

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE *MADAM*

)

TUESDAY *8*

~~WEDNESDAY~~, THE 6th

JUSTICE *DIETRICH*

)

DAY OF AUGUST, 2019

)

IN THE MATTER OF AN APPLICATION PURSUANT TO SECTION 243(1) OF
THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS
AMENDED, AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O.
1990, C. c.43, AS AMENDED

BETWEEN:



TEMISKAMING DEVELOPMENT FUND CORPORATION

Applicant

- and -

1793082 ONTARIO LTD., o/a K.D. QUALITY PELLETS

Respondent

AMENDED AND RESTATED APPROVAL AND VESTING ORDER

THIS MOTION, made by Grant Thornton Limited in its capacity as the Court-appointed receiver (the "**Receiver**") of the undertaking, property and assets of 1793082 Ontario Ltd., o/a K.D. Quality Pellets (the "**Debtor**") for an order approving the sale transaction contemplated by an agreement of purchase and sale between the Receiver and Bionorth Technology Holding Corporation dated April 17, 2019 and appended to the First Report of the Receiver dated May 14, 2019 (the "**First Report**"), and vesting in the Purchaser the Debtor's right, title and interest

in and to the assets described in the Sale Agreement and listed on Schedule B hereto (the “**Purchased Assets**”), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Motion of the Receiver dated May 14, 2019, Proposed Receiver’s Report, the Interim Receiver’s Report, the First Report, Notice of Motion of the Receiver dated and the Second Report of the Receiver, dated July 29, 2019 (the “**Second Report**”), on hearing the submissions of counsel for the Receiver, counsel for the Purchaser, Peter R. Welsh and no one appearing for any other person on the service list, although properly served as appears from the affidavit of Monique Sassi sworn July 30, 2019 filed:

1. **THIS COURT ORDERS** that the time for service and filing of this motion is hereby abridged and validated such that the motion is properly returnable today and hereby dispenses with further service thereof.

SALE APPROVAL

2. **THIS COURT ORDERS AND DECLARES** that the sale transaction (the “**Transaction**”) contemplated by an agreement of purchase and sale between the Receiver and Bionorth Technology Holding Corporation (“**Bionorth**”) dated April 17, 2019 as assigned by Bionorth to 2576642 Ontario Limited (the “**Purchaser**”) and as amended on July 29, 2019 (the “**Sale Agreement**”), is hereby approved, and the execution of the Sale Agreement by the Receiver 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.

3. **THIS COURT ORDERS AND DECLARES** that 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 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**”) including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Justice McEwen in these proceedings dated February 22, 2019; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) 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**”) 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. **THIS COURT ORDERS** that upon the registration in the Land Registry Office for the Land Titles Division of Temiskaming of an Application for Vesting Order in the form prescribed by the *Land Titles Act* and/or the *Land Registration Reform Act*, the Land Registrar is hereby directed to enter the Purchaser as the owner of the subject real property identified in Schedule B hereto (the “**Real Property**”) in fee simple, and is hereby directed to delete and expunge from title to the Real Property all of the Claims listed in Schedule C hereto.

5. **THIS COURT ORDERS** that 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 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, 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 employees. The Purchaser shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the Debtor.

DISPUTED COLLATERAL

8. **THIS COURT ORDERS AND DIRECTS** that upon closing of the Transaction, the Receiver is directed to hold \$300,000.00 of the net proceeds from the Transaction on account of the following assets: (i) 2012 Caterpillar Model 950K (S/N: 950KCR4A00970); (ii) 2006 Vermeer Horizontal Grinder (S/N: N1VRY4531271000225); (iii) 2012 Caterpillar C16 Engine (S/N: BFM002822) (collectively, the "**Disputed Collateral**") in escrow (the "**Disputed Collateral Escrow Amount**") pending resolution of claims in respect of the Disputed Collateral.

9. **THIS COURT ORDERS** that the Disputed Collateral Escrow Amount shall be distributed in accordance with:

- (a) an agreement reached between the Receiver and Axiom Leasing Inc; or
- (b) a further Order of the Court.

10. **THIS ORDER** is without prejudice to the position of any person with respect to any claim or interest in the Disputed Collateral's proceeds, including whether the Disputed Collateral is subject to any prior Order made in this proceeding, and without prejudice to the ability of any person to claim an entitlement to the Disputed Collateral Escrow Amount.

SEALING ORDER

11. **THIS COURT ORDERS** that, pending further order of this Court or upon the filing of the Receiver's Certificate, Confidential Appendix "1", "2" and "3" to the First Report of the Receiver dated May 14, 2019, and Confidential Appendix "1" to the Second Report be sealed, kept confidential and not form part of the public record, but rather shall be placed separate and apart from all other contents Court file, in a sealed envelope attached to a notice that sets out the title of the proceedings and a statement that the contents are subject to a sealing order.

12. **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 the Debtor and any bankruptcy order issued pursuant to any such applications; and
- (c) 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 pursuant to any applicable federal or provincial legislation.

13. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in any foreign jurisdiction 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.



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

AUG 06 2019

PER / PAR:



Schedule A – Form of Receiver’s Certificate

Court File No. CV-19-00612265-0000

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

**IN THE MATTER OF AN APPLICATION PURSUANT TO SECTION 243(1) OF
THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS
AMENDED, AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O.
1990, C. c.43, AS AMENDED**

BETWEEN:

TEMISKAMING DEVELOPMENT FUND CORPORATION

Applicant

- and -

1793082 ONTARIO LTD., o/a K.D. QUALITY PELLETS

RECEIVER’S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable Justice McEwen of the Ontario Superior Court of Justice (the “**Court**”) dated February 22, 2019, Grant Thornton Limited was appointed as the receiver (the “**Receiver**”) of the undertaking, property and assets of 1793082 Ontario Ltd., o/a K.D. Quality Pellets (the “**Debtor**”).

B. Pursuant to an Order of the Court dated ●, the Court approved the agreement of purchase and sale made as of April 17, 2019 (the “**Sale Agreement**”) between the Receiver and Bionorth Technology Holdings Corporation (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 as set out in section ● of the Sale Agreement 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;
2. The conditions to Closing as set out in section ● of 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].

**Grant Thornton Limited, in its capacity as
Receiver of the undertaking, property and
assets of 1793082 Ontario Ltd., o/a K.D.
Quality Pellets, and not in its personal
capacity**

Per: _____
Name:
Title:

Schedule B – Purchased Assets

Parcel 1 – Land and Buildings

LAND	
Item	Description
Location	999562 Highway 11 North, Harley, Ontario P0J 1P0
Size of Land	89.39 acres
Legal Description	PT N 1/2 LT 7 CON 4 HARLEY PT 2 54R5414; PT N 1/2 LT 8 CON 4 HARLEY PT 1, 54R5437 HARLEY; DISTRICT OF TIMISKAMING; PIN 61311-0291; SUBJECT TO AN EASEMENT IN GROSS OVER PT 3 54R-5732 AS IN DT46532; SUBJECT TO AN EASEMENT IN GROSS OVER PT 3 54R-5732 AS IN DT46533
Zoning	M1 – General Industrial
Property Identification Number	61311-0291

BUILDINGS					
Building No.	Building Description	Estimated Approx. Size (Sq. Ft.)	Exterior Construction		
			Floor	Walls	Roof
1	Plant & Office	12,100	Poured Concrete	Insulated sandwich panel and brick	Metal
2	Warehouse	14,880	Poured Concrete	Insulated sandwich panel	Metal
3	Pump House	120	Poured Concrete	Insulated sandwich panel	Metal
4	Scale House	120	Poured Concrete	Insulated sandwich panel	Metal

Parcel 2 – Pellet Mill Equipment

PELLET MILL EQUIPMENT (By Production Area)			
#	Item #	Asset Description	Qty.
RECEIVING			
1	01000	Intake receiving bin	1
2	01005	Hopper bins for dumping	2
3	01010	Discharge conveyor from hoppers	1
4	01015	Transfer inclined conveyor	1
5	01020	Pre bin for hammer mill	1

6	01030	Level limit switch	2
7	01040	Hammer mill feeder	1
8	01045	Heavy particle separator	1
9	01050	Hammer mill	1
10	01060	Soft start for hammer mill	1
11	01070	300 HP Motor	1
12	01080	Safety interlocking package	1
13	01090	Magnet installed in hammer mill	1
14	01100	Air assist complete with filter and pick up	1
15	01110	Filter discharge screw	1
16	01120	Cellular wheel lock	1
HAMMERMILL BIN			
17	01130	Structure for hammer mill	1
18	01140	Elevator type EV 11624	1
19	01150	2-way abort gate	1
20	01160	Explosion protection for hammer mill	1
21	01180	Silo for storage of dried wood	1
22	01190	Silo discharge devise	1
23	01200	Silo conveyer screw	1
24	01210	Elevator type EV 11624	1
25	01220	2-way abort gate	1
PELLET PRESS – PHASE 1			
26	02040	Mixing conditioner, type M400	1
27	02050	Water proportioning system, type WD GLI 15	1
28	02060	Moisture measuring system	1
29	02070	Prebin, type RWB 2205-1	1
30	02080	Level limit switches	3
31	02090	Proportioning and mixing screw, type DM 400	1
32	02100	Water proportioning system, type WD E	1
33	02110	Pelleting press, type flat die 60-1250	1
34	02120	Drive for pelleting press, type 60-1250	1
35	02130	Central roller lubrication	1

36	02140	Hydraulic system	1
37	02150	Press outlet box	1
38	02160	Oil fitting for the press	1
39	02170	Flat die 6mm	1
40	02180	Electric chain hoist with windlass travelling gear	1
41	02190	Aspiration system for the pelleting press	1
42	02200	Round bottom pellet conveyor	1
43	02210	Countercurrent cooler, type GKI900 R	1
44	02220	Additional equipment for cooler	1
45	02230	Cyclone, type OZ 1300	1
45	02240	Cellular wheel lock, type SL 250	1
46	02250	Radial fan, type RV M 321 x 140	1
47	02260	Set of accessories for the fan, type RV M 031 x 140	1
48	02280	Air piping	1
49	02290	Pellet drag conveyor	1
50	02300	Vibratory screen	1
51	02310	Pellet drag conveyor	1
52	02320	Fines screw conveyor	1
53	02340	Pellet drag conveyor	1
54	02350	Pellet drag conveyor	1
PELLET PRESS – PHASE 2			
55	13010	Proportioning and mixing screw, type DM 400	1
56	13020	Water proportioning system, type WD C	1
57	13030	Pelleting Press, type flat die 60-1250	1
58	13040	Drive for the pelleting press, type 60-1250	1
59	13060	Central roller lubrication	1
60	13070	Hydraulic system	1
61	13080	Press outlet box	1
62	13090	Oil filling for the press	1
63	13100	Flat die for wood pellets 8mm	2
64	13110	Oil coolers for press	1
65	13120	Electric chain hoist with windlass travelling gear	1

66	13130	Item of modifying drag conveyor	1
67	13120	Vibratory system	1
68	13220	Kahl automated pellet control package EAPR	1
69	N/A	Conveyor by-pass system	1
70	N/A	Steam generator model LB -240(L)	1
71	N/A	18" diameter screw conveyor 19'6" long complete with drive (conveyor 1017 15 HP)	1
72	N/A	New drive package for conveyor (conveyor 1016 15HP)	1
LOAD OUT BINS			
73	02360	Elevator type EV 7520	1
74	02370	Bin transfer drag conveyor	1
75	02380	Truck loadout bins	1
MISCELLANEOUS EQUIPMENT			
76	03010	Spot filter, type FI 04 P	1
77	03020	Pipes and transition pieces	1
78	03030	Assembly materials	1
79	03040	Electric control and regulation of plant	1
80	03045	Pellet mill controller EAPR	1
81	03050	Power circuit MCC	1
82	03060	Electric installation material	1
83	03070	Spark detection system	1
84	03080	Spark alarm and extinguishing plant	1
85	04040	Spare parts (2) dies, (10) rollers, (10) bearings for rollers, (10) roller seals, (1) hydraulic nut rebuild kit, (1) revolute joint rebuild kit, (10) hammer mill screens, (2) sets of hammers, (12) kegs of grease	1
86	N/A	Phase 1 transformer	1
87	N/A	Screen frame for Sprout fines removal	1
88	N/A	Mesh screens for Sprout fines screener	35
89	N/A	Magnet and sensor for abort gate	1
90	N/A	Rectifier for abort gate	1
91	N/A	30" spiral duct work with connectors and transitions	1
92	N/A	Schutte hammer mill screens	2
93	N/A	Straw grinder	1
94	N/A	Diesel water pump	1

Parcel 3 – Lab Equipment

LAB EQUIPMENT		
#	Asset Description	Qty.
1	Computrac Ash Analyzer MAX-5000XL	1
2	Model 4E Grinding Mill – Model 4FDZ1	1
3	Tumbler Type 1000	1
4	Retsch AS 200 digit	1
5	Scale GP 20K – Model # 50004	1
6	Binder Heater	1
7	Lennox Air Handlers – Model # CBX26UH-024-230-1	2

Parcel 4 – CAT Loader

CAT LOADER					
#	Description	Make	Model / Serial Number	Year	Qty.
1	Model 950K	Caterpillar	S/N: 950KCR4A00970	2012	1

Parcel 5 – INTENTIONALLY REMOVED

Parcel 6 – Horizontal Grinder and Engine

HORIZONTAL GRINDER					
#	Description	Make	Model / Serial Number	Year	Qty.
1	Horizontal Industrial Wood Grinder	Vermeer	N1VRY4531271000225	2006	1
2	C16 Engine	Caterpillar	S/N: BFM002822	2012	1

Parcel 7 – Other Moveable Equipment

OTHER MOVEABLE EQUIPMENT					
#	Description	Make	Model / Serial Number	Year	Qty.
1	Grain Belt	Unknown	Grain-belt 1545	Unknown	1
2	53' Axel Trailer with Cover	Titan	2TVWF1Z43DD000390	2013	1
3	Pneumatic 6,000 lbs. Forklift with 48" Forks	Unknown	12L3000749	Unknown	1

Parcel 8 – Office Equipment & Furniture

OFFICE EQUIPMENT			
#	Location	Detail	Qty.
1	Office	Office desks	4
2	Office	Drawer	1
3	Office	Office chairs	10
4	Office	Brother Multi-function Photocopier – MFC9970CDW	1
5	Office	ACER Computer with 22" Monitor	1
6	Lab	Toshiba Flat-screen 38"	1
7	Lab	RCA Flat-screen 48"	1
8	Office	80" Flat-screen Television	1
9	Control Room	HP Computers and 22" Monitors	2
10	Control Room	40" Flat-screen Televisions	2
11	Control Room	Large Office Desk	1

Parcel 9 – Other Assets

OTHER ASSETS			
#	Location	Detail	Qty.
1	Kitchen	Kenmore Fridge – Model # 970-417322	1
2	Kitchen	Kenmore Stove – Four Element Range	1
3	Kitchen	Kenmore Microwave	1
4	Kitchen	Hot Water Heater – 4500 Watt 6G805DE1	1
5	Premises	40 ft. Evergreen metal container	1
6	Production Floor	Industrial Scaffold	1
7	Lab	Shelving 18"x36"	5
8	Lab	Bolt Bin 72 pigeon hole	1
9	Electrical Room	Shelving 18"x36"	7

	<u>Registration File Number</u>	<u>Secured Party</u>	<u>Registration Date/ Registrations Period</u>	<u>Collateral</u>
			5 years Expiry Date: February 2, 2020	
8.	703453923	RJM Inc. and Sarj Equipment Corp.	Registration Date: February 5, 2015 Registration Period: 5 years Expiry Date: February 5, 2020	Inventory, Equipment, Accounts, Other
9.	712215099	1000728 Ontario Ltd. o/a Baron Finance	Registration Date: November 30, 2015 Registration Period: 5 years Expiry Date: November 30, 2020	Consumer Goods, Inventory, Equipment, Accounts, Other, Motor Vehicle
10.	736548687	Axiom Leasing Inc.	Registration Date: February 16, 2018 Registration Period: 5 years Expiry Date: February 16, 2023	Equipment, Other
11.	747406152	Temiskaming Development Fund Corporation	Registration Date: January 8, 2019 Registration Period: 5 years Expiry Date: January 8, 2024	Equipment, Other
12.	748215423	Manoj Shivanani	Registration Date: February 8, 2019 Registration Period: 3 years Expiry Date: February 8, 2022	Inventory, Equipment, Accounts, Other, Motor Vehicle
13.	748215486	Robert Fedrock	Registration Date: February 8, 2019 Registration Period: 3 years Expiry Date: February 8, 2022	Inventory, Equipment, Accounts, Other, Motor Vehicle
14.	748215513	Sachin Mahajan	Registration Date: February 8, 2019 Registration Period: 3 years Expiry Date: February 8, 2022	Inventory, Equipment, Accounts, Other, Motor Vehicle

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

PROCEEDING COMMENCED AT
TORONTO

AMENDED APPROVAL AND VESTING ORDER

Cassels Brock & Blackwell LLP
Barristers & Solicitors
2100 Scotia Plaza
40 King Street West
Toronto, ON M5H 3C2

Larry C. Ellis LSUC# 49313K
Tel: 416.869.5406
Fax: 416.350.6923
lellis@casselsbrock.com

Monique Sassi LSO # 63638L
Tel: 416.860.6886
Fax: 416.640.3005
Email: msassi@casselsbrock.com

Lawyers for the Receiver, Grant Thornton Limited