

Court File No. 31-299040

Estate File No. 31-299040

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
[IN BANKRUPTCY AND INSOLVENCY]  
(COMMERCIAL LIST)**

THE HONOURABLE ) TUESDAY, THE 15<sup>TH</sup>  
)  
)  
JUSTICE OSBORNE ) DAY OF NOVEMBER, 2022

**IN THE MATTER OF THE BANKRUPTCY OF  
BRAMALEA INC.  
OF THE CITY OF TORONTO IN THE PROVINCE OF ONTARIO**

**SALE PROCESS APPROVAL ORDER**

**THIS MOTION**, made by MNP Ltd. in its capacity as the trustee (the “**Trustee**”) of the bankruptcy estate of Bramalea Inc. (the “**Bankrupt**”) for an Order substantially in the form included in the Trustee’s Motion Record seeking, *inter alia*, approval of a sale process for the Lands (as defined in the Stalking Horse Agreement) (as defined below)) was heard this day via videoconference.

**ON READING** the Motion Record of the Trustee, including the First Report of the Trustee dated November 8, 2022 (the “**First Report**”), filed.

**ON HEARING** the submissions of counsel for the Trustee, counsel for the Stalking Horse Bidder (as defined below) and such other counsel that were present as reflected on the counsel slip, no one else appearing for any party although duly served as appears from the affidavit of service of Amanda Adamo dated November 9<sup>th</sup>, 2022, and the affidavit of service of Amanda Adamo dated November 11<sup>th</sup>, 2022.

## **SERVICE AND DEFINITIONS**

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS** that capitalized terms used in this Order and not otherwise defined herein shall have the meanings ascribed to them in the Sale Process attached hereto as Schedule “A” (the “**Sale Process Procedures**”).

## **APPROVAL OF THE STALKING HORSE BID, THE SALE PROCESS AND THE SALE PROCESS PROCEDURES**

3. **THIS COURT ORDERS AND DECLARES** that the execution by the Trustee of the Agreement of Purchase and Sale between the Trustee and RCC Enterprises Inc. o/a Railway Construction Company (the “**Stalking Horse Bidder**”) dated November 8, 2022, in the form attached as Appendix “E” to the First Report (the “**Stalking Horse Agreement**”) is hereby authorized and approved, *nunc pro tunc*.
4. **THIS COURT AUTHORIZES** the Trustee to use the Stalking Horse Agreement as the “stalking horse bid” in the Sale Process. For greater certainty, except as contemplated by paragraphs 7 through 12 hereof, nothing herein approves the transaction contemplated in the Stalking Horse Agreement and the approval of the Stalking Horse Agreement or any other transaction arising from the Sale Process shall be determined on a subsequent motion made to this Court.
5. **THIS COURT ORDERS** that the Sale Process and the Sale Process Procedures, substantially in the form attached hereto, be and are hereby approved, and the Trustee is authorized and directed to carry out the Sale Process in accordance with the Sale Process Procedures and this Order, and is hereby authorized and directed to take such steps as it considers necessary or desirable in carrying out its obligations thereunder, subject to prior approval of this Court being obtained before the completion of any transaction(s) under the Sale Process.
6. **THIS COURT ORDERS** that the Trustee and its respective affiliates, partners, directors, employees, advisors, lawyers, agents and controlling persons shall have no liability with respect

to any and all losses, claims, damages or liability of any nature or kind to any person in connection with or as a result of performing their duties under the Sale Process, except to the extent such losses, claims, damages or liabilities arise or result from the gross negligence or willful misconduct of the Trustee as determined by the Court in a final order that is not subject to appeal or other review.

### **STALKING HORSE CHARGE**

7. **THIS COURT ORDERS** that the Trustee's obligation to pay the Expense Reimbursement and Break Fee (each as defined in the Stalking Horse Agreement) in accordance with the terms of the Stalking Horse Agreement is hereby approved.

8. **THIS COURT ORDERS** that the Stalking Horse Bidder shall be entitled to the benefit of and is hereby granted a charge (the "**Stalking Horse Charge**") on the Lands, which charge shall not exceed an aggregate amount of \$164,000, as security for the payment of the Expense Reimbursement and Break Fee.

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

10. **THIS COURT ORDERS** that the Stalking Horse Charge shall constitute a charge on the Lands and rank in priority to all other security interests, trusts (including deemed trusts), liens, charges and encumbrances and claims of secured creditors, statutory or otherwise (collectively, "**Encumbrances**") in favour of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "**Persons**" and each being a "**Person**") notwithstanding the order of perfection or attachment.

11. **THIS COURT ORDERS** that the Trustee shall not grant any Encumbrances over the Lands that rank in priority to, or *pari passu* with, the Stalking Horse Charge, unless the Trustee also obtains the prior written consent of the Stalking Horse Bidder.

12. **THIS COURT ORDERS** that the Stalking Horse Charge shall not be rendered invalid or unenforceable and the rights and remedies of the Stalking Horse Bidder in connection therewith shall not otherwise be limited or impaired in any way by: (a) the bankruptcy of the Bankrupt or the pendency of these proceedings; (b) the provisions of any federal or provincial statutes; or (c) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an “**Agreement**”) which binds the Bankrupt, and notwithstanding any provision to the contrary in any Agreement:

- (a) the creation of the Stalking Horse Charge shall not create or be deemed to constitute a breach by the Bankrupt of any Agreement to which it is a party;
- (b) the Stalking Horse Bidder shall have no liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the creation of the Stalking Horse Charge; and
- (c) the granting of the Stalking Horse Charge and the payment of the Expense Reimbursement and/or Break Fee by the Trustee does not and will not constitute a preference, fraudulent conveyance, transfer at undervalue, oppressive conduct, or other challengeable or voidable transaction under any applicable law.

#### **CASL**

13. **THIS COURT ORDERS** that the Trustee (and its representatives, advisors and counsel) are at liberty to serve or distribute this Order and any other materials and orders as may be reasonably required in these proceedings, including any notices or other correspondence, by forwarding true copies thereof by electronic message to the Bankrupt’s creditors or other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or juridical obligation, and notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations*, Reg. 81000-2-175 (SOR/DORS).

## **APPROVAL OF ACTIVITIES**

14. **THIS COURT ORDERS** that the First Report, and the activities and conduct of the Trustee as set out therein, are hereby approved; provided, however, that only the Trustee, in its personal capacity and only with respect to its own personal liability, shall be entitled to rely upon or utilize in any way such approvals.

## **GENERAL**

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

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

17. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. (Toronto time) on the date of this Order.

**SCHEDULE "A"**

**SALE PROCESS PROCEDURES**

**[ATTACHED]**

## SCHEDULE "A"

### SALE PROCEDURES RE: LANDS SUBJECT TO STALKING HORSE BID

#### Defined Terms

1. These sale procedures, and the sale process described herein, shall collectively be hereinafter referred to as the "**Sale Process**".
2. All capitalized terms contained herein but not otherwise defined herein shall have the meanings ascribed thereto in the Stalking Horse Agreement (as defined below) to which this schedule is appended.
3. "**Bankrupt**" shall mean Bramalea Inc.
4. "**Trustee**" shall mean MNP Ltd., solely in its capacity as licensed insolvency trustee of the estate of Bramalea Inc. (the "**Estate**") appointed pursuant to Section 41(11) of the *Bankruptcy and Insolvency Act* pursuant to the Order of the Court dated June 14, 2022.
5. For purposes hereof, "**Stalking Horse Bid**" shall mean the transaction contemplated by the agreement of purchase and sale (the "**Stalking Horse Agreement**") between the Trustee, as vendor, and RCC Enterprises Inc. o/a Railway Construction Company, as purchaser, (the "**Stalking Horse Bidder**") dated November 8, 2022, and approved as the Stalking Horse Bid by Order of the Ontario Superior Court of Justice (In Bankruptcy and Insolvency) [Commercial List] (the "**Court**") issued on November 15, 2022 (the "**Sale Process Order**").
6. "**Lands**" shall mean those parcels of land that are described in Schedule A to the Stalking Horse Agreement.

#### Commencement of the Sale Process

7. The Sale Process shall commence immediately following the date on which Sale Process Order is issued (the "**Commencement Date**").
8. Within three (3) business days of the Commencement Date, the Trustee shall contact parties identified by the Trustee (the "**Potential Bidders**") who may be interested in purchasing the Lands and provide those parties notice of the Transaction and Sale Process by way of an information document (the "**Sale Information Document**"). The Sale Information Document shall contain general details about the Transaction and the opportunity to purchase the Lands, or any part thereof (the "**Opportunity**"), as well as some general background information about the Bankrupt.

9. Within five business (5) days of the Commencement Date, or as soon thereafter as is practical, if the Trustee deems it advisable and cost-effective, the Trustee shall also (a) publish a notice advertising the Opportunity in the National Post and/or such other trade publications or other publications as the Trustee may deem appropriate or advisable, and (b) post the Opportunity on its website.
10. Any person or entity that contacts the Trustee and expresses an interest in the Opportunity, and that was not identified by the Trustee previously under Section 8 hereof, shall be deemed a “Potential Bidder” for all other purposes hereunder.

### **Due Diligence**

11. Any Potential Bidders who advise the Trustee of their interest in participating in the Sale Process shall execute a non-disclosure agreement (the “NDA”) in a form satisfactory to the Trustee.
12. Commencing on the Commencement Date (and after each respective Potential Bidder has executed the NDA), the Trustee shall make available to each Potential Bidder the following:
  - a) a copy of the Stalking Horse Agreement and the Sale Process Order, including this Sale Process; and
  - b) access to an electronic data room, to be maintained by the Trustee, which shall contain information pertaining to the Opportunity which is in the Trustee’s possession.

### **Bid Deadline**

13. All bids must be submitted in writing to the Trustee (via email to Sheldon Title at sheldon.title@mnp.ca) so as to be received by the Trustee by no later than 5:00pm (Toronto time) on January 6, 2023 (the “**Bid Deadline**”).

### **Consideration of Bids**

14. The Trustee may consider bids in respect of all or any part of the Lands, provided that the Trustee shall only consider Qualified Bids (*as defined below*) and Qualified Limited Parcel Bids (*as defined below*).

### **Consideration of Qualified Limited Parcel Bids**

15. The Trustee may consider bids on parcels comprising the Lands on an individual or limited basis provided that any such bid meets the following requirements:



- i. it must be received by the Trustee on or before the Bid Deadline;
- ii. it must be submitted in writing, identifying the specific parcels of the Lands to which it applies and the proposed cash purchase price for such parcels, and otherwise substantially in the form of the Stalking Horse Agreement (but excluding any entitlement to a break fee or expense reimbursement), with any changes to the offer blacklined against the Stalking Horse Agreement;
- iii. it must be irrevocable until five (5) business days after the Auction (as defined below);
- iv. it must be accompanied by a deposit in the form of a certified cheque or bank draft (or in the form of confirmed wire transfer in the case of offers submitted electronically) payable to “MNP Ltd., in trust” which is equal to at least twenty-five percent (25%) of the total purchase price payable under the bid;
- v. it is on an “as is, where is” basis and includes an acknowledgement that the offeror has relied solely on its own independent review and investigation and that it has not relied on any representation by the Bankrupt, the Trustee or their respective agents, employees or advisers;
- vi. it must not contain any condition or contingency relating to due diligence or financing or any other material conditions precedent to the offeror’s obligation to complete the transaction other than Court approval of the transaction; and
- vii. it must include written evidence, satisfactory to the Trustee, that the offeror has the financial means to complete the proposed acquisition.

Any bid meeting the foregoing requirements shall be a “**Qualified Limited Parcel Bid**” hereunder.

16. In considering Qualified Limited Parcel Bids, the Trustee may:
  - a) seek to negotiate with the Stalking Horse Bidder and/or any other Potential Bidder submitting a Qualified Bid (a “**Qualified Bidder**”) to determine if any or all such parties will agree to amend their respective bids to allow the Trustee to conclude one or more Qualified Limited Parcel Bids (it being understood that the Stalking Horse Bidder shall maintain its sole and absolute discretion as to whether or not to agree to remove any parcels comprising the Lands from the Transaction), and, if such amendments can be agreed, where there is more than one Qualified Bid, the Trustee shall proceed to an Auction between the Stalking Horse Bidder and any other Qualified Bidders only in respect of those Lands not included in such Qualified Limited Parcel Bids;

- b) designate two or more Qualified Limited Parcel Bids, in aggregate, as a Qualified Bid; provided that such Qualified Limited Parcel Bids, taken together, must satisfy all elements of a Qualified Bid as set out in Section 17, below, including an aggregate purchase price satisfying Section 17(b), below (an “**Aggregated Qualified Bid**” and the parties submitting the Aggregated Qualified Bid, the “**Aggregated Qualified Bidders**”) and proceed to an Auction among the Stalking Horse Bidder, any other Qualified Bidders and the Aggregated Qualified Bidders; and/or
- c) elect to reject any Qualified Limited Parcel Bids in its sole and absolute discretion, including because: (i) the proposed purchase price or other terms of a Qualified Limited Bid are not satisfactory to the Trustee; or (ii) a Qualified Limited Parcel Bid cannot be consummated in light of the terms of the Stalking Horse Bid or any other Qualified Bid (including following any negotiations as contemplated by Section 16(a).

### **Consideration of Qualified Bids**

- 17. Save and except for Qualified Limited Parcel Bids, a bid will only be considered in this Sale Process if it is received by the Trustee on or before the Bid Deadline and it meets the following minimum criteria (any such bid submitted by a Potential Bidder being a “**Qualified Bid**”):
  - a) it must be submitted in writing, substantially in the form of the Stalking Horse Agreement (but excluding any entitlement to a break fee or expense reimbursement), with any changes to the offer blacklined against the Stalking Horse Agreement;
  - b) it must be for a cash purchase price equal to or greater than the sum of:
    - (i) the Purchase Price; plus
    - (ii) the Expense Reimbursement (\$100,000) and Break Fee (\$64,000); plus
    - (iii) \$46,000; plus
    - (iv) the amount, if any, sufficient to fully satisfy any commission payable by the Trustee in connection with the transaction contemplated by the bid;
  - c) it must be irrevocable until five (5) business days after the Auction;
  - d) it must be accompanied by a deposit in the form of a certified cheque or bank draft (or in the form of confirmed wire transfer in the case of offers submitted electronically) payable to “MNP Ltd., in trust” which is equal to at least twenty-five percent (25%) of the total purchase price payable under the offer, and \$25,000 of such deposit must be non-refundable in the circumstances described in Section 27 hereof;
  - e) it is on an “as is, where is” basis and includes an acknowledgement that the offeror has relied solely on its own independent review and investigation and that it has not relied on any representation by the Bankrupt, the Trustee or their respective agents, employees or advisers;

- f) it must not contain any condition or contingency relating to due diligence or financing or any other material conditions precedent to the offeror's obligation to complete the transaction other than Court approval of the transaction; and
- g) it must include written evidence, satisfactory to the Trustee, that the offeror has the financial means to complete the proposed acquisition,

provided however that the Trustee may, in exercising its reasonable discretion, waive strict compliance with one or more of the foregoing Qualified Bid requirements and deem such non-compliant offer to be a Qualified Bid.

- 18. The Stalking Horse Bid shall be deemed to be a Qualified Bid and the Stalking Horse Bidder shall be deemed to be a Qualified Bidder for all purposes in the Sale Process.
- 19. Qualified Bids for all or part of the Lands will be considered.

### **Potential Auction**

- 20. For the purposes of Sections 20 through 24 hereof, the term "Qualified Bid" shall include any Aggregated Qualified Bid.
- 21. If no Qualified Bid (other than the Stalking Horse Bid) is received by the Bid Deadline, the Auction will not be held, the Stalking Horse Bid shall be deemed the Winning Bid (as hereinafter defined) and the Trustee shall proceed to seek the Approval & Vesting Order in accordance with the Stalking Horse Agreement and, subject to the issuance of same, proceed to close the Transaction with the Stalking Horse Bidder in accordance with the Stalking Horse Agreement and pursuant to the Approval & Vesting Order.
- 22. If one or more Qualified Bids (other than the Stalking Horse Bid) is received by the Bid Deadline, the Trustee shall extend invitations by phone, fax and/or email by 10:00 a.m. (Toronto time) on January 9, 2023, to all Qualified Bidders (including the Stalking Horse Bidder) and their counsel and other advisors to attend an auction for the Lands (the "**Auction**"). The Auction shall be held beginning at 10:00 a.m. (Toronto time) on January 11, 2023, at the offices of the Trustee or by video conference, as the Trustee may deem fit.
- 23. The Trustee shall conduct the Auction. At the Auction, the bidding shall begin initially with the highest Qualified Bid (a copy of which, including any and all Qualified Limited Parcel Bids comprising same, shall be provided by the Trustee to all Qualified Bidders not less than 48 hours prior to the start of the Auction) and subsequently continue in multiples of \$50,000, or such greater amount as the Trustee determines to facilitate the Auction. Additional consideration in excess of the amount set forth in the highest Qualified Bid must be comprised only of cash consideration. Subject to the foregoing, the other procedures for the Auction shall be determined by the Trustee in its reasonable discretion as it considers advisable or appropriate so as to facilitate a fair and transparent Auction process, with a goal of achieving the best result for the Estate, and shall be provided in writing to all Qualified Bidders prior to the start of the Auction.

24. Where the Auction involves an Aggregated Qualified Bid, the Trustee shall make such modifications to the Auction terms as the Trustee deems necessary, advisable or appropriate so as to facilitate a fair and transparent Auction process, with a goal of achieving the best result for the Estate, including but not limited to seeking any increase in offer price from the Aggregated Qualified Bidders, first, on a pro rata basis based on their pro rata share of the Aggregated Qualified Bid purchase price and, thereafter, on such other terms that are acceptable among them and the Trustee.

### **Selection of the Winning Bid(s)**

25. The winning bid(s) in the Sale Process shall be, either:
- a. the Stalking Horse Bid, in the event that no other Qualified Bid or Qualified Limited Parcel Bid is received by the Bid Deadline (or any Qualified Limited Parcel Bid(s) received by the Bid Deadline are rejected by the Trustee in accordance with Section 16(c);
  - b. the Stalking Horse Bid and one or more Qualified Limited Parcel Bids, in the event that no other Qualified Bid is received by the Bid Deadline but Qualified Limited Parcel Bid(s) are received by the Bid Deadline, and the Trustee and Stalking Horse Bidder are able to negotiate a mutually acceptable amendment to the Stalking Horse Bid that permits the conclusion of one or more of such Qualified Limited Parcel Bid(s);
  - c. the highest and best Qualified Bid, as determined by the Trustee, received at the conclusion of the Auction and one or more Qualified Limited Parcel Bids, in the event that one or more Qualified Bids (other than the Stalking Horse Bid) and Qualified Limited Parcel Bids are received by the Bid Deadline and the Trustee and such bidders are able to negotiate mutual acceptable amendments to one or more Qualified Bids that permits the conclusion of such Qualified Limited Parcel Bids and an Auction in respect of the Lands not included in the accepted Qualified Limited Parcel Bids; or
  - d. the highest and best Qualified Bid, as determined by the Trustee, received at the conclusion of the Auction, in the event that one or more Qualified Bids other than the Stalking Horse Bid (including an Aggregated Qualified Bid) are received by the Bid Deadline.

Such winning bid or bids shall hereinafter be referred to as the “**Winning Bid(s)**”.

### **Court Approval**

26. Following the determination of the Winning Bid(s), the Trustee will make a motion to the Court (the “**Approval Motion**”) for one or more approval and vesting orders (collectively, the “**Approval and Vesting Order**”) in respect of the Winning Bid(s) and the underlying purchase agreement(s) (the “**Final Purchase Agreement(s)**”).

### **Other Terms**

27. All deposits received (except deposits received from the Stalking Horse Bidder and deposits in respect of the Winning Bid(s)) shall be held by the Trustee “in trust” in a non-interest-bearing account. All deposits submitted by Potential Bidders who did not submit the Winning Bid(s) shall be returned, without interest, as soon as practicable following the date on which any such offers are deemed rejected hereunder. The Deposit received from the Stalking Horse Bidder shall be dealt with in accordance with the Stalking Horse Agreement. The deposit(s) forming part of any Winning Bid(s) other than the Stalking Horse Agreement shall be dealt with in accordance with the Final Purchase Agreement(s), it being understood that \$25,000 of the deposit(s) provided in respect of any such Winning Bid(s) shall be non-refundable and may be immediately accessed by the Trustee to refund the Process Fee Amount to the Stalking Horse Bidder in accordance with the terms of the Stalking Horse Agreement in the event the Stalking Horse Bid is not selected as the Winning Bid.
28. In the event that any deposit is forfeited for any reason it shall be forfeited as liquidated damages and not as a penalty.
29. All Qualified Bids and Qualified Limited Parcel Bids (other than the Winning Bid(s)) shall be deemed rejected once the Approval and Vesting Order is granted by the Court and the transaction(s) contemplated by the Winning Bid(s) are completed.
30. In the event that the Stalking Horse Bid is not the Winning Bid, then: (i) the full Deposit under the Stalking Horse Agreement will be immediately returned by the Trustee to the Stalking Horse Bidder (with the Process Fee Amount to be funded from the non-refundable portion of the deposit provided in respect of the Winning Bid); and (ii) the Stalking Horse Bidder shall be entitled to a break fee of \$64,000 and an expense reimbursement fee of up to \$100,000 (collectively, the “**Expense Reimbursement and Break Fee**”) which shall be payable by the Trustee immediately following the closing of the Winning Bid(s).
31. The Sale Process does not, and will not be interpreted to, create any contractual or other legal relationship between the Trustee and any Potential Bidder, any Qualified Bidder, or any other party, other than as specifically set forth in a definitive agreement (including the Stalking Horse Agreement). Except as specifically set forth in a definitive agreement (including the Stalking Horse Agreement), any party that submits a bid in the Sale Process expressly acknowledges and agrees that the Trustee has not made any commitment or otherwise incurred any obligation to consider or conclude any transaction with that party.
32. Participants in the Sale Process are responsible for all costs, expenses and liabilities incurred by them in connection with the submission of any Qualified Bid and/or Qualified Limited Parcel Bid, due diligence activities, and any further negotiations or other actions, whether or not they lead to the consummation of a transaction. Except for the payment of the Expense Reimbursement and Break Fee to the Stalking Horse Bidder, if payable pursuant to the Stalking Horse Agreement, no party will be entitled for any reason to

reimbursement for any costs or expenses incurred in reliance upon the procedures set forth herein.

33. Except as otherwise provided in any order of the Court, the Court shall retain jurisdiction to hear and determine all matters arising from or relating to the implementation of the Sale Process Order, the Sale Process and these procedures.
34. Subject to the terms of the Stalking Horse Agreement and any other definitive agreement(s) in respect of a Winning Bid, the Trustee shall not have any liability whatsoever to any person or party, including, without limitation, to any Potential Bidder, Qualified Bidder, or any creditor or other stakeholder, for any act or omission related to this Sale Process. By submitting a bid, each Potential Bidder shall be deemed to have agreed that it has no claim against the Trustee for any reason, matter or thing whatsoever, except as a result of any gross negligence or wilful misconduct on the part of the Trustee.
35. Nothing contained in the Sale Process Order or these procedures shall create any rights in any person (including, without limitation, any bidder in the Sale Process and any rights as third party beneficiaries or otherwise), other than the rights expressly granted to the Stalking Horse Bidder pursuant to the Sale Process Order.
36. Nothing in these procedures shall be construed so as to modify, restrict, limit or impair the rights of the Stalking Horse Bidder under the Stalking Horse Agreement and, as between the Trustee and the Stalking Horse Bidder, the terms of the Stalking Horse Agreement shall prevail to the extent of any direct and irreconcilable conflict between these procedures and the Stalking Horse Agreement.
37. The Trustee shall have the right to adopt such other rules and revise these terms and conditions in a manner that, in its reasonable discretion, will better promote the goals of the Sale Process; provided, however, that the Trustee may not revise the terms and conditions contained in Sections 13 or 17(b) or in a manner that impairs the Stalking Horse Bidder's rights under the Stalking Horse Agreement.

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**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**[IN BANKRUPTCY AND INSOLVENCY]**  
**(COMMERCIAL LIST)**  
Proceeding commenced at Toronto

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**SALE PROCESS APPROVAL ORDER**

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