

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.

ENTERED



\$50.00  
Justice Sidnell  
COM  
Dec 10, 2021

DOCUMENT **APPLICATION**  
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**NOTICE TO RESPONDENTS:** Service List attached hereto as **Schedule "A"**.

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

You have the right to state your side of this matter before the Judge.

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

Date: December 10, 2021  
Time: 10:00 am  
Where: Calgary Law Courts – via WebEx  
Before Whom: The Honourable Justice E. J. Sidnell

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

**Remedy Claimed or Sought:**

1. Capitalized terms not otherwise defined herein shall have the meaning given to them in the Third Report dated November 30, 2021 (the "**Third Report**") of BDO Canada Limited, in its capacity as the Court-appointed receiver (the "**Receiver**") of, W.A. Grain Holdings Inc., 1309497 Alberta Ltd. (o/a W.A. Grain & Pulse Solutions) ("**130 Alberta**"), New Leaf Essentials (West) Ltd., New Leaf Essentials (East) Ltd. and 1887612 Alberta Ltd. (collectively, "**WA Grain**" or the "**Company**").
2. The Receiver respectfully seeks an Order from this Honourable Court for the following relief in the form of **Schedule "B"** hereto (the "**Claims Process Order**"):
  - (a) abridging, if necessary, the time for service of this Application and materials in support thereof, and an Order declaring service of same to be good and sufficient; and
  - (b) approving the claims procedure proposed in the Third Report respecting the priority claims of grain producers holding Primary Elevator Receipts (the "**Priority Producer Creditors**") and the subsequent distribution of proceeds of Like Grain (as defined below) to the Priority Producer Creditors (or their representative) with proven claims.
3. The Receiver further seeks an Order from this Honourable Court for the following relief in the form of **Schedule "C"** hereto (the "**Distribution Order**"):
  - (a) abridging, if necessary, the time for service of this Application and materials in support thereof, and an Order declaring service of same to be good and sufficient;
  - (b) approving the Receiver's proposed distribution to creditors holding Grain Receipts (the "**81.2 Creditors**") who filed valid claims under section 81.2 of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 (the "**BIA**") from the funds realized from the sale of all of the Company's inventory;
  - (c) approving the disallowance of the claims filed by Priority Producer Creditors under section 81.2 of the BIA;

- (d) approving the Receiver's proposed distribution of proceeds realized from the sale of 130 Alberta's grain plants, the inventory and accounts receivable collections as an interim distribution;
- (e) approving the Receiver's proposed allocation of costs and disbursements between the Company's creditors, all as outlined in the Third Report; and
- (f) such further and other relief as the circumstances may require and as this Honourable Court deems appropriate.

### **Grounds for Making the Application:**

#### Background

4. WA Grain owned and operated six grain processing plants located in Vanguard, Saskatchewan (the "**Vanguard Plant**"); Pondeix, Saskatchewan (the "**Pondeix Plant**"); Pambrun, Saskatchewan (the "**Pambrun Plant**") (collectively, the "**Saskatchewan Plants**"); Bashaw, Alberta (the "**Bashaw Plant**"); Bowden, Alberta (the "**Bowden Plant**") (collectively, the "**Processing Plants**"); and Slemon, Prince Edward Island (the "**PEI Plant**"). The Processing Plants exclude the PEI Plant, because it is subject to a separate receivership order. The Processing Plants are regulated by the Canadian Grain Commission (the "**CGC**").
5. Through 130 Alberta, WA Grain held Primary Elevator Licences and Grain Dealer Licences at the Processing Plants, which were issued by the CGC (collectively, the "**Grain Licences**").
6. On April 19, 2021, the CGC suspended all of the Grain Licences until April 30, 2021, restricting any movement of inventory onto or off of the Processing Plants and their respective grain elevators.
7. By way of Receivership Order granted on April 26, 2021 by Justice Mah of the Alberta Court of Queen's Bench (the "**Receivership Order**"), the Receiver was appointed as receiver and manager over all of the current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate, including all proceeds thereof of the Company, excluding the PEI Plant.

8. On May 1, 2021, the CGC granted 130 Alberta, through the Receiver, short term conditional Grain Licences (the “**Conditional Licences**”) allowing it to remove and sell, but not accept, inventory at the Processing Plants. The Conditional Licences were renewed monthly through to August 31, 2021.

#### Removal and Sale of Inventory

9. On June 10, 2021, Justice Lema granted an Order (the “**ISA Order**”) approving an Inventory Sale Agreement (the “**ISA**”) between the Receiver and Bridge Agri Partners Inc. (“**Bridge Agri**”), pursuant to which Bridge Agri purchased all of 130 Alberta’s inventory located at the Processing Plants subject to the Conditional Licences (the “**Elevator Inventory**”).
10. Cotecna Canada Inc. (“**Cotecna**”), an entity approved by the CGC, was retained by the Receiver to grade the Elevator Inventory as it was removed by Bridge Agri. Cotecna provided weekly reports specifying the type of commodity removed, the weight, grade and applicable dockage for each prior week’s removals (the “**Grain Audits**”).
11. By August 11, 2021, pursuant to the ISA, all Elevator Inventory was removed, graded, and paid for. The Receiver maintains the proceeds realized from the sale of the Elevator Inventory (the “**Elevator Inventory Proceeds**”) and the other proceeds of grain that were located at third party facilities and the PEI Plant (the “**Non-Elevator Inventory Proceeds**”, and together with the Elevator Inventory Proceeds, the “**Inventory Proceeds**”) in trust.

#### Sale Approval and Vesting Orders

12. On June 10, 2021, Justice Lema also granted an Order (the “**SSP Order**”) approving the Receiver’s proposed sale and solicitation process (“**SSP**”).
13. Pursuant to the SSP Order, the Receiver marketed the Bashaw Plant, Bowden Plant and the Saskatchewan Plants. Through the SSP, the Receiver generated and accepted the following Asset Purchase Agreements (collectively, the “**APAs**”) to purchase each of the Processing Plants from the following parties:
  - (a) APA from Global Food and Ingredients Inc. to purchase the Bowden Plant;

- (b) APA from 2371394 Alberta Ltd. to purchase the Bashaw Plant; and
  - (c) APA from GP Acres Grain Inc. to purchase the Saskatchewan Plants.
14. On September 23, 2021, Justice Dario granted three separate Sale Approval and Vesting Orders (the “**Processing Plant SAVOs**”) approving each of the APAs and vesting title of the Processing Plants with their respective purchaser.
  15. To date, the Receiver retains all proceeds generated from the sale of the Processing Plants (the “**Processing Plant Proceeds**”) in its trust account.

#### Priority Producer Creditors

16. Under the *Canada Grain Act*, RSC 1985, c G-10 (the “**Grain Act**”), when grain producers deliver grain to a licensed primary elevator, the producer will receive a Primary Elevator Receipt (“**PER**”) pending payment for the grain. Consequently, PERs are issued as proof of delivery, and entitle the holder to payment or return of grain of the same kind, grade and quantity (“**Like Grain**”) as the grain referred to in the PER.
17. If grain producers deliver grain to a third party storage facility, they receive a grain receipt (“**Grain Receipt**”). Pursuant to the Grain Act, Grain Receipts are issued as evidence of a sale.
18. A producer with a PER retains a proprietary interest in the delivered grain until either: (a) the producer surrenders the PER in exchange for payment; or (ii) Like Grain is returned to the PER holder.
19. At the time of the Licence Suspension, the Company reported owing \$5.55 million to PER holders. The CGC provided the Receiver with a copy of its audit of the PERs, which identified \$5.57 million owing to PER holders.
20. At the time of the Receiver’s appointment, 130 Alberta had sold, removed or distributed more Like Grain than was available to return to all PER holders. Using the data from the Grain Audit and the information from the CGC’s PER audit, the Receiver has initially identified approximately \$1.5 million of Like Grain from the Elevator Inventory Proceeds available at

the date of the Receiver's appointment that could be used to satisfy the claims of PER holders (the "**Like Grain Funds**").

### 81.2 Creditors

21. Under section 81.2 of the BIA, where a grain producer has sold and delivered an agricultural product to a purchaser within 15 days before a receiver is appointed over the purchaser, that grain producer has a claim for all amounts unpaid on the products sold and delivered in those 15 days, which is secured by a charge over all of the inventory of the purchaser as of the date of the Receivership Order. This security interest ranks ahead of every other claim, right, charge or security against the debtor's inventory.
22. The Receiver received 35 claims from grain producers under section 81.2 of the BIA, in the total amount of approximately \$1.4 million. Of those 35 claims, 26 claims totaling approximately \$1.2 million were advanced by PER holders, and the remaining 9 claims totaling \$198,318 were advanced by grain producers holding Grain Receipts. Pursuant to the Grain Act, a Grain Receipt is issued as evidence of a sale, and entitles the holder to payment.
23. The Receiver has determined that under the requirements of section 81.2, only grain producers with Grain Receipts are eligible for payment of their claims, as section 81.2 requires the grain to be sold and delivered to the debtor, as opposed to just delivered. Although PER holders have delivered grain, they maintain a proprietary interest in the grain and have not released this interest. The producers with Grain Receipts have both sold and delivered grain to 130 Alberta. Those producers (the "**Priority 81.2 Creditors**") that did so within the requisite timeframe have valid claims under section 81.2 of the BIA.

### Distribution to Priority Producer Creditors and 81.2 Creditors

24. With respect to the potential claims against the Inventory Proceeds, the Receiver's position is that the Inventory Proceeds be distributed as follows:
  - (a) Priority Producer Creditors should take priority over the Priority 81.2 Creditors as Priority Producer Creditors maintain a proprietary interest in the proceeds of Like Grain sold under the ISA.

- (b) Priority Producer Creditors with valid PERs should be paid out of the Like Grain Funds and shall be paid on a pro rata basis where full weight is not available.
  - (c) Producers with a section 81.2 claim and a PER do not comply with the provisions of section 81.2 of the BIA, as PERs are proof of delivery, and not a delivery and a sale. The Receiver proposes disallowing the claims from 25 producers who submitted claims under section 81.2 and held PERs, but not those holding Grain Receipts.
  - (d) The Receiver shall distribute \$198,318 among the nine Priority 81.2 Creditors from the Non-Elevator Inventory Proceeds.
25. The Receiver has discussed the distribution as proposed above with the CGC, which has indicated it does not object to the above proposed treatment of claims advanced by grain producers. The Receiver has also advised the Company's grain licence insurer, Intact Insurance, of this proposed course of action.

#### Claims Procedure for Primary Elevator Receipt Claims

26. In cooperation with the CGC, the Receiver proposes to facilitate a claims process as follows:
- (a) The CGC will prepare and forward the Priority Producer Creditors a claims package ("**Priority Producer Claim**") including a standard producer acknowledgement letter ("**Producer Acknowledgement**") for approval and signature.
  - (b) The Receiver will, within 10 days of Court approval, publish in newspapers in both Alberta and Saskatchewan a call for claims of Priority Producer Creditors. The CGC will also post notification on its website to ensure all Priority Producer Creditors holding PERS have an opportunity to participate in this claims process.
  - (c) Once the Priority Producer Claims are received from the Priority Producer Creditors, the CGC will confirm amounts with the Receiver and will provide the Receiver with copies of the Priority Producer Claim, including the PER, and the signed Producer Acknowledgement.

- (d) The Receiver will provide the CGC with detailed information on amounts owed to each Priority Producer Creditor for Like Grain by percentage and value, where 100% is not available.
- (e) Costs associated with the Receiver's time related to the exercise will be deducted from the overall amount of Like Grain proceeds and will be prorated amongst the Priority Producer Claims and any excess funds distributable to ATB as the highest ranking general secured creditor. The CGC and the Receiver will work closely to limit the overall costs and attend to an efficient claims process.
- (f) With Court approval, the Receiver will distribute, in one payment, the funds payable for the Priority Producer Claims to the CGC for distribution to Priority Producer Creditors.

Proposed Distribution to Secured Creditors

- 27. There are three creditors with security interests registered against the Company's assets: ATB, Farm Credit Canada ("**FCC**") and Avrio Subordinated Debt General Partner II Ltd. ("**Avrio**", and together with ATB and FCC, the "**Secured Creditors**").
- 28. After distributing the Like Grain Funds to the Priority Producer Creditors, and \$198,318 of the Non-Elevator Inventory Proceeds to the Priority 81.2 Creditors, the Receiver proposes making the following distributions to the Secured Creditors:
  - (a) \$1,180,000 realized from the sale of the Vanguard Plant (exclusive of costs of \$92,714) to FCC (the "**FCC Distribution**"); and
  - (b) up to \$10,000,000.00 to ATB.
- 29. The \$150,000 realized from the sale of the Pambrun Plant (exclusive of costs) will be addressed at a subsequent application pending the completion of the security review in respect of the Pambrun Plant.



Proposed Allocation of Costs

30. The Receiver proposes that the fees and costs associated with addressing the Priority Producer Claims be paid out of the Like Grain Funds prior to any distribution to the Priority Producer Creditors; the fees and costs associated with the Vanguard Plant, in the amount of \$92,714, be set off against the proceeds payable to FCC; and the fees and costs associated with the balance of the administration of the estate be paid from the remaining residual funds otherwise payable to ATB.
31. The Receiver and its legal counsel have attempted to allocate their time and expenses in relation to addressing the claims of Priority Producer Creditors and attending to the sale of the Processing Plants. The Receiver has further broken down the costs associated with each Processing Plant and proposes allocating those costs to either FCC or ATB, based on which creditor has priority over which Processing Plant. The allocation of costs approximates the time spent on each asset (where such allocation was possible), and where there are multiple creditors claiming against a pool of proceeds, share those costs pro rata amongst all of the creditors receiving a distribution from those assets.

Approval of Receiver's Activities to Date

32. All of the actions of the Receiver and its legal counsel in the course of the administration of the receivership of the Company are reasonable and appropriate in the circumstances.
33. The fees and disbursements of the Receiver and of its legal counsel, MLT Aikins LLP, as set out in the Third Report are reasonable and appropriate in the circumstances.
34. The Receiver relies on such further and other grounds in support of its Application as counsel may advise and this Honourable Court may permit.

**Material or Evidence To Be Relied Upon:**

- (a) The Third Report of the Receiver dated November 30, 2021;
- (b) The Sale Approval and Vesting Orders granted on September 13, 2021;
- (c) The SSP Order granted on June 10, 2013;

- (d) The ISA Order granted on June 10, 2013;
- (e) The Receivership Order granted by Justice Mah on April 26, 2021;
- (f) All pleadings, affidavits and other materials filed in this action; and
- (g) Such further and other material as counsel may advise and this Honourable Court may permit.

**Applicable Rules:**

- (a) The Alberta *Rules of Court* at Part 6, Rules 11.27 and 13.5.

**Applicable Acts and Regulations:**

- (a) The *Bankruptcy and Insolvency Act*, RSC 1985 c B-3, as amended.
- (b) The *Canada Grain Act*, RSC 1985, c G-10, as amended.

**How the Application is Proposed to be Heard or Considered:**

- (a) Via WebEX before the Honourable Justice E.J. Sidnell.

**WARNING TO THE RESPONDENT:**

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

**Schedule "A" – Service List**

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*Updated November 30, 2021*

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## GRAIN PRODUCERS



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*Updated November 26, 2021*

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**Schedule "B" – Claims Process Order**

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.

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**DATE ON WHICH ORDER WAS PRONOUNCED: DECEMBER 10, 2021**

**LOCATION WHERE ORDER WAS PRONOUNCED: CALGARY, ALBERTA**

**NAME OF JUSTICE WHO MADE THIS ORDER: JUSTICE E. J. SIDNELL**

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**UPON THE APPLICATION** by BDO Canada Limited, in its capacity as the court-appointed receiver and manager (the “**Receiver**”) of all current and future assets, undertakings and property of W.A. Grain Holdings Inc., 1309497 Alberta Ltd. (o/a W.A. Grain & Pulse Solutions) (the “**Debtor**”), 1887612 Alberta Ltd., New Leaf Essentials (West) Ltd. and New Leaf Essentials (East) Ltd. for an Order approving the Receiver’s proposed claims process for certain

creditors, as set out in the Third Report of the Receiver dated November 30, 2021 (the “**Third Report**”); **AND UPON HAVING READ** the Receivership Order dated April 26, 2021 (the “**Filing Date**”) of Justice Mah (the “**Receivership Order**”), the Third Report, the Receiver’s Brief of Law filed November 30, 2021 and the Affidavit of Service of Nishaljeet Khangura; **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.

**DEFINED TERMS**

2. Any capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Third Report.

**APPROVAL OF CLAIMS PROCESS**

3. The Receiver and the Canadian Grain Commission (the “**CGC**”) are hereby authorized to jointly run the claims process (the “**Priority Producer Claims Process**”) with respect to the priority claims of grain producers holding Primary Elevator Receipts (“**Priority Producer Creditors**”) and the Priority Producer Claims Process is hereby approved.
4. The Priority Producer Acknowledgment and Proposed Call for Priority Producer Claims, each as respectively attached at Appendices “B” and “C” of the Third Report, are hereby approved.
5. The Priority Producer Claims Process shall have the following milestones:
  - (a) As soon as reasonably possible, the CGC will issue the Priority Producer Creditors a claims package (“**Priority Producer Claim**”), including the standard Priority Producer Acknowledgment.
  - (b) Within 10 days of this Court’s approval, the Receiver will publish in Alberta and Saskatchewan newspapers a call for Priority Producer Claims. The CGC will also

post notification on its website to ensure all Priority Producer Creditors holding Primary Elevator Receipts have an opportunity to participate in the Priority Producer Claims Process.

- (c) By no later than January 21, 2022 (the “**Priority Producer Claims Bar Date**”), the Priority Producer Creditors must submit a claim to the CGC or the Receiver.
- (d) Once the CGC receives the Priority Producer Claims from the Priority Producer Creditors, the CGC will provide copies of the same to the Receiver by no later than the Priority Producer Claims Bar Date, including the signed Priority Producer Acknowledgments.
- (e) The Receiver will provide the CGC with detailed information on amounts owed to each Priority Producer Creditor for Like Grain by percentage and value, where 100% is not available.
- (f) Direct costs associated with the Receiver’s time related to the Priority Producer Claims Process will be deducted from the overall amount of Like Grain proceeds and will be prorated amongst the Priority Producer Creditors.
- (g) The Receiver is authorized to distribute, in one payment, the funds payable for the accepted Priority Producer Claims to the CGC for the CGC to distribute to the Priority Producer Creditors, and the Receiver shall have no further obligation to pay or distribute any amounts to the Priority Producer Creditors with respect to the Priority Producer Claims.

#### **PRIORITY PRODUCER CLAIMS BAR DATE**

- 6. Any Priority Producer Creditor who has a Priority Producer Claim against the Debtor as of the Filing Date and has not, as of the Priority Producer Claims Bar Date, submitted a Priority Producer Claim to the CGC or the Receiver, then in accordance with the Priority Producer Claims Process, such Priority Producer Claims shall be forever extinguished unless otherwise ordered by this Honourable Court.

#### **NOTICE AND COMMUNICATION**

- 7. Except as otherwise provided herein, the Receiver or the CGC may deliver any notice or other communication to be given under the Order to the Priority Producer Creditors or

other interested persons by forwarding true copies thereof by ordinary mail, courier, personal delivery, facsimile or email to such Priority Producer Creditors or persons at the address last shown on the books and records of the Debtor, and that any such notice by courier, personal delivery, facsimile or email shall be deemed to be received on the next Business Day following the date of forwarding thereof, or, if sent by ordinary mail on the third Business Day after mailing within Alberta, the fifth Business Day after mailing within Canada, and the tenth Business Day after mailing internationally.

8. Any notice or other communication to be given under this Order by a Priority Producer Creditor to the Receiver or the CGC shall be in writing in substantially the form, if any, provided for in this Order and will be sufficiently given only if delivered by registered mail, courier, email (in PDF format), personal delivery or facsimile transmission and addressed to:

BDO Canada Limited, Receiver of 1309497 Alberta Ltd.  
110, 5800 – 2<sup>nd</sup> Street SW  
Calgary, Alberta T2H 0H2  
Attention: Marc Kelly  
Email: [makelly@bdo.ca](mailto:makelly@bdo.ca)  
Fax: 403.640.0591

Canadian Grain Commission  
800 – 303 Main Street  
Winnipeg, MB R3C 3G8  
Attention: Jeanine Courteau, Head, Licensee Audits  
Email: [audit-verification@grainscanada.gc.ca](mailto:audit-verification@grainscanada.gc.ca)

9. In the event that the day on which any notice or communication required to be delivered pursuant to the Priority Producer Claims Process is not a Business Day then such notice or communication shall be required to be delivered on the next Business Day.

#### **GENERAL**

10. The Receiver is authorized to use reasonable discretion as to the adequacy of compliance with respect to the manner in which Priority Producer Claims are submitted, completed and executed and may, if satisfied that a Priority Producer Claim has been adequately proven, waive strict compliance with the requirements of the Priority Producer Claims Process and this Order as to the submission, completion and execution of the Priority Producer Claims.



11. References in this Order to the singular shall include the plural, references to the plural shall include the singular, and to any gender shall include the other gender.
12. Notwithstanding the terms of this Order, the Receiver or any interested person may apply to this Court from time to time for such further order or orders as it considers necessary or desirable to amend, supplement or modify the Priority Producer Claims Process or this Order.
13. Service of this Order on the Service List by email, facsimile, registered mail, courier or personal delivery shall constitute good and sufficient service of this Order, and no Persons, other than those on the Service List, are entitled to be served with a copy of this Order. Service is deemed to be effected the next business day following the transmission or delivery of such documents.
14. Service of this Order on any party not attending this application is hereby dispensed with.

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The Honourable Justice E. J. Sidnell  
Justice of the Court of Queen's Bench of Alberta

**Schedule "C" – Distribution Order**

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 **ORDER (Distribution, Approval of Receiver's Fees and Disbursements and Approval of Receiver's Activities)**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT MLT AIKINS LLP  
Barristers and Solicitors  
2100, 222 3<sup>rd</sup> Avenue S.W.  
Calgary, Alberta T2P 0B4  
Phone: 403.693.5420  
Fax: 403.508.4349  
Attention: Ryan Zahara  
File: 128056.00003

Clerk's Stamp

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**DATE ON WHICH ORDER WAS PRONOUNCED: DECEMBER 10, 2021**

**LOCATION WHERE ORDER WAS PRONOUNCED: CALGARY, ALBERTA**

**NAME OF JUSTICE WHO MADE THIS ORDER: JUSTICE E. J. SIDNELL**

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**UPON THE APPLICATION** by BDO Canada Limited, in its capacity as the court-appointed receiver and manager (the "**Receiver**") of all current and future assets, undertakings and property 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. for an Order approving an interim distribution of certain sales proceeds, approving the Receiver's fees and disbursements and approving the Receiver's activities, as set out in the Third Report of the Receiver dated November 30, 2021 (the "**Third Report**");

**AND UPON HAVING READ** the Receivership Order dated April 26, 2021 of Justice Mah (the "**Receivership Order**"), the Third Report, the Receiver's Brief of Law filed November 30, 2021 and the Affidavit of Service of Nishaljeet Khangura; **AND UPON HEARING** the submissions of counsel for the Receiver and all other interested parties present;

**IT IS HEREBY ORDERED AND DECLARED THAT:**

1. Any capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Third Report.
2. 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.
3. Any claims filed by grain producers with a Primary Elevator Receipt under section 81.2 of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, are disallowed.
4. The Receiver is authorized and directed to:
  - (a) issue payment to the 81.2 Priority Creditors in priority to the Secured Creditors out of the Non-Elevator Inventory Proceeds;
  - (b) distribute the amount of \$1,180,000 realized from the sale of the Vanguard Plant to Farm Credit Canada ("**FCC**"), less any applicable costs and fees allocated to FCC; and
  - (c) make an interim distribution of up to \$10,000,000 to ATB Financial ("**ATB**").
5. The Receiver's fees and costs shall be allocated as follows:
  - (a) the fees and costs associated with addressing the Priority Producer Claims shall be paid out of the Like Grain Funds prior to any distribution to the Priority Producer Creditors;

- (b) the fees and costs associated with the Vanguard Plant, in the amount of \$92,714, shall be set off against any funds payable to FCC; and
  - (c) the fees and costs associated with the balance of the administration of the estate be paid from the remaining residual funds otherwise payable to ATB.
6. The Receiver's accounts for fees and disbursements, including the invoices of the Sales Agent, as set out in the Third Report, are hereby approved without the necessity of a formal passing of its accounts.
  7. The accounts of the Receiver's legal counsel, MLT Aikins LLP, for its fees and disbursements, as set out in the Third Report, are hereby approved without the necessity of a formal assessment of their accounts.
  8. The Receiver's activities as set out in the Third Report are hereby ratified and approved.

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The Honourable Justice E. J. Sidnell  
Justice of the Court of Queen's Bench of Alberta