

ENTERED



COURT FILE NUMBER 1801-17912
COURT COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE CALGARY
PLAINTIFF ATB FINANCIAL (FORMERLY ALBERTA TREASURY BRANCHES)
DEFENDANTS HUGHSON TRUCKING INC., LEROY CHRISTIAN HUGHSON, DARREN JAMES HUGHSON, and JUSTIN LEE HUGHSON

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May 5, 2021
Justice Ho

DOCUMENT **APPLICATION**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT: McCarthy Tétrault LLP
4000, 421 – 7th Avenue SW
Calgary, Alberta T2P 4K9
Attention: Sean Collins / Pantelis Kyriakakis
Tel: 403-260-3531 / 3536
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Email: scollins@mccarthy.ca / pkyriakakis@mccarthy.ca

NOTICE TO RESPONDENT(S)

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

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

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

Date: May 5, 2021
Time: 3:00 p.m.
Where: Calgary Courts Centre (Virtual Courtroom via WebEx – see Schedule "A" hereto)
Before Whom: The Honourable Justice L.B. Ho

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

Remedy claimed or sought: Ernst & Young Inc., in its capacity as the court-appointed receiver and manager (the "Receiver") of the assets, properties, and undertakings (collectively, the "Property") of Hughson Trucking Inc. (the "Debtor") pursuant to the Consent Receivership Order, granted by the Honourable Justice K.M. Eidsvik on December 19, 2018, (the "Receivership Order"), in the within proceedings (the "Proceedings") applies for three (3) Orders, substantially in the forms attached as Schedules "B", "C", and "D" hereto:

Service

1. If necessary, declaring that the time for service of this application (the “**Application**”) and the Fourth Report of the Receiver, dated April 27, 2021 (the “**Fourth Receiver’s Report**”), is abridged, that the Application is properly returnable on May 5, 2021, that service of the Application and the Fourth Receiver’s Report, on the service list, is good and sufficient, and that no persons other than those on the service list are entitled to service of the Fourth Receiver’s Report, the Application, or any orders arising therefrom.

Approval of the Credit Bid APA

2. Approving the Asset Purchase and Sale Agreement, dated April 27, 2021 (the “**Credit Bid APA**”), between the Debtor, by and through the Receiver, in its capacity as the court-appointed receiver and manager of the Debtor, and 1010307 Alberta Ltd. (the “**Purchaser**”), as purchaser, attached as Appendix “A” to the Fourth Receiver’s Report, and the sale, transfer, and assignment of the lands, fixtures, improvements, attachments, agreements, and chattels, as identified therein (collectively, the “**Assets**”), and the transfer, and vesting of the Assets to the Purchaser, and authorizing the Receiver to execute and deliver the Credit Bid APA to the Purchaser and to take any and all such steps as the Receiver determines necessary or advisable to close the transaction for the purchase and sale of the Assets, as contemplated by the Credit Bid APA.

3. Ordering and declaring that, effective immediately upon the Receiver filing a certificate with this Honourable Court (the “**Receiver’s SAVO Certificate**”) confirming that all terms and conditions under the Credit Bid APA and any and all modifications thereto have either been satisfied or waived and that the transactions contemplated by the Credit Bid APA have otherwise been completed, to the satisfaction of the Receiver, all legal and beneficial ownership of and title to the Assets shall vest in the Purchaser (or its designated assignee or nominee, to the extent permitted by the Credit Bid APA), free and clear of any and all security interests (whether contractual, statutory, or otherwise), liens, writs, executions, ownership interests, levies, charges, or other financial or monetary claims, whether or not they have been attached, registered, perfected, or filed, and whether secured, unsecured, liquidated, contingent, or absolute, but subject to the Permitted Encumbrances (as defined in the proposed form of Order attached as Schedule “**C**” hereto).

4. Ordering that the Debtor and any and all persons claiming through, by, or under the Debtor and all other persons in possession of any or all of the Assets to deliver up possession of the

Assets to the Purchaser or its assignee or nominee, upon the filing of the Receiver's SAVO Certificate.

Vesting Provisions

5. Ordering and declaring that, notwithstanding the pendency of these proceedings or the provisions of any federal or provincial statute, the vesting provisions contained in the proposed form of Order, attached as Schedule "C" hereto, concerning the assignment, sale, and transfer of the Assets:

- (a) will not be void or voidable at the instance of creditors or claimants;
- (b) do not constitute and shall not be deemed to be a fraudulent preference, a fraudulent conveyance, a transfer at undervalue, or otherwise subject to challenge under the *Bankruptcy and Insolvency Act* (Canada), the *Fraudulent Preferences Act* (Alberta), or any other applicable federal or provincial legislation; and,
- (c) do not constitute and shall not be deemed to constitute conduct meriting an oppression remedy.

Sealing the Confidential Supplement

6. Sealing the Confidential Supplement to the Fourth Report of the Receiver, dated April 27, 2021 (the "**Confidential Supplement**"), on the Court file, until the filing of the Receiver's Certificate.

Discharge

7. Approving the Receiver's final statement of receipts and disbursements with respect to the Debtor, as set out in paragraphs 24 and 25 of the Fourth Receiver's Report.

8. Approving the final accounts of the Receiver and its legal counsel with respect to the Debtor, as set out in paragraphs 38, 40, and Exhibit 2.0 of the Fourth Receiver's Report.

9. Declaring that, as of the date of the Fourth Receiver's Report and based on the evidence that is currently before the Court:

- (a) the actions and conduct of the Receiver are approved;

- (b) the Receiver has satisfied all of its duties and obligations as receiver and manager of the Debtor and the Property;
- (c) the Receiver shall not be liable for any act or omission including, without limitation, any act or omission pertaining to the discharge of the Receiver's duties as receiver and manager of the Debtor and the Property, save and except for any liability arising out of fraud or wilful misconduct on the part of the Receiver; and,
- (d) any and all claims against the Receiver arising from, relating to, or in connection with, the performance of the Receiver's duties and obligations as receiver and manager of the Debtor and the Property, save and except for any claims based on fraud or wilful misconduct, on the part of the Receiver, shall be forever barred and extinguished.

10. Ordering and declaring that, effective immediately upon the Receiver filing a certificate with this Honourable Court confirming that: (i) all remaining tasks and actions, as set out in paragraph 42 of the Fourth Receiver's Report, have been completed; and, (ii) the approximately \$380,068 (the "**Security Amount**") being held by the Receiver in connection with the Debtor's potential remediation obligations, if any, has been paid out, either, (a) in accordance with any agreement reached between the AEP (as defined below), the Purchaser, and the Receiver; or, (b) into Court, in the within Action, to be held pending further Order of this Honourable Court (collectively, the "**Discharge Certificate Conditions**"), the Receiver shall be discharged as receiver and manager of the Debtor and the Property and relieved of all further duties and obligations in respect of the Debtor and the Property.

11. Declaring that, notwithstanding the discharge of the Receiver, the Receiver remains empowered with residual jurisdiction to perform any act necessary or incidental to the conclusion of the receivership of the Debtor or the Property.

12. Declaring that no action or proceeding arising from, relating to, or in connection with, the performance of the Receiver's duties and obligations, as receiver and manager of the Debtor or the Property, may be commenced or continued, without the prior leave of this Honourable Court, on notice to the Receiver, and on such terms as this Honourable Court may direct.

Miscellaneous Matters

13. Ordering and declaring that service of any orders arising from this Application by email, facsimile, registered mail, courier, regular mail, or personal delivery, to the persons listed on the service list, present at the Application, or who were otherwise served with the Application, shall constitute good and sufficient service of such orders and that no persons other than those on the service list are entitled to be served with a copy of such orders.

14. Such further and other relief as counsel for the Receiver may advise and this Honourable Court considers to be just and appropriate in the circumstances.

Grounds for Making this Application: The grounds for the Application are as follows:

Background

15. The Receiver was appointed as the receiver and manager of the Debtor's Property, pursuant to the Receivership Order.

16. Pursuant to the Receivership Order, the Receiver is empowered and authorized, with the approval of this Honourable Court, to sell the Property, which includes, in part, the Assets.

17. Pursuant to the Order, granted by the Honourable Justice G.A. Campbell on April 17, 2019 (the "**April 17 Order**"), the Receiver was authorized and directed to, *inter alia*, withhold the Security Amount from the Receiver's distributions to Creditors (as defined in the April 17 Order), on a without prejudice basis, as security for the obligations, if any, of the Debtor to Alberta Environment and Parks or any successor department that is created (collectively, the "**AEP**"), to pay for or perform reclamation or remediation work on real property described as NW-26-02-17 W4M (the "**Lands**").

Marketing of the Property and Completed Prior Transactions

18. Following the granting of the Receivership Order, the Receiver proceeded to market and solicit proposals in connection with the sale of the Property.

19. As a result of the Receiver's marketing efforts, the Receiver entered into:

- (a) an Asset Disposition Proposal, dated February 22, 2019 (the "**Century Offer**"), between the Receiver, in its capacity as the court-appointed receiver and manager

of the Debtor, and Century Services Corp., concerning the sale and auction of various pieces of equipment. The Century Offer was subsequently approved pursuant to the Order granted by this Honourable Court on March 5, 2019; and,

- (b) an Asset Purchase Agreement, dated February 19, 2020 (the “**Milk River APA**”, the Milk River APA and the Century Offer are collectively referred to as, the “**Prior Transactions**”), between the Receiver, in its capacity as the court-appointed receiver and manager of the Debtor, and 1010307 Alberta Ltd., as purchaser. The Milk River APA was subsequently approved pursuant to the Order granted by this Honourable Court on March 13, 2020.

20. The Prior Transactions have all closed. Following completion of the Prior Transactions, with the exception of a portion of the Debtor’s cash to be used to fund the conclusion of the within proceedings and the Debtor’s concurrent bankruptcy proceedings, the Assets constitute the Debtor’s sole remaining Property.

The Credit Bid APA

21. ATB Financial (“**ATB**”) and the Purchaser entered into Agreement, dated January 13, 2021 (the “**ATB Debt Assignment Agreement**”), pursuant to which ATB transferred and assigned to the Purchaser all of ATB’s rights, title, and interests in and to ATB’s loan and security documents (collectively, the “**ATB Loan and Security**”).

22. In addition to the Purchaser’s various interests under the assigned ATB Loan and Security, the Purchaser also provided various secured availments to the Debtor pursuant to and in accordance with the Loan and General Security Agreement, dated February 10, 2016 (the “**101 Loan and Security**”, the ATB Loan and Security and the 101 Loan and Security are collectively the “**Credit Bid Loan and Security**”).

23. As a result of the aforementioned and upon completion of the ATB Debt Assignment Agreement, the Purchaser became the Debtor’s primary secured creditor.

24. The Purchaser subsequently submitted a credit bid, comprised of all outstanding indebtedness under the Credit Bid Loan and Security, for all remaining Assets.

25. In connection with the Purchaser's credit bid and as the Purchaser was a related party, the Receiver completed an analysis to estimate the net proceeds from the realization of the Assets under various scenarios (collectively, the "**Net Recovery Analysis**").

26. The Net Recovery Analysis indicates that the estimated recoveries will not be sufficient to satisfy the indebtedness due and owing under the Credit Bid Loan and Security which comprises the Purchaser's credit bid.

27. The Receiver and the Purchaser have negotiated the Credit Bid APA. The Credit Bid APA is conditional, *inter alia*, on the approval of this Honourable Court.

28. The price to be paid for the Assets, pursuant to the Credit Bid APA, represents the highest and best price that can be obtained for the Assets in the current circumstances. The Credit Bid APA, as proposed, is in the best interests of the Debtor's estate and stakeholders.

Confidential Supplement

29. The Confidential Supplement sets out the Receiver's Net Recovery Analysis which contains confidential information concerning the Credit Bid APA, the Assets, and certain commercially sensitive information related thereto. The public disclosure and dissemination of the information in the Confidential Supplement would cause serious and irreparable harm to the estate of the Debtor and its stakeholders. The limited sealing provision that the Receiver seeks, as part of the Application, in respect of the Confidential Supplement, is a fair and reasonable method of addressing the serious and irreparable harm that would result if the Confidential Supplement was publically disseminated.

Discharge of the Receiver

30. Following the closing of the Credit Bid APA and the sale of the Assets, all assets of the Debtor will have been dealt with and any and all funds belonging or owing to the Debtor will have been gathered or otherwise dealt with. As such, the administration of the estate of the Debtor is substantially complete and it is appropriate for the Receiver to be discharged upon confirmation that the Discharge Certificate Conditions have been completed.

31. Such further and other considerations, as counsel may advise and this Honourable Court considers just and appropriate in the circumstances.

Affidavit or other Evidence and Materials to be used in Support of this Application:

32. The Fourth Receiver's Report, filed.
33. The First Report of the Receiver, dated February 28, 2019, filed.
34. The Second Report of the Receiver, dated April 14, 2019, filed.
35. The Third Report of the Receiver, dated March 4, 2021, filed
36. The Confidential Supplement to the Fourth Receiver's Report, unfiled.
37. All such further reports, confidential reports, supplements, appendices, and pleadings filed by the Receiver in the within proceedings.
38. Such further and other evidence or materials as counsel may advise and this Honourable Court may permit.

Applicable Rules:

39. Rule 6.3, 6.9, 6.28, and 11.27 of the *Alberta Rules Of Court*, Alta. Reg. 124/2010.
40. Such further and other rules as counsel may advise and this Honourable Court may permit.

Applicable Acts and Regulations:

41. The *Bankruptcy and Insolvency Act*, RSC 1985, c B-3.
42. Such further and other acts and regulations as counsel may advise and this Honourable Court may permit.

Any Irregularity Complained of or Objection Relied On:

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

How the Application is Proposed to be Heard or Considered:

44. The Receiver proposes that this Application be heard via WebEx with one, some, or all of the parties present.

AFFIDAVIT EVIDENCE IS REQUIRED IF YOU WISH TO OBJECT.

WARNING

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

SCHEDULE "A" TO THE APPLICATION WEBEX INSTRUCTIONS

Virtual Courtroom 60 has been assigned for the above noted matter:

Virtual Courtroom Link:

<https://albertacourts.webex.com/meet/virtual.courtroom60>

Instructions for Connecting to the Meeting

1. Click on the link above or open up Chrome or Firefox and cut and paste it into your browser address bar.
2. If you do not have the Cisco Webex application already installed on your device, the site will have a button to install it. Follow installation instructions. Enter your full name and email address when prompted
3. Click on the **Open Cisco Webex Meeting**.
4. You will see a preview screen. Click on **Join Meeting**.

Key considerations for those attending:

1. Please connect to the courtroom **15 minutes prior** to the start of the hearing.
2. Please ensure that your microphone is muted and remains muted for the duration of the proceeding, unless you are speaking. Ensure that you state your name each time you speak.
3. If bandwidth becomes an issue, some participants may be asked to turn off their video and participate by audio only.
4. **Note: Recording or rebroadcasting of the video is prohibited.**
5. **Note: It is highly recommended you use headphones with a microphone or a headset when using Webex. This prevents feedback.**

If you are a non-lawyer attending this hearing remotely, **you must** complete the undertaking located here:

<https://www.albertacourts.ca/qb/resources/announcements/undertaking-and-agreement-for-non-lawyers>

For more information relating to Webex protocols and procedures, please visit:

<https://www.albertacourts.ca/qb/court-operations-schedules/webex-remote-hearings-protocol>

You can also join the meeting via the "Cisco Webex Meetings" App on your smartphone/tablet or other smart device. You can download this via the App marketplace and join via the link provided above.

IT IS HEREBY ORDERED AND DECLARED THAT:

SERVICE

1. The time for service of the Application and the Fourth Receiver's Report is abridged, the Application is properly returnable today, service of the Application and the Fourth Receiver's Report on the service list, in the manner described in the Service Affidavit, is good and sufficient, and no other persons, other than those listed on the service list (the "**Service List**") attached as an exhibit to the Service Affidavit, are entitled to service of the Application or the Fourth Receiver's Report.

SEALING

2. Part 6, Division 4 of the *Alberta Rules of Court* does not apply to the Application and the Clerk of the Court is hereby directed to seal the Confidential Supplement, on the Court file, until the filing of the Receiver's Certificate (as defined in and contemplated by the Order (Sale Approval and Vesting) made in connection with the Application. The Confidential Supplement shall be sealed and filed in an envelope containing the following endorsement thereon:

THIS ENVELOPE CONTAINS THE CONFIDENTIAL SUPPLEMENT TO THE FOURTH REPORT OF THE RECEIVER, DATED APRIL 27, 2021. THE CONFIDENTIAL SUPPLEMENT TO THE FOURTH REPORT OF THE RECEIVER IS SEALED PURSUANT TO AN ORDER ISSUED BY THE HONOURABLE JUSTICE L.B. HO, DATED MAY 5, 2021, AND IS NOT TO BE PLACED ON THE PUBLIC RECORD OR MADE PUBLICALLY ACCESSIBLE UNTIL THE FILING OF THE RECEIVER'S CERTIFICATE REFERRED TO THEREIN.

3. Any person may apply, on reasonable notice to the Receiver and any other persons likely to be affected, to vary or amend the terms of paragraph 2 of this Order.

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

(a) Serving same on:

(i) the persons listed on the Service List created in these proceedings;

- (ii) any other person served with notice of the Application for this Order;
- (iii) any other parties attending or represented at the Application for this Order;
and

(b) Posting a copy of this Order on the Receiver's Website at:
<https://documentcentre.eycan.com/Pages/Main.aspx?SID=1442>

and service on any other person is hereby dispensed with.

5. 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.

Justice of the Court of Queen's Bench of Alberta

AND UPON HAVING READ the Receivership Order, dated December 19, 2018 (the "**Receivership Order**"), the Fourth Receiver's Report, and the Affidavit of Service of Katie Doran, sworn on April 1, 2019 (the "**Service Affidavit**"), all filed; **AND UPON** having read the Confidential Supplement to the Fourth Report of the Receiver, dated April 27, 2021 (the "**Confidential Supplement**"), unfiled; **AND UPON HEARING** the submissions of counsel for the Receiver and for any other parties who may be present;

IT IS HEREBY ORDERED AND DECLARED THAT:

SERVICE

1. The time for service of the Application and the Fourth Receiver's Report is abridged, the Application is properly returnable today, service of the Application and the Fourth Receiver's Report on the service list, in the manner described in the Service Affidavit, is good and sufficient, and no other persons, other than those listed on the service list (the "**Service List**") attached as an exhibit to the Service Affidavit, are entitled to service of the Application or the Fourth Receiver's Report.

APPROVAL OF THE TRANSACTION

2. The Transaction is commercially reasonable and in the best interests of the Debtor, creditors, and its stakeholders. The Transaction is hereby approved, and the execution of the APA by the Receiver is hereby authorized, ratified, confirmed, and approved, with such minor amendments as the Receiver may deem necessary. The Receiver is hereby authorized and directed to complete the Transaction, subject to the terms of the APA, to perform its obligations under the APA and any ancillary documents related thereto, and to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction or for the conveyance of the Assets to the Purchaser (or its nominee).

VESTING OF THE ASSETS

3. Upon the delivery of a Receiver's certificate to the Purchaser (or its nominee) substantially in the form set out in Schedule "**A**" hereto (the "**Receiver's Certificate**"), subject only to the Permitted Encumbrances (as defined below), all of the Debtor's right, title, and interest in and to the Assets, as described in the APA, shall vest absolutely, exclusively, and entirely in the name of the Purchaser (or its nominee), free and clear of and from any and all caveats, security interests, hypothecs, pledges, mortgages, liens, trusts or deemed trusts, reservations of

ownership, privileges, interests, assignments, actions, judgements, executions, levies, taxes, writs of enforcement, charges, or other claims, whether contractual, statutory, financial, monetary, or otherwise, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, "**Claims**") including, without limiting the generality of the foregoing:

- (a) any encumbrances or charges created by the Receivership Order;
- (b) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Alberta) or any other personal property registry system; and,
- (c) any liens or claims of lien under the *Builders' Lien Act* (Alberta),

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

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

4. Upon delivery of the Receiver's Certificate, and upon filing of a certified copy of this Order, together with any applicable registration fees, all governmental authorities including those referred to below in this paragraph (collectively, "**Governmental Authorities**") are hereby authorized, requested, and directed to accept delivery of such Receiver's Certificate and certified copy of this Order as though they were originals and to register such transfers, interest authorizations, discharges and discharge statements of conveyance as may be required to convey to the Purchaser or its nominee clear title to the Assets, subject only to Permitted Encumbrances. Without limiting the foregoing the Registrar of the Alberta Personal Property Registry (the "**PPR Registrar**") shall and is hereby directed to forthwith cancel and discharge any registrations at the Alberta Personal Property Registry (whether made before or after the date of this Order) claiming security interests (other than Permitted Encumbrances) in the estate or interest of the Debtor in any of the Purchased Assets which are of a kind prescribed by applicable regulations as serial-number goods.

5. In order to effect the transfers and discharges described above, this Court directs each of the Governmental Authorities to take such steps as are necessary to give effect to the terms of this Order and the APA. Presentment of this Order and the Receiver's Certificate shall be the sole and sufficient authority for the Governmental Authorities to make and register transfers of title or interest and cancel and discharge registrations against any of the Assets of any Claims including the Encumbrances, but excluding Permitted Encumbrances.

6. No authorization, approval or other action by and no notice to or filing with any governmental authority or regulatory body exercising jurisdiction over the Assets is required for the due execution, delivery and performance by the Receiver of the APA.

7. For the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Assets (to be held in an interest bearing trust account by the Receiver) shall stand in the place and stead of the Assets from and after delivery of the Receiver's Certificate and all Claims including the Encumbrances (but excluding Permitted Encumbrances) shall not attach to, encumber, or otherwise form a charge, security interest, lien, or other Claim against the Assets and may be asserted against the net proceeds from sale of the Assets with the same priority as they had with respect to the Assets immediately prior to the sale, as if the Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

8. Except as expressly provided for in the APA or by section 5 of the *Alberta Employment Standards Code*, the Purchaser (or its nominee) shall not, by completion of the Transaction, have liability of any kind whatsoever in respect of any Claims against the Debtor.

9. Upon completion of the Transaction, the Debtor and all persons who claim by, through or under the Debtor in respect of the Assets, and all persons or entities having any Claims of any kind whatsoever in respect of the Assets, save and except for persons entitled to the benefit of the Permitted Encumbrances, shall stand absolutely and forever barred, estopped and foreclosed from and permanently enjoined from pursuing, asserting, or claiming any and all right, title, estate, interest, royalty, rental, equity of redemption or other Claim whatsoever in respect of or to the Assets, and to the extent that any such persons or entities remain in the possession or control of any of the Assets, or any artifacts, certificates, instruments or other indicia of title representing or evidencing any right, title, estate, or interest in and to the Assets, they shall forthwith deliver possession thereof to the Purchaser (or its nominee).

10. The Purchaser (or its nominee) shall be entitled to enter into and upon, hold and enjoy the Assets for its own use and benefit without any interference of or by the Debtor, or any person claiming by, through or against the Debtor.

11. Immediately upon closing of the Transaction, holders of Permitted Encumbrances and any claims pleaded or derived in connection with to the proceedings commenced with the Supreme Court of British Columbia, under Action No S1913541 shall have no claim whatsoever against the Debtor or the Receiver and shall continue against the Assets.

12. The Receiver is directed to file with the Court a copy of the Receiver's Certificate forthwith after delivery thereof to the Purchaser (or its nominee).

MISCELLANEOUS MATTERS

13. Notwithstanding:

- (a) the pendency of these proceedings and any declaration of insolvency made herein;
- (b) the pendency of any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c.B-3, as amended (the "**BIA**"), in respect of the Debtor, and any bankruptcy order issued pursuant to any such applications;
- (c) any assignment in bankruptcy made in respect of the Debtor; and
- (d) the provisions of any federal or provincial statute:

the vesting of the Assets in the Purchaser (or its nominee) pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Debtor and shall not be void or voidable by creditors of the Debtor, nor shall it constitute nor be deemed to be a transfer at undervalue, settlement, fraudulent preference, assignment, fraudulent conveyance, or other reviewable transaction under the BIA or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

14. The Receiver, the Purchaser (or its nominee), and any other interested party, shall be at liberty to apply for further advice, assistance and direction as may be necessary in order to give

full force and effect to the terms of this Order and to assist and aid the parties in closing the Transaction.

15. This Honourable Court hereby requests the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in any of its provinces or territories or in any foreign jurisdiction, to act in aid of and to be complimentary to this Court in carrying out the terms of this Order, to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such order and to provide such assistance to the Receiver, as an officer of the Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

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

(a) Serving the same on:

- (i) the persons listed on the service list created in these proceedings;
- (ii) any other person served with notice of the application for this Order;
- (iii) any other parties attending or represented at the application for this Order;
- (iv) the Purchaser or the Purchaser's solicitors; and

(b) Posting a copy of this Order on the Receiver's website at:
<https://documentcentre.eycan.com/Pages/Main.aspx?SID=1442>

and service on any other person is hereby dispensed with.

17. 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.

Justice of the Court of Queen's Bench of Alberta

**SCHEDULE "A" TO THE ORDER (SALE APPROVAL AND VESTING)
RECEIVER'S CERTIFICATE**

Clerk's Stamp

COURT FILE NUMBER	1801-17912
COURT	COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE	CALGARY
PLAINTIFF	ATB FINANCIAL (FORMERLY ALBERTA TREASURY BRANCHES)
DEFENDANTS	HUGHSON TRUCKING INC., LEROY CHRISTIAN HUGHSON, DARREN JAMES HUGHSON, and JUSTIN LEE HUGHSON
DOCUMENT	RECEIVER'S CERTIFICATE
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT:	McCarthy Tétrault LLP 4000, 421 – 7th Avenue SW Calgary, Alberta T2P 4K9 Attention: Sean Collins / Pantelis Kyriakakis Tel: 403-260-3531 / 3536 Fax: 403-260-3501 Email: scollins@mccarthy.ca / pkyriakakis@mccarthy.ca

RECITALS

- A. Pursuant to an Order of the Honourable Justice K.M. Eidsvik of the Court of Queen's Bench of Alberta, Judicial District of Calgary (the "**Court**"), dated December 19, 2018, Ernst & Young Inc., was appointed as the receiver and manager (the "**Receiver**") of the undertakings, property, and assets of Hughson Trucking Inc. (the "**Debtor**").
- B. Pursuant to an Order of the Court, dated May 5, 2021 (the "**Sale Approval Order**"), the Court approved the Asset Purchase and Sale Agreement, dated April 27, 2021 (the "**APA**"), between the Debtor by and through the Receiver, in its capacity as the court-appointed receiver and manager of the Debtor and 1010307 Alberta Ltd. (the "**Purchaser**"), as purchaser, and provided for the vesting in the Purchaser of the Debtor's right, title, and interest in and to the Assets, which vesting is to be effective with respect to the Assets upon the delivery by the Receiver to the Purchaser of a certificate confirming: (i) the payment by the Purchaser of the Purchase Price for the Assets; (ii) that

all conditions to the closing of the APA have been satisfied or waived by the Receiver and the Purchaser; and, (iii) the Transaction has been completed to the satisfaction of the Receiver.

C. Unless otherwise indicated herein, all capitalized terms have the meanings set out in the Sale Approval Order.

THE RECEIVER CERTIFIES the following:

1. The Purchaser (or its nominee) has paid and the Receiver has received the purchase price for the Assets, in accordance with and as contemplated by the terms of the APA;
2. The conditions to the closing of the APA have been satisfied or waived by the Receiver and the Purchaser (or its nominee); and,
3. The Transaction has been completed to the satisfaction of the Receiver.

This Certificate was delivered by the Receiver at **[Time]** on **[Date]**.

ERNST & YOUNG INC., in its capacity as receiver and manager of the undertaking, property and assets of **HUGHSON TRUCKING INC.**, and not in its personal or corporate capacity.

Per: _____
Name:
Title:

**SCHEDULE "B" TO THE ORDER (SALE APPROVAL AND VESTING)
PERMITTED ENCUMBRANCES**

NONE.

**SCHEDULE "D" TO THE APPLICATION
ORDER (DISCHARGE ORDER)**

Clerk's Stamp

COURT FILE NUMBER 1801-17912

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

PLAINTIFF ATB FINANCIAL (FORMERLY ALBERTA TREASURY BRANCHES)

DEFENDANTS HUGHSON TRUCKING INC., LEROY CHRISTIAN HUGHSON, DARREN JAMES HUGHSON, and JUSTIN LEE HUGHSON

DOCUMENT **ORDER (Discharge Order)**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT: McCarthy Tétrault LLP
4000, 421 – 7th Avenue SW
Calgary, Alberta T2P 4K9
Attention: Sean Collins / Pantelis Kyriakakis
Tel: 403-260-3531 / 3536
Fax: 403-260-3501
Email: scollins@mccarthy.ca / pkyriakakis@mccarthy.ca

DATE ON WHICH ORDER WAS PRONOUNCED: May 5, 2021

LOCATION OF HEARING OR TRIAL: Calgary, Alberta

NAME OF JUDGE WHO MADE THIS ORDER: Honourable Justice L.B. Ho

UPON the application (the "**Application**") of Ernst & Young Inc. (the "**Receiver**"), in its capacity as the court-appointed receiver and manager of Hughson Trucking Inc. (the "**Debtor**") pursuant to the Consent Receivership Order granted on December 19, 2018 (the "**Receivership Order**"), in the within proceedings (the "**Proceedings**"); **AND UPON** reading the Fourth Report of the Receiver, dated April 27, 2021 (the "**Fourth Receiver's Report**"), filed; **AND UPON** reading the Confidential Supplement to the Fourth Report of the Receiver, dated April 27, 2021 (the "**Confidential Supplement**"), unfiled; **AND UPON** reading the Affidavit of Service of Katie Doran, sworn on April 1, 2020 (the "**Service Affidavit**"), filed; **AND UPON** hearing counsel for the Receiver and for any other parties who may be present;

IT IS HEREBY ORDERED AND DECLARED THAT:

1. The time for service of the Application and the Fourth Receiver's Report is abridged, the Application is properly returnable today, service of the Application and the Fourth Receiver's Report on the service list, in the manner described in the Service Affidavit, is good and sufficient, and no other persons, other than those listed on the service list (the "**Service List**") attached as an exhibit to the Service Affidavit, are entitled to service of the Application or the Fourth Receiver's Report.
2. The Receiver's activities, as set out in the Fourth Receiver's Report and in all of its other reports filed in the within proceedings, are hereby ratified and approved.
3. The Receiver's final statement of receipts and disbursements, as set out in paragraphs 24 and 25 of the Fourth Receiver's Report, be and is hereby approved.
4. The Receiver's accounts for its fees and disbursements, as set out in paragraphs 38, 40, and Exhibit 2.0 of the Fourth Receiver's Report, are hereby approved, without the necessity of a formal passing of its accounts.
5. The accounts of the Receiver's legal counsel, McCarty Tétrault LLP, for its fees and disbursements, as set out in paragraphs 38, 40, and Exhibit 2.0 of the Fourth Receiver's Report, are hereby approved, without the necessity of a formal assessment of its accounts.
6. Based on the evidence that is currently before this Honourable Court:
 - (a) the actions and conduct of the Receiver are approved;
 - (b) the Receiver has satisfied all of its duties and obligations as the receiver and manager of the Debtor and the Property;
 - (c) the Receiver shall not be liable for any act or omission, including, without limitation, any act or omission pertaining to the discharge of the Receiver's duties as receiver and manager of the Debtor and the Property, save and except for any liability arising out of fraud, gross negligence, or wilful misconduct, on the part of the Receiver; and,
 - (d) any and all claims against the Receiver arising from, relating to, or in connection with the performance of the Receiver's duties and obligations, as receiver and

manager of the Debtor and the Property, save and except for claims based on fraud, gross negligence, or wilful misconduct, on the part of the Receiver, are hereby stayed, extinguished, and forever barred.

7. No actions or other proceedings shall be commenced against the Receiver which in any way arise from or relate to its capacity or conduct as Receiver, except with prior leave of this Court, on Notice to the Receiver and upon such terms as this Court may direct.

8. The Receiver is hereby authorized and empowered to pay the approximately \$380,068 (the "**Security Amount**") being held by the Receiver in connection with the Debtor's potential remediation obligations:

- (a) in accordance with any written confirmation from Alberta Environment and Parks, 1010307 Alberta Ltd., and the Receiver, or such parties respective counsel (collectively, the "**Reclamation Parties**") that such parties have reached an agreement concerning the payment and distribution of the Security Amount; or,
- (b) into Court, in the within proceedings, if the Reclamation Parties have not reached any agreement, as contemplated in paragraph 8(a) of this Order, on or before the latter of: (i) the closing of the Transaction (as defined in the Order (Sale Approval and Vesting Order) granted on May 5, 2021, in connection with the Application; or (ii) the Receiver completing all tasks and actions, as set out in paragraph 42 of the Fourth Receiver's Report.

9. Upon the Receiver filing with the Clerk of the Court a certificate, substantially in the form attached as Schedule "**A**" hereto, confirming that: (i) all remaining tasks and actions, as set out in paragraph 42 of the Fourth Receiver's Report, have been completed; and, (ii) the Security Amount has been paid out, either, (a) in accordance with an agreement reached between the Reclamation Parties; or, (b) into Court, in the within Action, to be held pending further Order of this Honourable Court, the Receiver shall be discharged as Receiver of the Debtor and Property, provided however that notwithstanding its discharge herein:

- (a) the Receiver shall remain Receiver for the performance of such incidental duties as may be required to complete the administration of the receivership herein; and,

- (b) the Receiver shall continue to have the benefit of the provisions of all Orders made in this proceeding, including all approvals, protections, and stays of proceedings in favour of the Receiver in its capacity as Receiver.

10. The Receiver is hereby authorized and empowered to destroy any and all documents, accounting records, and other papers, records, and information related to the business or affairs of the Debtor, if not collected by any of the prior directors of the Debtor, on or before June 4, 2021.

11. This Order must be served only upon those interested parties attending or represented at the within application and service may be effected by Facsimile, electronic mail, personal delivery or courier. Service is deemed to be effected the next business day following the transmission or delivery of such documents.

12. Service of this Order on any party not attending this application is hereby dispensed with.

J.C.C.Q.B.A.

**SCHEDULE "A" TO THE ORDER (DISCHARGE ORDER)
RECEIVER'S CERTIFICATE**

Clerk's Stamp

COURT FILE NUMBER 1801-17912

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

PLAINTIFF ATB FINANCIAL (FORMERLY ALBERTA TREASURY
BRANCHES

DEFENDANTS HUGHSON TRUCKING INC., LEROY CHRISTIAN HUGHSON,
DARREN JAMES HUGHSON, and JUSTIN LEE HUGHSON

DOCUMENT **RECEIVER'S DISCHARGE CERTIFICATE**

ADDRESS FOR
SERVICE AND
CONTACT
INFORMATION OF
PARTY FILING THIS
DOCUMENT: McCarthy Tétrault LLP
4000, 421 – 7th Avenue SW
Calgary, Alberta T2P 4K9
Attention: Sean Collins / Pantelis Kyriakakis
Tel: 403-260-3531 / 3536
Fax: 403-260-3501
Email: scollins@mccarthy.ca / pkyriakakis@mccarthy.ca

RECEIVER'S DISCHARGE CERTIFICATE

1. All capitalized terms used in this Receiver's Discharge Certificate and not otherwise defined shall have the meaning ascribed to them in the Order issued by The Honourable Justice L.B. Ho the Court of Queen's Bench of Alberta, in the within proceedings, granted on May 5, 2021 (the "**Discharge Order**").
2. Pursuant to the Discharge Order, the Court provided for the discharge of the Receiver, upon the filing of this certificate, by the Receiver, confirming that:
 - (a) all remaining tasks and actions, as set out in paragraph 42 of the Fourth Receiver's Report, have been completed; and,
 - (b) the approximately \$380,068 (the "**Security Amount**") being held by the Receiver, has been paid out, either, (a) in accordance with any agreement reached between the Alberta Environment and Parks, 1010307 Alberta Ltd., and the Receiver

(collectively, the “**Reclamation Parties**”); or, (b) into Court, in the within Action, to be held pending further Order of this Honourable Court

THE RECEIVER HEREBY CONFIRMS AND CERTIFIES THE FOLLOWING:

1. All remaining tasks and actions, as set out in paragraph 42 of the Fourth Receiver’s Report, have been completed; and,
2. The Security Amount has been paid out, **[in accordance with an agreement reached between the Reclamation Parties] OR [into Court, in the within Action, to be held pending further Order of this Honourable Court].**

DATE THIS _____ DAY OF _____, 2021

ERNST & YOUNG INC., in its capacity as receiver and manager of the undertaking, property and assets of **HUGHSON TRUCKING INC.**, and not in its personal or corporate capacity.

Per: _____
Name:
Title: