Clerk's Stamp

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COURT	COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE	CALGARY
PLAINTIFF	ATB FINANCIAL (FORMERLY ALBERTA TREASURY BRANCHES)
DEFENDANTS	1963843 ALBERTA LTD., PENHOLD CROSSING PLAZA LTD., ASHWANI AWASTHI, SWARNJIT SINGH KOONER, SUKHBIR NAIN, OM ACAYOT ABHOY, and ANURAG SUMAN
DOCUMENT	**FIRST REPORT OF ERNST & YOUNG INC., IN ITS CAPACITY AS RECEIVER AND MANAGER OF 1963843 ALBERTA LTD.** **July 17, 2020**
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	**RECEIVER** Ernst & Young Inc. 2200, 215 - 2 Street SW Calgary, Alberta T2P 1M4 Telephone: 403-206-5061 Fax: 403-206-5075 Email: peter.chisholm@ca.ey.com **COUNSEL** Dentons Canada LLP 15th Floor, Bankers Court 850 - 2 Street SW Calgary, Alberta T2P 0R8 Telephone: 403-268-7000 Fax: 403-268-3100 Email: derek.pontin@dentons.com john.regush@dentons.com

TABLE OF CONTENTS OF THE FIRST REPORT

INTRODUCTION AND PURPOSE

1. Ernst & Young Inc. (the "**Receiver**") was appointed as Receiver and Manager of the property assets and undertakings of 1963843 Alberta Ltd. ("196") and Penhold Crossing Plaza Ltd. ("**Penhold Crossing**") Crossing pursuant to an Order of this Court (the "**Receivership Order**") dated November 6, 2019 (the "**Receivership Date**").

2. The purpose of this report (the "**First Report**") is to provide this Honourable Court, and other interested stakeholders, with the information in respect of:

   a) The activities of the Receiver since the Receivership Date, including a statement of receipts and disbursements for the period of the Receivership Date to June 23, 2020;

   b) The application (the "**Penhold Shareholders' Application**") brought by two of the indirect shareholders of Penhold Crossing, Sukhbir Nain and Om Abhoy, (collectively, the "**Applicant Penhold Shareholders**") for an Order of this Court directing the Receiver to terminate the lease agreement dated February 8, 2017 under which 196 leases the land and buildings containing its Esso gas station from Penhold Crossing (the "**196 Lease Agreement**");

   c) The Receiver's request for authorization to increase the Receiver's Borrowings Charge (as defined in the Receivership Order) from $100,000 to $175,000 (the "**Increased Receiver's Borrowings Charge**"); and

   d) The Receiver's recommendation with respect to same.

TERMS OF REFERENCE

3. Capitalized terms not defined in this First Report are as defined in the Receivership Order.

4. In preparing the First Report, the Receiver has relied upon unaudited financial information of the 196, the 196 books and records, certain financial information prepared by 196 and discussions with 196's Management ("**Management**"). The Receiver has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the information provided. Accordingly, the Receiver expresses no opinion or other form of assurance on the information contained in this report or relied upon in its preparation. Future oriented financial information reported or relied on in order to prepare this report is based on Management's assumptions regarding future events; actual results will vary from forecast, and such variations may be material.

5. All references to dollars are in Canadian currency unless otherwise noted.

BACKGROUND

6. 196 operates as an Esso gas station, convenience store and car wash (the "**Gas Station**") situated on Highway 2A in Penhold, AB. 196 leases its land and buildings from Penhold Crossing. There is some common ownership between 196 and Penhold Crossing. Penhold Crossing also sub-leases space within the convenience store to an unrelated Tim Hortons franchise.

7. There is a dispute between certain stakeholders of Penhold Crossing and ATB Financial ("**ATB**") regarding the validity of a cross-guarantee provided by Penhold Crossing in favour of 196 Alberta (the "**Guarantee Dispute**").

8. Due to the Guarantee Dispute, certain provisions were inserted in the Receivership Order that:

    a) limit the scope of the Receiver's powers pending resolution of the Guarantee Dispute, including limiting the Receiver's ability to accept any offer to purchase the assets of Penhold Crossing;

    b) require the Receiver to allocate time and costs incurred proportionately between the Debtors; and

    c) require the Receiver to provide separate reports for each of the Debtors.

9. A special application to resolve the Guarantee Dispute has been partially heard by the Court, however the balance of the hearing is yet to be concluded and has been delayed due to the impacts of the novel coronavirus on Court operations.

ACTIVITIES OF THE RECEIVER

Custody and Control

10. Since the date of the Receiver's appointment, the Receiver's activities to take custody and control of the Property of 196 have included, but are not limited to, the following:

    a) Attended the premises of 196 on November 8, 2019 to take possession of the assets, change locks and met with the manager and employees to continue operation of the Gas Station. The Receiver terminated four employees and retained these service attendants as contractors to continue operating the Gas Station;

    b) The Receiver met with a shareholder and director of 196, Ashwani Awasthi ("**Mr. Awasthi**") to inquire as to the location of 196's vendor information to enable the Receiver to contact companies for product and fuel, and to discuss the operations of the daycare in Penhold Crossing, whose ownership and operation Mr. Awasthi was also involved with;

c) The Receiver, with the assistance of the service attendants, completed an inventory of the personal property and inventory located at the Gas Station;

d) Notified the Tim Hortons franchisee subleasing space within the Gas Station from 196 of the Receivership and continued to collect rents due from the Tim Hortons franchisee;

e) The Receiver was advised of the liability and pollution policies held by 196 and contacted the insurers to notify them of the Receivership. The Receiver has continued to pay monthly premiums to ensure policies are kept in place;

f) The Receiver inquired as to existence of all bank accounts and was advised that accounts of 196 were solely held at ATB. 196 did not hold any cash as at the Receivership Date and funds received subsequent to the Receivership Date have been deposited into the Receiver's trust account;

g) Redirecting the mail in order to review creditor correspondence to ensure that all creditors are captured and provided with notice of these proceedings where appropriate.

h) Notified the AGLC of the Receivership and established new accounts in order to maintain lottery sales onsite; and

i) Contacted Parkland Fuel to establish new accounts and request it take best efforts to ensure fuel inventory remains at adequate levels.

Receiver's Notice to Creditors

11. The Receiver mailed the Receiver's Notice and Statement in accordance with sec. 245 and sec. 246 of the *Bankruptcy and Insolvency Act* on November 15, 2020 to creditors of 196 as at the Receivership Date as disclosed in the books and records of 196 available to the Receiver.

Fuel Tank

12. Located at the gas station are three (3) underground fuel tanks holding regular fuel, premium fuel, and diesel fuel. The regular fuel tank holds approximately 70,000 litres of fuel with the diesel and premium tanks holding approximately 20,000 litres each. It is the understanding of the Receiver that these tanks were installed in 2017.

13. In October, staff of 196 noticed that brine was leaking from the top of the premium grade fuel tank. These concerns were conveyed to the Receiver subsequent to the Receivership Date, and the Receiver contacted the company responsible for the installation and maintenance of the tanks, ZCL Composites ("**ZCL**"), to provide information on warranties and to service and fix the tank.

14. The Receiver retained ZCL to complete the repairs on the tank and flush out the fuel in the tank, which was contaminated with brine and was not saleable. These measures came at a cost of approximately $16,000, and as at the date of this report, all three tanks are functioning with no further issues at this time.

Source Deductions and Goods and Services Tax ("GST")

15. The Receiver contacted 196's bookkeeper and obtained copies of the available books and records of 196. The Receiver, with the assistance of 196's bookkeeper, completed the 2019 pre-receivership T4s for the former employees of 196.

16. With the information provided from 196's bookkeeper the Receiver coordinated a trust examination to be completed by the Canada Revenue Agency ("**CRA**") with respect to GST and source deduction liabilities as at the Receivership Date.

17. A representative from CRA came in early February to perform a trust examination, determining that approximately $28,000 was owing in arrears and penalties.

18. No formal Deemed Trust Claim has been received by the Receiver yet, however, and the Receiver has followed up on this matter.

19. The Receiver has remitted payment on all post-Receivership source deduction amounts owing and is up to date on all post-Receivership GST returns, with a credit balance to be remitted to the 196 estate.

Workers' Compensation Board

20. The Receiver has provided notice to the Workers' Compensation Board ("**WCB**") of the Receivership and has remitted payment to WCB on any post-receivership amounts owing as they come due.

Personal Property Registry

21. The Receiver obtained a Personal Property Registry ("**PPR**") search in respect of 196 and identified parties with registered interests, which appear to be related to property leased by 196. The Receiver provided these parties with notice of the Receivership and has kept the leases in good standing for the benefit of the estate.

Review of Security

22. The Receiver has instructed its legal counsel to undertake a review of the validity and priority of any secured creditors of 196. The Receiver anticipates reporting on the outcome of this review in a subsequent Report to this Honourable Court.

Statement of Receipts and Disbursements

23. Included in this report are the Receiver's Receipts and Disbursements from the date of Receivership through to June 23, 2020.

1963843 Alberta Ltd. - in Receivership		Exhibit 1.0
Statement of Receipts and Disbursements		
For the Period November 8, 2019 to June 23, 2020		
Receipts:	**Notes**	
Fuel and convenience sales	a	519,372.02
Receiver's certificate	b	100,000.00
Lotto sales		75,855.84
Rental income	c	44,756.81
Refund	d	4,294.00
ATM commissions		1,478.50
Total Receipts		**745,757.17**
Disbursements:		
Fuel purchases	a	318,914.22
Rental payments	e	109,604.00
Food, beverage, & tobacco purchases	a	101,747.91
AGLC payments		69,730.36
Payroll		52,327.28
Insurance		17,417.66
Repairs & maintenance	f	16,666.40
Lease payments		13,909.78
Source deductions		13,077.94
Utilities		5,392.03
Bank charges		4,808.94
Waste disposal		4,095.00
Locksmith		1,508.00
Workers Compensation Board		788.03
Supplies & uniforms		257.96
Filing & license fees		70.00
Total Disbursements		**730,315.51**
Cash on Hand - June 23, 2020		**15,441.66**

24. Notes to the Receiver's statement of receipts and disbursements are as follows:

a) The Receiver has entered into agreements with multiple vendors to provide ongoing fuel, food, beverage and tobacco sales at the gas station. The majority of these agreements are C.O.D. with the Receiver not committing to any term length of agreement.

b) The Receiver is seeking to increase permitted borrowings by an additional $75,000.00.

c) Rental income relates to Tim Hortons sublease with 196.

d) Refund is in relation to AGLC withdrawing funds on pre-Receivership tickets stolen from the site prior to the Receiver's appointment. Request was made to have monies returned and pre-Receivership tickets treated as a stayed claim against the estate under the terms of the Receivership Order.

e) These rental amounts represent payment of rental amounts owing to Penhold, the July rental payment has not yet been made, and the Receiver intends to make this payment if an increase in borrowings is permitted.

f) The bulk of these charges relate to the repairs to the fuel tank.

25. To date, no disbursements have been made to the Receiver or Receiver's counsel for any professional fees outstanding. The Receiver has allocated the following fees to the administration of the Receivership in respect of 196:

a) Ernst & Young Inc. = $87,717.61 (as at July 10, 2020)

b) Dentons Canada LLP = $5,568.55 (Up to and including June 30, 2020)

RELIEF SOUGHT BY THE APPLICANT PENHOLD SHAREHOLDERS

26. The Receiver's Report with respect to the administration Penhold Crossing's Receivership sets out the Receiver's comments and recommendation with respect to the relief sought in the Penhold Shareholders' Application as that application pertains to Penhold Crossing. From the perspective of 196's Receivership, the Receiver's view is that the 196 Lease Agreement should not be terminated. This conclusion is based upon the following:

a) The Receiver of 196 has satisfied all rents of 196 owing to Penhold Crossing arising subsequent to the Receivership Date (except for the July rental payment, which the Receiver intends to make if an increase in borrowings is approved), which amounts have been treated as an operating expense of 196. There are no other post-Receivership Date defaults in respect of the 196 Lease Agreement. 196 has the benefit of a stay of proceedings with respect to any defaults under the 196 Lease Agreement existing prior to the Receivership Date;

b) Terminating the 196 Lease Agreement would end any business operations of 196, cause a loss of employment for 4 employees, and prevent the Gas Station's sale as a going concern, which would likely detrimentally impact the value of 196's assets; and

c) Termination of the 196 Lease Agreement could lead to a termination of the Tim Hortons sublease. This sublease provides a critical revenue stream to 196 (which amounts flow up to Penhold Crossing) and the Receiver is of the view that the existence of the Tim Hortons franchise is an important feature that will increase interest in any potential purchaser acquiring the Property of 196.

27. In the course of its mandate, the Receiver continues to evaluate the ongoing business operations of 196; however, at this time it is of the view that the operations of 196 should continue while a sale process is conducted, hopefully culminating in a sale of 196's assets as a going concern. Terminating the 196 Lease Agreement would result in the termination of 196's business operations and foreclose on any possibility of a going concern sale, which the Receiver does not view as being a desirable outcome. The Receiver continues to evaluate the ongoing business operations of 196 and, if it comes to the conclusion that such operations should be modified or cease altogether, will proceed accordingly, including by seeking direction from this Honourable Court if required.

PROPOSED SALE PROCESS

28. Under the terms of the Receivership Order, the Receiver cannot divest the assets of Penhold Crossing until the shareholders dispute is resolved, which creates a practical impediment to selling the assets of 196.

29. Approximately eight (8) months have passed since the date of the Receivership Order, and no clear indication has been provided as to whether this dispute will be resolved and when.

30. During these eight months, the Receiver has operated 196 as a going concern to maintain the value of the estate in hopes that a sales process will occur. However, professional fees have, and continue to, and the business has operated at a loss, owing at least in part to the issues occasioned by the novel coronavirus, along with increasing insurance costs, and repairs and maintenance costs.

31. Prospective purchasers and interested parties have also reached out to the Receiver during this period, inquiring as to when the property will be listed for sale. Seven (7) parties have come forward unsolicited.

32. One party provided a conditional offer to purchase to purchase all assets of 196 and Penhold Crossing, however this offer could not be effectively pursued given the restrictions placed on the Receiver by the Receivership Order.

33. Given the unsolicited interest and offer received, and the professional fees and operating costs associated with operating the business, the Receiver believes it should run a formal sales process and liquidate the assets.

34. Any sale would require Court approval, and funds generated can be held by the Receiver pending resolution of the dispute between ATB and certain guarantors of Penhold Crossing, or on such other terms as may be appropriate.

35. The Receiver believes that a sales process can be run with 196 honoring the terms of the lease agreement with Penhold Crossing and Penhold Crossing can use the funds from the rent to pay any utility, insurance and property taxes as they come due.

36. In these circumstances, it is the Receiver's intention to bring an application seeking approval of a sales process in the near future.

INCREASE OF THE RECEIVER'S BORROWINGS CHARGE

37. The Gas Station has an inventory of fuel and an inventory of goods in the convenience store and continues to earn revenue, both through its operations and from payments under the Tim Hortons sublease. While the Gas Station continues to earn revenue and has some cash on hand, the circumstances caused by the novel coronavirus have created some difficulties and uncertainties in the Gas Station's business operations, which have necessitated the Receiver borrowing funds. Presently, the Receiver has exhausted the existing borrowings permitted under the Receivership Order. In order to facilitate the continued operations of the Gas Station, the Receiver is requesting an increase in the borrowings permitted under the Receivership Order in the amount of $75,000.00.

38. As discussed, it is the Receiver's intention to seek this Honourable Court's advice and direction to permit the Receiver to pursue a sales process for the assets of 196. The Receiver's requested increase in borrowings is expected to permit the operations of 196 to continue through the likely length of a sales process so that the business of 196 can be marketed and sold as a going

concern, which is anticipated to result in better realization than a sale of the assets of 196 outside of a going concern sale. For clarity, the Receiver's projections provide that 196 will pay the July rental payment owing and continue to pay ongoing operating expenses, including making payment of amounts owing to Penhold Crossing, over this time.

39. The Receiver has discussed the need for an increase in permitted borrowings with ATB Financial ("**ATB**"), and ATB is supportive of the Receiver's request.

RECOMMENDATIONS

40. The Receiver recommends that this Honourable Court:

a) Does not grant the relief sought by the Applicant Penhold Shareholders, including directing the Receiver to terminate the 196 Lease.; and

b) Grants an Ordering approving the Increased Receiver's Borrowings Charge.

Respectfully submitted this 17th day of July 2020.

Ernst & Young Inc.
In its capacity as Receiver of
1963843 Alberta Ltd.
and not in its personal or corporate capacity

Per:

Peter Chisholm, CPA, CA, CIRP, Licensed Insolvency Trustee
Senior Vice-President