

**ONTARIO
SUPERIOR COURT OF JUSTICE
(IN BANKRUPTCY AND INSOLVENCY)**

**IN THE MATTER OF THE PROPOSAL OF MPH GRAPHICS
INC., A COMPANY INCORPORATED PURSUANT TO THE LAWS OF THE
PROVINCE OF ONTARIO, WITH A HEAD OFFICE IN THE CITY OF
MARKHAM, IN THE PROVINCE OF ONTARIO**

**SECOND SUPPLEMENTARY REPORT TO THE
FIRST REPORT OF IRA SMITH TRUSTEE & RECEIVER INC.,
in its capacity as Trustee in re the Proposal of MPH Graphics Inc.**

DATED JANUARY 6, 2014

1.0 INTRODUCTION

1. On December 23, 2013, MPH Graphics Inc. (the “**Company**” or “**MPH**”) lodged a Notice of Intention to Make a Proposal (the “**NOI**”) pursuant to section 50.4(1) of the *Bankruptcy and Insolvency Act* (Canada) (the “**Act**”) with Ira Smith Trustee & Receiver Inc. as the Proposal Trustee (the “**Proposal Trustee**”). The NOI was filed with the Official Receiver on the same day.
2. This Second Supplementary Report to the First Report of the Proposal Trustee (the “**Second Supplementary Report**”) is supplementary to the First Report of the Proposal Trustee Volume 1 dated December 23, 2013, the First Report of the Proposal Trustee Volume 2 dated December 30, 2013 and the First Supplementary Report to the First Report of the Proposal Trustee dated January 3, 2014.
3. The purpose of this Second Supplementary Report is to advise this Honourable Court of the result of communications held between MPH Graphics Inc., Thistle

Printing Limited (the “**Stalking Horse Bidder**”), the Proposal Trustee and legal counsel during the period from January 3 to 6, 2014.

2.0 THE PROPOSED AMENDMENTS TO THE STALKING HORSE SALES PROCESS

4. Attached hereto as **Exhibit “A”** is a copy of a proposed new Order being submitted by MPH’s legal counsel to this Honourable Court for approval. This draft Order contains the amendments agreed-to between MPH and the Stalking Horse Bidder.
5. The amendments are:
 - a) The Break Fee (as defined in the Stalking Horse Agreement of Purchase and Sale) is reduced to the amount of \$100,000.
 - b) The Overbid Amount (as described in the Stalking Horse Agreement of Purchase and Sale) has been reduced to the amount of \$100,000.
 - c) In the event an Auction has to be held between Qualified Bidders (as described in the proposed Terms and Conditions of Sale), the necessary incremental bid has been reduced to the amount of \$5,000.

3.0 RECOMMENDATIONS

6. The Proposal Trustee believes that the Break Fee should be set at an amount that fairly compensates the Stalking Horse Bidder for both its actual costs and for allowing its Bid to be exposed to the marketplace, (in the event it is outbid and does not become the Purchaser). The Proposal Trustee believes that an amount not in excess of \$100,000 is adequate compensation for the Stalking Horse Bidder.
7. The Proposal Trustee believes that the Overbid Amount should be a function of the Break Fee. Any new bid that does not provide funds in excess of the Break Fee would not produce additional recovery for stakeholders. Therefore, it is the

Break Fee which drives the amount a new Bidder must offer in order for its Offer to produce a sales price in excess of the Stalking Horse Bid. The Proposal Trustee also believes that a new Bid, made in the form of the Stalking Horse APA, should be in an amount that shows the seriousness of the new Bidder.

8. The Proposal Trustee submits that any Overbid Amount of \$100,000 or more (i.e. a sum equaling or exceeding the Break Fee, so as to ensure that the unsecured creditors are not funding any part of the Break Fee) would show the seriousness of the new Bidder(s), would be worth pursuing within the proposed Terms and Conditions of Sale.

9. Given that the proposed Approval Order, if made today by this Honourable Court, will have been made three (3) days after the original proposed date of January 3, 2014, the Proposal Trustee recommends that the Sales Process Timeline be amended so that the initial date of the placing of the advertisement in The Report on Business in the national edition of The Globe and Mail be amended to January 10, 2014, or as soon as practical thereafter. Placement is expected to occur no later than January 13, 2014.

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All of which is respectfully submitted at Toronto, Ontario this 6th day of January, 2014.

IRA SMITH TRUSTEE & RECEIVER INC.

solely in its capacity as the Trustee in re the Proposal of
MPH Graphics Inc.



Per: _____

President

EXHIBIT "A"

**ONTARIO
SUPERIOR COURT OF JUSTICE
(IN BANKRUPTCY AND INSOLVENCY)**

THE HONOURABLE REGIONAL SENIOR) MONDAY, THE 6TH DAY
JUSTICE MORAWETZ)
) OF JANUARY, 2014

**IN THE MATTER OF THE PROPOSAL OF MPH GRAPHICS
INC., A COMPANY INCORPORATED PURSUANT TO THE LAWS OF THE
PROVINCE OF ONTARIO, WITH A HEAD OFFICE IN THE CITY OF
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**ORDER
(Stalking Horse Process)**

THIS MOTION, made by MPH Graphics Inc. (the “**Debtor**”), for an order, among other things, approving the stalking horse asset purchase agreement and related sales process, a directors and officers charge and an administration charge, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Stephen Pugh sworn December 23, 2013, the first report of Ira Smith Trustee & Receiver Inc., in its capacity as Proposal Trustee (the “**Proposal Trustee**”), dated December 23, 2013 (the “**First Report**”) and the exhibits thereto, filed, and on hearing the submissions of counsel for the Debtor, the Proposal Trustee, Thistle Printing Limited, RBC, Unifor Local 591G, no one appearing for any other person on the service list, although properly served:

SERVICE

1. THIS COURT ORDERS that the time for service of the Notice of Motion, the First Report and the Motion Record is hereby abridged so that this motion is properly returnable today and hereby dispenses with further service thereof.

STALKING HORSE PROCESS

2. THIS COURT ORDERS that the Debtor is hereby authorized and directed, *nunc pro tunc*, to enter into an agreement to sell all or substantially all of its assets, property and undertakings (the “**Purchased Assets**”) to [Thistle Printing Limited](#) (the “**Stalking Horse Bidder**”), substantially in the form of the agreement attached as Appendix “B” to the First Report (the “**Stalking Horse Bid**” or “**Stalking Horse Asset Purchase Agreement**”), and such agreement, subject to the terms of this Order, is hereby approved and accepted for the purpose of conducting the Stalking Horse Process (defined below) in accordance with the Bid Procedures, including, without limitation, the payment of the Break Fee (as each such term is defined in the Stalking Horse Asset Purchase Agreement).
3. THIS COURT ORDERS that the bid procedures described in the First Report and attached hereto as Schedule “A” (the “**Bid Procedures**”) and the sale process and auction described therein (collectively, the “**Stalking Horse Process**”) be and are hereby approved and the Proposal Trustee is hereby authorized and directed to conduct the Stalking Horse Process.
4. THIS COURT ORDERS that, in the event that the Debtor and/or the Proposal Trustee concludes a sale of all or any of the Purchased Assets to a Successful Bidder other than the Stalking Horse Bidder, the Debtor and/or the Proposal Trustee be and is hereby authorized and directed to pay the Break Fee (as those terms are defined in the Stalking Horse Asset Purchase Agreement) 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 Stalking Horse Bidder shall be entitled to the benefit of and is hereby granted a charge (the “**Stalking Horse Bidder’s Charge**”) on the Debtor’s current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate, including all proceeds thereof (the “**Property**”), which charge shall not exceed an aggregate amount of \$100,000.00, as security for the payment of the Break Fee in the circumstances provided for in the Stalking Horse Asset Purchase Agreement, and that the Stalking Horse Bidder’s Charge shall form a charge on the

Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise (collectively, the “**Encumbrances**”), in favour of any Person (as defined in the Stalking Horse Asset Purchase Agreement), except for the security interests of RBC and the statutory charges set out in sections 14.06(7), 81.4(4), and 81.6(2) of the *Bankruptcy and Insolvency Act* (Canada) (the “**BIA**”). The Stalking Horse Bidder’s Charge, in relation to the D&O Charge and the Administration Charge (as such terms are defined below), shall have the priority set out in paragraph 11 of this Order.

6. THIS COURT ORDERS that in connection with the Stalking Horse Process and pursuant to clause 7(3)(c) of the *Personal Information Protection and Documents Act* (Canada), the Debtor and/or the Proposal Trustee may 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 said assets and related business, and if it does not complete a purchase thereof, shall return all such information to the Debtor and/or the Proposal Trustee or in the alternative shall destroy all such information and certify such destruction to the Debtor and/or the Proposal Trustee.

DIRECTORS & OFFICERS AND ADMINISTRATION CHARGES

7. THIS COURT ORDERS that the Debtor shall indemnify its directors and officers against obligations and liabilities that they may incur as directors or officers of the Debtor for any and all statutory liabilities, for which the directors and officers may be liable by reason of, or in relation to their capacity as directors and/or officers of the Debtor.
8. THIS COURT ORDERS that the directors and officers of the Debtor shall be entitled to the benefit of and are hereby granted a charge (the “**D&O Charge**”) on the Property, which charge shall not exceed an aggregate amount of \$100,000.00, as security for the indemnity provided in paragraph 7 of this Order, and that the D&O Charge shall form a charge on the Property in priority to all Encumbrances, except for the security interests of RBC and the statutory charges set out in sections 14.06(7), 81.4(4), and 81.6(2) of the

BIA. The D&O Charge, in relation to the Stalking Horse Bidder's Charge and the Administration Charge, shall have the priority set out in paragraph 11 of this Order.

9. THIS COURT ORDERS that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the D&O Charge and (b) the Debtor's directors and officers shall only be entitled to the benefit of the D&O Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 7 of this Order.
10. THIS COURT ORDERS that the Proposal Trustee, counsel to the Proposal Trustee and the Debtor's counsel shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on the Property, which charge shall not exceed an aggregate amount of \$200,000, as security for their professional fees and disbursements incurred or billed at the standard rates and charges of the Proposal Trustee and such counsel, both before and after the making of this Order in respect of these proceedings, and that the Administration Charge shall form a charge on the Property in priority to all Encumbrances, except for the security interests of RBC and the statutory charges set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA. The Administration Charge, in relation to the Stalking Horse Bidder's Charge and the D&O Charge, shall have the priority set out in paragraph 11 of this Order.
11. THIS COURT ORDERS that the priorities of the Stalking Horse Bidder's Charge, the D&O Charge and the Administration Charge (collectively, the "**Charges**") shall be as follows: (a) first, repayment of the indebtedness of the Debtor to RBC (Royal Bank of Canada); (b) second, the Stalking Horse Bidder's Charge to a maximum of \$100,000.00, (c) third, the Administration Charge and (d) fourth, the D&O Charge.
12. THIS COURT ORDERS that the filing, registrations or perfection of the Charges in Canada shall not be required, and that the Charges are and shall be valid and enforceable against the Property for all purposes, including, without limitation, as against any right, title and interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect the Charges.

13. THIS COURT ORDERS that the Charges shall not be rendered invalid or unenforceable and the rights and remedies of the charges entitled to the benefit of the Chargees (collectively, the “**Chargees**”) shall not be limited or impaired in any way by: (a) the pendency of these proceedings and any declarations of insolvency made in these proceedings; (b) any application(s) for bankruptcy order(s) issued pursuant to the BIA, or any bankruptcy orders made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) borrowings, incurring debt or the creation of any Encumbrances contained in any existing loan document, lease or other agreement (collectively, an “**Agreement**”) which binds the Debtor and notwithstanding any provision to the contrary in any such agreement or otherwise:
- (a) the creation of the Charges shall not create or be deemed to constitute a breach by the Debtor of any Agreement to which it is a party;
 - (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the creation of the Charges; and
 - (c) the payments made by the Debtor pursuant to this Order and the granting of the Charges do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct or other challengeable or voidable transactions under any applicable law.
14. THIS COURT ORDERS that the Charges shall attach to the Property notwithstanding any requirement for the consent any third party or the failure to comply with any other condition precedent; provided, however, that any Charge created by this Order over leases of real property shall only be a Charge in the Debtor’s interest in such real property leases.

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 Debtor and the Proposal Trustee and their

respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Debtor and the Proposal Trustee, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Debtor and the Proposal Trustee and their respective agents in carrying out the terms of this Order.

16. THIS COURT ORDERS that the Debtor and the Proposal Trustee are authorized and directed to pay Royal Bank of Canada (“**RBC**”) the amount owed to RBC forthwith upon successful closing of the sale of the Purchased Assets and thereafter to pay the amounts owing under the Charges, as described.
17. THIS COURT ORDERS that service of the motion record of the Proposal Trustee returnable January 3, 2014 (the “**Proposal Trustee’s Record**”) be and it hereby is dispensed with.
18. THIS COURT ORDERS that the Proposal Trustee’s Record be and it hereby is sealed until further order of this Court.

Morawetz R.S.J.

SCHEDULE A

Bid Procedures

STALKING HORSE BID, BID PROCEDURES AND BREAK FEES

Set forth below are the Terms and Conditions of Sale (the “**Terms and Conditions of Sale**”) to be employed with respect to the sale of the assets, properties and undertaking (the “**Purchased Assets**”) of MPH Graphics Inc. (the “**Company**” or the “**Vendor**”) as more particularly defined in the Stalking Horse Asset Purchase Agreement (the “**Agreement**”). Any defined terms used below denoted by initial capital letters, not otherwise expressly defined, shall have the meaning given to such term in the Agreement. It is expressly acknowledged and agreed that notwithstanding any other provision herein, the stalking horse sales process shall occur in accordance with this essential timetable and in the event of any conflict between the provisions of this timetable and any other provision of this Agreement, the provisions of this timetable set out in the immediately following chart shall govern to the extent necessary (and only to the extent necessary) to resolve the conflict:

Advertisement in The Globe & Mail Report on Business	January 10, 2014 or as soon as thereafter as is practical
Summary information document distributed to interested parties	Commencing January 10, 2014
Confidentiality Agreement distributed to interested parties	Commencing January 10, 2014
Confidential Information Memorandum circulated to interested parties after receipt of signed Confidentiality Agreement	Commencing January 10, 2014
Data room access provided to interested parties after receipt of signed Confidentiality Agreement	Commencing January 16, 2014
Deadline for submission of bids	January 31, 2014 (3:00 PM Toronto time)
Bidders notified of Qualified Bidder status	No later than February 5, 2014 – provided that in the event that there are no Qualified Bidders, the Vendor and the Purchaser shall proceed to close the transaction called for under this Agreement on the 7 th day of February, 2013 or such other day as the said parties may agree upon in writing
Indication by Qualified Bidders of intention to participate in Auction (if necessary)	February 7, 2014 (5:00 PM Toronto time)
Auction (if necessary)	February 12, 2014 (10:00 AM Toronto time)

Court motion to approve Successful Bid	By February 26, 2014
Transaction close after completion of Auction Process	As agreed by the parties, provided that such closing shall be no later than ten (10) Business Days of Court approval

Marketing Process and Identifying Potential Bidders

Upon Court approval of the Agreement, the Proposal Trustee will immediately commence the following marketing process:

- (a) a list of potential buyers has been identified by the Proposal Trustee and will be advised of the current opportunity to acquire the assets introduced;
- (b) an advertisement will be placed in the national edition of the Globe and Mail newspaper on the 10th day of January, 2014, or as soon thereafter as practical, and
- (c) a notice will be placed on the website of the Proposal Trustee.

Due Diligence

- 2. A confidential information memorandum (“**CIM**”) has been prepared and will be provided to all interested parties that sign the Proposal Trustee’s form of confidentiality agreement and who the Proposal Trustee determines is likely, based on the non-binding Letter of Intent and financial information submitted by the bidder, the availability of financing and other considerations deemed relevant by the Proposal Trustee, 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 it to perform its due diligence.
- 4. A Potential Bidder will be also be provided with a business tour, facilitated by the Proposal Trustee, to supplement its due diligence procedures.
- 5. Potential Bidders are cautioned not to rely upon any documentation or information provided by or on behalf of the Proposal Trustee. Any such documentation or other material provided with respect to the Business 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 Terms and Conditions of Sale or the Agreement. 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 the Purchased Assets prior to submitting their offer.

Bid Deadline

6. A Potential Bidder that desires to make a bid (a "Bidder") shall deliver written copies of its bid together with the other Bid Requirements set forth below to the Proposal Trustee not later than 3:00 p.m. (Toronto Time) on the 31st day of January, 2014 (the "Bid Deadline").

Bid Requirements

7. All bids must be received not later than the Bid Deadline and include:
 - (a) an offer to pay a cash purchase price greater than the aggregate consideration offered by the Stalking Horse Bidder pursuant to the Agreement, plus the amount of the break fee of \$100,000.00 plus an overbid in the amount of \$100,000.00 (which in aggregate equals the Break Fee amount plus the bid increment proposed by the Vendor in the Auction process);
 - (b) no provision making the offer 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 Agreement;
 - (c) an executed copy of a purchase agreement in the form of the Agreement, together with a blackline copy of the Agreement reflecting any changes made to the Agreement, shall be submitted to the Proposal Trustee and shall be binding and irrevocable until either (i) such time as the Proposal Trustee rejects a Bidder's Bid in accordance with paragraph 11 herein; (ii) at the conclusion of the Auction, if held, each respective Qualified Bidder (as defined herein) does not become the Successful Bidder; or (iii) if the Court does not approve the Successful Bidder's Accepted Bid;
 - (d) 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 \$5,000.00 payable to the Proposal Trustee's legal counsel 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 Terms and Conditions of Sale) or approved by the Court, or (iii) be forfeited to the Proposal Trustee in the event that the Successful Bidder breaches its obligations pursuant to the Agreement or an Accepted Bid (as defined herein);
 - (e) 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 Proposal Trustee may reasonably request;

- (f) 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;
- (g) 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;
- (h) 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;
- (i) 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 the such Qualified Bidder's continued participation in any Auction is on a non-exclusive basis; and
- (j) A description of the Bidder's current operations.

Qualified Bids

- 8. A bid received from a Bidder not later than the Bid Deadline 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."
- 9. The Agreement shall be deemed to be a Qualified Bid and the Purchaser shall be deemed to be a Qualified Bidder for all purposes and requirements pursuant to the sale procedures set out this Schedule (the "**Sale Procedures**"), notwithstanding the requirements that other potential Bidders must satisfy to be considered a Qualified Bidder.
- 10. Qualified Bids will be valued and assessed by the Proposal Trustee in its sole commercial discretion based upon any and all factors that the Proposal Trustee may deem pertinent.
- 11. The Proposal Trustee, in its business judgment, 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 Agreement;
 - (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; or
 - (f) includes any other considerations that the Proposal Trustee may deem relevant to the bid.

12. Any bid rejected pursuant to Paragraph 11 above, shall not be deemed to be a Qualified Bid.
13. The Proposal Trustee will advise all Bidders by email whether or not they are a Qualified Bidder by 5 PM (Toronto time) on the 5th day of February, 2014 or by such further date as the Proposal Trustee 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

14. If the Proposal Trustee determines that it has received more than one Qualified Bid (including the Agreement), it will invite Qualified Bidders to participate in an Auction, as described in more detail below (the “**Auction**”). If the Proposal Trustee does not receive any Qualified Bids other than the Agreement, it will not hold an Auction, in which case the Agreement will be deemed the Successful Bid (as this term is defined herein) and the Purchaser will be named the Successful Bidder (as this term is defined herein) and the Vendor will proceed towards completion of the Transaction in accordance with its terms.
15. By 3 PM (Toronto time) on the 7th day of February, 2014, each Qualified Bidder must inform the Proposal Trustee, by email, whether it intends to participate in the Auction.
16. The Proposal Trustee 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.
17. Only the authorized representatives, professionals or agents of the Purchaser and each other Qualified Bidder identified in advance to the Proposal Trustee, shall be eligible to participate at the Auction.
18. The Auction, if any, shall be conducted by the Proposal Trustee, commencing on the 12th day of February, 2014 at 10 AM. (Toronto Time) at the offices of Miller Thomson LLP, Suite 5800, 40 King Street West, Toronto, Ontario M5H 3S1.
19. At the Auction, the bidding will start at the aggregate consideration for the Purchased Assets and terms proposed in the offer that the Proposal Trustee selects as the highest and best offer prior to the Auction and will continue in cash increments of at least \$5,000.00.
20. The Proposal Trustee, 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.
21. During the Auction, Qualified Bidders, including the Purchaser, may submit revised bids that otherwise comply with the rules of this bidding and Auction process (a “**Revised Bid**”).
22. If no Qualified Bidder submits a Revised Bid after a period of 15 minutes following the Proposal Trustee’s acceptance of a Revised Bid and the Proposal Trustee in its sole discretion chooses not to adjourn the Auction further, the Auction will be concluded

whereupon the Proposal Trustee shall enter into a binding agreement of purchase and sale with the Qualified Bidder or the Purchaser (the “**Accepted Bid**”) that submitted the leading bid as determined by the Proposal Trustee in its sole discretion (the “**Successful Bidder**”). The bid process shall end at the conclusion of the Auction.

23. The Successful Bidder agrees to do all such things as may be required by the Proposal Trustee to obtain Court approval of the Accepted Bid.
24. Subject to the Proposal Trustee obtaining the approval and vesting order in respect of the Accepted Bid, if the Successful Bidder fails to consummate the transaction by the 10th Business Day following Court approval (or such date that may otherwise be mutually agreed upon in writing), the Proposal Trustee 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 Proposal Trustee, and the Company and the Proposal Trustee are authorized to seek an alternative bidder for the Purchased Assets.
25. Except for the Purchaser with respect to the Breakup Fee, Potential Bidders, Bidders and/or Qualified Bidders shall not be allowed any breakup, termination or similar fee or expense reimbursement. 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.
26. The Proposal Trustee 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.
27. The highest or any offer will not necessarily be accepted.

Court Approval

28. The sale of Purchased Assets is subject to an approval and vesting order being issued by the Court.
29. Pursuant to these Stalking Horse and Terms and Conditions of Sale, the Proposal Trustee shall report to the Court and provide its recommendations to the Court regarding the sale of the Purchased Assets by the 26th day of [February](#), 2014, if necessary or as soon thereafter as the Court may allow.
30. The Proposal Trustee shall not be required to pay any commission or finder’s fee with respect to any sale pursuant hereto.

“As is, where is”

31. 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 Proposal Trustee 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

32. The Purchased Assets shall be and remain at the risk of the Vendor until closing. From and after closing, the Purchased Assets shall be at the Successful Bidder's risk. Pending closing, the Vendor shall hold any insurance policies or proceeds thereof in trust for itself, the Successful Bidder 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 Successful Bidder may elect by notice in writing, 15 days after receiving notice from the Proposal Trustee, 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.
33. The Successful Bidder shall pay on closing, in addition to the purchase price, all applicable federal, provincial and municipal taxes in connection with the sale and transfer of the Purchased Assets.
34. The Successful Bidder 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 Successful Bidder from and after closing.
35. All stipulations as to time are strictly of the essence.
36. Any tender of documents or money hereunder may be made upon the Proposal Trustee or its solicitor. Money may only be tendered by certified cheque, bank draft or wire transfer drawn on an Acceptable Institution.
37. The purchase agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and applicable laws of Canada and enure to the benefit of and be binding upon the parties thereto and their respective heirs, executors, administrators, successors or assigns as the case may be.
38. The obligations of the Vendor to complete any purchase 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 Vendor 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 Vendor shall be to return the applicable deposit, without interest, deduction, costs or compensation.

ONTARIO
SUPERIOR COURT OF JUSTICE
(In Bankruptcy and Insolvency)

Proceeding commenced at Ottawa

ORDER

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