

**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 PLANET ORGANIC HEALTH CORP. AND  
DARWEN HOLDINGS LTD.

APPLICANTS

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**MOTION RECORD**  
**(RETURNABLE ON JUNE 4, 2010)**

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**SUPERIOR COURT OF JUSTICE**  
**(Commercial List)**

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*ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

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**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**(Commercial List)**

IN THE MATTER OF THE *COMPANIES' CREDITORS*  
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AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF PLANET ORGANIC HEALTH CORP. AND  
DARWEN HOLDINGS LTD.

APPLICANTS

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**MOTION RECORD**  
**(RETURNABLE ON JUNE 4, 2010)**

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TAB 1

Court File No. 10-8699-00CL

**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 PLANET ORGANIC HEALTH CORP. and DARWEN  
HOLDINGS LTD.

APPLICANTS

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**NOTICE OF MOTION**  
**(returnable on June 4, 2010)**

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The Applicants, Planet Organic Health Corp. ("Planet Organic") and Darwen Holdings Ltd., will make a motion to the Honourable Mr. Justice Morawetz of the Ontario Superior Court of Justice (Commercial List) on Friday, June 4, 2010 at 10:00am or as soon after that time as the motion can be heard at 330 University Avenue, Toronto, Ontario, M5G 1R8.

**PROPOSED METHOD OF HEARING:** The motion is to be heard orally.

**THE MOTION IS FOR:**

- (a) an Order abridging time for service of the Notice of Motion and Motion Record in respect of this motion and dispensing with further service thereof;
- (b) an Order approving the acquisition of substantially all of the assets of the Applicants pursuant to an Acquisition Agreement, dated May 19, 2010 between



the Applicants and The Catalyst Capital Group Inc. on behalf of funds management by it (“Catalyst”) and providing a vesting order in connection therewith in the form of the draft Approval and Vesting Order attached hereto at tab 4;

- (c) an Order authorizing the Applicants to downsize/shut down the parts of its business operation as contemplated by the Acquisition Agreement;
- (d) an Order sealing a confidential summary prepared by Planet Organic’s financial advisor of all the offers received by the Applicants until after the closing of the transaction between the Applicants and Catalyst or further order of the Court (“Bid Summary”);
- (e) an Order substantially in the form of the draft Claims Order attached at tab 5, establishing a process for the filing of claims against the Applicants’ current and former officers and directors, and setting a claims bar date on the later of (i) June 21, 2010, (ii) 21 days after the closing of the acquisition by Catalyst, or (iii) such later date as may be ordered by the Court;
- (f) an Order approving Deloitte & Touche Inc.’s (the “Monitor”) First, Second and Third Reports to the Court and the actions and conduct described therein; and
- (g) such further and other relief as counsel may request and this Honourable Court may deem just.

## THE GROUNDS FOR THE MOTION ARE:

### A. Background

1. Planet Organic is a TSX Venture Exchange listed publicly traded corporation, incorporated under the *Business Corporations Act* (Alberta) (ticker symbol: POH: TSX-V) and is a leading Canadian/US retailer of organic products.
2. Planet Organic has retail operations across Canada, in Ontario, British Columbia, Nova Scotia and Alberta which operate under the brand name Planet Organic Market (“POM”) and retail operations in the United States (in New York State and Connecticut), which operate through its wholly owned subsidiary, Planet Organic Holding Corp. (the “Holding Corp”), dba Mrs. Green’s Natural Markets (“Mrs. Green’s”).
3. Planet Organic had borrowed significantly to finance its growth and, as a result, had several long term debt instruments. In early 2009, Planet Organic breached the financial covenants under the loan agreements with its secured lenders, and after the expiry of a forbearance period in November 2009, the secured lenders were in a position to declare all the loans in default and demand payment.
4. Catalyst acquired by way of assignment all of the secured indebtedness owed by Planet Organic on or about April 20, 2010. As a result, Catalyst is now Planet Organic’s senior secured lender. As at the date of the granting of the Initial Order, Catalyst was owed approximately US\$32.6 million. Catalyst has recently made demand and Planet Organic is unable to repay said debt.

5. On April 29, 2010, Planet Organic and Darwen commenced an application under the *Companies' Creditors Arrangement Act (CCAA)* with the support of Catalyst and were granted the Initial Order which provided, *inter alia*, a stay of proceedings in favour of the Applicants until May 27, 2010. By further order of the court, the stay of proceedings was extended to June 18, 2010.

#### **B. Sales Process**

6. In order to address its financial defaults, deteriorating financial performance and highly leveraged business, Planet Organic has over the past year conducted a comprehensive process in which attempts were made to restructure or refinance the business, and then more recently, to down-size and sell Planet Organic as a going concern.
7. Planet Organic, with the assistance of its advisors, solicited and obtained multiple expressions of interest. This process resulted in sales of the non-core divisions of Planet Organic which reduced the outstanding indebtedness to the secured lenders.
8. Planet Organic, in conjunction with its advisors, has made significant efforts to sell its core assets (POM and Mrs. Green's) over the past year. Over 130 potential purchasers were contacted and of those, 51 parties signed non-disclosure agreements and were granted access to an online data room. Eleven (11) parties submitted indications of interest and, ultimately, six (6) formal bids received for POM and/or Mrs. Green's on or about January 8, 2010.
9. Planet Organic requested revised bids by January 25, 2010, following which Planet Organic's Board of Directors made a good faith determination that the offer from

Catalyst for substantially all of the assets of Planet Organic (both the POM and Mrs. Green's stores) was the best and most viable offer.

10. Nevertheless, Planet Organic went back to all the bidders again in early March and in early April 2010 to see if any would improve their offer, including to Planet Organic's majority shareholder, Mr. Francisco. No better offers were received.
11. Planet Organic engaged in good faith and arms' length negotiations with the Catalyst in reaching the Acquisition Agreement. The Monitor and/or its counsel were present throughout the negotiations and the Monitor supports the approval of the acquisition by this Court. The agreement is commercially reasonable and in the best interest of Planet Organic and its stakeholders in that:
  - (i) the jobs of the majority of employees are preserved;
  - (ii) the obligations owed to the overwhelming majority of trade creditors will be assumed by Catalyst;
  - (iii) it represents a fair and reasonable valuation of the assets of Planet Organic;
  - (iv) the sales process realized maximum value for Planet Organic's assets;
  - (v) the acquisition value offered by Catalyst exceeds the liquidation or going concern value of Planet Organic;
  - (vi) other efforts to restructure Planet Organic have been unsuccessful; and
  - (vii) it preserves an organic and natural foods retailer for the benefit of Canadian and US consumers.

### **C. Claims Process**

12. Upon closing of the Acquisition Agreement, the parties have agreed to a cash reserve that would cover certain liabilities including claims that fall under the Directors and Officer's Charge as defined by the Initial Order.
13. The Applicants are seeking a claims process in order to definitively determine all claims against the officers and directors that would be subject to the Directors and Officer's Charge in order to address those claims in a timely fashion and eventually release the cash reserve to Catalyst.

**D. Sealing and Miscellaneous Grounds**

14. The Bid Summary contains confidential information which could have a negative effect on further sale efforts by Planet Organic in the event that the transaction with Catalyst is not completed and sealing order pending the closing of the transaction with Catalyst or further court order is appropriate.
15. The provisions of the CCAA and Rules 2.03, 3.02, 16 and 37 of the Rules of Civil Procedure.
16. Such further and other grounds as counsel may advise and this Honourable Court permit.

**THE FOLLOWING DOCUMENTARY EVIDENCE:** will be used at the hearing of the motion:

- (a) Affidavit of Darren Krissie sworn 20, 2010;
- (b) Affidavit of Tripp Baird sworn May 20, 2010;
- (c) Third Report of the Monitor; and

- (d) such further and other materials counsel may advise and this Honourable Court may permit.

May 21, 2010

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Surrey BC, V3S 6K4
- AND TO: WASTE SERVICES**  
185 Strthmoor Way  
Sherwood Park AB, T8H 1Z7
- AND TO: CANADIAN LINEN AND UNIFORM SERVICE**  
947 North Park Street  
Victoria BC, V8T 1C5  
Tel: (250) 384-8166  
Fax: (250) 384-8191
- AND TO: DEPARTMENT OF JUSTICE**  
The Exchange Tower  
130 King St. West  
Suite 3400, PO Box 36  
Toronto, ON  
M5X 1K6
- Diane Winters**  
Tel: (416) 973-3172  
Fax: (416) 973-0810  
Email: diane.winters@justice.gc.ca

**AND TO: MINISTRY OF FINANCE (ONTARIO)**

Legal Services Branch, PO Box 620  
33 King Street West, 6<sup>th</sup> Floor  
Oshawa, ON  
L1H 8E9

**Kevin J. O'Hara**

Email: kevin.ohara@ontario.ca

**AND TO: HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF  
BRITISH COLUMBIA AS REPRESENTED BY THE MINISTER  
OF FINANCE**

(PST/BC/Income Tax)  
Revenue Programs Division  
Room 153  
501 Belleville Street  
Victoria, BC  
V8V 1X4

Tel: (250) 387-3751

Fax: (250) 387-5594

Email: fin.minister@gov.bc.ca

**AND TO: MINISTRY OF ATTORNEY GENERAL**

Revenue and Taxation Group  
Legal Services Branch  
601 – 1175 Douglas Street  
PO Box 9289 Stn Prov Govt  
Victoria, BC  
V8W 9J7

**Aaron Welch**

Tel: (250) 356-8589

Fax: (250) 387-0700

Email: Aaron.Welch@gov.bc.ca

**AND TO: HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF  
ALBERTA AS REPRESENTED BY THE MINISTER OF FINANCE**

(Income Tax)

Tax and Revenue Administration  
Alberta Finance and Enterprise  
9811 - 109 Street  
Edmonton, AB  
T5K 2L5

Tel: (780) 427-3044

Fax: (780) 427-0348

Email: tra.revenue@gov.ab.ca mailto:tra.pledge@gov.ab.ca

**AND TO: HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF  
SASKATCHEWAN AS REPRESENTED BY THE MINISTER OF  
FINANCE (PST Saskatchewan)**

Revenue Division  
2350 Alberta Street  
5<sup>th</sup> Floor  
Regina, SK  
S4P 4A6  
Fax: (306) 787-0241

**AND TO: MINISTRY OF FINANCE (NOVA SCOTIA)**

PO Box 187  
1723 Hollis St.,  
Halifax, NS  
B3J 2N3  
Tel: (902) 424-5554  
Fax: (902) 424-0635  
Email: FinanceWeb@gov.ns.ca

**AND TO Alpine Building Maintenance Inc.**

Sun Life Plaza W Tower  
2600 144 4<sup>th</sup> Avenue  
Calgary, AB  
2TP 3N4



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  
PLANET ORGANIC HEALTH CORP. AND DARWEN HOLDINGS LTD.

Court File No: 10-8699-00CL

APPLICANTS

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

Proceeding commenced at Toronto

**NOTICE OF MOTION**

**BAKER & MCKENZIE LLP**  
Barristers and Solicitors  
181 Bay Street, P.O. Box 874  
Suite 2100  
Toronto, Ontario  
M5J 2T3

**Frank Spizzirri (LSUC#: 37327F)**  
Tel.: 416.865.6940  
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**Michael Nowina (LSUC#: 496330)**  
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Fax: 416.863.6275

Lawyers for the Applicants

TAB 2

**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 PLANET ORGANIC HEALTH  
CORP. AND DARWEN HOLDINGS LTD.

APPLICANTS

**AFFIDAVIT OF DARREN KRISSIE**

(Sworn May 20, 2010)

I, **DARREN KRISSIE** of the City of Edmonton, in the Province of Alberta,  
MAKE OATH AND SAY:

1. I am a co-founder, current Executive Vice-President, and one member of the two-member Office of the Chief Executive Officer ("OCEO") of the Applicant, Planet Organic Health Corp. ("Planet Organic"). Prior to my appointment as EVP, I served as the Vice-President Business Development and Chief Financial Officer of Planet Organic since its inception. In addition, I am an director and an officer of the Applicant, Darwen Holdings Ltd. ("Darwen"), which is a subsidiary of Planet Organic. As such, I have personal knowledge of the matters to which I hereinafter depose, save and except where stated to be based on information and belief, in which case, I do verily believe the same to be true.

2. Unless otherwise indicated, all monetary amounts referenced in this affidavit are expressed in Canadian dollars.

3. I swear this affidavit in support of a motion for orders, *inter alia*:
- (a) approving an acquisition agreement between Planet Organic and which provides for a going-concern acquisition of substantially all of the assets and operations of Planet Organic and Darwen by The Catalyst Capital Group Inc., on behalf of funds managed by it (or its permitted assigns) (collectively, "Catalyst") and vesting in and to Catalyst all of the acquired assets free and clear of all encumbrances other than those assumed;
  - (b) approving a procedure for calling and determination of all claims against the directors and officers of the Applicants, including approving a claims bar date; and
  - (c) authorizing and empowering Deloitte & Touche Inc. in its capacity as court-appointed monitor of the Applicants to undertake certain responsibilities in connection with the claims process.
4. The reasons and events leading up to the application for CCAA protection are more particularly set out in my Affidavit sworn April 29, 2010 ("April 29 Krissie Affidavit") in support of the application under the CCAA. A copy of which affidavit is attached hereto (without exhibits) as **Exhibit "A"**. A copy of Initial Order granted by the Honourable Mr. Justice Morawatez on April 29, 2010 is attached hereto as **Exhibit "B"**.
5. Unless otherwise stated, defined terms used in this affidavit are the same as in the April 29 Krissie Affidavit.

**A. Overview**

6. Planet Organic is a TSX Venture Exchange listed publicly traded corporation, incorporated under the *Business Corporations Act* (Alberta) (ticker symbol: POH: TSX-V) and is a leading Canadian/US retailer of organic products.

7. Planet Organic has retail operations across Canada, in Ontario, British Columbia, Nova Scotia and Alberta which operate under the brand name Planet Organic Market ("POM") and retail operations in the United States (in New York State and Connecticut), which operate through its wholly owned subsidiary, Planet Organic Holding Corp. (the "Holding Corp"), dba Mrs. Green's Natural Markets ("Mrs. Green's").

8. A more detailed description of Planet Organic and its business is set out in paragraphs 4 to 10 of the April 29 Krissie Affidavit.

9. In early 2009, Planet Organic breached the financial covenants under the loan agreements with its secured lenders, including The Toronto-Dominion Bank ("TD"), Ares Capital Corporation ("Ares") and Partnership Capital Growth Fund I (collectively, the "Secured Lenders"). After the expiry of a forbearance period in November 2009, the Secured Lenders were in a position to declare all the loans in default and demand payment. Planet Organic repaid TD in full through the Non-Core Asset Sales on or about March 17, 2010, as detailed in the April 29 Krissie Affidavit.

10. As discussed in greater detail below, Catalyst acquired by way of assignment all of the secured indebtedness owed by Planet Organic on or about April 20, 2010. As a result, Catalyst is now Planet Organic's senior secured lender. As at the date of the granting of the Initial Order, Catalyst is owed approximately US\$32.6 million.

11. On April 28, 2010, Catalyst made demand for repayment of the outstanding indebtedness and Planet Organic was and is unable to repay said debt. Attached hereto and marked as **Exhibit "C"** is a true copy of the demand.

12. On April 29, 2010, Planet Organic and Darwen commenced an application under the *Companies' Creditors Arrangement Act (CCAA)* with the support of Catalyst and were granted the Initial Order which provided, *inter alia*, a stay of proceedings in favour of the Applicants until May 27, 2010. By further court order, the stay of proceedings was extended to June 18, 2010.

13. In the April 29 Krissie Affidavit, I referred to a liquidation analysis prepared by PriceWaterhouseCoopers LLP ("PWC") when, in fact, PWC prepared a going-concern valuation of Planet Organic. The liquidation analysis was generated internally by Planet Organic.

14. Pursuant to the Initial Order, Deloitte & Touche Inc. was appointed the monitor ("Monitor") of the Applicants.

#### **B. Marketing and Sales Efforts**

15. In an effort to address its covenant defaults, Planet Organic explored a number of different options for the business prior to seeking court protection under the *CCAA*. In early 2009, Planet Organic engaged Partnership Capital Growth LLC ("PCG"), an investment bank based in San Francisco, California, to act as an advisor for the purpose of reorganizing, recapitalizing the business or other restructuring alternatives, including a sale and/or divestiture process. PCG was selected by the Board of Directors based on its industry focus and expertise in the healthy living space generally and in natural and

organic food/retail specifically, its track record of success, and existing knowledge of Planet Organic and investors focused in the area.

16. Prior to becoming the financial advisor for Planet Organic, through its affiliate Partnership Capital Growth Fund I LP, PCG participated in providing secured financing of US\$11 million to Planet Organic by way of convertible notes. Brent Knudsen who is a principal of PCG is also a member of the Planet Organic's Board of Directors and OCEO.

17. The extensive marketing efforts undertaken by Planet Organic in conjunction with with PCG are detailed in the April 29 Krissie Affidavit and in the Affidavit of Tripp Baird sworn May 20, 2010 (the "Baird May 20 Affidavit"). Mr. Baird is a principal of PCG and had primary responsibility for the marketing and sales efforts.

### **C. Catalyst Offer**

18. On or about January 8, 2010, Planet Organic received six (6) formal offers including from Catalyst which made a formal offer for both the POM and Mrs. Green's stores. As discussed in greater detail in the Baird May 20 Affidavit, Planet Organic advised all of the bidders about the criteria that would be used to evaluate the bids and requested that all bidders submit additional detail and clarification by January 25, 2010.

19. I am advised by Mr. Baird and believe that it is Mr. Baird's view that the bid submitted by Catalyst was the best overall bid received, in terms of the proposed purchase price, its ability to satisfy the claims of stakeholders (including Secured Lenders, most unsecured creditors and employees) and with respect to the ability of Catalyst to close the transaction. It is also my view that the bid by Catalyst was the best overall bid received by Planet Organic.

#### **D. Acquisition Agreement**

20. On May 19, 2010, following extensive negotiations, the parties finalized the terms of an agreement for the acquisition of assets and operations of Planet Organic and Darwen (the "Acquisition Agreement"). Both before and after its appointment, the Monitor and/or its counsel have been present during the negotiations of the Acquisition Agreement. Planet Organic and Darwen have executed the Acquisition Agreement which is subject to approval of this Honourable Court. Attached hereto and marked as **Exhibit "D"** is a copy of the Acquisition Agreement.

21. Unless otherwise defined herein, all capitalized terms used in this Section D shall have the meanings set out in the Acquisition Agreement.

22. As discussed in greater detail in paragraph 27 below, the Acquisition Agreement contemplates that Catalyst will acquire certain specified assets as consideration for the assumption of the Assumed Obligations (discussed below) and that Catalyst will also have enforced its security and will acquire the Applicants' other assets in consequence of the failure to pay approximately US\$19.2 million in respect of principal and interest owing under the Note Purchase Agreement, dated July 3, 2007, as amended. The effect of the transaction will be that no obligations under the Note Purchase Agreement will be owing.

23. In addition, Catalyst will deliver on closing a release to Planet Organic of its obligations under the Guarantee Agreement dated July 3, 2007 in respect of the Amended and Restated Term Loan Agreement, dated November 30, 2007, as amended (the "Term B Credit Agreement").



24. Pursuant to the Acquisition Agreement, Catalyst has agreed to offer employment to the majority of Planet Organic's current employees, to acquire substantially all of Planet Organic's contracts and leases and to assume substantially all of the obligations thereunder, and to assume all liabilities to Planet Organic's trade creditors, with a view to continuing the business, including Holding Corp's US business, Mrs Green's, as a going concern.

25. Darwen's operating business was sold pursuant to a non-core asset sale which closed prior to the granting of the Initial Order and which is discussed in greater detail in the April 29 Krissie Affidavit. Accordingly, the only assets that Catalyst will acquire from Darwen are certain accounts receivable.

26. Under the Acquisition Agreement, the only operating asset that will not be acquired is the Vaughan Lease (as defined below). Details relating to the history of Planet Organic's negotiations with the landlord in respect of the Vaughan Lease are also discussed below.

27. Catalyst's acquisition of the assets of Planet Organic and Darwen will take place as follows:

- (a) First, a cash reserve (the "Cash Reserve") will be set aside to pay for:
  - (i) any claims of employees under subsection 6(5)(a) of the CCAA, to the extent not paid by Planet Organic or Darwen

or assumed by Catalyst on the Closing Date, which amounts are expected not to exceed \$75,000;

- (ii) obligations secured by the administration charge approved of in the Initial Order to the extent required for the completion of the CCAA case, in an aggregate amount not to exceed \$300,000 after the Closing Date;
- (iii) obligations secured by the Directors and Officer's Charge approved of in the Initial Order arising prior to the Closing Date, in an aggregate amount not to exceed \$500,000; and
- (iv) obligations of Planet Organic or Darwen to pay the PCG Transaction Fee as defined in the letter agreement dated April 20, 2010 between PCG and Catalyst which is attached as Exhibit "B" to the Baird May 20 Affidavit.

(b) Second, as consideration for assuming the Assumed Obligations, Catalyst will receive the Cash and Cash Equivalents (less the amount of the Cash Reserve), Accounts Receivable, Tax Refunds, the Holding Corp. Shares, and other designated Assets prior to the Closing Date.

(c) Finally, as a result of Planet Organic's and Darwen's failure to pay the obligations under the Note Purchase Agreement owing to Catalyst, Catalyst will acquire all right, title and interest in and to

the assets of Planet Organic and Darwen (other than the assets referred to above in (b)).

D1. Employees

28. As noted above, the Acquisition Agreement provides that Catalyst will offer employment to the majority of employees of Planet Organic on terms and conditions which in the aggregate are no less favourable than under their current employment terms (the "Transferred Employees"). Catalyst will assume the wages, vacation pay, Source Deductions, or benefit payments to insurers owing as of the Closing Date to those Planet Organic employees who have been offered employment.

29. As discussed below, Catalyst will not be acquiring the Vaughan Lease (as defined below). Accordingly, Catalyst will not be offering employment to the 27 part-time and 18 full-time employees currently employed at Planet Organic's Vaughan store, which employees will be terminated prior to Closing (the "Excluded Employees"). However, the Excluded Employees will be compensated as follows:

- (a) each Excluded Employee will have a claim against the Cash Reserve for the employee priority claims set out in subsection 6(5)(a) of the CCAA. Planet Organic does not expect the Excluded Employee claims under subsection 6(5)(a)(i) (the WEPPA claims) to exceed the statutory maximum; and
- (b) Catalyst will assume Planet Organic's liability to each Excluded Employee for termination payments up to a cap of \$35,000. Planet Organic does not anticipate that the amounts owing to the Excluded

Employees for termination payments will exceed \$35,000 in the aggregate.

D2. Assumed Obligations

30. Pursuant to the Acquisition Agreement, on the Closing Date, Catalyst will assume the "Assumed Obligations", which includes all obligations of the Planet Organic under certain contracts, leases and licences that are assigned to Catalyst.

31. A summary of the liabilities assumed is set out below:

- (a) the liabilities of Planet Organic or Darwen under and in connection with the contracts, licences and leases that are assigned under the Acquisition Agreement, other than those contracts set out in the Excluded Assets schedule.
- (b) liabilities associated with the Transferred Employees;
- (c) the liabilities associated with the Excluded Employees (as described above); and
- (d) all trade liabilities and obligations incurred by Planet Organic or Darwen in the ordinary course of business for the supply of goods and services to their business.

32. In respect of the contracts, licenses and leases assigned under the Acquisition Agreement, I believe that Catalyst is able to perform the obligations under such contracts, leases and licenses and I understand that Catalyst will remedy all financial defaults under such contracts, licenses and leases as more specifically set out in Schedule 1.1(17 and

1.1(41) of the Acquisition Agreement. The assigned contracts, licenses and leases are essential for the continued operation of the Planet Organic business and I believe that it is appropriate for these agreements to be assigned to Catalyst.

D3. Excluded Liabilities

33. The Acquisition Agreement provides that certain obligations of Planet Organic and Darwen will not be acquired by Catalyst (the "Excluded Liabilities"). A summary of the Excluded Liabilities is as follows:

- (a) liabilities of Planet Organic or Darwen for legal, accounting, audit and investment banking fees, brokerage commissions and any other expenses incurred by Planet Organic or Darwen with respect to the transaction contemplated by the Acquisition Agreement;
- (b) liabilities of Planet Organic or Darwen with respect to borrowed money or otherwise;
- (c) liabilities of Planet Organic or Darwen: (i) accruing prior to the Time of Closing (other than liabilities arising from financial defaults) under the contracts, licences and leases to the extent that such liabilities are not disclosed in the schedules to the Acquisition Agreement or are contingent at the Time of Closing;
- (d) liabilities of Planet Organic or Darwen relating to product liability claims arising out of the conduct of the business prior to the Closing Time. Planet Organic is currently not aware of any such liabilities;

- (e) liabilities for taxes payable or remittable by Planet Organic or Darwen; and
- (f) liabilities under the following excluded contracts:
  - (i) the Vaughan Lease discussed in detail below;
  - (ii) the Nanaimo Lease which is an obligation of Darwen leftover after the sale of its operating business and which is currently the subject of a commercial dispute – obligations under this lease are estimated at \$13,000;
  - (iii) the Note Purchase Agreement and the Term B Credit Agreement (which provide for Planet Organic's senior credit facilities);
  - (iv) the contracts relating to the retainer of PCG; and
  - (v) certain guarantees/indemnities granted by Planet Organic in favour of the landlords under certain leases that were assigned pursuant to Planet Organic's prior sale of the Healthy's business.

D4. Real Property Leases

34. Pursuant to the Acquisition Agreement, the lease between Planet Organic and 8000 Bathurst Street Realty Inc. in respect of a leased property at 8020 Bathurst Street in Vaughan, Ontario, (the "Vaughan Lease") will be disclaimed prior to the Closing Date. This store opened in March 2008 and the lease runs until December 31, 2022. This store

has a larger footprint than most other POM stores at 13,000 sq. ft. (as compared to the average 9,000 sq. ft. for other POM stores) and the rent is higher at \$22 per sq. ft. than the average of \$13-19 per sq. ft. for other POM stores. This location is not producing sufficient customer traffic to be profitable and Planet Organic has been unable to negotiate any concessions with the landlord. It is intended that the inventory and equipment at this location will be moved to other locations and Catalyst has agreed to assume trade payables incurred in relation to the Vaughan store under the Acquisition Agreement. The landlord will be given notice of this motion.

D5. Conditions of Closing

35. A summary of the principal conditions to closing are as follows:

- (a) the Initial Order shall not be stayed, vacated, reversed or amended without the prior written consent of Catalyst;
- (b) the Approval and Vesting Order shall have been granted by the Court on or before June 4, 2010 and shall not have been stayed, varied or vacated, and no order shall have been issued to restrain or prohibit the completion of the transaction as contemplated by the Acquisition Agreement;
- (c) the D&O Claims Procedure Order shall have been granted by the Court on date on which the Approval and Vesting Order is granted and shall not have been stayed, varied or vacated;

- (d) Planet Organic and Darwen shall not have made any payments or distributions except in accordance with the 13-week cash flow forecast filed with the Court in connection with Planet Organic and Darwen's motion for the Initial Order (subject to an allowed 15% cumulative variance from the weekly payments and distributions set out in such 13-week cash flow), other than with the prior consent of Catalyst; and
- (e) the Monitor shall have delivered to Catalyst a written confirmation that, subject only to the satisfaction of the other conditions set out in this Article 6 of the Acquisition Agreement, the Monitor will deliver the Monitor's Certificate contemplated by, and in the form attached to, the Approval and Vesting Order.

**E. Transaction with Purchaser is the Best Option Available**

36. The proposed sale has the benefit of preserving Planet Organic's business as a going concern which has the following consequential benefits:

- (a) the jobs of Planet Organic's employees who accept an offer of employment with Catalyst will be preserved;
- (b) the obligations owed to the overwhelming majority of trade creditors will be paid in full, which is significant in that these unsecured creditors would see substantially reduced recoveries in a liquidation



scenario;

- (c) the obligations under all but one of Planet Organic's operating leases (i.e. the Vaughan Lease) will be assumed by Catalyst;
- (d) the business will be able to exit from its CCAA proceeding on an expedited basis, with no further disruption to its relationships with customers, suppliers and landlords;
- (e) the business will emerge from CCAA with a significantly reduced debt load, which will in turn, support a healthier and more sustainable business in the future; and
- (f) preserving an organic and natural foods retailer for the benefit of Canadian and US consumers.

37. The Acquisition Agreement represents the best overall offer received by Planet Organic in its pre-CCAA sales process. The Catalyst transaction maximizes value for stakeholders and ensures a smooth and rapid exit from the CCAA proceeding. Moreover, the transaction is supported by Catalyst, who as Planet Organic's senior secured lender, has the primary economic interest in the proceedings.

38. As set out in the affidavit of Baird May 20 Affidavit, Planet Organic conducted a long and comprehensive sales process prior to filing under the CCAA. The market was broadly canvassed and the best received was (and remains) the Catalyst transaction. I do not believe that a further sales process is necessary, given the degree to which the Planet Organic business has been marketed. Indeed, a further sales process would likely result in

the incurrence of significant costs, a delay in exiting the CCAA proceeding and the possibility that Planet Organic's business will deteriorate as customers, suppliers and other stakeholders begin to lose confidence in a going-concern solution.

39. A summary prepared by Planet Organic of the consideration given by Catalyst under the Acquisition Agreement is attached and marked as "Exhibit E".

**F. Claims Process**

40. Upon closing of the Acquisition Agreement, the parties have agreed to a Cash Reserve (described above) that would cover certain liabilities including claims that fall under the Directors and Officer's Charge as defined by the Initial Order.

41. The purpose of the claims process is to definitively determine all claims against the officers and directors that would be subject to the Directors and Officer's Charge in order to address those claims in a timely fashion and eventually release the cash reserve. Accordingly, the initiation of a claims process is both necessary and desirable at this time. The proposed claims process provides for:

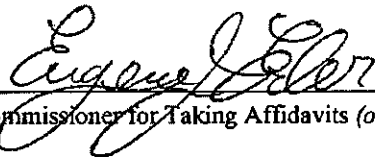
- (a) a call for all claims which would fall under the Directors and Officer's Charge as defined by the Initial Order up to and including the Closing Date (the "Claims");
- (b) the publication by the Monitor on two occasions in The Globe and Mail, National Post, the Toronto Star, Calgary Herald and Edmonton Journal of a notice regarding the call for Claims;
- (c) the posting of notice of claim and such other materials as the

Monitor may consider appropriate or desirable on it's website; and

- (d) a claims bar date on the later of (i) June 21, 2010, (ii) 21 days after the Closing Date, or (iii) such later date as may be ordered by the Court, after which creditors will be forever barred from making or enforcing any Claims against the officers and directors.

42. I swear this affidavit in support of a motion for relief outlined in paragraph 4 above and for no other or improper purpose.

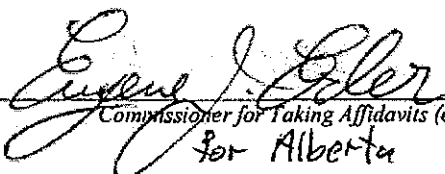
SWORN BEFORE ME at the )  
 City of Edmonton, in the )  
 Province of Alberta )  
 this 20<sup>th</sup> day of May, 2010. )

  
 Commissioner for Taking Affidavits (or as may be)

EUGENE J. ERLER  
 BARRISTER AND SOLICITOR  
 AND NOTARY PUBLIC  
 for Alberta

  
 Darren Krissie

This is Exhibit "A" referred to in the Affidavit of Darren Krissie,  
sworn before me this 20<sup>th</sup> day of May, 2010.

  
\_\_\_\_\_  
*Commissioner for Taking Affidavits (or as may be)*  
*for Alberta*

EUGENE J. ERLER  
BARRISTER AND SOLICITOR  
AND NOTARY PUBLIC

Court File No.

**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 PLANET ORGANIC HEALTH  
CORP. AND DARWEN HOLDINGS LTD.**

**APPLICANTS**

**AFFIDAVIT OF DARREN KRISSIE**

**(Sworn April 29, 2010)**

**I, DARREN KRISSIE of the City of Edmonton, in the Province of Alberta,  
MAKE OATH AND SAY:**

1. I am a co-founder, current Executive Vice-President, and one member of the two-member Office of the Chief Executive Officer ("OCEO") of the Applicant, Planet Organic Health Corp. ("Planet Organic"). Prior to my appointment as EVP, I served as the Vice-President Business Development and Chief Financial Officer of Planet Organic since its inception. In addition, I am an director and officer of the Applicant, Darwen Holdings Ltd. ("Darwen"), which is a subsidiary of Planet Organic. As such, I have personal knowledge of the matters to which I hereinafter depose, save and except where stated to be based on information and belief, in which case, I do verily believe the same to be true.

2. I swear this affidavit in support of an application under the *Companies' Creditors Arrangement Act* (the "CCAA").

3. Unless otherwise indicated, all monetary amounts referenced in this affidavit are expressed in Canadian dollars.

**I. Background**

**A. Overview of the Business**

4. Planet Organic is a TSX Venture Exchange listed publicly traded corporation, incorporated under the Business Corporations Act (Alberta) (ticker symbol: POH: TSX-V) and is a leading Canadian/US retailer of organic products. Planet Organic has retail operations across Canada, in Ontario, British Columbia, Nova Scotia and Alberta, and retail operations in the United States (in New York State and Connecticut), which operate through its wholly owned subsidiary, Planet Organic Holding Corp. (the "US Holdco"), dba Mrs. Green's Natural Markets ("Mrs. Green's").

5. Planet Organic started as a single store in Alberta in 2001 under the brand name Planet Organic Market ("POM"), with a view to participating in the natural and organic foods segment of the food industry. This industry segment has experienced double-digit annual growth in recent years. This first store was followed by the acquisition of stores located in Victoria, British Columbia, and Calgary, Alberta, which were rebranded as POM stores.

6. POM distinguishes itself from its competition through its commitment to organic and natural products sold in an average store size of approximately 9,000 square feet in

locations with lower population densities and attractive demographics where larger competitors cannot support stores.

7. This early success in Western Canada was followed by a period of expansion through which Planet Organic built a national, natural/organic sales and distribution business. This expansion was accomplished by a series of strategic acquisitions meant to grow and expand the business, summarized as follows:

- (a) in July 2004, Darwen and Sangster's Enterprises Ltd., two (2) companies which operated a chain of 43 franchised small footprint vitamin stores with locations across Canada, were acquired by Planet Organic. These two (2) companies were subsequently amalgamated as Darwen in December 2004 ("Sangster's"). Planet Organic also acquired S-5 Holdings Ltd., a holding corporation which held certain real property leases for the Sangster's retail locations, as part of this transaction;
- (b) in August 2005, Planet Organic acquired 616407 Alberta Ltd. (operating as "Newfound Health"), a franchise chain of supplement and body care locations in Alberta whose operations were subsequently folded into Sangster's;
- (c) in January 2005, Trophic Canada Limited ("Trophic"), one of Canada's leading manufacturers of natural supplements located in Penticton, British Columbia, was acquired by Planet Organic with a view to vertically integrating its vitamin supply into the Planet Organic family and expanding Trophic's retail presence throughout Canada. Trophic was vertically amalgamated with Planet Organic on July 1, 2007;

- (d) in June 2006, Healthy's, The Athletes Edge Inc., Amdek Marketing Inc., and Hatem Inc. (a chain of seven (7) vitamin stores in Toronto), were acquired by Planet Organic. These three entities were amalgamated into Healthy's, The Athletes Edge Inc. on July 1, 2007. Healthy's, The Athletes Edge Inc. was subsequently vertically amalgamated with Planet Organic on January 1, 2010 and became the Healthy's division of Planet Organic;
- (e) in September 2006, Planet Organic acquired The Big Fresh Inc. a single store located in Edmonton, Alberta, which was rebranded as a POM store and was amalgamated with Planet Organic on July 1, 2007; and
- (f) in July 2007, eleven (11) separate legal entities operating as Mrs. Green's Natural Food Markets, Inc., a U.S chain with nine (9) stores in New York state and two (2) stores in Connecticut was acquired along with a management company by Planet Organic through US Holdco which was incorporated for the purpose of making the purchase. Mrs. Green's is a leading small-format natural organic food retailer and its stores are of similar size and concept to the POM stores in Canada.

8. The total combined acquisition cost was approximately \$43 million, a significant portion of which was financed through working capital, term debt and subordinated debt, described in more detail in Section B.4 below. A chart outlining the corporate structure of Planet Organic and its subsidiaries as of January 31, 2010, is attached hereto as Exhibit "A".

9. As set out in greater detail in paragraphs 55 to 58 below, there were a series of subsequent divestiture transactions (the "Non-Core Asset Sales") to pay down debt



during February and March 2010. A chart outlining the current corporate structure of Planet Organic and subsidiaries after completing the Non-Core Asset Sales is attached hereto as Exhibit "B".

10. Darwen is a wholly owned subsidiary of Planet Organic incorporated under the laws of Saskatchewan which operated the "Sangster's" business. As one of the Non-Core Asset Sales, the main assets of the "Sangster's" business were acquired by JAMM Enterprises, Inc. which left Darwen as a non-operating shell company with significant liabilities, as it guaranteed the liabilities of Planet Organic, and a few assets, including accounts receivable.

11. Planet Organic currently operates nine (9) natural food supermarkets in Canada under the POM banner of which six (6) are in Western Canada, two (2) are in Ontario and one (1) is in Nova Scotia. Eleven (11) natural food supermarkets are owned and operated by US Holdco's subsidiaries in the United States under the Mrs Green's brand.

B. Planet Organic's Current Operations

12. Planet Organic is a reporting issuer, as such term is defined pursuant to applicable securities legislation in the Provinces of Alberta and British Columbia. Planet Organic is currently in good standing with the British Columbia and Alberta Securities Commissions.

B.1 Leases

13. The POM stores in Canada and Mrs Green's stores in the United States operate from leased premises. All of the leased premises are owned by arm's length parties. All of the leases are currently in good standing.

**B.2 Employees**

14. There are approximately 500 employees employed in POM stores, of which 300 are full time and 200 are part-time. US Holdco and its subsidiaries in the US, collectively, employ a total of approximately 300 employees of which 90 are full-time and 210 are part-time. All of the employees are currently non-unionized. A recent attempt to unionize the workers at Planet Organic's Port Coquitlam store in British Columbia was unsuccessful.

15. Planet Organic is current with employee related obligations. There are no employee registered or unregistered pension plans.

**B.3. Unsecured Creditors**

16. Planet Organic's unsecured net debt as it appears from its books and records, as at April 22, 2010 is \$1,051,696.77. Planet Organic is current with the majority of its unsecured creditors.

17. As of March 31, 2010, the inter-company payables break down as follows:

- (a) \$1,337,236 is owing to Darwen; and
- (b) \$2,522,027 is owing from US Holdco.

18. Planet Organic is currently a party to the following legal proceedings:

- (a) on January 15, 2010, Ms. Nora Aboudaya commenced an application at the Human Rights Tribunal of Ontario against Planet Organic alleging that she was discriminated against her in the course of her employment and is seeking \$32,500 in financial remedies, and the implementation of policies and training for Planet Organic's staff.

**B.4 Secured Creditors**

19. As mentioned, Planet Organic significantly increased its borrowing to finance the acquisition of Mrs. Green's, the expansion and development of new POM stores, and the upgrading/remodelling of existing facilities. As a result, Planet Organic has several long term debt instruments, including term debt and convertible debt. The debt facilities are denominated in US dollars or Canadian dollars. Some of the debt facilities are recorded on Planet Organic books and some on US Holdco's books.

**B.4.1 The Toronto-Dominion Bank**

20. The Toronto-Dominion Bank ("TD") provided secured loans in the amount of US\$4,000,000 in a Canadian revolving credit commitment, US\$3,500,000 revolving credit commitment and US\$4,000,000 in a term loan (of which US\$2.8 million was drawn). TD was repaid in full on March 17, 2010 from the proceeds of the Non-Core Asset Sales. Following repayment of its loans, TD discharged its security registered against Planet Organic and against the US Holdco.

**B.4.2 Ares Capital Corporation**

21. Ares Capital Corporation arranged for secured financing in the amount of US\$17.5 million in term loans from a series of lenders and, prior to the sale of such loans (as described in paragraph 25), acted as agent for those lenders (Ares Capital Corporation and the lenders are collectively referred to as "Ares") under the terms of the Amended and Restated Term Loan Agreement, dated as of November 30, 2007 (the "Ares Loan"). Attached and marked as Exhibit "C" is a copy of said agreement.

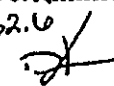
22. Ares and Partnership Capital Growth Fund I LP, a fund owned/operated by an affiliate of PCG (defined below), also arranged secured financing of US\$11 million for Planet Organic by way of convertible notes pursuant to a Note Purchase Agreement, dated July 3, 2007 (the "Ares/PCG Loan"). A copy of the Note Purchase Agreement and two (2) convertible notes are attached and marked as Exhibit "D", "E" and "F", respectively.

23. Pursuant to the Ares Loan and Ares/PCG Loan, Planet Organic and its subsidiaries provided security to Ares over all of its assets, including security over US Holdco. As noted above, Darwen guaranteed the obligations of Planet Organic under the Ares Loan.

24. As of the most recent audited financial statements for the fiscal year ended June 30, 2009, Planet Organic owed US\$36,412,069 in long-term debt and notes to these secured creditors as determined under Canadian generally accepted accounting principles. The face value of the debt outstanding at June 30, 2009 was US\$35,683,294. As of March 16, 2010, this number rose to approximately US\$38.5 million. As a result of the Non-Core Asset Sales as of March 17 2010, the Planet Organic debt outstanding to secured creditors was reduced to approximately US\$29.7 million.

**B.4.3 Catalyst Acquisition of Indebtedness**

25. On or about April 20, 2010, The Catalyst Capital Group Inc. ("Catalyst") acquired the Ares Loan, the Ares/PCG Loan and the related security by way of assignment. As a result, Catalyst is now Planet Organic's senior secured lender. As at the date of the swearing of this Affidavit, Catalyst is owed approximately US\$~~30.1~~ million.

\$ 32.6  


#### B.4.4 Other Secured Creditors

26. There are a total of four (4) other secured creditors of Planet Organic who are registered in Alberta and each appears to hold security over specific equipment. There is one (1) other secured creditor of Darwen who is registered in Alberta and who appears to hold security over specific equipment.

#### B.4.5 Personal Property Security Searches

27. Attached hereto for informational purposes are true copies of personal property security searches from each of Ontario, Alberta, British Columbia and Nova Scotia marked as Exhibits "G", "H", "I" and "J", respectively.

#### B.5 Share Capital

28. Planet Organic is authorized to issue an unlimited number of common shares and an unlimited number of preferred shares, of which 34,664,794 common shares have been issued and are outstanding. No preferred shares have been issued.

29. Planet Organic has approved a stock option plan whereby options may be granted to employees, consultants, officers and directors totalling up to 10% of its issued and outstanding common shares. Other than unexercised options expiring, there have been no share option transactions from June 30, 2009 to the date of this Affidavit. There were no warrant transactions from June 30, 2009 to the date of this Affidavit.

30. Mr. Ron Francisco, who is the majority shareholder of Planet Organic, holds approximately 67% of the outstanding shares of Planet Organic and is a controlling shareholder of a major supplier to Planet Organic, Horizon Distributors Ltd.

#### B.6 Governmental Agencies

31. Planet Organic is current on its governmental remittances, including source deductions, GST and provincial sales taxes.

#### B.7 Assets vs. Liabilities

32. Attached and marked as Exhibits "K" and "L" are copies of Planet Organic's last audited financial statement for the year ending June 30, 2009 and the unaudited financial statement for the period ending December 31, 2009.

33. As is evident from both statements, there is significant goodwill associated with the ongoing business, which goodwill would be jeopardized if operations were disrupted.

34. In addition, a liquidation analysis of Planet Organic was undertaken by PricewaterhouseCoopers LLP and suggests that the liquidation value of Planet Organic is substantially less than the secured indebtedness owing to Catalyst.

35. Catalyst has demanded repayment of the loans and Planet Organic is unable to repay said debt.

#### C. Covenant Defaults in 2008 and 2009

36. The recent global economic downturn did not spare POM in Canada or Mrs. Green's in the US. In FY09, POM stores sales increased 5.4%, yet EBITDA declined from positive \$752,042 to negative (\$225,604), primarily related to \$1.4 million of losses at two new Ontario locations in Vaughan and Markham. In the same period, Mrs. Green's experienced 1.4% sales growth, yet with a resulting EBITDA decline of (US\$209,979).

Consolidated EBITDA declined 15% percent between FY2008 and FY2009. Significant EBITDA declines in both Planet Organic and other non-core business units resulted in debt to EBITDA ratios of 6.2 times, well above allowable covenant levels.

37. Under existing debt arrangements, there are five (5) financial covenants that management regularly monitors and then reports on a quarterly basis. The ratios are:

- (a) total leverage ratio;
- (b) senior leverage ratio;
- (c) fixed charge coverage ratio;
- (d) interest coverage ratio; and
- (e) capital expenditure limits ratio.

38. As a result of the economic pressures caused by the general economic downturn, Planet Organic breached its total leverage ratio by December 31, 2008 and by June 30, 2009, the senior leverage ratio and interest coverage ratio had also been breached.

D. Attempts to Raise Capital/Equity in 2008 and Early 2009

39. Early in 2008, after recognizing that the increased leverage and risk would ultimately affect the viability of the business, Planet Organic decided to initiate a process to raise capital and engaged Canaccord Adams to assist in raising equity through a secondary offering. Canaccord Adams secured a proposed investment at \$1.80 to \$2.00 per share which at the time represented an approximately 10% discount to the then average share price. The secondary offering was blocked by Mr Francisco, because I

understand that he did not want any dilution to existing shareholders and/or an offering of less than \$2.00 per share.

40. After several days of negotiations with Mr. Francisco, the Board of Directors authorized a price of \$2.00 per share because Mr. Francisco would not approve a capital raise below that price. Planet Organic, though, was unable to raise any capital at the price of \$2.00 per share.

41. In early 2009, Planet Organic engaged Partnership Capital Growth LLC ("PCG"), an investment bank based in San Francisco, California, to act as advisor for the purpose of reorganizing or recapitalizing the business or other restructuring alternatives, including a sale and/or divestiture process. In addition to being the financial advisor for Planet Organic, through its affiliate Partnership Capital Growth Fund I LP, PCG is a convertible note holder as referenced in paragraph 22 above. Brent Knudsen who is a principal of PCG is also a member of the Planet Organic's Board of Directors and OCEO.

42. As a result of engaging PCG, Planet Organic has had confidential discussions with a broad group of potential investors and buyers in respect of a sale of or investment in Planet Organic. PCG contacted approximately 213 parties in total over the course of its engagement. However, investor interest waned as Planet Organic's performance continued to deteriorate in 2009.

E. Management and Operational Restructuring in Spring-Summer 2009

43. The covenant breaches and declining financial performance resulted in an in-depth operational review that led to several key management and organizational changes.



44. On May 22, 2009, Mr. Francisco was replaced as CEO with a 2-member OCEO of which I am a member along with Mr. Knudsen. The OCEO was appointed by the Board to fulfill the CEO role on an interim basis. Arthur Warsaw, a specialist in company turnarounds, was hired through PCG as a third party consultant to assist in stabilizing the business and advise the OCEO. Mr. Warsaw brings 50 years of experience leading businesses in a variety of industries.

45. Additionally, in light of the poor operating results Mark Craft and Diane Shaskin, VP of Operations and VP of Marketing, respectively, were terminated and replaced by promoting two (2) individuals from within the organization. Mark Craft was a Company founder and a member of the Board of Directors up to this time.

46. In or about June 2009, a 100-Day Operational Plan was instituted by the OCEO and the Board of Directors, which plan included a full review of corporate strategy, operations, and restructuring opportunities. The operational plan included the following key initiatives:

- (a) board & corporate restructuring; including a complete review and assessment of historic and ongoing results which drove management changes;
- (b) rationalizing core business;
- (c) instituting formal reporting packages and controls focused on awarding incremental performance across key functional areas including revenue, EBITDA, inventory turns, and margin;
- (d) implementing a compensation plan that aligned employee performance with corporate objectives;

- (e) implementing a revised and more efficient/targeted marketing program focused on driving traffic including new in-store training, programs, contests aimed at increasing average sale; and
- (f) monitoring ongoing progress through weekly operating calls and holding regular board meetings.

47. Driven by mounting losses and a lack of visible improvement in performance, the OCEO determined to and completed the closure of the POM store in Markham, Ontario. For similar reasons, it determined to close the Healthy's Vaughan store in February 2010 prior to the sale of those assets. The issues facing Planet Organic were reported to the shareholders in the most recent 2008/2009 Annual Report including that a refinancing and/or divestiture strategy may be pursued.

F. Negotiations with Lenders in Fall 2009

48. Negotiations with Planet Organic's lenders began in earnest in September 2009 with a view to finding an option that would allow Planet Organic to continue as a going concern, including the renegotiation or refinancing of its loan agreements and the covenants therein.

49. Planet Organic and Ares entered into Forbearance Agreements dated September 25, 2009. Planet Organic entered into a Forbearance Agreement with TD, dated September 25, 2009. Under the terms of the Forbearance Agreements, Ares and TD agreed to waive their rights to call the loans due to the covenant breaches until November 30, 2009. Attached and marked as Exhibits "M" and "N" are copies of the Forbearance Agreements.

50. In October 2009, Planet Organic attempted to issue bonus shares into escrow to negotiate with debt holders for a reduction in penalty interest and a prospective conversion of debt to equity. This action was approved by the Board of Directors and conditionally approved by the TSX Venture Exchange. However, Mr. Francisco, via his counsel, objected to the issuance and the TSX Venture Exchange subsequently reversed its conditional approval. Ares' counsel subsequently advised Planet Organic of the impact this may have on Ares' willingness to convert debt to equity and negotiate further forbearance.

51. Notwithstanding the foregoing, Planet Organic was optimistic that negotiations with Ares would be successful and lead to a renegotiation of the debt terms and conditions as all the principal and interest payments to Ares continued (and still continues) to be made. Unfortunately, due to the opposition of Mr. Francisco and, in part, the reversal of approval by the TSX-V, Planet Organic was denied a means by which to convert or reduce the debt in the ordinary course of business. Ares in response thereafter (in November 2009) advised Planet Organic that they wished to end their relationship:

52. In the result, both TD and Ares remained in a position to declare all of the loans in default and demand payment from that point onward. And each demanded that Planet Organic work towards reducing the debts owed to each of them, including by way of the sale of some or all of the assets of business.

G. The Refinancing and Divestiture Strategy in Late 2009 and Early 2010

53. Between September 2009 and November 2009, Planet Organic undertook an extensive effort to refinance its operations in conjunction with PCG. PCG was selected by the Board of Directors based on its industry focus and expertise in the healthy living space generally and in natural and organic food/retail specifically, its track record of success, and existing knowledge of Planet Organic and investors focused in the area. PCG worked closely with the Board and the OCEO throughout the following:

- (a) the OCEO attempted to issue bonus shares into escrow to negotiate with debt holders for a reduction in penalty interest and a prospective conversion of debt to equity as more particularly discussed in paragraph 50 above. As mentioned, because Mr. Francisco objected to the issuance of such shares, the OCEO began pursuing the sale or recapitalization of assets to pay down debt;
- (b) in December 2009, Planet Organic and PCG approached eight (8) banks with an Request for Proposal ("RFP") for the refinancing of POM and Mrs. Green's debt. Following a full review of diligence materials by each, Planet Organic received three (3) indications of interest to provide financing at debt ratios of 1.5 times to 2.5 times EBITDA. Given Planet Organic's then current ratios were well in excess of prospective new lender parameters, the Board of Directors decided to put on hold further refinancing efforts.
- (c) in November/December 2009, Planet Organic actively began to explore options for a sale of some or all of its assets. Due diligence processes with potential investors commenced for the sales of

certain non-core assets, namely, the Sangster's, Healthy's, and Trophic divisions with a view of reducing debt; and

- (d) PricewaterhouseCoopers LLP was engaged to provide fair market value for the sale of key assets.

54. The hope was that a sale of some assets could be concluded, such that the outstanding debt could be paid down to a more manageable and acceptable level and the core elements of the business kept by Planet Organic, or failing which, a sale of the whole business could be concluded which would maximize realizations and keep the business operating as a going concern with a new owner who was prepared to invest and grow the business.

#### H. Non-Core Asset Sales

55. As a result, Planet Organic undertook an extensive search for buyers of some or all of the non-core assets of the business with a view to maximizing realizations for all stakeholders. The detail of sales processes are as follows:

- (a) **Sangster's/Healthy's Sales Process:**

In Q3 of calendar year 2009, PCG contacted 50 potential investors for the acquisition opportunity in the combined assets of the Sangster's and Healthy's divisions. Seven (7) interested parties performed a full review of the opportunity including a combination of legal, accounting and business due diligence as well as conversations with management and site visits. Of the seven (7) investor groups, five (5) submitted formal indications of interest. Following the completion of confirmatory diligence and documentation, on February 18, 2010, JAMM Enterprises, Inc.

purchased Sangster's for gross proceeds of \$1.1 million. The Healthy's division was separately sold to Health-X Corp. on March 16, 2010 for gross proceeds of \$348,500.

**(b) Trophic Sales Process:**

In Q4 of calendar year 2009, PCG conducted a focused process, contacting 33 targeted potential investors with strong background or strategic interest in the space. 16 groups engaged in a full review of initial diligence materials with five (5) groups expressing interest. Of the sixteen (16) investor groups, four (4) parties submitted formal Letters of Intent. Trophic was sold to Atrium Innovations Inc. on March 17, 2010 for gross proceeds of \$10.6 million.

56. The proceeds of the Non-Core Asset Sales were paid as follows:

- (a) \$5,296,266 to repay all outstanding indebtedness to the TD;
- (b) \$4,533,820 to reduce the existing indebtedness to Ares; and
- (c) \$1,268,614 for transaction related costs.

57. In addition, \$850,000 is currently held in two (2) escrow accounts: (i) \$250,000 for working capital adjustments; and (ii) \$600,000 for an indemnification escrow. Planet Organic expects to receive the \$250,000 from the first escrow account in the near future with the outstanding \$600,000 remaining in escrow for another 12 months.

58. While still a member of the Board of Directors, Mr. Francisco provided his consent to the Non-Core Asset Sales.

I. Impasse with Mr. Francisco

59. After Planet Organic's Board of Directors decided to explore the aforementioned divestiture strategy, Mr. Francisco, who was a director at the time, resigned from the Board of Directors on January 27, 2010 and subsequently advised the Board of Directors that he will not provide consent to any transaction involving core business assets that did not result in his ultimate controlling of Planet Organic.

60. I have been advised by Mr. Heighington (a former director of Planet Organic) who acts as Planet Organic's Alberta counsel that as a matter of Alberta corporate law, absent an Order of the Court, shareholder approval would be required for the sale of all or substantially all assets of Planet Organic. Since Mr. Francisco is the majority shareholder, he effectively has a veto power over any sale of the business and he has made it known to Planet Organic and its advisors that he is prepared to veto any sale that does not result in his control of the resulting company.

61. Mr. Francisco was offered the opportunity to refinance or restructure the business or table a plan that would pay Ares down or out, if his desire was to retain control of the business (as Planet Organic was unable to solicit any interest from any potential new partner that would leave Mr. Francisco with control of the company).

62. Mr. Francisco was advised that a viable offer had been received from Catalyst, one that would see the business survive and grow with new injections of capital. A face-to-face meeting between Mr. Francisco and Mr. Heighington was held in early March 2010 to discuss options and alternatives. I understand that Mr. Francisco rejected Catalyst's proposal and reiterated his opposition to any sale that did not result in his

control of the business. Again, Mr. Francisco was invited to submit an alternative offer or proposal.

63. To date, Mr. Francisco has not put forward any viable alternatives to a going concern sale to a third party despite continued contact and requests to do so.

J. Core-Asset Sales Process

64. Approximately one hundred and thirty (130) parties were canvassed for their interest in acquiring Planet Organic as a whole. Of those parties, fifty one (51) signed confidentiality agreements and were given access to an electronic data room. There were eleven (11) submitted expressions of interest and then six (6) bids were subsequently received for POM and Mrs Green's.

65. The bids received are summarized below:

- (a) an offer by Catalyst to acquire the combined assets of POM and Mrs. Green's for an effective purchase price in the range of \$33 million to \$36 million;
- (b) a revised offer for \$30 million by another party for the recapitalization of the entire business which was subject to arranging for financing;
- (c) a revised offer from another party in the range of USD \$14 million to USD \$18 million to acquire six western locations of POM;
- (d) another party's offer of \$7.6 million for the POM division only;
- (e) another party's offer in the range of USD \$15 million to USD \$18 million for Mrs. Green's only; and



- (f) another party's all cash offer in the range of USD \$20 million for POM and Mrs. Green's only.

66. The proposals received were reviewed by the Board of Directors and it resolved to create a committee of independent directors to review additional detail on the relative merits of the proposals and to make a recommendation to the board of directors of Planet Organic. The independent committee was composed of David Heighington, Ian Newton and me. On February 25, 2010, I resigned from the independent committee to ensure the committee's independence from management. On March 4, 2010, David Heighington resigned from the Board of Directors and the independent committee.

67. Based on these bids, several weeks of discussions and negotiations commenced amongst Planet Organic, its then secured creditor Ares and Catalyst, as the potential acquirer of, and highest bidder for, the assets or the shares of the company as set forth above. Due to a lack progress after several weeks of negotiations for the purchase of the assets or the shares of Planet Organic, Catalyst purchased the debt of Ares. As noted above, this debt purchase was completed on April 20, 2010.

68. During this period Mr Francisco was given the further opportunity to submit his own bid, but none was received.

## II. CCAA FILING

### A. Reason for CCAA Filing

69. Planet Organic and Darwen are insolvent and both have liabilities in excess of \$5 million.

70. The Applicants do not have the ability to repay the indebtedness owing to Catalyst and as a result, are insolvent and in jeopardy. As noted, Planet Organic has pursued restructuring activities and implemented comprehensive sales processes outside of formal proceedings. However, without the support of Mr. Francisco for an *en bloc* sale of the core assets, it is clear that the only way a successful business and financial restructuring can be achieved is through a formal court-supervised restructuring under the auspices of the CCAA.

B. Venue

71. The Commercial List in Toronto is the proper venue for this CCAA application. Planet Organic is a diverse company with assets and operations spread across Canada, including the Greater Toronto Area and Ontario (where it has both operations and creditors), and into the United States, via its US Holdco. Planet Organic's directors are located in both Canada and the United States and management generally meets via conference call.

72. Toronto has been the centre of Planet Organic's restructuring activities since 2009 for a variety of reasons, including the fact that Planet Organic's restructuring counsel and advisors are located in Toronto, and TD and Ares' counsel and advisors were located in Toronto as well. In addition, Mr. Ron Francisco is also in the Greater Toronto Area, as is his counsel. And, Catalyst's advisors and counsel are also located in Toronto.

73. It is therefore appropriate and convenient for Planet Organic to file for CCAA protection in Toronto, and this will benefit Planet Organic's stakeholders as well. Catalyst supports Planet Organic's application under the CCAA in Toronto.

C. Proposed Monitor

74. Planet Organic proposes Deloitte & Touche Inc. ("Deloitte or "Proposed Monitor") as monitor under the CCAA. I am advised that Deloitte has extensive experience in such proceedings and has consented to act. Attached hereto and marked as Exhibit "O" is a true copy of Deloitte's consent.

75. Planet Organic and Darwen with the assistance of the proposed monitor have developed a statement of projected consolidated cash flow for the period May 1, 2010 to July 24, 2010. Attached as Exhibit "P" is a copy of the consolidated projected cash flow.

D. Post-Filing Plan of Action

76. At this juncture, Planet Organic is of the view that the best solution for the enterprise and its employees, customers and creditors is to proceed to complete the negotiation of the terms of a credit bid with Catalyst. Planet Organic intends to finalize an agreement with Catalyst, which will preserve the business as a going concern and seek the Court's approval of the agreement in the very near future. If Planet Organic is unable to reach an agreement with Catalyst, it will return to court with other alternatives.

77. At this time, it does not appear that debtor-in-possession financing will be required.

78. Planet Organic is seeking an administrative charge of \$400,000 and an indemnification charge for its officers and directors of \$1.75 million.

79. The Board of Directors currently consists of Ian Newton, Brent Knudsen, and me. The current D&O insurance policy expires on June 15, 2010 and I understand that to extend the coverage would result in an 150% premium increase over the existing premium.

80. Said charges are not sought against the other secured creditors of Planet Organic, namely, the four (4) creditors with equipment security.

81. Planet Organic is required under section 132 of the *Alberta Business Corporations Act (ABCA)* to call an annual meeting of its shareholders no later than 15 months after the last preceding meeting. The Court may extend the time for the calling of the meeting if it is satisfied that it is in the best interests of the corporation. Planet Organic's last shareholder meeting was held on December 19, 2008 and one is currently scheduled for April 30, 2010. I am advised by Heighington that as a matter of corporate law, Planet Organic could further adjourn the meeting of shareholder to May 14, 2010.

82. At this juncture, a postponement of the time for the holding of the meeting is required, in my view, as holding the annual meeting of shareholders could impede the successful restructuring of the business if Mr. Francisco uses his status as majority shareholder to thwart current management's effort to sell the business to Catalyst. Mr. Francisco has indicated that he intends to replace the board with his nominees. This would constitute a change of control under the Ares Loan and Ares/PCG Loan, and would likely result in Catalyst moving to enforce its security, which in turn would destabilize and harm the enterprise. Catalyst has expressed to me its confidence in the current Board of Directors.

83. Financial and other information will continue to be available to Mr. Francisco and the public through court filings which will be easily accessible on the Proposed Monitor's website and all public filings required under securities laws will continue to be made.

84. I swear this affidavit in support of the application for the Initial Order and for no other or improper purpose.

SWORN BEFORE ME at the  
City of Edmonton in the  
Province of Alberta  
this 29<sup>th</sup> day of April, 2010.

Eugene J. Erler  
Commissioner for Taking Affidavits (or as may be)

Darren Krissie  
Darren Krissie

EUGENE J. ERLER  
BARRISTER AND SOLICITOR  
AND NOTARY PUBLIC

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  
PLANET ORGANIC HEALTH CORP. AND DARWEN HOLDINGS LTD.

Court File No: 10-8699-00CL

APPLICANTS

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

Proceeding commenced at Toronto

**AFFIDAVIT OF DARREN KRISSIE**  
(Sworn on May 18, 2010)

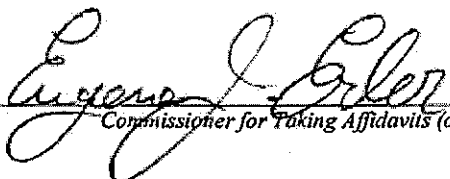
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Lawyers for the Applicants

This is Exhibit "B" referred to in the Affidavit of Darren Krissie,  
sworn before me this 20<sup>th</sup> day of May, 2010.



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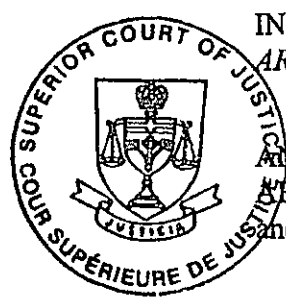
*Commissioner for Taking Affidavits (or as may be)*

**EUGENE J. ERLER**  
BARRISTER AND SOLICITOR  
AND NOTARY PUBLIC

Court File No. 10-8699-00CL

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

THE HONOURABLE MR. ) THURSDAY, THE 29th  
 )  
JUSTICE MORAWETZ ) DAY OF APRIL, 2010



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 PLANET ORGANIC HEALTH CORP.  
and DARWEN HOLDINGS LTD. (the "Applicants")

**INITIAL ORDER**

THIS APPLICATION, made by the Applicants, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA") was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the notice of application, the affidavit of Darren Krissie sworn April 29, 2010 and the exhibits thereto, and the pre-filing report of Deloitte & Touche Inc., the proposed monitor, and on being advised that the secured creditors who are likely to be affected by the charges created herein were given notice, and on hearing the submissions of counsel for the Applicants, for the proposed monitor and for The Catalyst Capital Group Inc., on behalf of funds managed by it ("Catalyst"), and on reading the consent of Deloitte & Touche Inc. to act as the Monitor,



**SERVICE**

1. THIS COURT ORDERS that the time for service of the Notice of Application and the Application Record is hereby abridged and validated so that this Application is properly returnable today and hereby dispenses with further service thereof.

**APPLICATION**

2. THIS COURT ORDERS AND DECLARES that the Applicants are companies to which the CCAA applies.

**PLAN OF ARRANGEMENT**

3. THIS COURT ORDERS that the Applicants shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the "Plan").

**POSSESSION OF PROPERTY AND OPERATIONS**

4. THIS COURT ORDERS that the Applicants shall remain in possession and control of their current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "Property"). Subject to further Order of this Court, the Applicants shall continue to carry on business in a manner consistent with the preservation of their business (the "Business") and Property. The Applicants shall be authorized and empowered to continue to retain and employ the employees, consultants, agents, experts, accountants, counsel and such other persons (collectively "Assistants") currently retained or employed by it, with liberty to retain such further Assistants as it deems reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

5. THIS COURT ORDERS that the Applicant shall be entitled to make use of a central cash management system (the "Cash Management System") and that any present or future bank providing the Cash Management System shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the Applicant of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be

entitled to provide the Cash Management System without any liability in respect thereof to any Person (as hereinafter defined) other than the Applicant, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as provider of the Cash Management System, an unaffected creditor under the Plan with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.

6. THIS COURT ORDERS that the Applicants shall be entitled but not required to pay the following expenses whether incurred prior to or after this Order:

- (a) all outstanding and future wages, salaries, employee and pension benefits, vacation pay and expenses payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements; and
- (b) the outstanding and future fees and disbursements of any Assistants retained or employed by the Applicants in respect of these proceedings, at their standard rates and charges.

7. THIS COURT ORDERS that, except as otherwise provided to the contrary herein, the Applicants shall be entitled but not required to pay all reasonable expenses incurred by the Applicants in carrying on the Business in the ordinary course after this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

- (a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors and officers insurance), maintenance and security services; and
- (b) payment for goods or services actually supplied to the Applicants following the date of this Order.

8. THIS COURT ORDERS that the Applicants shall remit, in accordance with legal requirements, or pay:

- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, and (iii) income taxes;
- (b) all goods and services or other applicable sales taxes (collectively, "Sales Taxes") required to be remitted by the Applicants in connection with the sale of goods and services by the Applicants, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order; and
- (c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the Applicants.

9. THIS COURT ORDERS that until a real property lease is disclaimed in accordance with the CCAA, the Applicants shall pay all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under the lease) or as otherwise may be negotiated between the Applicants and the landlord from time to time ("Rent"), for the period commencing from and including the date of this Order, twice-monthly in equal payments on the first and fifteenth day of each month, in advance (but not in arrears) or as otherwise agreed to between the Applicants and the relevant landlord. On the date of the first of such payments, any Rent relating to the period commencing from and including the date of this Order shall also be paid.

10. THIS COURT ORDERS that, except as specifically permitted herein, the Applicants are hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Applicants to any of their creditors as of this date; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of their Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

### RESTRUCTURING

11. THIS COURT ORDERS that the Applicants shall, subject to such requirements as are imposed by the CCAA, have the right to terminate the employment of such of their employees or temporarily lay off such of their employees as it deems appropriate to permit the Applicants to proceed with an orderly restructuring of the Business (the "Restructuring").

12. THIS COURT ORDERS that the Applicants shall provide each of the relevant landlords with notice of the Applicants' intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Applicants' entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Applicants, or by further Order of this Court upon application by the Applicants on at least two (2) days notice to such landlord and any such secured creditors. If the Applicants disclaim the lease governing such leased premises in accordance with Section 32 of the CCAA, they shall not be required to pay Rent under such lease pending resolution of any such dispute (other than Rent payable for the notice period provided for in Sub-Section 32(5) of the CCAA), and the disclaimer of the lease shall be without prejudice to the Applicants' claim to the fixtures in dispute.

13. THIS COURT ORDERS that if a notice of disclaimer is delivered pursuant to Section 32 of the CCAA, then (a) during the notice period prior to the effective time of the disclaimer, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the Applicants and the Monitor 24 hours' prior written notice, and (b) at the effective time of the disclaimer, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may

have against the Applicants in respect of such lease or leased premises and such landlord shall be entitled to notify the Applicants of the basis on which it is taking possession and to gain possession of and re-lease such leased premises to any third party or parties on such terms as such landlord considers advisable, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

#### **NO PROCEEDINGS AGAINST THE APPLICANTS OR THE PROPERTY**

14. THIS COURT ORDERS that until and including May 27, 2010, or such later date as this Court may order (the "Stay Period"), no proceeding or enforcement process in any court or tribunal (each, a "Proceeding") shall be commenced or continued against or in respect of the Applicants or the Monitor, or affecting the Business or the Property, except with the written consent of the Applicants, Catalyst and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Applicants or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

#### **NO EXERCISE OF RIGHTS OR REMEDIES**

15. THIS COURT ORDERS that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "Persons" and each being a "Person") against or in respect of the Applicants or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the Applicants and the Monitor, or leave of this Court, provided that nothing in this Order shall (i) empower the Applicants to carry on any business which the Applicants are not lawfully entitled to carry on, (ii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

#### **NO INTERFERENCE WITH RIGHTS**

16. THIS COURT ORDERS that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Applicants, except with the written consent of the Applicants and the Monitor, or leave of this Court.

**CONTINUATION OF SERVICES**

17. THIS COURT ORDERS that during the Stay Period, all Persons having oral or written agreements with the Applicants or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Business or the Applicants, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Applicants, and that the Applicants shall be entitled to the continued use of their current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Applicants in accordance with normal payment practices of the Applicants or such other practices as may be agreed upon by the supplier or service provider and each of the Applicants and the Monitor, or as may be ordered by this Court.

**NON-DEROGATION OF RIGHTS**

18. THIS COURT ORDERS that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of lease or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the Applicants. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

**PROCEEDINGS AGAINST DIRECTORS AND OFFICERS**

19. THIS COURT ORDERS that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Applicants with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Applicants whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such

obligations, until a compromise or arrangement in respect of the Applicants, if one is filed, is sanctioned by this Court or is refused by the creditors of the Applicants or this Court.

#### **DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE**

20. THIS COURT ORDERS that each of the Applicants shall indemnify its directors and officers against obligations and liabilities (including, without limitation professional fees and disbursements incurred in connection with any such obligation or liability) that they may incur as directors or officers of such Applicant after the commencement of the within proceedings, except to the extent that, with respect to any officer or director, the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

21. THIS COURT ORDERS that the directors and officers of the Applicants shall be entitled to the benefit of and are hereby granted a charge (the "Directors' Charge") on the Property, which charge shall not exceed an aggregate amount of \$750,000, as security for the indemnity provided in paragraph 20 of this Order. The Directors' Charge shall have the priority set out in paragraphs 32 and 34 herein.

22. THIS COURT ORDERS that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) the Applicants' directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 20 of this Order.

#### **APPOINTMENT OF MONITOR**

23. THIS COURT ORDERS that Deloitte & Touche Inc. is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Applicants with the powers and obligations set out in the CCAA or set forth herein and that the Applicants and their shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Applicants pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

24. THIS COURT ORDERS that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- (a) monitor the Applicants' receipts and disbursements;
- (b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;
- (c) assist the Applicants, to the extent required by the Applicants, in their dissemination to Catalyst and its counsel on a weekly basis of financial and other information as agreed to between the Applicants and Catalyst which may be used in these proceedings;
- (d) advise the Applicants in their preparation of the Applicants' cash flow statements and reporting required by Catalyst, which information shall be reviewed with the Monitor and delivered to Catalyst and its counsel on a periodic basis, but not less than weekly, or as otherwise agreed to by Catalyst;
- (e) advise the Applicants in their development of the Plan and any amendments to the Plan;
- (f) assist the Applicants, to the extent required by the Applicants, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;
- (g) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Applicants, to the extent that is necessary to adequately assess the Applicants' business and financial affairs or to perform its duties arising under this Order;
- (h) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order; and



- (i) perform such other duties as are required by this Order or by this Court from time to time.

25. THIS COURT ORDERS that the Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

26. THIS COURT ORDERS that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, "Possession") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "Environmental Legislation"), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

27. THIS COURT ORDERS that that the Monitor shall provide any creditor of the Applicants, including Catalyst, with information provided by the Applicants in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Applicants is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicants may agree.

28. THIS COURT ORDERS that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

29. THIS COURT ORDERS that the Monitor, counsel to the Monitor and counsel to the Applicants shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the Applicants as part of the costs of these proceedings. The Applicants are hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and counsel for the Applicants on a weekly basis and, in addition, the retainers paid by the Applicants to the Monitor, counsel to the Monitor, and counsel to the Applicants which are to be held by them as security for payment of their respective fees and disbursements outstanding from time to time, are hereby authorized and approved.

30. THIS COURT ORDERS that the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

31. THIS COURT ORDERS that the Monitor, counsel to the Monitor, if any, and the Applicants' counsel shall be entitled to the benefit of and are hereby granted a charge (the "Administration Charge") on the Property, which charge shall not exceed an aggregate amount of \$400,000, as security for their professional fees and disbursements incurred at the standard rates and charges of the Monitor and such counsel, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 32 and 34 hereof.

**VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER**

32. THIS COURT ORDERS that the priorities of the Directors' Charge and the Administration Charge, as among them, shall be as follows:

First – Administration Charge (to the maximum amount of \$400,000); and

Second – Directors' Charge (to the maximum amount of \$750,000).

33. THIS COURT ORDERS that the filing, registration or perfection of the Directors' Charge or the Administration Charge (collectively, the "Charges") shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

34. THIS COURT ORDERS that each of the Directors' Charge and the Administration Charge (each as constituted and defined herein) shall constitute a charge on the Property, except against the collateral encumbered by the security interests of those parties listed in the attached Schedule "A", and such Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, "Encumbrances") in favour of any Person.

35. THIS COURT ORDERS that except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicants shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Directors' Charge or the Administration Charge, unless the Applicants also obtain the prior written consent of the Monitor and the beneficiaries of the Directors' Charge and the Administration Charge, or further Order of this Court.

36. THIS COURT ORDERS that the Directors' Charge and the Administration Charge shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "Chargees") thereunder shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to the *Bankruptcy and Insolvency Act* of Canada (the "BIA") or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "Agreement") which binds the Applicants, and notwithstanding any provision to the contrary in any Agreement:

- (a) the creation of the Charges shall not create or be deemed to constitute a breach by the Applicants of any Agreement to which they are a party;
- (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the creation of the Charges; and
- (c) the payments made by the Applicants pursuant to this Order and the granting of the Charges, does not and will not constitute a preference, fraudulent conveyance, transfer at undervalue, oppressive conduct, or other challengeable or voidable transaction under any applicable law.

37. THIS COURT ORDERS that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the Applicants' interest in such real property leases.

**SERVICE AND NOTICE**

38. THIS COURT ORDERS that the Monitor shall (i) without delay, publish in Globe and Mail, National Post, the Toronto Star, Calgary Herald and Edmonton Journal a notice containing the information prescribed under the CCAA, (ii) within five days after the date of this Order, (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, in the prescribed manner, a notice to every known creditor who has a claim against any Applicant of more than \$1,000, and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Paragraph 23(1)(a) of the CCAA and the regulations made thereunder.

39. THIS COURT ORDERS that the Applicants and the Monitor be at liberty to serve this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or electronic transmission to the Applicants' creditors or other interested parties at their respective addresses as last shown on the records of the Applicants and that any such service or notice by courier, personal delivery or electronic transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

40. THIS COURT ORDERS that the Applicants, the Monitor, and any party who has filed a Notice of Appearance may serve any court materials in these proceedings by e-mailing a PDF or other electronic copy of such materials to counsels' email addresses as recorded on the Service List from time to time, and the Monitor may post a copy of any or all such materials on its website at [www.deloitte.com/ca/planet-organic](http://www.deloitte.com/ca/planet-organic).

**GENERAL**

41. THIS COURT ORDERS that the Applicants or the Monitor may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

42. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Applicants, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicants and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicants and the Monitor and their respective agents in carrying out the terms of this Order.

43. THIS COURT ORDERS that each of the Applicants and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

44. THIS COURT ORDERS that any interested party (including the Applicants and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

45. THIS COURT ORDERS that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard/Daylight Time on the date of this Order.



A handwritten signature in black ink, appearing to read "J. D. Brown", is written over a horizontal line.

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

APR 30 2010

PER / PAR: TV

**Schedule "A"**

- 1) Koch Ford Lincoln Sales (2003) Ltd.
- 2) Xerox Canada Ltd.
- 3) National Leasing Group Inc.
- 4) Halton Autolease Inc.
- 5) IBM Canada Limited
- 6) De Lage Landen Financial Services Canada

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  
PLANET ORGANIC HEALTH CORP. AND DARWEN HOLDINGS LTD.

Court File No: 10-8699-00CL

APPLICANTS

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceeding commenced at Toronto

**INITIAL ORDER**

**BAKER & MCKENZIE LLP**  
Barristers and Solicitors  
181 Bay Street, P.O. Box 874  
Suite 2100  
Toronto, Ontario  
M5J 2T3

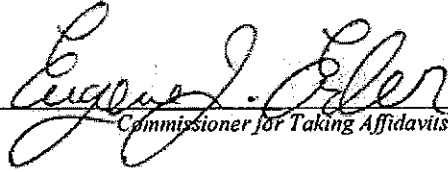
**Frank Spizzirri (LSUC#: 37327F)**  
Email: frank.spizzirri@bakermckenzie.com  
Tel.: 416.865.6940

**Michael Nowina (LSUC#: 49633O)**  
Email: michael.nowina@bakermckenzie.com  
Tel.: 416.865.2312  
Fax: 416.863.6275

Lawyers for the Applicants



This is Exhibit "C" referred to in the Affidavit of Darren Krissie,  
sworn before me this 20<sup>th</sup> day of May, 2010.



Commissioner for Taking Affidavits (or as may be)

EUGENE J. ERLER  
BARRISTER AND SOLICITOR  
AND NOTARY PUBLIC

Reply Attention of Adam Maerov  
Direct Line 416.865.7285  
Internet Address adam.maerov@mcmillan.ca  
Our File No. 0095897  
Date April 28, 2010

**DELIVERED BY FAX**

Planet Organic Health Corp.  
7915 - 104 St., Suite 230  
Edmonton, AB  
Canada  
T6E 4E1

**Attention: Mr. Darren Krissie**

Darwen Holdings Ltd.  
2218 Hanselman Ave.  
Saskatoon, SK  
Canada  
S7L 6A4

**Attention: Mr. Darren Krissie**

Dear Sir:

**Re: Loans to Planet Organic Holding Corp. and Senior Secured Convertible Notes issued by Planet Organic Health Corp.**

As you are aware, we are counsel for Catalyst Fund Limited Partnership II, in its capacity as administrative agent and collateral agent (the "**Term B Agent**") for the lenders under the Term B Credit Agreement (as defined below) and as collateral agent (the "**Notes Agent**") for the purchasers under the Note Purchase Agreement (as defined below).

We refer to that certain amended and restated term loan agreement dated November 30, 2007, made among, *inter alia*, the Term B Agent, as administrative agent and collateral agent, Planet Organic Holding Corp. ("**Holding Corp.**"), as borrower, Planet Organic Health Corp. ("**Health Corp.**"), as parent guarantor, and each of the lenders party thereto from time to time, as amended by a Forbearance Agreement and First Amendment to Amended and Restated Term Loan Agreement dated September 25, 2009 (as amended, restated or modified from time to time, the "**Term B Credit Agreement**").

We also refer to that certain note purchase agreement dated July 3, 2007, among, *inter alia*, the Notes Agent, as collateral agent, Health Corp., as issuer, and each of the purchasers party thereto from time to time, as amended by a Forbearance Agreement and First Amendment to Note Purchase Agreement dated September 25, 2009 (as amended, restated or modified from time to time, the "Note Purchase Agreement"). All capitalized terms used herein and not otherwise defined have the meanings given to them in the Term B Credit Agreement and the Note Purchase Agreement, as applicable.

We also refer to that certain Guarantee Agreement dated July 3, 2007 executed by, *inter alia*, Health Corp., Holding Corp. and Darwen Holdings Ltd. ("Darwen") in favour of the Term B Agent in respect of the Term B Credit Agreement.

We also refer to that certain Guarantee Agreement dated July 3, 2007 executed by, *inter alia*, Health Corp., Holding Corp. and Darwen in favour of the Notes Agent in respect of the Note Purchase Agreement.

As you are aware, Holding Corp. and each of the Credit Parties party to the Term B Credit Agreement acknowledged to the Term B Agent that the Credit Parties have failed to comply with subsections 9.14(a) and 9.14(b) of the Term B Credit Agreement, which failure to comply constitute Events of Default under Article 10 of the Term B Credit Agreement. In addition, on April 20, 2010, Health Corp. on behalf of itself and its subsidiaries confirmed and acknowledged that Defaults and Events of Default (as defined in the Term B Credit Agreement) have occurred and are continuing.

As you are further aware, Health Corp. and each of the Credit Parties party to the Note Purchase Agreement acknowledged to the Notes Agent that the Credit Parties have failed to comply with subsection 9.14(a) of the Note Purchase Agreement, which failure to comply constitutes an Event of Default under Article 10 of the Note Purchase Agreement. In addition, on April 20, 2010, Health Corp. on behalf of itself and its subsidiaries confirmed and acknowledged that Defaults and Events of Default (as defined in the Note Purchase Agreement) have occurred and are continuing.

On behalf of the Term B Agent and the Notes Agent, we hereby demand payment by Health Corp. and Darwen of their respective indebtedness and liabilities under the Term B Credit Agreement (as Parent Guarantor and guarantor, respectively) and under the Note Purchase Agreement (as Issuer and guarantor, respectively) and any additional amounts for which Health Corp. and Darwen may be liable from time to time.

In particular, the following amounts are outstanding under the Term B Credit Agreement and Note Purchase Agreement as of April 27, 2010 and are due and payable in full:

- (a) US\$13,311,402.89 on account of principal outstanding and US\$149,753.28 on account of interest under the Term B Credit Agreement;
- (b) US\$16,439,177.91 on account of the principal outstanding and US\$201,836.58 on account of interest under the Note Purchase Agreement; and

together with additional accrued and unpaid interest, fees and costs and all other amounts payable under or in connection with the Term B Credit Agreement and the Note Purchase Agreement. Interest will continue to accrue on the outstanding amounts in accordance with the Term B Credit Agreement and the Note Purchase Agreement, as applicable.


As security for the indebtedness and liabilities of Health Corp. and Darwen under the Term B Credit Agreement and the Note Purchase Agreement, respectively, the Term B Agent and the Notes Agent hold certain security including, without limitation, the security set out in Schedule "A" hereto ("**Security**"). On behalf of the Term B Agent and the Notes Agent, respectively, we hereby declare that all of the obligations of Health Corp. and Darwen to the Term B Agent and the Notes Agent pursuant to the Security is now immediately due and payable.

Please be advised that, if payment or arrangements satisfactory to the Term B Agent and the Notes Agent for payment are not made forthwith, the Term B Agent and the Notes Agent will take such further steps as they deem necessary to recover the outstanding obligations of Health Corp. and Darwen. Those steps may include the enforcement of the Security or the appointment of a receiver.

We enclose herewith Notices of Intention to Enforce Security addressed to Health Corp. and to Darwen and issued pursuant to subsection 244(1) of the *Bankruptcy and Insolvency Act* (the "**Notices**"). The Term B Agent and the Notes Agent each reserve their respective rights to proceed with the enforcement of the Security at any time prior to the time specified in the enclosed Notices in those circumstances where such earlier enforcement may be permitted by law.

Please govern yourselves accordingly.

Yours truly,



Adam Maerov

JF/  
Attach.  
Copy to:

Gabriel De Alba, The Catalyst Capital Group Inc.  
Andrew Kent, McMillan LLP  
Tushara Weerasooriya, McMillan LLP  
Phillips Nizer LLP  
Richards Hunter, Barristers & Solicitors

**SCHEDULE "A"  
SECURITY**

**Term B Credit Agreement Security**

1. Canadian General Security Agreement dated July 3, 2007 executed by Health Corp. and its Canadian subsidiaries in favour of the Term B Agent in respect of the Term B Credit Agreement;
2. Canadian Guarantee and General Security Agreement dated June 29, 2007 executed by Trophic Canada Ltd., Hatem Inc., The Big Fresh Inc. and Amdek Marketing Inc. in favour of the Term B Agent in respect of the Term B Credit Agreement;
3. Grant of Security Interest in Trade-Mark Rights dated July 2007 by Health Corp. and its Canadian subsidiaries in favour of the Term B Agent in respect of the Term B Credit Agreement; and
4. Assignment of Representations, Warranties, Covenants and Indemnities (Equity Purchase Agreement) dated July 3, 2007 made among Holding Corp. and the Term B Agent in respect of the Term B Credit Agreement.

**Note Purchase Agreement Security**

5. Canadian General Security Agreement dated July 3, 2007 executed by Health Corp. and its Canadian subsidiaries in favour of the Notes Agent in respect of the Note Purchase Agreement;
6. Canadian Guarantee and General Security Agreement dated June 29, 2007 executed by Trophic Canada Ltd., Hatem Inc., The Big Fresh Inc. and Amdek Marketing Inc. in favour of the Notes Agent in respect of the Note Purchase Agreement;
7. Grant of Security Interest in Trade-Mark Rights dated July 2007 by Health Corp. and its Canadian subsidiaries in favour of the Notes Agent in respect of the Note Purchase Agreement; and
8. Assignment of Representations, Warranties, Covenants and Indemnities (Equity Purchase Agreement) dated July 3, 2007 made among Holding Corp. and the Notes Agent in respect of the Note Purchase Agreement.

**Other Security**

9. Blocked Account Agreement dated July 2007 made among The Toronto-Dominion Bank, the Term B Agent, the Notes Agent, The Toronto Dominion Bank, as the bank, Health Corp. and its Canadian subsidiaries.

**Notice of Intention to Enforce a Security**  
(Rule 124)

To: Planet Organic Health Corp. ("**Debtor**"), an insolvent person

Take notice that:

1. Catalyst Fund Limited Partnership II, by its general partner The Catalyst Capital Group Inc., in its capacity as Administrative Agent and Collateral Agent (the "**Agent**") for and on behalf of The Catalyst Capital Group Inc. (on behalf of funds managed by it), a secured creditor, intends to enforce its security on the Debtor's property described in Schedule "A" attached hereto.


2. The security that is to be enforced is in the form of the security listed in Schedule "B" attached hereto (the "**Security**").

3. The total amount of indebtedness secured by the Security as at April 27, 2010, is US\$13,461,156.17 together with additional accrued and unpaid interest and fees, costs, and expenses.

4. The Agent will not have the right to enforce the Security until after the expiry of the 10-day period after this notice is sent unless the Debtor consents to an earlier enforcement.

DATED at Toronto, Ontario, this 28<sup>th</sup> day of April, 2010.

**CAPITAL FUND LIMITED**  
**PARTNERSHIP II**, by its solicitors  
McMillan LLP

Per:   
Adam Maerov

In force September 30, 1997 as Form 115; reissued April 30, 1998.

**SCHEDULE "A"**

**DESCRIPTION OF COLLATERAL**

All present and after acquired real and personal property and undertaking of the Debtor as more particularly defined and described in the Security.

**SCHEDULE "B"**

**SECURITY**

1. Canadian General Security Agreement dated July 3, 2007 executed by Health Corp. and its Canadian subsidiaries in favour of the Term B Agent in respect of the Term B Credit Agreement;
2. Canadian Guarantee and General Security Agreement dated June 29, 2007 executed by Tropic Canada Ltd., Hatem Inc., The Big Fresh Inc. and Amdek Marketing Inc. in favour of the Term B Agent in respect of the Term B Credit Agreement;
3. Grant of Security Interest in Trade-Mark Rights dated July 2007 by Health Corp. and its Canadian subsidiaries in favour of the Term B Agent in respect of the Term B Credit Agreement;
4. Assignment of Representations, Warranties, Covenants and Indemnities (Equity Purchase Agreement) dated July 3, 2007 made among Holding Corp. and the Term B Agent in respect of the Term B Credit Agreement; and
5. Blocked Account Agreement dated July 2007 made among The Toronto-Dominion Bank, the Term B Agent, the Notes Agent, The Toronto Dominion Bank, as the bank, Health Corp. and its Canadian subsidiaries.



**Notice of Intention to Enforce a Security**  
(Rule 124)

To: Planet Organic Health Corp. ("**Debtor**"), an insolvent person

Take notice that:

1. Catalyst Fund Limited Partnership II, by its general partner The Catalyst Capital Group Inc., in its capacity as Collateral Agent (the "**Agent**") for and on behalf of The Catalyst Capital Group Inc. (on behalf of funds managed by it), a secured creditor, intends to enforce its security on the Debtor's property described in Schedule "A" attached hereto.
2. The security that is to be enforced is in the form of the security listed in Schedule "B" attached hereto (the "**Security**").
3. The total amount of indebtedness secured by the Security as at April 27, 2010, is US\$16,641,014.49 together with additional accrued and unpaid interest and fees, costs, and expenses.
4. The Agent will not have the right to enforce the Security until after the expiry of the 10-day period after this notice is sent unless the Debtor consents to an earlier enforcement.

DATED at Toronto, Ontario, this 28<sup>th</sup> day of April, 2010.

**CAPITAL FUND LIMITED**  
**PARTNERSHIP II**, by its solicitors  
McMillan LLP

Per: Adam Maerov  
Adam Maerov

In force September 30, 1997 as Form 115; reissued April 30, 1998.

**SCHEDULE "A"**

**DESCRIPTION OF COLLATERAL**

All present and after acquired real and personal property and undertaking of the Debtor as more particularly defined and described in the Security.

**SCHEDULE "B"****SECURITY**

1. Canadian General Security Agreement dated July 3, 2007 executed by Health Corp. and its Canadian subsidiaries in favour of the Notes Agent in respect of the Note Purchase Agreement;
2. Canadian Guarantee and General Security Agreement dated June 29, 2007 executed by Trophic Canada Ltd., Hatem Inc., The Big Fresh Inc. and Amdek Marketing Inc. in favour of the Notes Agent in respect of the Note Purchase Agreement;
3. Grant of Security Interest in Trade-Mark Rights dated July 2007 by Health Corp. and its Canadian subsidiaries in favour of the Notes Agent in respect of the Note Purchase Agreement;
4. Assignment of Representations, Warranties, Covenants and Indemnities (Equity Purchase Agreement) dated July 3, 2007 made among Holding Corp. and the Notes Agent in respect of the Note Purchase Agreement; and
5. Blocked Account Agreement dated July 2007 made among The Toronto-Dominion Bank, the Term B Agent, the Notes Agent, The Toronto Dominion Bank, as the bank, Health Corp. and its Canadian subsidiaries.

FORM 86

**Notice of Intention to Enforce a Security**  
(Rule 124)

To: Darwen Holdings Ltd. (“**Debtor**”), an insolvent person

Take notice that:

1. Catalyst Fund Limited Partnership II, by its general partner The Catalyst Capital Group Inc., in its capacity as Administrative Agent and Collateral Agent (the “**Agent**”) for and on behalf of The Catalyst Capital Group Inc. (on behalf of funds managed by it), a secured creditor, intends to enforce its security on the Debtor’s property described in Schedule “A” attached hereto.

2. The security that is to be enforced is in the form of the security listed in Schedule “B” attached hereto (the “**Security**”).

3. The total amount of indebtedness secured by the Security as at April 27, 2010, is US\$13,461,156.17 together with additional accrued and unpaid interest and fees, costs, and expenses.

4. The Agent will not have the right to enforce the Security until after the expiry of the 10-day period after this notice is sent unless the Debtor consents to an earlier enforcement.

DATED at Toronto, Ontario, this 28<sup>th</sup> day of April, 2010.

**CAPITAL FUND LIMITED**  
**PARTNERSHIP II**, by its solicitors  
McMillan LLP

Per: \_\_\_\_\_  
Adam Maerov

In force September 30, 1997 as Form 115, reissued April 30, 1998.

**SCHEDULE "A"**

**DESCRIPTION OF COLLATERAL**

All present and after acquired real and personal property and undertaking of the Debtor as more particularly defined and described in the Security.

**SCHEDULE "B"**

**SECURITY**

1. Canadian General Security Agreement dated July 3, 2007 executed by Health Corp. and its Canadian subsidiaries in favour of the Term B Agent in respect of the Term B Credit Agreement;
2. Canadian Guarantee and General Security Agreement dated June 29, 2007 executed by Tropic Canada Ltd., Hatem Inc., The Big Fresh Inc. and Amdek Marketing Inc. in favour of the Term B Agent in respect of the Term B Credit Agreement;
3. Grant of Security Interest in Trade-Mark Rights dated July 2007 by Health Corp. and its Canadian subsidiaries in favour of the Term B Agent in respect of the Term B Credit Agreement;
4. Assignment of Representations, Warranties, Covenants and Indemnities (Equity Purchase Agreement) dated July 3, 2007 made among Holding Corp. and the Term B Agent in respect of the Term B Credit Agreement; and
5. Blocked Account Agreement dated July 2007 made among The Toronto-Dominion Bank, the Term B Agent, the Notes Agent, The Toronto Dominion Bank, as the bank, Health Corp. and its Canadian subsidiaries.

FORM 86

**Notice of Intention to Enforce a Security**  
(Rule 124)

To: Darwen Holdings Ltd. ("**Debtor**"), an insolvent person

Take notice that:

1. Catalyst Fund Limited Partnership II, by its general partner The Catalyst Capital Group Inc., in its capacity as Collateral Agent (the "**Agent**") for and on behalf of The Catalyst Capital Group Inc. (on behalf of funds managed by it), a secured creditor, intends to enforce its security on the Debtor's property described in Schedule "A" attached hereto.
2. The security that is to be enforced is in the form of the security listed in Schedule "B" attached hereto (the "**Security**").
3. The total amount of indebtedness secured by the Security as at April 27, 2010, is US\$16,641,014.49 together with additional accrued and unpaid interest and fees, costs, and expenses.
4. The Agent will not have the right to enforce the Security until after the expiry of the 10-day period after this notice is sent unless the Debtor consents to an earlier enforcement.

DATED at Toronto, Ontario, this 28<sup>th</sup> day of April, 2010.

**CAPITAL FUND LIMITED**  
**PARTNERSHIP II**, by its solicitors  
McMillan LLP

Per: \_\_\_\_\_

Adam Maerov

In force September 30, 1997 as Form 115; reissued April 30, 1998.

**SCHEDULE "A"**

**DESCRIPTION OF COLLATERAL**

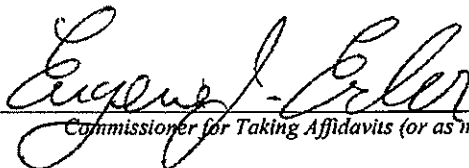
All present and after acquired real and personal property and undertaking of the Debtor as more particularly defined and described in the Security.



**SCHEDULE "B"****SECURITY**

1. Canadian General Security Agreement dated July 3, 2007 executed by Health Corp. and its Canadian subsidiaries in favour of the Notes Agent in respect of the Note Purchase Agreement;
2. Canadian Guarantee and General Security Agreement dated June 29, 2007 executed by Trophic Canada Ltd., Hatem Inc., The Big Fresh Inc. and Amdek Marketing Inc. in favour of the Notes Agent in respect of the Note Purchase Agreement;
3. Grant of Security Interest in Trade-Mark Rights dated July 2007 by Health Corp. and its Canadian subsidiaries in favour of the Notes Agent in respect of the Note Purchase Agreement;
4. Assignment of Representations, Warranties, Covenants and Indemnities (Equity Purchase Agreement) dated July 3, 2007 made among Holding Corp. and the Notes Agent in respect of the Note Purchase Agreement; and
5. Blocked Account Agreement dated July 2007 made among The Toronto-Dominion Bank, the Term B Agent, the Notes Agent, The Toronto Dominion Bank, as the bank, Health Corp. and its Canadian subsidiaries.

This is Exhibit "D" referred to in the Affidavit of Darren Krissie,  
sworn before me this 20<sup>th</sup> day of May, 2010.



*Eugene J. Erler*

---

*Commissioner for Taking Affidavits (or as may be)*

**EUGENE J. ERLER**  
BARRISTER AND SOLICITOR  
AND NOTARY PUBLIC

---

## ACQUISITION AGREEMENT

Made as of 19th day of May, 2010

Between

**THE CATALYST CAPITAL GROUP INC.,**  
on behalf of funds managed by it

and

**PLANET ORGANIC HEALTH CORP. and DARWEN HOLDINGS LTD.**

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## ACQUISITION AGREEMENT

This Agreement is made as of May 19, 2010, between

**THE CATALYST CAPITAL GROUP INC.,**  
on behalf of funds managed by it  
and

**PLANET ORGANIC HEALTH CORP. and DARWEN  
HOLDINGS LTD.**

### RECITALS

- A. Planet Organic Health Corp. ("**Health Corp.**") and Planet Organic Holding Corp. ("**Holding Corp.**") are in default of their respective obligations under the Term B Credit Agreement and the Note Purchase Agreement and have failed to pay all or part of the amounts owing under such agreements.
- B. Darwen Holdings Ltd. guaranteed the amounts owing by Health Corp. and Holding Corp. under the Term B Credit Agreement and the Note Purchase Agreement pursuant to two guarantee agreements, each dated as of July 3, 2007 (the "**Guarantees**").
- C. On April 29, 2010, the Applicants obtained an initial order (the "**Initial Order**") from the Ontario Superior Court of Justice (Commercial List) (the "**Court**") under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c.C-36, as amended (the "**CCAA**").
- D. On the Closing Date, the Creditor will acquire certain Assets in consequence of the failure to pay amounts owing under the Note Purchase Agreement (the "**Failure to Pay**").
- E. On the Closing Date, the Creditor will assume the Assumed Obligations pursuant to and in accordance with the terms of this Agreement.

FOR VALUE RECEIVED, the parties agree as follows:

### ARTICLE 1 – INTERPRETATION

#### Section 1.1 Definitions

In this Agreement:

- (1) "**Accounts Receivable**" means all trade and other accounts receivable, refunds, rebates, notes receivable, loans receivable and other rights to receive payments whether current or which may be receivable in the future, including the Applicants' rights in and to any security arrangements and collateral securing the repayment and satisfaction of any of the foregoing;
- (2) "**Administration Charge**" has the meaning specified in the Initial Order;

- (3) **“Agreement”** means this Acquisition Agreement together with the attached schedules;
- (4) **“Applicants”** means Health Corp., and Darwen Holdings Ltd;
- (5) **“Approval and Vesting Order”** means an Order of the Court (i) approving the acquisition of the Cash and Cash Equivalents (less the amount of the Cash Reserve), the Accounts Receivable, Tax Refunds, Holding Corp. Shares and other Assets designated by the Creditor in accordance with Section 2.1(1) hereof, and (ii) vesting all right, title and interest in and to the Assets (including, any amounts in the Cash Reserve Account that are not used to pay Cash Reserve Costs) after satisfaction by the Creditor of its obligations under this Agreement, free and clear of all Encumbrances, such order to be substantially in the form of the draft Order attached hereto as Schedule 1.1(5);
- (6) **“Assets”** means, collectively, all property of every kind owned by, or in the possession of, or used by the Applicants as of the date of this Agreement, including without limitation the Accounts Receivable, Inventory, Contracts, Licenses, Leases, Pre-Paid Expenses, Owned Intellectual Property, Equipment, Warranty Rights, Books and Records, Goodwill, Tax Refunds, the Holding Corp. Shares, any amounts in the Cash Reserve Account that are not used to pay Cash Reserve Costs (as determined in accordance with the Approval and Vesting Order), and all other property, assets, rights and interests used in, or related to, the Business, but excepting always the Excluded Assets and, for greater certainty, shall not include the following (i) retainers held by Baker McKenzie LLP (in an amount not to exceed \$56,000), Goodmans LLP (in an amount not to exceed \$50,000) and Deloitte & Touche Inc. (in an amount not to exceed \$50,000), respectively, for fees and disbursements incurred in connection with the CCAA proceedings and (ii) retainers held by Heighington Law (in an amount not to exceed \$70,000) and Miller Thomson LLP (in an amount not to exceed \$50,000), respectively, in connection with services to be provided to the Applicants and their respective directors and officers (provided, however, that any portion of the aforementioned retainers which remains unused at the end of the CCAA proceeding shall constitute an Asset of the Applicants that shall vest in the Creditor in accordance with the terms of this Agreement and the Approval and Vesting Order);
- (7) **“Assumed Obligations”** has the meaning specified in Section 2.3;
- (8) **“Assumed Trade Payables”** means all trade liabilities and obligations incurred by the Applicants in the ordinary course of business for the supply of goods and services to the Applicants in relation to the Business which, for greater certainty, shall not include Liabilities under any Contract, License or Lease that is not assumed pursuant to this Agreement;
- (9) **“Books and Records”** means all of the books and records of the Applicants, in the possession or control of the Applicants at Closing relating to the operation and management of the Assets, including sales documents, purchase, repair and warranty records, manuals, inventory records, bills of material, cost records, payroll and personnel records, customer invoices, purchase orders, supplier lists and customer and supplier information, advertising and promotional materials, software programs (to the extent of the Applicants’ interest therein), manuals and data, other similar books, records, files and documents related to the Assets (whether in written, printed or electronic form);

- (10) **“Business”** means the business of operating natural food supermarkets retailing natural products throughout Canada and the United States under the Planet Organic and Mrs. Green’s banners;
- (11) **“Business Day”** means a day on which banks are open for business in the City of Toronto but does not include a Saturday, Sunday or statutory holiday in the Province of Ontario;
- (12) **“Cash and Cash Equivalents”** means all cash, certificates of deposits, bank deposits, commercial paper, treasury bills and other cash equivalents of, and all of the cheques and cheque books of, the Applicants;
- (13) **“Cash Reserve”** means a maximum amount to be specified in the Approval and Vesting Order, which reserve shall be distributed by the Applicants from the Cash and Cash Equivalents to the Monitor and shall be deposited by the Monitor in the Cash Reserve Account to be held in trust by the Monitor for the benefit of persons entitled to be paid the Cash Reserve Costs in accordance with the Approval and Vesting Order;
- (14) **“Cash Reserve Account”** means a segregated account established by the Monitor in trust pursuant to the Approval and Vesting Order;
- (15) **“Cash Reserve Costs”** means specified administrative claims and costs falling within one of the following categories: (i) obligations secured by the Administration Charge to the extent required for the completion of the CCAA case, in an aggregate amount not to exceed \$300,000 after the Closing Date, (ii) obligations secured by the Directors’ Charge arising prior to the Closing Date, in an aggregate amount not to exceed \$500,000 and (iii) claims under subsection 6(5)(a) of the CCAA in respect of the Excluded Employees to the extent not paid by the Applicants or assumed by the Creditor on the Closing Date, which amounts are expected not to exceed \$75,000 and (iv) the obligations of the Applicants to pay the PCG Transaction Fee as defined in the letter agreement dated April 20, 2010 between Partnership Capital Growth, LLC and The Catalyst Capital Group Inc. payable in accordance with the terms of such letter agreement;
- (16) **“CCAA”** has the meaning specified in the Recitals;
- (17) **“Contracts”** means all contracts and agreements to which one or more of the Applicants is a party as at the Time of Closing (other than the Leases) including without limitation any leases of personal property and the agreements described in Schedule 1.1(17) ;
- (18) **“Closing”** means the successful completion of the Transaction;
- (19) **“Closing Date”** means the date on which the conditions specified in Article 6 have been satisfied or waived and the Monitor delivers the Monitor’s Certificate contemplated by the Approval and Vesting Order, provided that in no event shall such date be later than June 7, 2010;
- (20) **“Creditor”** means The Catalyst Capital Group Inc., on behalf of funds managed by it and/or one or more entities that take assignment of all or part of The Catalyst Capital Group Inc.’s interest under this Agreement on notice in writing to the Monitor and the Applicants no later than 48 hours prior to the Time of Closing;



- (21) **“Court”** has the meaning specified in the Recitals;
- (22) **“D&O Claims Procedure Order”** means an order, substantially in the form attached hereto as Schedule 1.1(22). which sets out procedures for the identification and adjudication of claims against the directors and officers of the Applicants, in such capacity;
- (23) **“Directors’ Charge”** has the meaning specified in the Initial Order;
- (24) **“Employees”** has the meaning specified in Section 7.1(1);
- (25) **“Encumbrances”** means all charges, mortgages, liens, pledges, claims, restrictions, security interests, trusts or other encumbrances whether created or arising by agreement, statute or otherwise at law, attaching to property, interests or rights and shall be construed in the widest possible terms and principles known under the law applicable to such property, interests or rights and whether or not they constitute specific or floating charges as those terms are understood under the laws of the Province of Ontario;
- (26) **“ETA”** means the *Excise Tax Act* (Canada);
- (27) **“Equipment”** means all machinery, manufacturing equipment, baking or cooking equipment, office and retail store equipment, office furniture, computers, trade fixtures, material handling equipment, implements, tools and other tangible property owned by, in the possession of, or used by the Applicants at the Time of Closing;
- (28) **“Excluded Assets”** means the assets described in Schedule 1.1(28) ;
- (29) **“Excluded Employees”** has the meaning specified in Section 7.1(1);
- (30) **“Excluded Employee Liabilities”** means: (i) Source Deductions; and (ii) unpaid or accrued liabilities owed in respect of the Excluded Employees as of the Closing Date for wages, vacation pay, termination and severance or benefit payments to insurers (other than amounts payable to such Excluded Employees pursuant to section 6(5)(a) of the CCAA which, for greater certainty, will be deposited in the Cash Reserve) up to a maximum aggregate amount of \$35,000;
- (31) **“Financial Records”** means all books of account and other financial data and information of the Applicants and all such records, data and information stored electronically, digitally or on computer-related media;
- (32) **“Goodwill”** means the goodwill of the Business together with the exclusive right to represent the Creditor as carrying on the Business as successor to the Applicants and to all rights in respect of the names “Planet Organic” and “Mrs. Green’s” and variations thereof; as well as all telephone numbers and facsimile numbers used by the Applicants in the conduct of the Business;
- (33) **“Government Authority”** means any person, body, department, bureau, agency, board, tribunal, commission, branch or office of any federal, provincial or municipal government having or claiming to have jurisdiction over part or all of the Assets, the transaction contemplated in this Agreement and/or one or more of the parties hereto and shall include a board or association of insurance underwriters;

- (34) **"GST"** means all goods and services or harmonized sales taxes payable under Part IX of the ETA;
- (35) **"Health Corp."** has the meaning specified in the Recitals;
- (36) **"Holding Corp."** has the meaning specified in the Recitals;
- (37) **"Holding Corp. Shares"** means all of the issued and outstanding shares of the equity of Holding Corp., including without limitation the shares listed on Schedule 1.1(37) ;
- (38) **"Inventory"** means all inventories in the possession of the Applicants at the Time of Closing, including without limitation all finished goods, work in process, raw materials, packaging materials and all other materials and supplies used or consumed in the preparation and sale of natural food;
- (39) **"Initial Order"** has the meaning specified in the Recitals;
- (40) **"ITA"** means the *Income Tax Act* (Canada) and the regulations thereunder, each as amended;
- (41) **"Leases"** means all offers to lease, agreements to lease, leases, renewals of leases, subleases, tenancy agreements, rights of occupation, licenses or other occupancy agreements for real or immovable property, including all purchase options, prepaid rents, security deposits, licences and permits relating thereto and all leasehold improvements thereon, whether oral or written, where an Applicant is a tenant, including without limitation the leases described on Schedule 1.1(41), but excludes the Vaughan Lease and the Nanaimo Lease;
- (42) **"Licences"** means all licences, permits, authorizations, approvals or other evidence of authority issued or granted to, conferred upon, or otherwise created for, the Applicants by any Governmental Authority;
- (43) **"Liabilities"** of a Person means all indebtedness, obligations and other liabilities of that Person whether absolute, accrued, contingent, fixed or otherwise, or whether due or to become due;
- (44) **"Monitor"** means Deloitte & Touche Inc., in its capacity as monitor appointed pursuant to the Initial Order;
- (45) **"Monitor's Certificate"** has the meaning specified in Section 6.1(g);
- (46) **"Nanaimo Lease"** means the real property lease dated April 7, 2006 between Shape Properties (Nanaimo) Corp., Mancal Commercial Properties BC (Rutherford Mall) Inc. and S-5 Holdings Ltd. (a subsidiary of Health Corp.) in respect of the premises located at 243-4750 Rutherford Road, Nanaimo, British Columbia;
- (47) **"Note Purchase Agreement"** means that certain Note Purchase Agreement among, *inter alia*, Health Corp. as issuer, Catalyst Fund Limited Partnership II, as Collateral Agent, and the purchasers from time to time party thereto dated July 3, 2007, as amended;

(48) **“Owned Intellectual Property”** means, in whatever format, all intellectual and industrial property of the Applicants, as applicable existing as of the Closing Date, including, without limitation: (i) all registered and unregistered trade marks, trade names, trade mark applications and registrations, trade name registrations, service marks, designs, logos and corporate names, together with all translations, adaptations, derivations, and combinations thereof and including any goodwill associated therewith, and all applications, registrations and renewals in connection therewith, (ii) patents, patent applications and registrations and patent disclosures, together with all reissues, divisions, continuations-in-part, revisions, renewals, extensions and re-examinations, inventions (whether patentable or not patentable and whether or not reduced to practice) and any improvement thereto, (iii) all works of authorship including all copyrightable works, all copyrights, copyright applications and registrations and all renewals in connection therewith, and all moral rights, and industrial designs, domestic or foreign, (iv) all trade secrets, know-how, inventions and other intellectual property (including confidential information, recipes, ideas, research and development, processes, methods, techniques, technical data, designs, drawings, specifications, customer and suppliers list, pricing and cost information, and business, technical and marketing plans and proposals) and (v) all exclusivity agreements;

(49) **“Person”** means any natural person, sole proprietorship, partnership, syndicate, trust, joint venture, Governmental Authority, or any incorporated or unincorporated entity or association of any nature;

(50) **“Personal Information”** means any factual or subjective information, recorded or not, about an employee, independent contractor, officer, director, executive, customer, supplier or shareholder of each of the respective Applicants, or about any other identifiable individual, including any record that can be manipulated, linked or matched by a reasonably foreseeable method to identify an individual, but does not include the name, title or business address or telephone number of an employee of each of the respective Applicants;

(51) **“Pre-Paid Expenses”** means the full benefit of all pre-paid amounts paid by any of the Applicants, including all deposits with any public utility or any Governmental Authority, or with any lessor or licensor under any Contract, Licence or Lease;

(52) **“Representing Applicant”** has the meaning specified in Section 5.2;

(53) **“Source Deductions”** means statutory deductions made with respect to income tax, Canadian pension plan or employment insurance applicable to employment for the period up to the Closing Date but not remitted prior to the Closing Date and deductions made in connection with court-ordered support, garnishment and/or alimony payments for the period up to the Closing Date but not remitted prior to the Closing Date;

(54) **“Subsidiary”** or **“Subsidiaries”** shall have the meaning specified in the *Business Corporations Act* (Alberta), R.S.A., 2000, c. B-9;

(55) **“Taxes”** includes all present and future taxes, surtaxes, duties, levies, imposts, rates, fees, assessments, withholdings, dues and other charges of any nature imposed by any Governmental Authority, including income, capital (including large corporations), withholding, consumption, sales, use, transfer, goods and services or other value-added, excise, customs, anti-dumping, countervail, net worth, stamp, registration, franchise, payroll, employment, health, education, business, school, property, local improvement, development, education development and

occupation taxes, surtaxes, duties, levies, imposts, rates, fees, assessments, withholdings, dues and charges, and other assessments or similar charges in the nature of a tax including Canada Pension Plan and other provincial pension plan contributions, employment insurance and unemployment insurance premiums and workers compensation premiums, together with all fines, interest, penalties on or in respect of, or in lieu of or for non-collection of, those taxes, surtaxes, duties, levies, imposts, rates, fees, assessments, withholdings, dues and other charges;

(56) **“Tax Refunds”** means any present or future amount owing, or eligible to be refunded, to an Applicant (or an assignee of the Applicant), currently or in the future, by or on behalf of any government or Government Authority in respect of any period that (i) ends on or prior to the Closing Date, or (ii) includes the Closing Date;

(57) **“Term B Credit Agreement”** means that certain Amended and Restated Term Loan Agreement among Health Corp. as parent guarantor, Holding Corp. as borrower, certain Subsidiaries as guarantors, Catalyst Fund Limited Partnership II, as Administrative Agent and Second Lien Collateral Agent, and the lenders from time to time party thereto dated November 30, 2007, as amended;

(58) **“Time of Closing”** means 12:00 p.m. (EDT) on the Closing Date or such other time on the Closing Date as the parties may mutually agree;

(59) **“Transaction”** means the acquisition transaction contemplated by this Agreement;

(60) **“Transfer Taxes”** has the meaning specified in Section 4.1(1);

(61) **“Transferred Employees”** means the Employees who are offered and accept employment with the Creditor;

(62) **“Transferred Employee Liabilities”** means unpaid or accrued liabilities owed in respect of the Transferred Employees as of the Closing Date for wages, vacation pay, Source Deductions, or benefit payments to insurers;

(63) **“Vaughan Lease”** means the real property lease dated May 8, 2007 between Health Corp. and 8000 Bathurst Street Realty Inc. in respect of the premises located at 8000 Bathurst Street, Vaughan, Ontario; and

(64) **“Warranty Rights”** means all warranty rights against manufacturers or suppliers relating to any of the Assets, to the extent the foregoing are transferable.

**Section 1.2 Interpretation Not Affected by Headings, etc.**

The division of this Agreement into sections, subsections, paragraphs and subparagraphs and the insertion of headings or captions are for convenience of reference only and shall not affect the construction or interpretation of this Agreement or any part hereof. Unless otherwise indicated, all references to a “section” followed by a number and/or a letter refer to the specified section of this Agreement. The terms “this Agreement”, “hereof”, “herein” and “hereunder” and similar expressions refer to this Agreement and not to any particular section hereof.

**Section 1.3 Extended Meanings**

Words importing the singular include the plural and vice versa, words importing gender include all genders. The term "including" means "including, without limitation," and such terms as "includes" have similar meanings.

**Section 1.4 Schedules**

The following Schedules are incorporated in and form part of this Agreement:

- (a) Schedule 1.1(5) Approval and Vesting Order
- (b) Schedule 1.1(17) Contracts
- (c) Schedule 1.1(22) D&O Claims Procedure Order
- (d) Schedule 1.1(28) Excluded Assets
- (e) Schedule 1.1(37) Holding Corp. Shares
- (f) Schedule 1.1(41) Leases
- (g) Schedule 8.2(a) Trademark Assignment Agreement

**ARTICLE 2- ACQUISITION**

**Section 2.1 Acquisition of Assets**

The following shall occur at the stated times on the Closing Date pursuant to the Approval and Vesting Order, on the terms and subject to the conditions of this Agreement:

- (1) The acquisitions provided for in (a) and (b) below shall occur immediately prior to the Time of Closing free and clear of any withholdings for Taxes or otherwise:
  - (a) Cash and Cash Equivalents (less the amount of the Cash Reserve) shall be paid to the Creditor, free and clear of all Encumbrances as consideration for the assumption of the Assumed Obligations. (To the extent that the fair market value of the Cash and Cash Equivalents (less the amount of the Cash Reserve) exceeds the amount of the consideration reasonably payable to the Creditor for the assumption of the Assumed Obligations, such excess shall instead be paid in partial repayment of the indebtedness outstanding under the Note Purchase Agreement).
  - (b) All right, title and interest in and to (i) the Accounts Receivable, (ii) the Tax Refunds, (iii) the Holding Corp. Shares, and (iv) other Assets of one or more of the Applicant designated by the Creditor prior to the Closing Date, shall be acquired by the Creditor free and clear of all Encumbrances as consideration for the assumption of the Assumed Obligations. (To the extent that the sum of (A) the fair market value of the Cash and Cash Equivalents (less the amount of the

for

Cash Reserve) and (B) the fair market value of the right, title and interest in and to (i) the Accounts Receivable, (ii) the Tax Refunds, (iii) the Holding Corp. Shares, and (iv) other Assets of one or more of the Applicants designated by the Creditor prior to the Closing Date, exceeds the amount of the consideration reasonably payable to the Creditor for the assumption of the Assumed Obligations, such excess shall instead be paid in partial repayment of the indebtedness outstanding under the Note Purchase Agreement (to the extent not already credited as a partial repayment of the indebtedness outstanding under the Note Purchase Agreement under Section 2.1(1)(a)).

(2) All right, title and interest in and to the Assets (other than the Assets referred to in Section 2.1(1)) shall be acquired by the Creditor free and clear of all Encumbrances pursuant to the Approval and Vesting Order at the Time of Closing in consequence of the Failure to Pay, on the terms, and subject to the conditions, of this Agreement, and no obligations under the Note Purchase Agreement shall thereafter be outstanding.

(3) The Creditor shall have the right, until two (2) Business Days prior to the Closing Date, to designate any Contract, Lease or License to be an Excluded Asset where:

- (a) the Creditor discovers that such Contract, Lease or License gives rise to or may give rise to a Liability that was not previously disclosed to the Creditor; and/or
- (b) the Contract, Lease or License provides that it may not be assigned without the consent of the counterparty and such consent has not been obtained by such date.

### **Section 2.2 "As is, Where is"**

The Creditor agrees and acknowledges that the Creditor is acquiring the Assets on an "as is, where is" basis subject to whatever defects, conditions, impediments or deficiencies which may or as they shall exist on the Closing Date, including, without limiting the generality of the foregoing, any latent or patent defects in the Assets. The Creditor further acknowledges and agrees that it has entered into this Agreement on the basis that the Applicants do not guarantee title to the Assets and that the Creditor has conducted such inspections of the condition of and title to the Assets as it deemed appropriate and has satisfied itself with regard to these matters. No representation, warranty or condition is expressed or can be implied as to title, encumbrances, description, fitness for purpose, legality of rents, merchantability, condition, quantity or quality or in respect of any other matter or thing whatsoever concerning the Assets or the right of the Applicants to permit the acquisition of same save and except as expressly represented or warranted herein. Without limiting the generality of the foregoing, any and all conditions, warranties or representations expressed or implied pursuant to the *Sale of Goods Act* (Ontario) or similar legislation do not apply hereto and have been waived by the Creditor. The description of the Assets contained in the Schedules hereto is for the purpose of identification only. No representation, warranty or condition has or will be given by the Applicants concerning completeness or the accuracy of such descriptions.

### **Section 2.3 Assumed Obligations**

In connection with its acquisition of the Assets, the Creditor shall assume:

- (a) the Liabilities of the Applicants under and in connection with the Contracts, Licenses and Leases, subject to Section 2.4;
- (b) the Transferred Employee Liabilities;
- (c) the Excluded Employee Liabilities; and
- (d) the Assumed Trade Payables;

((a), (b), (c) and (d) collectively, the “Assumed Obligations”).

On Closing, the Creditor shall enter into an assumption agreement with respect to the Assumed Obligations, in form and substance satisfactory to the Applicants and Creditor, acting reasonably.

**Section 2.4 Excluded Obligations**

Other than the Assumed Obligations, the Creditor is not agreeing to assume and shall not be obliged to pay, perform or discharge any Liabilities of any of the Applicants which arise or relate to the Business or otherwise. Without limiting the generality of the foregoing, the Creditor shall have no obligations in respect of any of the following Liabilities:

- (1) **Transaction Expenses.** All Liabilities of the Applicants for legal, accounting, audit and investment banking fees, brokerage commissions and any other expenses incurred by the Applicants with respect to the transaction contemplated by this Agreement.
- (2) **Banks, etc.** All Liabilities of the Applicants to banks, financial institutions or other Persons with respect to borrowed money or otherwise.
- (3) **Contracts, etc.** All Liabilities of the Applicants: (i) accruing prior to the Time of Closing (other than Liabilities arising from financial defaults) under the Contracts, Licences and Leases to the extent that such Liabilities are not disclosed on Schedules 1.1(17) and 1.1(41) or are contingent at the Time of Closing; and (ii) arising under any Contract, License or Lease that is not assumed hereunder.
- (4) **Product Liabilities.** All Liabilities in respect of injury to or death of Persons or damage to or destruction of property not constituting part of the Assets, including product liability claims and workers’ compensation claims arising out of the conduct of the Business prior to the Closing Time, regardless of when any such Liability is asserted, including any Liability for consequential or punitive damages in connection with the foregoing.
- (5) **Taxes.** All Liabilities for Taxes (other than Source Deductions) payable or remittable by any Applicant.

### ARTICLE 3 - STATEMENT OF FAIR MARKET VALUE/CONSIDERATION PAYABLE

#### Section 3.1 Designation of Fair Market Value/Consideration Payable

The Creditor shall be entitled to designate (i) the fair market value of each of the Assets acquired under Section 2.1 at the Time of Closing and (ii) the amount of the consideration reasonably payable to the Creditor for assuming the Assumed Obligations under this Agreement and shall provide Notice to the Applicants thereof within 30 Business Days following the Closing Date. The Applicants shall consult and cooperate with the Creditor in respect of the Creditor resolving such designations including promptly providing the Creditor all information, documents and other material pertaining thereto and in its or their custody and control. The Applicants and the Creditor shall adopt such designations for purposes of the ITA and applicable federal and provincial tax legislation.

### ARTICLE 4- TAX MATTERS

#### Section 4.1 Transfer Taxes

(1) The Creditor shall pay upon Closing all applicable federal and provincial sales taxes exigible in connection with the acquisition of the Assets by the Creditor including, without limitation, GST and all retail sales taxes (as required pursuant to the *Retail Sales Tax Act* (Ontario) and provincial tax legislation in British Columbia and Saskatchewan) (collectively, the "Transfer Taxes") and the Creditor shall prepare and file at its expense any affidavits, returns or other documents required under the applicable legislation with respect thereto. Alternatively, where applicable, the Creditor shall have the option to furnish the Applicants with appropriate exemption certificates or other satisfactory documentation in proof of exemptions from such taxes.

(2) If the Creditor has not, as of the Time of Closing, designated the fair market value of the Assets as at the Time of Closing in accordance with Section 3.1, the Creditor shall pay to the Applicants the provincial retail sales taxes under Section 4.1(1) based on an assumed fair market value of the Assets and other assets acquired by the Creditor under this Agreement equal to the net book value thereof in the Financial Records. The Creditor shall be entitled to designate the fair market value of the Assets in accordance with Section 3.1, which designation shall supersede the preceding assumed fair market value of net book value (to the extent of any discrepancies). Once the Creditor has notified the Applicants of its designation made under Section 3.1, (a) to the extent any additional provincial sales taxes are payable in respect of the Assets, the Creditor shall remit such additional provincial sales taxes directly to the appropriate taxing authority (b) to the extent provincial sales taxes have been collected by the Applicants in excess of the amount required to be remitted in respect of the Assets, the Applicants shall return such excess to the Creditor and (c) to the extent provincial sales taxes have been collected and remitted by the Applicants in excess of the amount required to be remitted in respect of the Assets, the Creditor shall apply for a refund of such excess taxes directly to the appropriate taxing authority.



**Section 4.2 Goods and Services Tax**

The Creditor and Health Corp. shall jointly make the elections provided for under subsection 167(1.1) of the ETA, or such other elections, so that no GST will be payable in respect of the transactions contemplated by this Agreement. The Creditor and the Applicants shall jointly complete the election form (more particularly described as form GST-44) and/or any other forms necessary in respect of such election and the Creditor shall file the said election form no later than the due date for the Creditor's GST return for the first reporting period in which GST would, in the absence of such election, become payable in connection with the transactions contemplated by this Agreement.

**Section 4.3 Accounts Receivable/Assumption of Obligations**

Upon the request of the Creditor, in its sole discretion, the Creditor and the Applicants shall jointly make the elections provided for under section 22 of the ITA and/or subsection 20(24) of the ITA.

**ARTICLE 5 REPRESENTATIONS AND WARRANTIES**

**Section 5.1 Creditor's Representations**

The Creditor represents and warrants to each of the Applicants that:

- (a) the Creditor is a corporation duly incorporated, organized and validly subsisting under the laws of Ontario;
- (b) the Creditor has all necessary corporate power, authority and capacity to enter into this Agreement and to perform its obligations under this Agreement, and the execution and delivery of this Agreement and the consummation of the Transaction contemplated have been duly authorized by all necessary corporate action on the part of the Creditor;
- (c) the Creditor is not party to, bound or affected by or subject to any indenture, agreement, instrument, charter or by-law provision, order, judgment or decree of a court of competent authority or any Government Authority or applicable law which would be violated, contravened or breached by the execution and delivery by it of this Agreement or the performance (such performance shall include, without limitation, the exercise of any of the Creditor's rights and compliance with each of the Creditor's obligations hereunder) by it of any of the terms contained herein;
- (d) there is no suit, action, litigation, arbitration proceeding or governmental proceeding, including appeals and applications for review, in progress, pending or, to the best of the Creditor's knowledge, threatened against or relating to the Creditor or any judgment, decree, injunction, rule or order of any court, governmental department, commission, agency, instrumentality or arbitrator which, in any case, might adversely affect the ability of the Creditor to enter into this Agreement or to consummate the Transaction and the Creditor is not aware of

any existing ground on which any such action, suit or proceeding may be commenced;

- (e) the Creditor is duly registered for the purposes of Part IX of the ETA;
- (f) this Agreement and all other documents contemplated hereunder to which the Creditor is or will be a party have been or will be, as at the Time of Closing, duly and validly executed and delivered by the Creditor and constitute or will, as at the Time of Closing, constitute legal, valid and binding obligations of the Creditor enforceable in accordance with the terms hereof or thereof; and
- (g) the Creditor is not a "non-Canadian", as defined in the *Investment Canada Act* (Canada).

The Creditor shall promptly deliver to the Applicants written notice specifying the occurrence or likely occurrence of any event which may result in any of the Creditor's representations and warranties contained in this Agreement not continuing to be true as at Closing.

### **Section 5.2 Applicants' Representations**

Each of the Applicants represents and warrants to the Creditor in respect of itself (the "Representing Applicant") as follows:

- (a) the Representing Applicant has been duly incorporated and is a corporation validly existing under the laws of Canada and has the power to own its property and to carry on the Business as now being conducted by it;
- (b) the Representing Applicant is duly registered for the purposes of Part IX of the ETA;
- (c) subject to the granting of the Approval and Vesting Order, the Representing Applicant is not party to, bound or affected by or subject to any indenture, agreement, instrument, charter or by-law provision, order, judgment or decree of a court of competent authority or any Government Authority or applicable law which would be violated, contravened or breached by the execution and delivery by it of this Agreement or the performance (such performance shall include, without limitation, the exercise of any of the Representing Applicant's rights and compliance with each of the Representing Applicant's obligations hereunder) by it of any of the terms contained herein;
- (d) except for the Liabilities previously disclosed to the Creditor, there are no other Liabilities under any Contract, Lease or License that is being assigned to the Creditor under the terms of this Agreement;
- (e) there is no suit, action, litigation, arbitration proceeding or governmental proceeding, including appeals and applications for review, in progress, pending or, to the best of the Representing Applicant's knowledge, threatened against or relating to the Representing Applicant or any judgment, decree, injunction, rule or

order of any court, governmental department, commission, agency, instrumentality or arbitrator which, in any case, might adversely affect the ability of the Representing Applicant to enter into this Agreement or to consummate the Transaction and the Representing Applicant is not aware of any existing ground on which any such action, suit or proceeding may be commenced;

- (f) subject to the granting of the Approval and Vesting Order, this Agreement and all other documents contemplated hereunder to which the Creditor is or will be a party have been or will be, as at the Time of Closing, duly and validly executed and delivered by the Representing Applicant and constitute or will, as at the Time of Closing, constitute legal, valid and binding obligations of the Representing Applicant enforceable in accordance with the terms hereof or thereof; and
- (g) the Representing Applicant is not a "non-resident" of Canada as defined for the purposes of the ITA.

**ARTICLE 6- CONDITIONS**

**Section 6.1 Conditions - Creditor**

The obligation of the Creditor to complete the Transaction is subject to the following conditions being fulfilled or performed at or prior to the Time of Closing:

- (a) the Initial Order shall not be stayed, vacated, reversed or amended without the prior written consent of the Creditor;
- (b) the Approval and Vesting Order shall have been granted by the Court on or before June 4, 2010 and shall not have been stayed, varied or vacated, and no order shall have been issued to restrain or prohibit the completion of the Transaction;
- (c) the D&O Claims Procedure Order shall have been granted by the Court on the day on which the Approval and Vesting Order is granted and shall not have been stayed, varied or vacated;
- (d) all representations and warranties of each of the Applicants contained in this Agreement shall be true at and as of the date hereof and each of such representations and warranties shall continue to be true as at the Closing Date with the same effect as though made on and as of that date;
- (e) each of the Applicants shall have performed each of its obligations under this Agreement to the extent required to be performed on or before the Closing Date
- (f) the Applicants shall not have made any payments or distributions except in accordance with the 13-week cash flow forecast filed with the Court in connection with Applicants' motion for the Initial Order (subject to an allowed 15% cumulative variance from the weekly payments and distributions set out in such 13-week cash flow), other than with the prior consent of the Creditor;

- (g) the Monitor shall have delivered to the Creditor a written confirmation that, subject only to the satisfaction of the other conditions set out in this Article 6 and confirmation by the Monitor that the Transaction has been completed to its satisfaction, as contemplated by the Monitor's Certificate in the form attached to the Approval and Vesting Order (the "Monitor's Certificate"), the Monitor will deliver the Monitor's Certificate;
- (h) the Applicants shall have provided the Creditor, by no later than May 14, 2010, with drafts of all motion materials that they intend to file with the Court in support of the motion for the Approval and Vesting Order;
- (i) the Applicants shall have filed with the Court and served on all interested Persons by no later than May 20, 2010, the motion materials in support of the motion for the Approval and Vesting Order; and
- (j) no action or proceeding shall be pending or threatened to restrain or prohibit the completion of the Transaction contemplated by this Agreement.

The foregoing conditions are for the exclusive benefit of the Creditor.

**Section 6.2 Conditions – Applicants**

The obligation of the Applicants to complete the Transaction is subject to the following conditions being fulfilled or performed at or prior to the Time of Closing:

- (a) all representations and warranties of the Creditor contained in this Agreement shall be true at and as of the date hereof and each of such representations and warranties shall continue to be true as at the Closing Date with the same effect as though made on and as of that date;
- (b) the Creditor shall have performed each of its obligations under this Agreement to the extent required to be performed on or before the Closing Date;
- (c) the Approval and Vesting Order shall have been granted by the Court and shall not have been stayed, varied or vacated, and no order shall have been issued to restrain or prohibit the completion of the Transaction;
- (d) the Monitor shall have delivered to the Creditor a written confirmation that, subject only to the satisfaction of the other conditions set out in this Article 6 and confirmation by the Monitor that the Transaction has been completed to its satisfaction, as contemplated by the Monitor's Certificate, the Monitor will deliver the Monitor's Certificate;
- (e) the D&O Claims Procedure Order shall have been granted by the Court and shall not have been stayed, varied or vacated; and
- (f) no action or proceeding shall be pending or threatened to restrain or prohibit the completion of the Transaction contemplated by this Agreement.

The foregoing conditions are for the exclusive benefit of the Applicants.

### **Section 6.3 Non-Satisfaction of Conditions**

If any condition set out in this Article 6 is not satisfied, performed or not fulfilled, in whole or in part, prior to the time specified, the party for whose benefit the condition is provided may:

- (a) waive compliance with the condition in whole or in part in its sole discretion by written notice to the other parties and without prejudice to any of its rights of termination in the event of non-fulfilment of any other condition in whole or in part and, if so waived, this Agreement shall be read exclusive of the said condition or conditions so waived; or
- (b) subject to Section 8.12 in its absolute and unfettered discretion, elect, on written notice to the other parties, to terminate this Agreement before Closing and, in such event each of the Applicants and the Creditor shall be released from their obligations and liabilities hereunder.

## **ARTICLE 7- EMPLOYEE MATTERS**

### **Section 7.1 Offers**

(1) Prior to the Closing Date, the Creditor shall offer employment to the employees of Health Corp. (the "**Employees**"), effective as of the Closing Date and conditional on Closing, save and except only for those employees designated in the letter dated as of the date hereof and delivered by the Creditor to the Applicants (the "**Excluded Employees**") on terms and conditions which are in the aggregate no less favourable than the terms and conditions on which the Employees collectively are employed immediately prior to the Closing Date. However, nothing herein will prevent the Creditor from including in the offers of employment an acknowledgement of new employment and that the Employee's years of service with the applicable Applicant will be recognized for statutory purposes only.

(2) The Creditor acknowledges and agrees that: (i) the Applicants make no representation or warranty that any Employee will accept employment with the Creditor; and (ii) the acceptance by Employees of offers of employment with the Creditor shall not constitute a condition to the Creditor's obligation to complete the Transaction.

### **Section 7.2 Termination**

Prior to the Closing Date, the Applicants shall terminate the employment of each of the Excluded Employees.

**ARTICLE 8- CLOSING**

**Section 8.1 Closing**

The completion of the Transaction shall take place at the offices of McMillan LLP, Brookfield Place, Suite 4400, Bay Wellington Tower, 181 Bay Street, Toronto, Ontario at the Time of Closing or as otherwise determined by mutual agreement of the parties in writing.

**Section 8.2 Creditor's Deliveries on Closing**

At or before the Time of Closing, the Creditor shall execute and deliver the following, each of which shall be in form and substance satisfactory to the Applicants and the Creditor, acting reasonably:

- (a) an assignment agreement with respect to the assignment of any registered Applicants' trademarks substantially in the form attached as Schedule 8.2(a)
- (b) payment or evidence of the payment of the applicable Transfer Taxes or appropriate exemption certificates, as required by Section 4.1;
- (c) the assumption agreement required by Section 2.3, in form and substance satisfactory to the parties acting reasonably;
- (d) a certificate dated as of the Closing Date, confirming that all of the representations and warranties of the Creditor contained in this Agreement are true as of the Closing Date, with the same effect as though made on and as of the Closing Date;
- (e) an acknowledgement dated as of the Closing Date, that each of the conditions precedent in Sections 6.1 and 6.3 of this Agreement have been fulfilled, performed, or waived by the Creditor as of the Closing Date;
- (f) a confirmation of acquisition in form and substance satisfactory to the parties acting reasonably in respect of the Assets;
- (g) a release of the Guarantee dated as of July 3, 2007 among, *inter alia*, Planet Organic and the administrative agent under the Term B Credit Agreement; and
- (h) such further and other documentation as is referred to in this Agreement or as the Applicants may reasonably require to give effect to this Agreement.

**Section 8.3 Applicants' Deliveries on Closing**

At or before the Time of Closing, the Applicants shall together execute and deliver the following (only one copy of and evidence of which shall be required), each of which shall be in form and substance satisfactory to the Creditor, acting reasonably:

- (a) an assignment agreement with respect to the assignment of any registered Applicants' trademarks substantially in the form attached as Schedule 8.2(a);

- (b) a certificate dated as of the Closing Date, confirming that all of the representations and warranties of the Applicants contained in this Agreement are true as of the Closing Date, with the same effect as though made on and as of the Closing Date;
- (c) an acknowledgement dated as of the Closing Date, that each of the conditions precedent in Sections 6.2 and 6.3 of this Agreement have been fulfilled, performed, or waived by the Applicants as of the Closing Date;
- (d) a confirmation of acquisition in form and substance satisfactory to the parties acting reasonably in respect of the Assets;
- (e) evidence of delivery of a notice of repudiation in respect of each of the Vaughan Lease and the Nanaimo Lease;
- (f) A duly executed resolution of the board of directors of Holding Corp. authorizing the cancellation of the existing share certificates evidencing the Holding Corp. Shares, the transfer of the Holding Corp. Shares from Planet Organic to the Creditor, and the issuance of new share certificates evidencing the Holding Corp. Shares registered in the name of the Creditor; and
- (g) such further and other documentation as is referred to in this Agreement or as the Creditor may reasonably require to give effect to this Agreement.

#### **Section 8.4 Creditor's Acknowledgement**

The Creditor acknowledges that it is acquiring the Assets pursuant to the Approval and Vesting Order and the Creditor agrees to accept a conveyance of the Assets pursuant to the Approval and Vesting Order.

#### **Section 8.5 Pre-Closing Applicant Obligations**

Prior to Closing,

- (1) the Applicants shall cause the Assets to be managed and maintained in the ordinary course of business consistent with their existing practices in the state of repair which exists at the time of execution of this Agreement, normal wear and tear excepted;
- (2) the Applicants shall provide the Creditor with reasonable access to the Applicants' management, employees and advisors to the extent necessary to adequately assess the Applicants' Business and financial affairs; and
- (3) the Applicants shall provide to the Creditor all relevant financial information necessary to adequately assess the Applicants' Business and financial affairs including, without limitation, information regarding the Applicants' (and their Subsidiaries') performance, working capital, cash position, accounts receivable, inventory and accrued expenses, as may be reasonably requested by the Creditor and, in any event not less frequently than on a weekly basis.

**Section 8.6 Possession of Assets**

The Applicants shall remain in possession of the Assets until the Time of Closing. On Closing, the Creditor shall take possession of the Assets wherever situate at the Time of Closing. The Creditor acknowledges that the Applicants have no obligation to deliver physical possession of the Assets to the Creditor. In no event shall the Assets be assigned, transferred or set over to the Creditor until the conditions set out in the Approval and Vesting Order have been satisfied and the Creditor has satisfied all of the requirements outlined in Section 8.2.

**Section 8.7 Risk**

The Assets shall be and remain at the risk of the Applicants until Closing and at the risk of the Creditor from and after Closing. If, prior to Closing, the Assets are substantially damaged or destroyed by fire or other casualty, then, at its option, the Creditor may decline to complete the Transaction. Such option shall be exercised within three (3) Business Days after the notification to the Creditor by any of the Applicants of the occurrence of such damage or destruction (or prior to the Closing Date if such occurrence takes place within three Business (3) days of the Closing Date) in which event this Agreement shall be considered to be validly terminated in accordance with Section 8.12. If the Creditor does not exercise such option, it shall complete the Transaction and shall be entitled to an assignment of the proceeds of insurance referable to such damage or destruction. Where any damage is not substantial, the Creditor shall complete the Transaction and shall be entitled to an assignment of any proceeds of insurance referable to such damage provided that such damage is insured.

**Section 8.8 Access to Assets and Operations Prior to Closing**

The Creditor may have reasonable access to the Assets located at the Applicants' premises between the hours of 9:00 a.m. and 5:00 p.m. local time prior to the Time of Closing for the purpose of enabling the Creditor to conduct such inspections of the Assets as it deems appropriate. Such inspection shall only be conducted in the presence of a representative of the Applicants or one of their designees, if so required at the discretion of the Applicants.

**Section 8.9 D&O Claims Procedure Order**

Prior to Closing, the Applicants shall serve and file with the Court a notice of motion and motion record seeking the D&O Claims Procedure Order.

**Section 8.10 Vaughan Lease and Nanaimo Lease Repudiation**

Prior to Closing, the Applicants shall deliver a notice of repudiation in respect of each of the Vaughan Lease and the Nanaimo Lease.

**Section 8.11 Acknowledgement**

The Applicants acknowledge that the costs and expenses (including legal fees) incurred, on or after April 20, 2010, by the Creditor in connection with this Transaction constitute costs and expenses incurred in connection with the enforcement and/or preservation of its rights under the Note Purchase Agreement and the Term B Agreement.



### Section 8.12 Termination

(1) If the Creditor or either of the Applicants terminates this Agreement in accordance with Section 6.3, other than as a result of a default, or failure, by any of the parties to comply with the terms of this Agreement, then:

- (a) all the obligations of each of the Applicants and the Creditor pursuant to this Agreement shall be at an end; and
- (b) neither party shall have any right to specific performance or other remedy against, or any right to recover damages or expenses from, the other.

### Section 8.13 Personal Information Privacy

The Creditor shall at all times comply with all applicable protection of personal information legislation, federal or provincial, with respect to Personal Information disclosed or otherwise provided, including any access provided to such Personal Information by the Applicants under this Agreement. The Creditor shall only use or disclose such Personal Information for the purposes of reasonably investigating the affairs of the Business and completing the Transaction or, in the case of the Employees, offering employment to the Employees in accordance with this Agreement. The Creditor shall safeguard all Personal Information collected from the Applicants in a manner consistent with the degree of sensitivity of the Personal Information and, furthermore, maintain at all times the security and integrity of the Personal Information. Creditor covenants and agrees that it will not make any copies of the Personal Information or any excerpts thereof or in any way re-create the substance or contents of the Personal Information if the Transaction is not completed for any reason, and that any and all Personal Information will be returned to the Applicants or destroyed upon the Applicants' request.

### Section 8.14 Monitor's Certificate

Notwithstanding any other term in this Agreement, in the event that all conditions precedent set out in Article 6, except for the conditions precedent set out in Section 6.1(g) and Section 6.2(d), have been satisfied on or at the Time of Closing, the parties agree:

- (a) to (i) work cooperatively with the Monitor towards a consensual resolution that would result in the delivery of the Monitor's Certificate, failing which either the Creditor or the Applicants may apply to the Court for directions, on notice to the other party(ies) and the Monitor and (ii) use commercially reasonable efforts to have such an application disposed of on an expedited basis; and
- (b) that (i) the Closing shall take place on the Business Day following the date on which the Monitor's Certificate is delivered pursuant to a consensual resolution under Section 8.14(a) above, or the date on which the Court issues an Order pursuant to an application under Section 8.14(a) (subject to the terms of such Order) and (ii) the outside date referenced in the definition of "Closing Date" set out in Section 1.1(19) shall be extended from June 7, 2010 until the date specified in subsection (i) of this Section 8.14(b), provided that such outside date shall not

be later than June 18, 2010 (unless otherwise extended by mutual agreement of the parties with the consent of the Monitor).

**Section 8.15 Schedules**

The Applicants agree to use commercially reasonable efforts to complete "Schedule 1.1(17) Contracts" to the satisfaction of the Creditor, acting reasonably, by no later than five (5) days prior to the Closing Date.

**ARTICLE 9- GENERAL**

**Section 9.1 Further Assurances**

Each of the parties shall, from time to time after the Closing Date, at the request and expense of the other, take or cause to be taken such action and execute and deliver or cause to be executed and delivered to the other such documents and further assurances as may be reasonably necessary to give effect to this Agreement.

**Section 9.2 Notice**

Any notice or other communication under this Agreement shall be in writing and may be delivered personally or transmitted by fax or other electronic transmission, addressed in the case of the Creditor, as follows:

- (a) The Catalyst Capital Group Inc., on behalf of funds managed by it  
77 King Street West  
Royal Trust Tower, TD Bank Centre  
Suit 4320, P.O. Box 212  
Toronto, Ontario M5K 1J3

**Attention:** Gabriel de Alba  
**Telephone No.:** 416-945-3020  
**Fax No.:** 416-945-3060  
**Email:** gdealba@catcapital.com

with a copy to

- (b) McMillan LLP  
Brookfield Place, Suite 4400  
181 Bay Street  
Toronto, Ontario M5J 2J7

**Attention:** Andrew J.F. Kent  
**Telephone No.:** 416-865-7160  
**Fax No.:** 416-865-7048  
**Email:** andrew.kent@mcmillan.ca

and in the case of the Applicants, as follows:

- (c) Planet Organic Health Corp.  
7915-104 Street  
Suite 2300  
Edmonton, Alberta T6E 4E1

**Attention:** Darren Krissie  
**Telephone No.:** 780-435-4573 Ext. 314  
**Fax No.:** 780-988-5064  
**Email:** dkrissie@planetorganic.ca

with a copy to:

- (d) Heighington Law Firm  
730, 1015 - 4th Street SW  
Calgary, Alberta T2R 1J4

**Attention:** David D. Heighington  
**Telephone No.:** 416 865-6940  
**Fax No.:** 416 863-6275  
**Email:** david@hlf.ca

and in the case of the Monitor, as follows:

- (e) Deloitte & Touche Inc.  
181 Bay Street, Suite 1400  
Toronto, Ontario M5J 2V1

**Attention:** Pierre Laporte.  
**Email:** PiLaporte@deloitte.ca

with a copy to:

- (f) Goodmans LLP  
Bay Adelaide Centre  
333 Bay Street, Suite 3400  
Toronto, ON  
M5H 2S7

**Attention:** Brendan O'Neill  
**Telephone No.:** 416-849-6017  
**Fax No.:** 416-979-1234  
**Email:** boneill@goodmans.ca

Any such notice or other communication, if given by personal delivery, will be deemed to have been given on the day of actual delivery thereof and, if transmitted by fax before 5:00 p.m. (EDT) on a Business Day, will be deemed to have been given on the Business Day, and if transmitted by fax or other electronic transmission after 5:00 p.m. (EDT) on a Business Day, will be deemed to have been given on the Business Day after the date of the transmission. A party

may change its address and/or fax machine number and/or email address by providing notice in accordance with this Section.

**Section 9.3 Time**

Time shall, in all respects, be of the essence hereof, provided that the time for doing or completing any matter provided for herein may be extended or abridged by an agreement in writing signed by the Applicants and the Creditor or by their respective solicitors who are hereby expressly appointed for that purpose.

**Section 9.4 Currency**

Except where otherwise indicated, all references herein to money amounts are in Canadian currency.

**Section 9.5 Tender**

Any tender to notices, documents and/or monies hereunder may be made upon the Applicants or the Creditor or their respective solicitors. Unless otherwise indicated herein, monies may be tendered by a negotiable cheque certified by a Canadian chartered bank or by an official bank draft drawn a major Canadian bank listed in Schedule I to the *Bank Act* (Canada).

**Section 9.6 Survival**

The representations and warranties of the parties hereto contained in this Agreement shall survive Closing.

**Section 9.7 Benefit of Agreement**

This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns. The Creditor shall not assign its rights or benefits under this Agreement in whole or in part except with the prior written consent of the Applicants, acting reasonably, except that the Creditor may assign its rights hereunder without such consent to one or more of its Subsidiaries or affiliates provided that such assignment is made no later than two (2) Business Days prior to the Closing Date.

**Section 9.8 Entire Agreement**

This Agreement and the attached schedules constitute the entire agreement between the parties with respect to the subject matter and supersede all prior negotiations and understandings. This Agreement may not be amended or modified in any respect except by written instrument executed by the parties. Each of the parties acknowledges that, except as contained in this Agreement, there is no representation, warranty, collateral agreement or condition (whether a direct or collateral condition or an express or implied condition) which induced it to enter into this Agreement.

**Section 9.9 Cumulative Remedies**

No remedy conferred upon or reserved to one or both of the parties hereto is intended to be exclusive of any other remedy, but each remedy shall be cumulative and in addition to every

other remedy conferred upon or reserved hereunder, whether such remedy shall be existing or hereafter existing, and whether such remedy shall become available under common law, equity or statute.

**Section 9.10 Interpretation**

This Agreement shall be read with all changes of gender and number as required by the context.

**Section 9.11 References To Statutes**

Except as otherwise provided in this Agreement, references to any statute herein shall be deemed to be a reference to such statute and any and all regulations from time to time promulgated thereunder and to such statute and regulations as amended or re-enacted from time to time. Any reference herein to a specific section or sections, paragraph or paragraphs and/or clause or clauses of any statute or regulations promulgated thereunder shall be deemed to include a reference to any corresponding provision of future law.

**Section 9.12 Paramourncy**

In the event of any conflict or inconsistency between the provisions of this Agreement, and any other agreement, document or instrument executed or delivered by the Applicants in connection with the Transaction or this Agreement, the provisions of this Agreement shall prevail to the extent of such conflict or inconsistency.

**Section 9.13 Severability**

If any provision contained in this Agreement or any document delivered in connection with this Agreement or the application thereof to any person/entity or circumstance is, to any extent, invalid or unenforceable, the invalidity or unenforceability of that provision shall not affect the validity or enforceability of any other provision of this Agreement, all of which shall be construed and enforced as if that invalid or unenforceable provision were omitted. The invalidity or unenforceability of any provision in one jurisdiction shall not affect such provisions validity or enforceability in any other jurisdiction.

**Section 9.14 Governing Law**

This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein and each of the parties irrevocably attorns to the non-exclusive jurisdiction of the courts of the Province of Ontario.

**Section 9.15 Non-Business Days**

In the event that any date specified or any date contemplated in this Agreement shall fall upon a day other than a Business Day, then such date shall be deemed to be the next following Business Day.

**Section 9.16 Counterparts**

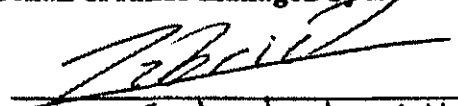
This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which shall constitute one and the same agreement. Transmission by facsimile or other electronic transmission of an executed counterpart of this Agreement shall be deemed to constitute due and sufficient delivery of such counterpart.

***[Signature Pages to Follow]***

The Parties have executed this agreement.

The Creditor:

**THE CATALYST CAPITAL GROUP INC.,  
on behalf of funds managed by it**

By:   
Name: Gabriel de Alba  
Title: Managing Director ; Partner

The Applicants:

**PLANET ORGANIC HEALTH CORP.**

By: \_\_\_\_\_  
Name:  
Title:

**DARWEN HOLDINGS LTD.**

By: \_\_\_\_\_  
Name:  
Title:

The Parties have executed this agreement.

The Creditor:

**THE CATALYST CAPITAL GROUP INC.,  
on behalf of funds managed by it**

By: \_\_\_\_\_

Name:

Title:

The Applicants:

**PLANET ORGANIC HEALTH CORP.**

By:  \_\_\_\_\_

Name: Darren Krissie

Title: EVP

**DARWEN HOLDINGS LTD.**

By:  \_\_\_\_\_

Name: Darren Krissie

Title: EVP



**Schedule 1.1(5) – Approval and Vesting Order**

See attached.

Court File No. 10-8699-00CL

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

THE HONOURABLE MR.	)	THURSDAY, THE _____
	)	
JUSTICE MORAWETZ	)	DAY OF MAY, 2010

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

AND IN THE MATTER OF PLANET ORGANIC HEALTH CORP. and  
DARWEN HOLDINGS LTD.

**APPROVAL AND VESTING ORDER**

THIS MOTION, made by Planet Organic Health Corp. and Darwen Holdings Ltd., (collectively, the "Applicants") for an order approving the acquisition (the "Acquisition") contemplated by an acquisition agreement among the Applicants and the Creditor (as that term is defined in the Acquisition Agreement) made as of May ●, 2010 and appended to the Affidavit of Darren Krissie sworn May ●, 2010, together with such non-material amendments as may be consented to by the Monitor (defined below) (the "Acquisition Agreement"), and vesting in the Creditor all right, title and interest in and to the assets described in the Acquisition Agreement (the "Assets"), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the material filed, including the Notice of Motion and the Report of the court-appointed monitor, Deloitte & Touche Inc. (the "Monitor") and on hearing the submissions of counsel for the Applicants, counsel for the Monitor and counsel for the Creditor, and on being advised that the Service List was served with the Motion Record herein:

1. THIS COURT ORDERS that, if necessary, the time for service of the Notice of Motion and the Motion Record is hereby abridged so that this motion is properly returnable today and hereby dispenses with further service thereof.

2. THIS COURT ORDERS AND DECLARES that capitalized terms used herein that are not otherwise defined shall have the meanings set out in the Acquisition Agreement.

### **Approval and Vesting**

3. THIS COURT ORDERS AND DECLARES that the Acquisition including, without limitation, the payment and acquisition contemplated in section 2.1 of the Acquisition Agreement is hereby approved, and that the Acquisition Agreement is in the best interests of the Applicants and their stakeholders. The execution of the Acquisition Agreement by the Applicants is hereby authorized and approved, and the Applicants are hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of, or to further evidence or document, the Acquisition and for the conveyance of the Assets to the Creditor.

4. THIS COURT ORDERS that, upon satisfaction (or, where applicable, waiver) of the conditions set out in Article 6 of the Acquisition Agreement, the Monitor shall file with this Court a certificate substantially in the form attached as Schedule A hereto stating that all conditions precedent set out in Article 6 of the Acquisition Agreement have been satisfied (or, where applicable, waived by the Applicants or the Creditor in accordance with the terms of the Acquisition Agreement) (the "Monitor's Certificate"). For the purposes of the preparation of the Monitor's Certificate, the Monitor shall be entitled to rely upon information provided by the Applicants with respect to the satisfaction or waiver of the conditions set out in Article 6 of the Acquisition Agreement.

5. THIS COURT ORDERS AND DECLARES that upon the delivery of a Monitor's Certificate to the Creditor, all right, title and interest in and to the Assets described in the Acquisition Agreement shall vest absolutely in the Creditor, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected,

registered or filed and whether secured, unsecured or otherwise (collectively, the "Claims"), whether such Claims came into existence prior to, subsequent to, or as a result of any previous orders of this Court, contractually, by operation of law or otherwise, including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Justice Mr. Justice Morawetz dated April 29, 2010; and (ii) all charges, security interests or claims evidenced by registrations including without limitation pursuant to the *Personal Property Security Act* (Ontario), the *Personal Property Security Act* (Alberta), *Personal Property Security Act* (British Columbia), *Personal Property Security Act* (Nova Scotia), *Personal Property Security Act* (Saskatchewan) or any other personal property registry system (all of which are collectively referred to as the "Encumbrances") and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Assets shall, upon the delivery of the Monitor's Certificate to the Creditor, be and are hereby expunged and discharged as against the Assets.

6. THIS COURT ORDERS that, subject to and in accordance with the restrictions in section 11.3 of the *Companies' Creditors Arrangement Act* (Canada) ("CCAA"), the Applicants are authorized and directed to assign the contracts, leases, agreements and other arrangements of which the Creditor takes an assignment on closing pursuant to and in accordance with the terms of the Acquisition Agreement (the "Contracts") and that such assignments are hereby approved and are valid and binding upon the counterparties notwithstanding any restriction or prohibition on assignment contained in any such Contracts.

7. THIS COURT ORDERS that from and after the Closing Date, subject to the CCAA, all Persons shall be deemed to have waived all defaults then existing or previously committed by the Applicants under, or caused by the Applicants under, and the non-compliance by the Applicants with, any of the Contracts arising solely by reason of the insolvency of the Applicants or as a result of any actions taken pursuant to the Acquisition Agreement or in these proceedings, and all notices of default and demands given in connection with any such defaults under, or non-compliance with, the Contracts shall be deemed to have been rescinded and shall be of no further force or effect.

8. THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act* ("PIPEDA"), and pursuant to any other

similar provincial legislation, the Applicants are authorized and permitted to disclose and transfer to the Creditor all human resources and payroll information in the Applicants' records pertaining to the Applicants' past and current employees. The Creditor shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects in compliance with PIPEDA and other similar provincial legislation.

### **Cash Reserve**

9. THIS COURT ORDERS that the Monitor shall establish a cash reserve in the amount of \$2,031,281, as required under the Acquisition Agreement, on the Closing Date, using funds from the Cash and Cash Equivalents (the "Cash Reserve"), which Cash Reserve shall be held by the Monitor in a segregated account ("Cash Reserve Account") in trust for the benefit of Persons entitled to be paid the Cash Reserve Costs and the Creditor for the purpose of paying the Cash Reserve Costs in accordance with this Order.

10. THIS COURT ORDERS that the Cash Reserve Costs shall consist of the following obligations of the Applicants outstanding on the Closing Date:

- (a) obligations secured by the Administration Charge to the extent required for the completion of the CCAA Proceeding in an amount not to exceed \$300,000;
- (b) obligations secured by the Directors' Charge including, legal fees and costs incurred by the directors and officers of the Applicants in connection with the conduct of the directors' and officers' claims process contemplated by the D&O Claims Procedure Order, that arose prior to the Closing Date, in an aggregate amount not to exceed \$500,000;
- (c) claims under subsections 6(5)(a) of the CCAA to the extent not paid by the Applicants on or before the Closing Date or assumed by the Creditor on the Closing Date, which amounts are expected not to exceed \$75,000; and
- (d) the obligation of the Applicants to pay the PCG Transaction Fee as defined in the Acquisition Agreement;

11. THIS COURT ORDERS that, as soon as reasonably possible following and in any event within fifteen (15) days of, the Closing Date, or by such later date as may be ordered by the Court, the Monitor shall quantify, based on the books and records of the Creditor, the precise amount of each of the Cash Reserve Costs under paragraph 10(c) hereof. For such purpose, the

Monitor shall be given access to the books and records of the Applicants and shall be entitled to rely exclusively thereon and, in particular, shall not be responsible for any errors therein or the impact of such errors on the Monitor's quantification of any such Cash Reserve Cost. Upon being provided with the Monitor's quantification of each such Cash Reserve Cost, the Creditor shall have ten (10) days to decide whether to agree to the Monitor's quantification of such Cash Reserve Cost, failing which agreement the amount of any such Cash Reserve Cost still in dispute shall be determined, on application of the Monitor, on notice to the Creditor, any affected directors and officers of the Applicants and any affected beneficiary of the Administration Charge, by Order of the Court. Once the amount of any such Cash Reserve Cost has either been agreed to or determined by the Court, as set forth above, the Monitor shall pay such claim from the Cash Reserve Account.

12. THIS COURT FURTHER ORDERS that, from time to time after the Closing Date, the Monitor shall reduce the amount of the Cash Reserve as and to the extent that the Monitor, the Creditor, any affected directors and officers of the Applicants and any affected beneficiary of the Administration Charge agree, or a Court determines, that it, or portions of it, are no longer required to satisfy Cash Reserve Costs by distributing to the Creditor the amount of such reductions. All right, title and interest in and to any amounts in the Cash Reserve Account that are not used to pay Cash Reserve Costs in accordance with this Order shall vest absolutely in the Creditor as at the Closing Date and shall be distributed to the Creditor in accordance with this paragraph.

13. THIS COURT FURTHER ORDERS that nothing in this Order shall affect the rights of counsel to the Applicants, the Monitor and counsel to the Monitor to use and apply the retainers received by them from the Applicants.

**General**

14. THIS COURT ORDERS that, notwithstanding:

- (a) the pendency of these proceedings;

- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of any of the Applicants and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of any of the Applicants;

the vesting of the Assets in the Creditor and the payment of any amounts contemplated by the Acquisition Agreement pursuant to this Order including, without limitation, the payment and acquisition contemplated in section 2.1(1) of the Acquisition Agreement, shall be binding on any trustee in bankruptcy that may be appointed in respect of any of the Applicants and shall not be void or voidable by creditors of the applicable Applicant, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance or other transfer at undervalue under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

15. THIS COURT ORDERS AND DECLARES that the Acquisition is exempt from the application of the *Bulk Sales Act* (Ontario).

16. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Applicants and their agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicants, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

**Schedule A – Form of Monitor’s Certificate**

Court File No. 10-8699-00CL

**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 PLANET ORGANIC HEALTH CORP. and  
DARWEN HOLDINGS LTD.**

**MONITOR’S CERTIFICATE**

**RECITALS**

A. Pursuant to an Order of the Honourable Mr. Justice Morawetz of the Ontario Superior Court of Justice (the "Court") dated April 29, 2010, Deloitte & Touche Inc. was appointed as the monitor of the Applicants (the "Monitor").

B. Pursuant to an Order of the Court dated May 20, 2010, the Court approved the acquisition agreement made as of May ●, 2010 (the "Acquisition Agreement") among Planet Organic Health Corp. and Darwen Holdings Ltd. (collectively, the "Applicants") and ● (the "Creditor") and provided for the vesting in the Creditor of all right, title and interest in and to the Assets, which vesting is to be effective with respect to the Assets upon the delivery by the Monitor to the Creditor of a certificate with this Court confirming that (i) the conditions to Closing as set out in Article 6 of the Acquisition Agreement have been satisfied or waived by the Applicants and the Creditor, and (ii) the Transaction has been completed to the satisfaction of the Monitor.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Acquisition Agreement.



THE MONITOR CERTIFIES the following:

1. The conditions to Closing as set out in Article 6 of the Acquisition Agreement have been satisfied or waived by the Applicants and the Creditor.
2. The Transaction has been completed to the satisfaction of the Monitor.
3. This Certificate was delivered by the Monitor at ● [TIME] on ● [DATE].

**Deloitte & Touche Inc., in its capacity as  
Monitor of the Applicants, and not in its  
personal capacity**

Per: \_\_\_\_\_

Name:

Title:

**IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT,  
R.S.C. 1985, c.C-36, AS AMENDED  
AND IN THE MATTER OF PLANET ORGANIC HEALTH CORP. and DARWEN  
HOLDINGS LTD.**

Court File No. 10-8699-00CL

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

Proceeding commenced at Toronto

**MONITOR'S CERTIFICATE**

**GOODMANS LLP**  
Barristers & Solicitors  
Bay Adelaide Centre  
333 Bay Street, Suite 3400  
Toronto, ON M5H 2S7

●  
Lawyers for the Monitor

**IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT,  
R.S.C. 1985, c.C-36, AS AMENDED  
AND IN THE MATTER OF PLANET ORGANIC HEALTH CORP. and DARWEN  
HOLDINGS LTD.**

Court File No. 10-8699-00CL

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**(COMMERCIAL LIST)**  
Proceeding commenced at Toronto

**APPROVAL AND VESTING ORDER**

**BAKER & MCKENZIE LLP**  
Barristers & Solicitors  
Brookfield Place  
181 Bay Street, Suite 2100  
P.O. Box 874  
Toronto, Ontario M5J 2T3

●

Lawyers for the Applicants

## Schedule 1.1(17) – Contracts

	Contract	Financial Defaults	Total Liabilities
1.	Invoice No. L1053684I dated January 8, 2010 from Xerox Canada Ltd. to Planet Organic Health Corp.	\$109.00	\$6,666.84 + maintenance fees + taxes
2.	Excel Business Systems Lease Contract, Lease Number 1-63766, dated October 5, 2005, between, by, or among Excel Business Systems, De Lage Landen Financial Services Canada Inc. (Lessor), and Great Ocean Natural Foods and Gifts Limited (Lessee).	\$0.00	\$640.00 before contract is automatically renewed
3.	Segue Systems Lease Contract, Lease Number 1-62546, dated September 1, 2006, between, by, or among Segue Distributors Inc., De Lage Landen Financial Services Canada Inc. (Lessor), and Planet Organic Health Corp. (Lessee).	\$0.00	\$145.00 before contract is automatically renewed
4.	Segue Systems Lease Contract, Lease Number 1-74876, between, by, or among Segue Distributors Inc., De Lage Landen Financial Services Canada Inc. (Lessor), and Planet Organic Health Corp. (Lessee).	\$0.00	\$195.51 before contract is automatically renewed
5.	Segue Systems Lease Contract, Lease Number 1-88404, dated January 11, 2007, between, by, or among Segue Distributors Inc., De Lage Landen Financial Services Canada Inc. (Lessor), and Planet Organic Health Corp. (Lessee).	\$0.00	\$1,178.37 before contract is automatically renewed
6.	Confidentiality and Intellectual Property Agreement dated August 28, 2009 between Planet Organic Health Corp. and Anita's Organic Grain & Flour Mill Ltd. (contractor).	N/A	N/A
7.	Certificate of Automobile Insurance / Offer to Renew dated August 5, 2009 between The Co-operators through Millgrove Insurance Ltd. (as Agent) and Planet Organic Health Corp./GRE.	\$0.00	\$5,946.00 - 2009-2010 Auto Insurance annual premium for 2 vehicles cost; expires August 17, 2010

## EXECUTION COPY

8.	Invoice No. 1841404 from Sage Software Canada Ltd. to Planet Organic Health Corp.	\$0.00	\$10,623.15 - 2009-2010 Renewal cost; expires October 27, 2010; technical support for additional \$3,000
9.	Service Agreement dated May 1, 2009 between Planet Organic Health Corporation and WIS International.	\$0.00	\$0.00 - no commitment
10.	TeraGo Master Services Agreement dated July 11, 2008 between TeraGo Networks Inc. and Planet Organic Health Corp. and E10 Order Form dated March 18, 2009 between TeraGo Networks Inc. and Planet Organic Health Corp.	\$1,075.00	\$499.00 + taxes per month
11.	Ethical Bean Coffee Equipment Lease dated March 6, 2009 between The Ethical Bean Coffee Company Ltd., as Lessor, and Planet Organic Market, Victoria, as Lessee.	\$3,323.00	\$40.00
12.	Invoice No. 204028 dated March 16, 2009 from Kennedy Solutions Inc. to Planet Organic Health Corp.	\$0.00	\$1,245.78 - Two-year renewal cost; expires on March 15, 2011
13.	Offer to Lease dated November 22, 2008 between Halton Autolease, Inc., as Lessor, and Planet Organic Health Corp., as Lessee.	\$0.00	\$21,187.32
14.	Agreement dated January 6, 2009 between White Rose Building Services Ltd. and Planet Organic Market, Alberta for providing Janitorial Services.	\$0.00	\$1,625.00 + taxes per month
15.	Employer Services Master Services Agreement dated April 24, 2008, between Planet Organic Health and ADP Canada Co.	\$0.00	\$4,300.00 per year or \$1,784.50 per four month period
16.	April 24, 2008 Amendment to Employer Services Master Services Agreement dated May 23, 2008, between Planet Organic Health and ADP Canada Co.	\$0.00	\$4,300.00 per year or \$1,784.50 per four month period

## EXECUTION COPY

17.	Group Benefits Policy for Planet Organic Health Corp. Effective March 1, 2008, The Manufacturers Life Insurance Company (Manulife Financial).	\$0.00	[\$0.00]
18.	Customer Agreement – Non-Regulated / Forborne Services (Telus Contract ID# ECB 155863) between Planet Organic Health Corp and Telus	\$5,020.00	[\$0.00]
19.	Renewal of Annual Breakpoint Software Contract (Charge Sale Invoice 39223 dated December 4, 2009) between Planet Organic and Accurate Business Systems.	\$0.00	\$13,775.00 - 2010 Annual fee and expires Dec. 2010
20.	Loyalty Genius Agreement dated April 9, 2009 between Planet Organic Market and Living Naturally.	\$0.00	[\$0.00]
21.	Master Services Agreement dated September 1, 2008 between Planet Organic Health Corporation and AllFour Technology Enterprises Inc.	\$5,874.00	\$8250.00 + taxes before contract is automatically renewed
22.	JS Upgrade Contract dated June 4, 2008 between Planet Organic and JS Software.	\$0.00	\$5709.75 - 2009-2010 Annual fee for license and expires June 30, 2010
23.	Preventative Maintenance Program Agreement dated February 1, 2010 between Gateway Mechanical Services Inc. and Planet Organic (located in Port Coquitlam, BC)		\$2,052.00 - Amount paid in 2010 for one year
24.	Invoice No. 604052 dated January 19, 2004 from Orkin PCO to Planet Organic Market (located in Port Coquitlam, BC).		\$849.58 per year
25.	Commercial Sales Proposal Agreement dated December 12, 2003 between ADT Security Services Canada, Inc. and Planet Organic (located in Port Coquitlam, BC).		\$718.80 before contract is automatically renewed for one year
26.	Standard Service Agreement dated January 22, 2009 between Cintas and Planet Organic Market (located in Port Coquitlam, BC).		\$45,171.00 + taxes

## EXECUTION COPY

27.	Customer Service Agreement dated January 9, 2004 between Northwest Waste Systems Inc. and Planet Organic Market (located in Port Coquitlam, BC).		\$4851.00 + taxes
28.	Invoice No. 1001851 dated March 7, 2008 from Orkin PCO to Planet Organic Market (located in Vaughan, ON).		\$845.25 per year
29.	Service Agreement dated February 21, [date cutoff] between Canadian Linen and Uniform Service and Planet Organic Market (located in Vaughan, ON).		[\$0.00]
30.	Service Agreement dated January 13, 2009 between CCR and Planet Organic (located in Victoria, BC)		\$15,186.74 before contract is automatically renewed for five years
31.	Standard Service Agreement dated July 22, 2008 between Cintas and Planet Organic Market (located in Victoria, BC).		\$45,171.00 + taxes
32.	Maintenance Agreement dated June 12, 2009 between Johnson Controls L.P. and Planet Organic Market (located in Victoria, BC).		\$3,702.49 + GST annual charge or \$629.68 +GST per inspection (6 inspections annually)
33.	Customer Service Agreement dated May 27, 2009 between Price's Alarms and Planet Organic Market (located in Victoria, BC).		\$622.80 + taxes
34.	Customer Service Agreement dated August 1, 2008 between Select Janitorial and Planet Organic Market (located in Victoria, BC).		\$6,052.00 + taxes
35.	Customer Service Agreement dated February 1, 2010 between Waste Management and Planet Organic (located in Victoria, BC)		\$6,070.40
36.	Customer Service Agreement dated September 22, 2009 between BFI and Planet Organic Market (located in Calgary, AB)		\$78,416.00 + taxes
37.	Metropol (Titan Security)		[\$0.00]

## EXECUTION COPY

38.	Miller Waste		[\$0.00]
39.	Chum Satellite Services		[\$0.00]
40.	Murphy & Wharten		[\$0.00]
41.	Securicorp Canada		[\$0.00]
42.	Carlou Alarm		[\$0.00]
43.	Carmichael Engineering		[\$0.00]
44.	Custom Building Maintenance		[\$0.00]
45.	Leave the Cleaning to Us Inc.		[\$0.00]
46.	Customer Service Agreement dated December 21, 2007 between Fine Recycling and Disposal Services and Planet Organic Market (located in Vaughan, ON)		[\$0.00]
47.	Customer Service Agreement dated November 30, 2006 between Fine Recycling and Disposal Services and Planet Organic (located in Mississauga, ON)		[\$0.00]
48.	Proposal and Contract Agreement dated December 5, 2006 between Magen Security Systems Inc. and Planet Organic Market (located in Mississauga, ON)		[\$0.00]
49.	Preventative Maintenance Program Agreement dated May 8, 2009 between Rosetown Central and Planet Organic Market (located in Mississauga, ON)		\$3,390.00 + GST - 2009 Annual fee and expired on May 8,2010
50.	Quote from George's Ditching & Trucking to Planet Organic Market (located in Edmonton, AB)		\$0.00 - was a quotation offered by company
51.	Sidewalk Snow Removal Contract dated October 14, 2009 between CP's Landscapes and Planet Organic Market (located in Edmonton, AB)		\$0.00 - contract has ended
52.	Consolidated Monitoring		[\$0.00]
53.	Orkin Canada PCO		\$842.20 per year



54.	Executive Mat		<b>[\$0.00]</b>
55.	Waste Services (WSI)		\$11,277.46
56.	Armoured Transportation Services Agreement dated January 21, 2007 between BRINK'S Canada Limited and Planet Organic Markets		<b>[\$0.00]</b>

**Schedule 1.1(22) – D& O Claims Procedure Order**

See attached

**Schedule 1.1(28) – Excluded Assets**

1. Vaughan Lease
2. Nanaimo Lease
3. Term B Credit Agreement and all Credit Documents (as such term is defined in the Term B Credit Agreement)
4. Note Purchase Agreement and all Credit Documents (as such term is defined in the Note Purchase Agreement)
5. Leases assigned pursuant to the Applicants' prior sale of the Healthy's business, including :
  - (a) Lease Agreement dated April 21, 2004, as amended, between Exchange Tower Limited, HRI Exchange Inc., PFS Exchange Inc. (collectively, the Lessors) and Healthy's, The Athlete's Edge Inc. (Lessee), Lease Assignment dated March 16, 2010 in respect thereof and Consent to Assignment of Lease dated March 16, 2010 in respect thereof.
  - (b) Lease Agreement dated May 31, 2006 between Acktion Capital Corporation and Bramalea City Centre Equities Inc. by its agent Morguard Investments Limited (collective, the Lessors) and Healthy's, The Athlete's Edge Inc. (Lessee), Assignment of Lease dated March 18, 2010 in respect thereof, Consent to Assignment Agreement dated March 18, 2010 in respect thereof.
  - (c) Lease Agreement dated February 28, 2005 between Ivanhoe Cambridge II Inc. (Lessor) and Amdek Marketing Ltd. (Lessee) and Assignment and Amendment of Lease dated January 25, 2010 in respect thereof.
  - (d) Lease Agreement dated May 8, 2003 between OMERS Realty Management Corporation (Lessor) and Hatem Inc. (Lessee) and Assignment of Lease dated March 16, 2010 in respect thereof.
  - (e) Lease Agreement dated January 16, 2007 between Ivanhoe Cambridge II Inc. (Lessor) and Amdek Marketing Ltd. (Lessee) and Assignment of Lease dated January 25, 2010.
  - (f) Lease Agreement dated February 20, 2007 between Riotrin Properties (Milton) Inc. (Lessor) and Healthy's, The Athlete's Edge Inc. (Lessee) and Assignment of Lease dated March 16, 2010.
6. Transaction Fee Schedule and Retainer Agreement and Indemnity Agreement, each dated June 2009 between Partnership Capital Growth LLC and Planet Organic Health Crop.



**Schedule 1.1(37) – Holding Corp. Shares**

100 Common Shares of Planet Organic Holding Corp.

## Schedule 1.1(41) – Leases

	Lease	Financial Defaults	Total Liabilities
1.	Lease Agreement between Lauring GP Ltd., as General Partner of Lauring Limited Partnership and Planet Organic Health Corp. dated February 15, 2008 for the Leased Premises (as defined in the Lease Agreement) including 22,189 square feet on the main floor, 6,425 square feet on the second floor and 1,883 square feet of storage space, in respect of the real property municipally known as 7915 – 104 Street, Edmonton, AB.	\$0.00	\$7,840,028.21
2.	Lease Agreement between Hansbraun Investments Ltd., High Quadra Holdings Ltd., Marcentre Holdings Ltd., Highmark Holdings Ltd. and Planet Organic Health Corp. dated February 17, 2002 (renewed January 1, 2005) in respect of the real property municipally known as 109-3995 Quadra Street, Saanich Centre, Victoria, B.C.	\$0.00	\$1,153,083.84
3.	Lease Agreement between Hansbraun Investments Ltd., High Quadra Holdings Ltd., Marcentre Holdings Ltd., Highmark Holdings Ltd. and Planet Organic Health Corp. for Storage A.9 located at 3995 Quadra Street, Saanich Centre, Victoria, B.C.	\$0.00	\$29,304.00
4.	Lease Agreement between A.N.R. Investments Ltd. and Planet Organic Health Corp. dated July 1, 2006 (renewed April 16, 2009) in respect of the real property municipally known as Monterey Mews Building – Oak Bay, B.C.	\$0.00	\$12,864.50
5.	Lease Agreement between Southwood Corner Properties Ltd. and Planet Organic Health Corp. dated December 6, 2002 (extended May 1, 2006) in respect of the real property known as Southwood Corner, Plan Southwood Calgary 2601 HR, Block 2, Lot 14.	\$0.00	\$399,858.77
6.	Lease Agreement between Narland Properties (Tri-Cities) Ltd. and Planet Organic Health Corp. dated September 4, 2003 in respect of the real property municipally known as 2755 Lougheed Highway, Port Coquitlam, B.C.	\$0.00	\$462,164.00

7.	Lease Agreement between Sobey Leased Properties Limited and Planet Organic Health Corp. dated October 27, 2003 in respect of the real property municipally known as 6487 Quinpool Road, Halifax, Nova Scotia.	\$0.00	\$513,000.00
8.	Lease Agreement between 721803 Alberta Ltd. and Planet Organic Health Corp. dated September 11, 2006 in respect of the real property municipally known as 12120 Jasper Avenue, Edmonton, AB.	\$0.00	5% of store sales or minimum of \$23/sq ft
9.	Lease Agreement between Shaganappi Village Shopping Centre Inc. and Planet Organic Health Corp. dated April 15, 2006 in respect of the real property known as Shaganappi Village – Unit 110, Plan 3884JK, Block F, Lot 2.	\$0.00	\$1,183,675.44
10.	Lease Agreement between Pietro Rinello and Joe Indovino and Planet Organic Health Corp. dated April 6, 2006 in respect of the real property municipally known as 170 Lakeshore Road East, Mississauga, ON.	\$0.00	\$718,425.00

**Schedule 8.2(a) – Trademark Assignment Agreement**

See attached



## TRADE-MARK ASSIGNMENT

TO THE REGISTRAR OF TRADEMARKS

WHEREAS Planet Organic Health Corp. (the "Assignor") whose full post office address is 1015 4 Street SW, Suite 730, Calgary, Alberta, Canada T2R 1J4, is entered on the Canadian Trade-Marks Office Register as the registered owner/applicant of the trade-marks identified in Appendix "A" (the "Trade-marks");

AND WHEREAS [Creditor] (the "Assignee"), whose full post office address is Royal Trust Tower, Suite 4320, P.O. Box 212, Toronto, Ontario, Canada M5K 1J3, is desirous of acquiring the entire right, title and interest of Planet Organic Health Corp. in and to the Trade-marks;

NOW, THEREFORE, the Assignor declares as follows:

1. The Assignor, for and on behalf of Planet Organic Health Corp., hereby unconditionally assigns and transfers to the Assignee, without warranty as to the registrability or validity thereof, in consideration of the sum of one dollar (\$1.00) and other good and valuable consideration, the receipt of which is hereby acknowledged, Planet Organic Health Corp.'s entire right, title and interest in and to the Trade-marks in Canada, and the goodwill attached to the Trade-marks.
2. The assignment shall be binding upon the parties, their successors and permitted assigns.
3. The Assignor undertakes and agrees to execute, at the request and expense of the Assignee, such further assurances as may be reasonably required in order to permit the Assignee to obtain recording of this agreement.

It is the express wish of the parties hereto that this document be drawn up in English. La volonté expresse des parties aux présentes est que ce document soit rédigé en anglais.

**[SIGNATURE PAGE FOLLOWS]**

IN WITNESS WHEREOF, the parties have caused this agreement to be duly executed and signed by their duly authorized officers this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

**PLANET ORGANIC HEALTH CORP.**

Witnessed by:

By:

\_\_\_\_\_  
Name:  
Address:

\_\_\_\_\_  
Name:  
Title:

Witnessed by:

By: **[CREDITOR]**

\_\_\_\_\_  
Name:  
Address:

\_\_\_\_\_  
Name:  
Title:

## Appendix "A"

Registered Trade-mark

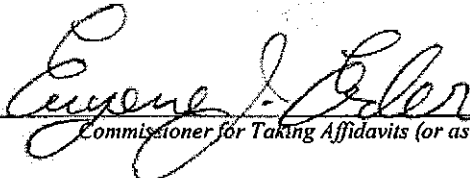
Trade-mark	Registration/ Application No.	Wares/Services
<b>PLANET ORGANIC HEALTH</b>	Reg. No.: TMA605963  Appl. No.: 1069021	<p><u>Goods:</u> (1) Organic foods, namely mixes for making bakery goods; natural, unprocessed foods namely, fresh fruits and vegetables, bread, cereals, cheese, yogurt, nuts, grains and seeds for eating, flour, and rice; organic food beverages, namely herbal food beverages, soy-based milk substitute beverages, grain-based food beverages, dairy-based food beverages and vegetable-based chocolate food beverages; organic food sauces, spices, and salad dressings; organic prepared meals; organic dehydrated meals; and vitamins and vitamin supplements.</p> <p><u>Services:</u> (1) Operation of a business that manufactures, distributes, arranges for the distribution, and promotes the sale of organic foods; and retail and wholesale sale of organic foods.</p>
<b>PLANET ORGANIC MARKET</b>	Reg. No.: TMA608652  Appl. No.: 1136133	<p><u>Wares:</u> (1) Organic foods, namely mixes for making bakery goods and protein-based foods used as meat extenders and meat substitutes; natural, unprocessed foods namely, fresh fruits and vegetables, bread, cereals, cheese, yogurt, nuts, grains and seeds for eating, flour, and rice; organic food beverages, namely herbal food beverages, soy-based milk substitute beverages, grain-based food beverages, dairy-based food beverages and vegetable-based chocolate food beverages; organic food sauces, spices, and salad dressings; organic prepared meals; organic dehydrated meals; and vitamins and vitamin supplements.</p> <p><u>Services:</u> (1) Operation of a business that manufactures, distributes, and arranges for the distribution of organic foods; marketing services, namely the distribution of information to others about the benefits of consuming</p>

- 2 -

		organic foods; and retail and wholesale sale of organic foods.
<p><b>Good Food ☙ Good for You ☙ Good for the Earth</b></p>	<p>Reg. No.: TMA645714</p> <p>Appl. No.: 1223564</p>	<p><u>Wares:</u> (1) Organic foods, namely mixes for making bakery goods and protein-based foods used as meat extenders and meat substitutes; natural, unprocessed foods namely, fresh fruits and vegetables, bread, cereals, cheese, yogurt, nuts, grains and seeds for eating, flour, and rice; organic food beverages, namely herbal food beverages, soy-based milk substitute beverages, grain-based food beverages, dairy-based food beverages and vegetable-based chocolate food beverages; organic food sauces, spices, and salad dressings; organic prepared meals; organic dehydrated meals; and vitamins and vitamin.</p> <p><u>Services:</u> (1) Operation of a business that manufactures, distributes, and arranges for the distribution of organic foods; marketing services, namely the distribution of information to others about the benefits of consuming organic foods; and retail and wholesale sale of organic foods.</p>
<p><b>FRIENDS OF THE PLANET</b></p>	<p>Reg. No.: TMA688422</p> <p>Appl. No.: 1253244</p>	<p><u>Wares:</u> (1) Organic foods, namely mixes for making bakery goods and protein-based foods used as meat extenders and meat substitutes; natural, unprocessed foods namely, fresh fruits and vegetables, bread, cereals, cheese, yogurt, nuts, grains and seeds for eating, flour, and rice; non-alcoholic beverages, namely organic vegetable-based food beverages, organic soy-based milk substitute beverages, organic dairy-based food beverages and organic vegetable-based chocolate food beverages; organic spices, and salad dressings; organic prepared meals; organic dehydrated meals; and vitamins and vitamin</p> <p><u>Services:</u> (1) Operation of a business that manufactures, distributes, and arranges for the distribution of organic foods; marketing services, namely the distribution of information</p>

		to others about the benefits of consuming organic foods; and retail and wholesale sale of organic foods; and reward program services in the field of the distribution of organic foods, namely the provision of incentives for consumers of organic foods.
<b>PLANET ORGANIC LIVING</b>	Reg. No.: TMA721853  Appl. No.: 1361752	<p><u>Wares:</u> (1) Vitamins and vitamin supplements; organic foods, namely mixes for making bakery goods and protein-based foods used as meat extenders and meat substitutes; natural, unprocessed foods namely, fresh fruits and vegetables, bread, cereals, cheese, yogurt, nuts, grains and seeds for eating, flour, and rice; organic food beverages, namely herbal food beverages, soy-based milk substitute beverages, grain-based food beverages, dairy-based food beverages and vegetable-based chocolate food beverages; organic food sauces, spices, and salad dressings; organic prepared meals; and organic dehydrated meals.</p> <p><u>Services:</u> (1) Operation of an organic food, vitamin and vitamin supplement retail and wholesale business; operation of a business that manufactures, distributes, and arranges for the distribution of organic foods, vitamins and vitamin supplements.</p>

This is Exhibit "E" referred to in the Affidavit of Darren Krissie,  
sworn before me this 20<sup>th</sup> day of May, 2010.

  
\_\_\_\_\_  
*Commissioner for Taking Affidavits (or as may be)*

**EUGENE J. ERLER**  
BARRISTER AND SOLICITOR  
AND NOTARY PUBLIC

Planet Organic Health Corp  
Asset Acquisition Consideration

	Note	C\$
Term B loan assumed		\$13,570,975
Term B accrued interest assumed	5	282,729
Convertible notes principal extinguished		16,759,742
Convertible notes accrued interest extinguished	5	387,802
Prepayment Amount on convertible notes		2,572,132
D&O charge to cash reserve account	1	500,000
Admin charge to cash reserve account	1	300,000
PCG fee	2	1,134,165
Vaughan employee costs	3	60,000
Board/advisor costs to close (estimate only)	4	200,000
<b>Total Consideration</b>		<b>\$35,767,544</b>

Notes:

- 1) As defined in Asset Acquisition Agreement.
- 2) Amount owing to PCG under letter dated April 20.
- 3) Estimate of full vacation and notice in lieu pay for approximately 47 employees to be terminated at closing.
- 4) Estimate only of professional fees incurred by POHC up to date of closing, assumes fees will be paid for the week prior to close, so would represent one full weeks of fees (covers Deloitte, Goodmans, Baker Mackenzie, Heighington, Miller Thomson). Comes from 13 week cash flow projection - maximum weekly was \$180k, rounded to \$200k.
- 5) Interest accrued to May 20, 2010.

Assumed USD exchange rate 1.0195

00,000  
10,000

00,000  
10,000

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  
PLANET ORGANIC HEALTH CORP. AND DARWEN HOLDINGS LTD.

Court File No: 10-8699-00CL

APPLICANTS

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

Proceeding commenced at Toronto

**AFFIDAVIT OF DARREN KRISSIE  
(Sworn on May 20, 2010)**

**BAKER & MCKENZIE LLP**  
Barristers and Solicitors  
181 Bay Street, P.O. Box 874  
Suite 2100  
Toronto, ON M5J 2T3

**Frank Spizzirri (LSUC#: 37327F)**  
Tel.: 416.865.6940  
Email: frank.spizzirri@bakermckenzie.com

**Michael Nowina (LSUC#: 496330)**  
Tel.: 416.865.2312  
Email: michael.nowina@bakermckenzie.com  
Fax: 416.863.6275

Lawyers for the Applicants



TAB 3

Court File No.: 10-8699-00CL

**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 PLANET ORGANIC HEALTH  
CORP. AND DARWEN HOLDINGS LTD.

APPLICANTS

**AFFIDAVIT OF TRIPP BAIRD**

(Sworn May 20, 2010)

I, **TRIPP BAIRD** of the City of San Francisco, in the State of California, in the United States of America, MAKE OATH AND SAY:

1. I am a Principal of Partnership Capital Growth LLC ("PCG"), an investment bank based in San Francisco, California, which was retained by Planet Organic Health Corp. on or about March 19, 2009 ("Planet Organic") as a financial advisor as is more particularly described in this Affidavit. As such, I have personal knowledge of the matters to which I hereinafter depose, save and except where stated to be based on information and belief, in which case, I do verily believe the same to be true.
2. I swear this Affidavit in support of a motion to approve an acquisition agreement dated May 19, 2010 (the "Acquisition Agreement"), between Planet Organic and Darwen Holdings Ltd. ("Darwen"), and Catalyst Capital Group Inc., on behalf of funds managed by it ("Catalyst") that, amongst other things, provides for a going concern acquisition of substantially all of the assets and operations of Planet Organic and Darwen by Catalyst

and vesting all of the acquired assets in and to Catalyst free and clear of all encumbrances other than those assumed by Catalyst in accordance with the Acquisition Agreement.

3. Prior to swearing this Affidavit, I reviewed the Affidavit of Darren Krissie sworn April 29, 2010 ("April 29 Krissie Affidavit") in support of Planet Organic's application under the *Companies' Creditors Arrangement Act (CCAA)* as well as, the court appointed monitor's reports and the materials filed in connection with the May 12, 2010 motion by Planet Organic for a court order postponing the holding of the annual general meeting of Planet Organic's shareholders.

4. In this Affidavit, capitalized terms not otherwise defined have the meaning ascribed to them by the April 29 Krissie Affidavit.

#### **I. Overview of Initial Involvement and Marketing Efforts**

5. PCG's mission is to create meaningful economic and social value for entrepreneurs and investors through advising and investing in great companies in the areas of healthy, active and sustainable living.

6. In 2007, PCG represented the prior owner of Mrs. Green's in a sales process which ultimately led to Planet Organic's purchase of Mrs. Green's. Planet Organic, at that time, enlisted PCG's assistance in acquiring debt financing to facilitate the deal and that ultimately led to Ares Capital Corporation ("Ares") providing financing for Planet Organic. As part of their debt agreements, Ares appointed my colleague and PCG's Managing Partner, Brent Knudsen, to Planet Organic's Board of Directors in 2007.

7. Planet Organic formally engaged PCG in March of 2009 to act as its advisor for the purpose of reorganizing or recapitalizing the business and/or exploring other restructuring alternatives, including a sale and/or divestiture process.

8. One of PCG's first tasks was to work closely with Planet Organic's management team to create marketing documents for the business as a whole, including overview materials/executive summaries which would provide a high-level review of the various divisions of Planet Organic for distribution to interested parties. This exercise was completed around the end of March 2009. It should be noted that at the direction of the Board of Directors and with the support of Ron Francisco, PCG also marketed Planet Organic in combination with Horizon Distributors Ltd., a large supplier of Planet Organic and majority-owned by Mr. Francisco.

9. As part of the initial process, PCG assisted in identifying and contacting interested parties via introductory emails with attached introductory information and follow-up telephone calls, all with a view to determining whether any of these parties wished to proceed with an in-depth investigation of the opportunity for investment, refinancing or acquisition. In total, ninety-six (96) parties were identified and contacted during this initial marketing effort. Of these, approximately forty (40) parties executed confidentiality agreements and received additional confidential materials to perform in-depth due diligence.

10. Planet Organic's management team together with PCG, met with and delivered management presentations to ten (10) interested parties, consisting primarily of private equity groups. These presentations provided the opportunity for interested parties to meet

management, tour locations and ask additional questions about the business. Of these parties four (4) submitted formal indications of interest.

11. Based on feedback from the marketplace garnered through the initial process discussed above, Planet Organic's management and the Board of Directors determined that the various divisions of Planet Organic were valued more highly on an individual basis than as a whole.

12. The subsequent marketing efforts undertaken by Planet Organic in conjunction with PCG can be broken down into three (3) distinct phases:

- (a) attempts to raise additional equity and/or refinance the business;
- (b) the sale of Planet Organic's non-core divisions (Sangster's, Healthy's and Tropic); and
- (c) the efforts to market and sell core business (consisting of the POM and Mrs. Green's stores) either as a whole or as separately.

13. Each will be discussed in turn, below.

A. Attempts to Raise Equity or Refinance

14. As noted in paragraph 39 of the April 29 Krissie Affidavit, prior to PCG's retainer, Planet Organic engaged Canaccord Adams to assist in raising equity through a secondary offering in early 2008. I have been advised by Darren Krissie that this effort was effectively blocked by Planet Organic's majority shareholder, Mr. Francisco.

15. PCG, for its part, worked closely with Planet Organic's Board of Directors and the Office of the Chief Executive Officer ("OCEO") to assist with the attempt to issue bonus shares into escrow to negotiate with secured debt holders for a reduction in penalty

interest and a prospective conversion of debt to equity as more particularly discussed in paragraph 50 of the April 29 Krissie Affidavit. This action was approved by the Board of Directors and conditionally approved by the TSX Venture Exchange. However, the majority shareholder, Mr. Ron Francisco (via his counsel) objected to the issuance and the TSX Venture Exchange subsequently reversed its conditional approval.

16. Due to the opposition of Mr. Francisco and, in part, the reversal of approval by the TSX-V, Planet Organic was denied a means by which to convert or reduce the debt in the ordinary course of business.

17. In December 2009, Planet Organic and PCG approached eight (8) potential lenders (Business Development Bank of Canada, Bank of Montreal, Canadian Imperial Bank of Commerce, HSBC Bank Canada, Roynat Capital, Toronto Dominion Bank and Wells Fargo) with proposals for the refinancing of Planet Organic's debt. Following a full review of diligence materials by each, Planet Organic received three (3) indications of interest to provide financing at debt ratios of 1.5 times to 2.5 times EBITDA. Given that Planet Organic was at the time overleveraged above approximately 6.0 times EBITDA, it was determined that any new debt raised would be insufficient to replace the current lenders and raising equity to bridge the gap was not an option for the reasons discussed in paragraph 14 above. Ultimately, the Board of Directors decided to put on hold further refinancing efforts and focus efforts on a two-track divestiture process whereby the company: (i) pursued transactions involving the divestiture of non-core assets in order to reduce debt and leverage; and (ii) sought to determine the best solution for Planet Organic's core business which consisted of POM stores in Canada and Mrs Green's stores in the United States.

B. Divesture Strategy—Non-Core Assets Sales

18. PCG contacted 213 parties (including the 96 parties contacted in the initial process) in an effort to see if there was any interest in acquiring Planet Organic as a whole or in part. Of that total, 130 parties were contacted for the sale of POM and Mrs. Green's stores (from December 2009 through April 2010), 33 parties were contacted for the sale of Trophic (from August 2009 through February 2010) and, 50 parties were contacted for the sale of Sangster's and Healthy's (from July 2009 through December 2009).

19. The sales of the non-core assets that took place prior to the CCAA filing are detailed in the April 29 Krissie Affidavit at paragraphs 55 to 58. The proceeds of those sales were paid as follows:

- (a) \$5,296,266 to repay all outstanding indebtedness to the TD;
- (b) \$4,533,820 to reduce the existing indebtedness to Ares; and
- (c) \$1,268,614 for transaction related costs.

20. In addition, \$850,000 was held in two (2) escrow accounts: (i) \$250,000 for working capital adjustments; and (ii) \$600,000 for an indemnification escrow. Planet Organic recently received the \$250,000 from the first escrow account with the outstanding \$600,000 remaining in escrow for another 12 months from the close of the sale of Trophic.

21. While a member of the Board of Directors, Mr. Francisco provided his consent to the non-core sales. Mr. Francisco resigned from the Board of Directors on January 27, 2010 and I have been advised by Darren Krissie that he subsequently advised the Board

of Directors that he will not provide consent to any transaction involving core business assets that does not result in his ultimate controlling the business.

C. Sale of Core Assets

22. As discussed in paragraph 18 above, 130 parties were contacted to determine their interest in POM and/or Mrs Green's. Of that group, fifty one (51) parties signed non-disclosure agreement ("NDA") and were given access to a confidential online data room containing information that would be pertinent to potential purchasers including: financial, operational, leasehold, and other relevant information in January 2010.

23. Eleven (11) parties submitted indications of interest and ultimately, there were six (6) formal bids received for POM and/or Mrs Green's on or about January 8, 2010. On January 15, 2010, Planet Organic's Board of Directors met to review the bids which are summarized below:

- (a) an offer by Catalyst to acquire the combined assets of POM and Mrs. Green's for an effective purchase price in the range of \$33 million to \$36 million;
- (b) a revised offer for \$30 million by another party for the recapitalization of the entire business which was subject to arranging for financing;
- (c) a revised offer from another party in the range of USD \$14 million to USD \$18 million to acquire six western locations of POM;
- (d) another party's offer of \$7.6 million for the POM division only;
- (e) another party's offer in the range of USD \$15 million to USD \$18 million for Mrs. Green's only; and



- (f) another party's all cash offer in the range of USD \$20 million for POM and Mrs. Green's only.

24. The proposals received were reviewed by the Board of Directors which then resolved to create a committee of independent directors to review additional detail on the relative merits of the proposals and to make a recommendation to the board of directors of Planet Organic (the "Committee"). The Committee was composed of David Heighington, Ian Newton and Darren Krissie. On February 25, 2010, Mr. Krissie resigned from the Committee and I am advised by Mr. Krissie that he resigned to ensure the committee's independence from management. On March 4, 2010, Mr. Heighington resigned from the Board of Directors and the Committee.

25. The Committee decided to request additional information from the six (6) interested bidders and instructed me to advise them that a recommendation to move forward with a purchaser would be based on an assessment of which purchaser provided the strongest combination of the following factors:

- (a) valuation and ability to satisfy secured lenders, stakeholders, employees and management;
- (b) availability of funds and ability to close quickly;
- (c) strong financial support to facilitate growth and proposed capital available for future growth post sale;
- (d) proposed treatment of employees post sale;
- (e) demonstrable expertise in operational matters;
- (f) an adequate exit strategy for all stakeholders and shareholders; and

(g) ongoing support and/or incentives for employees and management.

26. At the direction of the Committee, PCG contacted the six (6) bidders on or about January 20, 2010, with the request that any additional detail and clarification of their offers be provided by January 25, 2010.

27. The \$30 million recapitalization offer was unable to confirm its financing at that time and subsequently resubmitted an offer at approximately 50% of the value of the outstanding debt. Mr. Francisco submitted an offer at a valuation substantially below the value of the debt. Nevertheless, Mr. Francisco was contacted by me and others numerous times regarding whether he intended to put forward an alternative to the process described herein. To my knowledge he has not done so as of this date.

28. A summary of the revised bids received after January 25, 2010 which was prepared by PCG is submitted to the Court on a sealed basis as "Exhibit A" and is subject to request for a sealing order.

29. The summary was intended to assist the Board of Directors in its consideration of the bids and could have a negative effect on further sale efforts by Planet Organic in the event that the transaction with Catalyst is not completed since it contains the purchase price and other relevant terms of the respective bids.

30. None of the bids (aside from Catalyst) were sufficient to fully retire the debt owed to the secured lenders. I believe that the bid submitted by Catalyst for both the POM and Mrs. Green's stores was the best overall bid received in terms of the proposed purchase price, its ability to satisfy the claims of stakeholders (including Secured Lenders, most

unsecured creditors and employees) and with respect to the ability of Catalyst to close the transaction.

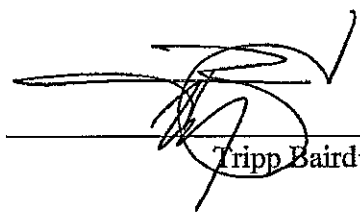
31. The Committee recommended that Board of Directors move forward with further due diligence by Catalyst with a view to signing a binding Letter of Intent by February 15 and a target closing by end of March, 2010.

32. Notwithstanding the Board of Directors' determination that the Catalyst offer was the best one in hand, all bidders were asked to resubmit their bids in early March, 2010. This was done to see whether the other bidders, including Mr. Francisco, were prepared to better their offer. A further final call was made on April 1<sup>st</sup> for offers by April 8, 2010. No better offers were received.

33. During this time there were ongoing negotiations regarding the form of a transaction with Catalyst. Ultimately, the secured lenders determined to sell their debt to Catalyst. As noted in the April 29 Krissie Affidavit, this debt purchase was completed on April 20, 2010. As part of the sale of the debt, I negotiated a side letter, dated April 20, 2010 with Catalyst which is attached as **Exhibit "B"**, which laid out the terms by which PCG would be compensated for its work on behalf of Planet Organic. The transaction fee provided in the side letter is in lieu of the 5% commission that would have been earned in a refinancing and/or sale outside the CCAA. It should also be noted that PCG fund was a minority participant in a convertible note which was sold to Catalyst. The PCG fund which participated in the convertible note was a passive debt holder and maintains a committee which is independent of our advisory business. It was the independent committee which made the decision to support the eventual sale of debt to Catalyst.

34. I swear this affidavit in support of a motion for relief outlined in paragraph 2 above and for no other or improper purpose.

SWORN BEFORE ME at the )  
City of SAN FRANCISCO in the )  
State of CALIFORNIA )  
this 20<sup>th</sup> day of May, 2010. )  
)  
)

  
\_\_\_\_\_  
Tripp Baird

\_\_\_\_\_  
Commissioner for Taking Affidavits (or as may be)

# CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of SAN FRANCISCO

On MAY 20, 2010 before me, MARISSA CORNELIO VARGAS NOTARY PUBLIC  
Date Here Insert Name and Title of the Officer

personally appeared TRIPP BAIRD  
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature *Marissa C. Vargas*  
Signature of Notary Public

Place Notary Seal Above

## OPTIONAL

*Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.*

### Description of Attached Document

Title or Type of Document: \_\_\_\_\_

Document Date: \_\_\_\_\_ Number of Pages: \_\_\_\_\_

Signer(s) Other Than Named Above: \_\_\_\_\_

### Capacity(ies) Claimed by Signer(s)

Signer's Name: \_\_\_\_\_

- Individual
- Corporate Officer — Title(s): \_\_\_\_\_
- Partner —  Limited  General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_



Signer Is Representing: \_\_\_\_\_

Signer's Name: \_\_\_\_\_

- Individual
- Corporate Officer — Title(s): \_\_\_\_\_
- Partner —  Limited  General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_



Signer Is Representing: \_\_\_\_\_

Exhibit "A" to Tripp Baird Affidavit  
Submitted on a Sealed Basis

Tripp Baird

Tripp Baird

This is Exhibit "B" referred to in the Affidavit of Tripp Baird,  
sworn before me this 20<sup>th</sup> day of May, 2010.

---

*Commissioner for Taking Affidavits (or as may be)*

# The Catalyst Capital Group Inc.

77 King Street West  
Royal Trust Tower  
TD Bank Centre  
Suite 4320, P.O. Box 212  
Toronto, Ontario M5K 1J3  
Telephone: 416.945.3000  
Facsimile: 416.945.3060

April 20, 2010

Partnership Capital Growth LLC  
One Embarcadero Center, Suite 3810  
San Francisco, CA 94111

Attention: Mr. Tripp Baird, Principal

Dear Sirs/Mesdames:

**Re: Advisory Services provided to Planet Organic Holdings  
Corp. and Planet Organic Health Corp.**

We understand that Partnership Capital Growth, LLC ("PCG LLC") acts as broker-dealer to Planet Organic Health Corp. (together with its affiliates and subsidiaries, the "Company") under that certain Transaction Agreement dated March, 2009 as extended in writing by a Letter Agreement between PCG LLC and the Company dated February 3, 2010. The Transaction Agreement is subject to the current PCG Transaction Fee Schedule and Retainer Agreement and Indemnity Agreement, each dated June 2009. The Transaction Agreement, Letter Agreement, Retainer Agreement and Indemnity Agreement are collectively referred to in this letter as the "PCG Agreements".

As you know, The Catalyst Capital Group Inc., on behalf of funds managed by it (collectively, "Catalyst") has entered into various agreements of even date for the purchase of 100% of the loans and security held by each of Ares Capital Corporation (and its affiliates) and Partnership Capital Growth Fund I, LP under, as applicable, the Amended and Restated Term Loan Agreement dated as of November 30, 2007, as amended, and the Note Purchase Agreement dated as of July 3, 2007, as amended (collectively, the "Debt Purchase Transactions").

In order to facilitate the closing of the Debt Purchase Transactions, Catalyst, the Company, and PCG LLC hereby agree as follows:

1. Subject to and in accordance with the terms and conditions of this Letter Agreement, Catalyst and the Company acknowledge and agree that PCG LLC is entitled to be paid by the Company a transaction fee in the aggregate amount of One Million One Hundred Fifty Six Thousand Two Hundred Eighty One United States Dollars (US\$1,156,281) inclusive of any applicable taxes (the "PCG Transaction Fee").
2. Subject to the performance by PCG LLC of all of its material obligations under the PCG Agreements and this Letter Agreement, Catalyst agrees that it shall not oppose and will support the payment by the Company of the PCG Transaction Fee to PCG LLC and that



it will use commercially reasonable efforts (for greater certainty, the parties acknowledge that the Company is a public company and that it would not be commercially reasonable for Catalyst or the Company to take any steps other than in accordance with applicable laws) to cause the Company to pay such PCG Transaction Fee (without any obligation on the part of Catalyst to directly make such payment) upon the earliest to occur of the following (any of the following, an "Acquisition") using all or part of the debt (or, without limitation, any interest that such debt is converted into) acquired by Catalyst pursuant to the Debt Purchase Transaction:

- (a) any transaction or series of related transactions resulting in the sale, purchase, or acquisition by Catalyst Affiliates (as described below) of at least sixty-six and two thirds percent (66 2/3 %) of the property and assets of Planet Organic Health Corp., including without limitation, sixty-six and two thirds percent (66 2/3 %) of the outstanding shares of Planet Organic Holding Corp.; or
- (b) any transaction or series of related transactions resulting in the sale, purchase, acquisition, or issuance to Catalyst Affiliates of shares or equity securities, or any rights to shares or equity securities, of Planet Organic Health Corp. representing in the aggregate more than sixty-six and two thirds percent (66 2/3 %) of the outstanding shares or equity securities of Planet Organic Health Corp.;
- (c) any transaction or series of related transactions resulting in the Catalyst Affiliates owning, or exercising control or direction over sixty-six and two thirds percent (66 2/3 %) of stock or other equity securities, such that Catalyst Affiliates would own, or exercise control or direction over, Planet Organic Health Corp.;
- (d) a merger, consolidation, reorganization, amalgamation, recapitalization or share exchange of the Company (whether or not the Company is the surviving and continuing entity) in which Catalyst Affiliates hold sixty-six and two thirds percent (66 2/3 %) or more of the outstanding equity of the resulting or surviving entity; or
- (e) any sale, transfer, exclusive license, exclusive partnering arrangement or other disposition in a single transaction or series of related transactions of sixty-six and two thirds percent (66 2/3 %) or more of the property and assets of the Company to Catalyst Affiliates.

For the purposes of this side letter, "Catalyst Affiliates" would include Catalyst and any of its assigns, nominees, affiliates, funds, or partners or any group or syndicate acting jointly or in concert with Catalyst.

3. In consideration of the agreements and acknowledgements set out herein: (a) PCG LLC, on behalf of itself and its affiliates agrees to pursue, support and take all steps reasonably requested by Catalyst to implement the Debt Purchase Transaction and in furtherance of the completion of the Acquisition; and (b) Catalyst on behalf of itself and its affiliates agrees to pursue, support and take all steps reasonably necessary (without the requirement make any new investment) to implement the Debt Purchase Transaction and

in furtherance of the completion of the Acquisition. Nothing in this Letter Agreement is intended to, or should be construed as, obligating Catalyst or any Catalyst Affiliate to complete an Acquisition on terms not satisfactory to Catalyst.

4. PCG LLC:

- (a) agrees to use its commercially reasonable efforts to effect the proposed Acquisition through a proceeding under the *Companies' Creditors Arrangement Act* (the "CCAA") or other court proceeding and acknowledges that it believes that, implementation of an Acquisition is in the best interests of the Company; and
- (b) acknowledges that, in the event that a potential Acquisition does not occur, it is not opposed to and will support as being appropriate: (i) the payment by the Company (and not by PCG LLC) to Catalyst of a break-fee in connection with such potential Acquisition, and (ii) the reimbursement to Catalyst of its out-of-pocket costs and expenses incurred in connection with the Debt Purchase Transaction and the pursuit of a potential Acquisition.

5. Unless otherwise mutually agreed by Catalyst, the Company and PCG LLC, PCG LLC shall cause Mr. Brent Knudsen to continue to serve on the board of directors of the Company and in the office of the CEO of the Company until the earlier of the implementation of the Acquisition or December 31, 2010, provided, however, that the Company continues to reimburse all out-pocket-expenses incurred as provided in Section 2 of the Retainer Agreement and to pay the retainer amount of \$35,000 per month described in the Letter Agreement.

6. Upon payment by the Company of the PCG Transaction Fee, PCG and the Company agree that:

- (a) the Transaction Agreement would terminate in accordance with Section 6 thereof without further written notice,
- (b) the Retainer Agreement would terminate in accordance with Section 6 thereof without further written notice; and
- (c) PCG LLC and the Company hereby expressly waive the thirty-day notice of termination provided for in each of Section 6 of the Transaction Agreement and Section 6 of the Retainer Agreement;

provided, however, that PCG LLC acknowledges and agrees that (i) Catalyst and the Company are providing no assurance in this Letter Agreement that PCG LLC will receive any distribution or other consideration on account of any claims that PCG LLC may assert pursuant to Section 6 of the Transaction Agreement or Section 6 of the Retainer Agreement (collectively, "Indemnity Claims"), (ii) under the CCAA, holders of unsecured claims against a company that has sought protection under the CCAA may or may not receive any distributions or any other consideration on account of any such claims or that holders of such claims will receive equal treatment, and (iii) Catalyst and the Company shall each at all times be entitled to take any position in accordance with

the CCAA in their respective sole and absolute discretion with respect to the disclaimer of the Agreements and (iv) Catalyst and the Company shall each at all times be entitled to take any position in accordance with the CCAA in their sole and absolute discretion with respect to the consideration, if any, offered to PCG LLC on account of any Indemnity Claims that PCG LLC may assert. Nothing herein shall be construed as acknowledgement by either Catalyst or the Company of the existence or validity of any Indemnity Claims.

7. This Letter Agreement constitutes the entire agreement between the parties with respect to the subject matter and supersedes all prior agreements, negotiations, discussions, undertakings, representations, warranties and understandings, whether written or verbal.
8. This Letter Agreement is governed by and is to be construed and interpreted in accordance with the laws of the State of New York, without reference to conflicts of law provisions.
9. This Letter Agreement may be executed and delivered in any number of counterparts, each of which when executed and delivered is an original but all of which taken together constitute one and the same instrument.

Please acknowledge your agreement with the foregoing by executing below.

**THE CATALYST CAPITAL GROUP INC.**

By: 

Name: Gabriel de Alba

Title: Managing Director and Partner

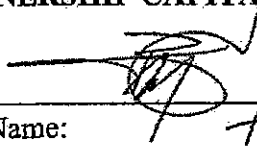
Accepted and Agreed as of April 20, 2010.

**PARTNERSHIP CAPITAL GROWTH, LLC**

By: \_\_\_\_\_

Name:

Title:

  
Tripp Bald  
Authorized Person

**PLANET ORGANIC HEALTH CORP.**

By: \_\_\_\_\_

Name:

Title:

*[Signature Page to Letter Agreement dated April 20, 2010 among The Catalyst Capital Group Inc., Partnership Capital Growth, LLC and Planet Organic Health Corp.]*

Accepted and Agreed as of April 20, 2010.

**PARTNERSHIP CAPITAL GROWTH, LLC**

By: \_\_\_\_\_

Name:

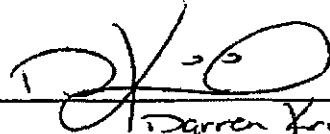
Title:

**PLANET ORGANIC HEALTH CORP.**

By: \_\_\_\_\_

Name:

Title:

  
Darren Krissie  
EVP

***[Signature Page to Letter Agreement dated April 20, 2010 among The Catalyst Capital Group Inc., Partnership Capital Growth, LLC and Planet Organic Health Corp.]***

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  
PLANET ORGANIC HEALTH CORP. AND DARWEN HOLDINGS LTD.

Court File No: 10-8699-00CL

APPLICANTS

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

Proceeding commenced at Toronto

**AFFIDAVIT OF TRIPP BAIRD  
(Sworn on May 20, 2010)**

**BAKER & MCKENZIE LLP**  
Barristers and Solicitors  
181 Bay Street, P.O. Box 874  
Suite 2100  
Toronto, ON M5J 2T3

**Frank Spizzirri (LSUC#: 37327F)**  
Tel.: 416.865.6940  
Email: frank.spizzirri@bakermckenzie.com

**Michael Nowina (LSUC#: 496330)**  
Tel.: 416.865.2312  
Email: michael.nowina@bakermckenzie.com  
Fax: 416.863.6275

Lawyers for the Applicants

TAB 4

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

THE HONOURABLE MR. )  
 )  
JUSTICE MORAWETZ ) \_\_\_\_\_, THE \_\_\_\_\_  
 )  
 ) DAY OF JUNE, 2010

IN THE MATTER OF THE *COMPANIES' CREDITORS*  
*ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED  
AND IN THE MATTER OF PLANET ORGANIC HEALTH CORP. and  
DARWEN HOLDINGS LTD.

**APPROVAL AND VESTING ORDER**

THIS MOTION, made by Planet Organic Health Corp. and Darwen Holdings Ltd., (collectively, the "Applicants") for an order approving the acquisition (the "Acquisition") contemplated by an acquisition agreement among the Applicants and the Creditor (as that term is defined in the Acquisition Agreement) made as of May 19, 2010 and appended to the Affidavit of Darren Krissie sworn May 20, 2010 and Tripp Baird sworn May 20, 2010, together with such non-material amendments as may be consented to by the Monitor (defined below) (the "Acquisition Agreement"), and vesting in the Creditor all right, title and interest in and to the assets described in the Acquisition Agreement (the "Assets"), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the material filed, including the Notice of Motion and the Third Report of the court-appointed monitor, Deloitte & Touche Inc. (the "Monitor") and on hearing the submissions of counsel for the Applicants, counsel for the Monitor and counsel for the Creditor, and on being advised that the Service List was served with the Motion Record herein:



- 1. THIS COURT ORDERS that, if necessary, the time for service of the Notice of Motion and the Motion Record is hereby abridged so that this motion is properly returnable today and hereby dispenses with further service thereof.
- 2. THIS COURT ORDERS AND DECLARES that capitalized terms used herein that are not otherwise defined shall have the meanings set out in the Acquisition Agreement.

**Approval and Vesting**

- 3. THIS COURT ORDERS AND DECLARES that the Acquisition including, without limitation, the payment and acquisition contemplated in section 2.1 of the Acquisition Agreement is hereby approved, and that the Acquisition Agreement is in the best interests of the Applicants and their stakeholders. The execution of the Acquisition Agreement by the Applicants is hereby authorized and approved, and the Applicants are hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of, or to further evidence or document, the Acquisition and for the conveyance of the Assets to the Creditor.
- 4. THIS COURT ORDERS that, upon satisfaction (or, where applicable, waiver) of the conditions set out in Article 6 of the Acquisition Agreement, the Monitor shall file with this Court a certificate substantially in the form attached as Schedule A hereto stating that all conditions precedent set out in Article 6 of the Acquisition Agreement have been satisfied (or, where applicable, waived by the Applicants or the Creditor in accordance with the terms of the Acquisition Agreement) (the "Monitor's Certificate"). For the purposes of the preparation of the Monitor's Certificate, the Monitor shall be entitled to rely upon information provided by the Applicants with respect to the satisfaction or waiver of the conditions set out in Article 6 of the Acquisition Agreement.
- 5. THIS COURT ORDERS AND DECLARES that upon the delivery of a Monitor's Certificate to the Creditor, all right, title and interest in and to the Assets described in the Acquisition Agreement shall vest absolutely in the Creditor, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected,

registered or filed and whether secured, unsecured or otherwise (collectively, the "Claims"), whether such Claims came into existence prior to, subsequent to, or as a result of any previous orders of this Court, contractually, by operation of law or otherwise, including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Justice Mr. Justice Morawetz dated April 29, 2010; and (ii) all charges, security interests or claims evidenced by registrations including without limitation pursuant to the *Personal Property Security Act* (Ontario), the *Personal Property Security Act* (Alberta), *Personal Property Security Act* (British Columbia), *Personal Property Security Act* (Nova Scotia), *Personal Property Security Act* (Saskatchewan) or any other personal property registry system (all of which are collectively referred to as the "Encumbrances") and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Assets shall, upon the delivery of the Monitor's Certificate to the Creditor, be and are hereby expunged and discharged as against the Assets.

6. THIS COURT ORDERS that, subject to and in accordance with the restrictions in section 11.3 of the *Companies' Creditors Arrangement Act* (Canada) ("CCAA"), the Applicants are authorized and directed to assign the contracts, leases, agreements and other arrangements of which the Creditor takes an assignment on closing pursuant to and in accordance with the terms of the Acquisition Agreement (the "Contracts") and that such assignments are hereby approved and are valid and binding upon the counterparties notwithstanding any restriction or prohibition on assignment contained in any such Contracts.

7. THIS COURT ORDERS that from and after the Closing Date, subject to the CCAA, all Persons shall be deemed to have waived all defaults then existing or previously committed by the Applicants under, or caused by the Applicants under, and the non-compliance by the Applicants with, any of the Contracts arising solely by reason of the insolvency of the Applicants or as a result of any actions taken pursuant to the Acquisition Agreement or in these proceedings, and all notices of default and demands given in connection with any such defaults under, or non-compliance with, the Contracts shall be deemed to have been rescinded and shall be of no further force or effect.

8. THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act* ("PIPEDA"), and pursuant to any other

similar provincial legislation, the Applicants are authorized and permitted to disclose and transfer to the Creditor all human resources and payroll information in the Applicants' records pertaining to the Applicants' past and current employees. The Creditor shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects in compliance with PIPEDA and other similar provincial legislation.

**Cash Reserve**

9. THIS COURT ORDERS that the Monitor shall establish a cash reserve in the amount of \$2,031,281, as required under the Acquisition Agreement, on the Closing Date, using funds from the Cash and Cash Equivalents (the "Cash Reserve"), which Cash Reserve shall be held by the Monitor in a segregated account ("Cash Reserve Account") in trust for the benefit of Persons entitled to be paid the Cash Reserve Costs and the Creditor for the purpose of paying the Cash Reserve Costs in accordance with this Order.

10. THIS COURT ORDERS that the Cash Reserve Costs shall consist of the following obligations of the Applicants outstanding on the Closing Date:

- (a) obligations secured by the Administration Charge to the extent required for the completion of the CCAA Proceeding in an amount not to exceed \$300,000;
- (b) obligations secured by the Directors' Charge including, legal fees and costs incurred by the directors and officers of the Applicants in connection with the conduct of the directors' and officers' claims process contemplated by the D&O Claims Procedure Order, that arose prior to the Closing Date, in an aggregate amount not to exceed \$500,000;
- (c) claims under subsections 6(5)(a) of the CCAA to the extent not paid by the Applicants on or before the Closing Date or assumed by the Creditor on the Closing Date, which amounts are expected not to exceed \$75,000; and
- (d) the obligation of the Applicants to pay the PCG Transaction Fee as defined in the Acquisition Agreement;

11. THIS COURT ORDERS that, as soon as reasonably possible following and in any event within fifteen (15) days of, the Closing Date, or by such later date as may be ordered by the Court, the Monitor shall quantify, based on the books and records of the Creditor, the precise amount of each of the Cash Reserve Costs under paragraph 10(c) hereof. For such purpose, the

Monitor shall be given access to the books and records of the Applicants and shall be entitled to rely exclusively thereon and, in particular, shall not be responsible for any errors therein or the impact of such errors on the Monitor's quantification of any such Cash Reserve Cost. Upon being provided with the Monitor's quantification of each such Cash Reserve Cost, the Creditor shall have ten (10) days to decide whether to agree to the Monitor's quantification of such Cash Reserve Cost, failing which agreement the amount of any such Cash Reserve Cost still in dispute shall be determined, on application of the Monitor, on notice to the Creditor, any affected directors and officers of the Applicants and any affected beneficiary of the Administration Charge, by Order of the Court. Once the amount of any such Cash Reserve Cost has either been agreed to or determined by the Court, as set forth above, the Monitor shall pay such claim from the Cash Reserve Account.

12. THIS COURT FURTHER ORDERS that, from time to time after the Closing Date, the Monitor shall reduce the amount of the Cash Reserve as and to the extent that the Monitor, the Creditor, any affected directors and officers of the Applicants and any affected beneficiary of the Administration Charge agree, or a Court determines, that it, or portions of it, are no longer required to satisfy Cash Reserve Costs by distributing to the Creditor the amount of such reductions. All right, title and interest in and to any amounts in the Cash Reserve Account that are not used to pay Cash Reserve Costs in accordance with this Order shall vest absolutely in the Creditor as at the Closing Date and shall be distributed to the Creditor in accordance with this paragraph.

13. THIS COURT FURTHER ORDERS that nothing in this Order shall affect the rights of counsel to the Applicants, the Monitor and counsel to the Monitor to use and apply the retainers received by them from the Applicants.

**General**

14. THIS COURT ORDERS that, notwithstanding:
- (a) the pendency of these proceedings;

- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of any of the Applicants and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of any of the Applicants;

the vesting of the Assets in the Creditor and the payment of any amounts contemplated by the Acquisition Agreement pursuant to this Order including, without limitation, the payment and acquisition contemplated in section 2.1(1) of the Acquisition Agreement, shall be binding on any trustee in bankruptcy that may be appointed in respect of any of the Applicants and shall not be void or voidable by creditors of the applicable Applicant, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance or other transfer at undervalue under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

15. THIS COURT ORDERS AND DECLARES that the Acquisition is exempt from the application of the *Bulk Sales Act* (Ontario).

16. THIS COURT ORDERS that the Exhibit "A" to the Affidavit of Tripp Baird sworn May 20, 2010 shall be segregated from other documents filed in connection with this motion and shall be sealed until the filing with the Court of the Monitor's Certificate in relation to the Acquisition or upon further Order of the Court.

17. THIS COURT ORDERS that the Applicants shall, subject to such requirements as are imposed by the CCAA, have the right to permanently or temporarily cease, downsize or shut down any of its business or operations in accordance with Acquisition Agreement.

18. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Applicants and their agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicants, as may be

necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

19. THIS COURT ORDERS AND DECLARES that the actions and conduct of the Monitor in the CCAA proceedings from April 29, 2010 to the date of the Third Report, as more particularly set out in the First, Second and Third Reports themselves, and the First, Second and Third Reports, be and are hereby approved and that the Monitor has satisfied all of its obligations from April 29, 2010 up to and including the date of the Third Report.



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**Schedule A – Form of Monitor’s Certificate**

Court File No. 10-8699-00CL

**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 PLANET ORGANIC HEALTH CORP. and  
DARWEN HOLDINGS LTD.

**MONITOR’S CERTIFICATE**

**RECITALS**

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A. Pursuant to an Order of the Honourable Mr. Justice Morawetz of the Ontario Superior Court of Justice (the "Court") dated April 29, 2010, Deloitte & Touche Inc. was appointed as the monitor of the Applicants (the "Monitor").

B. Pursuant to an Order of the Court dated May 20, 2010, the Court approved the acquisition agreement made as of May 19, 2010 (the "Acquisition Agreement") among Planet Organic Health Corp. and Darwen Holdings Ltd. (collectively, the "Applicants") and ● (the "Creditor") and provided for the vesting in the Creditor of all right, title and interest in and to the Assets, which vesting is to be effective with respect to the Assets upon the delivery by the Monitor to the Creditor of a certificate with this Court confirming that (i) the conditions to Closing as set out in Article 6 of the Acquisition Agreement have been satisfied or waived by the Applicants and the Creditor, and (ii) the Transaction has been completed to the satisfaction of the Monitor.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Acquisition Agreement.

THE MONITOR CERTIFIES the following:

1. The conditions to Closing as set out in Article 6 of the Acquisition Agreement have been satisfied or waived by the Applicants and the Creditor.
2. The Transaction has been completed to the satisfaction of the Monitor.
3. This Certificate was delivered by the Monitor at ● [TIME] on ● [DATE].

**Deloitte & Touche Inc., in its capacity as  
Monitor of the Applicants, and not in its  
personal capacity**

Per: \_\_\_\_\_

Name:

Title:

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**IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT,  
R.S.C. 1985, c.C-36, AS AMENDED  
AND IN THE MATTER OF PLANET ORGANIC HEALTH CORP. and DARWEN  
HOLDINGS LTD.**

Court File No. 10-8699-00CL

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

Proceeding commenced at Toronto

**MONITOR'S CERTIFICATE**

**GOODMANS LLP**  
Barristers & Solicitors  
Bay Adelaide Centre  
333 Bay Street, Suite 3400  
Toronto, ON M5H 2S7

●  
Lawyers for the Monitor

**IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT,  
R.S.C. 1985, c.C-36, AS AMENDED  
AND IN THE MATTER OF PLANET ORGANIC HEALTH CORP. and DARWEN  
HOLDINGS LTD.**

Court File No. 10-8699-00CL

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

Proceeding commenced at Toronto

**APPROVAL AND VESTING ORDER**

**BAKER & MCKENZIE LLP**

Barristers & Solicitors  
Brookfield Place  
181 Bay Street, Suite 2100  
P.O. Box 874  
Toronto, Ontario M5J 2T3

**Frank Spizzirri (LSUC#: 37327F)**

Tel.: 416.865.6940

Email: frank.spizzirri@bakermckenzie.com

**Michael Nowina (LSUC#: 496330)**

Tel.: 416.865.2312

Email: michael.nowina@bakermckenzie.com

Fax: 416.863.6275

Lawyers for the Applicants

TAB 5

**ONTARIO  
SUPERIOR COURT OF JUSTICE- COMMERCIAL LIST**

THE HONOURABLE MR. )  
 )  
JUSTICE MORAWETZ )

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

AND IN THE MATTER OF PLANET ORGANIC HEALTH CORP. and  
DARWEN HOLDINGS LTD.

Applicants

**DIRECTORS' AND OFFICERS'  
CLAIMS PROCEDURE ORDER**

THIS MOTION, made by Planet Organic Health Corp. and Darwen Holdings Ltd. (the "Applicants"), for an Order substantially in the form included in the Applicants' Motion Record was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Applicants' Notice of Motion, the Third Report of Deloitte & Touche Inc. (the "Monitor") dated May 1, 2010, and on hearing the submissions of counsel for the Applicants, the Monitor, The Catalyst Capital Group Inc. and those other parties present, no one appearing for the other parties served with the Applicants' Motion Record, although duly served as appears from the affidavit of service of 1 sworn May 1 2010, filed:

**SERVICE**

1. THIS COURT ORDERS that the time for service of the Notice of Motion and the Motion Record filed by the Applicants in support of this Motion be and it is hereby abridged such

that the Motion is properly returnable today and hereby dispenses with further service thereof.

**MONITOR'S ROLE**

2. THIS COURT ORDERS that the Monitor, in addition to its prescribed rights and obligations under the CCAA (as hereinafter defined) and under the Initial Order of this Court dated April 29, 2010 (such Order, as supplemented, amended or varied from time to time, is referred to herein as the "Initial Order"), is hereby directed and empowered to take such other actions and fulfill such other roles as are authorized by this Order, and that in taking such other actions and in fulfilling such other roles, the Monitor shall have the protections given to it in the Initial Order and this Order, including without limitation the protections provided in paragraph 21 of this Order.

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**DEFINITIONS**

3. THIS COURT ORDERS AND DECLARES that capitalized terms used herein that are not otherwise defined shall have the meanings set out in the Acquisition Agreement and that the following terms shall have the following meanings ascribed thereto:

- (a) "Business Day" means a day, other than a Saturday or a Sunday, on which banks are generally open for business in Toronto, Ontario;
- (b) "CCAA" means *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended;
- (c) "Catalyst" means The Catalyst Capital Group Inc.

- (d) "Claims Bar Date" means 4:00 p.m. (Eastern Daylight Time) on the later of (i) June 21, 2010, (ii) 21 days after the Closing Date, or (iii) such later date as may be ordered by the Court;
- (e) "Closing Date" means the date on which the conditions specified in Article 6 of the Acquisition Agreement have been satisfied or waived and the Monitor delivers the Monitor's Certificate contemplated by the Approval and Vesting Order, provided that in no event shall such date be later than June 7, 2010 (subject to the extension provisions set out in the Acquisition Agreement);
- (f) "Court" means the Ontario Superior Court of Justice (Commercial List);
- (g) "Creditor" means any Person having a Director/Officer Claim;
- (h) "Directors" means all former, current or future directors of either of the Applicants, including any Person who is or was, or may be deemed to be or have been, whether by statute, operation of law or otherwise a director or *de facto* director of either of the Applicants, and "Director" means any one of them;
- (i) "Director/Officer Claim" means any right of any Person against the Directors or Officers of the Applicants for obligations and liabilities which the Directors or Officers of the Applicants incur in their capacity as Directors or Officers of the Applicants from and after the Filing Date to and including the Closing Date;
- (j) "Dispute Notice" means a written notice to the Monitor, in substantially the form attached as Schedule "E" hereto, delivered to the Monitor by a Creditor who has received a Notice of Disallowance, of its intention to dispute such Notice of Disallowance and provide further evidence to support its claim;

- (k) "Filing Date" means April 29, 2010;
- (l) "Initial Order" has the meaning ascribed to that term in paragraph 2 of this Order;
- (m) "Instruction Letter" means the instruction letter to Creditors, in substantially the form attached as Schedule "B" hereto;
- (n) "Monitor" means Deloitte & Touche Inc. in its capacity as monitor pursuant to the Initial Order;
- (o) "Notice of Disallowance" means a notice, in substantially the form attached as Schedule "D" hereto, advising a Creditor that the Monitor has revised or rejected all or part of such Creditor's Director/Officer Claim set out in the Proof of Claim;
- (p) "Notice for Publication" means the notice to Creditors for publication in substantially the form attached as Schedule "A" hereto;
- (q) "Officers" means all current and former officers of the Applicants, and "Officer" means any one of them;
- (r) "Person" includes any individual, partnership, joint venture, trust, corporation, unlimited liability company, unincorporated organization, government body or agency or instrumentality thereof, or any other juridical entity howsoever designated or constituted;
- (s) "Proof of Claim" means the form of Proof of Claim in substantially the form attached as Schedule "C" hereto;

- (t) "Proof of Claim Document Package" means a document package that includes a copy of the Instruction Letter, a Proof of Claim, and such other materials as the Monitor may consider appropriate or desirable;
- (u) "Proven Claim" has the meaning ascribed to that term in paragraph 4 of this Order;

**DETERMINATION OF PROVEN CLAIM**

4. THIS COURT ORDERS that the amount and status of every Director/Officer Claim of a Creditor as finally determined in accordance with the forms and procedures hereby authorized (a "Proven Claim"), including any determination as to the nature, amount, value, priority or validity of any Director/Officer Claim shall be final for all purposes.

**NOTICE TO CREDITORS**

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5. THIS COURT ORDERS that:
- (a) the Monitor shall no later than five (5) Business Days following the Closing Date, post a copy of the Proof of Claim Document Package on its website;
  - (b) the Monitor shall cause to be published, on two (2) separate days on or after the Closing Date, but no later than five (5) Business Days following the Closing Date, the Notice for Publication in The Globe and Mail, National Post, the Toronto Star, Calgary Herald and Edmonton Journal; and
  - (c) the Monitor shall, provided such request is received by the Monitor prior to the Claims Bar Date, deliver as soon as reasonably possible following receipt of a



request therefore a copy of the Proof of Claim Document Package to any Person claiming to be a Creditor and requesting such material.

6. THIS COURT ORDERS that neither any Applicant nor the Monitor is under any obligation to give notice to or deal with any Person other than the Creditor holding a Director/Officer Claim, and without limitation shall have no obligation to give notice to or deal with any Person having a security interest in the Director/Officer Claim (including the holder of a security interest created by way of a pledge or a security interest created by way of an assignment of the Director/Officer Claim), and such Persons shall be bound by any notices given to the Creditor and any steps taken in respect of such Director/Officer Claim in accordance with this Order.

**CREDITORS' DIRECTOR/OFFICER CLAIMS**

7. THIS COURT ORDERS that Proofs of Claim shall be filed with the Monitor and that any Creditor that does not file a Proof of Claim as provided for herein such that such Proof of Claim is received by the Monitor on or before the Claims Bar Date (a) shall be and is hereby forever barred from making or enforcing any Director/Officer Claim against the Directors or Officers or any of them; and (b) shall not be entitled to any further notice in, and shall not be entitled to participate as a creditor in, these proceedings.
8. THIS COURT ORDERS that insurers of the Applicants or the Directors or Officers shall not be entitled to rely on the barring of Director/Officer Claims provided for in paragraph 7 of this Order.

**PROOFS OF CLAIM**

9. THIS COURT ORDERS that:

- (a) the Monitor may, where it is satisfied that a Director/Officer Claim has been adequately filed, waive strict compliance with the requirements of this Order as to completion and execution of Proofs of Claim; and
- (b) any Director/Officer Claims denominated in any currency other than Canadian dollars shall, for the purposes of this Order, be converted to, and constitute obligations in, Canadian dollars, such calculation to be effected by the Monitor using the Bank of Canada noon spot rate on the Closing Date.

**REVIEW OF PROOFS OF CLAIM**

10. THIS COURT ORDERS that the Monitor, in consultation with the applicable Director or Officer and Catalyst, shall review all Proofs of Claims that are filed on or before the Claims Bar Date and shall accept or disallow (in whole or in part) the amount and/or status of such Claims provided that where any of the Monitor, the applicable Director or Officer or Catalyst disputes all or a portion of a Director/Officer Claim asserted, then the disputed portion of such claim must be disallowed. At any time, the Monitor may request additional information from a Creditor with respect to a Director/Officer Claim, and may request that the Creditor file a revised Proof of Claim.

11. THIS COURT ORDERS that where a Director/Officer Claim has been accepted in writing by the Monitor, such Director/Officer Claim shall constitute such Creditor's Proven Claim for all purposes.

12. THIS COURT ORDERS that where a Director/Officer Claim is disallowed (in whole or in part) by the Monitor, the Monitor shall deliver to the Creditor a Notice of Disallowance.
13. THIS COURT ORDERS that where a Director/Officer Claim has been disallowed (in whole or in part), the disallowed Director/Officer Claim (or disallowed portion thereof) shall not be a Proven Claim unless the Creditor has disputed the disallowance and proven the disallowed Director/Officer Claim (or portion thereof) in accordance with paragraphs 14 to 18 of this Order.

**DISPUTE NOTICE**

14. THIS COURT ORDERS that any Creditor who intends to dispute a Notice of Disallowance shall file a Dispute Notice with the Monitor as soon as reasonably possible but in any event such that such Dispute Notice shall be received by the Monitor on or before 4:00 p.m. (Eastern Daylight Time) on the day that is fourteen (14) days after the Monitor sends the Notice of Disallowance in accordance with paragraph 23 of this Order. The filing of a Dispute Notice with the Monitor within the time limited therefor shall constitute an application to have the amount or status of such Director/Officer Claim determined as set out in paragraphs 14-18 hereof.
15. THIS COURT ORDERS that where a Creditor that receives a Notice of Disallowance fails to file a Dispute Notice with the Monitor within the time limited therefor, the amount and status of such Creditor's Director/Officer Claim shall be deemed to be as set out in the Notice of Disallowance and such amount and status, if any, shall constitute such Creditor's Proven Claim.

**RESOLUTION OF DIRECTOR/OFFICER CLAIMS**

16. THIS COURT ORDERS that as soon as practicable after the delivery of the Dispute Notice to the Monitor, the Creditor and the Monitor, in consultation with the applicable Director or Officer and Catalyst, shall attempt to resolve and settle the Creditor's Director/Officer Claim.
  
17. THIS COURT ORDERS that, in the event that the dispute between the Creditor and the Monitor is not settled within ten (10) days in a manner satisfactory to the Monitor in consultation with the applicable Director or Officer and Catalyst, the Monitor may bring a motion for advice and directions before the Court for determination of the disputed Director/Officer Claim ("Dispute Motion").
  
18. THIS COURT ORDERS that the Monitor, in consultation with the applicable Director or Officer and Catalyst, and the Creditor shall each use reasonable efforts to have the Dispute Motion, and any appeals therefrom, disposed of on an expedited basis with a view to having the Director/Officer Claim of the Creditor finally determined on a timely basis.

**NOTICE OF TRANSFEREES**

19. THIS COURT ORDERS that neither any Applicant, Director or Officer, Catalyst nor the Monitor shall be obligated to give notice to or to otherwise deal with a transferee or assignee of a Director/Officer Claim as the Creditor in respect thereof unless and until (i) actual written notice of transfer or assignment, together with satisfactory evidence of such transfer or assignment, shall have been received by the Monitor, and (ii) the Monitor shall have acknowledged in writing such transfer or assignment, and thereafter such transferee or assignee shall for the purposes hereof constitute the "Creditor" in respect of

such Director/Officer Claim. Any such transferee or assignee of a Director/Officer Claim, and such Director/Officer Claim, shall be bound by any notices given or steps taken in respect of such Director/Officer Claim in accordance with this Order prior to the written acknowledgment by the Monitor of such transfer or assignment.

20. THIS COURT ORDERS that the transferee or assignee of any Director/Officer Claim (i) shall take the Director/Officer Claim subject to the rights and obligations of the transferor/assignor of the Director/Officer Claim, and subject to the rights of the Directors or the Officers against any such transferor or assignor, including any rights of set-off which the Directors or the Officers had against such transferor or assignor, and (ii) cannot use any transferred or assigned Director/Officer Claim to reduce any amount owing by the transferee or assignee to the Directors or the Officers, whether by way of set off, application, merger, consolidation or otherwise.

#### **PROTECTIONS FOR MONITOR**

21. THIS COURT ORDERS that (i) in carrying out the terms of this Order, the Monitor shall have all of the protections given to it by the CCAA and the Initial Order or as an officer of this Court, including the stay of proceedings in its favour, (ii) the Monitor shall incur no liability or obligation as a result of the carrying out of the provisions of this Order, except for its own wilful misconduct or gross negligence, (iii) the Monitor shall be entitled to rely on the books and records of the Applicants, and any information provided by the Applicants, the Directors or the Officers, all without independent investigation, and (iv) the Monitor shall not be liable for any claims or damages resulting from any errors or omissions in such books, records or information.

## **DIRECTIONS**

22. THIS COURT ORDERS that the Monitor may, at any time, on notice to the Directors and Officers and Catalyst, and with such other notice as this Court may require, seek directions from the Court with respect to this Order and the Director/Officer Claims process set out herein, including the forms attached as Schedules hereto.

## **SERVICE AND NOTICE**

23. THIS COURT ORDERS that the Monitor be at liberty to deliver the Proof of Claim Document Package, if requested, and any letters, notices or other documents to Creditors or other interested Persons, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or electronic or digital transmission to such Persons and that any such service or notice by courier, personal delivery or electronic or digital transmission shall be deemed to be received on the next Business Day following the date of forwarding thereof, or if sent by mail, on the second Business Day after mailing. Notwithstanding anything to the contrary in this paragraph 23, Notices of Disallowance shall be sent only by registered mail or by courier.
24. THIS COURT ORDERS that any notice or other communication (including, without limitation, Proofs of Claim and Dispute Notices) to be given under this Order by a Creditor to the Monitor shall be in writing in substantially the form, if any, provided for in this Order and will be sufficiently given only if given by prepaid ordinary mail, courier, personal delivery or electronic or digital transmission addressed to:

Deloitte & Touche Inc.  
Court-appointed Monitor of Planet Organic Health Corp. and Darwen Holdings Ltd.

Address: 181 Bay Street, Suite 1400,  
Toronto, Ontario, M5J 2V1

Attention: **Neil B. Jones, CA**  
Telephone: 416.874.3142  
E-mail: neiljones@deloitte.ca  
Fax: 416.601.6690

Any such notice or other communication by a Creditor shall be deemed received only upon actual receipt thereof during normal business hours on a Business Day.

**MISCELLANEOUS**

25. THIS COURT ORDERS AND REQUESTS the aid and recognition of any court or any judicial, regulatory or administrative body in any province or territory of Canada (including the assistance of any court in Canada pursuant to Section 17 of the CCAA) and any court or any judicial, regulatory or administrative body of the United States and the states or other subdivisions of the United States and of any other nation or state, to act in aid of and to be complementary to this Court in carrying out the terms of this Order.

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Ontario Court of Justice

**SCHEDULE "A"**

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**NOTICE OF DIRECTORS' AND OFFICERS' CLAIMS PROCEDURE  
OF PLANET ORGANIC HEALTH CORP.**

(also known as Planet Organic Market)

and

**DARWEN HOLDINGS LTD.**

(also known as Sangsters Enterprises Ltd.)

(hereinafter referred to as the "Applicants")

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**RE: NOTICE OF DIRECTORS' AND OFFICERS' CLAIMS PROCEDURE FOR THE APPLICANTS PURSUANT TO THE *COMPANIES' CREDITORS ARRANGEMENT ACT* (the "CCAA")**

**PLEASE TAKE NOTICE** that this notice is being published pursuant to an Order of the Superior Court of Justice of Ontario made May \_\_\_\_, 2010 (the "Order"). Creditors may obtain the Order and a Proof of Claim package from the website of Deloitte & Touche Inc., Court-appointed monitor of the Applicants, at [www.deloitte.com/ca/planet-organic](http://www.deloitte.com/ca/planet-organic), or by contacting the Monitor by telephone (●) or by fax (●).

Proofs of Claim must be submitted to the Monitor for any claims against the current or former directors or officers of the Applicants for obligations and liabilities which the current or former directors or officers of the Applicants incur in their capacity as directors or officers of the Applicants from and after April 29, 2010 to and including [Closing Date] ("Director/Officer Claims"). Please consult the Proof of Claim package for more details.

**Completed Proofs of Claim must be received by the Monitor by 4:00 p.m. (Eastern Daylight Time) on [Claims Bar Date] (the "Claims Bar Date"). It is your responsibility to ensure that the Monitor receives your Proof of Claim by the above-noted time and date.**

**DIRECTOR/OFFICER CLAIMS WHICH ARE NOT RECEIVED BY THE CLAIMS BAR DATE WILL BE BARRED AND EXTINGUISHED FOREVER.**

**DATED** at Toronto this \_\_\_\_\_ day of May, 2010.

Applicants

**Planet Organic Health Corp.** (also known as Planet Organic Market) and  
**Darwen Holdings Ltd.** (also known as Sangsters Enterprises Ltd.)



**SCHEDULE "B"**

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**INSTRUCTION LETTER FOR THE DIRECTORS' AND OFFICERS'  
CLAIMS PROCEDURE  
OF PLANET ORGANIC HEALTH CORP.**  
(also known as Planet Organic Market)  
**and**  
**DARWEN HOLDINGS LTD.**  
(also known as Sangsters Enterprises Ltd.)  
(hereinafter referred to as the "Applicants")

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**A. DIRECTORS' AND OFFICERS' CLAIMS PROCEDURE**

By Order of the Superior Court of Justice of Ontario made May \_\_\_\_, 2010 under the *Companies' Creditors Arrangement Act* (the "CCAA"), the Applicants have been authorized to conduct a directors' and officers' claims procedure under the CCAA (the "Directors' and Officers' Claims Procedure").

The Directors' and Officers' Claims Procedure is intended for any Person with any claims against the current or former directors or officers of the Applicants for obligations and liabilities which the current or former directors or officers of the Applicants incur in their capacity as directors or officers of the Applicants from or after April 29, 2010 to and including **[Closing Date]**. Please review the enclosed material for the complete definition of Director/Officer Claim.

If you have any questions regarding the Directors' and Officers' Claims Procedure, please consult the website of the Court-appointed Monitor ([www.deloitte.com/ca/planet-organic](http://www.deloitte.com/ca/planet-organic)) or contact the Monitor at the address provided below.

All notices and enquiries with respect to the Directors' and Officers' Claims Procedure should be addressed to:

Deloitte & Touche Inc.  
Court-appointed Monitor of Planet Organic Health Corp. and Darwen Holdings Ltd.

Address: 181 Bay Street, Suite 1400,  
Toronto, Ontario, M5J 2V1

Attention: **Neil B. Jones, CA**  
Telephone: 416.874.3142  
E-mail: [neiljones@deloitte.ca](mailto:neiljones@deloitte.ca)  
Fax: 416.601.6690

**B. FOR CREDITORS SUBMITTING A PROOF OF CLAIM**

If you believe that you have a Director/Officer Claim against the current or former directors or officers of the Applicants, you will have to file a Proof of Claim with the Monitor. **The Proof of Claim must be received by 4:00 p.m. (Eastern Daylight Time) on [Claims Bar Date], the Claims Bar Date.**

Additional Proof of Claim forms and other information, including a copy of the Order creating the Directors' and Officers' Claims Procedure, can be obtained from the Monitor's website at "[www.deloitte.com/ca/planet-organic](http://www.deloitte.com/ca/planet-organic)", or by contacting the Monitor at the telephone and fax numbers indicated above and providing particulars as to your name, address and facsimile number.

**It is your responsibility to ensure that the Monitor receives your Proof of Claim by the above-noted time and date.**

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**SCHEDULE "C"**

---

**PROOF OF CLAIM AGAINST THE CURRENT AND FORMER DIRECTORS  
AND OFFICERS OF PLANET ORGANIC HEALTH CORP.**

(also known as Planet Organic Market)

**and**

**DARWEN HOLDINGS LTD.**

(also known as Sangsters Enterprises Ltd.)

(hereinafter referred to as the "Directors" and "Officers", as applicable)

---

Please carefully read the enclosed Instruction Letter for completing this Proof of Claim.

**A. PARTICULARS OF CREDITOR:**

1. Full Legal Name of Creditor: \_\_\_\_\_  
\_\_\_\_\_

(the "Creditor"). (Full legal name should be the name of the original Creditor of the Directors or Officers, notwithstanding whether an assignment of a Director/Officer Claim, or a portion thereof, has occurred following April 29, 2010 to and including [Closing Date].)

2. Full Mailing Address of the Creditor (the original Creditor not the Assignee):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

3. Telephone Number: \_\_\_\_\_

4. E-Mail Address: \_\_\_\_\_

5. Facsimile Number: \_\_\_\_\_

6. Attention (Contact Person): \_\_\_\_\_

7. Has the Director/Officer Claim been sold or assigned by the Creditor to another party  
[check (✓) one]?

Yes:  No:

**B. PARTICULARS OF ASSIGNEE(S) (IF ANY):**

8. Full Legal Name of Assignee(s):

\_\_\_\_\_

(If the Director/Officer Claim has been assigned, insert full legal name of assignee(s) of the Director/Officer Claim (If all or a portion of the Director/Officer Claim has been sold). If there is more than one assignee, please attach a separate sheet with the required information.)

9. Full Mailing Address of Assignee(s):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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10. Telephone Number of Assignee(s): \_\_\_\_\_

11. E-Mail Address: \_\_\_\_\_

12. Facsimile Number: \_\_\_\_\_

13. Attention (Contact Person): \_\_\_\_\_

**C. PROOF OF CLAIM:**

I, \_\_\_\_\_  
[name of Creditor or Representative of the Creditor], of \_\_\_\_\_ do hereby certify:  
\_\_\_\_\_  
(city and province)

(a) that I [check (✓) one]

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am the Creditor of the Directors and/or Officers; OR

am \_\_\_\_\_ (state position or title) of

\_\_\_\_\_  
(name of creditor)

(b) that I have knowledge of all the circumstances connected with the Director/Officer Claim referred to below;

(c) the Creditor asserts its claim against [check (✓) all applicable boxes]:

(i) Director(s) of Planet Organic Health Corp.

(ii) Director(s) of Darwen Holdings Ltd..

(iii) Officer(s) of Planet Organic Health Corp.

(iv) Officer(s) of Darwen Holdings Ltd.

(Please list the Director(s) and/or Officer(s) against whom you assert your claim);  
and

(d) The Director(s)/Officer(s) was/were and still is/are indebted to the Creditor as follows:

(i) TOTAL UNSECURED DIRECTOR/OFFICER CLAIM:

\$ \_\_\_\_\_ [insert \$ value of claim] CAD

(Director/Officer Claims in a foreign currency are to be converted to Canadian Dollars at the Bank of Canada noon spot rate as at [Closing Date]. The Canadian Dollar/U.S. Dollar rate of exchange on that date was CDN\$●/US\$1.00.

**D. PARTICULARS OF DIRECTOR/OFFICER CLAIM:**

Other than as already set out herein, the particulars of the undersigned's total Director/Officer Claim are attached.

(Provide all particulars of the Director/Officer Claim and supporting documentation, including amount, description of transaction(s) or agreement(s) giving rise to the Director/Officer Claim, name of any guarantor which has guaranteed the Director/Officer Claim, and amount of invoices, particulars of all credits, discounts, etc. claimed.)

**This Proof of Claim must be received by the Monitor by no later than 4:00 p.m. (Eastern Daylight Time) on [Claims Bar Date], by prepaid ordinary mail, courier, personal delivery or electronic or digital transmission to the following address:**

Deloitte & Touche Inc.  
Court-appointed Monitor of Planet Organic Health Corp. and Darwen Holdings Ltd.

Address: 181 Bay Street, Suite 1400,  
Toronto, Ontario, M5J 2V1

Attention: Neil B. Jones, CA  
Telephone: 416.874.3142  
E-mail: neiljones@deloitte.ca  
Fax: 416.601.6690

**E. FILING OF DIRECTOR/OFFICER CLAIM**

Failure to file your proof of claim as directed by 4:00 p.m. (Eastern Daylight time), on [Claims Bar Date] will result in your claim being barred and in you being prevented from making or enforcing a Director/Officer Claim against any Director and/or any Officer. In addition, you shall not be entitled to further notice in, and shall not be entitled to participate as a creditor in, these proceedings.

Dated at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

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Signature of Creditor

DRAFT

**SCHEDULE "D"**

**REFERENCE NUMBER [●]**

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**NOTICE OF DISALLOWANCE**

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**TO:** [insert name of creditor]

**RE:** In the matter of the Director/Officer Claim dated [DATE] filed by you against the Directors or Officers of Planet Organic Health Corp. or Darwen Holdings Ltd.

Deloitte & Touche Inc., in its capacity as Monitor, hereby gives you notice that it has reviewed your Director/Officer Claim and has revised or rejected your Director/Officer Claim as follows:

	The Proof of Claim as Submitted	The Director/Officer Claim as Accepted
A. Total Director/Officer Claim against the Directors or Officers		

DRAFT

**A. Reasons for Disallowance or Revision:**

[insert explanation]

If you do not agree with this Notice of Disallowance, please take notice of the following:

- 14. **If you dispute this Notice of Disallowance, you must, no later than 4:00 p.m. (Toronto time) on [INSERT DATE, being fourteen (14) days after the Notice of Disallowance is sent by the Monitor (see paragraph 14 of the Order)], notify the Monitor by delivery of a Dispute Notice in accordance with the accompanying Instruction Letter. The form of Dispute Notice is enclosed.**
- 15. **If you do not deliver a Dispute Notice, your Director/Officer Claim shall be deemed to be as set out in this Notice of Disallowance.**





**SCHEDULE "E"**

**DISPUTE NOTICE**

RE: In the matter of the Director/Officer Claim dated \_\_\_\_\_ filed by \_\_\_\_\_ against the Directors or Officers of Planet Organic Health Corp. or Darwen Holdings Ltd.

We hereby give you notice of our intention to dispute the Notice of Disallowance bearing Reference Number \_\_\_\_\_ and dated \_\_\_\_\_ issued in respect of our Director/Officer Claim.

Name of Creditor \_\_\_\_\_

**Reasons for Dispute** (attach additional sheet and copies of all supporting documentation if necessary):

\_\_\_\_\_  
(Signature of individual completing this Dispute)

\_\_\_\_\_  
Date

DRAFT

(Please print name)

Telephone Number: ( ) \_\_\_\_\_

E-mail Address: \_\_\_\_\_

Facsimile Number: ( ) \_\_\_\_\_

Full Mailing Address \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**THIS FORM IS TO BE RETURNED BY PREPAID ORDINARY MAIL, COURIER, PERSONAL DELIVERY OR ELECTRONIC OR DIGITAL TRANSMISSION AND BE RECEIVED NO LATER THAN 4:00 P.M. (TORONTO TIME) ON [INSERT DATE] BEING FOURTEEN (14) DAYS AFTER THE MONITOR SENDS THE NOTICE OF**

**DISALLOWANCE IN ACCORDANCE WITH THE DIRECTORS' AND OFFICERS'  
CLAIMS PROCEDURE ORDER TO:**

Deloitte & Touche Inc.  
Court-appointed Monitor of Planet Organic Health Corp. and Darwen Holdings  
Ltd.

Address: 181 Bay Street, Suite 1400,  
Toronto, Ontario, M5J 2V1

Attention: **Neil B. Jones, CA**  
Telephone: 416.874.3142  
E-mail: neiljones@deloitte.ca  
Fax: 416.601.6690

DRAFT

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  
PLANET ORGANIC HEALTH CORP. AND DARWEN HOLDINGS LTD.

Court File No: 10-8699-00CL

APPLICANTS

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

Proceeding commenced at Toronto

**MOTION RECORD  
(returnable on June 4, 2010)**

**BAKER & McKENZIE LLP**

Barristers and Solicitors  
181 Bay Street, P.O. Box 874  
Suite 2100  
Toronto, ON M5J 2T3

**Frank Spizzirri (LSUC#: 37327F)**

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Lawyers for the Applicants