



Court File No. CV-11-9233-00CL

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

THE HONOURABLE MR. ) FRIDAY, THE 12<sup>TH</sup> DAY  
JUSTICE NEWBOULD ) OF AUGUST, 2011

BETWEEN:

**2251263 ONTARIO INC.**

Applicant

- and -

**BRUSHSTROKES FINE ART INC.**

Respondent

**STALKING HORSE AND BID PROCEDURES ORDER**

WHEREAS Ira Smith Trustee & Receiver Inc. was appointed receiver (the "**Receiver**") of the undertaking, property and assets of Brushstrokes Fine Art Inc. (the "**Company**") pursuant to an order of this Court made June 6, 2011 (the "**Appointment Order**");

NOW THEREFORE the Receiver brings this motion for an order authorizing the Receiver to enter into the stalking horse asset purchase agreement and to carry out the related bid procedures, approving the activities of the Receiver as set out in the First Report to the Court of the Receiver dated August 5, 2011 (the "**First Report**"), approving an increase in the Receiver's borrowing authority from \$500,000 to \$1 million, approving the Receiver's receipts and disbursements and approving the fees and disbursements of the Receiver and its counsel was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the First Report and the Affidavits of Ira Smith sworn August 5, 2011 and Ken Rosenberg sworn August 4, 2011 (together, the "**Fee Affidavits**"), the First Supplement to the First Report (the "**Supplementary Report**"), and the Confidential Supplement to the First Report (the "**Confidential Report**") and on hearing the submissions of counsel for the Receiver, the Applicant and Orlando Corporation and Investor's Trust Co. as Trustee for Investors Real Property Fund (the "**Orlando**"), no one appearing for any other person on the service list, although properly served:

### **SERVICE**

1. THIS COURT ORDERS that the time and manner for service of the Notice of Motion and Motion Record in respect of this motion is hereby abridged and validated and that further service is dispensed with.

### **STALKING HORSE PROCESS**

2. THIS COURT ORDERS that the Receiver is hereby authorized to enter into an agreement (the "**Purchase Agreement**") to sell all or substantially all of the assets, property and undertakings of the Company (the "**Purchased Assets**") to 2251263 Ontario Inc. (the "**Purchaser**") ("**Transaction**"), substantially in the form of the agreement attached as Appendix "B" to the Supplementary Report (the "**Stalking Horse APA**" or the "**Stalking Horse Bid**"), and subject to the terms of this Order, such agreement is hereby approved and accepted for the purpose of conducting the Stalking Horse Process (as defined below).

3. THIS COURT ORDERS that the bidding procedures described in the First Report (and attached thereto as Appendix "C") and attached hereto as Schedule "A" (the "**Bid Procedures**") and the sales and auction process described therein (collectively, the "**Stalking Horse Process**") be and are hereby approved and the Receiver is hereby authorized and directed to conduct the Stalking Horse Process.

4. THIS COURT ORDERS that, in the event that the Receiver concludes a sale of all or substantially all of the Purchased Assets to a Successful Bidder (as defined in the Bid Procedures) other than the Stalking Horse Bidder, the Receiver be and is hereby authorized and directed to pay the Breakup Fee (as defined in the Bid Procedures) to the Stalking Horse Bidder

forthwith following the closing of such sale approved by the Court in accordance with the provisions of the Stalking Horse Bid.

5. THIS COURT ORDERS that, in connection with the Stalking Horse Process and pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Receiver is authorized and permitted to disclose personal information of identifiable individuals to prospective bidders for the Purchased Assets and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete a sale of such assets. Each prospective bidder to whom any such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the assets and related business, and if it does not complete a purchase thereof, shall return all such information to the Receiver or in the alternative destroy all such information and certify such destruction to the Receiver.

#### **ACTIVITIES OF THE RECEIVER**

6. THIS COURT ORDERS that the activities of the Receiver disclosed in the First Report be and are hereby approved, without prejudice to Orlando's right to make any claims it may have regarding the non-payment of rent to Orlando in accordance with the lease for 60 Leek Crescent, Richmond Hill, Ontario (the "RH Lease").

7. THIS COURT ORDERS that the Receipts and Disbursements of the Receiver from June 6, 2011 until July 31, 2011, as set out and described in **Appendix U** to the First Report, be and are hereby approved.

8. THIS COURT AUTHORIZES AND DIRECTS the Applicant to lend and the Receiver to borrow and pay, forthwith and in any event within 7 days of this order, the amount of \$64,274.52, being the amount due and owing pursuant to the terms of the RH Lease as of the date of this order.

9. THIS COURT AUTHORIZES AND DIRECTS that, without prejudice to Orlando's other rights and remedies pursuant to the RH Lease, the Receiver shall pay \$38,564.71 monthly on account of Rent (as defined in the RH Lease) in accordance with the terms of the RH Lease.

10. THIS COURT ORDERS that the fees and the disbursements of the Receiver and its legal counsel from June 6, 2011 until July 31, 2011, as disclosed in the Fee Affidavits, be and are hereby approved and taxed in the amounts reflected therein.

### RECEIVER'S BORROWING AUTHORITY

11. THIS COURT ORDERS that the authority granted to the Receiver pursuant to paragraph 20 of the Appointment Order to borrow monies by way of a revolving credit or otherwise, shall be hereby increased from \$500,000 to \$1 million.

12. THIS COURT ORDERS that in all respects and for certainty, the provisions governing the Receiver's borrowing authority including, without limitation, the Receiver's Borrowing Charge (as defined in the Appointment Order) and the priority of such borrowings, as fully set out in paragraphs 20 through 23 of the Appointment Order, shall apply to any and all additional amounts that may be borrowed by the Receiver up to the \$1 million borrowing limit.

### GENERAL

13. THIS COURT ORDERS that the Confidential Report shall be and is hereby sealed pending further order of this court.

14. 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 Receiver and its 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 Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.



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## Schedule "A"

## **BID PROCEDURES**

Set forth below are the proposed bid procedures (the "**Bid Procedures**") to be employed with respect to the sale of the assets and undertaking of Brushstrokes Fine Art Inc. ("**Brushstrokes**") including its subsidiary and affiliate Brushstrokes Fine Art de Mexico, S. de R.L. de C.V. (the "**Purchased Assets**"). Such Purchased Assets are located at the Brushstrokes premises described as follows:

- (a) Canadian manufacturing premises located at 60 Leek Crescent, Richmond Hill, ON Canada;
- (b) Mexican manufacturing premises located at Av. Santiago Blancas/Libramiento Aeropuerto, Parque Industrial Salvarcar, Juarez, Chihuahua, Mexico; and
- (c) independent warehouse facilities located at 12273 Gateway Blvd. W., El Paso, TX USA.

The Purchased Assets being purchased and the terms and conditions upon which Ira Smith Trustee & Receiver Inc. ("**Smith**" and/or "**Receiver**") contemplate consummating a sale as further described in the form of the Stalking Horse Agreement between the Receiver and 2251263 Ontario Inc. made as of August 5, 2011 (the "**APA**").

The Receiver will seek approval of the Superior Court of Justice of Ontario Commercial List (the "**Court**") of the APA with 2251263 Ontario Inc. (the "**Stalking Horse Bidder**") and the Bid Procedures set out herein, which includes a description of the sales and marketing process (the "**Stalking Horse and Bid Procedures Orders**"). The Stalking Horse Process is described more particularly in the First Report of the Receiver dated August 5, 2011.

### **Marketing Process and Identifying Potential Bidders**

1. Upon Court approval of the Sale Process, the Receiver will immediately commence the following marketing process:
  - (a) a list of potential buyers has been identified by the Receiver for the current opportunity to acquire the assets introduced;
  - (b) advertisement(s) will be placed in the national edition of the Globe and Mail newspaper during the week immediately following Court approval of the Sale Process;
  - (c) notice(s) will be placed on the website of the Receiver.

### **Due Diligence**

2. A confidential information memorandum ("**CIM**") has been prepared and will be provided to all interested parties that sign a confidentiality agreement and who the

Receiver determines is likely, based on financial information submitted by the bidder, the availability of financing and other considerations deemed relevant by the Receiver, to be able to consummate a sale if selected as the Successful Bidder, as defined below (a **"Potential Bidder"**);

3. A Potential Bidder will be provided access to a data room containing detailed information regarding the assets to enable them to perform their due diligence.
4. A Potential Bidder will be provided access to management, facilitated by the Receiver, to supplement their due diligence procedures, as necessary.
5. If a Qualified Bidder (as defined below) requests access to one or more of Brushstrokes' key customers, the Receiver will make all reasonable effort to facilitate such access prior to the Auction. For certainty, only Qualified Bidders may request such access. Each Bidder acknowledges and agrees that if it becomes a Qualified Bidder, the Receiver can disclose its name and the identity of its officers and directors to whichever key customers that Qualified Bidder wishes to meet.
6. Potential Bidders are cautioned not to rely upon any documentation or information provided by or on behalf of the Receiver. Any such documentation or other material provided with respect to the Assets was prepared solely for the convenience of Potential Bidders and is not warranted to be complete or accurate, has not been independently verified, and is not part of these Bid Procedures or the APA. Each Potential Bidder shall be deemed to have relied entirely on its own inspection and investigation in submitting its offer. Potential Bidders are required to obtain such third party consents as they consider necessary. Potential Bidders are to make such independent enquiries, as they deem necessary, concerning all Assets prior to submitting their Offer.

### **Bid Deadline**

7. A Potential Bidder that desires to make a bid (a **"Bidder"**) shall deliver its bid to the Receiver not later than noon (Eastern Time) on August 22, 2011 (the **"Bid Deadline"**).

### **Bid Requirements**

8. All bids must include:
  - (a) An offer to pay a cash purchase price greater than the aggregate consideration offered by the Stalking Horse Bidder pursuant to the APA, plus the amount of the breakup fee of 2.5% of the Purchase Price stipulated in the Stalking Horse Agreement (the **"Breakup Fee"**);
  - (b) An executed copy of a purchase agreement in the form of the APA, together with a blackline copy of the APA reflecting any changes made to the APA, shall be submitted to the Receiver and shall be binding and irrevocable until either (i) such

time as the Receiver rejects a Bidder's Bid in accordance with paragraph 14 herein; (ii) at the conclusion of the Auction, if held, each respective Qualified Bidder does not become the Successful Bidder; or (iii) the Court does not approve the Successful Bidder's Accepted Bid;

- (c) A certified cheque, bank draft or wire transfer drawn on a Canadian Schedule "1" Chartered Bank (an "Acceptable Institution") or by bankers draft from an Acceptable Institution in the amount of \$140,000 payable to the Receiver in trust. This amount will either (i) be applied to satisfy the purchase price of a Successful Bidder, the balance of which purchase price shall be due on closing; (ii) be returned to the Bidder if its bid is not successful at the Auction (subject to the other provisions of these Bid Procedures) or approved by the Court, or (iii) be forfeited to the Receiver in the event that the Successful Bidder breaches its obligations pursuant to the APA or an Accepted Bid (as defined herein);
- (d) A representation of the Bidder and written evidence of available cash and/or a commitment for financing to evidence the Bidder's ability to consummate the proposed transaction as the Receiver may reasonably request;
- (e) A copy of a resolution or similar document demonstrating authority to make an irrevocable bid, and to execute the transaction contemplated by the offering bid for the Purchased Assets;
- (f) A disclosure of the identity of each entity that will be bidding for the Purchased Assets or otherwise participating with such bid and the complete terms of any such participation;
- (g) A disclosure of the identity of each of the Officers and Directors or Partners, as the case may be, of each entity bidding for the Purchased Assets or otherwise participating with such bid;
- (h) An acknowledgement by such Bidder that if its bid becomes a Qualified Bid and the bidder becomes a Qualified Bidder (as such terms are hereinafter defined) that such Qualified Bidder's continued participation in this Stalking Horse Process is on a non-exclusive basis;
- (i) A description of the Bidder's current operations, including an indication of similarities between its current operations and that of the Vendor;
- (j) A listing of the Bidder's existing relationships with any of Brushstroke's current customers, including an indication of whether it has preferred supplier status with any of the customers; and
- (k) A representation as to the Bidder's plans to either engage current management and senior management or provide its own management team if the bid is accepted.



- (l) A statement of the email address at which the Bidder wishes to receive any notices sent pursuant to these procedures.

### **Qualified Bids**

9. A bid received from a Bidder that meets the above requirements will be considered a "Qualified Bid" and each Bidder that submits a Qualified Bid will be considered a "Qualified Bidder".
10. The APA shall be deemed to be a Qualified Bid and the Stalking Horse Bidder shall be deemed to be a Qualified Bidder for all purposes and requirements pursuant to the Sale Procedures, notwithstanding the requirements that other potential Bidders must satisfy to be considered a Qualified Bidder.
11. Qualified Bids will be valued and assessed by the Receiver in its sole commercial discretion based upon any and all factors that the Receiver may deem pertinent.
12. The Receiver, in its business judgement, reserves the right to reject any bid if such bid:
  - a) is on terms that are more burdensome or conditional than the terms of the APA;
  - b) requires any indemnification of such Bidder;
  - c) excludes assets or contracts, or leases of the Vendor;
  - d) is not received by the Bid Deadline;
  - e) includes non-cash consideration;
  - f) is subject to any due diligence, financing condition or other contingencies (including representations, warranties, covenants, and timing requirements) of any kind or any other conditions precedent on such party's obligation to acquire the Purchased Assets other than as may be specifically included in the APA; or
  - g) includes any other considerations that the Receiver may deem relevant to the bid.
13. Any bid rejected pursuant to Paragraph 12 above, shall not be deemed to be a Qualified Bid.
14. The Receiver will advise all Bidders by email whether or not they are a Qualified Bidder by 5:00 p.m. on August 23, 2011 or by such further date as the Receiver may determine in its sole discretion, but in any event not less than 48 hours before the start of the Auction (the "Notification Date").

### The Auction and Auction Procedures

15. If the Receiver determines that it has received more than one Qualified Bid (in addition to the APA), it will invite Qualified Bidders to participate in an Auction, as described in more detail below (the "Auction"). If the Receiver does not receive any Qualified Bids other than the APA, it will not hold an Auction, in which case the APA will be deemed the Successful Bid (as this term is defined below) and the Stalking Horse Bidder will be named the Successful Bidder (as this term is defined below).
16. By 5:00 p.m. on August 24, 2011, each Qualified Bidder must inform the Receiver, by email, whether it intends to participate in the Auction.
17. The Receiver will promptly thereafter inform, in writing, each Qualified Bidder who has expressed its intent to participate in the Auction of the identity of all other Qualified Bidders that have expressed their intention to participate in the Auction and will provide copies of all other Qualified Bids to such Qualified Bidders.
18. Only the authorized representatives, professionals or agents of the Stalking Horse Bidder and each other Qualified Bidder identified in advance to the Receiver, shall be eligible to participate at the Auction.
19. The Auction, if any, shall be conducted by the Receiver, commencing on August 26, 2011 at 10:00 a.m. (Eastern Time) at the offices of Paliare Roland Rosenberg Rothstein LLP, 250 University Avenue, Suite 500, Toronto, Ontario.
20. At the Auction, the bidding will start at the aggregate consideration for the Purchased Assets and terms proposed in the offer that the Receiver selects as the highest and best offer prior to the Auction and will continue in cash increments of at least \$250,000.
21. The Receiver, in its sole discretion, may adjourn the auction at any time to permit the Qualified Bidders and the Stalking Horse Bidder, the opportunity to consider improved bids.
22. During the Auction, Qualified Bidders and the Stalking Horse Bidder may submit revised bids that otherwise comply with the rules of this bidding and Auction process (a "Revised Bid").
23. If no Qualified Bidder submits a Revised Bid after a period of 15 minutes following the Receiver's acceptance of a Revised Bid and the Receiver in its sole discretion chooses not to adjourn the Auction further, the Auction will be concluded whereupon the Receiver shall enter into a binding agreement of purchase and sale with the Qualified Bidder or the Stalking Horse Bidder (the "Accepted Bid") that submitted the leading bid

as determined by the Receiver in its sole discretion (the "Successful Bidder"). The bid process shall end at the conclusion of the Auction.

24. The Successful Bidder agrees to do all such things as may be required by the Receiver to obtain Court approval of the Accepted Bid.
25. If the Successful Bidder fails to consummate the transaction by August 31, 2011 (or such date that may otherwise be mutually agreed upon by the Receiver and the Successful Bidder), the Receiver shall be authorized but not required to deem that the Successful Bidder has breached its obligations pursuant to the Accepted Bid, has forfeited its deposit to the Receiver, and the Company and the Receiver are authorized to seek an alternative bidder for the Purchased Assets.
26. Except for the Stalking Horse Bidder with respect to the Breakup Fee, Potential Bidders, Bidders and/or Qualified Bidders shall not be allowed any breakup, termination or similar fee. For greater certainty, Potential Bidders, Bidders and/or Qualified Bidders/Successful Bidder shall be responsible for all of their own professional and other fees and costs relating to their investigation or closing of any transaction in this regard.
27. The Receiver shall have the right to adopt and implement such other rules for the Auction as may be necessary to promote the goals of this bid process generally.
28. The highest or any offer will not necessarily be accepted.

#### **Court Approval**

29. The sale of Purchased Assets is subject to an approval and vesting Order being issued by the Court.
30. In the case of an Agreement for the Receiver's interest in any lease of equipment, the Receiver shall assign (without covenants) all of its right, title and interest, if any, in such lease to the Purchaser on closing. The Receiver agrees to use all commercially reasonable efforts to obtain the requisite consent of the landlord or lessor, as the case may be, and/or the approval of the Court, to such assignment (if required by the lease) but in so doing shall not be required to incur any expense or liability (except as the Receiver in its absolute discretion may see fit).
31. Pursuant to the Stalking Horse and Bid Procedures Order, the Receiver shall report to the Court and provide its recommendations to the Court regarding the sale of the Purchased Assets no later than August 31, 2011, or as soon thereafter as the Court may allow.
32. The Receiver shall not be required to pay any commission or finder's fee with respect to any sale pursuant hereto.

**“As is, where is”**

33. The Purchased Assets are being sold on an “as is, where is” basis and no warranty, condition or representation, whether statutory, express or implied is being given by the Receiver as to the description, condition, state, cost, size, quality, fitness for purpose, merchantability, or in respect to any other matter or thing whatsoever concerning the Purchased Assets other than as set out herein. The Purchaser is deemed to have satisfied itself with regard to all of the foregoing and any matter or thing whatsoever in respect of the Purchased Assets.

**Miscellaneous**

34. The Purchased Assets shall be and remain at the risk of the Receiver as its interest may appear until closing. From and after closing, the Purchased Assets shall be at the Purchaser’s risk. Pending closing, the Receiver shall hold any insurance policies or proceeds thereof in trust for itself, the Purchaser and others as their respective interests may appear. In the event of substantial damage to or loss prior to closing of the Purchased Assets which are insured, the Purchaser may elect by notice in writing, 15 days after receiving notice from the Receiver, of such damage or loss, either to close the Agreement and receive the remaining Purchased Assets and the proceeds of the insurance, or may rescind the Agreement, have all moneys theretofore paid returned without interest, costs, deduction or compensation, but shall have no further or other right to damages, costs, specific performance or any other remedy.
35. The Purchaser shall pay on closing, in addition to the purchase price, all applicable federal, provincial and municipal taxes in connection with the sale.
36. The Purchaser shall, at its own cost and expense, be responsible for compliance with all municipal, provincial and federal laws insofar as they apply to the Purchased Assets and the use thereof by the Purchaser from and after closing.
37. All stipulations as to time are strictly of the essence.
38. Any tender of documents or money hereunder may be made upon the Receiver or its solicitor. Money may only be tendered by certified cheque, bank draft or wire transfer drawn on an Acceptable Institution.
39. The obligations of the Receiver to complete the Agreement shall be relieved if, on or before the closing of such sale, any asset which is the subject of the sale has been removed from the control of the Receiver by any means or process, or any such asset is redeemed, or if the completion of the sale is restrained or prohibited by an injunction or other order issued by a court of competent jurisdiction, whereupon the only obligation of the Receiver shall be to return the applicable deposit, without interest, deduction, costs or compensation.

### SUMMARY TIMELINE OF IMPORTANT DATES

Sales Procedure	Date
<b>Court approval of Sales Process and Stalking Horse Bid</b>	August 12, 2011
<b>Potential bidders notified; release of Globe and Mail advertisement</b>	August 16, 2011
<b>Period for Due Diligence by Potential Bidders who have executed NDAs</b>	Until August 22, 2011 at noon
<b>Bids due</b>	August 22, 2011 at noon
<b>Notification sent to Bidders</b>	August 23, 2011
<b>Indication of intent to participate in the Auction by Qualified Bidders and identification of all representatives</b>	August 24, 2011
<b>Auction</b>	August 26, 2011
<b>Court motion to approval Successful Bid</b>	August 30, 2011
<b>Transaction close</b>	August 31, 2011

2251263 ONTARIO INC.

Applicant

- and - BRUSHSTROKES FINE ART INC.

Respondent

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

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**STALKING HORSE AND BID  
PROCEDURES ORDER**

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