



Court No. S-236559  
Vancouver Registry

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

BETWEEN:

**AQUILINI DEVELOPMENT LIMITED PARTNERSHIP,  
GARIBALDI RESORT MANAGEMENT COMPANY LTD. and  
1413994 B.C. LTD.**

PETITIONERS

AND:

**GARIBALDI AT SQUAMISH LIMITED PARTNERSHIP  
and GARIBALDI AT SQUAMISH INC.**

RESPONDENTS

**NOTICE OF APPLICATION**

**(Sale Approval, Reverse Vesting Order, and Receiver Approvals)**

Name of applicant: Ernst & Young Inc., in its capacity as the court-appointed Receiver and Manager, of Garibaldi at Squamish Limited Partnership and Garibaldi at Squamish Inc.

To: Service List

**TAKE NOTICE** that an application will be made by the applicant to the Honourable Justice Walker in person at the courthouse at 800 Smithe Street, Vancouver, British Columbia, on March 15, 2024 at 10:30 a.m. for the orders set out in Part 1 below. The Receiver estimates that the application will take **1 hour**. [ ] This matter is within the jurisdiction of an associate judge.

[ x ] This matter is not within the jurisdiction of an associate judge.

**PART 1: ORDERS SOUGHT**

1. Ernst & Young Inc. (“**EY**”), in its capacity as the court-appointed Receiver and Manager (the “**Receiver**”) of all the current and future assets, undertakings, and properties (the “**Property**”) of Garibaldi at Squamish Limited Partnership (“**LP**”) and Garibaldi at Squamish Inc. (“**GAS**”, and together with LP, the “**GAS Entities**”), seek orders in substantially the form attached hereto as **Schedule “A”** (the “**RV Order**”) and **Schedule “B”** (the “**Approval Order**”):

- (a) abridging the time for and validating service of this Notice of Application and application record, and directing that any further service thereof be dispensed with
- (b) declaring:
  - i. the Stalking Horse Bid (as defined below) put forward by Aquilini Development Limited Partnership (“ADLP”), Garibaldi Resort Management Company Ltd. (“GRMC”), and 1413994 B.C. Ltd. (“141”, and collectively with ADLP and GRMC, the “**Debenture Holders**” or the “**Purchasers**”) in the sale and investment solicitation process conducted by the Receiver (the “**Sale Process**”) is the Successful Bid (as defined in the First Report of the Receiver dated January 17, 2024 (the “**First Report**”)); and
  - ii. the Purchasers as the Successful Bidder (as defined in the First Report);
- (c) approving the purchase agreement between the Receiver and the Purchasers dated March 13, 2024 (the “**Purchase Agreement**”) attached as **Appendix “C”** to the Second Report of the Receiver dated March 14, 2024 (the “**Second Report**”), for the sale transaction contemplated therein (the “**Transaction**”), and the reorganization steps to complete the Transaction (the “**Reorganization Steps**”);
- (d) authorizing the Receiver to execute the Purchase Agreement, for and on behalf of the GAS Entities, and complete the Transaction;
- (e) authorizing the Receiver to perform all obligations of the GAS Entities under the Purchase Agreement and to take such additional steps, including the incorporation of a subsidiary of GAS (“**ExcludedCo**”) prior to the closing date of the Transaction, and to execute such additional documents as may be necessary or desirable for the completion of the Transaction;
- (f) ordering that upon the closing of the Transaction, the following Reorganization Steps shall be deemed to occur in the sequence as set forth in the RV Order:
  - i. the transfer to and vesting in ExcludedCo all of the Excluded Assets and the Excluded Liabilities (each as defined in the Purchase Agreement) such that the Excluded Liabilities shall become the liabilities of ExcludedCo;
  - ii. the release and discharge of the GAS Entities and the Retained Assets (as defined in the Purchase Agreement) from and in respect of the Excluded Liabilities and all Claims and Encumbrances (each as defined in the Purchase Agreement);
  - iii. the issuance to the Purchasers of new common shares in GAS (the “**New GAS Shares**”) and vesting all right, title, interest, and entitlement granted to the holders thereof, free and clear of all Claims and Encumbrances;
  - iv. the issuance to the Purchasers of new limited partnership units in LP (the “**New LP Units**”) and vesting all right, title, interest, and entitlement granted to the unitholders thereof, free and clear of all Claims and Encumbrances;

- v. all issued and outstanding share interests (the “**Existing GAS Shares**”), except the New GAS Shares, and all limited partnership units issued to the limited partners of the GAS Entities (the “**Existing LP Units**”), except the New LP Units and the existing limited partnership units issued to the GAS Entities Inc. (the “**Existing GP Units**”), shall be cancelled without any further requirement to make payment or liability;
  - vi. the resignation of any directors of LP and the GAS Entities Inc. immediately prior to the closing of the Transaction (the “**Closing Time**”) and naming one or more new directors to GAS;
  - vii. LP and GAS will cease to be Respondents in this Receivership proceeding and will be released from all other Orders granted in this Receivership proceeding (excluding the RV Order); and
  - viii. ExcludedCo will be added as a Respondent to this Receivership proceeding;
- (g) ordering that the RV Order shall be the only authorization required by the Receiver and the Purchasers to proceed with the Transaction, and that, except as specifically provided in the Purchase Agreement, no director or shareholder approval shall be required and no authorization, approval, or other action by or notice to or filing with any governmental authority or regulatory body exercising jurisdiction in respect of the GAS Entities shall be required for the due execution, delivery, performance, and completion of the Transaction;
  - (h) from and after the Closing Time, barring and enjoining all persons from commencing or continuing any step or proceeding against the Receiver, the Purchasers, or the GAS Entities relating to the Excluded Assets, the Excluded Liabilities, or any other claim, obligation or matter waived, released, or discharged pursuant to the RV Order;
  - (i) authorizing the Receiver to take all actions necessary to, among other things, wind down and/or dissolve and/or bankrupt ExcludedCo and administer the Excluded Assets, Excluded Liabilities, and ExcludedCo.;
  - (j) approving the First Report of the Receiver dated January 22, 2024 and the Second Report and the activities of the Receiver as described in the Second Report;
  - (k) approving the fees and disbursements of the Receiver and its legal counsel as described in the Second Report; and
  - (l) such further relief as the circumstances may require and as this Honourable Court deems appropriate.

## **PART 2: FACTUAL BASIS**

### **Background**

2. All capitalized terms not otherwise defined herein have the meanings given to them in the Second Report and the Purchase Agreement.

3. LP is a limited partnership formed under the laws of the Province of British Columbia.
4. GAS is a corporation incorporated pursuant to the *Canada Business Corporations Act*, RSC, 1985, c C-44. GAS is the general partner of LP.
5. The GAS Entities' aggregate indebtedness owing to the Purchasers under four outstanding debentures (the "**Debentures**") as at December 4, 2023 was approximately \$73,450,000.00 (the "**Indebtedness**"). As the GAS Entities could not repay this secured debt, the Debenture Holders sought the appointment of the Receiver.
6. On December 4, 2023, the Supreme Court of British Columbia (the "**Court**") granted an order (the "**Receivership Order**") which, among other things, appointed EY as the Receiver of the Property of the GAS Entities Inc. and LP pursuant to section 243 of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 (the "**BIA**") and section 39 of the *Law and Equity Act*, RSBC 1996, c 253 (the "**LEA**"). The Receivership Order also authorized the Receiver to take immediate possession and control of the Property and to market and sell the Property out of the ordinary course of business, subject to Court approval.

Second Report at para 1.

7. On January 22, 2024, the Court granted an order (the "**SISP Order**") which, among other things:
  - (a) approved the Sale Process, which included the use of a stalking horse credit bid from the Debenture Holders (the "**Stalking Horse Bid**"); and
  - (b) authorized the Receiver to commence and conduct the Sale Process in respect of the Property.

Second Report at para 6.

### The Project

8. The GAS Entities was formed for the purpose of advancing the development of a ski resort on Brohm Ridge, near Squamish, British Columbia (the "**Project**").

Second Report at para 15.

9. The Project is intended to convert approximately 2,800 hectares of logged forest to recreational use. The Project is possible as a result of the GAS Entities reaching an interim agreement with the Province of British Columbia (the "**Interim Agreement**").

First Report at paras 15 and 22.

10. In order for the Project to begin construction, the GAS Entities must, among other things, satisfy the numerous construction pre-conditions identified in environmental assessment certificate #TD16-01 regarding the Project issued by the Province of British Columbia on January 26, 2018, as extended on January 15, 2021 (the "**EA Certificate**"), by no later than January 26, 2026 (the "**Conditions Deadline**") and obtain approval of a master plan related to the Project (the "**Resort Master Plan**") by the Province of British Columbia.

First Report at paras 26 and 27.

11. Since the granting of the SISP Order, the Receiver has been working diligently towards completing the critical conditions under the EA Certificate so that the Conditions Deadline does not expire.

Second Report at paras 18-20.

12. Many aspects of the Project, including the EA Certificate, the Interim Agreement, and the tax attributes associated with the GAS Entities' tax losses (the "**Tax Attributes**"), and any rights and obligations of the GAS Entities thereunder may not transferrable or may be transferrable at risk of significant delay, complexity, and approval of governmental authorities.

Second Report at para 35.

### **Outcome of the Sale Process**

13. As more fully detailed in the Second Report, the Receiver conducted the Sale Process in accordance with the SISP Order.

Second Report at paras 23-29.

14. Phase I of the Sale Process ("**Phase I**") commenced on or about January 22, 2024 (the "**Commencement Date**"). Phase I consisted of the Receiver:
  - (a) preparing a teaser package and information detailing the Sale Process (the "**Teaser Package**") and distributing the Teaser Package to 97 prospective bidders and prospective strategic and financial investors (each, a "**Prospective Bidder**").
  - (b) entering into confidentially agreements (each a "**Confidentiality Agreement**") with 9 Prospective Bidders;
  - (c) arranging for the Prospective Bidders to view information relating to the GAS Entities and the Project in a virtual data room (the "**Data Room**") and updating the Data Room and providing additional due diligence materials to the Prospective Bidders.

Second Report at paras 23-25.

15. Notwithstanding that the Receiver received substantial interest from Prospective Bidders, the Receiver did not receive any offers from any Prospective Bidders by February 22, 2024, the Phase I bid deadline (the "**Bid Deadline**"). As a result of receiving no other bids by the Bid Deadline, the Receiver determined that the Stalking Horse Bid was the Successful Bid in the Sale Process.

Second Report at paras 25-27.

16. Shortly after the Bid Deadline, and on providing the necessary notice, the Receiver terminated the Sale Process and advised the Stalking Horse Bidder that the Receiver would be proceeding with the Stalking Horse Bid.

Second Report at paras 26 and 28.



17. The Receiver entered into the Purchase Agreement with the Purchasers on March 13, 2024 for the purchase of substantially all of the Property and operations of the GAS Entities. The Purchase Agreement contemplates the Receiver obtaining the RV Order.

Second Report at para 29.

18. The transaction proposed by the Stalking Horse Bid is the outcome of the Receiver's efforts through the Sale Process to identify a viable going-concern strategy to exit this Receivership proceedings in a manner that:

- (a) preserves the going-concern value of the Project for the benefit of their stakeholders;
- (b) preserves the continued progress towards the development of the Project for the benefit of British Columbia;
- (c) maintains the GAS Entities' relationships with the Squamish Nation, the Province of British Columbia, the suppliers, and any other stakeholders of the Project to the greatest extent possible;
- (d) creates thousands of employment opportunities during the construction of the Project and after completion; and
- (e) preserves the GAS Entities' rights in the Interim Agreement.

Second Report at para 31 and 36; First Report at paras 20, 22, and 24.

### **The Purchase Agreement**

19. The key terms of the Purchase Agreement are summarized in the Second Report and provide for the following Transaction:

- (a) the Purchasers shall:
  - i. be issued the New GAS Shares in the denominations specified in the Purchase Agreement, free and clear of all Encumbrances;
  - ii. be issued the New LP Units, one unit to each of the Purchasers, free and clear of all Encumbrances; and
  - iii. acquire the Retained Assets, which shall remain vested in the GAS Entities free and clear of all Claims, Liabilities, and Encumbrances, except for the Retained Liabilities (as defined in the Purchase Agreement);
- (b) the aggregate purchase consideration shall comprise of (collectively, the "**Purchase Consideration**"):
  - i. \$58,401,838.00 being the amount of the Indebtedness, other than the Indebtedness included in the Retained Liabilities;

- ii. \$724,955.19, being the total amount of all costs, charges, and expenses of and incidental to the appointment of the Receiver and the exercise by the Receiver of any or all of its rights, remedies, and powers as set forth in the Receivership Order including the remuneration of the Receiver and all amounts properly payable to the Receiver together with all legal costs in respect thereof on a solicitor and his own client basis, including for certainty any amounts advanced under the Receiver's Certificate (as defined in the Receivership Order);
- iii. the total amount of all costs, charges and expenses incurred or paid by the Purchasers in connection with the enforcement of their general security agreement dated as of January 26, 2018 and the assignment of permits, licenses, approvals, agreements and documents dated January 26, 2018 (including legal fees on a solicitor and own client basis), each granted by the GAS Entities; and
- iv. \$20,000,00.00, being the total amount of the Retained Liabilities; and
- v. \$15,000.00 on account of the costs associated with the bankruptcy of ExcludedCo.

The Purchasers shall pay and satisfy the Purchase Consideration on the Closing Date (as defined in the Purchase Agreement) by (a) as to the amounts set out in paragraphs 18(b)(i)-(iii), the credit and set-off of such amount against an equivalent amount of the Purchase Consideration, (b) as to the dollar value of the Retained Liabilities, by the assumption by the Purchasers of the Retained Liabilities, and (c) as to the amount set out in paragraph 18(b)(v), in cash by way of wire transfer or bank draft to the Receiver;

- (c) all of the Existing GAS Shares, other than the New GAS Shares, will be cancelled for no consideration, resulting in the Purchasers becoming the shareholders of the GAS Entities;
- (d) all of the limited partnership units, other than the New LP Units and the Existing GP Units, will be cancelled for no consideration, resulting in the Purchasers becoming the only limited partners of the GAS Entities;
- (e) all of the Excluded Assets and the Excluded Liabilities shall be being vested in and to ExcludedCo and the Excluded Liabilities shall continue to attach to the Excluded Assets after their transfer to ExcludedCo with the same nature and priority as they had immediately prior to the Transaction;
- (f) ExcludedCo shall effectively replace the GAS Entities as the Respondent in the within Receivership proceedings;
- (g) the closing of the Transaction contemplated in the Purchase Agreement is conditional upon, among other things:
  - i. approval of the Transaction and the Purchase Agreement by this Honourable Court and the granting of the RV Order;
  - ii. the transfer of all Excluded Assets and Excluded Liabilities to ExcludedCo;

- iii. the GAS Entities and the Retained Assets shall be released and forever discharged of all Claims, Liabilities, and Encumbrances, other than the Retained Liabilities; and
- iv. all of the closing deliveries being completed.

Second Report at para 29.

- 20. The Transaction is most efficiently implemented pursuant to the RV Order, which is uniquely structured to preserve the going-concern value of Project for the benefit of all stakeholders. In addition, it is a condition of the Transaction that it be implemented pursuant to an RV Order granted by this Court.

Second Report at paras 29 and 35.

- 21. With respect to the GAS Entities' rights in the EA Certificate, the Interim Agreement, and the tax attributes associated with the GAS Entities' tax losses (the "**Tax Attributes**") being the only assets of value of the GAS Entities, a reverse vesting transaction preserves the significant value associated with the Property and ensures that no additional or significant steps need to be taken to transfer such Property rights to another entity.

Second Report at para 35.

- 22. There would be significant complexities and delays associated with transferring the EA Certificate and the Interim Agreement given that the interests under EA Certificate the Interim Agreement require approval of governmental agencies. Given the already urgent deadlines outlined in the gantt chart prepared by the Receiver in the First Report, any delays to the transfer of the EA Certificate and the Interim Agreement, if the government agencies agree to the transfer of the interests, could make the conditions under the EA Certificate impossible to complete by the EAC Deadline (as defined in the First Report).

Second Report at para 35; First Report at Appendix "D";  
First Affidavit of Andrew Brown filed September 22, 2023 at Exhibit G.

- 23. The Tax Attributes are not a transferrable or assignable interest of the GAS Entities and the value and benefit of this asset would be lost to the Purchasers outside of a reverse vesting transaction.

Second Report at para 35;

- 24. As a result, the only feasible structure for the Transaction is a sale of the equity of the GAS Entities by means of the RV Order. Any other transaction structure risks materially diminishing or eliminating the value of the Property if the interests in the EA Certificate, Interim Agreement, and Tax Attributes are delayed and/or unable to be transferred or assigned to the Purchasers.

Second Report at para 35.



25. Due to the nature of the Project and in light of the foregoing, the Receiver has determined that completing the Transaction by a traditional asset sale and vesting order would be extremely difficult, lengthy, costly, and unlikely to preserve the going-concern value of the GAS Entities.

Second Report at para 35.

26. The Receiver recommends the approval of the Purchase Agreement because, among other things:

- (a) the Sale Process was transparent;
- (b) the Property was sufficiently exposed to the market;
- (c) the outcome of the Sale Process would not have been different as no other offers were received in the Sale Process or otherwise;
- (d) the Transaction with the Purchasers is the best and only alternative available to The GAS Entities and is in the best interests of the GAS Entities and their stakeholders
- (e) the Debenture Holders, the only secured creditors of the GAS Entities, are in support of the Purchase Agreement; and
- (f) the only substantive conditions of the Purchase Agreement remaining are the approval of the Transaction and the Purchase Agreement by this Honourable Court, the granting of the RV Order, and the transfer of the Excluded Assets and Excluded Liabilities to ExcludedCo.

Second Report at para 35-36.

### **PART 3: LEGAL BASIS**

27. The Receiver relies on:

- (a) the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3;
- (b) the *Law and Equity Act*, RSBC 1996 c. 253;
- (c) the *Supreme Court Civil Rules*, BC Reg 241/2010, as amended;
- (d) the inherent and equitable jurisdiction of this Honourable Court; and
- (e) such further and other legal basis as counsel may advise and this Honourable Court may allow.

#### **A. Approving the Transaction**

The Purchase Agreement

28. The following considerations established by the Ontario Court of Appeal in *Royal Bank of Canada v Soundair Corp.* must be taken into account by a Court in deciding whether to approve a sale negotiated by a court-appointed receiver:

- (a) whether the receiver made sufficient efforts to obtain the best price and did not act improvidently;
- (b) the interests of all parties;
- (c) the efficacy and integrity of the process by which offers were obtained; and
- (d) whether there has been any unfairness in the sales process.

*Royal Bank of Canada v. Soundair Corp.* (1991), 4 O.R. (3d) 1 (Ont. C.A.)  
 (“**Soundair**”) at para. 16 [TAB 10]; *Kruger v Wild Goose Vintners Inc.*, 2021  
 BCSC 1406 (“**Wild Goose**”) at para 26 [TAB 11].

29. More generally, in analyzing whether a transaction should be approved, the Court is to consider whether, taking “the transaction as a whole, the proposed sale is appropriate, fair, and reasonable”.

*Soundair* at paras 21-22; *Wild Goose* at para 30.

30. The Receiver submits that the Transaction contemplated by the Purchase Agreement satisfies the *Soundair* factors for the following reasons:

- (a) The Sale Process was thorough, far-reaching, and provided sufficient time in the circumstances for interested parties to carry out the necessary due diligence required to form a view on the opportunity and submit a bid by the Bid Deadline. The Receiver made significant solicitation efforts including by contacting third parties who were identified as strategic investors, private equity investors, and other parties who had shown interest prior to the Sale Process. The Receiver made efforts to obtain the best price and did not act improvidently;
- (b) the Transaction is in the best interests of all parties. The Transaction is supported by the only secured creditors of the GAS Entities, being the Purchasers. All other known creditors are unsecured creditors. The Purchasers are the only creditors with a significant economic interest in the GAS Entities and the only creditors who will recover as no other bids were received during the Sale Process;
- (c) the Sale Process was conducted in an open and transparent manner and in accordance with the SISP Order granted by this Honourable Court. The Stalking Horse Bid was approved by this Honourable Court as part of the Sale Process in order to obtain the highest value for the Property during the Sale Process and allowed for the Receiver to move the restructuring efforts in an expedited manner given the Conditions Deadline. Notwithstanding that no other bids were received by the Receiver, the Sale Process was efficacious and had integrity;

- (d) there was no unfairness in the Sale Process. All potential purchasers were entitled to participate in the Sale Process, subject to the conditions set out in the SISP Order. All available information with respect to the opportunity was made available in the Data Room to any Prospective Bidder who signed a Confidentiality Agreement and all Prospective Bidders had the same opportunity to submit a bid to the Receiver based on that information.

Second Report at paras 35.

### Reverse Vesting Order

31. Neither the *BIA* nor the *LEA* provide specific jurisdiction for the approval of a reverse vesting order in receivership proceedings. This Court's authority to grant a reverse vesting order in receivership proceedings is found in its general jurisdiction to grant an approval and vesting order.

*Vert Infrastructure Ltd, (Re)* (June 8, 2021), ONSC (Commercial List), Court file No CV-20-00642256-00CL (Approval and Vesting Order) [TAB 12]; *2056706 Ontario Inc et al (Re)* (January 7, 2021), ONSC (Commercial List), Court File No CV-20-00638503-00CL-(Approval and Vesting Order) [TAB 13]; *Third Eye Capital Corporation v. Ressources Dianor Inc/Dianor Resources Inc.*, 2019 ONSC 508 at para 73 [TAB14]; *Peakhill Capital Inc. v Southview Gardens Limited Partnership*, 2023 BCSC 1476 ("Peakhill") (appeal to be heard) [TAB 15].

32. This Court has found that the Court has a general jurisdiction to grant a reverse vesting order under the *BIA* under both s. 183(1)(c) and s. 243 of the *BIA*, as applicable. The Court has not ruled on whether s. 39 of the *LEA* also grant the Court jurisdiction to grant an reverse vesting order.

*Payslate Inc. (Re)*, 2023 BCSC 608 ("Payslate") at paras 84-86 [TAB 16]; *Peakhill* at paras 19-25, 28.

33. While courts have granted reverse vesting orders in appropriate circumstances, a reverse vesting transaction is not standard and should be regarded "as an unusual or extraordinary measure; not an approach appropriate in any case merely because it may be more convenient or beneficial for the purchaser".

*Harte Gold Corp (Re)*, 2022 ONSC 653 ("*Harte Gold*") at para 38 [TAB 17]; *Quest University Canada (Re)*, 2020 BCSC 1883 at para 168 [TAB 18]; *Payslate* at para 87.

34. Reverse vesting orders are generally appropriate in at least three types of circumstances:

- (a) where the debtor operates in a highly-regulated environment in which its existing permits, licences or other rights are difficult or impossible to assign to a purchaser;

- (b) where the debtor is party to certain key agreements that would be similarly difficult or impossible to assign to a purchaser; and
- (c) where maintaining the existing legal entities would preserve certain Tax Attributes that would otherwise be lost in a traditional vesting order transaction.

*Arrangement relatif à Black Rock Metals Inc.*, 2022 QCCS 2828 (“**Black Rock**”) at paras 114-116 [TAB 19]; *Harte Gold* at para 71; *Pay Slate Inc. (Re)*, 2023 BCSC 977 at para 11 [TAB 20].

35. The GAS Entities’ value is tied to its business as a going concern, the continued existence of permits, licenses, and other rights granted in respect of the Project, and the Tax Attributes. Without those assets, and without certainty that all of those assets are transferable to a third party, the GAS Entities have limited or no value to any purchaser.
36. In deciding whether to grant the RV Order, this Court should consider the following questions:
- (a) Why is a reverse vesting order necessary in this case?
  - (b) Does the reverse vesting transaction produce an economic result at least as favourable as any other viable alternative?
  - (c) Is any stakeholder worse off under the reverse vesting transaction than they would have been under any viable alternative?
  - (d) Does the consideration being paid for the debtor’s business reflect the importance and value of the licences and permits (or other intangible assets) being preserved under the reverse vesting transaction?

*Harte Gold* at para 38.

37. The following factors lead to the conclusion that the Transaction ought to be approved and the RV Order granted:
- (a) the RV Order is necessary in this case as it is critical to keep the existing legal entities in place in order to preserve the business of the GAS Entities as a going concern in order to complete the Project. The Transaction allows the Purchasers to obtain control of the GAS Entities and allows the Property to remain with the GAS Entities without the complex process, additional costs, and delays associated with transferring and/or assigning the registration of licenses, permits, and agreements issued to the GAS Entities to the Purchasers, and preserves the Tax Attributes of the GAS Entities. Specifically, this includes:
    - i. the EA Certificate which was issued to the GAS Entities by the Environment Assessment Office (“**EAO**”) and which would require the EAO to agree to transfer the EA Certificate or issue a new environmental assessment certificate to the Purchasers, which is not a certainty. This process would necessarily involve delays in the already tight timeline to meet the Conditions Deadline. There would also be a risk that the EAO does not agree to transfer the EA Certificate or refuses to issue a new environmental assessment certificate to the Purchasers;

- ii. the Interim Agreement which was entered into between the GAS Entities and the Province of British Columbia (the “**Minister**”) and which would need to be assigned to the Purchasers. The Interim Agreement may or may not be transferable and it would be very difficult and cumbersome to assign. Additionally, there would be a risk that the Minister does not agree to the assignment of the Interim Agreement and/or terminates the Interim Agreement as a result of the Transaction; and
  - iii. the Tax Attributes will only have value to reduce taxes payable on future revenues of the GAS Entities and will have no value or a nominal value to any other parties outside of the Transaction. The most practical and efficient way for the stakeholders to realize on the benefits of the Tax Attributes is through the Purchase Agreement and the RV Order;
- (b) the RVO Order preserves the going-concern value of the Property. The GAS Entities’ assets of value are the EA Certificate and the Interim Agreement, which are time sensitive and governed by regulatory authorities. Without these assets, the Transaction is of no value to the Purchasers or the stakeholders of the GAS Entities. The only feasible structure for the Transaction is a sale of the equity of the GAS Entities by means of a reverse vesting order. Any other structure risks all of the value in the Property being eliminated for all of the GAS Entities’ stakeholders;
  - (c) the Transaction represents the highest and best recovery available to the GAS Entities’ stakeholders in the circumstances. Additionally, the Transaction was the only viable alternative to effect a going-concern transaction and is a requirement of the Purchasers; and
  - (d) the Receiver is not aware of any stakeholders that would be worse off under the Purchase Agreement as opposed to another viable transaction structure. No other bids were received. The Purchasers are the only secured creditors and the largest creditors by a significant margin. No subordinate creditors will receive a return from the Transaction and therefore no creditors would be worse off because of the reverse vesting transaction structure;
  - (e) the interested parties, being the counterparties to the EA Certificate and the Interim Agreement, the only agreements to which the GAS Entities is currently a party, were provided notice of this application and were served with the Second Report. The interested parties are not required to take any action or provide any services following the Transaction. The unsecured creditors were provided notice, notwithstanding that they will receive no value from the Transaction. The Purchase Agreement provides only enough consideration to compensate the Debenture Holders for the Indebtedness and the Receiver for its costs and fees of this Receivership proceeding.

Second Report at paras 35; *Black Rock* at para 116; *PaySlate* at paras 62-65.

- 38. The Receiver respectfully submits that the RV Order is appropriate in the circumstances and recommends that this Honourable Court grant the RV Order approving the Purchase Agreement and the Transaction on the terms contained therein.



Other Relief is Appropriate

39. The Receiver is seeking approval of the Reorganization Steps since it is contemplated that certain steps will be completed prior to the exit of the GAS Entities from this Receivership proceeding.
40. The Transaction provides for LP and GAS to file articles of amendment in accordance with *Canada Business Corporations Act*, RSC 1985, c C-44 (“**CBCA**”), an amended certificate of limited partnership in accordance with the *Partnership Act*, RSBC 1996, c 348 (“*Partnership Act*”), or such other documents or instruments as may be required to permit or enable and effect the steps necessary for reorganization.
41. Section 191(2) of the *CBCA* provides that, where a corporation is subject to an order under section 191(1), its articles may be amended by such order to effect any change that might lawfully be made under section 173.58 Section 173 permits the articles of the corporation to be amended to “add, change or remove any rights, privileges, restrictions and conditions ... in respect of all or any of its shares”. Additionally, subsection 176(1)(b) of the *CBCA* expressly refers to effecting (among other things) a cancellation of “all or part of the shares of a class”. The provisions permit the Court to approve the cancellation of outstanding shares as part of a corporate reorganization to give effect to the Transaction

*CBCA*, sections 191, 173, 176 [TAB 8].

42. Section 70(1) of the *Partnership Act* provides that a partnership certificate must be amended to accurately reflect the partnership agreement, as amended from time to time. A court may order the cancellation or amendment to partnership unit certificates and direct the registrar to record the cancellation or amendment of the certificate pursuant to section 71 of the *Partnership Act*.

*Partnership Act*, sections 70 and 71 [TAB 9].

43. The Receiver submits that this Honourable Court has the jurisdiction to authorize the Reorganization Steps required to implement the Transaction, which includes:
  - (a) amending the articles of LP and GAS in order to provide for the cancellation of the Existing GAS Shares and the Existing LP Units, as applicable;
  - (b) the termination and cancellation of all other subscription rights, conversion rights, options, plans, and instruments created or granted in connection with their respective share capital; and
  - (c) the issuance of the New GAS Shares in GAS and the issuance of the New LP Units in LP to each of the Purchasers in accordance with the Purchase Agreement.

**B. Approving the Receiver’s Activities**

44. The Court has inherent jurisdiction to review and approve or disapprove the activities of a court-appointed receiver. If the Receiver has met the objective test of demonstrating that it has

acted reasonably, prudently, and not arbitrarily, the Court may approve the activities of the Receiver as set out in the First Report and the Second Report.

*Leslie & Irene Dube Foundation Inc. v P218 Enterprises Ltd.*, 2014 BCSC 1855 at para 54 [TAB 21].

45. The Receiver seeks the approval of the Court with respect to its activities set out in the First Report and the Second Report. The Receiver has continued to act expeditiously and responsively to conduct the Sale Process and perform the conditions necessary under the EA Certificate in order to preserve the going concern of the business of the GAS Entities.

Second Report at paras 49.

46. The activities of the Receiver have all been necessary and conducted in accordance with the Receiver's powers as granted in the Receivership Order and, thus, the Receiver seeks approval of its activities to date.

Second Report at para 53.

### **C. Approving the Fees and Disbursements of the Receiver and Receiver's Counsel**

47. The Receivership Order expressly provides that the accounts of the Receiver are referred to a judge of this Honourable Court and that the passage of those accounts may be heard on a summary basis.

Receivership Order at para 21.

48. The timely passing of accounts should be encouraged and that insolvency professionals should not put off the assessment of their fees for undue periods of time.

*Re: Redcorp Ventures Ltd.*, 2016 BCSC 188 ("*Redcorp*") at para 28-29 [TAB 22]

49. The governing principle in determining the amount of compensation to be paid to a receiver is that the compensation "must be fair and reasonable having regard to all of the material facts and circumstances of the particular case" and includes the following considerations:

- (a) The value of the assets;
- (b) Complications and difficulties encountered by the receiver;
- (c) Degree of assistance provided by the debtor;
- (d) Time spent by the receiver;
- (e) Receiver's knowledge, experience, and skill;
- (f) Diligence and thoroughness;
- (g) Responsibilities assumed;
- (h) Results; and
- (i) Cost of comparable services.

*Federal Business Development Bank v Belyea*, (1986) 46 CBR (NS) 244 at para 12 [TAB 23]; *Bank of Montreal v Nican Trading Co*, [1990] BCJ No 340 [TAB 24].

50. Similar considerations apply to the assessment of the accounts of counsel to the Receiver.

*Redcorp* at para 33.

51. In respect of the Receiver's fees, the Receiver submits that:

- (a) The Receiver's fees were properly incurred and are commensurate with fees charged by other insolvency firms of a similar size for work of a similar size, nature, and complexity in the Province of British Columbia;
- (b) The work completed by the Receiver was delegated to the appropriate professionals in the Receiver's organization with the appropriate seniority and hourly rates; and
- (c) The Receiver's services were performed in a prudent and economical manner.

Second Report at paras 40-42, 47-49.

52. Similarly, the Receiver submits that the fees for its legal counsel, MLT Aikins LLP ("MLT Aikins"), are fair and reasonable in the circumstances as:

- (a) MLT Aikins' professional fees and disbursements were properly incurred, and commensurate with fees charged by similar firms with the expertise and capacity to serve a matter of comparable size and complexity;
- (b) The work completed by MLT Aikins was delegated to the appropriate professionals in MLT Aikins' organization with the appropriate seniority and hourly rates;
- (c) MLT Aikins' services were performed in a prudent and economical manner; and
- (d) MLT Aikins' invoices were provided to the Receiver when rendered, and all have been approved by the Receiver.

Second Report at paras 50-51.

53. The Receiver submits that its fees and disbursements, and that of its legal counsel, MLT Aikins, are fair and reasonable, particularly given the complexity of the work involved for maintaining the Project, performing the Sale Process, and the essential activities of the Receiver has undertaken, as evidenced in the First Report and the Second Report.

Second Report at para 52.

## **E. Conclusion**

54. For all of the foregoing reasons, the Receiver respectfully requests that the RV Order be granted in the draft form of Order provided to the Court.

**PART 4: MATERIAL TO BE RELIED ON**

1. Receivership Order granted by the Honourable Justice Walker on December 4, 2023;
2. Approval and Vesting Order granted by the Honourable Justice Walker on January 22, 2024;
3. First Report of the Receiver, dated January 17, 2024;
4. Second Report of the Receiver, dated March 13, 2024.

TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to this notice of application, you must, within 5 business days after service of this notice of application or, if this application is brought under Rule 9-7, within 8 business days after service of this notice of application,

file an application response in Form 33,

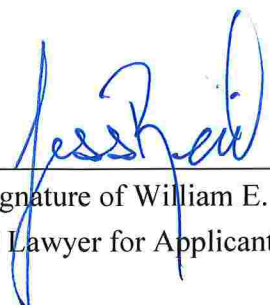
file the original of every affidavit, and of every other document, that

1. you intend to refer to at the hearing of this application, and
2. has not already been filed in the proceeding, and

serve on the applicant 2 copies of the following, and on every other party of record one copy of the following:

3. a copy of the filed application response;
4. a copy of each of the filed affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on that person;
5. if this application is brought under Rule 9-7, any notice that you are required to give under Rule 9-7(9).

Date: March 14, 2024

  
 Signature of William E. J. Skelly/ Jess R. Reid  
☒ Lawyer for Applicant

***To be completed by the court only:***

Order made

in the terms requested in paragraphs ..... of Part 1 of this  
notice of application

with the following variations and additional terms:

.....  
.....  
.....

Date: .....[dd/mmm/yyyy].....

\_\_\_\_\_  
Signature of ☐ Judge ☐ Master



**Appendix****(4) THIS APPLICATION INVOLVES THE FOLLOWING:**

- ☐ discovery: comply with demand for documents
- ☐ discovery: production of additional documents
- ☐ other matters concerning document discovery
- ☐ extend oral discovery
- ☐ other matter concerning oral discovery
- ☐ amend pleadings
- ☐ add/change parties
- ☐ summary judgment
- ☐ summary trial
- ☐ service
- ☐ mediation
- ☐ adjournments
- ☐ proceedings at trial
- ☐ case plan orders: amend
- ☐ case plan orders: other
- ☐ experts
- ☒ other

**SCHEDULE "A"**  
**ORDER MADE AFTER APPLICATION**  
**(RV Order)**

Court No. S-236559  
Vancouver Registry

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

BETWEEN:

**AQUILINI DEVELOPMENT LIMITED PARTNERSHIP,  
GARIBALDI RESORT MANAGEMENT COMPANY LTD. and  
1413994 B.C. LTD.**

PETITIONERS

AND:

**GARIBALDI AT SQUAMISH LIMITED PARTNERSHIP  
and GARIBALDI AT SQUAMISH INC.**

RESPONDENTS

**ORDER MADE AFTER APPLICATION**  
**(Purchase Agreement Approval and Reverse Vesting Order)**

BEFORE THE HONOURABLE	)	
	)	MARCH 15, 2024
JUSTICE WALKER	)	

**ON THE APPLICATION** of the Applicant, Ernst & Young Inc., in its capacity as the court-appointed Receiver and Manager (the “**Receiver**”), of the assets, undertakings, and property (collectively, the “**Property**”) of Garibaldi at Squamish Limited Partnership (“**LP**”) and Garibaldi at Squamish Inc. (“**GAS**”, and together with LP, the “**GAS Entities**”), coming on for hearing in person at Vancouver, British Columbia, on the 15<sup>th</sup> day of March, 2024; **AND ON HEARING** William E.J. Skelly, counsel for the Receiver, Vicki Tickle, counsel for Aquilini Development Limited Partnership (“**ADLP**”), Garibaldi Resort Management Company Ltd. (“**GRMC**”), and 1413994 B.C. Ltd. (“**141**”, and collectively with ADLP and GRMC, the “**Purchasers**”), and those other counsel listed on **Schedule “A”** hereto; **AND UPON READING** the materials filed, including the First Report of the Receiver, dated January 17, 2024 (the “**First Report**”), and the Second Report of the Receiver, dated March 14, 2024 (the “**Second Report**”); **AND** pursuant to the *Bankruptcy and Insolvency Act*, RSC 1985 c B-3, as amended (“**BIA**”), the *Law and Equity Act*, RSBC 1996 c. 253, the *British Columbia Supreme Court Civil Rules*, BC Reg 168/2009, and the inherent jurisdiction of this Honourable Court;

## **THIS COURT ORDERS AND DECLARES THAT:**

### **Service**

1. The time for service of the Notice of Application for this order (the “**Order**”) is hereby abridged and deemed good and sufficient such that this Notice of Application is properly returnable today, and service of the Notice of Application on any other interested party is hereby dispensed with.
2. 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 Purchasers or the Purchasers’ solicitors.
    - (v) and service on any other person is hereby dispensed with.
3. 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.

### **Defined Terms**

4. Capitalized terms used herein but not otherwise defined in this Order shall have the same meaning as given to such terms in the Order granted on December 4, 2023 by the Honourable Justice Walker (the “**Receivership Order**”), the Second Report, the purchase agreement among the Receiver and the Purchasers dated March 13, 2024 (the “**Purchase Agreement**”) attached as Appendix “C” to the Second Report, and the First Report.

### **Approval of the Transaction**

5. The Stalking Horse Bid put forward by the Purchasers during the sale and investment solicitation process undertaken by the Receiver is the Successful Bid and the Purchasers are the Successful Bidder.
6. The Purchase Agreement and sale transaction contemplated therein (the “**Transaction**”) are hereby approved and the Purchase Agreement is commercially reasonable. The execution of the Purchase Agreement by the Receiver, for and on behalf of the GAS Entities, and the Purchasers is hereby authorized and approved, with such minor amendments as the Receiver and the Purchasers may deem necessary or as may be required by the Receiver and the Purchasers pursuant to the terms of the Purchase Agreement. The Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or

desirable for the completion of the Transaction, including without limitation, issuance of the New GAS Shares and the New LP Units.

7. This Order shall constitute the only authorization required by the Receiver and the Purchasers to proceed with the Transaction and no shareholder, unitholder, or other approval shall be required in connection therewith.

**ExcludedCo**

8. On or before the Closing Date, the Receiver shall incorporate a subsidiary of GAS (such subsidiary, "**ExcludedCo**") and, to the extent required, a representative of the Receiver may be the sole director of ExcludedCo for the sole purposes of satisfying incorporating requirements of ExcludedCo. Immediately following incorporation, the sole director of ExcludedCo shall resign.
9. As of the Closing Time, as defined in the Receiver's Closing Certificate substantially in the form attached hereto as **Schedule "B"** (the "**Receiver's Closing Certificate**"):
  - (a) ExcludedCo shall be deemed to be a company to which the *BIA* applies;
  - (b) ExcludedCo shall be added as a respondent in this Receivership proceeding and any reference in any Order of this Court in respect of this Receivership proceeding to:
    - (i) a "Respondent" shall refer to ExcludedCo, *mutatis mutandis*; and
    - (ii) "Property" shall include the current and future assets, licenses, undertakings and properties of every nature and kind whatsoever, and wherever situate, including all proceeds thereof, of ExcludedCo, as applicable, including the Excluded Assets;
  - (c) the GAS Entities shall be deemed to be released from the purview of any Order of this Court granted in respect of this Receivership proceeding, save and except for this Order, the terms of which as they relate to the GAS Entities shall continue to apply in all respects to the GAS Entities; and
  - (d) The title and style of cause of this Receivership proceeding is hereby, and shall be deemed to be, amended as follows:

AQUILINI DEVELOPMENT LIMITED PARTNERSHIP, GARIBALDI RESORT  
MANAGEMENT COMPANY LTD. and 1413994 B.C. LTD.

AND

[EXCLUDEDCO].

10. Any document filed after the Closing Date (other than the Receiver's Closing Certificate contemplated by this Order) shall be filed using such revised title and style of cause of proceedings.



## Reorganization

11. Upon delivery of the Receiver's Closing Certificate to the Purchasers, the following (collectively, the "**Reorganization Steps**") shall occur and be deemed to have occurred on the Closing Date in the following sequence:

- (a) first, all of the right, title, and interest of the GAS Entities in and to the Excluded Assets shall be transferred to, assumed by and vested absolutely and exclusively in ExcludedCo, without any payment by or other consideration from ExcludedCo, and in each case, all Excluded Liabilities shall continue to attach to such Excluded Assets with the same nature and priority as they had immediately prior to their transfer;
- (b) second, all Excluded Liabilities of the GAS Entities shall be transferred to, assumed by and vest absolutely and exclusively in the name of ExcludedCo, without any payment by or other consideration to ExcludedCo, and the Excluded Liabilities of the GAS Entities shall be novated and become obligations of ExcludedCo and shall no longer be obligations of the GAS Entities. The GAS Entities shall be forever released and discharged from such Excluded Liabilities and all Encumbrances securing the Excluded Liabilities cancelled as against the GAS Entities;
- (c) third, the GAS Entities and all of the Retained Assets, including, but not limited to, all of the GAS Entities' remaining assets, undertakings, and properties of every nature and kind whatsoever and wherever situate shall be and are hereby forever released and discharged from all Excluded Liabilities, including all related Claims, Liabilities, and Encumbrances, other than Retained Liabilities listed in Schedule "D" to the Purchase Agreement, and are hereby expunged and discharged as against the Retained Assets and the GAS Entities, and the Retained Assets will be retained by the GAS Entities free and clear of all Encumbrances except the Retained Liabilities;
- (d) fourth, without the need for any further action by any of GAS' shareholders, directors or officers, in consequence of the GAS Entities' failure to pay the Debentures, GAS shall issue to the Purchasers the New GAS Shares, in the following denominations:
  - (i) to 141, 9,005 Class A shares;
  - (ii) to ADLP, 13,162 Class A shares; and
  - (iii) to GRMC, 77,833 Class A shares.

All of the right, title and interest in and to the New GAS Shares issued by GAS to the Purchasers shall vest absolutely in the Purchaser, in each case free and clear of and from any and all Claims including, without limiting the generality of the foregoing, any Encumbrances, and for greater certainty, all of the Encumbrances affecting or relating to the New GAS Shares and/or the Retained Assets are hereby expunged and discharged as against the New GAS Shares;

- (e) fifth, GAS, in its capacity as general partner of LP, without the need for any further action by any of GAS's shareholders, directors or officers, shall issue to the Purchasers the New LP Units in the following denominations:

- (i) to 141, 1 limited partner unit;
- (ii) to ADLP, 1 limited partner unit; and
- (iii) to GRMC, 1 limited partner unit.

All of the right, title and interest in and to the New LP Units issued by GAS to the Purchasers shall vest absolutely in the Purchasers, in each case free and clear of and from any and all Claims including, without limiting the generality of the Encumbrances, and for greater certainty, all of the Encumbrances affecting or relating to the New LP Units and/or the Retained Assets are hereby expunged and discharged as against the New LP Units;

- (f) sixth, any and all outstanding shares of GAS, other than the New GAS Shares, and any and all options, warrants, agreements, commitments of any character whatsoever, and other documents or instruments governing or having been created or granted in connection with the share capital of GAS existing prior to the Closing Date of the Transaction shall be deemed terminated, cancelled, and extinguished without any consideration or any other Claim against the GAS Entities or ExcludedCo, and all certificates formerly representing any such shares shall be deemed to be cancelled and shall be null and void;
- (g) seventh, any and all outstanding partnership units of LP existing prior to the Closing Date, other than the New LP Units and the Existing GP Interest, and any and all other rights, entitlements, agreements, and commitments of any character whatsoever relating to the partnership units of LP shall be deemed cancelled and extinguished without any consideration or any other Claim against the GAS Entities or ExcludedCo therefor, and all certificates formerly representing any such units shall be deemed to be cancelled and shall be null and void;
- (h) eighth, the GAS Entities shall and shall be deemed to cease to be Respondents in this Receivership Proceeding, and the GAS Entities shall be deemed to be released from the purview of Receivership Order and all other Orders of this Court granted in respect of this Receivership proceeding, save and except for this Order, the provisions of which (as they related to the GAS Entities) shall continue to apply in all respect; and
- (i) ninth, any directors of GAS Inc. immediately prior to the Closing Time shall be deemed to have resigned as of the Closing Time.

12. The Receiver and ExcludedCo, in completing the transactions contemplated in the Reorganization Steps, are authorized:

- (a) to execute and deliver any documents and assurances governing or giving effect to the Reorganization Steps as the Receiver and ExcludedCo, in their discretion, may deem to be reasonable, necessary or advisable to conclude the Reorganization Steps, including the execution of all such ancillary documents as may be contemplated in the Purchase Agreement or as are reasonable, necessary or desirable for the completion and implementation of the Reorganization Steps, and all such ancillary documents are hereby ratified, approved and confirmed; and
- (b) to take such steps as are, in the opinion of the Receiver and ExcludedCo, reasonable, necessary, advisable or incidental to the implementation of the Reorganization Steps.

13. From and after the Closing Time:

- (a) the nature of the Retained Liabilities, including, without limitation, their amount and their secured or unsecured status, shall not be affected or altered as a result of the Transactions or this Order;
- (b) for the purposes of determining the nature and priority of Claims, all Claims and Encumbrances shall attach to the Excluded Assets with the same priority as they had immediately prior to the Transaction, as if the Excluded Assets and Excluded Liabilities had not been transferred to ExcludedCo and remained liabilities of Garibaldi;
- (c) the nature of the Excluded Liabilities, including, without limitation, their amount and their secured or unsecured status, shall not be affected or altered as a result of their transfer to the ExcludedCo;
- (d) any Person that prior to the Closing Time had a valid right or claim against the GAS Entities under or in respect of any Excluded Liability (each an “**Excluded Liability Claim**”) shall no longer have such right or claim against the GAS Entities but will have an equivalent Excluded Liability Claim against ExcludedCo, in respect of the Excluded Liability from and after the Closing Time in its place and stead, and nothing in this Order limits, lessens or extinguishes the Excluded Liability Claim of any Person as against ExcludedCo; and
- (e) the Excluded Liability Claim of any Person against ExcludedCo following the Closing Time shall have the same rights, priority and entitlement as such Excluded Liability Claim had against the GAS Entities prior to the Closing Time.

- 14. The Receiver shall file with the Court a copy of the Receiver’s Closing Certificate forthwith after delivery thereof.
- 15. This Order shall constitute the only authorization required by the Receiver or ExcludedCo to proceed with the Transaction, including, without limitation, the Reorganization Steps and no director or shareholder approval shall be required and no authorization, approval or other action by or notice to or filing with any governmental authority or regulatory body exercising

jurisdiction in respect of the GAS Entities is required for the due execution, delivery, and performance by the Receiver and ExcludedCo of the Purchase Agreement and the completion of the Transaction including, without limitation, the Reorganization Steps.

16. The Receiver is hereby permitted to execute and file articles of amendment in accordance with the *Canada Business Corporations Act*, RSC 1985, c C-44, an amended certificate of limited partnership in accordance with the *Partnership Act*, RSBC 1996, c 348, or such further and other documents or instruments as may be required to permit or enable and effect the Reorganization Steps, including, without limitation, the cancellation of the Existing GAS Shares and the Existing LP Interest, issuance of the New GAS Shares and the New LP Units, the appointment and/or resignation of directors of GAS, and such articles, documents or other instruments shall be deemed to be duly authorized, valid, and effective notwithstanding any requirement under federal or provincial law to obtain director or shareholder approval with respect to such actions or to deliver any statutory declarations that may otherwise be required under corporate law to effect the Reorganization Steps.
17. The Director, as defined in the *Business Corporations Act*, SBC 2002, c 57, as may be amended, shall accept and receive the articles of amendment, amended certificate of limited partnership or such further and other documents or instruments as may be required to permit or enable and effect the Reorganization Steps, filed by either the Receiver or ExcludedCo, as the case may be.
18. Upon delivery thereto of the Receiver's Closing Certificate and upon filing of a certified copy of this Order, together with any applicable registration fees, all governmental authorities (collectively, "**Governmental Authorities**") are hereby authorized, requested and directed to accept delivery of such Receiver's Closing 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 in order to give effect to the terms of this Order and the Purchase Agreement, including, but in no way limited to the Reorganization Steps.
19. 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 Purchase Agreement, including but in no way limited to the Reorganization Steps. Presentment of this Order and the Receiver's Closing 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 registration such that the New GAS Shares, the New LP Units, the Retained Assets shall be free from all Encumbrances, Liabilities, and Claims, except for the Retained Liabilities.
20. Pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act* or Section 18(10)(o) of the *British Columbia Personal Information Protection Act*, the Receiver and their respective advisors are authorized and permitted to disclose and transfer to the Purchasers, and their advisors, personal information of identifiable individuals and banking information of the GAS Entities but only to extent required to complete the Transaction pursuant to the Purchase Agreement. The Purchaser shall maintain and protect the

privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by GAS Entities.

### **General**

21. In addition to, and without in any way limiting, the rights and protections afforded to the Receiver pursuant to the Receivership Order made in this Receivership proceeding, the Receiver and its employees and representatives shall not incur any liability as a result of acting in accordance with the Transaction, the Purchase Agreement, this Order, or administering ExcludedCo, save and except for any gross negligence or wilful misconduct on the part of such parties. All protections afforded to the Receiver pursuant to the Receivership Order, any further order granted in this Receivership proceeding, or the *BIA* shall continue to apply.
22. The Receiver shall not, as a result of the Transaction, the Purchase Agreement, this Order, or any matter contemplated hereby: (i) be deemed to have taken part in the management or supervision of the management of GAS Entities, or to have taken or maintained possession or control of the business or property of the GAS Entities; or (ii) be deemed to be in possession of any property of the GAS Entities, within the meaning of any applicable environmental legislation or otherwise.
23. Notwithstanding:
  - (a) the pendency of this Receivership proceeding and any declaration of insolvency made herein;
  - (b) the pendency of any applications for a bankruptcy order now or hereafter issued pursuant to the *BIA* in respect of the GAS Entities or ExcludedCo, and any bankruptcy order issued pursuant to any such applications;
  - (c) any assignment in bankruptcy made in respect of the GAS Entities or ExcludedCo; and
  - (d) the provisions of any federal or provincial statute,

the execution of the Purchase Agreement, the implementation of the Reorganization Steps (including the transfer of the Excluded Assets and Excluded Liabilities to ExcludedCo) and the implementation of the Transaction shall be binding on any trustee in bankruptcy that may be appointed in respect of the GAS Entities or ExcludedCo, and shall not be void or voidable by creditors of the GAS Entities or ExcludedCo, 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.
24. The Purchasers shall be authorized to take all steps as may be necessary to effect the discharge of the Encumbrances as against the New GAS Shares, the New LP Interest, and the Retained Assets.



25. The Receiver, with the consent of the Purchaser, shall be at liberty to extend the Closing Date to such later date as those parties may agree without the necessity of a further Order of this Court.
26. The Receiver in addition to its prescribed rights and obligations under the BIA, is authorized, entitled and empowered to assign or cause to be assigned, at any time after the Closing Date, ExcludedCo into bankruptcy and the Receiver shall be entitled but not obligated to act as trustee in bankruptcy thereof.
27. This Order shall have full force and effect in all provinces and territories in Canada.
28. Each of the Receiver, the Purchasers and the GAS Entities shall be authorized to apply as it may consider necessary or desirable, with or without notice, to any other court or administrative body, whether in Canada, the United States or elsewhere, for orders which aid and complement this Order. All courts and administrative bodies of all such jurisdictions are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, the Purchasers and the GAS Entities as may be deemed necessary or appropriate for that purpose.
29. This Court hereby requests the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada to give effect to this Order and to assist the Receiver, the Purchasers and the GAS Entities, and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, the Purchasers and the GAS Entities, as may be necessary or desirable to give effect to this Order or to assist the Receiver, the Purchasers and the GAS Entities and their respective agents in carrying out the terms of this Order.
30. Endorsement of this Order by counsel appearing on this application, except for counsel for the Receiver, is hereby dispensed with.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

---

Signature of William E.J. Skelly

☐ Party ☒ Lawyer for the Applicant

BY THE COURT

---

REGISTRAR

**Schedule "A"**

(List of Counsel)

[illegible]

Schedule "B"

Receiver's Closing Certificate

Court No. S-236559

Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

AQUILINI DEVELOPMENT LIMITED PARTNERSHIP,  
GARIBALDI RESORT MANAGEMENT COMPANY LTD. and  
1413994 B.C. LTD.

PETITIONERS

AND:

GARIBALDI AT SQUAMISH LIMITED PARTNERSHIP  
and GARIBALDI AT SQUAMISH INC.

RESPONDENTS

RECEIVER'S CLOSING CERTIFICATE

- A. Pursuant to an Order of the Honourable Justice Walker of the British Columbia Supreme Court (the "**Court**") dated December 4, 2023, Ernst & Young Inc. was appointed as the receiver and manager (the "**Receiver**") of all undertaking, property, and assets of Garibaldi at Squamish Limited Partnership ("**LP**") and Garibaldi at Squamish Inc. ("**GAS**", and together with LP, the "**GAS Entities**") in these proceedings.
- B. Unless otherwise indicated herein, capitalized terms used and not otherwise defined in this Receiver's Closing Certificate have the meanings set out in the Purchase Agreement.
- C. Pursuant to an Order of the Honourable Justice Walker dated March 15, 2024 (the "**Reverse Vesting Order**"), the Court approved, *inter alia*, the purchase agreement dated March 13, 2024 (the "**Purchase Agreement**") between the Receiver and Aquilini Development Limited Partnership ("**ADLP**"), Garibaldi Resort Management Company Ltd. ("**GRMC**"), and 1413994 B.C. Ltd. ("**141**", and collectively with ADLP and GRMC, the "**Purchasers**") and the transaction contemplated therein (the "**Transaction**") and ordered, *inter alia*:
- a. the vesting of all of the GAS Entities' right, title, and interest in and to the Excluded Assets and the Excluded Liabilities in the newly formed subsidiary of GAS ("**ExcludedCo**");

- b. the discharge of the Claims and Encumbrances against the GAS Entities and the Retained Assets, except for the Retained Liabilities;
- c. certain ancillary relief set out the Reverse Vesting Order to become effective upon the Receiver filing a certificate confirming that the Purchasers have satisfied the Purchase Consideration and all conditions to closing the Transaction set out in the Purchase Agreement have been satisfied or waived by the Receiver and the Purchasers.

**THE RECEIVER CERTIFIES** the following:

1. The Purchasers have satisfied the Purchase Consideration in accordance with the Purchase Agreement.
2. The conditions to closing the Transaction, as set out in the Purchase Agreement, have been satisfied or waived by the Receiver and the Purchasers.
3. The Transaction has been completed to the satisfaction of the Receiver.
4. This Certificate was delivered by the Receiver at \_\_\_\_\_ [a.m./p.m.] on \_\_\_\_\_, 2024.

**ERNST & YOUNG INC. in its capacity as receiver and manager of the assets, undertaking and property of GARIBALDI AT SQUAMISH LIMITED PARTNERSHIP and GARIBALDI AT SQUAMISH INC., and not in its personal or corporate capacity**

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

No. S-236559  
Vancouver Registry

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

BETWEEN:

AQUILINI DEVELOPMENT LIMITED PARTNERSHIP,  
GARIBALDI RESORT MANAGEMENT COMPANY LTD. and  
1413994 B.C. LTD.

PETITIONERS

AND:

GARIBALDI AT SQUAMISH LIMITED PARTNERSHIP and  
GARIBALDI AT SQUAMISH INC.  
RESPONDENTS

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**ORDER**  
**(REVERSE VESTING ORDER)**

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**MLT AIKINS**

WESTERN CANADA'S LAW FIRM

Suite 2600 – 1066 West Hastings Street  
Vancouver BC V6E 3X1  
Phone: 604-682-5764

Attention: William E.J. Skelly/ Jess R. Reid  
File No.: 7230.46

**SCHEDULE "B"**  
**ORDER MADE AFTER APPLICATION**  
**(Approval Order)**

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

AQUILINI DEVELOPMENT LIMITED PARTNERSHIP,  
GARIBALDI RESORT MANAGEMENT COMPANY LTD. and  
1413994 B.C. LTD.

PETITIONERS

AND:

GARIBALDI AT SQUAMISH LIMITED PARTNERSHIP  
and GARIBALDI AT SQUAMISH INC.

RESPONDENTS

**ORDER MADE AFTER APPLICATION**  
**(Approval of Receiver Activities and Receiver Fees)**

BEFORE THE HONOURABLE )  
JUSTICE WALKER ) MARCH 15, 2024  
)

**ON THE APPLICATION** of the Applicant, Ernst & Young Inc., in its capacity as the court-appointed Receiver and Manager (the “**Receiver**”), of the assets, undertakings, and property of Garibaldi at Squamish Limited Partnership and Garibaldi at Squamish Inc., coming on for hearing in person at Vancouver, British Columbia, on the 15<sup>th</sup> day of March, 2024; **AND ON HEARING** William E.J. Skelly, counsel for the Receiver, Vicki Tickle, counsel for Aquilini Development Limited Partnership, Garibaldi Resort Management Company Ltd., and 1413994 B.C. Ltd., and those other counsel listed on **Schedule “A”** hereto; **AND UPON READING** the materials filed, including the First Report of the Receiver, dated January 17, 2024 (the “**First Report**”), and the Second Report of the Receiver, dated March 14, 2024 (the “**Second Report**”); **AND** pursuant to the *Bankruptcy and Insolvency Act*, RSC 1985 c B-3, as amended, the *Law and Equity Act*, RSBC 1996 c. 253, the British Columbia *Supreme Court Civil Rules*, BC Reg 168/2009, and the inherent jurisdiction of this Honourable Court;

**THIS COURT ORDERS AND DECLARES THAT:**

**Service**

1. The time for service of the Notice of Application for this order (the “**Order**”) is hereby abridged and deemed good and sufficient such that this Notice of Application is properly returnable today, and service of the Notice of Application on any other interested party is hereby dispensed with.



2. 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 Purchasers or the Purchasers' solicitors.
  - (v) and service on any other person is hereby dispensed with.
3. 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.

#### **Receiver's Activities**

4. The actions, conduct, and activities of the Receiver, as outlined in the First Report and the Second Report, are hereby approved.

#### **Receiver and Receiver's Counsel Fees**

5. The fees and disbursements of the Receiver and its legal counsel, MLT Aikins LLP, as outlined in the Second Report, are hereby approved.
6. Endorsement of this Order by counsel appearing on this application, except for counsel for the Receiver, is hereby dispensed with.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

\_\_\_\_\_  
Signature of William E.J. Skelly

☐ Party ☒ Lawyer for the Applicant

BY THE COURT

\_\_\_\_\_  
REGISTRAR

**Schedule "A"**

(List of Counsel)

[illegible]

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Vancouver Registry

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

**BETWEEN:**

AQUILINI DEVELOPMENT LIMITED PARTNERSHIP,  
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**PETITIONERS**

**AND:**

GARIBALDI AT SQUAMISH LIMITED PARTNERSHIP and  
GARIBALDI AT SQUAMISH INC.  
**RESPONDENTS**

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**ORDER  
(APPROVAL ORDER)**

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**IN THE SUPREME COURT OF BRITISH COLUMBIA**

**BETWEEN:**

AQUILINI DEVELOPMENT LIMITED PARTNERSHIP,  
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1413994 B.C. LTD.

**PETITIONERS**

**AND:**

GARIBALDI AT SQUAMISH LIMITED PARTNERSHIP and  
GARIBALDI AT SQUAMISH INC.

**RESPONDENTS**

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**NOTICE OF APPLICATION  
(SALE APPROVAL, REVERSE VESTING ORDER,  
RECEIVER APPROVALS)**

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