

ONTARIO  
SUPERIOR COURT OF JUSTICE

THE HONOURABLE *Mr.* )  
JUSTICE *M.-D. Parayoshi* )

THURSDAY, THE 30TH  
DAY OF MAY, 2019

VERSABANK

Applicant

- and -

2273925 ONTARIO INC., 1444046 ONTARIO LIMITED,  
2164536 ONTARIO INC. and 1448945 ONTARIO INC.

Respondents



ORDER  
(Sale Process)

**THIS MOTION**, made by BDO Canada Limited in its capacity as the court appointed receiver (the "Receiver") of the assets, undertakings and properties of 2273925 Ontario Inc. ("2273925 Ontario"), 1444046 Ontario Limited, 2164536 Ontario Inc., and 1448945 Ontario Inc, for an Order, *inter alia*, approving a sale process and related relief was heard this day at Suite 301 - 50 Frederick Hobson VC Drive, Simcoe, Ontario N3Y 0E4.

**ON READING** the Notice of Motion and the first report of the Receiver to the court dated May 15, 2019 and on hearing the submissions of counsel for the Receiver and such other counsel as are listed on the counsel slip for this motion, no one appearing for any other person on the service list, although properly served as appears from the affidavit of Catherine A. O'Neill sworn May 17, 2019, filed:

**SERVICE**

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 meaning ascribed to them under the Sale Process and Procedures attached hereto as Schedule "A" (the "SPP").

#### **APPROVAL OF STALKING HORSE AGREEMENT**

3. **THIS COURT ORDERS** that the execution, delivery, entry into, compliance with, and performance by the Receiver of the Stalking Horse Agreement, be and is hereby ratified, authorized and approved, provided, however, that nothing contained in this Order approves the sale or the vesting of any property, assets or undertaking of 2273925 Ontario to the Stalking Horse Offeror pursuant to the Stalking Horse Agreement and that, if the Stalking Horse Agreement is the Successful Offer under the SPP, the approval of the sale and vesting of the assets contemplated to be sold thereunder to the Stalking Horse Offeror shall be considered by this Court on a subsequent motion made to this Court following completion of the SPP, all in accordance with the terms of the SPP.

4. **THIS COURT ORDERS** that the Stalking Horse Agreement be and is hereby approved and accepted solely for the purposes of constituting a stalking horse offer under the SPP.

5. **THIS COURT DECLARES** that the Stalking Horse Offeror is a party to this proceeding.

6. **THIS COURT ORDERS** that the Stalking Horse Agreement shall not be rendered invalid or unenforceable and the rights and remedies of the Stalking Horse Offeror thereunder shall not otherwise be limited or impaired in any way by: (a) the insolvency of 2273925 Ontario; (b) any application(s) for a bankruptcy order issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) (the "BIA"), or any bankruptcy order made pursuant to such applications; (c) the filing of any assignment for the general benefit of creditors made pursuant to the BIA; or (d) the provisions of any federal or provincial statutes.

#### **APPROVAL OF SPP**

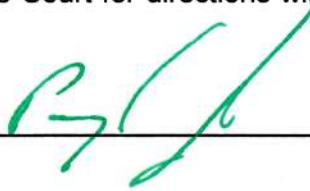
7. **THIS COURT ORDERS** that the SPP (subject to such non-material amendments as may be made by the Receiver) be and is hereby approved and the Receiver is hereby authorized and directed to take such steps as it deems necessary or advisable (subject to the terms of the SPP) to carry out the SPP, subject to prior approval of this Court being obtained before completion of any transaction under the SPP.

8. **THIS COURT ORDERS** that the Receiver and its partners, directors, employees, advisors, 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 its duties under the SPP, except to the extent of such losses, claims, damages or liabilities resulting from the gross negligence or willful misconduct of the Receiver, as determined by the Court.

9. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Receiver is hereby authorized and permitted to disclose and transfer to each potential Offeror (including, without limitation, the Stalking Horse Offeror) and to their representatives, if requested by such Offeror, but only to the extent desirable or required to negotiate or attempt to complete a sale of the Real Property (a "Sale"). Each Offeror or representative to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation for the purpose of effecting a Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information and provide confirmation of its destruction if requested by the Receiver. The Successful Offeror shall maintain and protect the privacy of such information and, upon closing of the transaction contemplated in the Successful Offer, shall be entitled to use the personal information provided to it that is related to the assets acquired pursuant to the SPP in a manner that is in all material respects identical to the prior use of such information by 2279325 Ontario, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed and provide confirmation of its destruction if requested by the Receiver.

10. **THIS COURT ORDERS** that at any time during the SPP, the Receiver, the Stalking Horse Offeror and any interested party may apply to the Court for directions with respect to the SPP.

<b>ENTERED AT SIMCOE</b>
Book No. 135
Doc. No. 69
on May 30/19
by CC.

  
\_\_\_\_\_

## Schedule "A"

### Sale Process and Procedures

#### Background

On November 15, 2018 the Ontario Superior Court of Justice (the "**Court**") issued an order, effective November 21, 2018, (the "**Order**") under section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended, and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended, to appoint BDO Canada Limited as the receiver (the "**Receiver**") of the assets, undertakings and properties of 2273925 Ontario Inc. ("2273925 Ontario"), 1444046 Ontario Limited, 2164536 Ontario Inc. and 1448945 Ontario Inc. (collectively, the "**Debtors**").

On May \_\_\_\_\_, 2019 the Court made an Order (the "**Sale Process Order**") approving a stalking horse sale process for the sale of 2273925 Ontario Inc.'s right, title and interest in the real property municipally known as 185 Robinson Street, Simcoe, Ontario and legally described as follows (the "**Real Property**" or "**185 Robinson Street**"):

- a) BLOCKS 68 AND 68A PLAN 182; LOTS 1 TO 11 INCLUSIVE BLOCK 69 PLAN 182; PART OF KARS STREET PLAN 182 CLOSED BY NR432932 PTS 1 & 3, 37R10794; S/T EASEMENT OVER PART 3, 37R10794 AS IN NR433095; NORFOLK COUNTY;
- b) PT METCALFE ST N PL 182 CLOSED BY NR513718 PT 2, 37R10794; NORFOLK COUNTY;

In the Sale Process Order, the Court approved the sale process and procedures set out below (the "**Sale Process**"), including a stalking horse agreement for the Real Property for the total consideration of \$[ ] (the "**Stalking Horse Agreement**") made between the Receiver, as vendor, and 1422894 Ontario Limited (the "**Stalking Horse Offeror**"), a subsidiary of Versa Bank, the primary secured creditor of 2273925 Ontario, as purchaser. The Stalking Horse Agreement establishes a minimum floor price for the sale of the Real Property. The purpose of the Sale Process is to conduct certain processes to provide interested parties with the opportunity to submit an offer (each an "**Offer**", and each party who submits an Offer, an "**Offeror**") superior in value to the Stalking Horse Agreement by a minimum of \$200,000, to purchase the right, title and interest of 2273925 Ontario in the Real Property on an "as is, where is" basis and without surviving representations or warranties of any kind, nature or manner by the Receiver.

All of the right, title and interest of 2273925 Ontario in and to the Real Property will be sold free and clear of all security interests, charges, pledges, liens, encumbrances, claims or interests therein as set out in the Court order approving such sale and vesting title to the Real Property unless specifically permitted to continue pursuant to the terms of the definitive agreement for such sale.

## **Procedures for the Submission of Offers**

The Receiver will conduct the sale process and receive offers for the Real Property in accordance with the Sale Process Order and the Sale Process. The Sale Process shall govern the solicitation by the Receiver of Offers for the Real Property and the selection by the Receiver of a Successful Offer (as defined below). At the Receiver's discretion, the Receiver may modify the Sale Process as it considers appropriate in the circumstances and, where it considers such modification to be material, it may seek Court approval on notice to the service list in the receivership proceeding of the Debtors. For certainty, the extension of any deadlines in the Sale Process by up to two (2) weeks shall not be considered material.

## **Solicitation**

The solicitation process will commence with the preparation by the Receiver, in consultation with BDO Corporate Finance Inc., of a target list of potential interested parties (the "**Potential Offerors**") for the Real Property in the real estate sector, including, but not limited to, real estate investment trusts. The Receiver will send an invitation for offers (the "**Invitation for Offers**") notifying Potential Offerors of the Sale Process and inviting the Potential Offerors to express their interest in making an offer to acquire the Real Property. The Invitation for Offers will include a one page teaser summary of 185 Robinson Street and the Sale Process. The Receiver will advertise the Invitation for Offers in the Globe & Mail (National Edition), Hamilton Spectator and London Free Press.

The Invitation for Offers to Potential Offerors will be distributed and the advertisements placed within five (5) business days of the issuance of the Sale Process Order. The Invitation for Offers will be placed on the Receiver's website for stakeholders in the Debtors' receivership: <http://extranets.bdo.ca/2273925> Ontario Inc. Highlights of 185 Robinson Street and the Sale Process will be circulated by the Receiver to its own internal network of BDO Canada partners in the ninety-five (95) BDO Canada offices across Canada.

## **Sale Approval**

Following the completion of the Sale Process, the Receiver will seek an order of the Court approving and authorizing the sale transaction between the Receiver and the Offeror (the "**Successful Offeror**") determined by the Receiver to have submitted the successful offer (the "**Successful Offer**") and vesting the right, title and interest of 2273925 Ontario in the Real Property in the Successful Offeror (such order to be in a template Approval and Vesting Order established by the User's Committee of the Ontario Superior Court of Justice – Commercial List).

## **As is, Where is**

Any sale of the Real Property will be completed on an "as is, where is" basis and without surviving representations, warranties, covenants or indemnities of any kind, nature, or description by the Receiver or its agents, professionals, advisors, or otherwise, except to the extent set forth in the definitive agreement for such sale.

### **Single Phase Process**

This is a single phase offer process. Offerors are required to put their best offer forward by the Offer Deadline. There will not be a second round of offers. The Receiver may discuss with an Offeror amendments to its Offer prior to the Offer Deadline, and if the Receiver in its business judgment deems it advisable, invite the Offeror to submit an amended Offer, provided the amended Offer is received by the Receiver by the Offer Deadline.

### **Offer Deadline**

All Offers must be submitted so that they are actually received by the Receiver no later than 5:00 p.m. (London, Ontario time) on August \_\_ 2019 (the "**Offer Deadline**"). Any Offer received by the Receiver after the Offer Deadline shall not be considered.

All Offers shall be delivered via e-mail or by personal delivery so that they are received prior to the Offer Deadline by the Receiver at:

BDO Canada Limited  
633 Colborne Street, Suite 100  
London, ON N6B 2V3  
Attention: Stephen N. Cherniak  
Email: [scherniak@bdo.ca](mailto:scherniak@bdo.ca)

### **Access to Due Diligence Materials**

The Receiver will establish an electronic data room ( the "**Data Room**") of due diligence materials utilizing the services of Donnelly Financial Solutions. Access to the Date Room will be controlled and monitored by the Receiver. Interested parties who execute and return to the Receiver a Confidentiality and Non-Disclosure agreement in form and substance acceptable to the Receiver and its legal counsel (the "**NDA**") and execute a written acknowledgment (an "**Acknowledgment**") of receipt of a copy of the Sale Process and agree to accept and be bound by the provisions contained herein, are eligible to receive access to the Data Room ("**Due Diligence Access**"). Such party's Due Diligence Access shall terminate upon the earliest of the following events occurring:

- the Receiver, in its reasonable business judgment, determines that it is appropriate to do so;
- the party does not submit an Offer by the Offer Deadline; and
- the party submits an Offer prior to the Offer Deadline, but it is determined by the Receiver to not be the Successful Offer;

The Receiver will designate a representative to coordinate all reasonable requests for Due Diligence Access for all parties eligible to receive such access and information.

Site visits to 185 Robinson Street are to be coordinated through the Receiver.

Offerors must rely on their own independent review, investigation and/or inspection of all information and of 185 Robinson Street in connection with their participation in the Sale Process and any transaction they enter into with the Receiver. The Receiver makes no representation or warranty whatsoever as to the information (including, without limitation, with respect to its accuracy or completeness) contained in the Data Room or otherwise provided or made available pursuant to the Sale Process, except to the extent provided for in the definitive agreement executed by the Receiver and approved by the Court for any transaction with the Successful Offeror.

### **Offer Requirements**

Interested parties granted Due Diligence Access will be able to refer to the template Agreement of Purchase and Sale (the "**Template Agreement**") (which will be based on the Stalking Horse Agreement) placed in the Data Room.

In order to participate in the Sale Process, an Offeror must deliver an Offer to the Receiver prior to the Offer Deadline which satisfies each of the following conditions (a "**Compliant Offer**"):

- (a) **Confidentiality**: An Offeror must deliver an executed NDA and Acknowledgement (if not already delivered).
- **Identification**: Identification of the Offeror and representatives thereof who are authorized to appear and act on behalf of the Offeror for all purposes regarding the contemplated transaction.
- **Form and Content**. The Offer must be in substantially the same form as the Template Agreement and executed by the Offeror (each a "**Proposed Purchase Agreement**"). Any changes and modifications to the Template Agreement are to be indicated on a blackline to the Template Agreement which is to be submitted along with the executed version.
- **Deposit**. The Offer must be accompanied by a certified cheque or bank draft in Canadian funds drawn on a chartered bank of Canada or a trust company incorporated under the laws of Canada or one of the provinces thereof, payable to "BDO Canada Limited, In Trust", in an amount equal to ten percent (10%) of the total purchase price contained in the Offer.
- **Irrevocable**. The Offer must be accompanied by a cover letter which indicates that the Offer:
  - may be accepted by the Receiver countersigning the Proposed Purchase Agreement, and
  - is irrevocable and capable of acceptance until the earlier of: (a) thirty (30) days after the Offer Deadline, and (b) approval by the Court of another Offer.
- **Contingencies**. The Offer may not be subject to any conditions precedent except those that are customary in a transaction of this nature. More specifically, an Offer may not be conditional on obtaining financing or any internal approval or on the outcome or review of due diligence. Any other contingencies associated with the Offer may not, in the opinion of

the Receiver, in the aggregate, be more burdensome or conditional than those set forth in the Stalking Horse Agreement.

- No Fees payable to Bidder. An Offer may not request or entitle the Offeror to any break-up fee, expense reimbursement, termination or similar type of fee or payment. Further, by submitting an Offer, an Offeror shall be deemed to irrevocably waive its right to pursue any claim in any way related to the submission of its Offer or the Sale Process.
- Minimum Consideration. The aggregate consideration of an Offer must provide a cash purchase price of at least \$200,000 greater than the amount of the purchase price under the Stalking Horse Agreement.
- Closing Date. The Offer must contemplate the closing of the transaction on or before October 15, 2019.

Each Offeror shall comply with all reasonable requests for additional information by the Receiver regarding such Offeror and its contemplated transaction. If requested by the Receiver, an Offeror must provide such form of financial disclosure that allows the Receiver to determine the Offeror's financial capability to complete a transaction.

The Receiver may in its discretion, if it deems it appropriate or desirable in the circumstances, modify or amend the above conditions. Any modification or amendment shall be placed in the Data Room.

**Stalking Horse Offer:**

The Stalking Horse Offeror and Versa Bank may not submit a further Offer under the Sale Process.

**Receiver's Reservation of Rights**

In addition to the other reservations of rights set out herein, the Receiver reserves the right in its reasonable discretion to:

- waive strict compliance with any one or more of the requirements specified herein;
- extend any deadline by up to two (2) weeks without Court approval;
- reject, or accept, any Offer which does not strictly comply with the requirements specified herein (doing so shall not be a waiver of the Offer Requirements above); and
- adopt such ancillary and procedural rules not otherwise set out herein (including rules that may depart from those set forth herein) that in its reasonable business judgment will better promote the goals of the Sale Process; provided that the adoption of any rule that materially deviates from these Procedures shall require an order of the Court.



**Acceptance of Offer**

If one or more Compliant Offers are received, the Successful Offer will be the Offer which provides the greatest value to the creditors and other stakeholders in the Debtors' receivership proceeding. If no Compliant Offer is received, the Stalking Horse Agreement will be declared the Successful Offer and the Receiver will proceed to seek Court approval of the Stalking Horse Agreement and Court approval to complete the transaction contemplated therein.

**Return of Deposit**

All Deposits shall be held in a non-interest bearing account until returned to the applicable Offeror or otherwise dealt with in accordance with this Section.

Deposits of all Offerors, other than the Successful Offeror, shall be returned to such Offeror(s) within three (3) business days of the Successful Offer being determined by the Receiver.

The Deposit of the Successful Offeror shall be applied to the purchase price of the transaction at closing.

**Capacity**

It is understood and agreed that in inviting Offers, the Receiver is acting solely in its capacity as Receiver of the assets, undertakings and properties of 2273925 Ontario, and neither the Receiver, nor its agents, officers, lawyers nor employees, shall have any personal liability under or as a result of the Sale Process.

**Acknowledgement**

I/we hereby acknowledge receipt of a copy of the Sale Process and agree to accept and be bound by the provisions contained herein.

\_\_\_\_\_  
Corporation

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name  
I have authority to bind the corporation

\_\_\_\_\_  
Date

VERSABANK and 2273925 ONTARIO INC., 1444046  
Applicant ONTARIO LIMITED, 2164536 ONTARIO  
INC. and 1448945 ONTARIO INC.  
Respondents

Court File No: CV-18-27

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
Proceeding commenced at SIMCOE

**ORDER**

**MILLER THOMSON LLP**  
**ONE LONDON PLACE**  
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**LONDON, ON CANADA N6A 5R8**

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Inc.