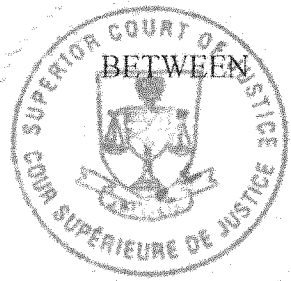


ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE)
JUSTICE *DUNPHY*)

THURSDAY, THE 13TH
DAY OF DECEMBER, 2018



BRIDGING FINANCE INC., as agent for
2665405 ONTARIO INC.

Applicant

- and -

1033803 ONTARIO INC. and 1087507 ONTARIO LIMITED

Respondents

IN THE MATTER OF AN APPLICATION 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

ORDER

(Approval of Brampton Stalking Horse Agreement and Bidding Procedures)

THIS MOTION, made by KSV Kofman Inc. ("**KSV**"), in its capacity as the Court-appointed receiver and manager (KSV, in such capacity, the "**Receiver**") of: (i) all of the assets, undertakings and properties of 1033803 Ontario Inc. (operating as Forma-Con Construction and Forma Finishing) ("**Forma-Con**"), including without limitation, the lands municipally known as 3420 Queen Street East, Brampton, Ontario (formerly 3420 Highway 7 East, Brampton, Ontario) (the "**Lands**") and 1087507 Ontario Limited; (ii) certain assets of Bondfield Construction Company Limited and Bondfield Construction Equipment Ltd; and (iii) the real property known municipally as 131 Saramia Crescent, Vaughan, Ontario ((i) – (ii), collectively, the "**Property**"),

for an order approving: (i) the stalking horse agreement of purchase and sale made as of December 6, 2018, between the Receiver and 2657897 Ontario Inc. ("**265**" or the "**Stalking Horse Bidder**") pursuant to which the Stalking Horse Bidder has agreed to purchase the Lands (the "**Stalking Horse Agreement**"), which Stalking Horse Agreement is appended as Appendix "C" to the First Report (as defined below); (ii) related bidding procedures (the "**Bidding Procedures**") to be followed by the Receiver in connection with the sale (the "**Sale**") of the Lands, which Bidding Procedures are attached as Schedule "A" hereto; (iii) the engagement of Intercity Realty Inc. ("**Intercity**") as listing agent in connection with the Bidding Procedures and the Sale of the Lands pursuant to the listing agreement between the Receiver and Intercity dated as of December 12, 2018 (the "**Listing Agreement**"); (iv) the termination agreement (the "**Termination Agreement**") dated as of December 6, 2018, between the Receiver and 265 in connection with the agreement of purchase and sale in connection with the Lands dated October 4, 2018, between Forma-Con and 265 (the "**Original APS**"), which Termination Agreement is appended as Appendix "B" to the First Report; (v) the First Report of the Receiver dated December 7, 2018 (the "**First Report**"); and (vi) certain related relief, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Motion and Motion Record, each dated December 7, 2018, filed, and the First Report, filed, and on hearing the submissions of counsel for the Receiver, counsel for the Stalking Horse Bidder and Bridging Finance Inc., and such other counsel appearing on the counsel slip, no one else appearing although properly served as appears from the affidavit of service of Adam Slavens sworn December 10, 2018, filed, the affidavit of service of Elizabeth Nigro sworn December 10, 2018, filed, and the affidavit of service of Siva Sivaperuman sworn December 10, 2018, 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 Bidding Procedures.

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 the Lands to or in the Stalking Horse Bidder pursuant to the Stalking Horse Agreement and that, if the Stalking Horse Bid is the Successful Bid under the Bidding Procedures, the approval of the sale and the vesting of the Lands to and in the Stalking Horse Bidder shall be considered by this Court on a subsequent motion following the completion of the Bidding procedures, all in accordance with the terms of the Bidding Procedures.

4. **THIS COURT ORDERS** that the Stalking Horse Agreement be and is hereby approved and accepted solely for the purpose of constituting the Stalking Horse Bid under the Bidding Procedures.

5. **THIS COURT DECLARES** that the Stalking Horse Bidder is a party to these proceedings.

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 Bidder thereunder shall not otherwise be limited or impaired in any way by: (a) these receivership proceedings and any findings of insolvency made in connection therewith; (b) any application(s) for bankruptcy order(s) 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 assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of security interests, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise, contained in any existing loan documents, lease, sublease, offer to lease or other agreement of Forma-Con (each, an "Agreement"), and notwithstanding any provision to the contrary in any Agreement:

- (a) the execution, delivery or performance of the Stalking Horse Agreement shall not create or be deemed to constitute a breach of any Agreement; and

- (b) the Stalking Horse Bidder shall not have any liability to any person whatsoever as a result of any breach of any Agreement caused by or resulting from the execution, delivery or performance of the Stalking Horse Agreement.

APPROVAL OF BIDDING PROCEDURES

7. **THIS COURT ORDERS** that the Bidding Procedures be and are 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 Bidding Procedures) to carry out the Bidding Procedures, subject to prior approval of this Court being obtained before completion of any Sale of the Lands under the Bidding Procedures, *provided that the Bid Deadline shall be 5 pm on*

January 31, 2019.
8. **THIS COURT ORDERS** that the Receiver and its affiliates, 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 their duties under the Bidding Procedures, except to the extent of such losses, claims, damages or liabilities resulting from the gross negligence or wilful misconduct of the Receiver, as applicable, 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 interested party, bidder and Qualified Bidder (including, without limitation, the Stalking Horse Bidder) and to their respective advisors and representatives, if requested by them, personal information of identifiable individuals, but only to the extent desirable or required to negotiate or attempt to complete a Sale of the Lands. Each interested party, bidder and Qualified Bidder (including, without limitation, the Stalking Horse Bidder) or advisor 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 Bidder shall maintain and protect the privacy of such information and, upon closing of the transaction contemplated in the Successful Bid, shall be entitled to use the personal information provided to it that is related to the Lands in a

manner that is in all material respects identical to the prior use of such information by Forma-Con, 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.

APPROVAL OF LISTING AGREEMENT

10. **THIS COURT ORDERS** that the execution, delivery, entry into, compliance with, and performance by the Receiver of the Listing Agreement, be and is hereby ratified, authorized and approved, and that the Receiver be and is hereby authorized to make any payments to Intercity that may become due and payable thereunder.

APPROVAL OF TERMINATION AGREEMENT

11. **THIS COURT ORDERS** that the execution, delivery, entry into, compliance with, and performance by the Receiver of the Termination Agreement, be and is hereby ratified, authorized and approved, and that the Original APS be and is hereby terminated pursuant to the Termination Agreement.

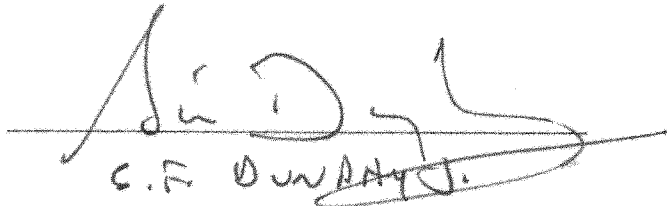
APPROVAL OF FIRST REPORT

AM
12. ~~**THIS COURT ORDERS** that the First Report be and is hereby approved~~

GENERAL

13. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, the United States, or any other jurisdiction, to give effect to this Order and to assist the Receiver and its agents and advisors 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 and advisors in carrying out the terms of this Order.

14. **THIS COURT ORDERS** that at any time during the process provided for under the Bidding Procedures, the Receiver or the Stalking Horse Bidder may apply to this Court for directions with respect to the Bidding Procedures.


C.F. DOWNARD

ENTERED AT / INSCRIT A TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO:

DEC 13 2018

PER / PAR:



Schedule "A"
Bidding Procedures

BIDDING PROCEDURES

Introduction

On November 19, 2018, the Superior Court of Justice (Commercial List) (the “**Court**”) made an order (the “**Receivership Order**”) appointing KSV Kofman Inc. (“**KSV**”) as receiver and manager (KSV, in such capacity, the “**Receiver**”) of: (i) all of the assets, undertakings and properties of 1033803 Ontario Inc. (operating as Forma-Con Construction and Forma Finishing) (“**Forma-Con**”), including without limitation, the lands municipally known as 3420 Queen Street East, Brampton, Ontario (formerly 3420 Highway 7 East, Brampton, Ontario) and legally described in Schedule “A” hereto (the “**Lands**”) and 1087507 Ontario Limited; (ii) certain assets of Bondfield Construction Company Limited and Bondfield Construction Equipment Ltd; and (iii) the real property known municipally as 131 Saramia Crescent, Vaughan, Ontario (such proceedings, the “**Receivership Proceedings**”).

The Receiver intends to bring a motion before the Court on December 13, 2018, for an order (the “**Bidding Procedures Order**”, and such motion the “**Bidding Procedures Approval Motion**”) approving: (i) the agreement of purchase and sale (the “**Stalking Horse Bid**”) made as of December 6, 2018, between the Receiver and 2657897 Ontario Inc. (the “**Stalking Horse Bidder**”) pursuant to which the Stalking Horse Bidder has agreed to purchase the Lands; and (ii) the bidding procedures as described in this document (the “**Bidding Procedures**”).

This document contains the Bidding Procedures to be followed by the Receiver in connection with the sale (the “**Sale**”) of the Lands. The Receiver will conduct the Bidding Procedures in accordance with the Bidding Procedures Order. All amounts specified herein are in Canadian dollars.

Assets to Be Sold

The Receiver is offering for sale all of Forma-Con’s right, title and interest in and to the Lands.

The Bidding Procedures

The Bidding Procedures Order approves the retention of Intercity Realty Inc. (the “**Broker**”) to act as real estate broker and listing agent for the Lands, and the entry into a retention agreement with the Broker by the Receiver, among other things.

Interested parties may be provided by the Receiver with such access to due diligence materials and information relating to the Lands as the Receiver deems appropriate in its reasonable business judgment. In the Receiver’s sole discretion, this may include the provision of access to an electronic data room of due diligence information. The Receiver, in its sole discretion, may also require interested parties to execute a form of non-disclosure agreement in form and substance satisfactory to the Receiver prior to the provision of any such access.

The Receiver shall have the right to adopt such other rules for the Bidding Procedures (including rules that may depart from those set forth herein) that in its reasonable business judgment will better promote the goals of the Bidding Procedures and/or achieving a Sale. The Receiver may

seek Court approval of an amendment to the Bid Procedures that it considers material. The extension of any deadline by up to two weeks shall not be considered material.

Bid Deadline

An interested party that desires to make a bid shall deliver written copies of its bid (including the Required Bid Terms and Materials) to the Broker, with a copy to the Receiver, by 5:00 p.m. (Toronto time) on January 18, 2018 (the "**Bid Deadline**").

Bid Requirements

All bids (other than the Stalking Horse Bid) must include, unless such requirement is waived by the Receiver, the following:

- (i) A base cash purchase price equal to or greater than \$16,750,000, which is the amount of the Stalking Horse Bid plus \$250,000; provided, however, that in the case of a Credit Bid (as defined below), all or part of the consideration will not be in cash;
- (ii) A provision stating that the bidder's offer is irrevocably open for acceptance until the first business day after the Lands have been sold pursuant to the closing of the Sale that is approved by the Court pursuant to the Sale Approval Order;
- (iii) Disclosure of the identity of each entity (including its ultimate shareholders and/or sponsors) that will be bidding for the Lands or otherwise participating in such bid and the complete terms of any such participation;
- (iv) Written evidence of a firm, irrevocable commitment for financing or other evidence of an ability to consummate the proposed transaction comprising such bid, that will allow the Receiver to make a determination as to the bidder's financial and other capabilities to consummate the proposed transaction;
- (v) Written evidence, in form and substance reasonably satisfactory to the Receiver, of authorization and approval from the bidder's board of directors (or comparable governing body) with respect to the submission, execution, delivery and closing of the transaction contemplated by the bid;
- (vi) An acknowledgment and representations of the bidder that: (A) it has had an opportunity to conduct any and all due diligence regarding the Lands prior to making its bid; (B) it has relied solely upon its own independent review, investigation and/or inspection of the Lands (including, without limitation, any documents in connection therewith) in making its bid; and (C) it did not rely upon any written or oral statements, representations, warranties, or guarantees whatsoever, whether express, implied, statutory or otherwise, regarding the Lands or the completeness of any information provided in connection therewith, except as expressly stated in the definitive transaction agreement(s) signed by the Receiver and approved by the Court;

- (vii) An executed copy of a proposed purchase agreement and a redline of the bidder's proposed purchase agreement reflecting any variations from the Stalking Horse Bid; and
- (viii) A cash deposit in the amount of 15% of the purchase price in the form of a wire transfer, certified cheque or such other form acceptable to the Receiver (the "**Bid Deposit**"), which shall be held by the Receiver in an escrow account (the "**Escrow Account**"). Funds shall be disbursed from the Escrow Account only as follows: (i) if the Qualified Bidder is the Successful Bidder, its Bid Deposit will be applied without interest to the purchase price payable by it under its bid on the closing thereof or as otherwise provided for in the purchase agreement; and (ii) if the Qualified Bidder is not the Successful Bidder, then its Bid Deposit shall be returned without interest to it forthwith following the expiration of its offer;

provided, however, that a bid shall not be subject to further due diligence, financing, bid protections, expense reimbursement, third party approvals or any other conditions or conditions precedent except those that are customary in a transaction of this nature (collectively, the "**Required Bid Terms and Materials**").

A bid received from a bidder that includes all of the Required Bid Terms and Materials and is received by the Bid Deadline is a "**Qualified Bid**", and such bidder is a "**Qualified Bidder**". Notwithstanding the bid requirements detailed above, the Stalking Horse Bid shall be deemed a Qualified Bid and the Stalking Horse Bidder shall be deemed a Qualified Bidder.

The Receiver may waive strict compliance with the Bid Deadline or any one or more of the Required Bid Terms and Materials deem such non-compliant bid to be a Qualified Bid, provided that doing so shall not constitute a waiver by the Receiver of the Bid Deadline or the Required Bid Terms and Materials or an obligation on the part of the Receiver to designate any other bid as a Qualified Bid. At any time during the Bidding Procedures, the Receiver may, in its reasonable business judgment, eliminate an interested party, a bidder or a Qualified Bidder (other than the Stalking Horse Bidder) from the Bidding Procedures, in which case such party will no longer be an interested party, bidder or a Qualified Bidder for the purposes of the Bidding Procedures.

Credit Bids

Other than the Stalking Horse Bidder, no bidder may provide for all or part of the consideration to be paid to be satisfied by way of a credit bid of secured indebtedness of Forma-Con (a "Credit Bid"). The Stalking Horse Bidder shall be permitted to Credit Bid up to the full face value of the secured indebtedness of Forma-Con.

"As Is, Where Is, With All Faults"

The sale of the Lands shall be on an "as is, where is" and "with all faults" basis and without representations, warranties, or guarantees, express, implied or statutory, written or oral, of any kind, nature, or description by the Receiver or its agents, counsel, representatives, partners or employees, or any of the other parties participating in the procedures outlined in these Bidding Procedures, except as may otherwise be provided in a definitive purchase agreement with the Receiver. Any party (including, without limitation, a Qualified Bidder) shall be deemed to

acknowledge and represent that it has had an opportunity to conduct any and all due diligence regarding the Lands prior to making its bid, that it has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the Lands in making its bid, and that it did not rely upon any written or oral statements, representations, warranties, or guarantees, express, implied, statutory or otherwise, regarding the Lands, or the completeness of any information provided in connection therewith or the Auction, except as expressly stated in these Bidding Procedures or as set forth in a definitive purchase agreement with the Receiver.

Free of Any and All Liens

Except as otherwise provided in the Stalking Horse Bid or another Successful Bidder's purchase agreement, all of Forma-Con's right, title and interest in and to the Lands shall be sold free and clear of all liens and encumbrances pursuant to the Sale Approval Order except for Permitted Encumbrances (as defined in the Stalking Horse Bid).

Selection of Successful Bidder

If one or more Qualified Bids is received by the Bid Deadline or so designated by the Receiver, all such Qualified Bidders shall proceed to an auction with the Stalking Horse Bidder (an "**Auction**"), which shall proceed according to the Auction Procedures set out in Schedule "B" hereto (the "**Auction Procedures**") to identify the Successful Bidder. In such event, the Receiver shall determine, in its reasonable business judgment, which Qualified Bid is the highest and/or best bid (the "**Lead Bid**"). In determining the Lead Bid, the Receiver may consider, without limitation: (i) the amount and nature of the consideration; (ii) the proposed assumption of any liabilities and the related implied impact on recoveries for creditors; (iii) the Receiver's assessment of the certainty of the Qualified Bidder to close the proposed transaction; (iv) the likelihood, extent and impact of any potential delays in closing; and (v) the net economic effect of any changes from the Stalking Horse Bid; (vi) the amount and priority of any Credit Bid; and (vii) such other considerations as the Receiver deems relevant in its reasonable business judgment.

If no Qualified Bid is submitted by the Bid Deadline or all Qualified Bids that have been submitted have been withdrawn prior to the Bid Deadline, then the Stalking Horse Bid shall be the Successful Bid, and the Stalking Horse Bidder shall be the Successful Bidder.

The "**Successful Bid**" will be either (i) the Stalking Horse Bid if no Qualified Bid is received by the Bid Deadline or so designated by the Receiver; (ii) in the event of an Auction, the highest and best bid as determined by the Receiver at the Auction; or (iii) a bid that is so designated by the Receiver in the event that the closing of the Sale that is approved by the Court pursuant to the Sale Approval Order (as defined below) does not occur by the required date pursuant to the Successful Bid (or such date that may otherwise be mutually agreed upon between the Receiver and the Successful Bidder). The party that submitted the Successful Bid is referred to herein as the "**Successful Bidder**".

Sale Approval Motion

Subject to the availability of the Court, within ten (10) business days following the conclusion of the Auction, the Receiver shall bring a motion (the "**Sale Approval Motion**") for an order of the Court authorizing and approving the Sale of the Lands to the Successful Bidder (such order, as

approved, the “**Sale Approval Order**”). At the hearing of the Sale Approval Motion, the Receiver shall, among other things, seek approval from the Court to consummate the Successful Bid.

Acceptance of Qualified Bids

The sale of the Lands to any Successful Bidder by the Receiver is expressly conditional upon the approval of the Successful Bid by the Court at the hearing of the Sale Approval Motion. The Receiver's presentation of the Successful Bid to the Court for approval does not obligate the Receiver to close the transaction contemplated by such Successful Bid unless and until the Court approves the Successful Bid. All of the Qualified Bids other than the Successful Bid, shall be deemed rejected by the Receiver on and as of the date of the closing of the Sale that is approved by the Court pursuant to the Sale Approval Order.

In the event that the closing of the Sale that is approved by the Court pursuant to the Sale Approval Order does not occur by the required date pursuant to the Successful Bid (or such date that may otherwise be mutually agreed upon between the Receiver and the Successful Bidder), the Receiver shall be authorized, but not required, to: (a) exercise such rights and remedies as are available to the Receiver under the Successful Bid including, if applicable, deeming that the Successful Bidder has breached its obligations pursuant to the Successful Bid and that the Successful Bidder has forfeited its Deposit to the Receiver; (b) accept any Qualified Bid or other bid of a Qualified Bidder, including, without limitation, a bid made at the Auction, in which case such bid and bidder shall be a Successful Bid and Successful Bidder, respectively, for the purposes of these Bidding Procedures, and close the transaction under such bid; and/or (c) take such other steps as it deems advisable. The Debtor reserves its right to seek all available damages and remedies, including specific performance, from any defaulting Successful Bidder.

Miscellaneous

The Receiver will oversee, in all respects, the conduct of the Bidding Procedures and, without limitation, the Receiver will participate in the Bidding Procedures in the manner set out in these Bidding Procedures and the Bidding Procedures Order. All discussions or inquiries regarding the Bidding Procedures should be directed to the Receiver.

The Sale Process and these Bidding Procedures are solely for the benefit of the Receiver and nothing contained in the Bidding Procedures Order or these Bidding Procedures shall create any rights in any other person (including, without limitation, any bidder or Qualified Bidder, and any rights as third party beneficiaries or otherwise) other than the rights expressly granted to a Successful Bidder under the Bidding Procedures Order. Other than as specifically set forth in the Broker's retention agreement, the Stalking Horse Bid or in a definitive agreement between the Receiver and another Successful Bidder, the Bidding Procedures do not, and will not be interpreted to create any contractual or other legal relationship among Forma-Con, the Receiver, the Broker, any interested party, any bidder, and Qualified Bidder, the Successful Bidder, or any other party.

The receiver may consult with any other parties with a material interest in the Receivership Proceedings regarding the status and material information and developments relating to the Bidding Procedures to the extent considered appropriate by the Receiver; provided that such parties may be required to enter into confidentiality arrangements satisfactory to the Receiver.

Subject to the terms of the Receivership Order, participants in the Bidding Procedures are responsible for all costs, expenses and liabilities incurred by them in connection with the submission of any bids, participation in the Auction, due diligence activities, and any further negotiations or other actions whether or not they lead to the consummation of a transaction.

Except as provided in the Bidding Procedures Order and Bidding Procedures, the Court shall retain jurisdiction to hear and determine all matters arising from or relating to the implementation of the Bidding Procedures Order and the Bidding Procedures.

Schedule "A"

Legal Description of the Lands

PIN 14209-1704 (LT)

PT LT 6, CON 7 ND (TORONTO GORE), DES PTS 1, 2, 3, 4, 5, 6, 7, 8, 11, 43R34750; S/T EASEMENT IN GROSS OVER PTS 22, 23 AND 24, 43R31898 AS IN PR1385008. S/T EASEMENT IN GROSS OVER PTS 22 AND 23, 43R31898 AS IN PR1385011.; SUBJECT TO AN EASEMENT IN GROSS OVER PTS 2 TO 5, 43R34750 AS IN PR2261758; SUBJECT TO AN EASEMENT IN GROSS OVER PTS 3, 5, 11, 43R34750 AS IN PR2264436; CITY OF BRAMPTON

Being the whole of the PIN.

Schedule "B"

Auction Procedures

1. If the Receiver determines to conduct an Auction pursuant to the Bidding Procedures, the Receiver will notify the Qualified Bidders who made a Qualified Bid that the Auction will be held at the offices of Torys LLP at 10:00 a.m. (Toronto time) on date that is determined by the Receiver, provided that that is not later than five business days after the Bid Deadline, or such other place and time as the Receiver may advise. Capitalized terms used but not defined have the meaning given to them in the Bidding Procedures.
2. The Auction shall be conducted in accordance with the following procedures:
 - (a) Participation At The Auction. Only a Qualified Bidder is eligible to participate in the Auction. The Receiver shall provide all Qualified Bidders with the amount of the Leading Bid, a copy thereof and a blackline to the Stalking Horse Bid by 5:00pm (Toronto Time) two business days before the scheduled date of the Auction. Each Qualified Bidder must inform the Receiver whether it intends to participate in the Auction no later than 12:00 p.m. (Toronto time) on the business day prior to the Auction. Only the authorized representatives of each of the Qualified Bidders, the Receiver, Forma-Con, Bridging Finance Inc. and their respective counsel and other advisors shall be permitted to attend the Auction.
 - (b) Bidding at the Auction. Bidding at the Auction shall be conducted in rounds. The Leading Bid shall constitute the "Opening Bid" for the first round and the highest Overbid (as defined below) at the end of each round shall constitute the "Opening Bid" for the following round. In each round, a Qualified Bidder may submit no more than one Overbid. Any Qualified Bidder who bids in a round (including the Qualified Bidder that submitted the Opening Bid for such round) shall be entitled to participate in the next round of bidding at the Auction.
 - (c) Receiver Shall Conduct The Auction. The Receiver and its advisors shall direct and preside over the Auction. At the start of each round of the Auction, the Receiver shall provide the terms of the Opening Bid to all participating Qualified Bidders at the Auction. The determination of which Qualified Bid constitutes the Opening Bid for each round shall take into account any and all factors that the Receiver reasonably deems relevant to the value of the Qualified Bid, including, among other things, the following: (i) the amount and nature of the consideration; (ii) the proposed assumption of any liabilities and the related implied impact on recoveries for creditors; (iii) the Receiver's assessment of the certainty of the Qualified Bidder to close the proposed transaction; (iv) the likelihood, extent and impact of any potential delays in closing; (v) the net economic effect of any changes from the Opening Bid of the previous round; (vi) the amount and priority of any Credit Bid; and (vii) such other considerations as the Receiver deems relevant in its reasonable business judgment (collectively, the "**Bid Assessment Criteria**"). All Bids made after the Opening Bid shall be Overbids, and shall be made and received on an open basis, and all material terms of the highest and best Overbid shall be fully disclosed

to all other Qualified Bidders that are participating in the Auction. The Receiver shall maintain a record of the Opening Bid and all Overbids made and announced at the Auction.

- (d) Terms of Overbids. An “**Overbid**” is any Bid made at the Auction subsequent to the Receiver’s announcement of the Opening Bid. To submit an Overbid, in any round of the Auction, a Qualified Bidder must comply with the following conditions:
- (i) *Minimum Overbid Increment:* Any Overbid shall be made in such increments as the Receiver may determine in order to facilitate the Auction (the “**Minimum Overbid Increment**”). The amount of any Overbid shall not be less than the amount of the Opening Bid, plus the Minimum Overbid Increment(s) at that time, plus any additional Minimum Overbid Increments.
 - (ii) *The Bid Requirements same as for Qualified Bids:* Except as modified herein, an Overbid must comply with the Bid Requirements, provided, however, that the Bid Deadline shall not apply.
 - (iii) *Announcing Overbids:* At the end of each round of bidding, the Receiver shall announce the identity of the Qualified Bidder and the material terms of the then highest and/or best Overbid and the basis for calculating the total consideration offered in such Overbid based on, among other things, the Bid Assessment Criteria.
 - (iv) *Consideration of Overbids:* The Receiver reserves the right to make one or more adjournments in the Auction to, among other things: (A) allow individual Qualified Bidders to consider how they wish to proceed; (B) consider and determine the current highest and/or best Overbid at any given time during the Auction; and (C) give Qualified Bidders the opportunity to provide the Receiver with such additional evidence as it may require that the Qualified Bidder has obtained all required internal corporate approvals, has sufficient internal resources, or has received sufficient non-contingent debt and/or equity funding commitments, to consummate the proposed transaction at the prevailing Overbid amount. The Receiver may have clarifying discussions with a Qualified Bidder, and the Receiver may allow a Qualified Bidder to make technical clarifying changes to its Overbid following such discussions.
 - (v) *Failure to Bid:* If at the end of any round of bidding a Qualified Bidder (other than the Qualified Bidder that submitted the then highest and/or best Overbid or Opening Bid, as applicable) fails to submit an Overbid, then such Qualified Bidder shall not be entitled to continue to participate in the Auction.

- (vi) *Credit Bids*: Bids at the Auction by the Stalking Horse Bidder may provide for all or part of the consideration to be paid to be satisfied by way of a credit bid up to the full face value of secured indebtedness of Forma-Con (a “**Credit Bid**”). No other Qualified Bidder may Credit Bid at the Auction.
- (e) Additional Procedures. The Receiver may adopt rules for the Auction at or prior to the Auction that will better promote the goals of the Auction, including rules pertaining to the structure of the Auction, the order of bidding provided they are not inconsistent with any of the provisions of the Bidding Procedures (including these Auction Procedures) and provided further that no such rules may change the requirement that all material terms of the then highest and/or best Overbid at the end of each round of bidding will be fully disclosed to all other Qualified Bidders.
- (f) Closing the Auction. The Auction shall be closed after the Receiver has: (i) reviewed the final Overbid of each Qualified Bidder on the basis of financial and contractual terms and the factors relevant to the sale process, including those factors affecting the speed and certainty of consummating the proposed sale; and (ii) identified the Successful Bid and advised the Qualified Bidders participating in the Auction of such determination.
- (g) Finalizing Documentation. Promptly following a bid of a Qualified Bidder being declared the Successful Bid, the Qualified Bidder shall execute and deliver such revised and updated definitive transaction agreements as may be required to reflect and evidence the Successful Bid.

**BRIDGING FINANCE INC.,
as agent for 2665405 ONTARIO INC.**

Applicant

**1033803 ONTARIO INC. and
1087507 ONTARIO LIMITED**

Respondents

Court File No. CV-18-608978-00CL

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

Proceedings commenced in Toronto

**ORDER
(Approval of Brampton Stalking Horse
Agreement and Bidding Procedures)**

TORYS LLP

79 Wellington St. W., Suite 3000
Box 270, TD Centre
Toronto, Ontario
M5K 1N2 Canada

Fax: 416.865.7380

Scott A. Bomhof (LSO#: 37006F)

Tel: 416.865.7370

Email: sbomhof@torys.com

Adam M. Slavens (LSO#: 54433J)

Tel: 416.865.7333

Email: aslavens@torys.com

Lawyers for KSV Kofman Inc.,
in its capacity as Court-appointed
Receiver