

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

IN THE MATTER OF THE *COMPANIES' CREDITORS
ARRANGEMENT ACT*, R.S.C. 1985, c.C-36 AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF TRINITY RAVINE COMMUNITY INC.

**FACTUM OF THE APPLICANT
(Re: Comeback Hearing)
Returnable March 4, 2022**

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TO: SERVICE LIST

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FACTUM OF THE APPLICANT

PART I - NATURE OF THIS MOTION

1. On February 24, 2022, Trinity Ravine Community Inc. (the “**Applicant**”) sought and obtained creditor protection and other ancillary relief pursuant to an order granted by this Court (the “**Initial Order**”) under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (the “**CCAA**”, and such proceedings, the “**CCAA Proceedings**”).

2. Pursuant to the Initial Order, *inter alia*, the Court granted the following relief:

- (a) declared that the Applicant is a company to which the CCAA applies;
- (b) authorized the Applicant to remain in possession and control of its assets, undertaking and properties (the “**Property**”) and continue to carry on business in a manner consistent with the preservation of its business (the “**Business**”);
- (c) ordered a stay of all proceedings and remedies in respect of the Applicant or affecting its business or property (the “**Stay**”) for an initial period of ten (10) days up to and including March 5, 2022 (the “**Stay Period**”);
- (d) appointed Deloitte Restructuring Inc. as monitor of the Applicant in these CCAA proceedings (in such capacity, the “**Monitor**”); and
- (e) granted an administration charge on the Property up to the aggregate amount of \$150,000 (the “**Administration Charge**”) as security for the payment of the professional fees and disbursements incurred and to be incurred by the Monitor, counsel to the Monitor, and counsel to the Applicant, in connection with the CCAA Proceedings.

3. During the initial Stay Period, the Applicant, with the assistance of the Monitor, has secured debtor-in-possession financing (the “**DIP Facility**”) and has prepared a sales and investment solicitation process (“**SISP**”) in respect of the Property.

4. The Applicant brings this motion for the following relief:

(a) an amended and restated Initial Order (the “**Amended and Restated Initial Order**”), substantially in the form of the draft order attached at Schedule “A” to the Notice of Motion, *inter alia*, (i) increasing the Administration Charge to maximum aggregate amount of \$250,000; (ii) extending the Stay Period to July 22, 2022; and (iii) approving the DIP Facility and the DIP Lender’s Charge (as defined below); and

(b) an Order (the “**SISP Order**”) substantially in the form of the draft order attached at Schedule “B” to the Notice of Motion, *inter alia*, (i) approving the SISP; and (ii) authorizing the Applicant to undertake the SISP, with the assistance of the Monitor.

5. For the reasons set out herein, the Applicant respectfully submits that the relief requested is in the best interests of the Applicant and its stakeholders, and that it is fair, reasonable and appropriate for the Court to grant the Amended and Restated Initial Order and the SISP Order.

PART II - SUMMARY OF FACTS

6. The facts underlying this motion are more fully set out in the Affidavit of Jeremy Anderson sworn February 28, 2022 filed in support of this Motion (the “**Anderson Affidavit**”). Capitalized terms not defined herein have the meanings prescribed to them in the Anderson Affidavit.¹

Background

7. The Applicant is a registered charitable organization developing a real estate development project known as Trinity Ravine Community (the “**Project**”). The Project is a two-tower, 605-unit Project to be built on “shovel-ready” grounds in Scarborough, Ontario (the “**Development Land**”), and is intended to serve as an accessible, condominium-style senior citizens’ residence which enables residents to “age in place”.²

8. The Project utilizes a life lease structure pursuant to which prospective residents purchase the right to occupy units in the Project upon completion. Due to the skyrocketing costs of construction and the delays and uncertainty caused by the COVID-19 pandemic, the Project will not be completed by the intended completion date. The Project’s financial model is no longer viable.³

9. Pursuant to certain life lease agreements, purchasers in the Project paid a 20% deposit in a series of installments over a period of time. Between 2019 and late 2021, the Applicant refunded

¹ Exhibit “A” to the Affidavit of Jeremy Anderson sworn February 28, 2022 (“**Anderson Affidavit**”), Tab 2A to the Motion Record of the Applicant dated February 28, 2022 (the “**Motion Record**”).

² Exhibit “A” to the Anderson Affidavit at paras. 14, 26, and 28, Tab 2A to the Motion Record.

³ Exhibit “A” to the Anderson Affidavit at paras. 2 and 4, Tab 2A to the Motion Record.

deposits to certain purchasers. Numerous other purchasers have recently requested return of their deposits, which the Applicant has been unable to process due to the lack of available funds.⁴

10. The Applicant's secured creditors include Limestone Capital Inc. ("**Limestone**") and Nahid Corporation ("**Nahid**").⁵

11. As at September 30, 2021, the Applicant had assets of \$25,766,228.49 and liabilities of approximately \$29,115,052.79.⁶

12. In support of the application for the Initial Order, the Monitor prepared a 13-week consolidated cash flow forecast for the Applicant for the period ending May 22, 2022 (the "**13-Week Cash Flow Forecast**") and a 26-week cash flow forecast for the Applicant for the period ending August 21, 2022 (the "**26-Week Cash Flow Forecast**"). The 26-Week Cash Flow Forecast indicates a requirement for the Applicant to obtain financing of at least \$850,000 successfully complete a Plan.⁷

13. Based on market appraisals, there is considerable equity in the Development Land. If the Project is definitively terminated and the Development Land is sold, it is likely that the proceeds will be sufficient to refund all purchasers' deposits and repay all other creditors.⁸

14. Since the granting of the Initial Order on February 23, 2022, the Applicant, with the assistance of the Monitor, has (i) finalized and entered into a DIP Facility Term Sheet with Nahid

⁴ Exhibit "A" to the Anderson Affidavit at paras. 58 and 61, Tab 2A to the Motion Record.

⁵ Exhibit "A" to the Anderson Affidavit at para 48, Tab 2A to the Motion Record.

⁶ Exhibit "A" to the Anderson Affidavit at para 44, Tab 2A to the Motion Record.

⁷ Anderson Affidavit at para 10.

⁸ Exhibit "A" to the Anderson Affidavit at paras. 8 and 65, Tab 2A to the Motion Record.

or an affiliate, as lender (the “**DIP Lender**”) dated February 28, 2022 (the “**Term Sheet**”), and (ii) prepared the SISP for the purpose of selling the Property and/or the Business.⁹

The Proposed SISP

15. The Applicant seeks court-approval of the proposed SISP. All capitalized terms not otherwise defined in this section of the factum have the meaning prescribed to them in the proposed SISP.

16. The SISP provides participants with the option to submit two types of bids:¹⁰

- (i) a bid for the real property municipally known as 1250 Markham Road, Scarborough Ontario (the “**Real Property**”); or
- (ii) a bid for the Real Property and all property and collateral of the Applicant in connection with its development business of the Real Property (the “**Development Assets**”).

17. The key terms and deadlines set out in the proposed SISP are as follows:¹¹

Milestone	Date(s)
Marketing and due diligence period	March 4, 2022 – May 6, 2022
LOI Deadline	May 6, 2022
Final Bid Deadline	June 17, 2022
Final Agreement Deadline	June 24, 2022
Targeted transaction closing date	August 31, 2022

⁹ Anderson Affidavit at para 6, Tab 2 to the Motion Record.

¹⁰ Anderson Affidavit at para 25, Tab 2 to the Motion Record.

¹¹ Anderson Affidavit at para 26, Tab 2 to the Motion Record.

The Proposed DIP Facility

18. Based on the 26-Week Cash Flow Forecast, the Applicant estimates that it requires a commitment for additional funding up to \$850,000 in order to ensure that it has sufficient resources to complete the SISP and CCAA process.¹²

19. In particular, the Applicant requires additional financing in order to undertake proposed SISP and consummate a transaction thereunder, as well as attend to an orderly distribution process in respect of all of its creditors, including remaining purchasers in the Project and secured creditors, among others.

20. Accordingly and pursuant to the Term Sheet, the DIP Lender has agreed to provide the Applicant with a non-revolving facility in the maximum principal amount of \$850,000.00, payable in monthly tranches, with interest thereon at a rate per annum equal to 12% or the TD Bank Prime Rate plus 9.55%.¹³

21. The proposed DIP Facility is to be secured by a court-ordered first-priority charge against all of the Property of the Applicant (the “**DIP Lender’s Charge**”) and for greater certainty, shall rank as a super-priority charge against the Property.

PART III - ISSUES AND THE LAW

22. The issues on this motion are as follows:

- (a) Should this Court grant the Amended and Restated Initial Order?

¹² Exhibit “A” to the Anderson Affidavit at para 66, Tab 2A to the Motion Record.

¹³ Anderson Affidavit at para 13; DIP Commitment, Exhibit “C” to the Anderson Affidavit at Tab 2C to the Motion Record.

(b) Should this Court grant the SISP Order?

A. The Amended and Restated Initial Order Should be Granted

(i) The Stay Period Should be Extended

23. The existing Stay Period under the Initial Order expires on March 5, 2022. Pursuant to s. 11.02 of the CCAA, the Court may grant an extension of a stay of proceedings where: (a) circumstances exist that make the order appropriate; and (b) the debtor company satisfies the court that it has acted, and is acting, in good faith and with due diligence.¹⁴

24. A stay of proceedings will be appropriate where it advances the purposes of the CCAA, including avoiding the social and economic effects of a bankruptcy.¹⁵

25. The Applicant submits that an extension of the Stay Period to and including July 22, 2022 is appropriate in the circumstances given, among other things:

- (a) the Applicant has acted, and continues to act, in good faith and with due diligence in respect of all matters relating to these proceedings;
- (b) the extension of the Stay Period to July 22, 2022 is necessary to provide the Applicant with the time needed to, among other things, advance the proposed SISP and work towards achieving a value-maximizing transaction for the benefit of its creditors and all other stakeholders; and

¹⁴ CCAA, s. 11.02(3).

¹⁵ *Century Services Inc. v. Canada (Attorney General)*, [2010 SCC 60](#) at para 70.

(c) the Monitor is supportive of the request to extend the Stay Period to and including July 22, 2022.

(ii) The DIP Facility Should be Approved and the DIP Lender's Charge Should be Granted

26. As noted above, additional financing is necessary in order for the Applicant to continue its restructuring efforts within the CCAA Proceeding.

27. Accordingly, the Applicant has sought additional financing and secured the DIP Facility. The DIP Facility is critical to the Applicant's ongoing business operations and to the implementation of the SISP.

28. The DIP Facility would be secured by a court-ordered first-priority charge against all of the Property of the Applicant (the "**DIP Lender's Charge**"), ranking as a super-priority charge against the Property.

29. The DIP Facility is expected to provide sufficient liquidity to allow the Applicant to undertake and complete the proposed SISP and consummate a transaction thereunder, as well as attend to an orderly distribution process in respect of all of its creditors' claims, including remaining purchasers in the Project and secured creditors, among others.

30. The court's authority to authorize funding in the context of a CCAA restructuring is found in sections 11.2(1) and 11.2(2) of the CCAA, which expressly permit the granting of a charge over the property of a debtor that ranks in priority to the claims of any secured creditor.¹⁶

¹⁶ CCAA, s. 11.2(1) and 11.2(2)

31. In determining whether to approve interim financing, the Court is to consider the non-exhaustive list of factors set out in s. 11.2(4) of the CCAA:¹⁷

Factors to be considered

(4) In deciding whether to make an order, the court is to consider, among other things,

(a) the period during which the company is expected to be subject to proceedings under this Act;

(b) how the company's business and financial affairs are to be managed during the proceedings;

(c) whether the company's management has the confidence of its major creditors;

(d) whether the loan would enhance the prospects of a viable compromise or arrangement being made in respect of the company;

(e) the nature and value of the company's property;

(f) whether any creditor would be materially prejudiced as a result of the security or charge; and

(g) the monitor's report referred to in paragraph 23(1)(b), if any.

32. Courts frequently exercise their authority to approve DIP financing that is secured by a priority charge on the debtor company's assets. This relief has been granted in various cases as part of the relief granted to a debtor company at a comeback motion.¹⁸

¹⁷ CCAA s. 11.2(4)

¹⁸ See for example, *Clover Leaf Holdings Company Re*, [2019 ONSC 6966](#) at paras 20-23.

33. Based on the factors below, the criteria of s. 11.2 of the CCAA support the approval of the DIP Facility and the DIP Lender's Charge on the terms sought in the Amended and Restated Initial Order:¹⁹

- (a) The Applicant has immediate liquidity needs, and given the circumstances, the Applicant faces great obstacles in obtaining alternative financing outside of these CCAA Proceedings;
- (b) The DIP Facility is necessary in order for the Applicant to implement the SISP, which will maximize value for all of the Applicant's stakeholders;
- (c) The quantum of the DIP Facility is reasonable and appropriate, having regard to the Applicant's cash flow forecasts;
- (d) The Monitor will supervise the spending of the funds drawn from the DIP Facility;
- (e) The Applicant has provided notice of the DIP Lender's Charge to affected secured creditors as required under s. 11.2(1) of the CCAA;
- (f) The charge does not secure an obligation that exists before the order is made; and
- (g) The Monitor is supportive of the DIP Facility and the DIP Lender's charge, and finds the terms of the Term Sheet to be commercially reasonable.

34. The Applicant, in consultation with its financial and legal advisors, carefully reviewed the different proposed terms received in respect of DIP financing and after these deliberations, the

¹⁹ CCAA, s. 11.2.

Applicant determined in its business judgment that the Term Sheet was the superior offer in the circumstances and is in the best interest of the Applicant.

35. The Applicant's management team has the confidence of its major creditors.

36. The proceeds of the DIP Facility will enhance the prospects of a viable compromise or arrangement being made in respect of the Applicant.

37. The appraised value of the Development Land is considerably higher than the proposed charges against same, and the DIP Lender's Charge will not unfairly or unduly prejudice any of the Applicant's other creditors.

(iii) The Administration Charge Should be Increased

38. The current Administration Charge secures the fees of the Monitor, its counsel and the Applicant's counsel to a maximum aggregate amount of \$150,000. The Applicant requests that this Court increase the Administration Charge to \$250,000. This increase in the Administration Charge is based on upon the additional fees that the foregoing professionals expect to incur during these CCAA proceedings.²⁰

39. The Applicant has worked with the Monitor to estimate the appropriate quantum of the Administration Charge.²¹

40. This Court has the statutory jurisdiction to grant the Administration Charge pursuant to s. 11.52 of the CCAA. This same statutory jurisdiction permits the court to increase the amount of

²⁰ Anderson Affidavit at para 18, Tab 2 to the Motion Record.

²¹ Anderson Affidavit at para 18, Tab 2 to the Motion Record.

the Administration Charge, as has frequently occurred on comeback motions following the initial ten-day stay period.²²

41. As outlined by Justice Pepall in *Canwest Publishing*, the following six non-exhaustive factors are to be considered in determining whether an Administration Charge is appropriate.

Those factors are:²³

- (a) The size and complexity of the business being restructured;
- (b) The proposed role of the beneficiaries of the charges;
- (c) Whether there is an unwarranted duplication of roles;
- (d) Whether the quantum of the proposed charge appears to be fair and reasonable;
- (e) The position of the secured creditors likely to be affected by the charge; and
- (f) The position of the monitor.

42. The increased Administration Charge satisfies the above-noted *Canwest* factors. In particular, the beneficiaries of the Administration Charge provide, and will continue to provide, essential legal and financial advice throughout the CCAA Proceedings. There is no unwarranted duplication of roles amongst these parties.

²² CCAA s. 11.52; *Canwest Publishing Inc. Re*, 2010 ONSC 222 [*“Canwest Publishing”*] at paras 37-40; see for example *Re Agmedica Bioscience et al* (2 December 2019), Toronto CV-19-00632052-00CL (Ont. Sup. Ct. [Comm List] Initial Order at para 27, Tab 1 to the Brief of Authorities dated February 28, 2022 (the “BOA”) and *Re Agmedica Bioscience* (12 December 2019), Toronto CV-19-00632052-00CL (Ont. Sup. Ct. [Comm List] Amended and Restated Initial Order at para 34, Tab 2 to the BOA.

²³ *Canwest Publishing* at para 54.

43. The increased amount of the Administration Charge is supported by the Monitor. Further, any existing secured creditors who may be affected by the proposed increase to the Administration Charge have been provided notice of same.

44. The DIP Lender requires that the DIP Lender's Charge be ranked in priority to the Administration Charge, thereby increasing the risk to the beneficiaries of the current Administration Charge.

45. In light of the foregoing, it is respectfully submitted that the Administration Charge should now be increased to \$250,000 to better protect the Monitor, counsel to the Monitor and counsel to the Applicant in furtherance of successfully implementing the SISP and completing these CCAA Proceedings.

B. The SISP Order Should be Granted

46. In *Nortel*, the Court identified several factors to be considered in determining whether to approve a sale process:²⁴

- (a) Is a sale warranted at this time?
- (b) Will the sale be of benefit to the whole economic community?
- (c) Do any of the debtor's creditors have a bona fide reason to object to a sale of the business?
- (d) Is there a better viable alternative?

²⁴ *Nortel Networks Corporation (Re)*, [2009 CanLII 39492](#) (ON SC) at para 49.

47. In *US Steel*, it was noted that while not technically applicable at the process approval stage in a proceeding, the factors set out in s. 36(3) of the CCAA may be considered in approving a sale process. Section 36(3) of the CCAA provides:²⁵

Factors to be considered

- (4) In deciding whether to grant the authorization, the court is to consider, among other things,
 - (a) whether the process leading to the proposed sale or disposition was reasonable in the circumstances;
 - (b) whether the monitor approved the process leading to the proposed sale or disposition;
 - (c) whether the monitor filed with the court a report stating that in their opinion the sale or disposition would be more beneficial to the creditors than a sale or disposition under a bankruptcy;
 - (d) the extent to which the creditors were consulted;
 - (e) the effects of the proposed sale or disposition on the creditors and other interested parties; and
 - (f) whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.

48. In the circumstances, the SISP provides an appropriate framework to obtain the best offer for the Applicant's Property and Business. Considering the *Nortel* criteria and the applicable factors set out in s. 36(3) of the CCAA, the SISP should be approved, given that:²⁶

- (a) There is a concrete, reasonable and achievable timeline for completion in the SISP;

²⁵ CCAA s. 36(3); *U.S. Steel Canada Inc, (Re)*, 2015 ONSC 2523 at para 8, Tab 3 to the BOA.

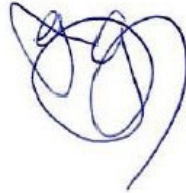
²⁶ SISP Procedures at Schedule "A" to the SISP Order, Tab 1B to the Motion Record.

- (b) The SISP provides for the most value-maximizing path forward in respect of the Applicant's Property, in that it seeks to realize on both the Real Property and the Development Assets;
- (c) No creditor or other interested party is expected to suffer any material prejudice as a result of the SISP; on the contrary, the SISP is intended to maximize value and recoveries for them;
- (d) The SISP provides bidders with the opportunity to purchase the Real Property as a stand-alone asset, or alternatively, to purchase the Development Assets in the event that such bidder has similar development plans for the Real Property; and
- (e) The SISP is supported by the Monitor, who is also of the view that the SISP is reasonable and in the best interests of all of the Applicant's stakeholders.

PART IV - ORDER REQUESTED

49. For the reasons set out herein, the Applicant respectfully requests that this Court grant the Amended and Restated Initial Order and the SISP Order, substantially in the form of the draft orders attached at Schedule "A" and "B" to the Notice of Motion, respectively.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 28th day of February, 2022.



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SCHEDULE “A”

LIST OF AUTHORITIES

1. *Century Services Inc. v. Canada (Attorney General)*, [2010 SCC 60](#).
2. *Clover Leaf Holdings Company Re*, [2019 ONSC 6966](#).
3. *Canwest Publishing Inc. Re*, [2010 ONSC 222](#).
4. *Re Agmedica Bioscience et al (2 December 2019)*, Toronto CV-19-00632052-00CL (Ont. Sup. Ct. [Comm List] Initial Order.
5. *Re Agmedica Bioscience (12 December 2019)*, Toronto CV-19-00632052-00CL (Ont. Sup Ct. [Comm List]) Amended and Restated Initial Order.
6. *Nortel Networks Corporation (Re)*, [2009 CanLII 39492](#) (ON SC).
7. *U.S. Steel Canada Inc, (Re)*, 2015 ONSC 2523.

SCHEDULE “B”

Stays, etc. — initial application

11.02 (1) A court may, on an initial application in respect of a debtor company, make an order on any terms that it may impose, effective for the period that the court considers necessary, which period may not be more than 10 days,

- (a) staying, until otherwise ordered by the court, all proceedings taken or that might be taken in respect of the company under the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act*;
- (b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and
- (c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

Stays, etc. — other than initial application

(2) A court may, on an application in respect of a debtor company other than an initial application, make an order, on any terms that it may impose,

- (a) staying, until otherwise ordered by the court, for any period that the court considers necessary, all proceedings taken or that might be taken in respect of the company under an Act referred to in paragraph (1)(a);
- (b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and
- (c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

Burden of proof on application

(3) The court shall not make the order unless

- (a) the applicant satisfies the court that circumstances exist that make the order appropriate; and
- (b) in the case of an order under subsection (2), the applicant also satisfies the court that the applicant has acted, and is acting, in good faith and with due diligence.

Restriction

(4) Orders doing anything referred to in subsection (1) or (2) may only be made under this section.

Interim financing

11.2 (1) On application by a debtor company and on notice to the secured creditors who are likely to be affected by the security or charge, a court may make an order declaring that all or part of the company’s property is subject to a security or charge — in an amount that the court considers appropriate — in favour of a person specified in the order who agrees to lend to the company an amount approved by the court as being required by the company, having regard to its cash-flow statement. The security or charge may not secure an obligation that exists before the order is made.

Priority — secured creditors

(2) The court may order that the security or charge rank in priority over the claim of any secured creditor of the company.

Priority — other orders

(3) The court may order that the security or charge rank in priority over any security or charge arising from a previous order made under subsection (1) only with the consent of the person in whose favour the previous order was made.

Factors to be considered

(4) In deciding whether to make an order, the court is to consider, among other things,

- (a) the period during which the company is expected to be subject to proceedings under this Act;
- (b) how the company’s business and financial affairs are to be managed during the proceedings;

- (c) whether the company's management has the confidence of its major creditors;
- (d) whether the loan would enhance the prospects of a viable compromise or arrangement being made in respect of the company;
- (e) the nature and value of the company's property;
- (f) whether any creditor would be materially prejudiced as a result of the security or charge; and
- (g) the monitor's report referred to in paragraph 23(1)(b), if any.

Additional factor — initial application

(5) When an application is made under subsection (1) at the same time as an initial application referred to in subsection 11.02(1) or during the period referred to in an order made under that subsection, no order shall be made under subsection (1) unless the court is also satisfied that the terms of the loan are limited to what is reasonably necessary for the continued operations of the debtor company in the ordinary course of business during that period.

Court may order security or charge to cover certain costs

11.52 (1) On notice to the secured creditors who are likely to be affected by the security or charge, the court may make an order declaring that all or part of the property of a debtor company is subject to a security or charge — in an amount that the court considers appropriate — in respect of the fees and expenses of

- (a) the monitor, including the fees and expenses of any financial, legal or other experts engaged by the monitor in the performance of the monitor's duties;
- (b) any financial, legal or other experts engaged by the company for the purpose of proceedings under this Act; and
- (c) any financial, legal or other experts engaged by any other interested person if the court is satisfied that the security or charge is necessary for their effective participation in proceedings under this Act.

Priority

(2) The court may order that the security or charge rank in priority over the claim of any secured creditor of the company.

Restriction on disposition of business assets

36 (1) A debtor company in respect of which an order has been made under this Act may not sell or otherwise dispose of assets outside the ordinary course of business unless authorized to do so by a court. Despite any requirement for shareholder approval, including one under federal or provincial law, the court may authorize the sale or disposition even if shareholder approval was not obtained.

Notice to creditors

(2) A company that applies to the court for an authorization is to give notice of the application to the secured creditors who are likely to be affected by the proposed sale or disposition.

Factors to be considered

- (3) In deciding whether to grant the authorization, the court is to consider, among other things,
- (a) whether the process leading to the proposed sale or disposition was reasonable in the circumstances;
 - (b) whether the monitor approved the process leading to the proposed sale or disposition;
 - (c) whether the monitor filed with the court a report stating that in their opinion the sale or disposition would be more beneficial to the creditors than a sale or disposition under a bankruptcy;
 - (d) the extent to which the creditors were consulted;
 - (e) the effects of the proposed sale or disposition on the creditors and other interested parties; and
 - (f) whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.

Additional factors — related persons

(4) If the proposed sale or disposition is to a person who is related to the company, the court may, after considering the factors referred to in subsection (3), grant the authorization only if it is satisfied that

- (a) good faith efforts were made to sell or otherwise dispose of the assets to persons who are not related to the company; and
- (b) the consideration to be received is superior to the consideration that would be received under any other offer made in accordance with the process leading to the proposed sale or disposition.

Related persons

(5) For the purpose of subsection (4), a person who is related to the company includes

- (a) a director or officer of the company;
- (b) a person who has or has had, directly or indirectly, control in fact of the company; and
- (c) a person who is related to a person described in paragraph (a) or (b).

Assets may be disposed of free and clear

(6) The court may authorize a sale or disposition free and clear of any security, charge or other restriction and, if it does, it shall also order that other assets of the company or the proceeds of the sale or disposition be subject to a security, charge or other restriction in favour of the creditor whose security, charge or other restriction is to be affected by the order.

Restriction — employers

(7) The court may grant the authorization only if the court is satisfied that the company can and will make the payments that would have been required under paragraphs 6(5)(a) and (6)(a) if the court had sanctioned the compromise or arrangement.

Restriction — intellectual property

(8) If, on the day on which an order is made under this Act in respect of the company, the company is a party to an agreement that grants to another party a right to use intellectual property that is included in a sale or disposition authorized under subsection (6), that sale or disposition does not affect that other party's right to use the intellectual property — including the other party's right to enforce an exclusive use — during the term of the agreement, including any period for which the other party extends the agreement as of right, as long as the other party continues to perform its obligations under the agreement in relation to the use of the intellectual property.

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
R.S.C. 1985, c.C-36 AS AMENDED
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT
OF TRINITY RAVINE COMMUNITY INC.

Court File No.: CV-2

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL DIVISION)

Proceeding commenced by

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