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| COURT FILE NUMBER | 1901-12274 |
| 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 | **RECEIVER'S FOURTH REPORT - 1963843 ALBERTA LTD.**<br><br>**June 7, 2021** |
| ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT | **RECEIVER**<br><br>Ernst & Young Inc.<br>2200, 215 - 2 Street SW<br>Calgary, Alberta T2P 1M4<br>Telephone: 403-206-5061<br>Fax: 403-206-5075<br>Email: peter.chisholm@ca.ey.com<br><br>**COUNSEL**<br><br>Dentons Canada LLP<br>15th Floor, Bankers Court<br>850 - 2 Street SW<br>Calgary, Alberta T2P 0R8<br>Telephone: 403-268-7000<br>Fax: 403-268-3100<br>Email: derek.pontin@dentons.com<br>john.regush@dentons.com |

## TABLE OF CONTENTS OF THE FOURTH 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**", collectively with 196 the "**Debtors**") pursuant to an Order of this Court (as amended from time to time, the "**Receivership Order**") dated November 6, 2019 (the "**Receivership Date**").

2. The purpose of this report (the "**Fourth Report**") is to provide this Honourable Court, and other interested stakeholders, with an update as to the status of the sale process relating to the assets of 196 and Penhold Crossing (the "**Sales Process**") and efforts made by the Receiver to enter into a definitive agreement to effect a sale of the Debtors' assets. Given the length of the Sales Process and the costs associated with the operations, insurance and property tax of 196 and Penhold Crossing, the Receiver requests an increase in the authorized Receiver's Borrowings Charge (as defined in the Receivership Order) from $250,000 to $350,000.

## TERMS OF REFERENCE

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

4. In preparing this Fourth Report, the Receiver has relied upon unaudited financial information of the Debtors, the Debtors' books and records, certain financial information prepared by the Debtors and discussions with Debtors' 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 is a tenant of Penhold Crossing, operating an Esso branded gas station and convenience store in Penhold, Alberta (the "**Penhold Convenience Store**"). Within the convenience store is a Tim Hortons which has a sublease with 196.

7. Penhold Crossing is also the landlord of a vacant strip mall situated on the same property as the Penhold Convenience Store and Tim Hortons, located at 2 Hawkridge Blvd. (collectively called the "**Property**").

8. The Receiver has made attempts to realize on the assets of the Debtors through a Sales Process that is detailed further in this Fourth Report.

## ACTIVITIES OF THE RECEIVER SINCE THIRD REPORT

### *Sales Process*

9. As described in greater detail in the Receiver's Second Report, Supplement to the Second Report, and the Receiver's Third Report, this Court approved the Sales Process on November 10, 2020.

10. In accordance with the Sales Process, the Receiver and the Receiver's selling agent (the "**Selling Agent**") undertook the following steps:

    a) The Selling Agent posted a teaser of the property on the realtor firm's official site, Century 21 Bravo Realty (www.thegatewayteam.ca), and on Realtor.ca (MLS No. A1048917) providing details on the Property and stating the submission deadline of January 29, 2021 as per the Third Report;

    b) The Receiver published advertisements in the Edmonton Journal and Calgary Herald, providing the Selling Agent's contact information in these advertisements. The Receiver also published the Property in the Insolvency Insider, a weekly online newsletter with a national reach;

    c) The Receiver's counsel drafted a Non-Disclosure Agreement ("**NDA**") for prospective bidders to execute. The NDA was provided to the Selling Agent to send to any prospective bidders;

    d) Those that did execute the NDA were given access to an electronic data room maintained by the Selling Agent that included any and all available and confidential due diligence material;

    e) The Selling Agent and the convenience store manager, a contractor under the Receivership of 196, made themselves available to provide walkthroughs of the site to any and all interested parties; and

    f) A templated Asset Purchase Agreement ("**APA**") was drafted by the Receiver's counsel for the Selling Agent to provide to prospective bidders as well.

11. On January 29, 2021, the Receiver was in receipt of fourteen (14) offers that were presented to ATB for review and comment.

12. On February 5, 2021, the Receiver, in consultation with the Real Estate Broker and ATB, extended the deadline for Qualified Bidders to submit offers to February 12, 2021 (the "**Revised Bid Deadline**")

13. The Receiver attempted to pursue definitive sale documentation with the party who submitted the highest bid (which the Receiver would refer to as the "successful bidder"), but unfortunately these negotiations did not result in a definitive agreement to purchase the property.

14. After negotiations with the first party identified as a successful bidder proved unsuccessful, the Receiver engaged with the party that had submitted the next highest bid in the Sales Process. Unfortunately, these negotiations also failed to result in execution of a definitive sale agreement.

15. While attempting to negotiate a definitive sale agreement with the first party identified as the successful bidder, the Receiver was provided with an unsolicited offer to purchase the Debtors' assets (the "**Unsolicited Offer**").

16. The Receiver advised the offeror of the Unsolicited Offer that it was in the process of negotiating definitive sales documentation with a party who submitted a bid in the Sales Process and would not be in a position to enter into negotiations regarding the Unsolicited Offer.

17. Subsequent to negotiations with the second party identified as the successful bidder failing to result in definitive sales documentation, and several other parties who submitted bids in the Sales Process advising the Receiver that they were withdrawing their bids from consideration, the Unsolicited Offer became the highest offer available for the Receiver's consideration.

18. In these circumstances, notwithstanding the Unsolicited Offer was received after the Revised Bid Deadline, the Receiver viewed the Unsolicited Offer as providing the greatest chance of maximizing realizations for the 196 estate.

19. Accordingly, the Receiver is presently attempting to negotiate definitive sale documentation regarding the Unsolicited Offer, and is hopeful that it will be in a position to bring an application seeking approval of a sale in the near term.

*Statement of Receipt and Disbursements*

20. This Honourable Court's order of January 14, 2021 provided, among other things, that "The next reports of the Receiver will provide information to the Court showing how additional borrowings were spent, in particular the allocation of expenditures as between 196 and Penhold Crossing. Interested parties are at liberty to request additional information regarding this reporting from the Receiver and the Receiver shall provide this additional information regarding reporting in advance of any application."

21. Exhibit 1.0 is a statement of receipts and disbursements during the period of the Receivership Date through to June 1, 2021. This statement of receipts and disbursements addresses the reporting requirement set out in the January 14, 2021 order and sets out 196's receipts for the period, including amounts obtained from Receiver's borrowings, and the disbursements made by 196 over the period, which indicates the expenses of 196 for the period.

| 1963843 Alberta Ltd. - In Receivership | | Exhibit 1.0 |
| --- | --- | --- |
| **Ernst & Young Inc., Receiver** | | |
| **Statement of Receipts and Disbursements** | | |
| **For the Period November 8, 2019 to June 1, 2021** | | |
| | | |
| **Receipts:** | **Notes** | |
| Fuel and convenience sales | *a* | 1,047,988 |
| Receiver's certificate | *b* | 250,000 |
| Lotto sales | | 155,139 |
| Rental income | *c* | 108,953 |
| Refund | | 4,294 |
| ATM commissions | | 3,037 |
| **Total Receipts** | | **1,569,410** |
| | | |
| **Disbursements:** | | |
| Fuel purchases | *a* | 690,692 |
| Rental payments | *d* | 212,975 |
| Convenience store purchases | | 210,810 |
| AGLC payments | | 142,611 |
| Payroll | | 119,571 |
| Insurance | *e* | 47,669 |
| Source deductions | | 34,368 |
| Lease payments | | 30,315 |
| Repairs & maintenance | *f* | 23,690 |
| Bank & moneris charges | | 13,161 |
| Waste disposal | | 11,050 |
| Utilities | | 14,114 |
| Locksmith | | 1,508 |
| Worked Compensation Board | | 1,731 |
| Supplies & uniforms | | 346 |
| Business license | | 240 |
| Filing & license fees | | 70 |
| **Total Disbursements** | | **1,554,919** |
| | | |
| **Cash on Hand - June 1, 2021** | | **14,491** |

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

a) The Receiver has maintained agreements with various tobacco, food and beverage vendors, operating on a C.O.D basis with no commitment to any term length of agreement. The fuel purchases made through Parkland are paid in advance. All fuel in the tanks (approximately 30,000 litres of gasoline and diesel as at the date of this report) have been accounted for as an expense but not as revenue. The fuel payments being made upfront are a cost burden with large amounts of funds needed in the account to cover. Payments made at the tank are swept directly by Parkland Fuel and deemed a credit toward purchases going forward;

b) Receiver's Borrowings advanced by ATB Financial to date. The Receiver is seeking to increase authorized Receiver's Borrowings Charge by $100,000 from $250,000 to $350,000;

c) Rental income related to the Tim Hortons sublease with 196. Tim Horton's pays a flat fee every first of the month to cover utility related costs, and then pays a fee tied to a percentage of the revenue that is made in the middle of the month;

d) Monthly rental payments to Penhold Crossing. These rental amounts represent payment of rents owing to Penhold Crossing. The Receiver notes that rent amounts owing to Penhold by 196 comprise both base rent of $13,763 per month ("**Base Rent**") as well as other amounts ("**Additional Rent**") as calculated pursuant to the lease between Penhold Crossing and 196 (the "**Gas Station Lease**"). Base Rent has been kept current for the period subsequent to the Receivership Date, with the exception that April through June payments of Base Rent have not yet been made. The Receiver intends to make payment of these amounts if the proposed increase in authorized Receiver's Borrowings is approved by this Court. As discussed in further detail below, if the proposed increase in authorized Receiver's Borrowings is approved by this Court, the Receiver proposes to make immediate payment of a portion of the outstanding Additional Rent, with payment of the balance of the outstanding Additional Rent held in abeyance pending the closing of a transaction to sell the Debtors' property;

e) Insurance costs have been material, with the Receiver paying almost four times more for a Pollution Policy than what was previously in place. This was done after an exhaustive solicitation, yielding many brokers refusing such coverage. Further, policy renewals for liability coverage have proven to show similar increases as a result of insurers hesitation to deal with Receiverships; and

f) The majority of these costs have been in relation to the fuel tank repairs necessary to be made. Further, maintenance costs associated with the fountain machines and fuel pumps/card readers have been made as well.

23. The Receiver has continued to make efforts to maintain the Gas Station Lease, though the COVID-19 pandemic has caused stress on the sales and cash flow of 196 for well over a year. Further, the cost of fuel has risen substantially during this period, requiring further upfront costs

from 196 to satisfy fuel orders and attract customers onsite. These difficulties have resulted in circumstances where post-receivership lease payments of both certain months of Base Rent and Additional Rent have needed to be delayed.

24. Penhold Crossing has no other agreements in place with tenants, suppliers, or customers outside of 196. Meanwhile, 196 holds supply agreements with Parkland Fuel Corporation ("**Parkland**") and the Esso brand, as well the TDL Group Ltd. ("**TDL**") through it's sublease of the Tim Hortons onsite ("**196 Agreements**").

25. The Receiver has been of the opinion since the inception of the Receivership that there is substantial benefit to the stakeholders of both Penhold Crossing and 196 for the 196 Agreements to remain in place.

26. As per the terms of the Receivership Order, the Receiver has maintained operations of both the convenience store and Tim Hortons through continued partnership with Parkland and TDL.

27. The Selling Agent has advised the Receiver that should the Tim Hortons and Esso gas station operations of 196 be suspended the value of the Property and business of Penhold Crossing and 196 would decrease materially.

28. Taking into account the cashflow position of 196, as well as the benefit to the estates of both Debtors in maintaining the 196 Agreements, the Receiver is proposing to provide a deferral of the payment of a portion of the Additional Rent by 196. In particular, the Receiver is proposing to satisfy only a portion of rent owing under the Gas Station Lease in the near term, being all Base Rent outstanding since the Date of Receivership and a portion of the Additional Rent, in an amount sufficient to ensure that Penhold Crossing can satisfy certain near term obligations, including insurance, utilities, and property taxes.

29. The Receiver is proposing to provide a deferral of the payment of the balance of any outstanding Additional Rent and further accruing Additional Rent until the closing of a sale transaction regarding the Debtors' property, at which time the Receiver's intention would be to fully satisfy all Base Rent (to the extent any is unpaid) and Additional Rent that has accrued due since the Date of Receivership. The Receiver observes that in its experience, in the present market circumstances, particularly as impacted by the effects of COVID-19, relief such as deferral of rental payments is reflective of activity in the market overall. For clarity, the Receiver anticipates making payments of Base Rent as they become due.

30. The Receiver makes this proposal having considered that in order to satisfy all rent amounts owing under the Inter Company Lease, the Receiver, on behalf of the estate of 196, would have to borrow an additional approximately $50,000 from ATB that would not be required to satisfy operating costs or property taxes and would be held in 196's bank account pending the closing of a sale pursuant to the Sales Process.

## INCREASE IN RECEIVER'S BORROWINGS CHARGE

31. As discussed in the Receiver's previous Reports, rental income from 196 pursuant to the lease agreement between Penhold Crossing and 196 is presently the only source of income of Penhold Crossing. Penhold Crossing has no other source of income from business operations to settle critical expenses such as insurance, property taxes, utilities, and repairs and maintenance in the normal course.

32. As identified in the Receiver's Third Report regarding 196, the Receiver has made payments of Base Rent from 196 to Penhold Crossing as per the terms of the lease agreement in place between 196 and Penhold Crossing (with the exception of Base Rent for April, May and June 2021 and operating costs due as additional rent under the Intercompany Lease, which the Receiver intends to make as set out above if the Receiver's Borrowings Charge is increased). The Receiver anticipates that any amounts received by Penhold Crossing from 196 pursuant to the lease agreement will continue to be used to pay necessary expenses of Penhold Crossing until the closing of any sale that may be approved by this Honourable Court, with any excess amounts accruing to the benefit of Penhold Crossing and its stakeholders.

33. As such, the Receiver requests that an additional $100,000 in Receiver's Borrowings Charge be granted in order for, among other expenditures that may be necessary, 196 to make payments of Base Rent and Additional Rent as set out above, which will in turn enable Penhold Crossing to make payment of its critical expenses. The requested increase would bring the total authorized Receiver's Borrowings Charge from $250,000 to $350,000.

34. The Receiver has advised ATB of the need for an increase in permitted borrowings with ATB and expects that ATB will provide its position on the relief sought prior to the application seeking approval of the increase to the Receiver's Borrowings Charge.

## RECOMMENDATION

35. The Receiver recommends that this Honourable Court increase the authorized Receiver's Borrowings Charge from $250,000 to $350,000 to permit the Receiver to continue operating the business of Penhold Crossing while it closes a sale of the Property.

Respectfully submitted this 7th day of June 2021.

**Ernst & Young Inc.**
In its capacity as Receiver of
Penhold Crossing Plaza Ltd.
and not in its personal or corporate capacity

Per:

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