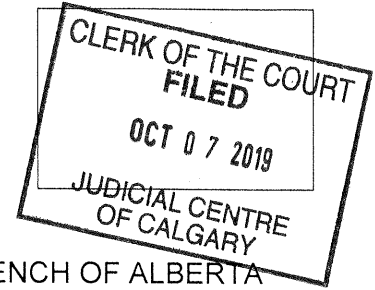


Clerk's Stamp:



COURT FILE NUMBER  
COURT  
JUDICIAL CENTRE OF

1901-14034  
COURT OF QUEEN'S BENCH OF ALBERTA  
CALGARY

IN THE MATTER OF THE *BUSINESS CORPORATIONS ACT*, RSA 2000, c B-9

AND

IN THE MATTER OF THE *JUDICATURE ACT*, RSA 2000, c J-2

AND

IN THE MATTER OF THE RECEIVERSHIP OF AQUILA FABRICATION AND EQUIPMENT LTD.

AND

IN THE MATTER OF THE RECEIVERSHIP OF 965431 ALBERTA LTD.

IN THE MATTER OF THE RECEIVERSHIP OF 1768192 ALBERTA LTD.  
TOM TRENNERY and DONNA TRENNERY

APPLICANTS

RESPONDENTS

AQUILA FABRICATION AND EQUIPMENT LTD., 965431 ALBERTA LTD., 1768192 ALBERTA LTD. and RANDALL JAMES HOFER

DOCUMENT

**ORIGINATING APPLICATION**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT:

**Cassels Brock & Blackwell LLP**  
Suite 3810, Bankers Hall West  
888 3 Street SW  
Calgary, AB T2P 5C5

Attention: Jeffrey Oliver  
Phone: 403-351-2921  
Facsimile: 403-648-1151

**NOTICE TO RESPONDENTS:**

This application is made against you. You are a 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: Tuesday, October 15, 2019

Time: 2:00 PM

Where: Calgary Law Courts

Before Whom: The Honourable Madam Justice B.E.C. Romaine

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

**Basis for this claim:**

Factual Summary

1. Aquila Fabrication and Equipment Ltd. ("**Aquila**"), 965431 Alberta Ltd. ("**965**") and 1768192 Alberta Ltd. ("**176**" and, collectively with Aquila and 965 the "**Companies**") are corporations incorporated pursuant to the laws of the Province of Alberta.
2. Aquila is in the business of providing manufacturing and fabrication solutions to the upstream oil and gas industry. 965 is a holding company and the owner of a parcel of real property (the "**Lands**"). The business and operations of Aquila and 965 are closely connected and integrated in that the business of Aquila is operated out of a building located on 965's real property.
3. 176 is the borrower under several credit facilities with Servus Credit Union, which facilities were used to, among other things: (i) finance the working capital requirements of 965, which were and continued to be integral to the business of Aquila; and (ii) partially finance 965 to ensure that the Lands were not sold to another party as a result of certain enforcement proceedings commenced by HSBC Bank Canada.

4. Significant and irreconcilable differences have arisen between the Applicants – who are collectively the 100% voting shareholders of each of the Companies, the directors of 176 and, in the case of the Applicant Tom Trenerry, the sole director of Aquila and 965 – and the current day to day operational management of the Companies. There is a familial relationship between the Applicants and Randall James Hofer, an employee of Aquila who is responsible for Aquila’s day-to-day operations.
5. Mr. Hofer is the son-in-law of Tom and Donna Trenerry. Mr. Hofer has wrongfully arranged Aquila’s affairs in a manner which precludes the Applicants from having sufficient visibility into the activities and operations of Aquila. What is visible to the Applicants suggests that Aquila’s affairs have been mismanaged. Examples include the recent unjustified issuance of cheques from Aquila to Mr. Hofer personally and the ongoing failure of Aquila to pay rent to 965. Most significantly, Mr. Hofer has baselessly asserted that Aquila and 965 are truly owned by Mr. Hofer and that the Applicants are merely “figurehead” owners.
6. In an effort to improve their visibility of the business and affairs of Aquila, the Applicants engaged KPMG Inc. (“**KPMG**”) to communicate and meet with Mr. Hofer. Although a meeting was held and requests for information and documentation have been made, Mr. Hofer has failed or neglected to provide the information and transparency necessary to address the Applicants’ ongoing concerns.
7. The Applicants have assumed various significant debts and other financial obligations in connection with their ownership of Aquila and 965. As a result, they have significant financial exposure. In addition, the verifiable information obtained to-date indicates that Aquila may not have sufficient liquidity to meet its obligations as they are due and accruing due. As a director of Aquila, the Applicant, Tom Trenerry, has a legal duty to consider the interests of the stakeholders of Aquila, such as creditors, and cannot permit Aquila to continue to operate if there is no prospect of payment of amounts owing.
8. As a result of Mr. Hofer’s repeated refusal to cooperate, the Applicants do not have confidence that their interests can be protected, and Tom Trenerry’s legal obligations as a director appropriately discharged, without judicial intervention.

9. In order to properly address the interests of the Companies and their stakeholders, it is necessary and appropriate for this Honourable Court to appoint a receiver-manager in respect of the Companies.

Legal Principles

10. Pursuant to section 242(2) of the *Business Corporations Act*, RSA 2000, c B-9 (the "**BCA**"), the Court may make any interim or final order it thinks fit including, without limitation, and order appointing a receiver-manager if the Court is satisfied that the business or affairs of the corporation or any of its affiliates are or have been carried on or conducted in a manner that is oppressive or unfairly prejudicial to or that unfairly disregards the interests of any security holder, creditor, director or officer. In addition, the Court may order the appointment of a receiver under section 13(2) of the *Judicature Act*, R.S.A. 2000, c J-2 ("**JA**") if it is satisfied that it is just and equitable that a receiver be appointed.
11. The threshold test for conduct that qualifies as oppressive, unfairly prejudicial or unfairly disregards is one of fairness. The question that must be answered by the Court is whether the impugned conduct or action is unfair with respect to the interests of the Applicants. The Court's determination is a fact-specific one and may be made having regard to factors including the nature of the corporation, the nature of the relationship between the complainant and alleged oppressor, the expectations of the complainant, and the detriment to the interests of the complainant.
12. Furthermore, the words "just and equitable" have been interpreted as being elastic in their application, to permit the court to intervene to relieve against an injustice or inequity. Judicial intervention in granting a receivership order is often justified where there exists a justifiable lack of confidence among the members.
13. It is necessary and appropriate for the Court to order the appointment of a receiver over the current and future affairs, businesses, assets, undertakings and properties of the Companies. Mr. Hofer has carried on the business and affairs of Aquila in a manner that is oppressive and unfairly prejudicial to, and which unfairly disregards, the interests of the Applicants. As affiliated and highly integrated companies, it is necessary and appropriate that the receivership process include 965 and 176 as well. Alternatively, and

additionally, it is just and equitable in the circumstances that a receiver be appointed over Aquila, 965 and 176.

14. In support of this application, the Applicants are seeking to seal the Confidential Affidavit of Tom Trenerry, sworn October 7, 2019 (the "**Confidential Affidavit**") on the basis that it contains confidential information about the assets and property of Aquila and 965, which disclosure to the marketplace could cause irreparable harm to the realization of the assets of the Companies.

**Remedy sought:**

15. An Order, substantially in form attached hereto as Schedule "A", appointing KPMG as receiver-manager (the "**Receiver**") over the affairs, businesses, assets, undertakings and properties of Aquila, 965 and 176 pursuant to sections 242 of the *BCA* and section 13(2) of the *JA*, or in the alternative section 13(2) of the *JA* alone.
16. A declaration that Tom and Donna Trenerry are "complainants" for the purpose of section 242(1) of the *BCA*.
17. A declaration that, due to the conduct of Randall James Hofer, the business or affairs of Aquila and/or 965 in a manner that is oppressive or unfairly prejudicial to or that unfairly disregards the interest of Tom and Donna Trenerry in their capacity as director and/or shareholders of Aquila and 965, pursuant to section 242(2) of the *BCA*.
18. Damages against Randall James Hofer, including punitive damages, in an amount to be quantified.
19. An Order sealing the Confidential Affidavit.
20. An interim, *ex parte* Order to require that Randall James Hofer be prohibited from:
  - (a) disposing, damaging, destroying or encumbering any assets of Aquila;
  - (b) hiring or firing any employees of Aquila without the prior written consent of Tom Trenerry;

(c) terminating any contract or agreement to which Aquila is a party, without the prior written consent of Tom Trenerry; and

(d) incurring any individual financial obligation on behalf of Aquila in excess of \$1,500, and transactions in the aggregate in excess of \$5,000, without the prior written consent of Tom Trenerry;

which Order shall expire upon the hearing of the application scheduled to be heard on October 15, 2019 in respect of the appointment of a receiver – manager in respect of the Companies.

21. Such further and other relief as counsel may advise and this Honourable Court may see fit to grant.

**Affidavit or other evidence to be used in support of this application:**

22. Affidavit of Tom Trenerry, sworn October 7, 2019, to be filed; and

23. Confidential Affidavit of Tom Trenerry, sworn October 7, 2019.

**Applicable Acts and Regulations:**

24. *Business Corporations Act*, RSA 2000, c B-9, particularly sections 242 and 243 thereof;

25. *Judicature Act*, RSA 2000, c J-2, particularly sections 8, 13(2) and 17;

26. *Rules of Court*, Rules 1.2, 1.3, 1.4, 6.1, 6.2, 6.3 and 6.4; and

27. Such further and other acts and regulations as counsel may advise and this Honourable Court may permit.

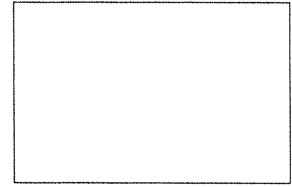
**WARNING**

You are named as a respondent because you have made or are expected to make an adverse claim in respect of this originating application. If you do not come to Court either in person or by your lawyer, the Court may make an order declaring you and all persons claiming under you to be barred from taking any further proceedings against the applicant(s) and against all persons claiming under the applicant(s). You will be bound by any order the Court makes, or another order might be given or other proceedings taken which the applicant(s) is/are entitled to make without any further notice to you. If you want to take part in the application, you or your lawyer must attend in Court on the date and at the time shown at the beginning of this form. If you

intend to give evidence in response to the application, you must reply by filing an affidavit or other evidence with the Court and serving a copy of that affidavit or other evidence on the applicant(s) a reasonable time before the application is to be heard or considered.

**SCHEDULE "A"**

Clerk's Stamp:



COURT FILE NUMBER

COURT

JUDICIAL CENTRE OF

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CALGARY

IN THE MATTER OF THE *BUSINESS  
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AND

IN THE MATTER OF THE RECEIVERSHIP OF  
965431 ALBERTA LTD.

AND

IN THE MATTER OF THE RECEIVERSHIP OF  
1768192 ALBERTA LTD.

APPLICANTS

TOM TRENERRY and DONNA TRENERRY

RESPONDENTS

AQUILA FABRICATION AND EQUIPMENT  
LTD., 965431 ALBERTA LTD., 1768192  
ALBERTA LTD. and RANDALL JAMES HOFER

DOCUMENT

**ORDER APPOINTING RECEIVER**

ADDRESS FOR SERVICE AND  
CONTACT INFORMATION OF  
PARTY FILING THIS DOCUMENT:

**Cassels Brock & Blackwell LLP**  
Suite 3810, Bankers Hall West  
888 3 Street SW  
Calgary, AB T2P 5C5

Attention: Jeffrey Oliver  
Phone: 403-351-2921  
Facsimile: 403-648-1151



File No.: 53374-1

DATE ON WHICH ORDER WAS PRONOUNCED    Tuesday, October 15, 2019

NAME OF JUDGE WHO MADE THIS ORDER        The Honourable Madam Justice B.E.C. Romaine

LOCATION OF HEARING                                Calgary, Alberta

**UPON THE APPLICATION** of Tom Trenerry, Donna Trenerry and 1768192 Alberta Ltd. (collectively, the "**Applicants**"); **AND UPON** having read the Originating Application and the Affidavit of Tom Trenerry sworn October 7, 2019; **AND UPON** it appearing just and equitable that a receiver-manager (the "**Receiver**") be appointed to manage the Property of Aquila Fabrication and Equipment Ltd. and 965431 Alberta Ltd. (together, the "**Companies**"); **AND UPON** it appearing that KPMG Inc. has consented to Act as the Receiver; **AND UPON** hearing counsel for the Applicants;

**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 242 of the *Business Corporations Act*, RSA 2000, c B-9 (the "**BCA**") and Section 13(2) of the *Judicature Act*, R.S.A. 2000, c J-2, KPMG Inc. ("**KPMG**") is hereby appointed Receiver, without security, of all of the Companies' current and future affairs, businesses, assets, undertakings and properties of every nature and kind whatsoever, and wherever situated, including all proceeds thereof (collectively, the "**Property**").

**RECEIVER'S POWERS**

3. In addition to the powers set forth in the *BCA*, the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Companies and 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;
- (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 Companies, 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 Companies;
- (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 Companies or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Companies and to exercise all remedies of the Companies in collecting such monies, including, without limitation, to enforce any security held by the Companies;
- (g) to settle, extend or compromise any indebtedness owing to or by the Companies;
- (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 Companies, for any purpose pursuant to this Order;

- (i) to undertake environmental or workers' health and safety assessments of the Property and operations of the Companies;
- (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 Companies, 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 \$250,000; 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*, R.S.A. 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, notwithstanding Section 191 of the Land Titles Act, RSA 2000, c. L-4, 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 Companies and not in its personal capacity;
- (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 Companies;
- (q) to enter into agreements with any trustee in bankruptcy appointed in respect of the Companies, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Companies;
- (r) assign the Companies (or any one of them) into bankruptcy without further Order of this Honourable Court;
- (s) to exercise any shareholder, partnership, joint venture or other rights which the Companies 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 (as defined below), including the Companies, and without interference from any other Person.

#### **DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER**

4. (i) The Companies, (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 Companies, 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 5 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 COMPANIES OR THE PROPERTY**

8. No Proceeding against or in respect of the Companies 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 Companies 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 8; and (ii) affect a Regulatory Body's investigation in respect of the Companies or an action, suit or proceeding that is taken in respect of the Companies 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.
9. Without limiting the generality of paragraph 8, the proceeding commenced under Court of Queen's Bench of Alberta Action No. 1910-000992, styled *Randall Hofer v. 1768192 Alberta Ltd., Tom Trenerry and Donna Trenerry*, is hereby stayed and suspended pending the earlier of: (i) the discharge of the Receiver over the Property; or (ii) further Order of this Court, provided however that the stay referenced in this paragraph shall not operate to stay the filing and service of the following documents within the time periods established under the *Alberta Rules of Court*, Alta Reg 124/2010, or such other time periods as may be mutually agreed to by the parties or ordered by the Court:

(a) any statements of defence to the statement of claim, third party claim(s) and counterclaim(s); and

(b) any third party claim(s) and/or counterclaim(s).

#### **NO EXERCISE OF RIGHTS OR REMEDIES**

10. 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 Companies 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, however, that nothing in this Order shall:

(a) empower the Companies to carry on any business that the Companies are 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 Companies from compliance with statutory or regulatory provisions relating to health, safety or the environment.

11. Nothing in this Order shall prevent any party from taking an action against the Companies 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**

12. 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 Companies, without written consent of the Companies and the Receiver or leave of this Court.

#### **CONTINUATION OF SERVICES**

13. All Persons having oral or written agreements or arrangements with the Companies or statutory or regulatory mandates for the supply of goods and/or services, 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 Companies 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 Companies or exercising any other remedy provided under such agreements or arrangements. The Companies shall 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 normal prices or charges for all such goods or services received after the date of this Order are paid by the Companies in accordance with normal payment practices of the Companies or such other practices as may be agreed upon by the supplier or service provider and each of the Companies and the Receiver, or as may be ordered by this Court.

#### **RECEIVER TO HOLD FUNDS**

14. 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. The Receiver shall not be required to pay interest on funds so deposited beyond any interest earned by the Receiver.

#### **EMPLOYEES**

15. Subject to employees' rights to terminate their employment, all employees of the Companies shall remain the employees of the Companies until such time as the Receiver, on the Companies' 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 *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 ("**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*, S.C. 2005, c.47 ("**WEPPA**").

16. Pursuant to clause 7(3)(c) of the *Personal Information Protection and Electronic Documents Act*, S.C. 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 Companies, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

#### **LIMITATION ON ENVIRONMENTAL LIABILITIES**

17.
  - (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 subparagraph (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**

18. Except for gross negligence or willful 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

19. The Receiver, counsel to the Receiver, and counsel to the Companies shall be paid their reasonable fees and disbursements, in each case, incurred at their standard rates and charges, calculated by multiplying the time spent on the matter by their standard hourly rates. The Receiver, counsel to the Receiver, and counsel to the Companies shall be entitled to the benefit of and are hereby granted a charge (the "**Receiver's Charge**") on the Property, as security for such fees and disbursements, incurred 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. The Receiver's Charge with respect to counsel for the Companies only secures reasonable fees and disbursements with respect to, or in preparation for, this Application.
20. The Receiver, its legal counsel, and counsel for the Companies on this Application shall pass their accounts from time to time, but in any event, not less than once in each year.
21. 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

22. 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 (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, 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.

23. 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.
24. 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.
25. 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.
26. The Receiver shall be allowed 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**

27. 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**

28. The Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

29. 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.
30. Allied Shortridge Civil Enforcement Agency Inc. shall immediately release to the Receiver the shares of 965431 Alberta Ltd., which are under seizure pursuant to a writ of enforcement registered in the Alberta personal property registry number 19062846671 (the "**Shares**"). The Receiver shall maintain possession and control of the Shares pending further order of this Court.
31. Nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Companies.
32. 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.
33. 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.
34. The Receiver shall establish and maintain a website in respect of these proceedings at [www.kpmg.ca/\\_\\_\\_\\_\\_](http://www.kpmg.ca/_____) 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. 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.

36. 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.

37. 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"

### SCHEDULE "A"

#### RECEIVER CERTIFICATE

CERTIFICATE NO. \_\_\_\_\_

AMOUNT \_\_\_\_\_

1. THIS IS TO CERTIFY that **[RECEIVER'S NAME]**, the Receiver (the "**Receiver**") of all of the assets, undertakings and properties of **[COMPANY'S NAME]** appointed by Order of the Court of Queen's Bench of Alberta (the "**Court**") dated the \_\_\_ day of \_\_\_\_\_, (the "**Order**") made in action number \_\_\_\_\_, 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 \$ \_\_\_\_\_ which 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 **[daily] [monthly not in advance on the \_\_\_ day of each month]** after the date hereof at a notional rate per annum equal to the rate of \_\_\_ per cent above the prime commercial lending rate of Bank of \_\_\_\_\_ 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, 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 ●.
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\_\_.

**[RECEIVER'S NAME]**, solely in its capacity as Receiver of the Property (as defined in the Order), and not in its personal capacity

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

Name:

Title: