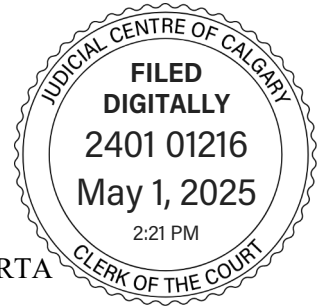


Clerk's Stamp

COURT FILE NUMBER 2401-01216  
COURT COURT OF KING'S BENCH OF ALBERTA  
JUDICIAL CENTRE CALGARY  
PLAINTIFF ATB FINANCIAL  
DEFENDANTS APEX NUTRI-SOLUTIONS INC., 2175551 ALBERTA LTD., STEVEN HERBERT, DAVID HERBERT, MURRAY HERBERT AND CAROLYN HERBERT  
APPLICANT BDO CANADA LIMITED, in its capacity as receiver and manager of APEX NUTRI-SOLUTIONS INC., 2175551 ALBERTA LTD., and certain property of MURRAY HERBERT AND CAROLYN HERBERT  
DOCUMENT **SECOND REPORT OF THE RECEIVER  
BDO CANADA LIMITED  
APRIL 30, 2025**



**RECEIVER**

BDO Canada Limited  
110, 5800 - 2nd Street SW  
Calgary, Alberta T2H 0H2

Attention: Kevin Meyler / Breanne Scott  
Phone: (403) 536-8526 / (403) 213-5432  
Fax: (403) 640-0591  
Email: kmeyler@bdo.ca / brscott@bdo.ca

**RECEIVER'S COUNSEL**

MLT Aikins LLP  
2100 Livingston Place  
222 3rd Ave SW  
Calgary, AB T2P 0B4  
Attention: Ryan Zahara / Paul Olfert  
Phone: (403) 693-5420 / (306) 956-6970  
Fax: (403) 508-4349  
Email: rzahara@mltaikins.com / polfert@mltaikins.com

**SECOND REPORT OF THE RECEIVER  
BDO CANADA LIMITED  
APRIL 30, 2025**

**INDEX**

INTRODUCTION .....	3
TERMS OF REFERENCE .....	6
LIMITED HERBERT GUARANTEE .....	7
OFFERS RECEIVED BY THE HERBERTS .....	7
HERBERT SALE APPROVAL APPLICATION .....	8
AGREEMENT RESPECTING SALE.....	9
MATERIAL TERMS OF THE OFFER #1 FOR THE HERBERT LANDS .....	10
RECEIVER COMMENTS ON THE SALE AGREEMENT .....	10
RECOMMENDATIONS.....	11

**APPENDICES**

Cross-Application .....	A
April 23 Herbert Correspondence.....	B
Herbert Sale Approval Application .....	C
April 25 Receiver Response Correspondence.....	D
April 25 Receiver Court Correspondence.....	E
April 28 Court Correspondence.....	F
Agreement Respecting Sale (inclusive of the Sale Agreement) .....	G
Notice of Waiver / Satisfaction of Conditions .....	H

## INTRODUCTION

1. On February 20, 2025, upon application by ATB financial (“**ATB**”), BDO Canada Limited (“**BDO**”) was appointed as the interim receiver (the “**Interim Receiver**”) in respect of Apex Nutri-Solutions Inc. (“**Apex**”) pursuant to an order (the “**IR Order**”) granted by the Court of King’s Bench of Alberta (the “**Court**”). Furthermore, the Court granted a subsequent order (the “**IR Extension Order**”) on March 14, 2025, following an *ex-parte* application by ATB, which extended the Termination Date as defined in the IR Order to April 2, 2025.
2. On February 20, 2025, BDO was also appointed as the receiver and manager (hereafter, in any such capacity over the entities/property, the “**Receiver**”) over all of the assets, undertakings and property of 2175551 Alberta Ltd. (“**217 AB**”) pursuant to an order (the “**217 AB Receivership Order**”).
3. On March 25, 2025, BDO as the Interim Receiver of Apex, filed a report (dated March 24, 2025) (the “**Interim Receiver’s Report**”), in advance of an application made by ATB at which the Court granted the following relief:
  - (a) An order (the “**Apex Receivership Order**”) appointing BDO as Receiver over all of the assets, undertakings and property of Apex. Accordingly, pursuant to the IR Order and IR Extension Order, the Interim Receivership terminated on this same date;
  - (b) An order (the “**Herbert Receivership Order**”) appointing BDO as Receiver over certain property of Murray and Carolyn Herbert (hereafter the “**Herberts**”), legally described as:

MERIDIAN 4 RANGE 20  
TOWNSHIP 43 SECTION 24 QUARTER  
NORTH EAST EXCEPTING THEREOUT  
ALL MINES AND MINERALS AREA:  
64.7 HECTARES (160 ACRES) MORE OR LESS  
 (“**Parcel #1**”)

MERIDIAN 4 RANGE 20  
TOWNSHIP 43 SECTION 26 QUARTER  
SOUTH EAST CONTAINING 64.7 HECTARES (160 ACRES)  
MORE OR LESS EXCEPTING THEREOUT:  
2.53 HECTARES (6.25 ACRES) MORE OR  
LESS AS SHOWN ON RAILWAY PLAN 1983AJ AND BEING  
TAKEN FOR RIGHT OF WAY OF THE CANADIAN NORTHERN RAILWAY  
COMPANY  
 (“**Parcel #2**”)

MERIDIAN 4 RANGE 20  
TOWNSHIP 43 SECTION 25 QUARTER  
SOUTH EAST EXCEPTING THEREOUT

ALL MINES AND MINERALS AREA:  
64.7 HECTARES (160 ACRES) MORE OR LESS  
("Parcel #3")

(the "**Herbert Lands**"), plus all of the Herbert's equipment, inventory, crops, fixtures and other property produced from, found upon or used by the Debtors in connection with the Herbert Lands wherever situate, including all proceeds thereof (collectively, the "**Herbert Property**").

4. On April 14, 2025, the Receiver filed its first report (the "**Receiver's First Report**") providing the Court with, *inter alia*:
  - (a) background information on Apex and 217 AB, as well as the property subject to these receivership proceedings, including the Herbert Lands; and
  - (b) details of the Receiver's application scheduled for April 17, 2025 (the "**Tender Process Application**") seeking the Court's approval of the Receiver's proposed sales process (the "**Tender Process**") through the engagement of CLHBid as sales agent ("**CLHBid**") in respect of Parcel #1 and Parcel #2 (collectively, the "**Initial Herbert Lands**").
5. On April 16, 2025, in advance of the Tender Process Application, the Herberts served the Receiver with a cross application (the "**Cross-Application**"), a copy of which is attached as **Appendix "A"**, seeking, *inter alia*, the following relief:
  - (a) An Order setting aside the Tender Process;
  - (b) An Order authorizing the sale of Parcel #1 and Parcel #2 jointly for \$2,300,000 with a closing date of May 6, 2025; and
  - (c) In the alternative, an Order authorizing the sale of Parcel #1 for \$1.35 million and Parcel #2 for \$1.05M, for a combined value of \$2,400,000.
6. On April 17, 2025, the Receiver prepared and filed a supplement to the Receiver's First Report (the "**Supplement to the First Report**") to provide the Court with, *inter alia*, additional information in respect of the Cross-Application.
7. On April 17, 2025, the Court adjourned both the Tender Process Application, and the Cross-Application *sine die*. During the April 17, 2025, hearing, the Court advised, *inter alia*, that it would be willing to hear an application of the sale of the Initial Herbert Lands on an urgent basis, provided that such application was uncontested.

8. On April 23, 2025, counsel to the Herberts provided the Receiver and counsel to ATB with correspondence (the “**April 23 Herbert Correspondence**”) advising that they had received offers for immediate consideration and requesting that the Receiver confirm by 12:00 noon on Friday, April 25, 2025, whether it would accept any of the offers presented, absent which counsel to the Herberts would proceed with filing an urgent application to have the matter set down before the Honourable Justice D. R. Mah. A copy of the April 23 Herbert Correspondence is attached as **Appendix “B”**.
9. On April 25, 2025, prior to receiving the Receiver’s response as requested above, the Herberts provided the Receiver with a further application (“**Herbert Sale Approval Application**”), a copy of which is attached as **Appendix “C”**, seeking, *inter alia*:
  - (a) An order setting aside the Tender Process;
  - (b) An Order authorizing the sale of Parcel #1 and Parcel #2 jointly for \$2,300,000 with a closing date of May 6, 2025, as per “Offer #1” described therein;
  - (c) Alternatively, an Order authorizing the sale of Parcel #1 and Parcel #2 jointly for \$2,050,000, with a closing date of May 1, 2025, as per “Offer #2” described therein; and
  - (d) An Order “terminating” the Receivership over the Herbert Lands, including without limitation, Parcel #1, Parcel #2, Parcel #3 and all personal and farming equipment related thereto, upon full payment to creditors.
10. On April 25, 2025, in response to the April 23 Herbert Correspondence, the Receiver responded to counsel to the Herbert’s and counsel to ATB (the “**April 25 Receiver Response Correspondence**”), a copy of which is attached hereto as **Appendix “D”**, that it was prepared to support the sale contemplated in Offer #1, but on certain terms, including, *inter alia*:
  - (a) A Notice to Remove Conditions is provided that was executed by each of the four prospective purchasers having form and content satisfactory to the Receiver; and
  - (b) Receipt of a copy of an Agreement Respecting Sale in the form provided, duly executed by the Herberts and witnessed as executed.

11. On April 25, 2025, the Receiver, through its counsel, submitted correspondence to the Court (the “**April 25 Receiver Court Correspondence**”) outlining the Receiver’s position with respect to the Herbert Sale Approval Application outlining, *inter alia*, that the Receiver was not opposed in principle to Offer #1 in the total amount of \$2,300,000, but that it opposed the specific relief in the Herbert Sale Approval Application for reasons briefly summarized therein. A copy of the April 25 Receiver Court Correspondence is attached as **Appendix “E”**
12. On April 28, 2025, the Court issued correspondence (the “**April 28 2025 Court Correspondence**”) confirming that it was willing to hear an urgent sale application, based on an offer or offers procured by the Defendants, provided that such application was proceeding on a consent basis. A copy of the April 28 Court Correspondence is attached as **Appendix “F”**.
13. As the parties have now reached an agreement to allow for a sale of the Initial Herbert Lands, the purpose of this report (the “**Receiver’s Second Report**”) is to provide the Court with details of the Receiver’s application seeking the Court’s approval of an Agreement Respecting Sale between the Receiver and the Herberts dated for reference April 28, 2025 (the “**Agreement Respecting Sale**”), outlining the terms and conditions of the Receiver’s consent to an Agriculture Purchase Contract entered between the Herberts and the Purchasers (defined herein), dated April 25, 2025 (the “**Sale Agreement**”) in respect of the Initial Herbert Lands, as further set out herein. A copy of the Agreement Respecting Sale, incorporating the Sale Agreement, is attached as **Appendix “G”**
14. Unless otherwise indicated, capitalized terms not defined in this Receiver’s Second Report are as defined in the Affidavit of Mr. Rehman Mulji of ATB sworn on January 5, 2025 (the “**Initial Mulji Affidavit**”), the Interim Receiver’s Report, the Receiver’s First Report, the Supplement to the First Report, the 217 AB Receivership Order, the Apex Receivership Order and the Herbert Receivership Order, as applicable. All references to currency are in Canadian dollars unless otherwise noted.
15. This Receiver’s Second Report, together with other information and filings regarding these proceedings, will be posted on the Receiver’s website at: <http://www.bdo.ca/Apex>.

#### **TERMS OF REFERENCE**

16. In preparing this Receiver’s Second Report, the Receiver has relied upon unaudited financial or other information provided by the stakeholders and/or its discussions with stakeholders, among other sources of information (the “**Information**”).

17. The Receiver has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Canadian Auditing Standards pursuant to the Chartered Professional Accountants Handbook. Accordingly, the Receiver expresses no opinion or any other form of assurance in respect of the Information referred to or used in the Receiver's Second Report.

#### **LIMITED HERBERT GUARANTEE**

18. As addressed in the Receiver's First Report and based on the Initial Mulji Affidavit, the Herberts extended the following guarantees to secure the indebtedness owed to ATB concerning both Apex and 217 AB:
- (a) A joint and several limited guarantee of up to \$1.1 million, plus interest and costs, in respect of Apex; and
  - (b) A joint and several limited guarantee of up to \$413,425 plus interest and costs, in respect of 217 AB.
19. Based on the foregoing, the total amount of the limited guarantee provided by the Herberts to ATB amounts to \$1,513,425, plus applicable interest and costs (hereinafter referred to as the "**Herbert Limited Guarantee**").
20. The Initial Mulji Affidavit also explains that, in order to secure their obligations to ATB pursuant to the Herbert Limited Guarantee, the Herberts granted the following security interests to ATB:
- (a) a collateral mortgage, dated March 2, 2018, in the principal amount of \$450,000 charging Parcel #2 and a second collateral mortgage, dated June 19, 2019, in the amount of \$1,100,000, charging Parcel #1, Parcel #2, and Parcel #3;
  - (b) a general security agreement, dated March 2, 2018, charging the personal property of the Herberts; and
  - (c) a pledge of security pursuant to two Deposit of Security Agreements from Murray and Carolyn Herbert, each dated June 26, 2019.

#### **OFFERS RECEIVED BY THE HERBERTS**

21. As addressed in the Cross-Application, the Herberts advised that they had sourced two private offers in respect of the Initial Herbert Lands that were in excess of the minimum bid/strike prices as proposed through the Tender Process. Copies of these offers were not included with the Cross-Application nor provided to the Receiver prior to the April 17, 2025, Court application.

22. On April 23, 2025, the Herberts provided the Receiver with further details regarding the offers they received as referenced in the Cross-Application, with such details including (for the first time) copies of two offers received for the Initial Herbert Lands and details of a third private offer received for Parcel #1 only, with such offers summarized below:

	<b>Offer #1</b>	<b>Offer #2</b>	<b>Offer #3</b>
Purchase Price	\$2,300,000.00	\$2,050,000.00	\$1,350,000.00
Closing Date	06-May-25	01-May-25	Flexible
Deposit Received	\$200,000.00 (April 16, 2025)	\$100,000.00 (April 22, 2025)	\$270,000.00 (April 16, 2025)
Lands Acquired	Parcel #1 and Parcel #2	Parcel #1 and Parcel #2	Parcel #1
Particulars	Parcel #1 - \$1.25M, Parcel #2 - \$1.05M	Parcel #1 - \$1.30M, Parcel #2 - \$750,000.00. Purchasers will only acquire Parcel #2 if they successfully acquire Parcel #1.	None

### **HERBERT SALE APPROVAL APPLICATION**

23. As described above, on April 25, 2025, the Herberts filed an application to, *inter alia*, approve a private sale, oppose the Tender Process, and “terminate” the receivership pursuant to the Herbert Receivership Order as described above. In response to this correspondence, through the April 25 Receiver Court Correspondence, the Receiver advised both the Court and the Herberts that, while not opposed in principle to Offer #1, the Receiver could not support the application in its current form for several reasons including, *inter alia*:

- (a) The Herbert Sale Approval Application sought to compel the Receiver to close a transaction based on a contract to which the Receiver is not a party, and which was entered into contrary to the exclusive authority of the Receiver pursuant to the Herbert Receivership Order;
- (b) The Herbert Sale Approval Application sought to compel the Receiver to discharge its registration from title without making any provision for the satisfaction of the Receiver’s Charge contemplated in the Herbert Receivership Order; and
- (c) The Herbert Sale Approval Application sought to “terminate” the receivership without including any of the standard provisions in the Alberta Template Discharge Order, including approval of the Receiver’s activities, approval of the professional fees and disbursements of the Receiver and its legal counsel; and granting protections from the Receiver from actions other than for gross negligence or wilful misconduct without leave of the Court.

24. Nevertheless, it appears to the Receiver that the proceeds from the transaction contemplated in Offer #1 has the potential to satisfy both the Herberts' obligations to ATB pursuant to the Herbert Limited Guarantee and the Receiver's Charge. Accordingly, the Receiver advised the Herberts through counsel, that, notwithstanding the Receiver's exclusive authority to market the Herbert Lands for sale, the Receiver is prepared in principle to support Offer #1, provided that conditions were removed and that the Herberts executed an Agreement Respecting Sale with the Receiver.

#### **AGREEMENT RESPECTING SALE**

25. The Receiver provided the Herberts with the terms on which the Receiver would support the transaction proposed by the Herberts. Those terms and conditions are contained in the Agreement Responding Sale, and can be summarized as follows:
- (a) The Sale Agreement in regard to Offer #1 and Assignment Respecting Sale are subject to Court approval;
  - (b) While the Receiver will apply to Court for the above approval, the Receiver will not be obtaining a vesting order from the Court. Accordingly, the Herberts will be responsible for discharging any and all interests from title required to complete the transaction, including but not limited to ATB's registered mortgage (but excluding the Receivership Order itself, which the Receiver will attend to discharge provided that the Agreement Respecting Sale is complied with); and
  - (c) The Receiver will cause the Herbert Receivership Order to be discharged from title to Parcel #1 and Parcel #2 within a reasonable time following the payment to the office of counsel to the Receiver of all the proceeds from the sale, net only of:
    - i. The amounts required to discharge the ATB mortgage;
    - ii. Any property taxes, utilities or other ordinary closing adjustments; and
    - iii. The Herberts' reasonable legal fees relating solely to the sale of Parcel #1 and Parcel #2, in an amount approved in writing by the Receiver.

If the Herberts and the Receiver are unable to agree upon the amounts described in clauses ii. and iii above, the difference between the amounts approved by the Receiver and the amount requested by the Herberts are to be paid to the Receiver's counsel in trust pending an application by the Receiver to the Court to determine the reasonable amounts to each.

26. ATB has provided the Herberts, through respective counsel, with an anticipated payment amount, subject to ATB final review and confirmation, illustrating that an estimated mortgage payout of \$1,777,052 would be required to be held in trust for ATB to discharge its mortgage security, with the potential that any final adjudication of costs could be completed post-closing.

#### **MATERIAL TERMS OF THE OFFER #1 FOR THE HERBERT LANDS**

27. As described above, the Herberts entered into the Sale Agreement, which is included as “Schedule A” to the Agreement Respecting Sale and has the following salient terms:
- (a) Purchasers: Kent and Delphie Siemens and Shane and Kortney Siemens (the “**Purchasers**”):
  - (b) Purchase price: \$2.3 million;
  - (c) Deposit: \$200,000 which the Receiver understands is being held in trust with the Herberts’ legal counsel;
  - (d) Purchased Assets: Parcel #1 and Parcel #2, or as previously defined, the Initial Herbert Lands;
  - (e) Purchaser conditions: financing condition which was waived pursuant to a Notice of Waiver / Satisfaction of Conditions, attached as **Appendix “H”**; and
  - (f) Closing date: May 6, 2025.

#### **RECEIVER COMMENTS ON THE SALE AGREEMENT**

28. The Receiver recommends that this Honourable Court approve the Agreement Respecting Sale and the Sale Agreement for the following key reasons:
- (a) Although the Receiver acknowledges that permitting debtors to complete the sale of lands subject to a Receivership Order without the direct involvement of the Receiver is exceptional, in the Receiver’s view the present circumstances justify this exceptional approach;
  - (b) The Debtors signed an agreement to sell the Initial Herbert Lands to the Purchasers despite the extant Herbert Receivership Order. While not to be encouraged, the fact remains that the contract with the Purchasers is (conditional on Court approval) a valid contract capable of supporting a transaction to be closed by the Debtors without the direct involvement of the Receiver;

- (c) The alternative to permitting the Debtors to proceed with the sale transaction based on the existing sale agreement would have been for the Receiver to work with its legal counsel to prepare its own form of agreement, approach the Purchasers directly, negotiate and finalize the agreement, and arrange to have the \$200,000 deposit transferred from the Debtors' legal counsel to the Receiver's legal counsel. While all of these steps were possible in theory, there would have been no guarantee that the Purchasers would have engaged with the Receiver on a timely basis or at all and it is possible that the window for a sale before spring seeding would have been lost. Further, such an approach would have increased the legal and professional fees secured by the Receiver's Charge which will ultimately be payable from the proceeds of sale;
- (d) The purchase price of \$2.3 million pursuant to the Sale Agreement is acceptable to the Receiver and the Herberts, while providing reasonable certainty in respect of closing and the timing of cash proceeds;
- (e) The Receiver understands that ATB is supportive of both the Agreement Respecting Sale and Sale Agreement. The purchase price appears to be more than sufficient to satisfy the Limited Herbert Guarantee and the Receiver's Charge, provided of course that the Agreement Respecting Sale is complied with in all respects by the Herberts;
- (f) The May 6 closing date should allow for the sale of Parcel #1 and Parcel #2 to be completed prior to the commencement of seeding and accordingly, limit the costs that would continue to accrue in the Herbert receivership, increase the quantum of the Herbert Limited Guarantee and erode the equity in the Herbert Lands; and
- (g) While the Receiver did not conduct the process leading to the submitted offers, the evidence of multiple offers provided by the Herberts appears to support a competitive and fair sales process facilitated by the Herberts in respect of Parcel #1 and Parcel #2.

### **RECOMMENDATIONS**

29. The Receiver respectfully recommends that this Honourable Court:

- (a) approve the Agreement Respecting Sale and the Sale Agreement; and
- (b) approve the actions of the Receiver as described in the Supplement to the First Report of the Receiver and this Second Report of the Receiver.

All of which is respectfully submitted this 30<sup>th</sup> day of April 2025.

**BDO Canada Limited**

In its capacity as Receiver of 2175551 Alberta Ltd., Apex Nutri-Solutions Inc. and certain property of Murray and Carolyn Herbert and not in its personal or corporate capacity.

Per: 

Kevin Meyler, CPA, CIRP, LIT  
Senior Vice President



Breanne Scott, CPA, CIRP, LIT  
Vice President

# APPENDIX “A”

COURT FILE NUMBER 2401-01216

COURT COURT OF KING'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

PLAINTIFF ATB FINANCIAL

DEFENDANTS APEX NUTRI-SOLUTIONS INC., 2175551 ALBERTA LTD., STEVEN HERBERT, DAVID HERBERT, MURRAY HERBERT AND CAROLYN HERBERT

APPLICANT BDO CANADA LIMITED, in its capacity as receiver and manager of APEX NUTRI-SOLUTIONS INC., 2175551 ALBERTA LTD., and certain property of MURRAY HERBERT AND CAROLYN HERBERT

RESPONDENT(S) APEX NUTRI-SOLUTIONS INC., 2175551 ALBERTA LTD., STEVEN HERBERT, DAVID HERBERT, MURRAY HERBERT AND CAROLYN HERBERT

DOCUMENT **CROSS APPLICATION TO APPROVE PRIVATE SALE AND OPPOSE TENDER PROCESS**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT SNYDER & ASSOCIATES LLP  
#3500 Manulife Place  
10180-101 St. NW  
Edmonton, AB T5J 3S4  
Telephone: 780.426.4133  
Facsimile: 780.424.1588

Attention: Stephen C. Snyder  
File No.: 118974/SCS

Clerk's Stamp

**NOTICE TO THE RESPONDENT(S)**

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

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

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

Date: April 17, 2025  
Time: 3:00 P.M.  
Where: Calgary Court Centre – VIA WEBEX  
Before: The Honourable Justice D. R. Mah

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

**Remedy sought:**

1. An Order setting aside the Receiver's proposed tender-sale process for Parcel #1 and Parcel #2.
2. An Order authorizing the sale of Parcel #1 and Parcel #2 jointly for \$2,300,000.00, with a closing date of May 06, 2025.
3. Alternatively, authorizing the sale of Parcel #1 for \$1.35M and Parcel #2 for \$1.05M, for a combined value of \$2,400,000.
4. An Order that the Colliers appraisal dated June 10, 2024 shall not be relied upon, referenced, or disclosed by the Receiver in any application, report, or sale process.
5. An Order compelling the Receiver to negotiate with Mr. Boese's \$1.15M offer for Apex Lands and Equipment.
6. An Order for an abridgment of the time for service of this Cross-Application and materials in support thereof, and an Order declaring service of same to be good and sufficient.
7. Costs of this Application.

**Basis for this claim:**

**Herbert Receivership**

**8. Superior Private Offers**

The Herberts have secured bona fide cash offers for Parcel #1 and Parcel #2:

<b>Offer Terms</b>	<b>\$2.3M Offer</b>	<b>\$2.4M Offer</b>	<b>Receivers Tender (Comparison)</b>
<b>Purchase Price</b>	\$2,300,000	\$2,400,000	\$2,300,000 (hypothetical)
<b>Fees</b>	\$0	\$0	\$207,000
<b>Net Proceeds</b>	\$2,300,000	\$2,400,000	\$2,093,000
<b>Closing Date</b>	May 6, 2025	May 1, 2025 (Parcel #1), May 31 (Parcel #2)	Mid-May 2025

- a. The \$2.3M offer provides – at a minimum - \$207,000.00 more in net sale proceeds than the best-case tender scenario while avoiding:
  - i. Risk of bidder withdrawal due to non-fundable 20% deposit requirements
  - ii. Delay from 30-day closing versus immediate certainty.

**9. Private Offers Fully Extinguishes All Claims**

- a. The Herberts' liability is strictly confined to the guarantees executed under S. 2 of Alberta's Guarantees Acknowledgment Act.

- b. ATB's Secured claim of (\$1,513,000) is the only debt personally guaranteed by the Herberts, as confirmed by the Herbert Receivership Order (April 2, 2025).
- c. The \$2.3M - \$2.4M private offers fully satisfy ATB's claim, leaving a minimum of \$787,000 surplus for unsecured creditors and administrative costs.
- d. The proposed tender process cannot improve creditor recoveries, as the lower \$2.3M offer already exceeds all liabilities.

**10. Commercial Unreasonableness of Tender Process**

- a. The Receiver's proposed tender sale (7.5% commission + 1.5% transaction fee) would reduce net creditor recoveries by \$207,000 - \$216,000 compared to the Herberts' \$2.3M - \$2.4M private offers, violating its duty under *Royal Bank v. Soundair Corp.*, 1991 CanLII 2727 (ON CA) to maximize net proceeds while minimizing costs.
- b. The Receiver claims mid-May closing is critical for seeding season, yet the \$2.3M offer closes May 6 – aligning with this rationale.
- c. Market realities: Forcing a tender during peak farming season risks suppressing bids.
- d. It is unlikely that most farming operations will have 20% in cash to provide as a non-refundable deposit.

**Apex Receivership**

**11. Judicial Estoppel Bars Colliers Appraisal**

- a. On April 7, 2025, the Receiver received a \$1.15M offer for the purchase of the Apex lands, improvements, and equipment. The offer was made by the former owner of Apex, who has sentimental attachment to the property and wishes to reunite it with surrounding family lands, and to make immediate use of the Apex facilities for his poultry quota.
- b. This offer exceeds the Frost Valuation endorsed by ATB as primary creditor by 21%. The offer was set to expire April 11, 2025, and the Receiver made no effort to negotiate an extension, electing to let it lapse. The Receiver predicates this decision primarily on the \$1.7M “as is” forced sales value of Apex contained in the Colliers Appraisal, which was the Appraisal initially advanced by the Herberts in the underlying litigation.
- c. ATB Financial explicitly repudiated the Colliers Appraisal (June 10, 2024) at the February 20, 2025 and April 02, 2025 Chambers hearings, successfully arguing for receivership of Apex based on the Frost Valuation's \$950,000 appraisal. Counsel for ATB, Mr. Pontin, specifically argued against the Collier Appraisal in his brief filed March 31, 2025 at paras 11& 29, in which Mr. Pontin stated:

[11] “The Colliers Appraisal is problematic, as it provides assessment of the assets therein on a “going concern” basis, rather than as a sale for land value. The problems are noted and described in the Mulji Affidavit No. 1. The Colliers Appraisal is of limited use, given the extraordinary assumptions are significantly different than the actual circumstances of the lands at issue.”

- d. The Court's appointment order implicitly rejected Colliers' \$1.7M valuation as a basis for avoiding receivership. It is procedurally improper and inequitable for the Receiver to now weaponize that same discredited appraisal to reject an offer that:
  - i. Exceeds ATB's endorsed Frost Valuation by 21%
  - ii. Reflects bona fide market interest from a purchaser with unique ties to the property (reuniting family lands); and
  - iii. Provides immediate liquidity, avoiding the costs and delays of marketing.
- e. The Frost Valuation (\$950,000.00), prepared at the request of and endorsed by ATB, renders the Purchasers \$1.15M offer 21% above market value – the best evidence of a fair price. *PricewaterhouseCoopers Inc v 1905393 Alberta Ltd.*, 2019 ABCA 433.
- f. Courts consistently prioritize actual market offers over stale valuations when assessing commercial reasonableness.
- g. The abuse of process doctrine prevents re-litigation or use of discredited evidence. *Toronto (City) v. Canadian Union of Public Employees, Local 79*, 2003 SCC 63.

## **12. Receivers Reliance on CLHbid.com Establishes Mr. Carter's Authority**

The Receiver's proposed tender process explicitly relies on CLHbid.com – a platform founded and operated by Roy Carter, Western Canada's leading firm in agricultural land sales. By engaging CLHbid.com, the Receiver has implicitly acknowledged Mr. Carter's expertise, as demonstrated by:

- a. CLHbid.com's specialization in farmland sales across Western Canada, with Mr. Carter personally overseeing over \$1B in transactions.
- b. The Receiver's own marketing materials describing CLHbid.com as "Western Canada's proven, leading-edge online tender platform."

## **13. Receiver's Dismissal of Mr. Carter's Advice is Commercially Unreasonable**

- a. On April 9, 2025, the Receiver consulted directly with Roy Carter, who advised acceptance of the \$1.15M private offer, noting:
  - i. The purchaser's unique historical ties to the Apex lands (original developer seeking to reunite family holdings).
  - ii. The Property's immediate utility for poultry quota utilization, eliminating typical farmland marketing delays.
  - iii. The absence of comparably motivated buyers in Western Canada's agricultural market.
- b. Despite this advice, the Receiver rejected the offer - a decision that:
  - i. Contradicts its own selection of CLHbid.com as a "specialty tool" for farmland sales.
  - ii. Violates the Soundair requirement to prioritize expert recommendations.

**14. \$1.15M Offer Reflects Market Reality**

- a. Contravention of Soundair Principles:
  - i. Receivers must base decisions on contemporaneous market reality, not discredited appraisals.
  - ii. The Receivers refusal to engage with offers exceeding ATB's endorsed Frost Valuation constitutes "willful blindness" to commercial evidence.

**15. Legal Consequences of Ignoring Retained Experts**

- a. Receivers cannot selectively disregard advice from retained experts when inconvenient.
  - i. Receivers reliance on marketing agents creates a "duty of deference" to their market insights.
  - ii. Receivers cannot "cherry pick" expert opinions to justify fee-driven processes.
- b. By rejecting Mr. Carter's advice while continuing to use his platform, the Receiver has engaged in precisely the type of "improvisational fiduciarity" barred by *Alberta (Treasury Branches) v. 1401057 Alberta Ltd.* 2013 ABQB 748.

**16. Unique Purchaser Dynamics Justify Immediate Acceptance**

- a. The purchaser's motivations – reuniting family lands he developed and leveraging poultry quota – render this offer commercially irreplicable:
  - i. No stalking horse bidder could match this purchaser's willingness to pay a premium for sentimental and operational synergies.
  - ii. The Receiver's own expert, Mr. Carter, confirmed the offer's reasonableness.

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

- 17. All pleadings, affidavits and other materials filed in this action.
- 18. The inherent jurisdiction of this Honourable Court to control its own process ; and
- 19. Such further and other material as counsel may advise and this Honourable Court may permit.

**Applicable Acts and regulations:**

- 4. The *Bankruptcy and Insolvency Act*, RSC 1985 c. B-3, as amended.

**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.

# APPENDIX “B”

**Jarrett Tilley** Barrister & Solicitor  
 E-Mail: [jtilley@snyder.ca](mailto:jtilley@snyder.ca)

Our Ref. 118974 /SCS

April 23, 2025

*Via email: [derek.pontin@dentons.com](mailto:derek.pontin@dentons.com)  
 Via email: [rzahara@maitkins.com](mailto:rzahara@maitkins.com)  
 Via email: [polfert@maitkins.com](mailto:polfert@maitkins.com)  
 Via email: [kmeyler@bdo.ca](mailto:kmeyler@bdo.ca)*

**DENTONS CANADA LLP**  
 850 – 2nd Street SW  
 15th Floor, Bankers Court  
 Calgary, Alberta T2P 0R8

**MLT AITKINS**  
 2100 Livingston Place  
 222 3 Ave SW  
 Calgary, Alberta T2P 0B4

**BDO CANADA LIMITED**  
 110, 5800 2<sup>nd</sup> Street SW  
 Calgary, Alberta T2H 0H2

**Attention: Derek Pontin**

**Attention: Ryan Zahara**  
**Attention: Paul Olfert**

**Attention: Kevin Meyler**

**Re: *Apex Nutri-Solutions Inc., 2175551 Alberta Ltd., Steven Herbert, David Herbert, Murray Herbert and Carolyn Herbert***  
**Court File No.: 2401-01216**

In furtherance of our appearance before the Honourable Justice D. R. Mah on Thursday, April 17, 2025, we advise receipt of the following offers for your immediate consideration:

Offer # 1	
Purchase Price:	\$2,300,000.00
Closing Date	May 06, 2025
Deposit Received:	\$200,000.00 (April 16, 2025)
Lands Acquired:	Parcel #1 and Parcel #2
Particulars:	Parcel # 1 - \$1.25   Parcel #2 - \$1.05M
Purchasers	Kent and Delphie Siemens (Parcel #1) and Shane and Kortney Siemens (Parcel #2)

Offer # 2	
Purchase Price:	\$2,050,000.00
Closing Date	May 01, 2025
Deposit Received:	\$100,000.00 (April 22, 2025)
Lands Acquired:	Parcel #1 and Parcel #2
Particulars:	Parcel # 1 - \$1.30   Parcel #2 - \$750,000.00. Purchasers will only acquire Parcel #2 if they successfully acquire Parcel #1.
Purchasers	Vernon and Rhonda Siemens (by way of Vern and Rhonda Siemens Farms Inc.)

Offer # 3	
Purchase Price:	\$1,350,000.00.
Closing Date	Flexible
Deposit Received:	\$270,000.00 (April 16, 2025)
Lands Acquired:	Parcel #1
Particulars:	None
Purchasers	Kent and Diana Hunter (by way of Hunter Acres Ltd.)

**Preferred Solution:**

Please note that if Offer #1 is bifurcated to allow Shane and Kortney Siemens to acquire Parcel #2 for \$1.05M and allow Kent and Diana Hunter to acquired Parcel #1 for \$1.35M, this represents the greatest net value of \$2.4M. However, that would be contingent on Shane and Kortney Siemens being amenable to acquiring Parcel #2 without the involvement of Kent and Delphie.

Should that not be possible, the \$2.3M package offer for both quarters may offer the most expedient resolution. All potential purchasers have been advised that any sale is conditional on both court and receiver approval.

Mr. Kent Siemens has further advised that they have already been approved for any financing, should it be required, and as such is prepared to waive any such condition.

Given the short turnaround times to complete the transactions, **we request the Receiver advise our office by 12:00 noon on Friday, April 25, 2025** whether they will accept any of the offers presented. If no response is received by that time, we shall proceed with filing

our urgent application to have the matter set down before the Honourable Justice D. R. Mah for resolution.

Please be advised that we are awaiting on Mr. and Mrs. Hunter to send us a signed version of their contract, which we anticipate receiving today. I confirm receipt of their \$270,000.00 deposit. We have received a signed Agricultural Purchase Contract from Vern and Rhonda Siemens, yet to be signed by Murray and Carolyn. We are providing the documents currently in our possession in the interest of time, and will send a fully executed version once in receipt of same.

Yours truly,

**SNYDER & ASSOCIATES LLP**

Per:



**JARRETT TILLEY**  
*Barrister & Solicitor*  
JT/js

Encl: Agricultural Purchase Contract – Kent, Delphie, Shane and Kortney Siemens  
Agricultural Purchase Contract – Vern & Rhonda Siemens



**1.6 Other considerations as per the attached Schedules:**

- |   |   |
|---|---|
| <input type="checkbox"/> Copy of the existing Title(s) _____                | <input type="checkbox"/> Financing Schedule                               |
| <input type="checkbox"/> Schedule A: Surface Leases/Income                  | <input type="checkbox"/> Poultry/Livestock Quotas Schedule                |
| <input type="checkbox"/> Schedule B: Grazing Leases/Permits                 | <input type="checkbox"/> Water Rights/Irrigation Schedule (if applicable) |
| <input type="checkbox"/> Schedule C: Property Leases                        | <input type="checkbox"/> Addendum   |
| <input type="checkbox"/> Country Residential/Agricultural Property Schedule | <input type="checkbox"/> Other _____                                      |
| <input type="checkbox"/> Land Description Schedule                          |   |

**1.7** Title to the Property shall be subject to any reservations and exceptions stated on the Certificate of Title, non-financial obligations now on title such as easements, utility rights-of-way, covenants and conditions that are normally found registered against property of this nature, and non-financial encumbrances which have been accepted by the Buyer (the "Permitted Encumbrances"). Unless otherwise agreed in writing, the Title shall be free and clear of all other liens, encumbrances, registrations and obligations except those implied by law.

The Buyer agrees to accept the following Permitted Encumbrances: \_\_\_\_\_  
URW 752 158 005, CAVEAT 902 243 866 (TITLE NO. 092 124 299)

**2. THE TRANSACTION**

**2.1** The Buyer and the Seller agree to act cooperatively, reasonably and in good faith.

**2.2** The Buyer hereby offers to purchase the Property for the Purchase Price specified and allocated below:

- \$ 200,000.00 \_\_\_\_\_ Initial Deposit
- \$ \_\_\_\_\_ Additional Deposit
- \$ \_\_\_\_\_ New Financing
- \$ \_\_\_\_\_ Seller Financing (as per attached Financing Schedule)
- \$ \_\_\_\_\_ Other Value
- \$ \_\_\_\_\_
- \$ 2,100,000.00 \_\_\_\_\_ Balance Owing (subject to adjustments)
- \$ 2,300,000.00 \_\_\_\_\_ **Purchase Price (excluding GST)**

**2.3** The Purchase Price does not include GST. In the event that GST is payable and the Buyer is not a GST registrant, then the Buyer shall remit the applicable GST to the Seller's lawyer on or before Completion Day.

**2.4** Other than the Deposits, the Buyer shall pay the Purchase Price by lawyer's trust cheque, bank draft or other agreed value.

**3. DEPOSITS**

**3.1** All Deposits shall be delivered in trust to SNYDER & ASSOCIATES LLP.  
Unless otherwise agreed in writing, the Initial Deposit shall accompany the offer. \_\_\_\_\_

**3.2** The Initial Deposit shall be deposited no later than the third Business Day following the day that Final Signing occurred (as per clause 16.1) or the third Business Day following the receipt of the Initial Deposit, whichever is last.

**3.3** Any Additional Deposits shall be delivered in trust as follows \_\_\_\_\_.  
Additional Deposits shall be deposited no later than the third Business Day following the day the Additional Deposit is received.

**3.4** Unless otherwise agreed in writing, no interest on the Deposits shall be paid to the Seller or the Buyer. \_\_\_\_\_

- 3.5** The Deposits shall be held in trust for both the Seller and the Buyer and shall be:
- (a) applied against the Commission and paid directly out of trust to the brokerage(s) when the Commission is earned in accordance with the terms of the Seller Brokerage Agreement or any other commission agreement signed by the Seller;
  - (b) refunded forthwith to the Buyer if this offer is not accepted;
  - (c) refunded forthwith to the Buyer upon the Buyer's cheque clearing the brokerage's trust account if a condition is not satisfied or waived (as per clause 8.4 or 8.5) or the Seller fails to perform this Contract; and
  - (d) forfeited to the Seller if this offer is accepted and all conditions are satisfied or waived and the Buyer fails to perform on this Contract.
- 3.6** The brokerage holding the Deposits is further directed and authorized to pay that portion of the Deposits exceeding the Commission in trust to the Seller's lawyer no later than two (2) Business Days prior to the Completion Day.
- 3.7** If there is a dispute between the Seller and the Buyer as to entitlement to the Deposits, then:
- (a) the brokerage holding the Deposits shall review the circumstances, determine entitlement and pay the money to the party who is entitled to the Deposit;
  - (b) if no reasonable conclusion can be made in regard to (a) above, the brokerage shall notify the parties to the Contract in writing and shall pay the money into a lawyer's trust account;
  - (c) the parties agree to allow the lawyer and/or the brokerage to deduct from the Deposit a reasonable fee and costs incurred for dealing with the Deposit;
  - (d) a brokerage and/or lawyer acting in good faith under this clause shall not be liable to either party for any damages associated with the handling of the Deposit except as arising from the negligence of the brokerage or lawyer.
- 3.8** In the event that the brokerage holding the trust funds ceases to be licensed in real estate, the Buyer and the Seller agree to allow the trust funds to be transferred to the brokerage representing the other party.

#### **4. CLOSING**

- 4.1** All monies due and owing to the Seller, including GST if applicable as per clause 2.3, shall be paid to the Seller's lawyer on or before the Completion Day. Subject to compliance with the terms hereof, possession of the Land shall be available and given to the Buyer on or before 12 noon of the 6th day of May, 2025 (the "Completion Day"), subject to the rights of the existing tenants, if any, and Buildings/Farmstead on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, subject to the rights of the existing tenants, if any. All harvested crops remain the property of the Seller and will be removed by the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, and all unharvested crops by the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, after which time the crops or any part thereof not removed shall become the absolute property of the Buyer.
- 4.2** When the Buyer obtains possession, the Property will be in substantially the same condition as when this Contract was accepted.
- 4.3** All normal adjustments for the Property including but not limited to taxes, local improvement levy and assessments, municipal charges, rents, utilities, tenant deposits including interest, prepaid rent, surface leases (if any), mortgage principal and interest that are applicable with respect to the Property shall be adjusted as of 24:00 hours on the Completion Day. The Buyer shall assume all local improvements, assessments and charges against the Property as of that time.
- 4.4** The Seller or the Seller's lawyer will deliver closing documents to the Buyer or the Buyer's lawyer upon reasonable terms consistent with the terms of this Contract. Closing documents shall consist of the transfer of land (the "Transfer") in registrable form together with all applicable conveyancing documents normally expected in a transaction of this nature and shall be prepared at the expense of the Seller and delivered to the Buyer's lawyer within a reasonable time to confirm registration prior to Completion Day.
- 4.5** If the Seller fails to deliver the closing documents according to clause 4.4, then payment of the Purchase Price and late interest will be postponed until the Buyer has received the closing documents and has a reasonable period of time to register them and to obtain the advance of proceeds for any New Financing and Other Value. Notwithstanding the foregoing, if the Buyer is otherwise ready, willing and able to close in accordance with this Contract and desires to take possession of the Property, then the Seller shall give the Buyer possession upon reasonable terms which will include the payment of late interest only on the amount of mortgage being obtained by the Buyer, if any, at the interest rate of such mortgage.
- 4.6** In circumstances where the Seller has complied with clause 4.4 but the Buyer is not able to close in accordance with this Contract, then the Seller may, but is not obligated to, accept late payment of the Purchase Price and give the Buyer possession upon reasonable terms. If the Seller agrees in writing to accept late payment of the Purchase Price under this clause then, whether or not possession is granted, the Buyer will pay late interest at the prime lending rate of the Province of Alberta Treasury Branches at the Completion Day plus 3% calculated daily from and including the Completion Day to (but excluding) the day the Seller is paid in full. Payment received after noon on any day will be payment as of the next Business Day.
- 4.7** The Seller's lawyer may use the Purchase Price to pay out all mortgages, registrations and other financial obligations that are the Seller's obligation to pay or discharge. Within a reasonable period of time after the Completion Day, the Seller's lawyer will provide the Buyer's lawyer with evidence of all discharges including, where required, a certified copy of the certificate of title.

- 4.8 The Seller will pay the costs to prepare the closing documents and to prepare, register and discharge any Seller's caveat based on the Contract.
- 4.9 The Buyer will pay the costs to prepare, register and discharge any Buyer's caveat based on this Contract and to register the transfer of land.
- 4.10 If the Property is rented and the Buyer is not assuming the tenancy, then the Seller is responsible for all costs related to ending the tenancy and giving vacant possession to the Buyer.

## 5. INSURANCE

- 5.1 The risk of loss or damage to the Property will lie with the Seller until the Purchase Price is paid according to the terms of this Contract. If loss or damage to the Property occurs before the Seller is paid the Purchase Price, then any insurance proceeds will be held in trust for the Buyer and the Seller according to their interests in the Property.

## 6. REPRESENTATIONS AND WARRANTIES

- 6.1 The Seller represents and warrants to the Buyer that:
- (a) the Seller has the legal right to sell the Property; subject to approval by the Court and Receiver;
  - (b) the Attached Goods and included Unattached Goods are in normal working order and are free and clear of all encumbrances;
  - (c) within the meaning of the *Income Tax Act (Canada)*, the Seller is not now, nor will be on the Completion Day, a non-resident of Canada nor an agent or a trustee for any person with an interest in the Property who is a non-resident of Canada;
  - (d) the current use of the Land and Buildings complies with the existing municipal land use bylaw;
  - (e) the Buildings and other improvements on the Land are not placed partly or wholly on any easement or utility right-of-way and are entirely on the Land and do not encroach on neighbouring lands, except where an encroachment agreement is registered on title, or in the case of an encroachment into municipal lands or a right-of-way, the municipality has endorsed encroachment approval directly on the real property report;
  - (f) the location of Buildings and other improvements on the Land complies with all relevant municipal bylaws, regulations or relaxations granted by the appropriate municipality prior to the Completion Day, or the Buildings and other improvements on the Land are "non-conforming buildings" as that term is defined in the *Municipal Government Act (Alberta)*;
  - (g) the current use of the Land and Buildings and the location of the Buildings and other improvements on the Land comply with any restrictive covenant on title;
  - (h) to the best of the Seller's knowledge, there is no legal action outstanding with respect to the Property;
  - (i) the Seller is not in breach of any contract with respect to the Property;(subject to approval by the Court and Receiver
  - (j) the Seller is not in breach of any obligation to any third party with respect to the Property, and
  - (k) except as otherwise disclosed, the Seller is not aware of any defects that are not visible and that may render the Property dangerous or potentially dangerous to occupants or unfit for habitation.
- 6.2 The Buyer represents and warrants that, prior to completion, it is NOT an "ineligible person" or a "foreign controlled corporation" and is eligible to purchase "controlled land" as those terms are defined in the *Foreign Ownership of Land Regulations*.
- 6.3 All of the warranties contained in this Contract and any attached Schedules are made as of and will be true at the Completion Day, unless otherwise agreed in writing.
- 6.4 The Seller and the Buyer each acknowledge that, except as otherwise described in this Contract, there are **no other warranties, representations or collateral agreements** made by or with the other party, the Seller's brokerage and the Buyer's brokerage about the Property, any neighbouring lands, and this transaction, including any warranty, representation or collateral agreement relating to the size/measurements of the Land and Buildings or the existence or non-existence of any environmental condition or problem.
- 6.5 The representations and warranties in this Contract shall survive the completion of purchase and sale and may be enforced after the Completion Day, provided that any legal action is commenced within the time limits prescribed by the Limitations Act (Alberta).
- 6.6 The Buyer shall have the right to register a caveat against the Title to the Property upon the acceptance of this offer by the Seller. Should the Buyer fail to perform this Contract, the Buyer agrees to forthwith discharge that caveat.

## 7. ADDITIONAL TERMS HOLDBACK

- 7.1 All time periods, deadlines and dates in this Contract shall be strictly followed and enforced. All times will be Alberta time unless otherwise stated.
- 7.2 This Contract is for the benefit of and shall be binding upon the heirs, executors, administrators and assigns of the individual parties and the successors and assigns of corporate parties.
- 7.3 All changes of number and gender shall be made where required.
- 7.4 This Contract will be governed by the laws of the Province of Alberta. The parties submit to the exclusive jurisdiction of the Courts in the Province of Alberta regarding any dispute that may arise out of this transaction.

7.5 Additional terms of sale, if any: \_\_\_\_\_

All references to Seller's and Buyer's realtors/brokers are not applicable.

There are no real estate commissions payable by either party.

\_\_\_\_\_ (Attach Schedule if necessary and have initialled by both parties.)

7.6 In the event that the additional terms of this Contract are not fulfilled, there shall be a holdback of \$ \_\_\_\_\_

\_\_\_\_\_ for \_\_\_\_\_ days from the Completion Day to allow compliance by the Seller. These monies will be held in trust by the Buyer's lawyer and if terms are not satisfied, these monies shall be released to the Buyer.

**8. CONDITIONS**

8.1 The Buyer's Conditions are:

(a) **Financing Condition**

It is a condition precedent to this offer that the Buyer is able to place a new mortgage(s), as per clause 2.2, upon terms acceptable to the Buyer in order to fund the purchase of the Property. The Buyer shall have an opportunity to obtain such financing

Before 9 p.m. on April 23, 2025, (the "Condition Day")

(b) **Water Supply**

It is a condition precedent of this offer that the Buyer will verify, at the Buyer's expense, that the water supply meets the following criteria: \_\_\_\_\_

Before 9 p.m. on \_\_\_\_\_, 20\_\_\_\_\_, (the "Condition Day")

(c) **Due Diligence Condition**

The Seller agrees to provide, within 48 hours of Final Signing, all relevant information and records relating the Property that the Seller has in its possession, including but not limited to operational information, other contracts, surveyor's plans, real property reports and environmental assessment reports. The Buyer may also at its own expense retain consultants to conduct inspections, reviews and tests. It is a condition precedent of this offer that the information be satisfactory to the Buyer.

Before 9 p.m. on \_\_\_\_\_, 20\_\_\_\_\_, (the "Condition Day")

The Buyer shall keep all information obtained in strict confidence and shall only make the information available to the Buyer's employees, agents and professional advisors in strict confidence and shall return all of the above materials including all copies to the Seller before any Deposits are released to the Buyer pursuant to this Contract.

(d) **Additional Buyer's Conditions**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Before 9 p.m. on \_\_\_\_\_, 20\_\_\_\_\_, (the "Condition Day")

**8.2 The Seller's Conditions are:** \_\_\_\_\_

Subject to Court Order authorizing the sale and approval by Receiver.

Before 9 p.m. on \_\_\_\_\_, 20\_\_\_\_\_, (the "Condition Day")

- 8.3** Unless otherwise agreed in writing, the Buyer's Conditions are for the sole benefit of the Buyer and the Seller's Conditions are for the sole benefit of the Seller. The Buyer and Seller must use reasonable efforts to satisfy their respective Conditions.
- 8.4** The Buyer and the Seller may unilaterally waive or acknowledge satisfaction of their Conditions by giving a written notice to the other party on or before the stated Condition Day. If that notice is not given, then this Contract is ended immediately following that Condition Day.
- 8.5** Subject to clause 8.3, the Buyer and the Seller may give written notice to the other party on or before the stated Condition Day advising that a Condition will not be waived, has not been satisfied and will not be satisfied on or before the Condition Day. If that notice is given, then this Contract is ended upon the giving of that notice.

**9. REMEDIES/DISPUTES**

- 9.1** If the Seller or the Buyer fails or refuses to complete this Contract according to its terms, then the other party may pursue all available remedies. The Seller's remedies include keeping the Deposits and claiming additional damages. Both the Seller and the Buyer can claim reasonable costs including legal fees and disbursements on a solicitor/client full indemnity basis.
- 9.2** If the Seller must restore title to the Property, enforce a lien against the Property or regain possession of the Property due to the Buyer's default, then the Buyer will pay the Seller's reasonable costs including legal fees and disbursements on a solicitor/client full indemnity basis.
- 9.3** The Seller and the Buyer agree that the Property is unique and that, in the event of a default by the Seller, the Buyer is entitled, without limiting any other remedies available in clause 9.1, to claim the remedy of specific performance.

**10. SECURITY FOR THE SELLER'S BROKERAGE'S FEES**

~~10.1 The Seller does hereby irrevocably assign to the Seller's brokerage enough of the Purchase Price to pay all sums due and owing to the Seller's brokerage, and agrees to pay any unpaid balance of the Commission to the Seller's brokerage.~~

**11. ADVICE**

- 11.1** This Contract is intended to create binding legal obligations. The Seller and the Buyer should read this Contract carefully and are encouraged to obtain legal advice before signing.
- 11.2** Any representations as to the measurements of the Buildings are only approximations and may not be accurate. The Buyer may wish to obtain an independent property inspection and verify the measurements of the Land and Buildings.
- 11.3** This Contract may be signed and sent by fax or by email and these procedures will be as effective as signing and delivering an original copy.
- 11.4** Unless there is written consent for alternate representation, the Seller's brokerage represents the Seller as Seller's Agent and does not have a fiduciary relationship with the Buyer, and the Buyer's brokerage represents the Buyer as Buyer's Agent and does not have a fiduciary relationship with the Seller.
- 11.5** The Buyer and Seller agree that the sale and other related information regarding this transaction may be retained and disclosed by the brokerage and/or the real estate board(s) as required for closing and for reporting, appraisal and statistical purposes.

**12. DEFINITIONS**

- 12.1** In this Contract:
  - (a) *Business Day* means every day but Saturday, Sunday and statutory holidays.
  - (b) *Commission* means the sum owing from the Seller for services rendered under the Seller Brokerage Agreement plus GST.
  - (c) *Seller Brokerage Agreement* means any written service or commission agreement obligating the Seller to pay remuneration.
  - (d) *Notice* means any notice referred to in this Contract and includes communication of the acceptance of an offer to purchase.
  - (e) *Unless otherwise agreed in writing* means either changes made to the terms of this Contract that are agreed to by both the Seller and the Buyer, or a written agreement by letter or otherwise between the Seller or the Seller's lawyer and the Buyer or the Buyer's lawyer.

**13. REPRESENTATIVES/NOTICE/COMMUNICATION**

**Note: This section must be filled out in full.**

- 13.1** As long as the Representative information in 13.3 is completed, the identified Representatives are authorized to send and receive any Notices, documents and information on behalf of their respective clients in person, by fax, or by email. Buyer and Seller acknowledge there are risks with each of these methods.
- 13.2** Buyer and Seller agree that any Notices, documents and information exchanged between the parties in person, by fax, or by email will be considered effective at the time they are sent.
- 13.3** The following addresses must be used for all communication between Buyer, Seller and their Representatives, unless otherwise stated. If the information changes, Buyer and Seller must tell each other, in writing, through their Representatives, within two Business Days of the change.

**Designated Address for Communication:**

The Buyer acknowledges that the following is the designated address for communication for all buyers.

Name KENT AND DELPHIE SIEMENS AND SHANE AND KORTNEY SIEMENS

Address \_\_\_\_\_ (postal code)

Phone \_\_\_\_\_ Fax \_\_\_\_\_

Email kj90siemens@gmail.com

**Buyer Brokerage Information:**

<b>BROKERAGE:</b>	<b>BROKERAGE REPRESENTATIVE:</b>
Name _____	Name _____
Address _____	Address: c/o the Brokerage
_____ (postal code)	
Phone _____ Fax _____	Phone _____ Fax _____
Email _____	Email _____

The Seller acknowledges that the following is the designated address for communication for all sellers.

Name MURRAY AND CAROLYN HERBERT

Address c/o Snyder & Associates LLP, 3500, 10180 - 101 Street, Edmonton, AB T5J 3S4 (postal code)

Phone 780-426-4133 Fax 780-424-1588

Email ssnyder@snyder.ca

**Seller Brokerage Information:**

<b>BROKERAGE:</b>	<b>BROKERAGE REPRESENTATIVE:</b>
Name _____	Name _____
Address _____	Address: c/o the Brokerage
_____ (postal code)	
Phone _____ Fax _____	Phone _____ Fax _____
Email _____	Email _____


**14. OFFER**

14.1 Buyer and Seller agree that an electronic signature, as defined in the *Electronic Transactions Act* (Alberta), or a digitized signature will have the same function as an ink signature.

14.2 The Buyer offers to buy the Property for the Purchase Price according to the terms of this Contract.

14.3 This offer/counter offer shall be open for acceptance in writing until \_\_\_\_\_m. on \_\_\_\_\_  
April \_\_\_\_\_, 20<sup>25</sup>.

SIGNED AND DATED at \_\_\_\_\_, Alberta at \_\_\_\_\_m. on April \_\_\_\_\_, 20<sup>25</sup>.

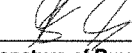
X  X Delphie Siemens

Signature of Buyer  
KENT AND DELPHIE SIEMENS

Signature of Witness

Print Name of Buyer

Print Name of Witness

X  X

Signature of Buyer  
SHANE AND KORTNEY SIEMENS

Signature of Witness

Print Name of Buyer

Print Name of Witness

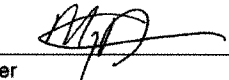
Buyer's GST # \_\_\_\_\_

**PART B – ACCEPTANCE**

**15. ACCEPTANCE**

15.1 The Seller accepts the Buyer's offer and agrees to sell the Property for the Purchase Price according to the terms of this Contract.

SIGNED AND DATED at \_\_\_\_\_, Alberta at \_\_\_\_\_m. on April \_\_\_\_\_, 20<sup>25</sup>.

X 

Signature of Seller  
MURRAY HERBERT

Signature of Witness

Print Name of Seller

Print Name of Witness

X 

Signature of Seller  
CAROLYN HERBERT

Signature of Witness

Print Name of Seller

Print Name of Witness

Seller's GST # \_\_\_\_\_

**16. FINAL SIGNING**

16.1 Final Signing of this Contract occurred at \_\_\_\_\_m. on April \_\_\_\_\_, 20<sup>25</sup>.

Initials of the person(s) who signed last \_\_\_\_\_

**CONVEYANCING**

**BUYER:**

Name <u>KENT AND DELPHIE SIEMENS AND SHANE AND KORTNEY SIEMENS</u>	Name _____
Address _____	Address _____
_____ (postal code)	_____ (postal code)
Phone _____ Fax _____	Phone _____ Fax _____
Email <u>kj90siemens@gmail.com</u>	Email _____

**BROKERAGE:**

Name \_\_\_\_\_

Address \_\_\_\_\_

\_\_\_\_\_ (postal code)

Phone \_\_\_\_\_ Fax \_\_\_\_\_

Email \_\_\_\_\_

**BROKERAGE REPRESENTATIVE:**

Name \_\_\_\_\_

Address: c/o the Brokerage

Phone \_\_\_\_\_ Fax \_\_\_\_\_

Email \_\_\_\_\_

**LAWYER:**

Name \_\_\_\_\_

Address \_\_\_\_\_

\_\_\_\_\_ (postal code)

Phone \_\_\_\_\_ Fax \_\_\_\_\_

Email \_\_\_\_\_

**SELLER:**

Name <u>MURRAY AND CAROLYN HERBERT</u>	Name _____
Address <u>Box 88, Edberg, AB T0B 1J0</u>	Address _____
_____ (postal code)	_____ (postal code)
Phone _____ Fax _____	Phone _____ Fax _____
Email _____	Email _____

**BROKERAGE:**

Name \_\_\_\_\_

Address \_\_\_\_\_

\_\_\_\_\_ (postal code)

Phone \_\_\_\_\_ Fax \_\_\_\_\_

Email \_\_\_\_\_

**BROKERAGE REPRESENTATIVE:**

Name \_\_\_\_\_

Address: c/o the Brokerage

Phone \_\_\_\_\_ Fax \_\_\_\_\_

Email \_\_\_\_\_

**LAWYER:**

Name STEPHEN C. SNYDER

Address 3500, 10180 - 101 Street, Edmonton, AB T5J 3S4

\_\_\_\_\_ (postal code)

Phone 780-426-4133 Fax 780-424-1588

Email ssnyder@snyder.ca



Contract Number

### AGRICULTURAL PURCHASE CONTRACT

This form was developed by the Alberta Real Estate Association for the use of its members and may not be altered electronically by any person. Others who use this document do so at their own risk.

#### PART A -- OFFER TO PURCHASE

This Contract is between

Name **THE SELLER** MURRAY AND CAROLYN HERBERT and **THE BUYER** VERN AND RHONDA SIEMENS FARMS INC.  
 Name \_\_\_\_\_ Name \_\_\_\_\_  
 Name \_\_\_\_\_ Name \_\_\_\_\_

#### 1. THE PROPERTY

1.1 The Property is the Land, Buildings, Attached Goods (unless excluded) and included Unattached Goods and other considerations as per clause 1.6 below, excluding all mines and minerals.

1.2 Municipal Address: \_\_\_\_\_

1.3 Legal description (as set out below or on attached Land Description Schedule):

##### Deeded Lands

W. of (Meridian)	Range	Township	Section	Part	Acres
4	20	43	26	SE QUARTER	153.75
4	20	43	24	NE QUARTER	160

##### Assignment of Lease of

W. of (Meridian)	Range	Township	Section	Part	Acres

1.4 All Attached Goods (fixtures) except for: \_\_\_\_\_

1.5 No Unattached Goods (specified chattels) except for: \_\_\_\_\_



Agricultural Purchase Contract

Contract Number

1.6 Other considerations as per the attached Schedules:

- Copy of the existing Title(s) \_\_\_\_\_
- Schedule A: Surface Leases/Income
- Schedule B: Grazing Leases/Permits
- Schedule C: Property Leases
- Country Residential/Agricultural Property Schedule
- Land Description Schedule
- Financing Schedule
- Poultry/Livestock Quotas Schedule
- Water Rights/Irrigation Schedule (if applicable)
- Addendum
- Other \_\_\_\_\_

1.7 Title to the Property shall be subject to any reservations and exceptions stated on the Certificate of Title, non-financial obligations now on title such as easements, utility rights-of-way, covenants and conditions that are normally found registered against property of this nature, and non-financial encumbrances which have been accepted by the Buyer (the "Permitted Encumbrances"). Unless otherwise agreed in writing, the Title shall be free and clear of all other liens, encumbrances, registrations and obligations except those implied by law.

The Buyer agrees to accept the following Permitted Encumbrances: URW 752 158 005, CAVEAT 902 243 866 (TITLE NO. 092 124 299)

**2. THE TRANSACTION**

2.1 The Buyer and the Seller agree to act cooperatively, reasonably and in good faith.

2.2 The Buyer hereby offers to purchase the Property for the Purchase Price specified and allocated below:

- \$ 100,000.00 Initial Deposit
- \$ \_\_\_\_\_ Additional Deposit
- \$ \_\_\_\_\_ New Financing
- \$ \_\_\_\_\_ Seller Financing (as per attached Financing Schedule)
- \$ \_\_\_\_\_ Other Value
- \$ NE Quarter @ 1,300,000.<sup>00</sup> SE Quarter @ 750,000.<sup>00</sup>
- \$ 1,950,000.00 Balance Owing (subject to adjustments)
- \$ 2,050,000.00 Purchase Price (excluding GST)

2.3 The Purchase Price does not include GST. In the event that GST is payable and the Buyer is not a GST registrant, then the Buyer shall remit the applicable GST to the Seller's lawyer on or before Completion Day.

2.4 Other than the Deposits, the Buyer shall pay the Purchase Price by lawyer's trust cheque, bank draft or other agreed value.

**3. DEPOSITS**

3.1 All Deposits shall be delivered in trust to SNYDER & ASSOCIATES LLP  
Unless otherwise agreed in writing, the Initial Deposit shall accompany the offer.

3.2 The Initial Deposit shall be deposited no later than the third Business Day following the day that Final Signing occurred (as per clause 16.1) or the third Business Day following the receipt of the Initial Deposit, whichever is last.

3.3 Any Additional Deposits shall be delivered in trust as follows \_\_\_\_\_  
Additional Deposits shall be deposited no later than the third Business Day following the day the Additional Deposit is received.

3.4 Unless otherwise agreed in writing, no interest on the Deposits shall be paid to the Seller or the Buyer.



Agricultural Purchase Contract

Contract Number

- 3.5 The Deposits shall be held in trust for both the Seller and the Buyer and shall be:
  - (a) applied against the Commission and paid directly out of trust to the brokerage(s) when the Commission is earned in accordance with the terms of the Seller Brokerage Agreement or any other commission agreement signed by the Seller;
  - (b) refunded forthwith to the Buyer if this offer is not accepted;
  - (c) refunded forthwith to the Buyer upon the Buyer's cheque clearing the brokerage's trust account if a condition is not satisfied or waived (as per clause 8.4 or 8.5) or the Seller fails to perform this Contract; and
  - (d) forfeited to the Seller if this offer is accepted and all conditions are satisfied or waived and the Buyer fails to perform on this Contract.
- 3.6 The brokerage holding the Deposits is further directed and authorized to pay that portion of the Deposits exceeding the Commission in trust to the Seller's lawyer no later than two (2) Business Days prior to the Completion Day.
- 3.7 If there is a dispute between the Seller and the Buyer as to entitlement to the Deposits, then:
  - (a) the brokerage holding the Deposits shall review the circumstances, determine entitlement and pay the money to the party who is entitled to the Deposit;
  - (b) if no reasonable conclusion can be made in regard to (a) above, the brokerage shall notify the parties to the Contract in writing and shall pay the money into a lawyer's trust account;
  - (c) the parties agree to allow the lawyer and/or the brokerage to deduct from the Deposit a reasonable fee and costs incurred for dealing with the Deposit;
  - (d) a brokerage and/or lawyer acting in good faith under this clause shall not be liable to either party for any damages associated with the handling of the Deposit except as arising from the negligence of the brokerage or lawyer.
- 3.8 In the event that the brokerage holding the trust funds ceases to be licensed in real estate, the Buyer and the Seller agree to allow the trust funds to be transferred to the brokerage representing the other party.

**4. CLOSING**

- 4.1 All monies due and owing to the Seller, including GST if applicable as per clause 2.3, shall be paid to the Seller's lawyer on or before the Completion Day. Subject to compliance with the terms hereof, possession of the Land shall be available and given to the Buyer on or before 12 noon of the 1st day of May, 2025 (the "Completion Day"), subject to the rights of the existing tenants, if any, and Buildings/Farmstead on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, subject to the rights of the existing tenants, if any. All harvested crops remain the property of the Seller and will be removed by the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, and all unharvested crops by the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, after which time the crops or any part thereof not removed shall become the absolute property of the Buyer.
- 4.2 When the Buyer obtains possession, the Property will be in substantially the same condition as when this Contract was accepted.
- 4.3 All normal adjustments for the Property including but not limited to taxes, local improvement levy and assessments, municipal charges, rents, utilities, tenant deposits including interest, prepaid rent, surface leases (if any), mortgage principal and interest that are applicable with respect to the Property shall be adjusted as of 24:00 hours on the Completion Day. The Buyer shall assume all local improvements, assessments and charges against the Property as of that time.
- 4.4 The Seller or the Seller's lawyer will deliver closing documents to the Buyer or the Buyer's lawyer upon reasonable terms consistent with the terms of this Contract. Closing documents shall consist of the transfer of land (the "Transfer") in registrable form together with all applicable conveyancing documents normally expected in a transaction of this nature and shall be prepared at the expense of the Seller and delivered to the Buyer's lawyer within a reasonable time to confirm registration prior to Completion Day.
- 4.5 If the Seller fails to deliver the closing documents according to clause 4.4, then payment of the Purchase Price and late interest will be postponed until the Buyer has received the closing documents and has a reasonable period of time to register them and to obtain the advance of proceeds for any New Financing and Other Value. Notwithstanding the foregoing, if the Buyer is otherwise ready, willing and able to close in accordance with this Contract and desires to take possession of the Property, then the Seller shall give the Buyer possession upon reasonable terms which will include the payment of late interest only on the amount of mortgage being obtained by the Buyer, if any, at the interest rate of such mortgage.
- 4.6 In circumstances where the Seller has complied with clause 4.4 but the Buyer is not able to close in accordance with this Contract, then the Seller may, but is not obligated to, accept late payment of the Purchase Price and give the Buyer possession upon reasonable terms. If the Seller agrees in writing to accept late payment of the Purchase Price under this clause then, whether or not possession is granted, the Buyer will pay late interest at the prime lending rate of the Province of Alberta Treasury Branches at the Completion Day plus 3% calculated daily from and including the Completion Day to (but excluding) the day the Seller is paid in full. Payment received after noon on any day will be payment as of the next Business Day.
- 4.7 The Seller's lawyer may use the Purchase Price to pay out all mortgages, registrations and other financial obligations that are the Seller's obligation to pay or discharge. Within a reasonable period of time after the Completion Day, the Seller's lawyer will provide the Buyer's lawyer with evidence of all discharges including, where required, a certified copy of the certificate of title.



Agricultural Purchase Contract

Contract Number

7.5 Additional terms of sale, if any: \_\_\_\_\_

All references to Seller's and Buyer's realtors/brokers are not applicable.

There are no real estate commissions payable by either party.

(Attach Schedule if necessary and have initialed by both parties.)

7.6 In the event that the additional terms of this Contract are not fulfilled, there shall be a holdback of \$ \_\_\_\_\_

for \_\_\_\_\_ days from the Completion Day to allow compliance by the Seller. These monies will be held in trust by the Buyer's lawyer and if terms are not satisfied, these monies shall be released to the Buyer.

8. CONDITIONS

8.1 The Buyer's Conditions are:

(a) Financing Condition NO CONDITIONS

It is a condition precedent to this offer that the Buyer is able to place a new mortgage(s), as per clause 2.2, upon terms acceptable to the Buyer in order to fund the purchase of the Property. The Buyer shall have an opportunity to obtain such financing

Before 9 p.m. on \_\_\_\_\_, 20\_\_\_\_\_, (the "Condition Day")

(b) Water Supply

It is a condition precedent of this offer that the Buyer will verify, at the Buyer's expense, that the water supply meets the following criteria: \_\_\_\_\_

Before 9 p.m. on \_\_\_\_\_, 20\_\_\_\_\_, (the "Condition Day")

(c) Due Diligence Condition

The Seller agrees to provide, within 48 hours of Final Signing, all relevant information and records relating the Property that the Seller has in its possession, including but not limited to operational information, other contracts, surveyor's plans, real property reports and environmental assessment reports. The Buyer may also at its own expense retain consultants to conduct inspections, reviews and tests. It is a condition precedent of this offer that the information be satisfactory to the Buyer.

Before 9 p.m. on \_\_\_\_\_, 20\_\_\_\_\_, (the "Condition Day")

The Buyer shall keep all information obtained in strict confidence and shall only make the information available to the Buyer's employees, agents and professional advisors in strict confidence and shall return all of the above materials including all copies to the Seller before any Deposits are released to the Buyer pursuant to this Contract.

(d) Additional Buyer's Conditions

Will only purchase SE Quarter on acceptance of offer on NE Quarter.

Before 9 p.m. on \_\_\_\_\_, 20\_\_\_\_\_, (the "Condition Day")



Agricultural Purchase Contract

Contract Number

13. REPRESENTATIVES/NOTICE/COMMUNICATION

Note: This section must be filled out in full.

- 13.1 As long as the Representative information in 13.3 is completed, the identified Representatives are authorized to send and receive any Notices, documents and information on behalf of their respective clients in person, by fax, or by email. Buyer and Seller acknowledge there are risks with each of these methods.
13.2 Buyer and Seller agree that any Notices, documents and information exchanged between the parties in person, by fax, or by email will be considered effective at the time they are sent.
13.3 The following addresses must be used for all communication between Buyer, Seller and their Representatives, unless otherwise stated. If the information changes, Buyer and Seller must tell each other, in writing, through their Representatives, within two Business Days of the change.

Designated Address for Communication:

The Buyer acknowledges that the following is the designated address for communication for all buyers.

Name VERN & RHONDA SIEMENS FARMS INC., 100, 4918 - 51 Street, Camrose, AB T7V 1S3

Address Copy to Vern and Rhonda Siemens, R.R. 1 Edberg, AB T0B 1J0

Phone 780-878-4272

Fax

Email vrsiemens@gmail.com

Buyer Brokerage Information:

BROKERAGE:

Name Felding & Co. LLP

Address Suite 100 4918-51 St Camrose, AB

Phone 780 672-8851 Fax

Email

BROKERAGE REPRESENTATIVE:

Name Ian Smith

Address: c/o the Brokerage

Phone 780 672-8851 Fax

Email info@feldingco.com

The Seller acknowledges that the following is the designated address for communication for all sellers.

Name MURRAY AND CAROLYN HERBERT

Address c/o Snyder & Associates LLP, 3500, 10180 - 101 Street, Edmonton, AB T5J 3S4

Phone 780-426-4133

Fax 780-424-1588

Email ssnyder@snyder.ca

Seller Brokerage Information:

BROKERAGE:

Name

Address

Phone

Email

BROKERAGE REPRESENTATIVE:

Name

Address: c/o the Brokerage

Phone

Email



Agricultural Purchase Contract

Contract Number

14. OFFER

14.1 Buyer and Seller agree that an electronic signature, as defined in the Electronic Transactions Act (Alberta), or a digitized signature will have the same function as an ink signature.

14.2 The Buyer offers to buy the Property for the Purchase Price according to the terms of this Contract.

14.3 This offer/counter offer shall be open for acceptance in writing until 12:00 pm. on 25th April, 2025.

SIGNED AND DATED at Edberg, Alberta at 11:00 p.m. on April 19, 2025. VERN & RHONDA SIEMENS FARMS INC.

Per: Vern Siemens

Signature of Buyer

Signature of Witness

X Vern Siemens c/s

Print Name of Witness

Signature of Buyer

Signature of Witness

Print Name of Buyer

Print Name of Witness

Buyer's GST # 13982 2936

PART B - ACCEPTANCE

15. ACCEPTANCE

15.1 The Seller accepts the Buyer's offer and agrees to sell the Property for the Purchase Price according to the terms of this Contract.

SIGNED AND DATED at Edmonton, Alberta at \_\_\_\_\_ m. on April \_\_\_\_\_, 2025.

X Signature of Seller

Signature of Witness

MURRAY HERBERT

Print Name of Witness

Print Name of Seller

X Signature of Seller

Signature of Witness

CAROLYN HERBERT

Print Name of Witness

Print Name of Seller

Seller's GST # \_\_\_\_\_

16. FINAL SIGNING

16.1 Final Signing of this Contract occurred at \_\_\_\_\_ m. on April \_\_\_\_\_, 2025.

Initials of the person(s) who signed last \_\_\_\_\_



Agricultural Purchase Contract

Contract Number

CONVEYANCING

BUYER:

Name VERN & RHONDA SIEMENS FARMS INC.

Name

Address 100, 4918 - 51 Street, Camrose, AB T4V 1S3

Address

Phone Fax (postal code)

Phone Fax (postal code)

Email

Email

BROKERAGE:

BROKERAGE REPRESENTATIVE:

Name

Name

Address

Address: c/o the Brokerage

Phone Fax (postal code)

Phone Fax (postal code)

Email

Email

LAWYER:

Name

Address

Phone

Fax

Email

SELLER:

Name MURRAY AND CAROLYN HERBERT

Name

Address Box 88, Edberg, AB T0B 1J0

Address

Phone Fax (postal code)

Phone Fax (postal code)

Email

Email

BROKERAGE:

BROKERAGE REPRESENTATIVE:

Name

Name

Address

Address: c/o the Brokerage

Phone Fax (postal code)

Phone Fax (postal code)

Email

Email

LAWYER:

Name STEPHEN C. SNYDER

Address 3500, 10180 - 101 Street, Edmonton, AB T5J 3S4

Phone 780-426-4133

Fax 780-424-1588

Email ssnyder@snyder.ca



Agricultural Purchase Contract

Contract Number

8.2 The Seller's Conditions are:

Subject to Court Order authorizing the sale and approval by Receiver.

Before 9 p.m. on \_\_\_\_\_, 20\_\_\_\_, (the "Condition Day")

- 8.3 Unless otherwise agreed in writing, the Buyer's Conditions are for the sole benefit of the Buyer and the Seller's Conditions are for the sole benefit of the Seller. The Buyer and Seller must use reasonable efforts to satisfy their respective Conditions.
- 8.4 The Buyer and the Seller may unilaterally waive or acknowledge satisfaction of their Conditions by giving a written notice to the other party on or before the stated Condition Day. If that notice is not given, then this Contract is ended immediately following that Condition Day.
- 8.5 Subject to clause 8.3, the Buyer and the Seller may give written notice to the other party on or before the stated Condition Day advising that a Condition will not be waived, has not been satisfied and will not be satisfied on or before the Condition Day. If that notice is given, then this Contract is ended upon the giving of that notice.

9. REMEDIES/DISPUTES

- 9.1 If the Seller or the Buyer fails or refuses to complete this Contract according to its terms, then the other party may pursue all available remedies. The Seller's remedies include keeping the Deposits and claiming additional damages. Both the Seller and the Buyer can claim reasonable costs including legal fees and disbursements on a solicitor/client full indemnity basis.
- 9.2 If the Seller must restore title to the Property, enforce a lien against the Property or regain possession of the Property due to the Buyer's default, then the Buyer will pay the Seller's reasonable costs including legal fees and disbursements on a solicitor/client full indemnity basis.
- 9.3 The Seller and the Buyer agree that the Property is unique and that, in the event of a default by the Seller, the Buyer is entitled, without limiting any other remedies available in clause 9.1, to claim the remedy of specific performance.

10. SECURITY FOR THE SELLER'S BROKERAGE'S FEES

~~10.1 The Seller does hereby irrevocably assign to the Seller's brokerage enough of the Purchase Price to pay all sums due and owing to the Seller's brokerage, and agree to pay any unpaid balance of the Commission to the Seller's brokerage.~~

11. ADVICE

- 11.1 This Contract is intended to create binding legal obligations. The Seller and the Buyer should read this Contract carefully and are encouraged to obtain legal advice before signing.
- 11.2 Any representations as to the measurements of the Buildings are only approximations and may not be accurate. The Buyer may wish to obtain an independent property inspection and verify the measurements of the Land and Buildings.
- 11.3 This Contract may be signed and sent by fax or by email and these procedures will be as effective as signing and delivering an original copy.
- 11.4 Unless there is written consent for alternate representation, the Seller's brokerage represents the Seller as Seller's Agent and does not have a fiduciary relationship with the Buyer, and the Buyer's brokerage represents the Buyer as Buyer's Agent and does not have a fiduciary relationship with the Seller.
- 11.5 The Buyer and Seller agree that the sale and other related information regarding this transaction may be retained and disclosed by the brokerage and/or the real estate board(s) as required for closing and for reporting, appraisal and statistical purposes.

12. DEFINITIONS

- 12.1 In this Contract:
  - (a) *Business Day* means every day but Saturday, Sunday and statutory holidays.
  - (b) *Commission* means the sum owing from the Seller for services rendered under the Seller Brokerage Agreement plus GST.
  - (c) *Seller Brokerage Agreement* means any written service or commission agreement obligating the Seller to pay remuneration.
  - (d) *Notice* means any notice referred to in this Contract and includes communication of the acceptance of an offer to purchase.
  - (e) *Unless otherwise agreed in writing* means either changes made to the terms of this Contract that are agreed to by both the Seller and the Buyer, or a written agreement by letter or otherwise between the Seller or the Seller's lawyer and the Buyer or the Buyer's lawyer.

# APPENDIX “C”

COURT FILE NUMBER 2401-01216

COURT COURT OF KING'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

PLAINTIFF ATB FINANCIAL

DEFENDANTS APEX NUTRI-SOLUTIONS INC., 2175551 ALBERTA LTD., STEVEN HERBERT, DAVID HERBERT, MURRAY HERBERT AND CAROLYN HERBERT

APPLICANT BDO CANADA LIMITED, in its capacity as receiver and manager of APEX NUTRI-SOLUTIONS INC., 2175551 ALBERTA LTD., and certain property of MURRAY HERBERT AND CAROLYN HERBERT

RESPONDENT(S) APEX NUTRI-SOLUTIONS INC., 2175551 ALBERTA LTD., STEVEN HERBERT, DAVID HERBERT, MURRAY HERBERT AND CAROLYN HERBERT

DOCUMENT **APPLICATION TO APPROVE PRIVATE SALE AND OPPOSE TENDER PROCESS**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT SNYDER & ASSOCIATES LLP  
#3500 Manulife Place  
10180-101 St. NW  
Edmonton, AB T5J 3S4  
Telephone: 780.426.4133  
Facsimile: 780.424.1588

Attention: Jarrett Tilley  
File No.: 118974/SCS

Clerk's Stamp

**NOTICE TO THE RESPONDENT(S)**

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

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

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

Date:  
Time:  
Where:  
Before: The Honourable Justice D. R. Mah

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

**Remedy sought:**

1. An Order setting aside the Receiver’s proposed tender-sale process for Parcel #1, Parcel # 2 and Parcel #3.
2. An Order authorizing the sale of Parcel #1 and Parcel #2 jointly for \$2,300,000.00, with a closing date of May 06, 2025 as per Offer # 1 outlined herein.
3. Alternatively, an Order authorizing the sale of Parcel #1 and Parcel #2 jointly for \$2,050,000.00, with a closing date of May 01, 2025 as per Offer # 2 outlined herein.
4. An Order for an abridgment of the time for service of this Application and materials in support thereof, and an Order declaring service of same to be good and sufficient.
5. An Order terminating the Receivership over the Herbert Lands, including, without limitation, Parcel #1, Parcel #2, Parcel #3, and all personal and farming equipment related thereto, upon full payment to creditors.
6. Costs of this Application.

**Basis for this claim:**

**Herbert Receivership**

**7. Superior Private Offers**

The Herberts have secured bona fide cash offers for Parcel #1 and Parcel #2:

	<b>Offer # 1</b>	<b>Offer # 2</b>	<b>Offer # 3</b>
Purchase Price	\$2,300,000.00	\$2,050,000.00	\$1,350,000.00
Deposit	\$200,000.00 (Received April 16, 2025 – held in trust with Snyder & Associates LLP)	\$100,000.00 (Received April 22, 2025 – held in trust with Snyder & Associates LLP)	\$270,000.00 (Received April 16, 2025 – held in trust with Snyder & Associates LLP)
Closing Date	May 06, 2025	May 01, 2025	May 2025
Property Acquired	Parcel #1 & Parcel # 2	Parcel #1 & Parcel #2	Parcel #1
Particulars:	\$1.05 for Parcel #2, \$1.25 for Parcel #1	\$1.3M for Parcel #1, will purchase Parcel #2 for \$750,000 if they are awarded Parcel #1	None.

- a. The \$2.3M offer provides – at a minimum - \$207,000.00 more in net sale proceeds than the best-case tender scenario while avoiding:
  - i. Risk of bidder withdrawal due to non-fundable 20% deposit requirements
  - ii. Delay from 30-day closing versus immediate certainty.

## 8. Private Offers Fully Extinguishes All Claims

Creditor	Amount	Source
ATB Financial	\$1,516,530.19	Exhibit G
Douglas Herbert Mortgage	\$78,000.00	Exhibit H
Calidon Financial Services Inc.	\$85,256.70	Exhibits I-J [Note: The leases are <i>not</i> required to be paid out]
Canadian Canola Growers Association	\$186,655.31	Exhibit L
<b>Total</b>	<b>\$1,866,442.20</b>	
<b>Net Sale Proceeds</b>	<b>\$433,557.80<sup>1</sup></b>	

\*The above table does not include per diems on the principal ATB Debt, Post-Judgment Interest, or the Receiver's fees. Also noted is that the Calidon leases are not required to be paid out as they are in good standing, but they have been listed above as opposing counsel includes them as creditors.

- a. The Herberts' liability is strictly confined to the guarantees executed under S. 2 of Alberta's Guarantees Acknowledgment Act.
- b. ATB's Secured claim of (\$1,516,530.19 as per their Ancillary Order pronounced February 20, 2025 by the Honourable Justice Simard) is the only debt personally guaranteed by the Herberts, as confirmed by the Herbert Receivership Order (April 2, 2025).
- c. The net sale proceeds, after payment of all reasonable and necessary costs of disposition, including legal fees and applicable taxes, will be adequate to discharge in full all indebtedness owed to the secured creditor, as well as all proven unsecured claims. There is no anticipated shortfall or claim that would remain outstanding following the completion of this transaction.
- d. The proposed tender process cannot improve creditor recoveries, as the lower \$2.3M offer already exceeds all liabilities.

## 9. Commercial Unreasonableness of Tender Process

- a. The Receiver's proposed tender sale (7.5% commission + 1.5% transaction fee) would reduce net creditor recoveries by \$207,000 - \$216,000 compared to the Herberts' \$2.3M - \$2.4M private offers, violating its duty under *Royal Bank v. Soundair Corp.*, 1991 CanLII 2727 (ON CA) to maximize net proceeds while minimizing costs.<sup>2</sup>
- b. The Receiver claims mid-May closing is critical for seeding season (First Report of the Receiver dated April 14, 2024, Page 9, Paragraph 26: "The timing of farmland sales is of paramount importance due to the agricultural growing season in Alberta."), yet their proposed auction process may not satisfy the full indebtedness (Receiver Report Page 12, Paragraph 35) which would result in a further sale of Parcel #3 having to occur in June 2025 or later, devaluing the price of the third quarter of land. Comparatively, the \$2.3M offer closes May 6, 2025 – aligning with the expediency rationale.

<sup>1</sup> Assuming sale price of \$2.3M as per Offer # 1

<sup>2</sup> A \$2.4M offer is predicated on selling Parcel #2 to S. & K. Siemens for \$1.05 as they are offering under Offer #1, and selling Parcel #1 for \$1.35M as per Offer #3.

- c. Market realities: Forcing a tender during peak farming season risks suppressing bids.
- d. It is unlikely that most farming operations will have 20% in cash to provide as a non-refundable deposit.

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

- 10. Affidavit of Murray Paul Herbert, affirmed April 24, 2025.
- 11. All pleadings, affidavits and other materials filed in this action.
- 12. The inherent jurisdiction of this Honourable Court to control its own process ; and
- 13. Such further and other material as counsel may advise and this Honourable Court may permit.

**Applicable Acts and regulations:**

- 15. The *Bankruptcy and Insolvency Act*, RSC 1985 c. B-3, as amended.
- 16. *Alberta Rules of Court*, Alta Reg 124/2010.

**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.

# APPENDIX “D”

**Ryan Zahara**Direct Line: (403) 693-5420  
E-mail: rzahara@mltaikins.com

April 25, 2025

**Via E-mail to [jtilley@snyder.ca](mailto:jtilley@snyder.ca)****Snyder & Associates LLP**

3500 – 10180 101 St NW

Edmonton, AB T5J 3S4

**Attention: Jarrett Tilley**

Dear Mr. Tilley:

**Re: Receivership respecting Murray Herbert and Carolyn Herbert, Court of King's Bench for Alberta, Judicial Centre of Calgary, Court File No. 2401-01216**

We write in response to your letter of April 23, 2025 in regard to the above-noted matter.

Subject to the qualifications and conditions set out herein, the Receiver is prepared to support the sale of "**Parcel #1**"<sup>1</sup> and "**Parcel #2**"<sup>2</sup> to Kent, Delphie, Shane, and Kortney Siemens ("**Offer #1**") on the terms and conditions set out in the Agricultural Purchase Contract appended to your April 23 letter.

To be clear, this is an exceptional circumstance. The Receivership Order granted on April 2, 2025 by the Honourable Justice C.D. Simard (the "**Receivership Order**") of the Court of King's Bench for Alberta (the "**Court**") respecting Murray and Carolyn Herbert (the "**Herberts**") vests the Receiver with the exclusive authority to market and sell Parcel #1 and Parcel #2.<sup>3</sup>

However, because it appears that the sale proceeds from the transaction contemplated in Offer #1 (the "**Proposed Sale**") will be sufficient to satisfy both the Herberts' obligations to ATB Financial ("**ATB**") and the Receiver's Charge established pursuant to paragraph 18 of the Receivership Order, and with the support of ATB, the Receiver is prepared to consent to the Proposed Sale notwithstanding the Receivership Order, again subject to the qualifications and conditions set out herein.

---

<sup>1</sup> MERIDIAN 4 RANGE 20 TOWNSHIP 43 SECTION 24 QUARTER NORTH EAST, EXCEPTING THEREOUT ALL MINES AND MINERALS, AREA: 64.7 HECTARES (160 ACRES) MORE OR LESS

<sup>2</sup> MERIDIAN 4 RANGE 20 TOWNSHIP 43 SECTION 26 QUARTER SOUTH EAST, CONTAINING 64.7 HECTARES (160 ACRES) MORE OR LESS, EXCEPTING THEREOUT: 2.53 HECTARES (6.25 ACRES) MORE OR LESS AS SHOWN ON RAILWAY PLAN 1983AJ AND BEING TAKEN FOR RIGHT OF WAY OF THE CANADIAN NORTHERN RAILWAY COMPANY, EXCEPTING THEREOUT ALL MINES AND MINERALS AND THE RIGHT TO WORK THE SAME

<sup>3</sup> See paras 2; 3(a), (k), and (l), and the text following paragraph (s): "and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons, including the Debtor, and without interference from any other Person (as defined below)."

The Receiver requires that Court approval of the sale be obtained, as the sale price is in excess of the thresholds set out in paragraph 3(l) of the Receivership Order. The Receiver is prepared to bring forward an application approving the sale as required by the terms of the Receivership Order, but it is not proposing that a vesting order be obtained as this is not a condition that the purchasers have included in the offers. The Receiver notes that because those offers are not in the standard form typically approved by the Court in respect of such sales there may be some risk that the Court will not approve the sale in its current form; however, if the Herberts are not concerned about this risk the Receiver is prepared to advance the application for approval of these sales on an expedited basis and subject to Court availability.

The Receiver will need to be paid from the proceeds for time and cost (including the costs of its legal counsel) incurred in dealing with the Herbert Lands under the terms of the Receivership Order as part of any agreement to discharge its registration of the Receiver's Charge granted under the terms of the Receivership Order. The Receiver has obligations and requirements to complete the administration of the receivership estate, including seeking its discharge as Receiver of the Herbert Lands, so it will also need to obtain a holdback for any of those amounts to be incurred.

The Receiver requires that the Herberts deliver the following forthwith, and in any event no later than 4:00 p.m. on **Monday, April 28, 2025**, namely:

1. A Notice to Remove Conditions executed by each of the four prospective purchasers having form and content satisfactory to the Receiver; and
2. A copy of the enclosed Agreement Respecting Sale, duly executed by the Herberts and witnessed as indicated.

Please advise if you will be seeking time from Justice Mah for an expedited hearing for sale approval or whether you would prefer the Receiver's legal counsel to take these steps.

We trust that the foregoing sets out the Receiver's position with clarity.

Yours truly,

**MLT AIKINS LLP**

Per 

for: Ryan Zahara

Encl. (1)

cc: Dentons Canada LLP, Attention: Derek Pontin

## AGREEMENT RESPECTING SALE

This Agreement Respecting Sale (“**Agreement**”) made effective the 28<sup>th</sup> day of April, 2025 (the “**Effective Date**”).

**BETWEEN:**     **BDO CANADA LIMITED, in its capacity as Court-appointed Receiver of certain property of MURRAY HERBERT and CAROLYN HERBERT and not in its personal capacity (the “Receiver”)**

**AND:**           **MURRAY HERBERT and CAROLYN HERBERT, individuals residing in or near Edberg, Alberta (the “Herberts”)**

**WHEREAS** the Receiver is the Receiver of, among other property owned by the Herberts, NE 24-43-20 W4 (“**Parcel #1**”) and SE 26-43-20 W4 (“**Parcel #2**”), pursuant to the Receivership Order granted on April 2, 2025 by the Honourable Justice C.D. Simard (the “**Receivership Order**”) of the Court of King’s Bench for Alberta (the “**Court**”) in respect of the Herberts;

**AND WHEREAS** the Herberts have presented the Receiver with an agreement pursuant to which from Kent, Delphie, Shane, and Kortney Siemens have agreed to purchase Parcel #1 and Parcel #2 from the Herberts, a copy of which is attached hereto as **Schedule A** (the “**Sale Agreement**”);

**AND WHEREAS** the Receiver is prepared to support the transaction described in the Sale Agreement subject to the terms and conditions set out in this Agreement;

**NOW THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Receiver and the Herberts agree as follows:

1. The Receiver will forthwith apply to Court for approval of the Sale Agreement and this Agreement.
2. Conditional on the Court approving the Sale Agreement and this Agreement, the Receiver consents to the Herberts completing the transaction described in the Sale Agreement.
3. The Receiver will not be obtaining a vesting order from the Court. Accordingly, the Herberts will (subject to this section 3) be responsible to discharge any and all interests from title to the extent required to complete the transaction contemplated in the Sale Agreement including, for greater certainty, the mortgage registered by ATB Financial (“**ATB**”). The Receiver shall cause the Receivership Order to be discharged from title to Parcel #1 and Parcel #2 within a reasonable time following the payment to the office of counsel to the Receiver of all of the proceeds from the sale of Parcel #1 and Parcel #2, net only of:
  - a. the amounts required to discharge the ATB mortgage;
  - b. any property taxes, utilities, or ordinary-course adjustments on closing in amounts approved in writing by the Receiver; and
  - c. the Herberts’ reasonable legal fees relating solely to the sale of Parcel #1 and Parcel #2, in an amount approved in writing by the Receiver.

If the Herberts and the Receiver are unable to agree upon the amounts described in clauses (b) and (c), the difference between the amounts approved by the Receiver and the amount requested by the Herberts shall be paid to the Receiver’s counsel in trust pending an application by the Receiver to the Court to determine the reasonable amounts of each.

4. For greater certainty, the Herberts do not and shall not have the authority to make any amendments to the Sale Agreement without the specific and express written consent of the Receiver.

5. Strictly subject to all of the foregoing, the Receiver hereby consents to the closing of the transaction described in the Sale Agreement, notwithstanding anything in the Receivership Order.
6. There are no representations or warranties, express or implied, and no agreements collateral hereto other than as expressly set forth or referred to herein.
7. The Herberts have carefully read this Agreement, know and fully understand the contents of this Agreement, have satisfied themselves as to the nature, meaning, and effect of this Agreement, are not relying upon the representations of any other party, and have had the opportunity to obtain (and have in fact received) independent legal advice respecting the nature, contents, and legal effect of this Agreement.
8. Time is of the essence of this Agreement and each of the terms and conditions hereof.
9. This Agreement shall be governed by and construed in accordance with the laws of the Province of Alberta and the federal laws of Canada applicable therein. Each of the Receiver and the Herberts hereby attorns to the exclusive jurisdiction of the courts of Alberta.
10. This Agreement may be executed in two or more counterparts, and may be signed by facsimile or other means of electronic communication producing a printed copy, each of which so signed shall be deemed to be an original, and such counterparts together shall constitute one and the same instrument and, notwithstanding the date of execution, shall be deemed to bear the Effective Date first written above.

IN WITNESS WHEREOF the parties have executed this Agreement effective as of the Effective Date.

\_\_\_\_\_  
Witness

\_\_\_\_\_  
**MURRAY HERBERT**

\_\_\_\_\_  
Witness

\_\_\_\_\_  
**CAROLYN HERBERT**

**BDO CANADA LIMITED, in its capacity as Court-appointed Receiver of certain property of MURRAY HERBERT and CAROLYN HERBERT and not in its personal capacity**

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

**SCHEDULE A**  
**AGRICULTURAL PURCHASE CONTRACT**

**See attached.**



**1.6 Other considerations as per the attached Schedules:**

- |   |   |
|---|---|
| <input type="checkbox"/> Copy of the existing Title(s) _____                | <input type="checkbox"/> Financing Schedule                               |
| <input type="checkbox"/> Schedule A: Surface Leases/Income                  | <input type="checkbox"/> Poultry/Livestock Quotas Schedule                |
| <input type="checkbox"/> Schedule B: Grazing Leases/Permits                 | <input type="checkbox"/> Water Rights/Irrigation Schedule (if applicable) |
| <input type="checkbox"/> Schedule C: Property Leases                        | <input type="checkbox"/> Addendum   |
| <input type="checkbox"/> Country Residential/Agricultural Property Schedule | <input type="checkbox"/> Other _____                                      |
| <input type="checkbox"/> Land Description Schedule                          |   |

**1.7** Title to the Property shall be subject to any reservations and exceptions stated on the Certificate of Title, non-financial obligations now on title such as easements, utility rights-of-way, covenants and conditions that are normally found registered against property of this nature, and non-financial encumbrances which have been accepted by the Buyer (the "Permitted Encumbrances"). Unless otherwise agreed in writing, the Title shall be free and clear of all other liens, encumbrances, registrations and obligations except those implied by law.

The Buyer agrees to accept the following Permitted Encumbrances: \_\_\_\_\_  
URW 752 158 005, CAVEAT 902 243 866 (TITLE NO. 092 124 299)

**2. THE TRANSACTION**

**2.1** The Buyer and the Seller agree to act cooperatively, reasonably and in good faith.

**2.2** The Buyer hereby offers to purchase the Property for the Purchase Price specified and allocated below:

- \$ 200,000.00 \_\_\_\_\_ Initial Deposit
- \$ \_\_\_\_\_ Additional Deposit
- \$ \_\_\_\_\_ New Financing
- \$ \_\_\_\_\_ Seller Financing (as per attached Financing Schedule)
- \$ \_\_\_\_\_ Other Value
- \$ \_\_\_\_\_
- \$ 2,100,000.00 \_\_\_\_\_ Balance Owing (subject to adjustments)
- \$ 2,300,000.00 \_\_\_\_\_ **Purchase Price (excluding GST)**

**2.3** The Purchase Price does not include GST. In the event that GST is payable and the Buyer is not a GST registrant, then the Buyer shall remit the applicable GST to the Seller's lawyer on or before Completion Day.

**2.4** Other than the Deposits, the Buyer shall pay the Purchase Price by lawyer's trust cheque, bank draft or other agreed value.

**3. DEPOSITS**

**3.1** All Deposits shall be delivered in trust to SNYDER & ASSOCIATES LLP.  
Unless otherwise agreed in writing, the Initial Deposit shall accompany the offer. \_\_\_\_\_

**3.2** The Initial Deposit shall be deposited no later than the third Business Day following the day that Final Signing occurred (as per clause 16.1) or the third Business Day following the receipt of the Initial Deposit, whichever is last.

**3.3** Any Additional Deposits shall be delivered in trust as follows \_\_\_\_\_.  
Additional Deposits shall be deposited no later than the third Business Day following the day the Additional Deposit is received.

**3.4** Unless otherwise agreed in writing, no interest on the Deposits shall be paid to the Seller or the Buyer. \_\_\_\_\_

- 3.5** The Deposits shall be held in trust for both the Seller and the Buyer and shall be:
- (a) applied against the Commission and paid directly out of trust to the brokerage(s) when the Commission is earned in accordance with the terms of the Seller Brokerage Agreement or any other commission agreement signed by the Seller;
  - (b) refunded forthwith to the Buyer if this offer is not accepted;
  - (c) refunded forthwith to the Buyer upon the Buyer's cheque clearing the brokerage's trust account if a condition is not satisfied or waived (as per clause 8.4 or 8.5) or the Seller fails to perform this Contract; and
  - (d) forfeited to the Seller if this offer is accepted and all conditions are satisfied or waived and the Buyer fails to perform on this Contract.
- 3.6** The brokerage holding the Deposits is further directed and authorized to pay that portion of the Deposits exceeding the Commission in trust to the Seller's lawyer no later than two (2) Business Days prior to the Completion Day.
- 3.7** If there is a dispute between the Seller and the Buyer as to entitlement to the Deposits, then:
- (a) the brokerage holding the Deposits shall review the circumstances, determine entitlement and pay the money to the party who is entitled to the Deposit;
  - (b) if no reasonable conclusion can be made in regard to (a) above, the brokerage shall notify the parties to the Contract in writing and shall pay the money into a lawyer's trust account;
  - (c) the parties agree to allow the lawyer and/or the brokerage to deduct from the Deposit a reasonable fee and costs incurred for dealing with the Deposit;
  - (d) a brokerage and/or lawyer acting in good faith under this clause shall not be liable to either party for any damages associated with the handling of the Deposit except as arising from the negligence of the brokerage or lawyer.
- 3.8** In the event that the brokerage holding the trust funds ceases to be licensed in real estate, the Buyer and the Seller agree to allow the trust funds to be transferred to the brokerage representing the other party.

#### **4. CLOSING**

- 4.1** All monies due and owing to the Seller, including GST if applicable as per clause 2.3, shall be paid to the Seller's lawyer on or before the Completion Day. Subject to compliance with the terms hereof, possession of the Land shall be available and given to the Buyer on or before 12 noon of the 6th day of May, 2025 (the "Completion Day"), subject to the rights of the existing tenants, if any, and Buildings/Farmstead on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, subject to the rights of the existing tenants, if any. All harvested crops remain the property of the Seller and will be removed by the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, and all unharvested crops by the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, after which time the crops or any part thereof not removed shall become the absolute property of the Buyer.
- 4.2** When the Buyer obtains possession, the Property will be in substantially the same condition as when this Contract was accepted.
- 4.3** All normal adjustments for the Property including but not limited to taxes, local improvement levy and assessments, municipal charges, rents, utilities, tenant deposits including interest, prepaid rent, surface leases (if any), mortgage principal and interest that are applicable with respect to the Property shall be adjusted as of 24:00 hours on the Completion Day. The Buyer shall assume all local improvements, assessments and charges against the Property as of that time.
- 4.4** The Seller or the Seller's lawyer will deliver closing documents to the Buyer or the Buyer's lawyer upon reasonable terms consistent with the terms of this Contract. Closing documents shall consist of the transfer of land (the "Transfer") in registrable form together with all applicable conveyancing documents normally expected in a transaction of this nature and shall be prepared at the expense of the Seller and delivered to the Buyer's lawyer within a reasonable time to confirm registration prior to Completion Day.
- 4.5** If the Seller fails to deliver the closing documents according to clause 4.4, then payment of the Purchase Price and late interest will be postponed until the Buyer has received the closing documents and has a reasonable period of time to register them and to obtain the advance of proceeds for any New Financing and Other Value. Notwithstanding the foregoing, if the Buyer is otherwise ready, willing and able to close in accordance with this Contract and desires to take possession of the Property, then the Seller shall give the Buyer possession upon reasonable terms which will include the payment of late interest only on the amount of mortgage being obtained by the Buyer, if any, at the interest rate of such mortgage.
- 4.6** In circumstances where the Seller has complied with clause 4.4 but the Buyer is not able to close in accordance with this Contract, then the Seller may, but is not obligated to, accept late payment of the Purchase Price and give the Buyer possession upon reasonable terms. If the Seller agrees in writing to accept late payment of the Purchase Price under this clause then, whether or not possession is granted, the Buyer will pay late interest at the prime lending rate of the Province of Alberta Treasury Branches at the Completion Day plus 3% calculated daily from and including the Completion Day to (but excluding) the day the Seller is paid in full. Payment received after noon on any day will be payment as of the next Business Day.
- 4.7** The Seller's lawyer may use the Purchase Price to pay out all mortgages, registrations and other financial obligations that are the Seller's obligation to pay or discharge. Within a reasonable period of time after the Completion Day, the Seller's lawyer will provide the Buyer's lawyer with evidence of all discharges including, where required, a certified copy of the certificate of title.

- 4.8 The Seller will pay the costs to prepare the closing documents and to prepare, register and discharge any Seller's caveat based on the Contract.
- 4.9 The Buyer will pay the costs to prepare, register and discharge any Buyer's caveat based on this Contract and to register the transfer of land.
- 4.10 If the Property is rented and the Buyer is not assuming the tenancy, then the Seller is responsible for all costs related to ending the tenancy and giving vacant possession to the Buyer.

## 5. INSURANCE

- 5.1 The risk of loss or damage to the Property will lie with the Seller until the Purchase Price is paid according to the terms of this Contract. If loss or damage to the Property occurs before the Seller is paid the Purchase Price, then any insurance proceeds will be held in trust for the Buyer and the Seller according to their interests in the Property.

## 6. REPRESENTATIONS AND WARRANTIES

- 6.1 The Seller represents and warrants to the Buyer that:
- (a) the Seller has the legal right to sell the Property; subject to approval by the Court and Receiver;
  - (b) the Attached Goods and included Unattached Goods are in normal working order and are free and clear of all encumbrances;
  - (c) within the meaning of the *Income Tax Act (Canada)*, the Seller is not now, nor will be on the Completion Day, a non-resident of Canada nor an agent or a trustee for any person with an interest in the Property who is a non-resident of Canada;
  - (d) the current use of the Land and Buildings complies with the existing municipal land use bylaw;
  - (e) the Buildings and other improvements on the Land are not placed partly or wholly on any easement or utility right-of-way and are entirely on the Land and do not encroach on neighbouring lands, except where an encroachment agreement is registered on title, or in the case of an encroachment into municipal lands or a right-of-way, the municipality has endorsed encroachment approval directly on the real property report;
  - (f) the location of Buildings and other improvements on the Land complies with all relevant municipal bylaws, regulations or relaxations granted by the appropriate municipality prior to the Completion Day, or the Buildings and other improvements on the Land are "non-conforming buildings" as that term is defined in the *Municipal Government Act (Alberta)*;
  - (g) the current use of the Land and Buildings and the location of the Buildings and other improvements on the Land comply with any restrictive covenant on title;
  - (h) to the best of the Seller's knowledge, there is no legal action outstanding with respect to the Property;
  - (i) the Seller is not in breach of any contract with respect to the Property; (subject to approval by the Court and Receiver
  - (j) the Seller is not in breach of any obligation to any third party with respect to the Property, and
  - (k) except as otherwise disclosed, the Seller is not aware of any defects that are not visible and that may render the Property dangerous or potentially dangerous to occupants or unfit for habitation.
- 6.2 The Buyer represents and warrants that, prior to completion, it is NOT an "ineligible person" or a "foreign controlled corporation" and is eligible to purchase "controlled land" as those terms are defined in the *Foreign Ownership of Land Regulations*.
- 6.3 All of the warranties contained in this Contract and any attached Schedules are made as of and will be true at the Completion Day, unless otherwise agreed in writing.
- 6.4 The Seller and the Buyer each acknowledge that, except as otherwise described in this Contract, there are **no other warranties, representations or collateral agreements** made by or with the other party, the Seller's brokerage and the Buyer's brokerage about the Property, any neighbouring lands, and this transaction, including any warranty, representation or collateral agreement relating to the size/measurements of the Land and Buildings or the existence or non-existence of any environmental condition or problem.
- 6.5 The representations and warranties in this Contract shall survive the completion of purchase and sale and may be enforced after the Completion Day, provided that any legal action is commenced within the time limits prescribed by the Limitations Act (Alberta).
- 6.6 The Buyer shall have the right to register a caveat against the Title to the Property upon the acceptance of this offer by the Seller. Should the Buyer fail to perform this Contract, the Buyer agrees to forthwith discharge that caveat.

## 7. ADDITIONAL TERMS HOLDBACK

- 7.1 All time periods, deadlines and dates in this Contract shall be strictly followed and enforced. All times will be Alberta time unless otherwise stated.
- 7.2 This Contract is for the benefit of and shall be binding upon the heirs, executors, administrators and assigns of the individual parties and the successors and assigns of corporate parties.
- 7.3 All changes of number and gender shall be made where required.
- 7.4 This Contract will be governed by the laws of the Province of Alberta. The parties submit to the exclusive jurisdiction of the Courts in the Province of Alberta regarding any dispute that may arise out of this transaction.

7.5 Additional terms of sale, if any: \_\_\_\_\_

All references to Seller's and Buyer's realtors/brokers are not applicable.

There are no real estate commissions payable by either party.

\_\_\_\_\_ (Attach Schedule if necessary and have initialled by both parties.)

7.6 In the event that the additional terms of this Contract are not fulfilled, there shall be a holdback of \$ \_\_\_\_\_

\_\_\_\_\_ for \_\_\_\_\_ days from the Completion Day to allow compliance by the Seller. These monies will be held in trust by the Buyer's lawyer and if terms are not satisfied, these monies shall be released to the Buyer.

**8. CONDITIONS**

8.1 The Buyer's Conditions are:

(a) **Financing Condition**

It is a condition precedent to this offer that the Buyer is able to place a new mortgage(s), as per clause 2.2, upon terms acceptable to the Buyer in order to fund the purchase of the Property. The Buyer shall have an opportunity to obtain such financing

Before 9 p.m. on April 23, 20<sup>25</sup>, (the "Condition Day")

(b) **Water Supply**

It is a condition precedent of this offer that the Buyer will verify, at the Buyer's expense, that the water supply meets the following criteria: \_\_\_\_\_

Before 9 p.m. on \_\_\_\_\_, 20\_\_\_\_\_, (the "Condition Day")

(c) **Due Diligence Condition**

The Seller agrees to provide, within 48 hours of Final Signing, all relevant information and records relating the Property that the Seller has in its possession, including but not limited to operational information, other contracts, surveyor's plans, real property reports and environmental assessment reports. The Buyer may also at its own expense retain consultants to conduct inspections, reviews and tests. It is a condition precedent of this offer that the information be satisfactory to the Buyer.

Before 9 p.m. on \_\_\_\_\_, 20\_\_\_\_\_, (the "Condition Day")

The Buyer shall keep all information obtained in strict confidence and shall only make the information available to the Buyer's employees, agents and professional advisors in strict confidence and shall return all of the above materials including all copies to the Seller before any Deposits are released to the Buyer pursuant to this Contract.

(d) **Additional Buyer's Conditions**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Before 9 p.m. on \_\_\_\_\_, 20\_\_\_\_\_, (the "Condition Day")

**8.2 The Seller's Conditions are:** \_\_\_\_\_

Subject to Court Order authorizing the sale and approval by Receiver.

Before 9 p.m. on \_\_\_\_\_, 20\_\_\_\_\_, (the "Condition Day")

- 8.3** Unless otherwise agreed in writing, the Buyer's Conditions are for the sole benefit of the Buyer and the Seller's Conditions are for the sole benefit of the Seller. The Buyer and Seller must use reasonable efforts to satisfy their respective Conditions.
- 8.4** The Buyer and the Seller may unilaterally waive or acknowledge satisfaction of their Conditions by giving a written notice to the other party on or before the stated Condition Day. If that notice is not given, then this Contract is ended immediately following that Condition Day.
- 8.5** Subject to clause 8.3, the Buyer and the Seller may give written notice to the other party on or before the stated Condition Day advising that a Condition will not be waived, has not been satisfied and will not be satisfied on or before the Condition Day. If that notice is given, then this Contract is ended upon the giving of that notice.

**9. REMEDIES/DISPUTES**

- 9.1** If the Seller or the Buyer fails or refuses to complete this Contract according to its terms, then the other party may pursue all available remedies. The Seller's remedies include keeping the Deposits and claiming additional damages. Both the Seller and the Buyer can claim reasonable costs including legal fees and disbursements on a solicitor/client full indemnity basis.
- 9.2** If the Seller must restore title to the Property, enforce a lien against the Property or regain possession of the Property due to the Buyer's default, then the Buyer will pay the Seller's reasonable costs including legal fees and disbursements on a solicitor/client full indemnity basis.
- 9.3** The Seller and the Buyer agree that the Property is unique and that, in the event of a default by the Seller, the Buyer is entitled, without limiting any other remedies available in clause 9.1, to claim the remedy of specific performance.

**10. SECURITY FOR THE SELLER'S BROKERAGE'S FEES**

~~10.1 The Seller does hereby irrevocably assign to the Seller's brokerage enough of the Purchase Price to pay all sums due and owing to the Seller's brokerage, and agrees to pay any unpaid balance of the Commission to the Seller's brokerage.~~

**11. ADVICE**

- 11.1** This Contract is intended to create binding legal obligations. The Seller and the Buyer should read this Contract carefully and are encouraged to obtain legal advice before signing.
- 11.2** Any representations as to the measurements of the Buildings are only approximations and may not be accurate. The Buyer may wish to obtain an independent property inspection and verify the measurements of the Land and Buildings.
- 11.3** This Contract may be signed and sent by fax or by email and these procedures will be as effective as signing and delivering an original copy.
- 11.4** Unless there is written consent for alternate representation, the Seller's brokerage represents the Seller as Seller's Agent and does not have a fiduciary relationship with the Buyer, and the Buyer's brokerage represents the Buyer as Buyer's Agent and does not have a fiduciary relationship with the Seller.
- 11.5** The Buyer and Seller agree that the sale and other related information regarding this transaction may be retained and disclosed by the brokerage and/or the real estate board(s) as required for closing and for reporting, appraisal and statistical purposes.

**12. DEFINITIONS**

- 12.1** In this Contract:
  - (a) *Business Day* means every day but Saturday, Sunday and statutory holidays.
  - (b) *Commission* means the sum owing from the Seller for services rendered under the Seller Brokerage Agreement plus GST.
  - (c) *Seller Brokerage Agreement* means any written service or commission agreement obligating the Seller to pay remuneration.
  - (d) *Notice* means any notice referred to in this Contract and includes communication of the acceptance of an offer to purchase.
  - (e) *Unless otherwise agreed in writing* means either changes made to the terms of this Contract that are agreed to by both the Seller and the Buyer, or a written agreement by letter or otherwise between the Seller or the Seller's lawyer and the Buyer or the Buyer's lawyer.

**13. REPRESENTATIVES/NOTICE/COMMUNICATION**

**Note: This section must be filled out in full.**

- 13.1 As long as the Representative information in 13.3 is completed, the identified Representatives are authorized to send and receive any Notices, documents and information on behalf of their respective clients in person, by fax, or by email. Buyer and Seller acknowledge there are risks with each of these methods.
- 13.2 Buyer and Seller agree that any Notices, documents and information exchanged between the parties in person, by fax, or by email will be considered effective at the time they are sent.
- 13.3 The following addresses must be used for all communication between Buyer, Seller and their Representatives, unless otherwise stated. If the information changes, Buyer and Seller must tell each other, in writing, through their Representatives, within two Business Days of the change.

**Designated Address for Communication:**

The Buyer acknowledges that the following is the designated address for communication for all buyers.

Name KENT AND DELPHIE SIEMENS AND SHANE AND KORTNEY SIEMENS

Address \_\_\_\_\_ (postal code)

Phone \_\_\_\_\_ Fax \_\_\_\_\_

Email kj90siemens@gmail.com

**Buyer Brokerage Information:**

<b>BROKERAGE:</b>	<b>BROKERAGE REPRESENTATIVE:</b>
Name _____	Name _____
Address _____	Address: c/o the Brokerage
_____ (postal code)	
Phone _____ Fax _____	Phone _____ Fax _____
Email _____	Email _____

The Seller acknowledges that the following is the designated address for communication for all sellers.

Name MURRAY AND CAROLYN HERBERT

Address c/o Snyder & Associates LLP, 3500, 10180 - 101 Street, Edmonton, AB T5J 3S4 (postal code)

Phone 780-426-4133 Fax 780-424-1588

Email ssnyder@snyder.ca

**Seller Brokerage Information:**

<b>BROKERAGE:</b>	<b>BROKERAGE REPRESENTATIVE:</b>
Name _____	Name _____
Address _____	Address: c/o the Brokerage
_____ (postal code)	
Phone _____ Fax _____	Phone _____ Fax _____
Email _____	Email _____


**14. OFFER**

14.1 Buyer and Seller agree that an electronic signature, as defined in the *Electronic Transactions Act* (Alberta), or a digitized signature will have the same function as an ink signature.

14.2 The Buyer offers to buy the Property for the Purchase Price according to the terms of this Contract.

14.3 This offer/counter offer shall be open for acceptance in writing until \_\_\_\_\_m. on \_\_\_\_\_  
April \_\_\_\_\_, 20<sup>25</sup>.

SIGNED AND DATED at \_\_\_\_\_, Alberta at \_\_\_\_\_m. on April \_\_\_\_\_, 20<sup>25</sup>.

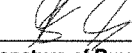
X  X Delphie Siemens

Signature of Buyer  
KENT AND DELPHIE SIEMENS

Signature of Witness

Print Name of Buyer

Print Name of Witness

X  X

Signature of Buyer  
SHANE AND KORTNEY SIEMENS

Signature of Witness

Print Name of Buyer

Print Name of Witness

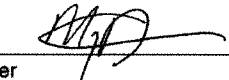
Buyer's GST # \_\_\_\_\_

**PART B – ACCEPTANCE**

**15. ACCEPTANCE**

15.1 The Seller accepts the Buyer's offer and agrees to sell the Property for the Purchase Price according to the terms of this Contract.

SIGNED AND DATED at \_\_\_\_\_, Alberta at \_\_\_\_\_m. on April \_\_\_\_\_, 20<sup>25</sup>.

X  \_\_\_\_\_

Signature of Seller  
MURRAY HERBERT

Signature of Witness

Print Name of Seller

Print Name of Witness

X  \_\_\_\_\_

Signature of Seller  
CAROLYN HERBERT

Signature of Witness

Print Name of Seller

Print Name of Witness

Seller's GST # \_\_\_\_\_

**16. FINAL SIGNING**

16.1 Final Signing of this Contract occurred at \_\_\_\_\_m. on April \_\_\_\_\_, 20<sup>25</sup>.

Initials of the person(s) who signed last \_\_\_\_\_

**CONVEYANCING**

**BUYER:**

Name <u>KENT AND DELPHIE SIEMENS AND SHANE AND KORTNEY SIEMENS</u>	Name _____
Address _____	Address _____
_____ (postal code)	_____ (postal code)
Phone _____ Fax _____	Phone _____ Fax _____
Email <u>kj90siemens@gmail.com</u>	Email _____

**BROKERAGE:**

Name \_\_\_\_\_

Address \_\_\_\_\_

\_\_\_\_\_ (postal code)

Phone \_\_\_\_\_ Fax \_\_\_\_\_

Email \_\_\_\_\_

**BROKERAGE REPRESENTATIVE:**

Name \_\_\_\_\_

Address: c/o the Brokerage

Phone \_\_\_\_\_ Fax \_\_\_\_\_

Email \_\_\_\_\_

**LAWYER:**

Name \_\_\_\_\_

Address \_\_\_\_\_

\_\_\_\_\_ (postal code)

Phone \_\_\_\_\_ Fax \_\_\_\_\_

Email \_\_\_\_\_

**SELLER:**

Name <u>MURRAY AND CAROLYN HERBERT</u>	Name _____
Address <u>Box 88, Edberg, AB T0B 1J0</u>	Address _____
_____ (postal code)	_____ (postal code)
Phone _____ Fax _____	Phone _____ Fax _____
Email _____	Email _____

**BROKERAGE:**

Name \_\_\_\_\_

Address \_\_\_\_\_

\_\_\_\_\_ (postal code)

Phone \_\_\_\_\_ Fax \_\_\_\_\_

Email \_\_\_\_\_

**BROKERAGE REPRESENTATIVE:**

Name \_\_\_\_\_

Address: c/o the Brokerage

Phone \_\_\_\_\_ Fax \_\_\_\_\_

Email \_\_\_\_\_

**LAWYER:**

Name STEPHEN C. SNYDER

Address 3500, 10180 - 101 Street, Edmonton, AB T5J 3S4

\_\_\_\_\_ (postal code)

Phone 780-426-4133 Fax 780-424-1588

Email ssnyder@snyder.ca

# APPENDIX “E”

**Ryan Zahara**  
**Partner**Direct Line: (403) 693-5420  
E-mail: rzahara@mltaikins.com

April 25, 2025

**VIA EMAIL**  
**(CommercialCoordinator.KBJEdmonton@albertacourts.ca)**Regie Agcaoili  
Legal Assistant  
Direct Line: (403) 693-5402  
E-mail: ragcaoili@mltaikins.com**Attention: Justice D.R. Mah c/o Commercial Coordinator****Re: Apex Nutri-Solutions Inc., 2175551 Alberta Ltd., Steven Herbert, David Herbert, Murray Herbert, and Carolyn Herbert v ATB Financial; Action No. 2401-01216, Judicial Centre of Calgary**

We are counsel to BDO Canada Limited, in its capacity as the Court-appointed receiver (the "**Receiver**") in the above-noted matter.

We write further to:

1. the hearing which took place in the receivership of certain assets of Murray and Carolyn Herbert (the "**Herberts**") before the Honourable Justice D. R. Mah on April 17, 2025 at 3:00 p.m. (the "**April 17 Hearing**"); and
2. correspondence from Jarrett Tilley of Snyder & Associates LLP, counsel on behalf of the Debtors, directed to Justice Mah's attention earlier today.

During the April 17 Hearing, Justice Mah indicated that he would arrange to hear an application for the sale of certain of the Herberts' lands on an urgent basis, provided that such application is uncontested. As per the hearing transcript beginning at page 3, line 23:

THE COURT... Mr. Tilley, if you're able to present your offer to the Receiver and it's acceptable to the Receiver and to the secured creditor - and I see that Mr. Pontin is here - and it has the effect of doing what you say it will do, which is pay out the secured creditor, then you're free to approach the commercial co-chair for Edmonton, and it happens to be me, to bring your matter on, on an urgent basis. If there isn't time on the commercial list and assuming that your offer actually does... everything that you say it will do, it should go through unopposed. So I will do my best to find some time to deal with it on an urgent basis, if you need it to be dealt with on an urgent basis. [Emphasis added.]

The Receiver opposes the specific relief sought in the Herberts' Application to Approve Private Sale and Oppose Tender Process which was served on us (together with the Affidavit of Murray Paul Herbert affirmed on April 24, 2025) earlier today (the "**Herbert Application**").

Further, the Herbert Application seeks relief in addition to the approval of the sale of the Herberts' lands, which is all that Justice Mah had contemplated on an urgent basis. It also seeks to "terminate" the receivership. Such relief is not available on an urgent basis.

To be clear, and without limitation, the Herbert Application cannot succeed because:

1. it seeks to compel the Receiver to close a transaction based on a contract to which the Receiver is not a party and which was entered into contrary to the exclusive authority provided to the Receiver pursuant to the Receivership Order respecting the Herberts dated April 2, 2025;
2. it seeks to compel the Receiver to close a transaction for the sale of land without vesting title to the land in the purchasers, such that the Receiver would have no legal mechanism to convey title to the purchasers;
3. it seeks to compel the Receiver to discharge its registration from title without making any provision for the satisfaction of the Receiver's Charge contemplated in paragraph 18 of the Receivership Order;
4. it seeks to deny the Receiver its choice of counsel and compel the Receiver to engage the firm of Snyder & Associates LLP in order to close the contemplated transaction, despite the clear conflict of interest of that firm (having taken positions adversarial to the Receiver throughout these proceedings and acting on behalf of the Herberts); and
5. it seeks to "terminate" the receivership without including any of the standard provisions in the Alberta Template Discharge Order, including approval of the Receiver's activities, approval of the professional fees and disbursements of the Receiver and its legal counsel; and granting protections from the Receiver from actions other than for gross negligence or wilful misconduct with leave of the Court.

Accordingly, there is currently no justification for the entirety of the relief sought in the Herbert Application to be heard on an urgent basis, whether on Wednesday, April 30, 2025 at 3:00 p.m. or otherwise.

With that said, the Receiver is not opposed in principle to "Offer #1" in the total amount of \$2.3 million as described in the Application. However, any agreement to sell any of the lands which are subject to the Herbert Receivership Order must either be made with the Receiver (in a form acceptable to the Receiver and subject to obtaining an Approval and Vesting Order from the Court) or, exceptionally, made with the Herberts directly with the Receiver's written permission (in which case it would be the Herberts' responsibility, not the Receiver's, to obtain all necessary discharges and close the resulting sale transaction, including payment of sufficient security from the sales proceeds to the Receiver in respect of its Receiver's Charge). The Receiver has proposed to the Herberts a mechanism to advance "Offer #1" to a sale, but has not yet received a response to that proposal from the Herberts.<sup>1</sup>

---

<sup>1</sup> For context, copies of "Offer #1" and "Offer #2" were provided for the first time in the afternoon of Wednesday April 23<sup>rd</sup>. Counsel for the Herberts requested that the Receiver advise by 12:00 noon on Friday, April 25 whether or not the Receiver would accept any of the offers presented, failing which they would proceed to file an urgent application. In fact, the Herberts' application was served on the Receiver at 11:52 a.m. on April 25, 2025, with the Receiver's response regarding the conditions upon the Receiver was willing to consider moving forward with Offer #1 following at 12:06 p.m. on April 25, 2025 (with the 6-minute delay caused by the Receiver and its counsel reviewing the Herberts' application materials).

The Receiver is cautiously optimistic that agreement on the manner in which Offer #1 can be pursued can be reached, at which point an urgent hearing can be scheduled if required.

In the alternative, if the Court is nevertheless prepared to set the Herbert Application down for a hearing on an urgent basis based on the current record, we respectfully suggest that such contested hearing should not be scheduled any earlier than Friday, May 2, 2025 (in order to permit continued negotiations or, failing agreement, preparation for a contested hearing). We can be available any time on that day for a hearing.

Yours truly,

**MLT AIKINS LLP**



for: Ryan Zahara

cc: Snyder & Associates LLP, Attention: Jarrett Tilley, legal counsel for Murray and Carolyn Herbert  
Derek Pontin, Dentons Canada LLP, legal counsel for ATB Financial

# APPENDIX “F”

THE HONOURABLE JUSTICE  
DOUGLAS R. MAH



THE LAW COURTS  
1A SIR WINSTON  
CHURCHILL SQUARE  
EDMONTON, ALBERTA T5J 0R2  
TEL (780) 644-8975  
FAX (780) 427-0334

COURT OF KING'S BENCH OF ALBERTA

April 28, 2025

Jarrett Tilley  
Snyder & Associates LLP  
Via Email: [jtilley@snyder.ca](mailto:jtilley@snyder.ca)

Ryan Zahara  
MLT Aikins  
Via Email: [rzahara@mltaikins.com](mailto:rzahara@mltaikins.com)

Derek Pontin  
Dentons Canada LLP  
Via Email: [derek.pontin@dentons.com](mailto:derek.pontin@dentons.com)

Dear Counsel:

**Re: Apex Nutri-Solutions Inc v ATB Financial  
Court of King's Bench Action No. 2401 01216**

I have Mr. Tilley's letter of April 25, 2025, requesting an urgent hearing respecting the sale of certain lands under receivership (and other relief) and Mr. Zahara's response of the same date. As the record shows, my comments at the adjournment hearing on April 17, 2025, regarding a possible urgent sale application, based on an offer or offers procured by the Defendants, were premised on the matter proceeding on a consent basis and, I suggest, within and not outside of the Receivership.

If counsel are able to work out a resolution that is satisfactory to the secured creditor, the Receiver and the Defendants, and which counsel believe the Court ought to approve, then I am prepared to hear the application on a consent basis on the afternoon of May 5, 6 or 7, at 1:30 p.m. I anticipate the application should not take more than a half hour. I am on out-of-town assignment that week but can make myself available as indicated.

In the event the proposal being put forward by the Defendants cannot be dealt with on a consent basis, then Mr. Tilley will have to bring his application on notice and in accordance with the Commercial Practice Note. In that event, it may be heard by any Commercial List Justice.

Yours truly,

A handwritten signature in black ink, appearing to read 'Douglas R. Mah'.

Justice Douglas R. Mah  
J.C.K.B.A

DRM/er

Cc Commercial Court Coordinator  
Via Email

# APPENDIX “G”

**AGREEMENT RESPECTING SALE**

This Agreement Respecting Sale (“**Agreement**”) made effective the 28<sup>th</sup> day of April, 2025 (the “**Effective Date**”).

**BETWEEN:**     **BDO CANADA LIMITED, in its capacity as Court-appointed Receiver of certain property of MURRAY HERBERT and CAROLYN HERBERT and not in its personal capacity (the “Receiver”)**

**AND:**           **MURRAY HERBERT and CAROLYN HERBERT, individuals residing in or near Edberg, Alberta (the “Herberts”)**

**WHEREAS** the Receiver is the Receiver of, among other property owned by the Herberts, NE 24-43-20 W4 (“**Parcel #1**”) and SE 26-43-20 W4 (“**Parcel #2**”), pursuant to the Receivership Order granted on April 2, 2025 by the Honourable Justice C.D. Simard (the “**Receivership Order**”) of the Court of King’s Bench for Alberta (the “**Court**”) in respect of the Herberts;

**AND WHEREAS** the Herberts have presented the Receiver with an agreement pursuant to which from Kent, Delphie, Shane, and Kortney Siemens have agreed to purchase Parcel #1 and Parcel #2 from the Herberts, a copy of which is attached hereto as **Schedule A** (the “**Sale Agreement**”);

**AND WHEREAS** the Receiver is prepared to support the transaction described in the Sale Agreement subject to the terms and conditions set out in this Agreement;

**NOW THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Receiver and the Herberts agree as follows:


1. The Receiver will forthwith apply to Court for approval of the Sale Agreement and this Agreement.
2. Conditional on the Court approving the Sale Agreement and this Agreement, the Receiver consents to the Herberts completing the transaction described in the Sale Agreement.
3. The Receiver will not be obtaining a vesting order from the Court. Accordingly, the Herberts will (subject to this section 3) be responsible to discharge any and all interests from title to the extent required to complete the transaction contemplated in the Sale Agreement including, for greater certainty, the mortgage registered by ATB Financial (“**ATB**”). The Receiver shall cause the Receivership Order to be discharged from title to Parcel #1 and Parcel #2 within a reasonable time following the payment to the office of counsel to the Receiver of all of the proceeds from the sale of Parcel #1 and Parcel #2, net only of:
  - a. the amounts required to discharge the ATB mortgage;
  - b. any property taxes, utilities, or ordinary-course adjustments on closing in amounts approved in writing by the Receiver; and
  - c. the Herberts’ reasonable legal fees relating solely to the sale of Parcel #1 and Parcel #2, in an amount approved in writing by the Receiver.

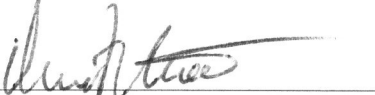
If the Herberts and the Receiver are unable to agree upon the amounts described in clauses (b) and (c), the difference between the amounts approved by the Receiver and the amount requested by the Herberts shall be paid to the Receiver’s counsel in trust pending an application by the Receiver to the Court to determine the reasonable amounts of each.

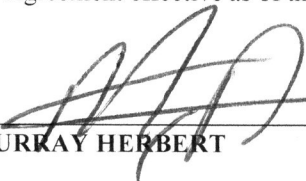
4. For greater certainty, the Herberts do not and shall not have the authority to make any amendments to the Sale Agreement without the specific and express written consent of the Receiver.

5. Strictly subject to all of the foregoing, the Receiver hereby consents to the closing of the transaction described in the Sale Agreement, notwithstanding anything in the Receivership Order.
6. There are no representations or warranties, express or implied, and no agreements collateral hereto other than as expressly set forth or referred to herein.
7. The Herberts have carefully read this Agreement, know and fully understand the contents of this Agreement, have satisfied themselves as to the nature, meaning, and effect of this Agreement, are not relying upon the representations of any other party, and have had the opportunity to obtain (and have in fact received) independent legal advice respecting the nature, contents, and legal effect of this Agreement.
8. Time is of the essence of this Agreement and each of the terms and conditions hereof.
9. This Agreement shall be governed by and construed in accordance with the laws of the Province of Alberta and the federal laws of Canada applicable therein. Each of the Receiver and the Herberts hereby attorns to the exclusive jurisdiction of the courts of Alberta.
10. This Agreement may be executed in two or more counterparts, and may be signed by facsimile or other means of electronic communication producing a printed copy, each of which so signed shall be deemed to be an original, and such counterparts together shall constitute one and the same instrument and, notwithstanding the date of execution, shall be deemed to bear the Effective Date first written above.

IN WITNESS WHEREOF the parties have executed this Agreement effective as of the Effective Date.

  
 \_\_\_\_\_  
 Witness

  
 \_\_\_\_\_  
 Witness

  
 \_\_\_\_\_  
 MURRAY HERBERT

  
 \_\_\_\_\_  
 CAROLYN HERBERT

**BDO CANADA LIMITED**, in its capacity as Court-appointed Receiver of certain property of **MURRAY HERBERT** and **CAROLYN HERBERT** and not in its personal capacity

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

Kevin Meyler, Senior Vice President

**SCHEDULE A**  
**AGRICULTURAL PURCHASE CONTRACT**

**See attached.**

## AGRICULTURAL PURCHASE CONTRACT

This form was developed by the Alberta Real Estate Association for the use of its members and may not be altered electronically by any person. Others who use this document do so at their own risk.

### PART A – OFFER TO PURCHASE

This Contract is between

**THE SELLER** and **THE BUYER**

Name MURRAY AND CAROLYN HERBERT Name KENT AND DELPHIE SIEMENS

Name \_\_\_\_\_ Name SHANE AND KORTNEY SIEMENS

#### 1. THE PROPERTY

1.1 The Property is the Land, Buildings, Attached Goods (unless excluded) and included Unattached Goods and other considerations as per clause 1.6 below, excluding all mines and minerals.

1.2 Municipal Address: \_\_\_\_\_

\_\_\_\_\_

1.3 Legal description (as set out below or on attached Land Description Schedule):

**Deeded Lands**

W. of (Meridian)	Range	Township	Section	Part	Acres
4	20	43	26	SE QUARTER	153.75
4	20	43	24	NE QUARTER	160

**Assignment of Lease of**

W. of (Meridian)	Range	Township	Section	Part	Acres

1.4 All Attached Goods (fixtures) except for: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

1.5 No Unattached Goods (specified chattels) except for: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**1.6 Other considerations as per the attached Schedules:**

- |   |   |
|---|---|
| <input type="checkbox"/> Copy of the existing Title(s) _____                | <input type="checkbox"/> Financing Schedule                               |
| <input type="checkbox"/> Schedule A: Surface Leases/Income                  | <input type="checkbox"/> Poultry/Livestock Quotas Schedule                |
| <input type="checkbox"/> Schedule B: Grazing Leases/Permits                 | <input type="checkbox"/> Water Rights/Irrigation Schedule (if applicable) |
| <input type="checkbox"/> Schedule C: Property Leases                        | <input type="checkbox"/> Addendum   |
| <input type="checkbox"/> Country Residential/Agricultural Property Schedule | <input type="checkbox"/> Other _____                                      |
| <input type="checkbox"/> Land Description Schedule                          |   |

**1.7** Title to the Property shall be subject to any reservations and exceptions stated on the Certificate of Title, non-financial obligations now on title such as easements, utility rights-of-way, covenants and conditions that are normally found registered against property of this nature, and non-financial encumbrances which have been accepted by the Buyer (the "Permitted Encumbrances"). Unless otherwise agreed in writing, the Title shall be free and clear of all other liens, encumbrances, registrations and obligations except those implied by law.

The Buyer agrees to accept the following Permitted Encumbrances: \_\_\_\_\_  
URW 752 158 005, CAVEAT 902 243 866 (TITLE NO. 092 124 299)

**2. THE TRANSACTION**

**2.1** The Buyer and the Seller agree to act cooperatively, reasonably and in good faith.

**2.2** The Buyer hereby offers to purchase the Property for the Purchase Price specified and allocated below:

- \$ 200,000.00 \_\_\_\_\_ Initial Deposit
- \$ \_\_\_\_\_ Additional Deposit
- \$ \_\_\_\_\_ New Financing
- \$ \_\_\_\_\_ Seller Financing (as per attached Financing Schedule)
- \$ \_\_\_\_\_ Other Value
- \$ \_\_\_\_\_
- \$ 2,100,000.00 \_\_\_\_\_ Balance Owning (subject to adjustments)
- \$ 2,300,000.00 \_\_\_\_\_ **Purchase Price (excluding GST)**

**2.3** The Purchase Price does not include GST. In the event that GST is payable and the Buyer is not a GST registrant, then the Buyer shall remit the applicable GST to the Seller's lawyer on or before Completion Day.

**2.4** Other than the Deposits, the Buyer shall pay the Purchase Price by lawyer's trust cheque, bank draft or other agreed value.

**3. DEPOSITS**

**3.1** All Deposits shall be delivered in trust to SNYDER & ASSOCIATES LLP.  
Unless otherwise agreed in writing, the Initial Deposit shall accompany the offer. \_\_\_\_\_

**3.2** The Initial Deposit shall be deposited no later than the third Business Day following the day that Final Signing occurred (as per clause 16.1) or the third Business Day following the receipt of the Initial Deposit, whichever is last.

**3.3** Any Additional Deposits shall be delivered in trust as follows \_\_\_\_\_.  
Additional Deposits shall be deposited no later than the third Business Day following the day the Additional Deposit is received.

**3.4** Unless otherwise agreed in writing, no interest on the Deposits shall be paid to the Seller or the Buyer. \_\_\_\_\_

- 3.5** The Deposits shall be held in trust for both the Seller and the Buyer and shall be:
- (a) applied against the Commission and paid directly out of trust to the brokerage(s) when the Commission is earned in accordance with the terms of the Seller Brokerage Agreement or any other commission agreement signed by the Seller;
  - (b) refunded forthwith to the Buyer if this offer is not accepted;
  - (c) refunded forthwith to the Buyer upon the Buyer's cheque clearing the brokerage's trust account if a condition is not satisfied or waived (as per clause 8.4 or 8.5) or the Seller fails to perform this Contract; and
  - (d) forfeited to the Seller if this offer is accepted and all conditions are satisfied or waived and the Buyer fails to perform on this Contract.
- 3.6** The brokerage holding the Deposits is further directed and authorized to pay that portion of the Deposits exceeding the Commission in trust to the Seller's lawyer no later than two (2) Business Days prior to the Completion Day.
- 3.7** If there is a dispute between the Seller and the Buyer as to entitlement to the Deposits, then:
- (a) the brokerage holding the Deposits shall review the circumstances, determine entitlement and pay the money to the party who is entitled to the Deposit;
  - (b) if no reasonable conclusion can be made in regard to (a) above, the brokerage shall notify the parties to the Contract in writing and shall pay the money into a lawyer's trust account;
  - (c) the parties agree to allow the lawyer and/or the brokerage to deduct from the Deposit a reasonable fee and costs incurred for dealing with the Deposit;
  - (d) a brokerage and/or lawyer acting in good faith under this clause shall not be liable to either party for any damages associated with the handling of the Deposit except as arising from the negligence of the brokerage or lawyer.
- 3.8** In the event that the brokerage holding the trust funds ceases to be licensed in real estate, the Buyer and the Seller agree to allow the trust funds to be transferred to the brokerage representing the other party.

#### **4. CLOSING**

- 4.1** All monies due and owing to the Seller, including GST if applicable as per clause 2.3, shall be paid to the Seller's lawyer on or before the Completion Day. Subject to compliance with the terms hereof, possession of the Land shall be available and given to the Buyer on or before 12 noon of the 6th day of May, 2025 (the "Completion Day"), subject to the rights of the existing tenants, if any, and Buildings/Farmstead on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, subject to the rights of the existing tenants, if any. All harvested crops remain the property of the Seller and will be removed by the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, and all unharvested crops by the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, after which time the crops or any part thereof not removed shall become the absolute property of the Buyer.
- 4.2** When the Buyer obtains possession, the Property will be in substantially the same condition as when this Contract was accepted.
- 4.3** All normal adjustments for the Property including but not limited to taxes, local improvement levy and assessments, municipal charges, rents, utilities, tenant deposits including interest, prepaid rent, surface leases (if any), mortgage principal and interest that are applicable with respect to the Property shall be adjusted as of 24:00 hours on the Completion Day. The Buyer shall assume all local improvements, assessments and charges against the Property as of that time.
- 4.4** The Seller or the Seller's lawyer will deliver closing documents to the Buyer or the Buyer's lawyer upon reasonable terms consistent with the terms of this Contract. Closing documents shall consist of the transfer of land (the "Transfer") in registrable form together with all applicable conveyancing documents normally expected in a transaction of this nature and shall be prepared at the expense of the Seller and delivered to the Buyer's lawyer within a reasonable time to confirm registration prior to Completion Day.
- 4.5** If the Seller fails to deliver the closing documents according to clause 4.4, then payment of the Purchase Price and late interest will be postponed until the Buyer has received the closing documents and has a reasonable period of time to register them and to obtain the advance of proceeds for any New Financing and Other Value. Notwithstanding the foregoing, if the Buyer is otherwise ready, willing and able to close in accordance with this Contract and desires to take possession of the Property, then the Seller shall give the Buyer possession upon reasonable terms which will include the payment of late interest only on the amount of mortgage being obtained by the Buyer, if any, at the interest rate of such mortgage.
- 4.6** In circumstances where the Seller has complied with clause 4.4 but the Buyer is not able to close in accordance with this Contract, then the Seller may, but is not obligated to, accept late payment of the Purchase Price and give the Buyer possession upon reasonable terms. If the Seller agrees in writing to accept late payment of the Purchase Price under this clause then, whether or not possession is granted, the Buyer will pay late interest at the prime lending rate of the Province of Alberta Treasury Branches at the Completion Day plus 3% calculated daily from and including the Completion Day to (but excluding) the day the Seller is paid in full. Payment received after noon on any day will be payment as of the next Business Day.
- 4.7** The Seller's lawyer may use the Purchase Price to pay out all mortgages, registrations and other financial obligations that are the Seller's obligation to pay or discharge. Within a reasonable period of time after the Completion Day, the Seller's lawyer will provide the Buyer's lawyer with evidence of all discharges including, where required, a certified copy of the certificate of title.

- 4.8 The Seller will pay the costs to prepare the closing documents and to prepare, register and discharge any Seller's caveat based on the Contract.
- 4.9 The Buyer will pay the costs to prepare, register and discharge any Buyer's caveat based on this Contract and to register the transfer of land.
- 4.10 If the Property is rented and the Buyer is not assuming the tenancy, then the Seller is responsible for all costs related to ending the tenancy and giving vacant possession to the Buyer.

## 5. INSURANCE

- 5.1 The risk of loss or damage to the Property will lie with the Seller until the Purchase Price is paid according to the terms of this Contract. If loss or damage to the Property occurs before the Seller is paid the Purchase Price, then any insurance proceeds will be held in trust for the Buyer and the Seller according to their interests in the Property.

## 6. REPRESENTATIONS AND WARRANTIES

- 6.1 The Seller represents and warrants to the Buyer that:
- (a) the Seller has the legal right to sell the Property; subject to approval by the Court and Receiver;
  - (b) the Attached Goods and included Unattached Goods are in normal working order and are free and clear of all encumbrances;
  - (c) within the meaning of the *Income Tax Act (Canada)*, the Seller is not now, nor will be on the Completion Day, a non-resident of Canada nor an agent or a trustee for any person with an interest in the Property who is a non-resident of Canada;
  - (d) the current use of the Land and Buildings complies with the existing municipal land use bylaw;
  - (e) the Buildings and other improvements on the Land are not placed partly or wholly on any easement or utility right-of-way and are entirely on the Land and do not encroach on neighbouring lands, except where an encroachment agreement is registered on title, or in the case of an encroachment into municipal lands or a right-of-way, the municipality has endorsed encroachment approval directly on the real property report;
  - (f) the location of Buildings and other improvements on the Land complies with all relevant municipal bylaws, regulations or relaxations granted by the appropriate municipality prior to the Completion Day, or the Buildings and other improvements on the Land are "non-conforming buildings" as that term is defined in the *Municipal Government Act (Alberta)*;
  - (g) the current use of the Land and Buildings and the location of the Buildings and other improvements on the Land comply with any restrictive covenant on title;
  - (h) to the best of the Seller's knowledge, there is no legal action outstanding with respect to the Property;
  - (i) the Seller is not in breach of any contract with respect to the Property; (subject to approval by the Court and Receiver
  - (j) the Seller is not in breach of any obligation to any third party with respect to the Property, and
  - (k) except as otherwise disclosed, the Seller is not aware of any defects that are not visible and that may render the Property dangerous or potentially dangerous to occupants or unfit for habitation.
- 6.2 The Buyer represents and warrants that, prior to completion, it is NOT an "ineligible person" or a "foreign controlled corporation" and is eligible to purchase "controlled land" as those terms are defined in the *Foreign Ownership of Land Regulations*.
- 6.3 All of the warranties contained in this Contract and any attached Schedules are made as of and will be true at the Completion Day, unless otherwise agreed in writing.
- 6.4 The Seller and the Buyer each acknowledge that, except as otherwise described in this Contract, there are **no other warranties, representations or collateral agreements** made by or with the other party, the Seller's brokerage and the Buyer's brokerage about the Property, any neighbouring lands, and this transaction, including any warranty, representation or collateral agreement relating to the size/measurements of the Land and Buildings or the existence or non-existence of any environmental condition or problem.
- 6.5 The representations and warranties in this Contract shall survive the completion of purchase and sale and may be enforced after the Completion Day, provided that any legal action is commenced within the time limits prescribed by the Limitations Act (Alberta).
- 6.6 The Buyer shall have the right to register a caveat against the Title to the Property upon the acceptance of this offer by the Seller. Should the Buyer fail to perform this Contract, the Buyer agrees to forthwith discharge that caveat.

## 7. ADDITIONAL TERMS HOLDBACK

- 7.1 All time periods, deadlines and dates in this Contract shall be strictly followed and enforced. All times will be Alberta time unless otherwise stated.
- 7.2 This Contract is for the benefit of and shall be binding upon the heirs, executors, administrators and assigns of the individual parties and the successors and assigns of corporate parties.
- 7.3 All changes of number and gender shall be made where required.
- 7.4 This Contract will be governed by the laws of the Province of Alberta. The parties submit to the exclusive jurisdiction of the Courts in the Province of Alberta regarding any dispute that may arise out of this transaction.

7.5 Additional terms of sale, if any: \_\_\_\_\_

All references to Seller's and Buyer's realtors/brokers are not applicable.

There are no real estate commissions payable by either party.

\_\_\_\_\_ (Attach Schedule if necessary and have initialled by both parties.)

7.6 In the event that the additional terms of this Contract are not fulfilled, there shall be a holdback of \$ \_\_\_\_\_

\_\_\_\_\_ for \_\_\_\_\_ days from the Completion Day to allow compliance by the Seller. These monies will be held in trust by the Buyer's lawyer and if terms are not satisfied, these monies shall be released to the Buyer.

**8. CONDITIONS**

8.1 The Buyer's Conditions are:

(a) **Financing Condition**

It is a condition precedent to this offer that the Buyer is able to place a new mortgage(s), as per clause 2.2, upon terms acceptable to the Buyer in order to fund the purchase of the Property. The Buyer shall have an opportunity to obtain such financing

Before 9 p.m. on April 23, 20<sup>25</sup>, (the "Condition Day")

(b) **Water Supply**

It is a condition precedent of this offer that the Buyer will verify, at the Buyer's expense, that the water supply meets the following criteria: \_\_\_\_\_

Before 9 p.m. on \_\_\_\_\_, 20\_\_\_\_\_, (the "Condition Day")

(c) **Due Diligence Condition**

The Seller agrees to provide, within 48 hours of Final Signing, all relevant information and records relating the Property that the Seller has in its possession, including but not limited to operational information, other contracts, surveyor's plans, real property reports and environmental assessment reports. The Buyer may also at its own expense retain consultants to conduct inspections, reviews and tests. It is a condition precedent of this offer that the information be satisfactory to the Buyer.

Before 9 p.m. on \_\_\_\_\_, 20\_\_\_\_\_, (the "Condition Day")

The Buyer shall keep all information obtained in strict confidence and shall only make the information available to the Buyer's employees, agents and professional advisors in strict confidence and shall return all of the above materials including all copies to the Seller before any Deposits are released to the Buyer pursuant to this Contract.

(d) **Additional Buyer's Conditions**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Before 9 p.m. on \_\_\_\_\_, 20\_\_\_\_\_, (the "Condition Day")

**8.2 The Seller's Conditions are:** \_\_\_\_\_

Subject to Court Order authorizing the sale and approval by Receiver.

Before 9 p.m. on \_\_\_\_\_, 20\_\_\_\_\_, (the "Condition Day")

- 8.3** Unless otherwise agreed in writing, the Buyer's Conditions are for the sole benefit of the Buyer and the Seller's Conditions are for the sole benefit of the Seller. The Buyer and Seller must use reasonable efforts to satisfy their respective Conditions.
- 8.4** The Buyer and the Seller may unilaterally waive or acknowledge satisfaction of their Conditions by giving a written notice to the other party on or before the stated Condition Day. If that notice is not given, then this Contract is ended immediately following that Condition Day.
- 8.5** Subject to clause 8.3, the Buyer and the Seller may give written notice to the other party on or before the stated Condition Day advising that a Condition will not be waived, has not been satisfied and will not be satisfied on or before the Condition Day. If that notice is given, then this Contract is ended upon the giving of that notice.

**9. REMEDIES/DISPUTES**

- 9.1** If the Seller or the Buyer fails or refuses to complete this Contract according to its terms, then the other party may pursue all available remedies. The Seller's remedies include keeping the Deposits and claiming additional damages. Both the Seller and the Buyer can claim reasonable costs including legal fees and disbursements on a solicitor/client full indemnity basis.
- 9.2** If the Seller must restore title to the Property, enforce a lien against the Property or regain possession of the Property due to the Buyer's default, then the Buyer will pay the Seller's reasonable costs including legal fees and disbursements on a solicitor/client full indemnity basis.
- 9.3** The Seller and the Buyer agree that the Property is unique and that, in the event of a default by the Seller, the Buyer is entitled, without limiting any other remedies available in clause 9.1, to claim the remedy of specific performance.

**10. SECURITY FOR THE SELLER'S BROKERAGE'S FEES**

~~10.1 The Seller does hereby irrevocably assign to the Seller's brokerage enough of the Purchase Price to pay all sums due and owing to the Seller's brokerage, and agrees to pay any unpaid balance of the Commission to the Seller's brokerage.~~

**11. ADVICE**

- 11.1** This Contract is intended to create binding legal obligations. The Seller and the Buyer should read this Contract carefully and are encouraged to obtain legal advice before signing.
- 11.2** Any representations as to the measurements of the Buildings are only approximations and may not be accurate. The Buyer may wish to obtain an independent property inspection and verify the measurements of the Land and Buildings.
- 11.3** This Contract may be signed and sent by fax or by email and these procedures will be as effective as signing and delivering an original copy.
- 11.4** Unless there is written consent for alternate representation, the Seller's brokerage represents the Seller as Seller's Agent and does not have a fiduciary relationship with the Buyer, and the Buyer's brokerage represents the Buyer as Buyer's Agent and does not have a fiduciary relationship with the Seller.
- 11.5** The Buyer and Seller agree that the sale and other related information regarding this transaction may be retained and disclosed by the brokerage and/or the real estate board(s) as required for closing and for reporting, appraisal and statistical purposes.

**12. DEFINITIONS**

- 12.1** In this Contract:
  - (a) *Business Day* means every day but Saturday, Sunday and statutory holidays.
  - (b) *Commission* means the sum owing from the Seller for services rendered under the Seller Brokerage Agreement plus GST.
  - (c) *Seller Brokerage Agreement* means any written service or commission agreement obligating the Seller to pay remuneration.
  - (d) *Notice* means any notice referred to in this Contract and includes communication of the acceptance of an offer to purchase.
  - (e) *Unless otherwise agreed in writing* means either changes made to the terms of this Contract that are agreed to by both the Seller and the Buyer, or a written agreement by letter or otherwise between the Seller or the Seller's lawyer and the Buyer or the Buyer's lawyer.

**13. REPRESENTATIVES/NOTICE/COMMUNICATION**

**Note: This section must be filled out in full.**

- 13.1 As long as the Representative information in 13.3 is completed, the identified Representatives are authorized to send and receive any Notices, documents and information on behalf of their respective clients in person, by fax, or by email. Buyer and Seller acknowledge there are risks with each of these methods.
- 13.2 Buyer and Seller agree that any Notices, documents and information exchanged between the parties in person, by fax, or by email will be considered effective at the time they are sent.
- 13.3 The following addresses must be used for all communication between Buyer, Seller and their Representatives, unless otherwise stated. If the information changes, Buyer and Seller must tell each other, in writing, through their Representatives, within two Business Days of the change.

**Designated Address for Communication:**

The Buyer acknowledges that the following is the designated address for communication for all buyers.

Name KENT AND DELPHIE SIEMENS AND SHANE AND KORTNEY SIEMENS

Address \_\_\_\_\_ (postal code)

Phone \_\_\_\_\_ Fax \_\_\_\_\_

Email kj90siemens@gmail.com

**Buyer Brokerage Information:**

<b>BROKERAGE:</b>	<b>BROKERAGE REPRESENTATIVE:</b>
Name _____	Name _____
Address _____	Address: <i>c/o the Brokerage</i>
_____ (postal code)	
Phone _____ Fax _____	Phone _____ Fax _____
Email _____	Email _____

The Seller acknowledges that the following is the designated address for communication for all sellers.

Name MURRAY AND CAROLYN HERBERT

Address c/o Snyder & Associates LLP, 3500, 10180 - 101 Street, Edmonton, AB T5J 3S4 (postal code)

Phone 780-426-4133 Fax 780-424-1588

Email ssnyder@snyder.ca

**Seller Brokerage Information:**

<b>BROKERAGE:</b>	<b>BROKERAGE REPRESENTATIVE:</b>
Name _____	Name _____
Address _____	Address: <i>c/o the Brokerage</i>
_____ (postal code)	
Phone _____ Fax _____	Phone _____ Fax _____
Email _____	Email _____


**14. OFFER**

14.1 Buyer and Seller agree that an electronic signature, as defined in the *Electronic Transactions Act* (Alberta), or a digitized signature will have the same function as an ink signature.

14.2 The Buyer offers to buy the Property for the Purchase Price according to the terms of this Contract.

14.3 This offer/counter offer shall be open for acceptance in writing until \_\_\_\_\_m. on \_\_\_\_\_  
April \_\_\_\_\_, 20<sup>25</sup>.

SIGNED AND DATED at \_\_\_\_\_, Alberta at \_\_\_\_\_m. on April \_\_\_\_\_, 20<sup>25</sup>.

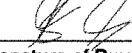
X  X Delphie Siemens

Signature of Buyer  
KENT AND DELPHIE SIEMENS

Signature of Witness

Print Name of Buyer

Print Name of Witness

X  X

Signature of Buyer  
SHANE AND KORTNEY SIEMENS

Signature of Witness

Print Name of Buyer

Print Name of Witness

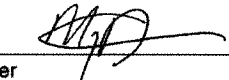
Buyer's GST # \_\_\_\_\_

**PART B – ACCEPTANCE**

**15. ACCEPTANCE**

15.1 The Seller accepts the Buyer's offer and agrees to sell the Property for the Purchase Price according to the terms of this Contract.

SIGNED AND DATED at \_\_\_\_\_, Alberta at \_\_\_\_\_m. on April \_\_\_\_\_, 20<sup>25</sup>.

X 

Signature of Seller  
MURRAY HERBERT

Signature of Witness

Print Name of Seller

Print Name of Witness

X 

Signature of Seller  
CAROLYN HERBERT

Signature of Witness

Print Name of Seller

Print Name of Witness

Seller's GST # \_\_\_\_\_

**16. FINAL SIGNING**

16.1 Final Signing of this Contract occurred at \_\_\_\_\_m. on April \_\_\_\_\_, 20<sup>25</sup>.

Initials of the person(s) who signed last \_\_\_\_\_

**CONVEYANCING**

**BUYER:**

Name <u>KENT AND DELPHIE SIEMENS AND SHANE AND KORTNEY SIEMENS</u>	Name _____
Address _____	Address _____
_____ (postal code)	_____ (postal code)
Phone _____ Fax _____	Phone _____ Fax _____
Email <u>kj90siemens@gmail.com</u>	Email _____

**BROKERAGE:**

Name \_\_\_\_\_

Address \_\_\_\_\_

\_\_\_\_\_ (postal code)

Phone \_\_\_\_\_ Fax \_\_\_\_\_

Email \_\_\_\_\_

**BROKERAGE REPRESENTATIVE:**

Name \_\_\_\_\_

Address: c/o the Brokerage

Phone \_\_\_\_\_ Fax \_\_\_\_\_

Email \_\_\_\_\_

**LAWYER:**

Name \_\_\_\_\_

Address \_\_\_\_\_

\_\_\_\_\_ (postal code)

Phone \_\_\_\_\_ Fax \_\_\_\_\_

Email \_\_\_\_\_

**SELLER:**

Name <u>MURRAY AND CAROLYN HERBERT</u>	Name _____
Address <u>Box 88, Edberg, AB T0B 1J0</u>	Address _____
_____ (postal code)	_____ (postal code)
Phone _____ Fax _____	Phone _____ Fax _____
Email _____	Email _____

**BROKERAGE:**

Name \_\_\_\_\_

Address \_\_\_\_\_

\_\_\_\_\_ (postal code)

Phone \_\_\_\_\_ Fax \_\_\_\_\_

Email \_\_\_\_\_

**BROKERAGE REPRESENTATIVE:**

Name \_\_\_\_\_

Address: c/o the Brokerage

Phone \_\_\_\_\_ Fax \_\_\_\_\_

Email \_\_\_\_\_

**LAWYER:**

Name STEPHEN C. SNYDER

Address 3500, 10180 - 101 Street, Edmonton, AB T5J 3S4

\_\_\_\_\_ (postal code)

Phone 780-426-4133 Fax 780-424-1588

Email ssnyder@snyder.ca

# APPENDIX “H”

**NOTICE**  
**(Waiver/Satisfaction of Conditions)**

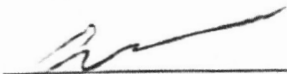
SELLERS: Murray and Carolyn Herbert  
BUYERS: Kent and Delphie Siemens and Shane and Kortney Siemens  
RE: 4:20:43:26;SE & 4:20:43:24;NE Camrose County

We, KENT AND DELPHINE SIEMENS AND SHANE AND KORTNEY SIEMENS, the Buyers, and MURRAY AND CAROLYN HERBERT, the Sellers, hereby agree as follows:

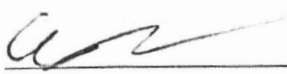
- The date for removal of the condition contained in Clause 8.1(a) Buyer's Financing, is extended to April 28, 2025;
- The Buyers hereby waive and have satisfied the said condition namely Clause 8.1(a) Buyer's Financing condition.

All other terms and conditions in the contract remain unchanged, and the Buyers are ready, willing, and able to complete the purchase of this property.

DATED this \_\_\_\_\_ day of April, 2025.

  
\_\_\_\_\_

Witness

  
\_\_\_\_\_

Witness

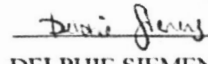
DATED this 28 day of April, 2025.

  
\_\_\_\_\_


Witness

  
\_\_\_\_\_

KENT SIEMENS - Buyer

  
\_\_\_\_\_

DELPHIE SIEMENS - Buyer

  
\_\_\_\_\_

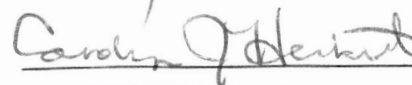
SHANE SIEMENS - Buyer

  
\_\_\_\_\_

KORTNEY SIEMENS - Buyer

  
\_\_\_\_\_

MURRAY HERBERT - Seller

  
\_\_\_\_\_

CAROLYN HERBERT - Seller