

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

**RESPONDING MOTION RECORD OF
THOMAS CANNING (MAIDSTONE) LIMITED
and 692194 ONTARIO LIMITED**

(Returnable June 21, 2017)

June 20, 2017

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692194 Ontario Limited, Respondents

TO: Service List

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TAB 1

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

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**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.

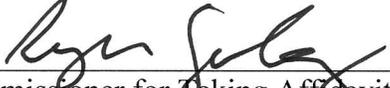
105. I make this affidavit in support of an Order:

- (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

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 WILLIAM THOMAS

This is Exhibit "A" referred to in the Affidavit of William Thomas
sworn the 20th of June, 2017.

A handwritten signature in black ink, appearing to read "Roger Foley". The signature is written in a cursive style with a large, sweeping initial "R".

Commissioner for Taking Affidavits (or as may be)

From: [David T. Ullmann](#)
To: [Ken Rosenstein](#)
Cc: [Alexandra Teodorescu](#); [Sam Babe](#)
Subject: Thomas Canning
Date: Sunday, April 16, 2017 8:53:06 PM

Ken,

I have had a chance to review our without prejudice discussion with our clients. However, certain important facts were brought to my attention over the weekend which alter how my clients wish to proceed.

First, please note that my clients are “farmers” as defined within the *Farm Debt Mediation Act*. They are obviously engaged in commercial farming. As a result, they are entitled to the protections provided under that statute.

I have reviewed the demand letters sent by your firm on April 5th, 2017. While those letters do include a notice under section 244 of the Bankruptcy and Insolvency Act, which would expire at the end of the day tomorrow (assuming it was properly constituted and sent etc.), it does not appear that a notice was sent to my clients under section 21 of the FDMA. As such, in accordance with section 22(1) of the FDMA, the BIA notice is invalid, as is the accompanying demand. Even if you had issued such a notice under the FDMA, you will know that the notice period under that statute runs for 15 business days. As of today, there have only been 6 business days since April 5th, as a result of the weekends and the Easter break.

Therefore, even under the most liberal interpretation had your client issued an FDMA notice (which it appears they did not), my clients have a further 9 business days during which they can consider their options and during which your client cannot take other steps to enforce their debt and security against them, such as it is. It is our position that you must reissue your demands with an FDMA notice to enforce, if you wish to do so, and then, if required, issue new demands and 244 notices after the FDMA notice expires. I can advise you that unless you issue a section 21 notice, or produce an FDMA notice for our review which was properly sent and received by our clients on or after April 5th, 2017 (which my clients advise has not happened), they will certainly take the position in resisting any unilateral enforcement your client may try that your client is statute barred from doing so.

It has also been drawn to our attention that the loan agreement, dated July 5, 2015, which we believe to be the central loan agreement, had a term of 18 months. We have not been provided with a written extension of that agreement and we are advised by our clients that the agreement was never extended. As such, it appears that the loan agreement expired on January 3rd, 2017. While the termination of the agreement does not remove the obligation of our clients to repay amounts that are outstanding, it does remove certain operating restrictions required under that agreement, including without limitation, the requirement to

continue to deposit future amounts into a blocked account swept by your client.

Finally, I am advised that our clients are in the midst of one of their two most important seasons. For your information, our client must purchase approximately \$50,000 worth of seeds immediately. These seeds are to be provided to the company's greenhouse operations. The greenhouse operators are also requiring a substantial up front deposit given the problems which the company had last year. I am given to understand that the necessary deposit is in the range of \$100,000 (approximately half the final bill which will be due in May). As you will understand, the growing season for tomatoes is finite. Ideally, the company should have delivered the seed to the greenhouse last week, or even the week before. If they wait any longer, the seedlings (which are grown from the seeds by the greenhouse) will not be ready in time to be planted to ensure that the crop can be harvested before the Fall frost. Also, the company has growers under contract to grow these seedlings into crops. If the seeds are not delivered to the greenhouse, the seedlings will not be delivered to the growers and those growers may not be available when needed if there is further delay. Truly this is an absolutely critical moment in the economic cycle of this company and it cannot be suspended while we negotiate a solution.

All the foregoing provides a new dynamic to our negotiations which I was unaware of when we had our call on Friday.

As such, my clients intend to proceed as follows. They will continue with their engagement of MNP and continue to review their financial affairs so as to be able to make a transparent report to your clients as to their financial position and to better assist them in making sensible decisions moving forward. I hope that some material reporting can be made available this week. While we are negotiating, they will deposit all future receipts into a new account (not the blocked account), but MNP will audit all receipts and withdrawals from that account. Any surplus amounts not required for critical business operations (such as payroll, seed purchase, machinery maintenance, professional fees, utilities, etc.) will be left in that account. No amounts will be used to pay any payroll to any of the principals of the company, or to pay any amounts which are owing to any of the principals of the company for their shareholder loans or past advances. Any future advances made by the shareholders will be secured advances, although I am hoping no such future advances are required. We will seek to address how to deal with the repayment of the shareholders amounts in the future, once the immediate critical moment has passed.

We will seek to negotiate with you over the period of the FDMA notice period towards a path forward once that notice period (and any future BIA notice period) expires. If such a mutually acceptable resolution cannot be found, the company will likely make an application under the FDMA to allow for the use of a mediator and the appointment of a guardian, as provided for in that statute.

The company has the right to a notice period within which the law recognizes it should have the chance to stabilize its business and consider its options. The longer period of notice under the FDMA (as opposed to the BIA) recognizes that farming is a business which should not be stopped abruptly. I would also note that the company is under no obligation to appoint MNP or otherwise provide the cash controls we are proposing in this letter, but they are doing so in the interest of demonstrating that, regardless of the confusion on both sides about the past, their intent going forward is to make sure the business survives and there is a proper opportunity to consider all options.

I look forward to reviewing this with you once you have reviewed it with your client. I am sure you will want to discuss it with me. While I am not available for the balance of the day today, I will be available at 9 AM tomorrow for such a call or through most of the morning tomorrow.

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.

This is Exhibit "B" referred to in the Affidavit of William Thomas
sworn the 20th of June, 2017.

A handwritten signature in black ink, appearing to read "Ryan Gole". The signature is written in a cursive style with a large, sweeping initial "R".

Commissioner for Taking Affidavits (or as may be)

From: [David T. Ullmann](#)
To: [Ken Rosenstein](#)
Cc: [Alexandra Teodorescu](#); [Sam Babe](#)
Subject: RE: Thomas Canning
Date: Monday, April 17, 2017 2:12:07 PM
Attachments: [Scan20170417.pdf](#)
[image003.png](#)
[image004.png](#)

Ken,

We look forward to hearing from you once you have reviewed our email from last night with your client. In the interim, as requested, please see the engagement letter of MNP. As discussed with you on Thursday, they were only engaged on Wednesday last week. They have no prior history with this entity. As you may know, the accountants for the company were BDO.

Regards,

David

David T. Ullmann

Partner

dullmann@blaney.com

416-596-4289 | 416-594-2437

From: Ken Rosenstein [mailto:krosenstein@airdberlis.com]

Sent: April-17-17 12:30 PM

To: David T. Ullmann

Cc: Alexandra Teodorescu; Sam Babe

Subject: RE: Thomas Canning

David thanks for your note, we will confer with our client and revert but in the interim can you please send us a copy of Mathew's/MNP's engagement so that we can see the scope, thx

April 11, 2017

Thomas Canning (Maidstone) Limited
326 South Talbot Road
Lakeshore, ON
N0R 1K0

Attention: Robert Thomas, Vice President

Dear Sirs:

Re: Thomas Canning (Maidstone) Limited (“TCL”)

You have advised us that TCL requires assistance in addressing the concerns of certain of its secured lenders and to formulate restructuring plans for TCL's business. To that end, you wish to engage MNP Ltd. (“MNP”) as its consultant to assist therein.

Work to be performed

The scope of work to be performed by MNP under this engagement will include:

1. Making an assessment of the business and financial affairs of TCL, and may include:
 - a. Reviewing TCL's business and restructuring plans;
 - b. Working with TCL to prepare financial projections; and
 - c. Reviewing TCL's creditor list and the relative priority of their claims and security position;
2. Developing with you and your counsel steps to address key secured lenders' or other critical creditors' concerns and issues, including:
 - a. Providing on-going monitoring and reporting;
 - b. Reviewing potential terms of a forbearance agreement;
3. Such other activities as requested by TCL and agreed to by MNP.

Access and co-operation

In order to carry out our work under this engagement, we will require unrestricted access to your premises, books, records and other financial documents, and the full co-operation of your directors and senior management. In addition, you will direct your accountants and solicitors to assist MNP where necessary. You undertake to keep the MNP completely advised on an up-to-date basis of all developments that may in any way impact on your financial position and/or your relationship with your creditors.

MNP may make copies of any documents or records it may request.

Electronic Communications

You acknowledge that: (i) you and MNP may correspond or convey documentation via Internet e-mail unless you expressly request otherwise in writing, (ii) neither party has control over the performance, reliability, availability, or security of Internet e-mail, and (iii) MNP shall not be liable for any loss, damage, expense, harm or inconvenience resulting from the loss, delay, interception, corruption, or alteration of any Internet e-mail due to any reason beyond MNP's reasonable control.

Consent for Personal Information Collection, Use, and Disclosure

The privacy and security of the personal information you give us are important to us. We strive to ensure the strictest compliance with all applicable provincial and federal standards of protection and disclosure of

personal information. You may review our privacy policy at www.mnp.ca. We will not collect, use or disclose any of your personal information without your knowledge and consent, or as may be required by law.

Fees

All fees and expenses, including applicable taxes, will be billed on a periodic basis and are payable upon receipt. In addition, MNP will be reimbursed for its reasonable disbursements and expenses incurred in connection with this engagement. Our fees will be determined based on of time spent at the prevailing hourly rate for the level of staff employed, which may be adjusted from time to time. The current rate structure is reflected below:

Professional	Hourly Rates
Partner/Senior Vice President	\$ 435 to \$ 575
Senior Manager/Vice President	\$ 365 to \$ 425
Manager	\$ 290 to \$ 350
Senior Associate	\$ 200 to \$ 250
Associate/Administrator	\$ 140 to \$ 190

Upon the execution of this engagement letter you will provide us with a retainer in the sum of \$20,000 This retainer will be held in trust, and will be used, if necessary, to cover MNP's fees and disbursements in connection with this engagement. Any surplus will be refunded to you in due course.

We confirm having advised you that MNP Ltd. will assume no decision-making responsibility nor have any capacity with respect to managing TCL's affairs. TCL agrees that MNP will not be held responsible for any of TCL's decisions or actions.

If this letter correctly sets out the terms of our engagement, please sign the copy of this letter in the space provided and return it to us for our files. If this letter is not correct, or if you have any questions in connection with this matter, please contact us immediately.

Yours truly,

MNP LTD.

Per:



Matthew Lem, CIRP LIT
Senior Vice President

ACCEPTANCE OF ENGAGEMENT

The undersigned hereby accepts the engagement on the terms set out above.

DATED this 12th day of April, 2017

THOMAS CANNING (MAIDSTONE) LIMITED

Per:



Robert Thomas, Vice President

I have the authority to bind the corporation

This is Exhibit "C" referred to in the Affidavit of William Thomas
sworn the 20th of June, 2017.



Commissioner for Taking Affidavits (or as may be)

From: [Ken Rosenstein](#)
To: [David T. Ullmann](#)
Cc: [Alexandra Teodorescu](#); [Sam Babe](#)
Subject: RE: Thomas Canning
Date: Tuesday, April 18, 2017 1:41:39 PM
Attachments: [image001.png](#)
[image002.png](#)

David, we are reviewing with Bridging and will advise. thx

From: David T. Ullmann [mailto:DUllmann@blaney.com]
Sent: April-18-17 10:10 AM
To: Ken Rosenstein <krosenstein@airdberlis.com>
Cc: Alexandra Teodorescu <ATEodorescu@blaney.com>; Sam Babe <sbabe@airdberlis.com>
Subject: Re: Thomas Canning

Ken,

Further to my email below, let me know if your clients have any concerns with the scope of the MNP engagement. To the extent your client wants certain additional powers or controls added, I would be happy to take those suggestions to our client for consideration. Also, please be advised that we understand that MNP is working on a preliminary report to provide information to your client and ours. That may be available as early as tomorrow.

I am available if you want to discuss.

Regards,

David

Sent from my BlackBerry 10 smartphone on the Bell network.

From: David T. Ullmann
Sent: Monday, April 17, 2017 2:12 PM
To: Ken Rosenstein
Cc: Alexandra Teodorescu; Sam Babe
Subject: RE: Thomas Canning

Ken,

We look forward to hearing from you once you have reviewed our email from last night with your client. In the interim, as requested, please see the engagement letter of MNP. As discussed with you on Thursday, they were only engaged on Wednesday last week. They have no prior history with this entity. As you may know, the accountants for the company were BDO.

Regards,

David

David T. Ullmann

Partner

dullmann@blaney.com

📞 416-596-4289 | 📠 416-594-2437

From: Ken Rosenstein [<mailto:krosenstein@airdberlis.com>]

Sent: April-17-17 12:30 PM

To: David T. Ullmann

Cc: Alexandra Teodorescu; Sam Babe

Subject: RE: Thomas Canning

David thanks for your note, we will confer with our client and revert but in the interim can you please send us a copy of Mathew's/MNP's engagement so that we can see the scope, thx

This is Exhibit "D" referred to in the Affidavit of William Thomas
sworn the 20th of June, 2017.

A handwritten signature in black ink, appearing to read "Roger Foley". The signature is written in a cursive style with a large, looping initial "R".

Commissioner for Taking Affidavits (or as may be)

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

- 2 -

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 Obligors (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 Obligors 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 Obligors 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 Obligors 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 Obligors have also requested that Lender provide certain funding of “critical payments” to the Borrower under the Credit Facilities, on the terms and conditions and

- 3 -

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

- 4 -

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

- 5 -

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;

- 6 -

- (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.

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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

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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.

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- (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 I of the RISP shall commence no later than May 8, 2017 ("**Phase I**"):
 - (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;

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- (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

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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.

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- (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;

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- (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

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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

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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

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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: [Signature]
Name:
Title:

**THOMAS CANNING (MAIDSTONE)
LIMITED**
By: [Signature]
Name: WILLIAM THOMAS
Title: CEO / VP

692194 ONTARIO LIMITED
By: [Signature]
Name: John Thomas
Title: PRESIDENT

[Signature]
Witness: David Altman
Daniel Korsunsky

[Signature]
William Thomas



 Witnesses: ~~David Ullman~~
 Daniel Kossunsky



 Robert Thomas



 Witnesses: ~~David Ullman~~
 Daniel Kossunsky



 John Thomas

SCHEDULE "A"
SECURITY AND GUARANTEES

Guarantee Agreement dated as of July 3, 2015 made by 692194 Ontario Limited in favour of Bridging Finance Inc., as agent for Sprott Bridging Income Fund LP.

General Security Agreement dated as of July 3, 2015 made by Thomas Canning (Maidstone) Limited in favour of Bridging Finance Inc., as agent for Sprott Bridging Income Fund LP.

Assignment of Insurance Policies Agreement dated as of July 3, 2015 made by Thomas Canning (Maidstone) Limited and 692194 Ontario Limited in favour of Bridging Finance Inc., as agent and collateral agent for Sprott Bridging Income Fund LP.

General Security Agreement dated as of July 3, 2015 made by 692194 Ontario Limited in favour of Bridging Finance Inc., as agent for Sprott Bridging Income Fund LP.

Securities Pledge Agreement dated as of July 3, 2015 made by 692194 Ontario Limited in favour of Bridging Finance Inc., as agent for Sprott Bridging Income Fund LP.

First ranking Charge in the amount \$21,365,650.00 registered on July 3, 2015 against the properties owned by Thomas Canning (Maidstone) Limited and 692194 Ontario Limited and municipally known as 346 and 372 South Talbot Road, Maidstone, ON and 3782 Maidstone Townline Road, Maidstone, ON in favour of Bridging Finance Inc., as agent for Sprott Bridging Income Fund LP.

General Assignment of Rents dated July 3, 2015 executed by Thomas Canning (Maidstone) Limited and 692194 Ontario Limited registered against the property owned by Thomas Canning (Maidstone) Limited and 692194 Ontario Limited and municipally known as 346 and 372 South Talbot Road, Maidstone, ON and 3782 Maidstone Townline Road, Maidstone, ON in favour of Bridging Finance Inc., as agent for Sprott Bridging Income Fund LP.

Blocked Account Agreement made as of June 29, 2015 between Bank of Montreal, Thomas Canning (Maidstone) Limited and Bridging Finance Inc., as agent for Sprott Bridging Income Fund LP.

Guarantee Agreement dated as of July 3, 2015 made by William Thomas in favour of Bridging Finance Inc., as agent for Sprott Bridging Income Fund LP, limited to the principal sum of \$250,000.

Guarantee Agreement dated as of July 3, 2015 made by Robert Thomas in favour of Bridging Finance Inc., as agent for Sprott Bridging Income Fund LP, limited to the principal sum of \$250,000.

Guarantee Agreement dated as of July 3, 2015 made by John Thomas in favour of Bridging Finance Inc., as agent for Sprott Bridging Income Fund LP, limited to the principal sum of \$250,000.

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Postponement and Assignment of Claim given July 3, 2015 by John Thomas, Robert Thomas and William Thomas in favour of Bridging Finance Inc., as agent for Sprott Bridging Income Fund LP.

SCHEDULE "B"
EXISTING DEFAULTS

- (1) Failure to repay when due the Seasonal Overadvance under the Facility A Loan.
- (2) Failure to repay when due the Temporary Loan made pursuant to the First Amending Letter Agreement dated May 17, 2016.
- (3) Failure to repay the Facilities at the end of the Term.
- (4) Failure to repay the Facilities on demand.
- (5) The failures detailed in the Affidavit of Graham Maar, sworn April 20, 2017 (in the Receivership Proceedings) to deposit receipts into the Blocked Account and the related misdirections of funds of the Borrower to other accounts.
- (6) Breaches of trust by the Borrower and related persons in failing to deposit the receipts reference in (5) above into the Blocked Account or otherwise remit the same to the Lender, and the commingling of the same trust funds.
- (7) The submission of inaccurate borrowing base certificates to the Lender prior to the date hereof.
- (8) Any lawsuit, action, proceeding or threatened lawsuit, action or proceeding which has occurred prior to the date hereof, the existence of which may otherwise be an Event of Default.
- (9) Failures to provide reports to the Lender as required under the Credit Agreement prior to the date hereof.

**SCHEDULE "C"
OBLIGATIONS**

[to be inserted]

29169375.2

This is Exhibit "E" referred to in the Affidavit of William Thomas
sworn the 20th of June, 2017.

A handwritten signature in black ink, appearing to read "Roger G. Galt". The signature is written in a cursive style with a large, stylized initial "R".

Commissioner for Taking Affidavits (or as may be)



REPLY TO: SAM RAPPOS
FILE NO.: 52648
DIRECT: 416-218-1137
FAX: 416-218-1837
EMAIL: samr@chaitons.com

May 17, 2017

VIA EMAIL

David Ullmann
Blaney McMurtry LLP
2 Queen Street East, Suite 1500
Toronto, Ontario M5C 3G5

Re: Thomas Canning (Maidstone) Limited (the "Company")

Dear Mr. Ullmann,

We write to you in response to your e-mail dated Monday May 15, 2017.

The Company has asked the Monitor to re-consider its recommendation that the Company proceed with contracting with growers to plant 150 acres of tomato crop during the RISP period, as opposed to the 400 acres desired by the Company. The Company has also requested that the time frame for submissions of bids in the RISP be extended by one week and that certain projections you circulated on Friday May 13, 2017, along with a letter from the Company, be included in the RISP dataroom.

At the outset, we wish to make it clear that Richter is well aware of its role as court officer in its appointment as Monitor. Although it should not have to be said, Richter at all times has and will continue act in the best interests of all of the Company's stakeholders when carrying out its mandate as Court-appointed Monitor.

Set out below are the Monitor's responses to each of the requests made by the Company and issues raised by it in your e-mails.

To summarize:

- (a) the Monitor has reviewed all of the financial and other information available to it and, following a re-consideration, remains of the view that the best course of action for all of the Company's stakeholders is for the Company to proceed with arranging for growers to plant 150 acres of crop during the RISP period;
- (b) the Monitor will consider an extension of the RISP deadlines pending receipt of responses and activity in the RISP over the next week; and
- (c) the Monitor does not support the Company's request to include the projections you circulated last week and/or a letter from the Company in the dataroom.



Summary of the Company's Position

Based on our review of your e-mail and subsequent emails, the Company's position is believed to be as follows:

1. The Company has been operating under a business plan to contract growing 400 acres of crops, this amount was previously agreed to by Bridging, the Company has a license for 400 acres and has committed to proceed with 400 acres, and the funding of the planting of 400 acres is a "critical payment" under the Accommodation Agreement.
2. Growing 150 acres of tomatoes will likely ruin the business of the Company, and result in the Company losing customers and its license and will decrease the value of the Company's business during the RISP.

Accommodation Agreement

As you know, the Monitor is not a party to the Accommodation Agreement. The terms of the agreement were negotiated and agreed to by the Company and Bridging. It is correct that Richter did have an opportunity to review a draft of the Accommodation Agreement prior to its execution.

We do not believe there is any value for the Monitor to delve into an argument as to how the terms of the Accommodation Agreement should be interpreted and what were the intentions of the parties when negotiating the agreement.

We note that, in our view, the role of the Monitor under the Accommodation Agreement is to make its recommendations to the parties. That is all. Notwithstanding your repeated assertions, the Monitor cannot, and has no power to, compel Bridging to advance funds to the Company.

400 acres v. 150 acres

In response to the statements made by you in your e-mails, we note that:

- (a) the Monitor has no personal knowledge and thus cannot speak to your comments with respect to what was communicated to Mr. Marr of Bridging regarding the Company's business plan and/or what transpired during any meetings held during March 2017. Those issues are between the Company and Bridging. In the same vein, the Monitor cannot comment on any license issues and/or what may have been discussed by the Company and the Commission, as the Monitor has only been provided with information and communications on a second hand basis; and
- (b) at no time did the Monitor recommend payment of costs related to the Company contracting with growers to plant 400 acres. The decisions to plant seedlings in greenhouses sufficient for 400 acres and making substantial payments for seeds and greenhouses were made by the Company



prior the Monitor's appointment. Any payments made subsequent to that, which is believed to be approximately \$6,000, was recommended by the Monitor so that all options would remain open to the Company during the RISP and while the Monitor was in the process of reviewing the Company's books and records and assisting the Company in preparing a financial forecast.

You have indicated that the Company has been "operating on its business plan to operate 400 acres of crops". However, the Company has provided no business plan to the Monitor based on 400 acres, or any acres for that matter. Additionally, given the resignation of the Company's CFO in March 2017, the lack of financial acumen of the Company's principals, and the Company's current financial resources available to it, the Company is unable to provide any credible business plan that would support the 400 acres that it desires to produce.

Other than the Company's bald assertions that 400 acres is key, it has not produced any documents or information to support its assertions that 150 acres would negatively impact the business. In both instances, the Company is securing tomato feedstock and producing organic and conventional tomato product. Additionally, given the Company's historical financial performance (losses), current balance sheet (significant amounts of past due accounts payable and high debt load), and senior management deficiencies, it is the Monitor's view that it is likely that potentially interested parties under the RISP will be focussed on the Company's asset base and production capacity as opposed to the current crop production and respective canning cycle.

Although it has been discussed by the Monitor with the Company on numerous occasions, and communicated to yourself and counsel to Bridging, the Monitor's recommendation for the Company to proceed with 150 acres as opposed to 400 acres was based on the following factors, among others:

- (a) the Company does not have sufficient finance resources to adequately plan and monitor the Company's financial performance and liquidity needs. The Company continues to have limited ability to provide visibility for the Company's stakeholders into the Company's short/medium/long term cash flow projections;
- (b) the Monitor has no confidence in the completeness of the Company's books and records and in the ability of the Company to make financially supportable operational decisions, which includes the following:
 - (i) Inventory and Sales:
 - (A) the Company produced on approximately 300 acres in its 2016 crop production, which resulted in a significant level of inventory on-hand of approximately \$10.7 million, even though the next production cycle is only months away. This



raises significant concerns that the Company is producing inventory without the required customer base;

- (B) the Company's FY16 sales are projected to be \$5.5 million, which is a 42% year-over-year decline. As result, the Company's current sales trend will not be able to sell through the existing inventory and the new inventory generated through the proposed 400 acres of planting;
 - (C) the Company has significant inventory management constraints (the person responsible for inventory and quality control resigned in September 2016) and has limited knowledge of what and where its current inventory levels are; and
 - (D) an inventory count performed by the Interim Receiver with the assistance of the Company indicated a \$1.0 to \$2.0 million overstatement and noted approximately \$400,000 in aged inventory or damaged product.
- (ii) Accounts Receivable – the Monitor has identified several instances (approximately \$600,000) from the period of November 2016 to April 2017 where customer payments were deposited in the Company's bank accounts but were not recorded in the Company's books and records. Based on this overstatement it is difficult for the Company and the Monitor to assess what cash flows are still to be received and their associated timing of receipt;
 - (iii) Accounts Payable – the accounts payable ledger is significantly past due and includes invoices that have not been entered by the Company and does not include significant payments the Monitor understands have been made by the principals;
 - (iv) Operational Decisions:
 - (A) the Company is unable to generate and/or provide the Monitor with any reliable reports for operational decisions (i.e. standard costing, gross margin by product, sales by customer by product category, etc.), which reduces the confidence the Monitor can place on the Company's ability to assess, plan and/or monitor any proposed business plan;
 - (B) the Company continues to operate at a net loss, which is consistent with its historic performance, and the Company has been selling organic product to Neil Jones, its largest customer of organic product, with a negative gross margin. The Monitor understands that this came as a surprise to the



Company as it and the Monitor worked together to assess the FY18 sales forecast; and

- (C) the Company was of the view that paste sales were a pivotal product line and generated significant profits and, on this basis, the Company planned on a substantial portion of 2017 feedstock to be used for paste production. However, the Company's and Monitor's recent analysis has indicated that paste generates a mere 2% margin.
- (c) to proceed with 400 acres, the Company may require additional cash and/or security to be posted by Bridging in the amount of approximately \$2.8 million. The Company would likely only require less than \$1.0 million to be posted by Bridging if it proceeds with 150 acres. Such payment would be made upfront, as the Company defaulted under the 2016 growers contracts, resulting in a lawsuit from 9 of 14 growers in the amount of approximately \$3.0 million and settled with 3 of the 14 growers for approximately \$500,000 (payable over 10 years), with 2 growers currently outstanding. In the Monitor's view, it would be prudent, given all of the risks outlined above, to minimize cash outlays in the circumstances.

Extension of the RISP Submission Deadline

The Monitor will consider the Company's request for the extension of the RISP bid submission deadline based on the responses it receives from interested parties and activity in the RISP during the next week.

Dataroom

The Monitor does not support the Company's request for its additional projection and/or letter from the Company to be placed in the dataroom. As has been discussed with you, the numbers in that projection were taken from an early draft forecast circulated for discussion purposes only that had not yet been fully reviewed by the Company and/or been finalized by the Company and the Monitor. That projection should not be relied upon by any party, let alone potentially interested parties.

It is the Monitor's view, based on its vast experience in this area, that it would be harmful to the RISP to have multiple projections in the dataroom, as it would serve to confuse potentially interested parties and likely result in them distrusting the state of the business and accuracy of the financials of the Company.

We would be happy to discuss the foregoing with you at your convenience.



Yours truly,
CHAITONS LLP

Sam Rappos

(computer generated signature)

Sam Rappos
LAWYER

Cc: Client
Aird & Berlis LLP

This is Exhibit "F" referred to in the Affidavit of William Thomas
sworn the 20th of June, 2017.

A handwritten signature in black ink, appearing to read "Ryan Gole". The signature is written in a cursive style with a long horizontal stroke extending to the right.

Commissioner for Taking Affidavits (or as may be)

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 May 17, 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 “**Respondents**”), 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 believe those facts to be true.
2. I swear this affidavit for an Order directing Richter Advisory Group Inc. (“**Richter**”) in its capacity as Monitor to the Company (“**Monitor**”) to:

- 2 -

- (a) Extend the deadline for the submission of non-binding letters of intent under the ongoing RISP (as defined below) from May 26th, 2017 to June 5th, 2017 (“**BIA**”) and to extend all related deadlines thereafter by the same amount; and
- (b) To permit the Company to place a letter in the dataroom expressing the Company’s extreme concern about the impact of the business of the Monitor’s decision to authorize the company to plant only 150 acres of Tomatoes (the company’s core crop) when the company’s business plan requires a minimum of 400 acres in order to function as a viable going concern.

Background

3. Thomas Canning is a privately-owned company incorporated pursuant to the laws of the Province of Ontario. We operate a commercial farming, canning and processing business in Lakeshore, Ontario.

4. The core business of the Respondents is commercial farming. The Respondents engage the services of greenhouses in order to grow tomatoes from the seeds that they own. The Respondents contract with third party growers to plant these seedlings, which are then harvested and delivered to the Respondents.

5. Thomas Canning produces primarily organic tomato products, such as canned tomatoes, tomato juice and ketchup. The business has been run by my family since 1933.

6. 692 Ontario is also an Ontario corporation, which is owned by members of the Thomas family, including myself and my brother, Robert Thomas. 692 Ontario owns farming land, which is commercially farmed for beans, corn and oats. It has grown tomatoes in the past.

7. The Respondents employ fifteen workers on a full time basis and hire up to 50 seasonal workers when needed. Many other businesses and spin off jobs in the small farming community in Essex County are reliant on our business.

Issues with Bridging Finance Inc.

8. Thomas Canning entered into a credit arrangement with Bridging Finance Inc., as agent for Sprott Bridging Income Fund LP (“**Bridging**”) as of July 3, 2015 (“**Credit Agreement**”). That credit agreement expired on January 3, 2017.

9. On April 5, 2017, Bridging made demand of the Respondents under the terms of the Credit Agreement, and provided notices of intention to enforcement security under s. 244 of the BIA.

10. I am advised by my counsel, David Ullmann, that Bridging was required to also provide notice to the Respondents under ss. 21(1) of the *Farm Debt Mediation Act* (“**FDMA**”). Despite the fact that I believe that the Respondents are engaged in farming for commercial purposes and are, therefore, “farmers” within the definition of the FDMA, no such notice was ever provided by Bridging.

11. On April 20, 2017, counsel for Bridging attended court on an *ex parte* basis to seek the appointment of Richter as an interim receiver. Indeed, Bridging obtained an Order for the Appointment of Interim Receiver from the Honourable Justice Newbould on April 20, 2017

12. Over the course of the period between April 20th and April 29th the parties engaged in hotly contested negotiations which culminated in a forbearance agreement executed among the

parties on April 29th, 2017. (the “**Accommodation Agreement**”). A copy of the Accommodation Agreement is attached hereto as **Exhibit “A”** to this my affidavit.

13. As a result of the Accommodation Agreement the Interim Receiver was dismissed and the parties agreed to the appointment of a court appointed Monitor. On May 1st, this court issued an order appointing the Monitor with power, *inter alia*, to market the business for sale. (the “**Monitor Order**”)

14. The Monitor is not a party to the Accommodation Agreement, but they were consulted on its terms prior to execution and were familiar with it in accepting the appointment to act as Monitor. The Accommodation Agreement is referred to in the Monitor Order.

Accommodation Agreement

15. The Accommodation Agreement remains in place and the Company is operating in the ordinary course, subject to the comments made hereafter.

16. The Accommodation Agreement has two central features. The first is that the Company’s operations would be controlled by the Monitor. In particular, the Monitor would control the Company’s ability to enter into contracts and the Monitor would have absolute control over the cash available to the Company. The Monitor Order contains similar provisions.

17. The Company has had a difficult relationship with Bridging and in particular has had difficulty in getting Bridging to authorize what the Company deemed to be critical payments required to ensure that the farming properly conducted. As such, the Company and Bridging agreed that the Monitor would make determinations as to what would constitute critical payments to allow the company to operate during the forbearance period. While Bridging was

not obliged to fund the full normal course operations of the Company, they would be obliged to fund the expenses recommended by the Monitor without reference to their usual borrowing base calculations. It was understood that the company would operate in a manner which was greater than just a “keep the lights on” receivership.

18. The Accommodation Agreement provides:

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...

19. The second central feature of the Accommodation Agreement is that the parties agreed to conduct an expedited refinancing, investment and/or sale solicitation process (the “RISP”) to attempt to seek any kind of purchaser or refinancier of the Company.

20. The parties agreed on the RISP process which required teasers to be sent to interested parties on May 8th, and required offers by May 26th. I was very concerned that this was a short process and so the Company negotiated that the Accommodation Agreement include a provision allowing the Monitor to extend those deadlines, with the consent of Bridging.

21. On May 8th the form of teaser was sent out. A copy of the teaser is attached hereto as **Exhibit “B”** to my affidavit.

150 Acres vs 400 Acres

22. It was understood by the Company that the operations contemplated by the Accommodation Agreement meant the Company would plant the crops which it was licensed to plant, in the amount of 400 acres.

23. Last year the Company's operated on 1200 acres of grown crop. This year, prior to these proceedings, the Company determined that in order to limit costs and improve the business, the Company, in consultation with Bridging, applied for and received a licence from the Farm Products Marketing Commission to farm only 400 acres.

24. The Company's business plan requires that the company contract with third party farmers in order to have them grow 400 acres of tomato plants in order to be a viable business.

25. Immediately following the Monitor's appointment and with the Monitor's consent and approval, the company contracted with greenhouse companies to plant sufficient seedlings to seed 400 acres of land. The company spent approximately \$175,000 towards this process.

26. Consistent with this plan to grow 400 Acres, the company had already spent approximately \$60,000 to purchase the necessary seeds to create those seedlings.

27. Over the first week of this proceeding, the Company worked with the Monitor to produce a forecast for the business which indicated that if the company grew 400 acres of tomatoes, it would be profitable. A copy of this forecast, along with the email which enclosed it from the Monitor, is attached, dated May 9th, 2017. The forecast contains confidential information and will not be served with this affidavit, but is provided to the Court as **Exhibit "C"** hereto.

- 7 -

28. Based on this forecast, and the Company's business plan generally, the Company requested that the Monitor recommend the planting of 400 acres of tomatoes and to seek payment from Bridging of the amounts necessary to allow that to happen as a "critical payment" in accordance with the Accommodation Agreement.

29. It is my belief that when the Monitor showed this forecast to Bridging, Bridging objected. As such, the Monitor ignored the advice of the company and created its own revised forecast for the business. The company believes the second forecast was incorrect and does not reflect the expert opinion of the principals of the Company. The forecast contains confidential information and will not be served with this affidavit, but is provided to the Court and attached hereto as **Exhibit "D"** hereto.

30. On Friday May 12th, our counsel wrote an email to the Monitor and Bridging recommending that the Monitor agree to fund 400 acres. The email contains confidential information and will not be served with this affidavit, but is provided to the Court and Exhibit "D" hereto. It does contain the following provision:

The immediate question is how much to plant. Richter has presented three scenarios. 400, 300 and 125 acres. The company does not support planting only 125 acres. In the company's view, **planting 400 acres is the minimum of what is required** to maintain the enterprise value of the business. At less than 400 acres the company will have difficulty maintaining its customers, the loyalty of its contracted growers, and it may jeopardize its license. The current license granted by the commission is to plant 400 acres. The company also says that its organic licence might be jeopardized if the production drops below a certain level of production. I comment that we have no proof of that at this time, but want to mention it as a consideration my clients wished me to advance.

31. A teleconference was held with Bridging and the Monitor. The Monitor recommended that only 150 acres be planted. Bridging agreed (subject to some concerns about the status of the company's licence with the Farm Products Marketing Board).

32. On Sunday, May 14th, our counsel wrote an email asking the Monitor to reconsider its decision. The email contains confidential information and will not be served with this affidavit, but is provided to the Court as **Exhibit "E"** hereto.

33. The email sets out that if the Monitor was unwilling to reconsider its decision, we asked that the Monitor extend the sale process and allow the Company to provide to the dataroom its view on the fact that the decision to plant only 150 acres will drastically change the business of the Company. The Monitor has responded twice to advise that their response is coming, but as of the swearing of this affidavit it has not arrived. In the meanwhile, parties are reviewing the dataroom information and making decisions whether or not to bid in the RISP.

34. The sale process is being run under the direction of Bridging and the Monitor as agreed under the Accommodation Agreement, but it is being held out as the Company's process. That is on purpose and designed to solicit the best possible going concern value for the company. The Company is supportive of the RISP and hopes for the best possible result. The principals of the company are junior secured creditors with a significant personal financial stake in the outcome of the process.

35. However, the Company, and in particular the principals of the Company, are very concerned that parties are being and will be misled as to the nature of the business if they are not made to understand the impact of the decision to abandon the Company's plan to farm 400 acres and to replace it with the Monitor recommended plan to farm only 150. As such, the Company wants that to be made clear to potential purchasers who sign an NDA and participate in the RISP.

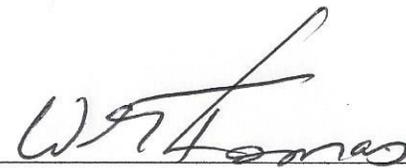
36. The Company hopes that the Monitor will reconsider its decision with respect to the amount of acres to be planted. However, if it does not, the Company believes that it is necessary

that parties interested in the company have an additional period of time to consider their offers in light of this new direction for the company. As such, the Company is asking the Court to direct the Monitor to extend the RISP process by effectively one week.

37. There will be no material prejudice to Bridging or anyone else from extending the process by a short period of time.

38. I am swearing this Affidavit for the above reasons and for no other or improper purpose.

SWORN BEFORE ME
at the City of Windsor,
in the Province of Ontario,
on May 17th, 2017

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WILLIAM THOMAS

A Commissioner for Taking Affidavits

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

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

BRIDGING FINANCE INC., AS AGENT
FOR SPROTT BRIDGING INCOME FUND L.P.
Applicant

THOMAS CANNING (MAIDSTONE) LIMITED
and 692194 ONTARIO LIMITED
Respondents

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

Proceeding commenced at Toronto

AFFIDAVIT OF WILLIAM THOMAS

BLANEY MCMURTRY LLP
Barristers & Solicitors
2 Queen Street East, Suite 1500
Toronto ON M5C 3G5

David T. Ullmann (LSUC #423571)
Fax: (416) 594-2437
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Alexandra Teodorescu (LSUC # 63889D)
Tel: (416) 596-4279
Email: ateodorescu@blaney.com

Lawyers for Thomas Canning (Maidstone) Limited. and 692194
Ontario Limited, Respondents

This is Exhibit "G" referred to in the Affidavit of William Thomas
sworn the 20th of June, 2017.

A handwritten signature in black ink, appearing to read "Ryan G. Kelly". The signature is written in a cursive style with a large, stylized initial "R".

Commissioner for Taking Affidavits (or as may be)

From: [David T. Ullmann](#)
To: [Alexandra Teodorescu](#)
Subject: FW: Thomas Canning
Date: Tuesday, June 20, 2017 10:44:00 AM
Attachments: [DOCS-#3906014-v1-Richter TCL - Order dated May 1 2017.PDF](#)
[DOCS-#3907268-v1-Richter TCL - Accommodation Agreement.PDF](#)
[Fwd Missing cheques.msg](#)
[RE Decision Regarding Extension.msg](#)
[image001.png](#)
[image002.png](#)
Importance: High

David T. Ullmann
Partner

dullmann@blaney.com

☎ 416-596-4289 | ☎ 416-594-2437

From: Sam P. Rappos [mailto:samr@chaitons.com]
Sent: June-03-17 12:42 PM
To: David T. Ullmann
Cc: 'Loneragan, Clark'; Forbes, Katherine; Mahmood, Wajahat; 'Ken Rosenstein'; Sam Babe
Subject: Thomas Canning
Importance: High

David,

As you know, Richter Advisory Group was appointed as Monitor of the Company pursuant to the Order of the Court dated May 1, 2017, a copy of which is attached hereto. The role of the Monitor is also detailed in the Accommodation Agreement dated April 29, 2017, a copy of which is attached hereto.

Pursuant to paragraph 9 of the Order, the Monitor has been empowered and authorized to act with respect to the property, assets and undertakings of the Company (the “**Property**”). Under the Agreement, the Company is required to promptly provide all information requested by the Monitor, provide full access to the books and records of the Company and the Property, and fully cooperate with the Monitor in implementing the Agreement. The Agreement also confirms that the Monitor’s powers include taking steps to secure the Property 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.

As detailed in the email dated May 31, 2017, a copy of which is attached, the Monitor recently discovered copies of three cheques from customers in the aggregate amount of CDN\$32,930.67, and a copy of a cheque from a customer in the amount of US\$54,757.77. The Monitor has confirmed that these cheques were not deposited into the Company’s blocked account. The Monitor has been repeatedly informed by the Company that it has no other bank accounts. The Monitor asked Mr. Bob Thomas for additional information with respect to these cheques, and his response was that he followed your instructions as the Company’s lawyer. Mr. Thomas did not provide any information as to the whereabouts of the cheques or funds to the extent they were deposited.

In accordance with its powers pursuant to the Order and the Agreement, we hereby demand, on behalf of the Monitor, that the Company return the cheques forthwith to the Monitor, in the event they have not been cashed, or return forthwith to the Monitor the amounts of CDN\$32,930.67 and

US\$54,757.77 in the event the cheques were cashed.

Also, further to my email to you dated May 25, 2017, a copy of which is attached, the Monitor continues to request information from the Company regarding a listing of all customer payments made via custom house/western union so that receipts and deposits can be traced to the BMO blocked account and the accounts receivable balance can be updated accordingly.

Lastly, the Monitor was approached by an employee of the Company yesterday, June 2, 2017 and the Monitor was informed about the following two troubling items:

- The Company has made arrangements for three migrant workers from Jamaica to arrive on Thursday June 8, 2017. The Company did not consult or seek the approval of the Monitor with respect to this, in violation of the terms of the Agreement. On behalf of the Monitor, we hereby demand that the Company immediately takes steps to cancel these arrangements and provide written confirmation of this cancellation to the Monitor.
- The Company has been intentionally mislabelling certain of its 2014 products so that some of its “aging” inventory can be monetized. The Monitor understands that rules and regulations require that canned products are to have a 3 year after canning best before date, not the 4 year best before date that was placed on identified product (certain canned items were listed as having best before dates of 2018 notwithstanding that the tomatoes were canned in 2014 per Julian Date). The Monitor, with the assistance of the respective employee, has segregated this inventory and pictures were taken. The Monitor is currently compiling a listing of the shipping documents with respect the mislabelled product that has already been shipped to customers . The Monitor understands that the Company is currently subject to a number of outstanding charges by the Canadian Food and Inspection Agency and other regulatory bodies with respect to previous mislabelling issues.

We trust that you will ensure that the foregoing matters are brought to your client’s attention and be given the attention and consideration these serious issues deserve and require.

Regards,
Sam

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



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This is Exhibit "H" referred to in the Affidavit of William Thomas
sworn the 20th of June, 2017.



Commissioner for Taking Affidavits (or as may be)

THOMAS CANNING (MAIDSTONE) LTD.

Currency Country: Canada

19-Jun-17

CDN\$ Outstadndig Since April 20, 2017

Supplier Name	Invoice #	Invoice Date	Due Date	Amount
AABCO Propane (Dowler Karn)	3555885	28-Apr-17	28-May-17	104.66
AABCO Propane (Dowler Karn)	3562534	28-Apr-17	28-May-17	- 121.48
AABCO Propane (Dowler Karn)	98537	30-Apr-17	30-May-17	113.00
AABCO Propane (Dowler Karn)	96770	4-May-17	3-Jun-17	113.00
AABCO Propane (Dowler Karn)	3568388	5-May-17	4-Jun-17	173.86
AABCO Propane (Dowler Karn)	98667	12-May-17	11-Jun-17	214.70
AABCO Propane (Dowler Karn)	3579055	19-May-17	18-Jun-17	128.82
AABCO Propane (Dowler Karn)	98925	26-May-17	25-Jun-17	85.88
AABCO Propane (Dowler Karn)	98415	17-Jun-17	17-Jul-17	150.37
AABCO Propane (Dowler Karn)	99020	17-Jun-17	17-Jul-17	107.35
ADVANTAGE FARM EQUIPMENT	M22903	31-May-17	30-Jun-17	110.97
ADVANTAGE FARM EQUIPMENT	M23078	7-Jun-17	7-Jul-17	224.66
ADVANTAGE FARM EQUIPMENT	M23079	7-Jun-17	7-Jul-17	11.63
ADVANTAGE FARM EQUIPMENT	X03032	17-Jun-17	17-Jul-17	440.06
AGRICORP-RMP: GRAINS AND OILSEEDS	040677000	7-Jun-17	7-Jul-17	660.88
AGRICORP-RMP: GRAINS AND OILSEEDS	040677389	8-Jun-17	8-Jul-17	102.51
AMEX FREIGHT	W0015655	26-Apr-17	26-May-17	675.00
BC Global Resources	198	8-Jun-17	8-Jul-17	673.12
BELL CANADA - PUBLIC ACCESS	149147	29-Apr-17	29-May-17	56.50
BELL CANADA - PUBLIC ACCESS	149550	29-May-17	28-Jun-17	56.50
BELL MOBILITY	APRIL24.2017	24-Apr-17	24-May-17	180.98
BELL MOBILITY	0315.2017	28-Apr-17	28-May-17	102.62
BELL MOBILITY	497: MAY 15/17	15-May-17	14-Jun-17	102.60
BUTCHER ENGINEERING ENTERPRISES LTD	161	4-May-17	3-Jun-17	324.26
BUTCHER ENGINEERING ENTERPRISES LTD	162	4-May-17	3-Jun-17	6,128.02
BUTCHER ENGINEERING ENTERPRISES LTD	163	8-May-17	7-Jun-17	820.20
BUTCHER ENGINEERING ENTERPRISES LTD	164	18-May-17	17-Jun-17	343.34
BUTCHER ENGINEERING ENTERPRISES LTD	165	5-Jun-17	5-Jul-17	343.34
BUTCHER ENGINEERING ENTERPRISES LTD	166	5-Jun-17	5-Jul-17	5,927.95
BUTCHER ENGINEERING ENTERPRISES LTD	167	15-Jun-17	15-Jul-17	343.34
CANAG TRAVEL SERVICES LTD.	OV606	5-May-17	4-Jun-17	- 1,279.95
CANAG TRAVEL SERVICES LTD.	ON17-004546	19-May-17	18-Jun-17	1,106.00
CANAG TRAVEL SERVICES LTD.	ON17-004547	19-May-17	18-Jun-17	553.00
CANAG TRAVEL SERVICES LTD.	LS17-002424	17-Jun-17	17-Jul-17	988.00
CANAG TRAVEL SERVICES LTD.	LS17-002426	17-Jun-17	17-Jul-17	988.00
CHEP CANADA INC.	5101860540	6-May-17	5-Jun-17	185.94
CHEP CANADA INC.	5101863415	13-May-17	12-Jun-17	468.89
CHEP CANADA INC.	5101863773	20-May-17	19-Jun-17	278.43
CHEP CANADA INC.	5101867688	3-Jun-17	3-Jul-17	278.43
COXON'S SALES AND RENTALS LTD.	58590	28-Apr-17	28-May-17	197.75
COXON'S SALES AND RENTALS LTD.	58968	1-May-17	31-May-17	395.50
COXON'S SALES AND RENTALS LTD.	58969	1-May-17	31-May-17	395.50
COXON'S SALES AND RENTALS LTD.	59125	10-May-17	9-Jun-17	197.75
COXON'S SALES AND RENTALS LTD.	59585	1-Jun-17	1-Jul-17	395.50
COXON'S SALES AND RENTALS LTD.	59586	1-Jun-17	1-Jul-17	395.50
CURTIS-JK PRINTING LTD.	IN00009890	11-May-17	10-Jun-17	972.27
CURTIS-JK PRINTING LTD.	IN00009926	25-May-17	24-Jun-17	359.11
F.A.R.M.S.	LS2017-000764	24-Apr-17	24-May-17	1,067.85
FP Gushue and Associates Inc.	TCL20170405	5-Apr-17	5-May-17	673.86
FRANK LAFFERTY LTD.	JUNE-14-2017	14-Jun-17	14-Jul-17	274.02
GREAT-WEST LIFE	MAY 31-2017	22-Apr-17	22-May-17	241.34

THOMAS CANNING (MAIDSTONE) LTD.

Currency Country: Canada

19-Jun-17

CDN\$ Outstadndig Since April 20, 2017

Supplier Name	Invoice #	Invoice Date	Due Date	Amount
GREAT-WEST LIFE	JUNE 2017	19-May-17	18-Jun-17	241.34
GS1 CANADA	G-696589	1-Jun-17	1-Jul-17	2,712.00
HUB INTERNATIONAL ONTARIO LIMITED	759876	7-Jun-17	7-Jul-17	1,702.00
HYDRO - ONE NETWORKS INC.	ACC-3760-APR-17	28-Apr-17	28-May-17	2,765.78
HYDRO - ONE NETWORKS INC.	ACC-4589-MAY-17	4-May-17	3-Jun-17	128.81
HYDRO - ONE NETWORKS INC.	ACC-4963-MAY-17	4-May-17	3-Jun-17	23.34
HYDRO - ONE NETWORKS INC.	ACC-4589	5-Jun-17	5-Jul-17	118.49
HYDRO - ONE NETWORKS INC.	ACC-4963-JUNE-1	5-Jun-17	5-Jul-17	23.34
HYMARK FARM	709452	1-Jun-17	1-Jul-17	170.00
INTELECOM SOLUTIONS INC.	133705	1-May-17	31-May-17	28.09
NEBS BUSINESS Products Limited	21705062715	16-May-17	15-Jun-17	793.03
1636488 Ontario Limited	RENT: JUNE - 17	1-Jun-17	1-Jul-17	960.50
ORKIN CANADA	IN-7764120	17-Jun-17	17-Jul-17	146.90
PRAXAIR DISTRIBUTION	1-01	17-Jun-17	17-Jul-17	255.83
PRAXAIR DISTRIBUTION	29420711-02	7-Jun-17	7-Jul-17	26.49
PUROLATOR COURIER LTD.	434540764	28-Apr-17	28-May-17	136.87
REBEL PACKAGING INC.	53278	16-May-17	15-Jun-17	1,883.21
ROGERS	1762032253	15-May-17	14-Jun-17	136.55
ROL-LAND FARMS AND GREENHOUSES	1051	1-May-17	31-May-17	43,154.97
SAFE N SAVE LOGISTICS INC.	PB16378	9-May-17	8-Jun-17	475.00
SAFE N SAVE LOGISTICS INC.	PB16872	31-May-17	30-Jun-17	700.00
SETTERINGTON'S FERTILIZER LTD	345310	24-May-17	23-Jun-17	1,778.81
THOMAS LAGER & SINGER INC.	12372457	28-Apr-17	28-May-17	355.26
THOMAS LAGER & SINGER INC.	12372458	28-Apr-17	28-May-17	2,131.09
THOMAS LAGER & SINGER INC.	12372459	28-Apr-17	28-May-17	2,134.72
THOMAS LAGER & SINGER INC.	12372463	28-Apr-17	28-May-17	6,590.86
THOMAS LAGER & SINGER INC.	12377509	30-Apr-17	30-May-17	4,276.32
Town of Lakeshore (Water)	W-0428.17	28-Apr-17	28-May-17	297.32
Town of Lakeshore (Water)	201706/01	17-Jun-17	17-Jul-17	356.74
TOWN OF LAKESHORE (Property Tax)	2017(P):02600.0	18-Jan-17	28-Apr-17	10,097.18
TOWN OF LAKESHORE (Property Tax)	THOM04	5-Apr-17	5-May-17	42.53
TOWN OF LAKESHORE (Property Tax)	2017-3100.-INT	10-May-17	9-Jun-17	4.54
TOWN OF LAKESHORE (Property Tax)	INT: 2017.1	17-May-17	16-Jun-17	455.96
TOWN OF LAKESHORE (Property Tax)	FEE: 2600.00	7-Jun-17	7-Jul-17	228.51
TST OVERLAND EXPRESS	711-5558525	3-Apr-17	3-May-17	123.21
TST OVERLAND EXPRESS	711-6217611	7-Apr-17	7-May-17	265.57
TST OVERLAND EXPRESS	711-6217612	7-May-17	6-Jun-17	153.40
TST OVERLAND EXPRESS	711-6212757	23-May-17	22-Jun-17	296.11
TST OVERLAND EXPRESS	711-6212773	31-May-17	30-Jun-17	226.47
TST OVERLAND EXPRESS	711-6212774	31-May-17	30-Jun-17	136.53
TST OVERLAND EXPRESS	711-6212775	2-Jun-17	2-Jul-17	76.07
UNION GAS LTD.	MAY05.2017	12-May-17	11-Jun-17	2,166.78
UNION GAS LTD.	JUNE6.2017	17-Jun-17	17-Jul-17	1,167.99
WADDICK FUELS - SX	584986	20-May-17	19-Jun-17	1,627.94
WINDSOR DISPOSAL SERVICES LTD.	837029	22-Apr-17	22-May-17	718.23
WINDSOR DISPOSAL SERVICES LTD.	837795	1-May-17	31-May-17	1,287.84
WINDSOR DISPOSAL SERVICES LTD.	840734	6-May-17	5-Jun-17	628.45
WINDSOR DISPOSAL SERVICES LTD.	842376	17-Jun-17	17-Jul-17	572.90
XPRESS CANADA	33710	24-Apr-17	24-May-17	734.50
XPRESS CANADA	33812	25-Apr-17	25-May-17	621.50
XPRESS CANADA	33843	26-Apr-17	26-May-17	600.00

THOMAS CANNING (MAIDSTONE) LTD.

Currency Country: Canada

19-Jun-17

CDN\$ Outstadndig Since April 20, 2017

Supplier Name	Invoice #	Invoice Date	Due Date	Amount
XPRESS CANADA	33918	27-Apr-17	27-May-17	600.00
XPRESS CANADA	33925	27-Apr-17	27-May-17	203.40
XPRESS CANADA	33930	27-Apr-17	27-May-17	203.40
XPRESS CANADA	33937	27-Apr-17	27-May-17	600.00
XPRESS CANADA	33970	28-Apr-17	28-May-17	600.00
XPRESS CANADA	33986	28-Apr-17	28-May-17	203.40
XPRESS CANADA	33987	28-Apr-17	28-May-17	203.40
XPRESS CANADA	34102	28-Apr-17	28-May-17	600.00
XPRESS CANADA	34065	1-May-17	31-May-17	734.50
XPRESS CANADA	34074	1-May-17	31-May-17	203.40
XPRESS CANADA	34075	1-May-17	31-May-17	203.40
XPRESS CANADA	34116	2-May-17	1-Jun-17	600.00
XPRESS CANADA	34123	2-May-17	1-Jun-17	203.40
XPRESS CANADA	34124	2-May-17	1-Jun-17	203.40
XPRESS CANADA	34139	2-May-17	1-Jun-17	600.00
XPRESS CANADA	34183	3-May-17	2-Jun-17	203.40
XPRESS CANADA	34184	3-May-17	2-Jun-17	203.40
XPRESS CANADA	34227	4-May-17	3-Jun-17	203.40
XPRESS CANADA	34228	4-May-17	3-Jun-17	203.40
XPRESS CANADA	34287	5-May-17	4-Jun-17	203.40
XPRESS CANADA	34288	5-May-17	4-Jun-17	203.40
XPRESS CANADA	34369	8-May-17	7-Jun-17	203.40
XPRESS CANADA	34370	8-May-17	7-Jun-17	203.40
XPRESS CANADA	34419	9-May-17	8-Jun-17	600.00
XPRESS CANADA	34439	9-May-17	8-Jun-17	203.40
XPRESS CANADA	34440	9-May-17	8-Jun-17	203.40
XPRESS CANADA	34470	10-May-17	9-Jun-17	450.00
XPRESS CANADA	34506	10-May-17	9-Jun-17	734.50
XPRESS CANADA	34710	16-May-17	15-Jun-17	734.50
XPRESS CANADA	34922	19-May-17	18-Jun-17	734.50
XPRESS CANADA	35043	23-May-17	22-Jun-17	600.00
XPRESS CANADA	35108	25-May-17	24-Jun-17	600.00
XPRESS CANADA	35224	29-May-17	28-Jun-17	734.50
XPRESS CANADA	35404	29-May-17	28-Jun-17	1,470.00
XPRESS CANADA	35320	31-May-17	30-Jun-17	203.40
XPRESS CANADA	35367	1-Jun-17	1-Jul-17	450.00
XPRESS CANADA	35372	1-Jun-17	1-Jul-17	600.00
XPRESS CANADA	35388	1-Jun-17	1-Jul-17	203.40
XPRESS CANADA	35427	2-Jun-17	2-Jul-17	203.40
XPRESS CANADA	35509	5-Jun-17	5-Jul-17	450.00
XPRESS CANADA	35536	5-Jun-17	5-Jul-17	203.40
XPRESS CANADA	35582	5-Jun-17	5-Jul-17	1,680.00
XPRESS CANADA	35595	6-Jun-17	6-Jul-17	203.40
XPRESS CANADA	35600	6-Jun-17	6-Jul-17	450.00
XPRESS CANADA	35655	7-Jun-17	7-Jul-17	203.40
XPRESS CANADA	35677	8-Jun-17	8-Jul-17	203.40
XPRESS CANADA	35783	9-Jun-17	9-Jul-17	203.40
XPRESS CANADA	35861	12-Jun-17	12-Jul-17	203.40

Totals:**144,681.50**

THOMAS CANNING (MAIDSTONE) LTD.

Currency Country: Canada

19-Jun-17

CDN\$ Outstadndig Since April 20, 2017

<u>Supplier Name</u>	<u>Invoice #</u>	<u>Invoice Date</u>	<u>Due Date</u>	<u>Amount</u>
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THOMAS CANNING (MAIDSTONE) LTD.
Currency Country: US
19-Jun-17
USD\$ Outstadndig Since April 20, 2017

Supplier Name	Invoice #	Invoice Date	Due Date	Amount
CB SERVICES, LLC	7291	8-May-17	7-Jun-17	18,922.82
DHL GLOBAL FORWARDING	7701309823 01	20-Apr-17	20-May-17	41.75
DHL GLOBAL FORWARDING	6800707630 01	26-Apr-17	26-May-17	41.75
DHL GLOBAL FORWARDING	6800702621 03	27-Apr-17	27-May-17	41.75
DHL GLOBAL FORWARDING	6800704346 03	27-Apr-17	27-May-17	41.75
DHL GLOBAL FORWARDING	6800705666 03	27-Apr-17	27-May-17	41.75
DHL GLOBAL FORWARDING	680070791301	27-Apr-17	27-May-17	41.75
DHL GLOBAL FORWARDING	680070791401	27-Apr-17	27-May-17	41.75
DHL GLOBAL FORWARDING	6800708184 01	27-Apr-17	27-May-17	41.75
DHL GLOBAL FORWARDING	6800702644 01	28-Apr-17	28-May-17	41.75
DHL GLOBAL FORWARDING	6800708273 01	28-Apr-17	28-May-17	41.75
DHL GLOBAL FORWARDING	6800708308 01	28-Apr-17	28-May-17	41.75
DHL GLOBAL FORWARDING	6800709003 01	2-May-17	1-Jun-17	41.75
DHL GLOBAL FORWARDING	6800709062 01	2-May-17	1-Jun-17	41.75
DHL GLOBAL FORWARDING	6800709367 01	2-May-17	1-Jun-17	41.75
DHL GLOBAL FORWARDING	6800706722 01	3-May-17	2-Jun-17	41.75
DHL GLOBAL FORWARDING	6800710749 01	9-May-17	8-Jun-17	41.75
DHL GLOBAL FORWARDING	6800711766 01	11-May-17	10-Jun-17	41.75
DHL GLOBAL FORWARDING	6800713185 01	16-May-17	15-Jun-17	41.75
DHL GLOBAL FORWARDING	6800713303 01	18-May-17	17-Jun-17	41.75
DHL GLOBAL FORWARDING	66800713386 01	17-Jun-17	17-Jul-17	41.75
DHL GLOBAL FORWARDING	6800716278 01	17-Jun-17	17-Jul-17	41.75
DHL GLOBAL FORWARDING	6800717246 01	17-Jun-17	17-Jul-17	41.75
DHL GLOBAL FORWARDING	6800717651 01	17-Jun-17	17-Jul-17	41.75
DHL GLOBAL FORWARDING	6800718233 01	17-Jun-17	17-Jul-17	41.75
DHL GLOBAL FORWARDING	6800719164 01	17-Jun-17	17-Jul-17	41.75
DHL GLOBAL FORWARDING	6800719334 03	17-Jun-17	17-Jul-17	45.00
DHL GLOBAL FORWARDING	6800719335 01	17-Jun-17	17-Jul-17	41.75
DHL GLOBAL FORWARDING	6800719479 01	17-Jun-17	17-Jul-17	41.75
DHL GLOBAL FORWARDING	6800720183 01	17-Jun-17	17-Jul-17	41.75
DHL GLOBAL FORWARDING	9800035156 01	17-Jun-17	17-Jul-17	463.50
Seedling incorporated	54933	29-May-17	28-Jun-17	36,363.87
SPS COMMERCE, INC	PSI-112674821	30-Apr-17	30-May-17	208.30
SPS COMMERCE, INC	PSI-112702172	31-May-17	30-Jun-17	252.30

Totals:

57,424.79

This is Exhibit "I" referred to in the Affidavit of William Thomas
sworn the 20th of June, 2017.



Commissioner for Taking Affidavits (or as may be)

From: [Ariyana Botejue](#)
To: [Alexandra Teodorescu](#)
Subject: FW: Account for Drafting and Preparation of Accommodation Agreement
Date: Tuesday, June 20, 2017 11:06:19 AM
Attachments: [image001.png](#)
[image002.png](#)
[image015.png](#)
[image013.png](#)
[image014.png](#)
[image004.png](#)
[image003.png](#)
[image016.png](#)
[image2017-06-12-104308.pdf](#)

Ariyana Botejue
Legal Assistant to Stephen Gaudreau and David Ullmann
abotejue@blaney.com
📞 416-593-1221 ext 4777

From: David T. Ullmann
Sent: June-12-17 11:24 AM
To: 'Sam P. Rappos'
Cc: Ariyana Botejue
Subject: FW: Account for Drafting and Preparation of Accommodation Agreement

Sam,

Not sure of the process here, but here is our account for the preparation of the Accommodation Agreement in accordance with paragraph 5.1 of that Agreement. The agreement says Bridging will pay it provided your client finds it reasonable. The company has signed off. I confirm that the account is at our usual rates and charges and if this was to be paid by the court, I would be able to swear an affidavit to that effect as usual. I confirm the account only relates to our work negotiating and preparing the agreement and the implementation of the settlement created under the AA.

Unless you have a problem with the attached, I would think the best process would be for the company to submit this for payment and then it can be paid when the company receives the funds from Bridging in the ordinary course.

We will then do the same with our account for the month of May, which I would like to send this week as well.

Let me know if this process makes sense to you.

David

David T. Ullmann
Partner
dullmann@blaney.com
📞 416-596-4289 | 📞 416-594-2437

From: William Thomas [<mailto:williamt@thomascanning.net>]
Sent: June-11-17 7:54 AM
To: David T. Ullmann

Subject: Re: Account for Drafting and Preparation of Accommodation Agreement

Hello David; This is reasonable, you can forward to monitor.



On Fri, Jun 9, 2017 at 2:49 PM, David T. Ullmann <DUllmann@blaney.com> wrote:
Bill,

Attached is our account for our services related to the drafting of the forbearance. In accordance with section 5.1 of the AA, we were entitled to bill up to \$20,000 to Bridging in respect of these services. You will see the enclosed is in the amount of \$18,510 plus HST.

Once you agree that the enclosed account is reasonable, I will forward it to the Monitor to have them confirm it is reasonable as well. Once we have that confirmation, we will then ask you to submit it for payment by Bridging as part of your usual request.

Thank you.

Regards,

David



David T. Ullmann
Partner

dullmann@blaney.com

📞 [416-596-4289](tel:416-596-4289) | 📞 [416-594-2437](tel: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.

HST REGISTRATION # R119444149

PRIVATE & CONFIDENTIAL
Thomas Canning (Maidstone) Limited
326 South Talbot Road
Maidstone, ON N0R 1K0

Date
April 30, 2017

Invoice No.
607546

File No.
111384-0002

Attention: Robert Thomas
Vice President

RE: Accommodations Agreement

TO ALL PROFESSIONAL SERVICES RENDERED on your behalf in connection with the above noted matter for the period ended April 30, 2017 as more particularly described below.

<u>Date</u>	<u>Lawyer</u>	<u>Description</u>
April 21, 2017	DU	Extended calls with client to consider options, draft forbearance
April 23, 2017	DU	Draft settlement, Telephone call Bill, Telephone call Ken Rosenstein, extended conference call
April 24, 2017	DU	Call with client, email to Ken research, review monitor option
April 24, 2017	AT	Telephone call with clients regarding settlement agreement with Bridging; reviewed settlement proposal between Bridging and David Ullmann
April 25, 2017	AT	Attend to forbearance
April 26, 2017	AT	Reviewed settlement proposals between Bridging and client; reviewed case law regarding receiver/Monitors under s. 101 of the CJA
April 27, 2017	DU	Email to and from opposing counsel regarding status of forbearance
April 28, 2017	DU	Attend court, review accommodation agreement, multiple Telephone call with clients regarding same
April 28, 2017	AT	Reviewed correspondence with counsel for Bridging and clients regarding settlement proposals; telephone call with clients regarding Forbearance Agreement

Date
April 30, 2017

Invoice No.
607546

File No.
111384-0002

-2-

<u>Date</u>	<u>Lawyer</u>	<u>Description</u>			
April 29, 2017	DU	Revise forbearance, email to and from Ken Rosenstein, multiple emails, review final form of forbearance			
April 30, 2017	AT	Call with clients regarding settlement and form of Order			
			<u>Title</u>	<u>Hours</u>	<u>Rate</u>
	<u>Lawyer</u>				<u>Amount</u>
	David Ullmann		Partner	27.50	\$575.00
	Alexandra Teodorescu		Associate	8.30	\$325.00
					\$18,510.00
					\$2,406.30
					\$18,510.00
					<u>\$2,406.30</u>
					<u>\$20,916.30</u>

OUR FEE HEREIN:
FEE HST:

TOTAL FEES AND DISBURSEMENTS:
TOTAL HST:

TOTAL AMOUNT DUE:

BLANEY McMURTRY LLP

David Ullmann
E. & O.E

Fees may include charges for services provided by Lawco Limited.
Details are available upon request.

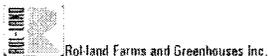
Make payment(s) payable to Blaney McMurtry LLP.
We accept Visa, Mastercard and AMEX.

For Wire Transfers: TD Canada Trust, Bank No. 004, Transit No. 10252,
General Account No. 0680-5215022 Swift Code: TDOMCATTOR
**Please ensure our account number and/or file number is quoted on
the wire transfer.**

This is Exhibit "J" referred to in the Affidavit of William Thomas
sworn the 20th of June, 2017.



Commissioner for Taking Affidavits (or as may be)



Rol-land Farms & Greenhouses Inc.
 9102 Bisnett Line
 RR 3
 Blenheim ON N0P1A0
 ldebrouwer@rollandfarms.com
 GST Registration No.: 889086948

Invoice 1086

DATE 19-06-2017	PLEASE PAY CAD 42,260.01	DUE DATE 01-07-2017
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INVOICE TO
 Thomas Canning (Maidstone) Limited
 326 South Talbot Rd
 Maidstone ON N0R 1K0

Please detach top portion and return with your payment.

ACTIVITY	QTY	RATE	AMOUNT
vegetable transplants 2017 Tomato Plant Contract (3,168,000 plants @ \$24,11/m) Final Payment	1	38,190.24	38,190.24
Board fees 3,168,000 @ \$0.20/m	-3,168	0.20	-633.60
Count Fees 3,168,000 @ \$0.05/m	-3,168	0.05	-158.40
		SUBTOTAL	37,398.24
		HST (ON) @ 13%	4,861.77
		TOTAL	42,260.01
		TOTAL DUE	CAD 42,260.01

THANK YOU.

TAX SUMMARY

	RATE	TAX	NET
HST (ON) @ 13%		4,861.77	37,398.24

This is Exhibit "K" referred to in the Affidavit of William Thomas
sworn the 20th of June, 2017.



Commissioner for Taking Affidavits (or as may be)

Date	CDN\$ Deposit	USD\$Deposit
7-Apr-17	12,003.77	-
10-Apr-17	96,239.57	-
12-Apr-17	22,381.40	-
24-Apr-17	6,005.20	-
27-Apr-17	619.00	-
1-May-17	-	10,661.46
1-May-17	82,535.01	-
1-May-17	-	127,922.35
2-May-17	38,380.53	-
5-May-17	22,384.70	-
9-May-17	3,960.20	-
9-May-17	-	25,703.50
11-May-17	7,714.72	-
11-May-17	6,567.68	-
12-May-17	-	9,477.25
15-May-17	61,381.99	-
18-May-17	25,012.95	-
18-May-17	-	20,603.00
23-May-17	4,480.00	-
23-May-17	13,519.80	-
25-May-17	22,365.45	-
25-May-17	-	22,819.25
26-May-17	-	53,722.66
26-May-17	12,010.40	-
26-May-17	32,952.66	-
31-May-17	2,644.69	-
31-May-17	94,722.85	-
2-Jun-17	-	11,820.00
2-Jun-17	-	42,275.00
2-Jun-17	-	11,820.00
3-Jun-17	5,664.22	-
5-Jun-17	360.00	-
5-Jun-17	31,851.56	-
8-Jun-17	6,650.08	-
12-Jun-17	23,061.22	-
12-Jun-17	1,515.65	-
13-Jun-17	420.00	-
15-Jun-17	-	52,148.88
16-Jun-17	4,398.40	-
16-Jun-17	-	25,999.83
19-Jun-17	17,763.91	-

659,567.61

414,973.18

This is Exhibit "L" referred to in the Affidavit of William Thomas
sworn the 20th of June, 2017.



Commissioner for Taking Affidavits (or as may be)

From: [David T. Ullmann](#)
To: [Alexandra Teodorescu](#)
Subject: FW: Adjournment of Monitor's Motion
Date: Monday, June 19, 2017 12:27:53 PM
Attachments: [image001.png](#)
[image002.png](#)
Importance: High

FYI

David T. Ullmann
Partner

dullmann@blaney.com

📞 416-596-4289 | 📞 416-594-2437

From: Sam P. Rappos [<mailto:samr@chaitons.com>]
Sent: June-19-17 12:22 PM
To: David T. Ullmann
Cc: Ken Rosenstein; 'Sam Babe'; CLonergan@Richter.ca; KForbes@richter.ca
Subject: RE: Adjournment of Monitor's Motion
Importance: High

David,

I am not sure it is appropriate for you to take any issue with service given that you previously informed us at 11:32 am on May 16 that you had scheduled a 9:30 am chambers appointment on May 17, without our consent or prior notice, at which time you were attempting to seek substantive relief.

The Interim Receiver and the Monitor served a motion record on Thursday June 15 with respect to a hearing date, which you have known about for some time, for Wednesday June 21. It is our position that this provides you with sufficient time to review and respond to the motion if the Company intends to take a position, especially since there is nothing in the Report that you and your client has not been aware of for weeks and we, as you noted, have exchanged numerous correspondence on.

I note that, pursuant to section 7.1 of the Accommodation Agreement, your client has already released Richter in its capacity as Monitor with respect to any steps taken in connection with the monitor proceeding.

The Interim Receiver and the Monitor intend to proceed with their motion on Wednesday.

Regards,
Sam

Sam P. Rappos

Lawyer | Chaitons LLP | T: 416.218.1137

From: David T. Ullmann [<mailto:DUllmann@blaney.com>]
Sent: Sunday, June 18, 2017 10:18 PM
To: Sam P. Rappos
Cc: Sam Babe; William Thomas

Subject: Adjournment of Monitor's Motion

Sam,

We are in receipt of your motion from Friday. We have instructions to seek an adjournment of your motion. Your motion is an add on to the motion already scheduled for that date to which our input as to timing was not sought and to which we have not consented. While we knew a report was coming in relation to the Bridging motion, we had no notice of your motion prior to receiving it on Friday. |Also, your report goes far beyond what is necessary to address the issue of the approval of the sale and our clients require reasonable time to digest all that ancillary information, consider it and to formulate a response, if necessary.

The appointment of the Receiver being sought on Wednesday, if found to be appropriate by the court, and the approval of the sale to the purchaser under the RISP, do not require the relief you are seeking in your motion in order to proceed.

As you know from our various emails in this matter there are multiple outstanding issues on which we have so far only agreed to disagree. These issues may yet lead to the need to review and comment on the Monitor's conduct and or to oppose its release. On the other hand, it may also be the case that once the sale is complete and some modest time has passed, some or all of these issues may no longer inspire as much interest as they currently do for my client or others.

We propose to adjourn your motion to a scheduling appointment on a date to be set. We also propose we schedule a meeting after the transaction has closed to see what issues remain outstanding and how they might be resolved. If they cannot be resolved at that meeting you can bring your motion back on on proper notice as determined at the court at the scheduling hearing.

Please advise if you will consent to the adjournment of the Monitor's motion for the relief set out in your notice of motion on the terms set out above. There is no urgency to your motion and it is unfair and unnecessary to spring it on the parties in this fashion.

Regards,

David



David T. Ullmann
Partner

dullmann@blaney.com

416-596-4289 | 416-594-2437

Blaney.com

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This is Exhibit "M" referred to in the Affidavit of William Thomas
sworn the 20th of June, 2017.



Commissioner for Taking Affidavits (or his may be)

From: David T. Ullmann
Sent: June-05-17 10:54 AM
To: 'Sam P. Rappos'
Cc: 'Loneragan, Clark'; Forbes, Katherine; Mahmood, Wajahat; 'Ken Rosenstein'; Sam Babe; William Thomas
Subject: RE: Thomas Canning

Sam,

I have no idea how you think the Monitor can control the operations of a company in a court process and then attempt to say that the decisions are all being made by the company and the Monitor has no responsibility. I refer you to your email in the same chain to which you responded just now.

“The Agreement also confirms that the Monitor’s powers include taking steps to secure the Property 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.** “

You cannot have it both ways. You cannot say you are both in control and not in control.

One way or another the corporate entity which is the company will likely cease to exist after the sale

process is complete. To the extent there are entities who have outstanding accounts and are looking for recourse for amounts which they incurred in good faith reliance on your client having approved those expenses, you can be sure they will look to your client. We are alerting you to this in time for you to mitigate this issue, which frankly I would have expected you to be doing anyway. If you choose not to do so, the consequences will be yours to deal with later. The position taken in your email however, including the suggestion that people providing post filing services need not be paid, is not in keeping with the duties of a court officer with control over an operating business, I am quite certain.

I understand at least one of the greenhouse growers is attending the company this afternoon looking for payment which you acknowledged in your email of May 25th came due on May 31st. Please advise Bill Thomas if he will be able to pay them.

Regards,

David

David T. Ullmann

Partner

dullmann@blaney.com

416-596-4289 | 416-594-2437

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

Sent: June-05-17 10:13 AM

To: David T. Ullmann

Cc: 'Lonergan, Clark'; Forbes, Katherine; Mahmood, Wajahat; 'Ken Rosenstein'; Sam Babe

Subject: RE: Thomas Canning

David, I will discuss your email with my client and revert back to you. **[redacted]** Additionally, in no way, shape or form does the Monitor agree that it is personally liable for any amounts with respect to your client's business, including without limitation the invoices presented by each of Rol-land Farms and Speedling Inc.

Sam P. Rappos

Lawyer | Chaitons LLP | T: 416.218.1137

From: David T. Ullmann [<mailto:DUllmann@blaney.com>]

Sent: Monday, June 05, 2017 10:04 AM

To: Sam P. Rappos

Cc: 'Lonergan, Clark'; Forbes, Katherine; Mahmood, Wajahat; 'Ken Rosenstein'; Sam Babe; William Thomas

Subject: Re: Thomas Canning

Sam,

Thank you for your email. Please be advised as follows.

[deleted]

Finally, please we are advised that apparently the Monitor and or Bridging have refused to approve the invoices presented by each of Rol-land Farms and Speedling Inc. for the millions of seedlings which were grown during this process. As we have advised our client, these are clearly post-filing obligations and I am sure you will agree that the Monitor will be personally

liable to these companies if these amounts are not paid for services rendered. Further, we remind you that the seedling growers can also make application and or complaint to the Farm Products Marketing Board, which will jeopardize the company's licence. Please ensure that these two greenhouses are paid immediately on Monday. The Monitor has been provided with the specific invoices (which you referred to in your email of May 25) by the company.

Regards,
David



David T. Ullmann
Partner

dullmann@blaney.com

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From: Sam P. Rappos <samr@chaitons.com>

Sent: June 3, 2017 12:42 PM

To: David T. Ullmann

Cc: 'Lonergan, Clark'; Forbes, Katherine; Mahmood, Wajahat; 'Ken Rosenstein'; Sam Babe

Subject: Thomas Canning

David,

As you know, Richter Advisory Group was appointed as Monitor of the Company pursuant to the Order of the Court dated May 1, 2017, a copy of which is attached hereto. The role of the Monitor is also detailed in the Accommodation Agreement dated April 29, 2017, a copy of which is attached hereto.

Pursuant to paragraph 9 of the Order, the Monitor has been empowered and authorized to act with respect to the property, assets and undertakings of the Company (the "**Property**"). Under the Agreement, the Company is required to promptly provide all information requested by the Monitor, provide full access to the books and records of the Company and the Property, and fully cooperate with the Monitor in implementing the Agreement. The Agreement also confirms that the Monitor's powers include taking steps to secure the Property 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.

[deleted]

Regards,
Sam

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



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From: [David T. Ullmann](#)
To: [Alexandra Teodorescu](#)
Subject: FW: Post filing Services etc.
Date: Tuesday, June 20, 2017 10:23:50 AM
Attachments: [image001.png](#)
[image002.png](#)
[image003.png](#)
[image004.png](#)
[image013.png](#)
[image014.png](#)
[image015.png](#)
[image016.png](#)

David T. Ullmann
Partner

dullmann@blaney.com

☐ 416-596-4289 | ☐ 416-594-2437

From: David T. Ullmann
Sent: June-15-17 1:30 PM
To: Sam P. Rappos
Cc: 'Ken Rosenstein'; Sam Babe; 'William Thomas'
Subject: Post filing Services etc.

Sam,

Presumably you are in the process of considering transition issues related to the hoped for sale which may be before the court next week. In this regard we wanted to advise you of the Company's concern that various post filing services remain outstanding and are not paid. I am advised that the company has made repeated requests of the Monitor for the payment of many or all of these amounts but the issue remains nonetheless.

If this issue is not resolved to the Company's satisfaction, we intend, in conjunction with any motion to appoint a receiver or transfer the business, to provide an affidavit from the company itemizing these amounts to ensure this is brought to the attention of the court and to seek an order requiring that all post filing services, being services ordered or received to the benefit of the company after April 20th, 2017, be paid from the sale proceeds in priority to the security held by Bridging. There is no doubt that Bridging has received a huge benefit from these services given the outcome of the sale process and it is inappropriate that they should go unpaid.

I believe I have your position from earlier when we raised this in the context of the seedling issue that you expressly disagreed with the proposition that the Monitor has any liability in connection with this issue and you have suggested, at least in the context of that issue, that it is not your issue. We disagree that that is clear in light of the degree of control your client has exercised, as you know. Nonetheless, I am writing to you now as the Company wanted to ensure there was no mistaking that the Monitor is on notice as to this issue and in the hopes that you can consider what steps can still be taken to mitigate this issue. If you or your client have any uncertainty as to which accounts these are, I am advised the company will itemize them for your client again.

If these outstanding amounts or any of them are being assumed by the selected purchaser, obviously that changes the matter. As we are outside the tent in that regard, we do not know if that is the case. This in part raises a second issue, however. It is our understanding that under the RISP a definitive agreement is to be reached by COB today. Please confirm that this has happened or advise us when it occurs later today. As I wrote to you on May 29th, we are looking for your input on the

issue of what impact the proposed sale has on the day to day decisions the company needs to make. That information needs to be shared with the company.

Regards,

David



David T. Ullmann
Partner

dullmann@blaney.com

416-596-4289 | 416-594-2437

Blaney.com



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This is Exhibit "N" referred to in the Affidavit of William Thomas
sworn the 20th of June, 2017.



Commissioner for Taking Affidavits (or as may be)

From: David T. Ullmann
Sent: June-02-17 12:36 AM
To: 'Sam P. Rappos'
Cc: 'Loneragan, Clark'; Wajahat Mahmood; Katherine Forbes; 'William Thomas'; Sam Babe; Ken Rosenstein; Alexandra Teodorescu
Subject: RE: 100 Conventional Acres -pending contract

Sam,

Thank you for your email. There is no doubt whatsoever that the Monitor committed, in front of our clients and the court, that it was critical that the company fund 150 acres. The information in the data room confirms this as well. It is certainly not the Company's fault that this has taken longer than the Company would have wished to get this done. The company has acted in good faith reliance on the clear and express representations of the Monitor, as has the grower in question, we assume.

Our emails to which you refer confirmed that our clients were continuing to seek the 100 conventional acres of land and your client was at all times informed of same, as your clients will eventually have to admit, under direct questioning should it come to that. I refer you to our emails May 23rd, both of which make it clear that the company was directed by the Monitor to continue to seek conventional acreages to plant and was doing so with the Monitor's knowledge. At no time did the company waiver in this pursuit, despite it often being unsuccessful, as we did report to you.

From: David T. Ullmann
Sent: May-23-17 12:27 PM
To: 'Sam P. Rappos'
Cc: Mahmood, Wajahat; Forbes, Katherine; Alexandra Teodorescu; Loneragan, Clark; Ken Rosenstein; Sam Babe; 'William Thomas'
Subject: RE: TCL RISP Update

Sam,

Thanks. It is my understanding that the company spoke to De Nijs about the conventional acreage

and he was not interested, hence my comment in my email last night. I will reconfirm however. The company is continuing to attempt to source conventional acres, as I said and will continue to do so...

From: Sam P. Rappos [<mailto:samr@chaitons.com>]
Sent: May-23-17 11:50 AM
To: David T. Ullmann
Cc: Mahmood, Wajahat; Forbes, Katherine; Alexandra Teodorescu; Lonergan, Clark; Ken Rosenstein; Sam Babe
Subject: RE: TCL RISP Update
Importance: High

David,

...The Monitor also requests that the Company continue to source conventional acreage. I note that the Company informed the Monitor this morning that it has not even raised the possibility of conventional acreage with its organic grower (De Nijs) and whether De Nijs would consider proceeding with conventional acreage....”

That was only 3 business days before my email on May 29th. To suggest, as your email does, that the first the Monitor heard of this was May 29th, two weeks after the decision was made is false, and frankly disturbing. You should really also check with your client as to the daily conversations which we are advised they had with the principals of the company about this issue leading up to our email of May 29th. The Company does nothing material without the Monitor’s input and to suggest that they would have engaged in these discussions without advising the Monitor regularly of same is simply not true.

As per my other email, we will engage in a more full throated correspondence on this issue should this decision, along with others in the same vein, prove to have been permanently damaging to the company and its stakeholders or the RISP. Hopefully the outcome of the RISP will make part of this issue moot, but if the company cannot plant at least these minimal acres, we are concerned it may result in the purchasers reducing their proposed purchase price or abandoning the transaction entirely, as they presumably remain able to do. Of course, we are not controlling that decision, but personally see it as a logical outcome of this latest flip flop decision from the Monitor. We will have to see what happens tomorrow.

Regards,

David

David T. Ullmann
Partner

dullmann@blaney.com

416-596-4289 | 416-594-2437

From: Sam P. Rappos [<mailto:samr@chaitons.com>]
Sent: June-01-17 9:37 PM

To: David T. Ullmann
Cc: 'Loneragan, Clark'; Wajahat Mahmood; Katherine Forbes
Subject: RE: 100 Conventional Acres -pending contract

David,

As you know, the discussion regarding acreage took place over two weeks ago, culminating in my letter to you dated May 17th and our attendance before Justice Newbould on May 18th.

Since that time, you have sent numerous emails confirming that your client has been unable to source 100 conventional acres. Your client then attempted to source additional organic acreage but, as described in my previous correspondence to you, your client provided nothing to support such additional organic acreage.

Then on May 29th, well into the RISP and during the week that a binding LOI was required to be entered into, your client notified the Monitor that 100 conventional acres had been sourced and that the farmer was willing to enter into an escrow arrangement. The Monitor indicated to your client that due to the late nature of this request and timing with respect to status of the RISP, the Monitor would have to check with the offerors with regards to the need of this acreage, the impact on their current LOI and how the cost to secure this feedstock would be paid for or addressed in the binding LOI.

Subsequently, the Monitor did consult with both offerors regarding the proposed conventional acreage, and determined that conventional acreage was not critical for either offeror to enter into a binding offer for the business by tomorrow, especially given that non-binding offers were submitted without such conventional acreage.

Accordingly, the Monitor is of the view that payments to proceed with the 100 conventional acreage would not be a "critical payment" under the Accommodation Agreement, nor is it required to complete a transaction under the RISP.

Regards,
Sam

Sam P. Rappos

Lawyer | Chaitons LLP | T: 416.218.1137

Sam P. Rappos

Lawyer | Chaitons LLP | T: 416.218.1137

From: David T. Ullmann [<mailto:DUllmann@blaney.com>]
Sent: Thursday, June 01, 2017 4:48 PM
To: Sam P. Rappos
Cc: Sam Babe; Ken Rosenstein; 'Loneragan, Clark'; William Thomas
Subject: RE: 100 Conventional Acres -pending contract

Sam,

Your response is disappointing and we do not believe it is correct. It was not by accident that we wrote

our inquiry to you and not to Bridging. However, we are instructed to wait until tomorrow to further engage on this issue, given that I am advised that it is hoped by all parties that the RISP will have a winner by then which may impact Bridging's position. If it does not, we will re-engage on this matter. In the interim, please know that the Company does not agree with the position taken by Bridging and will expect the Monitor to support the Monitor's existing recommendation that 150 acres should be planted and funded as a critical payment. We also reserve our clients rights in the event the 100 acre grower is no longer available by the time this matter is resolved.

Regards,

David

David T. Ullmann
Partner

dullmann@blaney.com

416-596-4289 | 416-594-2437

From: Sam P. Rappos [<mailto:samr@chaitons.com>]
Sent: June-01-17 4:31 PM
To: David T. Ullmann
Cc: Sam Babe; Ken Rosenstein; 'Lonergan, Clark'
Subject: RE: 100 Conventional Acres -pending contract

David,

I understand that Ken has sent you a response on behalf of his client, which I believe was the appropriate party to respond to your inquiry.

Regards,
Sam

Sam P. Rappos

Lawyer | Chaitons LLP | T: 416.218.1137

From: David T. Ullmann [<mailto:DUllmann@blaney.com>]
Sent: Thursday, June 01, 2017 10:29 AM
To: Sam P. Rappos
Cc: Sam Babe; Ken Rosenstein; William Thomas
Subject: 100 Conventional Acres -pending contract

Good Morning Sam,

I understand from the company that they have, subject to your client's confirmation, reached an arrangement with a grower named Brian Broad to grow the missing 100 acres of conventional farming. The Monitor has been advised that these discussions were underway. I think we have all agreed for some time that Bridging would provide the necessary escrow funding for these 100 acres (along with the 50 organic acres already funded). I understand from my client that Mr. Broad's lawyer has reviewed the escrow agreement and has found it acceptable and is ready to go. My client says he has discussed this with Clark and Wuji more than once over the past few days, but I think with everyone focused on the sale process this is not getting to the finish line so I have been asked to send this email. The company still has a business to run while the RISP process unfolds. It is also potentially possible that no deal will be

reached in the RISP and the company will need this farming to maintain at least some level of going concern operations while the parties decide what to do thereafter.

Can you please confirm that this will be dealt with today? To the extent there are negotiations underway with a going concern purchaser I am sure you and Bridging will look for a way to have the purchaser pick up the escrow obligation, but in the interim, it is not in the company's interest to wait for the RISP to finalize before proceeding with this contract. As you know, the contracts are time sensitive as there is pressure from the growers and the calendar to make decisions. It has been difficult to secure this grower and the company is very keen to proceed.

Regards,

David



David T. Ullmann
Partner

dullmann@blaney.com

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www.blaney.com



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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

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

BRIDGING FINANCE INC., AS AGENT
FOR SPROTT BRIDGING INCOME FUND L.P.
Applicant

THOMAS CANNING (MAIDSTONE) LIMITED
and 692194 ONTARIO LIMITED
Respondents

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

Proceeding commenced at Toronto

AFFIDAVIT OF WILLIAM THOMAS

BLANEY MCMURTRY LLP
Barristers & Solicitors
2 Queen Street East, Suite 1500
Toronto ON M5C 3G5

David T. Ullmann (LSUC #423571)
Fax: (416) 594-2437
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Alexandra Teodorescu (LSUC # 63889D)
Tel: (416) 596-4279
Email: ateodorescu@blaney.com

Lawyers for 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

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

**BRIDGING FINANCE INC., AS AGENT
FOR SPROTT BRIDGING INCOME FUND L.P.**
Applicant

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

**ONTARIO
SUPERIOR COURT OF JUSTICE**

COMMERCIAL LIST

Proceeding commenced at Toronto

**RESPONDING MOTION RECORD OF
THOMAS CANNING (MAIDSTONE) LIMITED
and 692194 ONTARIO LIMITED**

(Returnable June 21, 2017)

BLANEY MCMURTRY LLP
Barristers & Solicitors
2 Queen Street East, Suite 1500
Toronto ON M5C 3G5

David T. Ullmann (LSUC #423571)
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Lawyers for Thomas Canning (Maidstone) Limited. and 692194
Ontario Limited, Respondents