

## **BID PROCEDURES**

The following procedures (the “Bid Procedures”) shall govern the Sale (the “Sale”), including at a possible auction (the “Auction”), of all or substantially all of the assets of Montreal Maine & Atlantic Railway, Ltd. (“MMA”) and Montreal Maine & Atlantic Canada Co. (“MMA Canada” and, together with MMA, the “Debtors”), or some portion thereof, as approved by the United States Bankruptcy Court for the District of Maine (the “Bankruptcy Court”), pursuant to the order (the “Sale Order”) granting the *Motion for Authority to Sell Substantially All of the Debtor’s Assets and to Assume and Assign Certain Executory Contracts and Unexpired Leases*, filed by Robert J. Keach, the chapter 11 trustee (the “Trustee”) in the Debtor’s chapter 11 bankruptcy case, and pursuant to a corresponding vesting order (the “Vesting Order,” and, collectively with the Sale Order, the “Approval Orders”) entered by the Québec Superior Court (the “Canadian Court”) in MMA Canada’s CCAA proceeding (the “Canadian Case”) regarding the Sale. The Bid Procedures<sup>1</sup> contemplate that substantially all of the assets (the “Assets”) of MMA and MMA Canada, or certain “Lots” thereof (as defined below), shall be sold at the Auction, jointly by the Trustee and MMA Canada, and that the Trustee, MMA Canada, and the monitor appointed by the Canadian Court in the Canadian Case (the “Monitor”) shall consult with each other, as well as the Federal Railroad Administration (the “FRA”), regarding the Sale. Absent the receipt of a higher and better offer for the Assets, as collectively determined by the Trustee, MMA Canada, and the Monitor, and after consultation with the FRA, the Assets will be acquired by Railroad Acquisition Holdings LLC (the “Stalking Horse”) pursuant to the terms of that certain Asset Purchase Agreement dated as of December 12, 2013 (the “Stalking Horse APA”). In the event that one or more Qualified Bids (as such term is defined below) are received, the Auction shall be held in accordance with

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<sup>1</sup> Approval of the same Bid Procedures will also be obtained from the Canadian Court.

these Bid Procedures, and the Trustee, MMA Canada, and the Monitor shall determine, after consultation with the FRA, the highest and best bid, taking into account their fiduciary duties and the Public Interest (as defined below), as set forth below.

The Bid Procedures for the Auction and the Sale of the Assets are as follows:

## I. BID QUALIFICATIONS

1. **The Bidding Process.** The Trustee, the Monitor, and MMA Canada, in conjunction with their respective advisors and using reasonable discretion taking into account their fiduciary duties, shall, after consultation with the FRA, collectively: (i) determine whether any person is a Potential Bidder (hereinafter defined); (ii) coordinate the efforts of Potential Bidders in conducting their respective due diligence investigations regarding the Assets; (iii) receive offers from Qualified Bidders (hereinafter defined); and (iv) negotiate any offer made to acquire the Assets, together or separately (collectively, the "Bidding Process"). Neither the Trustee, the Monitor, MMA Canada, nor their respective representatives shall be obligated to furnish any information of any kind whatsoever relating to the Assets to any person who is not a Potential Bidder.

2. **Participation Requirements.** Unless otherwise ordered by the Bankruptcy Court or the Canadian Court, for cause shown, or as otherwise determined by the Trustee, the Monitor, and MMA Canada, in their reasonable discretion, taking into account their fiduciary duties, in order to participate in the Bidding Process, each person (a "Qualified Bidder") must submit a bid that adheres to the following requirements (a "Qualified Bid"):

- a. All Qualified Bids must be submitted to **the Trustee:** Bernstein, Shur, Sawyer & Nelson, P.A., c/o Robert J. Keach, Esq., 100 Middle Street, P.O. Box 9729, Portland, ME 04104, **counsel for MMA Canada:** Gowling Lafleur Henderson LLP, c/o Patrice Benoit, 3700-1 Place Ville Marie, Montreal, Québec H3B 3P4, Canada, **the Monitor:** Andrew Adessky, Richter Consulting, 1981 McGill College Avenue, 12<sup>th</sup> Floor, Montreal, Québec, H3A 0G6, Canada, and **counsel to the Monitor:** Woods LLP, c/o Sylvain Vauclair, 2000 McGill College Avenue, Suite

1700, Montreal Québec H3A 3H3, Canada, not later than **5:00 p.m.** (prevailing Eastern Time) on January 17, 2014 (the "Bid Deadline"). Upon determination that any Bid is not a Qualified Bid, the Trustee and/or MMA Canada, or their respective counsel, shall notify such bidder of such determination forthwith, but in any event not later than 5:00 p.m. (prevailing Eastern Time) on January 20, 2014, and shall provide such bidder with the basis for such determination.

- b. All Qualified Bids shall be in the form of an offer letter from a person or persons that the Trustee, the Monitor, and MMA Canada, in their reasonable discretion, taking into account their fiduciary duties, collectively deem financially able to consummate the Sale of the Assets or Lot(s) on which that person or persons bid, which letter states:
  - i. that such Qualified Bidder offers to purchase the Assets (or a "Lot," as defined below) upon the terms and conditions set forth in an attached clean executed asset purchase agreement (an electronic version in Word format) as well as an attached version of such asset purchase agreement blacklined against the Stalking Horse APA (also an electronic version in Word format) received on or before the Bid Deadline, with hard copies to follow, together with all exhibits and schedules, including terms relating to price and the time of closing (the "Proposed Agreement");
  - ii. that such Qualified Bidder is prepared to consummate the transaction, following entry of an order of this Court and the Canadian Court, as applicable, approving the Sale to the Successful Bidder(s) (as defined above, the "Approval Orders");
  - iii. that in the event such Qualified Bidder becomes the Successful Bidder or a holder of a Back-Up Bid (both are defined below), such Qualified Bidder's offer is irrevocable until five (5) Business Days after the closing of the Sale of the Assets;
  - iv. the actual value of such Qualified Bidder's bid to the Debtors' respective estates (the "Purchase Price"), which Purchase Price must be greater than or equal to the minimum initial bid price for the applicable Lot or the aggregate of the minimum initial bid prices for all Lots which are the subject of the Bid, as set forth below;
  - v. which of the Debtors' respective leases and executory contracts are to be assumed in connection with the consummation of the Qualified Bidder's bid;

- vi. that the Qualified Bidder consents to the jurisdiction of both the Bankruptcy Court and the Canadian Court as to all matters relating to the Auction or the Sale of the Assets; and
  - vii. that the Qualified Bidder is not entitled to any break-up fee, termination fee or similar type of payment or reimbursement and, by submitting its bid, the Qualified Bidder waives the right to pursue a substantial contribution claim under 11 U.S.C. § 503 related in any way to the submission of its bid or the Bidding Process.
  - viii. (a) that the Qualified Bidder commits to operate a railroad over the Assets upon which the Qualified Bidder is bidding as a going concern in the Public Interest; (b) the minimum period for which the Qualified Bidder makes such commitment to operate a railroad; and (c) any portions of the track to be acquired by the Qualified Bidder that such bidder intends to abandon, discontinue or limit operations with respect to such portion of track.
  - ix. that such Qualified Bidder has all requisite corporate or other authority to make the bid and, if the Successful Bidder, to close on the Proposed Agreement and the Sale; the Trustee and MMA Canada reserve the right, in their discretion and consistent with their fiduciary duties and the Public Interest to require additional evidence of authorization and approval from the Qualified Bidder's shareholders, board of directors or any other necessary approval with respect to the submission, execution, delivery and closing of all transactions contemplated by the Proposed Agreement.
- c. All Qualified Bids shall be accompanied by a deposit into escrow with the Trustee of an amount equal to five percent (5%) of the Purchase Price (the "Good Faith Deposit").
  - d. All Qualified Bids shall be accompanied by satisfactory evidence, in the reasonable opinion of the Trustee, the Monitor, and MMA Canada, in their reasonable discretion, taking into account their fiduciary duties, of committed financing or other ability to perform all transactions contemplated by the Proposed Agreement.
  - e. Qualified Bids shall not contain any financing conditions or other contingencies not contained in the Stalking Horse APA.
  - f. All Qualified Bids must provide adequate assurance of future performance to counterparties to any executory contracts and unexpired leases to be assumed by the Potential Bidder.

The documents referred to in subparagraphs (a) through (f) are referred to herein as the required bid documents (the “Required Bid Documents”). The Trustee shall immediately provide copies of all Required Bid Documents to the FRA upon receipt thereof.

3. **Due Diligence.** The Trustee and MMA Canada shall afford each Potential Bidder (hereinafter defined) due diligence access to the Assets. Due diligence access may include management presentations as may be scheduled by the Trustee, MMA Canada, and the Monitor, access to data rooms, onsite inspections and such other matters which a Potential Bidder may request and as to which the Trustee, MMA Canada, and the Monitor may agree, in their reasonable discretion, taking into account their fiduciary duties, provided that all such information shall be made available to each Potential Bidder on an equal basis. Neither the Trustee, nor the Monitor, nor the Debtors or any of their affiliates (nor any of their respective representatives), is obligated to furnish any information relating to the Assets to any person except to Potential Bidders and Qualified Bidders. Potential Bidders are advised to exercise their own discretion before relying on any information regarding the Assets provided by anyone other than the Trustee, the Monitor, the Debtors, or their respective representatives. To be a "Potential Bidder," each bidder must have delivered an executed confidentiality agreement in a form satisfactory to the Trustee, the Monitor, and MMA Canada, in their reasonable discretion, taking into account their fiduciary duties.

4. **No Representations or Warranties.** The Sale of the Assets shall be without representations or warranties of any kind, nature, or description by the Trustee, the Monitor, the Debtors, their respective agents or the Debtors’ respective estates, except to the extent set forth in the Proposed Agreement of the Successful Bidder and agreed to by the Sellers thereunder. Except as otherwise provided in the Proposed Agreement, the Assets to be acquired shall be free and clear of all liens, claims, and encumbrances of any kind or nature thereon and there

against (collectively, the "Transferred Encumbrances"), with such Transferred Encumbrances to attach to the proceeds of the sale. Each Potential Bidder and Qualified Bidder shall be deemed to acknowledge and represent that it has relied solely upon its own independent review, investigation and/or inspection of any documents and information in making its bid, and that it did not rely upon any written or oral statements, representations, promises, warranties or guaranties whatsoever, whether express, implied, by operation of law or otherwise, regarding the Assets, or the completeness of any information provided in connection with the Assets, the Bidding Process or the Auction, except as expressly stated in these Bid Procedures or, as to the Successful Bidder, in the applicable Proposed Agreement.

5. **The Stalking Horse.** The Stalking Horse is a Qualified Bidder (and, for the avoidance of doubt, a Potential Bidder) and the Stalking Horse Bid is a Qualified Bid for all of the Assets. Notwithstanding any other provision in these Bid Procedures, in the event that the Stalking Horse Bid is not selected as the Successful Bid, the Stalking Horse Bid shall not be a Back-Up Bid unless the Stalking Horse consents. In the event that one or more Qualified Bids other than the Stalking Horse Bid is selected as the Successful Bid or Successful Bids and is approved as the Successful Bid or Successful Bids by the Bankruptcy Court and/or the Canadian Court, the Stalking Horse shall be entitled to the Break-Up Fee, the Expense Reimbursement and a refund of the Good Faith Deposit in accordance with, and subject to, the terms of the Stalking Horse APA. For purposes of these Bid Procedures, the Stalking Horse's Qualified Bid is currently valued at \$14,250,000.00.

## II. AUCTION

If the Trustee, MMA Canada, and the Monitor receive a Qualified Bid prior to the Bid Deadline, other than the Qualified Bid of the Stalking Horse, the Trustee, the Monitor, and MMA Canada, or their respective representatives, shall conduct a joint auction (the "Auction")

at Bernstein, Shur, Sawyer & Nelson, P.A., 100 Middle Street, Portland, Maine, 04101 on January 21, 2014, beginning at 10:00 a.m. (prevailing Eastern Time) or such later time or other place as the Trustee, the Monitor and/or MMA Canada shall notify all Qualified Bidders who have submitted Qualified Bids. Only representatives of the Stalking Horse, the Trustee, the Trustee's representatives, the Debtors' respective representatives, the Monitor, the Monitor's representatives, the United States Trustee, representatives of the FRA, the Maine Department of Transportation, and the Province of Québec (or its agencies), and any Qualified Bidders who have submitted Qualified Bids shall be entitled to attend the Auction.

The Trustee, the Monitor, and/or MMA Canada, in their reasonable discretion, taking into account their fiduciary duties, and after consultation with the FRA, may announce at the Auction additional procedural rules that are reasonable under the circumstances (*e.g.*, the amount of time allotted to make subsequent overbids) for conducting the Auction. Based upon the terms of the Qualified Bids received, the number of Qualified Bidders participating in the Auction, and such other information as the Trustee, the Monitor, and MMA Canada, in their reasonable discretion, taking into account their fiduciary duties, determine is relevant, the Trustee, the Monitor, and MMA Canada, in their reasonable discretion, taking into account their fiduciary duties, and after consultation with the FRA, may conduct the Auction in the manner they collectively determine will achieve the maximum value for the Assets.

At the Auction, the Assets will be offered in the following lots (the "Lots") in such order as the Trustee, MMA Canada, and the Monitor shall determine in their discretion:

- a. All of the assets to be transferred to the Purchaser in the Stalking Horse APA, consisting of substantially all of the assets of MMA and MMA Canada, with the exception of the Excluded Assets (as defined in the Stalking Horse APA) (the "All Asset Lot");
- b. All of the assets of MMA (other than the Excluded Assets owned by MMA) (the "MMA Lot");

- c. All of the assets of MMA Canada (other than the Excluded Assets owed by MMA Canada) (the “MMA Canada Lot”);
- d. All of the assets of the MMA Lot other than the Newport Subdivision (as shown on the map attached to these Bid Procedures) (the “Modified MMA Lot”); and
- e. The Newport Subdivision, consisting of the track and related real estate and rights applicable only to the Newport Subdivision (the “Newport Subdivision Lot”).

The minimum initial bid for each of the Lots set forth above shall be as follows:

<u>All Asset Lot:</u>	\$15,748,750
<u>MMA Lot:</u>	\$10,551,662
<u>MMA Canada Lot:</u>	\$5,197,088
<u>Modified MMA Lot:</u>	\$9,801,662
<u>Newport Subdivision:</u>	\$750,000.00

At the commencement of the Auction and at the conclusion of each round of bidding at the Auction, the then highest or otherwise best offer for each Lot shall be announced by the Trustee, the Monitor, MMA Canada, and/or one or more of their respective representatives, along with the basis for such determination, including identification of any non-economic terms that form the basis for such determination. In comparing the proposed purchase price in any competing Qualified Bid to the bid of the Stalking Horse, the proposed purchase price of such competing Qualified Bid shall be reduced by the Break-Up Fee and the Expense Reimbursement.

Subsequent bids shall be made in minimum increments of not less than the following (unless such amount is increased or decreased as set forth below):

<u>All Asset Lot:</u>	\$500,000
<u>MMA Lot:</u>	\$400,000
<u>MMA Canada Lot:</u>	\$200,000
<u>Modified MMA Lot:</u>	\$350,000
<u>Newport Subdivision:</u>	\$50,000

Following the offering of all Lots and preliminary completion of rounds of bidding for

all Lots, the Trustee, MMA Canada, and the Monitor may compare the then highest and best offer for the All Asset Lot (the "Best All Asset Bid") with any combination of offers for the Lots other than the All Asset Lot (the "Combined Lot Bids") to determine, after consultation with the FRA, which of the two is the highest and best offer and the offer which best addresses the public interest (as that term is used in 11 U.S.C. § 1165, the "Public Interest"). After announcement of that determination, additional rounds of bidding may be conducted with the bidder having made the Best All Asset Bid and each of the previous bidders making the highest and best bid for each of the other Lots being permitted to increase their bids. Following such additional bidding, the then-increased Best All Asset Bid and the then-increased Combined Lot Bids shall again be compared. This process may be repeated at the discretion of the Trustee, MMA Canada, and the Monitor until they conclude, at their discretion and after consultation with the FRA, that bidding has been completed, and subject to the right to conduct a round of sealed bidding, as set forth below.

Prior to concluding the Auction, the Trustee, the Monitor, and MMA Canada shall: (i) review each Qualified Bid 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 Sale; and (ii) using the reasonable discretion of the Trustee, the Monitor, and MMA Canada, taking into account their fiduciary duties and the Public Interest, and after consultation with the FRA, identify and announce to all attending the Auction, the highest or otherwise best offer which is also in the Public Interest (the "Successful Bid") and shall rank the remaining Qualified Bids (each a "Back-up Bid") and the basis for such determination.

The Trustee, MMA Canada and the Monitor may reject at any time before announcing the Successful Bid(s) at the Auction, and after consultation with the FRA, any bid that, in the reasonable discretion of the Trustee, the Monitor, and MMA Canada, taking into account their

fiduciary duties and the Public Interest, is: (i) inadequate or insufficient; or (ii) not in conformity with the Bankruptcy Code, the CCAA, or the Bid Procedures.

The Trustee, MMA Canada, and the Successful Bidder(s) shall be required to execute the asset purchase agreement(s) for the Successful Bid(s) at the conclusion of the Auction or immediately thereafter. The bidder as to any Back-up Bid shall also execute an asset purchase agreement, contingent on the failure to close of any Successful Bid.

Absent irregularities in the conduct of the Auction, the Court will not consider bids made after the Auction has been closed.

### **III. ACCEPTANCE OF QUALIFIED BIDS**

The Assets shall be sold to the Stalking Horse (in the absence of an Auction) or the Successful Bidder(s), as the case may be, submitting the highest or otherwise best Qualified Bid(s) at the Auction, which Qualified Bid(s) is/are also in the Public Interest, after approval by the Bankruptcy Court and the Canadian Court pursuant to the Approval Orders. The Trustee's presentation to the Bankruptcy Court for approval of a particular Qualified Bid does not constitute the Trustee's acceptance of such Qualified Bid, and the Monitor's or MMA Canada's presentation to the Canadian Court for approval of a Qualified Bid does not constitute MMA Canada's acceptance of such Qualified Bid. The Trustee and MMA Canada shall have accepted a Qualified Bid only when that Qualified Bid has been approved pursuant to a Sale Order entered by the Bankruptcy Court and pursuant to the Vesting Order entered by the Canadian Court.

### **IV. APPROVAL HEARING**

After the conclusion of the Auction, the Bankruptcy Court and the Canadian Court shall conduct a joint hearing or individual hearings (with rulings conditioned upon the ruling of the other Court) (together or each, the "Approval Hearing") to approve the Sale. At the Approval

Hearing, the Trustee, MMA Canada, and the Monitor will seek entry of the Approval Orders, among other things, authorizing and approving the Sale of the Assets to the Successful Bidder(s), as determined by the Trustee, MMA Canada, and the Monitor in accordance with the Bid Procedures, pursuant to the terms and conditions set forth in the Proposed Agreement(s) submitted by the Successful Bidder(s) (as such agreement may be modified prior to, during or after the Auction with the agreement of the Trustee, MMA Canada, and the Monitor and after consultation with the FRA). The Approval Hearing may be adjourned or rescheduled without notice other than by an announcement of the adjourned date in open court. Following the entry of the Approval Orders approving the Sale, in the event that the Successful Bidder, as determined at the Auction, fails to close on the Sale through no fault of the Trustee, MMA Canada, and/or the Monitor, the Trustee and MMA Canada may (in their discretion and after consultation with the FRA) sell the Assets to the holder of the highest and best Back-Up Bid which is also in the Public Interest or, failing that, to the next highest and best Back-Up Bid (which is also in the Public Interest) as determined by the Trustee, MMA Canada, and the Monitor after consultation with the FRA, without further approval of the Bankruptcy Court or the Canadian Court (and with such sequence to continue until a closing occurs, should the Trustee, MMA Canada and the Monitor agree to pursue such a closing, in their discretion).

## V. MISCELLANEOUS

1. **Return of Good Faith Deposit.** The Good Faith Deposits of the Qualified Bidders submitting a Successful Bid or Back-Up Bid shall be retained by the Trustee and such Successful Bid or Back-Up Bids will remain open and irrevocable, notwithstanding Bankruptcy Court and Canadian Court approval of the Sale pursuant to the terms of a Successful Bid by a Qualified Bidder, until the closing on the Sale of the Assets; provided that the Good Faith Deposit of the Stalking Horse shall be returned in accordance with and subject to the terms of

the Stalking Horse APA. If a Successful Bidder fails to consummate an approved Sale because of a breach or failure to perform on the part of such Successful Bidder, the Trustee will not have any obligation to return the Good Faith Deposit deposited by such Successful Bidder, which shall be retained by the Trustee and MMA Canada as liquidated damages to the extent the Trustee or MMA Canada are entitled to such damages under the Proposed Agreement. Such deposit shall be allocated between the estates of the Debtors as agreed to by the Trustee, MMA Canada, the Monitor, and the FRA or, absent such agreement, a final order of the Bankruptcy Court and the Canadian Court.

2. **Reservation of Rights.** The Trustee, MMA Canada, and the Monitor may after consultation with the FRA: (i) determine, in their reasonable business judgment and taking into account their fiduciary duties, which Qualified Bid, if any, is the highest or otherwise best offer and in the Public Interest; (ii) consult with any significant constituency in connection with the bidding process and Bid Procedures; and (iii) reject at any time before announcing the Successful Bid(s) at the Auction, any bid that, in the reasonable discretion of the Trustee, MMA Canada, and the Monitor, taking into account their fiduciary duties, and the Public Interest, is: (x) inadequate or insufficient; or (y) not in conformity with the Bankruptcy Code or the Bid Procedures.

In addition to the rights set forth above, the Trustee, MMA Canada, and the Monitor may, collectively, and after consultation with the FRA, modify these Bid Procedures or impose, at or prior to the Auction, additional terms and conditions on the proposed Sale of the Assets if, in their reasonable judgment, taking into account their fiduciary duties, such modifications would be in the best interests of the Debtors' respective estates, maximize the value of the Assets, and/or promote an open and fair Auction process; provided, however, that the Trustee, MMA Canada, and the Monitor shall not have the right to (i) modify or alter any provision in

any executed agreement with the Stalking Horse, including the Stalking Horse APA, except as set forth in and in accordance with such agreements, (ii) modify or alter any right of the Stalking Horse to receive the Break-Up Fee, the Expense Reimbursement or a refund of the Good Faith Deposit in accordance with, and subject to, the terms of the Stalking Horse APA, or (iii) waive or modify the minimum initial bid amount set forth in these Bid Procedures for the All Asset Lot. Without limitation, at any point during the Auction, the Trustee, MMA Canada and the Monitor shall have, after consultation with the FRA, the absolute right to convert the bidding process from an open auction to a “sealed bid auction,” in which case all Qualified Bidders shall have one opportunity to make a final, sealed bid. If this option is exercised, then the Trustee, MMA Canada, and the Monitor shall collect all sealed bids, analyze them, and determine, after consultation with the FRA, the highest and best bid or combination of bids which is/are in the Public Interest, select the Successful Bidders, and rank all of the Back-Up Bids as set forth above.