

ONTARIO  
SUPERIOR COURT OF JUSTICE  
IN BANKRUPTCY

Justice A.D. Grace

Thursday, the 10th Day of  
December, 2015

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF  
HARVEST MUSTANG GP LTD.

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF  
HARVEST ONTARIO PARTNERS LIMITED PARTNERSHIP

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF  
HARVEST POWER MUSTANG GENERATION LTD.

APPROVAL AND VESTING ORDER

**THIS MOTION**, made by Harvest Mustang GP Ltd., Harvest Ontario Partners Limited Partnership and Harvest Power Mustang Generation Ltd. (collectively, the "**Debtors**") for an order approving the sale transaction (the "**Transaction**") contemplated by an agreement of purchase and sale (the "**Sale Agreement**") between the Debtors and Stormfisher Environmental Ltd. (the "**Purchaser**") dated October 15, 2015 and appended to the Affidavit of Wayne H. Davis sworn December 3, 2015 (the "**Affidavit**"), and vesting in the Purchaser the Debtor's right, title and interest in and to the assets described in the Sale Agreement (the "**Purchased Assets**"), was heard this day at ~~330 University Avenue, Toronto, Ontario.~~ <sup>80 Dundas Street, London</sup>

**ON READING** the Affidavit and on hearing the submissions of counsel for the Debtors, counsel for Deloitte Restructuring Inc. in its capacity as the Proposal Trustee of the Debtors (the "**Proposal Trustee**") and counsel for Stormfisher Ltd., no one appearing for any other person on the service list, although properly served as appears from the affidavit of Lynn Lee sworn December 7, 2015, filed:

1. **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved, with such minor amendments as the Debtors and the Proposal Trustee may deem necessary. The Debtors 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 the Transaction and for the conveyance of the Purchased Assets to the Purchaser.

2. **THIS COURT ORDERS AND DECLARES** that upon the delivery of a Proposal Trustee's certificate to the Purchaser substantially in the form attached as Schedule A hereto (the "**Proposal Trustee's Certificate**"), all of the Debtor's right, title and interest in and to the Purchased Assets described in the Sale Agreement shall vest absolutely in the Purchaser, 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**") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Justice Rady dated October 19, 2015; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; and (iii) those Claims listed on Schedule C hereto (all of which are collectively referred to as the "**Encumbrances**", which term shall not include the permitted encumbrances, easements and restrictive covenants listed on Schedule D) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

3. **THIS COURT ORDERS** that upon the registration in the Land Registry Office for the Land Titles Division of Waterloo (No. 33) of an Application for Vesting Order in the form prescribed by the *Land Titles Act*, the Land Registrar is hereby directed to enter the Purchaser as the owner of the subject real property identified in Schedule B hereto (the "**Real Property**") in fee simple, and is hereby directed to delete and expunge from title to the Real Property all of the Claims listed in Schedule C hereto.

4. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of the Proposal Trustee's Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

5. **THIS COURT ORDERS AND DIRECTS** the Proposal Trustee to file with the Court a copy of the Proposal Trustee's Certificate, forthwith after delivery thereof.

6. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Debtors are authorized and permitted to disclose and transfer to the Purchaser all human resources and payroll information in the Debtors' records pertaining to the Debtors past and current employees, including personal information of those employees listed in the Sale Agreement. The Purchaser 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 identical to the prior use of such information by the Debtors.

7. **THIS COURT ORDERS** that, notwithstanding:

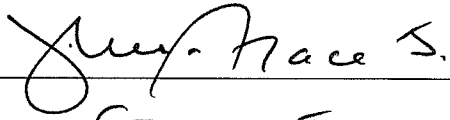
- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of the Debtor and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made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

the vesting of the Purchased Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Debtors and shall not be void or voidable by creditors of the Debtors, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction 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.

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

9. **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 Debtors, the Proposal Trustee 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 Debtors and the Proposal Trustee as may be necessary or desirable to give effect to this Order or to assist the Debtors, the Proposal Trustee and their agents in carrying out the terms of this Order.

  
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Grace S

**Schedule A – Form of Proposal Trustee’s Certificate**

Court File No. 35-2041157

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
IN BANKRUPTCY**

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF  
HARVEST MUSTANG GP LTD.**

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF  
HARVEST ONTARIO PARTNERS LIMITED PARTNERSHIP**

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF  
HARVEST POWER MUSTANG GENERATION LTD.**

**PROPOSAL TRUSTEE’S CERTIFICATE**

**RECITALS**

- A. On September 29, 2015 Harvest Mustang GP Ltd. (“**Mustang GP**”), Harvest Ontario Partners Limited Partnership (“**Harvest Ontario**”) and Harvest Power Mustang Generation Ltd. (“**Mustang Generation**”, and collectively, the “**Debtors**”) each filed a Notice of Intention to Make a Proposal (collectively, the “**NOIs**”) pursuant to section 50.4 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the “**BIA**”) as amended. Deloitte Restructuring Inc. (“**Deloitte**”) was named proposal trustee in the Debtors’ NOIs (the “**Proposal Trustee**”).
- B. Pursuant to an Order of the Court dated December 10, 2015, the Court approved the agreement of purchase and sale made as of October 15, 2015 (the “**Sale Agreement**”) between the Debtors and Stormfisher Environmental Ltd. (the “**Purchaser**”) and provided for the vesting in the Purchaser of the Debtors’ right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Proposal Trustee to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Purchased

Assets; (ii) that the conditions to Closing as set out in the Sale Agreement have been satisfied or waived by the Debtors and the Purchaser; and (iii) the transaction contemplated by the Sale Agreement (the “**Transaction**”) has been completed to the satisfaction of the Debtors and the Proposals Trustee.

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

**THE PROPOSAL TRUSTEE CERTIFIES** the following:

1. The Purchaser has paid and the Debtors have received the Purchase Price for the Purchased Assets payable on the closing date pursuant to the Sale Agreement;
2. The conditions to closing as set out in the Sale Agreement have been satisfied or waived by the Debtors and the Purchaser; and
3. The Transaction has been completed to the satisfaction of the Debtors and the Proposal Trustee.
4. This Certificate was delivered by the Proposal Trustee at \_\_\_\_\_ [TIME] on \_\_\_\_\_ [DATE].

**DELOITTE RESTRUCTURING INC. in its  
capacity as the Proposal Trustee of the  
Debtors, and not in its personal capacity**

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

DS

**Schedule B – Purchased Assets**

Part of Lot 13, Concession 3 designated as Part 1 on 33R-17471; City of London; PIN 08203-0194 (LT)



### Schedule C – Claims to be deleted and expunged from title to Real Property

1. Instrument No. ER732633, registered on October 7, 2010, is a Transfer/Deed of Land in favour of Harvest Power Mustang Generation Ltd., for consideration of \$825,000.
2. Instrument No. ER811453, registered on February 28, 2012, is a Charge/Mortgage of Land, in the amount of \$11,000,000 given by Harvest Power Mustang Generation Ltd. in favour of Farm Credit Canada.
3. Instrument No. ER826934, registered on June 5, 2012, is a Notice of Lease given by Harvest Power Mustang Generation Ltd. to Harvest Mustang GP Ltd. and Harvest Ontario Partners Limited Partnership.
4. Instrument No. ER827004 registered on June 5, 2012, is a Notice of Assignment of Lessor's Interest in Lease given by Harvest Power Mustang Generation Ltd. to Farm Credit Canada.
5. Instrument No. ER852555 registered on November 5, 2012, is a Postponement by Farm Credit Canada in favour of The Corporation of the City of London.
6. Instrument No. ER991271 registered on July 2, 2015 is a Construction Lien by Badger Daylighting Limited Partnership in the amount of \$239,191.00.
7. Instrument No. ER997157 registered on August 5, 2015 is a Certificate of Action by Badger Daylighting Limited Partnership and Badger Daylighting Ltd., perfecting Construction Lien No. ER991271.
8. Instrument No. ER998608 registered on August 14, 2015, is a Transfer of Charge No. ER811453 by Farm Credit Canada in favour of 2478223 Ontario Limited.
9. Instrument No. ER999326 registered on August 18, 2015, is a Notice of Assignment of Lessor's Interest in a Lease by Harvest Power Mustang Generation Ltd. in favour of 2478223 Ontario Limited.
10. Instrument No. ER1008453 registered on October 8, 2015, is a Transfer of Charge No. ER811453 by 2478223 Ontario Limited in favour of Stormfisher Environmental Ltd.
11. Instrument No. ER1009185 registered on October 15, 2015, is a Construction Lien by CRS Contractors Rental Supply General Partner Inc. in the sum of \$29,477.00.

DP



## Schedule D

### Permitted Encumbrances, Easements and Restrictive Covenants related to the Real Property

#### (unaffected by the Vesting Order)

1. Bylaw registered on April 3, 1964 as Instrument No. 195932.
2. Plan Reference registered on April 1, 2009 as Instrument No. 33R17471.
3. Notice registered on December 1, 2010 as Instrument No. ER741168.
4. Notice registered on December 21, 2011 as Instrument No. ER802713.
5. Notice registered on November 5, 2012 as Instrument No. ER852554.

#### Permitted Encumbrances related to Personal Property

##### Personal Property Security Act (Ontario) ("ONPPSA")

1. A financing statement registered pursuant to the ONPPSA on December 5, 2012 as Registration No. 683352864, Reference File No. 20121205 1255 1902 4627 against the Borrower, as debtor and Roynat Inc., as secured party for a period of 6 years in respect of all of the Borrower's Equipment, Other and Motor Vehicle (as such terms are defined in the ONPPSA), identified as 2009 Terex TL80 (VIN TL00801824) and further described in the General Collateral Description as wheel loader(s) together with all attachments accessories accessions replacements substitutions additions and improvements thereto and all proceeds in any form derived directly or indirectly from any sale.



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Court File No. 35-2041157

ONTARIO  
SUPERIOR COURT OF JUSTICE  
IN BANKRUPTCY  
Proceedings commenced at LONDON

APPROVAL AND VESTING ORDER

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Power Mustang Generation Ltd.