

COURT FILE NUMBER 1903-24389

Clerk's Stamp

COURT COURT OF QUEEN'S BENCH  
OF ALBERTA

JUDICIAL CENTRE EDMONTON

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 TLI CHO  
LANDTRAN TRANSPORT LTD., 1456998  
ALBERTA LTD., and 1456982 ALBERTA LTD.

APPLICANT TLI CHO INVESTMENT CORPORATION

RESPONDENTS TLI CHO LANDTRAN TRANSPORT LTD., 1456998  
ALBERTA LTD., and 1456982 ALBERTA LTD.

DOCUMENT **APPLICATION**

ADDRESS FOR  
SERVICE AND  
CONTACT  
INFORMATION  
OF PARTY  
**McMillan LLP**  
Suite 1700, 421 – 7<sup>th</sup> Avenue S.W.  
Calgary, Alberta T2P 4K9  
File No.: 269237

FILING THIS  
DOCUMENT  
**Attention: Adam Maerov**  
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**Attention: Kourtney Rylands**  
Telephone: (403) 531-4700  
Facsimile: (403) 531-4720  
Email: kourtney.rylands@mcmillan.ca

## NOTICE TO RESPONDENTS

This application is made against you. You are the respondents.

You have the right to state your side of this matter before the judge.

To do so, you attend Court by videoconference or phone when the application is heard as shown below:

Date: September 9, 2020  
 Time: 10:00 am  
 Where: Edmonton (virtual courtroom 62)

<https://albertacourts.webex.com/meet/virtual.courtroom62>

Please see instructions attached hereto as Appendix “A”.

Before Whom: The Honourable Justice D. Mah

Go to the end of this document to see what else you can do and when you must do it.

**Remedy claimed or sought:**

1. Tlicho Investment Corporation (“**TIC**”) seeks an order (the “**Termination Order**”) substantially in the form attached hereto as Schedule “A”:
  - a. extending the stay of proceedings (the “**Stay Period**”) up to and including the date on which the Monitor files with this Court a monitor’s certificate in the form attached as Schedule “A” to the Termination Order (the “**Monitor’s Certificate**”);
  - b. declaring that Blue Diamond Enterprises Ltd. (“**Blue Diamond**”) is in contempt of this Court for its continued breaches of orders made by this Court;
    - i. directing Blue Diamond to release immediate possession of the withheld trailer pair (“**Trailer Pair**”) to the Transport Companies;
    - ii. authorizing the Transport Companies to make arrangements for the repair of the Trailer Pair and requiring Blue Diamond to indemnify the Transport Companies for such repair costs;
    - iii. awarding solicitor and client costs of this application against Blue Diamond; and
    - iv. directing that the amount of Blue Diamond’s valid lien claim being \$3,633.46 is released to the Transport Companies in partial satisfaction of the repair costs and that any amounts to be distributed to Blue Diamond as a creditor in any bankruptcy proceedings of the Transport Companies be

paid first to satisfy the remaining repair costs for the Trailer Pair and legal costs of the Transport Companies;

- c. authorizing the Transport Companies to pay the Pre-Filing GST (as described in the Sixth Report of the Monitor dated September 2, 2020 (the “**Sixth Report**”);
  - d. authorizing the Monitor to make a voluntary assignment of all of the Transport Companies’ property for the general benefit of the Transport Companies’ creditors pursuant to Section 49 of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, including executing any and all documents required to complete such assignment;
  - e. ordering that upon the filing of the Monitor’s Certificate, the within proceedings (the “**CCAA Proceedings**”) shall be terminated and ancillary relief for such termination; and
  - f. approving the actions and conduct of the Monitor in the CCAA proceedings from November 29, 2019 to the date the Termination Order is granted.
2. Such further relief as counsel may request and this Honourable Court may grant.

### **Grounds for making this application:**

#### **A. Background**

1. Tlichø Investment Corporation (“**TIC**” or the “**Applicant**”) is a creditor and the ultimate parent company of Tłıchø Landtran. TIC is also the majority shareholder of the respondents 1456998 Alberta Ltd. (the “**General Partner**”), and 1456982 Alberta Ltd. (the “**Limited Partner**”), which companies are the general partner and the limited partner of Ventures West Transport LP (“**Ventures West LP**” and together with Tłıchø Landtran, the General Partner and the Limited Partner, the “**Transport Companies**”).
2. The Applicant is wholly owned by the Tłıchø Government. The Tłıchø are an aboriginal people of Canada that have traditionally used and occupied lands in and adjacent to the Northwest Territories.

#### **B. Court Proceedings**

3. On November 29, 2019, proceedings under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”) were commenced by TIC in respect of the Transport Companies and an initial order was obtained (the “**Initial Order**”) appointing MNP Ltd. as monitor of the Transport Companies in the CCAA proceedings (the “**Monitor**”) and granting a stay of proceedings in respect of the Transport Companies and their businesses and property until December 8, 2019.

4. On December 6, 2019, the Court granted the Amended Order, extending the stay of proceedings to February 21, 2020 (the “**Stay Period**”) and approving a sales process (the “**Sales Process**”) of the assets of the Transport Companies.
5. On February 28, 2020, the Court granted three orders to, among other things, approve the successful bids resulting from the Sale Process. Specifically, the Court granted:
  - (a) an approval and vesting order (as varied, the “**Auction Order**”) approving the transaction (the “**Auction Transaction**”) entered into between the Transport Companies and IronPlanet Canada Ltd. (“**IronPlanet**”). Pursuant to the Auction Order, IronPlanet is authorized to market and sell certain assets of the Transport Companies. The Auction Order was later varied by orders dated March 6, 2020 and May 15, 2020, to correct the descriptions of certain serial numbers for the equipment that is subject to the Auction Order.
  - (b) an approval and vesting order (the “**ARS Order**”) approving the sale transaction (the “**ARS Transaction**”) entered into between the Transport Companies and ARS Trucking & Welding Ltd. (“**ARS**”) for the sale of certain assets to ARS.
  - (c) a distribution and stay extension order extending the Stay Period to June 16, 2020, and authorizing the Monitor to make distributions from the proceeds of the ARS Transaction to the Canadian Imperial Bank of Commerce (“**CIBC**”), as the Monitor determined that the security held by CIBC is valid and enforceable and creates a first priority charge against the Transport Companies’ assets.
6. During these proceedings a number of claimants submitted claims under the *Garage Keepers’ Lien Act*. The Monitor and its legal counsel investigated each of the claims and determined the validity of same.
7. On May 28, 2020, TIC applied for and the Honourable Justice Feth granted an order authorizing the Monitor to make distributions from the proceeds of the Auction Transaction to CIBC, as first secured creditor of the Transport Companies, and certain *Garage Keepers’ Lien Act* lien claimants, (the “**Feth Order**”).
8. The Feth Order also declared that certain *Garage Keepers’ Lien Act* claims are valid and the Monitor or its counsel were directed to make distributions to the lien holders with Valid Lien Claims (as defined in the Feth Order). The Feth Order further authorized the establishment of a Lien Claim Reserve (as defined in the Feth Order) pending a determination of the validity of the remaining Lien Claims.
9. On June 11, 2020, TIC applied for and the Honourable Justice Dunlop granted an order extending the Stay Period to September 15, 2020 (the “**Dunlop Order**”). The Dunlop Order also determined that the remaining *Garage Keepers’ Lien Act* liens not dealt with in the Feth Order are invalid.

**C. Blue Diamond Contempt**

10. Blue Diamond has failed to deliver a Trailer Pair that formed part of the Auction Transaction and was subject to the Auction Order.

11. Paragraph 13 of the Auction Order provides that (emphasis added):

Upon completion of the Auction Transaction, the Companies and all persons who claim by, through or under the Companies in respect of the Assets, and all persons or entities having any Claims of any kind whatsoever in respect of the Assets shall stand absolutely and forever barred, estopped and foreclosed from and permanently enjoined from pursuing, asserting or claiming any and all right, title, estate, interest, royalty, rental, equity of redemption or other Claim whatsoever in respect of or to the Assets, and to the extent that any such persons or entities remain in the possession or control of any of the Assets, or any artifacts, certificates, instruments or other indicia of title representing or evidencing any right, title, estate, or interest in and to the Assets, they shall forthwith deliver possession thereof to the Auctioneer.

12. Despite repeated demands, Blue Diamond has failed to comply with the terms of the Auction Order.

13. The Trailer Pair has been located on land owned by Blue Diamond near Enterprise, Northwest Territories with the Trailer Pair's tires and hubcaps removed.

14. Blue Diamond is in contempt of this Court and is in breach of the Auction Order.

15. The costs to repair the Trailer Pair are not expected to exceed \$35,000.

16. The Transport Companies require immediate possession of the Trailer Pair so that it can be repaired and sold at auction by IronPlanet to complete the Auction Transaction prior to the termination of these CCAA Proceedings.

**D. Bankruptcy**

17. Upon the completion of the CCAA Proceedings and following the liquidation of the Transport Companies' assets, the Monitor has advised that it expects that it will hold on behalf of the Transport Companies between \$1.6 million and \$1.9 million (the "**Distribution Pool**").

18. The Monitor has advised that the balance of the Distribution Pool following amounts paid to TIC pursuant to the TIC Settlement (as defined in the Sixth Report of the Monitor) ought to be, for efficiency reasons, distributed to unsecured creditors through a bankruptcy of the Transport Companies.

19. TIC believes that the primary objective should be maximizing the net proceeds available for distribution to creditors of the Transport Companies and agrees with the Monitor that the statutory bankruptcy framework is this most appropriate tool for minimizing costs and proceeding expeditiously.

**E. Canada Revenue Agency Pre-Filing Objection**

20. The Canada Revenue Agency (“CRA”) alleges that the Pre-Filing GST (as defined in the Sixth Report) is owing as follows:
- (d) approximately \$73,200 alleged owing by Ventures West; and
  - (e) approximately \$56,800 alleged owing by Tịchq Landtran.
21. The Transport Companies have an outstanding pre-filing notice of objection that is currently being considered by CRA appeals division (the “**Pre-Filing Objection**”), which, if successful, would result in a GST refund of approximately \$130,000 being made to the Transport Companies.
22. Despite ongoing communications between the Transport Companies and CRA, it is not clear when a determination on the Pre-Filing Objection will be made. The Transport Companies seek to pay the Pre-Filing GST now and if any refund is received from CRA at a later date, such refund will be distributed to TIC pursuant to the TIC Settlement (as defined in the Sixth Report of the Monitor) and then to the Transport Companies’ other creditors in the proposed bankruptcy proceedings.
23. Delay in terminating the CCAA Proceedings could result if the Transport Companies wait for CRA to make a determination on the Pre-Filing Objection.

**F. Stay Extension**

24. The Transport Companies have acted and continue to act in good faith and with due diligence.
25. The ongoing benefit provided by the CCAA stay of proceedings is critical to the Transport Companies’ ability to complete the outstanding tasks described herein prior to the orderly termination of the CCAA Proceedings.
26. The Monitor is supportive of the proposed extension.

**Material or evidence to be relied on:**

- 3. The Amended Order;
- 4. The Auction Order, as varied;
- 5. The Affidavit of Mark Brajer, sworn September 2, 2020;
- 6. The Fifth Report of the Monitor;
- 7. The Sixth Report of the Monitor; and
- 8. Such further evidence as counsel may advise and this Honourable Court may permit.

**Applicable rules:**

9. Rules 1.3, 1.4, 6.3, 10.52 of the *Alberta Rules of Court*; and
10. Section 11 of the *Companies' Creditors Arrangement Act*;
11. Such further material as counsel may advise and this Honourable Court may permit.

**Applicable Acts and Regulations:**

12. The CCAA and this Court's equitable and statutory jurisdiction thereunder; and
13. Such further authority as counsel may advise and this Honourable Court may permit.

**Any irregularity complained of or objection relied on:**

14. None.

**How the application is proposed to be heard or considered.**

15. In person.

**WARNING**

If you do not come to Court either in person or by your lawyer, the Court may give the applicants what they want in your absence. You will be bound by any order that the Court makes. If you want to take part in this application, you or your lawyer must attend in Court on the date and at the time shown at the beginning of the form. If you intend to rely on an affidavit or other evidence when the application is heard or considered, you must reply by giving reasonable notice of the material to the applicant.

Schedule "A"

(See Attached)



**Virtual Courtroom 62** has been assigned for the following matter:

Date: September 09, 2020 at 10:00 AM

Style of Cause: 1903 24389 - TLICHO INVESTMENT CORP. v. TLI CHO LANDTRAN TRANSPORT LTD.

Presiding Justice: TOPOLNISKI, J

Virtual Courtroom Link:

<https://albertacourts.webex.com/meet/virtual.courtroom62>

Instructions for Connecting to the Meeting

1. Click on the link above or open up Chrome or Firefox and cut and paste it into your browser address bar.
2. If you do not have the Cisco Webex application already installed on your device, the site will have a button to install it. Follow installation instructions. Enter your full name and email address when prompted
3. Click on the **Open Cisco Webex Meeting**.
4. You will see a preview screen. Click on **Join Meeting**.

Key considerations for those attending:

1. Please connect to the courtroom **15 minutes prior** to the start of the hearing.
2. Please ensure that your microphone is muted and remains muted for the duration of the proceeding, unless you are speaking. Ensure that you state your name each time you speak.
3. If bandwidth becomes an issue, some participants may be asked to turn off their video and participate by audio only.
- 4. Note: Recording or rebroadcasting of the video is prohibited.**
- 5. Note: It is highly recommended you use headphones with a microphone or a headset when using Webex. This prevents feedback.**

If you are a non-lawyer attending this hearing remotely, please complete this undertaking located here:

<https://www.albertacourts.ca/qb/resources/announcements/undertaking-and-agreement-for-non-lawyers>

For more information relating to Webex protocols and procedures, please visit:

<https://www.albertacourts.ca/qb/court-operations-schedules/webex-remote-hearings-protocol>

Appendix "A"  
(See Attached)

COURT FILE NUMBER

1903-24389

COURT

COURT OF QUEEN'S BENCH  
OF ALBERTA

JUDICIAL CENTRE

EDMONTON

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 TLI CHO  
LANDTRAN TRANSPORT LTD., 1456998  
ALBERTA LTD., and 1456982 ALBERTA LTD.

APPLICANT

TLICHO INVESTMENT CORPORATION

RESPONDENTS

TLI CHO LANDTRAN TRANSPORT LTD.,  
1456998 ALBERTA LTD., and 1456982 ALBERTA  
LTD.

DOCUMENT

**ORDER**

CONTACT INFORMATION OF  
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DOCUMENT:

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Kourtney Rylands  
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File No. 261496

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**DATE ON WHICH ORDER WAS PRONOUNCED:** September 9, 2020

**LOCATION OF HEARING:** Edmonton

**NAME OF JUDGE WHO MADE THIS ORDER:** The Honourable Justice D. Mah

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UPON the applications of Tl̄ch̄q Investment Corporation (“**TIC**”) and MNP Ltd., in its capacity as Monitor of Tli Cho Landtran Transport Ltd. (the “**Monitor**”), 1456998 Alberta Ltd., 1456982 Alberta Ltd. and Ventures West Transport LP (collectively, the “**Debtors**”); AND UPON reviewing the initial order of this Court granted by the Honourable Justice Graesser on November 29, 2019 (the “**Initial Order**”) granting relief in respect of the Debtors; the first amending and extension order granted by the Honourable Justice Graesser on December 6, 2019 (the “**First Amending and Extension Order**”); the auction approval order granted by the Honourable Justice Mah on February 28, 2020, as varied by an order granted by the Honourable Justice Mah on March 6, 2020 and further varied by an order granted by the Honourable Justice Renke on May 15, 2020 (collectively, the “**Auction Order**”); and the auction distribution order granted by Honourable Justice Feth on May 28, 2020 (the “**Feth Order**”); AND UPON having read the Affidavit of Mark Brajer sworn September 2, 2020, filed (the “**Brajer Affidavit**”); and the affidavit of service of David Tsumagari, filed; AND UPON reviewing the Fifth Report of the Monitor, dated June 8, 2020; AND UPON reviewing the Sixth Report of the Monitor, dated September 2, 2020, AND UPON hearing counsel for TIC; counsel for the Monitor, and such other counsel as were present;

**IT IS HEREBY ORDERED AND DECLARED THAT:**

**SERVICE**

1. Service of notice of this application and supporting materials is hereby declared to be good and sufficient, no other person is required to have been served with notice of this application and time for service of this application is abridged to that actually given.

**BLUE DIAMOND**

2. Blue Diamond Enterprises Ltd. (“**Blue Diamond**”) is declared to be in breach of the Auction Order and is in contempt of this Court.
3. Blue Diamond is directed to release the following trailers to the Debtors, failing which Blue Diamond shall be subject to further sanction by this Court:

Unit # 7013 2007 Columbia Remtec 61,000 Ltr Super-B Tanker Trailer Lead  
VIN: 2C9LAA3S571026017

Unit # 7013 B 2007 Columbia Remtec 61,000 Ltr Super-B Tanker Trailer Rear  
VIN: 2C9LBA2R271026018

(together, the “**Trailers**”).

4. The Debtors are authorized to make arrangements for the repair of the Trailers to the extent the Debtors determine necessary or desirable for their recovery and operation and Blue Diamond shall indemnify the Debtors for all repair costs to the maximum amount of \$30,000 (the “**Repair Costs**”), within five (5) business days of delivery of an invoice by the Debtors in respect of such costs (the “**Trailer Invoice**”).
5. The Debtors may send the Trailer Invoice by email to [bluediamond@northwestel.net](mailto:bluediamond@northwestel.net) and the Trailer Invoice shall be deemed to be received by Blue Diamond on the date it is sent.
6. The Debtors are awarded solicitor and client costs of this application against Blue Diamond in the amount of \$\_\_\_\_\_ (the “**Legal Costs**”).
7. The amount of Blue Diamond’s Garage Keepers’ lien declared valid by the Feth Order, being \$3,633.46, is hereby forfeited to the Debtors in partial satisfaction of the Repair Costs and Legal Costs and Blue Diamond shall have no interest in the Lien Claim Reserve (as defined in the Feth Order). In addition, any amount payable to Blue Diamond pursuant to any proof of claim filed in bankruptcy proceedings of the Debtors is hereby forfeited to the Debtors’ estates to satisfy the Repair Costs and Legal Costs to the extent such costs have not been paid.

#### **PAYMENT TO CANADA REVENUE AGENCY**

8. The Debtors (or the Monitor on the Debtors’ behalf) are authorized to pay the Pre-Filing GST (as defined in the Fifth Report of the Monitor) to the Canada Revenue Agency notwithstanding that the Pre-Filing GST accrued prior to the date of the Initial Order.

#### **BANKRUPTCY**

9. The Monitor is hereby authorized to make a voluntary assignment of all of the Debtors’ property for the general benefit of the Debtors’ creditors pursuant to Section 49 of the BIA, including executing any and all documents required to complete such assignment.

## STAY OF PROCEEDINGS AND TERMINATION OF CCAA

10. The Stay Period (as defined in the First Amending and Extension Order) shall be and is hereby extended to and including the date on which the Monitor files with this Court a certificate (in the form attached as Schedule “A” to this Order) (the “**Monitor’s Certificate**”) certifying that:
  - (a) the Debtors have paid the Pre-Filing GST (as defined in the Fifth Report of the Monitor);
  - (b) the Trailers have been repaired and disposed of and proceeds of disposition paid to the Monitor; and
  - (c) the Debtors have been assigned into bankruptcy.
11. Upon the filing of the Monitor’s Certificate, the within proceedings (the “**CCAA Proceedings**”) shall be terminated.
12. Upon the filing of the Monitor’s Certificate, the Monitor shall be discharged as Monitor of the Debtors, provided however, that notwithstanding its discharge herein (a) the Monitor shall remain the Monitor for the performance of such incidental duties as may be required to complete the administration of the proceedings, including issuing final payments under the settlement agreement between the Debtors and TIC dated September 1, 2020 and attached as Schedule 2 to the Sixth Report of the Monitor, and (b) the Monitor shall continue to have the benefit of the provisions of all Orders made in the proceedings, including all approvals, protections and stay of proceedings in favour of the Monitor in its capacity as Monitor.
13. Upon the filing of the Monitor’s Certificate any and all claims against the Monitor, its officers, directors, employees and affiliates, in connection with its appointment or the performance of its duties as Monitor to the date of this Order shall be and are hereby stayed, extinguished and forever barred and the Monitor, its officers, directors, employees and affiliates, shall have no obligation or liability in respect thereof except for any liability arising out of gross negligence or wilful misconduct on the part of the Monitor.

14. No action or other proceeding shall be commenced against the Monitor in any way arising from or related to its capacity or conduct as Monitor, except (i) with prior leave of this Court on at least seven (7) days notice to MNP Ltd. and (ii) the posting of security for costs by the plaintiff or moving party in an amount sufficient to cover the substantial indemnity costs of MNP Ltd. for the proposed action or proceeding.
15. The actions and conduct of the Monitor in the CCAA Proceedings from November 29, 2019 to the date of this Order are approved.

### **SERVICE OF THIS ORDER**

16. Service of this Order shall be deemed good and sufficient by:
  - (a) Serving the same on the persons listed on the service list created in these proceedings;
  - (b) Posting a copy of this Order on the Monitor's website at: <https://mnpdebt.ca/en/corporate/Engagements/ventures-west-transport-limited-partnership>and service on any other person is hereby dispensed with.
17. Service of this Order may be effected by facsimile, electronic mail, personal delivery or courier. Service is deemed to be effected the next business day following transmission or delivery of this Order.

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Justice of the Court of Queen's Bench of Alberta

**Schedule "A" – Form of Monitor's Certificate**

COURT FILE NUMBER 1903-24389

COURT COURT OF QUEEN'S BENCH  
OF ALBERTA

JUDICIAL CENTRE EDMONTON

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  
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LANDTRAN TRANSPORT LTD., 1456998  
ALBERTA LTD., and 1456982 ALBERTA LTD.

APPLICANT TLI CHO INVESTMENT CORPORATION

RESPONDENTS TLI CHO LANDTRAN TRANSPORT LTD.,  
1456998 ALBERTA LTD., and 1456982 ALBERTA  
LTD.

DOCUMENT **MONITOR'S CERTIFICATE**

CONTACT INFORMATION OF  
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Kourtney Rylands  
Phone: 403-355-3326  
Email: kourtney.rylands@mcmillan.ca

File No. 261496



## RECITALS

A. Pursuant to an Order of the Honourable Justice Graesser of the Court of Queen’s Bench of Alberta (the "**Court**") dated November 29, 2019, MNP Ltd. was appointed as the monitor (the "**Monitor**") of Tli Cho Landtran Transport Ltd., 1456998 Alberta Ltd., and 1456982 Alberta Ltd. (the "**Debtors**").

B. Pursuant to a further Order of the Court dated September 9, 2020 (the "**Termination Order**"), the Monitor was authorized to file this Certificate in accordance with the terms of the Termination Order.

THE MONITOR CERTIFIES the following:

- (a) the Debtors have paid the Pre-Filing GST (as defined in the Fifth Report of the Monitor);
  - (b) the Trailers have been repaired and disposed of and proceeds of disposition paid to the Monitor; and
  - (c) the Debtors have been assigned into bankruptcy.
2. This Certificate was delivered by the Monitor at ● [TIME] on ● [DATE].

MNP Ltd., in its capacity as Monitor of Tli Cho Landtran Transport Ltd., 1456998 Alberta Ltd., and 1456982 Alberta Ltd. and not in its personal capacity

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

Name: Vanessa Allen

Title: Senior Vice President