**THE QUEEN'S BENCH**

**Winnipeg Centre**

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| --- | --- | --- |
| THE HONOURABLE      JUSTICE       | ))) | WEEKDAY, THE # DAY OF MONTH, 20YR |

B E T W E E N:

**PLAINTIFF**

Plaintiff[[1]](#footnote-1)

- and –

**DEFENDANT**

Defendant

**APPROVAL AND VESTING ORDER**

THIS MOTION, made by [RECEIVER'S NAME] in its capacity as the Court-appointed receiver (the "**Receiver**") of the undertaking, property and assets of [DEBTOR] (the "**Debtor**") for an order approving the sale transaction (the "**Transaction**") contemplated by an agreement of purchase and sale (the "**Sale Agreement**") between the Receiver and [NAME OF PURCHASER] (the "**Purchaser**") dated [DATE] and appended to the Report of the Receiver dated [DATE] (the "**Report**"), and vesting in the Purchaser the Debtor’s right, title and interest in and to the assets described in the Sale Agreement (the "**Purchased Assets**"), was heard this day at \_\_\_\_\_\_\_\_\_\_\_, Manitoba.

ON READINGthe Report and on hearing the submissions of counsel for the Receiver, [NAMES OF OTHER PARTIES APPEARING], no one appearing for any other person on the service list, although properly served as appears from the affidavit of [NAME] sworn [DATE] filed[[2]](#footnote-2):

1. THIS COURT ORDERS AND DECLARES that the Transaction is hereby approved,[[3]](#footnote-3) and the execution of the Sale Agreement by the Receiver[[4]](#footnote-4) is hereby authorized and approved, with such minor amendments as the Receiver may deem necessary. 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 of the Purchased Assets to the Purchaser.
2. THIS COURT ORDERS AND DECLARESthat 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 Debtor's right, title and interest in and to the Purchased Assets described in the Sale Agreement [and listed on Schedule B hereto][[5]](#footnote-5) shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**"[[6]](#footnote-6)) including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Justice [NAME] dated [DATE]; (ii) all charges, security interests or claims evidenced by registrations pursuant to *The* *Personal Property Security Act* (Manitoba) or any other personal property registry system; and (iii) those Claims listed on Schedule C hereto (all of which are collectively referred to as the "**Encumbrances**", which term shall not include the permitted encumbrances, easements and restrictive covenants listed on Schedule D) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.
3. THIS COURT ORDERS that upon the registration in the \_\_\_\_\_\_\_\_\_[[7]](#footnote-7) Land Titles Office ("\_\_\_\_ **LTO**") of a Transmission in the form prescribed by *The* *Real Property Act* (Manitoba) duly executed by the Purchaser[[8]](#footnote-8), and accompanied by a certified true copy of this Order, title to the real property identified in Schedule B hereto (the “**Real Property**”) shall vest in the Purchaser subject to all instruments registered on title at that time, other than those described in Schedule C, and the District Registrar is hereby directed to issue title accordingly.
4. THIS COURT ORDERS that this Order shall be accepted by the District Registrar notwithstanding that the appeal period in respect of this Order has not elapsed, which appeal period is expressly waived.[[9]](#footnote-9)
5. THIS COURT ORDERSthat for the purposes of determining the nature and priority of Claims, the net proceeds[[10]](#footnote-10) from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of the Receiver's Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale[[11]](#footnote-11), as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.
6. THIS COURT ORDERS AND DIRECTS the Receiver to file with the Court a copy of the Receiver's Certificate, forthwith after delivery thereof.
7. THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Receiver is authorized and permitted to disclose and transfer to the Purchaser all human resources and payroll information in the Company's records pertaining to the Debtor's past and current employees, including personal information of those employees listed on Schedule "●" to the Sale Agreement. The Purchaser shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the Debtor.
8. THIS COURT ORDERSthat, notwithstanding:
	1. the pendency of these proceedings;
	2. any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of the Debtor and any bankruptcy order issued pursuant to any such applications; and
	3. any assignment in bankruptcy made in respect of the Debtor;

the vesting of the Purchased Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Debtor and shall not be void or voidable by creditors of the Debtor, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct or action other than in good faith pursuant to any applicable federal or provincial legislation.

1. 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 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.

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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

Court File No. \_\_\_\_\_\_\_\_\_\_

**THE QUEEN'S BENCH**

**\_\_\_\_\_\_\_\_\_\_ CENTRE**

B E T W E E N:

**PLAINTIFF**

Plaintiff

- and –

**DEFENDANT**

Defendant

**RECEIVER’S CERTIFICATE**

**RECITALS**

A. Pursuant to an Order of the Honourable [NAME OF JUDGE] of the Manitoba Court of Queen's Bench (the "**Court**") dated [DATE OF ORDER], [NAME OF RECEIVER] was appointed as the receiver (the "**Receiver**") of the undertaking, property and assets of [DEBTOR] (the “**Debtor**”).

B. Pursuant to an Order of the Court dated [DATE], the Court approved the agreement of purchase and sale made as of [DATE OF AGREEMENT] (the "**Sale Agreement**") between the Receiver [Debtor] and [NAME OF PURCHASER] (the "**Purchaser**") and provided for the vesting in the Purchaser 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 Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing have been satisfied or waived by the Receiver and the Purchaser; 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 Purchaser has paid and the Receiver has received the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the Sale Agreement[[12]](#footnote-12);

2. The conditions to Closing the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and

3. The Transaction has been completed to the satisfaction of the Receiver.

4. This Certificate was delivered by the Receiver at \_\_\_\_\_\_\_\_ [TIME] on \_\_\_\_\_\_\_ [DATE].

|  |  |  |
| --- | --- | --- |
|  |  | **[NAME OF RECEIVER], in its capacity as Receiver of the undertaking, property and assets** **of [DEBTOR], and not in its personal capacity** |
|  |  | Per: |  |
|  |  |  | Name:  |
|  |  |  | Title:  |

**Schedule B – Purchased Assets**

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

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

**(unaffected by the Vesting Order)**

1. A receivership or other proceeding that might lead to an Approval and Vesting Order may be commenced either by action or by application. This model Order is drafted on the basis that the receivership proceeding was commenced by way of an action. [↑](#footnote-ref-1)
2. This model order assumes that the time for service does not need to be abridged. The motion seeking a vesting order should be served on all persons having an economic interest in the Purchased Assets, unless circumstances warrant a different approach. Counsel should consider attaching the affidavit of service to this Order. [↑](#footnote-ref-2)
3. In some cases, notably where this Order may be relied upon for proceedings in the United States, a finding that the Transaction is commercially reasonable and in the best interests of the Debtor and its stakeholders may be necessary. Evidence should be filed to support such a finding, which finding may then be included in the Court's endorsement. [↑](#footnote-ref-3)
4. In some cases, the Debtor will be the vendor under the Sale Agreement, or otherwise actively involved in the Transaction. In those cases, care should be taken to ensure that this Order authorizes either or both of the Debtor and the Receiver to execute and deliver documents, and take other steps. [↑](#footnote-ref-4)
5. To allow this Order to be free-standing (and not require reference to the Court record and/or the Sale Agreement), it may be preferable that the Purchased Assets be specifically described in a Schedule. [↑](#footnote-ref-5)
6. The "Claims" being vested out may, in some cases, include ownership claims, where ownership is disputed and the dispute is brought to the attention of the Court. Such ownership claims would, in that case, still continue as against the net proceeds from the sale of the claimed asset. Similarly, other rights, titles or interests could also be vested out, if the Court is advised what rights are being affected, and the appropriate persons are served. It is the Subcommittee's view that a non-specific vesting out of "rights, titles and interests" is vague and therefore undesirable. [↑](#footnote-ref-6)
7. Insert applicable Land Titles Office. [↑](#footnote-ref-7)
8. Elect the language appropriate to the land registry system. [↑](#footnote-ref-8)
9. On October 20, 2004 the Registrar General of the Property Registry of Manitoba issued a Directive which changed its previous practice and indicated that it would no longer accept a Vesting Order for registration until the applicable appeal period had expired subject to a number of exceptions including the Court ordering the Vesting Order to be immediately filed. Counsel should consider whether it is appropriate in the circumstances to seek inclusion of a paragraph along these lines. [↑](#footnote-ref-9)
10. The Report should identify the disposition costs and any other costs which should be paid from the gross sale proceeds, to arrive at "net proceeds". [↑](#footnote-ref-10)
11. This provision crystallizes the date as of which the Claims will be determined. If a sale occurs early in the insolvency process, or potentially secured claimants may not have had the time or the ability to register or perfect proper claims prior to the sale, this provision may not be appropriate, and should be amended to remove this crystallization concept. [↑](#footnote-ref-11)
12. While ordinarily the Receiver will expect payment in full on closing this language may need to be varied to accommodate certain transactions. For example, where the Purchaser's lender cannot advance until the mortgage has been registered in which case it can be revised to read:

 The Purchaser has made arrangements to pay the purchase price for the purchased assets pursuant to the Sale Agreement satisfactory to Receiver's counsel. [↑](#footnote-ref-12)