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 SIXTH REPORT – 1963843 ALBERTA LTD.** **May 9, 2022**
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	**RECEIVER** ERNST & YOUNG INC. Calgary City Centre 2200, 215 2nd Street SW Calgary, AB T2P 1M4 Attention: Peter Chisholm Telephone: (403) 206-5061 Fax: (403) 206-5075 Email: peter.chisholm@parthenon.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

Clerk's Stamp

TABLE OF CONTENTS OF THE SIXTH REPORT

INTRODUCTION

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 sixth report of the Receiver (the "**Sixth Report**") is to provide this Honourable Court with the Receiver's comments with respect to:

   a) the activities of the Receiver since the Fifth Report of the Receiver dated November 29, 2021 (the "**Fifth Report**"), including a statement of receipts and disbursements of the Receiver from the Receivership Date to April 20, 2022 (the "**Final Statement of R&D**");

   b) analysis of the Receiver's proposed allocation of the purchase price between the Debtors for the sale of the strip mall and gas station assets sold by the Debtors to 1676556 Alberta Ltd. ("**167 AB Ltd.**") (or its nominee);

   c) approval of the fees and disbursements of the Receiver and its counsel;

   d) the remaining efforts to be undertaken by the Receiver to complete the administration of the receivership of 196;

   e) the discharge of the Receiver of 196, following the Receiver's completion of the administration of the estate; and

   f) the Receiver's recommendations.

TERMS OF REFERENCE

3. Capitalized terms not defined in this Sixth Report are as defined in the Receivership Order and prior Reports.

4. In preparing this Sixth 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 was a tenant of Penhold Crossing, operating an Esso branded gas station and convenience store in Penhold, Alberta. Within the convenience store is a Tim Hortons which had 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**").

ACTIVITIES OF THE RECEIVER

8. As described in the Fifth Report, the Receiver, with the assistance of Liang Commercial Century 21 Bravo Realty (the "**Sales Agent**"), marketed the property of Penhold Crossing and 196 under both an initial sales process and a second subsequent renewed sales process (the "**Renewed Sales Process**"). The Renewed Sales Process was commenced after the successful bidder selected in the initial sales process was unwilling to enter into a binding offer with the Receiver to the purchase the property of the Debtors.

9. The Receiver, with the assistance of the Sales Agent and in consultation with ATB, reviewed the Qualified Bids received in the Renewed Sales Process and concluded that the Qualified Bid submitted by 167 AB Ltd., represented the highest recovery to the stakeholders of the Debtors and on November 14, 2021, the Receiver (as Vendor) and 167 AB Ltd. (as Purchaser) entered into a purchase and sale agreement (the "**Penhold Crossing & 196 PSA**").

10. On December 10, 2021, this Court granted an Order approving the sale and vesting of the property of the Debtors to 167 AB Ltd. pursuant to the Penhold Crossing & 196 PSA (the "**SAVO**").

11. On January 31, 2022, the Penhold Crossing & 196 PSA was amended to provide for a closing date of February 14, 2022. The Penhold Crossing & 196 PSA initially contemplated a closing date occurring within 65 days after Court-approval, which would have resulted in a closing date at the latest of February 13, 2022, a Sunday. The amending agreement provided for a one day extension of the closing date, which extension fell within the Outside Date of February 15, 2022

stipulated in the Penhold Crossing & 196 PSA. In all of the circumstances, the Receiver's respectful view is that the amending agreement constitutes a "minor amendment" as defined in paragraph 3 of the SAVO.

12. The Receiver also provided 167 AB Ltd. with a temporary license of occupation for the purpose of conducting certain inspections and repairs of the property.

13. The sale of the property closed on February 14, 2022 (the "**Closing Date**"). The Receiver collected the purchase price of $2.5 million in accordance with the Penhold Crossing and 196 PSA.

Statement of Receipts and Disbursements

14. The following is the Statement of Receipts and Disbursements that have occurred since the Receivership Date up to April 20, 2022 for the Receivership of 196:

1963843 Alberta Ltd. - In Receivership		
Ernst & Young Inc., Receiver		
Statement of Receipts and Disbursements		
For the Period November 8, 2019 to April 20, 2022		
		Nov 8, 2019 to April 20, 2022
Receipts:	**Notes**	
Sale of assets	*a*	500,000
Fuel, convenience, & lotto sales	*b*	1,684,174
Receiver's certificate	*c*	325,000
Rental income	*d*	166,400
Return of AGLC LOC	*e*	7,000
Refund		5,412
ATM commisions		3,748
Interest		119
Total Receipts		**2,691,853**
Disbursements:		
Fuel purchases	*b*	994,371
Convenience store purchases	*b*	280,008
Rental payments	*f*	251,903
Receiver's fees	*g*	190,574
AGLC payments	*b*	199,688
Payroll		174,240
Insurance	*h*	63,709
Source deductions		49,854
Lease payments	*i*	43,737
Repairs & maintenance	*j*	30,719
Utilities		24,159
Receiver's counsel fees	*k*	19,836
Waste disposal		18,982
Bank & moneris charges		18,879
Commercial realtor's commission	*l*	15,750
Receiver's certificate interest		13,060
Receiver's disbursements	*m*	12,432
Post-closing funds to purchaser	*n*	10,008
Phase II Environmental	*o*	9,030
Workers compensation board		2,833
Locksmith		1,508
Supplies & uniforms		346
Business license		240
Filing & license fee		70
Total Disbursements		**2,425,937**
Cash on Hand - April 20, 2022		**265,916**

15. Notes to the Statement of Receipts and Disbursements are as follows:

a) The Receiver agreed to the sale of 196 and Penhold Crossing's assets for $2.5 million. As noted in this Report, the Receiver allocated 20% of the sales price ($500,000) to 196;

b) The Receiver had 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 to Parkland were paid in advance and therefore, required the Receiver to maintain a balance in the account. Payments made at the tank were swept directly by Parkland and deemed a credit toward purchases going forward. Further, lottery sales made on-site were monitored by the Alberta Gaming, Liquor and Cannabis ("**AGLC**") with amounts swept by AGLC for cost of lottery tickets activated;

c) Receiver's borrowings advanced by ATB Financial to date. The Receiver is authorized to borrow up $400,000 under the Receiver's Borrowing Charge; however, no further borrowings are expected;

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

e) Upon closing of the lottery account with AGLC, a letter of credit ("**LOC**") was returned to the Receiver and deposited into 196's account;

f) Monthly rental payments to Penhold Crossing. As noted in the Fourth & Fifth Reports, the Receiver has made efforts to maintain the lease between Penhold Crossing and 196 (the "**Gas Station Lease**") through the pandemic; however, as discussed in further detail below, there is balance outstanding that will be settled with the proceeds from the Penhold Crossing & 196 Transaction;

g) Receiver's fees from November 9, 2019 to March 9, 2022;

h) Insurance costs are in relation to a pollution policy and insurance policy (including liability) for the assets within the convenience store and gas station. As noted in the Fourth and Fifth reports, insurance costs increased substantially throughout COVID, with the Receiver reaching out for multiple quotes, obtaining the best price and coverage available;

i) Lease payments in relation to monthly lease held with Meridian OneCap for various cooler systems, slurpee, fountain pop and ice cream machines onsite;

j) Costs associated with the repair of the premium fuel tank that was damaged prior to the Receivership and various costs associated with plumbing, repairs, and maintenance onsite throughout the Receivership;

k) Fees and disbursements of the Receiver's counsel from November 9, 2019 to January 31, 2021;

l) As per the terms of the listing agreement, the Sales Agent was awarded a commission of 3% (+GST) of the gross sales price, totaling $75,000 + GST. The Receiver allocated 20% of the commission to 196;

m) Disbursements that the Receiver covered included advertising the sales process on multiple newspapers and covering interim expenses relating to the day-to-day operations of the gas stations; and

n) Funds relating to sales post-closing (February 14, 2022) were erroneously deposited through Moneris to the Receiver's trust. These funds were returned to the purchaser; and

o) The Receiver identified that most prospective purchasers were unable to obtain financing and submit an unconditional offer for the property of the Debtors without an updated Phase II Environmental Report completed on the real property of the Debtors. The Receiver was authorized and directed to obtain an updated Phase II Environmental Report by Order of this Honourable Court pronounced June 24, 2021. The Receiver sought proposals from multiple environmental consultants and selected a consultant with the lowest cost to complete the Phase II Environmental Report. As the Phase II Environmental Report benefited the sale of the property owned by both Debtors, the cost associated the Phase II Environmental Report has been borne equally by each of 196 and Penhold Crossing.

ALLOCATION OF SALES PROCEEDS AMONGST THE DEBTORS

16. Pursuant to the Penhold Crossing & 196 PSA, 167 AB Ltd. purchased the property of the Debtors for a purchase price of $2.5 million, subject to normal closing adjustments for a real estate transaction.

17. The property purchased by 167 AB Ltd. consisted of the following:

a) **Penhold Crossing Property:** Penhold Crossing owned the real property at Plan 1623323, Block 8, Lot 124, with municipal address 2 Hawkridge Blvd, Penhold, Alberta consisting of the strip mall and gas station; and

b) **196 Property:** 196's intercompany lease with Penhold Crossing for the Gas Station, the agreement between 196 and the Tim Horton's franchise that sub-leases space within the convenience store at the Gas Station, inventory and other property onsite, including remaining fuel and convenience store food and beverages, and assets included in a lease agreement with 196 and Meridian OneCap Leasing.

18. The Penhold Crossing & 196 PSA did not allocate the purchase price as amongst the property of the Debtors. The Receiver did however consult with the Sales Agent during the initial sales process who advised that ceasing to operate the Gas Station and maintain the sub-lease with the Tim Hortons franchise would result in at lease a 20% discount on the purchase price offered by bidders for the property of the Debtors as compared to continuing to operate the Gas Station.

19. The Receiver is therefore proposing to allocate 80% of the Purchase Price ($2.0 million) to Penhold Crossing and 20% of the Purchase Price ($500,000) to 196 (the "**Purchase Price Allocation**").

20. Based on the proposed Purchase Price Allocation as identified in Exhibit 2.0 below, ATB is estimated to receive a distribution of $1.87 million from the Receivership of Penhold Crossing and the Receivership of 196 will have insufficient proceeds to fully repay the fees and costs due to the Receiver ($181,500) and the Receiver's legal counsel ($32,000) secured by the Administrative Charge and the amounts due to ATB under the Receiver's Borrowings Charge ($325,000).

Penhold Crossing Plaza Ltd. and 196 AB Ltd.				**Exhibit 2.0**
Purchase price allocation analysis as at April 20, 2022				
	Notes			
Purchase Price	*a*	$ 2,500,000		
		Penhold Crossing	**196 AB Ltd.**	**Net Recovery**
Allocation	*b*	**80%**	**20%**	
Purchase price		2,000,000	500,000	2,500,000
Real Estate broker fees (3% of Purchase Price)	*c*	(60,000)	(15,000)	(75,000)
Receiver's fees	*d*	(70,255)	(190,574)	(260,829)
Receiver's Counsel's fees	*d*	(118,650)	(58,269)	(176,919)
Operating costs	*e*	(17,982)	(25,432)	(43,414)
Settlement of outstanding property taxes	*f*	(128,162)		(128,162)
Intercompany lease settlement	*g*	284,096	(284,096)	-
Interest on Receiver's Borrowings			(13,060)	
Estimated costs to complete	*h*	(15,000)	(10,000)	(25,000)
Net recovery, before settlement of Receiver's Borrowings		**1,874,046**	**(96,431)**	**1,777,615**
Settlement of Receiver's Borrowings	*i*		(325,000)	**(325,000)**
Net Recovery, after settlement of Receiver's Borrowings		**1,874,046**	**(421,431)**	**1,452,615**

21. Notes to Exhibit 2.0, the purchase price allocation analysis are as follows:

a) Purchase Price of $2.5 million paid by 167 AB Ltd. for the property of the Debtors pursuant to the Penhold Crossing & 196 PSA;

b) Proposed allocation of the Purchase Price as amongst the Debtors based upon valuation guidance from the Sales Agent;

c) Sales commission of 3% paid to the Sales Agent in accordance with the real estate broker agreement. The commission has been allocated to the Debtors based upon the proposed allocation of the Purchase Price amongst the Debtors;

d) The Receiver and the Receiver's legal counsel made efforts to track and record their actual time and costs separately to each Debtor for the purpose of allocating professional fees and costs;

e) Costs funded by the Receiver, in excess of Receiver's Borrowings, to maintain operations of the Gas Station and settle utilities and other critical payables associated with the strip mall;

f) Property taxes outstanding from 2019, 2021 and 2022 settled with proceeds from the Purchase Price as at the closing date;

g) Balance due from 196 to Penhold Crossing under the Intercompany Lease as at the Closing Date;

h) Estimated costs to complete the administration of the Receiverships of the Debtors; and

i) Receiver's Borrowings were fully utilized by 196 to fund operating losses associated with the Gas Station and therefore, no costs have been allocated to Penhold Crossing.

22. ATB was owed $1,260,959, before accrued interest and fees, as at November 8, 2021. There will be no distribution to ATB from the estate of 196 as there are insufficient net recoveries to settle the Administrative Charge and Receiver's Borrowings Charge.

23. For comparison purposes the Receiver also analyzed its proposed distribution assuming 100% of the Purchase Price was allocated to assets owned by Penhold Crossing. In such a scenario, there would still not be sufficient proceeds to fully repay the indebtedness to ATB, such that the only estate creditor impacted by the Purchase Price Allocation would appear to be ATB. ATB has advised they are in agreement with the Purchase Price Allocation.

24. There will be insufficient recoveries in the Receivership of 196 to settle the fees and costs of the Receiver secured under the Administrative Charge and the Receiver's Borrowings secured by the Receiver's Borrowings Charge. Therefore, there will be no distribution to creditors of 196 including the Receiver General for approximately $20,000 of pre-receivership unremitted source deductions and amounts due to ATB.

PROFESSIONAL FEES

25. The Receiver's total billed fees and expenses are $181,499.50 (plus applicable taxes). The Receiver has unbilled time of approximately $1,725.40 (plus applicable taxes). The Receiver's legal counsel's billed fees and disbursements total $18,891.60 (plus applicable taxes). The Receiver's legal counsel has unbilled time of approximately $36,603.00.

26. Copies of the Receiver's invoices and the Receiver's legal counsel's invoices are summarized in the below table and not attached but are available to this Honourable Court, if requested.

Receiver's Fees & Disbursements				
Invoice	**Date**	**Sub-total**	**GST**	**Total**
CA12C500007824	09-Mar-22	181,499.50	9,074.98	190,574.48

Receiver's Counsel Fees & Disbursements				
Invoice	**Date**	**Amount**	**Tax**	**Total**
3483201	January 31, 2020	1,705.30	85.27	**1,790.57**
3498203	March 31, 2020	1,652.40	82.62	**1,735.02**
2516313	July 16, 2020	1,945.68	97.28	**2,042.96**
3531290	August 31, 2020	7,217.02	360.85	**7,577.87**
3551401	December 11, 2020	3,577.20	178.86	**3,756.06**
3565524	January 31, 2021	2,794.00	139.70	**2,933.70**

27. The Receiver estimates that fees of the Receiver and the Receiver's legal counsel to complete the administration of the receivership of 196 will not exceed $10,000.

28. It is the opinion of the Receiver that the fees and expenses of the Receiver and its counsel are fair and reasonable in these circumstances and, as such, should be approved by the Court.

29. The Receiver respectfully requests that this Honourable Court approve of the Receiver's and the Receiver's legal counsel's fees and disbursements to date along with the estimate of fees to complete the administration of the receivership.

DISCHARGE OF THE RECEIVER

30. The following tasks must be resolved in order to complete the administration of the 196 receivership proceedings:

    a) completing certain final administrative tasks, including filing GST returns, and winding down the receivership of 196; and

    b) settling the unpaid administrative costs and professional fees of the Receiver and the Receiver's legal counsel.

    (collectively, the "**Remaining Activities**").

31. Upon completion of the Remaining Activities, the Receiver will have completed its administration of the receivership of 196. The Receiver is therefore of the view that it should be discharged from its mandate with the Receiver's discharge being effective upon the Receiver filing a certificate with this Court in the form contemplated by the proposed form of Order attached as "Schedule A" to the Receiver's application (the "**Receiver's Completion Certificate**").

32. Accordingly, the Receiver respectfully requests that this Honourable Court approve an Order: (a) discharging the Receiver from any and all obligations as Receiver of 196 under the Receivership Order, conditional upon the completion of the Remaining Activities and the filing of the Receiver's Completion Certificate.

CORPORATE BOOKS AND RECORDS

33. 196 corporate books and records in the possession of the Receiver are currently located at Iron Mountain. The Receiver is seeking the approval of this Honourable Court to destroy the remaining corporate books and records, except those required by statute, unless they are claimed by any of the current or former directors of 196, or any other person entitled to such records, within thirty (30) days of the Receiver posting a filed copy of the Order discharging the Receiver to the Receiver's website for these proceedings.

RECOMMENDATIONS

34. The Receiver respectfully recommends that this Honourable Court approve:

    a) the activities of the Receiver as reported in this Sixth Report, and the Statement of Receipts and Disbursements, and all the Receiver's other reports, supplemental reports, and confidential supplements, filed herein;

b) the Receiver's proposed allocation of the Purchase Price as amongst the Debtors;

c) the fees and disbursements of the Receiver and the Receiver' s legal counsel; and

d) the discharge of the Receiver of 196, following the completion of the tasks identified in paragraph 30 of this Sixth Report.

Dated at Calgary, this 9th day of May 2022.

ERNST & YOUNG INC.,
in its capacity as the Receiver and Manager of 1963843 Alberta Ltd.
and not in its personal or corporate capacity.

Peter Chisholm, CPA, CA, CIRP, LIT
Senior Vice President