

**IN THE COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL DISTRICT OF CALGARY**

ALBERTA TREASURY BRANCHES

Plaintiff

- and -

**CHOCOLATERIE BERNARD CALLEBAUT PARTNERSHIP, by its Managing Partner,
CHOCOLATERIE BERNARD CALLEBAUT LTD., 1013988 ALBERTA LTD.,
CHOCOLATERIE BERNARD CALLEBAUT LTD., 1054796 ALBERTA LTD.,
BERNARD CALLEBAUT and FRANCESCA CALLEBAUT**

Defendants

NOTICE OF MOTION

TAKE NOTICE that an application will be made on behalf of Deloitte & Touche Inc., the court-appointed receiver and manager (the "**Receiver**") of Chocolaterie Bernard Callebaut Partnership, Chocolaterie Bernard Callebaut Ltd., 1013988 Alberta Ltd. and 1054796 Alberta Ltd. (collectively, referred to as "**Callebaut**") before the Honourable Madam Justice B.E.C. Romaine in Chambers at the Calgary Court Centre, 601-5th Street SW, in the City of Calgary, in the Province of Alberta, on Wednesday, the 20th day of October, 2010, at the hour of quarter past one o'clock in the afternoon or so soon thereafter as counsel may be heard for an Order seeking the following relief:

1. Abridging the time for service of this application and declaring that this motion is properly returnable today, if necessary, and further service of the notice of motion, other than to those listed on the Service List attached to the Notice of Motion as Schedule "A", is hereby dispensed with;
2. Approving the sale of the assets (the "**Assets**") more particularly described in the draft Sale Approval and Vesting Order which is attached hereto as Schedule "B", of Callebaut to 1563181 Alberta Ltd. (the "**Purchaser**") on the terms set forth in the agreement of

purchase and sale dated October 13, 2010 (the “**APA**”), and in accordance with sub-paragraphs 3(k) and 3(l) of the Consent Receivership Order granted on August 3, 2010 by Madam Justice E.A. Hughes (the “**Receivership Order**”) in these proceedings;

3. Vesting in the Purchaser all of Callebaut’s right title and interest, free and clear of all liens and encumbrances, in and to the Assets;
4. Sealing on the court file until further order, the Confidential Supplement to the Second Report of the Receiver (the “**Second Confidential Report**”) to be dated October 18, 2010; and
5. Such further and other relief as this Honourable Court deems just.

AND FURTHER TAKE NOTICE THAT the grounds of this application are as follows:

- (a) on August 3, 2010 the Receiver, pursuant to the Receivership Order was appointed by the Court as receiver and manager over all of the current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate, including all proceeds thereof of Callebaut;
- (b) sub-paragraph 3(k) of the Receivership Order authorized the Receiver to market any or all of the Assets, including advertising and soliciting offers and negotiating such terms and conditions of sale as the Receiver deems appropriate;
- (c) sub-paragraph 3(l) of the Receivership Order authorized the Receiver to, among other things, sell the Property out of the ordinary course of business with the approval of the Court where the purchase price exceeded \$100,000;
- (d) on September 1, 2010, the Receiver issued a sales teaser (the “**Teaser**”) in respect of the sale of the Assets to 102 interested parties. As a result of the Teaser, 59 interested parties signed a confidentiality agreement, were provided copies of the Confidential Information Memorandum dated September 1, 2010, and were given access to an electronic data room to conduct due diligence on the Assets;

- (e) On September 23, 2010, the Receiver was presented with 11 non-binding letters of intent (the “**Non-Binding LOIs**”). Of the 11 Non-Binding LOIs only three interested parties (the “**Preferred Bidders**”) were selected to move to the next stage of the sale process;
- (f) The Preferred Bidders were given access to additional due diligence information posted to an electronic data room and were allowed the opportunity to tour the head office as well as Callebaut’s seven other retail locations;
- (g) As a result of requests from Preferred Bidders for additional time to complete their due diligence, the deadline for the submission of binding offers was extended until October 12, 2010 at 12:00 p.m. On October 12, 2010, the Receiver received two binding offers (the “**Binding Offers**”) and after reviewing the two offers the Receiver entered into the APA with the Purchaser;
- (h) there is a need to ensure that the Second Confidential Report is not made public because it may detrimentally affect the Receiver’s ability to re-market and sell the Assets should the sale to the Purchaser not close for any reason.

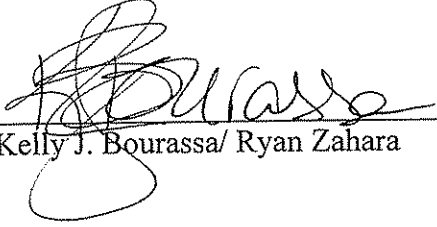
AND FURTHER TAKE NOTICE THAT the Applicant will refer to the following:

- (a) the First Report of the Receiver dated October 14, 2010, filed;
- (b) the Second Report of the Receiver dated October 15, 2010, filed;
- (c) the Second Confidential Report to be dated October 18, 2010;
- (d) the *Bankruptcy and Insolvency Act* R.S.C. 1985, c. B-3, as amended;
- (e) the Alberta *Rules of Court*; and
- (f) such further and other materials as counsel for the Receiver may advise and this Honourable Court may permit.

DATED at the City of Calgary, in the Province of Alberta, this 15th day of October, 2010.

BLAKE, CASSELS & GRAYDON LLP

Per:



Kelly J. Bourassa/ Ryan Zahara

TO: Clerk of the Court

AND TO: Service List - see attached Schedule "A"

Schedule "A"

Action No. 1001-11456

IN THE COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL DISTRICT OF CALGARY

BETWEEN:

ALBERTA TREASURY BRANCHES

Plaintiff

- and -

CHOCOLATERIE BERNARD CALLEBAUT PARTNERSHIP, by its Managing Partner,
CHOCOLATERIE BERNARD CALLEBAUT LTD., 1013988 ALBERTA LTD.,
CHOCOLATERIE BERNARD CALLEBAUT LTD., 1054796 ALBERTA LTD.,
BERNARD CALLEBAUT and FRANCESCA CALLEBAUT

Defendants

SERVICE LIST

<i>Counsel</i>	<i>Telephone</i>	<i>Fax</i>	<i>Counsel For</i>
DELOITTE & TOUCHE LLP 3000 Scotia Centre 700 - 2nd Street S.W Calgary AB T2P 0S7 VICTOR P. KROEGER E-mail: vkroeger@deloitte.ca VANESSA GRANT E-mail: ygrant@deloitte.ca	(403) 267-0609 (403) 298-5955	(403) 260-4060	Court-appointed Receiver
BLAKE, CASSELS & GRAYDON LLP 3500 East Tower, Bankers Hall 855 - 2 nd Street S.W. Calgary, AB T2P 4J8 KELLY J. BOURASSA E-mail: kelly.bourassa@blakes.com MATTHEW SIMPSON E-mail: matthew.simpson@blakes.com	(403) 260-9697 (403) 260-9749	(403) 260-9700	Receiver

<p>DAVIS LLP Livingston Place 1000 - 250 2nd Street S.W. Calgary AB T2P 0C1</p> <p>LARRY B. ROBINSON Q.C. E-mail: lbrobinson@davis.ca</p> <p>ANDREW T. LLOYD E-mail: alloyd@davis.ca</p>	<p>(403) 698-8715</p> <p>(403) 698-8786</p>	<p>(403) 697-6609</p>	<p>Alberta Treasury Branches</p>
<p>BURNET, DUCKWORTH & PALMER LLP First Canadian Centre 1400, 350 7th Avenue SW Calgary, AB T2P 3N9</p> <p>GRANT VOGELI E-mail: lgv@bdplaw.com</p> <p>DOUGLAS NISHIMURA E-mail: dsn@bdplaw.com</p>	<p>(403) 260-0171</p> <p>(403) 260-0269</p>	<p>(403) 260-0332</p>	<p>Chocolaterie Bernard Callebaut Partnership, by its Managing Partner, Chocolaterie Bernard Callebaut Ltd. 103988 Alberta Ltd. Chocolaterie Bernard Callebaut Ltd. 1054796 Alberta Ltd. Bernard Callebaut Francesca Callebaut</p>
<p>WITTEN LLP Canadian Western Bank Place 10303 Jasper Avenue N.W. Suite 2500 Edmonton AB T5J 3N6</p> <p>SCHUYLER V. WENSEL Q.C. E-mail: swensel@wittenlaw.com</p> <p>JOHN FRAME E-mail: jframe@wittenlaw.com</p> <p>JIM NESBITT E-mail: jnesbitt@wittenlaw.com</p>	<p>(780) 441-3204</p> <p>(780) 702-3404</p> <p>(780) 702-3407</p>	<p>(780) 429-2559</p>	<p>1097068 Alberta Ltd.</p>
<p>MCCARTHY TETRAULT LLP 3300, 421 - 7th Avenue S.W. Calgary, AB T2P 4K9</p> <p>SEAN COLLINS E-mail: scollings@mccarthy.ca</p> <p>STEPHEN L. LIVERGANT Q.C. E-mail: slivergant@mccarthy.ca</p>	<p>(403) 260-3531</p> <p>(403) 260-3633</p>	<p>(403) 260-3501</p>	<p>First Street Equities Inc.</p>
<p>NATIONAL LEASING GROUP 1558 Willson Place Winnipeg, MB R3T 0Y4</p>		<p>(204) 954-2242</p>	
<p>MCAP LEASING INC. 5575 North Service Rd. Ste. 300 Burlington, ON L7L 6M1</p>		<p>(905) 639-5902</p>	

RICOH CANADA INC. 5035 South Service Road Burlington, ON L7R 4C8		(905) 795-6926	
---	--	----------------	--

Schedule "B"

Action No.: 1001-11456

**IN THE COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL DISTRICT OF CALGARY**

BETWEEN:

ALBERTA TREASURY BRANCHES

Plaintiff

- and -

**CHOCOLATERIE BERNARD CALLEBAUT PARTNERSHIP, by its Managing Partner,
CHOCOLATERIE BERNARD CALLEBAUT LTD., 1013988 ALBERTA LTD.,
CHOCOLATERIE BERNARD CALLEBAUT LTD., 1054796 ALBERTA LTD.,
BERNARD CALLEBAUT and FRANCESCA CALLEBAUT**

Defendants

BEFORE THE HONOURABLE) At the Calgary Courts Centre in the City of
MADAME JUSTICE B.E.C. ROMAINE) Calgary, in the Province of Alberta, on
IN CHAMBERS) Wednesday, the 20th day of October, 2010.

SALE APPROVAL AND VESTING ORDER

UPON the application of Deloitte & Touche Inc., the court-appointed receiver and manager (the "Receiver") of Chocolaterie Bernard Callebaut Partnership, Chocolaterie Bernard Callebaut Ltd., 1013988 Alberta Ltd. and 1054796 Alberta Ltd. (collectively, referred to as "Callebaut"); AND UPON reading the First Report of the Receiver dated October 14, 2010, filed (the "First Report"), the Second Report of the Receiver dated October 15, 2010, filed (the "Second Report"), the Confidential Supplement to the Second Report of the Receiver dated October __, 2010 (the "Second Confidential Report") and the Affidavit of Service of _____, filed; AND UPON hearing counsel for the Receiver, counsel for 1563181 Alberta

Ltd. (the "**Purchaser**") and counsel for other interested parties; **AND UPON** it appearing that the sale transaction (the "**Transaction**") contemplated by the Asset Purchase Agreement dated October 13, 2010 (the "**Sale Agreement**") represents the best realizable value for the Purchased Assets (as defined below) in the present circumstances; **IT IS HEREBY ORDERED AND DECLARED THAT:**

1. The time for service of the Notice of Motion dated October 15, 2010 (the "**Notice of Motion**") and materials in support thereof be and is hereby abridged to the date of actual service and that service be and is hereby approved, the application is properly returnable today and all parties entitled to notice of this motion, and those listed on the service list (the "**Service List**") attached to the Notice of Motion, have been properly served and further service is hereby dispensed with.
2. Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Consent Receivership Order dated August 3, 2010 granted by the Honourable Madame Justice E.A. Hughes (the "**Receivership Order**").
3. The Transaction contemplated by the Sale Agreement whereby the Purchaser has agreed to purchase Callebaut's right, title and interest in all of the assets of Callebaut (the "**Purchased Assets**"), which are more specifically outlined in the Confidential Information Memorandum dated September 1, 2010, be and is hereby approved.
4. Approval is hereby granted to the Receiver and the Receiver is hereby authorized and directed to proceed with the Transaction and in particular, the sale by the Receiver to the Purchaser of all of Callebaut's right, title and interest in and to the Purchased Assets, and to take all steps necessary to complete the Transaction and, for greater certainty the sale of the Purchased Assets is also approved pursuant to paragraph 3(l) of the Receivership Order.
5. Upon the delivery of a receiver's certificate to the Purchaser, substantially in the form attached as Schedule "A" hereto (the "**Receiver's Certificate**"), all of the right, title, and interest of Callebaut, and any parties claiming through it in and to the Purchased Assets will be extinguished and all of Callebaut's right, title and interest in and to the Purchased

Assets shall vest absolutely and forever in the Purchaser, free and clear of and from any and all estate, right, title, interest, claims, hypothecs, mortgages, charges, liens (whether contractual, statutory or otherwise), security interests, assignments, actions, levies, taxes, writs of execution, trusts or deemed trusts (whether contractual, statutory or otherwise), options, agreements, disputes, debts, encumbrances, or other rights, limitations or restrictions of any nature whatsoever, or any other contractual, financial or monetary claims of any nature whatsoever, whether or not any of the foregoing have attached or been perfected, registered or filed, and whether secured, unsecured or otherwise (collectively, the “**Encumbrances**”) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to Callebaut’s right, title and interest in the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

6. The Receiver is hereby ordered and directed to file with the Court a copy of the Receiver’s Certificate forthwith after delivery thereof.
7. The sale process utilized by the Receiver was conducted in a fair and commercially reasonable manner and the purchase price represents the best possible and realizable value for the Purchased Assets in the present circumstances.
8. Pursuant to clause 20(e) of the Alberta *Personal Information Protection Act*, the Receiver is authorized and permitted to disclose and transfer to the Purchaser all human resources and payroll information in Callebaut’s records pertaining to Callebaut’s past and current employees. 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 Callebaut.
9. Notwithstanding the pendency of these proceedings and the provisions of any federal or provincial statutes neither the Sale Agreement nor the Transaction contemplated thereby will be void or voidable at the instance of creditors and claimants and do not constitute nor shall they be deemed to be settlements, fraudulent preferences, assignments, fraudulent conveyances or other reviewable transactions under the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended, 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.

10. The Transaction may be completed without compliance with and notwithstanding the provisions of Part 5 of the *Personal Property Security Act*, R.S.A. 2000, c. P-7, as amended.
11. In completing the Transaction subject to the terms and conditions of the Sale Agreement, the Receiver is further authorized:
 - (a) to execute and deliver such additional, related and ancillary documents and assurances governing or giving effect to the Transaction as the Receiver, in its discretion, may deem reasonably necessary or advisable to conclude the Transaction or in furtherance of this Order;
 - (b) to enter into such amendments to the Sale Agreement which are not material, whereupon any reference in this Order to the Sale Agreement shall be and include a reference to the Sale Agreement as amended; and
 - (c) to take such steps as are necessary or incidental to the performance of its obligations pursuant to the Sale Agreement and the Terms and Conditions, including to make any necessary post-closing adjustments as may be required.
12. The sale proceeds from the sale of the Purchased Assets, including all taxes payable under the Sale Agreement (the "**Sale Proceeds**"), shall stand in the place of and replace the Purchased Assets with respect to any claims ("**Claims**") asserted against the Purchased Assets by any person and 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 Callebaut. The Sale Proceeds shall be held by the Receiver pending further order of this Court.
13. The Receiver shall be at liberty from time to time to apply to this Court for advice and directions with respect to the Sale Agreement and the Transaction. The Receiver shall be

authorized and empowered to apply, upon such notice, if any, as it may consider necessary or desirable, to this Court to make such orders and provide such other aid and assistance to the Receiver, as this Court may deem necessary or appropriate.

14. To the extent necessary, this Court hereby requests the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or elsewhere to give effect to this Order and to assist the Receiver and its 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 Receiver, as an officer of this Court, 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.
15. Service of this Order and the Receiver's Certificate on the Service List and the Purchaser shall constitute good and sufficient service on all parties entitled to notice of same, which service may be effected by facsimile or electronic transmission and further service thereof is hereby dispensed with.
16. The Second Confidential Report, contains confidential information and shall be sealed on the court file in these proceedings and segregated from, and not form part of, the public record, until the later of filing of the Receiver's Certificate and the expiry of any appeal periods with respect to this Sale Approval and Vesting Order with no appeal having been filed.
17. The Clerk of the Court is hereby directed to file the Second Confidential Report in a sealed envelope attached to a notice that sets out the title of these proceedings, the aforementioned description of documents contained therein and a statement that the envelope's contents are sealed pursuant to this Order.
18. The media notice requirements of Civil Practice Note No. 12 dated July 15, 2004 are hereby dispensed with.

19. This Sealing Order may be varied by further order of this Court upon notice to the parties hereto, in accordance with Civil Practice Note No. 12 dated July 15, 2004.

J.C.Q.B.A.

ENTERED this ____ day of October, 2010.

Clerk of the Court

Schedule "A"

Action No.: 1001-11456

IN THE COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL DISTRICT OF CALGARY

BETWEEN:

ALBERTA TREASURY BRANCHES

Plaintiff

- and -

CHOCOLATERIE BERNARD CALLEBAUT PARTNERSHIP, by its Managing
Partner, CHOCOLATERIE BERNARD CALLEBAUT LTD., 1013988 ALBERTA LTD.,
CHOCOLATERIE BERNARD CALLEBAUT LTD., 1054796 ALBERTA LTD.,
BERNARD CALLEBAUT and FRANCESCA CALLEBAUT

Defendants

RECEIVER'S CERTIFICATE

This Receiver's Certificate is the Receiver's Certificate referred to in paragraph 5 of the Sale Approval and Vesting Order of the Honourable Madam Justice B.E.C. Romaine dated October 20, 2010 and made herein (the "Order"), a copy of which is attached hereto.

Deloitte & Touche Inc., solely in its capacity as Court-appointed receiver and manager (the "Receiver") of Chocolaterie Bernard Callebaut Partnership, 1013988 Alberta Ltd., Chocolaterie Bernard Callebaut Ltd. and 1054796 Alberta Ltd., and not in its personal capacity, hereby certifies that the Transaction contemplated in the Sale Agreement (both as defined in the Order) has closed to the satisfaction of the Receiver and that all conditions contained in the Sale Agreement have been satisfied or waived in accordance with the Sale Agreement.

Dated this ___ day of October, 2010.

DELOITTE & TOUCHE INC., solely in its
capacity as Court-appointed receiver and manager
of Chocolaterie Bernard Callebaut Partnership,
1013988 Alberta Ltd., Chocolaterie Bernard
Callebaut Ltd. and 1054796 Alberta Ltd. and not in
its personal capacity

Per: _____

Action No.: 1001-11456

**IN THE COURT OF QUEEN'S BENCH OF
ALBERTA
JUDICIAL DISTRICT OF CALGARY**

BETWEEN:

ALBERTA TREASURY BRANCHES

Plaintiff

- and -

**CHOCOLATERIE BERNARD
CALLEBAUT PARTNERSHIP, by its
Managing Partner, CHOCOLATERIE
BERNARD CALLEBAUT LTD., 1013988
ALBERTA LTD., CHOCOLATERIE
BERNARD CALLEBAUT LTD., 1054796
ALBERTA LTD., BERNARD CALLEBAUT
and FRANCESCA CALLEBAUT**

Defendants

RECEIVER'S CERTIFICATE

Blake, Cassels & Graydon LLP
Barristers and Solicitors
3500, 855 - 2nd Street S.W.
CALGARY, AB T2P 4J8

Attention: Kelly J. Bourassa/Ryan Zahara
Phone: (403) 260-9697/260-9628
Fax: (403) 260-9700

File No.: 38358/10013

Action No.: 1001-11456

IN THE COURT OF QUEEN'S BENCH
OF ALBERTA
JUDICIAL DISTRICT OF CALGARY

BETWEEN:

ALBERTA TREASURY BRANCHES

Plaintiff

- and -

**CHOCOLATERIE BERNARD
CALLEBAUT PARTNERSHIP, by its
Managing Partner, CHOCOLATERIE
BERNARD CALLEBAUT LTD., 1013988
ALBERTA LETS., CHOCOLATERIE
BERNARD CALLEBAUT LTD., 1054796
ALBERTA LTD., BERNARD
CALLEBAUT and FRANCESCA
CALLEBAUT**

Defendants

**SALE APPROVAL AND VESTING
ORDER**

BLAKE, CASSELS & GRAYDON LLP

Barristers and Solicitors
3500 Bankers Hall East
855 - 2nd Street S.W.
Calgary, Alberta T2P 4K7

Kelly J. Bourassa/
Ryan Zahara
Phone: (403) 260-9697/260-9628
Fax: (403) 260-9700
Our File No: 38358/10013

Action No.: 1001-11456

IN THE COURT OF QUEEN'S BENCH OF
ALBERTA
JUDICIAL DISTRICT OF CALGARY

ALBERTA TREASURY BRANCHES

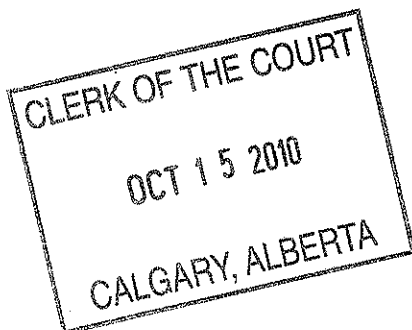
Plaintiff

- and -

**CHOCOLATERIE BERNARD CALLEBAUT
PARTNERSHIP, by its Managing Partner,
CHOCOLATERIE BERNARD CALLEBAUT
LTD., 1013988 ALBERTA LTD.,
CHOCOLATERIE BERNARD CALLEBAUT
LTD., 1054796 ALBERTA LTD., BERNARD
CALLEBAUT and FRANCESCA CALLEBAUT**

Defendants

NOTICE OF MOTION



BLAKE, CASSELS & GRAYDON LLP
Barristers and Solicitors
3500, 855 - 2nd Street S.W.
Calgary, Alberta T2P 4J8
Attention: Kelly J. Bourassa/ Ryan Zahara
Tel. No.: (403) 260-9697/ 260-9628
Fax No.: (403) 260-9700
Our File No.: 38358/10013