

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

THE HONOURABLE) TUESDAY, THE 2ND
)
JUSTICE THOMAS McEWEN) DAY OF JUNE, 2020

BETWEEN:

**CHOICE PROPERTIES LIMITED PARTNERSHIP,
by its general partner
CHOICE PROPERTIES GP INC.**

Applicant

- and -

**PENADY (BARRIE) LTD., PRC BARRIE CORP. and
MADY (BARRIE) INC.**

Respondents

**APPLICATION UNDER SECTION 243 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
(Sale Procedure Approval)**

THIS MOTION, made by RSM Canada Limited, in its capacity as the Court-appointed receiver and manager (the "**Receiver**") pursuant to section 243(1) of the *Bankruptcy and Insolvency Act* (Canada) and section 101 of the *Courts of Justice Act* of the assets, undertakings and properties of Penady (Barrie) Ltd. ("**PBL**") and certain of the assets of PRC Barrie Corp. ("**PRC Barrie**") and Mady (Barrie) Inc. ("**MBI**") for, *inter*

alia, an order (i) if necessary, abridging the time for service of the Receiver’s Notice of Motion, Supplementary Notice of Motion, Motion Record and Supplementary Motion Record herein, (ii) approving the First Report of the Receiver dated May 12, 2020 (the “**First Report**”) and the activities described therein, the Supplemental Report to the First Report dated May 26, 2020, (the “**Supplementary First Report**”) and the activities described therein, (iii) approving the sale procedure, substantially in the form attached as Schedule “A” hereto (the “**Sale Procedure**”) including approving the Expense Reimbursement (as defined in the Stalking Horse Agreement), (iv) authorizing the Receiver to enter into an asset purchase agreement by way of credit bid (the “**Stalking Horse Agreement**”) with Choice Properties Limited Partnership (“**CHP**”) as purchaser, (v) approving the Receiver’s retainer of Avison Young Commercial Real Estate (Ontario) Inc. as its listing agent to assist in carrying out the Sale Procedure (vi) sealing and treating as confidential Confidential Appendices “A” and “B” to the First Report, Confidential Appendices “AA” and “BB” to the Supplementary First Report, and the unredacted factum of the Receiver dated May 29, 2020, delivered in respect of the herein motion and (vii) approving and accepting the Receiver’s Interim Statement of Receipts and Disbursements for the period from March 27, 2020, to April 30, 2020, as set out in Appendix “K” to the First Report, was heard this day by judicial videoconference via Zoom at Toronto, Ontario due to the COVID-19 crisis.

ON READING the First Report, the Supplementary First Report, the Application Record of CHP dated March 9, 2020, including the affidavit of Mario Barrafato sworn March 9, 2020, the Supplementary Application Record of CHP dated March 22, 2020,

including the supplementary affidavit of Mario Barrafato sworn March 22, 2020, the Responding Motion Record of the Respondents including the affidavit of Neil Miller sworn May 22, 2020, the affidavit of Josh Thiessen sworn May 22, 2020, the affidavit of Neil Miller sworn March 20, 2020, and the affidavit of Cameron Lewis sworn March 19, 2020, the Respondents' Confidential Application Record dated March 20, 2020, the Supplemental Valuation Information of Cameron Lewis dated March 23, 2020, and CHP's reply affidavit of David Muallim sworn May 25, 2020, on hearing the submissions of counsel for the Receiver, counsel for CHP, and counsel for the Respondents, and other than counsel for MarshallZehr Group Inc. who did not make any submissions, no one appearing for any other person on the Service List although properly served as appears from the affidavit of Eric Golden sworn June 1, 2020, filed:

DEFINITIONS

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

SERVICE

2. **THIS COURT ORDERS** that the time for service of the Receiver's Notice of Motion dated May 12, 2020 and Supplementary Notice of Motion dated May 26, 2020 (collectively, the "NOM"), and related motion material filed in support of that NOM, including the Receiver's Motion Record dated May 12, 2020 and Supplementary Motion Record dated May 26, 2020, and the First Report and Supplementary First Report

(collectively, the “**Motion Material**”), be and is hereby abridged, that service of the NOM and Motion Material is hereby validated, and that further service thereof is hereby dispensed with.

SALE PROCEDURE AND RETAINER OF AGENT

3. **THIS COURT ORDERS** that the Sale Procedure in the form attached as **Schedule “A”** hereto is hereby approved.

4. **THIS COURT ORDERS** that the Receiver use best efforts to obtain estoppel certificates from the following tenants at the Barrie Property (as defined in the First Report): Cineplex, Dollarama, L.A. Fitness, McDonald’s, State & Main, TD Canada Trust and Tim Horton’s.

5. **THIS COURT ORDERS** that the Receiver’s retainer of Avison Young Commercial Real Estate (Ontario) Inc. as its listing agent to assist in carrying out the Sale Procedure be and is hereby approved.

6. **THIS COURT ORDERS** that the Receiver be and is hereby authorized to carry out the Sale Procedure and to take such steps and execute such documentation as may be necessary or incidental to the Sale Procedure.

STALKING HORSE AGREEMENT

7. **THIS COURT ORDERS** that the Receiver be and is hereby authorized to enter into the Stalking Horse Agreement, provided that the approval of any sale of the Subject Assets (as defined therein) by the Court will be subject to a subsequent motion to be held in accordance with the Sale Procedure.

8. **THIS COURT ORDERS** that the obligation to pay the Expense Reimbursement pursuant to Section 8.2 of the Stalking Horse Agreement and Section 13 of the Sale Procedure be and is hereby approved.

APPROVAL OF RECEIVER'S REPORTS

9. **THIS COURT ORDERS** that the First Report, and the activities of the Receiver described therein, are hereby approved.

10. **THIS COURT ORDERS** that the Supplementary First Report, and the activities of the Receiver described therein, are hereby approved.

SEALING OF CONFIDENTIAL INFORMATION

11. **THIS COURT ORDERS** that Confidential Appendices "A" and "B" to the First Report be and are hereby sealed pending further Order of the Court.

12. **THIS COURT ORDERS** that Confidential Appendices "AA" and "BB" to the Supplementary First Report be and are hereby sealed pending further Order of the Court.

13. **THIS COURT ORDERS** that the unredacted Receiver's Factum dated May 29, 2020, served in respect of the motion herein, be and is hereby sealed pending further Order of the Court.

14. **THIS COURT ORDERS** that the unredacted Factum of the Respondents dated June 1, 2020, served in respect of the motion herein, and the Respondents' Confidential Application Record dated March 20, 2020 and the Supplemental Valuation Information of Cameron Lewis dated March 23, 2020, served in respect of the Application for the Appointment Order, be and are hereby sealed pending further Order of the Court.

STATEMENT OF RECEIPTS AND DISBURSEMENTS

15. **THIS COURT ORDERS** that the Receiver's interim statement of receipts and disbursements for the period from March 27, 2020 to April 30, 2020, as set out in Appendix "K" to the First Report, is hereby approved.

GENERAL

16. **THIS COURT ORDERS** that the Receiver may apply from time to time to this Court for advice and directions in the discharge of its powers and duties hereunder.

MISCELANEOUS

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

18. **THIS COURT ORDERS** that this Order is effective from today's date, and is not required to be entered.



Schedule "A" Sale Procedure

Pursuant to a receivership Application issued on March 9, 2020 by Choice Properties Limited Partnership, by its general partner Choice Properties GP Inc. (the "**Applicant**"), in the matter bearing Court file No. CV-20-00637682-00CL (the "**Receivership Proceeding**"), and an Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") therein dated March 25, 2020, as amended on May 15, 2020, and as may in the future be supplemented, amended or restated from time to time (the "**Appointment Order**"), RSM Canada Limited (the "**Receiver**") was appointed receiver and manager, without security, of (i) the assets, undertakings and properties of the respondent Penady (Barrie) Ltd. ("**Penady**"), including but not limited to the real property in the City of Barrie, Ontario, having the legal description set out in Schedule "A" to the Appointment Order (the "**Lands**"), (ii) the interest of PRC Barrie Corp. ("**PRC**") in the NBC Shopping Centre, and (iii) the interest of Mady (Barrie) Inc. ("**MBI**") in the NBC Shopping Centre.

On June 2, 2020, the Court made an order (the "**Sale Procedure Order**") among other things, approving (a) the Receiver entering into an asset purchase agreement, dated May 20, 2020, as may in the future be supplemented, amended or restated from time to time (the "**Stalking Horse Agreement**"), relating to the NBC Shopping Centre with Choice Properties Limited Partnership, by its general partner Choice Properties GP Inc., as purchaser (the "**Stalking Horse Bidder** ") so as to set a minimum floor price in respect of the Receiver's sales process; and (b) this Sale Procedure for the solicitation of offers or proposals (each a "**Bid**") for the acquisition of the NBC Shopping Centre.

Accordingly, the following Sale Procedure shall govern the proposed sale of all of the NBC Shopping Centre pursuant to one or more Bids. This Sale Procedure shall govern the sales process relating to the solicitation by the Receiver of one or more Bids for the NBC Shopping Centre that are superior to that contemplated by the Stalking Horse Agreement.

All denominations are in Canadian Dollars.

1. Definitions

Capitalized terms used in this Sale Procedure shall have the definitions given to them in the preamble hereto and as follows:

"**Acknowledgement of Sale Procedure**" means an acknowledgement of the Sale Procedure in the form attached as Schedule A hereto;

"**Acquisition Entity**" means an entity specially formed for the purpose of effectuating the contemplated transaction;

"Applicant" means the Applicant in its capacity as the senior secured lender of Penady, and a creditor of PRC and MBI;

"Back-up Bid" means the next highest and/or best Qualified Phase II Bid after the Successful Bid, as assessed by the Receiver, taking into account financial and contractual terms and the factors relevant to the Sale Procedure, including those factors affecting the speed and certainty of consummating the proposed sale;

"Back-up Bidder" means the Bidder that submits the Back-up Bid;

"Bidder" means a Qualified Phase I Bidder or a Qualified Phase II Bidder;

"Confidential Data Room" means a private data room prepared and maintained by the Receiver or the Listing Agent containing confidential information in respect of or related to the NBC Shopping Centre;

"Confidential Information" means the confidential information in the Confidential Data Room;

"Confidential Information Memorandum" means a confidential information memorandum prepared by the Receiver or the Listing Agent providing certain confidential information in respect of or related to the NBC Shopping Centre;

"Confidentiality Agreement" means an executed confidentiality agreement in form and substance acceptable to the Receiver and its counsel Blaney McMurtry LLP;

"Debtors" means, collectively, Penady, PRC and MBI;

"Encumbrances" means, collectively, all pledges, liens, security interests, encumbrances, claims, charges, options, and interests;

"Expense Reimbursement" means as defined in Section 13 below;

"Good Faith Deposit" means a cash deposit equal to three (3%) percent of the total purchase price contemplated under the applicable Modified APA;

"Interested Party" means a party participating in this Sale Procedure;

"Listing Agent" means Avison Young Commercial Real Estate (Ontario) Inc. in its capacity as marketing and listing agent to the Receiver pursuant to an engagement agreement-executed by Avison Young Commercial Real Estate (Ontario) Inc. on April 23, 2020, and by the Receiver on or after June 2, 2020;

"Modified APA" means an executed mark-up of the Modified Stalking Horse Agreement reflecting the applicable Qualified Phase I Bidder's proposed changes to the Modified Stalking Horse Agreement;

"Modified Stalking Horse Agreement" means the Stalking Horse Agreement as modified by the Receiver for the purposes of a non-credit bid for the Purchased Assets;

"NBC Shopping Centre" means the Subject Assets, as defined in the Stalking Horse Agreement;

"Notice Parties" means the Receiver, its counsel Blaney McMurtry LLP, and the Listing Agent;

"Participant Requirements" means, collectively, the requirements set out in Section 4(a) through 4(d)(iv) hereof;

"Permitted Encumbrances" means the encumbrances set out in Schedule "B" of the Stalking Horse Agreement;

"Phase I Bid" means an initial Bid submitted by an Interested Party pursuant to Section 4 hereof;

"Phase I Bid Deadline" means 10:00 a.m. (Eastern time) on August 12 2020;

"Phase I Bidder" means a bidder submitting a Phase I Bid;

"Phase I Participant Requirements" has the meaning given to it in Section 4 hereof;

"Phase II Bid" means a Bid submitted by a Qualified Phase I Bidder pursuant to Section 8 hereof;

"Phase II Bid Deadline" means 10:00 a.m. (Eastern time) on August 26, 2020;

"Principals" means, collectively, the equity holder(s) of an Acquisition Entity and any guarantor of any Bid made by such Acquisition Entity;

"Qualified Phase I Bidder" means a Phase I Bidder that delivers the documents described in paragraphs (a) through (d) in Section 4, and that the Receiver determines is reasonably likely to submit a binding *bona fide* offer that would have an aggregate purchase price for the NBC Shopping Centre that exceeds the minimum purchase price referred to in Section 11 below and would be able to consummate a transaction if selected as a Successful Bidder;

"Qualified Phase II Bid" means a Phase II Bid that satisfies the conditions set out in Section 8 hereof;

"Qualified Phase II Bidder" means a bidder submitting a Qualified Phase II Bid;

"Sale Hearing" means a Court hearing on motion by the Receiver for an Order to approve the sale of the NBC Shopping Centre to the Successful Bidder;

"Stalking Horse Purchase Price" means \$50,000,000;

"Successful Bid" means the highest and best Qualified Phase II Bid as determined by the Receiver, taking into account financial and contractual terms and the factors relevant to the Sale Procedure, including those factors affecting the speed and certainty of consummating the proposed sale; and

"Successful Bidder" means the Bidder that submits the Successful Bid.

2. Assets for Sale

The Receiver is soliciting superior offers for all of and not less than all of the right, title and interest of the Receiver and the Debtors in and to the NBC Shopping Centre.

For the purposes of this Sale Procedure, Bids may be submitted only for the entire property comprising the NBC Shopping Centre.

3. Sale Procedure Structure and Bidding Deadlines

The Sale Procedure shall consist of two phases.

In the first phase, Interested Parties that meet the preliminary participant requirements set out herein, including having executed a Confidentiality Agreement, shall be provided the Confidential Information Memorandum in order to prepare and submit their Phase I Bid by the Phase I Bid Deadline and be given access to the Confidential Information in the Confidential Data Room. Phase I Bidders that are determined by the Receiver to be Qualified Phase I Bidders shall be invited to participate in the second phase to submit a Phase II Bid.

The Receiver will be engaging the Listing Agent as marketing and listing agent to assist the Receiver with the implementation of the Sale Procedure. Interested Parties wishing to obtain information about the Sale Procedure, a copy of the Confidentiality Agreement and information in connection with their due diligence, should contact the Listing Agent, Attn. Cam Lewis, cam.lewis@avisonyoung.com, with a copy to the Receiver c/o Attn. Brenda Wong (brenda.wong@rsmcanada.com).

All Phase I Bids must be submitted to the Notice Parties by email in accordance with the terms of this Sale Procedure so that they are actually received by each of the Notice Parties no later than the Phase I Bid Deadline.

All Phase II Bids must be submitted to the Notice Parties by email or facsimile in accordance with the terms of this Sale Procedure so that they are actually received by each of the Notice Parties no later than the Phase II Bid Deadline.

A Bid received after the Phase 1 Bid Deadline shall not constitute a Phase I Bid and a Phase II Bid received after the Phase II Bid Deadline shall be disqualified. A Bid shall be delivered to all Notice Parties at the same time.

4. Participant Requirements

Phase I Participant Requirements.

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

Phase II Participant Requirements

Only Qualified Phase 1 Bidders shall be allowed to participate in Phase II of the Sale Procedure.

In order for the Receiver to determine whether an Interested Party is a Qualified Phase I Bidder, and qualified to participate in Phase II, 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) Identification of Phase I Bidder. Identification of the Phase I Bidder and any Principals, and the representatives thereof, who are authorized to appear and act on their behalf for all purposes regarding the contemplated transaction;
- (b) Non-Binding Expression of Interest. An executed non-binding letter of intent, in the form of the document attached as Schedule "C" hereto, satisfactory to the Receiver, that must reasonably identify the contemplated transaction, the proposed purchase price, and conditions precedent to closing;
- (c) Corporate Authority. Written evidence of the approval of the Phase I Bid by the Phase I Bidder's directors; provided, however, that, if the Phase I Bidder is an Acquisition Entity, then the Phase I Bidder must also furnish written evidence reasonably acceptable to the Receiver of the approval of the Phase I Bid by the Acquisition Entity's Principals; and
- (d) Proof of Financial Ability to Perform. Written evidence upon which the Receiver may reasonably conclude that the Phase I Bidder has the necessary financial ability to close the contemplated transaction and provide adequate assurance of future performance of all obligations to be assumed in such contemplated transaction. Such information should include, among other things, the following:

- (i) the Phase I Bidder's or, in the case of an Acquisition Entity, the Principals', current financial statements and latest audited financial statements;
- (ii) contact names and numbers for verification of financing sources;
- (iii) evidence of the Phase I Bidder's or Principals' internal resources and proof of any debt or equity funding commitments that are needed to close the contemplated transaction; and
- (iv) any such other form of financial disclosure or credit-quality support information or enhancement reasonably acceptable to the Receiver demonstrating that such Phase I Bidder has the ability to close the contemplated transaction;

provided, however, that the Receiver shall determine, in its reasonable discretion, whether the written evidence of such financial wherewithal is reasonably acceptable, and shall not unreasonably withhold acceptance of a Phase I Bidder's financial qualifications.

5. Designation as Qualified Bidder

As set out above, only Qualified Phase I Bidders shall be allowed to participate in Phase II of the Sale Procedure. Following the Phase I Bid Deadline, the Receiver shall determine which Phase I Bidders are Qualified Phase I Bidders. The Receiver shall notify each Phase I Bidder of its determination as to whether the Phase I Bidder is a Qualified Phase I Bidder as soon as practicable after the Phase I Bid Deadline, but no later than August 19, 2020.

Following the Phase II Bid Deadline, the Receiver shall determine which Phase II Bidders are Qualified Phase II Bidders. The Receiver shall notify each Phase II Bidder of its determination as to whether the Phase II Bidder is a Qualified Phase II Bidder as soon as practicable after the Phase II Bid Deadline.

For greater certainty, the Stalking Horse Bidder is and is deemed to be a Qualified Phase I Bidder and a Qualified Phase II Bidder for all purposes of this Sale Procedure.

If no Qualified Phase I Bid other than the Stalking Horse Bid is received by the Phase I Bid Deadline, then the Sale Procedure shall be terminated and the Stalking Horse Bidder shall be declared the Successful Bidder. If the Stalking Horse Bidder is declared the Successful Bidder, the Receiver shall as soon as reasonably practicable seek approval of, and authority to consummate, the Stalking Horse Agreement and the transactions provided for therein at the Sale Hearing and the Receiver shall post notice of its application to Court for approval of the Stalking Horse Bid on its website established in connection with the Receivership Proceeding.

6. Access to Due Diligence Materials

Only Interested Parties that satisfy the Phase I Participant Requirements will be eligible to receive the Confidential Information Memorandum and access to the Confidential Information. If the Receiver determines that a Phase I Bidder does not constitute a Qualified Phase I Bidder, then such Phase I Bidder shall not be eligible to receive any additional due diligence access, any non-public information or any access to the Confidential Information.

The Receiver and the Listing Agent will be responsible for the coordination of all reasonable requests for additional information and due diligence access from Qualified Phase I Bidders. Neither the Receiver nor the Listing Agent shall be obligated to furnish any due diligence information after the Phase II Bid Deadline. Neither the Receiver nor the Listing Agent shall be responsible for, and will bear no liability with respect to, any information obtained by any party in connection with the sale of the NBC Shopping Centre.

7. Information from Interested Parties

Each Interested Party shall comply with all reasonable requests for additional information by the Receiver and/or the Listing Agent 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 a Qualified Phase II Bidder, as applicable.

8. Phase II Bid Requirements

Only Qualified Phase I Bidders shall be entitled to submit a Phase II Bid. In order to be considered a Qualified Phase II Bid, as determined by the Receiver, a Phase II Bid must satisfy each of the following conditions:

- (a) Written Submission of Modified APA and Commitment to Close. The Phase II Bid must be submitted by the Phase II Bid Deadline in the form of a Modified APA (together with a blackline of the Modified APA against the Modified Stalking Horse Agreement), which must constitute a written and binding commitment to close on the terms and conditions set forth therein;
- (b) Irrevocable. A Phase II Bid must be received by the Phase II Bid-Deadline, in accordance with Section 3 above, and must be irrevocable until the date on which the Receiver obtains court approval of the Successful Bid, subject to the provisions hereof regarding the Back-up Bid being deemed to be the Successful Bid;
- (c) Conditions. A Phase II Bid may not be conditional on obtaining financing or any internal approval or on the outcome or review of due diligence. Any other terms and conditions associated with a Phase II Bid may not, in

aggregate, be more burdensome than those set forth in the Stalking Horse Agreement;

- (d) **Financing Sources.** A Phase II Bid must be accompanied by written evidence of a commitment for financing or other evidence of the ability to consummate the transaction satisfactory to the Receiver and appropriate contact information for such financing sources must be provided;
- (e) **No Fees payable to Qualified Phase II Bidder.** A Phase II Bid may not request or entitle the Qualified Phase II Bidder to any break fee, expense reimbursement or similar type of payment, subject to Section 13;
- (f) **Good-Faith Deposit.** Each Phase II Bid must be accompanied by a Good Faith Deposit that shall be paid to the Receiver's counsel by wire transfer or banker's draft, to be held by the Receiver's counsel in trust in accordance with this Sale Procedure and which shall constitute the First Deposit under the Modified Stalking Horse Agreement; and
- (g) **Purchase Price.** The purchase price in a Phase II Bid must be in accordance with Section 11 below.

The Receiver shall be entitled to seek additional information and clarifications from Phase II Bidders in respect of their Phase II Bids at any time.

9. Furthers Bid by the Stalking Horse Bidder

The Stalking Horse Bidder, or a person related thereto, shall be entitled to make a Phase II Bid.

10. Determination of Successful Bid

If one or more Qualified Phase II Bids (in addition to the Stalking Horse Bid) is received by the Phase II Bid Deadline, and the Receiver determines any of such Qualified Phase II Bid(s) to have a Purchase Price equal to or greater than the Purchase Price under the Stalking Horse Bid, the Receiver shall conduct an auction amongst the Qualified Phase II Bidders (including the Applicant), on terms to be determined by the Receiver, to determine the Successful Bid and the Back-up Bid by September 11, 2020, and/or otherwise negotiate with the Qualified Phase II Bidders, on terms to be determined by the Receiver, to as to determine the Successful Bid and the Back-up Bid by September 11, 2020.

Upon determination of the Successful Bid and the Back-up Bid, if any, the Receiver shall as soon as reasonably practicable seek approval of, and authority to consummate, the Successful Bid and the transactions provided for therein at the Sale Hearing and the

Receiver shall post notice of its application to Court for approval of the Successful Bid on its website established in connection with the Receivership Proceeding.

If no Qualified Phase II Bid other than the Stalking Horse Bid is received by the Phase II Bid Deadline, then the Sale Procedure shall be terminated and the Stalking Horse Bidder shall be declared the Successful Bidder. If the Stalking Horse Bidder is declared the Successful Bidder, the Receiver shall as soon as reasonably practicable seek approval of, and authority to consummate, the Stalking Horse Agreement and the transactions provided for therein at the Sale Hearing and the Receiver shall post notice of its application to Court for approval of the Stalking Horse Bid on its website established in connection with the Receivership Proceeding.

11. Minimum Purchase Price for Phase II Bids

The minimum purchase price of any Phase II Bid must be the sum of the Stalking Horse Purchase Price plus the Expense Reimbursement plus \$250,000.

12. Acceptance of Successful Bid

The Receiver shall complete the sale transaction with the Successful Bidder following approval of the Successful Bid by the Court. The Receiver will be deemed to have accepted a Successful Bid only when the Successful Bid has been approved by the Court. The Receiver will be deemed to have accepted a Back-up Bid only when it has been approved by the Court and has been deemed to be a Successful Bid.

13. Expense Reimbursement

In consideration for the Applicant's expenditure of time and money in acting as the initial bidder in this Sale Procedure and the preparation and negotiation of the Stalking Horse Agreement and subject to the terms and conditions of that agreement and of the Sale Procedure Order, upon termination of the Stalking Horse Agreement by the Receiver or the closing of a sale and a transfer of the NBC Shopping Centre to one or more parties other than the Applicant or a person related thereto (an "**Alternative Transaction**"), the Receiver agrees to reimburse the Applicant for its expenses in connection with this transaction (the "**Expense Reimbursement**") in an amount of \$400,000.00 from the proceeds of an Alternative Transaction. Payment of the Expense Reimbursement shall be made by the Receiver to the Applicant upon consummation of the Alternative Transaction. Upon payment of the Expense Reimbursement to the Applicant, the Applicant and Applicant's Acquisition Entity and the Receiver shall have no further obligations under the Stalking Horse Agreement.

14. "As Is, Where Is"

The sale of any of the NBC Shopping Centre pursuant to this Sale Procedure shall be on an "as is, where is" basis and without representations or warranties of any kind, nature, or description by the Receiver, the Listing Agent or their respective officers, directors, employees, representatives or agents, except to the extent set forth in the Successful Bid. The Stalking Horse Bidder and each Bidder shall be deemed to acknowledge and represent that it has had an opportunity to conduct any and all due diligence regarding the NBC Shopping Centre prior to making its Bid, that it has relied solely on its own independent review, investigation, and/or inspection of any documents and/or the NBC Shopping Centre in making its Bid, and that it did not, does not, and will not rely on any written or oral statements, representations, promises, warranties, conditions or guarantees whatsoever, whether express or implied or arising by operation of law or otherwise, regarding the NBC Shopping Centre, made by the Receiver, the Listing Agent or their respective officers, directors, employees, representatives or agents or the completeness of any information provided in connection therewith, except as expressly stated in this Sale Procedure or in (a) as to the Stalking Horse Bidder, the Stalking Horse Agreement, or (b) as to another Successful Bidder, the applicable Modified APA.

15. Free Of Any And All Encumbrances

Except as otherwise provided in each Successful Bid, the NBC Shopping Centre shall be sold free and clear of all Encumbrances, except the Permitted Encumbrances, in accordance with a vesting order of the Court, with all Encumbrances on or against the NBC Shopping Centre, other than the Permitted Encumbrances, to attach to the net proceeds of the sale of the NBC Shopping Centre after completion of such sale under a Successful Bid.

16. Back-up Bid

If the Successful Bid is approved by the Court and the Successful Bidder fails to consummate the transaction in accordance with the terms and conditions of the Successful Bid, the Receiver shall, provided it is so authorized by the Court, be entitled, but not required, to deem the Back-up Bid the Successful Bid and the Receiver shall be authorized, but not required, to consummate the transaction with the Back-up Bidder and upon so doing the Back-up Bidder shall be deemed to be the Successful Bidder, subject to approval by the Court, which approval may be sought by the Receiver on a conditional basis at the Sale Hearing, at the Receiver's discretion.

17. Return of Good Faith Deposit

Good Faith Deposits of all Qualified Phase II Bidders shall be held in a non-interest bearing account of the Receiver's counsel. Good Faith Deposits of all Qualified Phase II Bidders, other than the Successful Bidder and the Back-up Bidder, shall be returned, without interest, to such Qualified Phase II Bidders within three (3) business days after the selection of the Successful Bidder and the Back-up Bidder. Good Faith Deposits of the

Successful Bidder shall be applied to the purchase price of such transaction at closing. The Good Faith Deposit of the Back-up Bidder shall be returned, without interest, to the Back-up Bidder within three (3) business days after the closing of the transaction(s) contemplated by the Successful Bid. If a Successful Bidder (including any Back-up Bidder deemed to be a Successful Bidder hereunder) fails to consummate an approved sale because of a breach or failure to perform on the part of such Successful Bidder, the Receiver shall be entitled to retain the Good Faith Deposit of the Successful Bidder as part of its damages resulting from the breach or failure to perform by the Successful Bidder. If the Successful Bidder fails to consummate an approved sale for any reason, and a transaction is completed with the Back-up Bidder, the Good Faith Deposit of the Back-up Bidder shall be applied to the purchase price of the transaction(s) contemplated by the purchase agreement of the Back-up Bidder at closing.

18. Modifications and Reservations

This Sale Procedure may be modified or amended by the Receiver, provided that if such modification or amendment materially deviates from this Sale Procedure, such modification or amendment may only be made by order of the Court.

CHOICE PROPERTIES LIMITED PARTNERSHIP -and- **PENADY (BARRIE) LTD. et al**
Applicant Respondents

**ONTARIO
SUPERIOR COURT OF JUSTICE
[COMMERCIAL LIST]**
Proceeding commenced at Toronto

**ORDER
(Sale Procedure Approval)**

BLANEY McMURTRY LLP
Barristers & Solicitors
2 Queen Street East, Suite 1500
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