

COURT FILE NUMBER

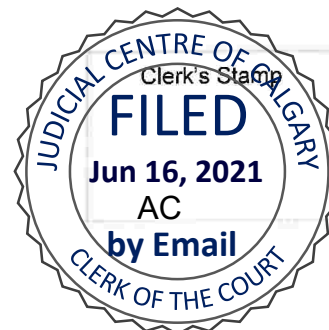
1901-14034

COURT

COURT OF QUEEN'S BENCH OF
ALBERTA

JUDICIAL CENTRE

CALGARY



602720

IN THE MATTER OF THE *BUSINESS*
CORPORATION 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. , 965431 ALBERTA
LTD., and 1768192 ALBERTA LTD.

APPLICANT

KPMG INC. IN ITS CAPACITY AS COURT
APPOINTED RECEIVER AND MANAGER
OF AQUILA FABRICATION AND
EQUIPMENT LTD., 965431 ALBERTA LTD.,
and 1768192 ALBERTA LTD.

DOCUMENT

**SALE APPROVAL AND VESTING ORDER
(Sale by Receiver)**

ADDRESS FOR SERVICE AND
CONTACT INFORMATION OF
PARTY FILING THIS DOCUMENT

MLT AIKINS LLP
Barristers and Solicitors
2100, 222 3rd Avenue S.W.
Calgary, Alberta T2P 0B4
Phone: 403.693.5420
Fax: 403.508.4349
Attention: Ryan Zahara
File: 0026931.00012

DATE ON WHICH ORDER WAS PRONOUNCED:

JUNE 15, 2021

LOCATION OF HEARING OR TRIAL:

CALGARY, ALBERTA

NAME OF JUDGE WHO MADE THIS ORDER:

JUSTICE B.E.C. ROMAINE

UPON THE APPLICATION of KPMG Inc. filed June 7, 2021 (the "**Application**") in its capacity as the Court-appointed receiver (the "**Receiver**") of all of the current and future assets, undertaking, and properties of every nature and kind whatsoever, and wherever situate, including all proceeds thereof, of Aquila Fabrication and Equipment Ltd. ("**Aquila**"), 965431 Alberta Ltd. ("**965**"), 1768192 Alberta ("**176**", together with Aquila and 965, the "**Debtors**"), for an Order approving the sale transaction between the Receiver and New City Development Ltd. dated May 12, 2021 for the property legally described s Plan 0521762; Block 1; Lot 2-3, excepting thereout all mines and minerals (the "**Transaction**"); **AND UPON HAVING READ** the Application, the Receivership Order granted by the Honourable Madam Justice Romaine on October 18, 2019 (the "**Receivership Order**"), the First Report of the Receiver dated January 13, 2020 (the "**First Report**"), the Confidential Supplement to the Receiver's First Report dated January 13, 2020 (the "**First Confidential Supplement**"), Second Report of the Receiver dated June 3, 2021 (the "**Second Report**"), the Confidential Supplement to the Receiver's Second Report dated June 3, 2021 (the "**Second Confidential Supplement**"), and the Affidavit of Service of Joy Mutuku sworn June 14, 2021; **AND UPON IT** appearing that all interested and affected parties have been served with notice of the Application; **AND UPON HEARING** the submissions of counsel for the Receiver and all other interested parties present;

IT IS HEREBY ORDERED AND DECLARED THAT:

SERVICE

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

APPROVAL OF THE TRANSACTION

2. The Transaction is hereby approved, and the execution of the Purchase and Sale Agreement (the "**Purchase Agreement**") dated May 12, 2021, entered into by the Receiver and New City Development Ltd. (the "**Purchaser**") is hereby authorized and approved, with such minor amendments as the Receiver may deem necessary. The Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction to the Purchaser (or its nominee).

VESTING OF PROPERTY

3. Upon the delivery of a Receiver's certificate to the Purchaser (or its nominee) substantially in the form set out in **Schedule "A"** hereto (the "**Receiver's Certificate**"), all of the Debtors' right, title and interest in and to the Purchased Assets listed in **Schedule "B"** and as described in the Purchase Agreement, shall vest absolutely in the name of the Purchaser (or its nominee), free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, caveats, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**") including, without limiting the generality of the foregoing:
 - a. any encumbrances or charges created by the Receivership Order;
 - b. all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Alberta), or any other personal property registry system;
 - c. any liens or claims of lien under the *Builders' Lien Act* (Alberta); and
 - d. those Claims listed in **Schedule "C"** hereto (all of which are collectively referred to as, the "**Encumbrances**", which term shall not include the Permitted Encumbrances as defined and set out in **Schedule "D"** hereto (the "**Permitted Encumbrances**"));

for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets other than the Permitted Encumbrances, are hereby expunged, discharged, and terminated as against the Purchased Assets.

4. Upon delivery of the Receiver's Closing Certificate, and upon filing of a certified copy of this Order, together with any applicable registration fees, all governmental authorities including those referred to below in this paragraph (collectively, "**Governmental Authorities**") are hereby authorized, requested and directed to accept delivery of such Receiver's Closing Certificate and certified copy of this Order as though they were originals and to register such transfers, interest authorizations, discharges and discharge

statements of conveyance as may be required to convey to the Purchaser (or its nominee) clear title to the Purchased Assets subject only to Permitted Encumbrances. Without limiting the foregoing:

a. the Registrar of Land Titles ("**Land Titles Registrar**") for the lands defined below shall and is hereby authorized, requested and directed to forthwith:

i. cancel existing Certificates of Title Nos. 052 133 189 and 052 133 189 +1 for those lands and premises municipally located at 5200 Blindman Drive, Red Deer County, AB T4S 2M4 and legally described as:

PLAN 0521762
BLOCK 1
LOT 2
EXCEPTING THEREOUT ALL MINES AND MINERALS
AREA: 1.706 HECTARES (4.22 ACRES) MORE OR LESS

- and-

PLAN 0521762
BLOCK 1
LOT 3
EXCEPTING THEREOUT ALL MINES AND MINERALS
AREA: 0.871 HECTARES (2.15 ACRES) MORE OR LESS

- ii. issue a new Certificate of Title for the Lands in the name of New City Development Ltd. (or its nominee) (the "**New Certificate of Title**");
- iii. transfer to the New Certificate of Title the existing instruments listed in **Schedule "D"**, to this Order, and to issue and register against the New Certificate of Title such new caveats, utility rights of ways, easements or other instruments as are listed in **Schedule "D"**; and
- iv. discharge and expunge the Encumbrances listed in **Schedule "C"** to this Order and discharge and expunge any Claims including Encumbrances (but excluding Permitted Encumbrances) which may be registered after the date of the Sale Agreement against the existing Certificate of Title to the Lands; and

- b. the Registrar of the Alberta Personal Property Registry (the "PPR Registrar") shall and is hereby directed to forthwith cancel and discharge any registrations at the Alberta Personal Property Registry (whether made before or after the date of this Order) claiming security interests (other than Permitted Encumbrances) in the estate or interest of the Debtors in any of the Purchased Assets which are of a kind prescribed by applicable regulations as serial-number goods.
5. In order to effect the transfers and discharges described above, this Court directs each of the Governmental Authorities to take such steps as are necessary to give effect to the terms of this Order and the Sale Agreement. Presentment of this Order and the Receiver's Closing Certificate shall be the sole and sufficient authority for the Governmental Authorities to make and register transfers of title or interest and cancel and discharge registrations against any of the Purchased Assets of any Claims including Encumbrances but excluding Permitted Encumbrances.
6. No authorization, approval or other action by and no notice to or filing with any governmental authority or regulatory body exercising jurisdiction over the Purchased Assets is required for the due execution, delivery and performance by the Receiver of the Sale Agreement.
7. Upon delivery of the Receiver's Closing Certificate together with a certified copy of this Order, this Order shall be immediately registered by the Land Titles Registrar notwithstanding the requirements of section 191(1) of the *Land Titles Act*, RSA 2000, c.L-7 and notwithstanding that the appeal period in respect of this Order has not elapsed. The Land Titles Registrar is hereby directed to 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.
8. For the purposes of determining the nature and priority of Claims, net proceeds from sale of the Purchased Assets (to be held in an interest bearing trust account by the Receiver) shall stand in the place and stead of the Purchased Assets from and after delivery of the Receiver's Closing Certificate and all Claims including Encumbrances (but excluding Permitted Encumbrances) shall not attach to, encumber or otherwise form a charge, security interest, lien, or other Claim against the Purchased Assets and may be

asserted against the net proceeds from sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale. Except as otherwise provided herein, unless otherwise ordered (whether before or after the date of this Order), the Receiver shall not make any distributions to creditors of net proceeds from sale of the Purchased Assets without further order of this Court, provided however the Receiver may apply any part of such net proceeds to repay any amounts the Receiver has borrowed for which it has issued a Receiver's Certificate pursuant to the Receivership Order.

9. Except as expressly provided for in the Sale Agreement or by section 5 of the *Alberta Employment Standards Code*, the Purchaser (or its nominee) shall not, by completion of the Transaction, have liability of any kind whatsoever in respect of any Claims against the Debtors.
10. Upon completion of the Transaction, the Debtors and all persons who claim by, through or under the Debtors in respect of the Purchased Assets, and all persons or entities having any Claims of any kind whatsoever in respect of the Purchased Assets, save and except for persons entitled to the benefit of the Permitted Encumbrances, shall stand absolutely and forever barred, estopped and foreclosed from and permanently enjoined from pursuing, asserting or claiming any and all right, title, estate, interest, royalty, rental, equity of redemption or other Claim whatsoever in respect of or to the Purchased Assets, and to the extent that any such persons or entities remain in the possession or control of any of the Purchased Assets, or any artifacts, certificates, instruments or other indicia of title representing or evidencing any right, title, estate, or interest in and to the Purchased Assets, they shall forthwith deliver possession thereof to the Purchaser (or its nominee).
11. The Purchaser (or its nominee) shall be entitled to enter into and upon, hold and enjoy the Purchased Assets for its own use and benefit without any interference of or by the Debtors, or any person claiming by, through or against the Debtors.

12. Immediately upon closing of the Transaction, holders of Permitted Encumbrances shall have no claim whatsoever against the Receiver.
13. The Receiver is directed to file with the Court a copy of the Receiver's Certificate, forthwith after delivery thereof to the Purchaser (or its nominee).
14. Pursuant to clause 7(3)(c) of the Personal Information Protection and Electronic Documents Act (Canada) and section 20(e) of the Alberta Personal Information Protection Act, the Receiver is authorized and permitted to disclose and transfer to the Purchaser (or its nominee) all human resources and payroll information in the Debtors' records pertaining to the Debtors' past and current employees. The Purchaser (or its nominee) shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use (of such information) to which the Debtors were entitled.
15. Notwithstanding:
 - a. the pendency of these proceedings;
 - b. any bankruptcy order issued pursuant to *the Bankruptcy and Insolvency Act*, R.S.C. 1985, C. B-3 (the "BIA") in respect of the Debtors; and
 - c. any assignment in bankruptcy made in respect of the Debtors;
 - d. the provisions of any federal or provincial statute;

the vesting of the Purchased Assets in the Purchaser (or its nominee) pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Debtors and shall not be void or voidable by creditors of the Debtors, nor shall it constitute nor be deemed to be a settlement, fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the BIA or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

16. The Receiver, the Purchaser (or its nominee), and any other interested party, shall be at liberty to apply for further advice, assistance and directions as may be necessary in order to give full force and effect to the terms of this Order and to assist and aid the parties in closing the Transaction.

MISCELLANEOUS MATTERS

17. This Order must be served only upon the Purchaser (or its nominee) and those interested parties attending or represented at the within Application and service 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 such documents.
18. Service of this Order on any party not attending the Application, other than the Purchaser (or its nominee), is hereby dispensed with.



The Honourable Justice B.E.C. Romaine
Justice of the Court of Queen's Bench of Alberta

SCHEDULE "A"

Form of Receiver's Certificate

COURT FILE NUMBER 1901-14034

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

IN THE MATTER OF THE *BUSINESS CORPORATION 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. , 965431 ALBERTA LTD., and 1768192 ALBERTA LTD.

APPLICANT KPMG INC. IN ITS CAPACITY AS COURT APPOINTED RECEIVER AND MANAGER OF AQUILA FABRICATION AND EQUIPMENT LTD., 965431 ALBERTA LTD., and 1768192 ALBERTA LTD.

DOCUMENT **RECEIVER'S CERTIFICATE**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT MLT AIKINS LLP
Barristers and Solicitors
2100, 222 3RD Avenue S.W.
Calgary, Alberta T2P 0B4
Phone: 403.693.5420
Fax: 403.508.4349
Attention: Ryan Zahara
File: 0026391.00012

RECITALS

- A. Pursuant to an Order of the Honourable Justice Romaine of the Court of Queen's Bench of Alberta (the "**Court**") dated October 18, 2019, KPMG Inc. was appointed as the receiver (the "**Receiver**") of all of the current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate, including all

proceeds thereof, of Aquila Fabrication and Equipment Ltd. ("**Aquila**"), 965431 Alberta Ltd. ("**965**"), 1768192 Alberta ("**176**", together with Aquila and 965, the "**Debtors**").

- B. Pursuant to an Order of the Honourable Justice C.M. Jones of the Court dated June 15, 2021 (the "**Sale Approval and Vesting Order**"), the Court approved the Purchase and Sale Agreement dated March 12, 2021 (the "**Purchase Agreement**") between the Receiver and New City Development Ltd. (the "**Purchaser**") and provided for the vesting in the Purchaser (or its nominee) of the Debtors' right, title and interest in and to the Purchased Assets (as such term is defined in the Sale Approval and Vesting Order), which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Receiver to the Purchaser (or its nominee) of a certificate confirming: (i) the payment by the Purchaser (or its nominee) of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing as set out in the Purchase Agreement have been satisfied or waived by the Receiver and the Purchaser (or its nominee) (as applicable); and (iii) the Transaction (as such term is defined in the Sale Approval and Vesting Order) has been completed to the satisfaction of the Receiver.
- C. Unless otherwise indicated herein, capitalized terms have the meanings set out in the Purchase Agreement.

THE RECEIVER CERTIFIES the following:

1. The Purchaser (or its nominee) has paid and the Receiver has received the Purchase Price for the Purchased Assets payable on the date of closing of the Transaction pursuant to the Purchase Agreement;
2. The conditions to closing as set out in the Purchase Agreement have been satisfied or waived by the Receiver and the Purchaser (or its nominee) (as applicable); and
3. The Transaction has been completed to the satisfaction of the Receiver.

4. This Certificate was delivered by the Receiver at _____ on the ____ day of _____, 2021.

KPMG Inc., in its capacity as Court-appointed Receiver of AQUILA FABRICATION AND EQUIPMENT LTD., 965431 ALBERTA LTD., and 1768192 ALBERTA LTD., and not in its personal capacity or corporate capacity,

Per: _____

Name:

Title:

SCHEDULE "B"

Purchased Assets

Lands

Municipal Address:

5200 Blindman Drive
Red Deer County, AB T4S 2M4

Description:

± 17,825 square feet on 6.37 acres

Legal Description:

PLAN 0521762
BLOCK 1
LOT 2
EXCEPTING THEREOUT ALL MINES AND MINERALS
AREA: 1.706 HECTARES (4.22 ACRES) MORE OR LESS

- and -

PLAN 0521762
BLOCK 1
LOT 3
EXCEPTING THEREOUT ALL MINES AND MINERALS
AREA: 0.871 HECTARES (2.15 ACRES) MORE OR LESS

SCHEDULE "C"

Encumbrances

Registration Number	Date	Description
132 385 533	27/11/201	Mortgage - 1768192 Alberta Ltd.
142 139 627	13/05/2014	Mortgage – Servus Credit Union Ltd.
142 139 628	13/05/2014	Caveat – Assignment of Rents and Leases Servus Credit Union Ltd.
142 139 629	13/05/2014	Postponement - 1768192 Alberta Ltd.

SCHEDULE "D"

Permitted Encumbrances

Title#: 052 133 189

Registration Number	Date	Description
882 029 458	11/02/1988	CAVEAT RE : TRANSFER OF LAND CAVEATOR - HER MAJESTY THE QUEEN IN RIGHT OF ALBERTA
962 133 087	29/05/1996	UTILITY RIGHT OF WAY GRANTEE - ATCO GAS AND PIPELINES LTD.
992 027 001	01/02/1999	DISCHARGE OF UTILITY RIGHT OF WAY 962133087 PARTIAL
052 133 256	11/04/2005	EASEMENT AS TO PORTION OR PLAN:0521763 "OVER LOT 3 BLOCK 1 PLAN 0521762"

Title#: 052 133 189 +1

Registration Number	Date	Description
792 189 477	09/08/1979	UTILITY RIGHT OF WAY GRANTEE - ATCO GAS AND PIPELINES LTD. " AFFECTS PART OF THIS TITLE "
882 029 458	11/02/1988	CAVEAT RE : TRANSFER OF LAND CAVEATOR - HER MAJESTY THE QUEEN IN RIGHT OF ALBERTA
052 133 256	11/04/2005	EASEMENT AS TO PORTION OR PLAN:0521763 "FOR BENEFIT OF LOT 2 BLOCK 1 PLAN 0521762"