultation with the Monitor;
- (v) **HST Account** – The Mastermind Entities and CIBC will cooperate to establish a deposit account (the “**HST Account**”) within which Mastermind LP will, on at least a weekly basis, deposit an amount equal to the HST collected each week during the Forbearance Period (as defined in the Forbearance Agreement), and from which

Mastermind LP will, at least on a bi-weekly basis, remit the funds in the HST Account to Canada Revenue Agency and provide CIBC and the Monitor with evidence of such remittance;

- (vi) **Court Approval** – As part of the ARIO, the Mastermind Entities are required to seek the Court's: (a) approval of the DIP Charge securing the aggregate borrowings under the Credit Facilities from and after the date of the ARIO and the Mastermind Entities' entrance into the Forbearance Agreement and the performance of their obligations thereunder; and (b) authorization and direction to continue to perform their obligations under the Blocked Accounts Agreement and to pay their pre-filing obligations owing under the CIBC Credit Agreement (provided that no advances of funds under the CIBC Credit Agreement from and after the date of the ARIO and no funds from the HST Account may be used to repay such obligations); and
- (vii) **Terminating Events** – The Forbearance Agreement includes a number Terminating Events (as defined in the Forbearance Agreement), the occurrence of which would constitute an Event of Default and, upon notice thereof in accordance with the proposed ARIO, result in the termination of the Forbearance Period. Among other things, the Termination Events include: (a) that in any given week during the Forbearance Period the actual cumulative net cash flow is more than 15% below the forecasted cumulative net cash flow amount for the given week, or the actual weekly net cash flow is more than 5% below forecasted weekly net cash flow amount for a given week; (b) the failure of the Mastermind Entities to comply with any order granted in the CCAA Proceedings or any covenant or condition of the Forbearance Agreement; (c) the failure to obtain the proposed ARIO on or prior

to December 1, 2023; and (d) the failure to achieve any of the Milestones by the dates prescribed under the Forbearance Agreement (as same may be amended with the consent of CIBC and the Monitor).

- 6.5 Absent the Court's approval of the accommodations negotiated by the Mastermind Entities with CIBC, in consultation and with significant input from the Monitor, the Mastermind Entities will not be able to continue to fund their operations, including the payment of employee payroll on November 30, 2023, rent on December 1, 2023, and amounts due to vendors and service providers in the ordinary course. As such, the Forbearance Agreement is essential to the Mastermind Entities' continued operations, the success of the CCAA Proceedings and the Mastermind Entities' objective of maximizing value for their stakeholders while pursuing a potential going concern transaction.
- 6.6 As noted above, it is a condition precedent to the effectiveness of the Forbearance Agreement that the Court issue the proposed ARIO, among other things, granting the DIP Charge and authorizing the Mastermind Entities' payment of their pre-filing obligations under the CIBC Credit Agreement from their post-filing receipts. Critically, the DIP Charge does not secure any of the Mastermind Entities' obligations existing prior to the date of the proposed ARIO. Consequently, the funds advanced under the Credit Facilities from and after the granting of the ARIO are expressly prohibited from being used to repay such obligations.
- 6.7 Given the Opinions obtained from the Monitor's counsel, and its counsel's local provincial agents, the Monitor is of the view that the Mastermind Entities' proposed authorization to repay pre-filing obligations under the CIBC Credit Agreement will not prejudice the

Mastermind Entities' stakeholders. In this regard, the Monitor notes that the Mastermind Entities' sole subordinate secured creditors, the Birch Hill Lenders, are supportive of the proposed Forbearance Agreement and the DIP Charge.

- 6.8 Having regard to the foregoing, the Monitor is supportive of the Forbearance Agreement and the granting of the DIP Charge in the circumstances.

7.0 ACTIVITIES OF THE MONITOR SINCE THE FILING DATE

- 7.1 Since the Filing Date, the primary activities of the Monitor have included the following:
- (i) continuing discussions with the Potential Purchaser regarding the going-concern sale for a large group of Mastermind LP's stores and business, and considering the substance of such discussions and negotiations with counsel to the Mastermind Entities and CIBC;
 - (ii) engaging in negotiations with the Consultant, the Mastermind Entities and their respective counsel in respect of the Consulting Agreement and the Sale Guidelines;
 - (iii) assisting the Mastermind Entities in developing the KERP;
 - (iv) engaging in negotiations with CIBC, the Mastermind Entities and their respective counsel in respect of the Forbearance Agreement and the DIP Charge;
 - (v) monitoring the Mastermind Entities' cash receipts and disbursements, and assisting in preparing weekly cash flow variance reporting;
 - (vi) activating the Case Website and coordinating the posting of Court-filed documents thereon;


- (vii) engaging with certain suppliers, stakeholders and landlords and their counsel who have reached out to the Monitor;
- (viii) completing and/or coordinating the notice requirements pursuant to paragraph 39 of the Initial Order, including, among other things:
 - (a) arranging for publication of notice of the CCAA Proceedings, in the prescribed form, in *The Globe and Mail* (National Edition) on November 29 and December 6, 2023;
 - (b) arranging for notice of the CCAA Proceedings, in the prescribed manner, to be emailed or mailed, on November 28, 2023, to all known creditors having a claim against the Mastermind Entities of more than \$1,000; and
 - (c) activating the Monitor's toll-free number and email account for the CCAA Proceedings, and responding to creditor and other inquiries received through those and other contact points; and
- (ix) with the assistance of Bennett Jones LLP, counsel to the Monitor, preparing this First Report.

8.0 CONCLUSIONS AND RECOMMENDATIONS

- 8.1 For the reasons set out in this First Report, the Monitor respectfully recommends that the Court grant the relief requested by the Applicant.

All of which is respectfully submitted to the Court this 29th day of November, 2023.

**Alvarez & Marsal Canada Inc., in its capacity as
Monitor of Mastermind GP Inc. and Mastermind LP,
and not in its personal or corporate capacity**

Per: 
Josh Nevsky
Senior Vice-President

APPENDIX A
PRE-FILING REPORT

See attached.

**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.**

**PRE-FILING REPORT OF THE PROPOSED MONITOR
ALVAREZ & MARSAL CANADA INC.**

NOVEMBER 22, 2023

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APPENDICES

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

Appendix B – Management’s Representation Letter Regarding the Cash Flow Forecast

1.0 INTRODUCTION

- 1.1 Alvarez & Marsal Canada Inc. (“**A&M**” or the “**Proposed Monitor**”) understands that Mastermind GP Inc. (“**Mastermind GP**” or the “**Applicant**”) intends to make an application to the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) for an order (the “**Initial Order**”) pursuant to the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”), among other things, declaring that Mastermind GP is a debtor company to which the CCAA applies, extending the protections, authorizations, restrictions and benefits of the Initial Order and the CCAA to Mastermind LP (together with Mastermind GP, the “**Mastermind Entities**”), granting a stay of proceedings in favour of the Mastermind Entities and appointing A&M as monitor of the Mastermind Entities (in such capacity, the “**Monitor**”). The proceedings to be commenced by the Applicant under the CCAA are referred to herein as the “**CCAA Proceedings**”.
- 1.2 Mastermind LP is a Canadian toy retailer, with 66 stores and approximately 800 employees across the country. Mastermind LP’s stores operate in Ontario, Alberta, British Columbia, Saskatchewan, Manitoba, New Brunswick, Nova Scotia, and Newfoundland and Labrador. Mastermind LP also operates an e-commerce platform that accounts for approximately 10% of its chain-wide sales.
- 1.3 Mastermind GP and Mastermind LP are incorporated and established, respectively, under the laws of Ontario, each with its registered head office in Toronto, Ontario. Mastermind GP is Mastermind LP’s general partner and holds all of the Class B limited partnership units in Mastermind LP. Mastermind GP does not have any operations and exists solely for

the purpose of serving as Mastermind LP's general partner. The ultimate parent company of Mastermind GP is Birch Hill Equity Partners Management Inc. ("**BHEPMI**"), which is not an Applicant in the CCAA Proceedings.

- 1.4 Over the past several years, Mastermind LP has experienced material net losses and financial strain, primarily resulting from an increasingly competitive toy retail industry, declining sales and margins, and a highly levered balance sheet resulting from incremental debt that was used to fund losses incurred due to the COVID-19 pandemic.
- 1.5 In April 2023, Mastermind LP, together with Alvarez & Marsal Canada Securities Inc. ("**A&M Corporate Finance**") acting as financial advisor, commenced an out-of-Court sale process that ultimately resulted in a proposed transaction pursuant to which a strategic bidder would acquire Mastermind LP on a going concern basis. However, as described in further detail in the First Milanovich Affidavit (as defined below), the proposed transaction was subject to mandatory pre-merger notification under the *Competition Act*, R.S.C. 1985, c. C-34. After a lengthy review process with the Competition Bureau, which involved both Mastermind LP and the proposed purchaser responding to extensive information requests and making numerous submissions (including a submission in support of Mastermind LP's "failing firm" status), the Competition Bureau issued a Supplementary Information Request ("**SIR**") necessitating a further and lengthy diligence process to advance the proposed transaction.
- 1.6 In light of the material cost and length of time that would have been required to respond to the SIR, and due to Mastermind LP's liquidity crisis, the uniquely challenging circumstances it faced, and the critically important upcoming holiday sales season, the

Mastermind Entities commenced these CCAA Proceedings. The principal purpose of the CCAA Proceedings is to provide a platform to allow the Mastermind Entities to pursue an expedient restructuring, with the intention of maximizing realizations for the benefit of all the Mastermind Entities' creditors.

- 1.7 The Mastermind Entities' restructuring plan entails commencing an immediate liquidation and store closure process for a sub-set of underperforming store locations while simultaneously exploring whether an alternative going-concern transaction for the remaining stores can be implemented with a new potential purchaser who has been in accelerated negotiations with the Mastermind Entities and A&M Corporate Finance in recent weeks.
- 1.8 If a transaction with such purchaser materializes, it is the Mastermind Entities' intention to conduct a holiday sale for continuing stores in the normal course. If the proposed transaction is not finalized imminently, the Mastermind Entities will have no choice but to commence a full liquidation of all 66 of their retail locations.
- 1.9 No relief is being requested in the proposed Initial Order by the Mastermind Entities in respect of the above proposed inventory sale or transaction. Rather, the Mastermind Entities are seeking limited relief and a stay of proceedings to provide the breathing room and stability necessary to advance their potential restructuring initiatives in the coming days, including determining whether a going concern transaction can be completed.

2.0 PURPOSE OF THIS REPORT

2.1 The purpose of this pre-filing report (this “**Report**”) is to provide the Court with information, and where applicable, the Proposed Monitor’s views on:

- (i) A&M’s qualifications to act as Monitor (if appointed);
- (ii) the Mastermind Entities’ business and financial circumstances;
- (iii) the Mastermind Entities’ 10-week cash flow forecast;
- (iv) the Mastermind Entities’ proposed payments during the CCAA Proceedings;
- (v) the Mastermind Entities’ intended next steps in the CCAA Proceedings;
- (vi) the opinions of counsel to the Proposed Monitor, and its counsel’s local provincial agents, regarding the validity and enforceability of the security granted by the Mastermind Entities in favour of their senior secured lender, Canadian Imperial Bank of Commerce (“**CIBC**”);
- (vii) the Court-ordered Charges (as defined below) over the property and assets of the Mastermind Entities (collectively, the “**Property**”) sought in the proposed Initial Order; and
- (viii) the Proposed Monitor’s conclusions and recommendations in connection with the foregoing.

3.0 TERMS OF REFERENCE AND DISCLAIMER

3.1 In preparing this Report, A&M, in its capacity as the Proposed Monitor, has been provided with, and has relied upon, unaudited financial information, books and records and financial information prepared by the Mastermind Entities and has held discussions with management of the Mastermind Entities and their legal counsel, as well as certain individuals at BHEPMI (collectively, the “**Information**”). Except as otherwise described in this Report in respect of the Mastermind Entities’ cash flow forecast:

- (i) the Proposed Monitor has reviewed the Information for reasonableness, internal consistency and use in the context in which it was provided. However, the Proposed Monitor has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Canadian Auditing Standards (“**CASs**”) pursuant to the *Chartered Professional Accountants Canada Handbook* (the “**CPA Handbook**”) and, accordingly, the Proposed Monitor expresses no opinion or other form of assurance contemplated under CASs in respect of the Information; and
- (ii) some of the information referred to in this Report consists of forecasts and projections. An examination or review of the financial forecasts and projections, as outlined in the CPA Handbook, has not been performed.

3.2 Future oriented financial information referred to in this Report was prepared based on the Mastermind Entities’ estimates and assumptions. Readers are cautioned that since projections are based upon assumptions about future events and conditions that are not

ascertainable, actual results will vary from the projections, even if the assumptions materialize, and the variations could be significant.

3.3 This Report should be read in conjunction with the Affidavit of Lucio Milanovich, the Interim Chief Financial Officer of Mastermind LP, sworn November 22, 2023 (the “**First Milanovich Affidavit**”), and filed in support of the Applicant’s application for relief under the CCAA. Capitalized terms used and not defined in this Report have the meanings given to them in the First Milanovich Affidavit.

3.4 Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian dollars.

4.0 A&M’S QUALIFICATIONS TO ACT AS MONITOR

4.1 Alvarez & Marsal Canada ULC and A&M Corporate Finance were originally engaged to act as a consultant to Mastermind LP on March 8, 2023, to assist the Mastermind Entities in assessing their financial performance and reviewing strategic alternatives, including the commencement of the sale process discussed above (and detailed in the First Milanovich Affidavit).¹ As such, the Proposed Monitor is familiar with the business and operations of the Mastermind Entities, their personnel and the key issues and stakeholders in these CCAA Proceedings.

4.2 A&M is related to Alvarez & Marsal Holdings LLC, which is an independent international professional services firm, providing, among other things, bankruptcy, insolvency and

¹ Under these engagements, Alvarez & Marsal Canada ULC and A&M Corporate Finance billed at their standard hourly rates, and not on a success fee or contingent basis.

restructuring services. The senior A&M professional personnel with carriage of this matter include experienced insolvency and restructuring practitioners who are Chartered Professional Accountants (Chartered Accountants), Chartered Insolvency and Restructuring Professionals, and Licensed Insolvency Trustees, and who have previously acted in CCAA matters of a similar nature and complexity in Canada.

4.3 A&M is a trustee within the meaning of subsection 2(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 and is not subject to any of the restrictions on who may be appointed as monitor set out in subsection 11.7(2) of the CCAA.

4.4 The Proposed Monitor has retained Bennett Jones LLP to act as its independent legal counsel.

4.5 A&M has consented to act as Monitor of the Mastermind Entities should the Court grant the proposed Initial Order.

5.0 BACKGROUND INFORMATION

5.1 More extensive background information on the Mastermind Entities is set out in the First Milanovich Affidavit. Certain key points are summarized below.

5.2 Mastermind LP is the largest independent specialty toy and children's book retailer in Canada, operating 66 retail stores in power centres, plazas and malls across eight provinces. Since establishing its first stores in 1984, Mastermind LP has grown substantially, peaking at 69 store locations in 2019.

- 5.3 For the 12-month period ended October 31, 2023, Mastermind LP generated revenue of \$111.6 million and earnings before interest, taxes, depreciation, and amortization (“EBITDA”) of negative \$7.2 million. Over the course of 2023 to date, same stores sales have declined materially, trending approximately 22% below prior year results. Mastermind LP’s declining financial performance has resulted in a significant working capital deficit and liquidity crisis for the business.

Stores & Employees

- 5.4 Mastermind LP’s store locations by province, each of which are leased, can be summarized as follows:

Stores by Province	
Ontario	35
Alberta	13
British Columbia	6
Saskatchewan	3
New Brunswick	3
Nova Scotia	3
Manitoba	2
Newfoundland	1
TOTAL	66

- 5.5 For the most part, Mastermind LP’s stores are located in power centres and retail plazas, with only a small group of locations located in malls. On average, Mastermind LP’s stores are approximately 5,000 square feet.

5.6 Mastermind LP's current approximate employee count by province is as follows:

Employees by Province	
Ontario (store level)	385
Ontario (head office)	105
Alberta	138
British Columbia	50
Saskatchewan	34
New Brunswick	28
Nova Scotia	27
Manitoba	23
Newfoundland	10
TOTAL	800

5.7 Mastermind LP's employees are enrolled in a health benefits program providing medical, dental, life insurance and disability programs. None of Mastermind LP's employees are unionized and there are no registered pension plans or RRSPs.

Inventory

5.8 Mastermind LP sells a curated selection of toys, books and baby products with a focus on toys geared towards science, technology, robotics, education, arts and math. Mastermind also carries a private label brand with over 400 unique SKUs.

5.9 Merchandise is purchased from a variety of vendors across Canada, the U.S. and Asia. Key merchandise vendors include Lego, Mattel, Hasbro, Spin Master and Ravensburger.

5.10 Warehousing, distribution and e-commerce fulfillment services are all performed from Mastermind LP's leased head office and distribution centre in Scarborough. During the holiday season, Mastermind LP utilizes a third-party warehouse provider for a small amount of overflow inventory.

- 5.11 As at October 31, 2023, Mastermind LP had approximately \$35.0 million of inventory at cost across its store network, distribution centre and third-party warehouse provider.
- 5.12 As a result of its recent financial hardships and current liquidity position, and more recently following the termination of the prior going-concern transaction, Mastermind LP took necessary steps to reduce its purchasing, reduce costs and preserve liquidity.

Unsecured Creditor Profile

- 5.1 Based on the Mastermind Entities' books and records, as at October 31, 2023, amounts payable to unsecured trade creditors were approximately \$22.2 million, consisting of:
- (i) approximately \$19.6 million owing to merchandise vendors; and
 - (ii) approximately \$2.6 million owing to logistics and other vendors.
- 5.2 In addition to the accounts payable and accrued liabilities included above, the Mastermind Entities also have approximately \$5.6 million in outstanding gift card liabilities, net of a provision for estimated breakage.

Primary Causes of Financial Difficulty

- 5.3 The primary causes of the Mastermind Entities' financial difficulty include the following:
- (i) *Negative Sales Trend:* Over the course of the last 12 months, Mastermind LP has experienced a significant reduction in sales, trending approximately 22% below prior year, and 25% below 2021, which benefited from a robust period of sales following the mandated store closures during the COVID-19 pandemic;

- (ii) *Operating Losses:* Over the past three fiscal years, Mastermind LP has expended significant effort to reduce its cost structure and improve performance. Certain of these initiatives have included, capital investments to the in-store shopping experience, closure of unprofitable stores, employee rationalizations at both the store and head office levels, optimizations to freight and warehousing processes, and a significant investment in the Mastermind LP's e-commerce platform. However, these steps have not been sufficient to offset against the negative trends recently experienced in the retail industry and the highly competitive nature of the toy retail space. In fiscal 2022 and for the trailing twelve-month period ended October 31, 2023, Mastermind LP reported EBITDA of negative \$4.0 million and negative \$7.2 million, respectively, and a net loss in each of its past six fiscal years (with the exception of 2021); and
- (iii) *Highly Leveraged Balance Sheet:* Like many other retailers, Mastermind LP incurred significant losses from government mandated store closures during the COVID-19 pandemic and in the months thereafter. To fund these losses and provide incremental liquidity, Mastermind LP applied for and obtained a \$6.25 million term loan under the Business Credit Availability Program ("BCAP"). While this BCAP term loan provided much needed liquidity during 2021 and 2022, Mastermind LP has not generated sufficient cash flow to pay down the debt, saddling Mastermind LP with a highly leveraged balance sheet.

6.0 SECURED CREDITORS

CIBC

- 6.1 CIBC is the main operating and senior secured lender to the Mastermind Entities pursuant to a credit agreement dated October 24, 2014 (as amended, the “**CIBC Credit Agreement**”), among, Mastermind LP, as borrower, Mastermind GP, as guarantor, the lenders party thereto from time to time (collectively, the “**Lenders**”), and CIBC, as administrative agent to the Lenders. Pursuant to the CIBC Credit Agreement, CIBC and the Lenders committed a revolving loan facility in an amount of up to \$30 million (the “**CIBC Revolving Loan Facility**”) and a term loan facility in the principal amount of \$6.25 million (the “**BCAP Term Loan Facility**”).
- 6.2 As of October 31, 2023, Mastermind LP’s secured obligations owing to CIBC were approximately \$25.7 million, comprised of approximately \$19.5 million owing under the CIBC Revolving Loan Facility, and \$6.25 million owing under the BCAP Term Loan Facility.
- 6.3 The maximum amount available for borrowing under the CIBC Revolving Loan Facility is derived from a borrowing base formula based on Mastermind LP’s credit card receivables, inventory on hand and inventory in-transit (less certain priority payables such as wages, worker’s compensation and certain taxes). Mastermind LP has no letters of credit outstanding.
- 6.4 The obligations under the CIBC Credit Agreement are guaranteed by Mastermind GP pursuant to a guarantee dated October 24, 2014 made by Mastermind GP in favour of CIBC (the “**Guarantee**”). The obligations of Mastermind LP and Mastermind GP under the

CIBC Credit Agreement and the Guarantee, respectively, are secured by a general security between CIBC and Mastermind LP dated October 24, 2014, and a general security agreement between CIBC and Mastermind GP dated October 24, 2014 (together, the “**Security**”).

- 6.5 Since October 2022, Mastermind LP has been in default of the CIBC Credit Agreement as a result of its failure to maintain a specified fixed charge coverage ratio required thereunder. Since April 2023, Mastermind LP has also been in default of the CIBC Credit Agreement for failure to maintain the minimum EBITDA covenant required thereunder. On November 13, 2023, counsel for CIBC sent notice of such defaults to Mastermind LP and indicated that CIBC was reserving all of its rights with respect to such defaults.
- 6.6 In light of the existing events of default under the CIBC Credit Agreement and in anticipation of the commencement of the CCAA Proceedings, the Lenders, CIBC and the Mastermind Entities intend to enter into a forbearance agreement prior to the Comeback Hearing (the “**Forbearance Agreement**”). In the interim period and subject to the granting of the proposed Initial Order, the Mastermind Entities will continue to use the CIBC Revolving Loan Facility in the ordinary course.
- 6.7 If the proposed Initial Order is granted, the Mastermind Entities intend to seek approval of the Forbearance Agreement and the Lender’s Charge at the Comeback Hearing.

BHEPMI Facility

- 6.8 In addition to the Mastermind Entities’ obligations under the CIBC Credit Agreement, as at October 31, 2023, Mastermind LP is indebted to BHEPMI in the approximate amount

of \$1.7 million (inclusive of accrued interest) under a secured facility provided by BHEPMI pursuant to grid promissory notes (the “**BHEPMI Facility**”).

- 6.9 The BHEPMI Facility is interest bearing at a rate per annum equal to 10%. Interest on the BHEPMI Facility accrues daily and is payable in arrears on December 31 of each year. At each fiscal year end on December 31, the interest outstanding on the BHEPMI Facility is payable in kind by issuing a new non-interest bearing promissory note in the principal amount of the unpaid interest.
- 6.10 BHEPMI has subordinated and postponed its security interests granted by Mastermind LP in connection with the BHEPMI Facility in favour of CIBC pursuant to a subordination and postponement agreement dated as of June 11, 2020.

Security Review

- 6.11 The Proposed Monitor requested that its counsel, and its counsel’s local provincial agents, conduct a review of the security granted by the Mastermind Entities in favour of CIBC in respect of the CIBC Credit Agreement. Subject to the customary qualifications and assumptions set out therein, the Proposed Monitor’s counsel, and its counsel’s local provincial agents, have provided written opinions to the Proposed Monitor (collectively, the “**Opinions**”), that the security granted by the Mastermind Entities in respect of the CIBC Credit Agreement constitutes valid security, enforceable in accordance with its terms, and perfected by registration in the provinces of Ontario, Alberta, British Columbia, Saskatchewan, Manitoba, New Brunswick, Nova Scotia, and Newfoundland and Labrador to the extent capable under applicable law. The Opinions will be made available to the Court upon request.

7.0 CASH FLOW FORECAST

7.1 Mastermind LP has prepared a weekly cash flow forecast (the “**Cash Flow Forecast**”) for the 10-week period from November 23, 2023 to January 28, 2024 (the “**Cash Flow Period**”). A copy of the Cash Flow Forecast, together with a summary of assumptions (the “**Cash Flow Assumptions**”) and Management’s report on the cash-flow statement required by subsection 10(2)(b) of the CCAA are attached hereto as **Appendices “A”** and **“B”**, respectively.

7.2 The following table provides a summary of the Cash Flow Forecast, including the “Initial Period” prior to the Comeback Hearing:

Cash Flow Forecast		\$000’s
	<u>Initial Period</u>	<u>10-Wk Period²</u>
Receipts		
Sales	5,842	41,824
Sales tax collections	757	4,463
Total Receipts	6,599	46,287
Disbursements		
Merchandise vendors	--	--
Non-merchandise vendors	(1,913)	(4,622)
Rent	(683)	(2,607)
Payroll & benefits	(996)	(5,066)
Proposed KERP	--	(485)
Restructuring professional fees	--	(2,462)
Consultant fees	(700)	(2,519)
Sales tax remittances	(1,119)	(5,211)
Other expenditures	(286)	(1,133)
Total Disbursements	(5,696)	(24,105)
Net cash flow	903	22,182

² Balances included in the 10-Week Period are inclusive of those included in the Initial Period.

- 7.3 During the Initial Period, total disbursements of approximately \$5.7 million are projected to be sufficiently funded by Mastermind LP's sales and collections of accounts receivable (credit card balances in transit), and accordingly, the Mastermind Entities are projected to reduce their exposure under the CIBC Revolving Loan Facility by approximately \$903,000.
- 7.4 During the entirety of the Cash Flow Period, due primarily to the anticipated liquidation of a sub-set of stores and the planned holiday sales across the Mastermind Entities' remaining locations, together with the fact that the Mastermind Entities are not purchasing additional inventory or planning to pay any pre-filing merchandise vendors, net cash flows are projected to be positive \$22.2 million. This positive cash flow is projected to fully satisfy the \$15.3 million of outstanding obligations owing under the CIBC Revolving Loan Facility at the commencement of the CCAA Proceedings, and result in a positive cash balance of approximately \$5.9 million as at January 28, 2024.
- 7.5 The Proposed Monitor also notes the following with respect to the Cash Flow Forecast:
- (i) receipts reflect forecasts of sales from both retail stores and e-commerce and are based on planned sales and anticipated mark-downs during the holiday shopping period;
 - (ii) the Mastermind Entities are not currently purchasing additional inventory and accordingly no merchandise payments have been included during the Forecast Period;

- (iii) non-merchandise vendors primarily include logistics, warehousing and transportation services, credit and debit card processing services, information technology services, and certain other store-level and corporate operating costs, all of which are forecast to be paid in the ordinary course; and
- (iv) the Consultant Fees include: (a) the Consultant's commission fee calculated at 2% of total sales at liquidating stores during the Forecast Period; and (b) a provision for costs related to marketing, signage, labour and other expenses the Consultant will incur in connection with the planned liquidation and holiday sales it will lead during the CCAA Proceedings.

7.6 Based on the Proposed Monitor's review,³ nothing has come to its attention that causes it to believe, in all material respects that: (i) the Cash Flow Assumptions are not consistent with the purpose of the Cash Flow Forecast; (ii) as at the date of this Report, the Cash Flow Assumptions are not suitably supported and consistent with the plans of the Mastermind Entities or do not provide a reasonable basis for the Cash Flow Forecast, given the Cash Flow Assumptions; or (iii) the Cash Flow Forecast does not reflect the Cash Flow Assumptions.

³ The Proposed Monitor has reviewed the Cash Flow Forecast to the standard required of a Court-appointed Monitor under subsection 23(1)(b) of the CCAA. Subsection 23(1)(b) of the CCAA requires a Monitor to review the debtor's cash flow statement as to its reasonableness and to file a report with the Court on the Monitor's findings. Pursuant to this standard, the Proposed Monitor's review of the Cash Flow Forecast consisted of inquiries, analytical procedures and discussions related to information supplied to it by certain key members of management. The Proposed Monitor reviewed information provided by management for the Cash Flow Assumptions. Since the Cash Flow Assumptions need not be supported, the Proposed Monitor's procedures with respect to them were limited to evaluating whether they were consistent with the purpose of the Cash Flow Forecast.

- 7.7 The Cash Flow Forecast has been prepared solely for the purpose and subject to the assumptions described above, and readers are cautioned that it may not be appropriate for other purposes.

8.0 CASH MANAGEMENT SYSTEM

- 8.1 As described in the First Milanovic Affidavit, Mastermind LP's cash management system is operated through various accounts with CIBC (the "**Cash Management System**"). The Cash Management System is administered by the Mastermind Entities' finance department.
- 8.2 Mastermind LP utilizes four primary bank accounts, of which two are deposit accounts and two are disbursement accounts. These accounts are denominated in CAD and USD. In addition to these primary bank accounts, Mastermind LP also utilizes a number of store level bank accounts, which are swept to the primary CAD deposit account on a daily basis.
- 8.3 Pursuant to the proposed Initial Order, Mastermind LP seeks approval of its continued use of the Cash Management System in substantially the same manner as before the commencement of the CCAA Proceedings, including the daily sweeping of Mastermind LP's Canadian dollar deposit account in repayment of the CIBC Revolving Loan Facility. Given the Opinions, the scale and nature of the Mastermind Entities' operations and the volume of transactions that are processed daily within the Cash Management System, the Proposed Monitor is of the view that the continued use of the existing Cash Management System is required and appropriate during the CCAA Proceedings.

9.0 CRITICAL SUPPLIERS

- 9.1 The Mastermind Entities are requesting as part of the proposed Initial Order the authority (but not the requirement) to pay pre-filing amounts with the consent of the Proposed Monitor to certain suppliers, including: (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 Proposed Monitor, such payment is necessary to maintain the uninterrupted operations of the Mastermind Entities' business.
- 9.2 The Proposed Monitor is of the view that the above relief is reasonable and appropriate in the circumstances, taking into account the Mastermind Entities' goal of implementing a successful restructuring and maximizing value for their stakeholders.

10.0 STAY OF PROCEEDINGS

- 10.1 The proposed Initial Order contemplates the granting of an initial 8-day stay of proceedings in respect of the Applicant, its business and the Property. Further, the proposed Initial Order contemplates the extension of the stay of proceedings, together with the benefits, protections, authorizations and restrictions under the proposed Initial Order and the CCAA to Mastermind LP.

10.2 In the circumstances, the Proposed Monitor is of the view that the stay of proceedings, including its extension to Mastermind LP, is appropriate and is in the best interests of the Mastermind Entities and their stakeholders given that:

- (i) the proposed stay of proceedings will provide the breathing room required by the Mastermind Entities to stabilize their business and advance their restructuring initiatives;
- (ii) the commencement of enforcement steps against either the Applicant or Mastermind LP would be detrimental to the stability and success of the CCAA Proceedings;
- (iii) as the Mastermind Entities' principal operating company, the employer of their employees and the lessee of a substantial portion of their leased locations, Mastermind LP is integral to the Mastermind Entities' business; and
- (iv) the Mastermind Entities have acted, and continue to act, in good faith and with due diligence in commencing the CCAA Proceedings and seeking to preserve and maximize value for their stakeholders.

11.0 COURT-ORDERED CHARGES SOUGHT IN THE INITIAL ORDER

11.1 The Proposed Initial Order seeks the granting of the Administration Charge and the D&O Charge (collectively, the “**Charges**”) over the Property of the Mastermind Entities, as described below.

Administration Charge

- 11.2 The proposed Initial Order provides for an initial Administration Charge in an amount not to exceed \$750,000 in favour of the Monitor, counsel to the Monitor and counsel to the Mastermind Entities. The Proposed Monitor understands that the Mastermind Entities intend to seek an increase in the amount of the Administration Charge to \$1 million at the Comeback Hearing.
- 11.3 The Proposed Monitor assisted the Mastermind Entities with the calculation of the Administration Charge and is of the view that the amount of the charge for the initial 8-day stay period is reasonable and appropriate in the circumstances, having regard to the nature of the CCAA Proceedings, the anticipated professional costs to be incurred during the initial 8-day stay period, the size of charges approved in similar CCAA proceedings, and the fact that the proposed beneficiaries of the Administration Charge do not have retainers.

D&O Charge

- 11.4 The proposed Initial Order provides that the Mastermind Entities shall indemnify their directors and officers against obligations and liabilities that they may incur as directors and officers of the Mastermind Entities after the commencement of the CCAA Proceedings, except to the extent that any such obligation or liability arises as a result of an officer's or director's gross negligence or wilful misconduct. The proposed Initial Order grants a charge over the Mastermind Entities' Property in the amount of \$4.0 million in favour of the Mastermind Entities' directors and officers as security for any such obligations or liabilities arising after the commencement of the CCAA Proceedings. The Mastermind

Entities intend to seek an increase in the amount of the D&O Charge to \$7.25 million at the Comeback Hearing.

11.5 The Proposed Monitor understands that the Mastermind Entities and BHEPMI hold directors' and officers' insurance policies that provide coverage for certain director and officer obligations. However, these policies contain certain exceptions, exclusions and carve-outs, and as a result, the policies may not provide adequate coverage to the Mastermind Entities' directors and officers during the CCAA Proceedings. The Mastermind Entities' directors and officers will only be entitled to the benefit of the D&O Charge to the extent they do not have coverage under directors' and officers' insurance policies or to the extent such coverage is insufficient to pay an indemnified amount.

11.6 The Proposed Monitor assisted the Mastermind Entities in the calculation of the initial quantum of the D&O Charge, taking into consideration the amount of the Mastermind Entities' payroll, vacation pay and federal and provincial sales tax liabilities during the initial 10-day stay period. The components that comprise the proposed D&O Charge are as follows:

Proposed D&O Charge	\$000's
Provision for sales taxes (HST, GST, PST)	\$2,000
Provision for employee wages and source deductions	\$1,650
Provision for accrued vacation pay	\$120
Provision for employee benefits, EHT and other similar amounts	\$230
Total	\$4,000

11.7 The Proposed Monitor understands that the directors and officers of the Mastermind Entities have advised that they are not willing to continue in their current roles absent the

protection afforded to them under the D&O Charge. In the circumstances, the Proposed Monitor is of the view that the D&O Charge is required and reasonable.

Priority of Charges Created by the Proposed Initial Order

11.8 The priorities of the Charges are proposed to be as follows:

- (i) First – Administration Charge (to the maximum amount of \$750,000); and
- (ii) Second – D&O Charge (to the maximum amount of \$4.0 million).

11.9 As set out above, the Proposed Monitor believes that the Charges are reasonable in the circumstances.

12.0 INTENDED NEXT STEPS IN THE CCAA PROCEEDINGS

12.1 The Proposed Monitor understands that, subject to obtaining the proposed Initial Order, during the period prior to the Comeback Hearing, the Mastermind Entities' intend to: (i) commence certain planning activities, with the assistance of the Consultant, for the planned liquidation sales at the sub-set of underperforming stores; and (ii) continue to advance discussions with the potential acquirer of the Mastermind Entities' business on a going concern basis, including the remaining locations.

12.2 At the Comeback Hearing, the Monitor understands that the Mastermind Entities expect to seek Court approval of:

- (i) the (a) Forbearance Agreement with CIBC to amend the current CIBC Credit Agreement and to provide financing during the CCAA Proceedings, and (b) the Lender's Charge;

- (ii) a consulting agreement with a consultant (the “**Consultant**”) who will serve as the exclusive consultant to the Mastermind Entities for the purpose of conducting a sale of Mastermind LP’s merchandise and furniture, fixtures and equipment, including the contemplated store closure sales at certain locations and the holiday shopping sales at the remaining locations;
- (iii) sale guidelines with respect to the liquidation of inventory and furniture, fixtures and equipment at stores that will be closed by the Mastermind Entities during the CCAA Proceedings;
- (iv) a key employee retention plan and a Court-ordered charge to secure amounts that may become payable thereunder;
- (v) an increase to the quantum of the Charges; and
- (vi) an extension to the stay of proceedings to January 28, 2024.

12.3 In addition to the above, Mastermind LP will also provide an update on the status of its discussions in connection with a proposed sale transaction for certain of Mastermind LP’s store locations together with the business and assets of the Mastermind Entities.

13.0 CONCLUSIONS AND RECOMMENDATIONS

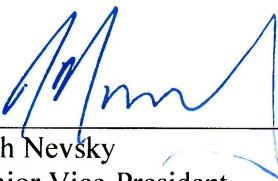
13.1 For the reasons set out in this Report, the Proposed Monitor is of the view that the relief requested by the Mastermind Entities in the proposed Initial Order is reasonable, appropriate and necessary having regard to the Mastermind Entities’ current circumstances. As such, the Proposed Monitor supports the Mastermind Entities’ application for CCAA

protection and respectfully recommends that the Court grant the Initial Order containing the relief requested by the Mastermind Entities.

All of which is respectfully submitted to the Court this 22nd day of November, 2023.

**Alvarez & Marsal Canada Inc., in its capacity as
Proposed Monitor of Mastermind GP Inc. and Mastermind LP,
and not in its personal or corporate capacity**

Per:



Josh Nevsky
Senior Vice-President

APPENDIX A
CASH FLOW FORECAST

See attached.

Appendix A – 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)

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.

APPENDIX B
MANAGEMENT'S REPRESENTATION LETTER
REGARDING CASH FLOW FORECAST

See attached.

Alvarez & Marsal Canada Inc.
200 Bay Street, Suite 2900
Toronto ON M5J 2J1

Attention: Mr. Josh Nevsky

November 22, 2023

Dear Sir:

Re: Mastermind GP Inc. (“Mastermind GP” or the “Applicant”) – CCAA section 10(2) Prescribed Representations with Respect to Cash Flow Forecast

In connection with the application by Mastermind GP for the commencement of proceedings under the *Companies’ Creditors Arrangement Act*, the management of Mastermind GP have prepared the attached 10-week projected cash flow statement for the period November 23, 2023 to January 28, 2024 (the “**Cash Flow Forecast**”) and the list of assumptions on which the Cash Flow Forecast is based. The purpose of the Cash Flow Forecast is to determine the liquidity requirements of the Applicant during the CCAA proceedings.

Mastermind GP confirms that the hypothetical assumptions on which the Cash Flow Forecast is based are reasonable and consistent with the purpose described herein, and the probable assumptions are suitably supported and consistent with the plans of the Applicant and provide a reasonable basis for the projections. All such assumptions are disclosed in notes to the Cash Flow Forecast (the “**Notes**”).

Since the projections are based on assumptions regarding future events, actual results will vary from the information presented, and the variations may be material.

The projections have been prepared solely for the purpose described herein, using the probable and hypothetical assumptions set out in the Notes. Consequently, readers are cautioned that the Cash Flow Forecast may not be appropriate for other purposes.

Yours truly,



Per: _____
Name: Lucio Milanovich
Title: Interim Chief Financial Officer

**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.**

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**
Proceeding commenced at Toronto

**PRE-FILING REPORT OF THE
PROPOSED MONITOR**

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Counsel for Alvarez & Marsal Canada Inc.,
solely in its capacity as the Proposed Monitor
and not in its personal or corporate capacity.

**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.**

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**
Proceeding commenced at Toronto

FIRST REPORT OF THE MONITOR

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personal or corporate capacity