

**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.**

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

**JANUARY 8, 2024**

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## **APPENDICES**

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## 1.0 INTRODUCTION

- 1.1 On November 23, 2023, 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**”). Among other things, the Initial Order appointed Alvarez & Marsal Canada Inc. as monitor (in such capacity, the “**Monitor**”) in the CCAA Proceedings (the “**CCAA Proceedings**”).
- 1.2 The Initial Order also extended the stay of proceedings and other protections and authorizations to Mastermind LP (together with Mastermind GP, the “**Mastermind Entities**”), a toy retailer with 66 stores across Canada. Mastermind GP is the general partner of Mastermind LP. The ultimate parent company of Mastermind GP is Birch Hill Equity Partners Management Inc., which is not an Applicant in the CCAA Proceedings.
- 1.3 Facing several unique challenges, a liquidity crisis and the imminent holiday shopping season, the Mastermind Entities commenced the CCAA Proceedings to provide the stability and flexibility necessary to allow them to pursue a value maximizing going concern sale transaction, while also implementing a liquidation and closure of a sub-set of store locations.
- 1.4 On November 30, 2023, the Applicant obtained the following:
  - (i) an amended and restated Initial Order (the “**ARIO**”), which, among other things:
    - (a) extended the Stay Period (as defined in the ARIO) to and including January 26, 2024;

- (b) approved a key employee retention plan (the “**KERP**”) and granted a KERP Charge on the Property (each as defined in the ARIO) to secure amounts payable under the KERP;
  - (c) increased the amounts of the D&O Charge and the Administration Charge (each as defined in the ARIO); and
  - (d) approved the Forbearance Agreement and granted the DIP Charge (each as defined in the ARIO) in favour of Canadian Imperial Bank of Commerce (“**CIBC**”); and
- (ii) an order (the “**Liquidation Sale Approval Order**”), which, among other things:
  - (a) approved the Consulting Agreement and the Sale Guidelines (each as defined in the Liquidation Sale Approval Order); and
  - (b) authorized Mastermind LP, with the assistance of Gordon Brothers Canada ULC (the “**Consultant**”) to commence a liquidation sale (the “**Liquidation Sale**”) at 18 store locations (collectively, the “**Liquidating Stores**”).

1.5 On December 13, 2023, the Applicant obtained an order (the “**Approval and Vesting Order**”), among other things:

- (i) approving the asset purchase agreement dated as of December 1, 2023 (the “**APA**”) between Mastermind LP, as seller, and Unity Acquisitions Inc. (“**Unity**”) or its permitted assignee, Mastermind Toys Inc., as purchaser (the “**Purchaser**”), and the going concern transaction contemplated thereby (the “**Transaction**”); and

- (ii) upon the delivery of a certificate to Mastermind LP and the Purchaser (the “**Monitor’s Certificate**”), vesting all of Mastermind LP’s right, title and interest in and to the Purchased Assets (as defined in the APA) in the Purchaser free and clear of all claims and encumbrances other than the Permitted Encumbrances (as defined in the APA).

1.6 Additional details regarding the Mastermind Entities and the circumstances leading to the CCAA Proceedings are set out in the Pre-Filing Report of the Proposed Monitor dated November 22, 2023 (the “**Pre-Filing Report**”), the First Report of the Monitor dated November 29, 2023 (the “**First Report**”) and the Second Report of the Monitor dated December 10, 2023 (the “**Second Report**” and collectively with the Pre-Filing Report and the First Report, the “**Prior Reports**”). The Prior Reports and other Court-filed documents in the CCAA Proceedings are available on the Monitor’s case website at: [www.alvarezandmarsal.com/Mastermind](http://www.alvarezandmarsal.com/Mastermind) (the “**Case Website**”).

## **2.0 PURPOSE OF THIS REPORT**

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

- (i) the cash flow results for the six-week period ended December 31, 2023;
- (ii) certain updates since the granting of the Approval and Vesting Order, including in respect of the Transaction, the Liquidation Sale, the disclaimer of the Liquidating Stores’ leases, the retention bonuses to be paid to certain staff of the Liquidating

Stores, certain employee terminations and the employment offers provided by the Purchaser to a significant number of Mastermind LP's employees;

- (iii) the Applicant's request for an order pursuant to section 11.3 of the CCAA (the "**Assignment Order**"), among other things, assigning, conveying and transferring to the Purchaser the rights and obligations of the Mastermind Entities under the Assigned Contracts (as defined below);
- (iv) the Applicant's request for an order (the "**Ancillary Order**"), among other things:
  - (a) granting the Monitor expanded powers and certain additional protections;
  - (b) declaring that Mastermind LP meets the criteria prescribed by section 3.2 of the WEPP Regulations (as defined below) and that certain of Mastermind LP's former employees are eligible to receive payments under and in accordance with the WEPP Act (as defined below);
  - (c) extending the Stay Period to and including April 30, 2024;
  - (d) amending the title of the CCAA Proceedings upon the Mastermind Entities' official name changes; and
  - (e) authorizing and directing Mastermind LP to distribute to CIBC any amounts required to satisfy the obligations owing under the CIBC Credit Agreement and the Forbearance Agreement upon the delivery of the Monitor's Certificate in accordance with the Approval and Vesting Order and the APA (the "**Distribution**");

- (v) the activities of the Monitor since the Second Report; and
- (vi) the Monitor's conclusions and recommendations in connection with the foregoing.

### 3.0 TERMS OF REFERENCE AND DISCLAIMER

3.1 In preparing this Third 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 (collectively, the **"Information"**). Except as otherwise described in this Third 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 Third 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 Third 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 Third Report should be read in conjunction with the affidavit of Lucio Milanovich, the Interim Chief Financial Officer of Mastermind LP, sworn January 5, 2024 (the "**Fourth Milanovich Affidavit**") and filed in support of the Applicant's motion for the proposed Assignment Order and Ancillary Order. Capitalized terms used and not defined in this Third Report have the meanings given to them in the Prior Reports or the Fourth Milanovich Affidavit, as applicable.
- 3.4 Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian dollars.

#### **4.0 UPDATE SINCE GRANTING THE APPROVAL AND VESTING ORDER**

##### The Transaction

- 4.1 The Court granted the Approval and Vesting Order on December 13, 2023, approving the APA and the Transaction. Since that time, the Mastermind Entities, the Purchaser, the Monitor and their respective counsel have worked diligently to prepare for the closing of the Transaction on January 15, 2024, being the closing date contemplated under the APA (the "**Closing Date**"). These efforts have included preparing the following agreements to be executed prior to the Closing Date:



- (i) an Amendment to the Asset Purchase Agreement (the “**Amendment Agreement**”) to memorialize minor amendments to the APA agreed to between Mastermind LP and Unity, with the Monitor’s approval (in accordance with the Approval and Vesting Order); and
- (ii) an Assignment and Assumption Agreement pursuant to which Unity’s wholly-owned subsidiary, Mastermind Toys Inc., will assume all of the rights, benefits, duties and obligations of Unity under the APA in accordance with section 11.5(b) thereof (the “**Assignment Agreement**”).

4.2 As set out in the Fourth Milanovich Affidavit and the Second Report, the Transaction, if consummated in accordance with its terms, will result in:

- (i) the preservation of jobs for the majority of Mastermind LP’s employees;
- (ii) the continuation of the “Mastermind Toys” business through the Purchaser;
- (iii) the continued operation of 48 of Mastermind LP’s retail stores and its head office/distribution centre and the preservation of the corresponding leases and relationships with landlords; and
- (iv) the repayment in full of all of the obligations owing to CIBC.

4.3 The Transaction is expected to result in excess proceeds (the “**Excess Proceeds**”), which will be delivered to the Monitor on or subsequent to closing. The Excess Proceeds will be held by the Monitor, subject to the costs associated with administering the CCAA Proceedings, for the benefit of the Mastermind Entities’ estates. Provided that the proposed

Ancillary Order is granted, the Monitor intends to seek the Court's approval to commence and conduct a process for the solicitation, determination and resolution of claims against the Mastermind Entities and their present and former directors and officers (the "**Anticipated Claims Process**"). The Anticipated Claims Process will inform any future distribution of the Excess Proceeds to the Mastermind Entities' creditors.

The Liquidation Sale and the Liquidating Stores

- 4.4 Mastermind LP, with the assistance of the Consultant, has conducted and continues to conduct the Liquidation Sale in accordance with the Sale Guidelines approved by the Court pursuant to the Liquidation Sale Approval Order. As at the date of this Third Report, the Liquidation Sale remains ongoing at certain of the Liquidating Stores.
- 4.5 The Consultant has advised Mastermind LP that it anticipates the Liquidation Sale will conclude, and that all of the Liquidating Stores will be returned to their respective landlords, on or prior to January 14, 2024.
- 4.6 In light of the Liquidation Sale and the anticipated closure of the Liquidating Stores, the Mastermind Entities delivered notices to disclaim the 18 Liquidating Stores' leases to the applicable counterparties thereto on December 13, 2023. The notices of disclaimer delivered by the Mastermind Entities and approved by the Monitor are effective as of January 14, 2024. The Mastermind Entities similarly intend to disclaim or terminate any agreements or informal arrangements with respect to the provision of goods or services to or for the Liquidating Stores that are not Assigned Contracts.

### Employees

- 4.7 As described in the Fourth Milanovich Affidavit, Mastermind LP employed approximately 800 employees, consisting of 625 part-time employees and 175 full-time employees, at the commencement of the CCAA Proceedings. Since that time, Mastermind LP has terminated or provided notice of termination to 232 employees who will not be retained by the Purchaser as well as approximately 40 of the Temporary Employees.<sup>1</sup> The latest effective date of such terminations is January 14, 2024.
- 4.8 The Monitor understands that Mastermind LP has paid or intends to pay all of the wages and vacation pay owing to its terminated employees (collectively the “**Terminated Employees**”). Certain amounts for severance and termination will however, remain owing to the Terminated Employees.
- 4.9 619 of Mastermind LP’s employees have been provided with offers of employment by Mastermind Toys Inc. (Unity’s wholly-owned subsidiary and assignee). Such employees will be terminated by Mastermind LP immediately prior to the Closing Date and, provided that they accept the offers of employment received, will become employees of Mastermind Toys Inc. as of the Closing Date.

### KERP Payments

- 4.10 In accordance with the terms of the KERP, the Mastermind Entities anticipate paying retention bonuses to the six KERP participants on January 14, 2024. Additionally, the

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<sup>1</sup> As also noted in the Fourth Milanovich Affidavit, Mastermind LP hired approximately 160 temporary employees to assist during the holiday shopping season (collectively, the “**Temporary Employees**”). The employment for the majority of these Temporary Employees expired in accordance with the terms of their employment agreements. However, approximately 40 of those Temporary Employees were asked to work beyond the expiration of their employment agreements and have now been terminated or provided with notice of termination.

Mastermind Entities currently anticipate paying the aggregate amount of approximately \$65,000 to select store level and other employees who were instrumental in assisting the Consultant at the Liquidating Stores.

## **5.0 THE ASSIGNMENT ORDER**

- 5.1 The APA contemplates that certain of the Mastermind Entities' leases and contracts will be assigned by Mastermind LP to, and assumed by, the Purchaser (collectively, the "**Assigned Contracts**"). Certain of the Assigned Contracts require the consent of the counterparties thereto to any assignment (collectively, the "**Third Party Consents**").
- 5.2 Section 2.4 of the APA requires Mastermind LP to obtain an order of the Court under section 11.3 of the CCAA assigning the Assigned Contracts for which the requisite Third Party Consents have not been obtained.
- 5.3 The Assigned Contracts for which Mastermind LP and the Purchaser have determined Third Party Consents are or may be required are set out in Schedule "A" of the Assignment Order.
- 5.4 The Monitor understands that the Mastermind Entities and the Purchaser continue to work with the relevant counterparties to obtain the Third Party Consents. Out of an abundance of caution, however, the Mastermind Entities are seeking for all Assigned Contracts to be subject to the Assignment Order, regardless of whether Third Party Consents are required or have been obtained.
- 5.5 The Purchaser has agreed to pay all monetary defaults in relation to any Assigned Contracts, other than those arising by reason of the Mastermind Entities' insolvency, the

commencement of the CCAA Proceedings or the Mastermind Entities' failure to perform a non-monetary obligation, as required under subsection 11.3(4) of the CCAA (collectively, the "**Cure Costs**"), within 7 business days after the closing of the Transaction. The Cure Costs to be paid by the Purchaser in connection with such Assigned Contracts are set out in Schedule "A" to the proposed Assignment Order.

5.6 On January 6, 2024, counsel to the Purchaser provided a letter to counsel to the Mastermind Entities and the Monitor (the "**Financial Covenant Letter**") attesting to the Purchaser's ability to perform the obligations under the Assigned Contracts subject to the proposed Assignment Order, including the payment of the Cure Costs. Among other things, the Financial Covenant Letter confirms that, as of the Closing Date, the Purchaser expects to have approximately \$5 million of shareholders' equity and an initial aggregate availability of \$15 million under a new revolving credit facility with the option to permanently increase such availability by \$5 million with the prior written consent of its lending agent. A copy of the Financial Covenant Letter is attached hereto as **Appendix "A"**.

5.7 The Monitor is supportive of the assignment of the Assigned Contracts and is of the view that the proposed Assignment Order is appropriate in the circumstances, given that:

- (i) the assignment of the Assigned Contracts, including those for which the Third Party Consents are required, is a material term of the APA and integral component of the Transaction negotiated by Mastermind LP and Unity – a Transaction that will preserve over 600 jobs and 49 landlord relationships and ensure the continued operation of the Mastermind Toys business through the Purchaser;

- (ii) the Monitor understands that the Assigned Contracts are essential to the efficient and effective operation of the Mastermind Toys business in the manner intended by the Purchaser;
- (iii) the Purchaser, through its counsel, has provided written confirmation of its ability to pay and perform the obligations under the Assigned Contracts subject to the proposed Assignment Order, including the Cure Costs that the Purchaser has covenanted to pay under the APA;
- (iv) the Monitor understands that CIBC is supportive of the proposed Assignment Order; and
- (v) the Monitor understands that the Mastermind Entities have made or will make best efforts to provide notice of the proposed Assignment Order to each of the counterparties to the Assigned Contracts.

5.8 As previously referenced, the Mastermind Entities intend to disclaim or terminate any agreements or informal arrangements to which they are party that are not Assigned Contracts and for which they will have no further use as of the Closing Date.

## **6.0 THE ANCILLARY ORDER**

### Expanded Powers

6.1 The Monitor understands that following the closing of the Transaction, the Mastermind Entities' directors and officers intend to resign. The proposed Ancillary Order therefore expands the Monitor's powers to facilitate the effective and efficient administration of the Mastermind Entities' estates following the closing of the Transaction, the completion of

the CCAA Proceedings (or any subsequent proceeding) and the wind-down of the Mastermind Entities. Specifically, and in addition to the Monitor's powers and duties under the ARIO or any other order of the Court in the CCAA Proceedings, the CCAA and applicable law, effective upon the delivery of the Monitor's Certificate, the Monitor will be authorized and empowered, but not required to, among other things:

- (i) take any and all actions and steps, and execute all agreements, documents, instruments and writings, on behalf of, and in the name of, the Mastermind Entities in order to facilitate the performance of any of the Mastermind Entities' powers or obligations, including, without limitation, under the APA and the Transaction (including any post-closing matters) or any order of the Court, and to carry out the Monitor's duties under the Ancillary Order or any other order of the Court in the CCAA Proceedings;
- (ii) exercise any powers which may be properly exercised by a board of directors of the Mastermind Entities;
- (iii) engage, retain, or terminate or cause the Mastermind Entities to engage, retain or terminate the services of any officer, employee, consultant, agent, representative, advisor, or other persons or entities, as the Monitor deems necessary or appropriate to assist with the exercise of the Monitor's powers and duties, including as such powers and duties are enhanced under the Ancillary Order;
- (iv) perform or cause the Mastermind Entities to perform such other functions or duties, and enter into or cause the Mastermind Entities to enter into any agreements, disclaim or terminate any agreements or incur any obligations, as the Monitor

considers necessary or desirable in order to facilitate or assist the winding-down or liquidation of the Mastermind Entities, the realization and/or sale of all of the Property not transferred pursuant to the Approval and Vesting Order, the distribution of any net proceeds of such Property and/or the Transaction, or any other related activities, including, without limitation, in connection with (a) developing and conducting a process for the solicitation, determination and resolution of claims against the Mastermind Entities and their present and former directors and officers, and (b) terminating the CCAA Proceedings;

- (v) exercise any shareholder, partnership, joint venture or other rights of the Mastermind Entities;
- (vi) initiate, prosecute, and/or continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Mastermind Entities or the Property;
- (vii) have access to all books and records that are the Property of the Mastermind Entities or that are in the Mastermind Entities' possession or control and the same access as the Mastermind Entities have to any books and records no longer in the Mastermind Entities' control or possession (collectively, the "**Books and Records**");
- (viii) engage, deal, communicate, negotiate, agree and settle with any creditor or other stakeholder of the Mastermind Entities (including, without limitation, any governmental authority) in the name of or on behalf of the Mastermind Entities;



- (ix) claim or cause the Mastermind Entities to claim any and all insurance proceeds or refunds or tax refunds to which either of the Mastermind Entities is entitled that were not transferred pursuant to the Approval and Vesting Order;
- (x) act as an authorized representative of the Mastermind Entities in respect of dealings with any taxing or regulatory authority;
- (xi) file, or take such actions necessary for the preparation and filing of, on behalf of and in the name of the Mastermind Entities, (a) any tax returns, and (b) the Mastermind Entities' employee-related remittances, T4 statements and records of employment for the Mastermind Entities' former employees, in either case, based solely upon the information in the Books and Records and on the basis that the Monitor shall incur no liability or obligation to any person with respect to such returns, remittances, statements, records or other documents;
- (xii) assign the Mastermind Entities, or cause the Mastermind Entities to be assigned, into bankruptcy and to take any steps incidental thereto, and to act (without the obligation to do so) as the licensed insolvency trustee in bankruptcy of each of the Mastermind Entities;
- (xiii) apply to the Court for advice and directions or any further orders necessary or advisable to carry out the Monitor's powers and duties under the Ancillary Order or any other order of the Court granted in the CCAA Proceedings; and
- (xiv) take any steps reasonably incidental to the exercise by the Monitor of the powers listed above or the performance of any statutory obligations.

6.2 The proposed Ancillary Order also affords the Monitor customary protections with respect to carrying out its expanded powers and duties, including in connection with certain employee-related liabilities.

6.3 Given the circumstances, the Monitor is of the view that it is best positioned to supervise, and administer the Mastermind Entities' estates and wind-down and that the proposed expansion of its powers is appropriate given, among other things, that:

- (i) as of the Time of Closing (as defined in the APA), the Mastermind Entities will no longer have any directors or officers, active business operations or employees;
- (ii) in view of the Excess Proceeds anticipated to materialize from the Transaction, additional steps in the CCAA Proceedings (or any subsequent proceeding) are required to realize and potentially distribute value to the Mastermind Entities' stakeholders; and
- (iii) without the proposed expansion of the Monitor's powers, no party will have the necessary authority or capacity to administer the Mastermind Entities' estates or their wind-down nor advance and eventually terminate the CCAA Proceedings.

Name Change

6.4 Under the APA, Mastermind LP covenanted and agreed to, among other things:

- (i) use commercially reasonable efforts to, effective after the Time of Closing, change, and cause each of its affiliates to, change its name to a name which does not include the words "Mastermind" or "Mastermind Toys" or any part thereof or any similar words; and

(ii) seek an order in the CCAA Proceedings to change the style of cause in the CCAA Proceedings to reflect the change of Mastermind LP's name.

6.5 Consistent with the terms of the APA, the Approval and Vesting Order authorized and directed the Mastermind Entities to, upon the filing of the Monitor's Certificate, take any appropriate action to change Mastermind LP's and its affiliates' respective names to a name which does not include the words "Mastermind" or "Mastermind Toys" or any part thereof or any similar words. Since the granting of the Approval and Vesting Order, the Mastermind Entities have determined that the Applicant's name will be changed to "Old MM GP Inc." upon the filing of the Monitor's Certificate.

6.6 In accordance with the terms of the APA, the Mastermind Entities seek to amend the style of cause in the CCAA Proceedings pursuant to the proposed Ancillary Order. Such amendment will reflect the Applicant's name change.

6.7 Given the terms of the APA and the Approval and Vesting Order, the Monitor is supportive of the Applicant's request that the style of cause in the CCAA Proceedings be amended upon the official change of its legal name to Old MM GP Inc.

#### WEPP Act Declaration

6.8 Subsection 5(1) of the *Wage Earner Protection Program Act*, S.C. 2006, c. 47 s. 1, as amended (the "**WEPP Act**"), provides that an individual is eligible to receive payment under the Wage Earner Protection Program if, among other things: (i) the individual's employment is ended for a reason prescribed by regulation; (ii) the individual is owed eligible wages by a former employee; (iii) the former employer is subject to proceedings

under the CCAA; and (iv) a court determines under subsection 5(5) of the WEPP Act that the criteria prescribed by regulation are met.

- 6.9 Section 3.2 of the *Wage Earner Protection Program Regulations*, SOR/2008-222 (the “**WEPP Regulation**”) provides that the Court “may determine whether the former employer is the former employer all of whose employees in Canada have been terminated other than any retained to wind down its business operations”.
- 6.10 As previously discussed, Mastermind LP has provided notice of termination to each of the Terminated Employees and, immediately prior to the Closing Date, will provide notice of termination to those employees that have received offers of employment from the Purchaser. As such, Mastermind LP will have terminated all of its employees immediately prior to the Closing Date. The proposed WEPP Act declaration is intended to ensure that Mastermind LP’s former employees who may be eligible are able to access benefits, such as termination and severance pay, under the WEPP Act at the earliest opportunity.
- 6.11 In light of the foregoing, the Monitor supports the Applicant’s request for a declaration that Mastermind LP is a former employer for the purposes of subsection 5(5) of the WEPP Act. If such declaration is made, the Monitor intends to liaise with the Mastermind Entities to identify all employees that may be eligible for payments under the WEPP Act (the maximum amount of which for 2024 is CAD\$8,507.66) and assist eligible individuals in applying under the Wage Earner Protection Program.

Extension of the Stay Period

- 6.12 The ARIO extended the Stay Period until and including January 26, 2024. Pursuant to the proposed Ancillary Order, the Applicant is seeking a further extension of the Stay Period to and including April 30, 2024.
- 6.13 The Monitor supports the proposed extension of the Stay Period to and including April 30, 2024, for the following reasons:
- (i) the extension of the stay of proceedings will provide the stability and certainty necessary to enable the Mastermind Entities to complete the Transaction, which has an outside date of January 31, 2024;
  - (ii) in addition to facilitating the closing of the Transaction, the stay of proceedings, as extended, will provide the Monitor with the breathing room necessary to exercise its powers and duties under the proposed Ancillary Order, seek approval of the Anticipated Claims Process and administer the Mastermind Entities' estates and wind-down;
  - (iii) the Mastermind Entities anticipate that the Excess Proceeds will provide sufficient liquidity through the extended Stay Period; and
  - (iv) in the Monitor's view, the Mastermind Entities have acted and continue to act in good faith and with due diligence to advance the CCAA Proceedings, complete the Liquidation Sale and consummate the Transaction for the benefit of their stakeholders.

Distribution to CIBC

6.14 Section 3.4(c) of the APA contemplates that immediately following the closing of the Transaction and in accordance with the Illustrative Net Debt Statement (as defined in the APA):

- (i) the aggregate amounts owing by Mastermind LP under the CIBC Credit Agreement will be paid in full out of cash on hand and, to the extent necessary, any proceeds received by Mastermind LP at the Time of Closing; and
- (ii) Mastermind LP will use its surplus cash, if any, and any portion of the Closing Cash Payment representing the AR Amount to pay any outstanding Priority Payables (each as defined in the APA), which Priority Payables includes all of the obligations secured under the DIP Charge.

6.15 Immediately following the Time of Closing, Mastermind LP is expected to be in possession of cash on hand and the proceeds from the Closing Cash Payment, a portion of which will be payable to CIBC in accordance with the APA. Accordingly, pursuant to the proposed Ancillary Order, the Applicant is seeking to authorize Mastermind LP to distribute such amounts to satisfy all obligations owing under the CIBC Credit Agreement and the Forbearance Agreement following the delivery of the Monitor's Certificate. Upon the Distribution being made, all of CIBC's commitments to make loans or otherwise extend credit to the Mastermind Entities under the CIBC Credit Agreement or the Forbearance Agreement will terminate.

6.16 As described in the Pre-Filing Report, the Monitor has previously requested that its counsel, Bennett Jones LLP ("**Bennett Jones**"), 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 Monitor's counsel, and its counsel's local provincial agents, provided written opinions to the Monitor 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.

- 6.17 Having regard to the foregoing, the Monitor supports the proposed Distribution to CIBC. As the beneficiary of the DIP Charge – which ranks subordinate only to the Administration Charge and the D&O Charge – and as the Mastermind Entities' senior-secured pre-filing creditor, CIBC has the senior most entitlement to the proceeds subject to the Distribution. Authorizing the Distribution under the proposed Ancillary Order will ensure that Mastermind LP is able to comply with its obligations under the APA and prevent the accumulation of further interest on the Mastermind Entities' obligations under the CIBC Credit Agreement.
- 6.18 Any obligations that may become due in respect of the Administration Charge and the D&O Charge following the proposed Distribution are expected to be secured by the Excess Proceeds.

## 7.0 CASH FLOW RESULTS RELATIVE TO FORECAST

7.1 Actual receipts and disbursements for the period from November 23, 2023 to December 31, 2023 (the “**Reporting Period**”), as compared to the Cash Flow Forecast attached as Appendix “A” to the Pre-Filing Report, are summarized in the below table.

Cash Flow Variance Report			\$000's
	Budget	Actual	Variance
<b>Receipts</b>			
Sales	29,749	30,249	500
Sales tax collections	3,406	3,447	41
<b>Total Receipts</b>	33,155	33,696	541
<b>Disbursements</b>			
Merchandise vendors	-	-	-
Non-merchandise vendors	(4,222)	(2,316)	1,906
Rent	(1,366)	(1,381)	(15)
Payroll & benefits	(3,202)	(2,994)	208
Restructuring professional fees	(1,007)	(1,247)	(241)
Consultant fees	(828)	(746)	82
Sales tax remittances	(3,594)	180	3,774
Other expenditures	(352)	(178)	174
<b>Total Disbursements</b>	(14,570)	(8,681)	5,889
<b>Net cash flow</b>	<b>18,585</b>	<b>25,014</b>	<b>6,430</b>

7.2 During the Reporting Period:

- (i) total receipts were approximately \$541,000 greater than projected, relatively consistent with forecast;
- (ii) the positive variance in non-merchandise disbursements of \$1.9 million is due primarily to lower than forecast shipping and logistics costs incurred in connection with moving product from the warehouse to individual store locations. At this time,



the Mastermind Entities' management considers this to be a positive variance of which, a portion may reverse in future weeks;

- (iii) within non-merchandise disbursements, approximately \$320,000 of pre-filing supplier payments were made. With the consent of the Monitor, these disbursements were made in accordance with the ARIO in order to release critical inventory held at a third-party warehouse, which inventory was subject to a lien claim under the *Repair and Storage Liens Act*, R.S.O. 1990, c. R.25, as amended; and
- (iv) the remaining positive variance in total disbursements of approximately \$4.0 million is expected to reverse and is due primarily to the collection of a sales tax refund and timing variances for the remittance of November and December sale tax.

7.3 Overall, during the Reporting Period, the Mastermind Entities experienced a positive net cash flow variance of approximately \$6.4 million, a portion of which is anticipated to decline as described above.

7.4 As at December 31, 2023, the Mastermind Entities were holding a positive cash balance of approximately \$4.2 million. In addition, as at December 31, 2023, the Mastermind Entities borrowings can be summarized as follows:

<b>Borrowings under CIBC Credit Facility</b>			<b>\$000's</b>
	<b>Budget</b>	<b>Actual</b>	<b>Variance</b>
Pre-Filing Revolver Facility (incl. BCAP)	--	--	--
Post-Filing Revolver Facility <sup>2</sup>	3,389	705	2,684
<b>Total Borrowings</b>	<b>3,389</b>	<b>705</b>	<b>2,684</b>

## 8.0 ACTIVITIES OF THE MONITOR SINCE THE SECOND REPORT

8.1 Since the date of the Second Report, the primary activities of the Monitor have included the following:

- (i) liaising with and assisting the Mastermind Entities and the Purchaser and each of their respective counsel in connection with the anticipated closing of the Transaction;
- (ii) attending regular update calls with CIBC;
- (iii) assisting the Mastermind Entities with communications to employees, suppliers, landlords and other parties;
- (iv) monitoring the Mastermind Entities' cash receipts and disbursements, and assisting in preparing weekly cash flow variance reporting;
- (v) responding to inquiries from stakeholders, including addressing questions or concerns of parties who contacted the Monitor on the hotline number or email account established by the Monitor for the CCAA Proceedings;

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<sup>2</sup> Borrowings under the Post-Filing Revolver Facility only are secured by the DIP Charge.


- (vi) assisting the Mastermind Entities with the preparation of materials requested by the CRA to conduct their limited scope HST audit;
- (vii) reviewing and providing the Monitor's views on various closing documents, including the Amendment Agreement and the Assignment Agreement;
- (viii) posting non-confidential materials filed with the Court to the Case Website; and
- (ix) with the assistance of Bennett Jones, preparing this Third Report.

## **9.0 CONCLUSIONS AND RECOMMENDATIONS**

- 9.1 For the reasons set out in this Third 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 8<sup>th</sup> day of January, 2024.

**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**  
**UNITY ACQUISITIONS INC. FINANCIAL COVENANT LETTER**

See attached.

# FASKEN

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January 6, 2024  
File No.: 336672.00001/18295

**Dylan Chochla**  
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Royal Bank Plaza, South Tower  
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Toronto, ON M5J 2J1

**Attention: Natasha MacParland**

**Attention: Josh Nevsky**

Dear Natasha and Josh:

**Re: CV-23-00710259-00CL / Mastermind GP Inc.  
Asset Purchase Agreement made as of December 1, 2023 between Unity Acquisitions Inc. (the “Buyer”) and Mastermind LP by its general partner Mastermind GP Inc. (the “Seller”), as may be amended, supplement, or restated from time to time (the “APA”)**

As you know, we are legal counsel for the Buyer. Capitalized terms used but not defined herein have the meanings given to them in the APA.

Pursuant to the APA, the Seller will be seeking a CCAA Assignment Order which, among other things, will authorize and approve the assignment to Mastermind Toys Inc. (a permitted assignee of the Buyer, the “Assignee”) of, and vest in the Assignee all right title, benefit, and interest of the Seller in, any Assumed Real Property Leases, Assumed Contracts, Purchased IP, and Assumed Authorizations (collectively, the “Assigned Documents”) for which a consent, approval, or waiver necessary for the assignment of same has not been obtained prior to the Time of Closing. Legal counsel for the Seller and legal counsel for the Monitor have requested the Buyer and Assignee to provide evidence that the Assignee would be able to perform the obligations under the Assigned Documents which are to be the subject of the CCAA Assignment Order, which may include the payment of certain Cure Costs, such Assigned Documents and Cure Costs to be expressly set forth in the CCAA Assignment Order.

On behalf of the Assignee, we hereby advise you that, as of the Closing Date, the Assignee expects that it will have approximately CAD 5 million of shareholders' equity and an initial aggregate availability of CAD 15 million under a new revolving credit facility with the option to permanently increase such availability by CAD 5 million with the prior written consent of its lending agent. The amounts available under the credit facility remain subject to the negotiation and execution of



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definitive loan and security documents. It is the view of the Buyer and Assignee that the Assigned Documents are essential to the continued operation and success of the “Mastermind Toys” business.

Yours truly,

**FASKEN MARTINEAU DuMOULIN LLP**



Dylan Chochla

DC/cd

cc Mitch Stephenson & Montana Licari, *Fasken Martineau DuMoulin LLP*  
(mstephenson@fasken.com; mlicari@fasken.com)  
Mitchell Binder, *Alvarez & Marsal Canada Inc.* (mbinder@alvarezandmarsal.com)  
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fosterj@bennettjones.com)  
Natalie Renner & Kristine Spence, *Davies Ward Phillips & Vineberg LLP*  
(nrenner@dwpv.com; kspence@dwpv.com)



**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.**

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

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**THIRD REPORT OF THE MONITOR**

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solely in its capacity as Monitor and not in its  
personal or corporate capacity