

**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

**RESPONDING MOTION RECORD  
of the 2016 Growers**

September 15, 2017

**SCOTT PETRIE LLP**  
Law Firm  
200-252 Pall Mall Street  
London ON N6A 5P7

**John D. Goudy, LSUC #50612H**  
Tel: 519-433-5310  
Fax: 519-433-7909  
Email: [jgoudy@scottpetrie.com](mailto:jgoudy@scottpetrie.com)

Lawyers for the 2016 Growers

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AMENDED, AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c.  
C.43, AS AMENDED**

**AFFIDAVIT OF IAN S. WRIGHT**

I, Ian S. Wright, of the City of London, in the County of Middlesex, **MAKE OATH AND SAY:**

1. I am a partner in the law firm of Scott Petrie LLP, lawyers for the 2016 Growers. As such, I have knowledge of the matters to which I hereinafter depose.
2. I make this affidavit based on my own information and belief. Where I have relied upon the information of others, I have identified the source of that information and verily believe that information to be true.
3. Our firm was retained by the 2016 Growers to act on their behalf in the proceeding before the Ontario Farm Products Marketing Commission (the "Commission") in respect of an Order issued to Thomas Canning (Maidstone) Limited dated April 13, 2017. The 2016 Growers consist of the following farm businesses: Stan Gillier Farms Ltd., Konecny Farms Inc., Brian Devries Farms Inc., Lycoland Farms Ltd., 1473534 Ontario Ltd. c.o.b. as Tri-Lan

Farms, Oxley Wridge Farms Ltd., Jon-Ern Farms Limited, McGeachy Farms (1997) Limited, and Robert McKerrall c.o.b. as Robert McKerrall Farms.

4. The 2016 Growers commenced an action in the Superior Court of Justice File No. CV-17-24728 against Thomas Canning (Maidstone) Limited, Jack Thomas, Bill Thomas, Bob Thomas and Brian Payne claiming damages arising from the failure of Thomas Canning (Maidstone) Limited to take delivery of all tomatoes grown by the 2016 Growers as required by "Processor-Grower Tomato Contracts" between the individual growers and Thomas Canning (Maidstone) Limited. Attached hereto as **Exhibit "A"** to this my affidavit is a copy of the 2016 Growers' Statement of Claim.

5. Each of the 2016 Growers appears in the List of Creditors attached to the Notice and Statement of the Receiver received by our firm on June 30, 2017, a copy of which is attached hereto as **Exhibit "B"** to this my affidavit.

6. Counsel for the Receiver has confirmed to John Goudy, my law partner, that the amounts stated in the Notice and Statement of the Receiver as owing to the 2016 Growers were to be changed to reflect the amounts claimed in their court action. Attached hereto as **Exhibit "C"** to this my affidavit is a copy of the email correspondence between Counsel for the Receiver, Sam Rappos, and John Goudy with respect to the amounts stated in the Notice and Statement of the Receiver.

7. By Notice of Hearing issued May 24, 2017, the Commission scheduled a hearing to take place to consider submissions with respect to the April 13, 2017 order. Attached hereto as **Exhibit "D"** to this my affidavit is copy of the Notice of Hearing.

8. I am advised by John Goudy and verily believe that he served a Document Brief on behalf of the 2016 Growers in the Commission hearing process on June 20, 2017, in accordance with the Notice of Hearing, and with the intention of participating in the June 28, 2017 hearing on behalf of the 2016 Growers. Attached hereto as **Exhibit "E"** to this my affidavit is a copy of the Document Brief.

9. On June 23, 2017, the Commission issued a Notice of Adjournment of the hearing that had been scheduled for June 28, 2017. The Commission adjourned the hearing until it would have confirmation that the sale of the assets of Thomas Canning (Maidstone)

Limited, by then approved by the Approval and Vesting Order of Justice Conway dated June 21, 2017, had closed. Attached hereto as **Exhibit "F"** to this my affidavit is a copy of the Notice of Adjournment.

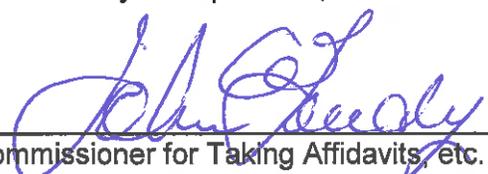
10. On June 30, 2017, Jim Clark, the Chair of the Commission, wrote to the Ontario Processing Vegetable Growers and the Ontario Tomato Seedling Growers' Marketing Board regarding the June 21, 2017 Approval and Vesting Order made by Justice Thomas in this proceeding and the \$1.2 million reserve (the "holdback funds"), and a copy of the letter was sent to our firm. Attached hereto as **Exhibit "G"** to this my affidavit is a copy of the June 30, 2017 letter from the Commission.

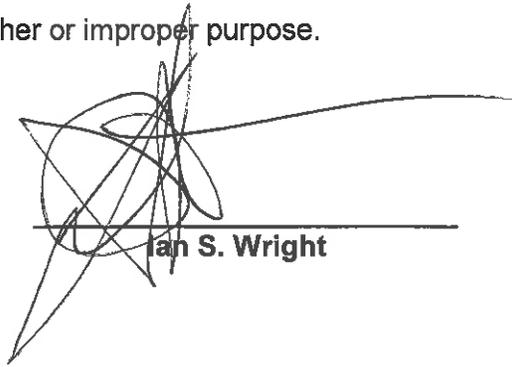
11. On July 28, 2017, the Commission issued a Notice of Cancellation of Hearing cancelling the hearing process related to the Thomas Canning (Maidstone) Limited vegetable processor licence altogether. The Commission advised that the sale of the assets of Thomas Canning (Maidstone) Limited had closed on July 7, 2017 and that Thomas Canning's licence as a processor of vegetables No. 1994-18 had expired. Attached hereto as **Exhibit "H"** to this my affidavit is a copy of the Notice of Cancellation of Hearing.

12. Attached hereto as **Exhibit "I"** to this my affidavit is a copy of our firm's account for services to the 2016 Growers for the period June 2, 2017 to June 30, 2017 with respect to the Commission proceeding. I am advised by John Goudy and verily believe that this account accurately reflects the services provided by our firm to the 2016 Growers and that the 2016 Growers have paid the account in full.

13. I make this Affidavit in support of the 2016 Growers' request for payment out of the holdback funds in this proceeding, and for no other or improper purpose.

Sworn before me at the  
City of London  
in the County of Middlesex on  
this 15th day of September, 2017.

  
\_\_\_\_\_  
Commissioner for Taking Affidavits, etc.

)  
)  
)  
)  
  
\_\_\_\_\_  
Ian S. Wright

Court File No. CV-17- 24728

**ONTARIO SUPERIOR COURT OF JUSTICE**

BETWEEN:

STAN GILLIER FARMS LTD., KONECNY FARMS INC,  
BRIAN DEVRIES FARMS INC., LYCOLAND FARMS LTD.,  
1473534 ONTARIO LTD cob as TRI-LAN FARMS,  
OXLEY WRIDGE FARMS LTD., JON-ERN FARMS LIMITED,  
McGEACHY FARMS (1997) LIMITED, and  
ROBERT McKERRALL cob as ROBERT McKERRALL FARMS

Plaintiffs

— and —

THOMAS CANNING (MAIDSTONE) LTD.,  
JACK THOMAS, BILL THOMAS, BOB THOMAS and BRIAN PAYNE

Defendants

**STATEMENT OF CLAIM**

TO THE DEFENDANTS:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service in this court office, WITHIN TWENTY DAYS after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES,

This is Exhibit A referred to in the affidavit of Jan S. Wright sworn before me, this 15<sup>th</sup> day of September 2017  
*[Signature]*  
A COMMISSIONER FOR TAKING AFFIDAVITS

LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court

Date: March 6, 2017

Issued by:

  
Registrar

Address of

Court office: 245 Windsor Avenue  
Windsor, ON N9A 1J2

**TO: THOMAS CANNING (MAIDSTONE) LTD.**  
326 South Talbot Rd.  
R.R. #1  
Maidstone, ON N0R 1K0

**AND**

**TO: JACK THOMAS**  
c/o Thomas Canning (Maidstone) Ltd.  
326 South Talbot Rd.  
R.R. #1  
Maidstone, ON N0R 1K0

**AND**

**TO: BILL THOMAS**  
c/o Thomas Canning (Maidstone) Ltd.  
326 South Talbot Rd.  
R.R. #1  
Maidstone, ON N0R 1K0

**AND**

**TO: BOB THOMAS**  
c/o Thomas Canning (Maidstone) Ltd.  
326 South Talbot Rd.  
R.R. #1  
Maidstone, ON N0R 1K0

**AND**

**TO: BRIAN PAYNE**  
c/o Thomas Canning (Maidstone) Ltd.  
326 South Talbot Rd.  
R.R. #1  
Maidstone, ON N0R 1K0

## CLAIM

1. The Plaintiffs claim as against all Defendants, jointly and severally, damages in the aggregate amount of \$2,852,529.54 for breach of contract and/or conspiracy and/or inducing breach of contract, comprised of the following amounts:
  - a) \$253,915.20 payable to the Plaintiff, Stan Gillier Farms Ltd. ("Gillier");
  - b) \$379,619.85 payable to Konecny Farms Inc. ("Konecny");
  - c) \$264,575.02 payable to Lycoland Farms Ltd. ("Lycoland");
  - d) \$329,036.40 payable to Brian Devries Farms Inc. ("Devries");
  - e) \$394,628.39 payable to 1473534 Ontario Ltd. carrying on business as Tri-Lan Farms ("Tri-Lan");
  - f) \$266,236.18 payable to Oxley Wridge Farms Ltd. ("Oxley");
  - g) \$375,827.76 payable to Jon-Ern Farms Limited ("Jon-Ern");
  - h) \$217,054.25 payable to McGeachy Farms (1997) Limited ("McGeachy"); and,
  - i) \$371,636.49 payable to Robert McKerrall carrying on business as Robert McKerrall Farms ("McKerrall").
2. Further, the Plaintiffs claim:
  - a) their costs of this proceeding, with any applicable taxes thereon, payable on a substantial indemnity basis;
  - b) pre- and post-judgment interest in accordance with the contract rate, or, in the alternative, with rates prescribed by the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended; and,
  - c) such further and other relief as this Honourable Court deems just.

### *The Parties*

3. The Plaintiff, Gillier, is a company incorporated pursuant to the laws of the Province of Ontario, carrying on business as a farming operation, and more specifically a grower of tomatoes, in Chatham, Ontario.

4. The Plaintiff, Konecny, is a company incorporated pursuant to the laws of the Province of Ontario, carrying on business as a farming operation, and more specifically a grower of tomatoes, in Tupperville, Ontario.
5. The Plaintiff, Lycoland, is a company incorporated pursuant to the laws of the Province of Ontario, carrying on business as a farming operation, and more specifically a grower of tomatoes, in Leamington, Ontario.
6. The Plaintiff, Devries, is a company incorporated pursuant to the laws of the Province of Ontario, carrying on business as a farming operation, and more specifically a grower of tomatoes, in Dresden, Ontario.
7. The Plaintiff, Tri-Lan, is a company incorporated pursuant to the laws of the Province of Ontario, carrying on business as a farming operation, and more specifically a grower of tomatoes, in Chatham, Ontario.
8. The Plaintiff, Oxley, is a company incorporated pursuant to the laws of the Province of Ontario, carrying on business as a farming operation, and more specifically a grower of tomatoes, in Harrow, Ontario.
9. The Plaintiff, Jon-Ern, is a company incorporated pursuant to the laws of the Province of Ontario, carrying on business as a farming operation, and more specifically a grower of tomatoes, in Blenheim, Ontario.
10. The Plaintiff, McGeachy, is a company incorporated pursuant to the laws of the Province of Ontario, carrying on business as a farming operation, and more specifically a grower of tomatoes, in Chatham, Ontario.
11. The Plaintiff, McKerrall, is an individual residing in the Province of Ontario, who operates a farming operation, and more specifically a grower of tomatoes, in Chatham, Ontario.
12. The Defendant, Thomas Canning (Maidstone) Limited ("Thomas Canning"), is a company incorporated pursuant to the laws of Canada, carrying on business in Maidstone, Ontario as a process of, in part, tomatoes.

13. The Defendant, Jack Thomas, is a resident of the Province of Ontario, and is the President and a shareholder of Thomas Canning ("Jack").
14. The Defendant, Bill Thomas, is a resident of the Province of Ontario, and is the Vice-President of Production and a shareholder of Thomas Canning ("Bill").
15. The Defendant, Bob Thomas, is a resident of the Province of Ontario, and is the Vice-President of Engineering & Plant Development and a shareholder of Thomas Canning ("Bob").
16. The Defendant, Brian Payne, is a resident of the Province of Ontario, and is the Chief Financial Officer of Thomas Canning ("Brian").

#### *The Contracts*

17. Each of the Plaintiffs entered into a separate "Processor-Grower Tomato Contract" with Thomas Canning. Pursuant to those contracts, each Plaintiff agreed to "plant, cultivate and care" for a specified number of acres of tomatoes and "to sell and deliver" to Thomas Canning a specific tonnage of tomatoes in the 2016 growing season.
18. In return, Thomas Canning, as the Processor, agreed "to purchase" and "to accept delivery and to pay for the tomatoes under the terms specified in the regulations of the Farm Products Marketing Act for the year 2016."
19. Each of the Plaintiffs planted, cultivated and cared for the tonnage specified in their respective contracts.
20. However, Thomas Canning only accepted delivery and paid for a portion of the tomatoes for which it contracted; it refused or denied delivery and did not pay for a bulk of the tomatoes for which it contracted.
21. Specifically,
  - a) On April 25<sup>th</sup>, 2016, Gillier contracted for 3,150 tons, of which Thomas Canning only accepted delivery and paid for 860 tons, leaving 2,290 tons of tomatoes for which delivery was refused or denied by Thomas Canning.

- b) On April 25<sup>th</sup>, 2016, Konecny contracted for 4,325 tons, of which Thomas Canning only accepted delivery and paid for 691.35 tons; Konecny was able to sell 209.95 tons of the Thomas Canning contract tomatoes to ConAgra Foods Canada Inc., thereby leaving 3,423.7 tons of tomatoes for which delivery was refused or denied by Thomas Canning.
- c) On April 25<sup>th</sup>, 2016, Lycoland contracted for 4,050 tons, of which Thomas Canning only accepted delivery and paid for 946.93 tons, leaving 3,103.07 tons of tomatoes for which delivery was refused or denied by Thomas Canning.
- d) On April 25<sup>th</sup>, 2016, Devries contracted for 3,600 tons, of which Thomas Canning only accepted and paid for 632.5 tons, except for a \$1,547.71 shortfall, leaving 2,967.5 tons of tomatoes for which delivery was refused or denied by Thomas Canning.
- e) On April 25<sup>th</sup>, 2016, Tri-Lan contracted for 4,320 tons, of which Thomas Canning only accepted delivery and paid for 774.9 tons, leaving 3,545.1 tons of tomatoes for which delivery was refused or denied by Thomas Canning.
- f) On April 18<sup>th</sup>, 2016, Oxley contracted for 3,150 tons, of which Thomas Canning only accepted delivery and paid for 531.36 tons; Oxley was able to sell 107.21 tons of the Thomas Canning contract tomatoes to Dell Wall Food, thereby leaving 2,511.43 tons of tomatoes for which delivery was refused or denied.
- g) On April 25<sup>th</sup>, 2016, Jon-Ern contracted for 4,074.3 tons, of which Thomas Canning only accepted delivery and paid for 684.8 tons, leaving 3,389.5 tons of tomatoes for which delivery was refused or denied by Thomas Canning.
- h) On April 25<sup>th</sup>, 2016, McGeachy contracted for 3,155.85 tons, of which Thomas Canning only accepted delivery and paid for 1,005.49 tons; McGeachy was able to sell 192.8 tons of the Thomas Canning contract tomatoes to ConAgra Foods Canada Inc., thereby leaving 1,957.56 tons of tomatoes for which delivery was refused or denied by Thomas Canning.

- i) On April 25<sup>th</sup>, 2016, McKerrall contracted for 4,050 tons, of which Thomas Canning only accepted delivery and paid for 698.3 tons, leaving 3,351.7 tons of tomatoes for which delivery was refused or denied by Thomas Canning.
22. Each Plaintiff grew the necessary tonnage as required by its contract with Thomas Canning and in doing so spent moneys on seedlings, fertilizer, fuel, etc.
23. Each Plaintiff was at all material times ready, willing and able to deliver all contracted tonnage to Thomas Canning.
24. As a result of Thomas Canning's refusal to accept delivery of the tomatoes grown by the Plaintiffs, each Plaintiff has suffered a loss of both profit on, and expenses incurred in growing, its undelivered tomato crop. While the contractually agreed upon purchase price was \$121.16 per ton, the Plaintiffs acknowledge that such compensation would have included the costs of harvesting and delivery. Accordingly, the Plaintiffs have calculated their damages using a recognized crop insurance value of \$110.88 per ton, which discounts for harvesting and delivery costs, as follows:

<i>Plaintiff</i>	<i>Remaining Tons</i>	<i>Damages @ \$110.88/ton</i>	<i>Adjustments</i>	<i>Damages Claimed</i>
Stan Gillier Farms Ltd.	2,290.00	\$253,915.20	None	\$253,915.20
Konecny Farms Inc.	3,423.70	\$379,619.85	None	\$379,619.85
Lycoland Farms Ltd.	3,103.07	\$344,068.40	Less \$79,493.38 (insurance payment & overpayment)	\$264,575.02
Brian Devries Farms Inc.	2,967.50	\$329,036.40	None	\$329,036.40
1473534 Ontario Ltd. (Tri-Lan)	3,545.10	\$393,080.68	Plus \$1,547.71 (payment shortfall)	\$394,628.39
Oxley Wridge Farms Ltd.	2,511.43	\$278,467.35	Less \$12,231.17 (insurance payment)	\$266,236.18
Jon-Ern Farms Limited	3,389.50	\$375,556.60	None	\$375,827.76
McGeachy Farms (1997) Limited	1,957.56	\$217,054.25	None	\$217,054.25
Robert McKerrall	3,351.70	\$371,636.49	None	\$371,636.49
<b>TOTAL</b>				<b>\$2,852,529.54</b>

25. Due to the nature of the business of tomato growing, which is a regulated farm industry, unless otherwise noted above, the Plaintiffs were unable to otherwise sell or dispose of the tomatoes that they had grown for Thomas Canning but for which delivery was refused or denied, thereby frustrating any attempts by the Plaintiffs to mitigate their respective damages.

*Liability of the Defendants*

26. The Plaintiffs state that Thomas Canning, by its failure to accept delivery of the tomatoes grown by the Plaintiffs in accordance with their respective contracts with Thomas Canning, is in breach of those contracts and is liable for damages in the amounts set out herein.
27. The Plaintiffs state that Jack, Bob, Bill and Brian, as high ranking officials and the controlling minds of Thomas Canning, have induced Thomas Canning to breach its contractual obligations to the Plaintiffs in that, knowing there were valid and enforceable contracts existing between the Plaintiffs and Thomas Canning, have without lawful justification interfered to cause Thomas Canning to breach those contracts, and their actions have resulted in the Plaintiffs having suffered damage. As such, Jack, Bob, Bill and Brian are liable to the Plaintiffs for damages caused by inducing Thomas Canning's breach of contract.
28. Further, the Plaintiffs state that Jack, Bob, Bill and Brian have together conspired to cause financial injury to the Plaintiffs by causing Thomas Canning to breach its contracts, and did so without lawful justification and knew, or should have known, that their actions would result in financial injury to the Plaintiffs. As such, Jack, Bob, Bill and Brian are liable to the Plaintiffs for the tort of conspiracy.
29. The Plaintiff proposes that this action be tried at Windsor, Ontario.

Date: March 6, 2017

**JEFFREY J. HEWITT (LSUC #38571N)**  
13300 Tecumseh Road East, Suite 340  
Windsor, ON N8N 4R8  
Telephone: (519) 995-6325  
Email: jeff@hewittlaw.ca  
*Lawyer for the Plaintiffs*

**STAN GILLIER FARMS LTD. et al**      **v.**      **THOMAS CANNING (MAIDSTONE) LTD. et al**  
*Plaintiffs*      *Defendants*

ONTARIO  
SUPERIOR COURT OF JUSTICE

Proceedings commenced at WINDSOR

**STATEMENT OF CLAIM**

**JEFFREY J. HEWITT**

*Lawyer*

13300 Tecumseh Rd. E., Suite 340  
Windsor, Ontario N8N 4R8  
Ph: 519-995-6325  
Email: [jeff@hewitlaw.ca](mailto:jeff@hewitlaw.ca)

LSUC #38571N

*Lawyer for the PLAINTIFFS*

# RICHTER

**Notice and Statement of the Receiver**  
(Subsections 245(1) and 246(1) of the *Bankruptcy and Insolvency Act*)

**In the Matter of the Receivership of**  
**Thomas Canning (Maldstone) Limited and 692194 Ontario Limited**  
Of the City of Maldstone  
In the Province of Ontario

The Receiver gives notice and declares that:

1. By order (the "Receivership Order") of the Honourable Madam Justice Conway of the Ontario Superior Court of Justice (Commercial List) (the "Court") dated June 21, 2017 (the "Date of Appointment"), Richter Advisory Group Inc. ("Richter") was appointed receiver (the "Receiver") in respect of all the assets, undertakings and properties (the "Property") of Thomas Canning (Maldstone) Limited ("TCL") and 692194 Ontario Limited ("692", and together with TCL, the "Company"), pursuant to section 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.
2. The Receivership Order was granted pursuant to an application made by Bridging Finance Inc., as agent for Sprott Bridging Income Fund LP ("Bridging"), pursuant to security held by Bridging in the assets, property and undertakings of the Company, including a general security agreement and mortgages, representing a charge over all the Property.
3. On the same date the Court issued the Receivership Order, the Court issued a subsequent order (the "Approval and Vesting Order") approving the sale of substantially all of the Company's business and assets (the "Sale Transaction") to 2581150 Ontario Inc. (the "Purchaser").
4. On the Date of Appointment, the Receiver took possession of certain of the Property as outlined below. According to the Company's most recent internal, unaudited, financial statements as at June 21, 2017, the Property consisted of the following:

**Thomas Canning (Maldstone) Limited**

<u>Assets</u>	<u>Net Book Value</u> <u>(CAD \$000s)</u>
Cash and Cash Equivalents	3
Accounts Receivable	3,176
Prepaid Expenses	1,143
Deferred Expenses	519
Inventory	11,678
Fixed Assets - Land & Building	3,418
Fixed Assets - Equipment	3,438
<b>Total</b>	<u><u>23,375</u></u>

*Note: The above amounts represent book values of the Company's assets as detailed in the Company's book and records and do not necessarily represent sale or liquidation values. Additionally, as noted in the Interim Receiver and Monitor's report dated June 15, 2017, the Company's books and records are significantly out of date and certain assets such as inventory and accounts receivable are overstated (~\$2 million and \$800k respectively). Financial statements for 692 were not made available to the Receiver.*

Richter Advisory Group Inc. 181  
Bay St., Suite 3320  
Bay Wellington Tower Toronto, ON  
M5J 2T3  
www.richter.ca

Toronto, Montreal, Chicago

This is Exhibit B referred to in the  
affidavit of Jam. S. Wright  
sworn before me, this 15<sup>th</sup>  
day of September 2017  
Chris Speady  
A COMMISSIONER FOR TAKING AFFIDAVITS



5. The following information relates to the receivership:

(a) Address of insolvent persons:

*Thomas Canning  
 (Maidstone) Limited  
 692194 Ontario Limited  
 R.R. #1,  
 326 South Talbot Road,  
 Maidstone, Ontario, Canada  
 N0 1 1 K0*

(b) Principal lines of business:

- 1) TCL - tomato processing and canning operations
- 2) 692 - holding company of TCL shares and certain real estate holdings

(c) Location(s) of business:

*Thomas Canning  
 (Maidstone) Limited  
 692194 Ontario Limited  
 R.R. #1,  
 326 South Talbot Road,  
 Maidstone, Ontario, Canada  
 N0 1 1 K0*

- (d) The estimated amounts owed, as at May 31, 2017, by the Company to each creditor who holds security on the Property described above, pursuant to the Company's books and records and a search of the Personal Property Security Registration System (Ontario), is as follows (please note the below amounts are based on the Company's books and records and have not been audited or otherwise verified by the Receiver):

Secured Creditor	Estimated Claim
Bridging Finance Inc., as agent (Note 1)	\$ 21,894,777
Gould Lease Ltd; CLE Leasing Enterprise Ltd; Capmore Financial Services Corporation – in Trust; Bodkin Capital Corporation; and 1419768 Ontario Inc. o/a D&D Leasing (collectively, the "Tote Leases") (Note 2)	\$ Unknown
John Thomas; Julie Thomas; Robert Thomas; William Thomas (collectively, the "Shareholder Loans") (Note 3)	\$ 1,181,219
Employees (pursuant to section 81.4 of the BIA)	\$ 23, 315

*Note 1: The above amount is based on information provided by Bridging. Please note that any USD denoted obligations have been converted to CAD (FX rate of 1.35). Only Bridging obligations are registered against 692.*

*Note 2: The Tote Leases relate to specific leased assets used to store and transport tomato product. Bodkin Capital Corporation also has an additional PPSA registration against all of TCL's property. The Tote Leases were all registered against TCL subsequent to Bridging's registration.*

*Note 3: The Shareholder Loans' registration is against all of TCL's property. The Receiver understands that the Shareholder Loans have been postponed and assigned to Bridging and were all registered subsequent to Bridging's registration.*

- (e) A consolidated list of the Company's other creditors and the amount owed to each creditor, as per the Company's

books and records, is set out in the attached schedule. Please note that the Receiver has not audited or otherwise verified this information.

(f) The intended plan of action of the Receiver during the receivership proceedings is to exercise its powers and duties, as set out in the Receivership Order, including to take such steps as necessary to complete the Sale Transaction as authorized and directed by the Court.

(g) Contact person for Receiver:

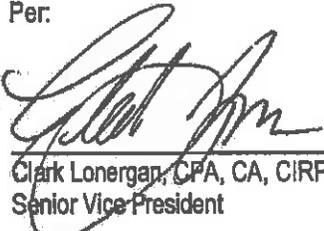
Wajahat Mahmood, CPA, CA, CBV  
Telephone: (416) 642-0820  
Fax: 416.488.3765  
E-mail: [claims@richter.ca](mailto:claims@richter.ca)

6. Further information regarding the receivership proceedings and materials related to the proceedings, including copies of the Receivership Order, may be obtained from the Receiver's website at <http://www.richter.ca/Folder/Insolvency-Cases/T/Thomas-Canning-Limited>

Dated at Toronto, in the Province of Ontario, on June 30, 2017

Richter Advisory Group Inc.  
in its capacity as Receiver of  
Thomas Canning (Maidstone) Limited and 692194 Ontario Limited

Per:



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

**List of Creditors**  
**Thomas Canning (Maidstone) Limited and 692194 Ontario Limited**

1046391 Ontario Inc.	53.53	
2190330 Ontario Inc.	325,000.00	
649963 Ontario Limited - Kevin	183,504.44	<b>Note 2</b>
Aabco Propane (Dowler Karn)	1,426.11	
Advantage Farm Equipment	787.32	
Agricorp-Rmp: Grains And Oilse	763.39	
Amex Freight	1,350.00	
BC Global Resources	673.12	
Bell Canada - Public Access	169.50	
Bell Canada - Public Access	169.50	
Bell Mobility	642.73	
Butcher Engineering Enterpris	42,127.23	
CanAg Travel Services Ltd.	unknown	<b>Note 3</b>
Carther Plants Ltd.	20,748.11	
Charron Transport Ltd.	707.15	
Chep Canada Inc.	7,011.70	
CN Revenue Management	6,311.52	
Coxon's Sales And Rentals Ltd.	6,328.00	
Curtis-JK Printing Ltd.	10,881.95	
Domino Printing Solutions Inc.	371.07	
F.A.R.M.S.	2,135.70	
FP Gushue And Associates Inc.	673.86	
Frank Lafferty Ltd.	4,754.02	
Felix Transport Ltd	1,900.00	
Global Time Recorders Inc.	155.94	
Global Freight Services	1,465.72	
Great-West Life	949.51	
GS1 Canada	2,712.00	
Heinzseed	15,925.00	
Home Hardware	40.66	
Hotham Building Materials	187.94	
HUB International Ontario Limi	1,702.00	
Hydro - One Networks Inc.	3,059.76	
Hymark Farm	170.00	
Intelecom Solutions Inc.	28.09	
Jack Thomas	220.35	
J. T. Mechanical	22,333.31	
Livingston International Inc.	10.46	
Lsi Supply Inc.	91.74	
Lycoland Farms Ltd.	203,241.74	<b>Note 2</b>
Marsham International Food Bro	18,979.32	
Mcgeachy Farms Ltd.	175,077.45	<b>Note 2</b>
Merchants Paper Co	129.14	
Minotaur Software Ltd.	8,726.99	
My Office Incorporated	unknown	<b>Note 3</b>

**List of Creditors**  
**Thomas Canning (Maidstone) Limited and 692194 Ontario Limited**

Nebs Business Products Limited	unknown	Note 3
1636488 Ontario Limited	960.50	
Orkin Canada	146.90	
Oxley Wridge Farms Ltd.	217,858.14	Note 2
Petro-Canada	57.22	
Praxair Distribution	255.83	
Purolator Courier Ltd.	748.73	
Rebel Packaging Inc.	1,883.21	
Rogers	359.22	
Rol-Land Farms And Greenhouses	43,154.97	
Safe N Save Logistics Inc.	6,652.35	
Samuel Strapping Systems	2,772.14	
Saskatchewan Finance	unknown	Note 3
Seana International	21,789.58	
Settingington'S Fertilizer Ltd	1,778.81	
Desjardins Fcdq	48.50	
Staples Advantage	410.21	
Thompsons Limited	27,055.50	
Thomas Lager & Singer Inc.	15,488.25	
Town Of Lakeshore (Water)	695.57	
Tomato Solutions	28,444.20	
Town Of Lakeshore	11,163.70	
TST Overland Express	3,254.14	
Union Gas Ltd.	3,334.77	
United Parcel Service	134.87	
Waddick Fuels - SX	1,702.97	
W.E. Killam Enterprises	158.09	
Windsor Factory Supply Ltd.	unknown	Note 3
Windsor Disposal Services Ltd.	6,416.55	
Xpress Canada	24,556.30	
Applied Products, Inc.	1,270.51	Note 1
Ball Corporation	344,779.88	Note 1
Can Corporation Of America, Inc	149,295.62	Note 1
CB Services, LLC	25,186.27	Note 1
DHL Global Forwarding	1,449.79	Note 1
Great Lakes Transport Solution	765.33	Note 1
Georgia-Pacific Corrugated LLC	15,219.01	Note 1
Seedling Incorporated	48,400.31	Note 1
SPS Commerce, Inc	613.06	Note 1
Zhang Na	931.70	Note 1
Brian Devries Farms Inc.	252,235.80	Note 2
Konecny Farms	287,640.85	Note 2
Robert Mckerrall Farms	284,904.70	Note 2
Jon-Ern Farms Ltd.	286,043.70	Note 2

**List of Creditors**  
**Thomas Canning (Maldstone) Limited and 692194 Ontario Limited**

Stan Gillier Farms	194,634.70	<b>Note 2</b>
Tri-Lan Farms (1473534 Ontario Ltd.)	278,380.10	<b>Note 2</b>
Triple P Farms	205,751.74	<b>Note 2</b>
Tony De Nijs (959699 Ontario Inc.)	221,817.55	<b>Note 2</b>
T. Van Dellan (J&J Farms)	92,120.49	<b>Note 2</b>
Eva Mozes	2,500.00	
Donald Johnson	20,241.52	
Mary Andres	556.82	
Ministry Of Agriculture And Food ("Ontario")	unknown	<b>Note 3</b>
	<hr style="width: 100%; border: 0.5px solid black;"/>	
	4,209,717.75	

**Note:**

- (1) USD amount translated to CAD at June 21, 2017 Bank of Canada rate - \$1.3310
- (2) Include amounts related an ongoing litigation the Company.
- (3) This amount is unknown as of this date.

**From:** Sam P. Rappos <samr@chaitons.com>  
**Sent:** Tuesday, July 25, 2017 10:44 AM  
**To:** John Goudy  
**Subject:** RE: Bridging Finance Inc. v. Thomas Canning (Maidstone) Limited et al, Court File No. CV-17-11773-00CL

John,

The amount owed to your client's as listed in the Receiver's notice will be changed to reflect the amount claimed in the action.

Thanks,  
 Sam

---

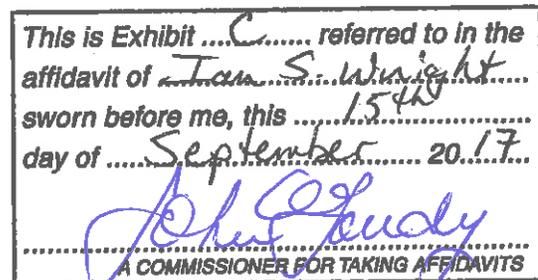
Sam P. Rappos  
 Lawyer | Chaitons LLP | T: 416.218.1137

---

**From:** John Goudy [mailto:JGoudy@scottpetrie.com]  
**Sent:** Friday, July 21, 2017 10:58 AM  
**To:** Sam P. Rappos  
**Subject:** RE: Bridging Finance Inc. v. Thomas Canning (Maidstone) Limited et al, Court File No. CV-17-11773-00CL

Thanks very much.

JOHN D. GOUDY | Partner  
 Scott Petrie LLP, Law Firm  
 200-252 Pall Mall Street  
 London, Ontario N6A 5P6  
 Tel: (519) 433-5310 Ext. 236  
 Fax: (519) 433-7909  
 E-mail: [jgoudy@scottpetrie.com](mailto:jgoudy@scottpetrie.com)



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**From:** Sam P. Rappos [mailto:samr@chaitons.com]  
**Sent:** Friday, July 21, 2017 10:57 AM  
**To:** John Goudy  
**Subject:** RE: Bridging Finance Inc. v. Thomas Canning (Maidstone) Limited et al, Court File No. CV-17-11773-00CL

John,

Attached is the endorsement dated July 5, 2017. The motion was originally booked for September 11, but due to no judges being available, the date was changed to September 27. No timetable was set out in the endorsement.

I will follow up with the Receiver regarding the Receiver's notice and the amount listed as being owed by your clients.

Cheers,  
 Sam

---

**Sam P. Rappos**

Lawyer | Chaitons LLP | T: 416.218.1137

---

**From:** John Goudy [<mailto:JGoudy@scottpetrie.com>]

**Sent:** Friday, July 21, 2017 10:17 AM

**To:** Sam P. Rappos

**Subject:** RE: Bridging Finance Inc. v. Thomas Canning (Maidstone) Limited et al, Court File No. CV-17-11773-00CL

Dear Sam,

I understand that September 11 has been set as the next court hearing date in the receivership process. If there was an endorsement made at the last hearing on July 5, could you please send me a copy? Otherwise, was any further timetable ordered apart from the September 11 date? If so, please let me know.

In the meantime, my clients have reviewed the June 30 Notice and Statement of the Receiver that was sent out and note that the amounts listed in the List of Creditors in respect of their individual claims do not reflect the amounts claimed in their civil action (see attached copy of the Statement of Claim at para. 24). Is the Receiver able to explain the basis on which the numbers set out in the List of Creditors were determined? For what it is worth, and subject to the Receiver's explanation, my clients would request that the list be amended to reflect the damage amounts claimed in the Statement of Claim.

I look forward to hearing from you.

Thanks again,

JOHN D. GOUDY | Partner

Scott Petrie LLP, Law Firm

200-252 Pall Mall Street

London, Ontario N6A 5P6

Tel: (519) 433-5310 Ext. 236

Fax: (519) 433-7909

E-mail: [jgoudy@scottpetrie.com](mailto:jgoudy@scottpetrie.com)

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**From:** Sam P. Rappos [<mailto:samr@chaitons.com>]

**Sent:** Friday, June 30, 2017 2:26 PM

**To:** John Goudy

**Cc:** 'Sam Babe'; 'Lonergan, Clark'; Forbes, Katherine; Mahmood, Wajahat; David T. Ullmann; 'Timothy Dunn'; 'neil@neilboykolaw.com'; [bobthomas67@hotmail.ca](mailto:bobthomas67@hotmail.ca); William Thomas; 'diane.winters@justice.gc.ca'; 'kevin.ohara@ontario.ca'; 'mike.relf@ontario.ca'; 'bleil@spencerbutcher.com'; 'gspurr@wilsonspurrllaw.ca'; 'dvd5@bell.net'; 'kevin.mccormack@agricorp.com'; 'service@ctscoxons.com'; 'greg.meredith@ontario.ca'; 'george.borovilos@ontario.ca'; Denis Blondin; 'Ireland, Michele (OMAFRA)'; 'Vanessa.Glasser@ontario.ca'; 'thomasca@mnsi.net'

**Subject:** RE: Bridging Finance Inc. v. Thomas Canning (Maidstone) Limited et al, Court File No. CV-17-11773-00CL

John,

From my point of view, there are three issues outstanding that need to be addressed and a single court hearing should be scheduled to address all three issues. The 930 chambers appointment on Wednesday should be used to set down a schedule and hearing date.

The first issue is the return of the Monitor's motion seeking its discharge, approval of fees and disbursements, and related relief, which was adjourned. The second and third issues arise, and should be clarified through a notice of motion from Mr. Ullmann, with

respect to the Company's motion for payment of Mr. Ullmann's fees and disbursements, and payment of certain amounts identified in the Affidavit of Robert Thomas, in priority to the claims of the secured lender to the \$1.2 million reserve being held by the Receiver from the net proceeds of sale.

It would be preferable for the parties to agree to a timetable and hearing of all of these issues at a single time, and then attend on Wednesday to have it blessed by the Court.

Thanks,  
Sam

---

**Sam P. Rappos**  
Lawyer | Chaitons LLP | T: 416.218.1137

---

**From:** John Goudy [<mailto:JGoudy@scottpetrie.com>]

**Sent:** Friday, June 30, 2017 2:19 PM

**To:** Sam P. Rappos

**Cc:** 'Sam Babe'; 'Lonergan, Clark'; Forbes, Katherine; Mahmood, Wajahat; David T. Ullmann; 'Timothy Dunn'; 'neil@neilboykolaw.com'; 'bobthomas67@hotmail.ca'; William Thomas; 'diane.winters@justice.gc.ca'; 'kevin.ohara@ontario.ca'; 'mike.relf@ontario.ca'; 'bleil@spencerbutcher.com'; 'gspurr@wilsonspurrllaw.ca'; 'dvd5@bell.net'; 'kevin.mccormack@agricorp.com'; 'service@ctscoxons.com'; 'greg.meredith@ontario.ca'; 'george.borovilos@ontario.ca'; Denis Blondin; 'Ireland, Michele (OMAFRA)'; 'Vanessa.Glasser@ontario.ca'; 'thomasca@mnsi.net'

**Subject:** RE: Bridging Finance Inc. v. Thomas Canning (Maldstone) Limited et al, Court File No. CV-17-11773-00CL

Mr. Rappos,

I am counsel to the 2016 Thomas Canning Growers. The endorsement of Justice Conway from June 21, 2017 indicates that the motion "re the Monitor's requested relief" was to be scheduled for July 5, 2017 before Justice Conway. I understand that relief to be what is set out in Richter's Notice of Motion dated June 15, 2017 with respect to the discharge and release of the Monitor, approval of Monitor's fees, and related relief. Could you please confirm whether my understanding is correct?

More particularly, I would ask for your confirmation that the disposition of the \$1,200,000 reserve that is the subject of paragraph 24(b) in Justice Conway's order appointing Richter as receiver dated June 21, 2017 is not being addressed on July 5. My clients may wish to participate in the proceedings with respect to that reserve and would request that they be notified of any request for relief in respect of that reserve.

Thank you in advance. I look forward to hearing from you.

Yours truly,

**JOHN D. GOUDY** | Partner  
Scott Petrie LLP, Law Firm  
200-252 Pall Mall Street  
London, Ontario N6A 5P6  
Tel: (519) 433-5310 Ext. 236  
Fax: (519) 433-7909  
E-mail: [jgoudy@scottpetrie.com](mailto:jgoudy@scottpetrie.com)

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**Ontario Farm Products Marketing  
Commission**

1 Stone Road West, 5<sup>th</sup> Floor SW  
Guelph, (Ontario) N1G 4Y2  
Tel: (519) 826-4220  
Fax: (519) 826-3400

**Commission de commercialisation des  
produits agricoles de l'Ontario**

1 Stone Road West, 5<sup>th</sup> Floor SW  
Guelph (Ontario) N1G 4Y2  
Tél.: (519) 826-4220  
Télééc.: (519) 826-3400



Ontario

**NOTICE OF HEARING**

- IN THE MATTER OF:** The *Farm Products Marketing Act* ("FPMA") and sections 3 to 8 of Regulation 440 (Vegetables for Processing – Marketing) made under the FPMA
- AND IN THE MATTER OF:** An order of Ontario Farm Products Marketing Commission ("Commission") issued to Thomas Canning (Maidstone) Limited ("Thomas Canning") dated April 13, 2017 ("Order")
- AND IN THE MATTER OF:** A request from Thomas Canning to the Commission asking for an oral hearing dated April 24, 2017
- AND IN THE MATTER OF:** A pre-hearing teleconference held on May 11, 2017 pursuant to Rule 5.0 of the Commission's Rules of Procedure.

**TAKE NOTICE** of the hearing in this matter to be held by the Commission on **June 28, 2017**, commencing at **9:30 a.m.** in the Agriculture, Food and Rural Affairs Appeal Tribunal hearing room, Ontario Government Building, 1 Stone Road West, Ground Floor, Guelph, Ontario. The hearing is open to the public.

**AND FURTHER TAKE NOTICE THAT** the purpose of the hearing will be for the parties to make submissions with respect to the terms set out in the Order.

**AND FURTHER TAKE NOTICE THAT** if a party does not attend the hearing, the Commission may proceed in the party's absence and the party will not be entitled to any further notice in the proceeding.

**AND FURTHER TAKE NOTICE THAT:**

- 1) By **Wednesday, June 21, 2017 at 4:00 p.m.**, the parties are to deliver to each other party one copy of all relevant documentary evidence and other materials of any kind whatsoever intended to be relied upon at the hearing including a list of any witnesses the party intends to call to give oral evidence at the hearing. The

An Agency of the Government of Ontario  
Un organisme du gouvernement de l'Ontario

This is Exhibit ...	D	referred to in the
affidavit of ...	John S. Wright	A bonne terre, bons produits
sworn before me, this ...	15 <sup>th</sup>	
day of ...	September	20..17
 A COMMISSIONER FOR TAKING AFFIDAVITS		



presentation of the party may be included if desired. In addition to any other materials Thomas Canning may choose to submit, **Thomas Canning's materials** shall include its business plan for making settlement with all growers for tomatoes not received or paid for in 2016.

- 2) By **Wednesday, June 21, 2017 at 4:00 p.m.**, each party is to deliver to the **Commission eight copies** of all relevant documentary evidence and other materials of any kind whatsoever the party intends to rely upon at the hearing including a list of any witnesses the party intends to call to give oral evidence at the hearing. The presentation of the party may be included if desired.

**AND FURTHER TAKE NOTICE THAT** the hearing room is wheelchair accessible. If you are a participant in the proceeding and have specific accommodation needs due to a disability, please contact the Secretary by telephone at (519) 826-5199 or by e-mail at [mike.relf@ontario.ca](mailto:mike.relf@ontario.ca) at least five days prior to the hearing.

**AND FURTHER TAKE NOTICE THAT** any party may have a representative at the hearing.

If you wish to be a party to this proceeding and have not been named on the last two pages of this notice or if you have any questions concerning this notice, please contact the Secretary by telephone at (519) 826-5199 or by e-mail at [mike.relf@ontario.ca](mailto:mike.relf@ontario.ca).

Mike Relf  
Secretary  
Ontario Farm Products Marketing Commission

Dated at Guelph, Ontario  
May 24, 2017

- TO:** Thomas Canning (Maidstone) Ltd.  
 c/o Mr. David Ullmann  
 Blaney McMurtry LLP  
 2 Queen Street East, Suite 1500  
 Toronto ON M5C 3G5  
[dullmann@blaney.com](mailto:dullmann@blaney.com)
- AND TO:** Bridging Finance Inc.  
 c/o Mr. Sam Babe  
 Aird and Berlis LLP  
 181 Bay Street, Suite 1800, Box 754  
 Brookfield Place  
 Toronto, ON M5J 2T9  
[sbabe@airdberlis.com](mailto:sbabe@airdberlis.com)
- AND TO:** Richter Advisory Group Inc.  
 c/o Sam Rappos  
 Chaitons LLP  
 5000 Yonge Street, 10th Floor  
 Toronto, ON M2N 7E9  
[samr@chaitons.com](mailto:samr@chaitons.com)
- AND TO:** OPVG  
 c/o Mr. Rob Wilson  
 Wilson, Spurr  
 261 Martindale Road Unit 16B  
 St. Catharines, ON L2W 1A2  
[rwilson@wilsonspurrlaw.ca](mailto:rwilson@wilsonspurrlaw.ca)
- AND TO:** David Dick  
 Ontario Tomato Seedling Growers' Marketing Board  
 16 Talbot Street East  
 Leamington, ON N8H 1L2  
[dvd5@bell.net](mailto:dvd5@bell.net)
- AND TO:** Jeffrey Hewitt, Lawyer  
 13300 Tecumseh Road East, Suite 340  
 Windsor, ON N8N 4R8  
[jeff@hewittlaw.ca](mailto:jeff@hewittlaw.ca)

**AND TO (FOR INFORMATION ONLY):**

Greg Meredith, Deputy Minister  
Ontario Ministry of Agriculture, Food and Rural Affairs  
1 Stone Road West, 2<sup>nd</sup> Floor  
Guelph ON N1G 4Y2  
[greg.meredith@ontario.ca](mailto:greg.meredith@ontario.ca)

**ONTARIO FARM PRODUCTS MARKETING COMMISSION**

IN THE MATTER OF: The Farm Products Marketing Act ("FPMA") and sections 3 to 8 of Regulation 440 (Vegetables for Processing – Marketing) made under the FPMA

AND IN THE MATTER OF: An order of Ontario Farm Products Marketing Commission ("Commission") issued to Thomas Canning (Maidstone) Limited ("Thomas Canning") dated April 13, 2017 ("Order")

AND IN THE MATTER OF: The hearing in this matter to be held by the Commission on June 28, 2017

**DOCUMENT BRIEF OF THE 2016 GROWERS**

- | <b>TAB</b> | <b>Document</b>   |
|------------|---|
| 01.        | Statement of Claim issued March 6, 2017 in Ontario Superior Court of Justice File No. CV-17-24728 |
| 02.        | 2016 Thomas Canning (Maidstone) Limited Processor-Grower Tomato Contract                          |
| 03.        | List of 2016 Growers and Representatives  |

Date: June 20, 2017

**SCOTT PETRIE** <sup>LLP</sup>  
Law Firm  
200-252 Pall Mall St.  
London, ON N6A 5P6

**John D. Goudy**  
(LSUC No. 50612H)  
Tel: (519) 433-5310  
Fax: (519) 433-7909  
email: [jgoudy@scottpetrie.com](mailto:jgoudy@scottpetrie.com)

Lawyers for the 2016 Growers

This is Exhibit F referred to in the affidavit of Jan S. Wright sworn before me, this 15<sup>th</sup> day of September 2017

*John D. Goudy*  
A COMMISSIONER FOR TAKING AFFIDAVITS

Court File No. CV-17- 24728**ONTARIO SUPERIOR COURT OF JUSTICE**

BETWEEN:

STAN GILLIER FARMS LTD., KONECNY FARMS INC,  
 BRIAN DEVRIES FARMS INC., LYCOLAND FARMS LTD.,  
 1473534 ONTARIO LTD cob as TRI-LAN FARMS,  
 OXLEY WRIDGE FARMS LTD., JON-ERN FARMS LIMITED,  
 McGEACHY FARMS (1997) LIMITED, and  
 ROBERT McKERRALL cob as ROBERT McKERRALL FARMS

Plaintiffs

— and —

THOMAS CANNING (MAIDSTONE) LTD.,  
 JACK THOMAS, BILL THOMAS, BOB THOMAS and BRIAN PAYNE

Defendants

**STATEMENT OF CLAIM**

TO THE DEFENDANTS:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service in this court office, WITHIN TWENTY DAYS after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES.

LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court

Date: March 6, 2017

Issued by:

  
Registrar

Address of

Court office: 245 Windsor Avenue  
Windsor, ON N9A 1J2

**TO: THOMAS CANNING (MAIDSTONE) LTD.**  
326 South Talbot Rd.  
R.R. #1  
Maidstone, ON N0R 1K0

**AND**

**TO: JACK THOMAS**  
c/o Thomas Canning (Maidstone) Ltd.  
326 South Talbot Rd.  
R.R. #1  
Maidstone, ON N0R 1K0

**AND**

**TO: BILL THOMAS**  
c/o Thomas Canning (Maidstone) Ltd.  
326 South Talbot Rd.  
R.R. #1  
Maidstone, ON N0R 1K0

**AND**

**TO: BOB THOMAS**  
c/o Thomas Canning (Maidstone) Ltd.  
326 South Talbot Rd.  
R.R. #1  
Maidstone, ON N0R 1K0

**AND**

**TO: BRIAN PAYNE**  
c/o Thomas Canning (Maidstone) Ltd.  
326 South Talbot Rd.  
R.R. #1  
Maidstone, ON N0R 1K0

## CLAIM

1. The Plaintiffs claim as against all Defendants, jointly and severally, damages in the aggregate amount of \$2,852,529.54 for breach of contract and/or conspiracy and/or inducing breach of contract, comprised of the following amounts:
  - a) \$253,915.20 payable to the Plaintiff, Stan Gillier Farms Ltd. ("Gillier");
  - b) \$379,619.85 payable to Konecny Farms Inc. ("Konecny");
  - c) \$264,575.02 payable to Licoland Farms Ltd. ("Licoland");
  - d) \$329,036.40 payable to Brian Devries Farms Inc. ("Devries");
  - e) \$394,628.39 payable to 1473534 Ontario Ltd. carrying on business as Tri-Lan Farms ("Tri-Lan");
  - f) \$266,236.18 payable to Oxley Wridge Farms Ltd. ("Oxley");
  - g) \$375,827.76 payable to Jon-Ern Farms Limited ("Jon-Ern");
  - h) \$217,054.25 payable to McGeachy Farms (1997) Limited ("McGeachy"); and,
  - i) \$371,636.49 payable to Robert McKerrall carrying on business as Robert McKerrall Farms ("McKerrall").
2. Further, the Plaintiffs claim:
  - a) their costs of this proceeding, with any applicable taxes thereon, payable on a substantial indemnity basis;
  - b) pre- and post-judgment interest in accordance with the contract rate, or, in the alternative, with rates prescribed by the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended; and,
  - c) such further and other relief as this Honourable Court deems just.

### *The Parties*

3. The Plaintiff, Gillier, is a company incorporated pursuant to the laws of the Province of Ontario, carrying on business as a farming operation, and more specifically a grower of tomatoes, in Chatham, Ontario.

4. The Plaintiff, Konecny, is a company incorporated pursuant to the laws of the Province of Ontario, carrying on business as a farming operation, and more specifically a grower of tomatoes, in Tupperville, Ontario.
5. The Plaintiff, Lycoland, is a company incorporated pursuant to the laws of the Province of Ontario, carrying on business as a farming operation, and more specifically a grower of tomatoes, in Leamington, Ontario.
6. The Plaintiff, Devries, is a company incorporated pursuant to the laws of the Province of Ontario, carrying on business as a farming operation, and more specifically a grower of tomatoes, in Dresden, Ontario.
7. The Plaintiff, Tri-Lan, is a company incorporated pursuant to the laws of the Province of Ontario, carrying on business as a farming operation, and more specifically a grower of tomatoes, in Chatham, Ontario.
8. The Plaintiff, Oxley, is a company incorporated pursuant to the laws of the Province of Ontario, carrying on business as a farming operation, and more specifically a grower of tomatoes, in Harrow, Ontario.
9. The Plaintiff, Jon-Ern, is a company incorporated pursuant to the laws of the Province of Ontario, carrying on business as a farming operation, and more specifically a grower of tomatoes, in Blenheim, Ontario.
10. The Plaintiff, McGeachy, is a company incorporated pursuant to the laws of the Province of Ontario, carrying on business as a farming operation, and more specifically a grower of tomatoes, in Chatham, Ontario.
11. The Plaintiff, McKerrall, is an individual residing in the Province of Ontario, who operates a farming operation, and more specifically a grower of tomatoes, in Chatham, Ontario.
12. The Defendant, Thomas Canning (Maidstone) Limited ("Thomas Canning"), is a company incorporated pursuant to the laws of Canada, carrying on business in Maidstone, Ontario as a process of, in part, tomatoes.

13. The Defendant, Jack Thomas, is a resident of the Province of Ontario, and is the President and a shareholder of Thomas Canning ("Jack").
14. The Defendant, Bill Thomas, is a resident of the Province of Ontario, and is the Vice-President of Production and a shareholder of Thomas Canning ("Bill").
15. The Defendant, Bob Thomas, is a resident of the Province of Ontario, and is the Vice-President of Engineering & Plant Development and a shareholder of Thomas Canning ("Bob").
16. The Defendant, Brian Payne, is a resident of the Province of Ontario, and is the Chief Financial Officer of Thomas Canning ("Brian").

#### *The Contracts*

17. Each of the Plaintiffs entered into a separate "Processor-Grower Tomato Contract" with Thomas Canning. Pursuant to those contracts, each Plaintiff agreed to "plant, cultivate and care" for a specified number of acres of tomatoes and "to sell and deliver" to Thomas Canning a specific tonnage of tomatoes in the 2016 growing season.
18. In return, Thomas Canning, as the Processor, agreed "to purchase" and "to accept delivery and to pay for the tomatoes under the terms specified in the regulations of the Farm Products Marketing Act for the year 2016."
19. Each of the Plaintiffs planted, cultivated and cared for the tonnage specified in their respective contracts.
20. However, Thomas Canning only accepted delivery and paid for a portion of the tomatoes for which it contracted; it refused or denied delivery and did not pay for a bulk of the tomatoes for which it contracted.
21. Specifically,
  - a) On April 25<sup>th</sup>, 2016, Gillier contracted for 3,150 tons, of which Thomas Canning only accepted delivery and paid for 860 tons, leaving 2,290 tons of tomatoes for which delivery was refused or denied by Thomas Canning.

- b) On April 25<sup>th</sup>, 2016, Konecny contracted for 4,325 tons, of which Thomas Canning only accepted delivery and paid for 691.35 tons; Konecny was able to sell 209.95 tons of the Thomas Canning contract tomatoes to ConAgra Foods Canada Inc., thereby leaving 3,423.7 tons of tomatoes for which delivery was refused or denied by Thomas Canning.
- c) On April 25<sup>th</sup>, 2016, Lycoland contracted for 4,050 tons, of which Thomas Canning only accepted delivery and paid for 946.93 tons, leaving 3,103.07 tons of tomatoes for which delivery was refused or denied by Thomas Canning.
- d) On April 25<sup>th</sup>, 2016, Devries contracted for 3,600 tons, of which Thomas Canning only accepted and paid for 632.5 tons, except for a \$1,547.71 shortfall, leaving 2,967.5 tons of tomatoes for which delivery was refused or denied by Thomas Canning.
- e) On April 25<sup>th</sup>, 2016, Tri-Lan contracted for 4,320 tons, of which Thomas Canning only accepted delivery and paid for 774.9 tons, leaving 3,545.1 tons of tomatoes for which delivery was refused or denied by Thomas Canning.
- f) On April 18<sup>th</sup>, 2016, Oxley contracted for 3,150 tons, of which Thomas Canning only accepted delivery and paid for 531.36 tons; Oxley was able to sell 107.21 tons of the Thomas Canning contract tomatoes to Dell Wall Food, thereby leaving 2,511.43 tons of tomatoes for which delivery was refused or denied.
- g) On April 25<sup>th</sup>, 2016, Jon-Ern contracted for 4,074.3 tons, of which Thomas Canning only accepted delivery and paid for 684.8 tons, leaving 3,389.5 tons of tomatoes for which delivery was refused or denied by Thomas Canning.
- h) On April 25<sup>th</sup>, 2016, McGeachy contracted for 3,155.85 tons, of which Thomas Canning only accepted delivery and paid for 1,005.49 tons; McGeachy was able to sell 192.8 tons of the Thomas Canning contract tomatoes to ConAgra Foods Canada Inc., thereby leaving 1,957.56 tons of tomatoes for which delivery was refused or denied by Thomas Canning.

- i) On April 25<sup>th</sup>, 2016, McKerrall contracted for 4,050 tons, of which Thomas Canning only accepted delivery and paid for 698.3 tons, leaving 3,351.7 tons of tomatoes for which delivery was refused or denied by Thomas Canning.
22. Each Plaintiff grew the necessary tonnage as required by its contract with Thomas Canning and in doing so spent moneys on seedlings, fertilizer, fuel, etc.
23. Each Plaintiff was at all material times ready, willing and able to deliver all contracted tonnage to Thomas Canning.
24. As a result of Thomas Canning's refusal to accept delivery of the tomatoes grown by the Plaintiffs, each Plaintiff has suffered a loss of both profit on, and expenses incurred in growing, its undelivered tomato crop. While the contractually agreed upon purchase price was \$121.16 per ton, the Plaintiffs acknowledge that such compensation would have included the costs of harvesting and delivery. Accordingly, the Plaintiffs have calculated their damages using a recognized crop insurance value of \$110.88 per ton, which discounts for harvesting and delivery costs, as follows:

<i>Plaintiff</i>	<i>Remaining Tons</i>	<i>Damages @ \$110.88/ton</i>	<i>Adjustments</i>	<i>Damages Claimed</i>
Stan Gillier Farms Ltd.	2,290.00	\$253,915.20	None	\$253,915.20
Konecny Farms Inc.	3,423.70	\$379,619.85	None	\$379,619.85
L.ycoland Farms Ltd.	3,103.07	\$344,068.40	Less \$79,493.38 (insurance payment & overpayment)	\$264,575.02
Brian Devries Farms Inc.	2,967.50	\$329,036.40	None	\$329,036.40
1473534 Ontario Ltd. (Tri-Lan)	3,545.10	\$393,080.68	Plus \$1,547.71 (payment shortfall)	\$394,628.39
Oxley Wridge Farms Ltd.	2,511.43	\$278,467.35	Less \$12,231.17 (insurance payment)	\$266,236.18
Jon-Ern Farms Limited	3,389.50	\$375,556.60	None	\$375,827.76
McGeachy Farms (1997) Limited	1,957.56	\$217,054.25	None	\$217,054.25
Robert McKerrall	3,351.70	\$371,636.49	None	\$371,636.49
<b>TOTAL</b>				<b>\$2,852,529.54</b>

25. Due to the nature of the business of tomato growing, which is a regulated farm industry, unless otherwise noted above, the Plaintiffs were unable to otherwise sell or dispose of the tomatoes that they had grown for Thomas Canning but for which delivery was refused or denied, thereby frustrating any attempts by the Plaintiffs to mitigate their respective damages.

*Liability of the Defendants*

26. The Plaintiffs state that Thomas Canning, by its failure to accept delivery of the tomatoes grown by the Plaintiffs in accordance with their respective contracts with Thomas Canning, is in breach of those contracts and is liable for damages in the amounts set out herein.
27. The Plaintiffs state that Jack, Bob, Bill and Brian, as high ranking officials and the controlling minds of Thomas Canning, have induced Thomas Canning to breach its contractual obligations to the Plaintiffs in that, knowing there were valid and enforceable contracts existing between the Plaintiffs and Thomas Canning, have without lawful justification interfered to cause Thomas Canning to breach those contracts, and their actions have resulted in the Plaintiffs having suffered damage. As such, Jack, Bob, Bill and Brian are liable to the Plaintiffs for damages caused by inducing Thomas Canning's breach of contract.
28. Further, the Plaintiffs state that Jack, Bob, Bill and Brian have together conspired to cause financial injury to the Plaintiffs by causing Thomas Canning to breach its contracts, and did so without lawful justification and knew, or should have known, that their actions would result in financial injury to the Plaintiffs. As such, Jack, Bob, Bill and Brian are liable to the Plaintiffs for the tort of conspiracy.
29. The Plaintiff proposes that this action be tried at Windsor, Ontario.

Date: March 6, 2017

**JEFFREY J. HEWITT (LSUC #38571N)**  
13300 Tecumseh Road East, Suite 340  
Windsor, ON N8N 4R8  
Telephone: (519) 995-6325  
Email: jeff@hewittlaw.ca  
*Lawyer for the Plaintiffs*



**THOMAS CANNING LTD.**

Packers of UTOPIA Brand Products

R.R. #1 - 326 South Talbot Rd.  
Maidstone, Ontario  
N6R 1K0



**PROCESSOR-GROWER TOMATO CONTRACT**

This agreement made this two thousand and sixteen between **THOMAS CANNING (MAIDSTONE) LIMITED**, of Maidstone, in the province of Ontario, Canada (hereinafter called the Processor) of the first part, Farm Products Marketing Board License No. 18 and \_\_\_\_\_ of the Township of \_\_\_\_\_ in the County of \_\_\_\_\_ (hereinafter called the Grower) of the second part.

WITNESSETH THAT in consideration of the terms, conditions and covenants hereinafter contained the Parties here to mutually covenant and agree with each other as follows.

1. The Grower agrees to plant, cultivate and care for \_\_\_\_\_ acres of Tomatoes and to sell and deliver \_\_\_\_\_ tons per acre or \_\_\_\_\_ tons in the 2016 season, to the Processor, as herein provided, at its designated factory or factory receiving station.
2. The Processor agrees to purchase the Crop of Tomatoes delivered under this agreement, as shall comply with the Tomato Grade for Processing, as specified in the agreement and award for marketing the 2016 crop of tomatoes for processing, and to pay for same as specified under option 7.
3. The Processor agrees to accept delivery and to pay for the tomatoes under the terms specified in the regulations of the Farm Products Marketing Act for the year 2016.
4. The Processor agrees to supply to the grower and the grower agrees to accept Tomato Plants in accordance with the terms of the Agreement for marketing the 2016 Crop of Tomatoes for Processing.
5. The Grower agrees, if requested, to participate in company specific pesticide residue testing. This is in addition to the Pesticide Management Program that forms part of the negotiated agreement.
6. It is mutually agreed between the Parties hereto that the Provisions of the Farm Products Marketing Act and all Regulations thereto shall apply to and form part of the Contract and be, with the above exceptions, in addition to the terms and conditions of the 2016 Agreement for the Marketing of Tomatoes for Processing to the Grower at the time of the execution of this Agreement.

IN WITNESS WHEREOF the parties hereto have signed.

GROWER:

TELEPHONE:

ADDRESS:

FAX:

PER.....

PROCESSOR: Thomas Canning (Maidstone) Ltd. PER:.....

PHONE: 519-737-1531 | FAX: 519-737-7003 | INFO@THOMASUTOPIABRAND.COM WWW.THOMASUTOPIABRAND.COM

**LIST OF 2016 GROWERS AND REPRESENTATIVES**

2016 Grower	Representative
Stan Gillier Farms Ltd.	Stan Gillier
Konecny Farms Inc.	Bill Konecny
Brian Devries Farms Inc.	Brian Devries
Lycoland Farms Ltd.	Peter Epp
1473534 Ontario Ltd. c.o.b. as Tri-Lan Farms	Frank Furlan
Oxley Wridge Farms Ltd.	Terry Wright
Jon-Ern Farms Limited	Chris Stewart
McGeachy Farms (1997) Limited	Scott McGeachy
Robert McKerrall c.o.b. as Robert McKerrall Farms	Robert McKerrall

**Ontario Farm Products Marketing Commission**

1 Stone Road West, 5<sup>th</sup> Floor SW  
Guelph, (Ontario) N1G 4Y2  
Tel: (519) 826-4220  
Fax: (519) 826-3400

**Commission de commercialisation des produits agricoles de l'Ontario**

1 Stone Road West, 5<sup>th</sup> Floor SW  
Guelph (Ontario) N1G 4Y2  
Tél.: (519) 826-4220  
Télééc.: (519) 826-3400



**NOTICE OF ADJOURNMENT OF HEARING**

**IN THE MATTER OF:** The *Farm Products Marketing Act* ("FPMA") and sections 3 to 8 of Regulation 440 (Vegetables for Processing – Marketing) made under the FPMA

**AND IN THE MATTER OF:** An order of Ontario Farm Products Marketing Commission ("Commission") issued to Thomas Canning (Maidstone) Limited ("Thomas Canning") dated April 13, 2017 ("Order")

**AND IN THE MATTER OF:** A request from Thomas Canning to the Commission asking for an oral hearing dated April 24, 2017

**AND IN THE MATTER OF:** A pre-hearing teleconference held on May 11, 2017 pursuant to Rule 5.0 of the Commission's Rules of Procedure

**AND IN THE MATTER OF:** A Notice of Hearing issued on May 24, 2017

**TAKE NOTICE** that on June 21, 2017, the Commission received a copy of an Approval and Vesting Order issued and entered in the Superior Court of Justice (Court File No. VCV-17-11773-00CL) approving an asset purchase agreement between 2581150 Ontario Inc. ("Purchaser") and Richter Advisory Group Inc. ("Richter") in its capacity as the Court-appointed receiver of the undertakings, properties and assets of each of Thomas Canning and 692194 Ontario Limited (the "Approval and Vesting Order").

An Agency of the Government of Ontario  
Un organisme du gouvernement de l'Ontario

This is Exhibit ... F ... referred to, in the affidavit of ... Jan S. Wright ... sworn before me, this ... 15<sup>th</sup> ... day of ... September ... 2017 ...  
*[Signature]*  
A COMMISSIONER FOR TAKING AFFIDAVITS

Good Things Grow in Ontario  
A bon les bons produits



**AND FURTHER TAKE NOTICE THAT**, pursuant to clause 2.1(i) of the draft Asset Purchase Agreement dated June 15, 2017 that was approved by the Court in the Approval and Vesting Order, Thomas Canning's Licence as a Processor of Vegetables No. 1994-18 will not transfer to the Purchaser because Richter does not have authority to transfer the licence.

**AND FURTHER TAKE NOTICE THAT**, as a result of these developments, the Commission has, on its own initiative, adjourned the hearing in this matter that was to be held on **June 28, 2017**, commencing at **9:30 a.m.** in Guelph, Ontario until the Commission has confirmation that the sale of Thomas Canning approved by the Approval and Vesting Order has closed. If the sale closes, the hearing in this matter will not proceed as Thomas Canning's Licence as a Processor of Vegetables No. 1994-18 will expire. If the sale does not close and Thomas Canning continues to process vegetables under its current ownership, the Commission will elect to recommence this hearing process by providing notice to the parties.

If you have any questions concerning this notice, please contact the Secretary by telephone at (519) 826-5199 or by e-mail at [mike.relf@ontario.ca](mailto:mike.relf@ontario.ca).

Mike Relf  
Secretary  
Ontario Farm Products Marketing Commission

Dated at Guelph, Ontario  
June 23, 2017

**TO:** Thomas Canning (Maidstone) Ltd.  
 c/o Mr. David Ullmann  
 Blaney McMurtry LLP  
 2 Queen Street East, Suite 1500  
 Toronto ON M5C 3G5  
[dullmann@blaney.com](mailto:dullmann@blaney.com)

**AND TO:** Bridging Finance Inc.  
 c/o Mr. Sam Babe  
 Aird and Berlis LLP  
 181 Bay Street, Suite 1800, Box 754  
 Brookfield Place  
 Toronto, ON M5J 2T9  
[sbabe@airdberlis.com](mailto:sbabe@airdberlis.com)

**AND TO:** Richter Advisory Group Inc.  
 c/o Sam Rappos  
 Chaitons LLP  
 5000 Yonge Street, 10th Floor  
 Toronto, ON M2N 7E9  
[samr@chaitons.com](mailto:samr@chaitons.com)

**AND TO:** OPVG  
 c/o Mr. Rob Wilson and Mr. Geoff Spurr  
 Wilson, Spurr LLP  
 261 Martindale Road Unit 16B  
 St. Catharines, ON L2W 1A2  
[rwilson@wilsonspurrllaw.ca](mailto:rwilson@wilsonspurrllaw.ca)  
[gspurr@wilsonspurrllaw.ca](mailto:gspurr@wilsonspurrllaw.ca)

**AND TO:** David Dick  
 Chair  
 Ontario Tomato Seedling Growers' Marketing Board  
 16 Talbot Street East  
 Leamington, ON N8H 1L2  
[dvd5@bell.net](mailto:dvd5@bell.net)

**AND TO:** 2016 Growers  
 c/o John D. Goudy  
 Scott Petrie LLP  
 200-252 Pall Mall Street  
 London, ON N6A 5P6  
[jgoudy@scottpetrie.com](mailto:jgoudy@scottpetrie.com)

**AND TO:** Hank Vander Pol  
President and CEO  
Rol-land Farms and Greenhouses Inc.  
9102 Bisnett Line, R.R. #3  
Bleinheim ON N0P 1A0  
[hvanderpol@rollandfarms.com](mailto:hvanderpol@rollandfarms.com)

**AND TO (FOR INFORMATION ONLY):**  
Greg Meredith  
Deputy Minister  
Ontario Ministry of Agriculture, Food and Rural Affairs  
1 Stone Road West, 2<sup>nd</sup> Floor  
Guelph ON N1G 4Y2  
[greg.meredith@ontario.ca](mailto:greg.meredith@ontario.ca)

**NOTICE OF CANCELLATION OF HEARING**

- IN THE MATTER OF:** The *Farm Products Marketing Act* ("FPMA") and sections 3 to 8 of Regulation 440 (Vegetables for Processing – Marketing) made under the FPMA
  
- AND IN THE MATTER OF:** An order of Ontario Farm Products Marketing Commission ("Commission") issued to Thomas Canning (Maidstone) Limited ("Thomas Canning") dated April 13, 2017 ("Order")
  
- AND IN THE MATTER OF:** A request from Thomas Canning to the Commission asking for an oral hearing dated April 24, 2017
  
- AND IN THE MATTER OF:** A pre-hearing teleconference held on May 11, 2017 pursuant to Rule 5.0 of the Commission's Rules of Procedure
  
- AND IN THE MATTER OF:** A Notice of Hearing issued on May 24, 2017
  
- AND IN THE MATTER OF:** A Notice of Adjournment issued on June 23, 2017

**TAKE NOTICE** that on July 10<sup>th</sup> the Commission was informed by counsel for Richter Advisory Group Inc. that the sale of Thomas Canning closed on July 7, 2017. As a result, the hearing in this matter will not proceed as Thomas Canning's Licence as a Processor of Vegetables No. 1994-18 has expired.

If you have any questions concerning this notice, please contact the Secretary by telephone at (519) 826-5199 or by e-mail at [mike.relf@ontario.ca](mailto:mike.relf@ontario.ca).

Mike Relf  
Secretary  
Ontario Farm Products Marketing Commission

Dated at Guelph, Ontario  
July 28, 2017

This is Exhibit G..... referred to in the affidavit of Tom S. Wright..... sworn before me, this 15<sup>th</sup> day of September..... 2017

*Cheryl G. [Signature]*  
A COMMISSIONER FOR TAKING AFFIDAVITS

- TO:** Thomas Canning (Maidstone) Ltd.  
c/o Mr. David Ullmann  
Blaney McMurtry LLP  
2 Queen Street East, Suite 1500  
Toronto ON M5C 3G5  
[dullmann@blaney.com](mailto:dullmann@blaney.com)
- AND TO:** Bridging Finance Inc.  
c/o Mr. Sam Babe  
Aird and Berlis LLP  
181 Bay Street, Suite 1800, Box 754  
Brookfield Place  
Toronto, ON M5J 2T9  
[sbabe@airdberlis.com](mailto:sbabe@airdberlis.com)
- AND TO:** Richter Advisory Group Inc.  
c/o Sam Rappos  
Chaitons LLP  
5000 Yonge Street, 10th Floor  
Toronto, ON M2N 7E9  
[samr@chaitons.com](mailto:samr@chaitons.com)
- AND TO:** OPVG  
c/o Mr. Rob Wilson and Mr. Geoff Spurr  
Wilson, Spurr LLP  
261 Martindale Road Unit 16B  
St. Catharines, ON L2W 1A2  
[rwilson@wilsonspurrllaw.ca](mailto:rwilson@wilsonspurrllaw.ca)  
[gspurr@wilsonspurrllaw.ca](mailto:gspurr@wilsonspurrllaw.ca)
- AND TO:** David Dick  
Chair  
Ontario Tomato Seedling Growers' Marketing Board  
16 Talbot Street East  
Leamington, ON N8H 1L2  
[dvd5@bell.net](mailto:dvd5@bell.net)
- AND TO:** 2016 Growers  
c/o John D. Goudy  
Scott Petrie LLP  
200-252 Pall Mall Street  
London, ON N6A 5P6  
[jgoudy@scottpetrie.com](mailto:jgoudy@scottpetrie.com)

**AND TO:** Hank Vander Pol  
President and CEO  
Rol-land Farms and Greenhouses Inc.  
9102 Bisnett Line, R.R. #3  
Bleinheim ON N0P 1A0  
[hvanderpol@rollandfarms.com](mailto:hvanderpol@rollandfarms.com)

**AND TO (FOR INFORMATION ONLY):**  
Greg Meredith  
Deputy Minister  
Ontario Ministry of Agriculture, Food and Rural Affairs  
1 Stone Road West, 2<sup>nd</sup> Floor  
Guelph ON N1G 4Y2  
[greg.meredith@ontario.ca](mailto:greg.meredith@ontario.ca)

**Ontario Farm Products Marketing  
Commission**

1 Stone Road West, 5<sup>th</sup> Floor SW  
Guelph, (Ontario) N1G 4Y2  
Tel: (519) 826-4220  
Fax: (519) 826-3400

**Commission de commercialisation des  
produits agricoles de l'Ontario**

1 Stone Road West, 5<sup>th</sup> Floor SW  
Guelph (Ontario) N1G 4Y2  
Tél.: (519) 826-4220  
Télééc.: (519) 826-3400



June 30, 2017

**VIA EMAIL ONLY**

Ontario Processing Vegetable Growers  
Elmer Buchanan, Trustee  
435 Consortium Court  
London ON N6E 2S8  
[ebuchanan@opvg.org](mailto:ebuchanan@opvg.org)

Ontario Tomato Seedling Growers' Marketing Board  
David Dick, Chair  
16 Talbot Street East  
Leamington, ON N8H 1L2  
[dvd5@bell.net](mailto:dvd5@bell.net)

This is Exhibit ...H..... referred to in the  
affidavit of ...*clan S. wright*.....  
sworn before me, this *15<sup>th</sup>*.....  
day of ...*September*..... 20*17*.....  
*John Sturdy*  
A COMMISSIONER FOR TAKING AFFIDAVITS

**Re: Update on Thomas Canning's Vegetables for Processing Licence**

Dear Messrs.:

I am writing to provide you with an update on the recent actions taken by the Ontario Farm Products Marketing Commission (Commission) regarding Thomas Canning (Maidstone) Limited's (Thomas Canning) processing licence.

As you may be aware, on June 21, 2017 the Ontario Superior Court of Justice made a number of orders with respect to Thomas Canning, including an order approving the sale of Thomas Canning to a third party. The Commission's legal counsel was in attendance during these proceedings.

In advance of the June 21, 2017 court date, the Commission submitted an affidavit sworn by Jim Clark. The affidavit raised concerns with how the other parties proposed to deal with Thomas Canning's processing licence given the proposed sale of the business. The affidavit also stated the Commission's position that growers who had not been paid for product in 2016 and 2017 should be considered by the court. To ensure that industry concerns were also part of the court record, we included OPVG legal counsel's June 19, 2017 letter as an exhibit to our affidavit and we included a section relaying concerns raised by the Ontario Tomato Seedling Growers' Marketing Board.

Through the court orders and Justice Conway's endorsement, it was clarified that the Commission could proceed with its hearing process, however it was also clarified that the processor licence would only be transferable to the extent that it could be transferred by the seller. The Commission's position is that processor licences are not transferable, therefore the existing Thomas Canning processor licence will expire upon the sale of the business. If the licence expires, there is no licence to which additional terms and conditions can be attached.

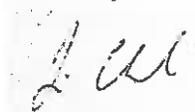
As a result of the court order, the Commission felt that holding a hearing on the terms and conditions of a processor licence that would likely cease to exist would not be a good use of the parties' resources. Industry would have received the Notice of Adjournment, which was issued to all parties to the hearing on June 23, 2017. If for some reason the sale of Thomas Canning is not finalized, the Commission is committed to recommencing the hearing process.

The Commission understands that the new owner of Thomas Canning may continue operations, as the court documents seem to show that the new owner will have the right to receive delivery of the 2017 tomato crop currently under contract by Thomas Canning. If the new owner of Thomas Canning does intend to process, they would be required to apply for a new processor licence from the Commission. If the Commission receives a licence application from the new owner, the Commission will follow its regular licensing procedures, which include ensuring that the applicant meets all applicable licensing criteria, and will ensure OPVG is notified of the application. The Commission continues to have the authority to impose such terms and conditions on the licence as it considers proper.

Finally, I would like to make industry aware that the June 21, 2017 Receivership Order appears to include an opportunity for interested persons to return to court to make submissions regarding any claims they might have to a \$1.2 million reserve, which is to be held back from the proceeds of the sale of Thomas Canning. It is our understanding from counsel for the Receiver for Thomas Canning that the sale of the business will be finalized in the coming days. Any 2016 or 2017 growers who are owed money by Thomas Canning may have an interest in this proceeding. The Commission does not currently have any information about what date the court will receive submissions on claims to the reserve but understands that some matters related to Thomas Canning may be considered by the court on July 5, 2017.

On behalf of the Commission I would like to thank you for your patience during this process. If you have any questions or concerns, I am available to discuss.

Sincerely,



Jim Clark, Chair  
Ontario Farm Products Marketing Commission

- c. 2016 Thomas Canning Growers (c/o John Goudy)  
Lynn DeBrouwer, Rol-land Farms and Greenhouses Inc.

**IN ACCOUNT WITH**  
**Scott Petrie LLP**  
 Law Firm

Main Office  
 200-252 Pall Mall St.  
 London, Ontario  
 N6A 5P6  
 TEL. (519) 433-5310  
 FAX. (519) 433-7909

2016 Thomas Canning Tomato Growers  
 c/o 1473534 Ontario Ltd. cob as Tri-Lan Farms  
 10858 Longwoods Road  
 Chatham, Ontario N7M 5J1

Invoice #: 44052  
 Jun 30, 2017  
 Matter #: 19673

**RE: OFPMC Hearing re Thomas Canning**

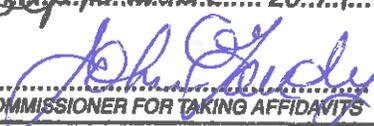
The following are the total fees and disbursements outstanding to the date of this account.  
 A detailed breakdown of each is attached.

Total Fees	\$6,235.00	
GST/HST on Fees	810.55	
<b>Total Fees &amp; GST/HST</b>	\$7,045.55	
Total Disbursements	\$167.88	
GST/HST on Disbursements	21.82	
<b>Total Disbursements &amp; GST/HST</b>	189.70	
<b>Total for this Bill</b>		<b>\$7,235.25</b>

Total Tax: \$832.37  
 GST/HST #: R139985063

This is our account herein  
 SCOTT PETRIE LLP Law Firm

Per:   
 John D. Goudy  
 E & O E

This is Exhibit I referred to in the  
 affidavit of Tom S. Wright  
 sworn before me, this 15<sup>th</sup>  
 day of September 2017  
  
 A COMMISSIONER FOR TAKING AFFIDAVITS

**Details of Fees and Disbursements**

<u>Fees</u>	<u>Hours</u>	<u>Amount</u>	<u>Lawyer</u>
Jun 02/17 Telephone attendance with Scott McGeachy re: Thomas Canning claim, OFPMC hearing	0.20	58.00	JDG
Jun 05/17 Review client documents re: claim, hearing; E-mail correspondence to Scott McGeachy re: retainer	1.10	319.00	JDG
Jun 06/17 Preparation for teleconference with clients	0.60	174.00	JDG
Telephone attendance with Scott McGeachy, Frank Furlan re: method of proceeding, retainer	0.40	116.00	JDG
Jun 07/17 Telephone attendance with Frank Furlan; File opening administration; Preparation of retainer agreement; E-mail correspondence to clients re: retainer agreement, contact information; E-mail correspondence to clients re: method of proceeding re hearing	1.20	348.00	JDG
Telephone attendance with Jeff Hewitt re: OFPMC hearing, documents	0.30	87.00	JDG
Jun 09/17 Review client documents received; E-mail letter to OFPMC re: retainer; Review documents received from OFPMC	0.80	232.00	JDG
Jun 13/17 E-mail correspondence to clients re: documents; Telephone attendance with lawyer for Richter; Review and respond to e-mail correspondence from lawyer for Richter re: status of receivership proceeding; E-mail correspondence to clients re: same, meeting; Preparation for client meeting	1.50	435.00	JDG
Jun 14/17 Preparation for client meeting	1.10	319.00	JDG
Travel to and from Louisville for client meeting (2.6 hours x half-rate)	1.30	377.00	JDG
Attendance at meeting with clients	1.00	290.00	JDG
Jun 15/17 Review client documents received	0.80	232.00	JDG
Review Bridging Finance court application materials; E-mail correspondence to clients re: same; Review Richter court application materials; E-mail correspondence to clients re: same	1.10	319.00	JDG
Jun 16/17 Research of law	0.90	261.00	JDG
Review court application materials; Determine method of proceeding re: OFPMC hearing and court application; Telephone attendance with OPVG lawyer re: same; E-mail correspondence to clients re: method of proceeding	3.10	899.00	JDG
Jun 19/17 Telephone attendance with OFPMC lawyer re: receivership court applications	0.40	116.00	JDG
E-mail correspondence to clients re: status update, materials for OFPMC hearing	0.40	116.00	JDG
Jun 20/17 Preparation of brief of documents for OFPMC; Telephone attendance with Frank Furlan, e-mail correspondence to and from clients re: same; Send document brief to OFPMC and other parties	2.30	667.00	JDG

	Review responding records filed by OFPMC and Thomas Canning in court application; E-mail correspondence to clients re: same	0.40	116.00	JDG
Jun 21/17	Review documents received from receivership court application; E-mail correspondence to clients re: same; Telephone attendance with Scott McGeachy re: court application; E-mail correspondence to clients re: method of proceeding re court application, OFPMC hearing	1.00	290.00	JDG
	Review endorsement, orders from receivership court application; E-mail correspondence to clients re: same	0.30	87.00	JDG
Jun 22/17	Review letter received from OPVG lawyer re OFPMC hearing; Review receivership order issued; E-mail correspondence to clients re: same	0.30	87.00	JDG
Jun 27/17	E-mail correspondence to clients re: OFPMC hearing, method of proceeding	0.20	58.00	JDG
Jun 28/17	Telephone attendance with OFPMC lawyer re: receivership order, reserve fund; E-mail correspondence to clients re: same	0.30	87.00	JDG
Jun 30/17	Review letter from OFPMC re: licence status; E-mail correspondence to clients re: same; E-mail correspondence to and from lawyer for Richter re: July 5 court date, reserve fund; E-mail correspondence to clients re: same	0.50	145.00	JDG

Total Fees	21.50	\$6,235.00
GST/HST on Fees		810.55

**Disbursements**

Legal research - Westlaw	31.50	
Courier/Delivery	136.38	
Total Disbursements		167.88
GST/HST on Disbursements		21.82

\* tax-exempt

**Total for this Bill** **\$7,235.25**

Total Tax: \$832.37  
 GST/HST #: R139985063

Lawyer	Hours	Effective Rate	Amount
JDG	21.50	\$290.00	\$6,235.00
<b>Totals</b>	<b>21.50</b>		<b>\$6,235.00</b>

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

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

v.

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

Applicant

Respondents

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
  
**PROCEEDING COMMENCED AT**  
**TORONTO, ONTARIO**

**AFFIDAVIT OF IAN S. WRIGHT**  
**sworn September 15, 2017**

**SCOTT PETRIE LLP**

Law Firm

200-252 Pall Mall St.

London, ON N6A 5P6

Telephone: (519) 433-5310

Facsimile: (519) 433-7909

email: [lgoudy@scottpetrie.com](mailto:lgoudy@scottpetrie.com)

**John D. Goudy**

LSUC # 50612H

Lawyers for the 2016 Growers

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**RESPONDING MOTION RECORD**  
**of the 2016 Growers**

**SCOTT PETRIE LLP**  
Law Firm  
200-252 Pall Mall St.  
London, ON N6A 5P6

Telephone: (519) 433-5310  
Facsimile: (519) 433-7909  
email: [igoudy@scottpetrie.com](mailto:igoudy@scottpetrie.com)

**John D. Goudy**  
LSUC # 50612H  
Lawyers for the 2016 Growers