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COURT FILE NUMBER 2101 - 06388  
COURT COURT OF QUEEN'S BENCH  
OF ALBERTA  
JUDICIAL CENTRE CALGARY  
PLAINTIFF ATB FINANCIAL  
DEFENDANT ALBERTA FOOTHILLS PROPERTIES LTD.  
APPLICANT FTI CONSULTING CANADA INC., in its capacity  
as the Court-appointed Receiver of ALBERTA  
FOOTHILLS PROPERTIES LTD.  
DOCUMENT **BRIEF OF RECEIVER (ADVICE AND  
DIRECTION APPLICATION)**  
ADDRESS FOR SERVICE AND CONTACT  
INFORMATION OF PARTY FILING THIS DOCUMENT  
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Sep 29, 2021



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## I. INTRODUCTION

1. This brief is submitted on behalf of FTI Consulting Canada Inc., in its capacity as the court-appointed receiver (the “**Receiver**”) of Alberta Foothills Properties Ltd. (“**AFPL**” or the “**Debtor**”), in support of an application filed by the Receiver on August 30, 2021 (the “**Application**”) seeking advice and direction from the Court on whether a municipality may enact certain bylaws affecting only the Debtor and its secured property and whether such actions are in contravention of the terms of the receivership order (the “**Receivership Order**”) granted on May 17, 2021 by the Honourable Justice K.M. Eidsvik.<sup>1</sup>
2. Capitalized terms used herein and not otherwise defined shall have the meaning ascribed to them in the First Report of the Receiver, dated August 30, 2021 (the “**First Report**”).<sup>2</sup>
3. AFPL’s primary asset is approximately 145 acres of land (the “**Property**”) located at the south-east corner of Highway 7 and Highway 783, on the south end of the Town of Okotoks (the “**Town**”). AFPL’s plan for the Property includes a seven-phase development referred to as the Wind Walk Development (the “**Development**”). To facilitate the Development, AFPL developed the Wind Walk Area Structure Plan (the “**Wind Walk ASP**”), which the Town approved in a bylaw dated June 26, 2017.
4. Shortly after the Receiver contacted the Town to advise of its appointment on May 28, 2021, the Town introduced two bylaws (the “**Proposed Bylaws**”) to repeal the Wind Walk ASP in its entirety and re-designate the Property from residential development lands to agricultural holding lands. The Proposed Bylaws may significantly reduce the value of the Property and were proposed at a time when the Receiver was commencing a sales process for the benefit of AFPL’s creditors.
5. The Receivership Order prohibits third parties from interfering with the Receiver’s efforts to market and sell the Property; prevents third parties from exercising all rights and remedies with respect to the Property; and prevents third parties from altering any right, licence or permit held by the Debtor. However, the case law provides little guidance on whether the Receivership Order extends to a municipality enacting bylaws that substantially change the nature of a debtor’s secured property. Both the Receiver and the Town agreed this

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<sup>1</sup> The May 17, 2021 Receivership Order of Justice K.M. Eidsvik (the “**Receivership Order**”), attached hereto as **Exhibit “A”**.

<sup>2</sup> First Report of the Receiver, dated August 30, 2021 (the “**First Report**”).

Application was necessary to determine if the Town is prevented from enacting the Proposed Bylaws by the stay of proceedings contained within the Receivership Order.

6. The Town has deferred a third and final reading of the Proposed Bylaws until this Application has been heard and determined.

## II. STATEMENT OF FACTS

### A. History of Development

7. AFPL acquired the Property in 2009 from Foothills County (formerly, the Municipal District of Foothills No. 31) (“**Foothills**”) for \$4.9 million.<sup>3</sup> On August 11, 2010, Foothills granted a bylaw approving AFPL’s earlier iteration of the Wind Walk ASP.<sup>4</sup> The Property was eventually annexed into the Town in 2017, at which point AFPL updated, redeveloped and submitted the latest form of the Wind Walk ASP to the Town for its approval.<sup>5</sup> The Town approved the Wind Walk ASP on June 26, 2017 pursuant to Bylaw 18-17.<sup>6</sup>
8. The Wind Walk ASP is essentially the development road map for the Property. Under section 633 of the *Municipal Government Act* (the “**MGA**”), an “area structure plan” must describe the sequence of development proposed for a certain area, the proposed land uses, the proposed population density, and the general location of major transportation routes and public utilities.<sup>7</sup>
9. AFPL’s Wind Walk ASP provides for a seven-phase development consisting of single and multi-family residential as well as commercial units.<sup>8</sup> Pursuant to the Wind Walk ASP, on August 21, 2017, the Town re-designated Phase I of the Property to a residential zone and approved AFPL’s outline plan.<sup>9</sup> On February 21, 2019, the Town’s Municipal Planning Commission approved AFPL’s subdivision plan for Phase I of the Development (the “**Subdivision Plan**”), which was valid for one year and subsequently extended to September 30, 2020.<sup>10</sup>

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<sup>3</sup> First Report, at para 30(a).

<sup>4</sup> First Report, at para 30(b).

<sup>5</sup> First Report, at para 30(c).

<sup>6</sup> First Report, at para 30(d).

<sup>7</sup> *Municipal Government Act*, RSA 2000, c M-26 (the “**MGA**”), at section 633, at **TAB 1** of the Book of Authorities (the “**Authorities**”).

<sup>8</sup> First Report, at para 20.

<sup>9</sup> First Report, at para 30(e).

<sup>10</sup> First Report, at para 30(f).

10. The Town imposed a number of conditions on the Subdivision Plan, which AFPL attempted to satisfy from February 2019 to September 2020.<sup>11</sup> However, despite AFPL engaging several professional firms and consultants to prepare and submit detailed design documents, the Town did not approve AFPL's proposed designs, and never provided any formal approval of Phase I of the Development.<sup>12</sup>
11. On September 2, 2020, the Town advised AFPL that it would not extend the Subdivision Plan beyond September 30, 2020.<sup>13</sup> To the best knowledge of the Receiver, there was no further correspondence between AFPL and the Town regarding the Development or the status of the Wind Walk ASP until the Receiver was appointed.<sup>14</sup>
12. AFPL was unable to secure the financing necessary to complete the entire Wind Walk Development, estimated to cost over \$48 million, or even Phase I, which was estimated to cost \$14.6 million.<sup>15</sup> AFPL listed the Property for sale in August 2019, but the listing did not result in a sale.<sup>16</sup>
13. Due to a number of defaults on its loan obligations, AFPL was eventually placed in Receivership on May 17, 2021 on application by its primary secured creditor, ATB Financial ("ATB").<sup>17</sup> As of the date of the Receivership Order, AFPL owed ATB approximately \$14 million.<sup>18</sup>

#### **B. The Town's Proposed Bylaws**

14. On May 28, 2021, the Receiver contacted Colin Gainer, Senior Planner for the Town, to advise of its appointment and intention to continue listing the Property for sale, with the aim of finding a buyer capable of developing the Property.<sup>19</sup> During this discussion, the Town did not provide the Receiver with any indication that it was considering changing the land use designation of the Property or rescinding the Wind Walk ASP.<sup>20</sup>

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<sup>11</sup> First Report, at para 30(g).

<sup>12</sup> First Report, at para 30(h).

<sup>13</sup> First Report, at para 30(i).

<sup>14</sup> First Report, at para 30(j).

<sup>15</sup> First Report, at para 24.

<sup>16</sup> First Report, at para 47(a).

<sup>17</sup> First Report, at para 26.

<sup>18</sup> First Report, at para 23(a).

<sup>19</sup> First Report, at para 31.

<sup>20</sup> First Report, at para 32.

15. On June 14, 2021, without notice to the Receiver, the Town introduced Bylaw 20-21 (the “**ASP Bylaw**”), which would rescind the Wind Walk ASP in its entirety and leave the Property with no replacement area structure plan.<sup>21</sup>
16. On June 21, 2021, the Town’s legal counsel issued correspondence (the “**June 21 Letter**”) to ATB’s legal counsel advising that the Town was considering enacting bylaws to rescind certain bylaws governing land use and development of the Property.<sup>22</sup> The Town’s legal counsel further advised that the Town would hold a public hearing on July 19, 2021 to consider the Proposed Bylaws (the “**Public Hearing**”).
17. On June 28, 2021, the Town further introduced Bylaw 19-21 (the “**Land Use Bylaw**”), which would rezone the Property from residential development property to urban or agricultural holdings.<sup>23</sup> The Proposed Bylaws only impact the Property of the Debtor, and do not impact any other constituents directly.
18. On July 13, 2021, the Receiver’s legal counsel issued correspondence to the Town’s legal counsel advising of the Receiver’s opposition to the Proposed Bylaws.<sup>24</sup> In accordance with the Town’s policies, on July 13, 2021 the Receiver and ATB made written submissions opposing the Proposed Bylaws.<sup>25</sup> The Receiver and ATB also attended the Public Hearing and made oral submissions opposing the Proposed Bylaws.<sup>26</sup>
19. In the First Reading Reports accompanying the Proposed Bylaws (the “**First Reading Reports**”),<sup>27</sup> the Town indicated that the land use for the Property should be considered in light of the new Municipal Development Plan (the “**2021 MDP**”), which the Receiver understands was enacted in January 2021, and intended to guide development of the Town until 2080. The Town advised in the First Reading Reports it was necessary to rescind the Wind Walk ASP so that, among other reasons, a new area structure plan could be submitted for the Town to consider in light of the 2021 MDP.

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<sup>21</sup> First Report, at Appendix “D” – Bylaw 20-21 First Reading Report; a video link of the June 14, 2021 Meeting is included in the First Report, at para 53(a).

<sup>22</sup> First Report, at para 33 and Appendix “C”.

<sup>23</sup> First Report, at Appendix “D” – Bylaw 19-21 First Reading Report; a video link of the June 28, 2021 Meeting is included in the First Report at para 53(b).

<sup>24</sup> First Report, at para 35, and Appendix “E”.

<sup>25</sup> First Report, at para 36 and Appendix “F”.

<sup>26</sup> First Report, at para 37.

<sup>27</sup> First Report, at Appendix “D”.

20. After all interested parties made oral submissions at the Public Hearing, Town council read the Proposed Bylaws for a second time, but reserved the third reading to obtain a legal opinion on whether the Proposed Bylaws contravened the Receivership Order.<sup>28</sup>

### **C. Delayed Sales Process**

21. On May 21, 2021, the Receiver initiated a sales process for the Property by engaging NAI Advent to act as selling agent (the “**Selling Agent**”), with a mandate to launch a marketing process in mid- to late-June.<sup>29</sup>
22. However, upon receiving notice of the June 21 Letter, and after discussions with the Selling Agent, given the uncertainty surrounding the Proposed Bylaws and their significant impact on the Property, the Receiver postponed the launch of the marketing process.<sup>30</sup>
23. In its discussions with the Selling Agent and interested stakeholders, the Receiver heard a number of concerns that the Proposed Bylaws would significantly impair the value of the Property due to increased uncertainty about the land use designation.<sup>31</sup>

### **III. ISSUES**

24. The sole issue to be determined in the within Application is whether the Receivership Order prevents the Town from enacting the Proposed Bylaws.

### **IV. LAW AND ARGUMENT**

25. Neither the Town nor the Receiver were able to locate authorities directly confirming whether the stay of proceedings contained in a receivership order prevents a municipality from enacting bylaws that affect property subject to the receivership order. In this regard, this application is truly seeking advice and direction from this Court as it does not appear that similar factual circumstances have previously been considered by this Court.
26. As such, the Receiver relies on the terms of the Receivership Order and the relative prejudice to the parties in support of its position that the Receivership Order appears to,

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<sup>28</sup> First Report, at para 39.

<sup>29</sup> First Report, at para 41.

<sup>30</sup> First Report, at para 42.

<sup>31</sup> First Report, at para 43.

on a plain reading, prevent the Town from affecting the Property by enacting the Proposed Bylaws.

**A. Receivership Order Preserves the Status Quo**

27. The pleadings, the circumstances, and the language of the Receivership Order support that the purpose of the Receivership Order is to maintain the status quo and maximize the return to AFPL's secured creditors through a sales process, both of which are disrupted by the Proposed Bylaws.

28. According to *Credit Suisse AG v Great Basin Gold Ltd.* ("**Credit Suisse**"), a Receivership Order should be interpreted according to the following approach:

... an order, whether by consent or awarded in an adjudicated disposition, is a decision of the court. As such, it is the court, not the parties, that determines the meaning of its order. In my view, the correct approach to interpreting the provisions of a court order is to examine the pleadings of the action in which it is made, the language of the order itself, and the circumstances in which the order was granted.<sup>32</sup>

29. The pleadings in this action include ATB's application to appoint a Receiver, and the Affidavit of John Sullivan, filed on May 11, 2021 (the "**Sullivan Affidavit**") in support of ATB's application. According to the Sullivan Affidavit, ATB sought to appoint a Receiver because, among other reasons, ATB lost faith in AFPL's ability to sell the Property to pay the outstanding amount owing to ATB.<sup>33</sup>

30. According to the Sullivan Affidavit:

In order to maximize recoveries from AFPL's estate, the Lender [ATB] believes it must appoint a receiver over the assets of AFPL, which it is entitled to do...This will:

(a) improve the chances of consummating a sale of the Lands [Property] through a sale process, which the Debtors have not been able to secure; and

(b) enable the Receiver to deal directly with the municipality, regulators, and other stakeholders on behalf of AFPL.<sup>34</sup>

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<sup>32</sup> *Credit Suisse AG v Great Basin Gold Ltd.*, 2015 BCSC 1199, at para 26, citing to *Yu v Jordan*, 2012 BCCA 367, at **TAB 2** of the Authorities.

<sup>33</sup> Affidavit of John Sullivan, sworn and filed May 11, 2021 (the "**Sullivan Affidavit**"), at para 61.

<sup>34</sup> Sullivan Affidavit, at para 62.



31. The Receivership Order was entered on May 17, 2021, before the Town had taken any steps to enact the Proposed Bylaws or communicated any intention to enact the Proposed Bylaws. As such, the Receivership Order does not include targeted language staying the Town from rescinding the Wind Walk ASP or rezoning the Property from a residential development to agriculture holding lands. However, ATB contemplates the Receiver dealing with the Town directly in aid of its mandate to maximize the Property's value in a sale process.
32. With this context in mind, paragraphs 9, 11, and 3(k) of the Receivership Order appear to support the position that the Town may be prevented from enacting bylaws that would change the nature and value of the Property.
33. Paragraph 9 of the Receivership Order prohibits the exercise of all rights and remedies against the Debtor and its Property, but carves out regulatory compliance to a limited degree:

All rights and remedies (including, without limitation, set-off rights) against or in respect of the Debtor, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court... provided that nothing in this Order shall... (ii) exempt the Receiver or the Debtor from compliance with statutory or regulatory provisions relating to health, safety or the environment...<sup>35</sup>

34. Under the MGA, the Town has the general right to enact bylaws dealing with any development,<sup>36</sup> and bylaws providing for a system of licences, permits or approvals to prohibit any development.<sup>37</sup> By seeking to enact the Proposed Bylaws, the Town is therefore exercising a right that affects the Property.
35. The purpose of the Proposed Bylaws is to change the Property's land use designation and long-term development plans associated with the Property, neither of which relate to health, safety, or the environment, which are regulations carved out of paragraph 9 of the Receivership Order. The Receiver has not been provided with any information from the Town to suggest the Proposed Bylaws will have any impact on health, safety or environment, and as far as the Receiver is aware, the Proposed Bylaws are not intended to respond to any safety or environmental issues with the Property.

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<sup>35</sup> Receivership Order, at para 9, at **Exhibit "A"**.

<sup>36</sup> MGA, at s 8(b), at **TAB 1** of the Authorities.

<sup>37</sup> MGA, at s 8(c)(iii), at **TAB 1** of the Authorities.

36. In addition, “Person” is defined in the Receivership Order to include, among others, “governmental bodies or agencies, or other entities having notice of this Order”.<sup>38</sup> Under paragraph 11, “No Person shall... alter, interfere with... any right ... licence or permit in favour of or held by the Debtor, except with the written consent of the Receiver or leave of this Court.”<sup>39</sup>
37. In *G.E. Canada Equipment Financing G.P. v Atikokan Forest Products Ltd.*, the Ontario Ministry of Forestry (the “**Ministry**”) was required to apply to lift a stay of proceedings before it could cancel a forestry licence,<sup>40</sup> confirming that an application is required to revoke a debtor’s licence. The receiver opposed the application on the basis that the licence had value to the sales process.<sup>41</sup> However, the Ministry’s application was granted, largely due to the fact the debtor no longer had any interest in the wood supply, thus negating the value of its forestry licence.<sup>42</sup>
38. With respect to AFPL’s Property, developers cannot develop a property without an area structure plan in place under the MGA. In that sense, the Wind Walk ASP functions like a licence in that the Town has permitted development on the Property so long as it follows the road map under the Wind Walk ASP. Similarly, AFPL obtained the Town’s approval to designate the Property as residential development lands, which enables the Property to be developed into a residential neighbourhood. However, the Proposed Bylaws significantly alter AFPL’s rights and permissions to develop the Property, which would appear to be prohibited under paragraph 11 of the Receivership Order.
39. Further, subparagraph 3(k) of the Receivership Order authorizes the Receiver to market the Property in such a manner as it deems appropriate, and where the Receiver takes such steps to market the Property, it is “authorized and empowered to do so... without interference from any other Person.”<sup>43</sup>
40. The Proposed Bylaws interfere with the Receiver’s ability to market and sell the Property, as they have caused the Receiver to delay the marketing process due to the uncertainty

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<sup>38</sup> Receivership Order, at para 4, at **Exhibit “A”**.

<sup>39</sup> Receivership Order, at para 11, at **Exhibit “A”**.

<sup>40</sup> *G.E. Canada Equipment Financing G.P. v Atikokan Forest Products Ltd.*, 2011 ONSC 2992 (“*Atikokan*”), at **TAB 3** of the Authorities.

<sup>41</sup> *Atikokan*, at para 4, at **TAB 3** of the Authorities.

<sup>42</sup> *Atikokan*, at para 7, at **TAB 3** of the Authorities.

<sup>43</sup> Receivership Order, at para 3(k), at **Exhibit “A”**.

injected by the Proposed Bylaws. A number of stakeholders have confirmed their concerns that the Proposed Bylaws will impair the value of the Property due to uncertainty about the land use designation.<sup>44</sup>

41. In addition, approximately \$24 million has been expended on the Property and Development, some of which has been funded by secured loans advanced by ATB and M. Holmes Holdings Ltd.<sup>45</sup> Those funds were advanced on the basis of the approvals obtained under the Wind Walk ASP, and the value of that investment may be lost in a sales process if the Town proceeds to enact the Proposed Bylaws.
42. On that basis, the pleadings, the circumstances of the Receiver's appointment and the language of the Receivership Order collectively support an interpretation of the Receivership Order that prevents the Town from enacting bylaws that solely affect the Debtor and its Property, which would disrupt the status quo of the estate of AFPL during the pendency of the Receivership Proceedings, and introduce a large amount of uncertainty into a sale process commenced by the Receiver.

#### **B. Relative Prejudice to the Parties**

43. Based on the information provided to the Receiver, its position is that the prejudice to the AFPL's creditors would greatly exceed any prejudice to the Town if the Town was not stayed from enacting the Proposed Bylaws.
44. In the First Reading Report circulated with the ASP Bylaw, the Town advised it was necessary to rescind the Wind Walk ASP so that a new area structure plan could be submitted for the Town's consideration in light of the 2021 MDP.
45. The MGA does provide that all area structure plans must be consistent with municipal development plans;<sup>46</sup> however, it is unclear to the Receiver why it is necessary for the Town to rescind the entire Wind Walk ASP at this time, after the Receiver's appointment.
46. The Wind Walk ASP already provides that it is intended to be a "living document" and revisited to the extent it needs to be amended. Further, the Town has not provided any information as to why it did not take steps to rescind the Wind Walk ASP since January

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<sup>44</sup> First Report, at para 43.

<sup>45</sup> First Report, at para 54.

<sup>46</sup> MGA, at s. 633, at **TAB 1** of the Authorities.

2021, rather than during these Receivership Proceedings. The Town has also not given any indication of the prejudice it will suffer if the Wind Walk ASP remains in place during the Receivership Proceedings.

47. It should also be noted that one of the alternatives that the Town considered was that the Town could decide not to change the current land use designations on the Property and continue to support the development of a conventional residential community on these lands.<sup>47</sup>
48. AFPL spent significant time and resources developing the Wind Walk ASP, and a purchaser will be required to incur similar costs to seek development approval. If the Town rescinds the Wind Walk ASP and rezones the Property, the Receiver will be left with bare agricultural land to sell, rather than residential development lands, which is likely to significantly reduce the value of the Property.
49. In addition, the Town has noted that due to its limited water supply, it can only issue a finite amount of water rights to new developments, and that it wished to prioritize developments that were further advanced than AFPL's Development.<sup>48</sup> However, the Development has not had water rights since the Subdivision Plan expired in September 2020, so the Development is not currently taking water rights away from other developments.<sup>49</sup>
50. In further support of the Proposed Bylaws, the Town indicated it does not need the Property to meet its development targets for the next five years. Changing the land use designation at this stage does not justify the impact on the estate of the Debtor in light of the sale process to be conducted, and especially given the significant economic interests at stake.
51. When the Proposed Bylaws were introduced to the Town for first reading on June 14, 2021 and June 28, 2021, a member of the Town's planning office noted several times that there was a change in ownership of the Property as a result of the Receivership Proceedings, which is incorrect – the Receiver does not own the Property. Submissions were made at the June 28, 2021 Town Council Meeting that the Receivership Proceedings

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<sup>47</sup> First Report, at Appendix "D" – First Reading Reports.

<sup>48</sup> First Report, at Appendix "D" – Bylaw 19-21 First Reading Report.

<sup>49</sup> First Report, at Appendix "D" – Bylaw 19-21 First Reading Report.

presented an “opportunity” for the Town to re-designate the Property and avoid infrastructure costs associated with connecting the Development with the Town across Highway 7.<sup>50</sup>

52. It would appear this is not the first time the Town contested the Development.<sup>51</sup> In 2012, pursuant to *Okotoks (Town) v Foothills (Municipal District) No. 31*, the Town contested the Development on the basis that the Wind Walk ASP permitted high density, urban-style development contrary to the intermunicipal planning agreement. The Town’s application was dismissed on a limitations issue.<sup>52</sup>
53. The timing of the Proposed Bylaws suggest the Town is reacting to the news of the Receivership, rather than advancing bylaws for legitimate, pressing reasons.
54. The Town put forward the Proposed Bylaws only weeks after its discussion with the Receiver, claiming it was to bring it in line with the 2021 MDP, enacted in January, and to prioritize other developments, after no steps were taken on the Development since the expiration of the Subdivision Plan in September 2020. After refraining from taking any action on the Development for 8 months, there is little to suggest the Town will suffer any prejudice if the status quo is maintained during the pendency of the Receivership Proceedings and until the Receiver completes its mandate and is discharged.
55. If the Town is permitted to enact the Proposed Bylaws, the combined effect would impair any certainty for potential purchasers that they could develop the Property, either as contemplated under the Wind Walk ASP, or at all, and significantly reduce the value of the Property.<sup>53</sup>
56. The Receiver is unaware of any competing prejudice to the Town if it refrains from enacting the Proposed Bylaws during the Receivership Proceedings, or at least until the completion of the sale process, that would exceed the prejudice to AFPL’s creditors.

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<sup>50</sup> First Report, at paras 53(a) and 53(b).

<sup>51</sup> First Report, at para 53(b).

<sup>52</sup> *Okotoks (Town) v Foothills (Municipal District) No. 31*, 2012 ABQB 53, at **TAB 4** of the Authorities.

<sup>53</sup> First Report, at paras 61 and 62.

### **C. Procedural Fairness**

57. On May 28, 2021, the Receiver contacted the Town to advise of its appointment and ensure the Town was aware of the Receiver's plan for the Property.<sup>54</sup> In response, and with no notice to the Receiver, the Town introduced the ASP Bylaw at the June 14, 2021 Town Council Meeting, and the Land Use Bylaw at the June 28, 2021 Town Council Meeting.
58. Again, it is unclear to the Receiver, even following the Public Hearing, why it is necessary to proceed with the Proposed Bylaws at this time. The Town was aware as of September 30, 2020 that the Subdivision Plan expired,<sup>55</sup> and had the 2021 MDP in place since January 2021.<sup>56</sup>
59. If the Town advanced the Proposed Bylaws in response to the Receivership Proceedings, the Receiver maintains that AFPL is a valid and subsisting legal entity, and its Property is preserved by the terms of the Receivership Order. It is critical to maintain the status quo during these Receivership Proceedings to protect legitimate commercial interests in the Property.
60. Further, if the Town is permitted to enact the Proposed Bylaws before the Property is sold, the ultimate buyer may be prejudiced, as it will not have had a chance to speak to the Proposed Bylaws at the Public Hearing. Procedural fairness dictates that the Town refrain from advancing the Proposed Bylaws until the Property is sold, at which point the ultimate owner can advocate for its own interest, as well as speak to and address any concerns the Town may have with the Development.

### **D. Conclusion**

61. The Receivership Order prevents a "Person", which includes a government body, from interfering with the Property of the Debtor and the Receiver's authority to market and sell the Property. The Receivership Order further stays a municipality from taking steps that affect the Property, unless it involves enacting regulations concerning health, safety and the environment. The totality of these provisions appear to prevent the Town from enacting the Proposed Bylaws during the pendency of the Receivership Proceedings.

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<sup>54</sup> First Report, at para 31.

<sup>55</sup> First Report, at para 51(a).

<sup>56</sup> First report, at para 51(d).

62. Further, enacting the Proposed Bylaws now injects uncertainty and confusion into the sale process and will significantly impair the value of the Property. The prejudice to AFPL's creditors greatly outweighs any benefits the Town alleges it will achieve with enacting the Proposed Bylaws. An interpretation of the Receivership Order that requires the Town to refrain from enacting the Proposed Bylaws during the Receivership Proceedings, or at least until the sale process is complete and any new purchaser can put forward its own position in respect of the Proposed Bylaws, supports both the spirit and the intent of appointing a receiver to maximize the value of the Property and preserves the status quo.

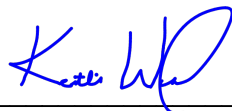
**V. RELIEF SOUGHT**

63. The Receiver seeks from this Honourable Court direction on:

- a. Whether the terms of the Receivership Order prevent the Town from enacting the Proposed Bylaws until the conclusion of a sales process; and
- b. such further and other relief as this Honourable Court deems just and appropriate in the circumstances.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** August 30, 2021:

**MLT AIKINS LLP**



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Ryan Zahara/Kaitlin Ward  
Counsel for the Receiver, FTI Consulting Canada  
Inc.

## LIST OF AUTHORITIES

<i>Municipal Government Act</i> , RSA 2000, c M-26 .....	<b>TAB 1</b>
<i>Credit Suisse AG v Great Basin Gold Ltd.</i> , 2015 BCSC 1199 .....	<b>TAB 2</b>
<i>G.E. Canada Equipment Financing G.P. v Atikokan Forest Products Ltd.</i> , 2011 ONSC 2992 .....	<b>TAB 3</b>
<i>Okotoks (Town) v Foothills (Municipal District) No. 31</i> , 2012 ABQB 53.....	<b>TAB 4</b>



**EXHIBIT "A"**

COURT FILE NUMBER 2101-06388  
COURT Court of Queen’s Bench Of Alberta  
JUDICIAL CENTRE Calgary  
PLAINTIFF / APPLICANT **ATB FINANCIAL**  
DEFENDANT / **ALBERTA FOOTHILLS**  
RESPONDENT **PROPERTIES LTD.**  
DOCUMENT **CONSENT RECEIVERSHIP  
ORDER**



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**DATE ON WHICH ORDER WAS PRONOUNCED:** May 17, 2021  
**NAME OF JUSTICE WHO MADE THIS ORDER:** The Honourable Justice K.M. Eidsvik  
**LOCATION OF HEARING:** Calgary, Alberta

**UPON** the application of ATB Financial (“**ATB**”), in respect of Alberta Foothills Properties Ltd. (the “**Debtor**”); **AND UPON** having read the Application, the Affidavit of John Sullivan, filed; **AND UPON** reading the consent of FTI Consulting Canada Inc. to act as receiver and manager (the “**Receiver**”) of the Debtor, filed; **AND UPON** hearing counsel for ATB, **AND UPON** noting the consent of the Debtor; **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.

## **APPOINTMENT**

2. Pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (“**BIA**”), FTI Consulting Canada Inc. is hereby appointed Receiver, without security, of all of the Debtor’s current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate and all proceeds thereof (collectively, 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;
  - (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 Debtor, 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 Debtor;
  - (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 Debtor or any part or parts thereof;
  - (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor;
  - (g) to settle, extend or compromise any indebtedness owing to or by the Debtor;
  - (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 Debtor, for any purpose pursuant to this Order;
  - (i) to undertake environmental or workers' health and safety assessments of the Property and operations of the Debtor;
  - (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 Debtor, 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; and

- (i) without the approval of this Court in respect of any transaction not exceeding \$250,000, provided that the aggregate consideration for all such transactions does not exceed \$500,000; and
- (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause,

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

- (m) to apply for any vesting order or other orders (including, without limitation, confidentiality or sealing orders) necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (n) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (o) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property, and when submitted by the Receiver for registration this Order shall be immediately registered by the Registrar of Land Titles of Alberta, 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 Debtor and not in its personal capacity;

- (p) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtor;
- (q) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtor;
- (r) to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have; and
- (s) 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 Debtor, and without interference from any other Person.

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

4. (i) The Debtor, (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 Debtor, 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 DEBTOR OR THE PROPERTY**

8. No Proceeding against or in respect of the Debtor 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 Debtor 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; and (ii) affect a Regulatory Body's investigation in respect of the Debtor or an action, suit or proceeding that is taken in respect of the Debtor 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 (including, without limitation, set-off rights) against or in respect of the Debtor, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" (as defined in the BIA), and further provided that nothing in this Order shall (i) empower the Receiver or the Debtor to carry on any business which the Debtor is not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtor from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.
10. Nothing in this Order shall prevent any party from taking an action against the Applicant where such an action must be taken in order to comply with statutory time limitations in order to preserve their rights at law, provided that no further steps shall be taken by such



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

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

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, licence or permit in favour of or held by the Debtor, except with the written consent of the Receiver or leave of this Court. Nothing in this Order shall prohibit any party to an eligible financial contract (as such term is defined in the BIA) from closing out and terminating such contract in accordance with its terms.

#### **CONTINUATION OF SERVICES**

12. All Persons having oral or written agreements with the Debtor or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation, services, utility or other services to the Debtor is 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 Receiver, and this Court directs that the Receiver shall be entitled to the continued use of the Debtor's current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Debtor, or such other practices as may be agreed upon by the supplier or service provider 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 and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date

of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the “**Post Receivership Accounts**”) and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further order of this Court.

## **EMPLOYEES**

14. Subject to employees’ rights to terminate their employment, all employees of the Debtor shall remain the employees of the Debtor until such time as the Receiver, on the Debtor’s 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*, S.C. 2005, c.47 (“**WEPPA**”).
  
15. Pursuant to clause 7(3)(c) of the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a “**Sale**”). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtor, 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 such 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), 81.6(2) and 88 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 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 \$500,000 (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), 81.6(2) and 88 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 allowed to repay any amounts borrowed by way of Receiver's Certificates out of the Property or any proceeds, including any proceeds from the sale of any assets without further approval of this Court.

#### **ALLOCATION**

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 an original signature.
29. Nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtor.
30. This Court hereby requests the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, the United States or other jurisdiction in which the Property might be located, 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 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. ATB shall have its costs of this application, up to and including entry and service of this Order, provided for by the terms of ATB security or, if not so provided by the ATB'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 Debtor's 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

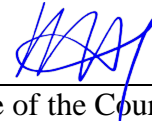
34. The Receiver shall establish and maintain a website in respect of these proceedings at <http://cfcanada.fticonsulting.com/>\_\_\_\_\_ (the "**Receiver's Website**") and shall post there as soon as practicable:
  - (a) all materials prescribed by statute or regulation to be made publically available; and
  - (b) all applications, reports, affidavits, orders and other materials filed in these proceedings by or on behalf of the Receiver, or served upon it, except such materials as are confidential and the subject of a sealing order or pending application for a sealing order.
35. The E-Service Guide of the Alberta Court of Queen's Bench Commercial List (the "**Guide**") is approved and adopted by reference herein and, in this proceeding, the service

of documents made in accordance with the Guide (which can be found on the Commercial List website at: \_\_\_\_\_) shall be valid and effective service. Subject to Rules 11.25 and 11.26, this Order shall constitute an order for substituted service pursuant to Rule 11.28 of the *Alberta Rules of Court*. Subject to paragraph 13 of the Guide, service of documents in accordance with the Guide will be effective on transmission. A Case Website shall be established in accordance with the Guide with the following URL \_\_\_\_\_.

36. Service of this Order shall be deemed good and sufficient by:

- (a) serving the same on:
    - (i) the persons listed on the service list created in these proceedings or otherwise served with notice of these proceedings;
    - (ii) any other person served with notice of the application for this Order; and
    - (iii) any other parties attending or represented at the application for this Order; and
  - (b) posting a copy of this Order on the Receiver's Website,
- and service on any other person is hereby dispensed with.

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




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Justice of the Court of Queen's Bench  
of Alberta

**Consented to by: Miles Davison LLP**



Per:

DocuSigned by:  
  
ZZFB3EE6295245F...

Terry Czechowskyj

Solicitor for the Respondent, Alberta  
Foothills Properties Ltd.

**SCHEDULE "A"**  
**RECEIVER CERTIFICATE**

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

AMOUNT \$ \_\_\_\_\_

1. THIS IS TO CERTIFY that \_\_\_\_\_, the receiver (the **"Receiver"**) of all of the assets, undertakings and properties of, Alberta Foothills Properties Ltd., appointed by Order of the Court of Queen's Bench of Alberta and Court of Queen's Bench of Alberta in Bankruptcy and Insolvency (collectively, the **"Court"**) dated the \_\_\_ day of \_\_\_\_\_, \_\_\_\_ (the **"Order"**) made in action numbers \_\_\_\_\_, 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 (as defined in the Order), in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.
4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at \_\_\_\_\_.
5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.
6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

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

DATED the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_ solely in  
its capacity as Receiver of the Property (as  
defined in the Order), and not in its personal  
capacity

Per: \_\_\_\_\_  
Name:  
Title: