

COURT FILE NUMBER 2101-05682

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

PLAINTIFF ATB FINANCIAL

DEFENDANTS W.A. GRAIN HOLDINGS INC., 1309497 ALBERTA LTD. (o/a W.A. GRAIN & PULSE SOLUTIONS), NEW LEAF ESSENTIALS (WEST) LTD., NEW LEAF ESSENTIALS (EAST) LTD., and 1887612 ALBERTA LTD.

APPLICANT BDO CANADA LIMITED, in its capacity as receiver and manager of W.A. GRAIN HOLDINGS INC., 1309497 ALBERTA LTD. (o/a W.A. GRAIN & PULSE SOLUTIONS), NEW LEAF ESSENTIALS (WEST) LTD., NEW LEAF ESSENTIALS (EAST) LTD., and 1887612 ALBERTA LTD.

DOCUMENT **APPROVAL AND VESTING ORDER (Sale by Receiver)**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT MLT AIKINS LLP
Barristers and Solicitors
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File: 0128056.00003



DATE ON WHICH ORDER WAS PRONOUNCED: SEPTEMBER 23, 2021

LOCATION WHERE ORDER WAS PRONOUNCED: CALGARY, ALBERTA

NAME OF JUSTICE WHO MADE THIS ORDER: JUSTICE DARIO

UPON THE APPLICATION by BDO Canada Limited, in its capacity as the Court-appointed receiver (the **"Receiver"**) of the undertakings, property and assets of W.A. Grain Holdings Inc., 1309497 Alberta Ltd., o/a W.A. Grain & Pulse Solutions, 1887612 Alberta Ltd., New Leaf Essentials (West) Ltd. and New Leaf Essentials (East) Ltd. (collectively, the **"Debtors"**) for an order approving the sale transaction (the **"Transaction"**) contemplated by an

asset purchase agreement (the “**Asset Purchase Agreement**”) between the Receiver and 2371394 Alberta Ltd. (the “**Purchaser**”) dated August 30, 2021 and appended in full in Confidential Appendix 3 of the Second Report of the Receiver dated September 10, 2021 (the “**Second Report**”), and vesting in the Purchaser (or its nominee) the Debtor’s right, title and interest in and to the assets described in the Asset Purchase Agreement and **Schedule “B”** (the “**Purchased Assets**”);

AND UPON HAVING READ the Receivership Order dated April 26, 2021 (the “**Receivership Order**”), the Second Report, the Receiver’s Brief of Law filed September 15, 2021 and the Affidavit of Service of Joy Mutuku filed September 22, 2021; **AND UPON HEARING** the submissions of counsel for the Receiver and all other interested parties present;

IT IS HEREBY ORDERED AND DECLARED THAT:

SERVICE

1. Service of notice of this application and supporting materials is hereby declared to be good and sufficient, no other person is required to have been served with notice of this application and time for service of this application is abridged to that actually given.

APPROVAL OF TRANSACTION

2. The Transaction is hereby approved and execution of the Asset Purchase Agreement by the Receiver is hereby authorized and approved, with such minor amendments as the Receiver may deem necessary. The Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for completion of the Transaction and conveyance of the Purchased Assets to the Purchaser (or its nominee).

VESTING OF PROPERTY

3. Upon 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 Closing Certificate**”), all of the Debtor’s right, title and interest in and to the Purchased Assets listed in **Schedule “B”** hereto shall vest absolutely 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, royalties, options, rights of pre-

emption, 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) any charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Alberta) or any other personal property registry system;
- (c) any liens or claims of lien under the *Builders' Lien Act* (Alberta); and
- (d) those Claims listed in **Schedule "C"** hereto (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 "D" (collectively, "**Permitted Encumbrances**"))

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

4. Upon delivery 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 including those referred to below in this paragraph (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 to convey to the Purchaser or its nominee clear title to the Purchased Assets subject only to Permitted Encumbrances. Without limiting the foregoing:

- (a) the Registrar of Land Titles ("**Land Titles Registrar**") for the lands defined below shall and is hereby authorized, requested and directed to forthwith:
 - (i) cancel existing Certificates of Title No. 202 149 251 for those lands and premises municipally described as 5111 – 48 Street, Bashaw, Alberta, T0B 0H0, and legally described as:

PLAN 8120619
 BLOCK 101
 LOT 4
 EXCEPTING THEREOUT ALL MINES AND MINERALS
 AREA: 0.812 HECTARES (2.01 ACRES) MORE OR LESS

(the "**Lands**")

- (ii) issue a new Certificate of Title for the Lands in the name of the Purchaser (or its nominee), namely, 2371394 Alberta Ltd.;
 - (iii) transfer to the New Certificate of Title the existing instruments listed in **Schedule "D"**, to this Order, and to issue and register against the New Certificate of Title such new caveats, utility rights of ways, easements or other instruments as are listed in **Schedule "D"**; and
 - (iv) discharge and expunge the Encumbrances listed in **Schedule "C"** to this Order and discharge and expunge any Claims including Encumbrances (but excluding Permitted Encumbrances) which may be registered after the date of the Asset Purchase Agreement against the existing Certificate of Title to the Lands;
- (b) 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 Asset Purchase Agreement. 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 registrations against any of the Purchased Assets of any Claims including 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 Purchased Assets is required for the due execution, delivery and performance by the Receiver of the Asset Purchase Agreement.
7. Upon delivery of the Receiver's Closing Certificate together with a certified copy of this Order, this Order shall be immediately registered by the Land Titles Registrar notwithstanding the requirements of section 191(1) of the *Land Titles Act*, RSA 2000, c.L-7 and notwithstanding that the appeal period in respect of this Order has not elapsed. The Land Titles Registrar is hereby directed to accept all Affidavits of Corporate Signing Authority submitted by the Receiver in its capacity as Receiver of the Debtor and not in its personal capacity.
8. For the purposes of determining the nature and priority of Claims, net proceeds from the sale of the Purchased Assets (to be held in an interest bearing trust account by the Receiver) shall stand in the place and stead of the Purchased Assets from and after delivery of the Receiver's Closing Certificate and all Claims including Encumbrances (but excluding Permitted Encumbrances) shall not attach to, encumber or otherwise form a charge, security interest, lien, or other Claim against the Purchased Assets and may be asserted against the net proceeds from sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased 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. Unless otherwise ordered (whether before or after the date of this Order), the Receiver shall not make any distributions to creditors of net proceeds from sale of the Purchased Assets without further order of this Court, provided however the Receiver may apply any part of such net proceeds to repay any amounts the Receiver has borrowed for which it has issued a Receiver's Certificate pursuant to the Receivership Order.
9. Except as expressly provided for in the Asset Purchase Agreement 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.

10. Upon completion of the Transaction, the Debtor and all persons who claim by, through or under the Debtor in respect of the Purchased Assets, and all persons or entities having any Claims of any kind whatsoever in respect of the Purchased 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 Purchased Assets, and to the extent that any such persons or entities remain in the possession or control of any of the Purchased Assets, or any artifacts, certificates, instruments or other indicia of title representing or evidencing any right, title, estate, or interest in and to the Purchased Assets, they shall forthwith deliver possession thereof to the Purchaser (or its nominee).
11. The Purchaser (or its nominee) shall be entitled to enter into and upon, hold and enjoy the Purchased 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.
12. Immediately upon closing of the Transaction, holders of Permitted Encumbrances shall have no claim whatsoever against the Receiver.
13. The Receiver is directed to file with the Court a copy of the Receiver's Closing Certificate forthwith after delivery thereof to the Purchaser (or its nominee).
14. Pursuant to clause 7(3)(c) of the *Personal Information Protection and Electronic Documents Act* (Canada) and section 20(e) of the *Alberta Personal Information Protection Act*, the Receiver is authorized and permitted to disclose and transfer to the Purchaser (or its nominee) all human resources and payroll information in the Debtor's records pertaining to the Debtor's past and current employees. The Purchaser (or its nominee) 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) to which the Debtor was entitled.

MISCELLANEOUS MATTERS

15. 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 Purchased 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.

- 16. 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.
- 17. 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.
- 18. 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://www.bdo.ca/en-ca/extranets/wagrainholdings/>

and service on any other person is hereby dispensed with.

19. 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.

A handwritten signature in black ink, consisting of a large, stylized 'C' followed by a 'D' and a long horizontal flourish extending to the right.

Justice of the Court of Queen's Bench of Alberta

Schedule "A"**Form of Receiver's Certificate**

COURT FILE NUMBER	2101-05682
COURT	COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE	CALGARY
PLAINTIFF	ATB FINANCIAL
DEFENDANTS	W.A. GRAIN HOLDINGS INC., 1309497 ALBERTA LTD. (o/a W.A. GRAIN & PULSE SOLUTIONS), NEW LEAF ESSENTIALS (WEST) LTD., NEW LEAF ESSENTIALS (EAST) LTD., and 1887612 ALBERTA LTD.
APPLICANT	BDO CANADA LIMITED, in its capacity as receiver and manager of W.A. GRAIN HOLDINGS INC., 1309497 ALBERTA LTD. (o/a W.A. GRAIN & PULSE SOLUTIONS), NEW LEAF ESSENTIALS (WEST) LTD., NEW LEAF ESSENTIALS (EAST) LTD., and 1887612 ALBERTA LTD.
DOCUMENT	RECEIVER'S CERTIFICATE
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	MLT AIKINS LLP Barristers and Solicitors 2100, 222 3 rd Avenue S.W. Calgary, Alberta T2P 0B4 Phone: 403.693.5420 Fax: 403.508.4349 Attention: Ryan Zahara File: 0128056.00003

RECITALS

- A. Pursuant to an Order of the Honourable Justice D.R. Mah of the Court of Queen's Bench of Alberta, Judicial District of Calgary (the "**Court**") dated April 26, 2021, BDO Canada Limited was appointed as the receiver (the "**Receiver**") of the undertakings, property and assets of W.A. Grain Holdings Inc., 1309497 Alberta Ltd., o/a W.A. Grain & Pulse Solutions, 1887612 Alberta Ltd., New Leaf Essentials (West) Ltd. and New Leaf Essentials (East) Ltd. (collectively, the "**Debtors**").

- B. Pursuant to an Order of the Court dated September 23, 2021, the Court approved the asset purchase agreement made as of August 30, 2021 (the “**Asset Purchase Agreement**”) between the Receiver and 2371394 Alberta Ltd. (the “**Purchaser**”) and provided for the vesting in the Purchaser of the Debtor’s right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased 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 Purchased Assets; (ii) that the conditions to Closing as set out in Article 6 of the Asset Purchase Agreement 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, capitalized terms have the meanings set out in the Asset Purchase Agreement.

THE RECEIVER CERTIFIES the following:

1. The Purchaser (or its nominee) has paid and the Receiver has received the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the Asset Purchase Agreement;
2. The conditions to Closing as set out in section 6 of the Asset Purchase Agreement 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.
4. This Certificate was delivered by the Receiver at **[Time]** on **[Date]**.

BDO Canada Limited in its capacity as Receiver of the undertakings, property and assets of W.A. Grain Holdings Inc., 1309497 Alberta Ltd., o/a W.A. Grain & Pulse Solutions, 1887612 Alberta Ltd., New Leaf Essentials (West) Ltd. and new Leaf Essentials (East) Ltd., and not in its personal capacity.

Per: _____
 Name:
 Title:

Schedule "B" – Purchased Assets

Lands:

Municipal address:

5111 – 48 Street, Bashaw, Alberta, T0B 0H0

Certificate of Title No. 202 149 251

PLAN 8120619
BLOCK 101
LOT 4
EXCEPTING THEREOUT ALL MINES AND MINERALS
AREA: 0.812 HECTARES (2.01 ACRES) MORE OR LESS

Personal Property:

Organic Facility - Equipment Listing

Equipment	Units	Manufacturer	Make/Model	Comments
Indent Machine	2.00	Northland Superior	Model T4-B Cylinder Separator	n/a
Air Screen Cleaner	1.00	Q-Sage	Model: 5x60-54-2+3	Serial #: Q12154
Gravity Separator	1.00	LMC	Marc 300 series	Serial #: 9838
Color Sorter	1.00	Buhler	Sortex Z+ Bichromatic	n/a
Commercial Hopper Bottom Seed Bins (54 MT each)	2.00	Wheatland	n/a	Serial # 200110 11844 / Serial # 200110 11845
Truck Scale	1.00	N/A	30 FT L x 10 FT W (Rated/certified for 60,000 lbs)	Serial #78943-1 / 78943
Total				

Export Facility - Equipment Listing

Equipment	Units	Manufacturer	Make/Model	Comments
Delta Mega Cleaner	1.00	Cimbria	Model 119 Serial # 6654	n/a
PLC Control System	1.00	LV Controls	(Cleaners, drags, legs)	Serial # 111003-1
PLC Control System	1.00	LV Controls	(Color Sorter equipment)	Serial # 1447
Color Sorter	1.00	Delta	Model: i-IQ-CCD5	Serial # 200022
20 ft Outload Conveyor	1.00	Batco	n/a	n/a
100 ft Receiving/Shipping Legs (5,000 bph)	2.00	n/a	n/a	n/a
Chain Drags for Shipping and Receiving	4.00	n/a	n/a	n/a
90 ft Leg	1.00	Nordstrong	n/a	n/a
20, 30 and 40 ft legs	1.00	Nordstrong	n/a	n/a
Air Compressor (30hp)	1.00	Atlas Copco	Model: GA30FF-125	Serial # 000790973
Corrugated Grain bin	1.00	Westeel	14 ft diameter	n/a
20 ft Sorter Conveyor	1.00	Flaman	n/a	n/a
30 hp Dust Fan	1.00	Northern Blower	n/a	Serial # 59990.01-01
Dust Cyclone with Airlock	1.00	Northern Blower	n/a	Serial # SA030399
Truck Scale	1.00	N/A	70 FT L x 10 FT W (Rated/certified for 63,000 KG)	Serial #091404P/ 009159
Ride on Mower	1.00	N/A	N/A	N/A
Total				

Both Facilities - Vehicles

Equipment	Units	Manufacturer	Make/Model	Comments
600 bu Grain Cart	1.00	Bruns	Model: 365	Serial # 17100732
48 ft Trans Loader	1.00	Covey-all Industries	Model: 1645	Serial # 1651252
1977 Tractor	1.00	Versatile	Model: 125	Serial # 21088
1980 Grain Truck	1.00	Ford	Model: F600	Serial # 80025 VIN F604CGJ7709
Total				

Schedule "C" – Encumbrances

Instrument No.	Registration Date	Instrument
212 146 733	July 5, 2021	Receivership Order in favour of BDO Canada Limited
212 194 904	September 10, 2021	Caveat Re: Agreement Charging Land Caveator – ATB Financial

Schedule "D" – Permitted Encumbrances

Instrument No.	Registration Date	Instrument
812 059 686	March 17, 1981	Utility Right of Way Grantee – the Town of Bashaw As to Portion or Plan: 8120620