

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N:

**BRIDGING FINANCE INC.,
as agent for SPROTT BRIDGING INCOME FUND LP**

Applicant

- and -

THOMAS CANNING (MAIDSTONE) LIMITED and 692194 ONTARIO LIMITED

Respondents

**IN THE MATTER OF AN APPLICATION PURSUANT TO SUBSECTIONS 47(1) AND
243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS
AMENDED, AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c.
C.43, AS AMENDED**

MOTION RECORD OF THE RECEIVER

(re motion for advice and direction)
(returnable January 11, 2018)

December 21, 2017

CHAITONS LLP
5000 Yonge Street, 10th Floor
Toronto, ON M2N 7E9

Sam Rappos (LSUC # 51399S)
Tel: (416) 218-1137
Fax: (416) 218-1837
E-mail: samr@chaitons.com

**Lawyers for Richter Advisory Group Inc.,
Court-appointed Receiver**

TO: THE ATTACHED SERVICE LIST

SERVICE LIST
(as at December 21, 2017)

AIRD & BERLIS LLP

Brookfield Place, 181 Bay Street
Suite 1800, Box 754
Toronto, ON M5J 2T9

Sam Babe

Tel: (416) 865-7718
Fax: (416) 863-1515
E-mail: sbabe@airdberlis.com

Lawyers for Bridging Finance Inc.

CHAITONS LLP

5000 Yonge Street, 10th floor
Toronto, ON M2N 7E9

Sam Rappos

Tel: (416) 218-1137
Fax: (416) 218-1187
E-mail: samr@chaitons.com

Lawyers for the Receiver and Monitor

MINDEN GROSS LLP

145 King Street West, Suite 2100
Toronto, ON M5H 4G2

Tim Dunn

Tel: (416) 369-4335
Fax: (416) 864-9223
E-mail: tdunn@mindengross.com

Lawyers for Robert Thomas

ROBERT THOMAS

310 South Talbot Road, RR #1
Maidstone, ON N0R 1K0

E-mail: Bobthomas67@hotmail.ca

RICHTER ADVISORY GROUP INC.

181 Bay Street, Suite 3320
Bay Wellington Tower
Toronto, ON M5J 2T3

Clark Lonergan and Wajahat Mahmood

Tel: (416) 488-2345
Fax: (416) 488-3765
E-mail: clonergan@richter.ca /
WMahmood@richter.ca

Court-appointed Receiver and Monitor

BLANEY MCMURTRY LLP

2 Queen Street East, Suite 1500
Toronto, ON M5C 3G5

David Ullmann

Tel: (416) 596-4289
Fax: (416) 594-2437
E-mail: dullmann@blaney.com

Lawyers for William and Robert Thomas

WILLIAM THOMAS

310 South Talbot Road, RR #1
Maidstone, ON N0R 1K0

E-mail: thomasw2010@gmail.com

D&D LEASING

85016-561 Brant Street
Burlington, ON L7R 2G6

Email: kbd@danddleasing.ca and
Deana.Pruitt@macquarie.com

GOWLING WLG (CANADA) LLP

Suite 1600, 1 First Canadian Place
100 King Street West
Toronto ON M5X 1G5

Neil Abbott

Tel: (416) 862-4376
Fax: (416) 862-7661
E-mail: Neil.Abbott@gowlingwlg.com

Lawyers for Gould Leasing Ltd.

CAPMOR FINANCIAL SERVICES CORPORATION

5575 North Service Road, Suite 401
Burlington, ON L7L 6M1

E-mail: nbrady@capmorfinancial.com and
TWaterman@romcoholdings.com

THE LAW OFFICE OF NEIL BOYKO

303-3500 Dufferin Street
North York, ON M3K 1N2

Neil Boyko

Tel: (416) 743-3232
Fax: (416) 743-5034
Email: neil@neilboykolaw.com

Lawyer for Santosh Mahal

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF ONTARIO AS REPRESENTED BY THE MINISTER OF FINANCE

PO Box 620
33 King Street West, 6th Floor
Oshawa, ON L1H 8E9

Kevin J. O'Hara

Tel: (905) 433-6934
Fax: (905) 436-451
Email: kevin.ohara@ontario.ca

MILLER THOMSON LLP

Scotia Plaza, 40 King Street West
Suite 5800, P.O. Box 1011
Toronto, ON M5H 3S1

Craig Mills

Tel: (416) 595-8596
Fax: (416) 595-8695
Email: cmills@millერთhompson.com

Lawyers for CLE Leasing

BODKIN CAPITAL CORPORATION

102-1465 North Service Road E
Oakville, ON L6H 1A7

E-mail: paul.royds@bodkin.com and
leanng@benningtonfsc.com

DICKINSON WRIGHT

199 Bay Street, Suite 2200, Commerce Court West
Toronto ON M5L 1G4

Trevor Whiffen

Tel: (416) 777-2399
Fax: (844) 670-6009
Email: Twhiffen@dickinsonwright.com

Lawyers for 2581150 Ontario Inc.

ONTARIO FARM PRODUCTS MARKETING COMMISSION

Ontario Farm Products Marketing Commission
Secretariat, Ministry of Agriculture, Food and
Rural Affairs
1 Stone Road West
Guelph, ON N1G 4Y2

Mike Relf, Secretary

Tel: (519) 826-5199
Fax: (519) 826-3400
E-mail: mike.relf@ontario.ca

SCOTT PETRIE LLP
200-252 Pall Mall Street
London, ON N6A 5P6

John Goudy
Tel: (519) 433-5310 Ext. 236
Fax: (519) 433-7909
E-mail: jgoudy@scottpetrie.com

Lawyers for 2016 Growers

**ONTARIO TOMATO SEEDLING
GROWERS' MARKETING BOARD**
16 Talbot Street East
Leamington, ON N8H 1 L2

David Dick
E-mail: dvd5@bell.net

CHODOLA REYNOLDS BINDER
720 Walker Rd.
Windsor, ON N8Y 2N3

Robert Reynolds
Tel: (519) 254-6433 Ext: 226
Fax: (519) 254-7990
Email: reynolds@crblaw.ca

**Lawyers for 959699 Ontario Inc. o/a
Denijs Organic Farms**

**MINISTRY OF AGRICULTURE, FOOD
AND RURAL AFFAIRS**
1 Stone Road West
Guelph, ON N1G 4Y2

Greg Meredith, Deputy Minister
E-mail: greg.meredith@ontario.ca

**George Borovilos, Director,
Business Development Branch**
E-mail: george.borovilos@ontario.ca

**KRONIS, ROTSZTAIN, MARGLES,
CAPPEL LLP**
25 Sheppard Ave. West, Suite 1100

WILSON, SPURR
261 Martindale Road Unit 16B
St. Catharines, ON L2W 1A2

Geoff Spurr
Tel: (519) 682-2775 Ext: 2
Fax: (519) 682-2357
E-mail: gspurr@wilsonspurrllaw.ca

Lawyers for OPVG

AGRICORP
1 Stone Road West, 5th Floor SW
Guelph, ON N1G 4Y2

Kevin McCormack
E-mail: kevin.mccormack@agricorp.com

COXON'S SALES AND RENTALS LTD.
4891 Manning Road
Maidstone, ON N0R 1K0

E-mail: bcoxon@ctscoxons.com

**OFFICE OF THE DIRECTOR OF PUBLIC
PROSECUTIONS - ONTARIO REGIONAL
OFFICE**

The Exchange Tower
130 King Street West, Suite 3400, Box 36
Toronto, ON M5X 1K6

Connie Zary
Tel: (416) 954-8229
Fax: (416) 973-8253
E-mail: connie.zary@ppsc-sppc.gc.ca

MINISTRY OF THE ATTORNEY GENERAL
Crown Law Office-Civil Law
8th Floor, 720 Bay St.

Toronto, ON M2N 6S6

Mark Lieberman

Tel: (416) 225-8750

Fax: (416) 225-2593

E-mail: mlieberman@krmc-law.com

Lawyers for Macquarie

DEPARTMENT OF JUSTICE

Agriculture and Food Inspection Legal
Services

174 Stone Road West

Guelph, ON N1G 4S9

Andrea Horton

Tel: (226) 217-8478

Fax: (226) 217-8504

E-mail: andrea.horton@inspection.gc.ca

**Lawyers for Canadian Food Inspection
Agency**

SPENCER / BUTCHER GROUP

2755 Lauzon Parkway

Windsor, ON N8T 3H5

Bill Leil, Director, Sales and Operations

Email: bleil@spencerbutcher.com

1636488 ONTARIO LIMITED

3170 Ridgeway Drive, Unit 24

Mississauga, ON L5L 5R4

Attention: Vince Santaguida

JOHN THOMAS

3902 Manning Road, RR #1

Maidstone, ON NOR 1K0

Toronto, ON M7A 2S9

Vanessa Glaser

Tel: (416) 326-4576

Fax: (416) 326-4181

Email: vanessa.glasser@ontario.ca

**ONTARIO MINISTRY OF AGRICULTURE,
FOOD & RURAL AFFAIRS**

Legal Services Branch

5th Flr. N.E., 1 Stone Rd. W.

Guelph, ON N1G 4Y2

Michele Ireland

Tel: (519) 826-4521

Fax: (519) 826-3385

E-mail: michele.ireland@ontario.ca

MCKENZIE LAKE LAWYERS LLP

140 Fullarton Street, Suite 1800,

London, ON N6A 5P2

Sean Flaherty

Tel: (519) 672-5666 ext. 335

Fax: (519) 672-2674

E-mail: flaherty@mckenzielake.com

**Lawyers for Rol-Land Farms Ltd. and
Greenhouses Inc.**

JULIE THOMAS

310 South Talbot Road, RR #1

Maidstone, ON NOR 1K0

1419768 ONTARIO INC.

85016-561 Brant Street

Burlington, ON L7R 2G6

2190330 ONTARIO LTD.
310 South Talbot Road, RR #1
Maidstone, ON N0R 1K0

INDEX

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N:

**BRIDGING FINANCE INC.,
as agent for SPROTT BRIDGING INCOME FUND LP**

Applicant

- and -

THOMAS CANNING (MAIDSTONE) LIMITED and 692194 ONTARIO LIMITED

Respondents

**IN THE MATTER OF AN APPLICATION PURSUANT TO SUBSECTIONS 47(1) AND
243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS
AMENDED, AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c.
C.43, AS AMENDED**

INDEX

| <u>TAB</u> | <u>DOCUMENT</u> |
|-------------------|---|
| 1. | Fresh as Amended Notice of Motion returnable January 11, 2018 |
| 2. | Fifth Report of the Receiver dated December 21, 2017 |
| A. | Appendix "A" Postponement and Assignment Of Claim |
| B. | Appendix "B" Interim Receivership Order dated April 20, 2017 |
| C. | Appendix "C" Endorsement of The Honourable Mr. Justice Newbould dated April 20, 2017 |
| D. | Appendix "D" First Report of the Interim Receiver dated April 28, 2017 (w/o appendices) |
| E. | Appendix "E" Accommodation Agreement dated April 29, 2017 |
| F. | Appendix "F" Monitor Order dated May 1, 2017 |

| <u>TAB</u> | <u>DOCUMENT</u> |
|-------------------|--|
| G. | Appendix "G" Report of the Monitor dated June 15, 2017 (w/o appendices) |
| H. | Appendix "H" Notice of Return of Application and Motion dated June 15, 2017 |
| I. | Appendix "I" Asset Purchase Agreement dated as of June 15, 2017 |
| J. | Appendix "J" Monitor's Notice of Motion dated June 15, 2017 |
| K. | Appendix "K" Affidavit of William Thomas sworn June 20, 2017 (w/o exhibits) |
| L. | Appendix "L" Receivership Order dated June 21, 2017 |
| M. | Appendix "M" Approval and Vesting Order dated June 21, 2017 |
| N | Appendix "N" Endorsement of The Honourable Madam Justice Conway dated June 21, 2017 |
| O | Appendix "O" Endorsement of Justice Conway dated July 5, 2017 |
| P | Appendix "P" Letter From Chaitons LLP dated August 25, 2017 |
| Q | Appendix "Q" E-Mail From Blaney McMurtry LLP dated August 31, 2017 |
| R | Appendix "R" Endorsement of The Honourable Mr. Justice Hainey dated September 13, 2017 |
| S | Appendix "S" First Report of the Receiver dated September 18, 2017 (w/o appendices) |
| T | Appendix "T" Questions received from the Thomases |
| U | Appendix "U" Letter From Chaitons LLP dated September 27, 2017 |
| V | Appendix "V" E-Mail From Blaney McMurtry LLP dated September 28, 2017 |
| W | Appendix "W" Endorsement of The Honourable Mr. Justice McEwen dated September 28, 2017 |

TAB 1

Court File No. CV-17-11773-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N:

**BRIDGING FINANCE INC.,
as agent for SPROTT BRIDGING INCOME FUND LP**

Applicant

- and -

THOMAS CANNING (MAIDSTONE) LIMITED and 692194 ONTARIO LIMITED

Respondents

**IN THE MATTER OF AN APPLICATION PURSUANT TO SUBSECTIONS 47(1) AND
243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS
AMENDED, AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c.
C.43, AS AMENDED**

FRESH AS AMENDED NOTICE OF MOTION

(re advice and direction)
(returnable January 11, 2018)

RICHTER ADVISORY GROUP INC. (“**Richter**”), in its capacity as Court-appointed receiver (the “**Receiver**”) of the property, assets and undertakings of the Respondents, will make a motion to a Judge of the Commercial List on Thursday January 11, 2018 at 10:00 am or as soon after that time as the motion can be heard, at 330 University Avenue, Toronto, Ontario.

PROPOSED METHOD OF HEARING: The motion is to be heard orally.

THE MOTION IS FOR:

- (a) advice and direction of the Court as to whether the Monitor (as defined below) and the Receiver are required to answer the 114 questions (the “**Questions**”) listed in the document received on September 22, 2017 from counsel for Messrs. William and Robert Thomas, former principals of the Respondents (collectively, the “**Thomases**”); and
- (b) such further and other relief as counsel may request and this Honourable Court may permit.

THE GROUNDS FOR THE MOTION ARE:

1. On April 20, 2017, the Applicant brought an *ex parte* application for the appointment of Richter as interim receiver under section 47(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the “**BIA**”) and requested a return date for the hearing of its application for the appointment of Richter as receiver under section 243(1) of the BIA and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43 (the “**CJA**”).
2. On April 20, 2017, Richter was appointed as interim receiver (the “**Interim Receiver**”) pursuant to the Order of Justice Newbould with the powers set out in subsection 47(2) of the BIA. The Applicant’s application for the appointment of Richter as receiver was made returnable April 28, 2017.
3. On May 1, 2017, following negotiations between the Applicant and the Respondents, Richter was discharged as Interim Receiver and was appointed monitor (the “**Monitor**”) pursuant to the Order of Justice Newbould dated May 1, 2017 (the “**Monitor Order**”).

4. Pursuant to the Monitor Order, the Monitor was empowered and authorized by the Court to market for sale the Respondents' business and/or any of their property in accordance with the terms of the refinancing, investment and/or sale process as agreed to by the Applicant and the Respondents (the "**RISP**").
5. By June 2, 2017, the RISP had been completed by the Monitor and an offer to purchase substantially all of the Respondents' assets had been selected by the Monitor, subject to court approval (the "**Offer**").
6. On June 15, 2017, the Applicant brought a motion returnable on June 21, 2017 for approval of the transaction contemplated by the Offer (the "**Sale Transaction**") and for an order appointing Richter as receiver and authorizing Richter as receiver to complete the Sale Transaction.
7. The Monitor also brought a motion returnable June 21, 2017 seeking, among other things, an order approving the Report of the Interim Receiver and the Monitor dated June 15, 2017 (the "**Monitor Report**") and the activities of the Monitor described in the Monitor Report, and approving the fees and disbursements of the Monitor and its counsel.
8. On June 21, 2017, Justice Conway, on consent of the Respondents:
 - (a) appointed Richter as receiver (the "**Receiver**") of the Respondents;
 - (b) approved the Sale Transaction pursuant to an Approval and Vesting Order dated June 21, 2017 (the "**Approval and Vesting Order**"); and

- (c) adjourned the Monitor's motion for approval of the Monitor Report, its activities and fees to be scheduled at a 9:30 am chambers appointment to be held on July 5, 2017.
9. As a result of the chambers attendance on July 5, 2017, the Monitor's motion was scheduled to be heard on September 27, 2017.
 10. Between July 5, 2017 and August 25, 2017, the Thomases did not deliver any responding materials or pose any questions to the Monitor with respect to the Monitor Report.
 11. On August 25, 2017, counsel to the Monitor wrote to counsel to the Thomases and requested that the Thomases confirm whether they still intended to oppose the Monitor's motion.
 12. On September 8, 2017, the Monitor scheduled a chambers appearance for September 13, 2017 to impose deadlines on the parties for delivery of responding materials in connection with the Monitor's motion.
 13. On September 13, 2017, the parties appeared in chambers before Justice Hailey and agreed to re-schedule the Monitor's motion to October 17, 2017 and that, among other things:
 - (a) by September 22, 2017, the Thomases would submit a list of questions for the Monitor to answer in connection with the Monitor Report and the First Report of Richter as Receiver dated September 18, 2017 (the "**First Report**"); and
 - (b) by September 27, 2017, the Monitor would provide a response to the questions.

14. On September 22, 2017, the Thomases delivered the Questions.
15. On September 27, 2017, the Monitor's counsel wrote to counsel to the Thomases indicating that it appeared that most, if not all, of the Questions were related to the sale process completed by the Monitor leading up to the Sale Transaction, which had been approved by the Court pursuant to the Approval and Vesting Order.
16. The Monitor's counsel stated that direction from the Court was needed with respect to the Questions, and that it would be contacting the Commercial List Office to confirm available hearing dates and would co-ordinate scheduling with counsel to the Thomases.
17. The Questions appear to be an attempt by the Thomases to collaterally attack the Approval and Vesting Order.
18. The Monitor anticipates that it will require up to 75 hours or more of professional time to answer all of the Questions.
19. Under these circumstances, the advice and direction of the Court are needed to determine whether any of the Questions should be answered by the Monitor, and, to the extent certain of the Questions are to be answered, direction as to which party shall bear the professional costs related to answering the Questions.
20. The Monitor Report and the First Report.
21. The fifth report of the Receiver dated December 21, 2017 (the "**Fifth Report**").
22. The first report of the Interim Receiver dated April 28, 2017 (the "**Interim Receiver Report**").

23. Rules 1.04, 1.05, 2.01, 2.03, and 37 of the *Rules of Civil Procedure* (Ontario).
24. The BIA and the CJA.
25. The inherent and equitable jurisdiction of the Court.
26. Such other grounds as counsel may advise and this Honourable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

1. The Monitor Report, the First Report, the Fifth Report, the Interim Receiver Report and the appendices annexed thereto; and
2. such further and other material as counsel may advise and this Honourable Court may permit.

December 21, 2017

CHAITONS LLP
5000 Yonge Street, 10th Floor
Toronto, ON M2N 7E9

Sam Rappos (LSUC # 51399S)
Tel: (416) 218-1137
Fax: (416) 218-1837
E-mail: samr@chaitons.com

**Lawyers for Richter Advisory Group
Inc., Court-appointed Receiver**

BRIDGING FINANCE INC.,
as agent for **SPROTT BRIDGING INCOME FUND LP**
Applicant

- and -

THOMAS CANNING (MAIDSTONE) LIMITED and
692194 ONTARIO LIMITED
Respondents

Court File No. CV-17-11773-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDING COMMENCED AT TORONTO

FRESH AS AMENDED NOTICE OF MOTION
(re advice and direction)
(returnable January 11, 2018)

CHAITONS LLP
5000 Yonge Street, 10th floor
Toronto, Ontario M2N 7E9

Sam Rappos (LSUC # 51399S)
Tel: (416) 218-1137
Fax: (416) 218-1187
Email: samr@chaitons.com

Lawyers for Richter Advisory Group Inc.,
Court-appointed Receiver

TAB 2

**THOMAS CANNING (MAIDSTONE) LIMITED AND
692194 ONTARIO LIMITED**

December 21, 2017

Court File No. CV-17-11773-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

BETWEEN:

BRIDGING FINANCE INC., as agent for SPOTT BRIDGING INCOME FUND LP

Applicant

- and -

THOMAS CANNING (MAIDSTONE) LIMITED and 692194 ONTARIO LIMITED

Respondents

APPLICATION UNDER subsections 47(1) and 243(1) of the *Bankruptcy and Insolvency Act*,
R.S.C. 1985, c. B-3, as amended, and under section 101 of the
Courts of Justice Act, R.S.O. 1990, c. C.43, as amended

FIFTH REPORT OF RICHTER ADVISORY GROUP INC.
IN ITS CAPACITY AS RECEIVER OF
THOMAS CANNING (MAIDSTONE) LIMITED and 692194 ONTARIO LIMITED

December 21, 2017

APPENDICES

- APPENDIX "A" POSTPONEMENT AND ASSIGNMENT OF CLAIM
- APPENDIX "B" INTERIM RECEIVERSHIP ORDER DATED APRIL 20, 2017
- APPENDIX "C" ENDORSEMENT OF THE HONOURABLE MR. JUSTICE NEWBOULD DATED APRIL 20, 2017
- APPENDIX "D" FIRST REPORT OF THE INTERIM RECEIVER DATED APRIL 28, 2017 (w/o APPENDICES)
- APPENDIX "E" ACCOMMODATION AGREEMENT DATED APRIL 29, 2017
- APPENDIX "F" MONITOR ORDER DATED MAY 1, 2017
- APPENDIX "G" REPORT OF THE MONITOR DATED JUNE 15, 2017 (w/o APPENDICES)
- APPENDIX "H" NOTICE OF RETURN OF APPLICATION AND MOTION DATED JUNE 15, 2017
- APPENDIX "I" ASSET PURCHASE AGREEMENT DATED AS OF JUNE 15, 2017
- APPENDIX "J" MONITOR'S NOTICE OF MOTION DATED JUNE 15, 2017
- APPENDIX "K" AFFIDAVIT OF WILLIAM THOMAS SWORN JUNE 20, 2017 (w/o EXHIBITS)
- APPENDIX "L" RECEIVERSHIP ORDER DATED JUNE 21, 2017
- APPENDIX "M" APPROVAL AND VESTING ORDER DATED JUNE 21, 2017
- APPENDIX "N" ENDORSEMENT OF THE HONOURABLE MADAM JUSTICE CONWAY DATED JUNE 21, 2017
- APPENDIX "O" ENDORSEMENT OF THE HONOURABLE MADAM JUSTICE CONWAY DATED JULY 5, 2017
- APPENDIX "P" LETTER FROM CHAITONS LLP DATED AUGUST 25, 2017
- APPENDIX "Q" E-MAIL FROM BLANEY MCMURTRY LLP DATED AUGUST 31, 2017
- APPENDIX "R" ENDORSEMENT OF THE HONOURABLE MR. JUSTICE HAINEY DATED SEPTEMBER 13, 2017
- APPENDIX "S" FIRST REPORT OF THE RECEIVER DATED SEPTEMBER 18, 2017 (w/o APPENDICES)
- APPENDIX "T" QUESTIONS RECEIVED FROM BILL AND BOB THOMAS
- APPENDIX "U" LETTER FROM CHAITONS LLP DATED SEPTEMBER 27, 2017
- APPENDIX "V" E-MAIL FROM BLANEY MCMURTRY LLP DATED SEPTEMBER 28, 2017
- APPENDIX "W" ENDORSEMENT OF THE HONOURABLE MR. JUSTICE MCEWEN DATED SEPTEMBER 28, 2017

I. PURPOSE OF REPORT

1. The purpose of this fifth report of Richter Advisory Group Inc. ("**Richter**") in its capacity as Receiver (as defined below) of the Respondents is to provide this Court with information with respect to the Receiver's motion for advice and direction returnable on January 11, 2018 with respect to the questions posed of the Monitor (as defined below) and the Receiver by Messrs. William and Robert Thomas (collectively, the "**Thomases**").

II. FACTUAL BACKGROUND

Background

2. The Respondents are companies incorporated under the laws of the Province of Ontario. The Receiver understands that the Respondent, Thomas Canning (Maidstone) Limited ("**TCL**"), is a wholly owned subsidiary of the other Respondent, 692194 Ontario Limited ("**692**"), and that 692 is wholly owned by members of the Thomas family and related entities.
3. The Applicant provided certain credit facilities to TCL, as borrower, pursuant to a letter credit agreement dated July 3, 2015, as amended. 692 provided an unlimited guarantee of TCL's indebtedness to the Applicant. The Thomases, along with their cousin John Thomas, each provided a limited guarantee of TCL's indebtedness to the Applicant.
4. On April 5, 2017, the Applicant issued a demand for repayment to the Borrower.
5. The Thomases claim that they are secured creditors of TCL. On April 18, 2017, each of the Thomases, along with their mother, Julie Thomas, and John Thomas, registered financing statements against all of TCL's personal property under the *Personal Property Security Act* (Ontario).
6. The Receiver has received no documentation in support of the Thomases alleged secured claims against TCL.
7. In connection with the financing provided by the Applicant to TCL and the guarantees granted in favour of the Applicant, the Thomases, along with John Thomas, granted a postponement and assignment of claim in favour of the Applicant, which was acknowledged and signed by TCL (the "**Postponement Agreement**"), a copy of which is attached hereto and marked as **Appendix "A"**.
8. Pursuant to the Postponement Agreement, all debts and liabilities, both present and future, of TCL to the Thomases and John Thomas, were deferred and postponed to the debts, liabilities and advances, both

present and future, of TCL to the Applicant. The Thomases and John Thomas agreed that, until all obligations of TCL to the Applicant had been paid in full:

- (a) no payment would be made or received on account of any liabilities of TCL to them;
- (b) the Applicant was permitted to claim and prove any or all liabilities of TCL to them in any bankruptcy or insolvency proceeding of TCL; and
- (c) all the liabilities of TCL to them were assigned and transferred to the Applicant.

Appointment of Interim Receiver

- 9. On April 20, 2017, the Applicant brought an *ex parte* application for the appointment of Richter as interim receiver of the Respondents under section 47(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the "BIA") and requested a return date for the hearing of its application for the appointment of Richter as receiver under section 243(1) of the BIA and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43 (the "CJA").
- 10. On April 20, 2017, Richter was appointed as interim receiver (the "Interim Receiver") pursuant to an order of The Honourable Mr. Justice Newbould, a copy of which is attached hereto and marked as **Appendix "B"**.
- 11. The Applicant's application for the appointment of Richter as receiver was made returnable on April 28, 2017, as noted in the endorsement of Justice Newbould dated April 20, 2017, a copy of which is attached hereto and marked as **Appendix "C"**.
- 12. In connection with the return of the Applicant's receivership application, the Interim Receiver filed its report to the Court dated April 28, 2017, a copy of which, without appendices, is attached hereto and marked as **Appendix "D"**.

Accommodation Agreement

- 13. Following negotiations between the parties, an accommodation agreement dated April 29, 2017 was entered into by the Applicant, the Respondents, the Thomases and John Thomas (the "**Accommodation Agreement**"), a copy of which is attached hereto and marked as **Appendix "E"**.
- 14. Pursuant to the Accommodation Agreement, the parties agreed that Richter would be appointed by the Court as monitor to market the Respondents' business and property in accordance with the terms of a refinancing, investment and/or sale process (the "**RISP**").

15. Pursuant to section 7.1 of the Accommodation Agreement, the Respondents, the Thomases and John Thomas released, among others, the Interim Receiver and Richter in its personal capacity, of any and all claims in any way directly or indirectly arising out of or in any way connected to the Accommodation Agreement and the Monitor Order (as defined below), other than as a result of the Interim Receiver and the Monitor's gross negligence or willful misconduct.

Appointment of the Monitor

16. On May 1, 2017, Richter was appointed as monitor (the "**Monitor**") of all of the assets, properties and undertakings of the Respondents under section 101 of the CJA pursuant to an order of Justice Newbould dated May 1, 2017 (the "**Monitor Order**"). A copy of the Monitor Order is attached hereto and marked as **Appendix "F"**.
17. Pursuant to the Monitor Order, the Court authorized the Monitor to market the Respondents' business and property in accordance with the RISP agreed to by the Respondents and the Applicant.
18. As detailed in the report of the Monitor dated June 15, 2017 (the "**Monitor's Report**"), two offers were received during the RISP, one from Robert Thomas on behalf of a company to be incorporated, and the other offer was from Santosh Mahal on behalf of a company to be incorporated (the "**Purchaser**"). The RISP was completed by June 2, 2017 and the Purchaser's offer to purchase substantially all of the Respondents' assets had been selected by the Monitor, subject to Court approval (the "**Purchaser's Offer**"). A copy of the Monitor's Report, without appendices, is attached hereto and marked as **Appendix "G"**.
19. On June 15, 2017, the Applicant sought to have its receivership application returnable on June 21, 2017 and brought a motion returnable that same day for approval of the transaction contemplated by the Purchaser's Offer (the "**Sale Transaction**"). A copy of the Applicant's notice of return of application and motion dated June 15, 2017 is attached hereto and marked as **Appendix "H"**. A copy of the asset purchase agreement dated June 15, 2017 (the "**APA**") is attached hereto and marked as **Appendix "I"**.
20. On June 15, 2017, the Monitor served a notice of motion returnable June 21, 2017 seeking, among other things, an order approving its conduct and activities and discharging it as Monitor upon the completion of its duties. A copy of the Monitor's notice of motion dated June 15, 2017 is attached hereto and marked as **Appendix "J"**.
21. On June 20, 2017, counsel to the Monitor received confirmation from counsel to Robert Thomas that his offer had been withdrawn. The Monitor returned Mr. Thomas' deposit to him shortly thereafter.

22. On June 20, 2017, the Respondents served the Affidavit of William Thomas sworn June 20, 2017 (the "**Thomas Affidavit**") wherein they sought, among other things, an adjournment of the Monitor's motion. A copy of the Thomas Affidavit, without exhibits, is attached hereto and marked as **Appendix "K"**.
23. On June 21, 2017, on consent of the Respondents, the Court:
 - (a) appointed Richter as receiver of the Respondents pursuant to section 243 of the BIA and section 101 of the CJA (the "**Receiver**") pursuant to an order of The Honourable Madam Justice Conway dated June 21, 2017, a copy of which is attached hereto and marked as **Appendix "L"**;
 - (b) approved the Sale Transaction pursuant to an Approval and Vesting Order dated June 21, 2017 (the "**Approval and Vesting Order**"), a copy of which is attached hereto and marked as **Appendix "M"**; and
 - (c) adjourned the Monitor's motion for approval of the Monitor's Report, its activities and fees to be scheduled at a 9:30 am chambers appointment to be held on July 5, 2017, as set out in The Honourable Madam Justice Conway's endorsement dated June 21, 2017, a copy of which is attached hereto and marked as **Appendix "N"**.
24. On July 5, 2017, the parties appeared in chambers and, as a result of that attendance, the Monitor's motion was scheduled to be heard on September 11, 2017. As a result of an administrative request received from the Court, the motion was subsequently scheduled to be heard on September 27, 2017. A copy of The Honourable Madam Justice Conway's endorsement dated July 5, 2017, is attached hereto and marked as **Appendix "O"**.
25. The Sale Transaction with the purchaser closed on July 7, 2017. In accordance with the terms of the APA, the Receiver received \$20.0 million from the Purchaser (a \$2.0 million deposit and \$18.0 million on closing), and the Respondents' indebtedness to the Applicant as at the time of the completion of all insolvency proceedings to the Respondents was to be assigned to the Purchaser.
26. Between July 5, 2017 and August 25, 2017, the Thomases did not deliver any responding materials or pose any questions to the Monitor with respect to the Monitor's Report.
27. On August 25, 2017, counsel to the Monitor wrote to counsel to the Thomases and requested that the Thomases confirm whether they still intended to oppose the Monitor's motion. A copy of the letter is attached hereto and marked as **Appendix "P"**. Counsel to the Thomases provided its response to the

- letter by way of email sent on September 1, 2017, a copy of which is attached hereto and marked as **Appendix "Q"**.
28. Following the exchange of additional correspondence, on September 8, 2017, the Monitor scheduled a chambers appearance for September 13, 2017 to impose deadlines on the parties for delivery of responding materials in connection with the Monitor's motion.
29. On September 13, 2017, the parties appeared in chambers before The Honourable Mr. Justice Hainey to discuss matters related to the motions scheduled to be heard on September 27, 2017. As set out in Justice Hainey's endorsement, a copy of which is attached hereto and marked as **Appendix "R"**, the parties agreed to re-schedule the Monitor's motion to October 17, 2017 and that, among other things:
- (a) the Receiver was to issue a report, which the Receiver did with its report dated September 18, 2017 (the **"First Report"**), a copy of which, without appendices, is attached hereto and marked as **Appendix "S"**;
 - (b) by September 22, 2017, the Thomases would submit a list of questions for the Monitor to answer in connection with the Monitor's Report and the First Report; and
 - (c) by September 27, 2017, the Monitor would provide a response to the questions.
30. On September 22, 2017, the Thomases delivered the questions (the **"Questions"**). A copy of the Questions is attached hereto and marked as **Appendix "T"**.
31. On September 27, 2017, the Monitor's counsel wrote to counsel to the Thomases indicating that it appeared that most, if not all, of the Questions were related to the sale process completed by the Monitor leading up to the Sale Transaction, which had been approved by the Court pursuant to the Approval and Vesting Order. The Monitor's counsel stated that direction from the Court was needed with respect to the Questions, and that it would be contacting the Commercial List Office to confirm available hearing dates and would coordinate scheduling with counsel to the Thomases. A copy of the letter is attached hereto and marked as **Appendix "U"**.
32. In response to the letter, counsel for the Thomases sent an email at 12:58 am on September 28, 2017 and indicated that he intended to appear in chambers before the Court that same day. Counsel to the Thomases appeared before the Court *ex parte* on September 28, 2017. A copy of counsel's e-mail is attached hereto and marked as **Appendix "V"**. A copy of The Honourable Mr. Justice McEwen's endorsement dated September 28, 2017 is attached hereto and marked as **Appendix "W"**.

33. On September 28, 2017, the Monitor served its notice of motion for advice and directions with respect to the Questions. The motion is returnable on January 11, 2018. The Monitor's approval and discharge motion, which has been outstanding since June 21, 2017, is still to be re-scheduled.
34. The Monitor is of the view that the Questions appear to be an attempt by the Thomases to collaterally attack the Approval and Vesting Order.
35. The Monitor anticipates that it will require up to 75 hours or more of professional time to answer all of the Questions.
36. Under these circumstances, the advice and direction of the Court are needed to determine whether any of the Questions should be answered by the Monitor, and, to the extent certain of the Questions are to be answered, direction as to which party shall bear the professional costs related to answering the Questions.

All of which is respectfully submitted on the 21st day of December, 2017.

**Richter Advisory Group Inc.
As Receiver of Thomas Canning (Maidstone) Limited and 692194 Ontario Limited
and not in its personal capacity**



Clark Lonergan, CPA, CA, CIRP, LIT
Senior Vice-President

TAB A

POSTPONEMENT AND ASSIGNMENT OF CLAIM

FOR VALUABLE CONSIDERATION, receipt whereof is hereby acknowledged, all debts and liabilities, present and future (the "Liabilities"), of Thomas Canning (Maidstone) Limited (hereinafter called the "Borrower") to each of the Undersigned, or any of them, are hereby deferred and postponed by each of the Undersigned, and each of them, to the debts, liabilities and advances, present and future (the "Obligations"), of the Borrower to BRIDGING FINANCING INC. as agent for SPROTT BRIDGING INCOME FUND LP and the other lenders from time to time under the Loan Agreement (as defined below) (collectively, the "Agent") and it is agreed by each of the Undersigned, and each of them, that until all Obligations of the Borrower to the Agent have been paid, subject to the provisions of the letter credit agreement between the Borrower and the Agent dated with effect as of the date hereof (the "Loan Agreement"), no payment shall be made or received on account of any Liabilities of the Borrower to each of the Undersigned, or any of them, and that any payments which may be received by each of the Undersigned, or any of them, from the Borrower (or from any third party on account of or otherwise for the benefit of the Borrower) in contravention of the provisions of the Loan Agreement shall be received in trust for the Agent and shall be paid over to the Agent forthwith upon receipt but no such payment shall have the effect of reducing the Obligations of the Borrower to the Agent until the same is actually received by the Agent; and none of the Liabilities of the Borrower to each of the Undersigned, or any of them, shall be released, transferred or charged in any manner whatsoever or allowed or permitted to become unenforceable through lapse of time, and the Agent may, but shall not be bound to, claim and prove in respect of any or all Liabilities of the Borrower to each of the Undersigned, or any of them, subject to the provisions of the Loan Agreement, in any bankruptcy, insolvency, composition, scheme of arrangement, liquidation or winding-up, voluntary or involuntary, affecting the Borrower or any distribution of assets of the Borrower among creditors of the Borrower, and all of the Liabilities of the Borrower to each of the Undersigned, or any of them, are hereby assigned and transferred to the Agent and all dividends or other sums which may be or become payable in respect thereof shall be due and be paid to the Agent until the Agent shall have received, together with dividends on the Obligations of the Borrower to the Agent, the full amount of the said Obligations; and the Undersigned, and each of them, will from time to time execute all such statements, proofs of claims, transfers, assignments and documents and do all such other acts and things as the Agent may request from time to time to implement any and all of the foregoing.

IT IS AGREED by the Parties hereto that the Borrower will pay all costs, charges and expenses reasonably incurred by the Agent whether directly or for services rendered (including reasonable solicitors' and auditors' costs, registration costs and other legal expenses), in preparing or enforcing this Agreement.

THIS AGREEMENT shall extend to and enure to the benefit of the Agent and its successors and assigns and shall be binding upon each of the Undersigned and the heirs, executors, administrators, legal representatives, successors and assigns of each of the Undersigned, and each of them.

Each of the Undersigned hereby acknowledges receipt of a copy of this Agreement.

Given under seal this June day of 2015.

in the presence of:

Witness:

Print Name:

Name: John William Thomas

1/s

Witness:

Print Name:

Name: Robert David Thomas

1/s

Witness:

Print Name:

Name: William M. Thomas

1/s

The "Borrower" named above hereby acknowledges receipt of a copy of the foregoing Agreement, accepts the assignment and transfer contained therein and further agrees with the Agent to give effect to all of the provisions of the foregoing Agreement.

Given under seal this 3rd day of July, 2015.

THOMAS CANNING (MAIDSTONE) LIMITED

By:

[Signature]

c/s

Authorized Signatory

TAB B

Court File No. CV-17-11773-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

THE HONOURABLE MR) THURSDAY, THE 20TH DAY
)
JUSTICE NEWBOULD) OF APRIL, 2017

BETWEEN:

**BRIDGING FINANCE INC.,
as agent for SPROTT BRIDGING INCOME FUND LP**

Applicant

- and -

THOMAS CANNING (MAIDSTONE) LIMITED and 692194 ONTARIO LIMITED

Respondents

**IN THE MATTER OF AN APPLICATION PURSUANT TO
SUBSECTIONS 47(1) AND 243(1) OF THE *BANKRUPTCY AND
INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED;**

**ORDER
(Appointment of Interim Receiver)**

THIS APPLICATION made by the Applicant for an Order pursuant to subsection 47(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”), appointing Richter Advisory Group Inc. (“**Richter**”) as interim receiver (in such capacities, the “**Interim Receiver**”) without security, of all of the assets, undertakings and properties of each of Thomas Canning (Maidstone) Limited (“**Thomas Canning**”) and 692194 Ontario Limited (together with Thomas Canning, the “**Debtors**”) acquired for, or used in relation to a business carried on by the Debtors, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Graham Marr sworn April 19, 2017 and the exhibits thereto and on hearing the submissions of counsel for the Applicant, no one appearing for any other person, and on reading the consent of Richter to act as the Interim Receiver,

APPOINTMENT

1. **THIS COURT ORDERS** that pursuant to subsection 47(1) of the BIA, Richter is hereby appointed Interim Receiver, without security, of all of the assets, undertakings and properties of the Debtors acquired for, or used in relation to a business carried on by the Debtors, including all proceeds thereof (the “**Property**”).

INTERIM RECEIVER’S POWERS

2. **THIS COURT ORDERS** that the Interim Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Interim Receiver is hereby expressly empowered and authorized to do any of the following where the Interim Receiver considers it necessary or desirable:

- a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- b) to preserve and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
- c) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Interim Receiver's powers and duties, including without limitation those conferred by this Order;
- d) to report to, meet with and discuss with such affected Persons (as defined below) as the Interim Receiver deems appropriate on all matters relating to the Property and the interim receivership, and to share information, subject to such terms as to confidentiality as the Interim Receiver deems advisable; and

e) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.

f) and in each case where the Interim Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtors, and without interference from any other Person.

CASH MANAGEMENT

3. **THIS COURT ORDERS** that the Debtors shall be required to continue to comply with cash management arrangements as set out and required under letter credit agreement dated July 3, 2015, as amended, between Thomas Canning, the Applicant and others, and the blocked account agreement dated June 29, 2015 entered into between Bank of Montreal, the Applicant and Thomas Canning.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE INTERIM RECEIVER

4. **THIS COURT ORDERS** that (i) the Debtors, (ii) all of their current and former directors, officers, employees, agents, advisors, consultants, legal counsel and shareholders, and all other persons acting on their instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being “**Persons**” and each being a “**Person**”) shall forthwith advise the Interim Receiver of the existence of any Property in such Person’s possession or control, shall grant immediate and continued access to the Property to the Interim Receiver, and shall deliver all such Property to the Interim Receiver upon the Interim Receiver's request.

5. **THIS COURT ORDERS** that all Persons shall forthwith advise the Interim Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtors, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the “**Records**”) in that Person's possession or control, and shall provide to the Interim Receiver or permit the Interim Receiver to make, retain and take away copies thereof and grant to the Interim Receiver

unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Interim Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

6. **THIS COURT ORDERS** that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Interim Receiver for the purpose of allowing the Interim Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Interim Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Interim Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Interim Receiver with all such assistance in gaining immediate access to the information in the Records as the Interim Receiver may in its discretion require including providing the Interim Receiver with instructions on the use of any computer or other system and providing the Interim Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

NO PROCEEDINGS AGAINST THE INTERIM RECEIVER

7. **THIS COURT ORDERS** that no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**"), shall be commenced or continued against the Interim Receiver except with the written consent of the Interim Receiver or with leave of this Court.

NO PROCEEDINGS AGAINST THE DEBTORS OR THE PROPERTY

8. **THIS COURT ORDERS** that no Proceeding against or in respect of the Debtors or the Property shall be commenced or continued except with the written consent of the Interim Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtors or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

9. **THIS COURT ORDERS** that all rights and remedies against the Debtors, the Interim Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Interim Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any “eligible financial contract” as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Interim Receiver or the Debtors to carry on any business which the Debtors are not lawfully entitled to carry on, (ii) exempt the Interim Receiver or the Debtors from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH THE INTERIM RECEIVER

10. **THIS COURT ORDERS** that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Debtors, without written consent of the Interim Receiver or leave of this Court.

CONTINUATION OF SERVICES

11. **THIS COURT ORDERS** that all Persons having oral or written agreements with the Debtors or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Debtors are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Interim Receiver, and that the Interim Receiver shall be entitled to the continued use of the Debtors’ current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Interim Receiver in accordance with normal payment practices of the Debtors or such other practices as may be agreed upon by the supplier or service provider and the Interim Receiver, or as may be ordered by this Court.

INTERIM RECEIVER TO HOLD FUNDS

12. **THIS COURT ORDERS** that all funds, monies, cheques, instruments, and other forms of payments that may be received or collected directly by the Interim Receiver from and after the making of this Order from any source whatsoever shall be deposited into one or more new accounts to be opened by the Interim Receiver (the “**Post Interim Receivership Accounts**”) and the monies standing to the credit of such Post Interim Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Interim Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

EMPLOYEES

13. **THIS COURT ORDERS** that all employees of the Debtors shall remain the employees of the Debtors. The Interim Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Interim Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

LIMITATION ON ENVIRONMENTAL LIABILITIES

14. **THIS COURT ORDERS** that nothing herein contained shall require the Interim Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, “**Possession**”) of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the “**Environmental Legislation**”), provided however that nothing herein shall exempt the Interim Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Interim Receiver shall not, as a result of this Order or anything done in pursuance of the Interim Receiver's duties and powers under this Order, be deemed to be

in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

LIMITATION ON THE INTERIM RECEIVER'S LIABILITY

15. **THIS COURT ORDERS** that the Interim Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Interim Receiver by section 14.06 of the BIA or by any other applicable legislation.

INTERIM RECEIVER'S ACCOUNTS

16. **THIS COURT ORDERS** that the Interim Receiver and counsel to the Interim Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Interim Receiver and counsel to the Interim Receiver shall be entitled to and are hereby granted a charge (the "**Interim Receiver's Charge**") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Interim Receiver's Charge shall form a charge on the Property in priority to the security interests in favour of the Applicant but behind all other security interests, trusts, liens, charges and encumbrances, statutory or otherwise (collectively, "**Encumbrances**"), in favour of any Person that has not been served with the notice of the application of this Order, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA. The Applicant and the beneficiaries of the Interim Receiver's Charge shall be entitled to seek priority ahead of all Encumbrances, on notice to those parties likely to be affected by such priority.

17. **THIS COURT ORDERS** that the Interim Receiver and its legal counsel shall pass its accounts from time to time, and for this purpose the accounts of the Interim Receiver and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

18. **THIS COURT ORDERS** that prior to the passing of its accounts, the Interim Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Interim Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

FUNDING OF THE INTERIM RECEIVERSHIP

19. **THIS COURT ORDERS** that the Interim Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$500,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Interim Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the “**Interim Receiver’s Borrowings Charge**”) as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to the security interests in favour of the Applicant but behind all other Encumbrances in favour of any Person that has not been served with the notice of application of this Order, but subordinate in priority to the Interim Receiver’s Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA. The Applicant and the beneficiaries of the Interim Receiver’s Borrowings Charge shall be entitled to seek priority ahead of all Encumbrances, on notice to those parties likely to be affected by such priority.

20. **THIS COURT ORDERS** that neither the Interim Receiver's Borrowings Charge nor any other security granted by the Interim Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

21. **THIS COURT ORDERS** that the Interim Receiver is at liberty and authorized to issue certificates substantially in the form annexed as **Schedule “A”** hereto (the “**Interim Receiver’s Certificates**”) for any amount borrowed by it pursuant to this Order.

22. **THIS COURT ORDERS** that the monies from time to time borrowed by the Interim Receiver pursuant to this Order or any further order of this Court and any and all Interim Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Interim Receiver's Certificates.

SERVICE AND NOTICE

23. **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the "**Protocol**") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL '<http://www.richter.ca/Folder/Insolvency-Cases/T/Thomas-Canning-Limited>'.

24. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Interim Receiver is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Debtors' creditors or other interested parties at their respective addresses as last shown on the records of the Debtors and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

GENERAL

25. **THIS COURT ORDERS** that the Interim Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

26. **THIS COURT ORDERS** that nothing in this Order shall prevent the Interim Receiver from acting as a BIA section 243(1) receiver or as a trustee in bankruptcy of the Debtors.

27. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Interim Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Interim Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Interim Receiver and its agents in carrying out the terms of this Order.

28. **THIS COURT ORDERS** that the Interim Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Interim Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.


29. **THIS COURT ORDERS** that the Applicant shall have its costs of this Application, up to and including entry and service of this Order, provided for by the terms of the Applicant's security or, if not so provided by the Applicant's security, then on a substantial indemnity basis to be paid by the Interim Receiver from the Debtors' estate with such priority and at such time as this Court may determine.

30. **THIS COURT ORDERS** that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Interim Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.



ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO:

APR 20 2017

PER / PAR: 

SCHEDULE "A"

INTERIM RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. **THIS IS TO CERTIFY** that Richter Advisory Group Inc., the interim receiver (the “**Interim Receiver**”) of the assets, undertakings and properties of each of Thomas Canning (Maidstone) Limited and 692194 Ontario Limited (together, the “**Debtors**”) acquired for, or used in relation to a business carried on by the Debtors, including all proceeds thereof (collectively, the “**Property**”) appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated the ___ day of _____, 2017 (the “**Order**”) made in an action having Court file number ___-CL-_____, has received as such Interim Receiver from the holder of this certificate (the “**Lender**”) the principal sum of \$_____, being part of the total principal sum of \$_____ which the Interim Receiver is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the _____ day of each month] after the date hereof at a notional rate per annum equal to the rate of _____ per cent above the prime commercial lending rate of _____ from time to time.

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Interim Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Interim Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Interim Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

6. The charge securing this certificate shall operate so as to permit the Interim Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

7. The Interim Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the _____ day of _____, 20__.

RICHTER ADVISORY GROUP INC., solely
in its capacity as Interim Receiver of Thomas
Canning (Maidstone) Limited and 692194
Ontario Limited, and not in its corporate or
personal capacity

Per: _____

Name:

Title:

IN THE MATTER OF AN APPLICATION PURSUANT TO SUBSECTIONS 47(1) AND 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*,
R.S.C. 1985, c. B-3, AS AMENDED;
BRIDGING FINANCE INC., as agent for SPROTT
BRIDGING INCOME FUND LP

Applicant

THOMAS CANNING (MAIDSTONE) LIMITED and 692194
ONTARIO LIMITED

Respondents

Court File No.

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST
PROCEEDING COMMENCED AT TORONTO

ORDER
(Appointment of Interim Receiver)

AIRD & BERLIS LLP
Barristers and Solicitors
Brookfield Place
Suite 1800, Box 754
181 Bay Street
Toronto, Ontario M5J 2T9

Sam Babe - LSUC # 49498B
Tel: 416.863.1500
Fax: 416.863.1515
Email: sbabe@airdberlis.com

*Lawyers for the Applicant, Bridging Finance Inc., as
Agent For Sprott Bridging Income Fund LP*

TAB C

IN THE MATTER OF AN APPLICATION PURSUANT TO SUBSECTIONS 47(1) AND 243(1) OF THE BANKRUPTCY AND INSOLVENCY ACT,
R.S.C. 1985, c. B-3, AS AMENDED;

BRIDGING FINANCE INC., as agent for SPROTT
BRIDGING INCOME FUND LP

THOMAS CANNING (MAIDSTONE) LIMITED and 692194
ONTARIO LIMITED

Applicant

Respondents

Court File No. CV-17-11773-00CL

May 20, 2017

In my view, on the basis of the material before me, an interim receiver is warranted. In light of the designation of funds, it is appropriate that this application be heard on an ex parte basis. Comeback date of April 28, 2017.

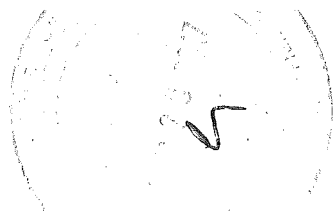
Dredy

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST
PROCEEDING COMMENCED AT TORONTO

APPLICATION RECORD

AIRD & BERLIS LLP
Barristers and Solicitors
Brookfield Place
Suite 1800, Box 754
181 Bay Street
Toronto, Ontario M5J 2T9

Sam Babe - LSUC # 49498B
Tel: 416.863.1500
Fax: 416.863.1515
Email: sbabe@airdberlis.com



Lawyers for the Applicant, Bridging Finance Inc., as
Agent For Sprott Bridging Income Fund LP

TAB D

**THOMAS CANNING (MAIDSTONE) LIMITED AND 692194 ONTARIO
LIMITED**

FIRST REPORT OF THE INTERIM RECEIVER

April 28, 2017

Court File No. CV-17-11773-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

BETWEEN:

BRIDGING FINANCE INC., as agent for SPROTT BRIDGING INCOME FUND LP

Applicant

- and -

THOMAS CANNING (MAIDSTONE) LIMITED and 692194 ONTARIO LIMITED

Respondents

**APPLICATION UNDER subsections 47(1) and 243(1) of the *Bankruptcy and Insolvency Act*,
R.S.C. 1985, c. B-3, as amended, and under section 101 of the
Courts of Justice Act, R.S.O. 1990, c. C.43, as amended**

**REPORT OF RICHTER ADVISORY GROUP INC.
IN ITS CAPACITY AS INTERIM RECEIVER OF
THOMAS CANNING (MAIDSTONE) LIMITED and 692194 ONTARIO LIMITED**

April 28, 2017

TABLE OF CONTENTS

| | | |
|------|---|---|
| I. | INTRODUCTION | 1 |
| II. | PURPOSE OF REPORT | 1 |
| III. | QUALIFICATIONS | 1 |
| IV. | BACKGROUND..... | 2 |
| V. | ACTIVITIES OF THE INTERIM RECEIVER..... | 2 |
| VI. | INTERIM RECEIVER'S FINDINGS..... | 5 |

APPENDICIES

APPENDIX "A" – ORDER OF THE HONOURABLE MR. JUSTICE NEWBOULD DATED APRIL 20, 2017

APPENDIX "B" – ENDORSEMENT OF THE HONOURABLE MR. JUSTICE NEWBOULD MADE APRIL 20, 2017

I. INTRODUCTION

1. Upon application by Bridging Finance Inc., as agent for Sprott Bridging Income Fund LP ("**Bridging**" or the "**Lender**"), on April 20, 2017, The Honourable Mr. Justice Newbould of the Superior Court of Justice (Commercial List) (the "**Court**") issued an order (the "**IR Order**") appointing Richter Advisory Group Inc. ("**Richter**") as interim receiver (the "**Interim Receiver**") of all of the assets, undertakings and properties (the "**Property**") of Thomas Canning (Maidstone) Limited ("**TCL**") and 692194 Ontario Limited (together with TCL, the "**Company**") pursuant to subsection 47(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "**BIA**"). A copy of the Interim Receivership Order is attached hereto as **Appendix "A"**.
2. As noted in the endorsement of Justice Newbould, a copy of which is attached hereto as **Appendix "B"**, the Interim Receivership Order was granted on an *ex-parte* basis with a comeback hearing date of April 28, 2017 (the "**Comeback Hearing**").
3. The Interim Receiver understands that an application will be made by Bridging before the Court at the Comeback Hearing for an order appointing Richter as receiver pursuant to subsection 243(1) of the BIA, and section 101 of the *Courts of Justice Act* R.S.O. 1990 c. C.43, as amended, without security, of the Property of the Company.
4. Richter is a licensed trustee within the meaning of section 2 of the BIA and has consented to act as receiver in these proceedings in the event that this Court grants the relief sought by the Lender. Richter files this report in its capacity as the Interim Receiver of the Company.

II. PURPOSE OF REPORT

5. The purpose of this report (the "**Report**") is to:
 - a) inform this Court of the activities of the Interim Receiver since the granting of the IR Order; and
 - b) provide this Court with the Interim Receiver's preliminary observations and findings.

III. QUALIFICATIONS

6. In preparing this Report, the Interim Receiver has relied upon unaudited financial information, the Company's books and records, financial information prepared by the Company and discussions with management (collectively, the "**Information**"). The Interim Receiver has reviewed the Information for reasonableness, internal consistency, and use in the context in which it was provided, and in consideration of the nature of the evidence provided to this Court, in relation to the relief sought therein. The Interim Receiver has not, however, audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Generally Accepted Auditing Standards ("**GAAS**") pursuant to the Canadian Institute of Chartered Accountants Handbook and, as such, the Interim Receiver expresses no opinion or other form of

assurance contemplated under GAAS in respect of the Information. An examination of the Company's financial forecasts in accordance with the *Canadian Institute of Chartered Accountants Handbook* has not been performed. Future-oriented financial information reported on or relied upon in this Report is based on management's assumptions regarding future events; actual results achieved may vary from forecast and such variations may be material.

7. Unless otherwise noted, all monetary amounts contained in this Report are expressed in Canadian dollars ("CAD").

IV. BACKGROUND

8. Reference is made to the Affidavit of Graham Marr of the Lender, sworn April 19, 2017 (the "**Bridging Affidavit**") and filed with the Court in support of the Lender's application for the IR Order made April 20, 2017 (the "**Date of Appointment**"). While this Report summarizes some of the information set out in the Bridging Affidavit, for context, readers are directed to the Bridging Affidavit for a more detailed explanation of the grounds for the Lender's application.

Company Overview

9. TCL is a privately-owned Ontario corporation founded by the principals' grandparents in 1933, which operates a tomato canning business in Essex County, Ontario. The principals of the Company include: Mr. William Thomas ("**Bill Thomas**"), CEO; Mr. John Thomas ("**Jack Thomas**"), President; and Mr. Robert Thomas ("**Bob Thomas**", and together with Bill Thomas and Jack Thomas, the "**Management**"), VP Production and Plant Engineering.
10. TCL produces a variety of canned tomato product including pastes, sauces, canned tomatoes (whole, diced and crushed), juices and ketchup from both conventional and organic tomato feedstock, which is secured by contracts first with third party greenhouses, and then with conventional farms later in the production cycle. TCL sells its product under white label branding and its own Utopia Brand™ to customers primarily located in Canada and the United States.
11. 692194 Ontario Limited is a non-operating holding company, which the Interim Receiver understands owns the shares of TCL and certain real estate assets.

V. ACTIVITIES OF THE INTERIM RECEIVER

12. In the afternoon of April 20, 2017, following the granting of the IR Order, the Interim Receiver arrived onsite at the Company's premises at 326 South Talbot Road, Lakeshore, Ontario (the "**Premises**"), and was granted access by Bill Thomas upon being advised of the Interim Receiver's appointment. The Interim Receiver explained the terms

of the IR Order, after which Bill Thomas requested that the Interim Receiver vacate the office building (located on the Premises) until such time as the Company's counsel could be reached.

13. Shortly thereafter, the Interim Receiver and its counsel, Chaitons LLP ("**Chaitons**") were contacted by, and corresponded with, the Company's counsel, Mr. David Ullmann of Blaney McMurtry LLP ("**Mr. Ullmann**") on the terms of the IR Order, and the Interim Receiver's intentions with respect to accessing the Premises and the third party warehouse (the "**Third Party Warehouse**") where it understood that certain of the Company's inventory was located. Additionally, Mr. Ullmann raised concern over potential notification by the Interim Receiver of its appointment to third parties, on the premise that it would be disruptive to the Company's operations.
14. Mr. Ullmann advised, in an email to the Interim Receiver, Chaitons, and the Lender's counsel, Aird & Berlis LLP ("**Aird**"), that the Company would only provide access to the Interim Receiver at 5:00 p.m. that day, or shortly thereafter, being after business hours once the majority of the Company's employees had left the Premises. Mr. Ullmann further advised that the Third Party Warehouse had closed at 3:30 p.m. as per normal operating hours. As such, the Interim Receiver was not able to access the Third Party Warehouse on the Date of Appointment.
15. Shortly after 5:00 p.m., the Interim Receiver was granted access to, and was provided a tour of, the Premises by Bill Thomas. The Interim Receiver proceeded to change the locks on certain of the entry/shipping doors, where possible, in an effort to secure the Premises and safeguard the Property. However, due to the unique configuration (buildings with large openings with no doors, large sliding doors, etc.) and age of the buildings on the Premises, securing all areas was not feasible.
16. The Interim Receiver also engaged an outside security company to remain on-site at all times while the Interim Receiver was not present, to further secure the Premises and safeguard the Property due to the aforementioned building configuration, significant inventory stored in large containers outdoors on the Premises (not secured against theft), and the fact that seven (7) Company employees are living on the Premises in trailers. No action was taken by the Interim Receiver to secure or safeguard the employees' lodgings.
17. On April 21, 2017, the Interim Receiver provided the Company's employees and Management access to the Premises. Such access has continued to be provided on a daily basis as requested, and business continues to operate in the normal course.
18. The Interim Receiver has also completed the following activities from the Date of Appointment up to and including the date of this Report:
 - a) Accessed the Third Party Warehouse for a brief inspection of the Company's inventory onsite on April 21, 2017. Subsequently, on April 24, 2017, the Interim Receiver was granted access to perform a physical count of the inventory at the Third Party Warehouse, which it understood was owned by the Company;
 - b) Photographed certain machinery/equipment and inventory located at the Premises;

- c) Performed a full physical count of the Company's inventory on the Premises, subject to certain limitations where certain of the inventory was not made readily accessible by Management;
- d) Confirmed with Management that valid insurance was in place;
- e) Requested and was provided with access to the computer system in order access certain of the Company's books and records;
- f) Reviewed the Company's books and records in an effort to gain an understanding of the Company's financial position;
- g) Established procedures for monitoring the Company's cash receipts and cash disbursements, including but not limited to: (i) reviewing the Company's funding requests for critical payments, and submitting these funding requests to the Lender on the Company's behalf; (ii) observing payments made by the Company to ensure they were made in accordance with the funding requests; (iii) gaining read-only access to the Company's depository and disbursement bank accounts held at the Bank of Montreal ("**BMO**"), with the Lender's assistance; and (iv) opening mail received at the Premises in order to monitor customer payments and information pertinent to the Property;
- h) Obtained from Management and reviewed recent bank statements of non-BMO accounts outside of the Lender's blocked account agreement with the Company and understood to no longer be in active use. With the exception of ongoing bank fees, the Interim Receiver noted no activity in these bank accounts, but notes that it has yet to review the April 2017 statement for one of the accounts (with Royal Bank of Canada);
- i) Monitored shipping activity from the Premises, including review of supporting documentation. The Interim Receiver did not monitor activity from the Third Party Warehouse, as it understands that shipments from the Third Party Warehouse are only made to the Premises, and not directly to customers;
- j) Obtained an understanding from Management of the Company's canning cycle (the "**Production Cycle**") and the status thereof, including reviewing supporting documentation for seeds purchased and provided to third party greenhouses in support of production, and related agreements between the Company and the greenhouses;
- k) Participated in numerous update calls with the Lender and Aird, and Mr. Ullmann in respect of the interim receivership proceedings; and
- l) Prepared this Report.

19. The Interim Receiver also engaged Mr. Julio Cacoilo, on a day-to-day independent consultant basis, to assist the Interim Receiver in safeguarding and securing the Property. Mr. Cacoilo was familiar with the Company having

provided monitoring services to the Lender prior to the granting of the IR Order. Mr. Cacoilo assisted the Interim Receiver in conducting the physical inventory count mentioned above, and once finalized; his services were terminated by the Interim Receiver.

VI. INTERIM RECEIVER'S FINDINGS

20. As at the date of this Report the Interim Receiver has made the following preliminary findings:

- a) Management has assisted the Interim Receiver when requested, however has not been proactive in identifying potential risks and/or concerns that may be of interest of the Interim Receiver with respect to the Property (e.g. aged inventory product, extent of damage to inventory product, etc.);
- b) In relation to the Production Cycle, the Interim Receiver understands that all seeds have been procured by the Company and are in the process of being planted by the third party greenhouses;
- c) The Company has processed fifteen (15) shipments since the Date of Appointment, totaling sales of approximately \$219k;
- d) Bridging provided the Company with financing to make approximately \$52k in critical payments since the Date of Appointment, including payroll costs (\$27k), warehouse costs (\$17k) and packaging materials (\$7k). However, Management has been unable to provide any visibility into the Company's short term liquidity needs;
- e) The Company has insufficient senior finance and accounting resources to effectively operate its business. The Interim Receiver understands that the previous CFO resigned in March 2017 and the Company's inventory costing accountant resigned in September 2016, and that these resources have not been replaced. The Interim Receiver further understands that Management's background is in operations, and as a result it cannot adequately support the finance function;
- f) The Company's books and records are not up-to-date, as evidenced by:
 - (i) Bank reconciliations not completed since July 2015;
 - (ii) HST returns not completed or filed since mid-2016. Given the nature of the industry, the Interim Receiver understands that the Company may be in a refund position, however has not been able to confirm the HST position to date;
 - (iii) The Interim Receiver discovered that approximately \$320k of cash receipts had not been posted in the accounting system, resulting in an overstatement of accounts receivable ("AR", approximately 10% of the most recent AR balance);

- (iv) Due to the Company's gaps in its inventory management processes and procedures (including system limitations), the Interim Receiver could not rely on the Company's books and records to conduct its physical inventory count. A material overstatement of approximately \$1.5 million - \$2.0 million (including potentially aged/damaged product) was determined by the Interim Receiver as follows:

| Thomas Canning Ltd. | | | |
|--|----------------------|-----------------------|--------------------|
| Results of Inventory Count | | | |
| As at April 20, 2017 | Per Company | Physical Count | Variance |
| Goods Counted | | | |
| Finished Goods (Note) | \$ 4,098,300 | \$ 4,975,200 | \$ 876,900 |
| Raw Materials - Paste | 3,599,500 | 1,764,500 | (1,835,000) |
| Raw Materials - Containers | 1,008,800 | 1,053,600 | 44,800 |
| Raw Materials - Tomatoes | 445,400 | - | (445,400) |
| Total | 9,152,000 | 7,793,300 | (1,358,700) |
| Goods Not Counted | | | |
| Raw Materials - Plants | \$ 801,500 | | |
| Packaging & Storage | 555,000 | | |
| Parts | 535,600 | | |
| Raw Materials - Other | 173,500 | | |
| Total | 2,065,600 | | |
| Grand Total | \$ 11,217,600 | | |
| Note: | | | |
| Finished goods counted include ~35,000 cases (book value of ~\$440,000) of unlabelled aged (canned in 2011-2014) or damaged product. | | | |

- g) Given the status of Company's books and records and the AR and inventory overstatements previously noted, it is likely the assets included in the Company's borrowing base certificate submitted to the Lender are overstated;
- h) During the tour of the Premises, the Interim Receiver noted that the plant's HVAC system was located on a property adjacent to the Premises, understood to be owned by Bob Thomas. Management informed the Interim Receiver that the HVAC system had been installed on the adjacent property (few years ago) due to timing constraints and its proximity to the area of production that requires a regulated temperature;
- i) The Company employs migrant workers as part of its Production Cycle. As previously noted, seven (7) of the Company's employees currently live on the Premises. The number of migrant workers is expected to double over the coming weeks, and increase to a total of 50-60 employees in the third quarter of the year. The Company utilizes a third party agency to handle jurisdiction requirements for its foreign workers; and

- j) Per the Company's blocked account agreement with the Lender, all receipts are required to be deposited to a blocked account with BMO. The Interim Receiver has not completed a detailed review of the Company's bank accounts, however has noted the following deposits were made into the Company's disbursement account at BMO.

| Thomas Canning Ltd. | | |
|--|--------------------------------|---------------------------|
| Deposits into Canadian Disbursement Account | | |
| January 1 to April 24, 2017 | | |
| Date | Description | Amount |
| 01/10/2017 | Grain Process Enterprises Ltd. | \$ 3,108.04 |
| 01/11/2017 | On The Move Organics | 637.00 |
| 01/20/2017 | Pasta House | 310.00 |
| 03/17/2017 | Deposit | 210.00 |
| 03/28/2017 | Deposit | 96.00 |
| 04/18/2017 | Deposit | 10,434.05 |
| 04/20/2017 | Deposit | 200.00 |
| | | <u>\$14,995.09</u> |

21. The Interim Receiver has discussed the above findings with Management and the Company's counsel.

All of which is respectfully submitted on the 28th day of April, 2017.

Richter Advisory Group Inc.
as Interim Receiver of Thomas Canning (Maidstone) Limited and 692194 Ontario Limited and not in its personal capacity



Clark Lonergan, CPA, CA, CIRP
Senior Vice-President

TAB E

ACCOMMODATION AGREEMENT

THIS ACCOMMODATION AGREEMENT (this “**Accommodation Agreement**”) is made with effect as of the 29th day of April, 2017 and is entered into by and among:

BRIDGING FINANCE INC., as Administrative and Collateral Agent for
Sprott Bridging Income Fund LP

- and -

THOMAS CANNING (MAIDSTONE) LIMITED, as Borrower

- and -

692194 ONTARIO LIMITED, as Guarantor

- and -

WILLIAM THOMAS, ROBERT THOMAS AND JOHN THOMAS,
as Limited Guarantors

RECITALS:

- A. Thomas Canning (Maidstone) Limited (the “**Borrower**”) is indebted to Bridging Finance Inc. (“**Bridging**”) and the other lenders under the Credit Agreement (as defined below) with respect to certain credit facilities (the “**Credit Facilities**”) granted pursuant to and under the terms of a Credit Agreement dated July 3, 2015 among and between Bridging as administrative and collateral agent (in such capacity, the “**Agent**”) for Sprott Bridging Income Fund LP (together with the Agent, the “**Lender**”), 692194 Ontario Limited, as guarantor (“**6921**”) and each of William Thomas, Robert Thomas and John Thomas, as limited guarantors (collectively, the “**Personal Guarantors**” and, together with 6921, the “**Guarantors**”, and the Guarantors together with the Borrower, the “**Obligors**”), as amended by a First Amending Letter Agreement dated May 17, 2016, a Second Amending Letter Agreement dated May 31, 2016, and a Third Amending Letter Agreement dated July 26, 2016 (collectively, and as further amended, supplemented, restated, replaced or renewed from time to time, the “**Credit Agreement**”).
- B. As security for the payment of all advances made to and obligations of the Borrower under the Credit Facilities and all other present and future indebtedness, fees, costs, expenses and other liabilities owing by the Borrower to the Lender (collectively, the “**Obligations**”), the Agent holds the security made by the Borrower detailed in Schedule “**A**” to this Accommodation Agreement (as amended, supplemented, restated, replaced or renewed from time to time, the “**Borrower’ Security**”).
- C. The Guarantors have delivered the guarantees of the Obligations in favour of the Agent and the Lenders detailed on Schedule “**A**” to this Accommodation Agreement (the “**Guarantees**”) and have granted security to the Agent detailed on Schedule “**A**” to this

Accommodation Agreement for their respective obligations under the Guarantees (as amended, supplemented, restated, replaced or renewed from time to time, collectively, the "Guarantors' Security" and, together with the Borrower's Security, the "Security").

- D. The Borrower is in breach of its obligations under the Credit Agreement as a result of the Events of Default detailed on Schedule "B" to this Accommodation Agreement (collectively, the "Existing Defaults").
- E. As a result of the Existing Defaults, the Agent, by its counsel, issued demands for repayment of the Obligations to each of the Obligor (collectively, the "Demands" and, each, a "Demand"), which Demands, in the case of the Borrower and 6921, were accompanied by Notices of Intention to Enforce Security (collectively, the "BIA Notices") pursuant subsection 244(1) of the *Bankruptcy and Insolvency Act* (the "BIA"), all dated April 5, 2017.
- F. The notice period set out in the BIA Notices has expired and the Obligor have failed to repay the outstanding Obligations and the Agent is entitled to pursue any and all remedies to enforce its rights pursuant to the Credit Agreement, the Security and the other Credit Documents, as such term is defined in the Credit Agreement (hereinafter, the "Credit Documents"), as well as under Applicable Laws, including, without limitation, the right to appoint, or seek the court-appointment of, a receiver over the Borrower and 6921.
- G. The Obligor breached their obligations in respect of the Cash Management (as defined below). On April 20, 2017, the Agent filed an application with the Ontario Superior Court of Justice (Commercial List) in Toronto (the "Court"), under Court file number CV-17-11773-00CL, for: (1) the *ex parte* appointment of Richter Advisory Group Inc. ("Richter") as interim receiver over the Borrower and 6921 (in such capacity, the "Interim Receiver") pursuant to subsection 47(1) of the *Bankruptcy and Insolvency Act* (the "BIA") and the subsequent appointment of Richter as receiver of the Borrower and 6921 (in such capacity, the "Receiver") pursuant to subsection 243(1) of the BIA (the "Original Application").
- H. Also on April 20, 2017, the Agent obtained an Order of the Court, made on an *ex parte* basis, appointing the Interim Receiver (the "Interim Receivership Order").
- I. On April 21, 2017, the Agent filed an amended Original Application, expanding the proposed legislative basis for the appointment of the Receiver to include section 101 of the *Courts of Justice Act* (Ontario) (as amended, the "Application", and the Court proceedings commenced thereby, the "Receivership Proceedings").
- J. The Obligor have requested that the Agent forbear from exercising and enforcing any rights and remedies available under Applicable Laws or under the Credit Documents and the adjournment of the Receivership Proceedings arising as a result of the Existing Defaults to allow the Borrower to conduct a refinancing, investment and/or sale solicitation process ("RISP").
- K. The Obligor have also requested that Lender provide certain funding of "critical payments" to the Borrower under the Credit Facilities, on the terms and conditions and

subject to the limitations as specified in the Credit Agreement as amended by this Accommodation Agreement.

NOW THEREFORE, in consideration of the premises above, the respective covenants of the parties hereto as herein contained, and other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged) the parties agree as follows:

ARTICLE 1 INTERPRETATION

1.1 Definitions

In this Accommodation Agreement, unless the context otherwise requires, all capitalized terms used but not otherwise defined herein shall have the respective meanings ascribed to them in the Credit Agreement. All monetary amounts referred to in this Agreement shall refer to Canadian currency save and except where the initials "U.S." appear in reference to any sum, in which event such reference shall be to currency of the United States of America.

1.2 Gender and Number

Words importing the singular include the plural and vice versa and words importing gender include all genders.

1.3 Severability

Each of the provisions contained in this Accommodation Agreement is distinct and severable, and a declaration of invalidity, illegality or unenforceability of any such provision or part thereof by a court of competent jurisdiction shall not affect the validity or enforceability of any other provision of this Accommodation Agreement.

1.4 Headings

The division of this Accommodation Agreement into articles, sections and clauses, and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Accommodation Agreement.

1.5 Attornment

The parties hereto irrevocably submit and attorn to the non-exclusive jurisdiction of the courts of the Province of Ontario and, in first instance, the Court, for all matters arising out of or in connection with this Accommodation Agreement.

1.6 Conflicts

If there is any inconsistency or conflict between the terms of this Accommodation Agreement and the terms of the Credit Documents, the provisions of this Accommodation Agreement shall prevail to the extent of such inconsistency or conflict, but the foregoing shall not apply to limit or

restrict in any way the rights and remedies of the Lender under the Credit Documents or this Accommodation Agreement other than as may be specifically contemplated herein.

ARTICLE 2 ACKNOWLEDGEMENTS AND CONFIRMATIONS

2.1 Acknowledgements and Confirmations

The Obligors hereby irrevocably and unconditionally acknowledge, agree, represent, warrant, confirm and agree as follows:

- (a) the statements contained in the Recitals of this Accommodation Agreement are true and accurate in every respect;
- (b) the Security is fully enforceable by the Agent against the Obligors and the Agent is entitled to exercise all of its rights and remedies under the Security;
- (c) the Obligations under the Credit Agreement as of the date of this Accommodation Agreement set out on **Schedule "C"** hereto are owing by the Obligors, jointly and severally, to the Agent and Lenders unconditionally, without offset, defence or counterclaim of any kind, nature or description whatsoever, except with regard to the limitations on the principal amount of the obligations of the Personal Guarantors under their respective Guarantees;
- (d) the Existing Defaults have occurred and are continuing and each constitutes an Event of Default under the Credit Agreement for all purposes (but not a Termination Event under this Accommodation Agreement) and the Obligors will not assert or exercise any right of defence, dispute, counterclaim or other right, claim, demand, challenge, objection or appeal of any kind in respect of such Existing Defaults, other than in opposition to any attempt to use such Existing Defaults as a basis for terminating this Accommodation Agreement;
- (e) each of the Demands and the BIA Notices has been validly and effectively given to the Obligor to which it was addressed in full compliance with the Credit Documents and Applicable Laws and will remain in full force and effect at all times until the Obligations are paid to the Agent in full, subject only to the provisions of this Accommodation Agreement;
- (f) the notice period set out in the BIA Notices has expired;
- (g) the Agent has not waived and shall not be deemed to have waived any of the Existing Defaults and the Agent has validly and effectively accelerated all Obligations and, subject only to the provisions of this Accommodation Agreement, the Agent is immediately entitled, in respect of the Existing Defaults, without limitation or restriction of any kind and as it may determine in its sole discretion, to take and exercise all rights, remedies, actions, proceedings and claims available to the Agent as secured creditor under or in respect of the Credit Agreement, the Obligations, the Credit Documents or otherwise under Applicable

Laws, including, without limitation, the appointment of a receiver, an interim receiver or trustee in bankruptcy under the BIA (such rights, remedies, action, proceedings and claims, collectively, "**Lender Enforcement Actions**");

- (h) nothing in this Accommodation Agreement constitutes a withdrawal or revocation of any of the Demands or the BIA Notices, or a waiver by or on behalf of the Agent of any Existing Defaults, a waiver of any other or future defaults or Events of Defaults under the Credit Agreement, the Security or the other Credit Documents or a waiver of any Lender Enforcement Actions relating to any existing or other or future defaults or Events of Default under the Credit Agreement, the Security, the other Credit Documents or Applicable Laws (including the Existing Defaults), or a waiver of the obligation of the Obligors to pay the entirety of the Obligations to the Agent when due;
- (i) the Credit Agreement, the Security and the other Credit Documents are in full force and effect, constitute legal, valid and binding obligations of the Obligors enforceable against the Obligors in accordance with their terms, and each Obligor hereby waives and agrees not to assert or cause to be asserted on its behalf, and is hereby estopped from asserting or causing to be asserted on its behalf, any rights of defense, dispute, counterclaim, set-off, deduction or other rights, claims, demands, challenges, objections or appeals of any kind whatsoever arising from or relating to any matter, cause or thing whatsoever existing as of the date of this Accommodation Agreement, whether in respect to the legal effect of any of the Credit Documents or the legality, validity or binding effect of the obligations of the Obligors thereunder or the enforceability of same;
- (j) this Accommodation Agreement has been duly executed and delivered by a duly authorized officer on behalf of each Obligor and constitutes a legal, valid and binding obligation of the Obligors, enforceable in accordance with its terms;
- (k) this Accommodation Agreement has been fairly and freely negotiated between sophisticated commercial parties having received the benefit of independent legal advice of experienced legal counsel, and the Obligors are entering into this Agreement voluntarily with full understanding of the nature and consequences of same and without duress, bad faith, unreasonable or oppressive conduct, undue influence or other unfair advantage of any kind by or on behalf of the Agent or any other person;
- (l) nothing herein shall require or constitute an agreement on the part of the Agent (i) to forbear from taking or exercising any Lender Enforcement Actions at any time in respect of any other or future Event of Default; or (ii) to forbear in the exercise of any Lender Enforcement Actions at any time upon or following the occurrence of any Forbearance Termination Event (as defined in section 6.1 below);
- (m) as of the date hereof, the Agent has acted in a commercially reasonable manner and the Obligors, are estopped from disputing same;

- (n) as of the date hereof, the Borrower has remained in possession and control of its business and assets at all times;
- (o) the Obligors do not fall under the definition of "farmer" in the *Farm Debt Mediation Act* (the "FDMA") and are hereby estopped from disputing same and/or from making any claim under the FDMA and hereby waive any right to assert that they are a "farmer" or have any rights under the FDMA;
- (p) in entering into this Accommodation Agreement, the Agent is relying on the covenants, acknowledgements, agreements, representations and warranties of the Obligors being true and correct at all times and that all such covenants, acknowledgements, agreements, representations and warranties are and will continue to be in full force and effect at all times, both before, during and after any Forbearance Period (as defined in section 3.1 below), notwithstanding (i) that any of the forbearance conditions in section 3.2 below (the "Forbearance Conditions") may not be satisfied or waived, or (ii) any expiry of the Forbearance Period;
- (q) all terms and conditions of the Credit Documents shall continue in full force and effect save and except as amended by this Accommodation Agreement, and to the extent than any provision thereof conflicts with this Accommodation Agreement, this Accommodation Agreement shall prevail to the extent of such conflict;
- (r) the existing cash management arrangements contemplated in the Credit Agreement (the "Cash Management"), including pursuant to which Bridging has full cash dominion over the Borrower's CDN\$ and U.S.\$ collection accounts at the Toronto main branch of the Bank of Montreal ("BMO") under the terms of a Blocked Account Agreement between the Agent, the Borrower and BMO dated as of June 29, 2015 (the "Blocked Account Agreement"), are being and shall continue to be maintained in order for the Agent to maintain the collateral monitoring and protection that it currently has over all proceeds of Collateral under the terms of the Credit Agreement and the Blocked Account Agreement;
- (s) despite the oversight and approval role of the Monitor (as defined in section 5.2 below), the Borrower shall remain, and be deemed to remain, in possession and control of its business throughout the Forbearance Period (as defined in subsection 3.1(a) below); and
- (t) title to the generator/cooling system in the possession of one or more of the Personal Guarantors, all growing contracts for the 2017 season and all seeds supplied in connection therewith are legally and beneficially solely owned and held by the Borrower.

ARTICLE 3 FORBEARANCE

3.1 Forbearance

- (a) In reliance upon the representations, warranties and covenants of the Obligors contained in this Accommodation Agreement, the Agent agrees to forbear from exercising its rights and remedies under the Security, the Guarantees and under Applicable Laws in accordance with the terms and conditions of this Accommodation Agreement, and any document(s) executed in connection herewith, for the period (the "**Forbearance Period**") commencing on the date the conditions precedent in subsection 3.2(a) are confirmed satisfied or waived by the Agent in writing and ending on the earliest of:
- (i) June 30, 2017 (the "**Outside Date**");
 - (ii) the occurrence of any Forbearance Termination Event (as defined in section 6.1 below); and
 - (iii) the completion of an acceptable transaction under Section 3.2(d) below;
- or such later date as agreed to in writing by the Agent and the Obligors (the "**Forbearance Termination Date**").
- (b) Subject to the satisfaction of the conditions in subsection 3.2(a), the Agent agrees that it shall take no further action or proceedings in furtherance of the Demands or the BIA Notices during the currency of the Forbearance Period.
- (c) Upon the expiration or termination of the Forbearance Period, the agreement of the Agent to forebear shall automatically and without further action terminate and be of no further force and effect, it being expressly agreed that the effect of such termination will be to permit the Agent, at its option, to take all Lender Enforcement Actions on not less than two (2) Business Days' notice to the Obligors and the Monitor.
- (d) If no acceptable offer is received and/or transaction is completed under the RISP as set out in Section 3.2(d) below or the Obligations are not repaid by the Outside Date, the Agent will, if requested by the Borrower, extend the Forbearance Period to allow for further operations of and an orderly wind-down of the Borrower's canning business (the "**Business**"), provided that the Monitor recommends such extension and advises the Agent that the Borrower can survive and operate solely on its own cash flow without any deterioration of the Business, customer base or value of Agent's secured position or Collateral and provided further that no Forbearance Termination Event has occurred and that the Individual Guarantors have and continue during such extension to fully cooperate with the Monitor in all respects. For greater certainty, the concept of "operate solely on its own cash flow" requires that the Lender will make advances to the Borrower, during the extension, as recommended by the Monitor, in amounts equal the amount of the

cash flow deposited into the Blocked Account and but no further advances can be required of the Lender.

3.2 Conditions

As conditions to the Agent's forbearance and funding obligations under this Accommodation Agreement:

Conditions Precedent

- (a) As conditions precedent to the parties hereto being able to rely on any aspect of this Accommodation Agreement:
 - (i) each of the Obligors shall have executed and delivered this Accommodation Agreement;
 - (ii) the Agent and the Obligors shall have obtained the Monitor Order as set out in section 5.2 below;

Operations

- (b) The Obligors shall comply with and operate the Business in a manner consistent with the following:
 - (i) the recommendations and approvals of the Monitor and any 13-week cash flow projections/budget to be prepared by the Monitor with the assistance of the Obligors, as such projections may only be modified from time to time by the Monitor with the written consent of the Agent (the "Cash Flows");
 - (ii) the RISP;
 - (iii) shall at any and all times and in all respects obtain the prior approval of the Monitor, act on all recommendations of the Monitor, and not attempt to hinder, delay, interfere with or frustrate the efforts of the Monitor, in respect of any business decisions including regarding sales, supply and expenditures;
 - (iv) not sell any assets out of the ordinary course of business or attempt to remove them from their existing collateral locations without the prior written approval of the Monitor and the Agent;
 - (v) any cash disbursements including but not limited to cheque requisitions, wire transfers requests and electronic fund transfers requests shall be reviewed and approved by the Monitor prior to execution by the senior officers of the Borrower.

- (c) The Borrower shall not pay any salary, bonuses or shareholder loans or any other form of remuneration or reimbursement to any related party, including the Personal Guarantors.

Refinancing, Investment and/or Sale Solicitation Process

- (d) The Monitor, with the assistance of the Obligors, shall implement the RISP in accordance with the following structure and milestones:
- (i) the RISP will seek proposals for one or more of: (A) refinancing of the Obligations; investment in the Borrower; purchase of the Borrower's business and assets, including its owned real estate core to its canning operations (the "Plant Lands"); and (B) purchase of the Borrower's and 6921's real estate other than the Plant Lands (the "Agricultural Lands");
 - (ii) Phase 1 of the RISP shall commence no later than May 8, 2017 ("Phase 1"):
 - (A) the Monitor shall, with the assistance of the Obligors, prepare and send a teaser to a list of persons who may have interest in bidding for the refinancing or sale of or investment in the Business (the "Known Potential Bidders"), which list shall be compiled by the Monitor with the assistance of the Obligors and the Agent;
 - (B) the Monitor will, with the assistance of the Obligors, prepare and enter into non-disclosure agreements in form and substance satisfactory to the Monitor with known Potential Bidders who are likely to be able to consummate a transaction (each, a "Qualified Bidder");
 - (C) the Monitor shall, with the assistance of the Obligors, grant access to Qualified Bidders to a data room (the "Data Room");
 - (D) the Monitor shall market the Business so as to allow for a bid that includes the assumption of the remaining obligations of the company's Totes lease(s);
 - (E) non-binding letters of intent (each, an "LOI") will be accepted from Qualified Bidders by no later than 5:00 p.m. (Eastern Standard time) on May 26, 2017;
 - (iii) the Monitor may extend these milestones at any time, with the consent of the Agent;
 - (iv) the Monitor may not accept bids to purchase the Business or Plant Lands at any time prior to May 26, 2017 and the Monitor shall be under no obligation to accept any offer including any offer that would not pay out the Obligations (as at the closing date) in full;

- (v) by no later than June 2, 2017 (“Phase 2”):
 - (A) the Monitor shall:
 - (1) in consultation with the Agent, review each LOI received and, if necessary, request clarification from the applicable Qualified Bidders to assess each LOI based on, among other things: (i) the form and amount of consideration, investment or credit being offered, including any adjustments and/or non-cash consideration; (ii) the demonstrated financial capability of the Qualified Bidder to consummate the proposed transaction; (iii) the conditions to closing of the proposed transaction; and (iv) the estimated time to closing the proposed transaction in relation to the Outside Date;
 - (2) the Monitor shall share such LOIs with the Obligors and may seek their input and assistance (provided they have declared their interest in writing as not being a potential bidder); and
 - (3) with the consent of the Agent and subject to the reservation of the right of the Monitor and/or the Agent to not accept any LOI, select the most favourable of any acceptable LOI(s);
 - (B) upon selection of an acceptable LOIs the applicable Qualified Bidder shall conduct any further due diligence it requires and, by the end of Phase 2, waive any condition other than the procurement of a sale approval order and provide a deposit of not less than 10% of the total proposed cash consideration; and
- (vi) by no later than June 15, 2017 (“Phase 3”) and upon waiver of any condition other than the procurement of a sale approval order, the Monitor shall negotiate and finalize the required definitive agreements with the applicable Qualified Bidder;
- (vii) the Monitor shall promptly seek court approval (in the Receivership Proceedings) of and close the chosen transaction(s) by no later than the Outside Date;
- (viii) the above milestone dates may be adjusted or extended by the Monitor for the sale of Agricultural Lands if no acceptable offer was made for such Agricultural Lands and the Monitor recommends such adjustment or extension;
- (ix) the Lender shall not be a Qualified Bidder in the RISP, but reserves its right to credit bid any portion of the Obligations if no LOIs acceptable to

the Monitor and Agent are received and/or any such transaction is not successfully completed; and

- (x) the Lender may assign its debt and security at any time, provided that, a) so long as no Forbearance Termination Event has occurred, the Lender shall not assign the personal Guarantees without the consent of the Personal Guarantors, b) the assignee shall not be assigned this Accommodation Agreement and shall not be entitled to rely upon the acknowledgements and consents to enforcement contained herein or the right to enforce that debt and security as a result of the Existing Defaults. For clarity, an entity who takes an assignment of the debt and security would only be able to enforce that debt and security over the Obligors upon the occurrence of a new Event of Default thereafter.
- (e) The Monitor shall provide the Agent and the Obligors or its advisors with weekly progress reports on the RISP.

Credit Facilities, Cash Management and Interim Repayment

- (f) The Borrowers shall continue to be liable for all interest on all amounts outstanding under the Credit Documents in accordance with section 4.1 hereof.
- (g) The Borrowers shall at any and all times maintain the Cash Management.

Co-operation

- (h) The Obligors shall fully cooperate with the Agent and the Monitor in preparing the Cash Flows and with all other matters associated with valuations or assessments on any of the property of the Borrower or 6921 that forms part of the Collateral.
- (i) The Obligors shall permit the Monitor to discuss their affairs, finances and condition with the Agent and their advisors.
- (j) The Obligors shall promptly provide all information requested by the Agent or the Monitor, including any legal counsel, financial advisors, or appraisers engaged on behalf of the Agent or the Monitor, and shall provide full access to the books, records, property and assets of the Obligors wherever they may be situated, which right of access shall include the right to inspect, appraise and take possession of any such property and assets of the Borrower and 6921.
- (k) The Obligors shall fully cooperate and grant full access to the Monitor's security contractors and otherwise assist the Monitor in securing the property of the Borrower and 6921.
- (l) The Obligors shall fully cooperate with the Monitor in the implementation of this Accommodation Agreement, any order of the Court and the RISP.

- (m) The Monitor shall be permitted to engage whatever advisors and consultants it deems necessary or advisable.

Financial Performance and Reporting

- (n) the Obligors shall continue to honour all reporting requirements as are presently provided for in the Credit Agreement, including any rights of the Agent for additional reporting as it may be entitled to (whether as a result of the occurrence of an Event of Default or otherwise) pursuant to the Credit Agreement or this Accommodation Agreement;
- (o) the Obligors shall immediately notify the Agent in writing of any material adverse change after the date hereof in the business or financial condition of the Borrower, or the occurrence of any Event of Default or Forbearance Termination Event (other than the Existing Defaults), or any event which with notice or lapse of time or both would constitute an Event of Default or Forbearance Termination Event.

ARTICLE 4 INTEREST RATES

4.1 Interest Rates

The Loans under the Credit Agreement and all other Obligations arising from or related to such Loans (including all Obligations outstanding as at the date hereof), until a Forbearance Termination Event as hereinafter defined, shall continue to bear interest during the Forbearance Period at the rate of interest provided under the Credit Agreement upon the occurrence of an Event of Default or demand.

ARTICLE 5 OBLIGATIONS OF THE LENDER DURING FORBEARANCE PERIOD

5.1 Loan Availability

Subject to a Forbearance Termination Event, the Lender shall continue to provide advances under the Credit Agreement (but without further reference to any borrowing base calculation which would, but for this Accommodation Agreement, impact such advances) during the Forbearance Period in order to fund the "critical payments" requested by the Obligors and recommended and approved by the Monitor. For greater certainty, the Lender shall not be obligated to fund full normal course operations during the Forbearance Period, but rather only amounts which are necessary to allow the Borrower to continue to operate the Business for the duration of the Forbearance Period. The Lender will, in accordance with and upon the Monitor's review and recommendation, fund the payment of the reasonable fees and disbursements of the Borrower's counsel, Blaney McMurtry LLP, incurred in connection with this Accommodation Agreement or the Monitor Order, up to a maximum amount of \$20,000, and the reasonable fees and disbursements incurred by said counsel during the Forbearance Period also in accordance with the Monitor's review and recommendation but excepting any fees and disbursements relating to work done in opposition to motions brought by the Monitor or the Agent in connection with the RISP or any transaction resulting from the RISP.

5.2 Receivership Proceedings

The Agent shall, on May 1, 2017, seek an Order, in form and substance satisfactory to Richter, the Obligors and the Agent (the "**Monitor Order**"), discharging Richter as Interim Receiver and reappointing it as a monitor of the Borrower and 6921 (in such capacity, the "**Monitor**"). The Monitor's powers under the Monitor Order shall not include taking possession or control of the property of the Borrower and 6921, but shall include power to secure the property, powers of approval and oversight of sales, supply, expenditures and other business decisions, the power to implement the RISP, the power to report to the Court and to the Agent and the power to appoint counsel, agents, consultants and advisors of its choosing. The Monitor Order shall also terminate any stay of proceedings against other creditors but not against any governmental or licensing body or agency in favour of the Borrower and 6921, but will provide for a stay in favour of the Monitor as well as provide for borrowing powers and a borrowing and administrative charge and the dispensing of any public and/or statutory notices required under the BIA or other Applicable Law. At the same hearing, the Application for the Receivership Order (for a full BIA subsection 243(1) receiver) will be adjourned until a date to be set.

ARTICLE 6 FORBEARANCE TERMINATION EVENTS

6.1 Forbearance Termination Events

This Accommodation Agreement shall forthwith terminate upon the happening of any one or more of the following events (each called a "**Forbearance Termination Event**")

- (a) if at any time any Obligor consents to or makes a general assignment for the benefit of creditors or takes advantage of, any insolvency, restructuring, reorganization or similar legislation, including the FDMA, or take any corporate step in furtherance of the foregoing, or is declared bankrupt, or if a liquidator, trustee in bankruptcy, bailee, custodian, interim receiver, receiver or receiver and manager or other officer with similar powers is appointed or taking any proceedings with respect to any Obligor or a related or affiliated company or any of its respective property, or any step in furtherance of any of the foregoing is taken by any Obligor or a related or affiliated company, its respective directors or officers, affiliates or any third party (excluding the Receivership Proceedings);
- (b) if at any time any Obligor seeks interim financing for the Business, outside the RISP, from a third party without prior written approval from the Agent;
- (c) if the Obligors fail to achieve any milestone in the RISP after June 1, 2017, including as specified in subsection 3.2(d) hereof (including if no LOIs received are determined to be acceptable);
- (d) the failure to obtain an order of the Court appointing the Monitor in form and substance acceptable to Agent, Richter and the Obligors;

- (e) the occurrence of any Event of Default under the Credit Agreement or any other Loan Document other than the Existing Defaults or any Event of Default caused by:
 - (i) the Receivership Proceedings or
 - (ii) the RISP or any actions taken in accordance therewith; and
 - (iii) any payments by the Borrower on account of pre-Receivership Proceedings critical supplier claims, where such payments have been approved and recommended by the Monitor;
- (f) the Obligors default in the performance or observance of any covenant, term, agreement or condition of this Accommodation Agreement;
- (g) the failure of the Obligors to seek the approval of the Monitor hereunder with respect to decisions concerning the Business or the failure to follow or implement the recommendations of the Monitor concerning the Business or any attempt to hinder, delay, interfere with or frustrate the Monitor, its mandate hereunder, or the implementation of the RISP as set out in section 3.2(d) hereof;
- (h) if any confirmation, representation or warranty given by the Obligors herein is untrue or incorrect, other than if rendered untrue or incorrect by the existence of the Existing Defaults, the RISP or the Receivership Proceedings;
- (i) if the Obligors challenge in any manner the legality, validity, or enforceability this Accommodation Agreement, the Credit Agreement, any Security or any other Loan Documents or any order of the Court or challenges any of the liabilities or obligations owing to the Lender;
- (j) any failure by the Obligors, at the end of the Forbearance Period to pay the total then-outstanding Obligations to the Agent in full and without any claim, counterclaim, set-off, deduction or dispute of any kind;
- (k) any threatened garnishment, seizure other similar action or proceeding against any Collateral; or
- (l) the expiry of the Forbearance Period.

Each Forbearance Termination Event shall be deemed an Event of Default pursuant to the Credit Agreement and the other Loan Documents. Upon the occurrence of a Forbearance Termination Event, the Agent shall be entitled, but not required to exercise in respect of the Existing Defaults or any other Event of Default all rights and remedies under this Accommodation Agreement, the Credit Agreement, the other Loan Documents or otherwise. Without limiting the foregoing and effective upon the occurrence of a Forbearance Termination Event, the Obligors hereby consent to the immediate appointment of a receiver over the Borrower and 6921 pursuant to the Application for Receivership Order and hereby agree not to contest the appointment, on return of

the Application, of Richter as receiver or interim receiver or the appointment of any other receiver/interim receiver selected by the Agent, over the Collateral of the Borrower and 6921.

ARTICLE 7 GENERAL PROVISIONS

7.1 Release

Each of the Obligors (collectively, the “Releasors”) hereby releases, remises, acquits and forever discharges and indemnifies and holds harmless the Agent, the Lender, the Interim Receiver and Richter (in its personal capacity) and each of their respective employees, agents, representatives, consultants, attorneys, advisors, fiduciaries, servants, officers, directors, partners, predecessors, successors and assigns, affiliates, subsidiary corporations, parent corporations, related corporate divisions, shareholders, participants and assigns (all of the foregoing hereinafter called the “Released Parties”), of and from any and all actions and causes of action, judgments, executions, suits, debts, claims, demands, liabilities, obligations, setoffs, recoupments, counterclaims, defences, damages and expenses of any and every character, known or unknown, suspected or unsuspected, direct and or indirect, at law or in equity, of whatsoever kind or nature, whether heretofore or hereafter arising, for or because of any matter or things done, omitted or suffered to be done by any of the Released Parties prior to and after the date hereof, and in any way directly or indirectly arising out of or in any way connected to this Accommodation Agreement, the Credit Agreement, the Security (and any enforcement relating thereto), any of the other Loan Documents, the Interim Receivership or the Monitor Order other than as a result of the Monitor’s gross negligence or wilful misconduct (all of the foregoing hereinafter called the “Released Matters”). Each Releasor acknowledges that the agreements in this Section are intended to be in full satisfaction of all or any alleged injuries or damages arising in connection with the Released Matters and constitute a complete waiver of any right of setoff or recoupment, counterclaim or any defence of any nature whatsoever with respect to the Released Matters or which might limit or restrict the effectiveness or scope of its agreements in this Section. Each Releasor represents and warrants that it has no knowledge of any claim by it against the Released Parties or of any facts, or acts or omissions of the Released Parties which on the date hereof would be the basis of a claim by the Releasors against the Released Parties which is not released hereby. Each Releasor represents and warrants that it has not purported to transfer, assign, pledge or otherwise convey any of its right, title or interest in any Released Matter to any other person or entity and that the foregoing constitutes a full and complete release of all Released Matters. The Releasors have granted this release freely, and voluntarily and without duress.

It is hereby understood and agreed that the Guarantees of John Thomas, Robert Thomas and William Thomas, and any claim which the Agent or Lender may have against Julie Thomas, will be released by the Agent upon: i) the successful completion of a transaction under the RISP, ii) the expiry of the Forbearance Period in the ordinary course and not as a result of a Forbearance Termination Event or any discovery of any fraudulent activity, behaviour or conduct; or iii) upon the completion of any orderly wind down of the Business as set out and in accordance with Section 3.1(d) above; provided that there has been no Event or Default (other than the Existing Defaults) under the Credit Agreement and there has been no Forbearance Termination Event hereunder including no breach of the obligations of the Obligors hereunder to fully cooperate with the Agent and the Monitor. In addition, provided the aforementioned conditions for release

of the personal Guarantees has been met, the Agent will, upon the completion of any realization over the property of 6921 in furtherance of its guarantee to the Agent, release the guarantee of 6921. In addition, if the conditions for releasing the Guarantees have been met, the Agent will also release any claim it may have against any of the foregoing entities in connection with any Existing Defaults, provided that this paragraph shall not require the Agent to release any claim against any such party for fraudulent activity, behaviour or conduct.

7.2 Effect of this Agreement

Except as modified pursuant hereto, no other changes or modifications to the terms of the Obligations, the Loan Documents or the other financing agreements are intended or implied and in all other respects the terms of the Obligations, the Loan Documents and the other financing agreements are confirmed.

7.3 Cost and Expenses

The Obligors hereby remain liable to the Agent whether or not all of the transactions contemplated by this Accommodation Agreement are consummated, for all reasonable costs, fees, expenses and disbursements of the Agent chargeable pursuant to the Credit Agreement or this Accommodation Agreement, and its legal and financial advisors (or any supplemental legal or financial advisors retained by the Agent) engaged by it in connection with the preparation, negotiation, execution, delivery, administration, interpretation or enforcement of this Accommodation Agreement, the Credit Agreement, the other Loan Documents and any agreements delivered in connection with the transactions contemplated hereby or thereby, and the RISP. The Agent continues to be authorized and directed to debit the account of the Borrower for such amounts. Without limiting the generality of the foregoing, the Obligors acknowledge and agree that the Agent shall have the right, at any time after the date hereof, to retain, within its sole discretion, upon reasonable terms and conditions, supplemental legal advisors and financial advisors of its sole choosing, and the costs and expenses thereof shall be for the account of the Obligors.

7.4 Further Assurances

The parties hereto shall execute and deliver such supplemental documents and take such supplemental action as may be necessary or desirable to give effect to the provisions and purposes of this Accommodation Agreement all at the sole cost and expense of the Borrower.

7.5 Binding Effect

This Accommodation Agreement shall be binding upon and enure to the benefit of each of the parties hereto and their respective heirs, executors, administrators, trustees, successors and assigns.

7.6 Survival of Representations and Warranties

All representations and warranties made in this Accommodation Agreement or any other document furnished in connection herewith shall survive the execution and delivery of this Accommodation Agreement and such other document, and no investigation by the Agent or any

closing of any transaction contemplated herein shall affect the representations and warranties or the rights of the Agent to rely upon such representations and warranties.

7.7 No Novation

This Accommodation Agreement will not discharge or constitute novation of any debt, obligation, covenant or agreement contained in the Credit Agreement or any of the other Loan Documents but same shall remain in full force and effect save to the extent same are amended by the provisions of this Accommodation Agreement.

7.8 Notice

Any notice, demand or other communication required or permitted to be given to any party hereunder shall be given in writing and addressed as follows:

in the case of Agent:

Bridging Finance Inc.
77 King Street West, Suite 2925
Toronto, Ontario M5K 1K7

Attention: Natasha Sharpe
Email: nsharpe@bridgingfinance.ca

In the case of the Obligors:

c/o Thomas Canning (Maidstone) Limited
326 South Talbot Road
Maidstone, Ontario N0R 1K0

Attention: William Thomas
Email: williamt@thomascanning.net

with a copy to Monitor:

Richter Advisory Group Inc.
181 Bay Street, Suite 3320
Toronto, Ontario M5J 2T3

Attention: Clark Lonergan
Email: CLonergan@Richter.ca

Any such notice shall be deemed to be sufficiently given if personally delivered or sent by facsimile transmission, and in each case shall be deemed to have been received by the other party on the same day on which it was delivered or sent by facsimile transmission, if such day is a Business Day, and, if not, on the next following Business Day.

7.9 Execution in Counterparts


This Agreement may be executed and delivered by facsimile and in any number of counterparts, each of which when executed and delivered is an original but all of which taken together constitute one and the same agreement.

7.10 Governing Law


This Agreement shall be exclusively (without regard to any rules or principals relating to conflict of laws) governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.

IN WITNESS WHEREOF, the parties have entered into this Agreement as of the date first above mentioned.


**BRIDGING FINANCE INC.,
as agent for Sprott Bridging Income Fund LP**


By: 
Name:
Title:

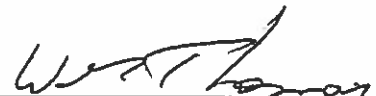
**THOMAS CANNING (MAIDSTONE)
LIMITED**


By: 
Name: WILLIAM THOMAS
Title: CEO / VP

692194 ONTARIO LIMITED


By: 
Name: John Thomas
Title: PRESIDENT


Witness: ~~David Ullman~~
Daniel Korsunsky


William Thomas




 Witness: ~~David Ullman~~
 Daniel Korsunsky



Robert Thomas



 Witness: David Ullman
 Daniel Korsunsky



John Thomas

TAB F

Court File No. CV-17-11773-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR) MONDAY, THE 1ST DAY
JUSTICE NEWBOULD) OF MAY, 2017



BETWEEN:

**BRIDGING FINANCE INC.,
as agent for SPROTT BRIDGING INCOME FUND LP**

Applicant

- and -

THOMAS CANNING (MAIDSTONE) LIMITED and 692194 ONTARIO LIMITED

Respondents

**IN THE MATTER OF AN APPLICATION PURSUANT TO SUBSECTIONS 47(1) AND
243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS
AMENDED, AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c.
C.43, AS AMENDED**

**ORDER
(Appointment of Monitor)**

THIS APPLICATION made by the Applicant for an Order pursuant to section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the “CJA”), appointing Richter Advisory Group Inc. (“**Richter**”) as monitor (in such capacity, the “**Monitor**”) of each of Thomas Canning (Maidstone) Limited (“**Thomas Canning**”) and 692194 Ontario Limited (together with Thomas Canning, the “**Debtors**”), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Graham Marr sworn April 19, 2017, and the exhibits thereto, and the Report of Richter in its capacity as Court-appointed Interim Receiver (the “**Interim Receiver**”) dated April 28, 2017 (the “**IR Report**”), and on hearing the submissions of counsel for the Applicant, counsel for the Debtors and no one appearing for any other person although duly served as appears from the affidavit of service of Paula Hoosain sworn April 21, 2017 and on reading the consent of Richter to act as the Monitor,

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Application and the Application Record is hereby validated and that this Application is properly returnable today and hereby dispenses with further service thereof.

INTERIM RECEIVERSHIP

2. **THIS COURT ORDERS** that the IR Report, and the activities of the Interim Receiver referred to therein, be and are hereby approved.

3. **THIS COURT ORDERS** that Richter is hereby discharged as Interim Receiver of the undertaking, property and assets of the Debtors, provided however that, notwithstanding its discharge herein, (a) Richter shall remain Interim Receiver for the performance of such incidental duties as may be required to complete the administration of the interim receivership herein (the “**Interim Receivership**”), and (b) Richter shall continue to have the benefit of the provisions of the Interim Receivership Order made in this proceeding on April 20, 2017 (the “**Interim Receivership Order**”), including the Interim Receivership Charge (as such term is defined in the Interim Receivership Order) and all approvals, protections and stays of proceedings in favour of Richter in its capacity as Interim Receiver.

4. **THIS COURT ORDERS AND DECLARES** that the Interim Receiver, having not taken possession of the Debtors’ current assets, did and does not have the obligations of a receiver under sections 81.4(5) or 81.6(3) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”) or under the *Wage Earner Protection Program Act*, S.C. 2005, c. 47, s. 1 (“**WEPPA**”).

5. **THIS COURT ORDERS** that Richter is authorized to take down the Interim Receivership Case Website established pursuant to paragraph 23 of the Interim Receivership Order.

6. **THIS COURT ORDERS AND DECLARES** that Richter be and is hereby released and discharged from any and all liability that Richter now has or may hereafter have by reason of, or in any way arising out of, the acts or omissions of Richter while acting in its capacity as Interim Receiver herein, save and except for any gross negligence or wilful misconduct on the Interim Receiver's part. Without limiting the generality of the foregoing, Richter is hereby forever released and discharged from any and all liability relating to matters that were raised, or which could have been raised, in the within Interim Receivership proceedings, save and except for any gross negligence or wilful misconduct on the Interim Receiver's part.

7. **THIS COURT ORDERS** that, notwithstanding its discharge hereby, the Interim Receiver and its legal counsel shall pass their accounts in accordance with paragraph 17 of the Interim Receivership Order at a later date.

APPOINTMENT

8. **THIS COURT ORDERS** that pursuant to section 101 of the CJA, Richter is hereby appointed Monitor of the Debtors and of all of their assets, undertakings and properties (the “**Property**”).

MONITOR’S POWERS

9. **THIS COURT ORDERS** that the Monitor is hereby empowered and authorized, but not obligated, to act at once in respect of the Debtors and the Property and, without in any way limiting the generality of the foregoing, the Monitor is hereby expressly empowered and authorized to do any of the following where the Monitor considers it necessary or desirable:

- (a) to monitor, make recommendations and approve of all matters concerning the management and operation of the Debtors’ business as has been agreed to between the Debtors and the Applicant;

- (b) to market the Debtors' business and/or any or all of the Property in accordance with the terms of such refinancing, investment and/or sale process as agreed to among and between the Applicant, the Debtors and the Monitor, provided any resulting sale or sales of all or substantially all of the Property acquired for or used in relation to the business of Thomas Canning shall be subject to prior approval of this Court on motion brought by the Debtors or the Applicant in the Receivership Proceedings;
- (c) to engage consultants, appraisers, examiners, advisors, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Monitor's powers and duties, including without limitation those conferred by this Order;
- (d) to report to, meet with and discuss with such affected Persons (as defined below) as the Monitor deems appropriate on all matters relating to the Property, and to share information, subject to such terms as to confidentiality as the Monitor deems advisable; and
- (e) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.

10. **THIS COURT ORDERS AND DECLARES** that:

- (a) the Monitor shall not take possession or control, nor shall it be deemed to have taken possession or control, of the Debtors' business or the Property;
- (b) the Monitor shall not be and shall not be deemed to be a receiver for purposes of subsection 243(1) of the BIA; and
- (c) the appointment of the Monitor shall not be and shall not be deemed to be a change of control of the Debtors.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE MONITOR

11. **THIS COURT ORDERS** that (i) the Debtors, (ii) all of their current and former directors, officers, employees, agents, advisors, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being “**Persons**” and each being a “**Person**”) shall forthwith advise the Monitor of the existence of any Property in such Person’s possession or control and shall grant immediate and continued access to the Property to the Monitor.

12. **THIS COURT ORDERS** that all Persons shall forthwith advise the Monitor of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtors, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the “**Records**”) in that Person’s possession or control, and shall provide to the Monitor or permit the Monitor to make, retain and take away copies thereof and grant to the Monitor unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 12 or in paragraph 13 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Monitor due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

13. **THIS COURT ORDERS** that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Monitor for the purpose of allowing the Monitor to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Monitor in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Monitor. Further, for the purposes of this paragraph, all Persons shall provide the Monitor with all such assistance in gaining immediate access to the information in the Records as the Monitor may in its discretion require including

providing the Monitor with instructions on the use of any computer or other system and providing the Monitor with any and all access codes, account names and account numbers that may be required to gain access to the information.

NO PROCEEDINGS AGAINST THE MONITOR

14. **THIS COURT ORDERS** that no proceeding or enforcement process in any court or tribunal (each, a “**Proceeding**”), shall be commenced or continued against the Monitor except with the written consent of the Monitor or with leave of this Court.

NO INTERFERENCE WITH THE DEBTORS

15. **THIS COURT ORDERS** that no regulatory body shall discontinue, fail to honour, alter, repudiate or terminate or cease to perform any right, renewal right, contract, agreement, certificate, certification, consent, approval, licence or permit in favour of or held by Thomas Canning or Thomas Canning’s manufacturing plant without written consent of the Monitor or leave of this Court.

EMPLOYEES

16. **THIS COURT ORDERS** that all employees of the Debtors shall remain the employees of the Debtors until such time as the Debtors’ may terminate the employment of such employees. The Monitor shall not be liable for any employee-related liabilities, including: (a) any successor employer liabilities; (b) any obligations of a receiver under sections 81.4(5) or 81.6(3) of the BIA or under WEPPA; or (c) any liability as an employer or sponsor of any workers employed or to be employed by the Debtors through the Temporary Foreign Worker Program or the International Mobility Program.

PIPEDA

17. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Monitor may disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a “**Sale**”). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such

information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Monitor, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtors, and shall return all other personal information to the Monitor, or ensure that all other personal information is destroyed.

LIMITATION ON ENVIRONMENTAL LIABILITIES

18. **THIS COURT ORDERS** that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, “**Possession**”) of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the “**Environmental Legislation**”). The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor’s duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation.

LIMITATION ON THE MONITOR’S LIABILITY

19. **THIS COURT ORDERS** that the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the any protections afforded the Monitor herein or by any applicable legislation.

MONITOR’S ACCOUNTS

20. **THIS COURT ORDERS** that the Monitor and counsel to the Monitor shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, and that the Monitor and counsel to the Monitor shall be entitled to and are hereby granted a charge (the

“**Monitor’s Charge**”) on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Monitor’s Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to the Interim Receiver’s Charge (as defined in the Interim Receivership Order), with which it shall rank *pari passu*. The Monitor’s Charge shall rank in priority to the Interim Receiver’s Borrowings Charge (as defined in the Interim Receivership Order).

21. **THIS COURT ORDERS** that the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

CASH MANAGEMENT

22. **THIS COURT ORDERS** that the Debtors shall be required to continue to comply with cash management arrangements as set out and required under letter credit agreement dated July 3, 2015, as amended, between Thomas Canning, the Applicant and others, and the blocked account agreement dated June 29, 2015 entered into between Bank of Montreal, the Applicant and Thomas Canning.

GENERAL

23. **THIS COURT ORDERS** that the Monitor may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

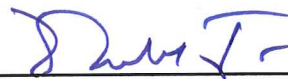
24. **THIS COURT ORDERS** that nothing in this Order shall prevent the Monitor from acting as a BIA section 243(1) receiver or a trustee in bankruptcy of the Debtors.

25. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Monitor and/or the Debtors and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the

Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Monitor and its agents in carrying out the terms of this Order.


26. **THIS COURT ORDERS** that the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

27. **THIS COURT ORDERS** that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Debtors and the Monitor and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.



ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO:

MAY 01 2017

PER / PAR: 

**BRIDGING FINANCE INC., as agent for
SPROTT BRIDGING INCOME FUND LP**
Applicant

And **THOMAS CANNING (MAIDSTONE) LIMITED and 692194
ONTARIO LIMITED**

Respondents

Court File No. CV-17-11773-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST
PROCEEDING COMMENCED AT TORONTO**

**ORDER
(APPOINTMENT OF MONITOR)**

AIRD & BERLIS LLP
Barristers and Solicitors
Brookfield Place
Suite 1800, Box 754
181 Bay Street
Toronto, Ontario M5J 2T9

Sam Babe - LSUC No. 49498B
Kyle B. Plunkett - LSUC No. 61044N
Tel: 416.863.1500
Fax: 416.863.1515
Email: sbabe@airdberlis.com / kplunkett@airdberlis.com
Lawyers for the Applicant

TAB G

RICHTER

Richter Advisory Group Inc.
181 Bay Street, 33rd Floor
Toronto, ON M5J 2T3
www.richter.ca

**THOMAS CANNING (MAIDSTONE) LIMITED AND
692194 ONTARIO LIMITED**

June 15, 2017

RICHTER

Richter Advisory Group Inc.
181 Bay Street, 33rd Floor
Toronto, ON M5J 2T3
www.richter.ca

Court File No. CV-17-11773-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

BETWEEN:

BRIDGING FINANCE INC., as agent for SPROTT BRIDGING INCOME FUND LP

Applicant

- and -

THOMAS CANNING (MAIDSTONE) LIMITED and 692194 ONTARIO LIMITED

Respondents

**APPLICATION UNDER subsections 47(1) and 243(1) of the *Bankruptcy and Insolvency Act*,
R.S.C. 1985, c. B-3, as amended, and under section 101 of the
Courts of Justice Act, R.S.O. 1990, c. C.43, as amended**

**REPORT OF RICHTER ADVISORY GROUP INC.
IN ITS CAPACITIES AS INTERIM RECEIVER AND MONITOR OF
THOMAS CANNING (MAIDSTONE) LIMITED and 692194 ONTARIO LIMITED**

June 15, 2017

TABLE OF CONTENTS

| | | |
|-------|--|----|
| I. | INTRODUCTION..... | 1 |
| II. | PURPOSE OF REPORT | 3 |
| III. | QUALIFICATIONS | 4 |
| IV. | BACKGROUND..... | 5 |
| V. | LICENCE ISSUES | 7 |
| VI. | FINANCIAL POSITION..... | 8 |
| VII. | CREDITORS | 10 |
| VIII. | THE MONITOR'S ACTIVITIES..... | 15 |
| IX. | THE MONITOR'S FINDINGS..... | 16 |
| X. | RISP AND SUBMITTED OFFERS | 20 |
| XI. | SALE TRANSACTION | 25 |
| XII. | INTERIM RECEIVER'S STATEMENT OF RECEIPTS AND DISBURSEMENTS | 27 |
| XIII. | REQUEST FOR APPROVAL OF FEES..... | 28 |
| XIV. | REMAINING MATTERS..... | 29 |
| XV. | PROPOSED INTERIM DISTRIBUTION TO BRIDGING..... | 29 |
| XVI. | RECOMMENDATION | 30 |

APPENDICES

- APPENDIX "A" AFFIDAVIT OF GRAHAM MARR SWORN APRIL 19, 2017 (W/O EXHIBITS)
- APPENDIX "B" ORDER OF THE HONOURABLE MR. JUSTICE NEWBOULD DATED APRIL 20, 2017
- APPENDIX "C" ENDORSEMENT OF THE HONOURABLE MR. JUSTICE NEWBOULD DATED APRIL 20, 2017
- APPENDIX "D" ACCOMMODATION AGREEMENT DATED APRIL 29, 2017
- APPENDIX "E" FIRST REPORT OF THE INTERIM RECEIVER DATED APRIL 28, 2017 (W/O APPENDICES)
- APPENDIX "F" ORDER OF THE HONOURABLE MR. JUSTICE NEWBOULD DATED MAY 1, 2017
- APPENDIX "G" AFFIDAVIT OF CLARK LONERGAN, SWORN JUNE 14, 2017
- APPENDIX "H" AFFIDAVIT OF GEORGE BENCHETRIT, SWORN JUNE 15, 2017
- APPENDIX "I" DAVID ULLMANN E-MAIL DATED APRIL 16, 2017
- APPENDIX "J" COMMISSION DECISION DATED MAY 18, 2017
- APPENDIX "K" E-MAILS RE DIVERSION OF ACCOUNTS RECEIVABLE
- APPENDIX "L" LETTER DATED MAY 17, 2017
- APPENDIX "M" ENDORSEMENT OF THE HONOURABLE MR. JUSTICE NEWBOULD DATED MAY 18, 2017
- APPENDIX "N" TRANSACTION OPPORTUNITY - TEASER
- APPENDIX "O" LETTER OF INTENT RECEIVED FROM SANTOKH MAHAL DATED MAY 26, 2017 (REDACTED)
- APPENDIX "P" THOMAS LOI DATED MAY 26, 2017 (REDACTED)
- APPENDIX "Q" MAHAL LOI DATED MAY 30, 2017 OFFER (REDACTED)
- APPENDIX "R" THOMAS LETTER DATED MAY 30, 2017 OFFER (REDACTED)

CONFIDENTIAL APPENDICES

- APPENDIX "A" BRIDGING ESTIMATED SECURITY POSITION AS AT MAY 31, 2017
- APPENDIX "B" LETTER OF INTENT RECEIVED FROM SANTOKH MAHAL DATED MAY 26, 2017
- APPENDIX "C" THOMAS LOI DATED MAY 26, 2017
- APPENDIX "D" MAHAL LOI DATED MAY 30, 2017
- APPENDIX "E" THOMAS LETTER DATED MAY 30, 2017
- APPENDIX "F" "BINDING" THOMAS LETTER DATED JUNE 2, 2017
- APPENDIX "G" SUMMARY OF OFFERS

I. INTRODUCTION

1. Pursuant to the Order of The Honourable Mr. Justice Newbould of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated April 20, 2017 (the "**Interim Receivership Order**"), Richter Advisory Group Inc. ("**Richter**") was appointed as interim receiver (the "**Interim Receiver**") of all of the assets, properties and undertakings (collectively, the "**Property**") of Thomas Canning (Maidstone) Limited ("**TCL**") and 692194 Ontario Limited ("**692**", and together with TCL, the "**Company**") under section 47(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "**BIA**").
2. The appointment of an interim receiver was sought, on an *ex parte* basis, by the Company's senior secured lender, Bridging Finance Inc. as agent for Sprott Bridging Income Fund LP ("**Bridging**" or the "**Lender**"). Attached hereto and marked as **Appendices "A", "B" and "C"** respectively, are copies of the Affidavit of Graham Marr sworn on April 19, 2017 in support of the Bridging application (without exhibits) (the "**Bridging Affidavit**"), the Interim Receivership Order, and the endorsement of Justice Newbould dated April 20, 2017.
3. As noted in the endorsement, the Court set a comeback date of April 28, 2017 for the hearing of Bridging's application for the appointment of Richter as receiver of the Property under section 243(1) of the BIA and section 101 of the *Courts of Justice Act*, R.S.O. 1990 c. C.43, as amended (the "**CJA**").
4. The comeback hearing was subsequently adjourned to May 1, 2017 to afford the parties with additional time to negotiate an acceptable go-forward business solution.
5. Bridging and the Company entered into an accommodation agreement dated April 29, 2017 (the "**Accommodation Agreement**"), which, among other things, established a refinancing, investment and/or sale solicitation process (the "**RISP**"), and required the appointment of Richter as a Court-appointed monitor to supervise and assist the Company (but not to have control over the business or to have control over or take possession of the Property). A copy of the Accommodation Agreement is attached hereto and marked as **Appendix "D"**.
6. Pursuant to the Order of Justice Newbould dated May 1, 2017 (the "**Monitor Order**"), the Court, among other things:
 - (a) appointed Richter as monitor of the Company and the Property pursuant to section 101 of the CJA (the "**Monitor**");
 - (b) outlined the powers of the Monitor, which included but was not limited to, monitoring, making recommendations and approving all matters concerning the management and operation of the

- 2 -

Company's business, and marketing the Company's business and/or Property under the RISP as set out in the Accommodation Agreement;

- (c) approved the Interim Receiver's report dated April 28, 2017 (the "**IR Report**") and the activities of the Interim Receiver described therein; and
 - (d) discharged the Interim Receiver from its duties, except for the performance of certain incidental duties, as required, as set out in the Interim Receivership Order. Copies of the IR Report (without appendices) and the Monitor Order are attached hereto and marked as **Appendices "E"** and **"F"** respectively.
7. In accordance with the terms of the RISP and the Accommodation Agreement, an offer from Mr. Santosh Mahal, on behalf of a company to be incorporated ("**Mahal**") to purchase substantially all of the Company's Property was selected as the winning bidder by the Monitor and Bridging. The Monitor and Mahal are currently negotiating a form of asset purchase agreement with respect to the Mahal offer (the "**APA**").
8. The Monitor understands that, to facilitate the completion of the sale transaction with a company owned by Mahal (the "**Purchaser**") as contemplated under the Mahal offer (the "**Sale Transaction**"), Bridging intends to revive its receivership application and will be requesting that the Court grant orders:
- (a) appointing Richter as receiver of the Company and the Property pursuant to section 243(1) of the BIA and section 101 of the CJA (the "**Receiver**");
 - (b) authorizing and directing the Receiver to execute the APA;
 - (c) approving the APA and authorizing and directing the Receiver to take all necessary steps to complete the Sale Transaction;
 - (d) vesting in the Purchaser the right, title and interest of the Company in and to the Purchased Assets (as defined in the APA), free and clear of all claims and encumbrances (other than permitted encumbrances under the APA); and
 - (e) authorizing and directing the Receiver, upon the closing of the Sale Transaction, to:
 - (i) repay the Interim Receiver's borrowings and associated interest charges;
 - (ii) pay the fees and disbursements of the Monitor and its counsel, Chaitons LLP ("**Chaitons**"), as approved by the Court; and

- (iii) distribute the net sale proceeds (net of reasonable reserves as determined by the Receiver) to Bridging.

II. PURPOSE OF REPORT

9. The purpose of this report (the "**Report**") is to:

- (a) provide the Court with information pertaining to:
 - (i) the Company's background, including the Company's financial performance, licences, debt structure and financial position;
 - (ii) the activities of the Monitor since its appointment;
 - (iii) the findings of the Monitor since its appointment;
 - (iv) the steps taken by the Monitor to market the Property and/or the Company's business in accordance with the RISP; and
 - (v) the results of the RISP, including information with respect to the Sale Transaction and the Monitor's views and recommendations with respect thereto.
- (b) set out the basis upon which the Court may grant the order sought by the Interim Receiver and the Monitor:
 - (i) approving the Interim Receiver's receipts and disbursements for the period from April 20, 2017 to and including May 31, 2017 (the "**IR R&D**");
 - (ii) approving the fees and disbursements of the Interim Receiver and its counsel, Chaitons, as set out herein and in the fee affidavits of Clark Lonergan attached hereto as **Appendix "G"** (the "**Lonergan Affidavit**") and George Benchetrit attached hereto as **Appendix "H"** (the "**Benchetrit Affidavit**") respectively;
 - (iii) authorizing and directing the Interim Receiver to distribute the net proceeds outlined in the IR R&D, including any future net proceeds, if any are received, to the Lender (the "**IR Distribution**");
 - (iv) terminating the interim receivership proceedings, including termination of the Interim Receiver's Charge and the Interim Receiver's Borrowing Charge (as defined in the Interim

- 4 -

Receivership Order), upon the repayment of the Interim Receiver's borrowings (including interest) by the Receiver following the closing of the Sale Transaction or any other sale, and the Interim Receiver filing a discharge certificate with the Court (the "**IR Discharge Certificate**"); and

- (v) approving the fees and disbursements of the Monitor and its counsel, Chaitons, as set out in this Report and the fee affidavits attached hereto.

- (c) in the event that the Receiver is appointed, grant an order, following payment of the fees and disbursements of the Monitor and its counsel to completion of the proceeding, discharging Richter as Monitor, which shall include the termination of the Monitor's Charge (as defined in the Monitor Order) upon the Monitor filing a discharge certificate with the Court (the "**Monitor Discharge Certificate**") and releasing Richter from any and all liability that Richter now has or may hereafter have by reason of, or in any way arising out of, the acts or omissions of Richter while acting in its capacity as Monitor, save and except for any gross negligence or willful misconduct on the Monitor's part.

III. QUALIFICATIONS

- 10. In preparing this Report, the Interim Receiver and the Monitor have relied upon unaudited financial information, the Company's books and records, financial information prepared by the Company and discussions with management (collectively, the "**Information**"). The Interim Receiver and the Monitor have reviewed the Information for reasonableness, internal consistency, and use in the context in which it was provided, and in consideration of the nature of the evidence provided to this Court, in relation to the relief sought therein. The Interim Receiver and the Monitor have not, however, audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Generally Accepted Auditing Standards ("**GAAS**") pursuant to the Canadian Institute of Chartered Accountants Handbook and, as such, the Interim Receiver and the Monitor express no opinion or other form of assurance contemplated under GAAS in respect of the Information. An examination of the Company's financial forecasts in accordance with the *Canadian Institute of Chartered Accountants Handbook* has not been performed. Future-oriented financial information reported on or relied upon in this Report is based on management's assumptions regarding future events; actual results achieved may vary from forecast and such variations may be material.

- 11. Unless otherwise noted, all monetary amounts contained in this Report are expressed in Canadian dollars.

12. Richter is a licensed trustee within the meaning of section 2 of the BIA and has consented to act as receiver in these proceedings in the event the Court grants the relief sought by the Lender.

IV. BACKGROUND

13. Reference is made to the Bridging Affidavit, which was filed with the Court in support of the Lender's *ex parte* application for the appointment of Richter as Interim Receiver. While this Report summarizes some of the information set out in the Bridging Affidavit, for context and completeness, readers are directed to the Bridging Affidavit for a more detailed explanation of the grounds set out in support of the Lender's application.

Company Overview

14. TCL is a privately-owned Ontario corporation that operates a tomato canning business in Essex County, Ontario. TCL was founded in 1933 by the grandparents of the current principals of the Company, William Thomas, CEO; John Thomas, President; and Robert Thomas, VP Production and Plant Engineering ("**Bob Thomas**", and collectively, "**Management**").
15. TCL produces a variety of canned tomato products including pastes, sauces, canned tomatoes (whole, diced and crushed), and juices, from both conventional and organic tomato feedstock. The feedstock is secured by contracts entered into by TCL first with third party greenhouses, and then with conventional farms later in the production cycle. TCL holds a processing licence with the the Ontario Farm Products Marketing Commission (the "**Commission**"), being licence no. 1944-18 (the "**Licence**"). The Commission administers six processor and dealing licensing programs, including the licences of vegetable processors.
16. TCL sells its product under white label branding and its own Utopia Brand™ to customers primarily located in Canada and the United States.
17. During the processing and packaging season (August to October), TCL typically employs up to 60 seasonal workers, most of whom are foreign migrant workers employed under the Temporary Foreign Workers Program. Otherwise, TCL maintains a core staff of approximately 10-15 employees.
18. The Company is not subject to any collective bargaining agreement and does not administer any pension plan.
19. TCL operates from owned premises municipally known as 326 South Talbot Road, Lakeshore, Ontario (the "**Premises**"). The process plant situated on the Premises has a licence through the federal plant processing registration with the Canadian Food Inspection Agency ("**CFIA**"), processor number CFIA #691.

Additionally, TCL also leases, from a third party, warehouse space municipally known as 2755 Lauzon Parkway, Windsor, Ontario (the "Warehouse") and a sales office in Oakville, Ontario.

20. The Monitor understands that the plant's HVAC system is located on real property adjacent to the Premises owned by Bob Thomas. Management has informed the Monitor that the HVAC system is owned by the Company, but was installed on the adjacent property a few years ago out of convenience and timing.
21. 692 is a non-operating holding company, which the Monitor understands is the owner of the shares of TCL and, along with TCL, an owner of certain real estate assets.

Causes of Financial Difficulties

22. As described in the Bridging Affidavit, the Company's financial difficulties arose as a result of the following: capital expenditures/build of inventory costs related to TCL's tomato paste line; diversion of customer receipts from the Company's blocked deposit accounts (as outlined below); overstatement of inventory; lack of sufficient financial reporting; and the inability of the Company to refinance its debt obligations as they became due.
23. The Bridging Affidavit provides greater detail on the fact that the Company had ceased to deposit its accounts receivables in accordance with the cash management arrangement agreed by the Company and Bridging. The Company had taken the position, as noted in an e-mail from its counsel dated April 16, 2017 to counsel to Bridging, that it was not required to abide by the cash management arrangement as the loan agreement had expired on January 3, 2017 and the Company was no longer bound by the contractual requirement to deposit accounts receivable into a blocked account. A copy of the e-mail of David Ullmann dated April 16, 2017 is attached hereto and marked as **Appendix "I"**.
24. As a result, the Company experienced a liquidity crisis and defaulted on various financial and other covenants under the loan and security documents with Bridging.
25. Additionally, TCL has experienced and continues to experience financial and operational difficulties due to a number of factors, including the following:
 - (a) persistent operating losses, as outlined below;
 - (b) insufficient senior finance and accounting resources to effectively operate and manage its business, including to accurately report/provide information to the Company's stakeholders;

- (c) insufficient books and records and financial reporting, which are significantly out of date, impacting the Company's ability to adequately predict, analyze and report on its business operations; and
- (d) CFIA work-stop orders and other licensing issues.

V. LICENCE ISSUES

- 26. As previously noted, TCL has a processing Licence issued by the Commission. The Monitor understands that Management made aggressive production targets for the 2016 production season, which were not achieved by TCL. As a result, the majority of the 2016 tomato feedstock contracts with 14 tomato field growers (the "**2016 Growers**") were not fulfilled (estimated to be approximately 70% of 1,100 planted acres or 47,000 tons of tomatoes were unfulfilled, the "**2016 Production**").
- 27. As a result of the 2016 Production issues, in March 2017, nine (9) of the 2016 Growers filed a \$2.85-million action against TCL for breach of contract as a result of TCL's failure to take the contractually agreed to tomato feedstock, three (3) others entered into settlement agreements with TCL for undisclosed terms, and the remaining two (2) 2016 Growers continue to examine their options. Management had indicated that one (1) of the 2016 Growers has been able to mitigate his loss and as such no obligation is owed to him by TCL. Total TCL obligations related to the 2016 Production is estimated to range between \$2.9 million to \$3.8 million (the "**2016 Production Obligations**").
- 28. The Monitor understands that TCL entered into discussions with the Commission regarding 2017 planted acreage and agreed that, for the 2017 production cycle, it would contract to a maximum of 400 acres (approximately 17,100 tons of tomatoes) (the "**2017 Production**").
- 29. As a result of a complaint levied by the 2016 Growers, the Commission made an Order on April 13, 2017 (the "**Commission's Order**") with respect to the Licence, which, among other things, required TCL to post a letter of credit in the amount of \$2.6 million. The Commission indicated that if the conditions were not met by May 1, 2017, it would revoke the Licence for any 2017 Production.
- 30. At the request of TCL, the Commission agreed to have a hearing with respect to matters related to the Licence and the Commission's Order. A pre-hearing was held via teleconference on May 11, 2017. The hearing was attended by counsel to the Company, Bridging, and the Monitor, among others. At that time, both counsel to the Company and Bridging expressed that they were reserving their rights to argue that the Commission proceeding could be stayed by these proceedings.

31. The Commission allowed parties to make written submissions as to the appropriate next steps with respect to the Licence. Bridging and the Company asked whether the Commission would permit the Licence to continue for 2017 Production if the parties could agree on appropriate financial security to be put in place that would protect 2017 Production tomato field growers.
32. The Commission released its decision on May 18, 2017, which concluded that a hearing on the issues would be held at the end of June, and that the Licence would continue for 2017 Production if the financial security discussed above was agreed to. In its decision, the Commission indicated that a vegetable processing licence is not transferrable. A copy of the Commission's decision is attached hereto and marked as **Appendix "J"**.
33. The Monitor understands that TCL has entered into an arrangement with one (1) tomato field grower for 2017 Production of 50 acres of organic tomato feedstock (the "**2017 Grower**") and that TCL, Bridging and the 2017 Grower have entered into an escrow agreement pursuant to which Bridging has placed approximately \$472,500 into escrow.
34. The escrow agreement provides the 2017 Grower with a put option to sell the organic tomato feedstock (the "**2017 Feedstock**") when the goods are ready for shipment irrespective if TCL or the Purchaser is eligible to take delivery of the goods or transfer them to another processor as per the Licence.
35. It is the Monitor's view that, if the Court does not grant the Lender's request to transfer the Licence to the Purchaser for 2017 Production, the result will be that the Purchaser will be unable to take delivery or transfer the 2017 Feedstock and will be prejudiced to the extent of the escrow amount plus any gross margin to be realized by the Purchaser in connection with the further processing and sale of finished product.

VI. FINANCIAL POSITION

Historical Operating Results

36. The Company's most recent internal year-to-date financial statements are presented for the eleven month period ended May 31, 2017. The Company's fiscal year-end is June 30.
37. Set out below is a summary of the Company's income statement for: (i) the year-to-date ended May 31, 2017 (internal F/S); (ii) the year-ended June 30, 2016 (internal F/S); (iii) the year ended June 30, 2015 (notice to reader); and (iv) the year ended June 30, 2014 (notice to reader):

| Thomas Canning (Maidstone) Limited Income Statement | | | | |
|---|---------------------|-------------------|--------------------------------|-------------------|
| (\$000's) | YTD | | 12 Months Ended June 30 | |
| | Internal F/S | | Notice to Reader | |
| | May-17 | 2016 | 2015 | 2014 |
| Sales | \$ 6,584 | \$ 8,663 | \$9,098 | \$13,061 |
| Cost of sales (1) | (7,444) | (9,801) | (6,717) | (12,481) |
| Gross profit | (861) | (1,138) | 2,381 | 581 |
| Wages, commissions & benefits | 296 | 540 | 395 | 326 |
| Other operating costs | 237 | 578 | 774 | 1,035 |
| Expenses | 533 | 1,118 | 1,169 | 1,362 |
| Operating income (loss) | \$ (1,393) | \$ (2,256) | \$ 1,212 | \$ (781) |
| Interest expense (2) | (4) | (110) | (1,250) | (407) |
| Profit (loss) from farming operations | (47) | 151 | 140 | (106) |
| Gain (loss) on foreign exchange & other | 81 | 1,751 | (88) | (55) |
| Net income (loss) | \$ (1,363) | \$ (465) | \$ 14 | \$ (1,348) |
| Notes | | | | |
| (1) Cost of sales in 2016 & 2017 is understated due to a significant overstatement of inventory not booked. | | | | |
| (2) Interest in 2016 & 2017 is understated as interest expense has not been booked. | | | | |

38. As noted above, the Company has generated approximately \$3.0 million of cumulative losses since 2014. It is likely that these losses are understated due to the state of the Company's books and records (i.e. expenses have not been entered, interest expenses have not booked in 2016 and 2017, inventory valuation adjustments haven't been performed, etc.).
39. These losses appear to be the result of a steadily declining sales/customer base since 2014, an erosion in gross margin (negative margin sales, tote leases, etc.), and an unsupportable capital structure.

Cash Flow and Cash Position

40. As a result of its persistent losses and liquidity constraints, the Company requested that Bridging issue a series of overadvances under its credit facilities, as described in the Bridging Affidavit, which were granted by Bridging from October 2015 through April 2017.
41. As described in the Bridging Affidavit, at the time the affidavit was sworn, the Company was in a significant overadvance position and was unable to provide an accurate representation of its borrowing base. As at April 1, 2017, the Company's borrowing base showed a significant margin deficit with marginable assets of approximately \$8.2 million in comparison to its outstanding revolving credit facility amount of approximately \$15.6 million.

42. The Monitor has completed an estimated security position with respect to Bridging's credit facilities as at May 31, 2017, a copy of which attached hereto as **Confidential Appendix "A"**. The Monitor is of the view that, in an orderly liquidation scenario, it is expected that Bridging would suffer a significant shortfall on its security.

VII. CREDITORS

43. The Bridging Affidavit provides details with respect to the identity of the Company's secured creditors. The following is a summary of the Monitor's understanding of the indebtedness owed to such parties.

Bridging

44. The Monitor understands that the Company's secured debt facilities consist of revolving and term loans made available by the Lender (the "**Credit Facilities**") to TCL as borrower, 692 as guarantor, and Management as limited guarantors pursuant to the original credit agreement dated July 3, 2015, as amended (the "**Credit Agreement**"). Pursuant to the Credit Agreement, the maximum amounts available to TCL under the Credit Facilities are as follows:

| Thomas Canning (Maidstone) Limited Credit Facilities | | |
|---|-----------|-------------------|
| Demand Revolving Loan (Facility A) | \$ | 15,000,000 |
| Revolving Loan (Seasonal Bulge) | | 2,000,000 |
| Demand Term Loan (Facility B) | | 608,000 |
| Demand Term Loan (Facility C) | | 3,757,650 |
| Term Revolving Loan | | 2,500,000 |
| Total Credit Facilities | \$ | 23,865,650 |

45. Pursuant to the Accommodation Agreement, the Lender amended the terms of the Credit Agreement. The outstanding balances owing to the Lender, including the Interim Receiver's borrowings, are as follows:

| Thomas Canning (Maidstone) Limited Credit Facilities | | |
|---|-----------|-------------------|
| As at May 31, 2017 | | |
| Demand Revolving Loan (Facility A) | \$ | 16,214,034 |
| Revolving Loan (Seasonal Bulge) | | 100,000 |
| Demand Term Loan (Facility B) | | 220,796 |
| Demand Term Loan (Facility C) | | 3,277,853 |
| Term Revolving Loan | | 1,807,094 |
| Total Credit Facilities | \$ | 21,619,777 |
| Accrued Lender Legal Fees | | 200,000 |
| Amounts Funded (Interim Receivership) | | 75,000 |
| Total Estimated Lender Advances | \$ | 21,894,777 |

46. The Monitor understands that the Credit Facilities are secured by general security agreements granted by the Company dated July, 3, 2015, and a real property charge against real estate owned by the Company.
47. The Monitor has obtained an independent legal opinion from Chaitons with respect to the validity and enforceability of the personal and real property security granted by the Company in favour of Bridging under the laws of the Province of Ontario ("**Ontario Law**"). Chaitons has reviewed certain security documents and, subject to customary qualifications, assumptions and limitations is of the opinion that the security granted by the Company in favour of the Lender under Ontario Law is valid and enforceable against the Property in accordance with its terms.
48. Additionally, the Lender advanced funds to the Interim Receiver in connection with the interim receivership proceeding. The Interim Receiver's borrowings, which was in the amount of \$75,000, is subject to a super-priority Court-ordered charge over all of the Company assets, as granted under the Interim Receivership Order.

Other Secured Creditors

49. A search conducted as of June 8, 2017 by the Monitor's counsel of registrations made pursuant to the *Personal Property Security Act* (Ontario) (the "**PPSA**") against TCL disclosed registrations in favour of (i) Gould Lease Ltd.; (ii) CLE Leasing Enterprise Ltd.; (iii) Capmor Financial Services Corporation – in Trust; (iv) Bodkin Capital Corporation; (v) 1419768 Ontario Inc.; (vi) D&D Leasing (collectively, the "**Tote Leases**"); (vii) John Thomas; (viii) Julie Thomas; (ix) Robert Thomas; and (x) William Thomas (collectively, the "**Shareholder Loans**").
50. The Tote Leases relate to specific leased assets used to store and transport tomato product inventory.¹ The registrations in respect of the Shareholder Loans appear to be in respect of security over all of TCL's personal property. However, the Monitor understands that the Shareholder Loans of John Thomas, Robert Thomas and William Thomas have been postponed and assigned to Bridging pursuant to an Assignment and Postponement of Claim. The Monitor notes that the Tote Leases and the Shareholder Loans were all registered subsequent to Bridging's registrations. The Shareholder Loans, in particular, were registered only two days prior to the date of the Interim Receivership Order.
51. A search conducted on June 8, 2017 by the Monitor's counsel of registrations made pursuant to the PPSA against 692 outlined no registrations other than Bridging's registration.

¹ Bodkin also has an additional PPSA registration against all of TCL's personal property.

Priority Claims

52. Bridging's security is currently, and should the appointment of the Receiver be granted become, subject to potential prior charges, security interests or claims in respect of the Company's property, which include (each capitalized term as defined herein):
- (a) the Interim Receiver's Charge;
 - (b) the Interim Receiver's Borrowing Charge;
 - (c) the Monitor's Charge;
 - (d) the Receiver's Charge;
 - (e) the Receiver's Borrowings Charge;
 - (f) Statutory claims; and
 - (g) Statutory claims under the BIA.

Interim Receiver's Charge

53. As noted above, Richter was appointed as Interim Receiver pursuant to the Interim Receivership Order. The order granted a super-priority charge over the Property in favour of the Interim Receiver and its counsel (the "**Interim Receiver's Charge**") as security for payment of the fees and disbursements of the Interim Receiver and its counsel (the "**IR Professional Fees**").
54. The IR Professional Fees for the period from April 19, 2017 to May 1, 2017 total approximately \$81,000 (excluding HST), as detailed in the fee affidavits appended hereto. This amount has been repaid by the Interim Receiver through funds borrowed from Bridging and secured by the Interim Receiver's Borrowings Charge, and a retainer amount received from Bridging.
55. In the event that (i) the Receiver is appointed, (ii) the Court approves the IR Professional Fees, and (iii) the Sale Transaction is approved and closes, the Monitor understands that upon the filing of the IR Discharge Certificate, the Interim Receiver's Charge will be extinguished.

Interim Receiver's Borrowing Charge

56. Pursuant to paragraph 19 of the Interim Receivership Order, the Interim Receiver was authorized to borrow up to \$500,000, as it considered necessary or desirable. Repayment of such borrowings is secured by a

super-priority charge over the Property granted pursuant to the Interim Receivership Order (the "**Interim Receiver's Borrowings Charge**").

57. The Interim Receiver borrowed \$75,000 by way of an Interim Receiver's certificate issued to Bridging. In the event that the Receiver is appointed and the Sale Transaction is approved and closes, the Monitor understands that the Receiver will remit payment of this amount plus interest to Bridging, at which time upon the filing of the IR Discharge Certificate, the Interim Receiver's Borrowings Charge will be extinguished.

Monitor's Charge

58. Pursuant to the Monitor Order, the Court granted a super-priority charge over the Property in favour of the Monitor and its counsel (the "**Monitor's Charge**") as security for payment of the fees and disbursements of the Monitor and its counsel (the "**Monitor Professional Fees**").
59. The Monitor Professional Fees for the period from May 1, 2017 to June 11, 2017 total approximately \$243,000 (excluding HST) as detailed in the fee affidavits appended hereto, and the Monitor and its counsel estimates that additional fees and disbursements of approximately \$75,000 (excluding HST) will be incurred in the event that the Receiver is appointed (the "**Monitor Estimated Fees**").
60. In the event that (i) the Receiver is appointed, (ii) the Court approves the Monitor Professional Fees and the Monitor Estimated Fees, and (iii) the Sale Transaction is approved and closes, the Monitor understands that the Receiver will remit payment of the Monitor Professional Fees and the Monitor Estimated Fees, at which time, upon the filing of the Monitor's Discharge Certificate, the Monitor's Charge will be extinguished.

Statutory Claims

61. The Monitor understands that the Company made normal course remittances to Canada Revenue Agency ("**CRA**") in connection with source deductions withheld from its employees. Additionally, the Company has informed the Monitor that it has not filed harmonized sales tax ("**HST**") returns with the CRA since April/May 2016. However, based on historic performance, the Company expects to be in a significant refund position. As such, the Monitor understands that the amount of deemed trust in favour of CRA would be limited to any source deductions outstanding (as detailed below).
62. Additionally, as noted above, TCL is the owner of the Premises. The Monitor currently has no information regarding the amount of property taxes that may be unpaid and outstanding with respect to the Premises.

BIA Claims

63. In the event that the Receiver is appointed by the Court, it is expected, given the reduced business operations of the Company, that there will be a minimal amount of goods that may have been delivered and unpaid as of the date of the receivership proceedings. To the extent that any claims are received by the Receiver, they will be assessed and administered in accordance with section 81.1 of the BIA.
64. The Monitor expects that there will be certain amounts of outstanding wages and/or vacation pay to which the Company's employees will be entitled to as at the date of the Receiver's appointment. Accordingly, in the event the Sale Transaction closes, the Receiver will be holding back an amount equal to \$2,000 per employee in respect of statutory charges pursuant to section 81.4 of the BIA. Since the Monitor Order is explicit that the Monitor is not in possession or control of TCL's business and is not a receiver for purposes of section 243 of the BIA, the appointment of the Receiver is necessary in order to trigger the protection afforded to employees by section 81.4 of the BIA.
65. Similarly, as noted above, the Monitor understands that the Company did not provide a registered pension plan for its employees. Accordingly, the Monitor is not aware of any amounts owing to the Company's employees pursuant to section 81.6 of the BIA.
66. Based upon discussions with Management, it is estimated that the Company will have the following liabilities that rank, or may rank, in priority to the secured claims of Bridging at the date of the appointment of the Receiver:
- (a) section 81.1 30-day goods claims, should any exist, are estimated to be \$15,000 for purposes a cash reserve to held by the Receiver (as discussed later herein);
 - (b) source deduction payments are made semi-monthly and are understood to be current. The maximum amount outstanding at any point in time is understood to be approximately \$12,000; and
 - (c) wages, vacation and source deduction payments are understood to be current, with the possible exception at any point in time of one payroll cycle. Based on the number of current employees and a number of \$2,000 per employee pursuant to section 81.4 of the BIA, the Monitor understands that the amount will be approximately \$40,000.
67. The Monitor understands that the Purchaser is considering what employees it may offer employment to following the closing of the Sale Transaction to maintain the business as a going concern, and that no determination has been made by the Purchaser as of the date of the Report. With respect to any

employees who are not offered employment by the Purchaser, the Company and, where and to the extent applicable, its directors, will remain responsible for any outstanding employee wages, statutory deductions, remittances, assessments, bonuses, vacation pay, sick leave, severance pay, termination pay, amounts paid in lieu of notice, and any other remuneration, benefits and deductions for the employees that become due and payable prior to the receivership proceedings and will be dealt with in the receivership proceeding, including complying with the requirements of the *Wage Earner Protection Program Act*.

Unsecured Trade Creditors

68. The Monitor understands that the Company had unsecured trade payables owing of approximately \$1.1 million as at May 31, 2017. The Monitor also understands that these amounts may not include all of the 2016 Production Obligations (between \$2.9 and \$3.8 million) incurred but not paid for by the Company.
69. The Sale Transaction does not contemplate the assumption by the Purchaser of any outstanding trade payables of the Company.

VIII. THE MONITOR'S ACTIVITIES

70. The activities of the Monitor from the date of the Monitor Order to the date of this Report have included:
- (a) returning keys to Management and allowing unfettered access to the Premises;
 - (b) monitoring adherence to the terms of the Accommodation Agreement and the Monitor Order, including the blocked account arrangements with the Lender, including reviewing cheques received and tracing other forms of customer receipts (wires, Western Union, etc.);
 - (c) reviewing the Company's funding requests and making recommendations to the Lender in respect of critical payments for which funding should be advanced by Bridging (the "**Funding**"), as per the Accommodation Agreement;
 - (d) reconciling the Company's distribution bank account with BMO for the Funding received less approved payments cashed, outstanding or in process of being paid;
 - (e) monitoring shipping activity from the Premises, including review of supporting documentation. The Monitor did not monitor activity from the Warehouse, as it understands that shipments from the Warehouse are only made to the Premises, and not directly to customers;
 - (f) analyzing and reviewing operational matters regarding TCL's business;

- 16 -

- (g) performing random test counts of TCL's revised inventory listing, which led to an additional physical inventory count, preparation of an updated inventory schedule, and reconciliation;
- (h) reconciling the outstanding customer accounts receivable balances;
- (i) assisting TCL, Management and other stakeholders in understanding the 2016 Production Obligations and analyzing the 2017 tomato feedstock obligations and/or future obligations, and corresponding Licence implications;
- (j) assisting Management and other stakeholders in assessing TCL's customer base and associated gross margins;
- (k) reviewing and analyzing the conventional and organic product mix for the 2017 Production and the associated costing, gross margin and sales backlog coverage analysis;
- (l) assisting TCL, Management and other stakeholders with requirements associated with TCL's processing and facility licences;
- (m) reviewing TCL's quality control process;
- (n) engaging an outside security company, when needed, to safe guard the Property and the Premises;
- (o) conducting the RISP, as described in detail later in this Report;
- (p) participating in numerous update calls and email correspondence with the Lender, Lender's counsel, Monitor's counsel and Company's counsel in respect of the monitor proceedings and the RISP; and
- (q) preparing this Report.

IX. THE MONITOR'S FINDINGS

71. The findings of the Monitor should be read in conjunction with the preliminary findings of the Interim Receiver as outlined in the IR Report. The findings of the Monitor from the date of the Monitor Order to the date of this Report have included:

- (a) Management has hindered and frustrated the Monitor's ability to effectively and efficiently perform its duties including: misleading the Interim Receiver and its consultant as to the proper

- 17 -

categorization of inventory when the Interim Receiver and certain employees of TCL performed a full physical count; mislabeling of product with regards to product expiry dates; not updating TCL's accounts receivable balance to allow for an effective and timely reconciliation; providing no meaningful response to the Monitor's requests regarding potential diversion of funds; and providing no active management with regards to the finances of the business;

- (b) Upon the Monitor's reconciliation of the inventory balance and test counts regarding same, the Monitor was made aware by an employee of TCL on June 2, 2017 that instructions were provided to him to mislead the Interim Receiver as to the categorization of certain inventory items during the initial physical inventory count. The Monitor believes this mis-categorization of inventory further supports the \$1.5 - \$2.0 inventory overstatement outlined in the IR Report and resulted in additional time and expense of the Monitor to assess these discrepancies;
- (c) Additionally, on June 2, 2017, this same employee also suggested that the Monitor examine certain finished goods inventory that had been recently labeled. The Monitor examined this product, physically segregated it from the other inventory, took pictures of it, and discovered that TCL had added an extra year to the best before date of the 2014 canned product (2018 vs. 2017). The Monitor understands that the industry standards for best before dates is a three (3) year shelf life after the product is canned;
- (d) On additional review and reconciliation of TCL's accounts receivable balances, the Monitor identified additional potential diversion of customer receipts (as outlined below) in contravention of the cash management arrangements under the Company's Credit Facilities with the Lender and, in the most recent case, in breach of the Interim Receivership Order. The Monitor requested TCL's assistance in reconciling these receipts to the Company bank accounts (accounts of which the Monitor is aware of) and Management's response regarding the first occurrence identified was that they were acting in accordance with the Company's counsel's instruction, and on subsequent findings the Monitor was told by Management to deal directly with the Company's counsel. Numerous emails were made by the Monitor's counsel to counsel to the Company, and as of the date of this Report no clear answer has been provided. Attached hereto and marked as **Appendix "K"** are copies of the emails exchanged by counsel to the Monitor and counsel to the Company.

| Thomas Canning (Maidstone) Limited | | | | | | |
|---|--------------------|-------------|---------------|----------------------|-------------|----------------------|
| Potential Diversion of Funds per Credit Facilities | | | | | | |
| <u>Cheque From</u> | <u>Cheque Date</u> | <u>Curr</u> | <u>Cheque</u> | <u>Amount</u> | <u>Date</u> | <u>Date of Email</u> |
| Ali-Mondee Ltee | 04/22/2017 | CAD | 19750 | \$ 6,500.05 | 05/30/2017 | 05/31/2017 |
| Ventura Foods Cdn Ltd. | 04/03/2017 | CAD | 10904 | 22,335.20 | 05/30/2017 | 05/31/2017 |
| UNFI Canada | 04/12/2017 | CAD | 363258 | 4,095.42 | 05/30/2017 | 05/31/2017 |
| Total | | | | \$ 32,930.67 | | |
| Garden Fresh | 02/17/2017 | USD | Wire | 50,646.96 | 06/05/2017 | 06/07/2017 |
| Garden Fresh | 03/10/2017 | USD | Wire | 25,704.00 | 06/05/2017 | 06/07/2017 |
| The Fremont Company | 04/06/2017 | USD | 47808 | 54,757.77 | 05/30/2017 | 05/31/2017 |
| The Fremont Company | 04/13/2017 | USD | 47932 | 36,563.18 | 06/08/2017 | 06/12/2017 |
| Total | | | | \$ 167,671.91 | | |
| Total | | CAD | | 32,930.67 | | |
| Total | | USD | | 167,671.91 | | |
| Total | | CAD | | \$ 259,287.75 | | |

As previously outlined by the Interim Receiver, the Monitor has significant concerns that this listing is not complete given the lack of Management assistance with regards to this matter, the state of the Company's books and records and limited confirmation of accounts receivable balances/payment history with TCL's customers;

- (e) Despite the numerous requests, the Company's books and records still remain significantly out of date. As a result of the state of the Company's books and records and the little or no assistance provided by Management, the Company remains unable to provide visibility to the Monitor and the Company's stakeholders regarding its short term liquidity needs (i.e. unable to produce useable cash flows). In this regard, Management has taken no active management in running its business, as outlined below:
- (i) funding requests are ad hoc and appear to be on a "crisis" basis only (i.e. which vendors are calling the most, threat of litigation, showing up at the Premises, etc.);
 - (ii) vendor invoices are given in stacks to the Monitor and told that the items need to be paid without any summary and/or understanding by Management or finance personnel with regards to what service or product the invoices related to;
 - (iii) certain obligations have been incurred by Management without required pre-approval of the Monitor (as required pursuant to the Monitor Order) and then requested by Management be deemed critical and funded by the Lender;

- 19 -

- (iv) estimates are given without any backup and are subject to numerous changes as further clarification is requested by the Monitor;
 - (v) requesting approval of purchase orders without performing sufficient due diligence/assessment of the business needs;
 - (vi) Management and finance personnel directing vendors who are upset by the current status of their account to contact the Monitor for payment;
 - (vii) Management directing the Monitor to call customers to get the outstanding accounts receivable balances/payment history for reconciliation and cash flow purposes; and
 - (viii) Management believing that the top priority was engaging an outside accounting firm to get financial statements prepared for the RISP versus understanding that the books and records are required to be updated prior to producing meaningful financial statements.
- (f) The finance personnel that is available, though competent, remains overwhelmed given the state of accounts that she inherited from the former CFO (who resigned in March 2017) and personal obligations which has limited her availability at the Premises. Management continues to use a significant amount of her time and the Monitor has been challenged in requesting deliverables without her threatening to end her employment with TCL. Updating TCL's account payable balance, which has identified by the Interim Receiver and Monitor, is still not complete as of the date of this Report (some six weeks) and other critical update items such as updating the accounts receivable balances, HST filings to get the Company a refund/liquidity and other items required for the RISP have not been started;
- (g) The Monitor, in preparing the 2017 Production analysis with the assistance of Management, became aware that sales to TCL's largest organic customer were being made at negative gross margin and that TCL's conventional paste inventory was being sold at little or no gross margin. Until this analysis was completed by the Monitor, Management was unaware of this profitability by product category and associated TCL's cost base. Additionally, given the current levels of inventories on hand, it appears that TCL has been producing inventory that is not destined for any particular customer or open orders;
- (h) Management requested that the Monitor recommend that TCL proceed with the 2017 Production (400 acres/17,100 tons of tomatoes) and obtain the required funding from Bridging. The Monitor was unable to recommend this course of action due to the following:

- 20 -

- (i) inability of Management to provide visibility into the financial viability of this request, including a business plan and sufficient customer order backlog. In the event a business plan was ever provided by Management, the Monitor would have been unable to assess its viability given the current state of the Company's books and records;
- (ii) significant inventory already on-hand with insufficient customer order backlog and currently selling existing product at negative gross margins;
- (iii) uncertainty surrounding the status of the Licence (as previously outlined in this Report);
- (iv) uncertainty surrounding TCL's ability to source additional 2017 Growers;
- (v) significant upfront cash payments required to secure 2017 Production due to Licence conditions resulting from the 2016 Production Obligations; and
- (vi) significant concerns regarding Management's ability to execute a business plan.

72. Further to the issues identified above, Management and the Monitor disagreed as to the appropriate TCL financial projection (2017 Production) to include in the RISP dataroom. The Monitor, with the assistance of the TCL's finance personnel and Management, prepared this financial projection based on the TCL's available numbers. Management took the position that an earlier, incomplete draft of the financial projection should also be included in the dataroom, as the incomplete draft had more favourable numbers (missing significant costs and preliminary unsupported product selling prices) supporting the Company's position that the 2017 Production should be for 400 acres of tomato feedstock.

73. The Monitor, through its counsel, responded to questions asked of it by Management and the Company's counsel with respect to this issue, among others, in a letter dated May 17, 2017, a copy of which is attached hereto and marked as **Appendix "L"**.

74. The Company took the position that it needed to bring this matter to the Court's attention and required the parties to attend before the Court on May 18, 2017. At the attendance, Justice Newbould dismissed all of the positions taken by the Company, as set out in His Honour's endorsement dated May 18, 2017, a copy of which is attached hereto and marked as **Appendix "M"**.

X. RISP AND SUBMITTED OFFERS

75. As described in the Bridging Affidavit, in early 2016, the Company began searching for a lender to refinance the Bridging Credit Facilities. The Company retained two separate consulting firms to run investment

- solicitation processes to raise equity, and/or locate a new lender. The Monitor understands that these efforts were unsuccessful.
76. As noted above, the Company, Management and the Lender (the “Parties”) entered into the Accommodation Agreement on April 29, 2017 and agreed to the RISP set out therein. A key term of the agreement was that a RISP would be implemented by the Monitor, with the assistance of the Company and Management. The RISP also provided that Bridging could not be a “Qualified Bidder” under the RISP, but reserved its right to credit bid any portion of its secured indebtedness if no acceptable offer was received or no sale transaction could otherwise be successfully completed.
77. The Parties consulted with Richter with respect to the proposed terms of the RISP prior to its appointment as Monitor. The RISP contemplated an eight (8) week period to market the Company’s business and/or assets to potentially interested parties and close a sale transaction, subject to Court approval.
78. In the Monitor’s view, given: (i) the Company’s deteriorating financial position/liquidity constraints, (ii) the Company had recently completed two unsuccessful professionally-led searches for new investors and/or lenders, (iii) the impending processing season (beginning in August), (iv) conditions with regards to the Licence, and (v) other potential issues (including Bridging funding additional operating losses and the Company’s indebtedness to Bridging increasing), the expedited timelines in the RISP were appropriate and commercially reasonable in the circumstances.
79. Richter was appointed, on consent of the Company and Management, as Monitor on May 1, 2017. Phase 1 of the RISP was to be commenced by no later than May 8, 2017, and would include the preparation of a teaser to be sent to a list of persons, compiled by the Monitor with the assistance of the Company, Management and Bridging, who could have an interest in making an offer during the RISP.
80. The RISP provided for an 8-week marketing and diligence period, with the following deadlines:
- (a) May 8, 2017: commencement of marketing process;
 - (b) May 26, 2017: submissions of non-binding letters of intent (“LOI”);
 - (c) June 2, 2017: receipt of a binding LOI from an acceptable non-binding LOI submitted by May 26, 2017;
 - (d) June 15, 2017: completion of a definitive sale agreement; and
 - (e) June 30, 2017: completion of sale transaction after an approval and vesting order was obtained.

- 22 -

81. The RISP provided the Monitor with the ability to extend the deadline with respect to submissions of the non-binding LOIs and other deadlines outlined in the RISP at its own discretion and with the consent of Bridging. Additionally, the Monitor was under no obligation to accept any offer received, including but not limited to an offer insufficient to satisfy Bridging's secured debt at closing.
82. The Monitor understood that, because the May 26, 2017 deadline was relatively early on in the process, the Parties agreed to a second deadline of June 2, 2017 for an acceptable non-binding LOI to become binding.
83. On or about May 8, 2017, a teaser, which was reviewed by the Parties, was finalized (the "**Teaser**") and sent out to a list of 69 potential purchasers, investors and/or lenders (the "**Potential Interested Parties**"). The list of Potential Interested Parties included significant players in the wholesale produce processing and re-processing sectors, and prospective financial purchasers or investors. A copy of the Teaser is attached hereto and marked as **Appendix "N"**.
84. Following the release of the Teaser, the Monitor followed up with the Potential Interested Parties to discuss the Company's business and assets and confirm interest in same. Potential Interested Parties were required to sign a non-disclosure agreement ("**NDA**", becoming "**Interested Parties**") to commence due diligence and obtain access to the electronic dataroom established by the Monitor with the assistance of the Company.
85. During the course of the RISP, the Monitor received responses from 35 Potential Interested Parties, of which sixteen (16) became Interested Parties and the remaining nineteen (19) declined to take any further steps under the RISP.
86. Two (2) of the sixteen (16) Interested Parties were industry players: (i) a licensed processor who subsequently had no further interest in the business; and (ii) a customer of products similar to those produced by the Company.
87. The initial offer deadline of May 26, 2017 (the "**LOI Deadline**") required that an acceptable non-binding LOI be submitted by a bidder(s) likely to be able to consummate a transaction. The non-binding LOI's were to be made on an "as is, where is" basis and without surviving representations or warranties of any kind, nature, or description.
88. On or before the LOI Deadline, the Monitor received non-binding LOI's from two (2) parties: Mahal and Bob Thomas (collectively, the "**Bidders**"). Redacted copings of the Mahal offer and Thomas offer (the "**Thomas LOI**") are attached hereto and respectively marked as **Appendices "O"** and "**P"**", respectively. Unredacted copies of the offers are attached hereto and marked as **Confidential Appendices "B"** and "**C"**", respectively.

89. The Thomas LOI included several conditions, whereas the Mahal offer only had the condition of receiving an approval and vesting order to complete the sale transaction.
90. Shortly following the LOI Deadline, the Monitor, with the consent of Bridging, informed the Bidders that they would each be afforded an opportunity to remove conditions and submit their final and best offer on or before May 30, 2017 at 5:00 p.m. (the "**Extended LOI Deadline**").
91. The Teaser provided that a binding offer would be accompanied by a deposit in the amount of at least the lesser of 10% of the total cash consideration or \$500,000. The RISIP as outlined in the Accommodation Agreement provided that a bidder was required to, among other things, provide a deposit of not less than 10% of the total proposed cash consideration. The intent of the deposit formula was to ensure that a \$500,000 minimum deposit was received by the Monitor in the event that an offer included little or no cash consideration (e.g. assumption of debt).
92. Given the significant cash portion of the consideration offered by the Bidders, on May 29, 2017, the Monitor, with the assistance of Chaitons, informed the Bidders that a deposit in the amount of 10% (the "**10% Deposit**") would be required in the non-binding LOIs from the Bidders prior to the Extended LOI Deadline.
93. Prior to the Extended LOI Deadline, Mahal provided the Monitor with an amended LOI (the "**Mahal LOI**") reflecting improved financial terms. The Mahal LOI included the required 10% Deposit, consistent with Mahal's offer received at the LOI Deadline. Counsel to Bob Thomas, Minden Gross LLP ("**Minden**"), sent a letter to the Monitor's counsel, Chaitons, dated May 30, 2017 clarifying certain terms and conditions of the Thomas LOI (the "**Thomas Letter**"), and indicated that Bob Thomas would not increase his cash consideration or provide the 10% Deposit, as his position was that he had fully complied with the bid process as outlined in the Teaser. Redacted copies of the Mahal LOI and the Thomas LOI are attached hereto and marked as **Appendices "Q"** and **"R"**, respectively. Unredacted copies of the offers are attached hereto and marked as **Confidential Appendices "D"** and **"E"**, respectively.
94. In response to the Thomas Letter, Chaitons, on behalf of the Monitor, advised Minden that, in the absence of the 10% Deposit, at the very least firm supporting documentation of Bob Thomas' financial ability to complete the sale transaction was required by June 2, 2017 at 5:00 p.m., being the binding offer deadline as set out in the Teaser (the "**Binding Offer Deadline**"). The Monitor understands that Chaitons and Minden also discussed certain alternative ways in which the Thomas LOI consideration could be improved to address the projected shortfall against Bridging's secured debt, including the assumption of the remaining secured indebtedness owing to Bridging, but Chaitons was advised by Minden that this was not acceptable to Bob Thomas.

- 24 -

95. On or about 1:30 p.m. on June 2, 2017, prior to the Binding Offer Deadline (but after the Extended LOI Deadline), Chaitons, on behalf of the Monitor, sent an email to Minden advising that the Monitor had declined to accept the Thomas LOI. Additionally the Chaitons email summarized certain facts contained in the Thomas LOI/Thomas Letter and noted that the alternatives available to the Thomas LOI were declined by Bob Thomas. The Monitor understands that Chaitons also provided particulars of the offer accepted by the Monitor (the Mahal LOI) to Minden, upon request shortly after 3:00 p.m.
96. Also in the afternoon of June 2, 2017, Chaitons, on behalf of the Monitor, advised Mahal by email that the Mahal LOI had been accepted and that subject to the confirmation by Mahal of certain terms, including that the 10% Deposit would be paid to the Monitor by June 6, 2017 at 5:00 p.m. (the "**Deposit Deadline**"), the Mahal LOI would be considered binding. Such terms were confirmed by Mahal prior to the Binding Offer Deadline. The wire transfer for the deposit was initiated by Mahal and confirmed by the respective financial institution prior to the Deposit Deadline and was received in the Monitor's trust account the next day.
97. At approximately 4:45 p.m. on June 2, 2017, Chaitons received a "binding" offer from Minden on behalf of Bob Thomas, providing an increase in the purchase price, and waiving certain conditions in the Thomas LOI. A deposit of \$500,000 from Bob Thomas was received by the Monitor, but which was significantly less than the previously requested 10% Deposit. A copy of this "binding" offer received is attached hereto as **Confidential Appendix "F"**.
98. The Monitor is of the view that: (i) the Thomas LOI was unacceptable and was previously rejected, (ii) this new offer was received after the Extended LOI Deadline and only after Minden was informed that another offer had been accepted in accordance with the RISP and that the accepted offer had higher consideration and deposit amounts, and (iii) that the requirement to provide the 10% Deposit or proof of financial ability to complete a transaction, and an assumption of the remaining Bridging debt, was not met by Bob Thomas. Accordingly, as previously noted, Minden was notified that the Monitor had accepted the Mahal LOI. A summary of the offers received in connection with the RISP has been prepared by the Monitor and is attached hereto as **Confidential Appendix "G"**.
99. The RISP contemplates that a definitive agreement be finalized by June 15, 2017 or such date as may be extended by the Monitor, and that the Monitor promptly seek Court approval of and close a transaction no later than June 30, 2017. As previously mentioned, the Monitor and the Purchaser are currently negotiating the APA and they expect to have the required definitive agreement finalized very shortly.

XI. SALE TRANSACTION

100. The Sale Transaction contemplates the purchase of substantially all of Company's Property and the assumption of certain obligations of the Company by the Purchaser. The purchased assets include, but are not limited to:
- (a) accounts receivable, including cash, pre-payments, deposit and any HST or other government refunds;
 - (b) inventory (including inventory stored at the Warehouse);
 - (c) office furniture, machinery & equipment and fixed assets (including farming equipment);
 - (d) real property and all rights under real property leases and Warehouse/storage agreements/arrangement;
 - (e) rights to any licences, consents, approval, certifications or other similar rights and/or property;
 - (f) open customer orders;
 - (g) all purchase orders for the supply of goods, all rights to receive goods in respect to the 2017 Feedstock;
 - (h) intellectual property; and
 - (i) documents and records with respect to transactions between the Company and customers.
101. The obligations assumed include, but are not limited to:
- (a) all remaining obligations of the Company relating to the indebtedness owing to the Bridging, including without limitation, any costs, fees, expenses, losses and damages incurred by Bridging in connection with its loans to the Company; and
 - (b) any guarantee or indemnity in favour of any other person and any amounts held in escrow for good in connection with the 2017 Feedstock.
102. It was contemplated under the RISP that any sale transaction would close by no later than June 30, 2017. The Monitor understands that, if all of the relief requested by Applicant is granted and the Receiver is appointed, the parties intend to close the transaction on June 21, 2017 or shortly thereafter.

103. As previously outlined, the RISP provided for a 4-week period to market the Company's business and/or assets to Potential Interested Parties. In the Monitor's view, this timeline was sufficient to allow Interested Parties to perform due diligence and submit offers, especially in light of the following circumstances:
- (a) the previous sale/refinancing efforts of the Company;
 - (b) the Company's liquidity constraints, as outlined in earlier sections of this Report;
 - (c) the compressed timeframe to make the 2017 Production decisions and arrangements;
 - (d) the Company's industry sector is composed of a limited number of strategic purchasers, and as such significant time was not required to canvass the market of industry players; and
 - (e) the current financial position of the Company was such that interest from financial purchasers, investors, or lenders was unlikely, as evidenced by the low level of due diligence performed by this segment of the Potential Interested Parties.
104. Without the certainty resulting from the Sale Transaction, it appears likely that value will quickly deteriorate for assets both subject to – and outside of – the Sale Transaction, for the reasons previously noted in this Report and in the Bridging Affidavit.
105. In the circumstances, the Monitor is of the view that the Sale Transaction is the best option available to the Company's stakeholders given that (i) the Company has been broadly marketed, (ii) the Mahal Offer represents the only viable offer received during the RISP, (iii) it includes a significant non-refundable deposit that has been received by the Monitor, (iv) it contains no conditions other than the approval of this Court, and (v) it appears to maximize the value of the Company's Property for the Company's stakeholders.
106. The Company continues to operate in a significant overadvance position, as outlined in the Company's most recent borrowing base certificate and as detailed in the Bridging Affidavit. The Monitor does not expect a significant reversal of the current overadvance position in the foreseeable future, given that Bridging is not willing to support an incremental overadvance to continue business operations and has made application to the Court for the appointment of a receiver. Additionally, as noted above, Bridging is expected to experience a significant shortfall on its security in a liquidation scenario.
107. Bridging has reviewed and is supportive of the Sale Transaction as it represents the highest and best offer received through the RISP, is the only offer received through the RISP that the Monitor believes has the sufficient resources to close, and preserves the Company's operations, customer base and asset value.

XII. INTERIM RECEIVER'S STATEMENT OF RECEIPTS AND DISBURSEMENTS

108. As mentioned earlier in this Report, the Monitor Order approved the IR Report and the activities referred to therein, and Richter was, subject to the performance of certain incidental duties, discharged as Interim Receiver.

109. The IR R&D is summarized as follows:

| Thomas Canning (Maidstone) Limited | | |
|---|---------------------|--------------|
| Statement of Receipts and Disbursements | | |
| For the period April 20, 2017 to May 31, 2017 | | |
| | | <i>Notes</i> |
| Receipts | | |
| Interim Receiver's borrowings | \$ 75,000.00 | <i>a</i> |
| Third party fee guarantee/retainer | 25,000.00 | <i>b</i> |
| Total Receipts | <u>\$100,000.00</u> | |
| Disbursements | | |
| Professional fees - Interim Receiver | 71,552.03 | <i>c</i> |
| Professional fees - Chaitons | 9,459.50 | <i>c</i> |
| HST paid on disbursements | 7,924.68 | <i>d</i> |
| Costs incurred to safeguard assets | 4,947.50 | |
| Filing fees | 70.00 | |
| Total Disbursements | <u>\$ 93,953.71</u> | |
| Excess Receipts over Disbursements/ Cash on Hand | <u>\$ 6,046.29</u> | |

Notes:

- (a) As detailed in the table above, in order to fund the interim receivership, the Interim Receiver borrowed \$75,000 from the Lender on April 20, 2017, repayment of which is secured by the Interim Receiver's Borrowing Charge;
- (b) A guarantee/retainer of professional fees from the Lender was also deposited with the Interim Receiver, which deposit was used to offset the Interim Receiver's professional fees and disbursements, as discussed below;
- (c) Pursuant to the Interim Receivership Order, the fees and disbursements of the Interim Receiver and its counsel, Chaitons, were paid by the Interim Receiver. As previously outlined in this Report, the Interim Receiver is seeking the approval of the Interim Receiver's fees and disbursements, and those of its counsel; and

- (d) Input tax credits ("ITC(s)") in the amount of \$7,924.68 may be claimed by the Interim Receiver from HST paid on disbursements in connection with the Interim receivership.
110. As at May 31, 2017, receipts exceeded disbursements by \$6,046.29. Following receipt of the ITC refund from CRA and any bank deposit interest earned less bank charges paid (collectively, the "**Remaining IR Amounts**"), the Interim Receiver will return IR Distribution to Bridging with the available cash on hand.

XIII. REQUEST FOR APPROVAL OF FEES

111. The Interim Receiver, the Monitor and their counsel have maintained detailed records of their professional time and disbursements since the date of the Interim Receivership Order.
112. The Interim Receiver's professional fees incurred for services rendered from April 19, 2017 to May 1, 2017 (the "**IR Period**") amount to \$67,897.22, plus disbursements in the amount of \$3,654.71 (all excluding HST). These amounts represent professional fees and disbursements not yet approved by the Court. The time spent by the Interim Receiver's professionals is described in the Lonergan Affidavit.
113. The fees of the Interim Receiver's counsel, Chaitons, for services rendered in the IR Period total \$9,459.50 (excluding HST). These amounts represent professional fees and disbursements not yet approved by the Court. The time spent by the Chaitons professionals is described in the Benchetrit Affidavit.
114. The Monitor's professional fees incurred for services rendered from May 1, 2017 to June 11, 2017 amount to \$203,074.50, plus disbursements in the amount of \$9,243.33 (all excluding HST). These amounts represent professional fees and disbursements not yet approved by the Court. The time spent by the Monitor's professionals is described in the Lonergan Affidavit.
115. The fees of the Monitor's counsel, Chaitons, for services rendered from May 1, 2017 to June 11, 2017 total \$30,749, plus disbursements in the amount of \$304.46 (all excluding HST). These amounts represent professional fees and disbursements not yet approved by the Court. The time spent by the Chaitons professionals is described in the Benchetrit Affidavit.
116. The Interim Receiver and the Monitor have reviewed Chaitons' accounts and have determined that the services have been duly authorized and duly rendered and that the charges are reasonable given the circumstances.
117. In addition to the fees incurred by the Monitor and its counsel noted above, and on the assumption that there are no delays, disputes or unforeseen developments in connection with these proceedings, including the within motion, the Monitor has estimated the Monitor Estimated Fees to be in the amount of \$75,000 for

the Monitor and its counsel (all amounts excluding HST). These amounts represent the Monitor's best estimate of the reasonable professional and legal fees required to complete the terms of the Monitor Order up to the effective date of discharge.

XIV. REMAINING MATTERS

118. The remaining activities of the Interim Receiver include the following:
- (a) Complete and file HST remittances to recover ITCs paid on disbursements in connection with the interim receivership; and
 - (b) Distribute the IR Distribution to the Lender.
119. The remaining activities of the Monitor include the following:
- (a) Continue to perform the duties and responsibilities of Monitor as outlined in the Monitor Order up to the Monitor's discharge;
 - (b) Finalize the APA with the Purchaser; and
 - (c) Continue to assist the Company and Purchaser in the operational, financial and transitional items as they relate to the Sale Transaction.

XV. PROPOSED INTERIM DISTRIBUTION TO BRIDGING

120. The Monitor proposes that, following the appointment of the Receiver and the completion of the Sale Transaction, the Receiver be authorized to make an interim distribution to Bridging. The interim distribution will represent the net proceeds of realization from the Sale Transaction, less a reserve to be held by the Receiver sufficient to complete the receivership proceedings.
121. Other than the claims described above, the Monitor is not aware of any security interests, liens, charges, encumbrances or other rights of third parties that would have priority over Bridging's security, with respect to the Property or the proceeds therefrom.
122. The Monitor is of the view that, in order to maximize efficiency, it is appropriate, in addition to seeking approval of the interim distribution, to seek the Court's approval to make such subsequent distributions to Bridging as the Receiver determines are appropriate, provided the aggregate distributions to Bridging do not exceed the indebtedness owing by the Company to Bridging, and subject to the Receiver maintaining

- 30 -

sufficient reserves to complete the administration of the Company's receivership proceedings, as previously outlined in this Report.

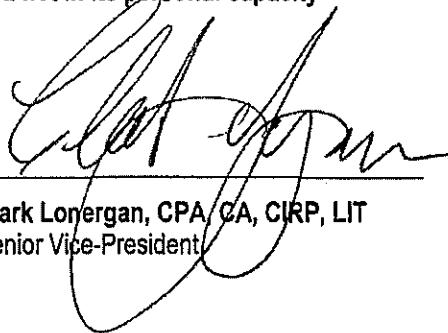
123. The Monitor respectfully requests that, should the Receiver be appointed and the Sale Transaction be approved and closed, the Court authorize the Receiver to make the interim distribution to the Lender and such subsequent distributions to Bridging as the Receiver determines are appropriate.

XVI. RECOMMENDATION

124. As detailed above, in the circumstances, the Proposed Receiver is of the view that the Sale Transaction, together with the RISP, represents a reasonable and value-maximizing approach to realizing on the Property. If the Court sees fit to appoint a receiver in the circumstances, the Monitor recommends proceeding in this manner.

All of which is respectfully submitted on the 15th day of June, 2017.

Richter Advisory Group Inc.
as Interim Receiver and Monitor of
Thomas Canning (Maidstone) Limited and 692194 Ontario Limited
and not in its personal capacity



Clark Loryergan, CPA, CA, CIRP, LIT
Senior Vice-President

TAB H

Court File No. CV-17-11773-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN:

**BRIDGING FINANCE INC.,
as agent for SPROTT BRIDGING INCOME FUND LP**

Applicant

and

**THOMAS CANNING (MAIDSTONE) LIMITED and 692194 ONTARIO
LIMITED**

Respondents

**IN THE MATTER OF AN APPLICATION PURSUANT TO SUBSECTIONS 47(1) AND
243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS
AMENDED, AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c.
C.43, AS AMENDED**

**NOTICE OF RETURN OF APPLICATION AND MOTION
(returnable June 21, 2017)**

The Applicant, Bridging Finance Inc. (“**Bridging**”), who last appeared on this Application before this Court on May 1, 2016 for an order appointing Richter Advisory Group Inc. (“**Richter**”) as monitor (in such capacity, the “**Monitor**”) of Thomas Canning (Maidstone) Limited (the “**Thomas Canning**”) and 692194 Ontario Limited (“**6921**” and, together with Thomas Canning, the “**Debtors**”), will return to Court on Wednesday, June 21, 2017 at 10:00 a.m., or as soon after that time as the Applicant can be heard, at 330 University Avenue, Toronto, Ontario, to seek certain relief originally sought in this Application and to make a motion for further relief.

PROPOSED METHOD OF HEARING: The Application and the motion are to be heard orally.

1. **THE APPLICATION IS FOR** an Order, substantially in the form of the draft Order attached hereto as **Schedule “A”** (the **“Receivership Order”**), pursuant to subsection 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the **“BIA”**) and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the **“CJA”**), appointing Richter as receiver, without security, over all of the assets, undertaking and property of the Debtors (in such capacity, the **“Receiver”**).
2. **THE MOTION IS FOR** an Order, substantially in the form of the draft Order attached hereto as **Schedule “B”** (the **“Approval and Vesting Order”**), among other things:
 - (a) approving an asset purchase agreement (the **“Purchase Agreement”**) to be made between the Receiver and a company owned by Mr. Santokh Mahal (the **“Purchaser”**), and authorizing the Receiver to complete the transaction contemplated thereby (the **“Transaction”**); and
 - (b) vesting in the Purchaser the Debtors’ right, title and interest in and to the assets described in the Purchase Agreement, free and clear of any claims and encumbrances subject to certain exceptions; and

such further and other relief as counsel may advise and this Honourable Court may permit.

3. **THE GROUNDS FOR THE APPLICATION AND MOTION ARE:**

THE PARTIES

- (a) Thomas Canning is a privately-owned Ontario corporation, which operates a tomato canning business in Lakeshore, Ontario;
- (b) Thomas Canning operates from a plant it owns at 326 South Talbot Road, Maidstone, Ontario and also leases warehouse space at 2755 Lauzon Parkway, Windsor, Ontario;
- (c) Thomas Canning is wholly-owned by 6921 which is, in turn, owned by members of the Thomas family and related corporations (collectively, the **“Shareholders”**);

- (d) Thomas Canning produces a variety of organic and conventional tomato products including pastes, sauces, canned tomatoes (whole, diced and crushed) and juices, and its tomato supply comes from greenhouse farmers with whom it contracts at the start of the season for supply at harvest;
- (e) Bridging is the senior secured creditor of the Debtors and a creditor of William Thomas, Robert Thomas and John Thomas (together with 6921 the “**Guarantors**” and, the Guarantors collectively with Thomas Canning, the “**Obligors**”);
- (f) a search of registrations against Thomas Canning made pursuant to the *Personal Property Security Act* (Ontario) (the “**PPSA**”), revealed various registrations against Thomas Canning by equipment lessors and by Shareholders, all of which registrations were made subsequent to the registration in favour of Bridging;
- (g) a search of registrations against 6291 made pursuant to the PPSA, revealed no registrations in favour of any other party other than Bridging;

BRIDGING’S LOAN AND SECURITY

- (h) Bridging and the Obligors are parties to a letter credit agreement dated July 3, 2105 (as amended, replaced, restated, or supplemented from time to time, the “**Credit Agreement**”);
- (i) pursuant to the terms and conditions of the Credit Agreement, Bridging has supplied Thomas Canning with the following credit facilities (collectively, the “**Credit Facilities**”):
 - (i) a demand revolving operating facility in the maximum amount of CDN\$15,000,000, with a sub-limit of USD\$1,000,000, plus a seasonal structured overadvance of CDN\$2,000,000, all margined against current assets;
 - (ii) a CDN\$608,000 demand term loan facility; and
 - (iii) a CDN\$3,757,650 demand term loan facility;

- (iv) a term revolving facility in the maximum amount of CDN\$2,500,00;
- (j) as security for its obligations to Bridging, Thomas Canning provided, among other things, a General Security Agreement dated July 3, 2015, registration in respect of which was made pursuant to the PPSA;
- (k) Thomas Canning, Bridging and Bank of Montreal (“**BMO**”) entered in to a Blocked Account Agreement, pursuant to which Bridging was given full cash dominion over CDN\$ and \$USD collection accounts, located at BMO’s Toronto main branch;
- (l) by a Guarantee Agreement dated as of July 3, 2015 (the “**6921 Guarantee**”), 6921 guaranteed all present and future obligations under the Credit Agreement of Thomas Canning to Bridging;
- (m) as security for its obligations under the 6921 Guarantee, 6921 provided, among other things, (a) a General Security Agreement, registration in respect of which was made pursuant to PPSA; and (b) a Securities Pledge Agreement pursuant to which 6921 pledged, as collateral, all its present or future investment property including all its shares in the capital of Thomas Canning;
- (n) Thomas Canning and 6921 also granted Bridging a first mortgage on all their owned real estate;

FINANCIAL DIFFICULTIES AND DEFAULTS

- (o) Thomas Canning has been in overadvance under the Credit Facilities since July, 2015 and in default as a result of failure to pay such overadvances since at least December 2015;
- (p) Thomas Canning also failed to repay the Credit Facilities as a whole upon their 18 month maturity in January, 2017;
- (q) Thomas Canning is alarmingly deficient in terms of its bookkeeping and finance functions;

- (r) Thomas Canning has failed to comply with and operate their businesses within the agreed margining set out in the Credit Agreement;
- (s) Thomas Canning has and continues to breach its reporting obligations under the Credit Agreement;
- (t) Thomas Canning overstated its inventory;
- (u) Thomas Canning diverted receipts and funds away from the cash management system constituting a clear breach of the terms of the Credit Agreement;

FAILED FINANCING AND REFINANCING EFFORTS

- (v) starting in early 2016, Thomas Canning began to search for a lender to refinance the Credit Facilities when they would become due in January, 2017 and, in March, 2016 retained Norton McMullen Corporate Finance Inc. to run an investment solicitation process to raise equity;
- (w) upon the failure of its refinancing solicitation efforts, Thomas Canning retained The Coterie Group the summer of 2016 as funding consultants to assist in finding financing for the Credit Facilities, which efforts were also unsuccessful;
- (x) the Debtors did not present Bridging with any evidence of other concrete refinancing opportunities after the term of the Credit Facilities expired in January, 2017;

DEMANDS

- (y) Bridging, by its counsel on April 5, 2017, sent the Obligors demands for repayment of Thomas Canning's obligations under the Credit Agreement;
- (z) in the case of Thomas Canning and 6921, their demands were accompanied by notices of intention to enforce security under Section 244 of the BIA dated the same date;

APPOINTMENT OF THE INTERIM RECEIVER

- (aa) on April 20, 2017, in the absence of repayment of the obligations under the Credit Facilities and in the face of a written statement from the Debtors' counsel that he had advised the Debtors to divert funds from cash management, the Agent filed the within Application;
- (bb) that same day, Richter was appointed as Interim Receiver of the Debtors (in such capacity, the "**Interim Receiver**") on an *ex parte* basis by Order (the "**Interim Receivership Order**") of the Honourable Justice Newbould (as he then was);
- (cc) among other things, the Interim Receivership Order required the Debtors to comply with their cash management arrangements with Bridging;

ACCOMMODATION AGREEMENT AND MONITOR ORDER

- (dd) following the making of the Interim Receivership Order, Bridging and the Obligor entered into negotiations around forbearance arrangements, which culminated in the execution of an Accommodation Agreement on April 29, 2017 (the "**Accommodation Agreement**");
- (ee) the Accommodation Agreement required the Court-appointment of Richter as monitor of the Debtors to, among other things, run a refinancing, investment and/or sale solicitation process, the terms of which were agreed to in the Accommodation Agreement (the "**RISP**");
- (ff) by an Order made on May 1, 2017, again by Justice Newbould, Richter was appointed as the Monitor (the "**Monitor Order**");
- (gg) the Monitor Order authorized and empowered the Monitor to conduct the RISP as agreed to between the Debtors, Bridging and the Monitor, but was explicit that the Monitor would not be in possession of the Debtors' property and the Monitor would not be a receiver for purposes of subsection 243(1) of the BIA;

RISP AND PURCHASE AGREEMENT

- (hh) as detailed in the Report, the Monitor marketed the Debtors' property and assets to the best of its ability in accordance with the RISP, making adjustments thereto when requested by the Debtors and where the Monitor thought reasonable;
- (ii) the RISP built on the Debtors' previous efforts to seek financing and refinancing in 2016, which efforts were ultimately unsuccessful;
- (jj) the Monitor's marketing and sale efforts have culminated in the Purchase Agreement, which the Monitor has accepted, subject to approval by this Honourable Court;
- (kk) the Purchase Agreement contemplates that the Receiver will complete the Transaction described therein, and that the assets described in the Purchase Agreements will be vested in the Purchaser;
- (ll) a condition of the Purchase Agreement is that this Honourable Court provide a sale approval and vesting order in favour of the Purchaser;
- (mm) the Purchase Agreement is the highest and best available offers for the Property, and it represents a fair net realizable value for the assets being purchased;
- (nn) the Purchase Agreement is commercially reasonable and in the best interests of the Debtors and their stakeholders, and necessary to complete the Transaction;
- (oo) the Receiver has filed with the Court its Report outlining, among others things: (i) the background to and circumstances surrounding the Debtors' business, operations and financial position; (ii) the RISP; and (iii) the Purchase Agreement and the Transaction;
- (pp) Robert Thomas has submitted a competing bid, and attempted to improve it after the amended deadline for binding letters of intent under the RISP and after the Transaction was selected, but has failed to post a deposit in the amount required

under the Accommodation Agreement or to provide evidence of resources sufficient to close a transaction competitive to the Transaction;

APPOINTMENT OF RECEIVER

- (qq) the Purchase Agreement required the appointment of the Receiver to close the Transaction and to perform certain post-closing obligations;
- (rr) pursuant to its security, Bridging has the right, upon an event of default, to seek the court-appointment of a receiver over the Debtors;
- (ss) pursuant to the Accommodation Agreement, the Obligors consented to the appointment of a receiver upon the occurrence of any further event of default, and covenanted not to contest the same;
- (tt) the Report details numerous additional events of default under the Credit Facilities and the Accommodation Agreement including a large number of additional instances of diversions of funds away from cash management, the most recent of which occurred after, and therefore in violation of, the Interim Receivership Order;
- (uu) the Obligors and their counsel have given no answer to the Monitor's charges of diversions of receipts from cash management;
- (vv) because the Monitor, under the terms of the Monitor Order, is not in possession or control of the Debtors' current assets, the employees of Thomas Canning will not benefit from the protections offered by section 81.4 of the BIA unless the Receiver is appointed;
- (ww) Bridging has, at all times, acted in good faith and with considerable patience towards the Debtors, including by continuing to fund critical payments in the face of mounting events of default;
- (xx) the Debtors have failed to honour their obligations to Bridging pursuant to the Credit Agreement and the Accommodation Agreement;

- (yy) Bridging has lost faith in the Debtors' abilities and intentions;
- (zz) in the circumstances, it is just and equitable that a receiver be appointed;
- (aaa) Richter is a licensed trustee and has consented to act as Receiver should the Court so appoint it;
- (bbb) the other grounds set out in the Report;
- (ccc) sections 100 and 101 of the CJA;
- (ddd) section 84 and subsection 243(1) of the BIA;
- (eee) rules 1.04, 2.03, 3.02, 37 and 38 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended; and
- (fff) such further grounds as are required and this Court may permit.

2. **THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the Application and the Motion:

- (a) the Report;
- (b) the consent of Richter to act as the Receiver; and
- (c) such other material as is required and this Court may permit.

Dated: June 15, 2017

AIRD & BERLIS LLP

Barristers and Solicitors
Brookfield Place
Suite 1800, Box 754
181 Bay Street
Toronto, Ontario
M5J 2T9

Sam Babe (LSUC #49498B)

Tel: 416-865-7718

Fax: 416-863-1515

Email: sbabe@airdberlis.com

*Lawyers for Bridging Finance Inc, as agent
for Sprott Bridging Income Fund LP*

TO: ATTACHED SERVICE LIST

TAB I

ASSET PURCHASE AGREEMENT

THIS AGREEMENT is made as of the 15th day of June, 2017,

B E T W E E N:

RICHTER ADVISORY GROUP INC., solely in its capacity as Court-appointed receiver of the property, assets and undertakings of THOMAS CANNING (MAIDSTONE) LIMITED and 692194 ONTARIO LIMITED and not in its personal capacity and without personal or corporate liability

(hereinafter referred to as the “**Vendor**”)

- and –

2581150 ONTARIO INC.

(hereinafter referred to as the “**Purchaser**”)

RECITALS

- A. Pursuant to the Order of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated May 1, 2017 (the “**Monitor Order**”), Richter Advisory Group Inc. (“**Richter**”) was appointed as monitor (the “**Monitor**”) of the property, assets and undertakings (collectively, the “**Property**”) of Thomas Canning (Maidstone) Limited (“**TCL**”) and 692194 Ontario Limited (“**692**” and together with TCL, the “**Company**”).
- B. Pursuant to paragraph 9(b) of the Monitor Order, the Court authorized the Monitor to market the Property in accordance with the terms of a refinancing, investment and/or sale process, provided that any resulting sale of the Property acquired for or used in relation to the Company’s business would be subject to prior approval of the Court on a motion brought by, among others, Bridging Finance Inc. as agent for Sprott Bridging Income Fund LP (“**Bridging**”).
- C. Bridging is scheduled to bring an application returnable on June 21, 2017 for the appointment of Richter as Court-appointed receiver of the Company and the Property (the

“Receiver”), and, if appointed, will be requesting that the Court authorize the Receiver to execute this Agreement as Vendor.

- D. Subject to the granting of the Approval and Vesting Order and the Appointment Order (each as defined below), the Vendor has agreed to sell to the Purchaser, and the Purchaser has agreed to purchase from the Vendor, the right, title and interest of the Company in and to the Purchased Assets (as defined below) in accordance with the terms and conditions of this Agreement.

NOW THEREFORE, in consideration of the promises and mutual covenants and agreements contained in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Parties, the Parties hereto agree as follows:

ARTICLE 1 INTERPRETATION

1.1 Definitions

In this Agreement, the following terms shall have the meanings set out below unless the context requires otherwise:

“692” has the meaning ascribed thereto in the recitals hereto.

“Access Period” has the meaning ascribed to it in Section 6.1.

“Accounts Receivable” means all accounts receivable, bills receivable, trade accounts, book debts, HST refunds and insurance claims Related to the Business, including recoverable deposits, including any unpaid interest on such items and any security or collateral for such items, including without limitation those listed in Schedule 1.1.

“Agreement” means this Agreement, including the Schedules to this Agreement, as it or they may be amended or supplemented from time to time, and the expressions “hereof”, “herein”, “hereto”, “hereunder”, “hereby” and similar expressions refer to this Agreement and not to any particular Section or other portion of this Agreement.

“Applicable Law” means, with respect to any Person, property, transaction, event or other matter, any Law relating or applicable to such Person, property, transaction, event or other matter. Applicable Law also includes, where appropriate, any interpretation of the Law (or any part) by any Person having jurisdiction over it, or charged with its administration or interpretation.

“Appointment Order” has the meaning ascribed thereto in the recitals hereto.

“Approval and Vesting Order” means an order, in form and substance acceptable to the Purchaser and the Vendor, acting reasonably, made by the Court approving the Transaction and this Agreement and vesting in the Purchaser, upon delivery of the Receiver’s Certificate by the

Vendor to the Purchaser, all the right, title and interest of the Company in the Purchased Assets free and clear of all Liens (except the Permitted Liens).

“**Assumed Liabilities**” has the meaning ascribed to it in Section 2.7.

“**Books and Records**” means all books, records, files and papers Related to the Business or the Purchased Assets including, but not limited to, drawings, manuals and data related to equipment, computer hardware and software and phone systems, computer system passwords, combinations and keys to locks and other safety and storage systems, sales and purchases correspondence, trade association files, lists of present and former customers and suppliers, security and alarm system records, personnel, employment and other records, and all copies and recordings of the foregoing.

“**Bridging**” has the meaning ascribed thereto in the recitals hereto.

“**Bridging Indebtedness**” means any and all amounts owing by the Company to Bridging as at the date of the discharge of the Receiver, inclusive of principal, interest, escrow amounts, fees, and costs which amount shall be net of and take into account all amounts owed by the Company that were paid in priority to the amounts owed by the Company to Bridging, including without limitation and any and all amounts pursuant to any indemnity provided by Bridging, amounts secured by the Interim Receiver’s Borrowings Charge, the Interim Receiver’s Charge, the Monitor’s Charge, the Receiver’s Borrowings Charge, the Receiver’s Charge, statutory deemed trust amounts, amounts payable under the *Bankruptcy and Insolvency Act* (Canada), and all fees, costs and expenses incurred by the Receiver, including Taxes, in any way related to the sale transaction contemplated herein, or in connection with operating and administering the receivership proceeding and any and all previous or subsequent proceedings, including without limitation any costs incurred with respect to any appeals of all applicable court orders.

“**Business**” means the businesses carried on by the Company which primarily involved the wholesale production of a variety of organic and conventional tomato products including pastes, sauces, canned tomatoes, and juices.

“**Business Day**” means any day except Saturday, Sunday or any day on which banks are generally not open for business in the City of Toronto.

“**Canadian Dollars**” means the lawful currency of Canada.

“**Closing**” means the completion of the purchase and sale of the Purchased Assets in accordance with the provisions of this Agreement.

“**Closing Date**” means June 21, 2017 or such other date as may be agreed to by the Parties in writing.

“**Closing Time**” means the time of closing on the Closing Date provided for in Section 4.1.

“**Company**” has the meaning ascribed thereto in the recitals hereto.

"Contracts" means the rights and interests of the Company to and in the executory contracts, agreements, leases, and arrangements listed in Schedule 1.2.

"Court" has the meaning ascribed thereto in the recitals hereto.

"Deposit" has the meaning given in Section 2.3.

"Environmental Law" means any and all applicable international, federal, provincial, state, municipal or local laws, by-laws, statutes, regulations, treaties, orders, judgments, decrees, ordinances, official directives and all authorizations relating to the environment, occupational health and safety, health protection or any Hazardous Materials.

"Ereg" has the meaning given in Section 2.10.

"Excluded Assets" means the property, assets and undertakings of the Company listed on Schedule 1.3.

"Goodwill" means the goodwill Related to the Business, including all right, title and interest of the Company in, to and in respect of all elements which contribute to the goodwill Related to the Business, including goodwill represented by customer and supplier lists and the logos of the Company.

"Governmental Entities" means governments, regulatory authorities, governmental departments, agencies, commissions, bureaus, officials, ministers, Crown corporations, courts, bodies, boards, tribunals or dispute settlement panels or other law or regulation-making organizations or entities: (a) having or purporting to have jurisdiction on behalf of any nation, province, territory, state or other geographic or political subdivision thereof; or (b) exercising, or entitled or purporting to exercise any administrative, executive, judicial, legislative, policy, regulatory or taxing authority or power and "Governmental Entity" means any one of them.

"Hazardous Materials" means any contaminants, pollutants, substances or materials that, when released to the natural environment, could cause, at some immediate or future time, harm or degradation to the natural environment or risk to human health, whether or not such contaminants, pollutants, substances or materials are or shall become prohibited, controlled or regulated by any Government Entity and any "contaminants", "dangerous substances", "hazardous materials", "hazardous substances", "hazardous wastes", "industrial wastes", "liquid wastes", "pollutants" and "toxic substances", all as defined in, referred to or contemplated in federal, provincial and/or municipal legislation, regulations, orders and/or ordinances relating to environmental, health and/or safety matters and, not to limit the generality of the foregoing, includes asbestos, urea formaldehyde foam insulation and mono- or poly-chlorinated biphenyl wastes.

"HST" means the harmonized sales tax imposed under Part IV of the *Excise Tax Act* (Canada).

"Intellectual Property" means all rights to and interests in:

- (a) all business and trade names, corporate names, brand names and slogans Related to the Business including “Thomas’ Utopia Brand”;
- (b) all inventions, patents, patent rights, patent applications (including all reissues, divisions, continuations, continuations-in-part and extensions of any patent or patent application), industrial designs and applications for registration of industrial designs and associated rights Related to the Business;
- (c) all copyrights and trade-marks (whether used with goods or services and including the goodwill attaching to such trade-marks), registrations and applications for trade-marks and copyrights (and all future income from such trade-marks and copyrights) Related to the Business;
- (d) all rights and interests in and to processes, lab journals, notebooks, data, trade secrets, designs, know-how, product formulae and information, manufacturing, engineering and other drawings and manuals, technology, blue prints, research and development reports, agency agreements, technical information, technical assistance, engineering data, design and engineering specifications, and similar materials recording or evidencing expertise or information Related to the Business;
- (e) all other intellectual and industrial property rights throughout the world Related to the Business;
- (f) all rights of the Company in all confidentiality, non-compete, non-solicitation and intellectual property assignment agreements;
- (g) all licences of the intellectual property listed in items (a) to (e) above;
- (h) all future income and proceeds from any of the intellectual property and licences listed in items (a) to (e) above and the licences listed in item (f) above;
- (i) all rights to damages and profits by reason of the infringement of any of the intellectual property listed in items (a) to (f) above;
- (j) all phone numbers; and,
- (k) all websites, including www.thomasutopiabrand.com and www.thomascanning.com.

“Interim Receiver” means Richter in its capacity as Court-appointed interim receiver of the Property pursuant to the Interim Receiver Order.

“Interim Receiver Order” means the order of the Court dated April 20, 2017 appointing Richter as Interim Receiver.

“Interim Receiver’s Borrowings Charge” means the charge granted by the Court over the Property pursuant to paragraph 19 of the Interim Receiver Order.

“Interim Receiver’s Charge” means the charge granted by the Court over the Property in favour of the Interim Receiver and its counsel pursuant to paragraph 16 of the Interim Receiver order.

“Inventory” means all inventories of stock-in-trade and merchandise including materials, supplies, seeds, plants, finished goods, repair and service parts Related to the Business (including those in possession of suppliers, customers, co-processors, growers and other third parties), including, without limitation, those listed on Schedule 1.4.

“Law” means common law, order, judgment, decree, law, statute, rule, or regulation of any Governmental Entity.

“Liabilities” means all costs, expenses, charges, debts, liabilities, claims, demands and obligations, whether primary or secondary, direct or indirect, fixed, contingent, absolute or otherwise, under or in respect of any contract, agreement, arrangement, lease, commitment or undertaking, Applicable Law and Taxes.

“Licences and Permits” means all licences, permits, filings, authorizations, registrations, certificates of approval, approvals, grants, quotas, commitments, rights, privileges or indicia of authority Related to the Business or necessary for the conduct of the Business, excluding those relating to the Intellectual Property but including, without limitation, the Company’s licence with the Ontario Farm Products Marketing Commission, being licence #1944-18 and the Company’s federal plant processing registration with the Canadian Food Inspection Agency, being processor number CFIA #691.

“Lien” means any lien, mortgage, charge, hypothec, pledge, security interest, prior assignment, option, warrant, lease, sublease, right to possession, encumbrance, claim, right or restriction which affects, by way of a conflicting ownership interest or otherwise, the right, title or interest in or to any particular property.

“Monitor” has the meaning given in the recitals above.

“Monitor Order” has the meaning given in the recitals above.

“Party” means a party to this Agreement and any reference to a Party includes its successors and permitted assigns; **“Parties”** means every Party.

“Permitted Liens” means the Liens listed in Schedule 1.5.

“Person” is to be broadly interpreted and includes an individual, a corporation, a partnership, a trust, an unincorporated organization, the government of a country or any political subdivision thereof, or any agency or department of any such government, and the executors, administrators or other legal representatives of an individual in such capacity.

"Personal Property" means all machinery, equipment, furniture, fixtures, computer systems and equipment and other chattels Related to the Business or related to the farming operations carried on by the Company, including those assets listed in Schedule 1.6.

"Property" has the meaning given in the recitals above.

"Purchased Assets" has the meaning given in Section 2.1.

"Purchase Price" has the meaning given in Section 2.2.

"Purchase Orders" means all rights and interests of the Company to and in all customer orders for purchases of Inventory, including Inventory yet to be produced.

"Purchaser" has the meaning given in the recitals above.

"Purchaser's Solicitors" means Neil L. Boyko, Barrister, Solicitor and Notary.

"Real Property" means the lands legally described in Schedule 1.7, together with all easements, rights-of-way, privileges and appurtenances attaching thereto and enuring to the benefit thereof.

"Receiver's Borrowings Charge" means the charge granted by the Court over the Property pursuant to the Appointment Order.

"Receiver's Certificate" means the certificate attached to the Approval and Vesting Order and which is to be delivered by the Vendor to the Purchaser at the Closing Time in order to effect the transfer of the Purchased Assets to the Purchaser free and clear of all Liens other than Permitted Liens.

"Receiver's Charge" means the charge granted by the Court over the Property pursuant to the Appointment Order.

"Related to the Business" means, directly or indirectly, used in, arising from, or relating in any manner to the Business or the Purchased Assets.

"Richter" has the meaning ascribed thereto in the recitals hereto.

"Rights" has the meaning given in Section 4.4.

"Taxes" means all taxes, charges, fees, levies, imposts and other assessments, including all income, sales, use, goods and services, value added, capital, capital gains, alternative, net worth, transfer, profits, withholding, payroll, employer health, excise, franchise, real property and personal property taxes, and any other taxes, customs duties, fees, assessments or similar charges in the nature of a tax including Canada Pension Plan and provincial pension plan contributions, employment insurance payments and workers compensation premiums, together with any instalments with respect thereto, and any interest, fines and penalties, imposed by any governmental authority (including federal, state, provincial, municipal and foreign governmental authorities), and whether disputed or not.

“**TCL**” has the meaning ascribed thereto in the recitals hereto.

“**Transaction**” means the sale and purchase of the Purchased Assets and all matters and transactions ancillary thereto as contemplated by this Agreement.

“**Transfer Taxes**” has the meaning given in Section 2.8.

“**Vendor**” has the meaning given in the recitals above.

“**Vendor's Solicitors**” means Chaitons LLP.

1.2 **Headings and Table of Contents.**

The division of this Agreement into Articles and Sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement.

1.3 **No Strict Construction.**

The language used in this Agreement is the language chosen by the Parties to express their mutual intent, and no rule of strict construction shall be applied against any Party.

1.4 **Number and Gender.**

Unless the context requires otherwise, words importing the singular include the plural and vice versa and words importing gender include all genders. Where the word “including” or “includes” is used in this Agreement, it means “including (or includes) without limitation”.

1.5 **Business Days.**

If any payment is required to be made or other action is required to be taken pursuant to this Agreement on a day which is not a Business Day, then such payment or action shall be made or taken on the next Business Day.

1.6 **Currency and Payment Obligations.**

Except as otherwise expressly provided in this Agreement:

- (a) all dollar amounts referred to in this Agreement are stated in Canadian Dollars;
and
- (b) any payment contemplated by this Agreement shall be made by cash, certified cheque or any other method that provides immediately available funds.

1.7 Statute References.

Any reference in this Agreement to any statute or any section thereof shall, unless otherwise expressly stated, be deemed to be a reference to such statute or section as amended, restated or re-enacted from time to time.

1.8 Section and Schedule References.

Unless the context requires otherwise, references in this Agreement to Sections or Schedules are to Sections or Schedules of this Agreement. The Schedules to this Agreement, listed as follows, are an integral part of this Agreement:

| | |
|--------------|--------------------------------|
| Schedule 1.1 | Accounts Receivable |
| Schedule 1.2 | Contracts |
| Schedule 1.3 | Excluded Assets |
| Schedule 1.4 | Inventory |
| Schedule 1.5 | Permitted Liens |
| Schedule 1.6 | Personal Property/Fixed Assets |
| Schedule 1.7 | Real Property |

ARTICLE 2 PURCHASE AND SALE

2.1 Purchase and Sale of Purchased Assets.

At the Closing Time, subject to the terms and conditions of this Agreement, the Vendor shall sell and the Purchaser shall purchase all of the property, assets and undertaking of the Company (collectively, the “**Purchased Assets**”) and the Purchaser shall assume the Assumed Liabilities. The Purchased Assets include but are not limited to:

- (a) cash, bank balances, moneys in possession of banks and other depositories, term or time deposits and similar cash items of, owned or held by or for the account of the Company as at the Closing Date;
- (b) all prepayments, prepaid charges, deposits, security deposits, sums and fees Related to the Business or in respect of the Purchased Assets;
- (c) the Accounts Receivable;
- (d) the Books and Records;
- (e) the Contracts;
- (f) the Goodwill;
- (g) the Intellectual Property;

- (h) the Inventory;
- (i) the Licences and Permits, to the extent transferrable by the Vendor;
- (j) the Personal Property;
- (k) the Purchase Orders; and
- (l) the Real Property,

but for greater certainty the Purchased Assets do not include the Excluded Assets.

2.2 Amount of Purchase Price.

The purchase price payable by the Purchaser to the Vendor for the Purchased Assets shall be an amount equal to the aggregate of the following, subject to adjustment as set out herein (the "**Purchase Price**"):

- (a) the sum of \$20,000,000;
- (b) the Assumed Liabilities as at Closing; and
- (c) the Bridging Indebtedness.

2.3 Deposit.

The Parties acknowledge and agree that the Purchaser has paid to the Monitor, in trust, the sum of \$2,000,000 as a deposit (the "**Deposit**"). The Receiver shall disburse the Deposit in accordance with the following provisions:

- (a) if the Approval and Vesting Order is not granted by the Court, then the Deposit shall be released from trust to the Purchaser without interest;
- (b) upon the issuance of the Approval and Vesting Order, then the Deposit shall be released from trust and applied towards payment of the Purchase Price; and
- (c) if the purchase and sale of the Purchased Assets is not completed on the Closing Date for any reason other than the failure of the Vendor to obtain the Approval and Vesting Order, then the Deposit shall be released from trust and paid to the Vendor in full satisfaction of all damages, losses, costs and expenses incurred by the Vendor as a result of such failure.

2.4 Satisfaction of Purchase Price.

The Purchase Price shall be satisfied by the Purchaser as follows:

- (a) upon the issuance of the Approval and Vesting Order, the Receiver shall credit and apply the Deposit towards payment of the Purchase Price in accordance with Section 2.3;
- (b) at Closing, \$18,000,000 shall be paid in immediately available funds to the Vendor by way of certified cheque, bank draft or wire transfer, which the Vendor shall credit and apply towards payment of the Purchase Price; and
- (c) assumption of the Assumed Liabilities and the Bridging Indebtedness.

2.5 Allocation of Purchase Price.

The Purchase Price shall be allocated among the Purchased Assets in the manner agreed to by the Purchaser and Vendor prior to Closing (acting reasonably) and the Parties shall ensure that the Parties shall follow the allocations set out therein in determining and reporting their liabilities for any Taxes and, without limitation, shall file their respective income tax returns prepared in accordance with such allocations.

2.6 Excluded Liabilities

Other than the Assumed Liabilities, the Purchaser shall not assume and shall not be liable for any other Liabilities of the Company or the Vendor.

2.7 Assumed Liabilities

At and from the date of Closing, the Purchaser shall assume and be liable for the Assumed Liabilities. The Assumed Liabilities shall consist only of the Liabilities incurred under or in respect of:

- (a) all outstanding Taxes owing or owed with respect to the Real Property;
- (b) the Permitted Liens; and
- (c) the Contracts,

(the foregoing being the “**Assumed Liabilities**”).

2.8 Taxes

- (a) Subject to section subparagraph (b) hereof, the Purchaser will be liable for and will pay, or cause to be paid, any applicable federal, state and provincial Taxes and charges (including sales taxes, goods and services taxes, excise taxes, all land transfer taxes (as required pursuant to the *Land Transfer Tax Act* (Ontario)), value added, ad-valorem, use, consumption, harmonized sales, retail sales, social services, or other similar taxes or duties and any applicable interest, penalties and fines) (other than income taxes of the Vendor) payable under any Applicable Law on or with respect to the sale and purchase of the Purchased Assets under this

Agreement as and when due (collectively, “**Transfer Taxes**”). On or prior to the Closing Time, the Purchaser will either pay the Transfer Taxes to the Vendor or deliver to the Vendor evidence confirming the Purchaser’s payment of or exemption from payment of the Transfer Taxes in form and substance acceptable to the Vendor, acting reasonably. The Purchaser will prepare and file any affidavits or returns required in connection with the foregoing at its own cost and expense. To the extent that any Transfer Taxes are required to be paid by or are imposed upon the Vendor, the Purchaser will reimburse to the Vendor such taxes within five (5) Business Days of payment of such taxes by the Vendor. The Purchaser will indemnify and hold the Vendor harmless in respect of any Transfer Taxes, claims, liabilities, costs and fees for on in connection with payment of the Transfer Taxes, fines, penalties, interest and other amounts that may be assessed against the Vendor under any Applicable Law in connection with or relating to the sale of the Purchased Assets and any claims, liabilities, costs and fees in connection with, relating to or arising from any failure to pay such taxes, fines, penalties and other amounts when due.

- (b) At Closing Time, the Vendor and the Purchaser shall, to the extent applicable, jointly execute elections under Section 167 of the *Excise Tax Act* (Canada) to have the sale of the Purchased Assets take place on a HST-free basis under Part IX of the *Excise Tax Act* (Canada) and the Purchaser shall file such election with its HST return for the reporting period in which the sale of the Purchased Assets takes place.
- (c) The Parties. Shall execute jointly an election in prescribed form under Section 22 of the *Income Tax Act* (Canada) in respect of the Accounts Receivable and shall each file such election with their respective tax returns for their respective taxation years that include the Closing Date.
- (d) The Purchaser agrees to indemnify and save the Vendor harmless from and against all claims and demands for payment of all Taxes payable by Purchaser in connection with the purchase of the Purchased Assets, including penalties and interest thereon and any liability or costs incurred as a result of any failure to pay such taxes when due.
- (e) The Vendor shall pay all sales Taxes payable by the Vendor in connection with the sale of the Purchased Assets.

2.9 Document Preparation and Registration.

The Purchaser shall prepare or cause to be prepared the land transfer tax affidavit to be attached to the application for vesting order. Each of the Parties shall deliver draft documentation to the other not less than one (1) Business Day prior to Closing. Except as otherwise expressly provided in this Agreement, all such documentation shall be in form and have substance satisfactory to the Vendor and the Purchaser, acting reasonably. The Purchaser shall be responsible for and pay all registration costs incurred in connection with the transaction

contemplated in this Agreement. Except as otherwise expressly provided in this Agreement, each of the Vendor and the Purchaser shall be responsible for and pay all legal and other professional/consultant fees and disbursements incurred by it, directly or indirectly, in connection with this Agreement.

2.10 Electronic Registration.

In the event that a system for electronic registration (“**Ereg**”) is operative and mandatory in the applicable land registry office, the Purchaser agrees to cause all necessary procedures to be taken, as may be required by the Vendor or the Vendor’s Solicitors, to complete this transaction using Ereg in accordance with the Law Society of Upper Canada’s guidelines. If Ereg is operative on the Closing Date, (i) the Purchaser agrees to use a lawyer authorized to use Ereg and who is in good standing with the Law Society of Upper Canada, (ii) the Purchaser’s Solicitors will enter into the Vendor’s Solicitors’ standard form of escrow closing agreement or document registration agreement, which will establish the procedures for closing this transaction provided same are in accordance with Law Society guidelines, and (iii) if the Purchaser’s Solicitors are unwilling or unable to complete this transaction using Ereg, then the Purchaser’s Solicitors must attend at the Vendor’s Solicitors’ office or at another location designated by the Vendor’s Solicitors at such time on Closing as directed by the Vendor’s Solicitors to complete the transaction using Ereg utilizing the Vendor’s Solicitors’ computer facilities, in which event, the Purchaser shall pay to the Vendor’s Solicitors a reasonable fee therefor.

ARTICLE 3 PRE-CLOSING MATTERS

3.1 Pre-Closing Risk and Post-Damage Entitlements.

The Purchased Assets are and shall remain at the Vendor’s risk until Closing and the Vendor shall hold all insurance policies and the proceeds thereunder, in trust, for the Parties as their respective interests may appear pending Closing. From and after Closing, the Purchased Assets shall be at the risk of the Purchaser. In the event that the Purchased Assets shall be damaged prior to Closing, then the Vendor shall advise the Purchaser, in writing, within twenty-four (24) hours of the Vendor learning of same. In the event that the Purchased Assets shall be materially damaged prior to Closing then the Vendor shall be entitled, in its sole and absolute discretion, to elect to terminate this Agreement by notice, in writing, to the Purchaser and in such event the Parties hereto shall be released from all obligations and liabilities hereunder. If the Vendor shall not elect to terminate this Agreement as set out above, then the Transaction contemplated hereunder shall be completed and the Purchaser shall be entitled to all proceeds of insurance payable in respect thereof, if any.

ARTICLE 4 CLOSING ARRANGEMENTS

4.1 Closing.

The Closing shall take place at 10:00 a.m. (the “**Closing Time**”) on the Closing Date at the offices of the Vendor’s Solicitors, or at such other time on the Closing Date or such other place as may be agreed orally or in writing by the Vendor and the Purchaser.

4.2 Vendor’s Closing Deliveries.

At the Closing, the Vendor shall deliver or cause to be delivered to the Purchaser the following documents:

- (a) general conveyance and assumption of liabilities agreement, in a form agreed to by the Vendor and the Purchaser prior to Closing (acting reasonably);
- (b) the elections referred to in Section 2.8;
- (c) a Purchase Price allocation agreement referred to in Section 2.5;
- (d) Section 116 certificate;
- (e) registerable form of application for vesting order;
- (f) a certificate, dated as of the Closing Date, confirming that (i) all of the representations and warranties of the Vendor contained in this Agreement are true as of the Closing Date, with the same effect as though made on and as of the Closing Date and (ii) that each of the conditions precedent in Section 5.2 of this Agreement have been fulfilled, performed or waived as of the Closing Date;
- (g) the Approval and Vesting Order as issued and entered by the Court and the Receiver’s Certificate; and
- (h) all deeds of conveyance, bills of sale, assurances, transfers, assignments, consents, and such other agreements, documents and instruments as may be reasonably requested by the Purchaser or the Purchaser’s Solicitors to complete the transactions provided for in this Agreement.

4.3 Purchaser’s Closing Deliveries.

At the Closing, the Purchaser shall deliver or cause to be delivered to the Vendor the following documents and payments:

- (a) general conveyance and assumption of liabilities agreement, in a form agreed to by the Vendor and the Purchaser prior to Closing (acting reasonably);

- (b) the payments referred to in Sections 2.4;
- (c) the elections referred to in Section 2.8;
- (d) a Purchase Price allocation agreement referred to in Section 2.5;
- (e) the indemnity provided for under Section 2.8(d);
- (f) Section 116 certificate;
- (g) a certificate, dated as of the Closing Date, confirming that (i) all of the representations and warranties of the Purchaser contained in this Agreement are true as of the Closing Date, with the same effect as though made on and as of the Closing Date and (ii) that each of the conditions precedent in Section 5.1 of this Agreement have been fulfilled, performed or waived as of the Closing Date.

4.4 **Non-Transferable and Non-Assignable Purchased Assets.**

To the extent that any of the Purchased Assets to be transferred to the Purchaser on the Closing, or any claim, right or benefit arising under or resulting from such Purchased Assets (collectively, the “**Rights**”) is not capable of being transferred without the approval, consent or waiver of any third Person, or if the transfer of a Right would constitute a breach of any obligation under, or a violation of, any Applicable Law unless the approval, consent or waiver of such third Person or an order of the Court is obtained, then, except as expressly otherwise provided in this Agreement and without limiting the rights and remedies of the Purchaser contained elsewhere in this Agreement, this Agreement shall not constitute an agreement to transfer such Rights unless and until such approval, consent, waiver or order of the Court has been obtained. After the Closing and for a period ending on the earlier of one hundred and twenty (120) days following the Closing or the Business Day the Receiver is discharged by the Court, the Vendor shall, to the best of its ability:

- (a) maintain its existence and hold the Rights in trust for the Purchaser;
- (b) comply with the terms and provisions of the Rights as agent for the Purchaser at the Purchaser’s cost and for the Purchaser’s benefit;
- (c) cooperate with the Purchaser in any reasonable and lawful arrangements designed to provide the benefits of such Rights to the Purchaser; and
- (d) enforce, at the reasonable request of the Purchaser and at the expense and for the account of the Purchaser, any rights of the Vendor arising from such Rights against any third Person, including the right to elect to terminate any such rights in accordance with the terms of such rights upon the written direction of the Purchaser.

In order that the full value of the Rights may be realized for the benefit of the Purchaser, the Vendor shall, at the request and expense and under the direction of the Purchaser, in the name of

the Vendor or otherwise as the Purchaser may specify, take all such action and do or cause to be done all such things as are, in the reasonable opinion of the Purchaser, necessary or proper in order that the obligations of the Vendor under such Rights may be performed in such manner that the value of such Rights is preserved and enures to the benefit of the Purchaser, and that any moneys due and payable and to become due and payable to the Purchaser in and under the Rights are received by the Purchaser. The Vendor shall promptly pay to the Purchaser all moneys collected by or paid to the Vendor in respect of every such Right. To the extent that such approval, consent, waiver or order of the Court has not been obtained by the 120th day following the Closing, such Right shall be deemed to be an Excluded Asset and the Vendor may terminate any agreement pertaining to such Right. The Purchaser shall indemnify and hold the Vendor harmless from and against any claim or liability under or in respect of such Rights arising because of any action of the Vendor taken at the request of the Purchaser and in accordance with this Section.

ARTICLE 5 CONDITIONS OF CLOSING

5.1 Purchaser's Conditions.

The Purchaser shall not be obliged to complete the purchase and sale of the Purchased Assets pursuant to this Agreement unless, at or before the Closing Time, each of the following conditions has been satisfied, it being understood that the following conditions are included for the exclusive benefit of the Purchaser and may be waived, in whole or in part, in writing by the Purchaser at any time; and the Vendor agrees with the Purchaser to take all such actions, steps and proceedings within its reasonable control as may be necessary to ensure that the following conditions are fulfilled at or before the Closing Time:

- (a) *Representations and Warranties.* The representations and warranties of the Vendor in Section 7.2 shall be true and correct at the Closing.
- (b) *Vendor's Compliance.* The Vendor shall have performed and complied with all of the terms and conditions in this Agreement on its part to be performed or complied with at or before Closing and shall have executed and delivered or caused to have been executed and delivered to the Purchaser at the Closing all the documents contemplated in Section 4.2 or elsewhere in this Agreement.
- (c) *No Litigation.* There shall be no order for a stay issued for the purpose of enjoining, preventing or restraining the completion of the transactions contemplated hereby or otherwise claiming that such completion is improper.

5.2 Vendor's Conditions.

The Vendor shall not be obliged to complete the transactions contemplated by this Agreement unless, at or before the Closing Time, each of the following conditions has been satisfied, it being understood that the following conditions are included for the exclusive benefit of the

Vendor, and may be waived, in whole or in part, in writing by the Vendor at any time; and the Purchaser agrees with the Vendor to take all such actions, steps and proceedings within the Purchaser's reasonable control as may be necessary to ensure that the following conditions are fulfilled at or before the Closing Time:

- (a) *Purchaser's Compliance.* The Purchaser shall have performed and complied with all of the terms and conditions in this Agreement on its part to be performed by or complied with at or before the Closing Time and shall have executed and delivered or caused to have been executed and delivered to the Vendor at the Closing Time all the documents contemplated in Section 4.3 or elsewhere in this Agreement.
- (b) *Order.* The Appointment Order and the Approval and Vesting Order shall not have been stayed, varied or set aside.
- (c) *No Litigation.* There shall be no order for a stay issued for the purpose of enjoining, preventing or restraining the completion of the transactions contemplated hereby or otherwise claiming that such completion is improper.

5.3 **Condition not Fulfilled.**

If any condition in Section 5.2 shall not have been fulfilled at or before the Closing Time, then the Vendor in its sole discretion may, without limiting any rights or remedies available to the Vendor at law or in equity, either:

- (a) terminate this Agreement by notice to the Purchaser in which event the Vendor shall be released from all obligations under this Agreement; or
- (b) waive compliance with any such condition without prejudice to its right of termination in the event of non fulfillment of any other condition.

5.4 **Orders**

The obligations of the Vendor and the Purchaser hereunder are subject to the mutual conditions that:

- (a) the Appointment Order and the Approval and Vesting Order and shall have been made by the Court on June 21, 2017 (or such later date agreed upon by the Parties) approving this Agreement and the Transaction and vesting in the Purchaser all the right, title and interest of the Company in and to the Purchased Assets free and clear of all Liens, other than the Permitted Liens; and,
- (b) the Appointment Order and the Approval and Vesting Order will not have been stayed, varied or vacated and no order will have been issued and no action or proceeding will be pending to restrain or prohibit the completion of the transactions herein contemplated.

The Parties hereto acknowledge that the foregoing conditions are for the mutual benefit of the Vendor and the Purchaser and cannot be waived by either Party.

5.5 **Condition not Fulfilled.**

If any condition in Section 5.4 shall not have been fulfilled at or before the on or before June 21, 2017 or such later date agreed upon by the Parties, then the Vendor or the Purchaser, in its sole discretion, may terminate this Agreement by notice to the other Party in which event the Deposit shall be promptly returned to the Purchaser and each Party shall be released from all obligations under this Agreement.

ARTICLE 6 POST-CLOSING MATTERS

6.1 **Access to Books and Records.**

The Purchaser shall preserve and keep the Books and Records which relate to the Purchased Assets for a period of two (2) years from the Closing Date or for any longer period as may be required by any applicable Law or Governmental Entity (the “**Access Period**”). Upon reasonable advance notice, after the Closing Date, the Purchaser will grant the Vendor and its respective representatives, reasonable access during normal business hours, to use such Books and Records included in the Purchased Assets, including, without limitation, any personnel files/records to the period up to the Closing and computer systems, tapes, disks, records and software acquired as part of the Purchased Assets.

ARTICLE 7 REPRESENTATIONS AND WARRANTIES

7.1 **Representations and Warranties of the Purchaser.**

As a material inducement to the Vendor’s entering into this Agreement and completing the transactions contemplated by this Agreement and acknowledging that the Vendor is entering into this Agreement in reliance upon the representations and warranties of the Purchaser set out in this Section 7.1, the Purchaser represents and warrants to the Vendor as follows:

- (a) *Incorporation and Power.* The Purchaser is a corporation duly incorporated under the laws of the jurisdiction of its incorporation and is duly organized, validly subsisting and in good standing under such laws.
- (b) *Due Authorization.* The Purchaser has all necessary corporate power, authority and capacity to enter into this Agreement and all other agreements and instruments to be executed by it as contemplated by this Agreement and to carry out its obligations under this Agreement and such other agreements and

instruments. The execution and delivery of this Agreement and such other agreements and instruments and the completion of the transactions contemplated by this Agreement and such other agreements and instruments have been duly authorized by all necessary corporate action on the part of the Purchaser.

- (c) *Enforceability of Obligations.* This Agreement constitutes a valid and binding obligation of the Purchaser enforceable against the Purchaser in accordance with its terms subject, however, to limitations on enforcement imposed by bankruptcy, insolvency, reorganization or other laws affecting the enforcement of the rights of creditors or others and to the extent that equitable remedies such as specific performance and injunctions are only available in the discretion of the court from which they are sought.
- (d) *HST/GST.* The Purchaser is a “registrant” under Part IX of the *Excise Tax Act* (Canada) and its registration number is BN 710900291 RT0001.

7.2 Representations and Warranties of the Vendor.

As a material inducement to the Purchaser’s entering into this Agreement and completing the transactions contemplated by this Agreement and acknowledging that the Purchaser is entering into this Agreement in reliance upon the representations and warranties of the Vendor set out in this Section 7.2, the Vendor represents and warrants to the Purchaser as follows:

- (a) *Non-Residency:* The Vendor is not now and does not intend to become, prior to Closing, a non-resident of Canada within the meaning and purpose of Section 116 of the *Income Tax Act* (Canada).
- (b) *Authority to Sell:* Subject to obtaining the Approval and Vesting Order prior to Closing, on Closing the Vendor shall have the power and authority to sell the Purchased Assets, in accordance with the terms and conditions of this Agreement and the Approval and Vesting Order.
- (c) *HST/GST.* TCL is a “registrant” under Part IX of the *Excise Tax Act* (Canada) and its registration number is 10526 5466 RT0001.

7.3 Survival of Representations and Warranties.

The representations and warranties of the Purchaser and Vendor contained in Sections 7.1 and 7.2, respectively, or any other agreement, certificate or instrument delivered pursuant to this Agreement shall survive the Closing for three (3) months.

7.4 “As is, Where is”.

The Purchaser acknowledges that the Vendor is selling the Purchased Assets on an “as is, where is” basis as they shall exist on the Closing Date. The Purchaser further acknowledges that it has entered into this Agreement on the basis that the Vendor does not guarantee title to the Purchased Assets and that the Purchaser has conducted such inspections of the condition of and title to the

Purchased Assets as it deemed appropriate and has satisfied itself with regard to these matters. No representation, warranty or condition is expressed or can be implied as to title, encumbrances, description, fitness for purpose, merchantability, condition, quantity or quality or in respect of any other matter or thing whatsoever concerning the Purchased Assets or the right of the Vendor to sell or assign same save and except as expressly represented or warranted herein, including without limitation that no representation or warranty has been given by the Vendor with respect to the transferability of the Licenses and Permits to the Purchaser. Without limiting the generality of the foregoing, any and all conditions, warranties or representations expressed or implied pursuant to the *Sale of Goods Act* (Ontario) or similar legislation do not apply hereto and have been waived by the Purchaser. The description of the Purchased Assets contained in the Schedules hereto is for the purpose of identification only. No representation, warranty or condition has or will be given by the Vendor concerning completeness or the accuracy of such descriptions. The Purchaser further acknowledges that all written and oral information (including, without limitation, analyses, financial information and projections, compilations and studies) obtained by the Purchaser from the Vendor with respect to the Purchased Assets or otherwise relating to the transactions contemplated in this Agreement has been obtained for the convenience of the Purchaser only and is not warranted to be accurate or complete. The Purchaser further acknowledges that the Vendor shall be under no obligation to deliver the Purchased Assets to the Purchaser and that it shall be the Purchaser's responsibility to take possession of the Purchased Assets.

ARTICLE 8 TERMINATION

8.1 Termination by the Parties

This Agreement may be terminated:

- (a) upon the mutual written agreement of the Vendor and the Purchaser;
- (b) pursuant to Section 5.4 by either Party; and
- (c) pursuant to Section 5.3 by the Vendor.

8.2 Remedies for Breach of Agreement

If this Agreement is terminated as a result of any breach of a representation or warranty, or failure to satisfy a covenant or obligation of a Party, the terminating Party's right to pursue all legal remedies with respect to such breach shall survive such termination. For greater certainty, if any order of the Court is made which directly or indirectly results in the termination of this Agreement, then no Party shall have any remedy, legal or otherwise, against the other Party or its property.

ARTICLE 9 GENERAL

9.1 Non Merger.

Each party hereby agrees that all provisions of this Agreement (other than the conditions in Article 5 and the representations and warranties contained in Sections 7.1 and 7.2) shall forever survive the execution, delivery and performance of this Agreement, Closing and the execution, delivery and performance of any and all documents delivered in connection with this Agreement.

9.2 Further Assurances.

Each Party shall promptly do, execute, deliver or cause to be done, executed and delivered all further acts, documents and things in connection with this Agreement that the other Party may reasonably require, for the purposes of giving effect to this Agreement.

9.3 Expenses.

Each Party shall be responsible for its own legal and other expenses (including any Taxes imposed on such expenses) incurred in connection with the negotiation, preparation, execution, delivery and performance of this Agreement and the transactions contemplated by this Agreement and for the payment of any broker's commission, finder's fee or like payment payable by it in respect of the purchase and sale of the Purchased Assets pursuant to this Agreement.

9.4 Payment of Taxes.

Except as otherwise provided in this Agreement, the Purchaser shall pay all Taxes applicable to, or resulting from transactions contemplated by this Agreement (other than Taxes payable under applicable legislation by the Vendor) and any filing or recording fees payable in connection with the instruments of transfer provided for in this Agreement.

9.5 Announcements.

Except as required by law, all public announcements concerning the transactions provided for in this Agreement or contemplated by this Agreement shall be jointly approved as to form, substance and timing by the parties to this Agreement after consultation.

9.6 Capacity

It is acknowledged by the Purchaser that the Vendor is entering into this Agreement solely in its capacity as proposed Court-appointed receiver of the undertaking, properties and assets of the Company and that the Vendor shall have no personal or corporate liability under or as a result of this Agreement. Any claim against the Vendor shall be limited to and only enforceable against the property and assets then held by or available to it in its capacity as Receiver of the Property of the Company and shall not apply to its personal property and other assets held by it in any other capacity. The term "Vendor" as used in this Agreement shall have no inference or reference to the present registered owner of the Purchased Assets.

9.7 Notices.

- (a) Any notice, certificate, consent, determination or other communication required or permitted to be given or made under this Agreement shall be in writing and shall be effectively given and made if (i) delivered personally, (ii) sent by prepaid courier service or mail, or (iii) sent by fax, e-mail or other similar means of electronic communication, in each case to the applicable address set out below:

- (i) if to the Vendor, to:

Richter Advisory Group Inc.
181 Bay Street, Suite 3320
Bay Wellington Tower
Toronto, Ontario M5J 2T3

Attention: Clark Lonergan
Fax: (416) 488-3765
Email: Clonergan@Richter.ca

with a copy to:

Chaitons LLP
5000 Yonge Street, 10th floor
Toronto, Ontario M2N 7E9

Attention: Sam Rappos
Fax: (416) 218-1837
Email: samr@chaitons.com

(ii) if to the Purchaser, to:

Santokh Mahal

Email: s.mahal@rogers.com

- (b) Any such communication so given or made shall be deemed to have been given or made and to have been received on the day of delivery if delivered, or on the day of faxing or sending by other means of recorded electronic communication, provided that such day in either event is a Business Day and the communication is so delivered, faxed or sent before 4:30 p.m. on such day. Otherwise, such communication shall be deemed to have been given and made and to have been received on the next following Business Day. Any such communication sent by mail shall be deemed to have been given and made and to have been received on the fifth (5th) Business Day following the mailing thereof; provided however that no such communication shall be mailed during any actual or apprehended disruption of postal services. Any such communication given or made in any other manner shall be deemed to have been given or made and to have been received only upon actual receipt.
- (c) Any Party may from time to time change its address under this Section 9.7 by notice to the other Party given in the manner provided by this Section.

9.8 Time of Essence.

Time shall be of the essence of this Agreement in all respects.

9.9 Time Periods.

Unless otherwise specified, time periods within or following which any payment is to be made or act is to be done shall be calculated by excluding the day on which the period commences and including the day on which the period ends and by extending the period to the next Business Day following if the last day of the period is not a Business Day.

9.10 Entire Agreement.

This Agreement and the agreements and other documents required to be delivered pursuant to this Agreement, constitute the entire agreement between the Parties and set out all the covenants, promises, warranties, representations, conditions, understandings and agreements between the Parties pertaining to the subject matter of this Agreement and supersede all prior agreements, understandings, negotiations and discussions, whether oral or written. There are no covenants, promises, warranties, representations, conditions, understandings or other agreements, oral or written, express, implied or collateral between the Parties in connection with the subject matter of this Agreement except as specifically set forth in this Agreement and any document required to be delivered pursuant to this Agreement.

9.11 **Amendments and Waiver.**

No amendment of any provision of this Agreement shall be valid unless the same shall be in writing and signed by the Purchaser and the Vendor. The Vendor and the Purchaser may consent to any such amendment at any time prior to the Closing with the prior authorization of their respective boards of directors. No waiver by either Party of any default, misrepresentation, or breach of warranty or covenant hereunder, whether intentional or not, shall be deemed to extend to any prior or subsequent default, misrepresentation, or breach of warranty or covenant hereunder or affect in any way any rights arising by virtue of any prior or subsequent such occurrence.

9.12 **Severability.**

Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to that jurisdiction, be ineffective to the extent of such prohibition or unenforceability and shall be severed from the balance of this Agreement, all without affecting the remaining provisions of this Agreement or affecting the validity or enforceability of such provision in any other jurisdiction.

9.13 **Language.**

The Parties have required that this Agreement and all deeds, documents and notices relating to this Agreement be drawn up in the English language. Les parties aux présentes ont exigé que le présent contrat et tous autres contrats, documents ou avis afférents aux présentes soient rédigés en langue anglaise.

9.14 **Governing Law.**

This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable in that Province and shall be treated, in all respects, as a Ontario contract.

9.15 **Successors and Assigns.**

No party to this Agreement shall have the right to assign any of its rights and obligations hereunder without the prior written consent of the other party hereto which consent shall not be unreasonably withheld, provided that the Purchaser may assign its rights and obligations under this Agreement to an affiliate of the Purchaser without recourse to the Purchaser. To the extent that any such assignment occurs, this Agreement and all provisions hereof shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

9.16 **No Third Party Beneficiaries.**

This Agreement shall not confer any rights or remedies upon any Person other than the Parties and their respective successors and permitted assigns or as specifically referred to herein.

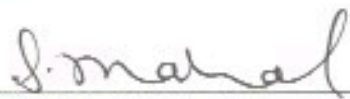
9.17 Counterparts.

This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which taken together shall be deemed to constitute one and the same instrument. Counterparts may be executed either in original, faxed or email PDF form and the parties adopt any signatures received by a receiving fax machine or email PDF as original signatures of the parties; provided, however, that any party providing its signature in such manner shall promptly forward to the other party an original of the signed copy of this Agreement which was so faxed or emailed.

[THE REMAINDER OF THIS PAGE WAS INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF the parties have executed this Agreement.

2581150 ONTARIO INC.

By: 
Name: Santokh Mahal
Title: President

I have authority to bind the Corporation.

RICHTER ADVISORY GROUP INC., in its capacity as proposed Court-appointed receiver all assets, undertakings and properties of Thomas Canning (Maidstone) Limited and 692194 Ontario Limited and not in its personal capacity and without personal or corporate liability

By: _____
Name: Clark Lonergan
Title: Senior Vice-President

I have authority to bind the Corporation.

IN WITNESS WHEREOF the parties have executed this Agreement.

2581150 ONTARIO INC.

By: _____

Name: Santokh Mahal

Title:

I have authority to bind the Corporation.

RICHTER ADVISORY GROUP INC., in its capacity as proposed Court-appointed receiver all assets, undertakings and properties of Thomas Canning (Maidstone) Limited and 692194 Ontario Limited and not in its personal capacity and without personal or corporate liability

By:  _____

Name: Clark Lonergan

Title: Senior Vice-President

I have authority to bind the Corporation.

SCHEDULE 1.1
ACCOUNTS RECEIVABLE

SEE ATTACHED

Thomas Canning (Maidstone) Ltd.
Summary of Accounts Receivable
As at May 31, 2017

| (\$000's) | AR Aging (Invoice Date) ⁽¹⁾ | | | | Total |
|--|--|------------------|------------------|--------------|--------------|
| | 0 to 30 Days | 31 to 60 Days | 61 to 90 Days | 91+ Days | |
| CAD Accounts Receivable | | | | | |
| AR listing | 275 | 257 | 338 | 640 | 1,510 |
| Less: Cash received not applied ⁽²⁾ | - | - | (22) | (304) | (326) |
| Net CAD AR | 275 | 257 | 316 | 335 | 1,183 |
| USD Accounts Receivable (in USD\$) | | | | | |
| AR listing | 167 | 194 | 197 | 757 | 1,315 |
| Less: Cash received not applied ⁽²⁾ | - | (17) | (128) | (242) | (387) |
| Net USD AR | 167 | 177 | 69 | 515 | 928 |
| Foreign Exchange @ 1.35 | 58 | 62 | 24 | 180 | 325 |
| Grand Total | 500 | 495 | 410 | 1,031 | 2,436 |
| <i>% of Total</i> | <i>21%</i> | <i>20%</i> | <i>17%</i> | <i>42%</i> | <i>100%</i> |

Notes:

⁽¹⁾ The Company's AR is aged using the invoice date.

⁽²⁾ ~\$330k in CAD collections and ~\$390k in USD collections were traced to payments, but not applied against AR as at May 31, 2017.

SCHEDULE 1.2**CONTRACTS**

Contact between Thomas Canning (Maidston) Limited and 959699 Ontario Inc. o/a DeNijs Organic Farms for the delivery of 50 organic acres of tomato feedstock

SCHEDULE 1.3
EXCLUDED ASSETS

- (1) Business Centre Office Agreement made as of March 31, 2017 between 1636488 Ontario Limited as owner and Thomas Canning (Maidstone) Ltd. as user
- (2) Butcher Engineering Enterprises Ltd. quote 16-1005 Warehousing 2016/17 Season dated August 3, 2016
- (3) Coxon's Sales and Rentals Ltd. Contract for Rental of Mobile Units
- (4) Lease Agreement with Bodkin Capital Corporation
- (5) All Equipment Lease Agreements with Capmor Financial Services Corporation
- (6) All Equipment Lease Agreements with CLE Leasing Enterprise Ltd.
- (7) Lease Agreement with 1419768 Ontario o/a D & D Leasing
- (8) All Equipment Lease Agreements with Gould Leasing Ltd.
- (9) Agreement for Marketing the 2017 Crops made December 9, 2015
- (10) Agreement for Marketing the 2017 Crops
- (11) 2017 Local Tomato Plan Contract dated March 29, 2017 with Rolland Farms and Greenhouses Inc.
- (12) 2017 Organic Tomato Plan Contract dated March 30, 2017 with Sandra Carther (Carther Plants Ltd)
- (13) Speedling Plant Order Form dated April 19, 2017

SCHEDULE 1.4
INVENTORY

SEE ATTACHED

Thomas Canning (Maidstone) Ltd.
 Summary of Inventory
 As at May 31, 2017

| | Inventory | | | | | | Drums (188kg) | Totes (2800 lbs) |
|---------------------------|---------------|----------------|-------------------|-------------|--------------|---------------|------------------|---------------------|
| | 100 oz.(6) | 48 oz. (12) | Cases (Cans/Case) | | 19 oz. (24) | 14 oz. (24) | | |
| | | | 28 oz. (24) | 25 oz. (12) | | | | |
| Conventional | | | | | | | | |
| Juice | 33,992 | 104,409 | - | - | 4,406 | - | - | |
| Whole | 50 | - | 6,864 | - | - | - | - | |
| Diced | 33,222 | - | 25,257 | - | - | 20,842 | - | |
| Paste | - | - | - | - | - | - | 932 | |
| Crushed | - | - | 375 | - | - | 760 | - | |
| Sauce | - | - | - | - | - | 468 | - | |
| Puree | - | - | - | - | - | 27 | - | |
| Misc. | - | - | - | - | - | - | - | |
| Total Conventional | 67,264 | 104,409 | 32,497 | - | 4,406 | 21,310 | 932 | |
| Organic | | | | | | | | |
| Juice | 4,312 | 66,392 | 100 | - | - | - | - | |
| Whole | 2,604 | - | 12,392 | - | - | - | - | |
| Diced | 4,173 | - | 2,900 | - | - | 2,975 | 29 | |
| Paste | - | - | - | - | - | - | - | |
| Crushed | - | - | - | - | - | - | - | |
| Sauce | - | - | - | - | - | 85 | - | |
| Puree | - | - | - | - | - | - | - | |
| Misc. | - | - | - | - | - | - | - | |
| Total Organic | 11,089 | 66,392 | 15,392 | - | - | 3,060 | 29 | |

Note: The above summary does not include packing supplies (i.e. empty cans/drums/labels) or aged / damaged inventory.

Note: The organic totes are not subject to a lease

SCHEDULE 1.5
PERMITTED LIENS

- (a) any reservations, restrictions, rights of way, easements or covenants that run with the land;
- (b) any registered agreements with a municipality or a supplier of utility service including, without limitation, electricity, water, sewage, gas, telephone or cable television or other telecommunication service;
- (c) all laws, by-laws and regulations and all outstanding work orders, deficiency notices and notices of violation affecting the Real Property;
- (d) any minor easements for the supply of utility service to the Real Property or adjacent properties;
- (e) encroachments disclosed by any errors or omissions in existing surveys of the Real Property or neighbouring properties and any title defect, encroachment or breach of a zoning or building by-law or any other applicable law, by-law or regulation which might be disclosed by a more up-to-date survey of the Real Property and survey matters generally;
- (f) any unregistered leases to tenants or other rights of occupation of tenants in possession of any part of the Real Property;
- (g) the exceptions and qualifications set forth in the *Land Titles Act* (Ontario);
- (h) the reservations contained in the original grant from the Crown; and
- (i) the following instruments registered against title to the Real Property:

PIN 75228-0009 (LT)

1. Instrument Number MB18413 registered on February 1, 1949 being a Transfer of Easement in favour of Bell Telephone Co. of Canada
2. Instrument Number R305027 registered on June 9, 1964 being a Transfer
3. Instrument Number 12R4451 registered on June 23, 1978 being a Reference Plan
4. Instrument Number 12R9420 registered on April 11, 1988 being a Reference Plan
5. Instrument Number R1042854 registered on April 13, 1988 being a Transfer
6. Instrument Number R1073171 registered on January 9, 1989 being a Notice of Claim

7. Instrument Number 12R24775 registered on August 17, 2011 being a Reference Plan
8. Instrument Number CE502602 registered on January 11, 2012 being a Transfer of Easement in favour of Hydro One Networks Inc.

PIN 75228-0005 (LT)

1. Instrument Number R442677 registered on June 19, 1969 being a Transfer

PIN 75228-0067 (LT)

1. Instrument Number 12R20686 registered on August 12, 2003 being a Reference Plan
2. Instrument Number CE52782 registered on January 6, 2004 being a Transfer

PIN 75016-0010 (LT)

1. Instrument Number MB18404 registered on January 21, 1949 being a Transfer of Easement in favour of The Bell Telephone Company of Canada
2. Instrument Number R305027 registered on June 9, 1964 being a Transfer
3. Instrument Number R1073182 registered on January 9, 1989 being a Notice of Claim

PIN 75016-0009 (LT)

1. Instrument Number MB18355 registered on November 23, 1948 a Transfer of Easement in favour of The Bell Telephone Company of Canada
2. Instrument Number R1042301 registered on April 7, 1988 being a Notice of Claim
3. Instrument Number R1119864 registered on February 26, 1990 being a Transfer

PIN 75016-0021 (LT)

1. Instrument Number R38129 registered on July 20, 1967 being a Transfer of Easement in favour of The Bell Telephone Company of Canada
2. Instrument Number RD138 registered on June 27, 1969 being a Reference Plan
3. Instrument Number R720043 registered on December 22, 1977 being a Transfer

PIN 75016-0019 (LT)

1. Instrument Number MB18409 registered on January 21, 1949 being a Transfer of Easement in favour of Bell Telephone Co. of Can.

2. Instrument Number MB18414 registered on February 1, 1949 being a Transfer of Easement in favour of Bell Telephone Co. of Canada
3. Instrument Number R305027 registered on June 9, 1964 being a Transfer
4. Instrument Number R463774 registered on March 10, 1970 being a Transfer
5. Instrument Number R645962 registered on October 16, 1975 being a Transfer
6. Instrument Number 12R7427 registered on January 20, 1984 being a Reference Plan
7. Instrument Number R1073173 registered on January 9, 1989 being a Notice of Claim
8. Instrument Number R1073175 registered on January 9, 1989 being a Notice of Claim
9. Instrument Number R1497830 registered on August 21, 2000 being a Site Plan Agreement

SCHEDULE 1.6
PERSONAL PROPERTY/FIXED ASSETS

SEE ATTACHED

Thomas Canning (Maidstone) Ltd.
 Summary of Capital Assets
 31-Jul-15

| Assets / IS | | | | |
|----------------|---|--------------------|-------------------|-------------------|
| Date | Supplier | Amount Purchase | 2015 | 2014 |
| | | | Book Value | Book Value |
| 30-Jun-15 | Bridge - 1520 | 14,269.81 | 8,625.06 | 8,891.81 |
| 30-Jun-15 | Office Building - 1600 | 23,045.00 | 20,817.35 | 21,913.00 |
| 30-Jun-15 | Office Building: Aspe Adjustment - 1601 | (18,045.00) | (17,142.75) | (18,045.00) |
| 30-Jun-15 | Warehouse Equipment - 1700 | 242,901.91 | 77,883.93 | 97,354.91 |
| 30-Jun-15 | Office Equipment - 1720 | 80,683.45 | 14,362.76 | 17,953.45 |
| 30-Jun-15 | Sewage Lagoon - 1800 | 219,932.50 | 112,001.54 | 115,465.50 |
| Totals: | | 562,787.67 | 216,547.88 | 243,533.67 |
| Farm / COS | | | | |
| Date | Supplier | Amount Purchase | 2015 | 2014 |
| | | | Book Value | Book Value |
| 30-Jun-15 | Farm Building - 1560 | 16,107.00 | 14,656.60 | 15,428.00 |
| 30-Jun-15 | Farm Building: Aspe Adjustment- 1561 | (13,107.00) | (12,451.65) | (13,107.00) |
| 30-Jun-15 | Spray Irrigation - 1645 | 23,257.10 | 6,634.48 | 8,293.10 |
| 30-Jun-15 | Farm Equipment - 1660 | 148,720.52 | 2,874.82 | 3,593.52 |
| 30-Jun-15 | Farm Auto Equipment - 1680 | 132,524.56 | 2,181.59 | 3,116.56 |
| 30-Jun-15 | Waterline - 1740 | 18,168.00 | 1,356.42 | 1,443.00 |
| 30-Jun-15 | Drainage Tile - 1760 | 60,074.00 | 21,660.10 | 22,330.00 |
| 30-Jun-15 | Well - 1780 | 1,767.00 | 14.85 | 16.50 |
| Totals: | | 387,511.18 | 36,927.21 | 41,113.68 |

Thomas Canning (Maidstone) Ltd.
Summary of Capital Assets
31-Jul-15

| Canning / COS | | | | |
|-----------------------------------|--|----------------------------|---------------------|---------------------|
| Date | Supplier | Amount Purchase | Book Value | Book Value |
| 30-Jun-15 | Factory Building - 1540 | 214,229.21 | 185,980.14 | 197,851.21 |
| 30-Jun-15 | Factory Building: Aspe Adjustment- 1541 | (138,069.33) | (129,785.17) | (138,069.33) |
| 30-Jun-15 | Warehouse - 1580 | 1,228,731.35 | 849,943.48 | 894,677.35 |
| 30-Jun-15 | Warehouse: Aspe Adjustments - 1581 | 449,191.60 | 426,732.02 | 449,191.60 |
| 31-May-16 | Additions | 23,261.89 | 22,680.34 | - |
| 30-Jun-15 | Seasonal Housing - 1620 | 48,657.89 | 38,118.50 | 42,353.89 |
| 30-Jun-15 | Seasonal Housing: Aspe Adjustment - 1621 | (24,085.29) | (21,676.76) | (24,085.29) |
| 09-Mar-15 | Additions | 1,904.00 | 1,808.80 | - |
| 30-Jun-15 | Cookers - 1641 | 965,583.38 | 506,205.96 | 532,848.38 |
| 30-Jun-15 | Factory Equipment - 1640 | 3,349,599.55 | 354,311.64 | 442,889.55 |
| 14-Jul-15 | Additions | 4,500.00 | 4,050.00 | - |
| 30-Jun-15 | Quality Control Facility - 1510 | 9,281.11 | 3,122.49 | 3,903.11 |
| 30-Jun-15 | Quality Control Facility: Aspe Adjustment - 1511 | (1,281.11) | (1,024.89) | (1,281.11) |
| 30-Jun-15 | | | - | |
| | Totals: | 6,131,504.25 | 2,240,466.55 | 2,400,279.36 |
| Land | | | | |
| Date | Supplier | Amount Purchase | Book Value | Book Value |
| 30-Jun-15 | Land - 1500 | 294,617.00 | 294,617.00 | 294,617.00 |
| 30-Jun-15 | Land: Aspe Adjustment - 1501 | 1,943,383.00 | 1,943,383.00 | 1,943,383.00 |
| 30-Jun-15 | Land Value Adjustment | | | |
| | Totals: | 2,238,000.00 | 2,238,000.00 | 2,238,000.00 |
| | Totals | 9,319,803.10 | 4,731,941.64 | |
| Assets under Capital Lease | | | | |
| Date | Supplier | Amount Purchase | Book Value | 2,015.00 |
| 07-Jan-15 | Assets Under Capital Lease | 989,856.00 | 890,870.40 | - |
| | Totals: | 989,856.00 | 890,870.40 | - |

Note: This schedule was prepared by the Company as at July 31, 2015 and is subject to change.

SCHEDULE 1.7**REAL PROPERTY****PIN 75228-0009 (LT)**

PROPERTY DESCRIPTION: PT LT 28-29 CON 9 MAIDSTONE AS IN R305027, PT 2 12R9420; T/W R1042854; S/T MB18413; LAKESHORE; SUBJECT TO AN EASEMENT IN GROSS OVER PT. 1 12R24775 AS IN CE502602

PIN 75228-0005 (LT)

PROPERTY DESCRIPTION: PT LT 27 CON 10 MAIDSTONE AS IN R442677; LAKESHORE

PIN 75228-0067 (LT)

PROPERTY DESCRIPTION: PT LT 27 CON 10; LAKESHORE DESIGNATED AS PT 2 12R20686

PIN 75016-0010 (LT)

PROPERTY DESCRIPTION: PT LT 289 CON STR MAIDSTONE AS IN R305027 (THIRDLY) EXCEPT PTS 3, 4 R423541; S/T MB18404; LAKESHORE

PIN 75016-0009 (LT)

PROPERTY DESCRIPTION: PT LT 289 CON STR MAIDSTONE AS IN R1119864; S/T MB18355; LAKESHORE

PIN 75016-0019 (LT)

PROPERTY DESCRIPTION: PT LT 289-290 CON STR MAIDSTONE AS IN R645962, R463774 & R305027 (FIRSTLY) EXCEPT PT 1 12R2096 & PTS 9, 10 R423541; S/T MB18409, MB18414, R902964; LAKESHORE

PIN 75016-0021 (LT)

PROPERTY DESCRIPTION: PT LT 291 CON STR MAIDSTONE PTS 1, 2 RD138 EXCEPT PT 1 RD273 & PT 1 12R376; S/T R389219; LAKESHORE

TAB J

Court File No. CV-17-11773-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

BETWEEN:

BRIDGING FINANCE INC.,
as agent for **SPROTT BRIDGING INCOME FUND LP**

Applicant

- and -

THOMAS CANNING (MAIDSTONE) LIMITED and 692194 ONTARIO LIMITED

Respondents

**IN THE MATTER OF AN APPLICATION PURSUANT TO SUBSECTIONS 47(1) AND
243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS
AMENDED, AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c.
C.43, AS AMENDED**

NOTICE OF MOTION
(returnable June 21, 2017)

RICHTER ADVISORY GROUP INC. (“**Richter**”), in its capacities as Court-appointed interim receiver (the “**Interim Receiver**”) and Court-appointed monitor (the “**Monitor**”) of the property, assets and undertakings of the Respondents, will make a motion to a Judge of the Commercial List on Wednesday June 21, 2017 at 10:00 a.m., or as soon after that time as the motion can be heard, at 330 University Avenue, Toronto, Ontario.

PROPOSED METHOD OF HEARING: The motion is to be heard orally.

THE MOTION IS FOR:

- (a) an order:
- (i) abridging the time for service of this notice of motion and the motion record so that the motion is properly returnable on June 21, 2017;
 - (ii) approving the fees and disbursements of the Interim Receiver and its counsel, as set out in the Report of Richter in its capacities as Interim Receiver and Monitor dated June 15, 2017 (the “**Report**”), the Affidavit of Clark Lonergan sworn June 14, 2017 (the “**Lonergan Affidavit**”), and the Affidavit of George Benchetrit sworn June 15, 2017 (the “**Benchetrit Affidavit**”);
 - (iii) approving the Statement of Receipts and Disbursements of the Interim Receiver contained in the Report;
 - (iv) authorizing the Interim Receiver to pay the monies currently in its hands, and any and all monies received by the Interim Receiver after the date hereof, to the Applicant;
 - (v) terminating the interim receivership proceeding and other ancillary relief, upon the Interim Receiver filing a discharge certificate with the Court;
 - (vi) approving the Report, and the activities of the Interim Receiver and the Monitor described therein;

- (vii) sealing the Confidential Appendices to the Report pending further Order of the Court;
 - (viii) approving the fees and disbursements of the Monitor and its counsel, as set out in the Report, the Lonergan Affidavit, and the Benchetrit Affidavit;
 - (ix) terminating the monitorship proceeding, discharging and releasing the Monitor, and other ancillary relief, upon the Monitor filing a discharge certificate with the Court; and
- (b) such further and other relief as counsel may request and this Honourable Court may permit.

THE GROUNDS FOR THE MOTION ARE:

1. Richter was appointed as Interim Receiver pursuant to the Order of The Honourable Mr. Justice Newbould dated April 20, 2017.
2. Richter was discharged as Interim Receiver and appointed as Monitor pursuant to the Order of Justice Newbould dated May 1, 2017.
3. The activities of the Interim Receiver and the Monitor are detailed in the Report.
4. The Report.
5. Rules 1.04, 1.05, 2.01, 2.03, and 37 of the *Rules of Civil Procedure* (Ontario).
6. The *Bankruptcy and Insolvency Act* (Canada) and the *Courts of Justice Act* (Ontario).
7. The inherent and equitable jurisdiction of the Court.

8. Such other grounds as counsel may advise and this Honourable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

1. The Report and the appendices annexed thereto, including without limitation the Lonergan Affidavit and the Benchetrit Affidavit; and
2. such further and other material as counsel may advise and this Honourable Court may permit.

June 15, 2017

CHAITONS LLP
5000 Yonge Street, 10th Floor
Toronto, ON M2N 7E9

Sam Rappos (LSUC # 51399S)
Tel: (416) 218-1137
Fax: (416) 218-1837
E-mail: samr@chaitons.com

Lawyers for the Interim Receiver and the Monitor

TO: THE SERVICE LIST

BRIDGING FINANCE INC.,
as agent for SPROTT BRIDGING INCOME FUND LP
Applicant
5

- and -

THOMAS CANNING (MAIDSTONE) LIMITED and
692194 ONTARIO LIMITED
Respondents

Court File No. CV-17-11773-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
PROCEEDING COMMENCED AT TORONTO

NOTICE OF MOTION
(returnable June 21, 2017)

CHAITONS LLP
5000 Yonge Street, 10th Floor
Toronto, Ontario M2N 7E9

Sam Rappos (LSUC # 51399S)
Tel: (416) 218-1137
Fax: (416) 218-1187
Email: samr@chaitons.com

Lawyers for the Interim Receiver and the Monitor

TAB K

Court File No. CV-17-11773-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

**BRIDGING FINANCE INC.,
as agent for SPROTT BRIDGING INCOME FUND L.P.**

Applicant

- and -

**THOMAS CANNING (MAIDSTONE) LIMITED
and 692194 ONTARIO LIMITED**

Respondents

**IN THE MATTER OF AN APPLICATION PURSUANT TO
SUBSECTIONS 47(1) AND 243 (1) OF THE *BANKRUPTCY ACT* AND
*INSOLVENCY ACT R.S.C. 1985, c. B-3, AS AMENDED;***

**AFFIDAVIT OF WILLIAM THOMAS
(Motion Returnable June 21, 2017)**

I, **WILLIAM THOMAS**, of the Hamlet of Maidstone, in the Province of Ontario,
MAKE OATH AND SAY:

1. I am the Chief Executive Officer of Thomas Canning (Maidstone) Limited (“**Thomas Canning**”) and the Vice-President of 692194 Ontario Limited (“**692 Ontario**”) (collectively, the “**Company**”), and as such I have personal knowledge of the matters deposed in my affidavit, except where I have indicated that I have obtained facts from other sources, in which case I have identified the source and believe those facts to be true.

2. I make this affidavit in response to the Application brought by the Applicant, Bridging Finance Inc., as agent for Sprott Bridging Income Fund LP (“**Bridging**”), to, *inter alia*, approve an asset purchase agreement between Richter Advisory Group (“**Richter**”) and a company

owned by Mr. Santokh Mahal (“**Purchaser**”), and to appoint Richter as receiver, without security, over all of the assets, undertaking and property of the Respondents. This affidavit is also in response to a motion brought by Richter in its capacities as Court-appointed interim receiver and monitor of the Respondents for, *inter alia*, an Order terminating the interim receivership and the monitorship proceeding, and discharging Richter from its responsibilities thereof.

3. I make this affidavit in support of an Order:

- (a) adjourning Richter’s motion for the approval of its conduct, fees and proposed release *sine die* to be returned following a scheduling appointment to be set after the transaction has closed and the operation of the business by the Company has ceased and claims against the Company, if any, are known;
- (b) requiring that the reasonable outstanding fees of counsel to the Company, Blaney McMurtry LLP, to the date of this application be paid, or that they form a charge on the assets ranking *pari passu* with the charge in favour of Richter in its capacity as interim receiver (“**Receiver’s Charge**”); and
- (c) requiring the payment by Richter of all post-filing amounts for goods and services contracted for or delivered for the period of April 20, 2017 to June 21, 2017, in priority to the distribution of funds to Bridging.

Background

4. Thomas Canning entered into a credit agreement with Bridging as of July 3, 2015 (“**Credit Agreement**”).

5. Unfortunately, the relationship between Bridging and Thomas Canning was, from the outset, not a good one. Despite promises made when we were negotiating the agreement, it

quickly became clear that Bridging did not understand the business it had invested in and was not able to provide the support they promised.

6. Bridging consistently resisted even the most fundamental and essential business requests which were necessary to support the business and would have preserved their investment.

7. The most striking example of this was when, at harvest time in the Fall of 2016, Bridging refused to grant the urgent request for funds needed in order to take in the 2016 harvest. As a direct result of these actions by Bridging, the business was unable to take delivery of its contracted tomato plants and was ultimately sued by those growers for non-performance of their contract.

8. But for that event in 2016 (and others like it caused by Bridging), Thomas Canning would be solvent and operating within the boundaries of its lending arrangements with Bridging and the position of the Company would be very different than it is today.

9. A culture of distrust and suspicion ultimately took over the relationship and certainly from the Fall of 2016 on, Bridging has acted in an adversarial fashion towards the Company.

10. Bridging refused to renew the Credit Agreement after it expired on January 3, 2017.

11. While it is true that Bridging made some limited advances to the Company after the expiration of the Credit Agreement, those advances were generally subsistence level advances and did not support operations.

12. During the period of January to April 2017, in order to fill the financial gaps left by Bridging, my family, including myself, loaned substantial personal funds to the Company for essential goods, services, and wages.

13. Although we have security for these advances, the security is registered junior in time to the security interest held by Bridging.

14. During this period, my brother, Robert (Bob) and I took no salary from the Company, although we were entitled to do so.

Appointment of Interim Receiver

15. Bridging issued demands on April 5th, 2017, for non-specific and non-urgent reasons. This was in my view more a reflection of frustration than any particularly pressing business need from Bridging.

16. I am advised by our counsel, David Ullmann, that the demands were legally deficient as the business of the Company is farming, and the Company is a “farmer” within the definition of the *Farm Debt Mediation Act* (the “**FDMA**”), and yet no notice was provided as required under that legislation.

17. As detailed in the email from David Ullmann to counsel for Bridging, dated April 16, 2017, Thomas Canning advised Bridging that we had instituted our own cash management system under the supervision of MNP Ltd. (“**MNP**”), and that we were going to ensure that the business could operate while we considered how best to restructure on a consensual basis with Bridging. Attached hereto and marked as **Exhibit “A”** is a copy of Mr. Ullmann’s e-mail to Ken Rosenstein, counsel for Bridging, dated April 16, 2017.

18. Although not included in the Affidavit of Graham Marr, sworn April 19, 2017 (“**Marr Affidavit**”), upon which Bridging’s *ex parte* application was based, we provided Bridging with a copy of the engagement letter from MNP for their review and comment. Attached hereto and marked as **Exhibit “B”** is Mr. Ullmann’s e-mail to Mr. Rosenstein, dated April 17, 2017, enclosing a copy of the engagement letter with MNP.

19. The Company, through its counsel, also provided Bridging with the opportunity to revise the appointment of MNP and put in place any further controls that it wished. Attached hereto and marked as **Exhibit “C”** is a copy of Mr. Ullmann’s e-mail to Mr. Rosenstein, dated April 18, 2017. This fact was also not disclosed in the Marr Affidavit.

20. After being provided with a copy of the MNP engagement letter, counsel for Bridging responded, “We are reviewing with Bridging and will advise. Thx.” This correspondence was previously attached as Exhibit “C”.

21. However, Bridging instead applied to the court on supposedly urgent basis for the *ex parte* appointment of Richter as interim receiver (“**Interim Receiver**”).

22. On the interim receivership application, Bridging did not provide the court with any legal authority to explain to the court that it had jurisdiction to appoint an interim receiver. I am advised by my lawyer, David Ullmann, that the court did not have the authority to appoint an interim receiver as a result of the provisions of the FDMA, and counsel for Bridging knew or ought to have known that this jurisdiction did not exist.

23. Bridging also did not advise the court of the representations it had made to the Company that they were considering the MNP engagement in the application materials.

24. I am advised by David Ullmann that he was available to have attended the hearing to appoint an interim receiver had he been notified of it. I believe the outcome of the hearing would have been materially different had counsel for the Company been given the opportunity to attend.

25. Despite these issues, the Company, through its counsel, complied with the interim receivership order and provided access and cooperation to the Interim Receiver, as recounted in the interim receiver's report.

Decision to Appoint a Monitor and Dismiss the Interim Receiver

26. From the period between April 20th to April 29th the Company considered its options, which included opposing the interim receivership order, applying for mediation under the FDMA, filing for protection under the *Companies' Creditors Arrangement Act* and/or filing a proposal under the *Bankruptcy and Insolvency Act*.

27. However, I realized that setting aside the interim receivership order and taking advantage of any restructuring statute, which would require the Company to declare that it was insolvent in order to stop further similar actions from Bridging, would not be a viable solution for the Company or in the best interest of its stakeholders.

28. I believed that the Company could viably refinance if given a period of time to do so.

29. Ultimately, the Company chose to proceed with a process to appoint a monitor over the business under the *Courts of Justice Act*, rather than a receiver.

30. On May 1, 2017, Justice Newbould dismissed the interim receiver (subject to certain remaining administrative acts for it to perform) and adjourned the pending receivership application to no fixed date in exchange for the appointment of Richter as monitor (“**Monitor**”) (“**Monitor Order**”).

31. The two main purposes of the appointment of the Monitor were to:

- (a) allow the parties to run a court supervised sales process that would end with court approval of a sale and a vesting order for the eventual purchaser without the Company being in receivership or otherwise suffering the stigma of an insolvency; and
- (b) provide an objective and non-partisan intermediary in the dysfunctional relationship between Bridging and the Company with respect to how the Company would operate during the sales process, and beyond, if the sales process did not produce a satisfactory outcome.

32. This approach was also to preserve the Company’s ability to operate within its various regulatory regimes as it was felt that an insolvency process might jeopardize its various tomato processing and growing licences (although Bridging ultimately required that a provision be added to the Monitor Order staying those bodies from terminating their licences in any event).

33. It was a requirement of the resolution of the dispute between Bridging and the Company that the Monitor be an officer of the court and that its conduct would be measured against, what I was advised by our counsel, was the objective standard of the appropriate conduct of a court officer.

34. The Monitor Order did not provide with the Monitor the ability to sell the business. The Monitor was only enabled to market the business for sale. The sale of the business would therefore have to be completed by the Company.

Accommodation Agreement

35. Bridging and the Company entered into an accommodation agreement, dated April 29, 2017 (“**Accommodation Agreement**”), which is a form of forbearance agreement. A copy of the Accommodation Agreement is attached hereto and marked as **Exhibit “D”**.

36. This is a private agreement between the Company, certain guarantors (including myself) and Bridging. The Monitor is not a party to that agreement, although Bridging and the Company agreed that the Monitor would be asked by the parties to perform certain tasks thereunder.

37. The Monitor reviewed and commented on the Accommodation Agreement before it was finalized.

38. In addition to containing the intention of the parties to run a sale process, the central feature of the Accommodation Agreement was that Bridging would fund operating expenses and that the parties would enter into a go forward relationship without being distracted by issues which arose prior to April 29, 2017.

39. The Company was ordered by the interim receivership order and the Monitor Order to operate in accordance with the cash management system in the Credit Agreement, notwithstanding that the Credit Agreement had been terminated. As such, the Company had no operating cash of any kind. All cash was deposited daily into a blocked account and swept daily

by Bridging. In order to have any cash with which to pay for any obligations, Bridging had to release funds as needed.

40. Rather than contest this issue, the Company agreed to the Accommodation Agreement, and in particular section 5.1, which sets out the following mechanism:

5.1 Loan Availability

Subject to a Forbearance Termination Event, the Lender shall continue to provide advances under the Credit Agreement (but without further reference to any borrowing base calculation which would, but for this Accommodation Agreement, impact such advances) during the Forbearance Period in order to fund the “critical payments” requested by the Obligors and recommended and approved by the Monitor. For greater certainty, the Lender shall not be obligated to fund full normal course operations during the Forbearance Period, but rather only amounts which are necessary to allow the Borrower to continue to operate the Business for the duration of the Forbearance Period. The Lender will, in accordance with and upon the Monitor’s review and recommendation, fund the payment of the reasonable fees and disbursements of the Borrower’s counsel, Blaney McMurtry LLP, incurred in connection with this Accommodation Agreement or the Monitor Order, up to a maximum amount of \$20,000, and the reasonable fees and disbursements incurred by said counsel during the Forbearance Period also in accordance with the Monitor’s review and recommendation but excepting any fees and disbursements relating to work done in opposition to motions brought by the Monitor or the Agent in connection with the RISP or any transaction resulting from the RISP.

41. As set out therein, the mechanism was that the Company was to provide recommendations to the Monitor of items which it required, and the Monitor was obliged to determine if they were appropriate. The Monitor was then to make a request to fund and Bridging was to fund.

42. I understood the purpose of this section was that I would no longer have to convince Bridging of the Company’s need for funds. I only had to convince the Monitor. The way I understood it was, “if the Monitor recommends, Bridging spends.”

43. The Accommodation Agreement was not put before the court on the appointment of the Monitor.

44. I remain confused as to how the Monitor and Bridging have approached the Accommodation Agreement since its execution. Bridging seems to claim from time to time that the Agreement is in breach, but at the same time asks for our strict compliance with it. The Monitor does the same.

45. As recently as June 19, 2017, our lawyer, David Ullmann, received an email from the Monitor asking that it comply with the Accommodation Agreement.

46. There was a similar email from Bridging's counsel on June 9th requiring the Company to comply with the Accommodation Agreement.

47. On the other hand, Bridging takes the position in its application record that the Accommodation Agreement is in breach.

48. We have at all times denied the statements from Bridging that the Accommodation Agreement is in breach or has been breached.

49. The Accommodation Agreement is in good standing and the Company has performed its role thereunder to the best of its ability and at all times in good faith. There is no evidence put forward on the pending motion by Bridging to the contrary.

50. As the Monitor has previously stated, the Monitor is not a party to Accommodation Agreement and is not in position to opine on its status, as per its letter to Mr. Ullmann dated May 16, 2017, a copy of which is attached hereto and marked as **Exhibit "E"**.

51. On May 16, 2017 I swore an affidavit in the within proceeding, which attested, among other things, that the Accommodation Agreement was in good standing at that time. Attached hereto and marked as **Exhibit “F”** is a copy of my affidavit, sworn May 16, 2017. Bridging and the Monitor did not contest that statement in the hearing before Justice Newbould on May 17th and, I am advised by David Ullmann, in fact relied on Accommodation Agreement at that hearing.

52. Under the terms of the Accommodation Agreement, Bridging is to forbear from taking any steps to enforce its security, including, appointing a receiver until the Accommodation Agreement is terminated.

Breakdown in Relationship during Monitor’s Mandate

53. Unfortunately, the hoped for cooperative and goal oriented approach to the operation of the business, aspired to by the Monitor Order and the Accommodation Agreement, never really materialized, despite our best efforts. The Monitor quickly assumed total control over every aspect of the business and consistently prevented the Company from making what I felt were appropriate and necessary decisions.

54. The dispute around the decision of how many acres to plant, as set out in the Monitor’s letter of May 16th (attached as Exhibit “E”) and my affidavit of the same day (attached as Exhibit “F”), is a useful example of how the Monitor had taken control and was not allowing the Company to act as it wished to do.

55. While it may be that the parties intended that the Monitor would not control the business, and it may be that the Monitor Order provided that the Monitor not be in control of the business,

that does not mean that the Monitor was not in fact in control. In my view, the conduct of the Monitor must be judged by its actions.

56. The Monitor had at least one employee at the Company every business day since May 1st. This person exercised control over every business decision we sought to make and often disallowed decisions which we wished to make. The Monitor decided who would be paid, when they would be paid, and how the Company operated. At one point, the Monitor appointed security over the plant to limit the access available to company personnel.

57. We made almost no independent decisions of any kind during this process, and when we tried to do so, the Monitor chastised us and reminded us that they were in control. We had no access to any cash and could not pay for anything without the Monitor's permission.

58. The Monitor interpreted its role as it had evolved during the process, as set out in part in its letter provided to the Court on May 17, 2017, a copy of which is attached hereto and marked as **Exhibit "G"**.

The Accommodation Agreement also confirms that the Monitor's powers include taking steps to secure the business and having oversight of sales, supply, expenditures and other business decisions. The Company is required to obtain prior approval of the Monitor in respect of any business decisions including expenditures.

Outstanding Accounts

59. Attached hereto and marked as **Exhibit "H"** is a list prepared by the Company's book keeper on June 19th, 2017 of all accounts which were incurred after April 20, 2017 by the Company and in respect of which goods or services were delivered and in respect of which payment has not been made.

60. As we were surprised by the Monitor's motion, we have had limited time to prepare this list and, as such, the list may not be a perfect account.

61. The total amount outstanding is \$144,681 Canadian and \$57,424 USD. These amounts do not including the legal fees discussed below but do include the seedling amounts discussed below.

62. The Monitor has been presented with these expenses for payment but has refused to authorize payment to these suppliers. It is not disputed by the Monitor that these are post filing goods and services.

63. While some of these amounts are small, they are all significant to the suppliers who trusted the Company and the Monitor in this process.

64. The non-payment of these accounts, especially the non-payment of the trucking, logistic, ordering and delivery accounts, will result in fines being imposed by Loblaws and other large customers and will threaten the continuity of those business relationships, which are valuable to the Company and presumably of value to the proposed purchaser.

Payment of legal fees of Blaney McMurtry

65. Among the unpaid post-filing accounts, are the fees of our counsel Blaney McMurtry LLP ("**Blaney**"). Blaney has rendered an account for work done for the period of April 20 to April 30, 2017 in the amount of \$18,500 plus HST, and has work in progress for work done since April 30th in the amount of approximately \$55,000, plus HST.

66. We contracted with Bridging that our reasonable legal fees would be paid by Bridging during this process.

67. Under the Accommodation Agreement, section 5.1 provides as follows:

... The Lender will, in accordance with and upon the Monitor's review and recommendation, fund the payment of the reasonable fees and disbursements of the Borrower's counsel, Blaney McMurtry LLP, incurred in connection with this Accommodation Agreement or the Monitor Order, up to a maximum amount of \$20,000, and the reasonable fees and disbursements incurred by said counsel during the Forbearance Period also in accordance with the Monitor's review and recommendation but excepting any fees and disbursements relating to work done in opposition to motions brought by the Monitor or the Agent in connection with the RISP or any transaction resulting from the RISP.

68. In the course of negotiating this paragraph there was originally a cap for \$20,000 for fees related to preparing the Accommodation Agreement. In the subsequent drafts, we added the provision that subsequent fees would also be paid. Bridging added to its final draft the carve-out provision at the end. As such, it is clear that the parties turned their mind to this section.

69. Below is an excerpt from the deal memorandum advanced by the Company, which gave rise to the obligation to pay fees reflects in the Accommodation Agreement in section 5.1:

15) Counsel: The company shall continue to have counsel during the forbearance period including to enable the company to complete a sale or refinancing, to deal with creditors and ordinary company issues etc. The reasonable fees and expenses of company counsel (Blaney), including those incurred related to the negotiation of this forbearance agreement, will be paid during the forbearance when cash is available or otherwise protected by a charge on the assets. The reasonable fees and expenses of counsel to Bridging (A&B) will presumably be paid by Bridging in the ordinary course and added to the secured debt as has been done in the past. The reasonable fees of counsel to the Receiver/Monitor (Chaitons) and the fees of Richter will be paid by the company when cash is available or otherwise protected by a charge on the assets.

70. The payment of our counsel's fees was not conditional. As long as Bridging was forbearing, we were to have counsel.

71. Both Bridging and the Monitor at all times through this process required active engagement from the Company and its counsel, and at no time prior to the email described below from June 14th was any suggestion made that our counsel would not or should not be paid.

72. On June 12, 2017 the Company applied to the Monitor for approval of the outstanding account of Blaney for the work up to April 30th. This work was below the \$20,000 cap established for such work. This amount is still outstanding. Attached hereto and marked as **Exhibit "I"** is a copy of an e-mail from Mr. Ullmann to counsel for the Monitor, Sam Rappos, dated June 12, 2017, enclosing a copy of Blaney's account.

73. Blaney has been intimately involved in this process and providing us useful guidance daily in this matter. This process was very unfamiliar to us and we would not have been able to participate in it without counsel.

74. Last week our counsel discussed the payment of its fees with counsel to Bridging. On June 14, 2017, counsel for Bridging denied payment of our counsel's fees by way of e-mail. I am advised by David Ullmann that this email followed a telephone conversation in which counsel for Bridging hung up on him when this issue was raised.

75. Our counsel has in fact assisted us with:

- (a) dealing with the various licencing agencies and attending before the Farm Products Marketing Board, which resulted in a favourable outcome for the Company and the RISP;
- (b) educating us as to the process and the role of the court in ensuring fairness in this process;

- (c) advising us in connection with the operations of the Company under the Accommodation Agreement and the Monitor Order, which required essentially daily communication;
- (d) advocating on the Company's behalf in the context of the rights of the Company in this process and in particular against restrictions which Bridging and/or the Monitor sought to impose, which we felt were inappropriate;
- (e) advising on the Teaser and the execution of non-disclosure agreements in the sale process;
- (f) advising on the sale process and its impact on the day-to-day operations of the business;
- (g) advising in connection with supplier and production issues, in particular the issues related to the farming operations of the business and the engagement of tomato growers; and
- (h) providing commentary and response on an almost constant stream of communication from the Monitor, its counsel, and Bridging's counsel.

76. There is nothing in our counsel's accounts related to the preparation or negotiation of the offer to buy the Company submitted by a corporation to be incorporated by my brother. My brother had separate counsel for that transaction and paid that counsel personally.

77. There is no doubt that Blaney assisted the Company in being able to continue in operations so that it could be sold as a going concern, which was its primary instruction and to everyone's benefit in this process.

Seedlings

78. As part of the operations of the business, the Company contracted with several greenhouses to grow seedling tomatoes for the Company so that they could be planted in accordance with Thomas Canning's licence to plant 400 acres of plants.

79. Bridging was intimately aware that the Company planned to plant these acres and required that seedlings be planted. As set out in the Marr Affidavit, Bridging acknowledged at paragraph 49 that "commitments have to be made to the growers for this year's supply and the purchase of seeds has to be funded. Bridging is willing to fund these critical expenses and the ongoing operations... with the oversight and control of the receiver." In entering into the Accommodation Agreement the Company relied on this statement. The hiring of these seedling growers was part of the ordinary seasonal operations of the Company to which this statement referred.

80. However, following the execution of the Accommodation Agreement, Bridging reneged on its obligation to support this planting.

81. As a corollary to this, Bridging instructed the Monitor not to pay the greenhouses, even though the greenhouses had delivered services during the period of May 1 to June 20th.

82. The greenhouses are owed approximately \$43,000 CDN and \$36,500 USD. The Company received a further invoice from Rol-Land Farms on June 19, 2017 (one of the seedling

growers) for a further amount owing of approximately \$42,000. A copy of this invoice is attached hereto and marked as **Exhibit “J”**. The Monitor at times has acknowledged that these accounts are due, allowed some of the other greenhouse fees to be paid, but now will not allow these accounts to be paid.

Migrant Workers

83. The Company employs migrant workers for manual labour and related tasks in its business, from Jamaica and Mexico.

84. The Company provides for the travel expenses to allow for these migrant workers to come to Canada.

85. The migrant workers are, obviously, low income individuals with limited resources here in Canada.

86. The expansion of the migrant worker force was expressly approved by the Monitor during its period of control of the business. There are 14 such workers currently.

87. The temporary work visas granted to these workers are granted in accordance with the Temporary Foreign Workers plan. This process was carefully explained to the Monitor on the first day of its appointment.

88. In the ordinary course the company would pay to return these workers to their home country when their term of service was completed. This is part of their VISA terms. They were expected to be in Canada until October or November.

89. It is also my understanding that the VISAs provided to these workers only allow them to work for Thomas Canning. If the business of Thomas Canning ceases, they have no legal means of making any money in Canada and cannot seek other employment easily.

90. I was shocked to see in the draft order put forward by Bridging that it is seeking, and presumably the Monitor is endorsing, at paragraph 13, that the Receiver should have no liability for these workers. Apparently, Bridging intends to strand these workers in Canada with no pay and no recourse.

91. The Monitor should be making arrangements with the Company to ensure that these vulnerable workers be allowed to return to their home countries as the Company would have done in the ordinary course, but it is my understanding that they are not doing so.

92. The Monitor also refused to make the latest rental payments due on the temporary housing in which these workers live on the land adjacent to the farm. As such, these migrant workers will soon have no place to live, notwithstanding that they are still under contract and working daily at the Company with the Monitor's permission and knowledge.

Funds Available for Payment of Post Filing Amounts

93. The Company has had substantial revenues during the period of April 7th to June 21st. Attached hereto as **Exhibit "K"** is a list of deposits prepared by the Company's bookkeeper for that period.

94. The list demonstrates that there have been receipts in excess of \$650,000 CDN and \$410,000 USD. These amounts have all been received by Bridging in accordance with the blocked account arrangements.

95. As such, it is clear that if the Company had access to its funds, it would have had ample funds with which to pay the outstanding post filing amounts which have accrued but also some of its other past due obligations.

Role of the Monitor and the Proposed Release

96. On Friday June 16, 2017, without notice, the Monitor served its motion, returnable on June 21, 2017 seeking approval of its conduct and a release from all possible claims.

97. I note that the motion was only served on the current service list, meaning that all of the parties with unpaid expenses have had no notice of the intention of Bridging to leave them unpaid nor any opportunity to attend the motion.

98. The Monitor's motion is not urgent and is not required in order to complete the proposed sale.

99. The Company's counsel, David Ullmann, wrote to the Monitor to request an adjournment, but the Monitor provided a, "two wrongs make a right" reply, which is attached hereto and marked as **Exhibit "L"**.

100. We require further time to consider the role of the Monitor once the sale procedure is complete. At this time, it is our understanding that there has still been no final agreement entered into for the sale of the business.

101. The Company has serious concerns about the positions taken in the Monitor's report and we should be entitled to at least the full notice period for such a motion to consider the evidence put forward and consider whether or not any of that evidence needs to be tested with questions.

102. Among the issues which require further review are:

- (a) Whether or not the Monitor was in fact in control of the business;
- (b) the impact of the fact that the Monitor proved incapable of understanding our accounting system and therefore dismissed it as deficient and whether or not this diminished the value of the business during its mandate;
- (c) the Monitor's conduct in the sale process, which can only be assessed when the sale process is complete and the consequences of the sale are known;
- (d) since May 26, 2017, the Monitor has refused to approve any ordinary expenses for the Company other than ones directly related to the proposed sale. This, plus the decision to serve the application to appoint the receiver widely, has resulted in the disruption of the business of the Company and in several parties threatening to commence lawsuits and in challenges being made to the company's licence. We have not yet received these suits and would certainly want the opportunity to review whether or not the Monitor should be added as a party to any or all of them. As noted above, these parties are not yet served and have not yet in all cases been alerted to their possible claim as their claims are just developing;
- (e) the decision to authorize certain expenses and agreements to be entered into during the period of May 1 to June 21st, which remain unpaid notwithstanding services were delivered to the Company which benefited the Company and, by extension Bridging. Attached hereto and marked as **Exhibit "M"** are several

emails advising the Monitor of these issues, which emails were not included in the Monitor's report;

- (f) the decision to walk away from the opportunity to contract with a farmer willing to plant 100 acres of additional conventional crops, which the Monitor had asked the Company to find. Attached hereto and marked as **Exhibit "N"** is e-mail correspondence in that regard; and
- (g) the Monitor authorized the Company to expand its migrant worker force and now seeks an order to terminate the Company's obligations with those workers.

Outcome of the Sale Process

103. The Company does not oppose the sale to the purchaser identified in the Monitor's Report, subject to actually seeing the form of agreement and confirming that its terms, including the assumption of all Bridging debt, remains the same as the form of offer.

104. The Company supports the sale. It is the only sale left from the sale process and at this point, it is simply not practical to resell the business and we need to preserve what little is left. That does not mean that the sale process was properly conducted, however.

105. I make this affidavit in support of an Order:

- (a) adjourning the Monitor's motion for the approval of its conduct, fees and proposed release *sine die* to be returned following a scheduling appointment to be set after the transaction has closed and operation of the business by the Company has ceased and claims against the Company, if any, are known;

- (b) requiring that the outstanding fees of our counsel to the date of this application be paid or that they form a charge on the assets ranking *pari passu* with the Receiver's Charge;
- (c) requiring the payment by the Monitor of all post-filing amounts for goods and services contracted for and delivered for the period of April 20th to June 21st in priority to the distribution of funds to Bridging;


and for no other or improper purpose.

SWORN BEFORE ME
 at the City of Windsor,
 in the Province of Ontario,
 on June 20th, 2017



 A Commissioner for Taking Affidavits
 LSUC 214604

)
)
)
)
)
)
)
)
)
)



 WILLIAM THOMAS

TAB L

Court File No. CV-17-11773-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE) WEDNESDAY, THE 21ST DAY
JUSTICE CONWAY) OF JUNE, 2017



BETWEEN:

**BRIDGING FINANCE INC.,
as agent for SPROTT BRIDGING INCOME FUND LP**

Applicant

- and -

THOMAS CANNING (MAIDSTONE) LIMITED and 692194 ONTARIO LIMITED

Respondents

**IN THE MATTER OF AN APPLICATION PURSUANT TO SUBSECTIONS 47(1) AND
243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS
AMENDED, AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c.
C.43, AS AMENDED**

**ORDER
(Appointment of Receiver)**

THIS APPLICATION made by the Applicant for an Order pursuant to subsection 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”), and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the “**CJA**”), appointing Richter Advisory Group Inc. (“**Richter**”) as receiver (in such capacity, the “**Receiver**”) without security, of all of the assets, undertakings and properties of each of Thomas Canning (Maidstone) Limited (“**Thomas Canning**”) and 692194 Ontario Limited (together with Thomas Canning, the “**Debtors**”) acquired for, or used in relation to a business carried on by the Debtors, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Report of Richter in its capacities as Court-appointed Monitor (the “**Monitor**”) and Interim Receiver dated June 15, 2017, and on hearing the submissions of counsel for the Applicant, counsel for the Debtors, counsel for the Monitor and no one appearing for any other person although duly served as appears from the affidavits of service of Kyle Plunkett and Daphne Porter sworn June 16, 2017 and on reading the consent of Richter to act as the Receiver,

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Return of Application and the Return Application Record is hereby validated and that this Application is properly returnable today and hereby dispenses with further service thereof.

APPOINTMENT OF RECEIVER

2. **THIS COURT ORDERS** that pursuant to subsection 243(1) of the BIA and section 101 of the CJA, Richter is hereby appointed Receiver, without security, of all of the assets, undertakings and properties of the Debtors including all proceeds thereof (the “**Property**”).

RECEIVER’S POWERS

3. **THIS COURT ORDERS** that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Debtors and the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;

- 3 -

- (c) to manage, operate, and carry on the business of the Debtors, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtors;
- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtors or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtors and to exercise all remedies of the Debtors in collecting such monies, including, without limitation, to enforce any security held by the Debtors;
- (g) to settle, extend or compromise any indebtedness owing to the Debtors;
- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtors, for any purpose pursuant to this Order;
- (i) to undertake environmental or workers' health and safety assessments of the Property and operations of the Debtors;
- (j) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtors, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;

- 4 -

- (k) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
- (l) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,
 - (i) without the approval of this Court in respect of any transaction not exceeding \$250,000, provided that the aggregate consideration for all such transactions does not exceed \$1,000,000; and
 - (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act*, or section 31 of the Ontario *Mortgages Act*, as the case may be, shall not be required;
- (m) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (n) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (o) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (p) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtors;

- 5 -

- (q) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtors, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtors;
- (r) to exercise any shareholder, partnership, joint venture or other rights which the Debtors may have;
- (s) to exercise any and all rights of the Debtors under any certificate, certification, consent, approval, licence or permit in favour of or held by the Debtors or Thomas Canning's manufacturing plant, including those granted by any governmental or regulatory body; and
- (t) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations,

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtors, and without interference from any other Person.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

4. **THIS COURT ORDERS** that (i) the Debtors, (ii) all of their current and former directors, officers, employees, agents, advisors, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "**Persons**" and each being a "**Person**") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request. Without limiting the foregoing, 2190330 Ontario Ltd. shall grant the Receiver such access to the Property of the Debtors located on the real property of the legal description PT LT 290, CON STR MAIDSTONE AS IN R1425228, LAKESHORE, PIN 75016-0085 (LT), as the Receiver may require for the continued operation

- 6 -

and/or removal of such Property, or as the Receiver may require to give any purchaser of such Property the same access.

5. **THIS COURT ORDERS** that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtors, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the “**Records**”) in that Person’s possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

6. **THIS COURT ORDERS** that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

NO PROCEEDINGS AGAINST THE RECEIVER

7. **THIS COURT ORDERS** that no proceeding or enforcement process in any court or tribunal (each, a “**Proceeding**”), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

NO PROCEEDINGS AGAINST THE DEBTORS OR THE PROPERTY

8. **THIS COURT ORDERS** that no Proceeding against or in respect of the Debtors or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtors or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

9. **THIS COURT ORDERS** that all rights and remedies against the Debtors, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any “eligible financial contract” as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Receiver or the Debtors to carry on any business which the Debtors are not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtors from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH THE RECEIVER

10. **THIS COURT ORDERS** that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, certificate, certification, consent, approval, licence or permit in favour of or held by the Debtors or Thomas Canning’s manufacturing plant without written consent of the Receiver or leave of this Court.

CONTINUATION OF SERVICES

11. **THIS COURT ORDERS** that all Persons having oral or written agreements with the Debtors or statutory or regulatory mandates for the supply of goods and/or services, including

without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Debtors are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and that the Receiver shall be entitled to the continued use of the Debtors' current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Debtors or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

RECEIVER TO HOLD FUNDS

12. **THIS COURT ORDERS** that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "**Post Receivership Accounts**") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

EMPLOYEES

13. **THIS COURT ORDERS** that all employees of the Debtors are hereby terminated. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA or any liability as an employer or sponsor of any workers employed or to be employed by the Debtors through the Temporary Foreign Worker Program or the International Mobility Program, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

PIPEDA

14. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Receiver may disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a “**Sale**”). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtors, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

LIMITATION ON ENVIRONMENTAL LIABILITIES

15. **THIS COURT ORDERS** that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, “**Possession**”) of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the “**Environmental Legislation**”), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver’s duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

LIMITATION ON THE RECEIVER'S LIABILITY

16. **THIS COURT ORDERS** that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

RECEIVER'S ACCOUNTS

17. **THIS COURT ORDERS** that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the "**Receiver's Charge**") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA. For greater certainty, the Receiver's Charge shall rank in priority to the Interim Receiver's Charge and the Interim Receiver's Borrowings Charge (as such terms are defined in the Interim Receivership Order made in this proceeding on April 20, 2017) and to the Monitor's Charge (as defined in the Monitor Order made in this proceeding on May 1, 2017).

18. **THIS COURT ORDERS** that the Receiver and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

19. **THIS COURT ORDERS** that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the normal rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

FUNDING OF THE RECEIVERSHIP

20. **THIS COURT ORDERS** that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$600,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the “**Receiver’s Borrowings Charge**”) as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver’s Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA. For greater certainty, the Receiver’s Borrowings Charge shall rank in priority to the Interim Receiver’s Charge, the Interim Receiver’s Borrowings Charge and the Monitor’s Charge.

21. **THIS COURT ORDERS** that neither the Receiver’s Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

22. **THIS COURT ORDERS** that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as **Schedule “A”** hereto (the “**Receiver’s Certificates**”) for any amount borrowed by it pursuant to this Order.

23. **THIS COURT ORDERS** that the monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver’s Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver’s Certificates.

PAYMENTS AND DISTRIBUTION

24. **THE COURT ORDERS** that the Receiver is hereby authorized, upon the closing of the sale transaction approved by this Court pursuant to the Approval and Vesting Order dated June 21, 2017, to:

- (a) repay the principal amount, and all interest that has accrued thereon, borrowed by the Interim Receiver in accordance with the Interim Receivership Order and secured by the Interim Receiver's Borrowings Charge; and
- (b) distribute the net sale proceeds to the Applicant, subject to a \$1,200,000 reserve, the entitlements and priority of claims to which reserve (including those claims set out in the Affidavit of William Thomas sworn June 20, 2017 and/or the Affidavit of James Clark sworn June 20, 2017) shall be subject to further Order of this Court.

JOINT ADMINISTRATION

25. **THIS COURT ORDERS** and directs that the receiverships and estates of the Debtors be jointly administered.

SERVICE AND NOTICE

26. **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the "**Protocol**") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL '<http://www.richter.ca/Folder/Insolvency-Cases/T/Thomas-Canning-Limited>'.

27. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Receiver is at liberty to serve or distribute this Order, any

other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Debtors' creditors or other interested parties at their respective addresses as last shown on the records of the Debtors and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

28. **THIS COURT ORDERS** that the Applicant, the Receiver and their respective counsel are at liberty to serve or distribute this Order, any other materials and orders as may be reasonably required in these proceedings, including any notices, or other correspondence, by forwarding true copies thereof by electronic message to the Debtors' creditors or other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or juridical obligation, and notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations*, Reg. 81000-2-175 (SOR/DORS).

GENERAL

29. **THIS COURT ORDERS** that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

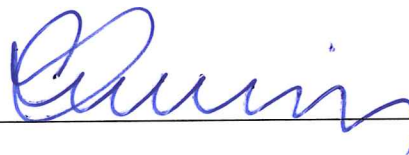
30. **THIS COURT ORDERS** that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtors.

31. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

32. **THIS COURT ORDERS** that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

33. **THIS COURT ORDERS** that the Applicant shall have its costs of this Application, up to and including entry and service of this Order, provided for by the terms of the Applicant's security or, if not so provided by the Applicant's security, then on a substantial indemnity basis to be paid by the Receiver from each of the Debtors' estates with such priority and at such time as this Court may determine.

34. **THIS COURT ORDERS** that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.



C. Irwin
Registrar

ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO:

JUN 22 2017

PER / PAR: 

SCHEDULE "A"
RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. **THIS IS TO CERTIFY** that Richter Advisory Group Inc., the receiver (the "**Receiver**") of the assets, undertakings and properties of each of Thomas Canning (Maidstone) Limited and 692194 Ontario Limited (together, the "**Debtors**") acquired for, or used in relation to a business carried on by the Debtors, including all proceeds thereof (collectively, the "**Property**") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated the 21st day of June, 2017 (the "**Order**") made in an action having Court file number CV-17-11773-00CL, has received as such Receiver from the holder of this certificate (the "**Lender**") the principal sum of \$ _____, being part of the total principal sum of \$ _____ which the Receiver is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the ____ day of each month] after the date hereof at a notional rate per annum equal to the rate of ____ per cent above the prime commercial lending rate of Bank of _____ from time to time.

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act* (Canada), and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver

- 16 -

to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the ____ day of _____, 2017.

RICHTER ADVISORY GROUP INC., solely in its capacity as Receiver of the Thomas Canning (Maidstone) Limited and 692194 Ontario Limited, and not in its corporate or personal capacity

Per:

Name:

Title:

**BRIDGING FINANCE INC., as agent for
SPROTT BRIDGING INCOME FUND LP**

Applicant

And

**THOMAS CANNING (MAIDSTONE) LIMITED and 692194
ONTARIO LIMITED**

Respondents

Court File No. CV-17-11773-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST
PROCEEDING COMMENCED AT TORONTO**

**ORDER
(APPOINTMENT OF RECEIVER)**

AIRD & BERLIS LLP
Barristers and Solicitors
Brookfield Place
Suite 1800, Box 754
181 Bay Street
Toronto, Ontario M5J 2T9

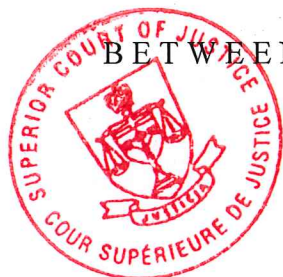
Sam Babe - LSUC No. 49498B
Kyle B. Plunkett - LSUC No. 61044N
Tel: 416.863.1500
Fax: 416.863.1515
Email: sbabe@airdberlis.com / kplunkett@airdberlis.com
Lawyers for the Applicant

TAB M

Court File No. CV-17-11773-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE) WEDNESDAY, THE 21ST DAY
)
 JUSTICE **CONWAY**) OF JUNE, 2017



BETWEEN:

**BRIDGING FINANCE INC.,
as agent for SPROTT BRIDGING INCOME FUND LP**

Applicant

- and -

THOMAS CANNING (MAIDSTONE) LIMITED and 692194 ONTARIO LIMITED

Respondents

**IN THE MATTER OF AN APPLICATION PURSUANT TO SUBSECTIONS 47(1) AND
243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS
AMENDED, AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c.
C.43, AS AMENDED**

APPROVAL AND VESTING ORDER

THIS MOTION, made by Bridging Finance Inc. for an order approving the sale transaction (the “**Transaction**”) contemplated by an asset purchase agreement dated June 15, 2017 (the “**Sale Agreement**”) and made between 2581150 Ontario Inc. (the “**Purchaser**”) and Richter Advisory Group Inc. (“**Richter**”) in its capacity as the Court-appointed receiver (the “**Receiver**”) of the undertakings, properties and assets of each of Thomas Canning (Maidstone) Limited (“**Thomas Canning**”) and 692194 Ontario Limited (together with Thomas Canning, the “**Debtors**”), as appended to the Report of Richter in its capacity as Interim Receiver and Monitor

in these proceedings dated June 15, 2017 (the “**Report**”), and vesting in the Purchaser the Debtors’ right, title and interest in and to the assets described in the Sale Agreement (the “**Purchased Assets**”), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Report and on hearing the submissions of counsel for the Receiver, counsel for the Debtors, counsel for Bridging, counsel for the Ontario Farm Products Marketing Commission and no one appearing for any other person on the service list, although properly served as appears from the affidavits of Kyle Plunkett and Daphne Porter sworn June 16, 2017, filed:

1. **THIS COURT ORDERS AND DECLARES** that the Sale Agreement and the Transaction are hereby approved, and the execution of the Sale Agreement by the Receiver is hereby authorized and approved, with such minor amendments as the Receiver may deem necessary. The Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchaser.
2. **THIS COURT ORDERS AND DECLARES** that upon the delivery of a Receiver’s certificate to the Purchaser substantially in the form attached as **Schedule A** hereto (the “**Receiver’s Certificate**”), all of the Debtors’ right, title and interest in and to the Purchased Assets described in the Sale Agreement, including, without limitation, those listed on **Schedule B** hereto, shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the “**Claims**”) including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Orders of the Honourable Justice Newbould dated April 20, 2017 and May 1, 2017 in this proceeding; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property

registry system; and (iii) those Claims listed on **Schedule C** hereto (all of which are collectively referred to as the “**Encumbrances**”, which term shall not include the permitted encumbrances, easements and restrictive covenants listed on **Schedule D**) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

3. **THIS COURT ORDERS** that the Purchaser shall be entitled to take delivery of those Purchased Assets comprised of the 50 acres of organic tomatoes being grown under contract by 959699 Ontario Inc. o/a DeNijs Organic Farms, in the normal course and upon release of the funds held in escrow for payment of the same, regardless of the assignability or status of Thomas Canning’s Ontario Farm Products Marketing Commission procurement license #1944-18.
4. **THIS COURT ORDERS** that upon the registration in the Land Registry Office for the Land Titles Division of Windsor of an Application for Vesting Order in the form prescribed by the *Land Titles Act*, the Land Registrar is hereby directed to enter the Purchaser as the owner of the subject real property identified in Schedule B hereto (the “**Real Property**”) in fee simple, and is hereby directed to delete and expunge from title to the Real Property all of the Claims listed in **Schedule C** hereto.
5. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of the Receiver’s Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.
6. **THIS COURT ORDERS AND DIRECTS** the Receiver to file with the Court a copy of the Receiver’s Certificate, forthwith after delivery thereof.

7. **THIS COURT ORDERS AND DECLARES** that the assumption of the Bridging Indebtedness, as such term is defined in the Sale Agreement, by the Purchaser pursuant to the Sale Agreement shall be effective as at the date of the Receiver's discharge in these proceedings.
8. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Receiver is authorized and permitted to disclose and transfer to the Purchaser all human resources and payroll information in the Debtors' records pertaining to the Debtors' past and current employees. The Purchaser shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the Debtors.
9. **THIS COURT ORDERS** that, notwithstanding:
 - (a) the pendency of these proceedings;
 - (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of the Debtors and any bankruptcy order issued pursuant to any such applications; and
 - (c) any assignment in bankruptcy made in respect of the Debtors;the vesting of the Purchased Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Debtors and shall not be void or voidable by creditors of the Debtors, nor shall it constitute nor be deemed to be a settlement, fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.
10. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to

- 5 -

give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies ~~including, without limitation, the Ontario Farm Products Marketing Commission and the Canadian Food Inspection Agency,~~ ^{Be} are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.



ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO:

JUN 21 2017

PER / PAR: 

**SCHEDULE A
FORM OF RECEIVER'S CERTIFICATE**

Court File No. CV-17-11773-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N:

**BRIDGING FINANCE INC.,
as agent for SPROTT BRIDGING INCOME FUND LP**

Applicant

- and -

THOMAS CANNING (MAIDSTONE) LIMITED and 692194 ONTARIO LIMITED

Respondents


RECEIVER'S CERTIFICATE

RECITALS

- A. Pursuant to an Order of the Honourable <*> of the Ontario Superior Court of Justice (the "**Court**") dated June 21, 2017, Richter Advisory Group Inc. was appointed as the receiver (the "**Receiver**") of the undertakings, properties and assets of Thomas Canning (Maidstone) Limited and 692194 Ontario Limited (collectively, the "**Debtors**").
- B. Pursuant to an Order of the Court dated June 21, 2017, the Court approved the asset purchase agreement made as of June 15, 2017 (the "**Sale Agreement**") between the Receiver and 2581150 Ontario Inc. (the "**Purchaser**") and provided for the vesting in the Purchaser of the Debtors' right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Receiver to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing as set out in Article 5 of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the Receiver.

- C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.

THE RECEIVER CERTIFIES the following:

1. The Purchaser has paid and the Receiver has received the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the Sale Agreement;
2. The conditions to Closing as set out in section Article 5 of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and
3. The Transaction has been completed to the satisfaction of the Receiver.
4. This Certificate was delivered by the Receiver at _____ on , 2017.

RICHTER ADVISORY GROUP INC., in its capacity as Receiver of the undertakings, properties and assets of THOMAS CANNING (MAIDSTONE) LIMITED and 692194 ONTARIO LIMITED, and not in its personal capacity

Per: _____
Name:
Title:

**SCHEDULE B
PURCHASED ASSETS**

All of the properties, assets and undertakings of the Debtors (collectively, the “**Purchased Assets**”) including but not limited to:

- (a) all accounts receivable, bills receivable, trade accounts, book debts and insurance claims Related to the Business, including recoverable deposits, including any unpaid interest on such items and any security or collateral for such items;
- (b) all books, records, files and papers Related to the Business or the Purchased Assets including, but not limited to, drawings, manuals and data related to equipment, computer hardware and software and phone systems, computer system passwords, combinations and keys to locks and other safety and storage systems, sales and purchases correspondence, trade association files, lists of present and former customers and suppliers, security and alarm system records, personnel, employment and other records, and all copies and recordings of the foregoing;
- (c) all rights and interests of the Debtors to and in all pending and/or executory contracts, agreements, licences (including, without limitation, all software licences), leases and arrangements;
- (d) the goodwill related to the business carried on by the Debtors (the “**Business**”), including all right, title and interest of the Debtors in, to and in respect of all elements which contribute to the goodwill related to the Business, including goodwill represented by customer and supplier lists and the logos of the Debtors;
- (e) the intellectual property including, without limitation:
 - (i) all business and trade names, corporate names, brand names and slogans Related to the Business including “Thomas’ Utopia Brand”;
 - (ii) all inventions, patents, patent rights, patent applications (including all reissues, divisions, continuations, continuations-in-part and extensions of any patent or patent application), industrial designs and applications for registration of industrial designs and associated rights related to the Business;
 - (iii) all copyrights and trade-marks (whether used with goods or services and including the goodwill attaching to such trade-marks), registrations and applications for trade-marks and copyrights (and all future income from such trade-marks and copyrights) related to the Business;
 - (iv) all rights and interests in and to processes, lab journals, notebooks, data, trade secrets, designs, know-how, product formulae and information, manufacturing, engineering and other drawings and manuals, technology, blue prints, research and development reports, agency agreements, technical information, technical assistance, engineering data, design and engineering specifications, and similar

- materials recording or evidencing expertise or information Related to the Business;
- (v) all other intellectual and industrial property rights throughout the world related to the Business;
 - (vi) all rights of the Debtors in all confidentiality, non-compete, non-solicitation and intellectual property assignment agreements;
 - (vii) all licences of the intellectual property listed in items (i) to (vi) above;
 - (viii) all future income and proceeds from any of the intellectual property and licences listed in items (i) to (vi) above and the licenses listed in item (vii) above;
 - (ix) all rights to damages and profits by reason of the infringement of any of the intellectual property listed in items (i) to (vii) above;
 - (x) all phone numbers; and,
 - (xi) all websites, including www.thomasutopiabrand and www.thomascanning.com;
- (f) all inventories of stock-in-trade and merchandise including seedlings, crops, materials, supplies, finished goods, repair and service parts related to the Business (collectively, the “**Inventory**”) including, without limitation, those in possession of suppliers, customers and other third parties (including, without limitation, the 50 acres of organic tomatoes being grown under contract by 959699 Ontario Inc. o/a DeNijs Organic Farms);
 - (g) all licences, permits, filings, authorizations, registrations, certificates of approval, approvals, grants, quotas, commitments, rights, privileges or indicia of authority related to the Business or necessary for the conduct of the Business;
 - (h) all machinery, equipment, furniture, fixtures, computer systems and equipment and other chattels related to the Business;
 - (i) all rights and interests of the Debtors to and in all customer orders for purchases of Inventory; and
 - (j) the all real property of the Debtors including, without limitation, the following:
 - (i) **PIN 75228-0009 (LT)**
PT LT 28-29 CON 9 MAIDSTONE AS IN R305027, PT 2 12R9420; T/W R1042854; S/T MB18413; LAKESHORE; SUBJECT TO AN EASEMENT IN GROSS OVER PT. 1 12R24775 AS IN CE502602
 - (ii) **PIN 75228-0005 (LT)**
PT LT 27 CON 10 MAIDSTONE AS IN R442677; LAKESHORE

(iii) **PIN 75228-0067 (LT)**

PT LT 27 CON 10; LAKESHORE DESIGNATED AS PT 2 12R20686,

(iv) **PIN 75016-0010 (LT)**

PT LT 289 CON STR MAIDSTONE AS IN R305027 (THIRDLY) EXCEPT
PTS 3, 4 R423541; S/T MB18404; LAKESHORE

(v) **PIN 75016-0009 (LT)**

PT LT 289 CON STR MAIDSTONE AS IN R1119864; S/T MB18355;
LAKESHORE

(vi) **PIN 75016-0021 (LT)**

PT LT 291 CON STR MAIDSTONE PTS 1, 2 RD138 EXCEPT PT 1 RD273 &
PT 1 12R376; S/T R389219; LAKESHORE

(vii) **PIN 75016-0019 (LT)**

PT LT 289-290 CON STR MAIDSTONE AS IN R645962, R463774 & R305027
(FIRSTLY) EXCEPT PT 1 12R2096 & PTS 9, 10 R423541; S/T MB18409,
MB18414, R902964; LAKESHORE

SCHEDULE C
CLAIMS TO BE DELETED AND EXPUNGED FROM TITLE TO REAL PROPERTY

PIN 75228-0009 (LT)

1. Instrument Number R233025 registered on January 5, 1961 being an Assignment of Lease
2. Instrument Number CE665518 registered on July 3, 2015 being a Charge in the principal amount of \$21,365,650.00 in favour of Bridging Finance Inc.
3. Instrument Number CE665523 registered on July 3, 2015 being a Notice of Assignment of Rents-General in favour of Bridging Finance Inc.

PIN 75228-0005 (LT)

1. Instrument Number CE665518 registered on July 3, 2015 being a Charge in the principal amount of \$21,365,650.00 in favour of Bridging Finance Inc.
2. Instrument Number CE665523 registered on July 3, 2015 being a Notice of Assignment of Rents-General in favour of Bridging Finance Inc.

PIN 75228-0067 (LT)

1. Instrument Number CE665518 registered on July 3, 2015 being a Charge in the principal amount of \$21,365,650.00 in favour of Bridging Finance Inc.
2. Instrument Number CE665523 registered on July 3, 2015 being a Notice of Assignment of Rents-General in favour of Bridging Finance Inc.

PIN 75016-0010 (LT)

1. Instrument Number CE665518 registered on July 3, 2015 being a Charge in the principal amount of \$21,365,650.00 in favour of Bridging Finance Inc.
2. Instrument Number CE665523 registered on July 3, 2015 being a Notice of Assignment of Rents-General in favour of Bridging Finance Inc.

PIN 75016-0009 (LT)

1. Instrument Number CE665518 registered on July 3, 2015 being a Charge in the principal amount of \$21,365,650.00 in favour of Bridging Finance Inc.
2. Instrument Number CE665523 registered on July 3, 2015 being a Notice of Assignment of Rents-General in favour of Bridging Finance Inc.

PIN 75016-0021 (LT)

1. Instrument Number R720043Z registered on December 22, 1977 being an Application to Annex Restrictive Covenant
2. Instrument Number CE665518 registered on July 3, 2015 being a Charge in the principal amount of \$21,365,650.00 in favour of Bridging Finance Inc.
3. Instrument Number CE665523 registered on July 3, 2015 being a Notice of Assignment of Rents-General in favour of Bridging Finance Inc.

PIN 75016-0019 (LT)

1. Instrument Number R902964 registered on March 8, 1984 being an Agreement for Right-of-Way in favour of Union Gas Limited (expired)
2. Instrument Number CE665518 registered on July 3, 2015 being a Charge in the principal amount of \$21,365,650.00 in favour of Bridging Finance Inc.
3. Instrument Number CE665523 registered on July 3, 2015 being a Notice of Assignment of Rents-General in favour of Bridging Finance Inc.

SCHEDULE D
PERMITTED ENCUMBRANCES, EASEMENTS AND RESTRICTIVE COVENANTS
RELATED TO THE REAL PROPERTY

(unaffected by the Vesting Order)

PIN 75228-0009 (LT)

1. Instrument Number MB18413 registered on February 1, 1949 being a Transfer of Easement in favour of Bell Telephone Co. of Canada
2. Instrument Number R305027 registered on June 9, 1964 being a Transfer
3. Instrument Number 12R4451 registered on June 23, 1978 being a Reference Plan
4. Instrument Number 12R9420 registered on April 11, 1988 being a Reference Plan
5. Instrument Number R1042854 registered on April 13, 1988 being a Transfer
6. Instrument Number R1073171 registered on January 9, 1989 being a Notice of Claim
7. Instrument Number 12R24775 registered on August 17, 2011 being a Reference Plan
8. Instrument Number CE502602 registered on January 11, 2012 being a Transfer of Easement in favour of Hydro One Networks Inc.

PIN 75228-0005 (LT)

1. Instrument Number R442677 registered on June 19, 1969 being a Transfer

PIN 75228-0067 (LT)

1. Instrument Number 12R20686 registered on August 12, 2003 being a Reference Plan
2. Instrument Number CE52782 registered on January 6, 2004 being a Transfer

PIN 75016-0010 (LT)

1. Instrument Number MB18404 registered on January 21, 1949 being a Transfer of Easement in favour of The Bell Telephone Company of Canada
2. Instrument Number R305027 registered on June 9, 1964 being a Transfer
3. Instrument Number R1073182 registered on January 9, 1989 being a Notice of Claim

PIN 75016-0009 (LT)

1. Instrument Number MB18355 registered on November 23, 1948 a Transfer of Easement in favour of The Bell Telephone Company of Canada

2. Instrument Number R1042301 registered on April 7, 1988 being a Notice of Claim
3. Instrument Number R1119864 registered on February 26, 1990 being a Transfer

PIN 75016-0021 (LT)

1. Instrument Number R38129 registered on July 20, 1967 being a Transfer of Easement in favour of The Bell Telephone Company of Canada
2. Instrument Number RD138 registered on June 27, 1969 being a Reference Plan
3. Instrument Number R720043 registered on December 22, 1977 being a Transfer

PIN 75016-0019 (LT)

1. Instrument Number MB18409 registered on January 21, 1949 being a Transfer of Easement in favour of Bell Telephone Co. of Can.
2. Instrument Number MB18414 registered on February 1, 1949 being a Transfer of Easement in favour of Bell Telephone Co. of Canada
3. Instrument Number R305027 registered on June 9, 1964 being a Transfer
4. Instrument Number R463774 registered on March 10, 1970 being a Transfer
5. Instrument Number R645962 registered on October 16, 1975 being a Transfer
6. Instrument Number 12R7427 registered on January 20, 1984 being a Reference Plan
7. Instrument Number R1073173 registered on January 9, 1989 being a Notice of Claim
8. Instrument Number R1073175 registered on January 9, 1989 being a Notice of Claim
9. Instrument Number R1497830 registered on August 21, 2000 being a Site Plan Agreement

**BRIDGING FINANCE INC., as agent for
SPROTT BRIDGING INCOME FUND LP**
Applicant

and **THOMAS CANNING (MAIDSTONE) LIMITED and 692194
ONTARIO LIMITED**

Respondents

Court File No. CV-17-11773-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST
PROCEEDING COMMENCED AT TORONTO

APPROVAL AND VESTING ORDER

AIRD & BERLIS LLP
Barristers and Solicitors
Brookfield Place
Suite 1800, Box 754
181 Bay Street
Toronto, Ontario M5J 2T9

Sam Babe - LSUC No. 49498B
Kyle B. Plunkett - LSUC No. 61044N
Tel: 416.863.1500
Fax: 416.863.1515
Email: sbabe@airdberlis.com / kplunkett@airdberlis.com
Lawyers for the Applicant

TAB N

BRIDGING FINANCE INC.,
as agent for SPROTT BRIDGING INCOME FUND LP
Applicant

- and -

THOMAS CANNING (MAIDSTONE) LIMITED and
692194 ONTARIO LIMITED
Respondents
June 21, 2017
Court File No. CV-17-11773-00CL

*June 21/17 as per counsel slip
This matter has been resolved as follows:
① OTC re fees & other matters related to
interim receiver only, as signed by me.
② Order appointing Receiver, as signed by
me, w/ amendments
③ Approval & vesting order re APA,
as signed by me.
④ Bridging has agreed to cover return
expenses for all but 2 of the CO's MISSED
worklets (counsel advised that the 2 missed
~~worklets~~ ^{a worklet has been taken on} ~~worklets~~ ^{the 2 missed worklets} ~~worklets~~ ^{not return}
⑤ None of this affects the proceeding before
the Commission on June 28th, to which
MR RAPPPOS will be attending via court call.
⑥ The motion re the Monitor's Requested
Relief to be scheduled at a 930 before me
on July 5/17.*

Conway J.

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
PROCEEDING COMMENCED AT TORONTO
MOTION RECORD OF THE INTERIM RECEIVER
AND THE MONITOR
(returnable June 21, 2017)

CHAITONS LLP
5000 Yonge Street, 10th floor
Toronto, Ontario M2N 7E9
to Canada
Sam Rappos (LSUC # 51399S)
Tel: (416) 218-1137
Fax: (416) 218-1187
Email: samr@chaitons.com

Lawyers for the Interim Receiver
and the Monitor



TAB O

COUNSEL SLIP

COURT FILE NO CV-17-01773-cl.

DATE JUNE 5, 2017

NO ON LIST (3)

TITLE OF PROCEEDING

BRIDGING FINANCE INC. AS AGENT FOR SPROTT BRIDGING INCOME FUND LP

THOMAS CANNING ^{VS} (MARDSTONE) LIMITED ET AL

COUNSEL FOR: PLAINTIFF(S) APPLICANT(S) PETITIONER(S)

SAM BABE
for BRIDGING FINANCE INC.

PHONE & FAX NOS
Email: sbabe@ard
T: 416 865 7718
F: 416 863 1515
berlyz .c

COUNSEL FOR: DEFENDANT(S) RESPONDENT(S)

D. Ullmann for Bill + Bob Thomas and as Agent for Rol-Land Farms

PHONE & FAX NOS
Email:

416 596-4289
416 593-2437

M. Kril-Mascarin for Richter

416-218-1123
416-218-1848

July 5/17

There are 2 motions to be scheduled:

1. Monitor's motion for fees + conduct approval.
2. Distribution motion.

Both are to proceed together for 2 hrs on Sept 11th. However, if the pending sale closes + motion #1 is to be unopposed, parties may return to a 930 anytime for a consent/unopp'd order between them.

Conduct A

TAB P



REPLY TO: SAM RAPPOS
FILE NO.: 52980
DIRECT: 416-218-1137
FAX: 416-218-1837
EMAIL: samr@chaitons.com

August 25, 2017

VIA EMAIL

David Ullmann
Blaney McMurtry LLP
2 Queen Street East, Suite 1500
Toronto, Ontario M5C 3G5

Re: Thomas Canning (Maidstone) Limited and 692194 Ontario Limited (collectively, the "Companies")

Dear Mr. Ullmann,

As I understand that you may currently be away from the office, I have taken the liberty of copying your colleagues Mr. Abramowitz and Ms. Teodorescu on this letter.

As a result of the appearances before Justice Conway on June 21 and July 5, 2017, the date of September 27, 2017 has been set down for the hearing of the Monitor's motion seeking Court approval of the Monitor's Report, its activities, and the fees and disbursements of the Monitor and its counsel, along with the discharge and release of the Monitor. It is anticipated that the Receiver will be bringing a motion on September 27, 2017 to obtain the authority to distribute amounts subject to the holdback in accordance with the Court's determination of the issues.

In an affidavit sworn by William Thomas on June 20, 2017, Mr. Thomas, in his capacity as an officer of the Companies, requested that the Court grant an order:

- (a) adjourning the Monitor's motion for approval of its conduct, fees, and proposed release to a date following the closing of the sale transaction;
- (b) requiring payment of the reasonable outstanding fees of counsel to the Companies, Blaney McMurtry LLP, up to June 21, 2017, or that they form a charge on the assets ranking *pari passu* with the charge granted to the Interim Receiver; and
- (c) requiring payment of all post-filing amounts for goods and services contracted for or delivered for the period of April 20 to June 21, 2017 in priority to the distribution of funds to Bridging.

It is not clear to me whether any party still intends to seek such relief from the Court on September 27, 2017, as to date we have not been served with any notice of cross-motion or any other materials. Additionally, it is not clear to me what party, if any, would be seeking such relief, as the Companies were placed into receivership on June 21, 2017 and the Receiver is the only party authorized to continue or commence proceedings in the name of the Companies. Lastly, in the event that any party intends to seek such relief on September



27, 2017, we are unaware of the legal basis or principles that the party intends to rely on, or the standing that the party has, in requesting such relief from the Court.

The hearing date of September 27, 2017 is quickly approaching. There is absolutely no reason that there should be any materials that are short served in connection with the hearing.

As a result, we ask that you please confirm the following in writing by no later than September 1, 2017:

- (a) the names of the parties you continue to represent in the receivership proceeding;
- (b) whether such parties intend to oppose the Monitor's motion returnable on September 27, 2017; and
- (c) whether such parties intend to seek relief from the Court on September 27, 2017, and if so, the basis upon which such parties have standing to seek the relief, details with respect to the factual and legal basis upon which such relief is being sought by the parties, and confirmation as to when a motion record and factum will be served by the parties.

To the extent we do not hear back from you by September 1, 2017, we will proceed to schedule a 9:30 am chambers appointment before the Commercial List during the week of September 4, 2017 to raise the issues before the Court so as to ensure that all matters can be dealt with fairly and completely on September 27, 2017.

Yours truly,
CHAITONS LLP

Sam Rappos

(computer generated signature)

Sam Rappos
LAWYER

Cc: Clark Lonergan, *Richter Advisory Group*
Ken Rosenstein and Sam Babe, *Aird & Berlis LLP*
Mervyn Abramowitz and Alexandra Teodorescu, *Blaney McMurtry LLP*

TAB Q

From: [Alexandra Teodorescu](#)
To: [Sam P. Rappos](#)
Cc: [David T. Ullmann](#); [Ariyana Botejue](#)
Subject: Thomas Canning (Maidstone) Limited and 692194 Ontario Limited
Date: Thursday, August 31, 2017 6:08:14 PM
Attachments: [image001.png](#)
[image002.png](#)
[image003.png](#)
[image004.png](#)
[image013.png](#)
[image014.png](#)
[image015.png](#)
[image016.png](#)

Sam,

Thank you for your letter, dated August 25, 2017. As you know David is away until next week and he may provide a further response to your letter upon his return, if necessary. However, in his absence, and after speaking with him briefly and considering your letter, I would note the following.

First, the question of whether or not the motion will proceed on the 27th with respect to those expenses incurred during the monitorship should not be posed just to our firm.

Please confirm that all of the parties who are listed in Mr. Thomas' affidavit as being owed money during that period have been provided with notice of the motion returnable on the 27th. I note from looking at your client's website that there is no such notice posted so we assume nothing has yet been sent. Indeed, you have not even posted our client's responding affidavit, which was served on June 20th. The Monitor should be ensuring that all parties impacted by the motion have a chance to respond and have a chance to review our materials.

Second, in terms of cross motions etc, David advised me that he had informally chatted with Sam Babe about this in Court on July 5th and he thought that it was understood that there is a motion pending from the Receiver to distribute funds, and there are responding materials filed by our firm opposing that distribution in part. There is also a motion pending from the Monitor seeking to approve their conduct and seek a release, and there are materials filed by our firm in opposition to that motion. Those motions and materials were outstanding as at the appointment of the receiver and the appointment of the receiver does not stay or interfere with them. As such, no cross motions are required.

In terms of proceeding on the 27th, we would expect at least the payments motion to proceed on that date. However, it was our expectation that the Receiver was going to file a report in response to our responding record. We were waiting for that before making any further decisions about questioning the Monitor or the Receiver or Mr. Marr, etc. to the extent that is necessary and to file further evidence in response, if necessary. We also believe the Court should be updated on the status of the receivership. Please confirm whether or not any such materials are forthcoming from the Receiver and that they will be provided in sufficient time for a response to be prepared. I would think you should be in a position to provide those materials by the end of next week, if not sooner, given that the sale closed some time ago.

With respect to the question of the payment of our fees, it is very clear from the materials

provided what was understood with respect to the obligation for our reasonable fees to be paid. We remain very surprised that there is any opposition to this position by Bridging.

Taken at its highest, it seems Bridging's position is that we should not have trusted them and should have insisted on a charge on May 1st. While we certainly concede Bridging was not happy with the work we did on the part of Thomas Canning, there was never the suggestion that we would only be paid if they thought our counsel was worthy of payment. Indeed, it would have been a manifest conflict of interest were that the case. What matters was whether our client appreciated our counsel (which they have sworn to) and whether the Monitor thought our fees were reasonable.

We would appreciate the Monitor's assistance in helping to resolve this matter. It would be really unfortunate for us to have to argue this matter before the court and it would not be in keeping with what is normal on the Commercial List. In that spirit, we would be prepared to recommend some compromise on the fees to our client in order to avoid the cost of the motion and put this matter behind us. To the extent you require it, we would be happy to provide you with our accounts (redacted for privilege) for your review, as we did with the initial account set out in our record.

Finally, please advise if your client intends to seek its discharge as receiver on Sept 27th. If not, it may make sense for the Monitor's conduct approval motion to be adjourned to whenever the Receiver is to be discharged, as there may be elements of the contested conduct which overlaps with the receivership (especially given the post-closing issues) and it would make sense to deal with them together. There is no urgency to the discharge of the Monitor on its own that we know of.

We see no need for a 9:30 appointment at this point but you can discuss that further with David upon his return next week.

Regards,

Alex



Alexandra Teodorescu
Associate

ateodorescu@blaney.com

📞 416-596-4279 | 📞 416-594-2506

🌐 Blaney.com



This communication is intended only for the party to whom it is addressed, and may contain information which is privileged or confidential. Any other delivery, distribution, copying or disclosure is strictly prohibited and is not a waiver of privilege or confidentiality. If you have received this telecommunication in error, please notify the sender immediately by return electronic mail and destroy the message.

TAB R

9:30 A.M.
COUNSEL SLIP

H

COURT FILE NO CV-17-11773-00CL

DATE SEP 13, 2017

NO ON LIST 6

TITLE OF PROCEEDING BRIDGING FINANCE INC.
THOMAS CANNING et al.

COUNSEL FOR: Sim Rappos
PLAINTIFF(S) for the Court appointed Monitor and Receiver
APPLICANT(S)
PETITIONER(S)

PHONE & FAX NOS
416 218 1137
416 218 1837
Sim.R@charters.ca

COUNSEL FOR: SAM BASS FOR
DEFENDANT(S) BRIDGING FINANCE INC.
RESPONDENT(S) & KSN ROSENSTEIN

PHONE & FAX NOS
T: 416 865 7718
F: 416 863 1515
sbass@cardberliss.com

David Ullmann, Alexandra Teodoroscu
Thomas et al Canning

T: 416-596-4289
F: 416-594-2437
dullmann@blaney.com

[Handwritten signatures and initials]

September 13/17
My Endorsement
is attached.
Hainey J

Time table

September 27, 2017 motion:-

- September 15, 2017: facts to be served by any party seeking payment out of holdback funds on behalf of the legal fees of the Company or with respect to claims of suppliers with respect to monitor proceedings
- September 22, 2017: responding facts to be served
- September 29, 2017: reply facts to be served

October 17, 2017 motion:

- September 18, 2017: Receiver report to be served
- September 22, 2017: written questions to be delivered to the Receiver
- September 27, 2017: Receiver to deliver response to written questions
- September 29, 2017: any additional evidence to be served
- October 6, 2017: Monitor to serve its facts

- October 11, 2017: responding facts to be served
- October 16, 2017: reply facts to be served

The Monitor's appraisal motion is returnable on October 17, 2017 and is peremptory on all parties and shall proceed to be heard on that date with no further adjournment.

Hanning J

September 13/17

TAB S

THOMAS CANNING (MAIDSTONE) LIMITED AND 692194 ONTARIO LIMITED

September 18, 2017

Court File No. CV-17-11773-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

BETWEEN:

BRIDGING FINANCE INC., as agent for SPOTT BRIDGING INCOME FUND LP

Applicant

- and -

THOMAS CANNING (MAIDSTONE) LIMITED and 692194 ONTARIO LIMITED

Respondents

**APPLICATION UNDER subsections 47(1) and 243(1) of the *Bankruptcy and Insolvency Act*,
R.S.C. 1985, c. B-3, as amended, and under section 101 of the
Courts of Justice Act, R.S.O. 1990, c. C.43, as amended**

**FIRST REPORT OF RICHTER ADVISORY GROUP INC.
IN ITS CAPACITY AS RECEIVER OF
THOMAS CANNING (MAIDSTONE) LIMITED and 692194 ONTARIO LIMITED**

September 18, 2017

I. BACKGROUND

1. Pursuant to the Order of The Honourable Mr. Justice Newbould of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated April 20, 2017 (the "**Interim Receivership Order**"), Richter Advisory Group Inc. ("**Richter**") was appointed as interim receiver (the "**Interim Receiver**") of all of the assets, properties and undertakings (collectively, the "**Property**") of Thomas Canning (Maidstone) Limited ("**TCL**") and 692194 Ontario Limited (together with TCL, the "**Company**") under section 47(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "**BIA**").
2. The appointment of an interim receiver was sought, on an *ex parte* basis, by the Company's senior secured lender, Bridging Finance Inc. as agent for Sprott Bridging Income Fund LP ("**Bridging**" or the "**Lender**").
3. The Court set a comeback date of April 28, 2017 for the hearing of Bridging's application for the appointment of Richter as receiver of the Property under section 243(1) of the BIA and section 101 of the *Courts of Justice Act*, R.S.O. 1990 c. C.43, as amended (the "**CJA**").
4. The comeback hearing was subsequently adjourned to May 1, 2017 to afford the parties with additional time to negotiate an acceptable resolution.
5. Bridging and the Company entered into an accommodation agreement dated April 29, 2017 (the "**Accommodation Agreement**"), which, among other things, established a refinancing, investment and/or sale solicitation process (the "**RISP**"), and required the appointment of Richter as a Court-appointed monitor to supervise and assist the Company (but not to have control over the business or to have control over or take possession of the Property).
6. Pursuant to the Order of Justice Newbould dated May 1, 2017 (the "**Monitor Order**"), the Court, among other things:
 - (a) appointed Richter as monitor of the Company and the Property pursuant to section 101 of the CJA (the "**Monitor**");
 - (b) outlined the powers of the Monitor, which included but was not limited to, monitoring, making recommendations and approving all matters concerning the management and operation of the Company's business, and marketing the Company's business and/or Property under the RISP as set out in the Accommodation Agreement;

- (c) approved the Interim Receiver's report dated April 28, 2017 and the activities of the Interim Receiver described therein; and
 - (d) discharged the Interim Receiver from its duties, except for the performance of certain incidental duties, as required, as set out in the Interim Receivership Order.
7. As detailed in the Report of the Interim Receiver and the Monitor dated June 15, 2017 (the "**June 15 Report**"), the RISP had been completed and an offer from Mr. Santosh Mahal, on behalf of a company to be incorporated ("**Mahal**"), to purchase substantially all of the Company's Property, was selected as the winning bidder by the Monitor and Bridging.
8. To facilitate the completion of the sale transaction with 2581150 Ontario Inc., a company owned by Mahal (the "**Purchaser**"), as contemplated under the Mahal offer (the "**Sale Transaction**"), Bridging revived its receivership application returnable June 21, 2017 and requested that the Court grant orders:
- (a) appointing Richter as receiver of the Company and the Property pursuant to section 243(1) of the BIA and section 101 of the CJA (the "**Receiver**");
 - (b) authorizing and directing the Receiver to execute an asset purchase agreement dated June 15, 2017 (the "**APA**");
 - (c) approving the APA and authorizing and directing the Receiver to take all necessary steps to complete the Sale Transaction;
 - (d) vesting in the Purchaser the right, title and interest of the Company in and to the Purchased Assets (as defined in the APA), free and clear of all claims and encumbrances (other than permitted encumbrances under the APA); and
 - (e) authorizing and directing the Receiver, upon the closing of the Sale Transaction, to:
 - (i) repay the Interim Receiver's borrowings and associated interest charges;
 - (ii) pay the fees and disbursements of the Monitor and its counsel, Chaitons LLP ("**Chaitons**"), as approved by the Court; and
 - (iii) distribute the net sale proceeds (net of reasonable reserves as determined by the Receiver) to Bridging.

9. The Interim Receiver and the Monitor also brought a motion returnable June 21, 2017 seeking an order granting the following relief:
 - (a) approving the Interim Receiver's statement of receipts and disbursements for the period from April 20, 2017 to and including May 31, 2017 (the "IR R&D");
 - (b) approving the fees and disbursements of the Interim Receiver and its counsel, Chaitons;
 - (c) authorizing and directing the Interim Receiver to distribute the net proceeds outlined in the IR R&D, including any future net proceeds, if any are received, to the Lender;
 - (d) terminating the interim receivership proceedings, including termination of the Interim Receiver's Charge and the Interim Receiver's Borrowing Charge (as defined in the Interim Receivership Order), upon the repayment of the Interim Receiver's borrowings (including interest) by the Receiver following the closing of the Sale Transaction or any other sale, and the Interim Receiver filing a discharge certificate with the Court (the "IR Discharge Certificate");
 - (e) approving the fees and disbursements of the Monitor and its counsel, Chaitons, to completion of the proceeding; and
 - (f) in the event that the Receiver was appointed, discharging Richter as Monitor, which was to include the termination of the Monitor's Charge (as defined in the Monitor Order) following payment of the Monitor's fees and disbursements and upon the Monitor filing a discharge certificate with the Court (the "Monitor Discharge Certificate"). On the filing of the Monitor Discharge Certificate, Richter was to be released from any and all liability that Richter had or may have by reason of, or in any way arising out of, the acts or omissions of Richter while acting in its capacity as Monitor, save and except for any gross negligence or willful misconduct on the Monitor's part.
10. In response to the return of Bridging's receivership application and the motion brought by the Monitor, the Company served a responding motion record containing an affidavit of William Thomas sworn June 20, 2017 (the "Thomas Affidavit"). In the Thomas Affidavit, the Company requested that the Monitor's motion be adjourned until after the completion of the Sale Transaction.
11. The Company also requested that the fees and disbursements of its counsel, Blaney, McMurtry LLP, and amounts owed to suppliers that the Company alleged supplied goods and/or services to the Company during the Monitor's appointment, be paid out of the net proceeds from the Sale Transaction in priority to Bridging's interest in the sale proceeds.

12. The Sale Transaction was approved by the Court pursuant to the Approval and Vesting Order of The Honourable Madam Justice Conway dated June 21, 2017 (the "**Approval and Vesting Order**"), a copy of which is attached hereto as **Appendix "A"**. The Company did not oppose the approval of the Sale Transaction by the Court. Additionally, the Court granted the relief sought by the Interim Receiver in the Order dated June 21, 2017. The Interim Receiver completed the remaining incidental duties and was discharged upon filing the IR Discharge Certificate with the Court of July 31, 2017.
13. The Court appointed Richter as Receiver pursuant to the Order (Appointment of Receiver) of Justice Conway dated June 21, 2017 (the "**Receivership Order**"), a copy of which is attached hereto as **Appendix "B"**. As noted above, Bridging's application requested that the net proceeds from the Sale Transaction be distributed to Bridging. As a result of the issues raised by the Company and the Ontario Farm Marketing Commission (the "**Commission**"), the parties agreed to paragraph 24 of the Receivership Order, which provides that:

"THIS COURT ORDERS that the Receiver is hereby authorized, upon the closing of the sale transaction approved by the Court pursuant to the Approval and Vesting Order dated June 21, 2017, to: ...

(b) distribute the net sale proceeds to the Applicant, subject to a \$1,200,000 reserve, the entitlements and priority of claims to which reserve (including those claims set out in the Affidavit of William Thomas sworn June 20, 2017 and/or the Affidavit of James Clark sworn June 20, 2017) shall be subject to further Order of this Court."
14. With respect to the relief sought by the Monitor, as noted in Justice Conway's endorsement dated June 21, 2017, a copy of which is attached hereto as **Appendix "C"**, the Monitor's motion was adjourned to be scheduled at a 9:30 am chambers appointment on July 5, 2017.
15. On July 5, 2017, the parties appeared before Justice Conway in chambers, at which time the Court ordered that the Monitor's motion, and matters related to the entitlement of the \$1.2 million being held in reserve by the Receiver as agreed to by the parties (the "**Reserve**"), be scheduled for September 11, 2017. As a result of an administrative request received from the Court, the motions were subsequently scheduled to be heard on September 27, 2017.
16. On September 13, 2017, parties appeared in chambers before The Honourable Mr. Justice Hainey to discuss matters related to the motions scheduled to be heard on September 27, 2017. As a result of the attendance, and information requests made of the Receiver by the former principals of the Company, the Court issued an endorsement setting out litigation timetables for the hearing of the motions related to the Reserve, which was to proceed on September 27, 2017, and the Monitor's motion, which was re-scheduled

to be heard on October 17, 2017. The litigation timetable requires the Receiver to serve a report by September 18, 2017. A copy of the endorsement is attached hereto as **Appendix "D"**.

II. PURPOSE OF REPORT

17. The purpose of this report (the "**Report**") is to detail matters related to the appointment of the Receiver and the completion of the Sale Transaction.

III. QUALIFICATIONS

18. In preparing this Report, the Receiver has relied upon unaudited financial information, the Company's books and records, financial information prepared by the Company and discussions with management (collectively, the "**Information**"). The Receiver has reviewed the Information for reasonableness, internal consistency, and use in the context in which it was provided, and in consideration of the nature of the evidence provided to this Court, in relation to the relief sought therein. The Receiver has not, however, audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Generally Accepted Auditing Standards ("**GAAS**") pursuant to the Canadian Institute of Chartered Accountants Handbook and, as such, the Receiver expresses no opinion or other form of assurance contemplated under GAAS in respect of the Information. An examination of the Company's financial forecasts in accordance with the *Canadian Institute of Chartered Accountants Handbook* has not been performed. Future-oriented financial information reported on or relied upon in this Report is based on management's assumptions regarding future events; actual results achieved may vary from forecast and such variations may be material.
19. Unless otherwise noted, all monetary amounts contained in this Report are expressed in Canadian dollars.

IV. RECEIVER'S ACTIVITIES SINCE ITS APPOINTMENT

20. This section details certain of the activities of the Receiver since its appointment on June 21, 2017. This section is not an exhaustive report on the Receiver's activities since its appointment, which the Receiver will provide in its next and expected final report to the Court.
21. Immediately upon issuance of the Receivership Order, the Receiver attended at the Company's premises in Maidstone, Ontario to take possession and secure the Company's assets, and books and records located therein.

22. At the time of the Receiver's appointment, the Company was in the midst of its seasonal slow period and as a result it had minimal employees, and was only dealing with equipment repair and maintenance activity and limited shipping operations.
23. Following its appointment, the Receiver's initial activities included:
- (a) informing the Company's employees, including workers employed by the Company through the Temporary Foreign Worker Program or the International Mobility Program, that their employment had been terminated pursuant to paragraph 13 of the Receivership Order;
 - (b) holding numerous discussions with the Company's foreign migrant workers and coordinating with the Jamaican Liaison Office and the Mexican migrant workers regarding their departure from the Company's premises and/or the country as required. As a result of the Receiver's efforts, all of the Mexican migrant workers were returned to Mexico and the Jamaican migrant workers were placed under the care of the Jamaican Liaison Office;
 - (c) informing the Canadian full time and part time employees that the Receiver and/or the Purchaser may communicate with them shortly to inquire about their interest in assisting the Receiver and/or the Purchaser should assistance be required;
 - (d) entering into consulting arrangements with certain former employees on a term and task basis to assist the Receiver in its administration, including human resource activities (final pay, records of employment and T4 documents), HST filings, and taking steps to arrange for the release of the Company's inventory that was located at a third-party warehouse;
 - (e) changing the locks and securing the premises;
 - (f) responding to demands from a party that was attempting to take possession of certain mobile units located at the Company's premises;
 - (g) corresponding with the Commission with respect to a hearing that was scheduled to take place with respect to the Company's marketing license;
 - (h) determining the amounts owed under the *Wage Earners Protection Program Act* and liaising with Service Canada on these amounts;

- (i) taking possession of the Company's books and records and, among other things, taking steps to complete administrative filings/mailings and HST returns that had been outstanding since June 2016, and to file corporate income tax returns;
- (j) repaying the Interim Receiver's borrowings and accumulated interest to Bridging;
- (k) corresponding with tote lessors; and
- (l) arranging for the continuation of all applicable utilities, insurance and security at the premises.

V. SALE TRANSACTION

- 24. As noted above, the APA was approved by the Court pursuant to the Approval and Vesting Order. A copy of the APA, as executed by the Receiver in accordance with the Approval and Vesting Order, is attached hereto as **Appendix "E"**.
- 25. Pursuant to the terms of the APA, the closing date for the Sale Transaction was to be June 21, 2017 or such later date as the parties may agree to in writing. As noted in the June 15 Report, it was the intent of the parties to close the Sale Transaction on June 21, 2017 or shortly thereafter.
- 26. As previously reported by the Monitor, a \$2.0 million deposit was received by the Monitor from Mahal in connection with the Sale Transaction.
- 27. Following its appointment, the Receiver worked closely with the Purchaser in an attempt to close the Sale Transaction as soon as possible. The Purchaser required additional time to complete its financing arrangements with its lender, which were particularly complex given that the Purchaser, as part of the APA, would be assuming the Company's indebtedness to Bridging, and such amount would not be conclusively determined until the completion of the receivership proceeding. The Receiver was supportive of this extension due to the level of communication with the Purchaser and its lender, the significant Deposit already received by the Receiver, the fact that the only other offer received during the RISP had been retracted by the offeror (a principal of the Company), and the minimal level of Company operations during this period.
- 28. As a result, the parties agreed to an extension of the closing date under the APA to July 7, 2017. The Sale Transaction was completed on that day. In connection with the closing, the Receiver received \$20.0 million from the Purchaser (\$18.0 million on closing and the \$2.0 million deposit), and the Purchaser entered into an assumption agreement with Bridging with respect to the Company's indebtedness that had been assumed by the Purchaser.

29. In accordance with the terms of the Receivership Order, the Receiver has distributed \$18.8 million of the net sale proceeds to Bridging and is maintaining funds for the Reserve in accordance with the Receivership Order.

VI. ADDITIONAL MATTERS

30. As noted above, the former principals of the Company have requested additional information from the Receiver, which they believe is relevant to the Monitor's motion scheduled for October 17, 2017. This section responds to the information requests.

Totes and Customers

31. Notwithstanding that the Sale Transaction was completed on July 7, 2017, the Receiver arranged with the Purchaser to have certain tomato produce storage units (known as "Totes") remain at the premises while the Receiver corresponded with Totes lessors regarding the return of empty totes that were situated at the premises and dealing with totes that were filled with tomato paste inventory that had been purchased by the Purchaser.
32. The Receiver understands that the majority of the empty Totes have been removed from the Purchaser's premises.
33. The Receiver issued letters to the Company's customers on or around July 12, 2017, notifying them of the Receiver's appointment, the Sale Transaction, and contact information for the Receiver. Since its appointment, the Receiver has collected cash receipts from the outstanding accounts receivables that were deposited to the Company's bank accounts or mailed to the Company. The Receiver has remitted these proceeds to the Purchaser in accordance with the APA.

Status of the Business

34. The Receiver has been informed by the Purchaser that it has been unable to recommence the Company's operations since the completion of the Sale Transaction for a number of reasons, including the state of the premises as at closing, the administrative and regulatory steps required of the Canadian Food Inspection Agency (the "CFIA") and the Commission, which have been more difficult than expected given the state of the business as at the time of closing and the outstanding charges laid by the CFIA against the Company and Mr. William Thomas under the *Food and Drugs Act*, the *Canada Agricultural Products Act*, the *Consumer Packaging and Liability Act*, and the fact that a dispute arose with the remaining supplier of tomato crops, 959699 Ontario Inc. o/a DeNijs Organic Farms ("DeNijs").


35. Given the knowledge that Richter had acquired in its capacities as the Interim Receiver, Monitor and Receiver, at the request of the Purchaser, Richter has assisted the Purchaser in a setting up the process and procedures for full inventory count as required by the CFIA.

Escrow Arrangement

36. As previously reported to the Court in the June 15 Report, the Company entered into an agreement with DeNijs in May 2017 for DeNijs to grow tomato seedlings to be processed by the Company. In connection with the agreement and the requirements imposed by the Commission, the parties entered into an escrow agreement with the Lender dated May 19, 2017, wherein \$472,500 was deposited with Aird & Berlis LLP as escrow agent (the "**Escrow Agent**").
37. Based on the correspondence exchanged by the parties, the Receiver understands that the parties are in dispute as to the state of the tomato crops and whether DeNijs was able to deliver the crops in accordance with the agreement. The Escrow Agent has indicated that, due to the conflict between the parties, it will not release the funds until the parties resolve the conflict.
38. The Receiver was recently informed, through its counsel, that DeNijs intends to commence an action for the release of the escrow funds.

All of which is respectfully submitted on the 18th day of September, 2017.

**Richter Advisory Group Inc.
as Receiver of Thomas Canning (Maidstone) Limited and 692194 Ontario Limited
and not in its personal capacity**



Clark Lonergan, CPA, CA, CIRP, LIT
Senior Vice-President

TAB T

Questions for Richter Advisory Group Inc. in its capacity as Monitor and Receiver of Thomas Canning (Maidstone) Limited and 692194 Ontario Limited

The following constitute our questions arising out of our review of the Report of Richter Advisory Group Inc. in its capacities as Interim Receiver and Monitor ("**Monitor**") of Thomas Canning (Maidstone) Limited ("**Thomas Canning**") and 692194 Ontario Limited ("**692 Ontario**") ("**Monitor's Report**") and the First Report of Richter Advisory Group Inc. in its capacity as Receiver ("**Receiver**") of Thomas Canning and 692 Ontario ("**Receiver's Report**").

The questions are presented in the order in which the corresponding reference appears and not in order of importance. These questions are relevant to the conduct of the Monitor and Receiver in recommending and completing the sale of the business, which sale resulted in the recovery of all debt owing to Bridging Finance Inc., as agent for Sprott Bridging Income Fund LP ("**Bridging**"), along with the apparent total destruction of the business enterprise and no benefit to any other party. These questions are asked to assist us in making submissions to the Court to allow the court to determine if the conduct of the Monitor should be approved on October 17th.

We reserve the right to ask more questions if and when a further report by the Receiver is produced.

Questions re: Monitor's Report

- Paragraph 45 – Please explain how the debt owing to Bridging was reduced by \$2,000,000 as shown in the two charts which appear at paragraphs 44 and 45.
- Paragraph 47 - Please produce the security opinion.
- Paragraphs 85/86 - To the extent it is not in the confidential appendices, please provide the names of the various parties described in paragraphs 85 and 86. Please advise if the Monitor advised Bridging of the names of any or all of these interested parties. If so, when and how?
- Paragraph 89 – Is it not true that the Mahal bid required due diligence as a condition? See paragraph 12 of the form of offer. Why was this not highlighted to the Court? Did this due diligence condition impact the ability of the Receiver to close the sale?
- Paragraph 92 - Did Bridging ask the Monitor to change the deposit terms? Please produce correspondence between Bridging and the Monitor or their counsel related to same.
- Paragraph 93 – please describe the improved financial terms between the two Mahal offers.
- Paragraph 95 - Please produce correspondence referred to in paragraph 95.
- Paragraph 96 – please produce the wire transfer.
- Paragraph 104 – given the Monitor's comment in this paragraph, why did the Monitor/receiver allow the business to cease on June 21st when there was no firm transaction? How did that protect the interest of the various stakeholders?
- Paragraph 105 – to which "stakeholders" is the Monitor referring in this paragraph? Have those stakeholders in fact benefitted? How did the Monitor support this statement in making its report on or before June 15th?
- Paragraph 106 – is it not true that Bridging was obliged to continue to make advances until the end of the forbearance period under the Accommodation Agreement? Why did the Monitor not challenge Bridging's position that it would no longer fund? Why did the Monitor allow this to impact the sale process?

- Paragraph 107- why did the Monitor “believe it [the Purchaser] has sufficient resources to close”? It appears to be a single purpose brand new company. Did the Monitor ask for firm supporting documentation of financial ability to close from the Purchaser as it did from the other bidder? Did Bridging ask the Monitor to do so? What was the response provided by the Purchaser and how was it satisfactory to the Monitor?
- Paragraph 107 - Why did the Monitor believe the sale would preserve the company’s operations?
- Did the Monitor ever discuss with Bridging if they were willing to accept the assumption of their debt by this single purpose company? If so, please produce all relevant correspondence related to same, if not, on what basis did the Monitor proceed?
- Paragraph 119 – what provisions did the Monitor make to address the “operational, financial and transitional items”? Was it the failure of these provisions which prevented the deal from closing promptly? Did these provisions fail?
- Please produce all the confidential appendices to the Monitor’s Report.
- Did Bridging at any time disclose its relationship to the Purchaser to the Monitor? Did Bridging at any point in time disclose to the Monitor that it was funding the purchaser through Skymark Finance? If so, when?
- Did the monitor ask Bridging if it had any relationship to the Purchaser? If so when and what was response?
- Please advise why the Monitor did not advise the court of the relationship between Bridging and the purchaser.
- Please advise why the Monitor’s report does not advise the court that the Monitor was advised by Bill Thomas that the purchaser was in fact acting as Bridging’s intermediary.
- Please advise why the Monitor’s report does not advise the court that the purchaser had previously approached the company, on the instructions of Bridging, to attempt to enter into a business deal to purchase the inventory of the company, which was rejected by the company.
- To the Monitor’s knowledge, is the purchaser a client or customer of Bridging?
- Was the Monitor aware that Bridging was not to be a qualified bidder in the RISP?
- How did the Monitor reconcile the fact that Bridging was indirectly bidding for the business with the fact that Bridging was precluded from being a qualified bidder in the sale process and why did the Monitor not include this in its report?
- Is the effect of the APA that Bridging’s outstanding debt is preserved to be paid out of another entity while all other stakeholders of the company receive nothing?
- Assuming Bridging funded the purchase of the business through an intermediary, which funds were then disbursed back to Bridging (immediately) how is that distinct from a credit bid?
- Was it Bridging or the Monitor who suggested that the revised Bob Thomas offer should include an assumption of debt? Did the Monitor advise Bob Thomas that the Mahal offer contained such a provision? If so, when?

- Did the Monitor ever tell Bob Thomas that the other offer (the Mahal Offer) was also a going concern offer?
- In the Monitor's professional opinion, was it reasonable for Bob Thomas to assume, from information from the Monitor advising that both his bid and the Mahal bid were both going concern offers, and the Mahal offer was for greater consideration, that his bid would not be the winning bid in this process?
- Please advise whether or not the Monitor was ever advised by the purchaser that the purpose of their bid was to find a means to effectively liquidate the inventory for the benefit of Bridging?
- The Monitor invited Thomas Canning to attend a meeting on May 9th to hear updates on the sale process. Representatives of Thomas Canning did not attend. Presumably Bridging did. Please advise how many such meetings attended by Bridging or their counsel, formal or otherwise, took place until a winning bid was chosen?
- Is it fair to say that Bridging was aware of all material developments in the bidding process and was provided with all information it required from the Monitor related to same?
- At any of these meetings did the Monitor advise Bridging of its requirement to keep the information confidential? If so, what was Bridging's response. Please produce any correspondence related to this and confirming that Bridging was to abide by this obligation.
- Please advise what steps the Monitor took to ensure that Bridging was not disclosing confidential information to the purchaser.
- Did the Monitor disclose the offers received on May 26 to Bridging? Please advise and produce any related correspondence between the Monitor, Bridging and or their counsel and or the proposed purchasers and or their counsel.
- Did the Monitor disclose the offers and related correspondence between May 30th and June 2nd to Bridging? Please advise and produce and related correspondence as above.
- The Monitor repeatedly asked the company whether or not they were intending to bid in the RISP. Did the Monitor ever ask Bridging the same question? If so, please advise when, and as to their answer. If the question was posed in writing, please provide that correspondence.
- Please confirm that it was the Monitor's position that no sales process updates were provided to Bill and Bob Thomas unless they agreed not to bid. Please advise why the Monitor continued to pursue this issue and what concern it was attempting to address.
- Please confirm that in fact no such updates were ever provided to the Company or Bill Thomas until after the bids were submitted.
- why did the Monitor not use the assistance of the company in negotiating the transition of the sale with the purchaser and attending to the wind down of operations? In retrospect, would that assistance have been useful in connection with the various post closing issues which have arisen?
- Other than signing the NDA, did the Monitor have any other contact with the purchaser prior to May 26th? I am advised the company did not.
- Why did the Monitor attend court on June 21 to approve a deal which was not signed and not fully negotiated and was still subject to due diligence and financing conditions? Why did the Monitor not adjourn the hearing pending execution of a binding deal? Did not the RISP allow for the Monitor to reject all offers?

- Was the Monitor being pressured by Bridging to proceed with the Mahal offer?
- Did the monitor ask the purchaser as to his intention with the business? If not, why not. If yes, what was the response? Please provide all relevant correspondence.
- The Monitor reported to the Court that the sale was to preserve the business. Please advise what investigations the Monitor made to prove this was likely to be true and whether, in retrospect, it now feels that it failed to ask the appropriate all the necessary questions.
- Does the Monitor know that the purchaser has now offered the equipment located at the plant (valued at over \$5,000,000) to our client at no cost, provided they pay to remove it? Did the purchaser ever advise the Monitor that it did not really want the equipment?
- What value was given to those equipment assets in the purchase price allocation in the APA?
- Is the Monitor aware that the purchaser has offered to the Thomas's to farm the land for free (but he unfortunately did so too late and by that time all the harvestable crops were destroyed)? Did the purchaser ever indicate to the Monitor that it had no interest in or ability to farm the land?
- Is the Monitor aware that the purchaser is advising people that it now intends to use the business as nothing more than a warehouse which he intends to construct on the premises? In the Monitor's business judgment, is it reasonable for someone to pay \$22,000,000 for a warehouse located nowhere near their business?
- Please provide all correspondence between the purchaser and or its counsel and the Monitor related the transaction or the post-closing issues.
- Please provide the emails which Mr. Dunn is referring to in his letter reproduced in your motion record. Please provide the Monitor's response to Mr. Dunn's letter.

Affidavit of Clark Lonergan, sworn June 14, 2017 (Exhibit G to the Monitor's Report)

- Please produce the fees affidavit for the remainder of the Monitor's fees and activities after June 11th
- Exhibit F to the Clark Lonergan affidavit:

Invoice 20402017

- 05/05/21017 – what is meant by the entry “Waste water disposal review” and what steps did the Monitor take during its term to address this issue and to ensure the purchaser or receiver would address it?
- 05/09/2017 – who attended the “lender meeting and update” and what was discussed? What “strategic options” were reviewed? Whose costs were reviewed in the “costs review” and what was decided?
- 05/11/2017 – please provide/describe the “seedling update” referred to in this entry? Did it relate to Rol-Land farms?
- 05/21/2017 – which “stakeholders” were provided with the update? Please provide a copy of this update.
- 06/08/2017 – what instructions did lender's counsel provide as to the “desired outcome of the court hearing”? Was it usual for the Lender to provide instructions to the Monitor of this sort?
- 06/09/2017 – please produce the “estimated security position.” If it differs from the information otherwise produced in response to earlier questions.
- 06/09/2017 – please produce the Lease analysis.

Invoice 20402016

- 05/17/2017 – please provide summary of sale process
- 05/19/2017 – who are the “stakeholders” referred to herein? Who attended the discussion? Please provide any correspondence related thereto or documents shared at the meeting unless already provided in response to our questions above
- 05/24/2017 – who are the entities listed? Are any of them the ultimate purchaser? Which “stakeholders” were advised?
- 05/26/2017 – which stakeholders were advised? Did Bridging advise at that time of its relationship with the purchaser? Did the Monitor ask at that time if there was such a relationship?
- 05/27/2017 – who are the “stakeholders”? Was information about the Thomas bid provided to Bridging?
- 05/30/2017 – what was discussed with counsel to the Lender?
- 05/31/2017 – please produce the updated offer analysis.
- 06/01/2017 – why was the Monitor conducting an inventory analysis prior to selection of a winning bidder? How was it required? Who requested it? There does not appear to be a

working capital adjustment in the offer which would necessitate such a count be conducted.

- 06/08/2017 – please produce the updated offer summary.
- 06/08/2017 – who attended the “site visit”. was it the purchasers first such visit?
- 06/08/2017 – who attended the “site visit”? What observations, if any, did the purchaser make to the Monitor, if any? Did it appear to the Monitor that the purchaser knew the business? Did the Monitor hear comments from the purchaser which indicated to the Monitor that the purchaser understood what it had purchased?

Affidavit of George Benchetrit, sworn June 15, 2017 (Exhibit H to Monitor’s Report)

- May 9, 2017 – who attended that meeting and what was discussed? Please provide any notes from that meeting or documents provided unless otherwise provided above
- May 25, 2017 – what “matters” were discussed with the lender and what, if anything, was provided or decided?
- June 5, 2017 – what was discussed with Lender counsel? What was the position of the Lender related to the two pending offers?
- June 6, 2017 – please provide correspondence referred to in this entry.

Receiver's Report

- Paragraph 7 – explain how the winning bidder was determined or selected by Bridging?
- Paragraph 8 – please produce a fully executed version of the APA.
- Paragraph 8 – how did the Monitor determine the corporate purchaser was owned by Mahal? Is Mahal the only owner of that corporation?
- Paragraph 18 – what discussions with Management did the Receiver have to which it is referring in this paragraph? All management was discharged on June 21.
- Paragraph 21 – what did the Receiver do to take possession and preserve the value pending closing? In the Receiver's view, were these efforts successful?
- Paragraph 23 – were the mobile homes of the migrant workers repossessed on June 21 or 22, rendering them homeless?
- Paragraph 23 – did Bridging require that all employees be fired? Did the purchaser? If not, why was it in the interest of the business (which had not yet been sold) to terminate all employees so abruptly?
- Paragraph 23(k) – please produce the correspondence with the tote lessors referred to herein.
- Paragraph 24 – please advise as to the differences, if any, between the two offers submitted by Mahal and the ultimate APA signed by the purchaser. When was it actually executed by the purchaser and the Receiver? (the copy in the report is unsigned and undated)
- Paragraph 27 – given that the purchaser was not able to close the transaction as required under the offer by June 21, why did the Receiver not just seize the deposit and remarket the business? The deposit was more than sufficient to operate for the balance of the growing season.
- Paragraph 27 - Why did the Monitor's Report not advise the court that the financing of the APA was conditional, complex and uncertain? Was this unknown to the Monitor on June 15th? The Monitor reported to the court at paragraph 102 in its report that "the parties intend to close the transaction on June 21, or shortly thereafter."
- Paragraph 27 - who is the Receiver referring to as the "lender" for the purchaser in paragraph 27? Is it not Bridging?
- Paragraph 28 – Please produce the assumption agreement. When did Bridging advise the assumption of debt was acceptable to them? Did they require any changes to the document? If so, please produce the earlier drafts.
- Paragraph 28/29 – Please produce the cheque or wire transfer delivered on closing. What was its source? When was it paid, net of the reserve, to Bridging? Please provide that wire transfer or bank draft etc. evidencing the payment and evidence of who cashed that cheque or received that wire.
- Paragraph 31 – What discussions did the Monitor or Receiver have with the purchaser about these totes? Why were they not necessary? Did the fact that the purchaser did not want them give the Receiver/Monitor reason to doubt their intent?
- Please provide whatever agreement was entered into with each of the lessors with respect to these totes and their use by the purchaser at closing. Why was there no positive adjustment in the transaction for the use of the totes?

- Please provide evidence of the consent of the lessors and Bill and Bob Thomas to the use of their leased property by the Purchaser.
- Paragraph 33- on what basis under the APA are those funds collected not funds of the receivership? Why are they payable to the purchaser?
- Paragraph 34 – why were these reasons not reasonably foreseeable by the Monitor at the time of its report to court? In light of these reasons, why did the Receiver not simply seize the deposit and continue operations until a genuine sale could be found?
- Paragraph 34 - Given that the business had been under observation of Richter since April 20th, why is it reasonable to say that the “state of the business” was a valid unknown that caused an unexpected outcome?
- Paragraph 35 - what assistance is Richter offering? Is there an agreement? If so, please produce same. How is Richter being paid? Are any of these expenses being charged to the receivership?
- Paragraph 36 – why does the purchaser continue to advise parties that the transaction has not closed and that all his money remains with his lawyer pending certain adjustments and inventory counts?
- Paragraph 37 – why was the vesting order registered on title to all the land only showing a purchase price of \$3,050,000 for the land? Is that all that was actually paid by purchaser? Did the Monitor or receiver make any inquiries in this regard?
- Please confirm how many totes were used in the operation of the business and where they were located at the time of the hand-off from the Monitor.
- Please explain how, in the Receiver's opinion, the business could possibly be continued without the use of the totes by the purchaser?
- Please advise what steps the Receiver took to ensure the safety of the totes during the period after June 21st.
- In the Receiver's view, were the totes in the same condition as at June 21 as they were as at August 30th?
- What was the rationale provided by the Purchaser to the Monitor as to why it was prepared to accept the open ended commitment added as paragraph 7 to the vesting order? Please provide any correspondence from the Monitor or Receiver to the purchaser and any correspondence in reply accepting this change.
- Who prepared the asset purchase agreement which appears at appendix “E”? Is it the receiver's form or the purchaser's? We note the version provided is version 5. Please provide the previous 4 versions so that we can see the changes required by the purchaser and all related correspondence.
- Why did the Receiver not extract a concession or some benefit from the fact that the purchaser failed to close by June 21 as required in the APA? It would appear from section 2.3 that the deposit should have been forfeit.
- Did the Receiver contact Bob Thomas and/or his counsel to see if he would revive his offer when the closing date was missed. If not, why not?
- Please produce the allocation of purchase price as per section 2.5 of the agreement. Please produce all documents delivered on closing not otherwise already provided under any previous questions.

- Please provide a copy of the signed and delivered Receiver's certificate
- Does Richter have a pre-existing business relationship with the purchaser?
- What steps did the Receiver or Monitor take to ensure that the purchaser had the necessary licences to operate the business?
- What steps did the Receiver/Monitor take to ensure that the purchaser had the necessary engineering certification to operate the business?
- What steps did the Receiver/Monitor take to ensure the purchaser would attend to all environmental requirements of the company?
- Please advise as to the conditions of the farming fields on the property prior to June 21st. How would you describe the condition of those fields today?
- As the Receiver is aware, those fields need to be maintained to a certain standard and managed in order to ensure there is no runoff of fertilizer and other harmful chemical by products. Please confirm what steps the receiver took to ensure that these fields would continue to meet reasonable environmental standards.

TAB U



REPLY TO: SAM RAPPOS
FILE NO.: 52980
DIRECT: 416-218-1137
FAX: 416-218-1837
EMAIL: samr@chaitons.com

September 27, 2017

VIA EMAIL

David Ullmann
Blaney, McMurty LLP
2 Queen Street East, Suite 1500
Toronto, Ontario M5C 3G5

Re: *In The Matter of the Receivership of Thomas Canning (Maidstone) Limited et al - Court File No. CV-17-11773-00CL*

Dear Mr. Ullmann,

We write to you in response to the list of questions for the Monitor we received from Ms. Teodorescu on Friday September 22, 2017 at approximately 7:05 pm. As you know, the litigation timetable that was agreed to and forms part of the Endorsement of Justice Hainey dated September 13, 2017 requires the Monitor to review and respond to the questions by the date hereof.

We have reviewed the questions with the Monitor and, based on our review, it appears that most, if not all, of the questions are related to the sale process completed by the Monitor and the sale transaction approved by the Court pursuant to the Approval and Vesting Order of Justice Conway dated June 21, 2017.

As you know, in considering whether to approve a sale transaction, the Court considers the factors set out in *Royal Bank of Canada v. Soundair Corp.*, which include considerations as to the efficacy and integrity of the sale process and whether there had been any unfairness in the process.

The approval of the sale transaction by the Court was not opposed by the Company and, in fact, Mr. Thomas confirmed in his affidavit sworn June 20, 2017 that the Company supported the sale transaction.

As a result of the approval of the sale transaction and the granting of the Approval and Vesting Order, the Court was satisfied that the *Soundair* principles had been met.

Accordingly, in our view, all of the questions posed by your clients are effectively collateral attacks on the Approval and Vesting Order.

As a result, we are of the view that direction from the Court is needed. The Monitor intends to bring a motion to address whether any of the questions are appropriate questions for the Monitor to answer given the granting of the Approval and Vesting Order and Court approval of the sale transaction.



We will be in touch with the Court tomorrow morning to confirm available hearing dates for the end of next week and will revert back to you on this.

Yours truly,
CHAITONS LLP

Sam Rappos

(computer generated signature)

Sam Rappos
LAWYER

Cc: *Richter Advisory Group Inc.*
Aird & Berlis

TAB V

From: [David T. Ullmann](#)
To: [Sam P. Rappos](#)
Cc: "[Loneragan, Clark](#)"; [Sam Babe](#); [George Benchetrit](#); [Alexandra Teodorescu](#)
Subject: Re: Thomas Canning
Date: Thursday, September 28, 2017 12:58:31 AM

Sam,

Thank you for your email. The position you have taken in your email, sent at 10pm this evening, 5 days after you received our questions, could have been sent on the day you received them, given the position you have taken. I can only draw the inference that you deliberately waited until this moment in order to create unnecessary time pressure and to purposefully jeopardize the schedule you consented to. That inference is fortified by your suggestion that the motion you propose in your letter be held at the end of next week which would render the outcome of that motion moot. That kind of behavior from a court officer is certainly disappointing and will be drawn to the attention of the court.

Your comments about the order of Justice Conway approving the sale process on June 21 are wrong. There was no factum presented to the court citing Sound Air at the June 21 hearing that I recall, nor was there any argument or fact finding from the court with respect to the integrity of sale process run by your client. The court can approve a sale without approving a sale process. That is all that happened on June 21. The question of your client's conduct with respect to the sale process was expressly adjourned.

Our client supported the sale in order to save the business (although that promised salvation ultimately proved to be a sham as you know). However, our client's support was expressly limited to not approving the sale process, as set out in the affidavit of Mr. Thomas sworn June 20th. Had you actually tried to approve the sale process on June 21, we would have objected. Indeed we did.

The order granted approves the sale, not the sale process. The approval of the sale process is bound up in the approval of the Monitor's conduct, which conduct will be assessed on October 17th.

On the other hand, if you are satisfied that the sale order approved the sale process and are prepared to carve out from the approval order you are seeking on the 17th any approval of the sale process or the monitor's conduct connected to same, we will seek instructions from our client to see if that might resolve this matter. If, as you suggest, the sale process has been approved, the approval of the Monitor's conduct in that regard should be moot and you should be comfortable in relying on the protection in the June 21 order.

Finally, even if you are right (which you are not), that the questions of the sale process need

not be answered, that does not excuse you from answering the other questions. Your failure to answer any questions is completely inappropriate.

In our view this does not require a motion, but if it does it certainly cannot wait until the end of next week. We intend to attend at court on September 28th at 9:30 (i.e. 8 hours from now) in front of Justice Hainey to seek to direction.

In the interim, I would ask that you review and assemble all of the productions required by our questions so that there will be no delay in you producing them when the court orders you to do so, which I am quite certain it will do. I also wish to advise you that we will almost certainly receive instructions in the AM to schedule the examination of the Receiver/Monitor in order to avoid any further delay by you or your client. Please confirm the Monitor's availability for such an examination next week. We will clear our schedule to accommodate the Monitor and make sure it is completed in that week. I would expect we will need a day. We will require productions in advance of that examination.

I remind you that Justice Hainey was quite clear in his direction that we were entitled to ask questions and your client was to answer them. You consented to that process in establishing the schedule to the motion. We cannot leave these questions unanswered. We had hoped that the Monitor would provide useful information which was missing from its and the Receiver's report. We are very disappointed by your approach to this issue.

If you will not consent to the Monitor being examined, we will seek the instruction of the Court in that regard later this morning. I will see you at court.

Regards,

David



David T. Ullmann
Partner

dullmann@blaney.com

416-596-4289 | 416-594-2437

Blaney.com

This communication is intended only for the party to whom it is addressed, and may contain information which is privileged or confidential. Any other delivery, distribution, copying or disclosure is strictly prohibited and is not a waiver of privilege or confidentiality. If you have received this telecommunication in error, please notify the sender immediately by return electronic mail and destroy the message.

From: Sam P. Rappos <samr@chaitons.com>
Sent: September 27, 2017 10:10 PM
To: David T. Ullmann
Cc: 'Lonergan, Clark'; Sam Babe; Ken Rosenstein; George Benchetrit
Subject: Thomas Canning

Please see the attached letter dated September 27, 2017.

Sam P. Rappos

Lawyer

Direct Tel: 416.218.1137

Direct Fax: 416.218.1837

samr@chaitons.com

5000 Yonge Street, 10th Floor, Toronto, Canada, M2N 7E9

www.chaitons.com



Note: This e-mail may be privileged and/or confidential, and the sender does not waive any related rights and obligations. Any distribution, use or copying of this e-mail or the information it contains by other than an intended recipient is unauthorized. If you received this e-mail in error, please advise me (by return e-mail or otherwise) immediately.

Ce courrier électronique est confidentiel et protégé. L'expéditeur ne renonce pas aux droits et obligations qui s'y rapportent. Toute diffusion, utilisation ou copie de ce message ou des renseignements qu'il contient par une personne autre que le (les) destinataire(s) désigné(s) est interdite. Si vous recevez ce courrier électronique par erreur, veuillez m'en aviser immédiatement, par retour de courrier électronique ou par un autre moyen.

TAB W

9:30 A.M.

249

COUNSEL SLIP

COURT FILE NO CV-17-11773-00CL DATE SEPT 28, 2017

NO ON LIST 9A

TITLE OF PROCEEDING BRIDGING FINANCE INC.
THOMAS CANNING et al.

COUNSEL FOR: PHONE & FAX NOS
PLAINTIFF(S)
APPLICANT(S)
PETITIONER(S)

COUNSEL FOR: PHONE & FAX NOS
DEFENDANT(S) David Ullmann for Thomas Canning
RESPONDENT(S) 416 596-4237 4239
416 593-4237 (F)

28 Sept 17

D. Ullmann

Mr Ullmann attends today seeking an ex parte motion date for Oct 2/17 claiming the Monitor has failed to copy to the timetable of Justice Heine. He advises that yesterday ^{Mr (late last night)} he asked other counsel to attend today & they refused.

I am not prepared to schedule the motion, but I will schedule a 9:30 spot on Oct 2/17. Mr Ullmann to follow and advise the other parties. If there are problems with the date they can contact

The Commercial Office -
 Issues relating to the timetable
 will be dealt with at the
 4:30 pm meeting. I am not
 prepared to make any ruling
 today.

McEnt

BRIDGING FINANCE INC.,
as agent for SPROTT BRIDGING INCOME FUND LP
Applicant

- and -

THOMAS CANNING (MAIDSTONE) LIMITED and
692194 ONTARIO LIMITED
Respondents

Court File No. CV-17-11773-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDING COMMENCED AT TORONTO

MOTION RECORD OF THE RECEIVER
(re motion for advice and direction)
(returnable January 11, 2018)

CHAITONS LLP
5000 Yonge Street, 10th floor
Toronto, Ontario M2N 7E9

Sam Rappos (LSUC # 51399S)
Tel: (416) 218-1137
Fax: (416) 218-1187
Email: samr@chaitons.com

Lawyers for Richter Advisory Group Inc.,
Court-appointed Receiver