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COURT FILE NUMBER 2101-06388

COURT COURT OF KING'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

APPLICANTS ATB FINANCIAL

RESPONDENTS ALBERTA FOOTHILLS PROPERTIES LTD.

DOCUMENT **THIRD REPORT OF FTI CONSULTING CANADA INC., IN ITS CAPACITY AS RECEIVER OF ALBERTA FOOTHILLS PROPERTIES LTD.**

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Nov 7 2022

October 31, 2022

ADDRESS FOR SERVICE AND
CONTACT INFORMATION OF
PARTY FILING THIS
DOCUMENT

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THIRD REPORT OF THE RECEIVER

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INTRODUCTION

1. On May 17, 2021 (the “**Date of Appointment**”), FTI Consulting Canada Inc. (“**FTI Consulting**”) was appointed as receiver and manager (the “**Receiver**”) of all the assets, undertakings, and properties (the “**Property**”) of Alberta Foothills Properties Ltd. (“**AFPL**”, the “**Debtor**”, or the “**Company**”) pursuant to an Order of the Honourable Justice K.M. Eidsvik (the “**Receivership Order**”) pronounced in the Court of Queen’s Bench of Alberta Court File Number 2101-06388 (the “**Receivership Proceedings**”).
2. The Receivership Order authorized the Receiver, among other things, to manage, operate and carry on the Business of the Company, to market any or all of the Property including advertising and soliciting offers to purchase the Property, and to make such arrangements or agreements as deemed necessary by the Receiver.
3. The Receiver’s reports and other publicly available information filed in connection with the Receivership Proceedings are posted on the Receiver’s website at <http://cfcanada.fticonsulting.com/AFPL>.
4. AFPL’s primary asset comprises approximately 145 acres of land located at NW 16-20-29 W4M in Okotoks, Alberta (the “**Lands**”).
5. At an application on September 29, 2021, the Receiver sought advice and directions from this Honourable Court as to whether the Town of Okotoks’ (the “**Town**”) actions with respect to rescinding the existing bylaws and enacting Bylaws 19-21 and 20-21 (the “**Proposed Bylaws**”) were in contravention of the terms of the Receivership Order.
6. On October 21, 2021, this Honourable Court released its reasons for decision with respect to the Proposed Bylaws.

7. The purpose of this report (“**Third Report Report**”) is to provide this Honourable Court with:
 - (a) the activities of the Receiver since the date of the First Report;
 - (b) a summary of the process undertaken by the Receiver to solicit proposals for the sale of the Lands;
 - (c) the Receiver’s analysis and recommendations with respect to the proposed transaction between the Receiver and TOM Capital Associates Ltd. (“**TOM Capital**”); and
 - (d) the Receiver’s conclusions and recommendations.

8. On October 31, 2022, the Receiver filed a Notice of Application seeking the following relief from this Honourable Court:
 - (a) approval of the Receiver’s activities since the Date of Appointment;
 - (b) an order (the “**Sale Approval and Vesting Order**”) authorizing and approving the asset purchase and sale agreement between the Receiver and TOM Capital (“**TOM Capital APA**”); and
 - (c) sealing on the Court record the Receiver’s Confidential Supplement to this Third Report.

TERMS OF REFERENCE

9. In preparing this Third Report, the Receiver has relied upon audited and unaudited financial information, other information available to the Receiver and, where appropriate, the Company's books and records and discussions with various parties (collectively, the "**Information**").
10. Except as described in this Third Report:
 - (a) The Receiver has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would comply with Generally Accepted Assurance Standards pursuant to the *Chartered Professional Accountants of Canada Handbook*; and
 - (b) The Receiver has not examined or reviewed financial forecasts and projections referred to in this First Report in a manner that would comply with the procedures described in the *Chartered Professional Accountants of Canada Handbook*.
11. Future oriented financial information reported or relied on in preparing this Third Report is based on assumptions regarding future events. Actual results may vary from forecasts and such variations may be material.
12. The Receiver has prepared this Third Report in connection with the Receiver's Application on November 7, 2022. This Third Report should not be relied on for other purposes.

13. Information and advice described in this Third Report that has been provided to the Receiver by its legal counsel, MLT Aikins LLP (the “**Receiver’s Counsel**”), was provided to assist the Receiver in considering its course of action, is not intended as legal or other advice to, and may not be relied upon by, any other person.
14. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian Dollars.

ACTIVITIES OF THE RECEIVER

15. Since the date of the First Report the Receiver’s activities have included, among other things:
 - (c) retaining Avison Young Commercial Real Estate Services, LP (“**Avison Young**”) to market and solicit proposals to purchase the Lands;
 - (d) providing periodic updates to the stakeholders of AFPL, including Drew Atkins, a corporate secretary and director of AFPL, Brian Lund as representative of 1367809 Alberta Ltd. in its capacity as second lien lender (“**2L Lender**”) to AFPL and representatives of ATB Financial (“**ATB**”) in its capacity as first lien lender to AFPL;
 - (e) attempting to resolve a dispute between various parties with respect to certain escrowed funds held by MLT Aikins LLP, in its capacity as escrow agent, with respect to a failed financing agreement. The Receiver has a separate application scheduled for December 12, 2022, in connection with this matter; and
 - (f) preparing this Third Report.

SOLICITATION OF LISTING PROPOSALS

16. Subsequent to the Date of Appointment, the Receiver, in consultation with ATB and the 2L Lender, determined that a listing agent should be retained to market the Lands to maximize the return for stakeholders.
17. On May 21, 2021, the Receiver sent a request for proposals to market the Lands to several parties. After discussions with ATB and the 2L Lender and after considering the proposals, on June 15, 2021, the Receiver engaged NAI Advent with a mandate to sell the Lands.
18. The Receiver was in the process of listing the Lands for sale, when on June 21, 2021, the Town's counsel sent a letter to counsel for ATB advising that "the Town is considering rescinding the bylaw for the ASP which impacts the parcel of land owned by AFPL and the Town will also be considering a land use bylaw amendment changing the land use designation for this parcel".
19. Given the uncertainty surrounding the Proposed Bylaws, the Receiver postponed the launch of the sales process.
20. The Town tabled, moved forward with a first and second reading and a public hearing with respect to the Proposed Bylaws which would have the effect of rezoning the Lands from residential property to urban or agricultural holdings and also rescinding the Wind Walk Area Structure Plan. The Town deferred a final reading of the Proposed Bylaws until the application for advice and directions had been heard and determined.

21. In its reasons for decision this Honourable Court concluded that, without any extant right in AFPL to develop the Lands, there was no basis upon which to stay the Town from enacting the Proposed Bylaws. Accordingly, after the Court’s decision, the Town proceeded with the final reading and the Proposed Bylaws were enacted.
22. After this Honourable Court released its reasons for decision with respect to the application for advice and directions, the Receiver sought revised listing proposals from parties to market and solicit proposals for the Lands (the “**Solicitation Process**”). Highlights of the Solicitation Process include:
 - (a) on November 16, 2021, the Receiver sent an email summarizing the opportunity and seeking proposals from six listing agents;
 - (b) a deadline for submission of proposals was established on November 26, 2021; and
 - (c) 3 proposals were received on or before the proposal deadline.
23. A number of parties declined to submit a proposal as a result of their perceived value of the Lands given the enactment of the Proposed Bylaws by the Town.

EVALUATION OF LISTING PROPOSALS

24. The Receiver, in consultation with ATB, evaluated the proposals with consideration to, among other things:
 - (a) qualifications for marketing properties of similar nature;
 - (b) strategy for listing the Lands given the change in land use designation after the enactment of the Proposed Bylaws;

- (c) marketing timeline including closing dates and due diligence period;
 - (d) the proposed listing price or pricing guidance;
 - (e) the fee structure; and
 - (f) the extent to which the proposals complied with the Solicitation Process.
25. Ultimately, the Receiver, in consultation with ATB, selected the proposal submitted by Avison Young.

SUMMARY OF MARKETING PROCESS

26. On January 8, 2022, the Receiver entered into an Exclusive Commercial Listing Agreement with Avison Young.
27. A summary of the marketing process (the “**Marketing Process**”) undertaken by Avison Young is summarized below.
- (a) the listing was launched on January 31, 2022, and included an email marketing campaign sent out to 700+ pre-qualified suitors and a sales brochure that was posted on the Avison Young and the Receiver’s websites;
 - (b) Avison Young engaged colleagues from other Avison Young offices to expose the Lands to a national audience of potential suitors;
 - (c) Avison Young approached adjacent landowners along Highway 7;
 - (d) Avison Young made or attempted to make direct contact with 28 individual investors or developers it felt was best suited for the Lands given their history or experience relative to the Calgary and surrounding communities;

- (e) targeted discussions and exploratory conversations with numerous local and out of province investors; and
 - (f) a virtual data room (“**VDR**”) was setup for prospective purchasers to review additional information upon execution of a confidentiality agreement (“**CA**”).
28. During the term of listing Avison Young received varying degrees of interest from prospective purchasers. The results of the Marketing Process included 8 parties executed CA’s were provided with access to the VDR and two parties submitted a letter of intent (“**LOI**”).
29. After further discussions with both parties that submitted an LOI and evaluation of the proposals, and consultation with ATB, the Receiver selected the proposal submitted by TOM Capital.
30. Avison Young marketing the Lands for sale without an advertised list price, however, communicated clear pricing guidance in the range of approximately \$10.8 million to all interested parties. The pricing guidance was based on the following:
- (a) Avison Young’s recommendation based on its market analysis included in its listing proposal:
 - (b) general market feedback from interested parties;
 - (c) the Receiver’s internal valuation on the Lands included the valuation affect of the enactment of the Proposed Bylaws; and

- (d) consideration given to a third party appraisal prepared by Avison Young Valuation & Advisory Services, LP at the request of the Receiver which was completed on August 26, 2021, based upon the hypothetical assumption that the Town enacted the Proposed Bylaws.
31. The Receiver also notes that the Lands were extensively marketed prior to the commencement of these Receivership Proceedings, as described below.
32. As more fully described in the Affidavit of John Sullivan sworn on May 11, 2021, ATB was owed approximately \$13.8 million and AFPL and ATB entered into a series of letter agreements pursuant to which ATB would continue to forbear from enforcing its rights against AFPL. As part of the forbearance AFPL entered into an Exclusive Sale Listing Agreement with CBRE Limited to market and solicit offers to purchase the Lands on December 20, 2019. The listing was later moved to NAI Commercial Real Estate Corp., operating as NAI Advent after the listing agent changed brokerages.
33. A summary of the pre-receivership listing history of the Lands is provided below:
- (a) originally listed for sale for \$20 million in December 2019;
 - (b) the listing price was reduced to \$17.5 million in September 2020; and
 - (c) the listing price was reduced to \$15.75 million in March 2021.
34. Ultimately, the Lands were not sold and AFPL was placed in Receivership.

TOM CAPITAL APA

35. On October 14, 2022, the Receiver and TOM Capital executed the TOM Capital APA.
36. A copy of the TOM Capital APA with commercially sensitive terms redacted is attached as Appendix “A” to this Third Report. The Receiver is of the view that disclosure of the financial terms of the TOM Capital APA may be detrimental to the realization process. For example, disclosure of the financial terms could cause prejudice to creditors and other stakeholders of the Company in the event the transaction contemplated by the TOM Capital APA is not completed in accordance with its terms. If this were to occur, the Lands could be subject to further marketing and the Receiver’s ability to obtain the highest and best price could be severely compromised by the financial terms of the TOM Capital APA entering the public domain. As such, the Receiver has therefore prepared a Confidential Supplement to the Third Report to disclose the financial terms and provide an unredacted copy of the TOM Capital APA to the Court only, and seeks a limited sealing order for this purpose.
37. The TOM Capital APA includes the following key terms:
 - (a) acknowledgement that the Lands are sold on an “as-is, where-is” basis, without any representations or warranties of any kind or nature whatsoever;
 - (b) the TOM Capital APA is subject to approval of this Honourable Court;
 - (c) a first deposit equal to approximately 1.5% of the purchase price that was provided upon execution of the TOM Capital APA;

- (d) a second deposit equal to approximately 4.2% of the purchase price upon waiver of the due diligence conditions;
- (e) the target closing date is 20 days after the later of (i) receiving the Approval and Vesting Order and (ii) waiver of the due diligence conditions; and
- (f) due diligence period of 90 days from the date of execution with an outside date of February 15, 2023.

RECEIVER'S COMMENTS ON THE TOM CAPITAL APA

38. The Receiver's comments with respect to the TOM Capital APA are as follows:
- (a) the Marketing Process was fair and transparent and provided all participants with equal access to information and opportunity to submit an offer or proposal;
 - (b) the Lands were exposed to the market for a considerable amount of time both prior to and for 8 months during these Receivership Proceedings;
 - (c) the purchase price in the TOM Capital APA provides for the highest and best recovery in the context of insolvency or restructuring proceedings;
 - (d) the Receiver is satisfied that TOM Capital has the requisite experience and is appropriately qualified to complete the transaction contemplated by the TOM Capital APA; and
 - (e) the TOM Capital APA is supported by ATB.

39. The Receiver notes that the purchase price included in the TOM Capital APA is below the secured debt owed to ATB and thus ATB is the fulcrum creditor in these proceedings.


RECEIVER'S CONCLUSIONS AND RECOMMENDATIONS

40. The TOM Capital APA represent the best proposal received in respect of the Lands, will result in the monetization of the Property in a timely manner.

41. Based on the foregoing, the Receiver respectfully recommends that this Honourable Court grant the Approval and Vesting Order authorizing and approving the Receiver to complete the transaction contemplated by the TOM Capital APA, approving the Receiver's activities as outlined in the Third Report, and the sealing of the Confidential Supplement to the Third Report

All of which is respectfully submitted this 31st day of October 2022.

FTI Consulting Canada Inc.
in its capacity as Receiver of Alberta Foothills
Properties Ltd.



Deryck Helkaa, LIT
Senior Managing Director
FTI Consulting Canada Inc.

Appendix “A” – TOM Capital APA

FTI CONSULTING CANADA INC.,
IN ITS CAPACITY AS COURT APPOINTED-RECEIVER OF **ALBERTA FOOTHILLS**
PROPERTIES LTD. AND NOT IN ITS PERSONAL OR CORPORATE CAPACITY

- and -

TOM CAPITAL ASSOCIATES LTD.

ASSET PURCHASE AGREEMENT

DATED AS OF OCTOBER 14, 2022

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ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT dated as of October 14, 2022 (the "**Execution Date**") is made by and between:

FTI CONSULTING CANADA INC.,
in its capacity as court-appointed receiver of **ALBERTA FOOTHILLS PROPERTIES LTD.** and not in its personal or corporate capacity

- and -

TOM CAPITAL ASSOCIATES LTD.

(the "**Purchaser**")

RECITALS:

- A. Pursuant to an order of the Court of Queen's Bench of Alberta (the "**Court**") granted on May 17, 2021 (the "**Receivership Order**") in the proceedings bearing Action No. 2101-06388 (the "**Receivership Proceedings**"), FTI Consulting Canada Inc. was appointed as receiver (the "**Receiver**") of all of the property, assets and undertakings of Alberta Foothills Properties Ltd. (the "**Debtor**" together with the Receiver, the "**Vendor**").
- B. The Vendor primarily carries on a real-estate development business in Alberta.
- C. The Vendor desires to sell, transfer and assign to the Purchaser, and the Purchaser desires to acquire and assume from the Vendor, all of the Vendor's right, title and interest in and to the Purchased Assets, on the terms and subject to the conditions contained in this Agreement.
- D. The transactions contemplated by this Agreement are subject to the approval of the Court and will be consummated pursuant to the Approval and Vesting Order to be entered by the Court in the Receivership Proceedings.

NOW THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged by each Party, the Parties agree as follows:

Article 1 INTERPRETATION

1.1 Definitions

In this Agreement, unless the context otherwise requires, the following terms have the meanings given to them below:

"Action" means any claim, action, cause of action, demand, lawsuit, arbitration, inquiry, audit, notice of violation, proceeding, litigation, citation, summons, Order, subpoena or investigation of any nature, civil, criminal, administrative, regulatory or otherwise, whether at Law or in equity and by or before a Governmental Authority.

"Adjustments" has the meaning ascribed thereto in Section 3.4.

"Affiliate" means, with respect to any Person, any other Person who directly or indirectly controls, is controlled by, or is under direct or indirect common control with, such Person, and includes any Person in like relation to an Affiliate. A Person shall be deemed to **"control"** another Person if such Person possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of such other Person, whether through the ownership of voting securities, by contract or otherwise; and the term **"controlled"** shall have a similar meaning.

"Agreement" means this Asset Purchase Agreement, including the preamble and the Recitals, and all the Schedules attached hereto, as they may be amended, restated or supplemented from time to time in accordance with the terms hereof.

"Applicable Law" means, with respect to any Person, property, transaction, event or other matter: (a) any domestic constitution, treaty, law, statute, regulation, code, ordinance, principle of common law or equity, rule, municipal by-law, Order or other requirement having the force of law, (b) any policy, practice, protocol, standard or guideline of any Governmental Authority which, although not necessarily having the force of law, is regarded by such Governmental Authority as requiring compliance as if it had the force of law (collectively, in the foregoing clauses (a) and (b), **"Law"**), in each case relating or applicable to such Person, property, transaction, event or other matter

"Approval and Vesting Order" means an Order of the Court issued in the Receivership Proceedings in form satisfactory to the Parties and the Receiver, each acting reasonably: (a) approving the transactions contemplated by this Agreement, and (b) vesting in the Purchaser all of the Vendor's right, title and interest in and to the Purchased Assets free and clear of all Encumbrances other than Permitted Encumbrances, in form and substance satisfactory to the Parties and the Receiver each acting reasonably.

"Assignment and Assumption Agreement" means an assignment and assumption agreement, in form and substance satisfactory to the Parties, acting reasonably, evidencing the assumption by the Purchaser of all of the Assumed Liabilities under or in respect of the Purchased Assets.

"Assumed Liabilities" means the following Liabilities of the Vendor:

- (a) all Liabilities relating to the Purchased Assets arising on or after the Closing Date; and
- (b) all Environmental Claims and all Environmental Liabilities related to or arising out of the Purchased Assets.

"Business Day" means any day except Saturday, Sunday or any day on which banks are generally not open for business in the City of Calgary, Alberta.

"Casualty" has the meaning set out in Section 5.2.

"Closing" means the completion of the purchase and sale of the Vendor's right, title and interest in and to the Purchased Assets in accordance with the provisions of this Agreement.

"Closing Date" means the date on which Closing occurs, which date shall be the Target Closing Date or such other date as may be agreed to in writing by the Parties and the Receiver.

"Closing Payment " has the meaning set out in Section 3.2(3).

"Closing Time" means the time of day on the Closing Date when Closing occurs.

"Court" has the meaning set out in Recital A.

"Damages" means any loss, cost, Liability, claim, interest, fine, penalty, assessment, Taxes or damages available at Law or in equity (excluding incidental, consequential, special, aggravated, exemplary or punitive damages), expense (including consultant's and expert's fees and expenses and reasonable costs, reasonable fees and expenses of legal counsel on a full indemnity basis, without reduction for tariff rates or similar reductions and reasonable costs, fees and expenses of investigation, defence or settlement).

"Data" means any information or data collected or received by, processed by, or output from software (including reports, analytics, and alerts), and any other information or data related to the Purchased Assets, including information and data contained in any databases.

"Deposits" has the meaning ascribed thereto in Section 3.1(2).

"DD Period" has the meaning ascribed thereto in Section 7.1.

"Encumbrances" means all claims, Liabilities, obligations, prior claims, right of retention, liens, security interests, floating charges, mortgages, pledges, assignments, conditional sales, warrants, adverse claims, charges, hypothecs, trusts, deemed trusts (statutory or otherwise), judgments, writs of seizure or execution, notices of sale, contractual rights (including purchase options, rights of first refusal, rights of first offer or any other pre-emptive contractual rights), encumbrances, whether or not they have been registered, published or filed and whether secured, unsecured or otherwise.

"Environmental Claim" means any Action, lien, fine, penalty, or, as to each, any settlement or judgment arising therefrom by or from any Person alleging Liability of whatever kind or nature (including Liability or responsibility for the costs of any enforcement proceedings, investigations, cleanup, governmental response, removal or remediation, natural resources Damages, property Damages, personal injuries, medical monitoring, penalties, contribution, indemnification and injunctive relief) arising out of, based on or resulting from: (a) the presence, Environmental Release of, or exposure to, any Hazardous Materials; or (b) any actual or alleged non-compliance with any Environmental Law or term or condition of any Environmental Permit.

"Environmental Law" means any Applicable Law or binding agreement with any Governmental Authority: (a) relating to pollution (or the investigation or cleanup thereof), the management or protection of natural resources, endangered or threatened species, human health or safety, or the protection or quality of the environment (including ambient air, soil, surface water or groundwater, or subsurface strata); or (b) concerning the presence of, exposure to, or the management, manufacture, use, containment, storage, recycling, reclamation, reuse, treatment, generation, discharge, transportation, processing, production, disposal or remediation of any Hazardous Materials.

"Environmental Liabilities" means all past, present and future obligations and Liabilities of whatsoever nature or kind arising from or relating to, directly or indirectly to any Environmental Claim applicable to or otherwise involving the Purchased Assets, including arising from or relating to the presence of any Hazardous Materials, or any past, present or future non-compliance with, violation of or Liability under any Environmental Laws or any Environmental Permit applicable to or otherwise involving the Purchased Assets, whenever occurring or arising.

"Environmental Permit" means any Permit and Licence, letter, clearance, consent, waiver, closure plan, exemption, decision or other action required under or issued, granted, given, authorized by or made pursuant to Environmental Law.

"Environmental Release" includes any actual or potential release, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, abandonment, disposing or allowing to escape or migrate into or through the environment (including ambient air (indoor or outdoor), surface water, groundwater, land surface or subsurface strata or within any building, structure, facility or fixture).

"ETA" means the *Excise Tax Act*, RSC 1985, c E-15 and the regulations thereunder.

"Excluded Assets" means all (a) all property and assets of the Vendor other than the Purchased Assets; (b) records that are required to be retained by any of the Vendor or their Affiliates by Applicable Law; (c) the rights of any of the Vendor under this Agreement or any other agreement, certificate or instrument executed and delivered pursuant to this Agreement; (d) all causes of action which arise from loss, Damage or facts occurring prior to the Closing Date and any insurance proceeds or claims payable for losses or Damages incurred prior to the Closing Date, other than insurance proceeds or rights thereto assigned to the Purchaser in accordance with Section 5.2; and (e) the Receiver's Charge.

"First Deposit" has the meaning ascribed thereto in Section 3.1(1).

"Governmental Authority" means:

- (a) any domestic or foreign government, whether national, federal, provincial, state, territorial, municipal or local (whether administrative, legislative, executive or otherwise);
- (b) any agency, authority, ministry, department, regulatory body, court, central bank, bureau, board or other instrumentality having legislative, judicial, taxing, regulatory, prosecutorial or administrative powers or functions of, or pertaining to, government;
- (c) any court, tribunal, commission, individual, arbitrator, arbitration panel or other body having adjudicative, regulatory, judicial, quasi-judicial, administrative or similar functions; and
- (d) any other body or entity created under the authority of or otherwise subject to the jurisdiction of any of the foregoing, including any stock or other securities exchange, securities commission or professional association.

"GST" means all goods and services tax and harmonized sales tax imposed under Part IX of the ETA.

"Hazardous Materials" means: (a) any material, substance, chemical, waste, product, derivative, compound, mixture, solid, liquid, mineral, gas, odour, heat, sound, vibration, radiation or combination of them that may impair the natural environment, injure or damage property or animal life or harm or impair the health of any individual and includes any contaminant, waste or substance or material defined, prohibited, regulated or reportable pursuant to any Applicable Law relating to the environment, pollution or human health and safety, in each case, whether naturally occurring or manmade; and (b) any petroleum or petroleum-derived products, radon, radioactive materials or

wastes, asbestos in any form, lead or lead-containing materials, urea formaldehyde foam insulation and polychlorinated biphenyls.

"Interim Period" means the period from the date that this Agreement is entered into by the Parties to the Closing Time.

"ITA" means the *Income Tax Act*, RSC, 1985, c. 1 (5th Supp), and the regulations thereto.

"Law" has the meaning set out in the definition of **"Applicable Law"**.

"Legal Proceeding" means any litigation, Action, application, demand, suit, investigation, hearing, claim, complaint, deemed complaint, grievance, civil, administrative, regulatory or criminal, arbitration proceeding or other similar proceeding, before or by any court or other tribunal or Governmental Authority and includes any appeal or review thereof and any application for leave for appeal or review.

"Liability" means, with respect to any Person, any liability, debt, dues, guarantee, surety, indemnity obligation, or other obligation of such Person of any kind, character or description, whether legal, beneficial or equitable, known or unknown, present or future, direct, indirect, absolute or contingent, accrued or unaccrued, disputed or undisputed, liquidated or unliquidated, secured or unsecured, joint or several, due or to become due or accruing due, vested or unvested, executory, determined, determinable or otherwise, and whether or not the same is required to be accrued on the financial statements of such Person.

"Order" means any order, writ, judgment, injunction, decree, stipulation, determination or award entered by or with any Governmental Authority.

"Outside Date" means February 15, 2023 or such later date as the Parties may mutually agree.

"Party" means a party to this Agreement and any reference to a Party includes its successors and permitted assigns and **"Parties"** means more than one of them.

"Permitted Encumbrances" means, collectively:

- (a) those Encumbrances listed on Schedule "B";
- (b) Encumbrances related to Taxes and utilities arising by operation of law (statutory or otherwise) which relate to or secure Liabilities that in each case are not yet due or are not in arrears or, if due or in arrears, the validity of which is being contested;
- (c) easements, covenants, rights of way, restrictive covenants and other restrictions provided that they are complied with in all material respects;
- (d) registered agreements with municipalities or public utilities if they have been complied with in all material respects or adequate security has been furnished to secure compliance; and
- (e) registered easements on real property for the supply of utilities or telephone services and for drainage, storm or sanitary sewers, public utilities lines, telephone lines, cable television lines or other services, provided such easements have been complied with in all material respects.

"Person" is to be broadly interpreted and includes an individual, a corporation, a partnership, a trust, an unincorporated organization, a Governmental Authority, and the executors, administrators or other legal representatives of an individual in such capacity.

"Purchase Price" has the meaning set out in Section 3.1.

"Purchased Assets" means, collectively, those assets of the Vendor set out in Schedule "A" (or any of them) and includes all improvements and fixtures owned by Vendor thereon, but, for greater certainty, does not include any Excluded Assets.

"Purchaser" has the meaning set out in Recital A hereto and includes any successor or permitted assignee thereof in accordance with Section 9.17.

"Receiver" has the meaning set out in Recital A.

"Receiver's Certificate" means the certificate, substantially in the form attached as Schedule "A" to the Approval and Vesting Order, to be delivered by the Receiver to the Vendor and the Purchaser on Closing and thereafter filed by the Receiver with the Court.

"Receivership Proceedings" has the meaning set out in Recital A.

"Receivership Order" has the meaning set out in Recital A.

"Receiver's Charge" has the meaning set out in the Receivership Order.

"Representative" when used with respect to a Person means each director, officer, employee, consultant, subcontractor, financial adviser, legal counsel, accountant and other agent, adviser or representative of that Person.

"Second Deposit" has the meaning ascribed thereto in Section 3.1(2).

"Specific Conveyance" means a registrable transfer of land required under the *Land Titles Act* (Alberta) to evidence transfer to the Purchaser of the Vendor's right, title and interest in and to the Purchased Assets.

"Target Closing Date" means twenty (20) days after the later of (a) receipt of the Approval and Vesting Order; and (b) the date of satisfaction or waiver of the DD Period, or such other date as agreed by the Parties from time to time.

"Tax Returns" means all returns, reports, declarations, elections, notices, filings, information returns, statements and forms in respect of Taxes that are filed or required to be filed with any applicable Governmental Authority, including all amendments, schedules, attachments or supplements thereto and whether in tangible or electronic form.

"Taxes" means, with respect to any Person, all supranational, national, federal, provincial, state, local or other taxes, including income taxes, branch taxes, profits taxes, capital gains taxes, gross receipts taxes, windfall profits taxes, value added taxes, severance taxes, *ad valorem* taxes, property taxes, capital taxes, net worth taxes, production taxes, sales taxes, use taxes, licence taxes, excise taxes, franchise taxes, environmental taxes, transfer taxes, withholding or similar taxes, payroll taxes, employment taxes, employer health taxes, government pension plan premiums and contributions, social security premiums, workers' compensation premiums,

employment/unemployment insurance or compensation premiums and contributions, stamp taxes, occupation taxes, premium taxes, alternative or add-on minimum taxes, GST, customs duties or other taxes of any kind whatsoever imposed or charged by any Governmental Authority and any instalments in respect thereof of another taxpayer or entity, together with any interest, penalties, or additions with respect thereto and any interest in respect of such additions or penalties, and whether disputed or not, and "**Tax**" means any one of such Taxes.

"**Transfer Taxes**" means all applicable Taxes, including any applicable GST, payable upon or in connection with the transactions contemplated by this Agreement and any filing, registration, recording or transfer fees payable in connection with the instruments of transfer provided for in this Agreement.

"**Vendor**" has the meaning set out in Recital A.

1.2 Actions on Non-Business Days

If any payment is required to be made or other action (including the giving of notice) is required to be taken pursuant to this Agreement on a day which is not a Business Day, then such payment or action shall be considered to have been made or taken in compliance with this Agreement if made or taken on the next succeeding Business Day.

1.3 Currency and Payment Obligations

Except as otherwise expressly provided in this Agreement: (a) all dollar amounts referred to in this Agreement are stated in the lawful currency of Canada; and (b) any payment contemplated by this Agreement shall be made by wire transfer of immediately available funds, by cash, by certified cheque or by any other method that provides immediately available funds as agreed to between the Parties, with the consent of the Receiver.

1.4 Calculation of Time

In this Agreement, a period of days shall be deemed to begin on the first day after the event which began the period and to end at 5:00 p.m. (Calgary time) on the last day of the period. If any period of time is to expire hereunder on any day that is not a Business Day, the period shall be deemed to expire at 5:00 p.m. (Calgary time) on the next succeeding Business Day.

1.5 Tender

Any tender of documents or money hereunder may be made upon the Parties or, if so indicated, the Receiver or their respective counsel.

1.6 Additional Rules of Interpretation.

(1) *Gender and Number.* In this Agreement, unless the context requires otherwise, words in one gender include all genders and words in the singular include the plural and vice versa.

(2) *Headings and Table of Contents.* The inclusion in this Agreement of headings, Articles and Sections and the provision of a table of contents are for convenience of reference only and are not intended to be full or precise descriptions of the text to which they refer.

(3) *Section References.* Unless the context requires otherwise, references in this Agreement to Articles, Sections or Schedules are to Articles or Sections of this Agreement, and Schedules to this Agreement.

(4) *Words of Inclusion.* Wherever the words "include", "includes" or "including" are used in this Agreement, they shall be deemed to be followed by the words "without limitation" and the words following "include", "includes" or "including" shall not be considered to set forth an exhaustive list.

(5) *References to this Agreement.* The words "hereof", "herein", "hereto", "hereunder", "hereby" and similar expressions shall be construed as referring to this Agreement in its entirety and not to any particular Section or portion of it.

(6) *Statute References.* Unless otherwise indicated, all references in this Agreement to any statute include the regulations thereunder, in each case as amended, re-enacted, consolidated or replaced from time to time and in the case of any such amendment, re-enactment, consolidation or replacement, reference herein to a particular provision shall be read as referring to such amended, re-enacted, consolidated or replaced provision and also include, unless the context otherwise requires, all applicable guidelines, bulletins or policies made in connection therewith.

(7) *Document References.* All references herein to any agreement (including this Agreement), document or instrument mean such agreement, document or instrument as amended, supplemented, modified, varied, restated or replaced from time to time in accordance with the terms thereof and, unless otherwise specified therein, includes all schedules attached thereto.

1.7 Schedules

The following are the Schedules attached to and incorporated in this Agreement by reference and deemed to be a part hereof:

Schedule "A"	Purchased Assets
Schedule "B"	Permitted Encumbrances

Unless the context otherwise requires, words and expressions defined in this Agreement will have the same meanings in the Schedules and the interpretation provisions set out in this Agreement apply to the Schedules. Unless the context otherwise requires, or a contrary intention appears, references in the Schedules to a designated Article, Section, or other subdivision refer to the Article, Section, or other subdivision, respectively, of this Agreement.

Article 2 PURCHASE OF ASSETS AND ASSUMPTION OF LIABILITIES

2.1 Purchase and Sale of Purchased Assets

At the Closing Time, on and subject to the terms and conditions of this Agreement and the Approval and Vesting Order, the Vendor shall sell to the Purchaser, and the Purchaser shall purchase from the Vendor, all of the Vendor's right, title and interest in and to the Purchased Assets, which shall be free and clear of all Encumbrances other than Permitted Encumbrances, to the extent and as provided for in the Approval and Vesting Order. For greater certainty, notwithstanding any other provision of this Agreement, this Agreement does not constitute an agreement by the Purchaser to purchase, or by the Vendor to sell, any Excluded Assets.

2.2 Assumption of Assumed Liabilities

At the Closing Time, on and subject to the terms and conditions of this Agreement, the Purchaser shall assume and agree to pay when due and perform and discharge in accordance with their terms, the Assumed Liabilities. Notwithstanding any other provision of this Agreement, the Purchaser shall not assume any Liabilities hereunder other than the Assumed Liabilities, except as required under Applicable Law.

Article 3 PURCHASE PRICE AND TAXES

3.1 Deposit

(1) Within two (2) Business Days of the Execution Date, the Purchaser shall pay to the Vendor the amount of [REDACTED] to be held by the Vendor's counsel, MLT Aikins LLP, in trust, as the first deposit (the "**First Deposit**"). Subject to the terms hereof, the First Deposit shall form part of the Purchase Price on Closing.

(2) Within two (2) Business Days of the date of waiver of the DD Period, the Purchaser shall pay to the Vendor the amount of [REDACTED] to be held by the Vendor's counsel, MLT Aikins LLP, in trust, as the second deposit (the "**Second Deposit**" and together with the First Deposit, the "**Deposits**"). Subject to the terms hereof, the Second Deposit shall form part of the Purchase Price on Closing.

(3) In the event that this Agreement is terminated pursuant to Sections 8.1(1), Section 8.1(2), 8.1(3) or 8.1(5) (not due a breach of the Purchaser), the Vendor will return the Deposits (that have been paid) within two (2) Business Days to the Purchaser. In the event that this Agreement is terminated pursuant to Sections 8.1(4) or 8.1(5) (where due to a breach by the Purchaser), the Vendor shall keep the Deposits as a genuine pre-estimation of liquidated Damages and not as a penalty which shall be the sole and exclusive remedy of the Vendor in the event of such termination.

(4) For certainty, any failure to pay a Deposit on the timelines set out in this Section 3.1 shall be deemed to be a material breach of this Agreement by Purchaser subject to Section 8.1(4).

3.2 Purchase Price

The consideration payable by the Purchaser to the Vendor for the Vendor's right, title and interest in and to the Purchased Assets is [REDACTED] (the "**Purchase Price**") consisting of the following:

- (1) the First Deposit;
- (2) the Second Deposit; and
- (3) [REDACTED] plus or minus the Adjustments, as applicable (the "**Closing Payment**").

3.3 Satisfaction of Purchase Price

The Purchase Price shall be paid and satisfied as follows:

- (1) the First Deposit shall be paid in accordance with Section 3.1(1) and released to Vendor at Closing;

- (2) the Second Deposit shall be paid in accordance with Section 3.1(2) and released to Vendor at Closing; and
- (3) the Closing Payment shall be paid by the Purchaser to the Vendor at Closing.

3.4 Adjustments

The Purchase Price shall be adjusted as of the Closing Date to account for property taxes paid or payable in respect of the Purchased Assets (the "**Adjustments**") based on the proportionate amount of time remaining in the calendar year. The Closing Date shall be for the Vendor's account in respect of such Adjustments.

3.5 Taxes

In addition to the Purchase Price, the Purchaser shall be liable for and shall, at Closing, pay all applicable Transfer Taxes.

3.6 GST/PST Gross Up

If any payment made by any of the Vendor or the Purchaser as a result of a breach, modification or termination of this Agreement, or of any other agreement or document delivered pursuant to this Agreement, is deemed by the ETA to include GST, or is deemed by any other applicable legislation to include a similar value added or multi-staged tax, the amount of such payment or forfeiture shall be increased accordingly. For greater certainty, if the Purchaser is required by Applicable Law to deduct or withhold any amount from any payment made by it, then such payment shall be increased by an additional amount such that the amount received by the Vendor after such deduction or withholding (including deduction or withholding from such additional amount) is equal to the amount that the Vendor would have received absent any such deduction or withholding.

3.7 Section 167 Tax Election.

If available and requested by the Purchaser, at the Closing, each of the Vendor and the Purchaser shall execute jointly an election under Section 167 of the ETA to have the sale of the Purchased Assets take place on a GST-free basis under Part IX of the ETA. The Purchaser shall file the elections in the manner and within the time prescribed by the relevant legislation.

Article 4 REPRESENTATIONS AND WARRANTIES

4.1 Representations and Warranties of the Purchaser

As a material inducement to the Vendor entering into this Agreement and completing the transactions contemplated by this Agreement and acknowledging that the Vendor is entering into this Agreement in reliance upon the representations and warranties of the Purchaser set out in this Section 4.1, the Purchaser represents and warrants to the Vendor as follows:

- (1) *Incorporation and Corporate Power.* The Purchaser is a corporation incorporated, organized and subsisting under the Laws of the jurisdiction of its incorporation. The Purchaser has the corporate power, authority and capacity to execute and deliver this Agreement and all other agreements and instruments to be executed by it as contemplated herein and to perform its obligations under this Agreement and under all such other agreements and instruments.

(2) *Authorization.* The execution and delivery of this Agreement and all other agreements and instruments to be executed by the Purchaser as contemplated herein and the completion of the transactions contemplated by this Agreement and all such other agreements and instruments have been duly authorized by all necessary corporate action on the part of the Purchaser.

(3) *Approvals.* No consent, waiver, authorization or approval of any Person and no notice or declaration to or filing or registration with any Governmental Authority is required in connection with the execution and delivery by the Purchaser of this Agreement or all other agreements and instruments to be executed by the Purchaser or the performance of its obligations hereunder or thereunder.

(4) *Enforceability of Obligations.* This Agreement constitutes a valid and binding obligation of the Purchaser enforceable against the Purchaser in accordance with its terms. There is no Legal Proceeding in progress, pending against or threatened against or affecting the Purchaser, and there are no grounds on which any such Legal Proceeding might be commenced and there is no Order outstanding against or affecting the Purchaser which, in any such case, affects adversely or might affect adversely the ability of the Purchaser to enter into this Agreement or to perform its obligations hereunder.

(5) *ITA.* The Purchaser will not be, at Closing, a non-resident of Canada for purposes of the ITA.

(6) *ETA.* The Purchaser will be, at Closing, registered for GST purposes under Part IX of the ETA and the GST number will be provided to the Vendor prior to Closing.

(7) *Commissions.* The Vendor will not be liable for any brokerage commission, finder's fee or other similar payment in connection with the transactions contemplated by this Agreement because of any action taken by, or agreement or understanding reached by, the Purchaser.

(8) *Sufficient Funds.* The Purchaser has sufficient financial resources or has arranged sufficient financing for it, on Closing (which financing is not subject to any conditions other than the conditions to Closing set out herein), to pay the Purchase Price and the Transfer Taxes payable on Closing and any and all other amounts payable by the Purchaser, if any, pursuant to this Agreement.

4.2 Representations and Warranties of the Vendor

As a material inducement to the Purchaser entering into this Agreement and completing the transactions contemplated by this Agreement and acknowledging that the Purchaser is entering into this Agreement in reliance upon the representations and warranties of the Vendor set out in this Section 4.2, the Vendor represent and warrant to the Purchaser as follows:

(1) *Incorporation and Corporate Power.* The Vendor is a corporation incorporated, organized and subsisting under the Laws of the jurisdiction of Alberta. Subject to the Approval and Vesting Order having been granted, the Vendor has the corporate power, authority and capacity to execute and deliver this Agreement and all other agreements and instruments to be executed by them as contemplated herein and to perform their other obligations hereunder and under all such other agreements and instruments.

(2) *Authorization by Vendor.* Subject to the Approval and Vesting Order having been granted, the execution and delivery of this Agreement and all other agreements and instruments to be executed by the Vendor as contemplated herein and the completion of the transactions

contemplated by this Agreement and all such other agreements and instruments have been duly authorized by all necessary corporate action on the part of the Vendor.

(3) *Enforceability of Obligations.* Subject to the Approval and Vesting Order having been granted, this Agreement constitutes a valid and binding obligation of the Vendor enforceable against the Vendor in accordance with its terms.

(4) *ITA.* The Vendor is not a non-resident of Canada for purposes of the ITA.

(5) *ETA.* The Vendor is registered for GST purposes under Part IX of the ETA and the GST numbers is 85419 5583 RT0002.

4.3 As is, where is

Notwithstanding any other provision of this Agreement, the Purchaser acknowledges, agrees and confirms that:

(1) it is entering into this Agreement, acquiring the Purchased Assets on an “**as is, where is**” basis as they exist as of the Closing Time and will accept the Purchased Assets in their state, condition and location as of the Closing Time except as expressly set forth in this Agreement and the sale of the Purchased Assets is made without legal warranty and at the risk of the Purchaser;

(2) it has conducted to its satisfaction such independent searches, investigations and inspections of the Purchased Assets as it deemed appropriate, and based solely thereon, has determined to proceed with the transactions contemplated by this Agreement;

(3) except as expressly stated in Section 4.2, the Vendor has not made, and the Purchaser is not relying on, any representations, warranties, statements or promises, express or implied, statutory or otherwise, concerning the Purchased Assets, the Vendor’s right, title or interest in or to the Purchased Assets, including with respect to merchantability, physical or financial condition, description, fitness for a particular purpose, suitability for development, title, description, use or zoning, eligibility for permitting, environmental condition, existence of any parts/and/or components, latent defects, quality, quantity or any other thing affecting any of the Purchased Assets, or normal operation thereof, or in respect of any other matter or thing whatsoever, including any and all conditions, warranties or representations expressed or implied pursuant to any Applicable Law in any jurisdiction, which the Purchaser confirms do not apply to this Agreement and are hereby waived in their entirety by the Purchaser;

(4) without limiting the generality of the foregoing, no representation, warranty or covenant is given by the Receiver or the Vendor that any of the Purchased Assets are or can be made operational within a specified time frame or will achieve any particular result, level of service, use, production capacity or actual production if made operational;

(5) without limiting the generality of the foregoing, except as expressly stated in Section 4.2, the Vendor has made no representation or warranty as to any regulatory approvals, licences, permits, consents or authorizations that may be needed to complete the transactions contemplated by this Agreement or any portion thereof, and the Purchaser is relying entirely on its own investigation, due diligence and inquiries in connection with such matters;

(6) all written and oral information or Data obtained from the Receiver and the Vendor, including in any teaser letter, asset listing, confidential information memorandum or other

document made available to the Purchaser (including in certain “data rooms”, management presentations, site visits and diligence meetings or telephone calls), with respect to the Purchased Assets has been obtained for the convenience of the Purchaser only, and the Receiver and the Vendor have made no representation or warranty, express or implied, statutory or otherwise as to the accuracy or completeness of any such information;

(7) any information or Data regarding or describing the Purchased Assets in this Agreement (excluding the Schedules hereto), or in any other agreement or instrument contemplated hereby, is for identification purposes only, is not relied upon by the Purchaser, and no representation, warranty or condition, express or implied, has or will be given by the Receiver the Vendor, or any other Person concerning the completeness or accuracy of such information or descriptions;

(8) except as otherwise expressly provided in this Agreement, the Purchaser hereby unconditionally and irrevocably waives any and all actual or potential rights or claims the Purchaser might have against the Receiver or any of the Receiver’s Representatives pursuant to any warranty, express or implied, legal or conventional, of any kind or type, other than those representations and warranties of the Vendor expressly set forth in Section 4.2. Such waiver is absolute, unlimited, and includes, but is not limited to, waiver of express warranties, implied warranties, warranties of fitness for a particular use, warranties of merchantability, warranties of occupancy, strict liability and claims of every kind and type, including claims regarding defects, whether or not discoverable or latent, product liability claims, or similar claims, and all other claims that may be later created or conceived in strict liability or as strict liability type claims and rights;

(9) except as provided in Section 9.1, none of the representations and warranties of the Vendor contained in this Agreement shall survive Closing and the Purchaser’s sole recourse for any breach of representation or warranty of the Vendor in Section 4.2 shall be for the Purchaser not to complete the transactions as contemplated by this Agreement and for greater certainty the Purchaser shall have no recourse or claim of any kind against the Vendor or the proceeds of the transactions contemplated by this Agreement following Closing; and

(10) this Section 4.3 shall not merge on Closing and is deemed incorporated by reference in all Closing documents and deliveries.

Article 5 COVENANTS

5.1 Motion for Approval and Vesting Order

This Agreement is subject to Court approval, and Closing is subject to the granting of the Approval and Vesting Order. The Receiver shall file with the Court, as soon as reasonably practicable following execution and delivery of this Agreement, a motion seeking the Court’s granting of the Approval and Vesting Order. The Purchaser shall cooperate with the Receiver in its efforts to obtain the Approval and Vesting Order. The Purchaser, at its own expense, will promptly provide to the Vendor all such information within its possession or under its control as the Vendor or the Receiver may reasonably request to obtain the Approval and Vesting Order.

5.2 Risk of Loss

The Purchased Assets shall be at the risk of the Vendor until Closing. If, between the date hereof and Closing, any of the Purchased Assets are destroyed, lost or materially damaged (each a “Casualty”), the Purchaser shall still complete the purchase of the Purchased Assets on an "as is,

where is" basis without any adjustment to the Purchase Price payable hereunder and take an assignment from the Vendor of all insurance proceeds payable to the Vendor in respect of the Casualty. For greater certainty, in no event shall the aggregate total of the insurance proceeds assigned to the Purchaser in accordance with this Section 5.2 and the fair market value of Purchased Assets exceed the Purchase Price.

5.3 Indemnity

The Purchaser hereby indemnifies the Receiver the Vendor, and their respective Representatives, and saves them fully harmless against, and will reimburse or compensate them for, any Damages arising from, in connection with or related in any manner whatsoever to:

- (1) The inaccuracy of its representations or warranties, or breach of its covenants in this Agreement;
- (2) any Transfer Taxes (including penalties and interest) which may be assessed against any of the Vendor, including, notwithstanding anything to the contrary in this Agreement, any Taxes which may be assessed against any of the Vendor in the event that any election made pursuant to Section 3.7 is challenged by the relevant Tax authority as being inapplicable to the transactions under this Agreement, or as a result of the Purchaser's failure to file such elections within the prescribed time;
- (3) the Purchaser's failure to pay when due and perform and discharge the Assumed Liabilities in accordance with their terms.

Notwithstanding the foregoing, the Vendor's retention of the Deposits in accordance with Section 3.1(3) shall be the Vendor's sole remedy in the event of the applicable terminations contemplated therein.

5.4 Environmental Liabilities

The Purchaser acknowledges and agrees that upon Closing, the Purchaser shall become responsible for the payment, performance and discharge of all Environmental Liabilities related to the Purchased Assets including, as applicable, all obligations of any kind whatsoever under Environmental Laws relating to the Purchased Assets.

Article 6 CLOSING ARRANGEMENTS

6.1 Closing

The Closing may take place in person at the offices of the Vendor's solicitors or may be effected by way of a virtual Closing, whereby required executed Closing deliverables are circulated by electronic mail in pdf and released at such time and pursuant to such protocols and confirmations as the Parties may agree.

6.2 Vendor's Closing Deliveries

At the Closing, the Vendor shall deliver or cause to be delivered to the Purchaser the following:

- (1) the Purchased Assets with delivery to occur *in situ* wherever such Purchased Assets are located at the Closing Time;
- (2) a copy of the Approval and Vesting Order;
- (3) the Assignment and Assumption Agreement, duly executed by the Vendor;
- (4) the Specific Conveyance, duly executed by the Vendor;
- (5) a statement of adjustments having annexed thereto reasonable details of the calculations used by the Vendor to calculate the Adjustments;
- (6) the election referred to in Section 3.7 of this Agreement, if applicable; and
- (7) such other agreements, documents and instruments as may be reasonably required by the Purchaser to complete the transactions provided for in this Agreement, or as are required to be delivered by the Vendor or Vendor's counsel under this Agreement, all of which shall be in form and substance satisfactory to the Parties, acting reasonably.

6.3 Purchaser's Closing Deliveries

At the Closing, the Purchaser shall deliver or cause to be delivered to the Vendor (or as otherwise indicated below), the following:

- (1) a direction to release the Deposits from trust to the Vendor;
- (2) the Closing Payment referred to in Section 3.2(3);
- (3) the Assignment and Assumption Agreement, duly executed by the Purchaser;
- (4) the payment of all Transfer Taxes (if any) required to be paid on Closing;
- (5) the Specific Conveyance, duly executed by the Purchaser;
- (6) a bring-down certificate executed by a senior officer of the Purchaser dated as of the Closing Date, in form and substance satisfactory to the Vendor, acting reasonably, certifying that:
(a) all of the representations and warranties of the Purchaser hereunder remain true and correct in all material respects as of the Closing Date as if made on and as of such date or, if made as of a date specified therein, as of such date; and (b) all of the terms and conditions set out in this Agreement to be complied with or performed by the Purchaser at or prior to Closing have been complied with or performed by the Purchaser in all material respects;
- (7) the election referred to in Section 3.7 of this Agreement, if applicable;
- (8) the GST number of the Purchaser; and
- (9) such other agreements, documents and instruments as may be reasonably required by the Vendor to complete the transactions provided for in this Agreement, or as are required to be delivered by the Purchaser or the Purchaser's counsel under this Agreement, all of which shall be in form and substance satisfactory to the Parties, acting reasonably.

Article 7
CONDITIONS OF CLOSING

7.1 Condition Precedent.

(1) The Purchaser's obligation to complete this transaction shall be conditional upon the Purchaser, in its sole, subjective, unfettered and unreviewable discretion, being satisfied, within ninety (90) calendar days from the Execution Date (the "**DD Period**"), with its due diligence examination of the Purchased Assets and the results of its tests, inspections and assessment of the Purchased Assets, including, without limitation, the Purchaser's subjective assessment of the economic viability of the Purchaser's proposed use of the Purchased Assets and the zoning and potential re-zoning of the Purchased Assets.

(2) Within five (5) Business Days from the Execution Date, the Vendor will make available to the Purchaser the financial, physical and operating information that it has in its possession regarding the Purchased Assets, including but not limited to, any leases, surveys, environment, geo-technical, transportation, planning and any other third-party professional reports regarding the Purchased Assets. The Vendor will use commercially reasonable efforts to cooperate with the Purchaser in the aforesaid examinations and inquiries and to provide access to the Purchased Assets for all customary testing and examinations of the Purchased Assets. All such testing and examinations by Purchaser shall be at its own risk and, regardless of whether the transaction contemplated herein closes, Purchaser shall restore the Purchased Assets to their original condition at its own expense. Purchaser agrees to and shall indemnify and save harmless the Vendor from and against any and all Damages, arising out of any act or omission of the Purchaser or its agents, consultants or employees or others for whom it is responsible at Law during and with respect to its utilization of such rights of access, testing and examination of the Purchased Assets, provided, however, the Purchaser shall have no liability to the Vendor for any pre-existing conditions (other than as contemplated herein in respect of the Assumed Liabilities on Closing).

(3) Upon execution of this Agreement, the Vendor will allow the Purchaser to contact the Debtor's consultants and, if necessary, to engage those same consultants to undertake or continue certain work on the Purchased Assets as the Purchaser may require in the satisfaction of its due diligence conditions, all such work to be to the account of, and the sole expense of, the Purchaser. The Vendor will, at Purchaser's expense, also provide letters of authorization permitting the Purchaser to make customary inquiries respecting the Purchased Assets with all governmental bodies and agencies as may be reasonably required by the Purchaser.

(4) Notwithstanding anything to the contrary in this Agreement, in the event the Purchaser fails to notify the Vendor in writing on or before the expiration of the DD Period that the Purchaser is satisfied with its diligence examination of the Purchased Assets or waived the balance of the DD Period, this Agreement shall terminate, the First Deposit shall be returned to the Purchaser and the Parties shall have no further obligations to each other in respect of this Agreement except any obligations that specifically survive the termination of the Agreement.

7.2 Purchaser's Conditions

The Purchaser shall not be obligated to complete the transactions contemplated by this Agreement unless, at or before the Outside Date, each of the conditions listed below in this Section 7.2 have been satisfied, it being understood that the said conditions are included for the exclusive benefit of the Purchaser, and may be waived by the Purchaser in whole or in part, without prejudice to any of

its rights of termination in the event of non-fulfillment of any other condition in whole or in part. Any such waiver shall only be binding on the Purchaser if made in writing:

- (1) *Court Approval.* The Approval and Vesting Order shall have been issued and entered by the Court.
- (2) *Vendor's Deliveries.* The Vendor shall have executed and delivered or caused to have been executed and delivered to the Purchaser at the Closing all the documents contemplated in Section 6.2.
- (3) *No Violation of Orders or Law.* During the Interim Period, no Governmental Authority shall have enacted, issued or promulgated any Law which has the effect of: (a) making any of the transactions contemplated by this Agreement illegal; or (b) otherwise prohibiting, preventing or restraining the consummation of any of the transactions contemplated by this Agreement.
- (4) *No Materially Adverse Claims.* During the Interim Period, no new easements, covenants, rights of way or restrictive covenants shall have been registered on title to the Purchased Assets or claimed by a third-party against the Vendor that: (a) have a material adverse effect on the Purchased Assets; and (b) cannot be vested off the Purchased Assets by the Approval and Vesting Order.
- (5) *No Breach of Representations and Warranties.* Each of the representations and warranties contained in Section 4.2 shall be materially true and correct: (a) as of the Closing Date as if made on and as of such date; or (b) if made as of a date specified therein, as of such date.
- (6) *No Breach of Covenants.* The Vendor shall have performed in all material respects all covenants, obligations and agreements contained in this Agreement required to be performed by the Vendor on or before the Closing.

7.3 Vendor's Conditions

The Vendor shall not be obligated to complete the transactions contemplated by this Agreement unless, at or before the Closing Time, each of the conditions listed below in this Section 7.3 have been satisfied, it being understood that the said conditions are included for the exclusive benefit of the Vendor, and may be waived by the Vendor, in whole or in part, without prejudice to any of their rights of termination in the event of non-fulfillment of any other condition in whole or in part. Any such waiver shall only be binding on the Vendor if made in writing.

- (1) *Court Approval.* The Approval and Vesting Order shall each have been issued and entered by the Court.
- (2) *Purchaser's Deliverables.* The Purchaser shall have executed and delivered or caused to have been executed and delivered to the Vendor at the Closing all the documents and payments contemplated in Section 6.3 to the satisfaction of the Vendor.
- (3) *Execution by the Purchaser.* This Agreement shall be executed by a duly authorized representative of the Purchaser.
- (4) *No Violation of Orders or Law.* During the Interim Period, no Governmental Authority shall have enacted, issued or promulgated any Law which has the effect of: (a) making any of the

transactions contemplated by this Agreement illegal; or (b) otherwise prohibiting, preventing or restraining the consummation of any of the transactions contemplated by this Agreement.

(5) *No Breach of Representations and Warranties.* Each of the representations and warranties contained in Section 4.1 shall be materially true and correct: (a) as of the Closing Date as if made on and as of such date; or (b) if made as of a date specified therein, as of such date.

(6) *No Breach of Covenants.* The Purchaser shall have performed in all material respects all covenants, obligations and agreements contained in this Agreement required to be performed by the Purchaser, on or before the Closing.

7.4 Receiver's Certificate

When the conditions to Closing set out in Section 7.2 and Section 7.3, have been satisfied and/or waived by the Vendor or the Purchaser, as applicable, the Vendor and the Purchaser will each deliver to the other Party written confirmation: (a) that such conditions of Closing, as applicable, have been satisfied and/or waived; and (b) of the amounts of Transfer Taxes required to be paid at Closing (if any is payable). Upon receipt of the executed Assignment and Assumption Agreement and the payment in full of the Closing Payment and the Transfer Taxes required to be paid at Closing (if any is payable), the Receiver shall: (a) issue forthwith its Receiver's Certificate to the Purchaser, at which time the Closing will be deemed to have occurred; and (b) file as soon as practicable a copy of the Receiver's Certificate with the Court (and shall provide a true copy of such filed certificate to the Vendor and the Purchaser).

Article 8 TERMINATION

8.1 Grounds for Termination

This Agreement may be terminated prior to the Closing Time:

(1) by written notice from the Purchaser to the Vendor at any time before the DD Period expires;

(2) by the mutual written agreement of the Vendor and the Purchaser, provided however that if this Agreement has been approved by the Court, any such termination shall require either the consent of the Receiver or approval of the Court;

(3) by written notice from the Purchaser to the Vendor if there has been a material breach by the Vendor of any representation, warranty or covenant contained in this Agreement, which breach has not been waived by the Purchaser, and such breach is not curable and has rendered the satisfaction of any condition in Section 7.2 impossible by the Outside Date or, provided that at the time of providing such notice of termination, the Purchaser is not in breach of any of its obligations under this Agreement;

(4) by written notice from the Vendor to the Purchaser if there has been a material breach by the Purchaser of any representation, warranty or covenant contained in this Agreement, which breach has not been waived by the Vendor and such breach is either: (a) not curable and has rendered the satisfaction of any condition in Section 7.3 impossible by the Outside Date; or (b) has not been cured within five (5) Business Days after Vendor has provided notice thereof to Purchaser,

provided that at the time of providing such notice of termination, the Vendor is not in breach of any of their obligations under this Agreement; and

(5) by the Purchaser, on the one hand, or by the Vendor (with the consent of the Receiver), on the other hand, upon written notice to the other Party if the Closing has not occurred by the Outside Date, provided, however, that the right to terminate this Agreement pursuant to this Section 8.1(5) shall not be available to any Party whose breach hereof has been the principal cause of, or has directly resulted in the Closing not occurring by the Outside Date.

8.2 Effect of Termination

If this Agreement is terminated pursuant to Section 8.1, all further obligations of the Parties under this Agreement will terminate and no Party will have any Liability or further obligations hereunder, except as contemplated in Sections 5.3 (*Indemnity*), 7.1 (*Condition Precedent*), 8.2 (*Effect of Termination*), 9.2 (*Expenses*), 9.3 (*Public Announcements*), 9.4 (*Notices*), 9.8 (*Entire Agreement*), 9.9 (*Amendment*), 9.11 (*Severability*), 9.13 (*Governing Law*), 9.14 (*Dispute Resolution*), 9.15 (*Attornment*), 9.16 (*Successors and Assigns*), 9.17 (*Assignment*), 9.18 (*Receiver's Capacity*) and 9.19 (*Third Party Beneficiaries*), which shall survive such termination.

Article 9 GENERAL

9.1 Survival

All representations, warranties, covenants and agreements of the Vendor or the Purchaser made in this Agreement or any other agreement, certificate or instrument delivered pursuant to this Agreement shall merge and shall not survive the Closing except where, and only to the extent that, the terms of any such covenant or agreement expressly provide for rights, duties or obligations extending after the Closing, or as otherwise expressly provided in this Agreement. For greater certainty, the following Sections shall survive Closing: 2.2 (*Assumption of Assumed Liabilities*), 3.5 (*Taxes*), 3.6 (*GST/PST Gross Up*), 3.7 (*Tax Elections*), 4.3 (*As is, where is*), 5.3 (*Indemnity*), 7.1 (*Condition Precedent*), 7.4 (*Receiver's Certificate*), 9.1 (*Survival*), 9.2 (*Expenses*), 9.3 (*Public Announcements*), 9.4 (*Notices*), 9.5 (*Time of Essence*), 9.6 (*Further Assurances*), 9.7 (*Post-Closing Wind-Up of Receivership Proceedings*), 9.8 (*Entire Agreement*), 9.9 (*Amendment*), 9.10 (*Waiver*), 9.11 (*Severability*), 9.12 (*Remedies Cumulative*), 9.13 (*Governing Law*), 9.14 (*Dispute Resolution*), 9.15 (*Attornment*), 9.16 (*Successors and Assigns*), 9.17 (*Assignment*), 9.18 (*Receiver's Capacity*) and 9.19 (*Third Party Beneficiaries*).

9.2 Expenses

Except as otherwise expressly provided herein, each Party shall be responsible for all costs and expenses (including any Taxes imposed on such expenses) incurred by it in connection with the negotiation, preparation, execution, delivery and performance of this Agreement and the transactions contemplated by this Agreement (including the fees and disbursements of legal counsel, bankers, investment bankers, accountants, brokers and other advisers).

9.3 Public Announcements

While the Vendor may in its sole discretion seek a sealing order with respect to the Purchase Price for a limited period of time subsequent to closing, the Vendor shall be entitled to disclose this Agreement (on an unredacted basis) and all information provided by the Purchaser in connection

herewith to the Court and parties of interest in the Receivership Proceedings and a copy of this Agreement may be posted on the Receiver's website maintained in connection with the Receivership Proceedings. Notwithstanding any other provision of this Agreement, unless such information is otherwise publicly disclosed or, upon the advice of counsel, required by Applicable Law or by any Governmental Authority to be disclosed (including in any Tax Returns or registrations at the Land Titles Office), the Purchaser shall not disclose the quantum of the Purchase Price without the prior written consent of the Vendor unless the sealing order has expired.

9.4 Notices

(1) *Mode of Giving Notice.* Any notice, direction, certificate, consent, determination or other communication required or permitted to be given or made under this Agreement shall be in writing and shall be effectively given and made if: (a) delivered personally; (b) sent by prepaid courier service; or (c) sent by e-mail or other similar means of electronic communication, in each case to the applicable address set out below:

if to the Vendor, to:

FTI Consulting Canada Inc.
Suite 1610, 520 Fifth Avenue S.W.
Calgary, AB T2P 3R7 Canada Inc.

Attention: Deryck Helkaa
Email: deryck.helkaa@fticonsulting.com

with a copy (which shall not constitute notice) to:

MLT Aikins LLP
2100, 222-3rd Ave S.W.
Calgary, AB T2P 3C5

Attention: Ryan Zahara
Email: rzahara@mltaikins.com

if to the Purchaser, to:

TOM Capital Associates Ltd.
700, 999 – 8th Street SW
Calgary, Alberta T2R 1J5
Attention: Tom Pointer
Email: pointert@tomcapital.com

with a copy (which shall not constitute notice) to:

Benjamin J Rootman, Barrister & Solicitor

700, 999 – 8th Street SW
Calgary, Alberta T2R 1J5
Attention: Benjamin Rootman
Email: ben.rootman@bjrprivatelaw.com

(2) *Deemed Delivery of Notice.* Any such communication so given or made shall be deemed to have been given or made and to have been received on the day of delivery if delivered, or on the day of e-mailing or sending by other means of recorded electronic communication, provided that such day in either event is a Business Day and the communication is so delivered, e-mailed or sent before 5:00 p.m. (Calgary time) on such day. Otherwise, such communication shall be deemed to have been given and made and to have been received on the next following Business Day.

(3) *Change of Address.* Any Party may from time to time change its address under this Section 9.4 by notice to the other Party given in the manner provided by this Section 9.4.

9.5 Time of Essence

Time shall be of the essence of this Agreement in all respects.

9.6 Further Assurances

The Vendor and the Purchaser shall, at the sole expense of the requesting Party, from time to time promptly execute and deliver or cause to be executed and delivered all such further documents and instruments and shall do or cause to be done all such further acts and things in connection with this Agreement that the other Party may reasonably require as being necessary or desirable in order to effectively carry out or better evidence or perfect the full intent and meaning of this Agreement or any provision hereof.

9.7 Post-Closing Wind-Up of Receivership Proceedings

Notwithstanding any other provision of this Agreement, nothing in this Agreement shall operate to restrict in any way the rights of the Receiver to distribute any of the assets or otherwise wind up the Receivership Proceedings as it may determine in its sole discretion after the Closing, even if doing so may impair the Vendor's ability to provide or perform any further cooperation, assistance or further assurances as may otherwise be provided under this Agreement.

9.8 Entire Agreement

Other than any confidentiality agreement, non-disclosure agreement or similar undertaking or agreement signed by the Purchaser in favour of the Vendor, which remain in full force and effect, except as amended by this Agreement, this Agreement and the agreements contemplated hereby constitute the entire agreement between the Parties or any of them pertaining to the subject matter of this Agreement and supersede all prior agreements, understandings, negotiations and discussions, whether oral or written (including any letter of intent or expression of interest submitted by the Purchaser). There are no conditions, representations, warranties, obligations or other agreements between the Parties in connection with the subject matter of this Agreement (whether oral or written, express or implied, statutory or otherwise) except as explicitly set out in this Agreement.

9.9 Amendment

No amendment of this Agreement shall be effective unless made in writing and signed by the Parties.

9.10 Waiver

A waiver of any default, breach or non-compliance under this Agreement shall not be effective unless in writing and signed by the Party to be bound by the waiver and then only in the specific instance and for the specific purpose for which it has been given. No waiver shall be inferred from or implied by any failure to act or delay in acting by a Party in respect of any default, breach or non-observance or by anything done or omitted to be done by the other Party. The waiver by a Party of any default, breach or non-compliance under this Agreement will not operate as a waiver of that Party's rights under this Agreement in respect of any continuing or subsequent default, breach or non-observance (whether of the same or any other nature).

9.11 Severability

Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction will, as to that jurisdiction, be ineffective to the extent of such prohibition or unenforceability and will be severed from the balance of this Agreement, all without affecting the remaining provisions of this Agreement or affecting the validity or enforceability of such provision in any other jurisdiction.

9.12 Remedies Cumulative

The rights, remedies, powers and privileges herein provided to a Party are cumulative and in addition to and not exclusive of or in substitution for any rights, remedies, powers and privileges otherwise available to that Party.

9.13 Governing Law

This Agreement shall be governed by and construed in accordance with the Laws of the Province of Alberta and the Laws of Canada applicable therein.

9.14 Dispute Resolution

If any dispute arises with respect to the interpretation or enforcement of this Agreement, including as to what constitutes a breach or material breach of this Agreement for the purposes of Article 8, such dispute shall be determined by the Court within the Receivership Proceedings, or by such other Person or in such other manner as the Court may direct. Without prejudice to the ability of any of the Vendor or the Purchaser to enforce this Agreement in any other proper jurisdiction, the Purchaser and the Vendor irrevocably submit and attorn to the non-exclusive jurisdiction of the Court.

9.15 Attornment

Each Party agrees: (a) that any Legal Proceeding relating to this Agreement must be brought in the Court, and for that purpose now irrevocably and unconditionally attorns and submits to the jurisdiction of the Court; (b) that it irrevocably waives any right to, and shall not, oppose any such Legal Proceeding in the Province of Alberta on any jurisdictional basis, including *forum non conveniens*; and (c) not to oppose the enforcement against it in any other jurisdiction of any Order duly obtained from the Court as contemplated by this Section 9.15. Each Party agrees that service of process on such Party as provided in Section 9.4 shall be deemed effective service of process on such Party.

9.16 Successors and Assigns

This Agreement shall enure to the benefit of, and be binding on, the Parties and their respective successors and permitted assigns.

9.17 Assignment

Prior to the granting of the Approval and Vesting Order, the Purchaser may assign all of its rights and obligations under this Agreement to an Affiliate (which for certainty includes a Person which is under common ownership of the Purchaser), provided that: (a) the Purchaser shall remain liable to perform all of its obligations hereunder; and (b) the Purchaser and its assignee execute and deliver to the Vendor an assignment and assumption agreement, in form and substance satisfactory to the Vendor, evidencing such assignment. Other than in accordance with the foregoing, the Purchaser may not assign or transfer, whether absolutely, by way of security or otherwise, all or any part of its rights or obligations under this Agreement.

9.18 Receiver's Capacity

The Purchaser acknowledges and agrees that the Receiver acting in its capacity as the Receiver of the Vendor in the Receivership Proceedings, will have no Liability in connection with this Agreement whatsoever in its capacity as Receiver in its personal or corporate capacity or otherwise.

9.19 Third Party Beneficiaries

Except as set forth in Section 5.3, this Agreement is for the sole benefit of the Parties, and nothing in this Agreement, express or implied, is intended to or shall confer upon any other Person any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

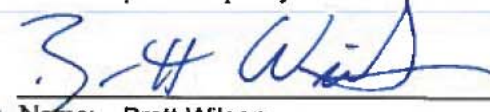
9.20 Counterparts

This Agreement may be executed in counterparts, each of which shall be deemed to be an original and both of which taken together shall be deemed to constitute one and the same instrument. To evidence its execution of an original counterpart of this Agreement, a Party may send a copy of its original signature on the execution page hereof to the other Party by e-mail in pdf format or by other electronic transmission and such transmission shall constitute delivery of an executed copy of this Agreement to the receiving Party.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF the Parties have executed this Agreement as of the date first above written.

FTI CONSULTING CANADA INC. solely in its capacity as court-appointed receiver of **ALBERTA FOOTHILLS PROPERTIES LTD.**, and not in its personal or corporate capacity

By: 
Name: Brett Wilson
Title: Senior Director

TOM CAPITAL ASSOCIATES LTD.

By: _____
Name:
Title:

IN WITNESS WHEREOF the Parties have executed this Agreement as of the date first above written.

FTI CONSULTING CANADA INC. solely in its capacity as court-appointed receiver of **ALBERTA FOOTHILLS PROPERTIES LTD.**, and not in its personal or corporate capacity

By: _____
Name:
Title:

TOM CAPITAL ASSOCIATES LTD.

By:  _____
Name: Bernard Gervon
Title: Director

SCHEDULE "A"

PURCHASED ASSETS

Purchased Assets			
MERIDIAN 4 RANGE 29 TOWNSHIP 20			
SECTION 16			
QUARTER NORTH WEST			
CONTAINING 64.7 HECTARES (160 ACRES) MORE OR LESS			
EXCEPTING:			
PLAN	NUMBER	HECTARES	(ACRES)
ROADWAY	6393I	0.809	2.00
ROADWAY WIDENING	8210839	0.397	0.980
ROAD	8711147	4.69	11.59
EXCEPTING THEREOUT ALL MINES AND MINERALS			

SCHEDULE "B"

PERMITTED ENCUMBRANCES

7611DO	20/12/1926	Utility Right or Way
7764LL	20/10/1972	Utility Right or Way
861 150 189	12/09/1986	Caveat re: Right of Way Amending Agreement
871 232 284	17/12/1987	Utility Right of Way
951 122 685	01/06/1995	Utility Right of Way
181 269 778	14/12/2018	Utility Right of Way
211 050 103	08/03/2021	Discharge of Utility Right of Way 181269778 Partial Except Plan/Portion: 2010478