

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MAINE

In re:

MONTREAL MAINE & ATLANTIC  
RAILWAY, LTD.

Debtor.

Bk. No. 13-10670

Chapter 11

**MOTION FOR ORDER: (A) APPROVING BID PROCEDURES FOR THE SALE OF THE DEBTOR'S ASSETS; (B) SCHEDULING AN AUCTION; (C) APPROVING ASSUMPTION AND ASSIGNMENT PROCEDURES FOR CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES; (D) APPROVING A BREAK-UP FEE, EXPENSE REIMBURSEMENT AND OVERBID PROTECTIONS; AND (E) APPROVING A FORM OF NOTICE OF SALE**

Robert J. Keach, the chapter 11 trustee (the "Trustee") in the above-captioned chapter 11 case of Montreal Maine & Atlantic Railway, Ltd. ("MMA" or the "Debtor"), hereby requests that this Court enter an order pursuant to sections 105, 363 and 365 of the United States Bankruptcy Code (the "Bankruptcy Code"), in the form attached hereto: (i) approving the bid procedures by which the Trustee may sell certain assets; (ii) scheduling an auction; (iii) approving procedures under which the Trustee may assume and assign certain executory contracts and unexpired leases; (iv) approving the Break-Up Fee, Expense Reimbursement and overbid protections (as set forth herein); and (v) approving the form of notice of sale which establishes a hearing date, and objection and overbid deadlines with respect to such sale, and assumption and assignment of contracts and leases. The Trustee has also filed his *Motion for Authority to Sell Substantially All of the Debtor's Assets and to Assume and Assign Certain Executory Contracts and Unexpired Leases* (the "Sale Motion"). Pursuant to the Sale Motion, the Trustee has requested that this Court enter an order authorizing him to consummate a sale of substantially all of the Debtor's assets (the "Assets"), and assume and assign certain executory

contracts and unexpired leases (the “Assigned Contracts and Leases”) to Railroad Acquisition Holdings LLC (the “Stalking Horse”) under the Asset Purchase Agreement (the “Stalking Horse APA”)<sup>1</sup> or to such other party who has submitted a higher and better offer. Parallel pleadings are being filed in the Canadian Court (as defined below) and the relief sought herein is conditioned upon the same relief being granted by the Canadian Court. In support of this motion (the “Motion”), the Trustee states as follows:

**I. JURISDICTION, VENUE AND STATUTORY BASIS FOR RELIEF**

1. The United States District Court for the District of Maine (the “District Court”) has original but not exclusive jurisdiction over this chapter 11 case pursuant to 28 U.S.C. § 1334(a) and over this Motion pursuant to 28 U.S.C. § 1334(b). Pursuant to 28 U.S.C. § 157(a) and Rule 83.6 of the District Court’s local rules, the District Court has authority to refer and has referred this chapter 11 case and this Motion to this Court.

2. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2) and the Court has constitutional authority to enter final judgment in this proceeding.

3. Venue over this chapter 11 case is proper in this district pursuant to 28 U.S.C. § 1408, and venue over this proceeding is proper in this district pursuant to 28 U.S.C. § 1409.

4. The relief sought in this Motion is predicated upon 11 U.S.C. §§ 105(a), 363 and 365, Rules 2002, 6004, 6006, and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and D. Me. LBR 6004-1.

**II. BACKGROUND**

5. On August 7, 2013 (the “Petition Date”), the Debtor filed a voluntary petition for relief under 11 U.S.C. § 101 et seq. (the “Case”). The Debtor’s bankruptcy filing was precipitated by the train derailment in Lac-Mégantic, Québec on July 6, 2013 (the “Derailement”).

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<sup>1</sup> All capitalized terms not defined herein shall have the meanings ascribed to them in the Stalking Horse APA.

The Derailment set off explosions, destroyed part of downtown Lac-Mégantic, and is presumed to have killed 47 people. The Derailment also precipitated the filing by Montreal Maine & Atlantic Canada Co. (“MMA Canada” and, together with MMA, the “Debtors”), MMA’s subsidiary, under Canada’s *Companies’ Creditors Arrangement Act* (the “Canadian Case”) in Superior Court in Canada (the “Canadian Court”).

6. On September 4, 2013, the Court entered an order adopting the *Cross-Border Insolvency Protocol* (the “Protocol”) [Docket No. 168], which governs the conduct of all parties in interest in the Case and the Canadian Case. The Canadian Court also adopted the Protocol.

7. In light of the Protocol, counsel to MMA Canada and the monitor appointed in the Canadian Case (the “Monitor”) are, contemporaneously with the filing of this Motion and the Sale Motion, seeking authority from the Canadian Court to sell those assets described in the Stalking Horse APA that are owned by MMA Canada.

**A. Summary of Sale**

8. The Stalking Horse APA contains the material terms of the Stalking Horse’s proposed purchase and should be consulted as to all of the terms of the proposed sale. Certain material terms of the Stalking Horse APA can be summarized as follows:<sup>2</sup>

- i. **Purchased Assets**: All assets of MMA and MMA Canada other than the Excluded Assets (collectively, the “Assets”).
- ii. **Assigned Contracts and Leases**: all executory contracts and all unexpired leases (the “Assigned Contracts and Leases”), subject to the addition or removal of certain executory contracts and unexpired leases by the Stalking Horse pursuant to the terms of the Stalking Horse APA, shall be assigned to the Stalking Horse.

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<sup>2</sup> The summary of the terms of the Stalking Horse APA set forth herein is intended solely to provide a brief overview of certain material terms thereof. This summary is qualified entirely by reference to the Stalking Horse APA, and in the event of any conflict or inconsistency between the provisions of this Motion and the Stalking Horse APA, the Stalking Horse APA shall control.

- iii. **Excluded Assets:** includes: cash; cash equivalents; accounts; accounts receivable; rights of reimbursement; setoff rights; rights of recoupment and any rights arising out of governmental programs; causes of action other than the Assigned Causes of Action selected by the Stalking Horse pursuant to Section 2.1(a)(xv) and Section 2.1(b)(xv) of the APA; the Debtors' rights and interests under any insurance policies; any and all claims, causes of action, or liabilities relating to or arising out of the Derailment; deposits; contracts and leases not assigned to the Stalking Horse.
- iv. **Sale Free and Clear:** The transfer of the Assets to the Stalking Horse shall be free and clear of all liens, claims, encumbrances and interests.
- v. **Purchase Price:** The purchase price for the Assets consists of: Fourteen Million, Two Hundred and Fifty Thousand Dollars (\$14,250,000.00) (the "Purchase Price").
- vi. **Deposit:** The Stalking Horse will deliver to counsel to the Trustee, as escrow agent, a deposit of \$750,000 (the "Deposit") within five (5) Business Days following the execution of the APA. The Deposit (and any interest accrued thereon) shall be credited as a partial payment of the Purchase Price payable at the Closing.
- vii. **Cure Costs:** The Stalking Horse shall pay any amounts payable under 11 U.S.C. § 365(b)(1)(A), (B), or (C) in order to effectuate the assumption of the Assigned Contracts and Leases, provided, however, that such cure costs shall not exceed the Cure Cost Cap set forth in the Stalking Horse APA.
- viii. **Closing Costs:** The Stalking Horse shall pay any recording fees and transfer taxes, except as otherwise provided in the Sale Order or Vesting Order. Other costs associated with the closing of the Stalking Horse APA shall be allocated as provided elsewhere in the Stalking Horse APA.
- ix. **Break-Up Fee:** The Stalking Horse APA requires that, in the event that a higher or better offer or offers is approved by the Bankruptcy Court and/or Canadian Court, the Debtors pay to the Stalking Horse a break-up fee in the amount of 3.5% of the Purchase Price (the "Break-Up Fee") and a reimbursement of actual expenses incurred by the Stalking Horse (the "Expense Reimbursement") in an amount not to exceed \$500,000.00. The Break-Up Fee and Expense Reimbursement shall constitute

administrative expenses under sections 503(b)(1) and 507(a)(1) of the Bankruptcy Code.

- x. **Conditions to Closing**: includes: entry of orders by this Court and the Canadian Court approving Bid Procedures, Sale Motion, and assumption, assignment and cure procedures; and all required governmental approvals and permits.

### **III. RELIEF REQUESTED**

9. To attract higher and better offers for the sale of the Assets, to provide certainty as to the sale process and to maximize the value of the Assets, the Trustee seeks approval of certain bid procedures. Pursuant to this Motion, the Trustee seeks approval of: (a) the Bid Procedures with respect to the Auction (as defined herein) for the sale of the Assets; (b) procedures governing the assumption and assignment of the Assigned Contracts and Assigned Leases; (c) the Break-Up Fee and Expense Reimbursement; (d) certain overbid protections; and (e) the form of notice of sale to be disseminated to various parties. As noted above, the Trustee separately filed the Sale Motion, which seeks approval of the sale of the Assets to the Stalking Horse, as well as the assumption and assignment of the Assigned Contracts and Leases by the Stalking Horse in accordance with the terms of the Stalking Horse APA, subject to higher and better bids.

### **IV. BASIS FOR RELIEF**

10. The Stalking Horse APA provides that upon the occurrence of certain events, the Trustee and MMA Canada will be obligated to pay to the Stalking Horse: (i) the Break-Up Fee; plus (ii) the Expense Reimbursement.

#### **A. The Break-Up Fee and Expense Reimbursement**

11. As consideration for the value of the bid for the Sale of the Assets proposed by the Stalking Horse, as set forth in the Stalking Horse APA (the "Stalking Horse Bid"), in the event that the Bankruptcy Court and/or the Canadian Court should determine that any

competitive bid or set of competitive bids in the aggregate constitute a higher or otherwise better offer than the Stalking Horse Bid, or that acceptance of a bid or bids other than the Stalking Horse Bid is in the public interest, as used in Subchapter IV of Chapter 11, and the Trustee and MMA Canada thereafter close on the Sale of the Assets to one or more third parties, then, subject to the terms of the Stalking Horse APA, the Stalking Horse shall receive the Break-Up Fee in the amount of \$498,750 (or 3.5% of the Purchase Price under the Stalking Horse APA) and an expense reimbursement for the Stalking Horse's reasonable expenses in an amount not to exceed \$500,000.00.

12. The Stalking Horse has incurred and will incur significant time, expense and costs in negotiating the terms of the Stalking Horse APA, as well as in conducting due diligence. The Stalking Horse APA will serve as a basis by which other offers, if any, will be measured. In light of these considerations, the Trustee believes that the Break-Up Fee, Expense Reimbursement and overbid protections are reasonable and should be approved by this Court.

13. Break-up fees serve a number of useful functions: (1) they attract bidders; (2) they help to ensure that a bidder does not withdraw its bid; and (3) they help to establish a bid standard for other bidders. In re Great Northern Paper, Inc., 299 B.R. 1, 6-7 (D. Me. 2003); *see also* Official Comm. of Subordinated Bondholders v. Integrated Res., Inc. (In re Integrated Res., Inc.), 147 B.R. 650, 661-62 (S.D.N.Y. 1992); In re Hupp Indus., 140 B.R. 191, 194 (Bankr. N.D. Ohio 1991) (“without such fees, bidders would be reluctant to make an initial bid for fear that their first bid will be shopped around for a higher bid from another bidder who would capitalize on the initial bidder's ... due diligence”); In re 995 Fifth Ave. Assocs., L.P., 96 B.R. 24, 28 (Bankr. S.D.N.Y. 1989) (“break up fees and other strategies may be legitimately necessary to convince a ‘white knight’ bidder to enter the bid by providing some

form of compensation for the risks it is undertaking”); Sea Island Co. v. Official Comm. of Unsecured Creditors (In re Sea Island Co.), 2010 WL 4393269, \*3 (Bankr. S.D. Ga. Sept. 15, 2010) (finding that existence of break-up fee maximized value to the debtor’s estate).

14. Courts consider three questions in assessing the appropriateness of break-up fees: (1) whether the relationship between the parties who negotiated the break-up fee is tainted by self-dealing or manipulation; (2) whether the fee hampers, rather than encourages, bidding; and (3) whether the amount of the break-up fee is reasonably relative to the proposed purchase price. *See Integrated Res.*, 147 B.R. at 657.

15. Applying this test to the Break-Up Fee, it should first be noted that the Break-Up Fee is the product of arms’ length negotiations between unrelated parties. Second, the Break-Up Fee and accompanying provisions encourage meaningful bidding by: (i) attracting and retaining the Stalking Horse’s bid, where no other party was willing to make a firm offer to acquire all or a portion of the Assets; and (ii) establishing a benchmark against which the Trustee can evaluate overbids. Third, the Trustee believes that the Break-Up Fee is fair and reasonable relative to the amount to be paid to the Debtor’s estate if the Sale Motion is approved. The Break-Up Fee totals three and a half percent (3.5%) of the Purchase Price, and the Expense Reimbursement is capped at \$500,000.00; the Debtors shall be jointly and severally liable for both the Break-Up Fee and the Expense Reimbursement. Importantly, the Stalking Horse was unwilling to enter into the Stalking Horse APA absent the protections afforded by the Break-Up Fee and the Expense Reimbursement. Viewed in this light, the Break-Up Fee and Expense Reimbursement are reasonable.

**B. The Appropriateness of the Overbid Protection**

16. The Stalking Horse APA contemplates that any competing offer for all of the Assets must provide an initial minimum overbid no less than \$1,498,750.00 more than the Stalking Horse's offer (the "Initial Minimum Overbid"). Subsequent bidding increments for all of the Assets must be no less than \$500,000.00 more than the previous bid, although the Trustee reserves the right to reduce this amount at the Auction. The initial minimum overbid is inclusive of the Break-Up Fee and maximum Expense Reimbursement of \$500,000.00 payable to the Stalking Horse, plus the subsequent bidding increment. Given the size of this transaction, subsequent bidding increments of \$500,000.00 will not discourage competing bids at an auction. Bids for less than all of the Assets will be permitted at the Auction; the initial minimum bid for each "lot," as well as the subsequent bidding increments for each "lot" (subject to adjustment at the Auction) will be set forth in the Bid Procedures.

**C. Proposed Bid Procedures**

17. To ensure that the estate receives the highest and best offer for the Assets, the Trustee will solicit competing bids for the Assets pursuant to the proposed bid procedures attached hereto as **Exhibit A** (the "Bid Procedures"). Court approval of the Bid Procedures is appropriate. Four B. Corp. v. Food Barn Stores, Inc. (In re Food Barn Stores, Inc.), 107 F.3d 558, 564-68 (8th Cir. 1997); In re Jon J. Peterson, Inc., 411 B.R. 131, 135 (Bankr. W.D.N.Y. 2009). Bidding procedures will be approved if they do not provide an undue advantage to the stalking horse bid, provide the same access to information to all potential bidders, provide the option to contain the same contingencies as any stalking horse bid, and promote overall fairness. Jon J. Peterson, Inc., 411 B.R. at 137. Of course, the primary goal

of any sale process is to maximize the proceeds received by the estate, and clear bid procedures promote that goal. Food Barn Stores, 107 F. 3d at 564-65.

18. The Bid Procedures provide for the following process in connection with the sale of the Assets:

## 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 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 Vaclair, 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; and

- 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.
- 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").

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 Federal Railroad Administration, 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, 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, may conduct the Auction in the manner they collective 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 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, 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, 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, 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). 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) 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, 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, and the Monitor, 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: (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, 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 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 (ii) 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 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 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.

19. As a sale of the Assets is in the best interests of the Debtors’ estates, and the Bid Procedures are intended to foster bidding to maximize a return on the Assets, the Bid Procedures should be approved by this Court.

**D. Proposed Procedures Relating to Executory Contracts and Unexpired Leases**

20. In connection with the Stalking Horse APA, the Stalking Horse has requested that the Trustee assume and assign the Assigned Contracts and Leases. To avoid the time and expense of addressing cure issues on a piecemeal basis, the Trustee requests approval of procedures for objections to assumption and assignment, and to establish the cure amounts, if any, that are owed under the Assigned Contracts and Leases, as further provided on **Exhibit B** attached hereto (the “Assumption and Assignment Procedures.”).

21. To determine the amount that must be paid to each counter-party to an executory contract or unexpired lease (each, a “Counter-Party”), the Trustee needs to accurately determine the extent of the Debtor’s cure obligations, if any. The Trustee is currently preparing an exhibit (the “Contract & Cure Schedule”) which shall provide a listing of the executory contracts and unexpired leases proposed to be assumed and assigned, as well as the cure amounts, if any, that the Trustee believes are owed under each such contract or lease. The Contract & Cure Schedule

will be submitted to the Court within five (5) calendar days following entry of an order approving this Motion, and will be appended to the Bid Procedures.

22. The Trustee requests that the Court require any Counter-Party to file and serve by a date established by the Court any objection to the assumption and assignment of the Assigned Contract or Lease and the cure amount asserted by the Trustee on the Contract & Cure Schedule in accordance with the Assignment and Assumption Procedures. Any such objection should contain the cure amount such Counter-Party believes is owing and any other basis for the objection. The failure of a Counter-Party to submit such objection will be deemed to be consent to the assumption, assignment and/or transfer of its Assigned Contract or Lease and forever bar such Counter-Party from (i) asserting any other cure amount or otherwise disputing such amounts with respect to the contracts and leases set forth on the Contract & Cure Schedule, (ii) objecting to the proposed adequate assurance of future performance, and/or (iii) objecting to the assumption, assignment and/or transfer of its Assigned Contract or Lease.

23. The Trustee requests that this Court hear any objection with respect to any cure amounts at the Sale Hearing or adjourn any hearing on such objection on the condition that the difference between the amount asserted by the Counter-Party and the Trustee, or such lower amount as the Court shall fix, shall be held in escrow from the sale proceeds, pending further order of the Court or mutual agreement of the parties. The Trustee submits that such an objection should not be deemed an objection to the assumption, assignment and sale of any Assigned Contract and Leases, but only as a reservation of the Counter-Party's rights to request a subsequent determination as to the correct cure amount.

24. Adequate assurance of future performance depends on the facts and circumstances of each case, but should be given "practical, pragmatic construction." Carlisle Homes, Inc. v.

Azzari (In re Carlisle Homes, Inc.), 103 B.R. 524, 538 (Bankr. D.N.J. 1989). As necessary, the proposed assignee must demonstrate to the Court that it can provide adequate assurance of future performance in connection with any executory contract or unexpired lease to be assigned, or will have obtained any necessary consents of the Counter-Parties to such contract or lease. The Trustee requests that, in connection with the Sale Hearing, the Court determine that the Stalking Horse, or the maker of the winning bid, has provided adequate assurance of future performance to each Counter-Party.

**E. Proposed Form and Manner of Notice**

25. A proposed form of notice with respect to the sale of the Assets and the objection, overbid and hearing dates is attached hereto as **Exhibit C** (the "Sale Notice"). The Trustee respectfully requests that the Court approve such Sale Notice.

26. In accordance with Bankruptcy Rules 2002, 6006 and 6006 of the Bankruptcy Rules, and parallel provisions of the CCAA, Sellers (the Trustee and MMA Canada) intend, upon approval of this Motion and a parallel motion in the Canadian Case, to:

- i. Serve copies of the Sale Motion and Sale Notice (or the similar pleading and notice in the Canadian Case) upon:
  - a. The United States Trustee;
  - b. The twenty largest non-insider unsecured creditors of the Debtor;
  - c. Local, state and federal taxing authorities for each jurisdiction in which the Assets are located;
  - d. Counsel to the Stalking Horse;
  - e. Counsel to MMA Canada;
  - f. the Monitor;

- g. Counsel to the Monitor;
- h. Prospective bidders (or their counsel) that are known to the Trustee and his advisors;
- i. The Counter-Parties to the executory contracts and unexpired leases on the Contract & Cure Schedule;
- j. Counsel to the Official Committee of Derailment Claimants;
- k. Counsel to the Maine Department of Transportation;
- l. Counsel to the Federal Railroad Administration;
- m. The United States Environmental Protection Agency;
- n. Town of Lac Megantic;
- o. Ministry of Sustainable Development, Environment, Wildlife and Parks;
- p. Transport Canada;
- q. All parties known to the Trustee to have or assert any liens, claims and encumbrances or other interests against the Assets; and
- r. All parties having filed requests for notices in the Debtor's case.

and

- ii. Serve a copy of the Sale Notice by first-class mail upon all creditors, including all plaintiffs and counsel in any and all lawsuits and other actions arising out of or related to the Derailment.

27. The Trustee and MMA Canada also intend to give publication notice, including publishing notice of the sale (substantially in the form attached hereto as **Exhibit D**) in the: (a) *Wall Street Journal*; (b) *Journal of Commerce*; (c) *Portland Press Herald*; (d) *Globe & Mail*; and (e) *Montreal Gazette*.

**CONCLUSION**

28. Approval of the Break-Up Fee, Expense Reimbursement, Bid Procedures, and Assumption and Assignment Procedures described herein are conditions precedent to the consummation of the sale of the Assets to the Stalking Horse. Based upon the timing considerations and the requirements of the Stalking Horse, the Trustee requests that the terms of such provisions be approved by this Court.

WHEREFORE, the Trustee respectfully requests that this Court enter an order:

A) Approving the Bid Procedures described herein and attached hereto as Exhibit A, including, without limitation, the initial overbid amount and the subsequent bidding intervals;

B) Approving the Assumption and Assignment Procedures as provided for herein and attached hereto as Exhibit B;

C) Approving the Break-Up Fee and Expense Reimbursement and authorizing the Trustee to pay the Break-Up Fee and Expense Reimbursement in accordance with the terms of the Bid Procedures;

D) Establishing a date and time for the final hearing on the Sale Motion and setting the deadline for objections or overbids;

E) Approving the form and content of the Sale Notice attached hereto as Exhibit C and form and content of the Publication Notice attached hereto as Exhibit D;

and

F) Granting such other and further relief as is just and equitable.

Dated: December 12, 2013

ROBERT J. KEACH,  
CHAPTER 11 TRUSTEE OF MONTREAL  
MAINE & ATLANTIC RAILWAY, LTD.

By his attorneys:

/s/ Michael Fagone

Michael A. Fagone, Esq.

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## **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 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, 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 these Bid Procedures, and the Trustee, MMA Canada, and the Monitor shall determine the highest and

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

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 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; and
  - 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.

- 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").

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 Federal Railroad Administration, 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, 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, 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 owned 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 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, 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, 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, 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). 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) 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, 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, and the Monitor, 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:

- (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, 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 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 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.



**ASSUMPTION AND ASSIGNMENT PROCEDURES**

Set forth below are the assumption and assignment procedures (the "Assumption & Assignment Procedures") to be employed with respect to the proposed sale contemplated by Robert J. Keach, the chapter 11 trustee (the "Trustee") in the chapter 11 case of Montreal Maine & Atlantic Railway, Ltd. (the "Debtor"), as contained in the Trustee's *Motion for Order: (A) Approving Bid Procedures for the Sale of the Debtor's Assets; (B) Scheduling an Auction; (C) Approving Assumption and Assignment Procedures for Certain Executory Contracts and Unexpired Leases; (D) Approving a Break-Up Fee, Expense Reimbursements and Overbid Protections; and (E) Approving a Form of Notice of Sale* (the "Motion").

- a. Within five (5) calendar days of entry of an order approving the Motion,<sup>1</sup> the Trustee shall file a schedule of cure obligations (the "Contract & Cure Schedule") listing all leases and executory contracts that the Stalking Horse intends to assume (the "Assigned Contracts and Leases") and the amount, if any, that the Trustee contends is the amount needed to cure any defaults with respect to such Assigned Contracts and Leases (the "Cure Amounts").
- b. Upon filing, a copy of the Sale Notice, Contract & Cure Schedule and these Assumption & Assignment Procedures will be served on each of the counterparties to the Assigned Contracts and Leases listed on the Contract & Cure Schedule.
- c. The Trustee shall amend the Contract & Cure Schedule promptly after the completion of the Auction to update the information contained therein with respect to the Successful Bid and Back-up Bid, including, but not limited to,

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<sup>1</sup> All capitalized terms not defined herein shall have the same meaning as set forth in the Bid Procedures attached as Exhibit A to the Motion.

adding additional leases and executory contracts (which shall then be deemed Assigned Contracts and Leases) and corresponding cure amounts (which shall be deemed Cure Amounts) and shall serve an amended Contract & Cure Schedule on each of the counterparties to the Assigned Contracts and Leases listed thereon.

- d. The bidder approved by the Bankruptcy Court as submitting the highest or otherwise best bid for purchase of the Debtor's assets (the "Successful Bidder"), at any time prior to closing on the sale of the Assets, may identify executory contracts and leases to be (a) added to the Contract & Cure Schedule (which contracts and leases shall then be deemed Assigned Contracts and Leases) and the corresponding cure amounts (which shall be deemed Cure Amounts) and (b) deleted from the list of Assigned Contracts and Leases (which shall then cease to be Assigned Contracts and Leases). The Trustee shall give notice (the "Supplemental Notice") to counterparties to executory contracts and leases added to or deleted from the Contract and Cure Schedule.
- e. Any objections ("Assignment Objections") to the assumption and assignment of any Assigned Contract and Lease, including, but not limited to, objections relating to adequate assurance of future performance by the Stalking Horse or to the cure amount set forth in the Contract & Cure Schedule must be filed with the Bankruptcy Court and served upon the Notice Parties on or before 4:00 p.m. prevailing Eastern Time on the later of the date (the "Assignment Objection Deadline") that is (a) five (5) Business Days before the Sale Hearing and (b) ten (10) calendar days after the date of service of the applicable

Supplemental Notice with regard to any Assigned Contract and Lease listed on such Supplemental Notice; provided that, in the event the Stalking Horse is not the Successful Bidder, counterparties to Assigned Contracts and Leases shall have until the later of (a) one (1) Business Day before the Sale Hearing and (b) ten (10) calendar days after the date of service of the applicable Supplemental Notice with regard to any Assigned Contract and Lease listed on such Supplemental Notice to object to the adequate assurance of future performance by the Successful Bidder. Any counterparty failing to file an Assignment Objection by the Assignment Objection Deadline shall be deemed to consent to the assumption, assignment and/or transfer of such Assigned Contract or Lease and shall be forever barred from: (i) objecting to the Cure Amount set forth on the Contract & Cure Schedule with respect to its Assigned Contract and Lease; (ii) seeking additional amounts arising under its Assigned Contract and Lease prior to the Closing from the Trustee, the Debtor or the Successful Bidder; and (iii) objecting to the assumption and assignment of its Assigned Contract and Lease to the Successful Bidder.

- f. Any Assignment Objections required to be filed prior to the date of the Sale Hearing and not consensually resolved prior to the Sale Hearing shall be heard at the Sale Hearing with any related Cure Amounts or adequate assurance of future performance being fixed by the Bankruptcy Court. All other objections to the proposed assumption and assignment of the Assigned Contracts and Leases will be heard at the Sale Hearing, provided, however that all Assignment Objections for which the Assignment Objection Deadline is after

the date of the Sale Hearing and which objection is not filed prior to the Sale Hearing shall be heard on a date to be determined jointly by the Trustee and the Successful Bidder, subject to the availability of the Bankruptcy Court.

- g. Except as may otherwise be agreed to by all parties to an Assigned Contract and Lease, on or before the Closing, the cure of any defaults under Assigned Contracts and Leases necessary to permit assumption and assignment thereof shall be by (i) payment of the undisputed Cure Amount, and/or (ii) establishment of a reserve with respect to any disputed Cure Amount. The party responsible for paying Cure Amounts shall be as set forth in the Proposed Agreement between the Successful Bidder or Back-up Bidder and the Trustee.



**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MAINE**

In re:

MONTREAL MAINE & ATLANTIC  
RAILWAY, LTD.

Debtor.

Bk. No. 13-10670

Chapter 11

**NOTICE OF (A) SALE OF SUBSTANTIALLY ALL OF THE ASSETS OF  
MONTREAL, MAINE & ATLANTIC RAILWAY, LTD. AND MONTREAL, MAINE &  
ATLANTIC CANADA, CO.; (B) THE ASSUMPTION AND ASSIGNMENT OF  
CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES; AND (C)  
PROCEDURE FOR DETERMINING CURE AMOUNTS**

To Creditors and Parties in Interest:

Notice is hereby given that Robert J. Keach, the chapter 11 trustee (the "Trustee") in the chapter 11 case of Montreal Maine & Atlantic Railway, Ltd. ("MMA"), and Montreal, Maine & Atlantic Canada, Co. ("MMA Canada" and, collectively with MMA, the "Debtors"), intend to sell substantially all of the Debtors' assets (the "Assets") and potentially assume and assign certain executory contracts and unexpired leases related thereto (the "Assigned Contracts and Leases").<sup>1</sup>

The Trustee and MMA Canada have entered into an asset purchase agreement (the "Stalking Horse Agreement") with Railroad Acquisition Holdings LLC (the "Stalking Horse"), by which agreement the Stalking Horse intends to purchase the Assets and take an assignment of any contracts and leases that are designated as Assigned Contracts and Leases. Pursuant to the *Motion for Authority to Sell Substantially All of the Debtor's Assets and to Assume and Assign Certain Executory Contracts and Unexpired Leases* (the "Sale Motion"), and a corresponding motion (the "Canadian Sale Motion") filed by MMA Canada and the monitor appointed in MMA Canada's insolvency proceeding (the "Monitor") in Québec Superior Court (the "Canadian Court"), the Trustee, MMA Canada, and the Monitor seek final approval of the Stalking Horse Agreement with the Stalking Horse or a higher and better bidder, if any.

Under the Stalking Horse Agreement, the Stalking Horse proposes to provide aggregate consideration of \$14,250,000.00 for the Assets from the Stalking Horse. The Stalking Horse Agreement is subject to higher and better offers, including offers respecting one or more "lots" of the Assets (the "Lots"), as more fully described in the Bid Procedures attached hereto as **Exhibit A** (the "Bid Procedures"). The Trustee, MMA Canada, and the Monitor are soliciting higher and better offers by means of an Auction (as defined in **Exhibit A**) which shall be governed by the terms and conditions of the Bid Procedures. The Bid Procedures have been

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<sup>1</sup> The term "Assets" shall include and refer to the "Assigned Contracts and Leases."

approved by the Bankruptcy Court (as defined below). The same bid procedures have been approved by the Canadian Court. The Assets are more fully described in the Stalking Horse Agreement.

The Assets will be sold and transferred free and clear of all liens, claims, encumbrances and interests. Any perfected, enforceable and valid liens shall attach to the proceeds of the sale according to priorities established under applicable law or the orders of the Bankruptcy Court and/or the Canadian Court.

The Sale Motion and the Stalking Horse Agreement are on file with the United States Bankruptcy Court for the District of Maine, 202 Harlow Street, 3<sup>rd</sup> Floor, Bangor, ME 04401 (the "Bankruptcy Court"), and are available for review during regular business hours. Copies of the Sale Motion and the Stalking Horse Agreement are also available (free of charge), upon written request, from Angela Stewart, Bankruptcy Paralegal, Bernstein, Shur, Sawyer & Nelson, P.A., 100 Middle Street, P.O. Box 9729, Portland, ME 04104-5029 (Tel: 207-228-7374; email: astewart@bernsteinshur.com).

The Canadian Sale Motion is on file with the Canadian Court, and is available for review during regular business hours. Copies of the Canadian Sale Motion are also available (free of charge), at <http://www.richter.ca/en/insolvency-cases/m/montreal-maine-and-atlantic-canada-co>.

OBJECTIONS, if any, to the relief requested in the Sale Motion or to final approval of the Stalking Horse Agreement must be filed with the Clerk of the Bankruptcy Court or with the Canadian Court on or before **January 22, 2014** (the "Objection Deadline"). A copy of any objection must also be served by hand, facsimile, e-mail or overnight mail upon:

- (i) Trustee's counsel, c/o Michael A. Fagone, Esq., Bernstein, Shur, Sawyer & Nelson, P.A., 100 Middle Street, P.O. Box 9729, Portland, ME (Fax: 207-774-1127; email: mfagone@bernsteinshur.com);
- (ii) the Monitor, c/o Andrew Adessky, Richter Consulting, 1981 McGill College Avenue, 12<sup>th</sup> Floor, Montreal, Québec, H3A 0G6, Canada (Fax: 514-934-3504; email: aadessky@richter.ca);
- (iii) counsel to the Monitor, c/o Sylvain Vauclair, Woods LLP, 2000 McGill College Avenue, Suite 1700, Montreal, Québec, H3A 3H3, Canada (Fax: 514-284-2046; email: svaclair@woods.qc.ca);
- (iv) MMA Canada, c/o Patrice Benoit, Gowling Lafleur Henderson LLP, 3700-1 Place Ville Marie, Montreal, Québec H3B 3P4, Canada (Fax: 514-876-9550; email: patrice.benoit@gowlings.com);
- (v) Stephen Morrell, Assistant U.S. Trustee, 537 Congress Street, Suite 303, Portland, ME 04101 (Fax: 207-780-3568; email: Stephen.G.Morrell@usdoj.gov); and

- (vi) Counsel to the Stalking Horse, c/o Terence M. Hynes, Esq., Sidley Austin LLP, 1501 K Street, N.W., Washington DC, 20005 (Fax: 202-736-8711; email: thynes@sidley.com) and Jeffrey C. Steen, Esq., Sidley Austin LLP, 1 S. Dearborn, Chicago, IL 60603 (Fax: 312-853-7036; email: jsteen@sidley.com).

(collectively, the “Interested Parties”) so **as to be received** on or before the Objection Deadline. Failure to file a timely objection to the sale of Assets shall be deemed to be “consent” for the purposes of section 363(f) of the Bankruptcy Code and shall be a bar to the assertion, at the Sale Hearing or thereafter, of any objection to the sale of the Assets (including the transfer free and clear of any liens, claims, encumbrances, rights, remedies or interests).

Through this notice, HIGHER AND BETTER OFFERS to purchase the Assets, one or more Lots, and/or for such other assets, executory contracts, or unexpired leases as a purchaser desires to acquire, are hereby solicited. To be considered a qualified counteroffer, a counteroffer shall comply with the Bid Procedures, including the service of such counteroffer by hand, facsimile, email or overnight mail upon: **counsel for the Trustee**: Bernstein, Shur, Sawyer & Nelson, P.A., c/o Michael A. Fagone, Esq., 100 Middle Street, P.O. Box 9729, Portland, ME 04104 (Fax: 207-774-1127; email: mfagone@bernsteinshur.com); **counsel for MMA Canada**: Gowling Lafleur Henderson LLP, c/o Patrice Benoit, 3700-1 Place Ville Marie, Montreal, Québec H3B 3P4, Canada (Fax: 514-876-9550; email: patrice.benoit@gowlings.com); **the Monitor**: Andrew Adessky, Richter Consulting, 1981 McGill College Avenue, 12<sup>th</sup> Floor, Montreal, Québec, H3A 0G6, Canada, (Fax: 514-934-3504; email: aadessky@richter.ca); **and counsel to the Monitor**: Woods LLP, c/o Sylvain Vauclair, 2000 McGill College Avenue, Suite 1700, Montreal Québec H3A 3H3, Canada, (Fax: 514-284-2046; email: svaclair@woods.qc.ca), not later than **5:00 p.m.** (prevailing Eastern Time) so as to be received **on or before 5:00 p.m. on January 17, 2014**. If a qualified bid is timely received, the Trustee will hold an open auction at Bernstein, Shur, Sawyer & Nelson, P.A., 100 Middle Street, Portland, Maine, 04101 commencing at **10:00 a.m. on January 21, 2014** (the “Auction”).

A FINAL HEARING on the Sale Motion is scheduled to take place at the Bankruptcy Court before the Honorable Louis H. Kornreich, United States Bankruptcy Judge, on **January 23, 2014 at 10:00 a.m.** Such hearing may be conducted jointly with the Canadian Court or, alternatively, the Canadian Court may conduct an individual hearing regarding the Canadian Sale Motion, with rulings being conditioned upon the ruling of the other Court. In the event that an individual hearing is conducted by the Canadian Court, creditors and parties in interest shall be notified of the date and time of such hearing by MMA Canada and the Monitor.

Notice is further given to each counter-party (a “Counter-Party”) listed on Attachment 1 to the Assumption and Assignment Procedures attached hereto as **Exhibit B** (the “Assumption and Assignment Procedures”) of the potential assumption and assignment of the Assigned Contracts and Leases and the cure amounts listed on such Attachment 1 (the “Cure Amounts”), if any, that the Trustee and MMA Canada believe are owing on each of the Assigned Contracts and Leases which may be designated by any potential buyer as an executory contract or unexpired lease to be assumed and assigned.

OBJECTIONS, if any, of any Counter-Party to the stated Cure Amounts or the assumption, assignment and/or transfer of an Assigned Contract or Lease must be filed with the Clerk of the Bankruptcy Court or the Canadian Court on or before the Objection Deadline in accordance with the Assumption and Assignment Procedures. A copy of any objection must also be served upon Interested Parties so as to be received on or before the Objection Deadline in accordance with the Assumption and Assignment Procedures. An objection should contain the Cure Amount such Counter-Party believes is due and any other basis for the objection. The failure of a Counter-Party to submit an objection shall be deemed to be consent to the assumption, assignment and/or transfer of its Assigned Contract or Lease and will forever bar such Counter-Party from (i) asserting any other Cure Amount or from otherwise disputing such amount(s) with respect to the contract(s) in question (ii) objecting to the proposed adequate assurance of future performance and/or (iii) objecting to the assumption, assignment and/or transfer of its Assigned Contract or Lease. The filing of an objection to the Cure Amounts shall not constitute an objection to the assumption, assignment and sale of the executory contract but shall reserve the rights of such objecting party to a determination of a different Cure Amount.

Any party who has filed an objection or a Qualified Bid is expected to be present at the Auction, failing which the objection may be overruled or the Qualified Bid may be stricken.

The Trustee, MMA Canada, and the Monitor may, collectively, modify the 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 and promote an open and fair Auction process.

Dated:

ROBERT J. KEACH,  
CHAPTER 11 TRUSTEE OF MONTREAL  
MAINE & ATLANTIC RAILWAY, LTD.

By his attorneys:

/s/

\_\_\_\_\_  
Michael A. Fagone, Esq.  
D. Sam Anderson, Esq.  
BERNSTEIN, SHUR, SAWYER & NELSON, P.A.  
100 Middle Street  
P.O. Box 9729  
Portland, ME 04104  
Telephone: (207) 774-1200  
Facsimile: (207) 774-1127  
E-mail: mfagone@bernsteinshur.com



**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 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, 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 these Bid Procedures, and the Trustee, MMA Canada, and the Monitor shall determine the highest and

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

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 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; and
  - 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.

- 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").

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 Federal Railroad Administration, 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, 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, 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 owned 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 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, 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, 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, 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). 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) 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, 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, and the Monitor, 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:  
(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, 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 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 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.

### **ASSUMPTION AND ASSIGNMENT PROCEDURES**

Set forth below are the assumption and assignment procedures (the "Assumption & Assignment Procedures") to be employed with respect to the proposed sale contemplated by Robert J. Keach, the chapter 11 trustee (the "Trustee") in the chapter 11 case of Montreal Maine & Atlantic Railway, Ltd. (the "Debtor"), as contained in the Trustee's *Motion for Order: (A) Approving Bid Procedures for the Sale of the Debtor's Assets; (B) Scheduling an Auction; (C) Approving Assumption and Assignment Procedures for Certain Executory Contracts and Unexpired Leases; (D) Approving a Break-Up Fee, Expense Reimbursements and Overbid Protections; and (E) Approving a Form of Notice of Sale* (the "Motion").

- a. Within five (5) calendar days of entry of an order approving the Motion,<sup>1</sup> the Trustee shall file a schedule of cure obligations (the "Contract & Cure Schedule") listing all leases and executory contracts that the Stalking Horse intends to assume (the "Assigned Contracts and Leases") and the amount, if any, that the Trustee contends is the amount needed to cure any defaults with respect to such Assigned Contracts and Leases (the "Cure Amounts").
- b. Upon filing, a copy of the Sale Notice, Contract & Cure Schedule and these Assumption & Assignment Procedures will be served on each of the counterparties to the Assigned Contracts and Leases listed on the Contract & Cure Schedule.
- c. The Trustee shall amend the Contract & Cure Schedule promptly after the completion of the Auction to update the information contained therein with respect to the Successful Bid and Back-up Bid, including, but not limited to,

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<sup>1</sup> All capitalized terms not defined herein shall have the same meaning as set forth in the Bid Procedures attached as Exhibit A to the Motion.

adding additional leases and executory contracts (which shall then be deemed Assigned Contracts and Leases) and corresponding cure amounts (which shall be deemed Cure Amounts) and shall serve an amended Contract & Cure Schedule on each of the counterparties to the Assigned Contracts and Leases listed thereon.

- d. The bidder approved by the Bankruptcy Court as submitting the highest or otherwise best bid for purchase of the Debtor's assets (the "Successful Bidder"), at any time prior to closing on the sale of the Assets, may identify executory contracts and leases to be (a) added to the Contract & Cure Schedule (which contracts and leases shall then be deemed Assigned Contracts and Leases) and the corresponding cure amounts (which shall be deemed Cure Amounts) and (b) deleted from the list of Assigned Contracts and Leases (which shall then cease to be Assigned Contracts and Leases). The Trustee shall give notice (the "Supplemental Notice") to counterparties to executory contracts and leases added to or deleted from the Contract and Cure Schedule.
- e. Any objections ("Assignment Objections") to the assumption and assignment of any Assigned Contract and Lease, including, but not limited to, objections relating to adequate assurance of future performance by the Stalking Horse or to the cure amount set forth in the Contract & Cure Schedule must be filed with the Bankruptcy Court and served upon the Notice Parties on or before 4:00 p.m. prevailing Eastern Time on the later of the date (the "Assignment Objection Deadline") that is (a) five (5) Business Days before the Sale Hearing and (b) ten (10) calendar days after the date of service of the applicable

Supplemental Notice with regard to any Assigned Contract and Lease listed on such Supplemental Notice; provided that, in the event the Stalking Horse is not the Successful Bidder, counterparties to Assigned Contracts and Leases shall have until the later of (a) one (1) Business Day before the Sale Hearing and (b) ten (10) calendar days after the date of service of the applicable Supplemental Notice with regard to any Assigned Contract and Lease listed on such Supplemental Notice to object to the adequate assurance of future performance by the Successful Bidder. Any counterparty failing to file an Assignment Objection by the Assignment Objection Deadline shall be deemed to consent to the assumption, assignment and/or transfer of such Assigned Contract or Lease and shall be forever barred from: (i) objecting to the Cure Amount set forth on the Contract & Cure Schedule with respect to its Assigned Contract and Lease; (ii) seeking additional amounts arising under its Assigned Contract and Lease prior to the Closing from the Trustee, the Debtor or the Successful Bidder; and (iii) objecting to the assumption and assignment of its Assigned Contract and Lease to the Successful Bidder.

- f. Any Assignment Objections required to be filed prior to the date of the Sale Hearing and not consensually resolved prior to the Sale Hearing shall be heard at the Sale Hearing with any related Cure Amounts or adequate assurance of future performance being fixed by the Bankruptcy Court. All other objections to the proposed assumption and assignment of the Assigned Contracts and Leases will be heard at the Sale Hearing, provided, however that all Assignment Objections for which the Assignment Objection Deadline is after

the date of the Sale Hearing and which objection is not filed prior to the Sale Hearing shall be heard on a date to be determined jointly by the Trustee and the Successful Bidder, subject to the availability of the Bankruptcy Court.

- g. Except as may otherwise be agreed to by all parties to an Assigned Contract and Lease, on or before the Closing, the cure of any defaults under Assigned Contracts and Leases necessary to permit assumption and assignment thereof shall be by (i) payment of the undisputed Cure Amount, and/or (ii) establishment of a reserve with respect to any disputed Cure Amount. The party responsible for paying Cure Amounts shall be as set forth in the Proposed Agreement between the Successful Bidder or Back-up Bidder and the Trustee.



**THE UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MAINE**

In re:

MONTREAL MAINE & ATLANTIC  
RAILWAY, LTD.

Debtor.

Bk. No. 13-10670

Chapter 11

**NOTICE OF (I) PROPOSED SALE OF ASSETS FREE AND  
CLEAR OF ALL LIENS, CLAIMS AND ENCUMBRANCES,  
(II) BID PROCEDURES, (III) AUCTION, AND (IV) SALE HEARING**

PLEASE TAKE NOTICE that on December 12, 2013, Robert J. Keach, the Chapter 11 trustee (the "Trustee") appointed in the Chapter 11 case of Montreal Maine & Atlantic Railway, Ltd. (the "Debtor"), filed a motion (the "US Bid Procedures Motion") with the United States Bankruptcy Court for the District of Maine (the "Bankruptcy Court") seeking, among other things, Bankruptcy Court approval of certain procedures (the "Bid Procedures") relating to the proposed sale of substantially all of the assets (the "Assets") of the Debtor and Montreal Maine & Atlantic Canada Co. ("MMA Canada," and together with the Debtor, the "Sellers"). The Sellers filed a motion seeking similar relief in MMA Canada's proceeding (the "Canadian Proceeding") under Canada's *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA") in the Superior Court for the Province of Québec (the "Canadian Court"). The Initial Order in the Canadian Proceeding was entered on August 8, 2013 by the Canadian Court (and supervision of the Canadian Proceeding was subsequently transferred to the Superior Court for the Province of Québec, District of St-François). The Bankruptcy Court entered an order approving the Bid Procedures on December \_\_, 2013 (the "US Bid Procedures Order"), and the Canadian Court entered an order approving the Bid Procedures on December \_\_, 2013 (the "Canadian Bid Procedures Order").

The US Bid Procedures Motion, the US Bid Procedures Order, the Bid Procedures and the Stalking Horse APA are available by (i) accessing the Bankruptcy Court's website at <https://ecf.meb.uscourts.gov> (please note that a PACER password is needed to access documents on the Bankruptcy Court's website), (ii) viewing the docket of these cases at the Clerk of the Court, United States Bankruptcy Court for the District of Maine, 202 Harlow Street, 3<sup>rd</sup> Floor, Bangor, ME 04401 or (iii) contacting counsel to the Trustee, Michael A. Fagone, Esq., c/o Bernstein, Shur, Sawyer & Nelson, P.A., 100 Middle Street, Portland, ME 04104.

PLEASE TAKE FURTHER NOTICE that, in the event that the Sellers receive, on or before the Bid Deadline, one or more Qualified Bids in addition to the Qualified Bid of the Stalking Horse Bidder, an auction (the "Auction") will be conducted at Bernstein, Shur, Sawyer & Nelson, P.A., 100 Middle Street, Portland, Maine 04101 on January 21, 2014 at 10:00 a.m. (Eastern Time) in accordance with the Bid Procedures to determine the highest and best Qualified Bid for the Assets.

PLEASE TAKE FURTHER NOTICE that the hearing to approve the sale of the Assets (the "Sale Hearing") will be held on January 23, 2014 at 10:00 a.m. before the Honorable Louis H. Kornreich, Chief United States Bankruptcy Judge, at the United States Bankruptcy Court for the District of Maine, 202 Harlow Street, Bangor, ME 04401.

PLEASE TAKE FURTHER NOTICE that any objection to the sale of the Assets must set forth the legal and factual basis of such objection and be in writing, filed with the Bankruptcy Court on or before on or before January 22, 2014 (the "Sale Objection Deadline") and served by hand, facsimile, e-mail or overnight mail upon: (i) Trustee's counsel, c/o Michael A. Fagone, Esq., Bernstein, Shur, Sawyer & Nelson, P.A., 100 Middle Street, P.O. Box 9729, Portland, ME (Fax: 207-774-1127; email: mfagone@bernsteinshur.com); (ii) the Monitor, c/o Andrew Adessky, Richter Consulting, 1981 McGill College Avenue, 12<sup>th</sup> Floor, Montreal, Québec, H3A 0G6, Canada (Fax: 514-934-3504; email: aadessky@richter.ca); (iii) counsel to the Monitor, c/o Sylvain Vauclair, Woods LLP, 2000 McGill College Avenue, Suite 1700, Montreal, Québec, H3A 3H3, Canada (Fax: 514-284-2046; email: svauclair@woods.qc.ca); (iv) MMA Canada, c/o Patrice Benoit, Gowling Lafleur Henderson LLP, 3700-1 Place Ville Marie, Montreal, Québec H3B 3P4, Canada (Fax: 514-876-9550; email: patrice.benoit@gowlings.com); (v) Stephen Morrell, Assistant U.S. Trustee, 537 Congress Street, Suite 303, Portland, ME 04101 (Fax: 207-780-3568; email: Stephen.G.Morrell@usdoj.gov); and (vi) Counsel to the Stalking Horse, c/o Terence M. Hynes, Esq., Sidley Austin LLP, 1501 K Street, N.W., Washington DC, 20005 (Fax: 202-736-8711; email: thynes@sidley.com) and Jeffrey C. Steen, Esq., Sidley Austin LLP, 1 S. Dearborn, Chicago, IL 60603 (Fax: 312-853-7036; email: jsteen@sidley.com), so as to be **actually received** on or before the Sale Objection Deadline. Failure to object to the sale of the Assets shall be deemed to be "consent" for purposes of section 363(f) of the Bankruptcy Code and shall be a bar to the assertion, at the Sale Hearing or thereafter, of any objection to the sale of the Assets pursuant to the terms of the Stalking Horse APA (including the transfer free and clear of all Liens, Claims encumbrances or interests as set forth in the Stalking Horse APA).

This Notice is qualified in its entirety by the US Bid Procedures Order, the Bid Procedures and the US Bid Procedures Motion. All persons and entities are urged to carefully read the US Bid Procedures Order, the Bid Procedures and the US Bid Procedures Motion. To the extent that this Notice is inconsistent with the US Bid Procedures Order, the terms of the US Bid Procedures Order shall govern.

DATED: December \_\_, 2013

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MAINE**

In re:

MONTREAL MAINE & ATLANTIC  
RAILWAY, LTD.

Debtor.

Bk. No. 13-10670

Chapter 11

**ORDER (I) APPROVING BID PROCEDURES RELATING TO THE PROPOSED  
SALE OF THE DEBTOR'S ASSETS, INCLUDING BREAK-UP FEE AND  
EXPENSE REIMBURSEMENT, (II) APPROVING PROCEDURES RELATING TO  
THE ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY  
CONTRACTS AND UNEXPIRED LEASES, INCLUDING FORM OF NOTICES OF  
ASSUMPTION AND ASSIGNMENT, (III) SCHEDULING A HEARING TO  
CONSIDER THE SALE AND APPROVING THE FORM AND MANNER OF  
NOTICE THEREOF, AND (IV) GRANTING RELATED RELIEF**

This matter having come before the Court on the *Motion for Order: (A) Approving Bid Procedures for the Sale of the Debtor's Assets; (B) Scheduling an Auction; (C) Approving Assumption and Assignment Procedures for Certain Executory Contracts and Unexpired Leases; (D) Approving a Break-Up Fee, Expense Reimbursement, and Overbid Protections; and (E) Approving a Form of Notice of Sale* (the "Bid Procedures Motion"),<sup>1</sup> filed by Robert J. Keach, the chapter 11 trustee (the "Trustee") of Montreal Maine & Atlantic Railway, Ltd. (the "Debtor"), seeking an order pursuant to sections 105, 363 and 365 of title 11 of the United States Code (the "Bankruptcy Code") and Rules 2002, 6004, 6006, 9008 and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") (a) approving certain bidding procedures (the "Bid Procedures") by which the Debtor, Montreal Maine & Atlantic Canada Co. ("MMA Canada") and, collectively with the Debtor and MMA Canada, the "Sellers") may sell

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<sup>1</sup> Capitalized terms used but not defined herein shall have the meaning ascribed to such terms in the Bid Procedures Motion, Bid Procedures, or Assumption and Assignment Procedures, as applicable.

substantially all of their assets, (b) approving a break-up fee and expense reimbursement in favor of Railroad Acquisition Holdings LLC (the “Stalking Horse”), (c) approving certain procedures relating to the assumption, assignment and cure of certain executory contracts and unexpired leases, including the form of notices of assumption and assignment and any applicable cure amounts (the “Assumption and Assignment Procedures”), (d) scheduling a hearing to consider the Sale and approving the form and manner of notice thereof, and (e) granting related relief; and after a hearing on the Bid Procedures Motion and after considering any objections thereto; and it appearing that due notice of the Bid Procedures Motion has been given and that no other or further notice need be given; and it appearing that the Bid Procedures Motion, the Bid Procedures, the Assumption and Assignment Procedures, and this Order comply with all applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules for the United States Bankruptcy Court for the District of Maine; and it appearing that the relief requested in the Bid Procedures Motion is fair, reasonable, in the best interest of the Debtor and its estate, and in the public interest; and based upon the foregoing and the entire record of the hearing on the Bid Procedures Motion; and after due deliberation thereon, and good cause appearing therefore, it is hereby

ORDERED, that the Bid Procedures Motion is granted and approved, and any and all objections to the Bid Procedures Motion are overruled; and it is further

ORDERED, that the Bid Procedures attached hereto as **Exhibit A** are approved, and shall govern all bids and sale procedures relating to the Assets; and it is further

ORDERED, that the Trustee and the Debtor are authorized to take any and all actions necessary or appropriate to implement the Bid Procedures; and it is further

ORDERED, that the Stalking Horse shall constitute a Qualified Bidder and the Stalking Horse APA shall constitute a Qualified Bid for all purposes and in all respects in connection with the Bid Procedures; and it is further

ORDERED, that, subject to the terms and conditions of the Bid Procedures, the Stalking Horse APA is hereby approved, and the Trustee and the Debtor are authorized to take any and all actions necessary to fulfill their obligations under the Stalking Horse APA, subject to the terms and conditions of the Bid Procedures; and it is further

ORDERED, that the Break-Up Fee and the Expense Reimbursement are hereby approved; and it is further

ORDERED, that the Trustee and the Debtor are authorized and directed to pay the Stalking Horse, in accordance with and as provided in the Stalking Horse APA, without the need for any application, motion, or further order of this Court, (i) the Break-Up Fee of \$498,750 as set forth in the Stalking Horse APA and (ii) the Expense Reimbursement in an amount not to exceed \$500,000; and it is further

ORDERED, that the obligation of the Trustee and the Debtor to pay the Break-Up Fee and the Expense Reimbursement in accordance with the terms of the Stalking Horse APA shall survive termination of the Stalking Horse APA, shall constitute allowed administrative expense claims against the Debtor's estate, shall be entitled to priority under sections 503(b)(1)(A) and 507(a)(2) of the Bankruptcy Code, and shall be (i) fully payable from the proceeds of any Successful Bid or Successful Bids upon closing of the Sale or (ii) payable from the proceeds of any deposit forfeited to the Debtor and/or any other funds of the Sellers in the event that the Successful Bid or Successful Bids does not close; provided that, in the case of multiple sale transactions, the Break-Up Fee and Expense Reimbursement shall be payable within three (3)

Business Days after the closing of the first such sale transaction from the proceeds of such sale transaction and, if necessary, the balance of the Break-Up Fee and Expense Reimbursement shall be payable within three (3) Business Days of the closing of each subsequent sale transaction, from the proceeds of each such sale transaction; and it is further

ORDERED, that any person seeking to submit a bid for the Assets shall comply with the Bid Procedures and shall submit such bid by hand, facsimile, e-mail or overnight mail 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, no later than **5:00 p.m. (Eastern Standard Time) on January 17, 2014** (the “Bid Deadline”); and it is further

ORDERED, that, to constitute a Qualified Bid, a bid must comply with the terms and conditions of the Bid Procedures, unless any such term or condition is waived, or modified by the Trustee, MMA Canada, and the Monitor (collectively, the “Sellers”) under the Bid Procedures; *provided, however*, that the Sellers 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 agreement, (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 the Bid Procedures for the All Asset Lot (as defined in the Bid Procedures); and it is further

ORDERED, that, in the event the Sellers receive, on or before the Bid Deadline, one or more Qualified Bids pursuant to the Bid Procedures in addition to the bid of the Stalking Horse, an Auction will be held on **January 21, 2014** at Bernstein, Shur, Sawyer & Nelson, P.A., 100 Middle Street, Portland, Maine 04101 at **10:00 a.m.** prevailing Eastern Time; provided that such Auction may be adjourned or rescheduled by announcement at the Auction without further notice; and it is further

ORDERED, that only Qualified Bidders (as determined pursuant to the Bid Procedures), including the Stalking Horse, shall be entitled to submit further bids at the Auction in accordance with the provisions of the Bid Procedures and such other procedures which may be announced at the time of the Auction; and it is further

ORDERED, that if no Qualified Bid, other than the bid of the Stalking Horse, is received by the Sellers by the Bid Deadline, the Sellers shall not conduct the Auction, the Stalking Horse shall be deemed to be the Successful Bidder, and the Sellers shall promptly seek approval of the Sale pursuant to the provisions of the Stalking Horse APA at the Sale Hearing (as defined below); and it is further

ORDERED, that the form and content of the Sale Notice attached hereto as **Exhibit B** is hereby approved, and the Sellers are hereby authorized and directed to serve the Sale Notice on: (i) the United States Trustee; (ii) counsel to the Official Committee of Derailment Victims appointed in this case; (iii) all parties known to the Sellers to have, or assert, any liens, claims and encumbrances or other interests in or on the Assets, including all state and local taxing authorities in jurisdictions in which sales or transfers of the Assets would occur; (iv) all known

creditors of the Debtor's estate, including all counsel in any and all lawsuits or other actions arising out of or related to the Derailment; (v) all counterparties to any Contract or Lease; (vi) other parties that have expressed an interest in purchasing the Sellers' assets; (vii) counsel to the Federal Railroad Administration; (viii) counsel to the Maine Department of Transportation; (ix) the Ministry of Sustainable Development, Environment, Wildlife and Parks; (x) Transport Canada; (xi) Town of Lac Megantic; (xii) the United States Environmental Protection Agency; and (xiii) all other parties who have, as of the date of the Bid Procedures Motion, entered an appearance and requested service of papers in the chapter 11 case, within three (3) Business Days of the entry of this Order; and it is further

ORDERED, that the form and content of the Publication Notice attached hereto as **Exhibit C** is hereby approved, and the Sellers are hereby authorized and directed to publish the Publication Notice once in: (a) the national edition of *The Wall Street Journal*; (b) the *Portland Press Herald*; (c) the *Journal of Commerce*; (d) the *Globe & Mail*; and (e) the *Montreal Gazette*, subject to publication deadlines, on or before five (5) days prior to the Sale Hearing; and it is further

ORDERED, that service of the Sale Notice and the publishing of the Publication Notice as set forth herein is hereby deemed to constitute sufficient notice of the Sale of the Assets under the Bankruptcy Code, the Bankruptcy Rules and the Local Rules, and no other or further notice shall be required; and it is further

ORDERED, that a joint hearing on the sale of the Assets (the "Sale Hearing") will be held on **January 23, 2014 at 10:00 a.m.** before the Honorable Louis H. Kornreich, Chief United States Bankruptcy Judge, at the United States Bankruptcy Court for the District of Maine, 202

Harlow Street, 3<sup>rd</sup> Floor, Bangor, Maine, ME 04401 and before Justice Gaetan Dumas, at the Québec Superior Court, 375 King Street West, Sherbrooke, Québec J1H 6B9; and it is further

ORDERED, that any objections to the sale of Assets must set forth the legal and factual basis of such objection and be in writing, filed with the Court on or before **January 22, 2014** (the "Sale Objection Deadline") and served so as to be actually received by the Sale Objection Deadline upon (i) Robert J. Keach, Esq., c/o Bernstein, Shur, Sawyer & Nelson, P.A., 100 Middle Street, Portland, ME 04104-5029, the Trustee; (ii) Terence M. Hynes, Esq., Sidley Austin LLP, 1501 K Street, N.W., Washington DC, 20005, Fax: (202) 736-8711 and Jeffrey C. Steen, Esq., Sidley Austin LLP, One South Dearborn, Chicago, IL 60603, Fax: (312) 853-7036, counsel to the Stalking Horse Bidder; (iii) the Office of the United States Trustee for the District of Maine, 537 Congress Street, Portland, ME 04101; (iv) the counsel to the Official Committee of Derailment Victims; and (v) all parties entitled to receive notice pursuant to Bankruptcy Rule 2002 (collectively, the "Notice Parties"); and it is further

ORDERED, that failure to object to the sale of Assets shall be deemed to be "consent" for purposes of section 363(f) of the Bankruptcy Code and shall be a bar to the assertion, at the Sale Hearing or thereafter, of any objection to the sale of the Assets (including the transfer free and clear of any liens, claims, encumbrances, rights, remedies or interests, except as specifically permitted in any agreement with the Successful Bidder); and it is further

ORDERED, that the Assumption and Assignment Procedures, attached hereto as **Exhibit D**, are approved and the service to be provided under the Assumption and Assignment Procedures, including of the Contract & Cure Schedule and/or the Supplemental Notice, is hereby deemed to constitute sufficient notice to the counterparties to the Assigned Contracts and

Leases of the Cure Amounts alleged to be owed by the Debtor under the Bankruptcy Code and the Bankruptcy Rules; and it is further

ORDERED, that unless the non-debtor counterparty to an Assigned Contract or Lease files an objection to (a) the proposed adequate assurance of future performance or to the Cure Amount set forth in the Contract & Cure Schedule, and/or (b) the proposed assumption, assignment and/or transfer of such Assigned Contract or Lease (including the transfer of any related rights or benefits thereunder) to the Successful Bidder by the applicable Assignment Objection Deadline and serves a copy of its objection so as to be received no later than the applicable Assignment Objection Deadline by the Notice Parties, then such non-debtor counterparty to the Assigned Contract or Lease shall be deemed to have consented to the assumption, assignment and/or transfer of such Assigned Contract or Lease and shall be forever barred from: (i) objecting to the Cure Amount set forth on the Contract & Cure Schedule with respect to its Assigned Contract and Lease; (ii) seeking additional amounts arising under its Assigned Contract and Lease prior to the Closing from the Trustee, the Debtor or the Successful Bidder; and (iii) objecting to the assumption and assignment of its Assigned Contract and Lease to the Successful Bidder; and it is further

ORDERED, that any timely objection to a Cure Amount set forth in the Contract & Cure Schedule, as applicable, shall not constitute an objection to the assumption, assignment and/or transfer of any Assigned Contract and Lease, but only as a reservation of the party's rights with respect to the correct cure amount; and it is further

ORDERED, that any objection to a Cure Amount set forth in the Contract & Cure Schedule and any objection to the assumption and assignment of an Assigned Contract and Lease must be filed with the Court and served upon the Notice Parties on or before 4:00 p.m. prevailing

Eastern Time on the later of the date (the "Assignment Objection Deadline") that is (a) five (5) Business Days before the Sale Hearing and (b) ten (10) calendar days after the date of service of the applicable Supplemental Notice with regard to any Assigned Contract and Lease listed on such Supplemental Notice; provided that, in the event the Stalking Horse is not the Successful Bidder, counterparties to Assigned Contracts and Leases shall have until the later of (a) one (1) Business Day before the Sale Hearing and (b) ten (10) calendar days after the date of service of the applicable Supplemental Notice with regard to any Assigned Contract and Lease listed on such Supplemental Notice to object to the adequate assurance of future performance by the Successful Bidder or Successful Bidders; and it is further

ORDERED, that in the event there is a conflict between this Order and the Bid Procedures Motion or the Bid Procedures, this Order shall control and govern; and it is further

ORDERED, that, notwithstanding any possible applicability of Bankruptcy Rules 6004 or 6006, or otherwise, this Order shall become effective and enforceable immediately upon its entry; and it is further

ORDERED, that this Court shall retain jurisdiction over any matter or dispute arising from or relating to the implementation of this Order.

Dated: \_\_\_\_\_, 2013

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The Honorable Louis H. Kornreich  
United States Bankruptcy Judge



### **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 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, 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 these Bid Procedures, and the Trustee, MMA Canada, and the Monitor shall determine the highest and

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

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 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; and
  - 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.

- 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").

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 Federal Railroad Administration, 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, 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, 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 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, 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, 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, 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). 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) 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, 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, and the Monitor, 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: (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, 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 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 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.



**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MAINE**

In re:

MONTREAL MAINE & ATLANTIC  
RAILWAY, LTD.

Debtor.

Bk. No. 13-10670

Chapter 11

**NOTICE OF (A) SALE OF SUBSTANTIALLY ALL OF THE ASSETS OF  
MONTREAL, MAINE & ATLANTIC RAILWAY, LTD. AND MONTREAL, MAINE &  
ATLANTIC CANADA, CO.; (B) THE ASSUMPTION AND ASSIGNMENT OF  
CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES; AND (C)  
PROCEDURE FOR DETERMINING CURE AMOUNTS**

To Creditors and Parties in Interest:

Notice is hereby given that Robert J. Keach, the chapter 11 trustee (the "Trustee") in the chapter 11 case of Montreal Maine & Atlantic Railway, Ltd. ("MMA"), and Montreal, Maine & Atlantic Canada, Co. ("MMA Canada" and, collectively with MMA, the "Debtors"), intend to sell substantially all of the Debtors' assets (the "Assets") and potentially assume and assign certain executory contracts and unexpired leases related thereto (the "Assigned Contracts and Leases").<sup>1</sup>

The Trustee and MMA Canada have entered into an asset purchase agreement (the "Stalking Horse Agreement") with Railroad Acquisition Holdings LLC (the "Stalking Horse"), by which agreement the Stalking Horse intends to purchase the Assets and take an assignment of any contracts and leases that are designated as Assigned Contracts and Leases. Pursuant to the *Motion for Authority to Sell Substantially All of the Debtor's Assets and to Assume and Assign Certain Executory Contracts and Unexpired Leases* (the "Sale Motion"), and a corresponding motion (the "Canadian Sale Motion") filed by MMA Canada and the monitor appointed in MMA Canada's insolvency proceeding (the "Monitor") in Québec Superior Court (the "Canadian Court"), the Trustee, MMA Canada, and the Monitor seek final approval of the Stalking Horse Agreement with the Stalking Horse or a higher and better bidder, if any.

Under the Stalking Horse Agreement, the Stalking Horse proposes to provide aggregate consideration of \$14,250,000.00 for the Assets from the Stalking Horse. The Stalking Horse Agreement is subject to higher and better offers, including offers respecting one or more "lots" of the Assets (the "Lots"), as more fully described in the Bid Procedures attached hereto as **Exhibit A** (the "Bid Procedures"). The Trustee, MMA Canada, and the Monitor are soliciting higher and better offers by means of an Auction (as defined in **Exhibit A**) which shall be governed by the terms and conditions of the Bid Procedures. The Bid Procedures have been

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<sup>1</sup> The term "Assets" shall include and refer to the "Assigned Contracts and Leases."

approved by the Bankruptcy Court (as defined below). The same bid procedures have been approved by the Canadian Court. The Assets are more fully described in the Stalking Horse Agreement.

The Assets will be sold and transferred free and clear of all liens, claims, encumbrances and interests. Any perfected, enforceable and valid liens shall attach to the proceeds of the sale according to priorities established under applicable law or the orders of the Bankruptcy Court and/or the Canadian Court.

The Sale Motion and the Stalking Horse Agreement are on file with the United States Bankruptcy Court for the District of Maine, 202 Harlow Street, 3<sup>rd</sup> Floor, Bangor, ME 04401 (the "Bankruptcy Court"), and are available for review during regular business hours. Copies of the Sale Motion and the Stalking Horse Agreement are also available (free of charge), upon written request, from Angela Stewart, Bankruptcy Paralegal, Bernstein, Shur, Sawyer & Nelson, P.A., 100 Middle Street, P.O. Box 9729, Portland, ME 04104-5029 (Tel: 207-228-7374; email: astewart@bernsteinshur.com).

The Canadian Sale Motion is on file with the Canadian Court, and is available for review during regular business hours. Copies of the Canadian Sale Motion are also available (free of charge), at <http://www.richter.ca/en/insolvency-cases/m/montreal-maine-and-atlantic-canada-co>.

OBJECTIONS, if any, to the relief requested in the Sale Motion or to final approval of the Stalking Horse Agreement must be filed with the Clerk of the Bankruptcy Court or with the Canadian Court on or before **January 22, 2014** (the "Objection Deadline"). A copy of any objection must also be served by hand, facsimile, e-mail or overnight mail upon:

- (i) Trustee's counsel, c/o Michael A. Fagone, Esq., Bernstein, Shur, Sawyer & Nelson, P.A., 100 Middle Street, P.O. Box 9729, Portland, ME (Fax: 207-774-1127; email: mfagone@bernsteinshur.com);
- (ii) the Monitor, c/o Andrew Adessky, Richter Consulting, 1981 McGill College Avenue, 12<sup>th</sup> Floor, Montreal, Québec, H3A 0G6, Canada (Fax: 514-934-3504; email: aadessky@richter.ca);
- (iii) counsel to the Monitor, c/o Sylvain Vauclair, Woods LLP, 2000 McGill College Avenue, Suite 1700, Montreal, Québec, H3A 3H3, Canada (Fax: 514-284-2046; email: svaclair@woods.qc.ca);
- (iv) MMA Canada, c/o Patrice Benoit, Gowling Lafleur Henderson LLP, 3700-1 Place Ville Marie, Montreal, Québec H3B 3P4, Canada (Fax: 514-876-9550; email: patrice.benoit@gowlings.com);
- (v) Stephen Morrell, Assistant U.S. Trustee, 537 Congress Street, Suite 303, Portland, ME 04101 (Fax: 207-780-3568; email: Stephen.G.Morrell@usdoj.gov); and

- (vi) Counsel to the Stalking Horse, c/o Terence M. Hynes, Esq., Sidley Austin LLP, 1501 K Street, N.W., Washington DC, 20005 (Fax: 202-736-8711; email: thynes@sidley.com) and Jeffrey C. Steen, Esq., Sidley Austin LLP, 1 S. Dearborn, Chicago, IL 60603 (Fax: 312-853-7036; email: jsteen@sidley.com).

(collectively, the “Interested Parties”) so **as to be received** on or before the Objection Deadline. Failure to file a timely objection to the sale of Assets shall be deemed to be “consent” for the purposes of section 363(f) of the Bankruptcy Code and shall be a bar to the assertion, at the Sale Hearing or thereafter, of any objection to the sale of the Assets (including the transfer free and clear of any liens, claims, encumbrances, rights, remedies or interests).

Through this notice, HIGHER AND BETTER OFFERS to purchase the Assets, one or more Lots, and/or for such other assets, executory contracts, or unexpired leases as a purchaser desires to acquire, are hereby solicited. To be considered a qualified counteroffer, a counteroffer shall comply with the Bid Procedures, including the service of such counteroffer by hand, facsimile, email or overnight mail upon: **counsel for the Trustee**: Bernstein, Shur, Sawyer & Nelson, P.A., c/o Michael A. Fagone, Esq., 100 Middle Street, P.O. Box 9729, Portland, ME 04104 (Fax: 207-774-1127; email: mfagone@bernsteinshur.com); **counsel for MMA Canada**: Gowling Lafleur Henderson LLP, c/o Patrice Benoit, 3700-1 Place Ville Marie, Montreal, Québec H3B 3P4, Canada (Fax: 514-876-9550; email: patrice.benoit@gowlings.com); **the Monitor**: Andrew Adessky, Richter Consulting, 1981 McGill College Avenue, 12<sup>th</sup> Floor, Montreal, Québec, H3A 0G6, Canada, (Fax: 514-934-3504; email: aadessky@richter.ca); **and counsel to the Monitor**: Woods LLP, c/o Sylvain Vauclair, 2000 McGill College Avenue, Suite 1700, Montreal Québec H3A 3H3, Canada, (Fax: 514-284-2046; email: svaclair@woods.qc.ca), not later than **5:00 p.m.** (prevailing Eastern Time) so as to be received **on or before 5:00 p.m. on January 17, 2014**. If a qualified bid is timely received, the Trustee will hold an open auction at Bernstein, Shur, Sawyer & Nelson, P.A., 100 Middle Street, Portland, Maine, 04101 commencing at **10:00 a.m. on January 21, 2014** (the “Auction”).

A FINAL HEARING on the Sale Motion is scheduled to take place at the Bankruptcy Court before the Honorable Louis H. Kornreich, United States Bankruptcy Judge, on **January 23, 2014 at 10:00 a.m.** Such hearing may be conducted jointly with the Canadian Court or, alternatively, the Canadian Court may conduct an individual hearing regarding the Canadian Sale Motion, with rulings being conditioned upon the ruling of the other Court. In the event that an individual hearing is conducted by the Canadian Court, creditors and parties in interest shall be notified of the date and time of such hearing by MMA Canada and the Monitor.

Notice is further given to each counter-party (a “Counter-Party”) listed on Attachment 1 to the Assumption and Assignment Procedures attached hereto as **Exhibit B** (the “Assumption and Assignment Procedures”) of the potential assumption and assignment of the Assigned Contracts and Leases and the cure amounts listed on such Attachment 1 (the “Cure Amounts”), if any, that the Trustee and MMA Canada believe are owing on each of the Assigned Contracts and Leases which may be designated by any potential buyer as an executory contract or unexpired lease to be assumed and assigned.

OBJECTIONS, if any, of any Counter-Party to the stated Cure Amounts or the assumption, assignment and/or transfer of an Assigned Contract or Lease must be filed with the Clerk of the Bankruptcy Court or the Canadian Court on or before the Objection Deadline in accordance with the Assumption and Assignment Procedures. A copy of any objection must also be served upon Interested Parties so as to be received on or before the Objection Deadline in accordance with the Assumption and Assignment Procedures. An objection should contain the Cure Amount such Counter-Party believes is due and any other basis for the objection. The failure of a Counter-Party to submit an objection shall be deemed to be consent to the assumption, assignment and/or transfer of its Assigned Contract or Lease and will forever bar such Counter-Party from (i) asserting any other Cure Amount or from otherwise disputing such amount(s) with respect to the contract(s) in question (ii) objecting to the proposed adequate assurance of future performance and/or (iii) objecting to the assumption, assignment and/or transfer of its Assigned Contract or Lease. The filing of an objection to the Cure Amounts shall not constitute an objection to the assumption, assignment and sale of the executory contract but shall reserve the rights of such objecting party to a determination of a different Cure Amount.

Any party who has filed an objection or a Qualified Bid is expected to be present at the Auction, failing which the objection may be overruled or the Qualified Bid may be stricken.

The Trustee, MMA Canada, and the Monitor may, collectively, modify the 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 and promote an open and fair Auction process.

Dated:

ROBERT J. KEACH,  
CHAPTER 11 TRUSTEE OF MONTREAL  
MAINE & ATLANTIC RAILWAY, LTD.

By his attorneys:

/s/

\_\_\_\_\_  
Michael A. Fagone, Esq.  
D. Sam Anderson, Esq.  
BERNSTEIN, SHUR, SAWYER & NELSON, P.A.  
100 Middle Street  
P.O. Box 9729  
Portland, ME 04104  
Telephone: (207) 774-1200  
Facsimile: (207) 774-1127  
E-mail: mfagone@bernsteinshur.com



### **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 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, 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 these Bid Procedures, and the Trustee, MMA Canada, and the Monitor shall determine the highest and

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

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 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; and
  - 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.

- 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").

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 Federal Railroad Administration, 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, 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, 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 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, 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, 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, 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). 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) 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, 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, and the Monitor, 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:

- (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, 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 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 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.



**ASSUMPTION AND ASSIGNMENT PROCEDURES**

Set forth below are the assumption and assignment procedures (the "Assumption & Assignment Procedures") to be employed with respect to the proposed sale contemplated by Robert J. Keach, the chapter 11 trustee (the "Trustee") in the chapter 11 case of Montreal Maine & Atlantic Railway, Ltd. (the "Debtor"), as contained in the Trustee's *Motion for Order: (A) Approving Bid Procedures for the Sale of the Debtor's Assets; (B) Scheduling an Auction; (C) Approving Assumption and Assignment Procedures for Certain Executory Contracts and Unexpired Leases; (D) Approving a Break-Up Fee, Expense Reimbursements and Overbid Protections; and (E) Approving a Form of Notice of Sale* (the "Motion").

- a. Within five (5) calendar days of entry of an order approving the Motion,<sup>1</sup> the Trustee shall file a schedule of cure obligations (the "Contract & Cure Schedule") listing all leases and executory contracts that the Stalking Horse intends to assume (the "Assigned Contracts and Leases") and the amount, if any, that the Trustee contends is the amount needed to cure any defaults with respect to such Assigned Contracts and Leases (the "Cure Amounts").
- b. Upon filing, a copy of the Sale Notice, Contract & Cure Schedule and these Assumption & Assignment Procedures will be served on each of the counterparties to the Assigned Contracts and Leases listed on the Contract & Cure Schedule.
- c. The Trustee shall amend the Contract & Cure Schedule promptly after the completion of the Auction to update the information contained therein with respect to the Successful Bid and Back-up Bid, including, but not limited to,

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<sup>1</sup> All capitalized terms not defined herein shall have the same meaning as set forth in the Bid Procedures attached as Exhibit A to the Motion.

adding additional leases and executory contracts (which shall then be deemed Assigned Contracts and Leases) and corresponding cure amounts (which shall be deemed Cure Amounts) and shall serve an amended Contract & Cure Schedule on each of the counterparties to the Assigned Contracts and Leases listed thereon.

- d. The bidder approved by the Bankruptcy Court as submitting the highest or otherwise best bid for purchase of the Debtor's assets (the "Successful Bidder"), at any time prior to closing on the sale of the Assets, may identify executory contracts and leases to be (a) added to the Contract & Cure Schedule (which contracts and leases shall then be deemed Assigned Contracts and Leases) and the corresponding cure amounts (which shall be deemed Cure Amounts) and (b) deleted from the list of Assigned Contracts and Leases (which shall then cease to be Assigned Contracts and Leases). The Trustee shall give notice (the "Supplemental Notice") to counterparties to executory contracts and leases added to or deleted from the Contract and Cure Schedule.
- e. Any objections ("Assignment Objections") to the assumption and assignment of any Assigned Contract and Lease, including, but not limited to, objections relating to adequate assurance of future performance by the Stalking Horse or to the cure amount set forth in the Contract & Cure Schedule must be filed with the Bankruptcy Court and served upon the Notice Parties on or before 4:00 p.m. prevailing Eastern Time on the later of the date (the "Assignment Objection Deadline") that is (a) five (5) Business Days before the Sale Hearing and (b) ten (10) calendar days after the date of service of the applicable

Supplemental Notice with regard to any Assigned Contract and Lease listed on such Supplemental Notice; provided that, in the event the Stalking Horse is not the Successful Bidder, counterparties to Assigned Contracts and Leases shall have until the later of (a) one (1) Business Day before the Sale Hearing and (b) ten (10) calendar days after the date of service of the applicable Supplemental Notice with regard to any Assigned Contract and Lease listed on such Supplemental Notice to object to the adequate assurance of future performance by the Successful Bidder. Any counterparty failing to file an Assignment Objection by the Assignment Objection Deadline shall be deemed to consent to the assumption, assignment and/or transfer of such Assigned Contract or Lease and shall be forever barred from: (i) objecting to the Cure Amount set forth on the Contract & Cure Schedule with respect to its Assigned Contract and Lease; (ii) seeking additional amounts arising under its Assigned Contract and Lease prior to the Closing from the Trustee, the Debtor or the Successful Bidder; and (iii) objecting to the assumption and assignment of its Assigned Contract and Lease to the Successful Bidder.

- f. Any Assignment Objections required to be filed prior to the date of the Sale Hearing and not consensually resolved prior to the Sale Hearing shall be heard at the Sale Hearing with any related Cure Amounts or adequate assurance of future performance being fixed by the Bankruptcy Court. All other objections to the proposed assumption and assignment of the Assigned Contracts and Leases will be heard at the Sale Hearing, provided, however that all Assignment Objections for which the Assignment Objection Deadline is after

the date of the Sale Hearing and which objection is not filed prior to the Sale Hearing shall be heard on a date to be determined jointly by the Trustee and the Successful Bidder, subject to the availability of the Bankruptcy Court.

- g. Except as may otherwise be agreed to by all parties to an Assigned Contract and Lease, on or before the Closing, the cure of any defaults under Assigned Contracts and Leases necessary to permit assumption and assignment thereof shall be by (i) payment of the undisputed Cure Amount, and/or (ii) establishment of a reserve with respect to any disputed Cure Amount. The party responsible for paying Cure Amounts shall be as set forth in the Proposed Agreement between the Successful Bidder or Back-up Bidder and the Trustee.



**THE UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MAINE**

In re:

MONTREAL MAINE & ATLANTIC  
RAILWAY, LTD.

Debtor.

Bk. No. 13-10670

Chapter 11

**NOTICE OF (I) PROPOSED SALE OF ASSETS FREE AND  
CLEAR OF ALL LIENS, CLAIMS AND ENCUMBRANCES,  
(II) BID PROCEDURES, (III) AUCTION, AND (IV) SALE HEARING**

PLEASE TAKE NOTICE that on December 12, 2013, Robert J. Keach, the Chapter 11 trustee (the "Trustee") appointed in the Chapter 11 case of Montreal Maine & Atlantic Railway, Ltd. (the "Debtor"), filed a motion (the "US Bid Procedures Motion") with the United States Bankruptcy Court for the District of Maine (the "Bankruptcy Court") seeking, among other things, Bankruptcy Court approval of certain procedures (the "Bid Procedures") relating to the proposed sale of substantially all of the assets (the "Assets") of the Debtor and Montreal Maine & Atlantic Canada Co. ("MMA Canada," and together with the Debtor, the "Sellers"). The Sellers filed a motion seeking similar relief in MMA Canada's proceeding (the "Canadian Proceeding") under Canada's *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA") in the Superior Court for the Province of Québec (the "Canadian Court"). The Initial Order in the Canadian Proceeding was entered on August 8, 2013 by the Canadian Court (and supervision of the Canadian Proceeding was subsequently transferred to the Superior Court for the Province of Québec, District of St-François). The Bankruptcy Court entered an order approving the Bid Procedures on December \_\_, 2013 (the "US Bid Procedures Order"), and the Canadian Court entered an order approving the Bid Procedures on December \_\_, 2013 (the "Canadian Bid Procedures Order").

The US Bid Procedures Motion, the US Bid Procedures Order, the Bid Procedures and the Stalking Horse APA are available by (i) accessing the Bankruptcy Court's website at <https://ecf.meb.uscourts.gov> (please note that a PACER password is needed to access documents on the Bankruptcy Court's website), (ii) viewing the docket of these cases at the Clerk of the Court, United States Bankruptcy Court for the District of Maine, 202 Harlow Street, 3<sup>rd</sup> Floor, Bangor, ME 04401 or (iii) contacting counsel to the Trustee, Michael A. Fagone, Esq., c/o Bernstein, Shur, Sawyer & Nelson, P.A., 100 Middle Street, Portland, ME 04104.

PLEASE TAKE FURTHER NOTICE that, in the event that the Sellers receive, on or before the Bid Deadline, one or more Qualified Bids in addition to the Qualified Bid of the Stalking Horse Bidder, an auction (the "Auction") will be conducted at Bernstein, Shur, Sawyer & Nelson, P.A., 100 Middle Street, Portland, Maine 04101 on January 21, 2014 at 10:00 a.m. (Eastern Time) in accordance with the Bid Procedures to determine the highest and best Qualified Bid for the Assets.

PLEASE TAKE FURTHER NOTICE that the hearing to approve the sale of the Assets (the “Sale Hearing”) will be held on January 23, 2014 at 10:00 a.m. before the Honorable Louis H. Kornreich, Chief United States Bankruptcy Judge, at the United States Bankruptcy Court for the District of Maine, 202 Harlow Street, Bangor, ME 04401.

PLEASE TAKE FURTHER NOTICE that any objection to the sale of the Assets must set forth the legal and factual basis of such objection and be in writing, filed with the Bankruptcy Court on or before on or before January 22, 2014 (the “Sale Objection Deadline”) and served by hand, facsimile, e-mail or overnight mail upon: (i) Trustee’s counsel, c/o Michael A. Fagone, Esq., Bernstein, Shur, Sawyer & Nelson, P.A., 100 Middle Street, P.O. Box 9729, Portland, ME (Fax: 207-774-1127; email: mfagone@bernsteinshur.com); (ii) the Monitor, c/o Andrew Adessky, Richter Consulting, 1981 McGill College Avenue, 12<sup>th</sup> Floor, Montreal, Québec, H3A 0G6, Canada (Fax: 514-934-3504; email: aadessky@richter.ca); (iii) counsel to the Monitor, c/o Sylvain Vauclair, Woods LLP, 2000 McGill College Avenue, Suite 1700, Montreal, Québec, H3A 3H3, Canada (Fax: 514-284-2046; email: svaclair@woods.qc.ca); (iv) MMA Canada, c/o Patrice Benoit, Gowling Lafleur Henderson LLP, 3700-1 Place Ville Marie, Montreal, Québec H3B 3P4, Canada (Fax: 514-876-9550; email: patrice.benoit@gowlings.com); (v) Stephen Morrell, Assistant U.S. Trustee, 537 Congress Street, Suite 303, Portland, ME 04101 (Fax: 207-780-3568; email: Stephen.G.Morrell@usdoj.gov); and (vi) Counsel to the Stalking Horse, c/o Terence M. Hynes, Esq., Sidley Austin LLP, 1501 K Street, N.W., Washington DC, 20005 (Fax: 202-736-8711; email: thynes@sidley.com) and Jeffrey C. Steen, Esq., Sidley Austin LLP, 1 S. Dearborn, Chicago, IL 60603 (Fax: 312-853-7036; email: jsteen@sidley.com), so as to be **actually received** on or before the Sale Objection Deadline. Failure to object to the sale of the Assets shall be deemed to be “consent” for purposes of section 363(f) of the Bankruptcy Code and shall be a bar to the assertion, at the Sale Hearing or thereafter, of any objection to the sale of the Assets pursuant to the terms of the Stalking Horse APA (including the transfer free and clear of all Liens, Claims encumbrances or interests as set forth in the Stalking Horse APA).

This Notice is qualified in its entirety by the US Bid Procedures Order, the Bid Procedures and the US Bid Procedures Motion. All persons and entities are urged to carefully read the US Bid Procedures Order, the Bid Procedures and the US Bid Procedures Motion. To the extent that this Notice is inconsistent with the US Bid Procedures Order, the terms of the US Bid Procedures Order shall govern.

DATED: December \_\_, 2013



**ASSUMPTION AND ASSIGNMENT PROCEDURES**

Set forth below are the assumption and assignment procedures (the "Assumption & Assignment Procedures") to be employed with respect to the proposed sale contemplated by Robert J. Keach, the chapter 11 trustee (the "Trustee") in the chapter 11 case of Montreal Maine & Atlantic Railway, Ltd. (the "Debtor"), as contained in the Trustee's *Motion for Order: (A) Approving Bid Procedures for the Sale of the Debtor's Assets; (B) Scheduling an Auction; (C) Approving Assumption and Assignment Procedures for Certain Executory Contracts and Unexpired Leases; (D) Approving a Break-Up Fee, Expense Reimbursements and Overbid Protections; and (E) Approving a Form of Notice of Sale* (the "Motion").

- a. Within five (5) calendar days of entry of an order approving the Motion,<sup>1</sup> the Trustee shall file a schedule of cure obligations (the "Contract & Cure Schedule") listing all leases and executory contracts that the Stalking Horse intends to assume (the "Assigned Contracts and Leases") and the amount, if any, that the Trustee contends is the amount needed to cure any defaults with respect to such Assigned Contracts and Leases (the "Cure Amounts").
- b. Upon filing, a copy of the Sale Notice, Contract & Cure Schedule and these Assumption & Assignment Procedures will be served on each of the counterparties to the Assigned Contracts and Leases listed on the Contract & Cure Schedule.
- c. The Trustee shall amend the Contract & Cure Schedule promptly after the completion of the Auction to update the information contained therein with respect to the Successful Bid and Back-up Bid, including, but not limited to,

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adding additional leases and executory contracts (which shall then be deemed Assigned Contracts and Leases) and corresponding cure amounts (which shall be deemed Cure Amounts) and shall serve an amended Contract & Cure Schedule on each of the counterparties to the Assigned Contracts and Leases listed thereon.

- d. The bidder approved by the Bankruptcy Court as submitting the highest or otherwise best bid for purchase of the Debtor's assets (the "Successful Bidder"), at any time prior to closing on the sale of the Assets, may identify executory contracts and leases to be (a) added to the Contract & Cure Schedule (which contracts and leases shall then be deemed Assigned Contracts and Leases) and the corresponding cure amounts (which shall be deemed Cure Amounts) and (b) deleted from the list of Assigned Contracts and Leases (which shall then cease to be Assigned Contracts and Leases). The Trustee shall give notice (the "Supplemental Notice") to counterparties to executory contracts and leases added to or deleted from the Contract and Cure Schedule.
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Supplemental Notice with regard to any Assigned Contract and Lease listed on such Supplemental Notice; provided that, in the event the Stalking Horse is not the Successful Bidder, counterparties to Assigned Contracts and Leases shall have until the later of (a) one (1) Business Day before the Sale Hearing and (b) ten (10) calendar days after the date of service of the applicable Supplemental Notice with regard to any Assigned Contract and Lease listed on such Supplemental Notice to object to the adequate assurance of future performance by the Successful Bidder. Any counterparty failing to file an Assignment Objection by the Assignment Objection Deadline shall be deemed to consent to the assumption, assignment and/or transfer of such Assigned Contract or Lease and shall be forever barred from: (i) objecting to the Cure Amount set forth on the Contract & Cure Schedule with respect to its Assigned Contract and Lease; (ii) seeking additional amounts arising under its Assigned Contract and Lease prior to the Closing from the Trustee, the Debtor or the Successful Bidder; and (iii) objecting to the assumption and assignment of its Assigned Contract and Lease to the Successful Bidder.

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- g. Except as may otherwise be agreed to by all parties to an Assigned Contract and Lease, on or before the Closing, the cure of any defaults under Assigned Contracts and Leases necessary to permit assumption and assignment thereof shall be by (i) payment of the undisputed Cure Amount, and/or (ii) establishment of a reserve with respect to any disputed Cure Amount. The party responsible for paying Cure Amounts shall be as set forth in the Proposed Agreement between the Successful Bidder or Back-up Bidder and the Trustee.