

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

THE HONOURABLE MR.

)

WEDNESDAY, THE 1<sup>ST</sup>

JUSTICE HAINEY

)

DAY OF MARCH, 2017

)



**IN THE MATTER OF THE NOTICE OF INTENTION  
TO MAKE A PROPOSAL OF ENTERTAINMENT MEDIA INC.**

**ORDER**

**THIS MOTION**, made by Entertainment Media Inc. (the “**Debtor**”) for an order, *inter alia*, approving an Asset Purchase Agreement made as of 23 February 2017 (the “**Sale Agreement**”) between the Debtor and 254183 Ontario Inc. (the “**Purchaser**”) and the related overbid procedures was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the Report (the “**Report**”) of A. Farber & Partners Inc. (the “**Proposal Trustee**”) in its capacity as trustee under the Debtor’s proposal and the Affidavit of Wayne Parsons sworn 24 February 2017 and on hearing the submissions of counsel for the Debtor and the Proposal Trustee;

1. **THIS COURT ORDERS** that the time for service and filing of the Notice of Motion and the Motion Record is hereby abridged and service thereof is hereby validated so that this motion is properly returnable today and further service thereof is hereby dispensed with.
2. **THIS COURT ORDERS** that all capitalized terms not otherwise defined herein shall have the respective meanings ascribed to them in the Sale Agreement or the Overbid Procedures (as such terms are defined below), as the case may be.

3. **THIS COURT ORDERS** that the Debtor is hereby authorized and directed to enter into the Sale Agreement to sell to the Purchaser the assets identified in the Sale Agreement (the "**Purchased Assets**"), substantially in the form of the agreement attached to the Report.

4. **THIS COURT ORDERS** that the sales and bidding procedures attached hereto as **Schedule "A"** (the "**Overbid Procedures**") be and are hereby approved and the Proposal Trustee is hereby authorized and directed to conduct the Overbid Procedure.

5. **THIS COURT ORDERS** that the Proposal Trustee and its affiliates, partners, directors, employees and agents shall have no liability with respect any losses, claims, damages or liabilities, of any nature or kind, to any person in connection with or as a result of the Overbid Procedure, except to the extent such losses, claims, damages or liabilities result from the gross negligence or wilful misconduct of the Proposal Trustee in performing its obligations under the Overbid Procedure.

6. **THIS COURT ORDERS** that upon acceptance of the Successful Bid in accordance with the Overbid Procedures there shall be a binding agreement of purchase and sale between the Successful Purchaser and the Debtor to complete the transaction contemplated by, and substantially on the basis of the terms contained in, the Sale Agreement and the Purchase Price offered by the Successful Purchaser in the Overbid Procedure save and except that the Successful Purchaser shall not be entitled to the benefit of Article 6 – Overbid Procedures of the Sale Agreement.

ENTERED AT / INSCRIT À TORONTO  
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LE / DANS LE REGISTRE NO:

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## **Schedule "A"**

### **OVERBID PROCEDURES**

These Overbid Procedures shall govern the solicitation by the Proposal Trustee of offers for the Purchased Assets that are superior to that contemplated by the Sale Agreement in terms of the Purchase Price to be paid for the Purchased Assets. Capitalized terms in these Overbid Procedures that are not otherwise defined shall have the meaning ascribed in the Order dated 1<sup>st</sup> March 2017 or the Sale Agreement. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian dollars.

#### **Overbid Procedures**

These Overbid Procedures provide a procedure to solicit binding offers to purchase the Purchased Assets for a Purchase Price that will result in proceeds in excess of that provided for in the Sale Agreement. In the event that the Debtor determines that there is one offer from a Qualified Bidder that will provide proceeds in excess of that provided by the Sale Agreement, the Debtor shall conduct an auction in accordance with the procedures set out in **Section 7**.

#### **1. Assets for Sale**

The Debtor is soliciting offers for the Purchased Assets only and offers must be for the purchase of all of the Purchased Assets *en bloc*.

#### **2. Solicitation**

The Proposal Trustee, with the assistance of the Debtor, has prepared: (a) a list of potential purchasers for the Purchased Assets (the "**Potential Bidders**"); (b) a notice of the fact that the Purchased Assets are being offered for sale (the "**Notice**"); (c) a Confidential Information Memorandum (the "**CIM**"); and (d) a form of confidentiality agreement (the "**Confidentiality Agreement**"). The Proposal Trustee shall send the Notice and the Confidentiality Agreement to the Potential Purchasers by no later than **3 March 2017**.

The Proposal Trustee shall post a notice in *The Globe & Mail* in the form attached as **Schedule 1** (the "**Advertisement**") once prior to **10 March 2017**. The Proposal Trustee shall send the CIM and the Confidentiality Agreement to any person that responds to the Advertisement prior to **20 March 2017**.

#### **3. Access to Due Diligence Materials**

Interested parties that execute and deliver to the Proposal Trustee the Confidentiality Agreement ("**Potential Purchasers**") prior to **21 March 2017** shall receive a copy of the CIM and access to an electronic data room established by the Proposal Trustee until **22 March 2017**.

#### **4. Bidding Deadlines**

All Offers by Potential Purchasers to purchase the Purchased Assets must be submitted so that they are received by the Proposal Trustee by no later than **1600 on 22 March 2017** (the "**Bid Deadline**"). Offers received by the Receiver after the Bid Deadline shall not be considered and Potential Purchasers submitting an Offer subsequent to the Bid Deadline may not be considered Qualified Bidders (as

defined below). Offers shall be delivered by Potential Purchasers *via* e-mail or by personal delivery to the Receiver at:

**A. FARBER & PARTNERS INC.**

Suite 1600, 150 York St  
Toronto ON M5H 3S5

Attention: Rob Stelzer, CPA, CA, CIRP  
Email: rstelzer@farberfinancial.com

**5. Offer Requirements**

Offers must be in writing and:

- (i) **Identification**: Must identify the representative(s) who is (are) authorized to act on behalf of the Potential Purchaser for all purposes regarding the contemplated transaction and the Auction (as defined below).
- (ii) **Form and Content**: Must indicate the Potential Purchaser's willingness to close the purchase of the Purchased Assets based on the terms set forth in the Sale Agreement save and except for Article 6 – Overbid Procedures, which Article shall not be applicable in connection with a transaction in favour of any person other than the Purchaser. For greater certainty, the only amendments to the Sale Agreement that are permitted are with respect to the Purchase Price to be paid for the Purchased Assets and whether the Purchase Price is to be paid in cash and/or by way of assumption of secured debt.
- (iii) **Minimum Consideration**: Must provide for consideration payable on closing that is equal to that contemplated by the Sale Agreement plus: (a) the \$75,000 expense reimbursement contemplated by Article 6.02 the Sale Agreement; and (b) an initial overbid amount of \$60,000. For greater certainty, an offer may contemplate the payment in cash of the Assumed Liabilities.
- (iv) **Financial Wherewithal**: Must include evidence satisfactory to the Proposal Trustee, in its sole and absolute discretion, of the Potential Purchaser's ability to close and, in particular, the Potential Purchaser's ability, if applicable, to assume and pay the Assumed Liabilities.
- (v) **Closing Date**: Must contain a binding commitment to close as soon as practicable and in no event later than **17 April 2017**.
- (vi) **Irrevocable**: Must be irrevocable and capable of acceptance until the earlier of: (a) the day on which the Potential Purchaser is notified that it is not a Qualified Bidder (as defined below); (b) the day on which Auction (as defined below) concludes; and (c) **17 April 2017**.
- (vii) **Other Information**: Shall contain such other information reasonably requested by the Debtor or the Proposal Trustee.



## 6. Designation as Qualified Bidder

By no later than **1200 on 27 March 2017**, the Proposal Trustee shall determine whether Potential Purchasers who submit an Offer that satisfies the requirements of **Section 5** and is a "Qualified Bidder" and shall notify all Potential Purchasers whether or not they are Qualified Bidders in accordance with **Section 7**. Notwithstanding anything else in the Bidding Procedures, the Purchaser is deemed to be a Qualified Bidder.

## 7. Auction

If the Proposal Trustee determines that there are no Qualified Bidders other than the Purchaser, then:

- (i) there will be no auction; and
- (ii) the Debtor shall bring a motion to the Court seek an order vesting the Purchased Assets in the Purchaser in accordance with the terms of the Sale Agreement.

If the Proposal Trustee determines that there is at least one Qualified Bidder other than the Purchaser, the Proposal Trustee shall conduct an auction to determine the highest Purchase Price that can be achieved for the Purchased Assets (the "**Auction**"). The Auction shall be held at the offices of Gowling WLG Canada LLP at Suite 1600, 100 King St W in Toronto, Ontario on **30 March 2017**.

If the Auction is to take place, by **1400 on 27 March 2017** the Proposal Trustee shall send written notice to all Qualified Bidders and invite the Qualified Bidder to participate in the Auction (the "**Auction Notice**").

If a Qualified Bidder intends to participate in the Auction, it must advise the Proposal Trustee of such intention in writing by no later than **1400 on 28 March 2017** (the "**Participation Notice**"). The Purchaser is not required to deliver a Participation Notice.

If no Participation Notices are received by **1400 on 28 March 2017**, then:

- (i) there will be no auction; and
- (ii) the Debtor shall bring a motion to the Court seek an order vesting the Purchased Assets in the Purchaser in accordance with the terms of the Sale Agreement.

If at least one (1) Participation Notice is received by **1400 on 28 March 2017**, the Auction will take place and shall be conducted in accordance with the following procedures:

- (i) **Participation at the Auction.** The Proposal Trustee shall direct and preside over the Auction. Only Qualified Bidders are eligible to participate in the Auction. Each Qualified Bidder must have present or available, the individual or individuals with the necessary decision making authority to submit Overbids (as defined below) and to make such necessary and ancillary decisions as may be required during the Auction. Only the authorized representatives, including counsel and other advisors, of each of the Qualified Bidders the Proposal Trustee and the Debtor shall be permitted to attend the Auction;

- (ii) **Rounds.** Bidding at the Auction shall be conducted in rounds. The Qualified Bidder with the highest Purchase Price shall constitute the opening bid (the “**Opening Bid**”) for the first round of bidding. The highest Overbid (as defined below) at the end of each round shall constitute the Opening Bid for the following round.
- (iii) **Failure to Submit an Overbid.** If, at the end of any round of bidding, a Qualified Bidder fails to submit an Overbid, then such Qualified Bidder **may not** participate in the next round of bidding at the Auction. Any Qualified Bidder that submitted the Opening Bid for a round shall be entitled to participate in the next round of bidding.
- (iv) **Overbids.** All Bids made during the Auction shall be Overbids. Overbids will be submitted in writing and will indicate the Purchase Price the Qualified Bidder is prepared to pay and whether the Purchase Price is to be satisfied by the payment of cash and/or the assumption of the Assumed Liabilities. The identity of each Qualified Bidder and the purchase price offered by such Qualified Bidder shall be fully disclosed to all other Qualified Bidders participating in the Auction. To be considered an Overbid, a Bid made during the Auction must satisfy the following criteria:
  - (a) **Minimum Consideration.** The amount of purchase price for any Overbid shall not be less than the purchase price consideration of the Opening Bid of the applicable round of bidding plus at least an additional \$60,000.00 provided that any Overbid by the Purchaser shall be deemed to include the \$75,000 expense reimbursement; and
  - (b) **Remaining terms are the same as for Qualified Bids.** An Overbid must comply with the conditions for a Bid set forth in **Section 5**. For greater certainty, the Proposal Trustee may, in its sole discretion, require that a Qualified Bidder establish that it has the ability to close and, in particular, the that it has the ability, if applicable, to assume and pay the Assumed Liabilities
- (v) **Announcing Highest Overbids.** At the end of each round of bidding, the Proposal Trustee, will disclose the highest Overbid and the Qualified Bidder(s) entitled to participate in the next round of bidding. Such highest Overbid in the round shall be the Opening Bid for the next round of the Auction.
- (vi) **Closing the Auction.** If, in any round of bidding no Overbid is made, the Auction shall be closed and the Proposal Trustee shall: (a) declare the last Opening Bid as the successful Bid (the “**Successful Bid**”) and the Qualified Bidder who submitted the Successful Bid shall be the “**Successful Purchaser**”.
- (vii) **Consent to Jurisdiction as Condition to Bid.** All Qualified Bidders shall be deemed to have consented to the exclusive jurisdiction of the Court in connection with any disputes relating to the Auction;
- (viii) **No Collusion.** Each Qualified Bidder shall be required to confirm that it has not engaged in any discussions or any other collusive behaviour with respect to the submissions of Overbids.

- (ix) **Approval Motion.** The Debtor shall, within five (5) Business Days of the conclusion of the Auction bring a motion seeking approval of the Successful Bidder and vesting the Purchased Assets in the Successful Bidder in accordance with the terms of the Sale Agreement, provided that the Purchase Price to be paid by the Successful Bidder shall be the purchase price as set forth in the Successful Bid.

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**ONTARIO**  
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*(Bankruptcy & Insolvency)*  
**(COMMERCIAL LIST)**

(PROCEEDING COMMENCED AT TORONTO)

**ORDER**

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