

COURT FILE NUMBER	1901 – 06628
COURT	COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE	CALGARY
PLAINTIFF	ALBERTA TREASURY BRANCHES
DEFENDANTS	EAGLES QUAY PROPERTIES INC., FRANK LAYTON, and CAROL LAYTON
APPLICANT	BDO CANADA LIMITED. in its capacity as the Court-appointed Receiver of EAGLES QUAY PROPERTIES INC.
DOCUMENT	<b>APPLICATION (SALE APPROVAL AND VESTING ORDER, CLOSING PROCESS ORDER AND ADVICE AND DIRECTIONS)</b>
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	MLT AIKINS LLP Barristers and Solicitors 2100, 222 3 <sup>rd</sup> Avenue S.W. Calgary, Alberta T2P 0B4 Phone: 403.693.5420/4349 Fax: 403.508.4349 Attention: Ryan Zahara/Catrina Webster <a href="mailto:RZahara@mltaikins.com">RZahara@mltaikins.com</a> <a href="mailto:CWebster@mltaikins.com">CWebster@mltaikins.com</a> File: 0033124.00012

**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:	August 19, 2020
Time:	10:00 am
Where:	Calgary Courts Centre, 601 – 5 <sup>th</sup> Street SW, Calgary AB
Before Whom:	The Honourable Justice C.M. Jones

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. BDO Canada Limited, formerly Hardie & Kelly Inc., in its capacity as the court-appointed receiver and manager (the “**Receiver**”) of all current and future assets, undertakings and property (the “**Property**”) of Eagles Quay Properties Inc. (the “**Debtor**” or “**EQPI**”), seeks an order (the “**Order**”) substantially in the form attached hereto as **Schedule “A”**:
  - a) abridging the time for service of this application (the “**Application**”), if necessary, declaring that this Application is properly returnable, and that further service of this Application is hereby dispensed with;
  - b) approving the actions, conduct, and activities of the Receiver, as outlined in the Second Report of the Receiver, dated August 12, 2020 (the “**Second Report**”) and the Confidential Supplement to the Second Report (the “**Confidential Supplement**”) dated August 12, 2020;
  - c) authorizing the Receiver to accept the offer to purchase (the “**Sale**”) from Shauna and Mike Garrow (collectively, the “**Purchaser**”) for the lot legally described as: Lot 3 (Legal description 0740786; Block 1, Lot 3)(the “**Property**”);
  - d) approving the Sale of the Property to the Purchaser;
  - e) prospectively authorizing the Receiver to accept an offer or offers to purchase by private sale, any or all of the unsold subdivided lots (the “**Unsold Lots**”) located within the subdivision owned by the Debtor and known as The Properties of Eagles Quay (Phase I), provided that the sale price for each Unsold Lot is at least the recommended minimum transaction value (the “**MTV**”) proposed by the Receiver, in the Confidential Supplement to the Second Report (the “**Confidential Supplement**”) dated August 11, 2020 and is otherwise acceptable to the Receiver having regard to the value for such Unsold Lots and prior sales of similar units, with consideration to the current market conditions, and provided that all other terms of the offers are, in the Receiver’s sole opinion, in the best interest of the stakeholders of the Debtor;
  - f) authorizing the execution of an agreement or agreements of purchase and sale (each agreement referred to as a “**Purchase Agreement**”) in respect of each Unsold Lot by the Receiver, as vendor, and the purchaser of each Unsold Lot (each purchaser hereinafter referred to as the “**Purchaser**”);

- g) approving the closing process order for additional sale transactions (each such transaction a "**Transaction**") in respect of the Unsold Lots; and
- h) providing that, upon delivery by the Receiver to the Purchaser of a Receiver's Certificate, all of the Debtor's right, title, and interest in and to the Unsold Lots described in each applicable Purchase Agreement (the "**Purchased Properties**") will vest in and to the applicable Purchaser, free and clear of any and all Claims and Encumbrances;
- i) providing advice and directions to the Receiver in respect of the appointment of the developer (the "**Developer**") and the architectural consultant (the "**Architectural Consultant**") named under the restrictive covenant (the "**RC**") registered as instrument number 082064434; and
- j) granting such other and further relief as the circumstances may require and as this Honourable Court shall deem appropriate.

#### **Grounds for Making the Application:**

##### **A. Background**

2. EQPI is a company incorporated pursuant to the laws of Alberta. EQPI operated in the real estate industry and was located in Sylvan Lake, Alberta.
3. EQPI's substantive assets are 11 individual real-estate lots (the "**Lots**") in a fully serviced development located on the northwest shores of Sylvan Lake, Alberta.
4. On March 5, 2019, the Receiver was appointed the receiver and manager over all of the Property of EQPI by Order of Justice K.G. Nielsen of the Alberta Court of Queen's Bench (the "**Receivership Order**").
5. Pursuant to sections 3(k) and (l) of the Receivership Order, the Receiver is authorized to, among other things, market any or all of the Property and sell the Property or any parts thereof with the approval of this Court.
6. In an order filed on May 16, 2019 (the "**Sales Process Order**"), Justice C.M. Jones approved the Receiver's proposed sale and listing process (the "**Listing Terms**"), as set

out in the First Report of the Receiver, dated May 6, 2019 (the “**First Report**”). The Sales Process Order also provided for the engagement by the Receiver of Trilliant Real Estate Ltd. as listing agent (the “**Listing Agent**”) for the Lots.

7. The Listing Terms require the Receiver to return to this Honourable Court to obtain an order approving a sale and the vesting of any of the Property to a successful bidder.

#### **B. Sales Process and Closing Process Order**

8. The Listing Agent, as described in more detail in the Confidential Supplement, has been engaged and has listed and marketed the Lots for sale for a significant period of time.
9. The Listing Agent has contacted a number of parties and a large number of parties have viewed the listings on the Listing Agent’s website.
10. The Receiver received an offer to purchase a Lot from the Purchaser and is now seeking approval of that Sale.
11. The Purchaser was sourced through the Listing Agent’s marketing of the Property.
12. The Receiver is of the view that the Property has been exposed for sale to the market for a significant amount of time and that the transaction contemplated by the Sale represents the highest realization value to stakeholders which is available in the circumstances.
13. The Receiver is also seeking approval of the closing process, as more fully described in the Second Report, to allow it to close sales of any Unsold Lots without filing and serving an application for each sale on the Service List but rather by applying *ex parte* to the Court to obtain a sale approval and vesting order for each of the unsold lots.

#### **C. Sealing of Confidential Supplement and Certain Portions of the Appendices to the Second Report**

14. The Confidential Supplement contains confidential information with respect to the proposed Sale and the MTV under a Purchase Agreement, as well as information with respect to the appraisal the Receiver obtained regarding the appraised value of the Property. The Confidential Supplement thus contains commercially sensitive information and

documentation and the Receiver is seeking to have that information sealed on the Court record until such time as the final sale of all of the Lots is completed.

15. As well certain of the correspondence attached as appendices to the Second Report also contain commercially sensitive information regarding the value of the Lots and the Receiver is asking that the redactions to those appendices be sealed on the Court record until such time as the final sale of all of the Lots is completed.
16. There will be a negative impact and significant potential prejudice to stakeholders in the event such confidential information and documentation were disclosed to the public and the transaction contemplated by the Sale were to not close, the MTV underlying the omnibus sale approval and vesting order be disclosed to the public, and the amount of the purchase price for the Sale of the Property was disclosed.

#### **D. Approval of Activities of the Receiver to Date**

17. All of the actions of the Receiver and its legal counsel in the course of the administration of the receivership of EQPI as described in the Second Report are reasonable and appropriate in the circumstances.
18. Such further and other grounds as counsel may advise and this Honourable Court may permit.

#### **E. Advice and Directions**

19. Katherine Ball is appointed as the architectural consultant under the RC. Ms. Ball has not responded to numerous attempts to contact her in her role as the Architectural Consultant. The Receiver is unable to get clarity on whether Ms. Ball still acts in any capacity as the Architectural Consultant.
20. Frank Layton and Carol Layton are named as the Developer in the RC and Architectural Guidelines. The Receiver believes that this role should properly have been transferred to EQPI upon its acquisition of all of EQPI properties on December 5, 2011.
21. The Receiver has had significant difficulties communicating with Mr. Layton in his capacity as the owner of EQPI, a homeowner in the EQPI development, the Developer

and in his purported role acting as the architectural consultant. The Receiver believes that the various roles that Mr. Layton act under place him in a conflict of interest in respect of facilitating the application of the RC and the Architectural Guidelines as well as the purchase of the Unsold Lots.

22. The Receiver, and the Listing Agent, have had difficulty getting timely and sufficient responses from Mr. Layton, both in his purported capacity as architectural consultant and as the owner of EQPI.
23. The Receiver and the Agent have attempted on a number of instances to get clarification on the application and interpretation of the architectural guidelines (the “**AGs**”) attached to the RC. The Receiver and the Agent have either received no responses from Ms. Ball or limited or unhelpful responses from Mr. Layton in respect of their inquiries.
24. The Receiver believes that if Mr. Layton does in fact hold the position as architectural consultant and Developer this will have a significant negative impact on the value to be obtained for the Unsold Lots due to the uncertainty created by Mr. Layton’s lack of cooperation and failure to respond in a timely and fulsome fashion to inquiries from the Receiver and the Listing Agent.
25. The Receiver is seeking advice and directions on replacing either Ms. Ball or Mr. Layton as the architectural consultant with an independent third-party who is described in more detail in the Second Report, or, alternatively, obtaining direction from the Court in establishing parameters surrounding the timelines under which the Architectural Consultant must respond to inquiries from purchasers of Unsold Lots.
26. The Receiver is also seeking to replace Frank Layton and Carol Layton as the Developer and substitute EQPI as the Developer under the RC and Architectural Guidelines.
27. The Receiver’s proposal to address the issues surrounding Mr. Layton’s role as architectural consultant and Developer has been formulated to allow the restrictive covenant provisions to remain unchanged while providing certainty to potential purchasers that if they purchase an Unsold Lot they will ultimately be able to develop

that Unsold Lot on a reasonable timeline and a reasonable basis in accordance with the terms of the RC and the Architectural Guidelines.

**Material or Evidence To Be Relied Upon:**

- a) The First Report of the Receiver, dated May 6, 2019, filed;
- b) The Confidential Supplement to the First Report dated May 6, 2019;
- c) The Second Confidential Supplement to the First Report of the Receiver dated May 16, 2019;
- d) The Second Report of the Receiver, dated August 12, 2020;
- e) The Confidential Supplement to the Second Report of the Receiver, dated August 12, 2020;
- f) The Sales Process Order granted by Justice C.M. Jones on May 16, 2019;
- g) The Receivership Order granted by Justice K.G. Nielsen on March 5, 2019;
- h) All pleadings, affidavits and other materials filed in this action;
- i) The inherent jurisdiction of this Honourable Court to control its own process; and
- j) Such further and other material as counsel may advise and this Honourable Court may permit.

**Applicable Rules:**

- a) Rules 6.47 (a), (d), (e) and (f), 11.27 and 13.5 of the Alberta *Rules of Court*.

**Applicable Acts and Regulations:**

- a) The *Bankruptcy and Insolvency Act*, R.S.C. 1985 c. B-3, as amended, including sections 243 and 250.

**How the Application is Proposed to be Heard or Considered:**

- a) Via webex hearing before the Honourable Justice C.M. Jones.

**WARNING TO THE RESPONDENT:**

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	1901-06628
COURT	COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE	CALGARY
PLAINTIFF	ATB FINANCIAL
DEFENDANT	EAGLES QUAY PROPERTIES INC., FRANK LAYTON and CAROL LAYTON
APPLICANT	BDO CANADA LIMITED in its capacity as the Court- appointed Receiver of EAGLES QUAY PROPERTIES INC.
DOCUMENT	<b>SALE APPROVAL AND VESTING ORDER (Sale by Receiver)</b>
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	MLT AIKINS LLP Barristers and Solicitors 2100, 222 3 <sup>rd</sup> Avenue S.W. Calgary, Alberta T2P 0B4 Phone: 403.693.5420/4347 Fax: 403.508.4349 Attention: Ryan Zahara/Catrina Webster <a href="mailto:RZahara@mltaikins.com">RZahara@mltaikins.com</a> <a href="mailto:CWebster@mltaikins.com">CWebster@mltaikins.com</a> File: 0033124.00012

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<b>DATE ON WHICH ORDER WAS PRONOUNCED:</b>	<b>AUGUST 19, 2020</b>
<b>LOCATION OF HEARING OR TRIAL:</b>	<b>CALGARY, ALBERTA</b>
<b>NAME OF JUDGE WHO MADE THIS ORDER:</b>	<b>HONOURABLE JUSTICE C.M. JONES</b>

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**UPON THE APPLICATION** of BDO Canada Limited, formerly Hardie & Kelly Inc., filed on August 12, 2020 (the "**Application**") in its capacity as the Court-appointed receiver (the "**Receiver**") of the current and future assets, undertakings, and properties of every nature and kind whatsoever, and wherever situate, including the proceeds thereof, of Eagles Quay Properties Inc. ("**EPQI**" or the "**Debtor**"), for an Order approving the sale of the property (the "**Property**" or the "**Purchased Assets**") set out in an offer of purchase and sale (the "**Purchase Agreement**") from Shauna Garrow and Mike Garrow (collectively, the "**Purchaser**");

**AND UPON HAVING READ** the Application, the Receivership Order granted on March 5, 2019 by Justice K.G. Nielsen (the "**Receivership Order**"), the Sales Process Order granted on May 16, 2019 Justice C.M. Jones, the Second Report of the Receiver dated August 12, 2020 (the "**Second Report**"), the Confidential Supplement to the Second Report dated August 12, 2020 (the "**Confidential Supplement**") and the Affidavit of Service of Joy Mutuku sworn August 12, 2020; **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. The time for service of the notice of Application for this Order is hereby abridged if necessary, service thereof is deemed good and sufficient, and this Application is properly returnable today.

**APPROVAL OF CONDUCT**

2. The actions, conduct, and activities of the Receiver, as outlined in the Second Report and the Confidential Supplement are hereby approved.

**APPROVAL OF TRANSACTION**

3. The purchase of the Property by the Purchaser is hereby approved.
4. The Transaction is hereby approved and execution of the Purchase Agreement by the Receiver is hereby prospectively 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 completion of the Transaction and sale of the Property.

**VESTING OF PROPERTY**

5. Upon delivery of the Receiver's certificate to the Purchaser (or its nominee) substantially in the form set out in **Schedule "A"** hereto, all of the Debtor's right, title and interest in

and to the Property, 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 caveats, security interests, hypothecs, pledges, mortgages, liens, trusts or deemed trusts, reservations of ownership, royalties, options, rights of pre-emption, privileges, interests, assignments, actions, judgements, executions, levies, taxes, writs of enforcement, charges, or other claims, whether contractual, statutory, financial, monetary or otherwise, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, "**Claims**") including, without limiting the generality of the foregoing:

- a) any encumbrances or charges created by the Receivership Order;
- b) any 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);

(all of which are collectively referred to as the "**Encumbrances**", which term shall not include the permitted encumbrances, caveats, interests, easements, and restrictive covenants listed in **Schedule "B"** hereto (collectively, "**Permitted Encumbrances**");

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

6. The Transaction is hereby approved and ratified and it is hereby declared that the Transaction is commercially reasonable.
7. Upon delivery of the Receiver's 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 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**") shall and is hereby authorized, requested and directed to proceed in accordance with the directions set out in **Schedule "B"** hereto forthwith and shall do as follows:
    - (i) cancel existing Certificates of Title for the Purchased Property;
    - (ii) issue a new Certificate of Title for the Lands in the name of the Purchaser (or its nominee);
    - (iii) transfer to the New Certificate of Title the existing instruments listed in **Schedule "B"**, 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 "B"**; and
    - (iv) discharge and expunge the Encumbrances and expunge any Claims including Encumbrances (but excluding Permitted Encumbrances) which may be registered after the date of the Purchase Agreement against the existing Certificate of Title to the Lands;
  - 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 Debtor in any of the Purchased Assets which are of a kind prescribed by applicable regulations as serial-number goods.
8. 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 Purchase Agreement. Presentment of this Order and the Receiver's 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.

9. 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 Purchase Agreement.
10. Upon delivery of the Receiver's 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 Debtor and not in its personal capacity.
11. 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 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. 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.
12. Except as expressly provided for in the Purchase 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 Debtor.

13. Upon completion of the Transaction, the Debtor and all persons who claim by, through or under the Debtor 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).
14. 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 Debtor, or any person claiming by, through or against the Debtor.
15. Immediately upon closing of the Transaction, holders of Permitted Encumbrances shall have no claim whatsoever against the Receiver.
16. 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).
17. 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 Debtor's records pertaining to the Debtor's 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 Debtor was entitled.

## MISCELLANEOUS MATTERS

18. Notwithstanding:

- a) the pendency of these proceedings and any declaration of insolvency made herein;
- b) the pendency of any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c.B-3, as amended (the "**BIA**"), in respect of the Debtor, and any bankruptcy order issued pursuant to any such applications;
- c) any assignment in bankruptcy made in respect of the Debtor; and
- 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 Debtor and shall not be void or voidable by creditors of the Debtor, nor shall it constitute nor be deemed to be a transfer at undervalue, settlement, fraudulent preference, assignment, fraudulent conveyance, 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.

19. The Receiver, the Purchaser (or its nominee) and any other interested party, shall be at liberty to apply for further advice, assistance and direction 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.

20. This Honourable Court hereby requests the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in any of its provinces or territories or in any foreign jurisdiction, to act in aid of and to be complimentary to this Court in carrying out the terms of this Order, 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 order and to provide such assistance to the Receiver, as an officer of the Court, as may



be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

21. 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;
- (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;
- (iv) the Purchaser or the Purchaser's solicitors; and

b) Posting a copy of this Order on the Receiver's website at:

<https://relieffromdebt.ca/eagles-quay/>

and service on any other person is hereby dispensed with.

22. 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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The Honourable Justice C.M. Jones  
Justice of the Court of Queen's Bench of Alberta

## SCHEDULE "A"

### Form of Receiver's Certificate

COURT FILE NUMBER	1901 - 06628
COURT	COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE	CALGARY
PLAINTIFF	ATB FINANCIAL
DEFENDANT	EAGLES QUAY PROPERTIES INC., FRANK LAYTON, and CAROL LAYTON
APPLICANT	BDO CANADA LIMITED., in its capacity as receiver and manager of EAGLES QUAY PROPERTIES INC.
DOCUMENT	<b>RECEIVER'S CERTIFICATE</b>
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	MLT AIKINS LLP Barristers and Solicitors 2100, 222 3 <sup>rd</sup> Avenue S.W. Calgary, Alberta T2P 0B4 Phone: 403.693.5420 Fax: 403.508.4349 Attention: Ryan Zahara/Catrina Webster File: 0033124.00017

### RECITALS

- A. Pursuant to an Order of the Honourable Justice K.G. Nielsen of the Court of Queen's Bench of Alberta (the "**Court**") dated March 5, 2019, BDO Canada Limited (formerly Hardie & Kelly Inc.), was appointed as the receiver (the "**Receiver**") of the undertakings, property and assets of Eagles Quay Properties Inc. (the "**Debtor**").
- B. Pursuant to an Order of the Court granted by the Honourable Justice C.M. Jones dated August 19, 2020, the Court prospectively approved the agreement of purchase and sale (the "**Purchase Agreement**") between the Receiver and future purchasers (the "**Purchasers**") and provided for the vesting in the Purchaser of the Debtor's right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Receiver to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing as set out in 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 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 \_\_\_\_\_, 2020.

**BDO Canada Limited (formerly Hardie & Kelly Inc.), in its capacity as Court-appointed Receiver of Eagles Quay Properties Inc., and not in its personal or corporate capacity,**

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

**Name:**

**Title:**

**SCHEDULE "B"**

**DIRECTIONS TO THE REGISTRAR OF LAND TITLES ALBERTA**

Upon receipt of a transfer of land from BDO Canada Limited., in its capacity as the Court-appointed receiver of Eagles Quay Properties Inc. (the "**Transfer of Land**"), the Registrar of Land Titles of Alberta (the "**Registrar**") shall immediately do the following with respect to the lands legally described as:

Legal description 0740786; Block 1, Lot 3

1. Immediately discharge the following encumbrances, liens and interests from the Lands:
  - (a) [Identify and list encumbrances to be removed]
2. Maintain the following encumbrances, liens and interest in the Lands (the "**Permitted Encumbrances**"):
  - (a) [Identify and list permitted encumbrances]
3. Accept and register the Transfer of Land, cancel the following existing Certificate of Title Numbers for the Lands:
  - (a) [Identify and list the Certificates of Title to be cancelled]
4. Issue new Certificate(s) of Title for the Lands in the name(s) of the Purchaser(s).



COURT FILE NUMBER	1901-06628
COURT	COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE	CALGARY
PLAINTIFF	ATB FINANCIAL
DEFENDANT	EAGLES QUAY PROPERTIES INC., FRANK LAYTON and CAROL LAYTON
APPLICANT	BDO CANADA LIMITED in its capacity as the Court- appointed Receiver of EAGLES QUAY PROPERTIES INC.
DOCUMENT	<b>CLOSING PROCESS ORDER</b>
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	MLT AIKINS LLP Barristers and Solicitors 2100, 222 3 <sup>rd</sup> Avenue S.W. Calgary, Alberta T2P 0B4 Phone: 403.693.5420/4347 Fax: 403.508.4349 Attention: Ryan Zahara/Catrina Webster <a href="mailto:RZahara@mltaikins.com">RZahara@mltaikins.com</a> <a href="mailto:CWebster@mltaikins.com">CWebster@mltaikins.com</a> File: 0033124.00012

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<b>DATE ON WHICH ORDER WAS PRONOUNCED:</b>	<b>AUGUST 19, 2020</b>
<b>LOCATION OF HEARING OR TRIAL:</b>	<b>CALGARY, ALBERTA</b>
<b>NAME OF JUDGE WHO MADE THIS ORDER:</b>	<b>HONOURABLE JUSTICE C.M. JONES</b>

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**UPON THE APPLICATION** of BDO Canada Limited, formerly Hardie & Kelly Inc., filed on August 12, 2020 (the "**Application**") in its capacity as the Court-appointed receiver (the "**Receiver**") of the current and future assets, undertakings, and properties of every nature and kind whatsoever, and wherever situate, including the proceeds thereof, of Eagles Quay Properties Inc. ("**EPQI**" or the "**Debtor**"), for an Order approving the closing process for certain unsold lots of EQPI (the "**Unsold Lots**" or the "**Property**") provided the minimum transaction value is obtained by the Receiver for the Property;

**AND UPON HAVING READ** the Application, the Receivership Order granted on March 5, 2019 by Justice K.G. Nielsen (the "**Receivership Order**"), the Sales Process Order granted

on May 16, 2019 Justice C.M. Jones, the Second Report of the Receiver dated August 12, 2020 (the “**Second Report**”), the Confidential Supplement to the Second Report dated August 12, 2020 (the “**Confidential Supplement**”) and the Affidavit of Service of Joy Mutuku sworn August 12, 2020; **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:**

**APPROVAL OF CLOSING PROCESS FOR UNSOLD LOTS**

1. The Receiver is hereby authorized to close the purchase and sale (the “**Sale**”) of any of the Unsold Lots for at least the Minimum Transaction Value (as that term is defined in the Confidential Supplement) by applying to Court for a sale approval and vesting order on an *ex parte* basis.
2. No further notice or service of the application for a sale approval and vesting order for any of the Unsold Lots needs to be provided to any other party.
3. The Receiver will continue to hold in trust any proceeds received from any Sales until such time as it applies for an interim distribution or distribution order from this Honourable Court.
4. The Closing Process as outlined in paragraphs [28-30] of the Second Report is hereby approved.

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**The Honourable Justice C.M.  
Jones Justice of the Court of  
Queen’s Bench of Alberta**





COURT FILE NUMBER 1901-06628  
COURT COURT OF QUEEN'S BENCH OF ALBERTA  
JUDICIAL CENTRE CALGARY

Clerk's Stamp

APPLICANT BDO CANADA LIMITED formerly HARDIE & KELLY INC. IN ITS CAPACITY AS COURT APPOINTED RECEIVER AND MANAGER OF EAGLES QUAY PROPERTIES INC.

**DOCUMENT**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

**SEALING ORDER**

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: 0033124.00012

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**DATE ON WHICH THIS ORDER WAS PRONOUNCED: AUGUST 19, 2020**  
**LOCATION AT WHICH ORDER WAS MADE: CALGARY, ALBERTA**  
**NAME OF THE JUDGE WHO MADE THIS ORDER: HONOURABLE JUSTICE C.M. JONES**

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**UPON THE APPLICATION** of BDO Canada Limited formerly Hardie & Kelly Inc. filed August 12, 2020 (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 Eagles Quay Properties Inc. (the "**Debtor**"), for an Order approving the sale transaction approving the Closing Process Order and Sealing certain confidential information; **AND UPON HAVING READ** the Application, the Receivership Order granted by the Associate Chief Justice Nielsen on March 5, 2019 (the "**Receivership Order**"), the Second Report of the Receiver dated August 12, 2020 (the "**Second Report**"), the Confidential Supplement to the Receiver's Second Report dated August 12, 2020 (the "**Confidential Supplement**"), and the Affidavit of Service of Danielle Christensen sworn [●], 2020; **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 THAT:**

1. The redactions to the Appendices to the Second Report are approved and hereby sealed on the Court file until the Receiver's last Receiver's Certificate is filed in accordance with paragraph 2(ii).
2. The clerk of the Court is hereby directed to seal the Confidential Supplement on the Court file until the earlier of:
  - i) An Order of this Court directs that the Confidential Supplement be filed in this Action, and
  - ii) A Sale of the last of the Debtor's assets (the "**Assets**") by the Receiver has closed, 60 days has expired and the Receiver files a receiver's certificate with the Clerk of the Court confirming a sale of the last of the Assets has closed. The Clerk of the Court is hereby directed to seal the Confidential Supplement in an envelope setting out the style of cause in the within proceedings and labelled:

**THIS ENVELOPE CONTAINS A CONFIDENTIAL DOCUMENT. THIS CONFIDENTIAL DOCUMENT IS SEALED ON COURT FILE ON 1901-06628 PURSUANT TO THE ORDER ISSUED BY JUSTICE C.M. JONES ON AUGUST 12, 2020. THIS CONFIDENTIAL DOCUMENT IS NOT TO BE ACCESSED BY ANY PERSON UNTIL EARLIER OF AN ORDER OF THE COURT DIRECTING THAT THIS CONFIDENTIAL DOCUMENT BE FILED AND 60 DAYS AFTER THE FILING OF A FINAL RECEIVER'S CERTIFICATE FROM BDO CANADA LIMITED., IN ITS CAPACITY AS RECEIVER OF THE DEBTOR, CONFIRMING THAT THE CONFIDENTIAL DOCUMENT MAY BE FILED.**

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**THE HONOURABLE MR. JUSTICE C.M. JONES  
JUSTICE OF THE COURT OF QUEEN'S BENCH  
OF ALBERTA**