



NO. FOS-S-S-24867
FORT ST. JOHN REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

THE BANK OF NOVA SCOTIA

PETITIONER

AND:

GRABHERS LAST STAND BISON RANCH LTD., DWAYNE
GRABHER AND CHELSEA GRABHER also known as CHELSEA
FOILLARD

RESPONDENTS

NOTICE OF APPLICATION

NAME OF APPLICANT: Deloitte Restructuring Inc. (the “**Receiver**”), in its capacity as receiver and manager of the assets and undertakings of Grabhers Last Stand Bison Ranch Ltd., and the assets of Dwayne Grabher and Chelsea Grabher (collectively, the “**Debtors**”) appointed by the Order of the Honourable Mr. Justice Branch, made on February 3, 2020 in the Supreme Court of British Columbia.

TO: The Petitioner

AND TO: The Respondents

AND TO: Jody Grabher
David Cramer
1050311 BC Ltd
Northern Truss Ltd.
Peace River Country Electric Ltd.
Peace River Building Products Ltd.

TAKE NOTICE that an application will be made by the applicant to the presiding master in Chambers via teleconference at the courthouse at **J.O. Wilson Square, 250 George Street, Prince George , B.C.** on **August 10, 2020 at 9:45 a.m.** for the order(s) set out in Part 1 below.

PART 1: ORDER(S) SOUGHT

1. And Order that:

- (a) the time for service of this Notice of Application and supporting materials is hereby abridged so that the application is properly returnable today and the need for further service of the Notice of Application and supporting materials is hereby dispensed with;
- (b) Jody Grabher, David Cramer, 1050311 BC Ltd, Northern Truss Ltd., Peace River Country Electric Ltd., Peace River Building Products Ltd. be joined as Respondents to these proceedings, *nunc pro tunc*, with service of an Amended Petition and Rule 6-2(8) of the *Rules of Court* being dispensed with, in the form attached as **Schedule “A”** hereto.
- (c) the sale of the subject lands and premises, as described below, be approved in the form attached as **Schedule “B”** hereto.

PART 2: FACTUAL BASIS

Background

- 2. The Respondents, Grabhers Last Stand Bison Ranch Ltd. (“**GLS**”) Dwayne Gordon Gabher and Chelsea Dawn Fouillard, are the owners of lands that are used by GLS in the operation of a bison ranch (the “**Ranch Property**”). The Ranch Property is comprised of the following lands:

- (a) As owned by Dwayne Gordon Grabher:

PID: 014-507-757

THE SOUTH EAST 1/4 OF SECTION 3 TOWNSHIP 82 RANGE 17
WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT, EXCEPT
PLAN 28204 AND EPP78064

- (b) As owned by Dwayne Gordon Gabher and Chelsea Dawn Fouillard, in joint tenancy;

PID: 024-384-267

BLOCK A OF WEST 1/2 SECTION 2 TOWNSHIP 82 RANGE 17
WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT

PID: 024-384-275

BLOCK B OF WEST 1/2 SECTION 2 TOWNSHIP 82 RANGE 17
WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT

PID: 013-114-034

THE NORTH EAST 1/4 OF SECTION 3 TOWNSHIP 82 RANGE 17
WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT

PID: 005-240-280
 NORTH EAST 1/4 OF SECTION 34 TOWNSHIP 81 RANGE 17 WEST
 OF THE 6TH MERIDIAN PEACE RIVER DISTRICT EXCEPT PLAN
 31892

(c) As owned by Grabbers Last Stand Bison Ranch Ltd.

PID: 014-479-966
 PARCEL A (P35144) OF SECTION 10 TOWNSHIP 82 RANGE 17
 WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT

PID: 014-485-788
 THE NORTH WEST 1/4 OF SECTION 3 TOWNSHIP 82 RANGE 17
 WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT, EXCEPT
 THE WEST 4.883 METRES

PID: 014-485-800
 THE SOUTH EAST 1/4 OF SECTION 9 TOWNSHIP 82 RANGE 17
 WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT EXCEPT
 THE MOST SOUTHERLY 25 METRES

PID: 014-485-796
 THE NORTH EAST 1/4 OF SECTION 4 TOWNSHIP 82 RANGE 17
 WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT

(collectively, the “**Lands**”)

3. Dwayne Grabher (“**Mr. Grabher**”) acted as the sole director of GLS and managed the Ranch Property. GLS employed approximately eight people who were terminated on or around November 30, 2019. From that date forward, Mr. Grabher was solely responsible for the operations of the Ranch Property.
4. In early 2019, GLS began to experience financial difficulties due to, amongst other things, a decline in bison prices. In June 2019, GLS failed to remit payment on its credit facilities and was in default of its loan agreements with the Petitioner, the Bank of Nova Scotia (“**BNS**”).
5. In September 2019, Mr. Grabher attempted, unsuccessfully, to refinance GLS’ credit facilities. Throughout October and November 2019, Mr. Grabher failed to provide information to BNS related to the inventory of bison, assets held by GLS and other related financial information.
6. According to the receivership materials filed by BNS, the Receiver understands that Mr. Grabher entered into various potentially fraudulent transactions related to the bison and the assets owned by GLS.

7. On November 26, 2019, BNS demanded payment of the obligations under its loan agreements with GLS. On December 31, 2019, Mr. Grabher, on behalf of GLS applied for protection pursuant to subsection 5(1)(b) of the *Farm Debt Mediation Act* (“**FDMA**”).
8. On January 3, 2020, BNS wrote to the administrator of the GLS FDMA application and requested the stay of proceeding be terminated immediately due to the conduct of Mr. Grabher.
9. On January 22, 2020, the stay of proceedings was terminated and BNS sought an order appointing a receiver to take possession of all of the assets, undertakings and property of GLS, as well as all of the assets Mr. Grabher and Chelsea Grabher acquired for, or used in connection with any business carried on by GLS, including the proceeds thereof, with such lands being listed on Schedule A” of the Receivership Order, and being included in the definition of Lands as set out above.
10. Accordingly, the Receivership Order was pronounced on February 3, 2020 and the Receiver was appointed to take possession of the Property.

Powers and Previous Actions of the Receiver

11. Pursuant to paragraph 2.1 of the Receivership Order, the Receiver has the power to, among other things, take and maintain possession and control of the Property, the power to manage, operate and carry on the business of GLS and the power to market and sell the Property (subject to Court approval if any one transaction exceeds \$1,200,000 or if the aggregate of transactions exceeds \$2,500,000).
12. In accordance with that order, and as set out in the Receiver’s First Report to the Court filed herein, the Receiver has sold, through private sales or auctions, the animals making up the bison herd, and equipment subject to BNS’s security interest, and with the consent of BNS.

Overview of the Ranch Property

13. The Ranch Property includes a modular barn, workshop with a residential suite on an upper mezzanine level, and a partially constructed house (the “**House**”).
14. On or around February 6, 2020, the Receiver selected Colliers International to undertake an appraisal of the Ranch Property. As at March 9, 2020, Colliers International appraised the market value of the Ranch Property to be:
 - (a) \$1,440,000 excluding the House;
 - (b) \$1,605,000 including the House in its current “as-is” condition; and

- (c) \$2,230,000 if construction of the House is completed.
15. The Receiver explored the options of completing construction of the House, as well as demolishing the House, and determined that selling the Ranch Property “as-is” would likely optimize realizations.
 16. The Receiver notes that the real estate market in the Fort St. John region has softened in recent months owing to the downturn in the oil and gas industry as well as uncertainty due to the COVID-19 pandemic.
 17. 1050311 B.C. Ltd, doing business as HAAB Homes (“**HAAB**”), had acted as the general contractor of the House. HAAB is owed approximately \$109,962 in outstanding costs relating to its construction services. On June 5, 2019, HAAB ceased work on the House due to lack of payment, and thereafter removed the House from its home warranty insurance plan.
 18. On September 10, 2019, HAAB filed a notice of civil claim against Mr. Grabher and filed a builders’ lien over the Lands.
 19. Pursuant to the *Homeowner Protection Act* (British Columbia), new homes under construction but not yet complete may not be sold unless it is covered by new home warranty insurance. Pursuant to discussions with HAAB, the Receiver and HAAB entered into an agreement on April 24, 2020, in which HAAB agreed to:
 - (a) re-enroll the House in its home warranty insurance plan;
 - (b) secure the House, including closing up the garage and front doors, and to carry out minor weatherproofing work; and
 - (c) provide assistance and co-operate with the Receiver to provide potential purchasers with all information necessary to sell the House, including discussing costs to complete the construction.
 20. In consideration of these actions, the Receiver agreed to pay HAAB \$33,200 payable on certain milestone dates associated with the marketing and sale of the House. The Receiver notes that \$29,000 of this payment was to be applied against the outstanding invoices owing to HAAB Homes at the Date of Receivership, thereby reducing its claim against GLS and/or Mr. Grabher.
 21. However, by doing so, it was able to engage a realtor to market the property without being in contravention of the *Homeowner Protection Act*.

Marketing and Sale of the Ranch Property

22. On April 28, 2020 the Receiver entered into a co-listing agreement with NAI Commercial and RE/MAX Action Realty Inc. (together, “NAI”). NAI undertook the following sales and marketing activities:
- (a) listed the Ranch Property on the Multiple Listing Service on April 28, 2020 with an asking price of \$1,995,000;
 - (b) marketed the Ranch Property on multiple real estate websites to ensure full internet exposure;
 - (c) sent a listing broadcast email to all commercial members of the Fraser Valley and Greater Vancouver Real Estate Boards and to approximately 7,000 NAI agents world wide, and marketed to all BC Northern, Okanagan, Kootenay and Kamloops Real Estate Board members; and
 - (d) sent targeted direct emails to NAI’s database of residential developers, investor and high net worth end users totalling over 300 individuals.
23. Further, the Receiver marketed the Ranch Property by way of a notice in “Insolvency Insider”, a weekly email publication sent to approximately 4,700 subscribers, including Licensed Insolvency Trustees, insolvency counsel, lenders, private equity companies, high net worth individuals and other companies or individuals interest in insolvency situations.
24. After receiving interest and its first offer, and in consultation with NAI, the Receiver determined that it would be best to implement a bid date while interest was still high. Accordingly, on May 22, 2020, NAI contacted all interested parties to advise that the Receiver would select a bid, and encouraged anyone interested in the Ranch Property to make an off by 5 p.m. PST on May 29, 2020 (the “**Offer Deadline**”).
25. By the Offer Deadline, the Receiver received the following four offers for the Ranch Property:
- (a) a first offer for a purchase price of \$2,095,525 subject to financing by June 12, 2020 (the “**Duriez Offer**”);
 - (b) a second offer for a purchase price of \$1,850,000 subject to financing by June 5, 2020 (the “**Newton Offer**”);
 - (c) a third offer for a purchase price of \$1,680,000 subject to financing by June 5, 2020; and
 - (d) a fourth offer for a purchase price of \$10,500 with no buyer subjects. NAI confirmed there was no error in the purchase price of this offer.

26. On June 2, 2020, after discussions with BNS, the Receiver entered into a purchase and sale agreement for the Duriez Offer. However, the offer collapsed after the offeror was unable to obtain financing.
27. The Receiver then entered into negotiations with respect to the Newton Offer. After such negotiations and after discussions with BNS, the Receiver entered into a purchase and sale agreement pursuant to the Newton Offer for a purchase price of \$1,850,000 plus applicable taxes, with no subject conditions (the “**Purchase Agreement**”).
28. The Purchase Agreement is for a price that is above the “as-is” appraised value of \$1,605,000. Additionally, NAI has recommended that the Purchase Agreement be accepted by the Receiver and this Honourable Court.
29. Attempting to hold and list the Ranch Property for a longer period of time in hopes of finding an alternate buyer at a higher price would have incurred substantial holding costs related to the Ranch Property, including insurance and utilities, and there is no guarantee any further offers would have been received given the current market conditions and the uncertainty caused by the COVID-19 pandemic.
30. BNS is in agreement with the Purchase Agreement, subject to the approvable of this Honourable Court. Accordingly, the Receiver is satisfied the Purchase Agreement represents market value, that being the most any party is willing to pay after a full and proper marketing process was undertaken.

Occupants of the Ranch Property and other Interested Parties to be added

31. Mr. Grabher’s sister, Jody Grabher, currently resides in a suite above the workshop on the Ranch Property. Additionally, Mr. Grabher currently resides in a mobile home on the Ranch Property which is purportedly owned by his grandmother.
32. The Receiver is unaware of any formal rental agreement between GLS and Mr. Grabher or between GLS and Jody Grabher. Neither party is paying rent.
33. Pursuant to subsection 2.2 of the Receivership Order, Mr. Grabher is entitled to reside in the modular home unless otherwise ordered by the Court.
34. As a condition of closing, the Purchase Agreement requires the Receiver to provide vacant possession of the Ranch Property after a vesting order is granted. Assuming the vesting order is granted, the Receiver will require Mr. Grabher and Jody Grabher to vacate the Ranch Property, including the removal of the mobile home and all personal property by no later than September 7, 2020.
35. Accordingly, the Receiver is also seeking:

- (a) an Order adding Jody Grabher as a Respondent as an interested party, and
 - (b) to include as terms of the Order Approving Sale:
 - (i) a vacant possession term as against Ms. Grabher, and
 - (ii) a provision that any personal property of either remaining on the Lands after September 7, 2020 may be disposed of, without liability of the Purchaser, the Receiver, or any person authorized to act on behalf of the Purchaser or the Receiver.
36. On July 21, 2020, the Receiver notified Mr. Grabher by email and telephone call of the proposed sale transaction and further informed him that, subject to the approval of the vesting order, Mr. Grabher and Jody Grabher will be required to vacate the Ranch Property and remove their personal property by September 7, 2020.
37. The Receiver has also notified Mr. Grabher that the Receiver's legal counsel would service notice of the application to Mr. Grabher and Jody Grabher as soon as reasonably practical after filing the application materials in Court.
38. In addition, based on the Land Title Searches, the following parties have filed financial encumbrances which rank in priority after the BNS Mortgage:
- (a) Chelsea Foillard, CPL CA7019012
 - (b) David Cramer, Builders Lien CA7322660
 - (c) 1050311 BC Ltd, Builders Lien CA7583242
 - (d) Northern Truss Ltd., Builders Lien WX2118360
 - (e) Peace River Country Electric Ltd., Builder's Lien CA7996902
 - (f) Peace River Building Products Ltd., Builder's lien CA7635482
39. As the proposed purchaser requires, and the Receiver seeks to, vest title to the Lands free and clear of these interests, the Receiver seeks an Order adding them as Respondents.

PART 3: LEGAL BASIS

Adding of Parties:

40. Based upon the facts set out above, the Respondents submits that the intended respondents to be added as parties have an interest in these proceedings, particularly the sale approval which affects their interests in and to the Lands.

41. The Receiver relies upon The applicant will rely on Rule 6-1, 6-2(4) of the *Supreme Court Civil Rules*.

Sale of the Lands

42. The Receiver relies on the *Supreme Court Civil Rules*, the *Personal Property Security Act*, the *Bankruptcy and Insolvency Act* and the inherent jurisdiction of this Honourable Court.
43. The Court has the authority to approve a sale by a receiver and grant a vesting order under Rule 13-5 of the *Supreme Court Civil Rules*. Additionally, the Court has the supervisory jurisdiction over enforcement of security interests and receivers pursuant to sections 63 and 64 of the *Personal Property Security Act*.

BC, *Supreme Court Civil Rules*, r. 13-5.

***Personal Property Security Act*,
R.S.B.C. 1996, c. 359, ss. 63 & 64.**

44. The test to be applied in considering whether to approve the sale by a receiver is settled law. The Court should consider:
- (a) whether the receiver has made a sufficient effort to get the best price and has not acted improvidently;
 - (b) the interests of all parties;
 - (c) the efficacy and integrity of the process by which offers are obtained; and
 - (d) whether there has been unfairness in the working out of the process.

***Royal Bank v Soundair Corp.* 1991
CarswellOnt 205 (Ont. C.A.) at para 16
("Soundair").**

The Purchase Agreement Represents the Best Price for the Ranch Property

45. When considering if a receiver has made sufficient efforts to obtain the best price and if a receiver has acted providently, a court should “examine the conduct of the receiver in light of the information in the receiver had when it agreement to accept an offer”.
- Soundair*, at para. 21.**
46. The Purchase Agreement represents the best price available for the Ranch Property. The Receiver made sufficient efforts through its marketing to obtain the best price for the

Ranch Property. After the collapse of the Duriez Offer, the Newton Offer was the best offer received.

The Receiver Properly Considered the Interests of All Relevant Parties

47. When considering the interest of all parties, a court should primarily consider the interests of the creditors, but should also consider the interests of the debtors and other parties when appropriate in the circumstances.

Soundair, at para. 40.

48. In this case, BNS was owed approximately \$6,559,710 by GLS as at January 21, 2020 pursuant to various credit facilities. BNS holds various registered and first ranking security over the Property, including a general security agreement dated July 27, 2017, a collateral mortgage registered August 1, 2017 and personal guarantees from Mr. Grabher and Chelsea Foillard. Therefore, the Receiver submits that in these circumstances, BNS' interest should be the primary consideration of this Honourable Court.
49. BNS supports the Receiver's acceptance of the Newton Offer and the Purchase Agreement. Further, BNS submits that the Receiver adequately considered its interest, and those of the debtors, when accepting the Newton Offer and the Purchase Agreement.

The Sales and Solicitation Process used to Obtain the Offer had Efficacy and Integrity

50. When considering the efficacy and integrity of the process to obtain the offer, a court should consider the solicitation process was conducted with commercial efficacy and integrity.

Soundair, at a para 43.

51. The Receiver submits that the sales and solicitation process was conducted with commercial efficacy, as:
- (a) the Receiver and NAI made sufficient efforts to market the Ranch Property over the months of April and May, 2020;
 - (b) the Receiver and NAI contacted prospective purchasers and provided adequate information to conduct due diligence on GLS and Mr. Grabher's affairs;
 - (c) the Receiver carefully analyzed all offers received and, after the Duriez Offer collapsed, ultimately decided that the Newton's Offer was the best offer presented for the Ranch Property; and
 - (d) at all times the sales and solicitation process has been open and transparent and has had the goal of realizing the maximum value for the Ranch Property.

The Sales and Solicitation was Fair

52. Lastly, a court should consider if there was any unfairness in the sales process. As described above, the sales process conducted by the Receiver was an open and commercially reasonable process. The Receiver submits that this Honourable Court should find the sales process fair in all circumstances.

Conclusion

53. Accordingly, the Receiver submits that this Honourable Court should grant the order sought sanctioning the sale and vesting the Ranch Property to the purchaser pursuant to the Purchase Agreement, as the Receiver has acted honestly and in good faith and conducted the sales and solicitation process in a commercially reasonable manner.

PART 4: MATERIAL TO BE RELIED ON

54. Order appointing Receiver pronounced February 3, 2020 by the Honourable Mr. Justice Branch in the within proceedings.
55. The Receiver's First Report to the Court dated July 28, 2020.

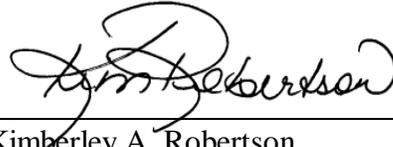
The applicant(s) estimate(s) that the application will take **minutes**.

- This matter is within the jurisdiction of a Master.
- This matter is not within the jurisdiction of a Master as it involves inherent jurisdiction

TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to this Notice of Application, you must, within 5 business days after service of this Notice of Application or, if this application is brought under Rule 9-7, within 8 business days after service of this Notice of Application:

- (a) file an Application Response in Form 33,
- (b) file the original of every affidavit, and every other document, that
 - (i) you intend to refer to at the hearing of this application, and
 - (ii) has not already been filed in the proceeding, and
- (c) serve on the applicant 2 copies of the following, and on every other party of record one copy of the following:
 - (i) a copy of the filed Application Response;
 - (ii) a copy of each of the filed affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on that person;
- (d) if this application is brought under Rule 9-7, any notice that you are required to give under Rule 9-7(9).

Dated at the City of Vancouver, in the Province of British Columbia, this 30th day of July, 2020.



Kimberley A. Robertson
Lawson Lundell LLP
Solicitors for the Applicant

This Notice of Application is filed by the law firm of Lawson Lundell LLP, whose place of business and address for delivery is 1600 – 925 West Georgia Street, Vancouver, British Columbia, V6C 3L2.

To be completed by the court only:

Order made

in the terms requested in paragraphs _____ of Part 1 of this Notice of Application

with the following variations and additional terms:

Date: _____

Signature of Judge Master

APPENDIX

The following information is provided for data collection purposes only and is of no legal effect.

THIS APPLICATION INVOLVES THE FOLLOWING:

- Other –application by Receiver for Approval of Sale**

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

THE BANK OF NOVA SCOTIA

PETITIONER

AND:

GRABHERS LAST STAND BISON RANCH LTD., DWAYNE GRABHER
AND CHELSEA GRABHER also known as CHELSEA FOILLARD

RESPONDENTS

**ORDER MADE AFTER APPLICATION
TO ADD RESPONDENT TO THE PROCEEDING**

BEFORE THE HONOURABLE

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MONTDAY, THE 10TH DAY OF
AUGUST, 2020

THE APPLICATION of Deloitte Restructuring Inc. in its capacity as Court-appointed Receiver (the “**Receiver**”) of the assets and undertakings of Grabhers Last Stand Bison Ranch Ltd., and the assets of Dwayne Grabher and Chelsea Grabher (collectively, the “**Debtors**”) with such assets as enumerated in the Order under which it was appointed, coming on for hearing at Prince George, British Columbia, on the 10th day of August 2020; AND ON HEARING Kimberley Robertson, counsel for the Receiver, and those other counsel listed on **Schedule “A”** hereto, and no one appearing for the remaining parties although duly served; AND UPON READING the material filed, including the Report of the Receiver dated July 28, 2020 (the “**Report**”);

THIS COURT ORDERS AND DECLARES THAT:

1. Jody Grabher, David Cramer, 1050311 BC Ltd , Northern Truss Ltd., Peace River Country Electric Ltd. and Peace River Building Products Ltd. be added as Respondents to these proceedings, *nunc pro tunc*.

2. The style of proceedings be amended accordingly;
3. Preparation and service of the Amended Petition on all parties be and is hereby dispensed with;
4. The terms of Rule 6-2(8) of the Supreme Court Civil Rules be dispensed with;

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

Kimberley Robertson
COUNSEL FOR THE RECEIVER

BY THE COURT

REGISTRAR

Schedule A – List of Appearing Parties

<p>Counsel for the Receiver, Deloitte Restructuring Inc. Applicant</p>	<p>Kimberley Robertson Lawson Lundell LLP Suite 1600 Cathedral Place 925 West Georgia Street Vancouver, BC V6C 3L2 Telephone: (604) 685-3456 Fax: (604) 669-1620 E-mail: krobertson@lawsonlundell.com</p>

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

THE BANK OF NOVA SCOTIA

PETITIONER

AND:

GRABHERS LAST STAND BISON RANCH LTD.,
DWAYNE GRABHER
CHELSEA GRABHER also known as CHELSEA FOILLARD
JODY GRABHER
DAVID CRAMER
1050311 BC LTD
NORTHERN TRUSS LTD.
PEACE RIVER COUNTRY ELECTRIC LTD.
PEACE RIVER BUILDING PRODUCTS LTD.

RESPONDENTS

ORDER MADE AFTER APPLICATION

BEFORE THE HONOURABLE

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MONTDAY, THE 10TH DAY OF
AUGUST, 2020

THE APPLICATION of Deloitte Restructuring Inc. in its capacity as Court-appointed Receiver (the “**Receiver**”) of the assets and undertakings of Grabhers Last Stand Bison Ranch Ltd., and the assets of Dwayne Grabher and Chelsea Grabher (collectively, the “**Debtors**”) with such assets as enumerated in the Order under which it was appointed, coming on for hearing at Prince George, British Columbia, on the 10th day of August 2020; AND ON HEARING Kimberley Robertson, counsel for the Receiver, and those other counsel listed on **Schedule “A”** hereto, and no one appearing for the remaining parties although duly served; AND UPON READING the material filed, including the Report of the Receiver dated July 28, 2020 (the “**Report**”);

THIS COURT ORDERS AND DECLARES THAT:

1. The time for service of this Notice of Application and supporting materials is hereby abridged so that the application is properly returnable today, and the need for further service of the Notice of Application and supporting materials is hereby dispensed with.
2. The sale transaction (the “**Transaction**”) contemplated by the Purchase Agreement dated July 3, 2020 (the “**Sale Agreement**”) between the Receiver and Mr. and Mrs. Newton (collectively, the “**Purchasers**”), a copy of which is attached as Appendix “D” to the Report is hereby approved, and the Sale Agreement is commercially reasonable. The execution of the Sale Agreement by the Receiver is hereby authorized and approved, and the Receiver is 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 to the Purchasers of the assets described in the Sale Agreement (the “**Purchased Assets**”).
3. Upon delivery by the Receiver to the Purchasers of a certificate substantially in the form attached as **Schedule “B”** hereto (the “**Receiver’s Certificate**”), all of the Debtor’s right, title and interest in and to the Purchased Assets described in the Sale Agreement and listed on **Schedule “C”** hereto shall vest absolutely in the Purchasers in fee simple, 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 this Court dated February 3, 2020
 - (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* of British Columbia or any other personal property registry system; and
 - (iii) those Claims listed on **Schedule “D”** 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 “E”** hereto),

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.

4. Any personal property remaining on the Lands may be disposed of, without liability to the Purchasers, the Receiver, or any person authorized to act on behalf of the Purchasers or the Receiver, if such personal property is not removed from the Lands by September 7, 2020.
5. Upon presentation for registration in the Land Title Office for the Land Title District of Prince George of a certified copy of this Order, together with a letter from Lawson

Lundell LLP, solicitors for the Receiver, authorizing registration of this Order, the British Columbia Registrar of Land Titles is hereby directed to:

- (a) enter the Purchasers as the owners of the Lands, as identified in **Schedule “B”** hereto, together with all buildings and other structures, facilities and improvements located thereon and fixtures, systems, interests, licenses, rights, covenants, restrictive covenants, commons, ways, profits, privileges, rights, easements and appurtenances to the said hereditaments belonging, or with the same or any part thereof, held or enjoyed or appurtenant thereto, in fee simple in respect of the Lands, and this Court declares that it has been proved to the satisfaction of the Court on investigation that the title of the Purchasers in and to the Lands is a good, safe holding and marketable title and directs the BC Registrar to register indefeasible title in favour of the Purchasers as aforesaid; and
 - (b) having considered the interest of third parties, to discharge, release, delete and expunge from title to the Lands all of the registered Encumbrances as set out in **Schedule “D”**, except for those listed in **Schedule “E”**.
6. 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 from and after the delivery of the Receiver’s Certificate all Claims 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 had possession or control immediately prior to the sale.
7. The Receiver is to file with the Court a copy of the Receiver’s Certificate forthwith after delivery thereof.
8. Subject to the terms of the Sale Agreement, vacant possession of the Purchased Assets, including any real property, shall be delivered by the Receiver to the Purchasers at 12:00 noon on the Closing Date (as defined in the Sale Agreement), subject to the permitted encumbrances as set out in the Sale Agreement and listed on Schedule “E”.
9. The Receiver, with the consent of the Purchasers, shall be at liberty to extend the Closing Date to such later date as those parties may agree without the necessity of a further Order of this Court provided that the Closing Date occurs within 30 days of the date of this Order.
10. Notwithstanding:
 - (a) these proceedings;
 - (b) any applications for a bankruptcy order in respect of the Debtor now or hereafter made pursuant to the *Bankruptcy and Insolvency Act* and any bankruptcy order issued pursuant to any such applications; and

(c) any assignment in bankruptcy made by or in respect of the Debtor,

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

11. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body, wherever located, 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.
12. The Receiver or any other party have liberty to apply for such further or other directions or relief as may be necessary or desirable to give effect to this Order.
13. Approval as to the form of this Order by any party other than counsel to the Receiver is dispensed with.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

Kimberley Robertson
Counsel for Deloitte Restructuring Inc.

BY THE COURT

REGISTRAR

Schedule A – List of Appearing Parties

<p>Counsel for the Receiver, Deloitte Restructuring Inc. Applicant</p>	<p>Kimberley Robertson Lawson Lundell LLP Suite 1600 Cathedral Place 925 West Georgia Street Vancouver, BC V6C 3L2 Telephone: (604) 685-3456 Fax: (604) 669-1620 E-mail: krobertson@lawsonlundell.com</p>

Schedule B – Form of Receiver’s Certificate

NO. FOS-S-S-24867
FORT ST. JOHN REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

THE BANK OF NOVA SCOTIA

PETITIONER

AND:

GRABHERS LAST STAND BISON RANCH LTD., DWAYNE
GRABHER AND CHELSEA GRABHER also known as
CHELSEA FOILLARD

RESPONDENTS

RECEIVER’S CERTIFICATE

- A. Pursuant to an Order of the Honourable Mr. Justice Branch made on February 3, 2020 in the Supreme Court of British Columbia, Deloitte Restructuring Inc. was appointed as the receiver and manager (the “**Receiver**”) of the assets and undertakings of Grabhers Last Stand Bison Ranch Ltd., and the assets of Dwayne Grabher and Chelsea Grabher (collectively, the “**Debtors**”), as enumerated therein.
- B. Pursuant to an Order of the Court dated , the Court approved the agreement of purchase and sale made as of July 3, 2020 (the “**Sale Agreement**”) between the Receiver and Mr. and Mrs. Newton (the “**Purchasers**”) and provided for the vesting in the Purchasers of the Debtor’s 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 Receiver to the Purchasers of a certificate confirming (i) the payment by the Purchasers 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 Receiver and the Purchasers; and (iii) the Transaction has been completed to the satisfaction of the Receiver.
- C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.

THE RECEIVER CERTIFIES the following:

1. The Purchasers have paid and the Receiver has 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 Receiver and the Purchasers (or its nominee); and
3. The Transaction has been completed to the satisfaction of the Receiver.

This Certificate was delivered by the Receiver at Vancouver, British Columbia on _____, 2020.

**Deloitte Restructuring Inc., in its capacity as
Receiver of the assets and undertakings of
Grabbers Last Stand Bison Ranch Ltd., and the
assets of Dwayne Grabher and Chelsea Grabher,
and not in its personal capacity.**

Per; _____

Name:

Title:

Schedule C – Purchased Assets

“**Lands**” means those lands and premises in the City of Seymour Arm, in the Province of British Columbia legally described as:

PID: 014-507-757
THE SOUTH EAST 1/4 OF SECTION 3 TOWNSHIP 82 RANGE 17 WEST OF THE
6TH MERIDIAN PEACE RIVER DISTRICT, EXCEPT PLAN 28204 AND EPP78064

PID: 024-384-267
BLOCK A OF WEST 1/2 SECTION 2 TOWNSHIP 82 RANGE 17 WEST OF THE 6TH
MERIDIAN PEACE RIVER DISTRICT

PID: 024-384-275
BLOCK B OF WEST 1/2 SECTION 2 TOWNSHIP 82 RANGE 17 WEST OF THE 6TH
MERIDIAN PEACE RIVER DISTRICT

PID: 013-114-034
THE NORTH EAST 1/4 OF SECTION 3 TOWNSHIP 82 RANGE 17 WEST OF THE
6TH MERIDIAN PEACE RIVER DISTRICT

PID: 005-240-280
NORTH EAST 1/4 OF SECTION 34 TOWNSHIP 81 RANGE 17 WEST OF THE 6TH
MERIDIAN PEACE RIVER DISTRICT EXCEPT PLAN 31892

PID: 014-479-966
PARCEL A (P35144) OF SECTION 10 TOWNSHIP 82 RANGE 17 WEST OF THE
6TH MERIDIAN PEACE RIVER DISTRICT

PID: 014-485-788
THE NORTH WEST 1/4 OF SECTION 3 TOWNSHIP 82 RANGE 17 WEST OF THE
6TH MERIDIAN PEACE RIVER DISTRICT, EXCEPT THE WEST 4.883 METRES

PID: 014-485-800
THE SOUTH EAST 1/4 OF SECTION 9 TOWNSHIP 82 RANGE 17 WEST OF THE
6TH MERIDIAN PEACE RIVER DISTRICT EXCEPT THE MOST SOUTHERLY 25
METRES

PID: 014-485-796
THE NORTH EAST 1/4 OF SECTION 4 TOWNSHIP 82 RANGE 17 WEST OF THE
6TH MERIDIAN PEACE RIVER DISTRICT

(the “**Lands**”).

“**Purchased Assets**” means:

1. the Debtor’s undivided interest in and to the Lands (the “**Property**”) and to any buildings or improvements located on the, together with all rights, easements and

other real property rights appurtenant to the Property (as shown on title no. BB1531932)

2. the Debtor's interest in and to the Property; and
3. the Personal Property on the Property if any.

Schedule D – Claims to be deleted/expunged from title to the Lands

As against PID: 024-384-267

Nature of Charge	Registration No.
Mortgage The Bank of Nova Scotia	CA6913582
Certificate of Pending Litigation Dwayne Gordon Grabher	CA6941542
Certificate of Pending Litigation Chelsea Dawn Fouillard	CA7019012

As to PID: 024-384-275

Nature of Charge	Registration No.
Mortgage The Bank of Nova Scotia	CA6913582
Certificate of Pending Litigation Dwayne Gordon Grabher	CA6941542
Certificate of Pending Litigation Chelsea Dawn Fouillard	CA7019012

As to PID: 013-114-034

Nature of Charge	Registration No.
Mortgage The Bank of Nova Scotia	CA6913582
Certificate of Pending Litigation Dwayne Gordon Grabher	CA6941542
Certificate of Pending Litigation Chelsea Dawn Fouillard	CA7019012

As to PID: 005-240-280

Nature of Charge	Registration No.
Mortgage The Bank of Nova Scotia	CA6913582
Certificate of Pending Litigation Dwayne Gordon Grabher	CA6941542
Certificate of Pending Litigation Chelsea Dawn Fouillard	CA7019012

As to PID: 014-507-757

Nature of Charge	Registration No.
Mortgage The Bank of Nova Scotia	CA6913581
Certificate of Pending Litigation Chelsea Dawn Fouillard	CA7019012
Claim of Builders Lien David Cramer	CA7322660
Claim of Builders Lien 1050311 B.C. Ltd.	CA7583242
Claim of Builders Lien Northern Truss Ltd.	WX2118360
Claim of Builders Lien Peace River Building Products Ltd.	CA7635482
Claim of Builders Lien Peace Country Electric Ltd.	CA7996902

As to PID: 014-479-966:

Nature of Charge	Registration No.
Mortgage The Bank of Nova Scotia	CA6203095
Certificate of Pending Litigation Chelsea Dawn Fouillard	CA7019014
Claim of Builders Lien David Cramer	CA7322660

As to PID: 014-485-788:

Nature of Charge	Registration No.
Mortgage The Bank of Nova Scotia	CA6203095
Certificate of Pending Litigation Chelsea Dawn Fouillard	CA7019014
Claim of Builders Lien David Cramer	CA7322660

As to PID: 014-485-800:

Nature of Charge	Registration No.
Mortgage The Bank of Nova Scotia	CA6203095
Certificate of Pending Litigation Chelsea Dawn Fouillard	CA7019014
Claim of Builders Lien David Cramer	CA7322660

As to PID: 014-485-796:

Nature of Charge	Registration No.
Mortgage The Bank of Nova Scotia	CA6203095
Certificate of Pending Litigation Chelsea Dawn Fouillard	CA7019014
Claim of Builders Lien David Cramer	CA7322660

**Schedule E – Permitted Encumbrances, Easements and Restrictive Covenants
related to Real Property**

The reservations, limitations, provisos and conditions expressed in the original grant thereof from the Crown and:

As against PID: 024-384-267

Nature of Charge	Registration No.
Undersurface and Other EXC & Res	PN4919
Covenant	PN4921

As to PID: 024-384-275

Nature of Charge	Registration No.
Undersurface and Other EXC & Res	PN4919
Covenant	PN4921

As to PID: 013-114-034

Nature of Charge	Registration No.
Legal Notation, Agricultural Land Reserve Plan	21608

As to PID: 005-240-280

Nature of Charge	Registration No.
Legal Notation, Agricultural Land Reserve Plan	21608
Covenant	X34094
Covenant	PN4921
Statutory Right of Way	CA4249817

As to PID: 014-507-757

Nature of Charge	Registration No.
Legal Notation, Agricultural Land Reserve Plan	21608
Right of Way	B16704

As to PID: 014-479-966:

Nature of Charge	Registration No.
Legal Notation, Agricultural Land Reserve Plan	21608

As to PID: 014-485-788:

Nature of Charge	Registration No.
Legal Notation, Agricultural Land Reserve Plan	21608
Statutory Right of Way	CA4249819

As to PID: 014-485-800:

Nature of Charge	Registration No.
Statutory Right of Way	PN11707
Statutory Right of Way	PN21800
Statutory Right of Way	BB311657
Statutory Right of Way	BB1501034
Statutory Right of Way	CA3387384
Statutory Right of Way	CA4730193

As to PID: 014-485-796:

Nature of Charge	Registration No.
Statutory Right of Way	PN11707
Statutory Right of Way	PN21800
Statutory Right of Way	BB311657
Statutory Right of Way	BB1501034
Statutory Right of Way	CA3387384
Statutory Right of Way	CA4249819
Statutory Right of Way	CA4730192

NO. FOS-S-S-24867
FORT ST. JOHN REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

THE BANK OF NOVA SCOTIA

PETITIONER

AND:

GRABHERS LAST STAND BISON
RANCH LTD., DWAYNE
GRABHER AND CHELSEA
GRABHER also known as CHELSEA
FOILLARD

RESPONDENTS

NOTICE OF APPLICATION



Barristers & Solicitors
1600 Cathedral Place
925 West Georgia Street
Vancouver, British Columbia
V6C 3L2