

COURT FILE NUMBER 2203-18590
COURT COURT OF KING'S BENCH OF ALBERTA
JUDICIAL CENTRE EDMONTON
PLAINTIFF/DEFENDANT BY 1823741 ALBERTA LTD.
COUNTERCLAIM
DEFENDANT BY MICHAEL JAMES GANSER
COUNTERCLAIM
DEFENDANT/PLAINTIFF BY MARK EDMUND HALDANE
COUNTERCLAIM



DOCUMENT **APPLICATION
(APPOINTMENT OF RECEIVER)**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT
Caron & Partners LLP
Fifth Avenue Place – West Tower
2120, 237 – 4 Avenue S.W.
Calgary, AB T2P 0K3
Phone: 403-770-4023
Fax: 403-237-0111
Attention: Dean A. Hutchison
Solicitors for Mark Edmund Haldane
File No.: 61882-000

NOTICE TO RESPONDENTS:

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

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

To do so, you must be in Court when the application is heard as shown below:

Date: Friday, June 14, 2024
Time: 2:00 p.m.
Where: Court of King's Bench of Alberta, Edmonton Law Courts,
1A Sir Winston Churchill Square, Edmonton, Alberta
Before Whom: The Honourable Mister Justice M.J. Lema, In Chambers – Via WebEx
(Booked on the Commercial List)

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. An abridgement, if necessary, of the time for service of this Application and materials in support thereof, and an Order declaring service of same to be good and sufficient.

2. An Order substantially in the form attached hereto as **Schedule “A”**, appointing BDO Canada Limited (“**BDO**”), as receiver and manager, or in the alternative, as receiver, over the assets, undertaking and property (collectively, the “**Property**”), of each of 1823741 Alberta Ltd. (“**182**”) and 1872806 Alberta Ltd. (“**187**”).
3. An Order directing that the within Action be transferred to the judicial centre of Calgary.
4. An Order granting such other and further relief as the circumstances may require and as this Honourable Court shall deem appropriate.

Grounds for Making the Application:

The Parties

- (a) The Plaintiff, Defendant by Counterclaim, 182, is an Alberta corporation that operates the following two businesses: (i) a business under the registered trade name “Kwik-Fab Energy Services” that provides fabrication and oilfield maintenance and construction services; and (ii) a business under the operating name “Mountainview Eco-Products” that deals in the recovery and conversion of sawmill waste into compressed and packaged wood shavings products.
- (b) 182 operates from business premises located on lands municipally described as 4 – 32532 Range Road 42, Mountain View County, Alberta, and legally described as:

Plan 0611068
Block 1
Lot 1
Excepting Thereout All Mines and Minerals
Area: 3.227 Hectares (7.97 Acres) More or Less

(the “**Lands**”), which are located near the town of Sundre, Alberta. The registered owner of the Lands is 187, an Alberta corporation and land holding company.

- (c) The Applicant, Defendant, and Plaintiff by Counterclaim, Mark Edmund Haldane (“**Mr. Haldane**”), is a voting shareholder of each of 182 and 187. Mr. Haldane holds 35% of the issued and outstanding voting shares of 182, and 50% of the issued and outstanding voting shares of 187. The Defendant by Counterclaim, Michael James Ganser (“**Mr. Ganser**”), holds the other 65% of the issued and outstanding voting shares of 182 and the other 50% of the issued and outstanding voting shares of 187.

- (d) 182 was incorporated on May 5, 2014. From the date of its incorporation until November 30, 2020, the directors of 182 were each of Mr. Haldane and Mr. Ganser. Mr. Haldane resigned as a director of 182 on November 30, 2020, which registration was registered with Alberta Corporate Registries on December 2, 2020. Since that time Mr. Ganser has been the sole director of 182.
- (e) 187 was incorporated on January 20, 2015. From the date of its incorporation, the directors of 187 have been, and continue to be, Mr. Haldane and Mr. Ganser.

Loan, Mortgage and Security held by the Business Development Bank of Canada

- (f) 187 purchased the Lands in September 2015 for the sum of \$1,950,000. To complete the purchase, 187 obtained financing (the “**BDC Loan**”) from the Business Development Bank of Canada (“**BDC**”) by way of a letter of offer from BDC to 187 dated March 30, 2015 and accepted by 187 on April 1, 2015.
- (g) As security for the BDC Loan, the following documents were provided to BDC:
 - (i) a mortgage over the Lands in the principal sum of \$1,560,000 granted by 187 in favour of BDC dated September 10, 2015, and registered against title to the Lands on September 29, 2015, as registration number 151 253 086 (the “**BDC Mortgage**”);
 - (ii) a General Assignment of Rents and Leases in respect of the Lands granted by 187 in favour of BDC dated September 10, 2015 (the “**Assignment of Rents and Leases**”), a caveat in respect of which was registered against title to the Lands on September 29, 2015, as registration number 151 253 087;
 - (iii) a General Security Agreement dated September 10, 2015, made by 187 in favour of BDC (the “**187 GSA**”), which was registered in the Alberta Personal Property Registry (the “**PPR**”) against 187 on June 5, 2015, as registration number 15060519163;
 - (iv) a Guarantee of Loan dated September 10, 2015, made by 182 in favour of BDC whereby 182 guaranteed payment to BDC of all indebtedness owed by 187 under the BDC Loan to the sum of \$1,560,000 (the “**182 Guarantee to BDC**”);
 - (v) a General Security Agreement dated September 10, 2015, made by 182 in favour of BDC (the “**182 GSA**”), which was registered in the PPR against 182 on June 5, 2015 as registration number 15060520566; and

- (vi) a Guarantee of Loan dated September 1, 2015, made by Mr. Ganser and Mr. Haldane, jointly and severally, in favour of BDC whereby Mr. Ganser and Mr. Haldane jointly guaranteed payment to BDC of the indebtedness owed by 187 under the BDC Loan to the sum of \$500,000 (the “**Ganser & Haldane Guarantee to BDC**”).

The Lease Between 182 and 187

- (h) On or about May 2017, 187 entered into a lease agreement with 182 (the “**Lease**”) whereby 187 agreed to lease the Lands to 182 and allow 182 to occupy the Lands, and 182 agreed to pay rent to 187 in an amount of \$12,000.00 per month / \$144,000.00 per year, plus goods and services taxes. Payment of rent by 182 to 187 in accordance with terms of the Lease provided 187 with the necessary revenue for 187 to service its debt to BDC under the BDC Loan and BDC Mortgage.

Non-Payment of Rent by 182 and Defaults on BDC Loan by 187

- (i) Following Mr. Haldane’s resignation as a director of 182, 182 began failing to pay rent to 187 in accordance with the terms of the Lease. More specifically, 182 failed to pay any rent to 187 for the months of each of January 2021 to and including March 2021.
- (j) As a result of 182’s failure to pay rent to 187, 187 lacked the revenue and funds to service its debt obligations to BDC under the BDC Loan and BDC Mortgage, and 187 defaulted on its obligations to BDC. This resulted in BDC issuing the following on March 31, 2021 (collectively, the “**BDC Demands**”):
 - (i) to 187, a formal demand for payment in respect of the BDC Loan and a notice of intention to enforce security;
 - (ii) to 182, a formal demand for payment in respect of the 182 Guarantee to BDC and notice of intention to enforce security; and
 - (iii) to Mr. Ganser and Mr. Haldane, a formal demand for payment with respect to the Ganser & Haldane Guarantee to BDC.
- (k) Following the issuance of the BDC Demands, BDC entered into a Forbearance Agreement with each of 187, 182, Mr. Ganser and Mr. Haldane dated April 30, 2021 whereby, *inter alia*, BDC agreed to forebear from its enforcement rights with respect to the BDC Loan, BDC Mortgage and BDC’s other security against 187, 182, Mr. Ganser and Mr. Haldane until September 30, 2021 (the “**Forbearance Period**”).

- (l) The amounts owed under the BDC Loan were not repaid by the expiry of the Forbearance Period and BDC subsequently took further enforcements steps, including:
- (i) demanding payment of rent directly from 182 under the Assignment of Rents and Leases by way of a formal written notice to 182 dated November 5, 2021 (the “**Demand Under the Assignment of Rents and Leases**”);
 - (ii) commencing proceedings, specifically Court of Queen’s Bench of Alberta (as it then was) Court File Number 2101-13327 against 187, 182, Mr. Ganser and Mr. Haldane (the “**BDC Foreclosure Proceedings**”) by way of a Statement of Claim filed October 25, 2021; and
 - (iii) seizing personal property of 182 on September 11, 2023.

Non-Payment of Rent and Short Payment of Rent by 182

- (m) 182 failed to make any payment of rent whatsoever to 187 or to BDC for the months of October 2021, November 2021 and December 2021.
- (n) Following BDC’s issuance of the Demand Under the Assignment of Rents and Leases, 182 has been paying partial rent to BDC in the amount of \$10,500.00 per month since January 2022. The Lease requires that 182 pay rent of the amount of \$12,000.00 per month, plus goods and services taxes.

Lack of Cooperation by 182 and Mr. Ganser in BDC Foreclosure Proceedings

- (o) On March 30, 2022, BDC obtained a Consent Redemption Order – Listing in the BDC Foreclosure Proceedings (the “**Consent Redemption Order**”) which provided that the Lands shall be listed for sale with a judicial listing agent for a period of 90 days. The judicial listing period pursuant to the Redemption Order has subsequently been extended for periods of 90 days each by Consent Orders granted in the Foreclosure Proceedings on August 9, 2022, November 2, 2022, February 16, 2023 and May 13, 2023.
- (p) BDC filed an Application in the BDC Foreclosure Proceedings on February 24, 2024 (the “**BDC Application**”) seeking an Order:
- (i) to renew the judicial listing of the Lands for a period of 120 days; and

- (ii) directing 182, or any other party in occupation of the Lands, to cooperate with the judicial listing agent to schedule tours of the Lands by prospective purchasers.

An Order with respect to the BDC Application was granted on March 12, 2024.

- (q) In support of the BDC Application, BDC filed the following two Affidavits in the BDC Foreclosure Proceedings: (i) the Affidavit of Sean Ferguson sworn December 8, 2023 and filed February 22, 2024 (the “**Ferguson Affidavit**”) and; (ii) the Affidavit of Faith McNeil sworn December 12, 2023 and filed February 22, 2024 (the “**McNeil Affidavit**”).
- (r) Sean Ferguson is the Associate Vice President Industry Sales & Leasing at Cushman & Wakefield, the judicial listing agent in the BDC Foreclosure Proceedings. Paragraph 5 of the Ferguson Affidavit sets out that it has become increasingly difficult for the judicial listing agent to schedule tours of the Lands with prospective purchasers given the lack of accommodation by 182 as the tenant of the Lands. The Ferguson Affidavit attaches as Exhibit “B” e-mail correspondence between members of the judicial listing agent, Cushman & Wakefield, counsel for BDC, Miller Thomson LLP (“**Miller Thomson**”), and the Defendant by Counterclaim, Mr. Ganser, about issues with Mr. Ganser’s and 182’s lack of cooperation in allowing the judicial listing agent to schedule tours of the Lands by prospective purchasers.

Seizure of Personal Property of 182 by BDC / Lack of Cooperation by 182 and Mr. Ganser

- (s) The fulcrum secured creditor of 182 and 187, BDC, through its legal counsel, Miller Thomson, has advised that most of the interested purchasers of the Lands have indicated that they are also interested in the equipment located on the Lands. 182 is the tenant and occupant of the Lands.
- (t) Personal property of 182, specifically equipment located on the Lands, was seized by BDC on September 11, 2023.
- (u) Faith McNeil is a Paralegal with Miller Thomson. The McNeil Affidavit states at paragraph 2 that on August 17, 2023, Miller Thomson, as counsel and agent for BDC, instructed Consolidated Civil Enforcement (the “**Bailiff**”) to seize all equipment located on the Lands, which BDC understood was owned by 182, the tenant in occupation of the Lands. The McNeil Affidavit further states at paragraph 3 that on September 11, 2023, the Bailiff completed the seizure of the equipment, and the McNeil Affidavit attaches as Exhibit “A” copies of the Bailiff’s report dated September 11, 2023 and the Amended Notice of Seizure dated September 11, 2023 (collectively,

the “**Bailiff’s Report**”). The McNeil Affidavit further states at paragraph 4 that Mr. Ganser has contacted BDC and has objected to the sale of the seized equipment.

- (v) The Bailiff’s Report states that Andrew Thompson of the Bailiff (“**Mr. Thompson**”) met with Mr. Ganser at the “sawdust and wood chipping plant” on the Lands on September 11, 2023 and that upon Mr. Thompson’s attendance, Mr. Ganser presented him with “a pile of bills of sale, stating everything at the location had been sold to another company 1883177 Alberta Ltd. [*sic*] that he [Mr. Ganser] owns on the 27th Jan 2021”. The Bailiff’s Report further states that the seized equipment was left at the Lands with Mr. Ganser on a bailee’s undertaking that Mr. Ganser refused to sign.

No Notice of Purported Sale of Equipment by 182 to 1883177 Alberta Ltd. / Mountainview Eco Products Ltd. and No Notice of Material Interests of Mr. Ganser in 1883177 Alberta Ltd. / Mountainview Eco Products Ltd.

- (w) A sale or transfer of all equipment by 182 requires the approval of shareholders of 182 by special resolution pursuant to section 190 of the Alberta *Business Corporations Act*, RSA 2000, c. B-9 (the “**ABCA**”).
- (x) No notice of any meeting of shareholders of 182 to consider a sale or transfer of all, or substantially all, of the equipment or other assets of 182 to 1883177 Alberta Ltd., or to any other purchaser or transferee, has ever been provided to Mr. Haldane as a 35% voting shareholder of 182.
- (y) As a 35% voting shareholder of 182, Mr. Haldane has not approved of any sale or transfer of all, or substantially all, of the equipment or assets of 182 to 1883177 Alberta Ltd., or to any other purchaser or transferee. Mr. Haldane has similarly not signed any special resolution of the shareholders of 182 approving of any sale or transfer of equipment or assets of 182 to 1883177 Alberta Ltd., or to any other purchaser or transferee.
- (z) Mr. Ganser is the sole director and sole voting shareholder of 1883177 Alberta Ltd. A sale or transfer of equipment or assets by 182 to 1883177 Alberta Ltd. would be a “material transaction” as described in the *ABCA*. As a director and officer of 182, Mr. Ganser has a statutory obligation to disclose the nature and extent of his interests in 1883177 Alberta Ltd. to the shareholders of 182.
- (aa) No notice or other form of disclosure has been provided to Mr. Haldane, as 35% voting shareholder in 182, by Mr. Ganser, as a director and officer of 182, of his interests in 1883177 Alberta Ltd.

before the purported sale or transfer of equipment or assets of 182 to 1883177 Alberta Ltd. that is purported to have occurred on January 27, 2021, occurred, or any other time.

- (bb) 1883177 Alberta Ltd. changed its name to Mountainview Eco Products Ltd. by way of name change registered with Alberta Corporate Registries on December 3, 2020. Such name change was registered the day after Mr. Haldane's resignation as a director of 182, which operates as "Mountainview Eco-Products", was registered with Alberta Corporate Registries.
- (cc) Mr. Haldane, as a shareholder of 182, has not been provided with information or documentation from 182 and its sole director, Mr. Ganser, (such as the consideration purportedly paid), with respect to any purported sale or transfer of equipment or assets of 182 to Mountainview Eco Products Ltd. (formerly 1883177 Alberta Ltd.), or to any other person or entity.

Failure by 182 to Hold Annual General Meetings of Shareholders and to Provide Shareholders with Financial Statements

- (dd) As the sole director of 182, Mr. Ganser has a statutory obligation pursuant to section 132 of the *ABCA* to call an annual meeting of shareholders not later than 15 months after the last preceding annual meeting.
- (ee) The bylaws of 182 require that annual meetings of shareholders shall be held at such time each year as the director(s) may from time to time determine for the purpose of considering the financial statements and reports required by the *ABCA*, which are required to be placed before the shareholders before the annual meeting, and for the purposes of electing directors and appointing auditors, and for the transaction of such other business as may be properly brought before the meeting.
- (ff) No annual meetings of shareholders of 182 have been held since Mr. Haldane resigned as a director of 182. No shareholders resolutions of 182 signed by all shareholders of 182 (which include Mr. Haldane) in lieu of an annual meeting of shareholders have been passed since Mr. Haldane has resigned as a director of 182. The last annual meeting of the shareholders of 182 was held on May 31, 2020.
- (gg) As the sole director of 182, Mr. Ganser has a statutory obligation pursuant to section 155 of the *ABCA* to provide to the shareholders of 182 with comparative financial statements for the last 2 completed financial periods of the company, together with a report of the auditor. No shareholders resolutions of 182 signed by all shareholders of 182 (which include Mr. Haldane) waiving

shareholders' rights to receive financial statements or dispensing with the appointment of an auditor of the corporation, have been passed since Mr. Haldane has resigned as a director of 182.

- (hh) The financial period for 182 is a calendar year and ends December 31st of each year. No financial statements for 182 for the fiscal years / financial periods of 2021, 2022 or 2023, nor any comparative financial statements comparing such fiscal years / financial periods, nor any auditor reports regarding such fiscal years / financial periods, have been provided to Mr. Haldane as a shareholder of 182 holding 35% of the company's voting shares.
- (ii) Mr. Haldane has made multiple requests of 182 and its sole director, Mr. Ganser, as well as 182's external accountant, MNP Ltd., for financial statements for 182, both in writing and verbally, but no financial statements of 182 for the fiscal years / financial periods of 2021, 2022 and 2023, have been provided to Mr. Haldane as a shareholder of 182.
- (jj) The external accountant of 182, MNP Ltd., has indicated that it has not received the financial information necessary to prepare financial statements for 182.

Oppressive and Prejudicial Conduct

- (kk) The powers of Mr. Ganser as a director of 182, and the business and affairs of 182 during Mr. Ganser's tenure as the sole director of 182, have been carried out and conducted in a manner that is oppressive and unfairly prejudicial to Mr. Haldane as a shareholder of each of 182 and 187, and that unfairly disregards the interests of BDC and Mr. Haldane as creditors of each of 182 and 187, and unfairly disregards the interests of Mr. Haldane as a shareholder of each of 182 and 187.
- (ll) Such oppressive and unfairly prejudicial conduct includes, but is not limited to:
 - (i) causing 182 to fail to provide payment of rent to 187 in accordance with the terms of the Lease;
 - (ii) failing to provide the shareholders of 182 with financial statements and audit reports in accordance with the statutory requirements of the *ABCA*, the bylaws of 182, or at all;
 - (iii) failing to schedule and hold annual meetings of shareholders of 182 in accordance with the statutory requirements of the *ABCA*, the bylaws of 182, or at all;
 - (iv) failing to disclose to 182's shareholders material interests that Mr. Ganser holds in corporations (specifically, Mountainview Eco Products Ltd., formerly 1883177 Alberta Ltd.)

which have purportedly made material contracts or conducted material transactions with 182;

- (v) selling and transferring, or attempting to sell or transfer, all or substantially all of the equipment of 182 to a party with which Mr. Ganser holds a material interest (namely Mountainview Eco Products Ltd., formerly 1883177 Alberta Ltd.) without seeking or obtaining the approval of the shareholders of 182;
- (vi) selling and transferring equipment or assets of 182 to a party with which Mr. Ganser holds a material interest (namely Mountainview Eco Products Ltd., formerly 1883177 Alberta Ltd.) for no or nominal consideration, or at undervalue;
- (vii) Mr. Ganser operating the sawmill waste recovery and conversion into compressed and packaged wood shaving products business of 182 known as “Mountainview Eco-Products” through his corporation, Mountainview Eco Products Ltd. (formerly 1883177 Alberta Ltd.), and using the equipment and assets of 182 to do so;
- (viii) Mr. Ganser diverting revenue and business from 182 to his corporation, Mountainview Eco Products Ltd. (formerly 1883177 Alberta Ltd.), without any or adequate compensation to 182; and
- (ix) failing to cooperate with BDC, the judicial listing of the Lands, and the Bailiff, to allow BDC to enforce its rights as a secured creditor with security over the assets of each of 182 (namely the personal property and equipment) and 187 (namely the Lands).

Appointing a Receiver Over the Property of 182 and 187 is Just and Convenient

- (mm) Each of 182 and 187 are insolvent. 182 and 187 has committed defaults under the BDC Loan.
- (nn) 182 has committed defaults under the 182 GSA. 187 has committed defaults under both of the BDC Mortgage and the 187 GSA.
- (oo) The 182 GSA provides for the appointment of a receiver, or receiver and manger, over the property of 182. The 187 GSA provides for the appointment of a receiver, or receiver and manger, over the property of 187, and the BDC Mortgage provides for the appointment of a receiver, or receiver and manager, over the Lands.

- (pp) It is unlikely that 187 and 182 will be able to repay their indebtedness to BDC without liquidating their property.
- (qq) It is appropriate, just and convenient that a receiver, or receiver and manager, be appointed over the Property of each of 187 and 182.
- (rr) BDO has consented to act as the receiver and manager of the property of each 187 and 182.
- (ss) Such further and other grounds as counsel may advise and this Honourable Court may permit.

Transfer of Action to Judicial Centre of Calgary

- (tt) The judicial centre of Calgary is the closest judicial centre that deals with commercial list matters, by road, to:
 - (i) the places of business of each of 182 and 187;
 - (ii) the location where the Property of each of 182 and 187 is situated;
 - (iii) the location of the Lands; and
 - (iv) the residence of Mr. Haldane.
- (uu) The BDC Foreclosure Proceedings were commenced in the judicial centre of Calgary.
- (vv) There is no connection to the judicial centre of Edmonton with respect to the parties to this action, the location of the Lands and Property, or the matters at issue in this action.
- (ww) It is unreasonable for this action to be carried on in the judicial centre of Edmonton.
- (xx) Such further and other grounds as counsel may advise and this Honourable Court may permit.

Material or Evidence To Be Relied Upon:

- (a) This notice of Application, filed;
- (b) The Affidavit of Mark Edmund Haldane, sworn May 24, 2024, filed;
- (c) The Affidavit of Sean Ferguson, sworn December 8, 2023 and filed February 24, 2024 in Court of King's Bench of Alberta Court File Number 2101-13327;

- (d) The Affidavit of Faith McNeil sworn December 12, 2023 and filed February 24, 2024 in Court of King's Bench of Alberta Court File Number 2101-13327;
- (e) The Consent to Act as Receiver executed by BDO Canada Limited dated May 24, 2024, filed;
- (f) The inherent jurisdiction of this Honourable Court to control its own process; and
- (g) Such further and other material as counsel may advise and this Honourable Court may permit.

Applicable Rules:

- (a) Rules 3.5, 6.9, 6.10, 11.27 and 13.5 of the Alberta *Rules of Court*.

Applicable Acts and Regulations:

- (a) *Business Corporations Act*, RSA 2000, c. B-9, as amended, specifically sections 99(a), 132, 155, 190 and 242.
- (b) *Judicature Act*, RSA 2000, c. J-2, as amended, specifically section 13(2).
- (c) *Personal Property Security Act*, RSA 2000, c. P-7, as amended, specifically section 65(7).

How the Application is Proposed to be Heard or Considered:

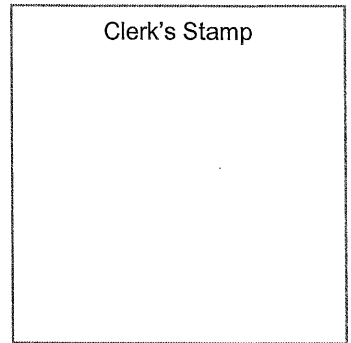
- (a) Via WebEx before the Honourable Mister Justice M.J. Lema, in Chambers.

WARNING TO THE RESPONDENT(S):

If you do not come to Court either in person or by your lawyer, the Court may give the applicant(s) 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"

COURT FILE NUMBER 2203-18590
COURT COURT OF KING'S BENCH OF ALBERTA
JUDICIAL CENTRE Edmonton
PLAINTIFF/DEFENDANT BY 182374 ALBERTA LTD.
COUNTERCLAIM
DEFENDANT BY MARK JAMES GANSER
COUNTERCLAIM
DEFENDANT/PLAINTIFF BY MARK EDMUND HALDANE
COUNTERCLAIM
DOCUMENT **RECEIVERSHIP ORDER**



ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT
Caron & Partners LLP
Fifth Avenue Place – West Tower
2120, 237 – 4 Avenue S.W.
Calgary, AB T2P 0K3
Phone: 403-770-4023
Fax: 403-237-0111
Attention: Dean A. Hutchison
Solicitors for Mark Edmund Haldane
File No.: 61882-000

DATE ON WHICH ORDER WAS PRONOUNCED: **June 14, 2024**
LOCATION OF HEARING: **Edmonton Law Courts, Edmonton, Alberta**
NAME OF JUSTICE WHO GRANTED THIS ORDER: **THE HONOURABLE MR JUSTICE M.J. LEMA**

UPON the application of Mark Edmund Haldane ("Mr. Haldane") in respect of 1823741 Alberta Ltd. ("182") and 1872806 Alberta Ltd. ("187", and collectively with 182, the "Debtors", and each respectively a "Debtor"); AND UPON having read the Application filed _____, 2024, the Affidavit of Mark Edmund Haldane sworn May 24, 2024, the Affidavit of Sean Ferguson sworn December 8, 2023 filed February 22, 2024 in Court of King's Bench of Alberta Court File Number 2101-13327, the Affidavit of Faith McNeil sworn December 12, 2023 and filed February 22, 2024 in Court of King's Bench of Alberta Court File Number 2101-13327 and the Affidavit of Service of Lorraine Chanasyk sworn _____, 2024, filed; AND UPON reading the consent of BDO Canada Limited to act as receiver and manager (the "Receiver") of the Debtors dated May 24, 2024, filed; AND UPON hearing counsel for Mr. Haldane, counsel for the proposed Receiver and any other counsel or other interested parties present;

IT IS HEREBY ORDERED AND DECLARED THAT:

Service

1. The time for service of the notice of application for this order (the "Order") is hereby abridged and deemed good and sufficient, and this application is properly returnable today.

Appointment

2. Pursuant to section 13(2) of the *Judicature Act*, RSA 2000, c.J-2, section 99(a) and 242 of the *Business Corporations Act*, RSA 2000, c.B-9, and 65(7) of the *Personal Property Security Act*, RSA 2000, c.P-7, BDO Canada Limited is hereby appointed Receiver, without security, of all of the Debtors' respective current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate, including all proceeds thereof (the "**Property**").

Receiver's Powers

3. The Receiver 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 Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:
 - (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property, which shall include the Receiver's ability:
 - i. to abandon, dispose of, or otherwise release any interest in any of the Debtors' real or personal property, or any right in any immovable; and
 - ii. upon further order of the Court, to abandon, dispose of, or otherwise release any license or authorization issued by the Alberta Energy Regulator, or any other similar government authority;
 - (b) to receive, 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 the Debtor, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtors;
 - (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, 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 Receiver's powers and duties, including without limitation those conferred by this Order;

- (e) to purchase or lease machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtors or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtors and to exercise all remedies of the Debtors in collecting such monies, including, without limitation, to enforce any security held by the Debtors;
- (g) to settle, extend or compromise any indebtedness owing to or by the Debtors;
- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtors, for any purpose pursuant to this Order;
- (i) to undertake environmental or workers' health and safety assessments of the Property and operations of the Debtors;
- (j) 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 the Debtors, the Property or the Receiver, 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, and provided further that nothing in this Order shall authorize the Receiver to defend or settle the action in which this Order is made unless otherwise directed by this Court;
- (k) to market any or all 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 Receiver in its discretion may deem appropriate;
- (l) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business:
 - i. without the approval of this Court in respect of any transaction not exceeding \$50,000.00, provided that the aggregate consideration for all such transactions does not exceed \$125,000.00; and
 - ii. with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;

and in each such case notice under subsection 60(8) of the *Personal Property Security Act*, RSA 2000, c. P-7 or any other similar legislation in any other province or territory shall not be required.

- (m) to apply for any vesting order or other orders (including, without limitation, confidentiality or sealing 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;

- (n) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (o) to register a copy of this Order and any other orders in respect of the Property against title to any of the Property, and when submitted by the Receiver for registration this Order shall be immediately registered by the Registrar of Land Titles of Alberta, or any other similar government authority, notwithstanding Section 191 of the *Land Titles Act*, RSA 2000, c. L-4, or the provisions of any other similar legislation in any other province or territory, and notwithstanding that the appeal period in respect of this Order has not elapsed and the Registrar of Land Titles shall accept all Affidavits of Corporate Signing Authority submitted by the Receiver in its capacity as Receiver of the Debtors and not in its personal capacity;¹
- (p) 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 Receiver, in the name of the Debtors;
- (q) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtors, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtors;
- (r) to, with leave of the Court, assign the Debtors into bankruptcy and to act as the trustee in bankruptcy of the Debtors;
- (s) to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have; and
- (t) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations;

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

Duty to Provide Access and Co-operations to the Receiver

4. (i) The Debtors, (ii) all of their 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 Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property (excluding Property subject to liens the validity of which is dependent on maintaining possession) to the Receiver upon the Receiver's request.

5. All Persons shall forthwith advise the Receiver 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 the Debtors, 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 Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph or in paragraph 6 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 Receiver due to the privilege attaching to solicitor-client communication or documents prepared in contemplation of litigation or due to statutory provisions prohibiting such disclosure.
6. 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 the Receiver for the purpose of allowing the Receiver 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 Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver 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 Receiver

7. No proceeding or enforcement process in any court or tribunal (each, a “**Proceeding**”), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

No Proceedings Against the Debtors or the Property

8. No Proceeding against or in respect of the Debtors or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and

all Proceedings currently under way against or in respect of the Debtors or the Property are hereby stayed and suspended pending further Order of this Court, provided, however, that nothing in this Order shall: (i) prevent any Person from commencing a proceeding regarding a claim that might otherwise become barred by statute or an existing agreement if such proceeding is not commenced before the expiration of the stay provided by this paragraph; and (ii) affect a Regulatory Body's investigation in respect of the Debtors or an action, suit or proceeding that is taken in respect of the Debtors by or before the Regulatory Body, other than the enforcement of a payment order by the Regulatory Body or the Court. "**Regulatory Body**" means a person or body that has powers, duties or functions relating to the enforcement or administration of an Act of Parliament or of the legislature of a Province.

No Exercise of Rights of Remedies

9. All rights and remedies of any Person, whether judicial or extra-judicial, statutory or non-statutory (including, without limitation, set-off rights) against or in respect of the Debtors or the Receiver or affecting the Property are hereby stayed and suspended and shall not be commenced, proceeded with or continued except with leave of this Court, provided that nothing in this Order shall:
- (a) empower the Debtors to carry on any business that the Debtor is not lawfully entitled to carry on;
 - (b) prevent the filing of any registration to preserve or perfect a security interest;
 - (c) prevent the registration of a claim for lien; or
 - (d) exempt the Debtors from compliance with statutory or regulatory provisions relating to health, safety or the environment.
10. Nothing in this Order shall prevent any party from taking an action against the Debtors where such an action must be taken in order to comply with statutory time limitations in order to preserve their rights at law, provided that no further steps shall be taken by such party except in accordance with the other provisions of this Order, and notice in writing of such action be given to the Receiver at the first available opportunity.

No Interference with the Receiver

11. No Person shall accelerate, suspend, 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 the Debtors, except with the written consent of the Debtors and the Receiver, or leave of this Court.

Continuation of Services

12. All persons having:
- (a) statutory or regulatory mandates for the supply of goods and/or services; or

- (b) oral or written agreements or arrangements with the Debtors, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation, services, utility or other services to the Debtors,

are hereby restrained until further order of this Court from discontinuing, altering, interfering with, suspending or terminating the supply of such goods or services as may be required by the Debtors or exercising any other remedy provided under such agreements or arrangements. The Debtors shall each be entitled to the continued use of their current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the usual prices or charges for all such goods or services received after the date of this Order are paid by the Debtors in accordance with the payment practices of the Debtors, or such other practices as may be agreed upon by the supplier or service provider and each of the Debtors and the Receiver, or as may be ordered by this Court.

Receiver to Hold Funds

- 13. All funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver 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 Receiver (the "**Post Receivership Accounts**") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further order of this Court.

Employees

- 14. Subject to employees' rights to terminate their employment, all employees of the Debtors shall remain the employees of the Debtors until such time as the Receiver, on the Debtors' behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*, SC 2005, c.47 ("**WEPPA**").
- 15. Pursuant to clause 7(3)(c) of the *Personal Information Protection and Electronic Documents Act*, SC 2000, c. 5, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "**Sale**"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such

information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtors, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

Limitations on Environmental Liabilities

16. (a) Notwithstanding anything in any federal or provincial law, the Receiver is not personally liable in that position for any environmental condition that arose or environmental damage that occurred:
- i. before the Receiver's appointment; or
 - ii. after the Receiver's appointment unless it is established that the condition arose or the damage occurred as a result of the Receiver's gross negligence or wilful misconduct.
- (b) Nothing in sub-paragraph (a) exempts a Receiver from any duty to report or make disclosure imposed by a law referred to in that sub-paragraph.
- (c) Notwithstanding anything in any federal or provincial law, but subject to sub-paragraph (a) hereof, where an order is made which has the effect of requiring the Receiver to remedy any environmental condition or environmental damage affecting the Property, the Receiver is not personally liable for failure to comply with the order, and is not personally liable for any costs that are or would be incurred by any person in carrying out the terms of the order,
- i. if, within such time as is specified in the order, within 10 days after the order is made if no time is so specified, within 10 days after the appointment of the Receiver, if the order is in effect when the Receiver is appointed, or during the period of the stay referred to in clause ii below, the Receiver:
 - A. complies with the order, or
 - B. on notice to the person who issued the order, abandons, disposes of or otherwise releases any interest in any real property affected by the condition or damage;
 - ii. during the period of a stay of the order granted, on application made within the time specified in the order referred to in clause (i) above, within 10 days after the order is made or within 10 days after the appointment of the Receiver, if the order is in effect when the Receiver is appointed, by:
 - A. the court or body having jurisdiction under the law pursuant to which the order was made to enable the Receiver to contest the order; or

- B. the court having jurisdiction in bankruptcy for the purposes of assessing the economic viability of complying with the order; or
- iii. if the Receiver had, before the order was made, abandoned or renounced or been divested of any interest in any real property affected by the condition or damage.

Limitation on the Receiver's Liability

- 17. Except for gross negligence or wilful misconduct, as a result of its appointment or carrying out the provisions of this Order the Receiver shall incur no liability or obligation that exceeds an amount for which it may obtain full indemnity from the Property. Nothing in this Order shall derogate from any limitation on liability or other protection afforded to the Receiver under any applicable law, including, without limitation, Section 14.06, 81.4(5) or 81.6(3) of the BIA.

Receiver's Accounts

- 18. The Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case, incurred at their standard rates and charges. The Receiver and counsel to the Receiver shall be entitled to the benefits of and are hereby granted a charge (the "**Receiver's Charge**") on the Property, as security for their professional fees and disbursements incurred at the normal rates and charges of the Receiver and such counsel, both before and after the making of this Order in respect of these proceedings, and the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, deemed trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person but subject to section 14.06(7), 81.4(4) and 81.6(2) of the BIA.
- 19. The Receiver and its legal counsel shall pass their accounts from time to time.
- 20. Prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including the legal fees and disbursements, incurred at the normal rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

Funding of the Receivership

- 21. The Receiver 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 \$100,000.00 (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 Receiver 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 "**Receiver'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,

deemed trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges set out in sections 14.06(7), 81.4(4) and 81.6(2) of the BIA.

22. Neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.
23. The Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule "A" hereto (the "**Receiver's Certificates**") for any amount borrowed by it pursuant to this Order.
24. The monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver'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 Receiver's Certificates.
25. The Receiver shall be authorized to repay any amounts borrowed by way of Receiver's Certificates out of the Property or any proceeds, including any proceeds from the sale of any assets without further approval of this Court.

Allocation

26. Any interested party may apply to this Court on notice to any other party likely to be affected, for an order allocating the Receiver's Charge and Receiver's Borrowings Charge amongst the various assets comprising the Property.

General

27. The Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.
28. Notwithstanding Rule 6.11 of the *Alberta Rules of Court*, unless otherwise ordered by this Court, the Receiver will report to the Court from time to time, which reporting is not required to be in affidavit form and shall be considered by this Court as evidence. The Receiver's reports shall be filed by the Court Clerk notwithstanding that they do not include an original signature.
29. Nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtors.
30. 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, to grant representative status to the Receiver

in any foreign proceeding, or to assist the Receiver and its agents in carrying out the terms of this Order.

31. The Receiver 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 Receiver 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.
32. The Plaintiff shall have its costs of this application, up to and including entry and service of this Order, provided for by the terms of the Plaintiff's security or, if not so provided by the Plaintiff's security, then on a substantial indemnity basis, including legal costs on a solicitor-client full indemnity basis, to be paid by the Receiver from the Debtors' estate with such priority and at such time as this Court may determine.
33. Any interested party may apply to this Court to vary or amend this Order on not less than 7 days' notice to the Receiver 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.²

Filing

34. The Receiver shall establish and maintain a website in respect of these proceedings at **www._____** (the "**Receiver's Website**") and shall post there as soon as practicable:
 - (a) all materials prescribed by statute or regulation to be made publicly available; and
 - (b) all applications, reports, affidavits, orders and other materials filed in these proceedings by or on behalf of the Receiver, or served upon it, except such materials as are confidential and the subject of a sealing order or pending application for a sealing order.
35. Service of this Order shall be deemed good and sufficient by:
 - (a) serving the same on:
 - i. the persons listed on the service list created in these proceedings or otherwise served with notice of these proceedings;
 - ii. any other person served with notice of the application for this Order;
 - iii. any other parties attending or represented at the application for this Order; and
 - (b) posting a copy of this Order on the Receiver's Website;and service on any other person is hereby dispensed with.

36. Service of this Order may be effected by facsimile, electronic mail, personal delivery or courier. Service is deemed to be effected the same business day as the transmission or delivery of this Order.

Justice of the Court of King's Bench of Alberta

SCHEDULE "A"

RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. THIS IS TO CERTIFY that BDO Canada Limited, the interim receiver and receiver and manager (the "Receiver") of all of the assets, undertakings and properties of 1823741 Alberta Ltd. and 1872806 Alberta Ltd. appointed by Order of the Court of King's Bench of Alberta (collectively, the "Court") dated the 14th day of June, 2024 (the "Order") made in action number 2203-18590, has received as such Receiver from the holder of this certificate (the "Lender") the principal sum of \$ _____, being part of the total principal sum of \$ _____ that the Receiver 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 Select an Option after the date hereof at a notional rate per annum equal to the rate of Enter Rate per cent above the prime commercial lending rate of Name of Institution 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 Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property (as defined in the Order), 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 *Bankruptcy and Insolvency Act*, and the right of the Receiver 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 Enter Address.
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 Receiver 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 Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.
7. The Receiver 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____

BDO Canada Limited, solely in its capacity as Receiver of the Property (as defined in the Order), and not in its personal capacity

Per: _____

Name:

Title: