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COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

APPLICANT ATB FINANCIAL

RESPONDENTS WA GRAIN HOLDINGS INC., 1309497 ALBERTA LTD.  
(o/a W.A. GRAIN & PULSE SOLUTIONS), NEW LEAF  
ESSENTIALS (WEST) LTD., NEW LEAF ESSENTIALS  
(EAST) LTD., 1887612 ALBERTA LTD.

DOCUMENT **FOURTH AND FINAL REPORT OF BDO CANADA  
LIMITED, IN ITS CAPACITY AS RECEIVER OF WA  
GRAIN HOLDINGS INC., 1309497 ALBERTA LTD. (o/a  
W.A. GRAIN & PULSE SOLUTIONS), NEW LEAF  
ESSENTIALS (WEST) LTD., 1887612 ALBERTA LTD.  
and CERTAIN ASSETS OF NEW LEAF ESSENTIALS  
(EAST) LTD.**

**April 11, 2022**

ADDRESS FOR  
SERVICE AND  
CONTACT  
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DOCUMENT

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**FOURTH REPORT OF THE RECEIVER  
BDO CANADA LIMITED  
APRIL 11, 2022**

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## **INTRODUCTION**

1. On April 26, 2021 (the “**Receivership Date**”), ATB Financial (“**ATB**”) made an application to the Court of Queen’s Bench of Alberta (the “**Court**”) and pursuant to an Order of the Honourable Justice Mah (the “**Receivership Order**”), BDO Canada Limited (“**BDO**”) was appointed receiver and manager (the “**Receiver**”) of the assets, undertakings and properties of every nature and kind whatsoever, and wherever situate, including all proceeds thereof of W. A. Grain Holdings Inc. (“**WA Holdings**”), 1887612 Alberta Ltd. (“**1887612**”), 1309497 Alberta Ltd. o/a W. A. Grain & Pulse Solutions Inc. (“**1309497**”), New Leaf Essentials (West) Ltd. (“**NLEW**”) and certain assets of New Leaf Essentials (East) Ltd. (“**NLEE**”) (collectively “**WA Grain**” or the “**Company**”).
  
2. This Fourth report of the Receiver (the “**Fourth Report**”), all other Court materials and Orders issued and filed in this receivership proceeding (the “**Proceeding**”) are available on the Receiver’s case website (the “**Receiver’s Website**”) at: <https://www.bdo.ca/en-ca/extranets/wagrainholdings/> and will remain available on the Receiver’s Website for a period of six months following the Receiver’s discharge.

## **PURPOSE**

3. The purpose of this Fourth Report is to provide this Honourable Court with information in respect of the Receiver’s application seeking:
  - a) approval of a distribution from the sale of the Pambrun Plant to the secured creditor, Farm Credit Canada (“**FCC**”);
  - b) approval of a final distribution to ATB;
  - c) assignment of two Statements of Claim initiated by the Receiver to ATB;
  - d) approval of the Receiver’s plan for the destruction of the Company’s books and records currently being stored by the Receiver;
  - e) the discharge of the Receiver;

- f) approval of the further and final fees and disbursements of the Receiver, and the Receiver's legal counsel, MLT Aikins LLP ("MLT"), including unbilled work in process and costs to complete and authorization for the Receiver to pay all approved unpaid fees and disbursements; and
- g) the release of BDO from any and all liability that it now has or may have by reason of, or in any way arising out of, the acts or omissions of BDO while acting in its capacity as Receiver herein, save and except for any gross negligence or willful misconduct on the Receiver's part, upon the filing of the Receiver's Discharge Certificate.

#### **TERMS OF REFERENCE AND DISCLAIMER**

- 4. In preparing this Fourth Report, the Receiver has relied upon unaudited financial information, discussions with former management of the Company, available books and records of the Company, information provided by the Canadian Grain Commission ("CGC") and information provided by the Receiver's legal counsel (collectively referred to as the "**Information**"). The Receiver has not performed an audit, review or otherwise attempted to verify the accuracy or completeness of the Information.
- 5. Capitalized terms used herein and not defined in this Fourth Report shall have the meaning ascribed to them in the Receivership Order, or the Receiver's First, Second and Third Reports.
- 6. All monetary amounts contained herein are expressed in Canadian dollars unless otherwise noted.

#### **BACKGROUND**

- 7. WA Grain purchased grain from producers or resellers for its processing plants located in Alberta, Saskatchewan and Prince Edward Island and sold the product, after cleaning and processing it, domestically and internationally. Customers were located throughout Canada and world-wide including the United States, the Middle East and Asia. Products that were sold by the Company included, but were not limited to, green and yellow peas, chickpeas, and lentils for human consumption and pet food.

8. WA Grain owned and operated a total of six grain processing plants which were located in Vanguard, Saskatchewan, Pambrun, Saskatchewan, Ponteix, Saskatchewan, Bashaw, Alberta, Bowden, Alberta (collectively the “**Processing Plants**”) and Slemon, Prince Edward Island (the “**PEI Plant**”). The Processing Plants exclude the PEI Plant, which is subject to a separate receivership proceeding.
9. The Processing Plants were regulated by the CGC. The Company held Primary Elevator Licences at each of the Processing Plants under 1309497 as well as a Grain Dealer Licence under 1309497 (collectively the “**Grain Licences**”).
10. On April 19, 2021, a week prior to the Receivership Date, the CGC suspended all the Grain Licences (“**Licence Suspension**”). The Licence Suspension restricted any movement of grain onto or off the Processing Plants and their respective grain elevators such that the Company had effectively ceased active operations prior to the Receivership Date. The Grain Licences were suspended until April 30, 2021 at which time the CGC would make a determination to either cancel, amend, or reissue the Grain Licences following its audit of the grain and unsettled Primary Elevator Receipts (“**PER(s)**”) and Grain Receipts issued to any producers.
11. On May 1, 2021, the Receiver, on behalf of 1309497, received conditional Grain Licences (“**Conditional Licences**”) from the CGC. The Conditional Licences allowed the Receiver to sell and remove the grain from the Processing Plants but not accept grain or incur producer liabilities at the Processing Plants. The Conditional Licences were renewed monthly through August 2021.
12. On May 31, 2021, the Receiver filed its first report to the Court (the “**First Report**”) in advance of its application seeking, *inter alia*:
  - a) approval of the Inventory Sale Agreement (“**ISA**”) between Bridge Agri Partners Inc. (“**Bridge Agri**”) and the Receiver for Inventory located at the Processing Plants;
  - b) approval of the Sales Solicitation Process (“**SSP**”) proposed by the Receiver in respect of the sale of the Processing Plants;

- c) approval of the initial interim billings (the “**Initial Interim Accounts**”) of the Receiver and its legal counsel MLT; and
  - d) the sealing of the Confidential Appendices included as part of the First Report.
13. On June 10, 2021, the Honourable Justice M. J. Lema granted the following Orders:
- a) an order approving the ISA;
  - b) an order approving the SSP and the Initial Interim Accounts; and
  - c) an order sealing the Confidential Appendices to the First Report.
14. On September 10, 2021, the Receiver filed a report (the “**Second Report**”) in advance of its application seeking, *inter alia*:
- a) approval of the sales of the Processing Plants;
  - b) preliminary information regarding the Receiver’s proposed methodology for the distribution of funds to Priority Producer Claims and BIA 81.2 Claims (each as defined below);
  - c) approval of the further interim fees and disbursements of the Receiver, its legal counsel and the Receiver’s sales agent, BDO LLP (“**Sales Agent**”) and payment of all approved unpaid fees and disbursements; and
  - d) the sealing of the Confidential Appendices included as part of the Second Report.
15. On September 23, 2021, the Honourable Madam Justice Dario granted the following Orders:
- a) Sale Approval and Vesting Order – to 2371394 Alberta Ltd. for the Bashaw Plant;
  - b) Sale Approval and Vesting Order – to Global Food and Ingredients Inc. for the Bowden Plant;

- c) Sale Approval and Vesting Order – to GP Acres Grain Inc. for the Saskatchewan Plants;
  - d) Three Sealing Orders regarding the above noted sales; and
  - e) Approval of the further interim fees of the Receiver, the Sales Agent and MLT.
16. On November 30, 2021, the Receiver filed a report (the “**Third Report**”) in advance of its application seeking, *inter alia*:
- a) approval of the claims’ procedure in respect of priority claims of grain producers holding Primary Elevator Receipts (“**Priority Producer Claims**”);
  - b) approval of a distribution to creditors holding Grain Receipts who filed valid claims under Section 81.2 of the Bankruptcy and Insolvency Act (“**BIA 81.2 Claims**”);
  - c) approval of the Receiver’s disallowance of claims of Priority Producer Claims who filed claims under BIA 81.2;
  - d) approval of an interim distribution to ATB of up to \$10 million; and
  - e) approval of the further interim fees of the Receiver and MLT.
17. On December 10, 2021, the Honourable Madam Justice E. J. Sidnell granted the following Orders:
- a) Interim Distribution Order dated December 10, 2021:
    - i. approving the distribution to FCC of \$1,180,000 less costs incurred of \$92,714 from the sale of the Vanguard Plant;
    - ii. approving the distribution of up to \$7,500,000 to ATB;
    - iii. approval of the allocation of fees and costs in dealing with the Priority Producer Claims to be paid out of Like Grain (as defined in the Third Report);

- iv. approval of the fees and costs associated with the balance of the administration of the estate to be paid from the remaining residual funds otherwise payable to ATB; and
  - v. approval of the further unpaid interim fees of the Receiver, the Sales Agent and MLT.
- b) Claims Process Order – approval of the claims process as described in the Third Report including a claims bar date of January 21, 2022.
18. The Court only partially granted the relief sought by the Receiver for an interim distribution and adjourned the Receiver’s request for full approval to allow interested parties to provide further submissions to the Court by no later than January 4, 2022.
19. On January 4, 2022 the Receiver prepared a Supplementary Report to the Third Report of the Receiver at the Court’s direction to address:
- a) whether there was any supply of grain to 1309497 on April 11, 2021;
  - b) whether 1309497 commingled grain that was delivered to it by grain producers holding Primary Elevator Receipts; and
  - c) whether it would be possible for the Receiver to trace the Priority Producer Claim inventory to funds realized from the sale of grain by the Receiver or prior to the Receivership Order.
20. The December 10, 2021 adjournment was reconvened on January 24, 2022, at which time the Honourable Madam Justice E. J. Sidnell granted an Interim Distribution Order providing for the following relief:
- a) approving the distribution to admitted BIA 81.2 claims in the amount of \$198,318;
  - b) approving the disallowance of BIA 81.2 claims filed by producers who also had Priority Producer Claims; and



- c) approval of a further interim distribution to ATB of up to \$2,500,000.

### **ACCOUNTS RECEIVABLE**

- 21. With the exception of one account discussed below, the Receiver has addressed all of the Company's outstanding accounts receivable and either collected funds or satisfied itself that further collection efforts would not be cost effective.
- 22. In light of the quantum of the remaining account and the Receiver's understanding of the facts in this case, the Receiver has filed a Statement of Claim (the "**Statement of Claim**") as against the following party in the noted amount in an effort to collect the outstanding receivable:

- a) Wildrose Commodities Holdings Ltd. ("**Wildrose**") – US \$17,538.90.

- 23. As of the date of this Fourth Report, the Wildrose account remains unresolved. Consequently, the Receiver will be seeking the Court's approval to assign its rights under and to the Statement of Claim filed against Wildrose to ATB pursuant to the ATB Security (as defined below).

### **COMPANY BOOKS AND RECORDS**

- 24. The Receiver took possession of the books and records of the Company (the "**Corporate Records**") and made arrangements to store them at a third-party storage facility. There are 257 boxes of records currently in storage. The Receiver has contacted the former Director of the Company and offered to have the records returned; however, the former Director has declined to take possession of them.
- 25. Upon review of the listing of records on hand, the Receiver notes that approximately 134 of the 257 boxes of records are older than six year and therefore predate the Canada Revenue Agency ("**CRA**") statutory requirement of keeping records for six years. Therefore, the Receiver has no obligation to keep these dated records and plans to destroy the older (pre-2016) records and prepay the storage fees and ultimate destruction charges for the 123 boxes as required by the CRA with a destruction date of April 2027. The estimated costs to address the Corporate Records is \$6,000.

26. The Receiver also notes that CRA has completed both its GST and payroll audits.
27. Mr. Chris Chivillo, the former Director and Officer of WA Grain has requested return of the Company's server. The Receiver has prepared a back-up of the server and is prepared to acquiesce to Mr. Chivillo's request.

### **FEES AND DISBURSEMENTS**

28. Pursuant to paragraph 18 of the Receivership Order, the Receiver and its counsel shall be paid their reasonable fees and disbursements, in each case, incurred at their standard rates and charges. The Receiver and counsel to the Receiver are entitled to the benefits of and were granted a charge (the "**Receiver's Charge**") for their professional fees and disbursements. This includes professional fees incurred at the normal rates and charges of the Receiver and such counsel both before and after the making of the Receivership Order in respect of the Proceeding as they constitute part of the Receiver's Charge.
29. As mentioned earlier in this Fourth Report, the interim accounts to the First Report, the Second Report and the Third Report were previously approved by the Court.
30. The Receiver has since rendered three invoices for the period November 15, 2021 through April 7, 2022 totaling \$72,524.33 (including disbursements of \$1,508.63 and GST of \$3,381.70) (the "**Receiver's Accounts**"), copies of which will be provided to the Court if requested prior to the upcoming Court application. At present, the Receiver anticipates issuing a final account not to exceed \$12,500 including GST, (the "**Receiver's Final Account**") in connection with unbilled WIP, preparing this Fourth Report, preparing for, and attending the upcoming Court application, attending to final banking issues, attending to the destruction and preservation of the corporate records, and filing the final statutory report with the Office of the Superintendent of Bankruptcy.
31. The detailed narratives contained in the Receiver's invoices provide a fair and accurate description of the services provided and the amounts charged by the Receiver. Included with each invoice is a summary of the time charges of partners and staff, whose services are reflected in the invoices, including the total fees and hours billed.

32. MLT has rendered four accounts for the period from November 1, 2021 through March 31, 2022 totalling \$57,375.24 (including disbursements of \$2,575.27 and GST \$2,720.25) (the “**Legal Accounts**”). The MLT Legal Accounts will be provided to the Court if requested prior to the upcoming Court application. MLT likewise anticipates issuing a final account not to exceed \$12,500, including GST, in connection with unbilled WIP and steps taken to conclude the proceedings (the “**Final Legal Account**”).
33. The Receiver respectfully submits that the Receiver’s Accounts, the Legal Accounts, the Receiver’s Final Account, and the Final Legal Account (collectively referred to as the “**Final Professional Accounts**”) are reasonable in the circumstances and have been validly incurred in accordance with the provisions of the Receivership Order.

### **STATEMENT OF RECEIPTS AND DISBURSEMENTS**

34. Attached as **Appendix “A”** is a copy of the Receiver’s consolidated Final Statement of Receipts and Disbursements as at April 8, 2022 (the “**Final R&D**”) indicating the Receiver maintains approximately \$923,000 (after payment of outstanding issued professional fees) in its trust account. The Receiver proposes to make certain final distributions to secured creditors as outlined below and is seeking the Court’s approval of same.

### **PROPOSED FINAL DISTRIBUTIONS TO SECURED CREDITORS**

#### ***Farm Credit Canada***

35. FCC’s security includes a first-ranking general security agreement dated August 14, 2015 from 1309497 registered in both Alberta and Saskatchewan; general security agreements dated June 14, 2018 from 1887612, NLEE, NLEW and WA Grain; and a mortgage on the Pambrun Plant in the amount of \$5,500,000 dated August 14, 2015 from 1309497 (the “**FCC Security**”).
36. The Receiver has now received an independent legal opinion confirming the validity, enforceability, and priority of FCC’s security position in relation to the Pambrun Plant. A copy of the security opinion will be made available to this Court upon request.

37. The Receiver has allocated, and FCC has agreed to, \$83,733 in costs incurred and associated with taking possession of and the sale of the Pambrun Plant. Therefore, as the sale of the Pambrun Plant realized \$150,000, the net amount to be paid to FCC is \$66,267.

***ATB Financial***

38. ATB's security includes general security agreements dated July 10, 2017 from WA Holdings; July 10, 2017 and January 30, 2020 from 1309497; October 13, 2017 and January 30, 2020 from NLEE; July 10, 2017 and January 30, 2020 from 1887612; and July 10, 2017 from NLEW. ATB also holds a mortgage of a lease dated July 10, 2017 from NLEW in the amount of \$3,930,000. Furthermore, there are guarantees of each of the entities as follows (collectively referred to as the "**ATB Security**"):

- a) Unlimited guarantee of WA Holdings against the debts and liabilities of 1309497 and NLEW dated January 30, 2020;
  - b) Unlimited guarantees of 1309497 against the debts and liabilities of NLEW and WA Holdings dated July 10, 2017 and January 30, 2020;
  - c) Unlimited guarantee of NLEW against the debts and liabilities of WA Holdings dated July 10, 2017 and WA Holdings and 1309497 dated January 30, 2020;
  - d) Unlimited guarantees of 1887612 against the debts and liabilities of WA Holdings and NLEW dated July 10, 2017 and January 30, 2020; and
  - e) Unlimited guarantees of NLEE against the debts and liabilities of NLEW and WA Holdings dated July 10, 2017 and January 30, 2020.
39. MLT has advised the Receiver that, subject to the usual qualifications and assumptions, it is of the opinion that: (i) the ATB Security constitutes legal, valid and binding obligations of the Company, enforceable in accordance with the terms thereof; (ii) which charges the general personal property of the Company, respectively, the ATB Security was duly perfected by registration under *The Personal Property Security Act* (Alberta) ("**AB PPSA**") *The Personal Property Security Act* (Saskatchewan) ("**SK**

PPSA”), respectively; and (iii) ATB’s order of registration under the AB PPSA and SK PPSA 1309497 in respect of the security interests granted by the Debtor entities to ATB pursuant to the ATB Security is first on all the estate with the exception of the Vanguard Plant and the Pambrun Plant, where FCC ranks first.

40. To date, the Receiver has distributed \$10,000,000 to ATB. ATB is still owed approximately \$2,000,000 by the Company. Accordingly, the Receiver recommends and requests approval to distribute the remaining funds, after satisfying any costs associated with addressing the Corporate Records and payment of the Final Professional Accounts (the “**Residual Funds**”).

### **REQUEST FOR DISCHARGE**

41. Subject to the few remaining administrative tasks set out in this Fourth Report, the Receiver has now substantially completed the administration of the estate and is of the view that a final discharge is appropriate. Consequently, the Receiver respectfully recommends its discharge to be effective upon filing a certificate substantially in the form set out in Schedule “A” of the Distribution and Discharge Order (the “**Receiver’s Discharge Certificate**”) with the Court.

### **RECOMMENDATIONS**

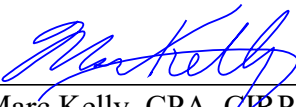
42. For the reasons set out in this Fourth Report, the Receiver recommends to this Honourable Court the following:
- a) approval of a distribution in the amount of \$66,267 from the sale of the Pambrun Plant to the secured creditor, FCC;
  - b) approval of a final distribution of the Residual Funds to ATB;
  - c) approval of the assignment of the Statements of Claim to ATB;
  - d) authorization for the Receiver to dispose of the Corporate Records as provided for in this Fourth Report;
  - e) approval of the Final Professional Accounts;


- f) approval of the actions and activities of the Receiver described herein;
- g) the discharge of the Receiver upon the filing of the Receiver's Discharge Certificate with the Court; and
- h) releasing BDO from, any and all liability that it now has or may have by reason of, or in any way arising out of, the acts or omissions of BDO while acting in its capacity as Receiver herein, save and except for any gross negligence or willful misconduct on the Receiver's part.

All of which is respectfully submitted this 11<sup>th</sup> day of April 2022.

**BDO Canada Limited**  
**in its capacity as Receiver and Manager of W.A. Grain Holdings Inc.**  
**1887612 Alberta Ltd. 1309497 Alberta Ltd. New Leaf Essentials (West) Ltd.**  
**and certain assets of New Leaf Essentials (East) Ltd.**  
**and not in its personal or corporate capacity**

Per:

  
\_\_\_\_\_  
Marc Kelly, CPA, CIRP, LIT  
Senior Vice President

  
\_\_\_\_\_  
Anna Koroneos, CIRP, LIT  
Vice President

**WA Grain & Pulse Solutions et. al**  
**Combined Statement of Receipts and Disbursements**  
**April 26, 2021 to April 8, 2022**

<b>Receipts</b>	
Sale of plants	\$ 4,855,000
Accounts receivable	5,020,844
Sale of inventory - Bridge Agri	2,736,939
Cash (bank)	1,070,933
Sale of inventory - offsite	780,128
Sale of inventory - Slemon, PEI	701,247
Sale of other assets	150,905
GST/HST refunds	70,128
Miscellaneous	18,942
<b>Total Receipts</b>	<b>15,405,066</b>
<b>Disbursements</b>	
Receiver's fees	379,802
Independent contractors re: plants	217,347
Legal fees	170,824
Pre-receivership payroll	159,206
Pre-receivership storage payments	145,153
Sale Advisor's fees (BDO LLP)	136,022
Operating, maintenance, rent	80,642
Taking possession, security	79,690
WEPPA - priority	75,764
Freight	65,093
Insurance	61,550
GST/HST/PST paid	53,590
Utilities	49,350
Property tax	40,981
Computer services/Contractor	30,283
Environmental site assessments	21,318
Advertisements assets/producers	13,020
Miscellaneous, bank charges, other	6,827
<b>Total Disbursements</b>	<b>1,786,460</b>
<b>Receipts over disbursements</b>	<b>\$ 13,618,607</b>
Payments to secured creditors	
ATB Financial	(10,000,000)
Farm Credit Canada	(1,087,286)
Payment to PPC- via CGC	(1,401,425)
Payment to >90 Alect PER	(8,457)
81.2 BIA Producer claims	(198,317)
	<u>(12,695,484)</u>
<b>Balance in trust account</b>	<b>\$ 923,122</b>