

COURT FILE NUMBER

COURT COURT OF KING'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

APPLICANT ATB FINANCIAL (FORMERLY ALBERTA TREASURY BRANCHES)

RESPONDENTS ST. ALBERT LIMITED PARTNERSHIP by and through its general partner ST. ALBERT REAL ESTATE SYNDICATE GP LTD., ST. ALBERT REAL ESTATE SYNDICATE GP LTD., and JOHN TORODE

**DOCUMENT APPLICATION TO APPOINT RECEIVER**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT MLT AIKINS LLP Barristers and Solicitors 2100, 222 3<sup>rd</sup> Ave SW Calgary, Alberta T2P 0B4 Fax: 403.508.4349 Attention: Ryan Zahara/Molly McIntosh Phone: 403.693.5403/780.969.3501 File: 0114153.00065

**NOTICE TO RESPONDENTS:**

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

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

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

Date: March 21, 2024  
Time: 2:00 PM MST  
Where: VIA WEBEX  
Before Whom: Honourable Justice B. Johnston (booked on the Commercial List)

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

**Remedy claimed or sought:**

1. ATB Financial, formerly Alberta Treasury Branches ("**ATB**"), seeks an Order from this Honourable Court granting the following relief:
  - (a) abridging the time for, and validating service of, this Application on the parties set out in the Service List attached hereto as **Schedule "A"** and the materials filed in support of this Application, if necessary, and dispensing with service on any party not served;
  - (b) granting an Order substantially in the form attached hereto as **Schedule "B"** appointing BDO Canada Ltd. as receiver and manager (the "**Receiver**") pursuant to section 243 of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, as amended (the "**BIA**"), section 13(2) of the *Judicature Act*, RSA 2000, c J-2, and section 65(7) of the *Personal Property Security Act*, RSA 2000, c P-7 (the "**PPSA**") over the current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate, including all proceeds thereof of St. Albert Limited Partnership ("**St. Albert LP**") and St. Albert Real Estate Syndicate GP Ltd. ("**St. Albert GP**" and together with St. Albert LP, the "**Borrower**");
  - (c) granting a sealing order (the "**Sealing Order**") substantially in the form attached hereto as **Schedule "C"** sealing the Confidential Exhibit "A" to the Affidavit of Olena Olenchuk, sworn on March 12, 2024 (the "**Olenchuk Affidavit**");
  - (d) awarding costs of this Application to ATB on a solicitor-client basis; and,
  - (e) such further and other relief as may be sought by Travelers and the Court may deem just and appropriate.
2. All capitalized terms used herein that are not otherwise defined, have the meaning ascribed to them in the Olenchuk Affidavit and the Bench Brief of ATB, filed concurrently herewith.

**Grounds for Making this Application:**

**Granting of a Receivership Order**

3. ATB advanced funds to the Borrower pursuant to a Commitment Letter, dated April 9, 2020, between ATB, as lender, and St. Albert LP, by its general partner St. Albert GP (collectively, the "**Borrower**").

4. As security for all amounts owing to ATB by the Borrower, the parties entered into the following:

(a) a general security dated April 20, 2020 (the "**Borrower GSA**"), in favour of ATB in respect of the Borrower's present and after acquired personal property used in connection with or arising from the business carried on at or about the lands and premises described below, and the proceeds thereof:

Firstly  
PLAN 7822207  
BLOCK 5  
LOT 61  
EXCEPTING THEREOUT ALL MINES AND MINERALS  
AREA: 0.429 HECTARES (1.06 ACRES) MORE OR LESS

Secondly  
PLAN 8222311  
BLOCK 5  
LOT 65  
EXCEPTING THEREOUT ALL MINES AND MINERALS

(the "**Lands**").

(b) an unlimited continuing guarantee and postponement of claims, dated April 20, 2020, from St. Albert GP to ATB (the "**Corporate Guarantee**"), which was secured by:

(i) a general security agreement, dated April 20, 2020 (the "**GP GSA**"), in favour of ATB;

(ii) a collateral mortgage in the amount of \$9,000,000 dated April 20, 2020 (the "**Collateral Mortgage**") in favour of ATB in respect of the Lands; and

- (iii) a general assignment of leases and rents, dated April 20, 2020 (the "**GP Assignment**") and together with the Corporate Guarantee, the GP GSA, and the Collateral Mortgage, the "**GP Security**") in favour of ATB in respect of the Lands; and
- (c) a continuing guarantee and postponement of claims dated April 20, 2020 from John Torode ("**Torode**") to ATB, guaranteeing up to the amount of \$2,250,000 of the Borrower's obligations to ATB (the "**Torode Guarantee**" and together with the Corporate Guarantee, the "**Guarantees**").
5. The Borrower GSA, the Guarantees, and the GP Security are collectively referred to hereinafter as the "**Security**".
6. ATB has perfected its security interests created by the Security by way of registration at the Alberta Personal Property Registry and the Alberta Land Titles Office.

**Defaults by the Borrower and the outstanding Indebtedness.**

7. The Borrower is in default of its obligations pursuant to the Commitment Letter and the Borrower GSA by, among other things, failing to maintain the Debt Service Coverage ratio required by the Commitment Letter and failing to make its payment obligations to ATB.
8. As of March 11, 2024, the total indebtedness of the Borrower to ATB pursuant to the Commitment Letter is \$7,737,946.67 plus interest accruing thereafter at the rates set out in the Commitment Letter, and all legal costs and expenses incurred by ATB in respect of the Commitment Letter (collectively, the "**Outstanding Indebtedness**").
9. Notwithstanding the foregoing defaults, ATB was prepared to, and made several attempts with the Defendants to propose a forbearance agreement to permit the Borrower time to attempt to increase the occupancy rate in the Property to attempt to maximize the realization on a sale of the Property in order to repay the Outstanding Indebtedness. However, the Respondents were not agreeable to a forbearance agreement on the terms proposed by ATB.

10. Starting in or around January 31, 2024, the Borrower failed to make scheduled payments as required by the Commitment Letter (the “**Payment Defaults**” and together with the Ratio Default, the “**Commitment Letter Defaults**”).
11. On February 20, 2024, ATB issued demand letters to St. Albert LP, St. Albert GP, and Torode for payment of the indebtedness then owing pursuant to the Commitment Letter and the Security, along with a notice of intention to enforce the Security pursuant to section 244 of the *BIA* (the “**Demands**”).
12. Notwithstanding the Demands, each of St. Albert LP and St. Albert GP have failed, neglected, or otherwise refused to repay the Outstanding Indebtedness to ATB in breach of their respective obligations under the Commitment Letter and the Security, as the case may be.
13. The Borrower GSA and the GP Security each provide that, upon an event of default, ATB is entitled to, among other things, apply for the appointment of a receiver and manager.
14. The appointment of a receiver is a just, convenient, and appropriate remedy in the circumstances.
15. BDO has consented to act as receiver of St. Albert LP and St. Albert GP.

#### **Sealing Order is Necessary in the Circumstances**

16. The Confidential Exhibit “A” to the Olenchuk Affidavit (the “**Confidential Exhibit**”) sets out certain commercially sensitive information regarding the potential purchase price of the assets of the Defendants. The public disclosure and dissemination of the information in the Confidential Exhibit would cause serious and irreparable harm to a possible sales process of these assets and, thereby, the stakeholders’ ability to maximize the recovery therefrom.
17. The limited sealing provision sought in respect of the Confidential Exhibit is a fair and reasonable method of addressing the serious and irreparable harm that would result.
18. ATB further relies on the grounds set out in the Olenchuk Affidavit and such further and other grounds as counsel may advise and this Honourable Court may permit.

**Material or Evidence to be relied on:**

19. The Applicant intends to rely on the following materials:
- (a) This Notice of Application;
  - (b) The Affidavit of Olena Olenchuk, sworn on March 12, 2024;
  - (c) The Consent to Act as Receiver of BDO;
  - (d) The Bench Brief of ATB, filed; and
  - (e) Such further and other materials as counsel may advise and this Honourable Court may permit.

**Applicable rules:**

20. The Applicant intends to rely on the following rules:
- (a) the *Alberta Rules of Court*, AR 124/2010, as amended;
  - (b) *Bankruptcy and Insolvency General Rules*, CRC, c 368; and
  - (c) such further and other rules as counsel may advise and this Honourable Court may permit.

**Applicable Acts and regulations:**

21. The Applicant intends to rely on the following Acts:
- (a) the *BIA* and specifically, sections 50.4(9), 242, and 243;
  - (b) the *Judicature Act*, RSA 2000, c J-2, and specifically, section 13(2);
  - (c) the *Personal Property Security Act*, RSA 2000, c P-7, and specifically, section 65(7); and
  - (d) such further and other Acts and regulations as counsel may advise and this Honourable Court may permit.

**Any Irregularity Complained of or Objection Relied on:**

22. There are no irregularities complained of or objections relied on.

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

23. Virtually by Webex, before the Honourable Justice Johnston (booked on the Commercial List).

**WARNING**

If you do not come to Court either in person or by your lawyer, the Court may give the applicant what they want in your absence. You will be bound by any order that the Court makes. If you want to take part in this application, you or your lawyer must attend in Court on the date and at the time shown at the beginning of this form. If you intend to rely on an affidavit or other evidence when the application is heard or considered, you must reply by giving reasonable notice of the material to the applicant.

**SCHEDULE "A"**

**Service List**

**(See attached)**

**SERVICE LIST**

**ATB FINANCIAL v ST ALBERT LIMITED PARTNERSHIP et al**

**Court of King's Bench Action No. TBD**

**(as of March 12, 2024)**

PARTY	COUNSEL
<b>ATB Financial</b>	<b>MLT Aikins LLP</b> 2100 Livingston Place 222 – 3 Avenue SW Calgary, AB T2P 0B4  <b>Attention:</b> Ryan Zahara - <a href="mailto:rzahara@mltaikins.com">rzahara@mltaikins.com</a> Molly McIntosh - <a href="mailto:mmcintosh@mltaikins.com">mmcintosh@mltaikins.com</a>
<b>BDO Canada LLP</b> #620, 903 8 Ave SW Calgary, AB T2P 0P7  <b>Attention:</b> Kevin Meyler – <a href="mailto:kmeyler@bdo.ca">kmeyler@bdo.ca</a>	
<b>St. Albert Limited Partnership, St. Albert Real Estate Syndicate GP Ltd., and John Torode</b>	4500 Bankers Hall East 855 2 <sup>nd</sup> Street, SW Calgary, AB T2P 4K7  <b>Attention:</b> Wayne Whitlock, KC – <a href="mailto:whitlockw@bennettjones.com">whitlockw@bennettjones.com</a>
<b>1230022 Alberta Ltd.</b> 244-7 St Anne St St. Albert, AB T8N 2X4  <b>Attention:</b> Diane Gallant – <a href="mailto:blisshairdesign@yahoo.ca">blisshairdesign@yahoo.ca</a>	
<b>The City of St. Albert</b> 5 St Anne Street St. Albert, AB T8N 2Z9  <b>Attention:</b> Marta Caufield	

<b>486230 Alberta Ltd.</b> 118, 7 St Anne Street St. Albert, AB T8N 2X4	
<b>Nine Eagles Equity Inc.</b> Suite 321, 7 St Anne St St. Albert, T8N 1E8	
<b>Canada Revenue Agency</b> Surrey National Verification and Collections Centre 9755 King George Boulevard Surrey, BC V3T 5E1 Fax: 1-833-697-2390 / 1-833-697-2389	
<b>Department of Justice (Canada)</b> 300, 10423 – 101 Street NW Edmonton, AB T5H 0E7 <b>Attention:</b> George F. Body - <a href="mailto:George.Body@justice.gc.ca">George.Body@justice.gc.ca</a>	

**SCHEDULE "B"**

**Form of Receivership Order**

**(See attached)**

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TREASURY BRANCHES)

RESPONDENTS ST. ALBERT LIMITED PARTNERSHIP by and through  
its general partner ST. ALBERT REAL ESTATE  
SYNDICATE GP LTD., ST. ALBERT REAL ESTATE  
SYNDICATE GP LTD., and JOHN TORODE

**DOCUMENT ORDER**

ADDRESS FOR SERVICE AND CONTACT  
INFORMATION OF PARTY  
FILING THIS DOCUMENT MLT AIKINS LLP  
Barristers and Solicitors  
2100, 222 3<sup>rd</sup> Ave SW  
Calgary, Alberta T2P 0B4  
Fax: 403.508.4349  
Attention: Ryan Zahara/Molly McIntosh  
Phone: 403.693.5403/780.969.3501  
File: 0114153.00065

**DATE ON WHICH ORDER WAS PRONOUNCED: March 21, 2024**

**LOCATION WHERE ORDER WAS PRONOUNCED: Calgary, Alberta**

**NAME OF JUSTICE WHO MADE THIS ORDER: The Honourable Justice B.  
Johnston**

**UPON** the Application of ATB Financial (formerly Alberta Treasury Branches) ("**ATB**") for an Order seeking to appoint a receiver and manager over the Property (as defined below) of St. Albert Limited Partnership and St. Alberta Real Estate Syndicate (collectively, the "**Debtors**"); **AND UPON** having read the Affidavit of Olena Olenchuk, sworn on March 12, 2024, the Affidavit of Service of \_\_\_\_\_, sworn on March \_\_\_\_, 2024; **AND UPON** reading the consent to act of the proposed receiver, BDO Canada Ltd. ("**BDO**"), **AND UPON** hearing from counsel for ATB, and any other parties present at the within Application;

**IT IS HEREBY ORDERED AND DECLARED THAT:**

## SERVICE

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

## APPOINTMENT

2. Pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 ("**BIA**"), section 13(2) of the *Judicature Act*, R.S.A. 2000, c.J-2, 99, and section 65(7) of the *Personal Property Security Act*, R.S.A. 2000, c.P-7, BDO (the "**Receiver**") is hereby appointed Receiver and Manager, without security, of all of the Debtors' current and future assets, undertakings, and properties of every nature and kind whatsoever, and wherever situate, including all proceeds thereof (the "**Property**").

## RECEIVER'S POWERS

3. The Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:
  - (a) to take possession of and exercise control over the Property and any and all proceeds, receipts, and disbursements arising out of or from the Property, which shall include the Receiver's ability:
    - (i) to abandon, dispose of, or otherwise release any interest in any of the Debtor's real or personal property, or any right in any immovable; and
    - (ii) upon further order of the Court, to abandon, dispose of, otherwise release any license or authorization issued by the Alberta Energy Regulator, or any other similar government authority;
  - (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories, and the placement of such insurance coverage as may be necessary or desirable;

- (c) to manage, operate and carry on the business of the Debtors, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtors;
- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel, and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
- (e) to purchase or lease machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtors or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtors and to exercise all remedies of the Debtors in collecting such monies, including, without limitation, to enforce any security held by the Debtors;
- (g) to settle, extend, or compromise any indebtedness owing to or by the Debtors;
- (h) to execute, assign, issue, and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtors, for any purpose pursuant to this Order;
- (i) to undertake environmental or workers' health and safety assessments of the Property and operations of the Debtors;
- (j) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtors, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding, and provided further that nothing in this Order shall authorize the Receiver to defend or settle the action in which this Order is made unless otherwise directed by this Court;

- (k) to market any or all the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
- (l) to sell, convey, transfer, lease, or assign the Property or any part or parts thereof out of the ordinary course of business;
  - (i) without the approval of this Court in respect of any transaction not exceeding **\$100,000.00**, provided that the aggregate consideration for all such transactions does not exceed **\$250,000.00**; and
  - (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause,

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

- (m) to apply for any vesting order or other orders (including, without limitation, confidentiality or sealing orders) necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (n) to report to, meet with, and discuss with such affected Persons (as defined below) as the Receiver deems appropriate all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (o) to register a copy of this Order and any other orders in respect of the Property against title to any of the Property, and when submitted by the Receiver for registration this Order shall be immediately registered by the Registrar of Land Titles of Alberta, or any other similar government authority, notwithstanding Section 191 of the *Land Titles Act*, RSA 2000, c. L-4, or the provisions of any other similar legislation in any other province or territory, and notwithstanding that the appeal period in respect of this Order has not elapsed and the Registrar of Land

Titles shall accept all Affidavits of Corporate Signing Authority submitted by the Receiver in its capacity as Receiver of the Debtors and not in its personal capacity;

- (p) to apply for any permits, licenses, approvals, or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtors;
- (q) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtors, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtors;
- (r) to exercise any shareholder, partnership, joint venture, or other rights which the Debtors may have;
- (s) to assign the Debtors into bankruptcy, in accordance with the provisions of the *BIA*, where the Receiver is of the opinion that the making of such assignment is proper and in the best interests of the estate; and
- (t) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations;

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

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

4. (i) The Debtors, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "**Persons**" and each being a "**Person**") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property (excluding Property subject to liens the validity of which is dependent on maintaining possession) to the Receiver upon the Receiver's request.

5. All Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtors, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "**Records**") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain, and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software, and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or documents prepared in contemplation of litigation or due to statutory provisions prohibiting such disclosure.
6. If any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names, and account numbers that may be required to gain access to the information.

#### **NO PROCEEDINGS AGAINST THE RECEIVER**

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

## NO PROCEEDINGS AGAINST THE DEBTORS OR THE PROPERTY

8. No Proceeding against or in respect of the Debtors or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtors or the Property are hereby stayed and suspended pending further Order of this Court, provided, however, that nothing in this Order shall: (i) prevent any Person from commencing a proceeding regarding a claim that might otherwise become barred by statute or an existing agreement if such proceeding is not commenced before the expiration of the stay provided by this paragraph 8; and (ii) affect a Regulatory Body's investigation in respect of the Debtors or an action, suit, or proceeding that is taken in respect of the Debtors by or before the Regulatory Body, other than the enforcement of a payment order by the Regulatory Body or the Court. "**Regulatory Body**" means a person or body that has powers, duties or functions relating to the enforcement or administration of an Act of Parliament or of the legislature of a province.

## NO EXERCISE OF RIGHTS OF REMEDIES

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

party except in accordance with the other provisions of this Order, and notice in writing of such action be given to the Receiver at the first available opportunity.

### **NO INTERFERENCE WITH THE RECEIVER**

11. No Person shall accelerate, suspend, discontinue, fail to honour, alter, interfere with, repudiate, terminate, or cease to perform any right, renewal right, contract, agreement, license, or permit in favour of or held by the Debtors, without written consent of the Debtors and the Receiver or leave of this Court.

### **CONTINUATION OF SERVICES**

12. All persons having:

- (a) statutory or regulatory mandates for the supply of goods and/or services; or
- (b) oral or written agreements or arrangements with the Debtors, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation, services, utility or other services to the Debtors,

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

## RECEIVER TO HOLD FUNDS

13. All funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from the Property and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable generated from the Property in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "**Post Receivership Accounts**") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further order of this Court.

## EMPLOYEES

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

information by the Debtors, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

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

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

after the order is made, or within 10 days after the appointment of the Receiver, if the order is in effect when the Receiver is appointed, by,

- A. the court or body having jurisdiction under the law pursuant to which the order was made to enable the Receiver to contest the order, or
  - B. the court having jurisdiction in bankruptcy for the purposes of assessing the economic viability of complying with the order; or
- (iii) if the Receiver had, before the order was made, abandoned or renounced or been divested of any interest in any real property affected by the condition or damage.

#### **LIMITATION ON THE RECEIVER'S LIABILITY**

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

#### **RECEIVER'S ACCOUNTS**

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

20. Prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including the legal fees and disbursements, incurred at the normal rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

#### **FUNDING OF THE RECEIVERSHIP**

21. The Receiver shall be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed **\$200,000** (or such greater amount as this Court may by further order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "**Receiver's Borrowings Charge**") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, deemed trusts, liens, charges, and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.
22. Neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.
23. The Receiver is at liberty and authorized to issue certificates substantially in the form annexed as **Schedule "A"** hereto (the "**Receiver's Certificates**") for any amount borrowed by it pursuant to this Order.
24. The monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

25. The Receiver shall be authorized to repay any amounts borrowed by way of Receiver's Certificates out of the Property or any proceeds, including any proceeds from the sale of any assets without further approval of this Court.

#### **ALLOCATION**

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

#### **GENERAL**

27. The Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.
28. Notwithstanding Rule 6.11 of the *Alberta Rules of Court*, unless otherwise ordered by this Court, the Receiver will report to the Court from time to time, which reporting is not required to be in affidavit form and shall be considered by this Court as evidence. The Receiver's reports shall be filed by the Court Clerk notwithstanding that they do not include the original signature.
29. Nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtors.
30. This Court hereby requests the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada and the United States or in any foreign jurisdiction to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Receiver in any foreign proceeding, or to assist the Receiver and its agents in carrying out the terms of this Order.
31. The Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory, or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order and that the Receiver is

authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

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

## **FILING**

34. The Receiver shall establish and maintain a website in respect of these proceedings at <https://www.bdo.ca/services/financial-advisory-services/business-restructuring-turnaround-services/current-engagements/stalbert-real-estate> (the "**Receiver's Website**") and shall post there as soon as practicable:
  - (a) all materials prescribed by statute or regulation to be made publicly available; and
  - (b) all applications, reports, affidavits, orders, and other materials filed in these proceedings by or on behalf of the Receiver, or served upon it, except such materials as are confidential and the subject of a sealing order or pending application for a sealing order.

## **SERVICE**

35. Service of this Order shall be deemed good and sufficient by:
  - (a) serving the same on:
    - (i) the persons listed on the service list created in these proceedings or otherwise served with notice of these proceedings;
    - (ii) any other person served with notice of the application for this Order;

(iii) any other parties attending or represented at the application for this Order;  
and

(b) posting a copy of this Order on the Receiver's Website,

and service on any other person is hereby dispensed with.

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

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Justice of the Court of King's Bench of Alberta

**SCHEDULE "A"**

**RECEIVER CERTIFICATE**

CERTIFICATE NO. \_\_\_\_\_  
AMOUNT \$ \_\_\_\_\_

1. **THIS IS TO CERTIFY** that BDO Canada Ltd. the receiver and manager (the "**Receiver**") of all of the Property of St. Alberta Limited Partnership and St. Albert Real Estate Syndicate GP Ltd., appointed by Order of the Court of King's Bench of Alberta (the "**Court**") dated March 21, 2024 (the "**Order**") made in action number \_\_\_\_\_, has received as such Receiver from the holder of this certificate (the "**Lender**") the principal sum of \$\_\_\_\_\_, being part of the total principal sum of \$\_\_\_\_\_ which the Receiver is authorized to borrow under and pursuant to the Order.
2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily] [monthly not in advance on the \_\_\_\_\_ day of each month] after the date hereof at a notional rate per annum equal to the rate of \_\_\_\_\_ per cent above the prime commercial lending rate of Bank of \_\_\_\_\_ from time to time.
3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.
4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at \_\_\_\_\_.
5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.
6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property) as authorized by the Order and as authorized by any further or other order of the Court.

7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the \_\_\_\_\_ day of \_\_\_\_\_, 2024.

**BDO Canada Ltd.**, solely in its capacity as Receiver of the Property (as defined in the Order), and not in its personal or corporate capacity

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

Name:

Title:

**SCHEDULE "C"**

**Form of Sealing Order**

**(See attached)**

COURT FILE NUMBER

COURT COURT OF KING'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

APPLICANT (Plaintiff) ATB FINANCIAL (FORMERLY ALBERTA TREASURY BRANCHES)

RESPONDENTS (Defendants) ST. ALBERT LIMITED PARTNERSHIP by and through its general partner ST. ALBERT REAL ESTATE SYNDICATE GP LTD., ST. ALBERT REAL ESTATE SYNDICATE GP LTD., and JOHN TORODE

DOCUMENT SEALING ORDER

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT MLT AIKINS LLP  
Barristers and Solicitors  
2100, 222 3<sup>rd</sup> Ave SW  
Calgary, Alberta T2P 0B4  
Fax: 403.508.4349  
Attention: Ryan Zahara/Molly McIntosh  
Phone: 403.693.5403/780.969.3501  
File: 0114153.00065

**DATE ON WHICH ORDER WAS PRONOUNCED:** March 21, 2024

**LOCATION WHERE ORDER WAS PRONOUNCED:** Calgary, Alberta

**NAME OF JUSTICE WHO MADE THIS ORDER:** The Honourable Justice B. Johnston

**UPON** the Application of ATB Financial (formerly Alberta Treasury Branches) ("**ATB**") for an Order seeking a sealing order of certain materials filed in connection with the Application to appoint a receiver over St. Albert Limited Partnership and St. Alberta Real Estate Syndicate (collectively, the "**Debtors**"); **AND UPON** having read the Affidavit of Olena Olenchuk sworn on March 12, 2024, the Confidential Exhibit "A" to the Affidavit, and the Affidavit of Service of \_\_\_\_\_, sworn on March \_\_\_\_, 2024; **AND UPON** hearing from counsel for ATB, and any other parties present at the within Application;

**IT IS HEREBY ORDERED AND DECLARED THAT:**

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

2. The Clerk of the Court is hereby directed to seal the Confidential Exhibit "A" to the Affidavit of Olena Olenchuk, sworn on March 11, 2024, on the Court file until the earlier of: (i) an Order(s) of the Court in the within Action granting a sale approval and vesting order in respect of the assets identified at Schedule "A" hereto; (ii) an Order of the Court discharging BDO Canada Ltd. (the "Receiver") in its capacity as the Court-appointed Receiver of the Debtors; (iii) the period of 12 months from the date of this Order; or (iv) a further Order of the Court.
  
3. The Clerk of the Court is hereby directed to seal the Confidential Affidavit in an envelope setting out the style of cause in the within proceeding and labelled:

**THIS ENVELOPE CONTAINS CONFIDENTIAL DOCUMENTS. THESE CONFIDENTIAL DOCUMENTS ARE SEALED ON COURT FILE NO. \_\_\_\_\_ PURSUANT TO THE ORDER ISSUED BY THE HONOURABLE JUSTICE JOHNSTON ON MARCH 21, 2024. THESE CONFIDENTIAL DOCUMENTS ARE NOT TO BE ACCESSED BY ANY PERSON UNLESS OR UNTIL THE EARLIER OF: (i) AN ORDER(S) OF THE COURT IN THE WITHIN ACTION GRANTING A SALE APPROVAL AND VESTING ORDER IN RESPECT OF THE ASSETS IDENTIFIED AT SCHEDULE "A" OF THE SEALING ORDER; (ii) AN ORDER OF THE COURT DISCHARGING THE RECEIVER; (iii) THE PERIOD OF 12 MONTHS FROM THE DATE OF THE SEALING ORDER; OR (iv) A FURTHER ORDER OF THE COURT.**

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Justice of the Court of King's Bench of Alberta

**SCHEDULE "A"**

Firstly

PLAN 7822207

BLOCK 5

LOT 61

EXCEPTING THEREOUT ALL MINES AND MINERALS

AREA: 0.429 HECTARES (1.06 ACRES) MORE OR LESS

Secondly

PLAN 8222311

BLOCK 5

LOT 65

EXCEPTING THEREOUT ALL MINES AND MINERALS