

Clerk's Stamp:



COURT FILE NUMBER	2301-04941
COURT	COURT OF KING'S BENCH OF ALBERTA
JUDICIAL CENTRE	CALGARY
PLAINTIFF	BANK OF MONTREAL
DEFENDANTS	WESTMOUNT PROJECTS INC., 2218923 ALBERTA LTD., 1975847 ALBERTA LTD., ANDERSON & ASSOCIATES FINANCIAL CORP., IRONCLAD PROJECTS LTD., GORDAN D. ANDERSON, AND DENI MARIO DANIEL ECHINO
DOCUMENT	<u>ORDER – MEDICINE HAT PROPERTY</u>
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	Dentons Canada LLP Bankers Court 15th Floor, 850 - 2nd Street S.W. Calgary, Alberta T2P 0R8 Attention: Derek Pontin Ph. (403) 268-6301 Fx. (403) 268-3100 File No.: 569588-14
DATE ON WHICH ORDER WAS PRONOUNCED:	August 4, 2023
LOCATION WHERE ORDER WAS PRONOUNCED:	Calgary, Alberta
NAME OF JUSTICE WHO MADE THIS ORDER:	The Honourable Justice Yamauchi

UPON the application of Deloitte Restructuring Inc., in its capacity as Court-appointed receiver and manager (“**Receiver**”) pursuant to three Orders of the Honourable Justice Lema pronounced on May 15, 2023 in these proceedings (the “**Receivership Orders**”); **AND UPON** reading the Second Reports of the Receiver in respect of 2218923 Alberta Ltd. and 1975847 Alberta Ltd. dated July 10, 2023 (the “**Second Reports**”) and Confidential Appendices 1 and 2 thereto, the Supplemental Reports to each of the Second Reports dated July 31, 2023 (collectively, the “**Supplemental Reports**”); and the written submissions of the Receiver; **AND UPON** reading the Affidavits of Gordon D. Anderson each sworn/affirmed on July 26, 2023, the Affidavit of Shaunee Vanderham sworn/affirmed on July 26, 2023, the Affidavit of Deni Mario Daniel Echino sworn/affirmed on July 26, 2023, the Affidavit of Gordon D. Anderson sworn August 2, 2023, the Submissions by Gordon D. Anderson and Anderson & Associates Financial Corp. (collectively, “**Anderson**”) dated July 26, 2023, and the Written Submissions of Anderson dated August 2, 2023; **AND UPON** reading the Affidavits of Service of Terry Trojanoski sworn August 2, 2023; **AND UPON** noting the attendance of or hearing from counsel for the Receiver, counsel for Bank of Montreal, counsel for Anderson, counsel for Westmount Projects Inc., 2218923 Alberta Ltd., and 1975847

Alberta Ltd., counsel for the Canada Revenue Agency, counsel for Deni Mario Daniel Echino, and counsel for Horizon Capital Corporation;

IT IS HEREBY ORDERED AND DECLARED THAT:

1. The time for service of the notice of application for this order is hereby abridged and deemed good and sufficient and this application is properly returnable today.
2. The Listing Agreement between the Receiver and Avison Young Commercial Real Estate Services, LP (the "**Listing Agent**"), and attached to the Supplemental Reports as Appendix B (the "**Listing Agreement**") is hereby approved.
3. The execution and delivery of the Listing Agreement by the Receiver, with such minor amendments as the Receiver may deem necessary, is approved and the Receiver is authorized, empowered and directed to take all steps and actions in respect of, and to comply with all of its obligations pursuant to, the Listing Agreement.
4. The Sales Process and the Sales Procedure substantially in the form attached hereto as Schedule "A", are hereby approved and the Receiver is authorized and directed to carry out the Sales Process in accordance with the Sales Procedure and this Order. The Receiver is also hereby authorized and directed to take such steps as it considers necessary or appropriate in carrying out each of its obligations under the Sales Process, subject to approval of this Court being obtained before the completion of any transaction(s) resulting from the Sales Process.
5. The Receiver and Listing Agent, and their respective affiliates, partners, directors, employees, advisors, agents, legal counsel, shareholders and controlling persons shall have no liability with respect to any losses, claims, damages or liability of any nature or kind to any person in connection with or as a result of the Sales Process or the conduct thereof, except to the extent such losses, claims, damages or liabilities result from the gross negligence or wilful misconduct of any of the foregoing.
6. Service of this order shall be effected on those parties to the service list for the within proceedings and the need for any further service of this order is hereby dispensed with.
7. This Order is without prejudice to any application that may be brought seeking approval of an alternative sale process.



Justice of the Court of King's Bench of Alberta

"Schedule A"

SALE PROCESS – MEDICINE HAT PROPERTIES

INTRODUCTION

1. On May 15, 2023, the Honourable Justice Lema in Alberta Court of King's Bench (the "**Court**") Action No. 2301-04941 (the "**Receivership Proceedings**") granted orders (collectively, the "**Receivership Orders**"), appointing Deloitte Restructuring Inc. ("**Deloitte**") as receiver and manager ("**Receiver**") of:
 - (a) all of the assets, properties, and undertakings of 1975847 Alberta Ltd. ("**197 Alberta**"), including the real property listed in Appendix 1 hereto; and
 - (b) all of the assets, properties, and undertakings of 2218923 Alberta Ltd. ("**221 Alberta**", collectively with 197 Alberta the "**Debtors**"), including the real property listed in Appendix 1 hereto.
2. On August 4, 2023, the Court granted, among others, an Order (the "**Sales Process Order**"), approving the listing agreement with Avison Young Commercial Real Estate Services, LP (the "**Listing Agent**") and authorizing the Receiver to conduct a sales process (the "**Sales Process**") as further described herein to market and sell the real property listed in Annex 1 hereto (the "**Medicine Hat Property**"), subject to prior approval of the Court before any sale.
3. The Receiver intends to provide all qualified interested parties with an opportunity to participate in the Sales Process.
4. This document (the "**Sales Procedure**") outlines the Sales Process.
5. All dollar amounts expressed herein, unless otherwise noted, are in Canadian currency. Unless otherwise indicated herein, any event that occurs on a day that is not a business day in the Province of Alberta (each, a "**Business Day**") shall be deemed to occur on the next Business Day. All references to time shall be to the current time in Calgary, Alberta. Capitalized terms not otherwise defined in this Sales Procedure have the meanings set forth in the materials filed by the Receiver in support of the Sales Process or the Reports of the Receiver.

OPPORTUNITY

6. The Sales Process is intended to solicit interest in, and opportunities for, a sale of the Medicine Hat Property (the "**Opportunity**"). The Opportunity may include a sale of all, substantially all, or some of the Medicine Hat Property.
7. Except to the extent otherwise set forth in a definitive sale agreement with a Successful Bidder (as defined herein), any sale of the Medicine Hat Property will be on an "as is, where is" basis and without surviving representations or warranties of any kind, nature, or description by the Receiver, the Debtors, or any of their respective agents, advisors or estates, and, in the event of a sale, all of the right, title and interest of the Debtors in and to the Medicine Hat Property to be acquired will be sold free and clear of all pledges, liens, security interests, encumbrances, claims, charges, options, and interests therein and thereon pursuant to Court orders, but unless specified by the Successful Bidder and approved by the Court, subject to all leases against the Medicine

Hat Property, to the extent that the Court deems it appropriate to grant such relief and except as otherwise provided in such Court orders.

TIMELINE

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

<u>Milestone</u>	<u>Deadline</u>
Listing Agreement with Listing Agent becomes effective	August 4, 2023 (Upon Court approval)
Listing Agent publicly lists Opportunity and creates list of known potential bidders and distributes Teaser Letters and Confidentiality Agreements to known potential bidders	August 10, 2023
Receiver to prepare and have available for potential bidders a data room	August 10, 2023
Bid Deadline	October 13, 2023
Transaction Approval Application Hearing	October 30, 2023 (depending on Court availability)
Closing Date Deadline	November 30, 2023

9. The dates set out in the Sales Procedure may be extended by the Receiver.

SOLICITATION OF INTEREST: NOTICE OF THE SALES PROCESS

10. As soon as reasonably practicable, but in any event by no later than August 10, 2023:

- (a) the Listing Agent will prepare a list of Potential Bidders (as defined herein), including:
 - (i) parties that have approached the Receiver indicating an interest in the Opportunity; and
 - (ii) parties who the Listing Agent believes may be interested in purchasing all or part of the Medicine Hat Property pursuant to the Sales Process,(collectively, "**Known Potential Bidders**");
- (b) the Receiver will arrange for a notice of the Sales Process (and such other relevant information that the Receiver considers appropriate) (the "**Notice**") to be published in The Globe and Mail (National Edition) and the Calgary Herald and any other industry publication, website, newspaper or journal as the Receiver consider appropriate, if any;
- (c) the Listing Agent will list the Medicine Hat Property on such websites or public listing services as it deems appropriate;

- (d) the Receiver will prepare:
 - (i) a process summary (the "**Teaser Letter**") describing the Opportunity, outlining the process under the Sales Process and inviting recipients of the Teaser Letter to express their interest pursuant to the Sales Process; and
 - (ii) a confidentiality agreement in form and substance satisfactory to the Receiver and its counsel (a "**Confidentiality Agreement**").
11. The Listing Agent shall send the Teaser Letter and Confidentiality Agreement to each Known Potential Bidder by no later than August 10, 2023 and to any other party who requests a copy of the Teaser Letter and Confidentiality Agreement or who is identified to the Listing Agent or the Receiver as a potential bidder as soon as reasonably practicable after such request or identification, as applicable.

BIDDING

Qualified Bidders

12. Any party who wishes to participate in the Sales Process (each, a "**Potential Bidder**") must deliver to the Receiver, unless the Receiver confirms to such Potential Bidder that the below documents were already provided to the satisfaction of, or are already available to, the Receiver (collectively, the "**Qualifying Information**"):
- (a) an executed Confidentiality Agreement that shall inure to the benefit of any purchaser of the Medicine Hat Property, or any portion thereof;
 - (b) a letter setting forth the Potential Bidder's (i) identity, (ii) contact information and (iii) full disclosure of its direct and indirect principals; and
 - (c) a form of financial disclosure and credit quality support or enhancement that allows the Receiver to make a reasonable determination as to the Potential Bidder's financial and other capabilities to consummate a Bid (as defined herein).
13. If the Receiver determines that a Potential Bidder has:
- (a) delivered the Qualifying Information; and
 - (b) the financial capability based on the availability of financing, experience and other considerations, to be able to consummate a sale pursuant to the Sales Process,
- then such Potential Bidder will be deemed to be a "**Qualified Bidder**". For greater certainty, no Potential Bidder shall be deemed to be a Qualified Bidder without the approval of the Receiver.
14. At any time during the Sales Process, the Receiver may, in its reasonable business judgment eliminate a Qualified Bidder from the Sales Process, in which case such bidder will be eliminated from the Sales Process, will no longer be a Qualified Bidder for the purposes of this Sales Process, and shall have no further recourse as against the Receiver.

15. The Receiver, with the assistance of the Listing Agent, shall prepare a data room with additional information considered relevant to the Opportunity. The Receiver, the Listing Agent, and their respective advisors make no representation or warranty as to the information made available pursuant to the Sales Process.
16. Potential Bidders must rely solely on their own independent review, investigation and/or inspection of all information and of the Medicine Hat Property in connection with their participation in the Sales Process and any transaction they enter into with the Receiver.

Due Diligence

17. The Receiver, shall, in its reasonable business judgment and subject to competitive and other business considerations, afford each Qualified Bidder such access to due diligence material and information relating to the Medicine Hat Property as they deem appropriate. Due diligence access may include management presentations, access to electronic data rooms, on-site inspections, and other matters which a Qualified Bidder may reasonably request and as to which the Receiver, in its reasonable business judgment, may agree.
18. The Receiver shall designate a representative to coordinate all reasonable requests for additional information and due diligence access from Qualified Bidders and the manner in which such requests must be communicated. The Receiver shall not be obligated to furnish any information relating to the Medicine Hat Property or Debtors to any person other than to Qualified Bidders.

Formal Binding Offers

19. Qualified Bidders that wish to make a formal offer to purchase the Medicine Hat Property, or a portion of it, shall submit a binding offer (a "**Bid**") that complies with all of the following requirements to the Receiver at the address specified in Annex 2 hereto (including by e-mail), so as to be received by them not later than 3:00 PM MT (Calgary Time) on October 13, 2023 (the "**Bid Deadline**"):
 - (a) the Bid (either individually or in combination with other Bids that make up one Bid) is an offer to purchase the Medicine Hat Property (or a portion of it) and is consistent with any necessary terms and conditions established by the Receiver and communicated to Qualified Bidders;
 - (b) the Bid includes a letter stating that the Qualified Bidder's offer is irrevocable until the selection of the Successful Bidder (as defined herein), provided that if such Qualified Bidder is selected as the Successful Bidder, its offer shall remain irrevocable until the closing of the transaction with the Successful Bidder;
 - (c) the Bid includes duly authorized and executed transaction agreements, including the purchase price and any other key economic terms expressed in Canadian dollars (the "**Purchase Price**"), together with all exhibits and schedules thereto;
 - (d) 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 Qualified Bidder's financial and other capabilities to consummate the proposed transaction;

- (e) the Bid is not conditioned on (i) the outcome of unperformed due diligence by the Qualified Bidder; or (ii) obtaining financing;
- (f) the Bid includes an allocation of the purchase price among any property purchased;
- (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 Qualified Bidder to provide a non-refundable deposit in the form of a wire transfer to a trust account specified by the Receiver (a "**Deposit**") in the amount of not less than 10% of the Purchase Price offered upon the Qualified Bidder being selected as the Successful Bidder;
- (i) the Bid includes acknowledgements and representations of the Qualified Bidder that the Qualified Bidder:
 - (i) has had an opportunity to conduct any and all due diligence regarding the Medicine Hat Property and the Debtors prior to making its offer;
 - (ii) has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the Medicine Hat Property in making its Bid; and
 - (iii) did not rely upon any written or oral statements, representations, warranties, or guarantees whatsoever, whether express, implied, statutory or otherwise, regarding the Medicine Hat Property or the Debtors or the completeness of any information provided in connection therewith;
- (j) the Bid is received by the Bid Deadline; and
- (k) the Bid contemplates closing the transaction set out therein on or before November 17, 2023.

Assessment and Evaluation of Bids

- 20. If the Receiver is not satisfied with the number or terms of the Bids, the Receiver may, elect to (i) extend the Bid Deadline or (ii) seek Court approval to formally amend the Sales Process.
- 21. The Receiver may aggregate separate Bids from unaffiliated Qualified Bidders to create one Bid.
- 22. The Receiver will evaluate Bids based upon several factors including, without limitation:
 - (a) the Purchase Price and the net value provided by such Bid;
 - (b) the identity, circumstances and ability of the Qualified Bidder to successfully complete such transactions;
 - (c) the proposed transaction documents;
 - (d) factors affecting the speed, certainty and value of the transaction;

- (e) the Medicine Hat Property included or excluded from the bid;
- (f) encumbrances or interests in the Medicine Hat Property proposed to be excluded or disclaimed;
- (g) an related closing costs; and
- (h) the likelihood and timing of consummating such transaction.

Selection of Successful Bid

23. The Receiver will:
- (a) review and evaluate each Bid, provided that each Bid may be negotiated by the Receiver and the applicable Qualified Bidder, and may be amended, modified or varied to improve such Bid as a result of such negotiations; and
 - (b) identify the highest or otherwise best Bid or Bids (the "**Successful Bid**", and the Qualified Bidder making such Successful Bid, the "**Successful Bidder**") for any particular Medicine Hat Property in whole or part. The determination of any Successful Bid by the Receiver shall be subject to approval by the Court.
24. The Receiver shall have no obligation to enter into a Successful Bid, and it reserves the right to reject any or all Bids.

If One or More Bids

25. If the Receiver determines, in its reasonable discretion, that one or more of the Bids are similar in terms of purchase price to the benefit of the Debtors and their stakeholders, the Receiver may provide the parties making such Bids the opportunity to make further bids by way of submitting a best and final offer, without conditions and subject only to Court approval, to the Receiver by a date set by the Receiver.
26. The Receiver shall select the winning bid (the "**Winning Bid**"). Once a definitive agreement has been negotiated and settled in respect of the Winning Bid as selected by the Receiver (the "**Selected Superior Offer**") in accordance with the provisions hereof, the Selected Superior Offer shall be the "Successful Bid" hereunder and the person(s) who made the Selected Superior Offer shall be the "Successful Bidder" hereunder.

Transaction Approval Application Hearing

27. At the hearing of the application to approve any transaction with a Successful Bidder (the "**Transaction Approval Application**"), the Receiver shall seek, among other things, approval from the Court to consummate any Successful Bid. All the Bids other than the Successful Bid, if any, shall be deemed to be rejected by the Receiver on and as of the date of approval of the Successful Bid by the Court.

Confidentiality and Access to Information

28. All discussions regarding a Bid shall be directed through the Receiver or the Listing Agent. Under no circumstances should the management of the Debtors be contacted directly without the prior consent of the Receiver. Any such unauthorized contact or communication could result in exclusion of the interested party from the Sales Process.
29. 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, Bids, the details of any Bids submitted or the details of any confidential discussions or correspondence between the Debtors, the Receiver, the Listing Agent and such other bidders or Potential Bidders in connection with the Sales Process, except to the extent the Receiver, with the consent of the applicable participants, is seeking to combine separate bids from Qualified Bidders.
30. The Receiver may consult with any other parties with a material interest in the Receivership Proceedings regarding the status of and material information and developments relating to the Sales Procedure to the extent considered appropriate by the Receiver (subject to paragraph **Error! Reference source not found.** and taking into account, among other things, whether any particular party is a Potential Bidder, Qualified Bidder or other participant or prospective participant in the Sales Process or involved in a Bid), provided that such parties shall have entered into confidentiality arrangements satisfactory to the Receiver.

Deposits

31. All Deposits shall be retained by the Receiver in a non-interest-bearing trust account located at financial institution in Canada. The Receiver may waive the requirement of a Deposit if it believes sufficient security or certainty has been provided by a Qualified Bidder, including by way of a credit bid.
32. If there is a Bid that constitutes a Successful Bid, the Deposit paid by the Successful Bidder shall be applied to the consideration to be paid upon closing of the transaction constituting the Successful Bid.
33. The Deposit(s) from all Qualified Bidders submitting Bids that do not constitute a Successful Bid shall be returned to such Qualified Bidder within ten (10) Business Days of the earlier of (i) the date that the Receiver selects a Successful Bid pursuant to section **Error! Reference source not found.** hereof or (ii) the Court declares a Successful Bid pursuant to section **Error! Reference source not found.** hereof.
34. If the Qualified Bidder making a Bid is selected as the Successful Bid and breaches or defaults on its obligation to close the transaction in respect of its Successful Bid, it shall forfeit its Deposit to the Receiver for and on behalf of the applicable Debtor or Debtors; provided however that the forfeit of such Deposit shall be in addition to, and not in lieu of, any other rights in law or equity that the Receiver have in respect of such breach or default.
35. If the Receiver is unable to complete the Successful Bid as a result of its own actions or the failure of a condition in the Successful Bid in favour of a the Successful Bidder to be satisfied, in

each case other than by reason of the actions or inactions of the Successful Bidder, then the Deposit shall be returned to the Successful Bidder.

Supervision of the Sales Process

36. The Receiver shall oversee the conduct of the Sales Process in all respects. Without limitation to that supervisory role, the Receiver shall participate in the Sales Process in the manner set out in this Sales Procedure, the Sales Process Order, and any other order of the Court, and is entitled to receive all information in relation to the Sales Process. For the avoidance of doubt, the completion of any Bid shall be subject to the approval of the Court and the requirement of approval of the Court may not be waived.
37. The Receiver may waive compliance with any one or more of the requirements of this Sales Process, including, for greater certainty, waive strict compliance with any one or more of the requirements specified in this Sale Procedure and deem a non-compliant Bid to be a compliant Bid and extend such timelines or deadlines as it deems appropriate.
38. This Sales Process does not, and shall not be interpreted to, create any contractual or other legal relationship between the Debtors or the Receiver and any Qualified Bidder or any other party, other than as specifically set forth in a definitive agreement that may be entered into with the Receiver.
39. Without limiting the preceding paragraph, the Receiver and Listing Agent, and their respective agents and advisors, shall not have any liability whatsoever to any person or party, including without limitation any Potential Bidder, Qualified Bidder, the Successful Bidder, the Debtors, or any other creditor or other stakeholder of the Debtors, for any act or omission related to the process contemplated by this Sales Procedure, except to the extent such act or omission is the result from gross negligence or willful misconduct of the Receiver, Listing Agent, or their respective agent and advisors. By submitting a bid, each Potential Bidder, Qualified Bidder, or Successful Bidder shall be deemed to have agreed that it has no claim against the Receiver, Listing Agent, or their respective agents and advisors for any reason whatsoever, except to the extent that such claim is the result of gross negligence or willful misconduct of the Receiver, Listing Agent, or their respective agents and advisors.
40. 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.
41. Subject to the terms of the Sales Process Order, the Receiver shall have the right to modify the Sales Process if, in its reasonable business judgment, such modification will enhance the process or better achieve the objectives of the Sales Process; provided that the service list in the Receivership Proceedings shall be advised of any substantive modification to the procedures set forth herein.
42. In order to discharge its duties in connection with the Sales Process the Receiver may engage professional or business advisors or agents as the Receiver deems fit in its sole discretion. Without limiting the foregoing, the Receiver shall be permitted, but not obligated, to consult with the Listing Agent in respect of any aspect of the Sales Process and the steps contemplated in this Sales Procedure.

Further Orders

43. At any time during the Sales Process the Receiver may apply to the Court for advice and directions with respect to the discharge of their powers and duties hereunder, if any.

ANNEX 1

	<u>Legal Description</u>	<u>Municipal Description</u>
Real property of 197 Alberta:		
	PLAN 0113682 BLOCK 2 LOT 5 EXCEPTING THEREOUT ALL MINES AND MINERALS	1496 Brier Park Crescent NW, Medicine Hat, AB
Real property of 221 Alberta:		
	PLAN 6293JK BLOCK 3 EXCEPTING THEREOUT ALL MINES AND MINERALS AND THE RIGHT TO WORK THE SAME AREA: 2.01 HECTARES (4.96 ACRES) MORE OR LESS	1516 Brier Park Crescent NW, Lethbridge, AB

ANNEX 2