

THE QUEEN'S BENCH

WINNIPEG CENTRE

BETWEEN:

LINCOLN WOLFE and 5606269 MANITOBA LTD.

Applicants,

- and -

DUANNE TAYLOR, 5608067 MANITOBA LTD., TAYLOR  
BROS. FARM LTD. and EDWIN POTATO GROWERS LTD.

Respondents.

APPLICATION UNDER section 207 of *The Corporations Act*, C.C.S.M. c. C225

CERTIFIED COPY  
of

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ORDER  
(APPOINTING LIQUIDATOR)

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THE QUEEN'S BENCH

WINNIPEG CENTRE

THE HONOURABLE  
MR. JUSTICE TOEWS

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)  
)

FRIDAY, THE 28<sup>th</sup>  
DAY OF APRIL, 2017

BETWEEN:

LINCOLN WOLFE and 5606269 MANITOBA LTD.

Applicants,

- and -

DUANNE TAYLOR, 5608067 MANITOBA LTD., TAYLOR  
BROS. FARM LTD. and EDWIN POTATO GROWERS LTD.

Respondents.

APPLICATION UNDER section 207 of *The Corporations Act*, C.C.S.M. c. C225

**CERTIFIED COPY**  
of  
**ORDER (APPOINTING LIQUIDATOR)**

THIS APPLICATION AND MOTION made by the Applicants for an Order providing for the liquidation and dissolution of the respondent corporations, Taylor Bros. Farm Ltd. ("TBF") and Edwin Potato Growers Ltd. ("EPG"), and appointing Deloitte Restructuring Inc. as liquidator without security, of TBF and EPG, was heard on March 15, 2017 at the Law Courts Buildings, 408 York Avenue in Winnipeg, Manitoba.

ON READING the Affidavits of Lincoln Wolfe affirmed August 6 and September 9, 2015, and the Affidavit of Lincoln Wolfe affirmed December 13, 2016 as filed in

Queen's Bench File No. CI 16-01-04369 (including the Awards of Arbitrator Harvey L. Selter dated April 20, August 24, October 5 and 17, 2016), the Affidavits of Duanne Taylor sworn August 31 and September 27, 2015, and the Affidavits of Duanne Taylor sworn December 8 and 30, 2016 and the Affidavit of Darlene Monette sworn February 24, 2017 as filed in Queen's Bench File No. CI 16-01-04369, the transcript of the cross-examination of Lincoln Wolfe on October 28, 2015, the transcript of the cross-examination of Duanne Taylor on October 28, 2015, and on reading the evidence filed in Queen's Bench File No. CI 15-01-94251 (the "**Previous Proceeding**") , namely the Affidavits of Duanne Taylor sworn March 4, 12 and 20, 2015, the Affidavit of Lincoln Wolfe affirmed March 10, 2015, the Affidavit of Gordon Daman sworn March 21, 2015 and the transcript of the cross-examination of Duanne Taylor on March 24, 2015, and on hearing the submissions of counsel for the Applicants and counsel for the Respondents Duanne Taylor and 5608067 Manitoba Ltd., and on reading the consent of Deloitte Restructuring Inc. to act as liquidator,

## **APPOINTMENT**

1. THIS COURT ORDERS that pursuant to sections 207 and 210 of *The Corporations Act*:

(a) the assets, undertakings and property of TBF and EPG (the "**Property**"), shall be liquidated in accordance with this Order;

(b) Deloitte Restructuring Inc. (the "**Liquidator**") shall be and is hereby appointed liquidator of the Property, without security; and

(c) upon the Liquidator concluding the liquidation of all or substantially all of the Property, the Liquidator shall be at liberty to apply to this Court for an Order dissolving TBF and EPG and discharging the Liquidator.

## **LIQUIDATOR'S POWERS**

2. THIS COURT ORDERS that the Liquidator is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Liquidator is hereby expressly empowered and authorized to do any of the following where the Liquidator may in its sole discretion consider it necessary or desirable:

- (a) to take possession of and exercise control over all or any part of the Property, wheresoever located, and any and all proceeds, receipts and disbursements arising out of or from the Property or any dealings with the Property;
- (b) to preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;

- (c) to manage, operate, and carry on the business of TBF and EPG as required for the orderly liquidation thereof;
- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, legal counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Liquidator's powers and duties, including without limitation those conferred by this Order;
- (e) to receive and collect all monies and accounts now owed or hereafter owing to TBF and/or EPG and to exercise all remedies of TBF and/or EPG in collecting such monies, including, without limitation, to enforce any security held by TBF and/or EPG;
- (f) to settle, extend or compromise any indebtedness owing to TBF and EPG;
- (g) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Liquidator's name or in the name and on behalf of TBF or EPG, for any purpose pursuant to this Order;
- (h) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to TBF and EPG, the Property or the Liquidator, and to settle or compromise any such proceedings.

The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;

- (i) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Liquidator in its discretion may deem appropriate;
- (j) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (k) to report to, meet with and discuss with such affected Persons (as defined below) as the Liquidator deems appropriate on all matters relating to the Property, and to share information, subject to such terms as to confidentiality as the Liquidator deems advisable;
- (l) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (m) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of (and, if thought desirable by the Liquidator, in the name of) TBF and/or EPG;

- (n) to exercise any shareholder, partnership, joint venture or other rights which TBF or EPG may have;
- (o) to develop a plan for the liquidation of TBF and EPG, the satisfaction of TBF and EPG's liabilities, and the payment of any surplus realized thereby (the "**Liquidation Plan**"), to seek acceptance by the Applicant and the Respondents of the Liquidation Plan, and, failing such acceptance within a reasonable period of time, as determined by the Liquidator, to recommend the Liquidation Plan to this Court and to seek approval thereof from this Court;
- (p) upon the Liquidation Plan being accepted in writing by the Applicants and the Respondents; or, in the alternative, being approved by an Order of this Court, to implement the Liquidation Plan;
- (q) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations; and
- (r) to disclaim, forfeit or otherwise terminate any lease of premises or land entered into by TBF and EPG without further order of this Court;

and in each case where the Liquidator takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below) and without interference from any other Person.

#### **DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE LIQUIDATOR**

3. THIS COURT ORDERS that (i) TBF and EPG, (ii) all of TBF and EPG's current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "**Persons**" and each being a "**Person**") shall forthwith advise the Liquidator of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Liquidator, and shall deliver all such Property to the Liquidator upon the Liquidator's request.

4. THIS COURT ORDERS that all Persons having notice of this Order shall forthwith advise the Liquidator of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of TBF and EPG, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "**Records**") in that Person's possession or control, and shall provide to the Liquidator or permit the Liquidator to make, retain and take away copies thereof and grant to the Liquidator unfettered access to and use of accounting, computer, software and physical facilities

relating thereto, provided however that nothing in this paragraph 4 or in paragraph 5 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Liquidator due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

5. THIS COURT ORDERS that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to such Records to the Liquidator for the purpose of allowing the Liquidator to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Liquidator in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Liquidator. Further, for the purposes of this paragraph, all Persons having notice of this Order shall provide the Liquidator with all such assistance in gaining immediate access to the information contained in the Records as the Liquidator may in its discretion require including providing the Liquidator with instructions on the use of any computer or other system and providing the Liquidator with any and all access codes, account names and account numbers that may be required to gain access to the information.

NO PROCEEDINGS AGAINST THE LIQUIDATOR

6. THIS COURT ORDERS that no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**"), shall be commenced or continued against the Liquidator except with the written consent of the Liquidator or with leave of this Court.

**NO PROCEEDINGS AGAINST TBF OR EPG OR THE PROPERTY**

7. THIS COURT ORDERS that no Proceeding against or in respect of TBF or EPG or the Property shall be commenced or continued except with the written consent of the Liquidator or with leave of this Court and any and all Proceedings currently under way against or in respect of TBF or EPG or the Property are hereby stayed and suspended pending further Order of this Court.

**NO EXERCISE OF RIGHTS OR REMEDIES**

8. THIS COURT ORDERS that all rights and remedies against TBF or EPG, the Liquidator, or affecting the Property, are hereby stayed and suspended except with the written consent of the Liquidator or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the *Bankruptcy and Insolvency Act*, and further provided that nothing in this paragraph shall (i) empower the Liquidator or TBF or EPG to carry on any business which they are not lawfully entitled to carry on, (ii) exempt the Liquidator or TBF or EPG from compliance with statutory or regulatory provisions relating to health, safety or the environment, (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 THE LIQUIDATOR**

9. THIS COURT ORDERS that 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 TBF and/or EPG, without written consent of the Liquidator or leave of this Court.

### **CONTINUATION OF SERVICES**

10. THIS COURT ORDERS that all Persons having oral or written agreements with TBF and/or EPG 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 either TBF or EPG 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 Liquidator, and that the Liquidator shall be entitled to the continued use of TBF's and EPG's current 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 Liquidator in accordance with normal payment practices of TBF or EPG (as the case may be) or such other practices as may be agreed upon by the supplier or service provider and the Liquidator, or as may be ordered by this Court.

## **LIQUIDATOR TO HOLD FUNDS**

11. THIS COURT ORDERS that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Liquidator from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Liquidator: and the monies standing to the credit of such accounts from time to time, net of any disbursements provided for herein, shall be held by the Liquidator to be paid in accordance with the terms of this Order or any further Order of this Court.

## **EMPLOYEES**

12. THIS COURT ORDERS that, subject to paragraph 12A hereof, all employees of TBF and EPG shall remain employees of TBF and EPG until such time as the Liquidator, on behalf of TBF and EPG, may terminate the employment of such employees. Nothing contained in this Order shall be deemed to constitute the Liquidator an employer, successor employer or related employer of any one or more of the employees of TBF and EPG within the meaning of any legislation (federal or provincial) or deem the Liquidator liable for any wages, salary or employment-related compensation whatsoever, including any severance pay, termination pay, pay in lieu of notice or vacation pay; and further, the appointment of the Liquidator shall not constitute the sale of TBF and EPG for the purpose of any legislation (federal or provincial), dealing with employees or employment-related obligations.

12A. For greater clarity, the claim of Duanne Taylor in regard to his employment contract (including the quantum of any amount which may be owing to Duanne Taylor in that regard) shall be unaffected by paragraph 12 of this Liquidation Order and shall be matters over which the Arbitrator shall continue to exercise jurisdiction.

### **LIMITATION ON ENVIRONMENTAL LIABILITIES**

13. THIS COURT ORDERS that nothing herein contained shall require the Liquidator 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 Environment Act* (Manitoba), *The Water Resources Conservation Act* (Manitoba), *The Contaminated Site Remediation Act* (Manitoba), *The Dangerous Goods Handling and Transportation Act* (Manitoba), *The Public Health Act* (Manitoba) or *The Workplace Safety and Health Act* (Manitoba) and regulations thereunder (collectively, the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Liquidator from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Liquidator shall not, as a result of this Order or anything done in pursuance of the Liquidator'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 the Liquidator actually takes physical possession of the Property.

#### **LIMITATION ON THE LIQUIDATOR'S LIABILITY**

14. THIS COURT ORDERS that in addition to the rights and protections afforded the Liquidator under *The Corporations Act* or as an officer of this Court, the Liquidator 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 liability arising out of gross negligence or wilful misconduct on its part.

#### **LIQUIDATOR'S ACCOUNTS**

15. THIS COURT ORDERS that the Liquidator and legal counsel to the Liquidator shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Liquidator and legal counsel to the Liquidator shall be entitled to and are hereby granted a charge (the "**Liquidator's Charge**") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Liquidator's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person. For greater clarity, the amount of the Liquidator's Charge shall not exceed \$50,000.00 (or such greater amount as this Court may be further Order authorize).

16. THIS COURT ORDERS that the Liquidator and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Liquidator and its legal counsel are hereby referred to a judge of this Court, but nothing herein shall fetter this Court's discretion to refer such matters to a Master of this Court.

17. THIS COURT ORDERS that, prior to the passing of its accounts or those of its legal counsel, the Liquidator shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements and those of its legal counsel, including legal fees and disbursements, incurred at the standard rates and charges of the Liquidator or its legal counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

#### **FUNDING OF THE LIQUIDATION PROCEEDINGS**

18. THIS COURT ORDERS that the Liquidator be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed an amount equal to the sum of: (a) such amounts as the Liquidator borrows to pay municipal property tax arrears and insurance; and \$50,000.00 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Liquidator by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "**Liquidator's Borrowings Charge**") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Liquidator's Charge.

19. THIS COURT ORDERS that neither the Liquidator's Borrowings Charge nor any other security granted by the Liquidator in connection with its borrowings under this Order shall be enforced without leave of this Court.

20. THIS COURT ORDERS that the Liquidator is at liberty and authorized to issue certificates substantially in the form annexed as Schedule "A" hereto (the "**Liquidator's Certificates**") for any amount borrowed by it pursuant to this Order.

21. THIS COURT ORDERS that the monies from time to time borrowed by the Liquidator pursuant to this Order or any further order of this Court and any and all Liquidator's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Liquidator's Certificates.

#### **GENERAL**

22. THIS COURT ORDERS that the Liquidator may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder, as deemed necessary and, upon rendering its final account, may apply for an order dissolving TBF and EPG.

23. 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 Liquidator 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 Liquidator, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Liquidator and its agents in carrying out the terms of this Order.

24. THIS COURT ORDERS that the Liquidator 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 Liquidator 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.

25. THIS COURT ORDERS that if the parties cannot agree on the issue of costs with respect to the Previous Proceeding, and the issue of costs with respect to the Applicants' motion for enforcement of the Awards of Arbitrator Harvey L. Sexter in this proceeding, such costs may be spoken to.

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

June 5<sup>th</sup>, 2017

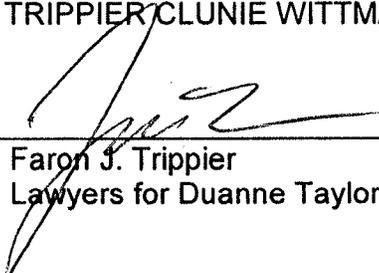
J. Toews

CERTIFIED A TRUE COPY  
*J. Toews*  
DEPUTY REGISTRAR

CONSENT AS TO FORM:

FAST TRIPPIER CLUNIE WITTMAN SANTOS LLP

per: \_\_\_\_\_

  
Faron J. Trippier

Lawyers for Duanne Taylor, 5608067 Manitoba Ltd. and Fat Cat Farms Ltd.

CONSENT AS TO FORM AND CONTENT:

PITBLADO LLP

per: \_\_\_\_\_

  
Douglas G. Ward

Lawyers for the secured creditor, the Bank of Montreal

CONSENT AS TO FORM AND CONTENT:

BOUDREAU LAW LLP

per: \_\_\_\_\_

J.R. Norman Boudreau

Lawyers for the secured creditors, Gerald Wiebe and Martha Wiebe

CONSENT AS TO FORM AND CONTENT:

MLT AIKINS LLP

per: \_\_\_\_\_

Jeffrey M. Lee, Q.C.

Lawyers for the Liquidator, Deloitte Restructuring Inc.

CONSENT AS TO FORM:

FAST TRIPPIER CLUNIE WITTMAN SANTOS LLP

per: \_\_\_\_\_

Faron J. Trippier  
Lawyers for Duanne Taylor, 5608067 Manitoba Ltd. and Fat Cat Farms Ltd.

CONSENT AS TO FORM AND CONTENT:

PITBLADO LLP

per: \_\_\_\_\_

Douglas J. Ward  
Lawyers for the secured creditor, the Bank of Montreal

CONSENT AS TO FORM AND CONTENT:

BOUDREAU LAW LLP

per: \_\_\_\_\_

J.R. Norman Boudreau  
Lawyers for the secured creditors, Gerald Wiebe and Martha Wiebe

CONSENT AS TO FORM AND CONTENT:

MLT AIKINS LLP

per: \_\_\_\_\_

Jeffrey M. Lee, Q.C. NIGEL I. THOMPSON  
Lawyers for the Liquidator, Deloitte Restructuring Inc.

**SCHEDULE "A"**

**LIQUIDATOR CERTIFICATE**

CERTIFICATE NO. \_\_\_\_\_

AMOUNT \$ \_\_\_\_\_

1. THIS IS TO CERTIFY that Deloitte Restructuring Inc., the liquidator (the "Liquidator") of the assets, undertakings and properties of Taylor Bros. Farm Ltd. and Edwin Potato Growers Ltd. (collectively, the "Property") appointed by Order of the Manitoba Court of Queen's Bench (the "Court") dated the 28<sup>th</sup> day of April, 2017 (the "Order") made in an action having Court File No. CI 15-01-97066, has received as such Liquidator from the holder of this certificate (the "Lender") the principal sum of \$ \_\_\_\_\_, being part of the total principal sum of \$ \_\_\_\_\_ which the Liquidator is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly] not in advance on the \_\_\_\_\_ day of each month] after the date hereof at a notional rate per annum equal to the rate of \_\_\_\_\_ per cent above the prime commercial lending rate of the Bank of Montreal from time to time.

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Liquidator pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order, and the right of the Liquidator to indemnify itself out of such Property in respect of its remuneration and expenses.

4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Winnipeg, Manitoba.

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Liquidator to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

6. The charge securing this certificate shall operate so as to permit the Liquidator to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

7. The Liquidator does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Deloitte Restructuring Inc., solely in its  
capacity as Liquidator of the Property, and  
not in its personal capacity

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

Name:

Title: