



Court File No. 10-8699-00CL

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

THE HONOURABLE MR. )  
 )  
JUSTICE MORAWETZ ) FRIDAY, THE 4<sup>th</sup>  
 ) DAY OF JUNE, 2010

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

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

APPLICANTS

**APPROVAL AND VESTING ORDER**

THIS MOTION, made by Planet Organic Health Corp. and Darwen Holdings Ltd., (collectively, the “Applicants”) for an order approving the acquisition (the “Acquisition”) contemplated by an acquisition agreement among the Applicants and the Creditor (as that term is defined in the Acquisition Agreement) made as of May 19, 2010 and appended to the Affidavit of Darren Krissie sworn May 20, 2010 and as amended pursuant to the First Amendment to Acquisition Agreement dated June 1, 2010 and appended to the Affidavit of Darren Krissie sworn on June 3, 2010, together with such non-material amendments as may be consented to by the Monitor (defined below) (collectively, the “Acquisition Agreement”), and vesting in the Creditor all right, title and interest in and to the assets described in the Acquisition Agreement (the “Assets”), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the material filed, including the Motion Record of the Applicants, the Third Report of the court-appointed monitor, Deloitte & Touche Inc. (the “Monitor”), the Responding Motion Record of 8000 Bathurst Street Realty Inc. and on hearing the submissions of counsel for the Applicants, counsel for the Monitor, counsel for the Creditor, counsel for 8000

Bathurst Street Realty Inc., and such other counsel as were present, and on being advised that the Service List was served with the Motion Record herein:

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

**Approval and Vesting**

3. THIS COURT ORDERS AND DECLARES that the Acquisition including, without limitation, the payment and acquisition contemplated in section 2.1 of the Acquisition Agreement is hereby approved, and that the Acquisition Agreement is in the best interests of the Applicants and their stakeholders. The execution of the Acquisition Agreement by the Applicants is hereby authorized and approved, and the Applicants are hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of, or to further evidence or document, the Acquisition and for the conveyance of the Assets to the Creditor.
4. THIS COURT ORDERS that, upon satisfaction (or, where applicable, waiver) of the conditions set out in Article 6 of the Acquisition Agreement, the Monitor shall file with this Court a certificate substantially in the form attached as Schedule A hereto stating that all conditions precedent set out in Article 6 of the Acquisition Agreement have been satisfied (or, where applicable, waived by the Applicants or the Creditor in accordance with the terms of the Acquisition Agreement) (the "Monitor's Certificate"). For the purposes of the preparation of the Monitor's Certificate, the Monitor shall be entitled to rely upon information provided by the Applicants with respect to the satisfaction or waiver of the conditions set out in Article 6 of the Acquisition Agreement.
5. THIS COURT ORDERS AND DECLARES that upon the delivery of a Monitor's Certificate to the Creditor, all right, title and interest in and to the Assets described in the Acquisition Agreement shall vest absolutely in the Creditor, free and clear of and from any and

all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the “Claims”), whether such Claims came into existence prior to, subsequent to, or as a result of any previous orders of this Court, contractually, by operation of law or otherwise, including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Justice Mr. Justice Morawetz dated April 29, 2010; and (ii) all charges, security interests or claims evidenced by registrations including without limitation pursuant to the *Personal Property Security Act* (Ontario), the *Personal Property Security Act* (Alberta), *Personal Property Security Act* (British Columbia), *Personal Property Security Act* (Nova Scotia), *Personal Property Security Act* (Saskatchewan) or any other personal property registry system (all of which are collectively referred to as the “Encumbrances”) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Assets shall, upon the delivery of the Monitor’s Certificate to the Creditor, be and are hereby expunged and discharged as against the Assets.

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

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

8. THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act* (“PIPEDA”), and pursuant to any other similar provincial legislation, the Applicants are authorized and permitted to disclose and transfer to the Creditor all human resources and payroll information in the Applicants’ records pertaining to the Applicants’ past and current employees. The Creditor shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects in compliance with PIPEDA and other similar provincial legislation.

### **Cash Reserve**

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

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

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

11. THIS COURT ORDERS that, as soon as reasonably possible following and in any event within fifteen (15) days of, the Closing Date, or by such later date as may be ordered by the

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

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

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

#### **General**

14. THIS COURT ORDERS that, notwithstanding:

- (a) the pendency of these proceedings;



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

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

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

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

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

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

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

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



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

JUN 04 2010

PER / PAR: JSN

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

Court File No. 10-8699-00CL

**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

**(COMMERCIAL LIST)**

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

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

**MONITOR’S CERTIFICATE**

**RECITALS**

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

B. Pursuant to an Order of the Court dated June 4, 2010, the Court approved the acquisition agreement among Planet Organic Health Corp. and Darwen Holdings Ltd. (collectively, the "Applicants") and 7562578 Canada Inc. (the "Creditor") made as of May 19, 2010 and as amended pursuant to the First Amendment to Acquisition Agreement dated June 1, 2010, together with such non-material amendments as may be consented to by the Monitor (collectively, the "Acquisition Agreement") and provided for the vesting in the Creditor of all right, title and interest in and to the Assets, which vesting is to be effective with respect to the Assets upon the delivery by the Monitor to the Creditor of a certificate with this Court confirming that (i) the conditions to Closing as set out in Article 6 of the Acquisition Agreement have been satisfied or waived by the Applicants and the Creditor, (ii) the Applicants have been released from the guarantee agreement dated as of July 3, 2007 (the "Guarantee") in respect of



the amended and restated term loan agreement dated as of November 30, 2007 (as amended) (the "Term B Credit Agreement"), and (iii) the Transaction has been completed to the satisfaction of the Monitor.

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

THE MONITOR CERTIFIES the following:

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

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

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

Name:

Title:

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

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

Proceeding commenced at Toronto

**MONITOR'S CERTIFICATE**

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**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,  
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**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)  
Proceeding commenced at Toronto**

**APPROVAL AND VESTING ORDER**

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