

**THE QUEEN'S BENCH
Winnipeg Centre**

IN THE MATTER OF: The Appointment of a Receiver pursuant to
Section 243 of the *Bankruptcy and Insolvency*
Act, R.S.C. 1985 c.B-3, as amended and Section
55 of *The Court of Queen's Bench Act*, C.C.S.M.
c. C280

BETWEEN:

ROYAL BANK OF CANADA,

Plaintiff,

- and -

**KELLER & SONS FARMING LTD. and
KELLER HOLDINGS LTD.**

Defendants.

NOTICE OF MOTION

**HEARING DATE: THURSDAY, OCTOBER 8, 2015 AT 10:00 A.M. ON THE
UNCONTESTED MOTIONS LIST**

FILLMORE RILEY LLP
Barristers, Solicitors and Trade-Mark Agents
1700 Commodity Exchange Tower
360 Main Street
Winnipeg, Manitoba
R3C 3Z3

Telephone: 204-957-8319

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J. MICHAEL J. DOW/DAVID J. KROFT

File No. 180007-785/JMJD

THE QUEEN'S BENCH
Winnipeg Centre

IN THE MATTER OF: **The Appointment of a Receiver pursuant to
Section 243 of the *Bankruptcy and Insolvency*
Act, R.S.C. 1985 c.B-3, as amended and Section
55 of *The Court of Queen's Bench Act*, C.C.S.M.
c. C280**

BETWEEN:

ROYAL BANK OF CANADA,

Plaintiff,

- and -

**KELLER & SONS FARMING LTD. and
KELLER HOLDINGS LTD.**

Defendants.

NOTICE OF MOTION

THE PLAINTIFF, will make a motion before the presiding judge on Thursday, October 8, 2015, at 10:00 a.m., or as soon after that as the motion can be heard, at the Law Courts Building, 408 York Avenue, Winnipeg, Manitoba.

THE MOTION IS FOR:

1. An order that the time for service of the notice of motion is hereby abridged and that this motion is properly returnable with no further service required.

2. An order that pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, RSC 1985 c.B-3 as amended (the "BIA") and section 55 of *The Court of Queen's Bench Act*, C.C.S.M. c.C280 as amended, Ernst & Young Inc. be appointed Receiver and Manager, without security, of all the assets, undertakings and properties of the Defendants with the authority to act as more particularly set out in the draft form of order attached to this notice of motion as Schedule "A".

THE GROUNDS FOR THE MOTION ARE:

1. The plaintiff is a Canadian chartered bank;
2. The Defendants are corporations incorporated pursuant to the laws of Manitoba with their office in the Town of Carberry, Manitoba.
3. The Defendants own and operate a large potato farm in Manitoba covering approximately 6,440 acres.
4. At the request of the Defendants and for valuable consideration, the plaintiff extended to the defendant Keller & Sons Farming Ltd. ("Keller") credit facilities (the "Credit Facilities"), guaranteed by the defendant Keller Holdings Ltd. ("Holdings") secured by, among other things, the following security:

From Keller:

- (a) General Security Agreement dated May 25, 2011;
- (b) General Assignment of Leases and Rents dated May 25, 2011;

- (c) Specific Assignment of Contracts dated May 25, 2011;
- (d) Real Property Mortgage No. 1159694/4 dated May 25, 2011, as amended thereafter;
- (e) Real Property Mortgage No. 1289048/2 dated May 25, 2011 as amended thereafter;
- (f) Real Property Mortgage No. 1291925/2 dated July 13, 2011 as amended thereafter;
- (g) Agreement as to loans and advances and section 427 of the *Bank Act* security dated May 25, 2011;
- (h) Bailee Agreement dated on or about May 25, 2011;

From Holdings:

- (a) Guarantee and Postponement of Claim dated May 25, 2011, of all debts and liabilities, present or future, direct or indirect, absolute or contingent, matured or not, at any time owing by Keller to the plaintiff limited to the principal sum of \$30,000,000.00 plus interest;
- (b) General Security Agreement dated May 25, 2011 pursuant to which Holdings granted RBC a security interest in all of its present and after-acquired personal property;
- (c) General Assignment of Leases and Rents dated May 25, 2011;
- (d) Real Property Mortgage No. 1159697/4, as amended thereafter dated May 25, 2011;

- (e) Real Property Mortgage No. 1289056/2 dated May 25, 2011, as amended thereafter

(collectively the "Security")

5. The terms of the Security included, among other things, the following:

- (a) the Defendants grant to the plaintiff security interests over all of their present and after acquired undertakings, properties and assets, including real property (collectively the "Assets"); and
- (b) upon default by the Defendants under the Security, the plaintiff may appoint a receiver and/or receiver/manager over the Assets.

6. As at September 18, 2015 the total indebtedness of the Defendants to the plaintiff was \$15,830,004.47 plus interests and costs (the "Indebtedness").

7. The Defendants have defaulted under the terms of the Credit Facilities and the Security.

8. On July 17, 2015, the plaintiff demanded from the Defendants payment of the Indebtedness.

9. Notices pursuant to section 21 of the *Farm Debt Mediation Act* S.C. 1997, c. 21 were served on the Defendants concurrently with said demands and at the time of filing this notice, any stay period thereunder has terminated.

10. On October 2, 2015, this Honourable Court issued an order, with the consent of the Defendants, granting leave pursuant to sections 8 and 9 of *The Family Farm Protection Act*, C.C.S.M. c. F15 to commence or continue proceedings pursuant to the Security, including the appointment of a receiver and manager.

11. The Defendants consent to the appointment of a receiver and manager.

12. The plaintiff wishes to appoint Ernst & Young Inc. as receiver and manager of the Defendants and Ernst & Young Inc. has consented to act in that capacity.

13. As this matter involves multiple corporations, real and personal assets in a variety of locations and a significant number of stakeholders, the appointment of Ernst & Young Inc. as a receiver and manager over all of the Defendants Assets is required by the plaintiff and is in the interest of all creditors.

14. The appointment of a receiver and manager is just and convenient.

15. Section 243(1) of the BIA and section 55 of *The Court of Queen's Bench Act*.

THE FOLLOWING DOCUMENTARY EVIDENCE will be relied upon at the hearing of this motion:

1. Affidavit of Gary Ivany, sworn the 2nd day of October, 2015;
2. Consent of the Defendants;

3. Consent of Ernst & Young Inc.; and
4. Such further evidence as counsel may submit and this Honourable Court will allow.

Date: October 6, 2015

FILLMORE RILEY LLP
1700 - 360 Main Street
Winnipeg, Manitoba R3C 3Z3

J. MICHAEL DOW/DAVID J. KROFT
Telephone: 957-8319
Lawyers for the plaintiff

TO: Keller & Sons Farming Ltd. and Keller Holdings Ltd.
Box 760, Carberry, Manitoba
R0K 0H0
The above named Defendants

AND TO: Aikins Law
30th floor – 360 Main Street
Winnipeg, Manitoba R3C 4G1
Attention: Bruce Taylor
Lawyers for the above named Defendants

Schedule A

File No. CI 15-01-98054

**THE QUEEN'S BENCH
Winnipeg Centre**

IN THE MATTER OF:

**The Appointment of a Receiver pursuant to
Section 243 of the *Bankruptcy and Insolvency
Act*, R.S.C. 1985 c.B-3, as amended and Section
55 of *The Court of Queen's Bench Act*, C.C.S.M.
c. C280**

BETWEEN:

ROYAL BANK OF CANADA,

Plaintiff,

- and -

**KELLER & SONS FARMING LTD. and
KELLER HOLDINGS LTD.**

Defendants.

**ORDER
(Appointing Receiver and Manager)**

FILLMORE RILEY LLP
Barristers, Solicitors and Trade-Mark Agents
1700 Commodity Exchange Tower
360 Main Street
Winnipeg, Manitoba
R3C 3Z3

Telephone: 204-957-8319
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J. MICHAEL J. DOW/DAVID J. KROFT
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THE QUEEN'S BENCH
Winnipeg Centre

IN THE MATTER OF:

**The Appointment of a Receiver pursuant to Section 243
of the *Bankruptcy and Insolvency Act*, R.S.C. 1985 c.B-
3, as amended and Section 55 of *The Court of Queen's
Bench Act*, C.C.S.M. c. C280**

THE HONOURABLE

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OCTOBER 8, 2015

BETWEEN:

ROYAL BANK OF CANADA,

Plaintiff,

- and -

**KELLER & SONS FARMING LTD. and
KELLER HOLDINGS LTD.**

Defendants.

ORDER

THIS MOTION made by the plaintiff pursuant to s.243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "BIA") and s.55 of *The Court of Queen's Bench Act*, C.C.S.M. c.C280, as amended (the "QBA"), for an order appointing Ernst & Young Inc. as receiver and manager (in such capacities, the "Receiver"), without security, of all of the assets, undertakings and properties of Keller & Sons Farming Ltd. and Keller Holdings Inc. (collectively referred to as the "Defendants") acquired for, or used in relation to a business carried on by the Defendants, was heard this day at the Law Courts Building 408 York Avenue, Winnipeg, Manitoba.

ON READING the affidavit of Gary Ivany, sworn October 2, 2015 and on hearing the submissions of counsel for the plaintiff and the Defendants, and on reading the consent of the Defendants to the within motion and the consent of Ernst & Young Inc. to act as the Receiver, filed,

SERVICE

5. **THIS COURT ORDERS** that the time for service of the Notice of Motion is hereby abridged so that this motion is properly returnable today and hereby dispenses with further service thereof.

APPOINTMENT

6. **THIS COURT ORDERS** that pursuant to s.243(1) of the BIA and s.55 of the QBA, Ernst & Young Inc. is hereby appointed Receiver, without security, of all of the assets, both real and personal, undertakings and properties of the Defendants, wheresoever situate, acquired for, or used in relation to a business carried on by the Defendants, including all proceeds thereof (collectively the "Property").

RECEIVER'S POWERS

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

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- (b) to receive, preserve, protect and maintain control of the Property, or any part or parts thereof, including, but not limited to, the changing of locks

and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;

- (c) to manage, operate, and carry on the business of the Defendants, including the power to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the defendants;
- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Defendants or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Defendants and to exercise all remedies of the Defendants in collecting such monies, including, without limitation, to enforce any security held by the Defendants;
- (g) to settle, extend or compromise any indebtedness owing to or by the Defendants;

- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Defendants, for any purpose pursuant to this Order;
- (i) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Defendants, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding and provided further that nothing in this Order shall authorize the Receiver to defend or settle the action in which this Order is made unless otherwise directed by this Court;
- (j) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
- (k) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,
 - (i) without the approval of this Court in respect of any transaction not exceeding \$ 100,000.00 provided that the aggregate consideration for all such transactions does not exceed \$500,000.00; and

- (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;

and in each such case notice under subsection 59(10) of *The Personal Property Security Act* or s.134(1) of *The Real Property Act* of Manitoba, shall not be required.

- (l) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (m) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (n) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (o) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Defendants;
- (p) to enter into agreements with any trustee in bankruptcy appointed in respect of the Defendants, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Defendants;

- (q) to exercise any shareholder, partnership, joint venture or other rights which the Defendants may have;
- (r) to assign all or either of the Defendants into bankruptcy; and
- (s) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations;

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

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

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

9. **THIS COURT ORDERS** that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Defendants, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the

“Records”) in that Person’s possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

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

NO PROCEEDINGS AGAINST THE RECEIVER

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

NO PROCEEDINGS AGAINST THE DEFENDANTS OR THE PROPERTY

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

NO EXERCISE OF RIGHTS OR REMEDIES

13. **THIS COURT ORDERS** that all rights and remedies (including, without limitation, set-off rights) against the Defendants, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any “eligible financial contract” as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Receiver or the Defendants to carry on any business which the Defendants are not lawfully entitled to carry on, (ii) exempt the Receiver or the Defendants from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration or filing of a lien or a claim for lien or the commencement of a Proceeding to protect a lien or other rights that might otherwise be barred or extinguished by the effluxion of time, provided that no further steps shall be taken in respect of such lien, claim for lien or Proceeding except for service of the initiating documentation on the Defendants and the Receiver.

NO INTERFERENCE WITH THE RECEIVER

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

CONTINUATION OF SERVICES

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

RECEIVER TO HOLD FUNDS

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

EMPLOYEES

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

PIPEDA

18. **THIS COURT ORDERS** that, pursuant to section 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "Sale"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Defendants, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

LIMITATION ON ENVIRONMENTAL LIABILITIES

19. **THIS COURT ORDERS** that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or

collectively, "Possession") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, *The Environment Act*, *the Water Resources Conservation Act*, *The Contaminated Sites Remediation Act*, *The Dangerous Goods Handling and Transportation Act*, *The Public Health Act* or *The Workplace Safety and Health Act* and regulations thereunder (the "Environmental Legislation"), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

LIMITATION ON THE RECEIVER'S LIABILITY

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

RECEIVER'S ACCOUNTS

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

charge (the "Receiver's Charge") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

22. **THIS COURT ORDERS** that the Receiver and its legal counsel shall pass its accounts from time to time.

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

FUNDING OF THE RECEIVERSHIP

24. **THIS COURT ORDERS** that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$1,000,000.00 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "Receiver's Borrowings Charge") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the

Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

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

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

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

ALLOCATION

28. **THIS COURT ORDERS** that any interested party may apply to this Court on notice to any other party likely to be affected, for an order allocating the Receiver Charge and Receiver's Borrowings Charge amongst the various assets comprising the Property.

GENERAL

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

30. **THIS COURT ORDERS** that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Defendants.

31. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give

effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

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

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

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

SERVICE AND NOTICE

35. **THIS COURT ORDERS** that the plaintiff shall, within ten (10) days of the date of this Order, cause a true copy of this Order to be served, along with the form of cover letter and Demand for Notice form as found in the attached Schedule "B" to this Order (the "Demand for

Notice”) by prepaid ordinary mail, courier, personal delivery or electronic transmission to the Defendants’ creditors or other interested parties at their respective addresses as last shown on the records of the Defendants, and that any such service or notice by courier, personal delivery or electronic transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

36. **THIS COURT ORDERS** that the plaintiff’s counsel shall prepare and keep current a service list (“Service List”) containing the name, address, telephone and fax or e-mail contact information of the plaintiff, the Receiver and each creditor or other interested person who communicates such interest to the plaintiff’s counsel by providing a response to the Demand for Notice. The Service List shall indicate whether those on the Service List have elected to be served by fax or e-mail. Service shall be deemed valid and sufficient if completed in the manner elected. In the event that any creditor or other interested party who has received notice of this Order does not provide a response to the Demand for Notice, such party shall not be required to be served with any further materials in this proceeding, unless otherwise directed or Ordered by this Court.

37. **THIS COURT ORDERS** that the Receiver shall post the notice of motion, the supporting materials and this Order on its website located at www.ey.com/ca/keller forthwith. Thereafter, the Receiver may continue to post copies of any or all further materials filed in this proceeding on the website.

October 8, 2015

J.

SCHEDULE "A"
RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. THIS IS TO CERTIFY that ERNST & YOUNG INC., the receiver and manager (the "Receiver") of the assets, undertakings and properties of Keller & Sons Farming Ltd. and Keller Holdings Ltd. (the "Defendants") acquired for, or used in relation to a business carried on by the Defendants, including all proceeds thereof (collectively, the "Property") appointed by Order of the Manitoba Court of Queen's Bench (the "Court") dated the 8th day of October, 2015. (the "Order") made in an action having Court file number CI 15-01-98054 has received as such Receiver from the holder of this certificate (the "Lender") the principal sum of \$ _____, being part of the total principal sum of \$1,000,000.00 which the Receiver is authorized to borrow under and pursuant to the Order.

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

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

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

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

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

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

DATED _____, 2015

ERNST & YOUNG INC., solely in its capacity as Receiver of the Property, and not in its personal capacity

Per: _____
Name: Joe Healey
Title: Senior Vice-President

SCHEDULE "B"

COVER LETTER OF DEMAND FOR NOTICE

[Date]

[Address]

Attention:

**Re: IN THE MATTER OF THE RECEIVERSHIP OF KELLER & SONS FARMING LTD. and
KELLER HOLDINGS LTD. (THE "DEFENDANTS")**

A Receiver has been appointed by Order of the Court of Queen's Bench for Manitoba over the, assets, undertakings and properties of the Defendants. Enclosed is a copy of the Court Order appointing Ernst & Young Inc. as Receiver.

You are being provided with a copy of the Order because you are a creditor of the Defendants.

If you would like to receive notice of all further proceedings in relation to the receivership of the Defendants, please complete the Demand for Notice attached to this letter and send the Demand for Notice by electronic mail (email) or facsimile to each of the following persons:

1. Fillmore Riley LLP
1700 – 360 Main Street
Winnipeg, MB R3C 3Z3
Attention: J. Michael Dow/David J. Kroft
Email: mdow@fillmoreriley.com
Fax: 204-954-0319
2. Ernst & Young Inc.
360 Main Street
Suite 2700
Winnipeg, MB R3C 4G9
Attention: Joe Healey
Email: joe.a.healey@ca.ey.com
Fax: 204-956-0138

If you fail to properly complete the Demand for Notice and forward the Demand for Notice by email or facsimile to each of the above-referenced persons indicating that you would like to receive further notice of the receivership proceedings, then you will not receive, nor will you be entitled to receive, any further notice of the receivership proceedings.

Yours truly,

DEMAND FOR NOTICE

TO:

1. Fillmore Riley LLP
1700 – 360 Main Street
Winnipeg, MB R3C 3Z3
Attention: J. Michael Dow/David J. Kroft
Email: mdow@fillmoreriley.com
Fax: 204-954-0319

2. Ernst & Young Inc.
360 Main Street
Suite 2700
Winnipeg, MB R3C 4G9
Attention: Joe Healey
Email: joe.a.healey@ca.ey.com
Fax: 204-956-0138

Re: In the Matter of the Receivership of the Defendants

I hereby request that notice of all further proceedings in the above receivership be sent to me in the following manner:

- (a) by email, at the following email address:

_____ ; or

- (b) by facsimile, at the following facsimile number:

_____.

Signature: _____

Name of Creditor: _____

Address of Creditor: _____

Phone Number: _____