

COURT FILE NUMBER 2101-00810
 COURT COURT OF QUEEN'S BENCH OF ALBERTA
 JUDICIAL CENTRE CALGARY
 APPLICANT 2314174 ALBERTA LTD.
 RESPONDENT 1652563 ALBERTA LTD.
 DOCUMENT **ORDER APPROVING SALES PROCESS**



ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT
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DATE ON WHICH ORDER WAS PRONOUNCED: APRIL 13, 2021
NAME OF JUSTICE WHO MADE THIS ORDER: JUSTICE B.E.C. ROMAINE
LOCATION OF HEARING: CALGARY, ALBERTA

UPON the Application by BDO Canada Limited in its capacity as the court-appointed receiver and manager (the "**Receiver**") of 1652563 Alberta Ltd. o/a and dba as "Two Guys Trailer" (the "**Debtor**"), filed on April 6, 2021 (the "**Application**"); AND UPON having read the Application, the First Report of the Receiver dated and filed April 6, 2021 (the "**First Report**"), the Affidavit of Service of Kayley Woods sworn April 9, 2021, and such other pleadings and proceedings filed herein, including the Receivership Order granted on February 11, 2021 (the "**Receivership Order**"); AND UPON hearing from counsel for the Receiver and any other interested parties appearing at the hearing of this Application, which occurred via WebEx Video Conference having regard to the Court's procedures for the COVID-19 pandemic,

IT IS HEREBY ORDERED AND DECLARED THAT:

1. The time for service of this Application, together with all supporting materials, is hereby abridged, if necessary, and declared to be good and sufficient and no other person is required to have been served with such documents, and this hearing is properly returnable before this Honourable Court today and further service thereof is hereby dispensed with.

2. The sales process attached as Schedule "A" (the "**Sale Process**") to this Order is hereby approved. The Receiver is hereby authorized and directed to implement the Sales Process and do all things as are necessary to conduct and give full effect to the Sales Process and carry out its obligations thereunder.
3. The Receiver is hereby authorized and directed to engage Tyler Realty Corp. Ltd. as the selling agent (the "**Selling Agent**"), pursuant to the terms of the engagement letter appended to the First Report as Appendix "D", which engagement is hereby approved.
4. The Receiver is authorized to apply for advice and directions as may be necessary or desirable in connection with the implementation of the Sales Process.
5. Neither the Receiver nor the Listing Agent shall have any liability whatsoever to any person or party for any act or omission relating to the Sales Process, except to the extent such act or omission is the result of gross negligence or willful misconduct on the part of the Receiver or the Selling Agent, as the case may be.
6. Service of this Order shall be deemed good and sufficient by:
 - a) serving the same on the Persons listed on the service list as attached to the Application; and
 - b) posting a copy of this Order to the Receiver's website at: <https://www.bdo.ca/en-ca/extranets/1652563alberta/>
7. No other Persons are entitled to be served with a copy of this Order.



Justice of the Court of Queen's Bench of Alberta

SCHEDULE "A"

SALE PROCESS

SALES PROCESS

On the application of 2314174 Alberta Ltd. (the “**Secured Lender**”), BDO Canada Limited (“**BDO**”) was appointed the receiver and manager (the “**Receiver**”) of the current and future assets, undertakings and properties of 1652563 Alberta Ltd. (the “**Debtor**”), pursuant to a receivership order (the “**Receivership Order**”) granted by the Court of Queen’s Bench of Alberta (the “**Court**”) on February 11, 2021.

The Debtor is the fee simple owner of three adjacent lands located in the Town of Carstairs, Alberta, which are municipally and legally described as follows (collectively, the “**Lands**”):

<u>No.</u>	<u>Municipal Address</u>	<u>Legal Description</u>	<u>Detail</u>
1	419, 10 Avenue South, Carstairs, AB, T0M 0N0	PLAN 3845C0 THAT PORTION OF THE ROADWAY SOUTH OF LOT 8 BLOCK 28 AND NORTH OF LOT 1 BLOCK 29 EXCEPTING THEREOUT ALL MINES AND MINERALS	Commercial building and parking space (the “ Building Lot ”)
2	417, 10 Avenue South, Carstairs, AB, T0M 0N0	LEGAL DESCRIPTION PLAN 3845CO BLOCK 28 LOTS 7 AND 8 EXCEPTING THEREOUT ALL MINES AND MINERALS AND THE RIGHT TO WORK THE SAME	Vacant commercial zoned land (“ Lot 417 ”)
3	413, 10 Avenue South, Carstairs, AB, T0M 0N0	PLAN 3845CO BLOCK 28 LOTS 5 AND 6 EXCEPTING THEREOUT ALL MINES AND MINERALS AND THE RIGHT TO WORK THE SAME	Vacant commercial zoned land (“ Lot 413 ”)

The Secured Lender holds a mortgage in respect of each of the Lands. The Lands are more particularly described in the Receiver’s First Report to the Court dated April 5, 2021 (the “**First Report**”).

Subject to the approval of the Court, the Receiver intends to market and sell the Lands in accordance with the sales process described herein (the “**Sales Process**”). To assist with the implementation of the Sales Process, the Receiver has, subject to Court approval, engaged Tyler Realty Corp. Ltd. as its selling agent (the “**Selling Agent**”).

The balance of this document outlines the Sales Process, which is principally comprised of three stages: pre-marketing, marketing and offering/evaluation stages. The Secured Lender shall have certain consultation and credit bidding rights as provided for below.

Unless otherwise indicated, capitalized terms used herein shall have the meanings given to them in the First Report.

OPPORTUNITY AND SALES PROCESS SUMMARY

1. The Sales Process is intended to solicit interest in the sale of the Lands (the “**Opportunity**”).
2. Having regard to the location and status of the Lands, the Receiver and Selling Agent shall solicit interest in the Lands in the following three packages (collectively, the “**Packages**”):
 - a) **Package 1:** all of the Lands, being an *en bloc* offer;
 - b) **Package 2:** the Building Lot; and
 - c) **Package 3:** Lot 417 and Lot 413.
3. Except as otherwise set forth in a definitive sale agreement with a successful bidder, any offer by a bidder is on an “as is, where is” basis and without surviving representations or warranties of any kind, nature, or description by the Receiver or the Selling Agent, or any of their respective affiliates, agents, advisors or estates. In the event of a sale, all of the right, title and interest of the Receiver in and to the Lands to be acquired shall be sold free and clear of all mortgages, pledges, liens, security interests, encumbrances, claims, charges, options, and interests therein and thereon pursuant to a Court Order, except as otherwise provided in such Court Order.
4. Solicitation of interest for formal binding offers shall be on an unpriced basis whereby no minimum asking price will be stipulated.

TIMELINE

5. The following table sets out the key milestones under the Sales Process:

<u>Milestone</u>	<u>Deadline</u>
Commencement Date	April 16, 2021
Final Bid Deadline	July 16, 2021
Sale Approval Application(s)	To be determined.

PRE-MARKETING

6. As soon as reasonably practicable, but in any event by no later than April 16, 2021 (the “**Commencement Date**”):
 - a) the Selling Agent, in consultation with the Receiver, shall prepare: (i) a process summary (the “**Teaser Letter**”) describing the Opportunity and Packages, outlining the Sales Process, and inviting recipients of the Teaser Letter to express their interest to participate in the Sale Process;
 - b) the Receiver, with input from the Selling Agent, shall develop a purchase and sale agreement for use during the Sales Process (the “**Draft PSA**”); and
 - c) the Selling Agent will prepare a list of potential bidders, including (i) parties that have approached the Receiver or the Selling Agent indicating an interest in the Opportunity; and (ii)

local, national or U.S. parties who the Receiver and the Selling Agent believe may be interested in purchasing the Lands or some of them (collectively, “**Known Potential Bidders**”).

MARKETING

7. The Receiver shall arrange for a notice of the Sales Process (and such other relevant information as the Receiver and Selling Agent consider appropriate) (the “**Notice**”) to be published in the *Calgary Herald*, the *Red Deer Advocate*, and any other newspaper or journals as the Receiver and the Selling Agent consider appropriate, if any.
8. The Selling Agent shall send the Teaser Letter to all Known Potential Bidders, the Selling Agent’s proprietary list of purchasers, and third-party brokerages, and any other party responding to the Notice or press release, or otherwise making inquiries regarding the Sales Process and Opportunity (all of the foregoing collectively referred to herein as an “**Interested Party**” or “**Interested Parties**”).
9. Requests for information shall be directed to the Selling Agent or the Receiver, at the contact information listed in **Appendix “A”** hereto. The Selling Agent shall send additional information relating to the Opportunity to Interested Parties as soon as reasonably practicable after such request. Notwithstanding the foregoing, neither the Selling Agent nor the Receiver are under any obligation to provide further information to an Interested Party who in either the Selling Agent’s or the Receiver’s reasonable business judgment is not participating in the Sales Process in good faith and with the intention to evaluate the Opportunity for the purposes of potentially making a formal binding offer in accordance with paragraph 11 hereof.

DUE DILIGENCE

10. The Receiver and the Selling Agent shall in their reasonable business judgment and subject to competitive and other business considerations, afford each Interested Party access to such information relating to the Lands as they deem appropriate. Notwithstanding the foregoing, neither the Selling Agent nor the Receiver are under any obligation to provide further information to an Interested Party who in either the Selling Agent’s or the Receiver’s reasonable business judgment is not participating in the Sales Process in good faith and with the intention to evaluate the Opportunity for the purposes of potentially making a formal binding offer in accordance with paragraph 11 hereof. By participating in the Sales Process, each Interested Party shall rely solely on its own investigations in order to satisfy itself as to all matters, except to the extent expressly agreed to in a definitive sale agreement with a successful bidder. The Receiver and the Selling Agent, and their respective advisors, make no representation or warranty as to the accuracy or completeness of any information made available pursuant to the Sales Process to such Interested Parties or otherwise, except to the extent as may be expressly contemplated in any definitive sale agreement with a successful bidder.

FORMAL BINDING OFFERS AND SELECTION OF SUCCESSFUL BIDS

Formal Binding Offers

11. Interested Parties shall be entitled to make a formal offer to purchase a Package. Such Interested Parties wishing to make a formal offer shall submit, to the Selling Agent and Receiver at the addresses specified in **Appendix “A”** hereto (including by email), so to be received by not later than 5:00 PM (Calgary time) on July 16, 2021 (the “**Final Bid Deadline**”), a sealed binding offer that complies with all of the following requirements:

- a) cash is the preferred form of consideration, but if the bid utilizes other consideration, a description of the material terms of the consideration shall be provided;
- b) the bid is an offer to purchase a Package on terms and conditions acceptable to the Receiver;
- c) unless otherwise agreed, the bid shall take the form of the Draft PSA and shall include a letter stating that the Interested Party's offer is irrevocable until the selection of one or more Successful Bidders (as defined below), provided that if such Interested Party is selected as a Successful Bidder, its offer shall remain irrevocable until the closing of the transaction with the Successful Bidder;
- d) the bid includes duly authorized and executed transaction agreements as contemplated by the Draft PSA; including, but not limited to, the purchase price expressed in Canadian dollars (the "**Purchase Price**"), together with all exhibits and schedules thereto, and the name or names of the ultimately beneficial owner(s) of the Interested Party, including their respective percentage interests;
- e) the bid includes written evidence of a firm, irrevocable commitment for financing or other evidence of ability to consummate the proposed transaction that will allow the Receiver to make a determination as to the Interested Party's financial and other capabilities to consummate the proposed transaction;
- f) the bid should not be conditioned on the outcome of unperformed due diligence by the Interested Party;
- g) the bid fully discloses the identity of each entity that will be entering into the transaction or the financing, or that is participating or benefiting from such bid;
- h) the bid includes a commitment by the Interested Party to provide a non-refundable deposit in the amount of not less than 10% of the Purchase Price offered upon the Interested Party being selected as the Successful Bidder, which shall be paid to the Receiver in trust;
- i) the bid includes acknowledgments and representations of the Interested Party that: (i) it has had an opportunity to conduct any and all due diligence regarding the Lands prior to making its offer; (ii) it has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the Lands in making its bid; and (iii) it did not rely upon any written or oral statements, representations, warranties, or guarantees whatsoever made by the Receiver or the Selling Agent, whether express, implied, statutory or otherwise, regarding the property or the accuracy or completeness of any information provided in connection therewith, except as expressly stated in the definitive purchase agreement signed by the Receiver;
- j) all required corporate approvals of the Interested Party will have been obtained prior to the submission of the bid;
- k) the bid shall identify any material conditions in favour of the purchaser to be resolved prior to closing the transaction;
- l) the bid is received by the Final Bid Deadline; and
- m) the bid contemplates a schedule for closing the transaction.

12. If an Interested Party submits a bid that complies with the requirements specified in paragraph 11 above such bid shall be deemed by the Receiver to be a “**Qualified Bid**” and each party who makes such bid a “**Qualified Bidder**”. Notwithstanding the foregoing, the Receiver may, acting reasonably, waive strict compliance with any one or more of the requirements specified above and deem non-compliant bids to be a Qualified Bid.
13. The Receiver shall have the right to remove all or part of the Lands or a Package from the Sales Process at its sole discretion.
14. If the Receiver is not satisfied with the number or terms of the Qualified Bids, the Receiver may amend the Sales Process to extend the Final Bid Deadline.
15. The Receiver may terminate, at any time without Court approval, further participation in the Sales Process by any Interested Party, or to modify dates or procedures as deemed appropriate or necessary, or to terminate the Sales Process in its entirety.

Credit Bid by the Secured Lender

16. The Receiver, in consultation with the Selling Agent, shall consider any bid by the Secured Lender, whereby all or a portion of the consideration being offered under the bid includes the compromise of all or a portion of the indebtedness owing from the Debtor to the Secured Lender (a “**Credit Bid**”).
17. A Credit Bid submitted by the Secured Lender (in this case, the “**Credit Bidder**”), shall be deemed to be a Qualified Bid for the purpose of the Sales Process, and the Credit Bid shall be deemed to be a Qualified Bid for the Sales Process, provided that:
 - a) the Credit Bidder executes and delivers to the Receiver a non-disclosure agreement in the form and substance satisfactory to the Receiver in its sole discretion (an “**NDA**”);
 - b) the Credit Bid is submitted by the Final Bid Deadline; and
 - c) the Credit Bid complies with the requirements under paragraph 11 above, as are applicable given the nature of the Credit Bid which is a comprise of indebtedness. For clarity, the Credit Bidder shall not be required to pay to the Receiver a deposit.
18. The Credit Bidder may be given access to other Qualified Bids received by the Receiver and Selling Agent during the Sales Process, provided that:
 - a) access to other Qualified Bids is granted only after the Final Bid Deadline; or
 - b) the Credit Bid is submitted on or before the Final Bid Deadline, and the Credit Bidder covenants that its Credit Bid shall not be increased at any time during the Sales Process, and the Credit Bidder shall not be permitted to increase its Credit Bid at any time during the Sales Process; and
 - c) the Credit Bidder maintains the confidentiality of the information provided, pursuant to the NDA and does not communicate, directly or indirectly with other parties or any other Qualified Bidder.

19. For clarity, if the Secured Lender submits a Credit Bid after the expiration of the Final Bid Deadline, such Credit Bid shall not be considered a Qualified Bid, and the Secured Lender shall not be considered a Credit Bidder or Qualified Bidder.

Evaluation of Competing Bids

20. A Qualified Bid will be evaluated, even before the Final Bid Deadline, based upon several factors, including, without limitation, items such as (i) the Purchase Price and the net value and form of consideration to be paid provided by such Qualified Bid; (ii) the identity, circumstances and ability of the Qualified Bidder to successfully complete such transactions, including any conditions attached to the Qualified Bid and the expected feasibility of such conditions, the proposed transaction documents (including any deviations from the Draft PSA); (iii) factors affecting the speed, certainty and value of the transaction; and (iv) the likelihood and timing of consummating such transaction, and the ability of the Qualified Bidder to finance and ultimately consummate the proposed transaction within the timeline established by the Receiver.

Selection of Successful Bid

21. Following the Final Bid Deadline, the Receiver shall:
 - a) review and evaluate each Qualified Bid (including any Credit Bid) in consultation with the Selling Agent and the Secured Lender (or the Credit Bidder, as the case may be); and
 - b) identify the highest or otherwise best bid(s) for the Package(s), which may be a Credit Bid (each a “**Successful Bid**”), and the Qualified Bidder(s) making such Successful Bid(s) (each a “**Successful Bidder**”). The determination of any Successful Bid by the Receiver shall be subject to approval by the Court.
22. The Receiver shall have no obligation to enter into a Successful Bid and reserves the right to reject any or all Qualified Bids.

Sale Approval Application

23. At the hearing of the application to approve any transaction with a Successful Bidder (each a “**Sale Approval Application**”), the Receiver shall seek, among other things, approval from the Court to consummate a Successful Bid.
24. All Qualified Bids for the same Package as a Successful Bid placed before the Court (if any), other than the Successful Bid subject of the application, shall be deemed rejected by the Receiver on and as of the date of approval of such Successful Bid by the Court.

Confidentiality and Access to Information

25. Unless otherwise expressly set out herein, participants and prospective participants in the Sales Process shall not be permitted to receive any information that is not made generally available to all participants relating to the number or identity of Potential Bidders, Qualified Bidders, Qualified Bids, the details of any bids submitted or the details of any confidential discussions or correspondence between the Receiver and such other bidders or Potential Bidders in connection with the Sales Process.

Supervision of the Sales Process

26. The Receiver and Selling Agent shall participate in the Sales Process in the manner set out in this Sales Process and are entitled to receive all information in relation to the Sales Process.
27. This Sales Process does not, and will not be interpreted to, create any contractual or other legal relationship between the Receiver or Selling Agent and any Qualified Bidder, the Credit Bidder, or any other party, other than as specifically set forth in a definitive agreement that may be signed with the Receiver and approved by the Court.
28. Without limiting the preceding paragraph, the Receiver shall not have any liability whatsoever to any person or party, including without limitation any Interested Party, Qualified Bidder, the Credit Bidder, a Successful Bidder, or any other creditor or other stakeholder of the Debtor, for any act or omission related to the process contemplated by this Sales Process, except to the extent such act or omission is the result from gross negligence or willful misconduct of the Receiver. By submitting a bid, each Qualified Bidder, Credit Bidder, or Successful Bidder, as the case may be, shall be deemed to have agreed that it has no claim against the Receiver for any reason whatsoever, except to the extent such claim is the result from gross negligence or willful misconduct of the Receiver.
29. Participants in the Sales Process are responsible for all costs, expenses and liabilities incurred by them in connection with the submission of any bid, due diligence activities, and any further negotiations or other actions whether or not they lead to the consummation of a transaction.
30. The Receiver shall have the right to modify the Sales Process and the deadlines set out herein if, in its reasonable business judgment, such modification will enhance the process or better achieve the objectives of the Sales Process.

APPENDIX "A"

CONTACT INFORMATION

Selling Agent

Tyler Realty Corp. Ltd.
3606 Blackfoot Trail SE,
Calgary, AB, T2G 4E6

Attention: Dan Shute, Senior Associate (dan@tylerrealty.com)

Receiver

BDO Canada Limited
110, 5800 2 Street SW
Calgary, AB T2H 0H2

Attention: Marc E. Kelly, Senior Vice President (makelly@bdo.ca)