

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

THE HONOURABLE MR.)
JUSTICE NEWBOULD)
)

MONDAY, THE 13TH
DAY OF MARCH, 2017



BETWEEN:

POWELL (RICHMOND HILL) CONTRACTING LTD.

Applicant

and

BLACKROCK FOUNDATION SOLUTIONS INC.

Respondent

**APPLICATION UNDER SECTION 101 OF THE *COURTS OF JUSTICE ACT*,
R.S.O. 1990, C. C.43, AS AMENDED, AND SECTION 243 OF THE *BANKRUPTCY
AND INSOLVENCY ACT*, R.S.C. 1985, C. B-3 AS AMENDED**

**ORDER
(Approval of Stalking Horse Agreement & Sale Process)**

THIS MOTION, made by Schwartz Levitsky Feldman Inc. in its capacity as receiver and receiver and manager (in such capacities, the “**Receiver**”) of the assets, properties and undertakings of Blackrock Foundation Solutions Inc. (“**Blackrock**”) was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Robert Bray sworn March 6, 2017 and the Exhibits thereto (the “**Bray Affidavit**”), the first report of Schwartz Levitsky Feldman Inc. as the proposed receiver of Blackrock, dated March 8, 2017 and the Appendices thereto (the “**Proposed Receiver’s Report**”), and on hearing the submissions of counsel for the Applicant, counsel for the Receiver, and such other parties as were present, no one else appearing for any other party although duly served as appears from the Affidavits of Service of Joseph Bellissimo

and Benjamin Goodis sworn March 7, 2017 and the Affidavit of Service of Amy Casella sworn March 8, 2017, filed.

SERVICE & DEFINITIONS

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 shall have the meaning ascribed to them under (i) the asset purchase agreement dated as of March 8, 2017 (the “**Stalking Horse Agreement**”) between the Receiver and Powell (Richmond Hill) Contracting Ltd. or its designee (the “**Stalking Horse Bidder**”); or (ii) the sale process attached hereto as Schedule “A” (the “**Sale Process**”), as the case may be.

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 authorized, ratified and approved, *provided, however*, that nothing contained in this Order approves the sale or the vesting of the Purchased Assets to the Stalking Horse Bidder pursuant to the Stalking Horse Agreement and that, if the Stalking Horse Agreement is the Successful Bid under the Sale Process, the approval of the sale and vesting of the Purchased Assets to the Stalking Horse Bidder shall be considered on a subsequent motion made to this Court in accordance with the Sale Process.
4. 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) Blackrock’s receivership proceedings; (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 (collectively, an “**Agreement**”) which binds Blackrock, 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 by the Receiver or Blackrock of any Agreement to which Blackrock is a party; 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 Receiver entering into the Stalking Horse Agreement.

APPROVAL OF SALE PROCESS

5. THIS COURT ORDERS that the Sale Process attached hereto as Schedule “A” 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 Sale Process) to carry out the Sale Process, subject to prior approval of this Court being obtained before completion of any transaction(s) under the Sale Process.

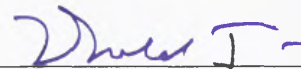
6. THIS COURT ORDERS that the Receiver and its affiliates, partners, directors, employees, agents and controlling persons shall have no liability with respect to any and all losses, claims, damages or liability of any nature or kind to any person in connection with or as a result of performing its duties under the Sale Process, 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.

7. 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 bidder (the “**Bidders**”) (including, without limitation, the Stalking Horse Bidder) and to their advisors, if requested by such Bidders, personal information of identifiable individuals, including, without limitation, all human resources and payroll information in Blackrock’s records pertaining to Blackrock’s past and current employees, but only to the extent desirable or required to negotiate or attempt to complete a sale of the Assets and/or the Business (a “**Sale**”). Each Bidder 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 of the 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. The Successful Bidder(s) shall maintain and protect the privacy of such information and, upon closing of the transaction contemplated in the Successful Bid(s), shall be entitled to use the personal information provided to it that is related to the Assets and/or Business acquired pursuant to the Sale in a manner which is in all material respects identical to the prior use of such information by Blackrock, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

GENERAL

8. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the 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, to grant representative status to the Receiver in any foreign proceeding, or to assist the Receiver and its agents in carrying out the terms of this Order.



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

MAR 13 2017

PER / PAR: 

SCHEDULE "A"

SALE PROCESS

On March 13, 2017, the Ontario Superior Court of Justice (Commercial List) (the "**Court**") made an order appointing Schwartz Levitsky Feldman Inc. (the "**Receiver**") as receiver and receiver and manager of the assets, properties and undertakings of Blackrock Foundation Solutions Inc. (the "**Company**").

On March 13, 2017, the Court made an order, which, among other things: (a) approved this sale process (the "**Sale Process**"), and (b) authorized the execution by the Receiver of the asset purchase agreement between the Receiver and the Stalking Horse Bidder (defined below) dated March 8, 2017 (the "**Stalking Horse Agreement**") as the stalking horse bid for the purpose of conducting the Sale Process.

The purpose of the Sale Process is to identify one or more purchasers of the Business and/or Assets (each as defined below) who may make an offer (each a "**Bid**") that is superior to the offer contemplated by the Stalking Horse Agreement, and to complete the transactions contemplated by any such offer, or by the Stalking Horse Agreement if no other offers are received or accepted. Set forth below are the procedures (the "**Sale Procedures**") that shall govern the Sale Process and any transactions consummated as a result thereof.

1. Defined Terms

The following capitalized terms have the following meanings when used in this Sale Process:

"**Acknowledgment of the Sale Process**" means an acknowledgment of the Sale Process in the form attached as Schedule "A" hereto;

"**Aggregate Bid**" means a combination of Portion Bids that do not overlap for Assets sought to be purchased, and which, when totalled, equal or exceed the Minimum Bid Amount;

"**Assets**" means the assets, undertakings and property of the Company;

"**Auction**" has the meaning given to it in Section 10;

"**Auction Procedure**" has the meaning given to it in Section 10;

"**Bid**" has the meaning given to it in the introduction;

"**Business**" means the business of providing design, supply and installation of shoring and foundation systems carried on by the Company;

"**Business Day**" means any day, other than a Saturday, Sunday or statutory holiday in the Province of Ontario, on which commercial banks in Toronto, Ontario are open for business;

“**Company**” has the meaning given to it in the introduction;

“**Confidentiality Agreement**” means the confidentiality agreement, with terms satisfactory to the Receiver, entered into between the Receiver and an Interested Party;

“**Court**” has the meaning given to it in the introduction;

“**Deposit**” has the meaning given to it in Section 7(i);

“**Dollars**” means Canadian dollars;

“**Form Purchase Agreement**” means the template asset purchase agreement in form acceptable to the Receiver;

“**Interested Party**” has the meaning given to it in Section 2;

“**Minimum Bid Amount**” means a Purchase Price that is equivalent or better than 102% of an amount required to repay the Powell Secured Debt (as defined in the Stalking Horse Agreement) and any amounts payable in priority to the Powell Secured Debt in full which sum is currently \$8,460,644.76 and will be updated by the Receiver at least 5 calendar days before the Phase I Bid Deadline;

“**Outside Date**” means May 15, 2017;

“**Phase I Bid**” means a bid submitted by an Interested Party pursuant to Section 5 hereof;

“**Phase I Bid Deadline**” as the meaning given to it in Section 5 hereof;

“**Phase I Bidder**” means a bidder submitting a Phase I Bid;

“**Phase I Participant Requirements**” has the meaning given to it in Section 6 hereof;

“**Portion Bid**” means a Bid for less than all or substantially all of the Assets that is otherwise a Qualified Phase I Bid;

“**Portion Bidder**” means a Qualified Phase I Bidder that submits a Portion Bid;

“**Purchase Price**” has the meaning given to it in Section 7(a);

“**Qualified Phase I Bid**” means a Phase I Bid that satisfies the conditions set out in Section 7 hereof;

“**Qualified Phase I Bidder**” means a bidder submitting a Qualified Phase I Bid;

“**Receiver**” has the meaning given to in the introduction;

“**Sale Process**” has the meaning given to it in the introduction;

“**Sale Procedures**” has the meaning given to it in the introduction;

“**Stalking Horse Agreement**” has the meaning given to it in the introduction;

“**Stalking Horse Bidder**” means Powell (Richmond Hill) Contracting Ltd., or its designee;

“**Successful Bid**” has the meaning given to it in Section 12; and

“**Successful Bidder**” has the meaning given to it in Section 12.

2. **The Sale Procedures**

The Sale Process shall consist of two phases. In the first phase, any interested party (an “**Interested Party**”) that meets the preliminary participant requirements set out herein, including having executed a Confidentiality Agreement and an Acknowledgment of the Sale Process, shall be provided with access to due diligence information in order to prepare and submit a Phase I Bid by the Phase I Bid Deadline. Phase I Bidders that are determined by the Receiver to be Qualified Phase I Bidders shall be invited to participate in the second phase wherein they will be invited to participate in the Auction.

The Receiver shall conduct and implement the Sale Procedures, including, if applicable, the Auction. In the event that there is disagreement as to the interpretation or application of these Sale Procedures, the Court will have the jurisdiction to hear and resolve such dispute.

3. **“As Is, Where Is”**

The sale of the Business or any part of the Assets will be on an “as is, where is” basis and without surviving representations or warranties of any kind, nature or description by the Receiver or its employees, officers, directors, agents or advisors, except to the extent set forth in the relevant definitive sale agreement between the Receiver and a Successful Bidder and approved by the Court.

By participating in this process, each Interested Party is deemed to acknowledge and represent that it has had an opportunity to conduct any and all due diligence regarding the Business, the Assets or the Company prior to making its Bid, that it has relied solely on its own independent review, investigation, and/or inspection of any documents and/or regarding the Business, the Assets or the Company in making its Bid, and that it did not rely on any written or oral statements, representations, promises, warranties, conditions or guaranties whatsoever, whether express, implied, by operation of law or otherwise, regarding the Business, the Assets or the Company or the completeness of any information provided in connection therewith, except as expressly stated in the terms of any definitive transaction documents.

4. **Access to Due Diligence Materials**

Only Interested Parties that satisfy the Phase I Participant Requirements will be eligible to receive access to due diligence information on the Business, the Assets and the Company.

The Receiver will be responsible for the coordination of all reasonable requests for due diligence information or any additional due-diligence access from Interested Parties.

5. **Bid Deadlines**

An Interested Party that wishes to make a Bid to acquire the Business or all, substantially all, or any part of the Assets must deliver an executed copy of a Phase I Bid to the Receiver, at the address specified in Schedule "B" hereto (including by email) so as to be received by it **not later than 5:00 p.m. (Eastern Time) on April 21, 2017**, or such other later date or time as may be agreed by the Receiver with the consent of the Stalking Horse Bidder (the "**Phase I Bid Deadline**").

PHASE I

6. **Phase I Participant Requirements.**

To participate in Phase I of the Sale Process and to otherwise be considered for any purpose hereunder, each Interested Party must provide the Receiver with an executed copy of each of the following prior to being provided with access to due diligence information: (i) a Confidentiality Agreement; and (ii) an Acknowledgement of the Sale Process (collectively, the "**Phase I Participant Requirements**").

7. **Qualified Phase I Bids**

Only Qualified Phase I Bidders shall be allowed to participate in the Auction. In order for an Interested Party to be a Qualified Phase I Bidder, the Interested Party must provide, in form and substance satisfactory to the Receiver, each of the following on or before the Phase I Bid Deadline:

- (a) **Irrevocable Bid:** A cover letter stating that the Phase I Bid is irrevocable until Court approval of the Successful Bid(s), and a duly authorized and executed definitive purchase agreement together with all completed schedules thereto substantially in the form of the Form Purchase Agreement containing the detailed terms and conditions of the proposed transaction, including identification of the Business or the Assets proposed to be acquired, the obligations to be assumed, the purchase price for the Business or Assets proposed to be acquired (the "**Purchase Price**"), and the detailed structure and financing of the proposed transaction, together with a blackline comparing the purchase agreement submitted to the Form Purchase Agreement.
- (b) **Purchase Price:** Evidence that the Purchase Price under the Phase I Bid or Aggregate Bid shall be an amount equal to or greater than the Minimum Bid

Amount, provided that any Portion Bidder shall not be subject to the Minimum Bid Amount except to the extent that it forms an Aggregate Bid;

- (c) Proof of Financial Ability to Perform: Written evidence upon which the Receiver may reasonably conclude that the Interested Party has the necessary financial ability to close the contemplated transaction on or before the Outside Date and provide adequate assurance of future performance of all obligations to be assumed in such contemplated transaction, which information should include, among other things, the following:
- (i) evidence of the Interested Party's internal resources and proof of any debt or equity funding commitments that are needed to close the contemplated transaction;
 - (ii) contact names and phone numbers for verification of financing sources; and
 - (iii) any such other form of financial disclosure or credit-quality support information or enhancement requested by and reasonably acceptable to the Receiver demonstrating that such Interested Party has the ability to close the contemplated transaction;
- (d) Unconditional Bid: Evidence that it is not conditioned on (i) the outcome of unperformed due diligence and/or (ii) obtaining financing;
- (e) Identification: Full written disclosure of the identity of each person (including any person that controls such person) that will be directly or indirectly sponsoring or participating in the Phase I Bid, including whether any prior or current member of the Company's board, management, any employee or consultant to the Company or any creditor or shareholder of the Company is involved in any way with the Phase I Bid or assisted with the Phase I Bid, and the complete terms of any such participation as well as evidence of corporate authority to sponsor or participate in the Phase I Bid;
- (f) Acknowledgment: An acknowledgement and representation that the Interested Party: (i) has relied solely upon its own independent review, investigation and/or inspection of any documents regarding the Business and/or the Assets to be acquired, liabilities to be assumed by the Interested Party in making its Phase I Bid; and (ii) did not rely upon any written or oral statements, representations, promises, warranties conditions or guaranties whatsoever, whether express or implied (by operation of law or otherwise) by the Company, the Receiver or any of their respective employees, shareholders, directors, officers, agents, advisors or other representatives, regarding the Business, Assets to be acquired, liabilities to be assumed, the Company or the completeness of any information provided in connection therewith, except as expressly provided in any definitive transaction documents;

- (g) Authorization: Evidence, in form and substance reasonably satisfactory to the Receiver, of authorization and approval from the Interested Party's board of directors (or comparable governing body) with respect to the submission, execution, delivery and closing of the transaction contemplated by the Phase I Bid, and identification of any anticipated shareholder, regulatory or other approvals outstanding, and the anticipated time frame and any anticipated impediments for obtaining such approvals;
- (h) Break or Termination Fee: Evidence that the Phase I Bid does not include any request for, or entitlement to, any break or termination fee, expense reimbursement or similar type of payment;
- (i) Deposit: A cash deposit (the "**Deposit**") in an amount equal to 10% of the Purchase Price that shall be paid to the Receiver in trust, which Deposit shall be held and dealt with in accordance with these Sale Procedures;
- (j) Employees: Full details of the proposed number of employees of the Company who will become employees of the Phase I Bidder if determined to be the Successful Bidder and the proposed terms and conditions of employment to be offered to those employees;
- (k) Other: Such other information as may reasonably be requested by the Receiver; and
- (l) Phase I Bid Deadline: It is received by the Receiver, at the address specified in Schedule "B" hereto (including by email), on or before the Phase I Bid Deadline.

The Receiver may waive any one or more minor and non-material violations of the foregoing requirements specified for Qualified Phase I Bids and deem such non-compliant Bids to be Qualified Phase I Bids, provided that, proof of financial ability to perform required pursuant to Section 7(c) and provision of the Deposit required pursuant to Section 7(i) cannot be waived without consent of the Stalking Horse Bidder.

8. Determination of Qualified Phase I Bids

As soon as practical after the Phase I Bid Deadline, the Receiver will advise an Interested Party whether or not its Phase I Bid constitutes a Qualified Phase I Bid and whether or not it is a Qualified Phase I Bidder and, if such Phase I Bidder is a Qualified Phase I Bidder, that it is invited to participate in the Auction. For certainty, the Stalking Horse Agreement is a Qualified Phase I Bid and the Stalking Horse Bidder is a Qualified Phase I Bidder for all purposes of these Sale Procedures, and is entitled to participate in the Auction, if any.

The Receiver shall have the option, in its discretion, to aggregate Portion Bids into an Aggregate Bid provided that the aggregate of the Purchase Price offered in all such Portion Bids exceeds the minimum Bid Amount, such case the Aggregate Bid may be a Qualified Phase I Bid for the purpose of an Auction.

9. **No Qualified Phase I Bids**

If no Qualified Phase I Bid other than the Bid pursuant to the Stalking Horse Agreement is received by the Phase I Bid Deadline, the Stalking Horse Bidder shall be declared the Successful Bidder and the Stalking Horse Agreement shall be declared the Successful Bid for the purpose of this Sale Process.

AUCTION

10. If more than one Qualified Phase I Bid has been received by the Phase I Bid Deadline, the Receiver shall pursue an auction (an “**Auction**”) in accordance with the procedures set out in the attached Schedule “C” (the “**Auction Procedure**”).

SELECTION AND APPROVAL OF SUCCESSFUL BID(S)

11. **Selection of Successful Bid(s)**

If an Auction is conducted, the Receiver may, in accordance with the Auction Procedure, accept, subject to Court approval, one (or more than one, if for distinct and compatible transactions) of the Overbids (each, a “**Successful Bid**” and the offeror(s) making such Successful Bid being a “**Successful Bidder**”) and take such steps as may be necessary to finalize transaction documents for the Successful Bid(s) with the Successful Bidder(s). For greater certainty, the Stalking Horse Agreement may be selected as the Successful Bid (and the Stalking Horse Bidder be selected as the Successful Bidder) in accordance with the Auction Procedure.

12. **Approval Motion**

The Receiver shall use reasonable efforts to make a motion to the Court to approve the Successful Bid(s) as soon as practical following the determination by it of the Successful Bidder(s). The Receiver will be deemed to have accepted the Successful Bid(s) only when it has been approved by the Court. All Qualified Phase I Bids (other than the Successful Bid(s)) shall be deemed rejected by the Receiver on and as of the date of approval of the Successful Bid(s) by the Court.

MISCELLANEOUS

13. **Information From Interested Parties**

Each Interested Party shall comply with all reasonable requests for additional information by the Receiver regarding such Interested Party and its contemplated transaction. Failure by an Interested Party to comply with requests for additional information will be a basis for the Receiver to determine that the Interested Party is not a Qualified Phase I Bidder or will be a basis for exclusion from the Auction.

14. **Deposits**

All Deposits shall be held by the Receiver in a single interest bearing account designated solely for such purpose. A Deposit paid by a Successful Bidder shall be dealt with in

accordance with the definitive documents for the transactions contemplated by the Successful Bid. Deposits, without any interest earned thereon, paid by Phase I Bidders not selected as either a Qualified Phase I Bidder shall be returned to such Phase I Bidder within three Business Days of being advised that it is not a Qualified Phase I Bidder. Deposits, without any interest thereon, paid by Qualified Phase I Bidders not selected as a Successful Bidder shall be returned to such Qualified Phase I Bidders within three Business Days of Court approval of the Successful Bid.

15. Modifications and Termination

The Receiver shall apply to the Court if it wishes to materially modify or terminate the process set out in these Sale Procedures. For certainty, any amendments to the Phase I Bid Deadline or other dates or deadlines set out in these Sale Procedures, including those relating to the Auction, shall not constitute a material modification but shall require the prior written consent of the Stalking Horse Bidder.

16. Other

The Receiver shall not be liable for any claim for a brokerage commission, finder's fee or like payment in respect of the consummation of any of the transactions contemplated under the Sale Process arising out of any agreement or arrangement entered into by the parties that submitted the Successful Bid(s). Any such claim shall be the sole liability of the parties that submitted such Successful Bid(s).

SCHEDULE "A"

Acknowledgement of the Sale Process

The undersigned hereby acknowledges receipt of the Sale Process approved by the Order of the Ontario Superior Court of Justice (Commercial List) dated March 13, 2017 (the "**Sale Process**") and that compliance with the terms and provisions of the Sale Process is required in order to participate in the Sale Process and for any Bids to be considered by the Receiver.

This ____ day of _____, 2017.

[NAME]

By:

[Signing Officer]

SCHEDULE "B"
ADDRESS PARTICULARS

Schwartz Levitsky Feldman Inc.
RioCan Yonge Eglinton Centre
2300 Yonge Street, Suite 1500
Toronto, ON M4P 1E4

Attention: Alan Page
Phone: 416.780.2206
Fax: 416.785.5663
Email: alan.page@slf.ca

SCHEDULE "C" AUCTION PROCEDURES

Auction

1. If an Auction is required pursuant to the Sale Procedures, the Receiver will notify the Qualified Phase I Bidders who made a Qualified Phase I Bid that the Auction will be held at the offices of Schwartz Levitsky Feldman Inc. at RioCan Yonge Eglinton Centre, 2300 Yonge Street, Suite 1500, Toronto, ON M4P 1E4, at 10:00 a.m. (Eastern Time) on a date that is determined by the Receiver, provided that it is a date that is not later than five Business Days after the Phase I Bid Deadline, or such other place, date and time as the Receiver may advise. Capitalized terms used but not defined herein have the meaning given to them in the Sale Procedures. The Auction shall be conducted in accordance with the following procedures:
 - (a) Participation at the Auction. Only a Qualified Phase I Bidder is eligible to participate in the Auction. Each Qualified Phase I Bidder must inform the Receiver whether it intends to participate in the Auction no later than 12:00 p.m. (Eastern Time) on the Business Day prior to the Auction. Only the authorized representatives of each of the Qualified Phase I Bidders and the Receiver and their respective counsel and other advisors and any other parties acceptable to the Receiver shall be permitted to attend the Auction.
 - (b) Bidding at the Auction. Bidding at the Auction shall be conducted in rounds. The highest Qualified Phase I Bid at the beginning of the Auction 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 Phase I Bidder may submit no more than one Overbid. Only a Qualified Phase I Bidder who bids in a round (including the Qualified Phase I Bidder that submitted the Opening Bid for such round) shall be entitled to participate in the next round of bidding at the Auction. For greater certainty, an Aggregate Bid may be determined to be the Opening Bid for any round including the opening round.
 - (c) Receiver Shall Conduct the Auction. The Receiver and its advisors shall direct and preside over the Auction. At the start of the Auction, the Receiver shall provide the terms of the Opening Bid to all participating Qualified Phase I Bidders at the Auction. The determination of which Qualified Phase I Bid constitutes the Opening Bid for each round shall take into account any factors that the Receiver reasonably deems relevant to the value of the Qualified Phase I Bid, including, among other things, the following: (i) the amount and nature of the consideration, including the value of any non-cash consideration; (ii) the proposed assumption of any liabilities; (iii) the Receiver's reasonable assessment of the certainty of the Qualified Phase I Bidder to close the proposed transaction on or before the Outside Date; (iv) the likelihood, extent and impact of any potential delays in closing; (v) the impact of the contemplated transaction on any actual or potential litigation; (vi) the net economic effect of any changes from the Opening Bid of the previous round; and (vii) such other considerations as the Receiver

deems relevant in its reasonable business judgment (collectively, the “**Bid Assessment Criteria**”). For greater certainty, the Receiver may ascribe monetary values to non-monetary terms in Overbids for the purposes of assessing and valuing such Overbids, including without limitation, the value to be ascribed to any liabilities or contracts to be assumed. 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 Phase I 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, including the Successful Bid.

- (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 Phase I 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 the cash purchase price consideration or value of any Overbid shall not be less than the cash purchase price consideration or value of the Opening Bid, plus the Minimum Overbid Increment(s) at that time plus any additional Minimum Overbid Increments. In respect of the Stalking Horse Agreement and any Overbid by the Stalking Horse Purchaser, the value shall include the amount of any indebtedness owing to it that is to be deemed repaid or otherwise released and any priority indebtedness to be assumed pursuant to and in accordance with the terms of the Stalking Horse Agreement.
 - (ii) *The Bid Requirements same as for Qualified Phase I Bids:* Except as modified herein, an Overbid must comply with the bid requirements contained herein, provided, however, that the Phase I Bid Deadline shall not apply. Any Overbid made by a Qualified Phase I Bidder must provide that it remains irrevocable and binding on the Qualified Phase I Bidder and open for acceptance until the closing of the Successful Bid(s).
 - (iii) *Announcing Overbids:* At the end of each round of bidding, the Receiver shall announce the identity of the Qualified Phase I Bidder and the material terms of the then highest and/or best Overbid, including the nature of the proposed transaction contemplated by the best Overbid, the assets proposed to be acquired and the obligations proposed to be assumed, the basis for calculating the total consideration offered in such Overbid, and among other things, the Bid Assessment Criteria. For greater certainty, an Aggregated Bid may be determined to be the highest and/or best Overbid.
 - (iv) *Portion Bids:* Notwithstanding the forgoing, each Portion Bidder entitled to participate in the Auction shall be entitled to submit an Overbid (in a

minimum increment to be determined by the Receiver) with respect to the Assets on which it is bidding without being required to submit an Overbid with respect to all Assets or the applicable Opening Bid; provided that any Aggregated Bid that is an Overbid shall be subject to these Auction procedures as any other Overbid, including that such Aggregated Bid that is an Overbid shall be subject to the Minimum Overbid Increment. Portion Bids can be aggregated with any other as determined by the Receiver.

- (v) *Failure to Bid:* If at the end of any round of bidding a Qualified Phase I Bidder (other than a Portion Bidder, or the Qualified Phase I Bidder that submitted the then highest and/or best Overbid or Opening Bid, as applicable) fails to submit an Overbid, then such Qualified Phase I Bidder shall not be entitled to continue to participate in the next round of the Auction.
- (e) Discussion with other Bidders. A Qualified Phase I Bidder shall not strategize or discuss with other Qualified Phase I Bidders for the purpose of submitting an Overbid without the consent of the Receiver.
- (f) 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 Sale 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 Phase I Bidders.
- (g) Closing the Auction. The Auction shall be closed after the Receiver and its legal counsel, have (i) reviewed the final Overbid of each Qualified Phase I 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 Phase I Bidders participating in the Auction of such determination. One or more Portion Bids can, in the discretion of the Receiver, form part of a Successful Bid so long as such Portion Bids do not overlap in respect of the Assets sought to be purchased and in such case, such Portion Bid shall be included in the definition of Successful Bidder.
- (h) Finalizing Documentation. Promptly following a Bid of a Qualified Phase I Bidder being declared the Successful Bid, the applicable Qualified Phase I Bidder shall execute and deliver such revised and updated definitive transaction agreements as may be required to reflect and evidence the Successful Bid.

**POWELL (RICHMOND HILL) CONTRACTING
LTD.**
Applicant

and

**BLACKROCK FOUNDATION SOLUTIONS
INC.**
Respondent

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

Proceedings commenced in Toronto

**ORDER
(APPROVAL OF STALKING HORSE & SALE
PROCESS)**

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**Lawyers for Schwartz Levitsky Feldman Inc., in its
capacity as Receiver**