

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

THE HONOURABLE MR.)	MONDAY, THE 21 st
)	
JUSTICE OSBORNE)	DAY OF FEBRUARY, 2023

ELA CAPITAL INC.

Applicant

- and -

11157353 CANADA CORP.

Respondent

ORDER
(Approval of Sale Process, Stalking Horse SPA and KERP)

THIS APPLICATION made by the Applicant for, *inter alia*, an Order approving a sale process (the “**Sale Process**”) with respect to the Property (as defined in the Order Appointing Receiver made by this Court, this day, in this Court file (the “**Appointment Order**”)) of the Respondent was heard this day at 330 University Avenue, Toronto, Ontario, by videoconference.

ON READING the Application Record, including the affidavit of Benjamin Trefler sworn February 15, 2023 (the “**Trefler Affidavit**”) and the Exhibits thereto, and the pre-filing report of KSV Restructuring Inc. as the proposed receiver and manager of

the Respondent (in such capacity, the “**Receiver**”) dated February 17, 2023 (the “**Pre-Filing Report**”), and on hearing the submissions of counsel for the Applicant, the Receiver, and such other counsel as were present and listed on the counsel slip, no one else appearing although duly served as appears from the affidavit of service of Joël Turgeon sworn February 21, 2023:

DEFINITIONS

1. **THIS COURT ORDERS** that capitalized terms not defined herein shall have the meanings set out in the Sale Process.

SERVICE

2. **THIS COURT ORDERS** that the time and manner for service of the Application Record and the Pre-Filing Report are hereby abridged and validated so that this application is properly returnable today, and hereby dispenses with further service thereof.

APPROVAL OF SALE PROCESS

3. **THIS COURT ORDERS** that the Sale Process terms attached hereto as Schedule ‘A’ (the “**Sale Process Terms**”) are hereby approved.
4. **THIS COURT ORDERS** that the Receiver is hereby authorized and directed to perform its obligations under the Sale Process in accordance with the Sale Process Terms and to take such further steps as it considers appropriate or necessary in carrying out the Sale Process.

5. **THIS COURT ORDERS** that the Receiver, the Respondent, and their respective affiliates, partners, directors, officers, employees, advisors, lawyers and agents (each, a “**Representative**”) shall have no personal or corporate liability with respect to any and all losses, claims, damages or liabilities, of any nature and kind, to any person in connection with or as a result of the Sale Process, except to the extent such losses, claims, damages or liabilities result from the gross negligence or wilful misconduct of the Receiver, the Respondent, or the applicable Representative, as determined by this Court.
6. **THIS COURT ORDERS** that for purposes of the Receiver’s evaluation of bids in the Sale Process, the Receiver shall consider the cash consideration provided in all bids as though it was expressed in the same currency, in accordance with the exchange rate applicable as of the Bid Deadline (as that term is defined in the Sale Process Terms).

APPROVAL OF THE STALKING HORSE AGREEMENT

7. **THIS COURT ORDERS** that the Share Purchase Agreement between the Receiver and Reflourish Capital Limited (the “**Reflourish Stalking Horse Agreement**”) of which a copy is attached as Exhibit “P” to the Trefler Affidavit, is hereby approved, including the break fee and expense reimbursement provisions set out therein, and the Receiver is hereby authorized and directed to execute the Reflourish Stalking Horse Agreement for purposes of constituting the “stalking horse” bid in respect of the Germany Shares in the Sale Process. For the avoidance of doubt, nothing contained in this Order approves the sale or the

vesting of the assets as contemplated in the Reflourish Stalking Horse Agreement and it is understood that this Court's approval of the Successful Bid(s) will be considered on a subsequent motion made to this Court in accordance with the Sale Process.

KERP APPROVAL

8. **THIS COURT ORDERS** that the KERP (as defined in the Trefler Affidavit) is hereby approved and that the Receiver is hereby authorized and directed to cause the Respondent to make payments and act in accordance with the KERP.
9. **THIS COURT ORDERS** that the key employee referred to in the KERP (the "**Key Employee**") shall be entitled to the benefit of and is hereby granted a charge on all of the assets, undertakings and properties of the Respondent, including all proceeds thereof (the "**KERP Charge**") to secure the amounts payable to the Key Employee under the KERP. The KERP Charge shall have the priority set out in paragraph 9 below.
10. **THIS COURT ORDERS** that the priorities of the KERP Charge, the Receiver's Charge and the Receiver's Borrowings Charge, as among them, shall be as follows:

First – the Receiver’s Charge (as defined in the Appointment Order);

Second – the Receiver’s Borrowings Charge (as defined in the Appointment Order); and

Third – the KERP Charge.

SEALING

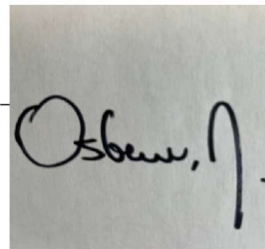
11. **THIS COURT ORDERS** that the terms of the KERP, a copy of which is attached as Confidential Exhibit “1” to the Trefler Affidavit, be and hereby are sealed until 30 days after the completion of the Sale Process, or further Court Order.

GENERAL

12. **THIS COURT ORDERS** that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.
13. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, in the United States, in the United Kingdom, or in the European Union to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give

effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

14. **THIS COURT ORDERS** that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.
15. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard/Daylight Time on the date of this Order without any need for entry and filing.

A rectangular stamp containing a handwritten signature in black ink. The signature appears to be "Osburn, J." with a stylized flourish at the end.

2023.02.2

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SCHEDULE 'A'

SALE PROCESS TERMS.

Sale Process

Overview

1. On February 21, 2023, pursuant to an order (the “**Receivership Order**”) of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”), KSV Restructuring Inc. was appointed as receiver and receiver and manager (the “**Receiver**”), without security, of all of the assets, undertakings and properties, excluding the Excluded Assets and Excluded Business (as defined in the Receivership Order) (the “**Property**”) of 11157353 Canada Corp. (the “**Company**”) which is principally comprised of 100% of the issued and outstanding share capital in Materia Deutschland GmbH (the “**Germany Shares**”), 100% of the issued and outstanding share capital in Materia Ventures Malta Ltd. (the “**Malta Shares**”), and 100% of the issued and outstanding share capital in Kara Wellness Limited and Handpicked CBD Limited (the “**UK Shares**”, together with the Germany Shares and Malta Shares, the “**Assets**”).

2. Pursuant to the Receivership Order, the Receiver is authorized to market any or all of the Property of the Company, which marketing may involve advertising or soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver may deem appropriate (the “**Sale Process**”).

3. On February 21, 2023, the Court issued an Order (the “**Sale Process Order**”) that, among other things:

- (a) approved the Sale Process as described herein; and
- (b) approved and accepted the Share Purchase Agreement between the Receiver and Reflourish Capital Limited (“**Reflourish**” and the “**Stalking Horse Bid**”) for the purpose of conducting a “stalking horse” solicitation process in respect of the Germany Shares, in accordance with the Sales Process.

Purpose

4. The purpose of this Sale Process is to seek offers for the purchase of: (i) the Germany Shares for an amount and on terms which are superior to the transaction contemplated by the Stalking Horse Bid; (ii) the Malta Shares; and (iii) the UK Shares.

5. The Sale Process, and any orders of the Court made in the proceeding relating to the Sale Process, shall exclusively govern the process for soliciting and selecting bids for the sale of the Assets (each, a “**Transaction**”).

Timeline

6. The following table sets out the key milestones and deadlines under the Sale Process:

Milestone	Deadline
Sale Process Commencement	As soon as practicable following the granting of the Sale Process Order
Publication of Notice of the Sale Process and delivery of the Teaser Letter and NDA to Potential Bidders, and upon execution of the NDA, provide Potential Bidders with access to the CIM and Data Room	As soon as practicable following the granting of the Sale Process Order
Bid Deadline	30 days after the granting of the Sale Process Order (the “ Bid Deadline ”)
Selection of the Successful Bid(s), including, if necessary, holding the Auction	As soon as reasonably practical following the Bid Deadline
Approval Hearing with the Court	As soon as reasonably practical following the Selection of the Successful Bid (s)
Closing of the Transaction under the Successful Bid(s)	No later than 5 days following the Court granting the Approval and Vesting Order (the “ Closing Date ”)

7. The deadlines set out in paragraph 6 above may be extended by the Receiver, acting reasonably, for up to a maximum of one week in the aggregate without the approval of the Court or the Stalking Horse Bidder. Any such extensions will be communicated to all bidders in writing.

8. Unless otherwise indicated herein, any event that occurs on a day that is not a Business Day shall be deemed to occur on the next Business Day (a “**Business Day**” is any day, other than a Saturday or Sunday, on which banks are ordinarily open for business in Toronto, Ontario).

Pre-Marketing Stage

9. As soon as reasonably practicable (the “**Sale Process Commencement**”), the Receiver will:

- (a) prepare: (i) a process summary (the “**Teaser Letter**”) describing the opportunity, outlining the process under the Sale Process and inviting recipients of the Teaser

Letter to express their interest pursuant to the terms of the Sale Process; (ii) a non-disclosure and confidentiality agreement with the Receiver (an “**NDA**”); and (iii) a confidential information memorandum (“**CIM**”). The Teaser Letter will specifically stipulate that the Receiver makes no representations or warranties as to the accuracy or completeness of the information contained in the Teaser Letter, the Data Room (as defined below), or made available pursuant to the Sale Process or otherwise, except to the extent expressly contemplated in any definitive sale agreement with a Successful Bidder (as defined below) ultimately executed and delivered by the Receiver;

- (b) gather and review all due diligence materials, it determines to be relevant, to be provided to interested parties and establish a secure, electronic data room (the “**Data Room**”), which will be maintained and administered by the Receiver throughout the Sale Process; and
- (c) prepare a list of potential interested parties (each a “**Potential Bidder**”), including:
 - (i) parties that have approached the Company or the Receiver indicating an interest in the opportunity; and
 - (ii) local and international strategic and financial parties who the Receiver believes may be interested in purchasing all or part of the Assets.

Marketing Stage

- 10. As soon as reasonably possible after the Sale Process Commencement, the Receiver shall:
 - (a) arrange for a notice of the Sale Process (and such other relevant information as the Receiver considers appropriate) (the “**Notice**”) to be published in such newspaper(s), publication(s) or journal(s) as the Receiver considers appropriate; and
 - (b) send the Teaser Letter and NDA to all Potential Bidders and to any other party who responds to the Notice as soon as reasonably practicable.

Free of Any and all Claims and Interests

11. Depending on the structure of the Transaction proposed by a Qualified Bidder (as defined herein), the Assets of the Company shall be transferred free and clear of all liens and claims, subject to any permitted encumbrances, pursuant to an approval and vesting order issued by the Court approving the Transaction (the “**Approval and Vesting Order**”). For greater certainty, all security interests, liens, claims and encumbrances will be discharged from the Assets and will attach to the net proceeds from a Transaction(s) following the granting of the Approval and Vesting Order.

“As Is, Where Is”

12. Any purchase of the Assets will be on an “as is, where is” basis without representations or warranties of any kind, nature or description by the Receiver or Company or any of their respective directors, officers, partners, employees, agents, advisors, representatives or estates,

except to the extent as may be set forth in a Binding APA (as defined herein) and approved by the Court.

13. By submitting a bid, each Potential Bidder (as defined herein) shall be deemed to acknowledge and represent that it has had an opportunity to conduct any and all due diligence regarding the Company and the Assets prior to making its bid, that it has relied solely upon its own independent review, investigation and/or inspection of any documents and information in respect of the Assets 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 Company or its Assets or the completeness of any information provided in connection therewith, except as expressly stated in this Sale Process or as set forth in a Binding APA and approved by the Court.

Participation Requirements

14. Each Potential Bidder must deliver to the Receiver, an executed NDA, in the form provided by the Receiver, prior to the distribution of any confidential information by the Receiver.

15. If it is determined by the Receiver that a Potential Bidder: (i) has a *bona fide* interest in pursuing a Transaction (based on financial ability to consummate a transaction, industry experience, and other factors); and (ii) has delivered an executed NDA, then such Potential Bidder will be deemed to be a **“Qualified Bidder”**.

16. Reflourish shall be deemed to be a Qualified Bidder in respect to the Germany Shares for the purposes of this Sale Process.

17. The Receiver will grant each Qualified Bidder access to the Data Room and CIM, as soon as reasonably practicable, which will provide, among other things, information considered relevant to the Sale Process, including in the case of a Qualified Bidder that desires to make a bid for the Germany Shares, the Stalking Horse Bid.

18. No Potential Bidder or Qualified Bidder, nor the Stalking Horse Bidder shall be permitted to receive the details of any bids or Binding APAs submitted or the details or existence of any confidential discussions or correspondence among the Company, the Receiver and any bidder in connection with the Sale Process, except to the extent the Receiver, at its sole discretion, determines is reasonable or in preparation for the Auction (as defined below).

Due Diligence

19. The Receiver, subject to competitive and other business considerations, may give each Qualified Bidder such access to due diligence materials and information relating to the Company as the Receiver deems appropriate. Due diligence access may include access to the Data Room, on-site inspections and other matters which a Qualified Bidder may reasonably request and to which the Receiver may agree. Neither the Receiver, nor any of its representatives will be obligated to furnish any information relating to the Company to any person. The Receiver and Company make no representation or warranty, express or implied, as to the information provided through this due diligence process or otherwise, except as may be set forth in a Binding APA.

Binding APAs

20. A Qualified Bidder that desires to make a bid for the Germany Shares shall deliver written copies of its bid, in the form of the Stalking Horse Bid, together with a blackline outlining all changes made to the Stalking Horse Bid (the “**Binding APA for the Germany Shares**”).
21. A Qualified Bidder that desires to make a bid for the Malta Shares shall deliver written copies of its bid in the form of a share purchase agreement (the “**Binding APA for the Malta Shares**”).
22. A Qualified Bidder that desires to make a bid for the UK Shares shall deliver written copies of its bid in the form of a share purchase agreement (together with the Binding APA for the Germany Shares and the Binding APA for the Malta Shares, a “**Binding APA**”).
23. The Receiver will consider (i) a bid for all of the Company’s Assets (an “**En Bloc Bid**”) or (ii) separate bids to acquire some but not all of the Company’s Assets (“**Piecemeal Bids**”). Subject to Court approval, the Receiver has the right to accept an En Bloc Bid if the total consideration is greater than separate Piecemeal Bids.
24. A Binding APA (for any of the Assets) must be submitted to the Receiver as follows: Attn: Noah Goldstein [ngoldstein@ksvadvisory.com] and Eli Brenner [ebrenner@ksvadvisory.com], so as to be received by no later than the Bid Deadline.
25. A Binding APA must comply with all of the following:
- (a) it is received by the Receiver prior to the Bid Deadline;
 - (b) the bid (either individually or in combination with another bid that makes up one Binding APA) is an offer:
 - (i) to purchase the Germany Shares on terms consistent with the form of the Stalking Horse Bid, together with all completed schedules thereto, and on conditions acceptable to the Receiver;
 - (ii) to purchase the Malta Shares on terms reflected in a share purchase agreement, together with all completed schedules thereto, and on conditions acceptable to the Receiver; and
 - (iii) to purchase the UK Shares on terms reflected in a share purchase agreement, together with all completed schedules thereto, and on conditions acceptable to the Receiver;
 - (c) it is duly authorized and executed, and includes a purchase price for the Assets (collectively, the “**Purchase Price**”):
 - (i) with respect to the Germany Shares, €400,000 (or the equivalent in Canadian Dollars) in cash due on closing of the Transaction plus (i) a minimum incremental amount of \$6,000 Canadian Dollars in excess of the

aggregate purchase price contemplated by the Stalking Horse Bid; (ii) a reimbursement of Reflourish's reasonable fees and disbursements relating to the preparation and execution of the Stalking Horse Bid in the maximum amount of \$25,000 Canadian Dollars; and (iii) a break fee in the amount of \$20,000 Canadian Dollars (inclusive of HST, if any);

- (ii) with respect to the Malta Shares, an amount in cash due on closing of the Transaction; and
 - (iii) with respect to the UK Shares, an amount in cash due on closing of the Transaction.
- (d) includes a letter of acknowledgment stating that the Qualified Bidder's offer is irrevocable and open for acceptance until the closing of the Successful Bid (as defined herein);
 - (e) it is accompanied by written evidence of a firm, irrevocable commitment for financing or other evidence satisfactory to the Receiver, in its sole discretion, of the ability of the Qualified Bidder to consummate the proposed Transaction, and that will allow the Receiver to make a determination as to the Qualified Bidder's financial and other capabilities to consummate the proposed sale and pay the Purchase Price;
 - (f) it will be unconditional (other than customary or other conditions acceptable to the Receiver in its sole discretion) and not subject to further due diligence;
 - (g) it fully discloses the identity of each person or entity (including all beneficial owners of such entity) that will be bidding for, or otherwise sponsoring, financing, participating or benefiting from such bid;
 - (h) it includes an acknowledgement and representation of the Qualified Bidder that:
 - (i) it has had an opportunity to conduct any and all due diligence regarding the Assets prior to making its bid; (ii) it has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the Assets in making its bid; and (iii) it did not rely upon any written or oral statements, representations, warranties, or guarantees whatsoever, whether express, implied, statutory or otherwise, regarding the Assets, the Company or the completeness or accuracy of any information provided by the Receiver or any other party in connection therewith;
 - (i) it includes evidence, in form and substance reasonably satisfactory to the Receiver, of authorization and approval from the Qualified Bidder's board of directors (or comparable governing body) with respect to the submission, execution and delivery of the Binding APA submitted by the Qualified Bidder;
 - (j) provides a deposit in the amount of not less than 15% of the Purchase Price offered by the Qualified Bidder (the "**Deposit**"); and

(k) the bid contemplates closing the Transaction by or on the Closing Date.

26. The Receiver may determine, at its sole discretion, whether to entertain bids for the Germany Shares, the Malta Shares, and/or the UK Shares that do not conform to one or more of the requirements for a Binding APA specified herein.

27. Notwithstanding anything herein, the offer represented by the Stalking Horse Bid with respect to the Germany Shares shall be deemed to be a Binding APA for the Germany Shares.

Evaluation of Binding APA

28. Each Binding APA will be considered and reviewed by the Receiver based upon several factors including, without limitation, the Purchase Price and the net value provided by such bid, the financial ability of the Qualified Bidder to close the Transaction, the claims likely to be created by such bid in relation to other bids, the counterparties to such transactions, the proposed transaction documents, other factors affecting the speed and certainty of the closing of the Transaction, the value of the transaction, the Assets included or excluded from the bid, the transition services required from the Receiver (if any), any related transaction costs, the likelihood and timing of consummating such transactions, and such other matters as the Receiver may determine.

29. Each Qualified Bidder shall comply with all reasonable requests for additional information by the Receiver regarding the Qualified Bidder or the Binding APA. Failure of a Qualified Bidder to comply with such requests for additional information will be a basis for the Receiver to reject a Binding APA.

Selection of Successful Germany Share Bid

30. With respect to the Germany Shares the Receiver may identify the highest or otherwise best offer for the Germany Shares (the “**Successful Germany Share Bid**”).

31. If no Binding APA for the Germany Shares (other than the Stalking Horse Bid) is received by the Bid Deadline, the Stalking Horse Bid shall be deemed the Successful Germany Share Bid.

32. If the Receiver receives one or more Binding APAs for the Germany Shares, it may, in the Receiver’s sole discretion, proceed with an auction to select the Successful Germany Share Bid (an “**Auction**”) on notice to each Qualified Bidder that submits a Binding APA for the Germany Shares and is invited to attend the Auction by the Receiver having regard to the terms of its Binding APA for the Germany Shares (each, an “**Auction Bidder**”). For greater certainty, Reflourish shall constitute an Auction Bidder in all circumstances in which an Auction is conducted for the Germany Shares.

33. If an Auction is commenced, the Receiver will implement Auction procedures that will be made available to all Auction Bidders if and when the Auction is implemented.

34. The Receiver shall consult with ELA Capital Inc, as applicant in these proceedings (“**Ela Capital**”), prior to the determination of a Successful Germany Share Bid by the Receiver, provided Ela Capital has not and confirms it has no intention to make a bid for any Assets.

Selection of Successful UK Share Bid and Malta Share Bid

35. With respect to the UK Shares and the Malta Shares: (i) the Receiver may identify the highest or otherwise best offer or combination of offers for the UK Shares (the “**Successful UK Share Bid**”); (ii) the Receiver may identify the highest or otherwise best offer or combination of offers for the Malta Shares (the “**Successful Malta Share Bid**”); or (iii) if the Receiver determines that two or more Binding APAs for the UK Shares and the Malta Shares are close in value, at the discretion of the Receiver, the Receiver may decide to negotiate with the applicable Qualified Bidders in order for the Qualified Bidders to submit an improved bids for the UK Shares or the Malta Shares, and as a result of such negotiations and the Receiver may identify a Successful UK Share Bid and Successful Malta Share Bid.

36. The Receiver shall consult with Ela Capital prior to the determination of a Successful UK Share Bid and the Successful Malta Share Bid by the Receiver, provided Ela Capital has not and confirms it has no intention to make a bid for any Assets.

37. The Receiver shall have no obligation to select a Successful UK Share Bid or a Successful Malta Share Bid and it reserves the right to reject any or all Binding APAs.

Backup Bid(s)

38. After selecting the Successful Bid(s), the Receiver may, at its sole discretion, chose the second highest or otherwise best offer or combination of offers for the Assets to act as the backup bid (the “**Backup Bid**”) in circumstances where the Transaction(s) contemplated by the Successful Bid(s) does not close.

Treatment of Deposits

39. In the event a Binding APA is not selected as a Successful Malta Share Bid, a Successful Germany Share Bid, or a Successful UK Share Bid (each a “**Successful Bid**”), the Deposit (without interest) shall be returned to the Qualified Bidder as soon as reasonably practicable after the closing of the Successful Bid.

40. A Binding APA may not be withdrawn, modified or amended without the written consent of the Receiver prior to the closing of the Successful Bid. Any such withdrawal, modification or amendment made without the written consent of the Receiver prior to the closing of the Successful Bid shall result in the forfeiture of such Qualified Bidder’s Deposit as liquidated damages and not as a penalty.

41. If a Qualified Bidder who made a Successful Bid breaches its obligations under the terms of the Sale Process or Binding APA, its deposit shall be forfeited as liquidated damages and not as a penalty.

Sale Approval Hearing

42. The sale of the Assets to any Successful Bidder is expressly conditional on the approval of the Successful Bid by the Court pursuant to an Approval and Vesting Order.

43. The motion for an order of the Court approving any Successful Bid (the “**Sale Approval Hearing**”) shall be brought by the Receiver. The Sale Approval Hearing shall be heard on a date determined by the Receiver and subject to the Court’s availability.

44. All of the Binding APAs for the Germany Shares other than any Successful Germany Share Bid, if any, shall be deemed rejected by the Receiver immediately after the closing of the Successful Germany Share Bid.

45. All of the Binding APAs for the Malta Shares other than any Successful Malta Share Bid, if any, shall be deemed rejected by the Receiver immediately after the closing of the Successful Malta Share Bid.

46. All of the Binding APAs for the UK Shares other than any Successful UK Share Bid, if any, shall be deemed rejected by the Receiver immediately after the closing of the Successful UK Share Bid.

Reservation of Rights

47. The Receiver may: (a) determine which Binding APA, if any, is the highest or otherwise best offer; and (b) notwithstanding anything contained herein, at any time before the issuance and entry of an Approval and Vesting Order, reject any bid that it determines is (i) inadequate or insufficient; or (ii) not in conformity with the requirements of this Sale Process or any order of the Court.

48. This Sale Process does not, and shall not be interpreted to, create any contractual or other legal relationship between the Receiver and any other party, other than as specifically set forth in definitive agreements that may be executed.

49. The Receiver shall have the right to adopt such rules, not inconsistent with the Sale Process described herein, that, in its reasonable discretion, will promote the goals of the Sale Process.

50. The Receiver may make any modification to the Sale Process that it considers appropriate in the circumstances and, if determined necessary or desirable in the Receiver’s sole discretion, it will seek Court approval of such modification on notice to the service list in the receivership proceeding. For greater certainty, any extension of time by the Receiver pursuant to paragraph 6 herein will not be considered “material”.

Approvals

51. For the avoidance of doubt, the approvals required pursuant to the terms hereof are in addition to, and not in substitution for, any other approvals required by the Receivership Order or any other statute or as otherwise required at law in order to implement a Successful Bid.

Limitation of Liability

52. The Receiver and the Company shall not have any liability whatsoever to any person or party, including without limitation to any Potential Bidder, Qualified Bidder, a bidder who

submits a Successful Bid or any creditor or other stakeholder, for any act or omission related to this Sale Process, save gross negligence or willful misconduct. By submitting a bid, each Potential Bidder shall be deemed to have agreed that it has no claim against the Receiver for any reason, matter or thing whatsoever, save gross negligence or willful misconduct.

53. Other than as specifically set forth in a definitive agreement between the Receiver and a Successful Bidder, the Sale Process does not, and will not be interpreted to, create any contractual or other legal relationship among the Company, the Receiver, a Potential Bidder, a Qualified Bidder, a Successful Bidder, or any other party.

54. The Receiver and the Company shall not be liable for any claim for a brokerage commission, finder's fee or like payment in respect of the completion of any Transaction completed under the Sale Process. Any such claim shall be the sole liability of the bidder who completes a Transaction under the Sale Process.

55. Participants in the Sale Process are responsible for all costs, expenses and liabilities incurred by them in connection with their participation in the Sale Process, including submission of any bids, due diligence activities, completion of a Successful Bid, preparation for and attendance at the Sale Approval Hearing and any negotiations or actions whether or not they lead to the consummation of a Transaction.

Supervision of the Sale Process

56. The Receiver will have responsibility for managing all communication with all Potential Bidders. This shall include facilitating the delivery of all communications, providing the Teaser Letter, coordinating the execution of NDAs, and managing the process of answering enquiries. Under no circumstances should a representative of the Company be contacted directly or indirectly in respect of the Sale Process, including diligence requests, without the prior written consent of the Receiver. Any such unauthorized contact or communication could result in exclusion from the Sale Process, in the Receiver's sole discretion.

57. The Company and its principals, employees and professional advisors shall cooperate fully with the Receiver and provide documents and information requested as part of the Sale Process to the Receiver in a prompt fashion.

Jurisdiction

58. All bidders (including Qualified Bidders) shall be deemed to have consented to the exclusive jurisdiction of the Ontario Superior Court of Justice (Commercial List) and waived any right to a jury trial in connection with any disputes relating to the Sale Process, including the qualification of bids, the construction and enforcement of the Sale Process, the selection of any Successful Bids and closing of any Transactions, as applicable.

ELA CAPITAL INC.

and

11157353 CANADA CORP.

Applicant

Respondent

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceedings commenced at Toronto

ORDER
(Approval of Sale Process, Stalking Horse SPA
and KERP)

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