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.

ERNST & YOUNG INC.
Receiver of Keller & Sons Farming Ltd. and Keller Holdings Ltd.

THIRD REPORT OF THE RECEIVER

AUGUST 5, 2016

INTRODUCTION

1. On October 8, 2015 this Honourable Court granted an Order (the "Initial Order") appointing Ernst & Young Inc. as receiver ("EY" or the "Receiver") of all the assets, property and undertaking of Keller & Sons Farming Ltd. ("KSF") and Keller Holdings Ltd. ("Holdings") (collectively "Keller") pursuant to Section 243 of the *Bankruptcy and Insolvency Act*, R.S.C. 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.

2. EY filed its first report dated January 19, 2016 (the "First Report"), which provided information to this Honourable Court on the background of Keller, the activities of the Receiver, the Receiver's efforts to sell the assets of Keller and the Receiver's recommendations and conclusions. On the same date, the Receiver also filed its first confidential report (the "First Confidential Report") that was subject to the Receiver's application for an order to seal certain commercially sensitive material from the public record. The Receiver subsequently filed a certificate with this Honourable Court confirming that the related transactions had closed, with the result that the First Confidential Report should no longer be sealed.

3. EY filed its second report dated March 30, 2016 (the "Second Report"), which principally dealt with the Receiver's efforts to sell the assets of Keller. A second confidential report dated March 30, 2016 (the "Second Confidential Report") was filed subject to the Receiver's application for a sealing order. The Receiver subsequently filed a certificate with this Honourable Court confirming that the related transactions had closed, with the result that the Second Confidential Report should no longer be sealed.

4. On April 8, 2016, following submissions by legal counsel for (a) Shilo Farms Ltd. ("SFL") and (b) Mr. Mark Keller in opposition to the Receiver's application for a sealing order, the Receiver agreed to provide parties in attendance with a partially redacted version of the Second Confidential Report.

5. The purpose of this third report of the Receiver (the "Third Report") is to advise and update this Honourable Court with respect to:

   a) the activities of the Receiver since the date of the Second Report;

   b) the Receiver's efforts to realize on the assets of Keller;

   c) the Receiver's analysis of the claims of various stakeholders to the proceeds from the sale of Keller's assets;

   d) the professional fees of the Receiver and its legal counsel;

   e) the Receiver's interim statement of receipts and disbursements;

   f) the Receiver's proposed distribution of excess funds on hand; and

   g) the Receiver's conclusions and recommendations.

6. Capitalized terms not defined herein are as defined in in the Initial Order, the First Report or the Second Report.

DISCLAIMER

7. In preparing this Third Report, the Receiver has relied upon unaudited financial information, books and records of Keller, financial information prepared by Keller and discussions with management of Keller and the Applicant.

8. The Receiver has not audited, reviewed, or otherwise attempted to verify the accuracy or completeness of the information in a manner that would comply with Generally Accepted Assurance Standards pursuant to the Chartered Professional Accountants (Canada) Handbook. Accordingly, the Receiver expresses no opinion or other form of assurance on the information contained in this Third Report.

9. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian dollars.

ACTIVITIES OF THE RECEIVER SINCE MARCH 30, 2016

10. Immediately prior to the commencement of the receivership, the Receiver retained the firm Thompson Dorfman Sweatman LLP ("TDS") as the Receiver's independent legal counsel.

Creditor/Stakeholder Communications

11. The Receiver has established a web-site (www.ey.com/ca/keller) to facilitate communications with creditors and stakeholders. Copies of the First Report, the Second Report, this Third Report, notices to creditors, and orders granted by this Honourable Court have been posted to the web site.

12. The Receiver has responded to numerous creditor queries since the date of the receivership. Creditors' queries involving potential claims ranking in priority to the security of the plaintiff Royal Bank of Canada ("RBC") have been forwarded to TDS for its review.

Employee Matters

13. In the ordinary course, office and administrative staff employed by Keller would receive and process numerous, regular information requests from various government entities such as CRA and Service Canada in respect of Keller employees (i.e. confirmation of earnings, etc.). In order to facilitate such requests after the date of the receivership, the Receiver agreed that Keller employee and payroll records would remain on-site at Keller's premises.

14. Pursuant to instructions from the Receiver, former Keller staff prepared and mailed T4 slips to former Keller employees, and filed these slips with Canada Revenue Agency ("CRA").

15. The Receiver has now been added as an "authorized contact" within CRA's internal systems, and has requested additional information related to unpaid source deductions. CRA officials have also advised the Receiver that they wish to complete a payroll audit.

16. On June 6, 2016, the Receiver requested that Mr. Keller provide all employee payroll records to the Receiver. Mr. Keller initially resisted the Receiver's request, on the basis that office and administrative staff still required access to the records and could directly deal with CRA's request for a payroll audit. The Receiver advised Mr. Keller via email that while it was prepared to make a complete copy of Keller's payroll records available, the original records were required by the Receiver.

17. Mr. Keller advised the Receiver that he intended to consult with his legal counsel in respect of the Receiver's request for the records. To date, the Receiver has not been provided with access to these records.

Protection and Preservation of Assets – Insurance

18. Prior to the receivership, Keller maintained liability, equipment and premises insurance through Wawanesa Insurance, and vehicle and rolling stock coverage through Manitoba Public Insurance.

19. In April 2016, a payout of $2,500.00 in respect of an insurance claim for a 1993 Ford pickup that was destroyed in October 2015 was received and deposited in the receivership estate trust bank account.

20. Subsequent to the sales of various Keller assets, the Receiver arranged to cancel the related insurance coverage, and process refunds to the Receiver for all unearned insurance premiums.

21. The final cancellation of all insurance policies was issued effective August 1, 2016, to coincide with the expiry of the lease of certain storage facilities to SFL.

Cash Surrender Value of Life Insurance

22. As noted in the Second Report, Keller is the registered owner of two life insurance policies, with aggregate coverage in the amount of $1,000,000 issued by Sun Life Assurance Company ("Sun Life"), insuring the lives of Mr. Keller's parents, Josef and Maria Keller.

23. The Receiver corresponded with Sun Life to cancel these policies on behalf of KSF and is in receipt of aggregate proceeds of $124,833.78 comprised of the cash surrender value of both policies.

Claim of Fat Cat Farms Ltd.

24. On Friday April 22, 2016, the Receiver was contacted by telephone by Mr. Duanne Taylor of Fat Cat Farms Ltd. ("Fat Cat"), claiming that it had leased approximately 4,000 acres of farmland from Keller for the 2016, 2017 and 2018 growing seasons.

25. Fat Cat provided the Receiver with a document purporting to support Fat Cat's claim. Upon review of this document, the Receiver concluded that the document appeared to be a land lease option signed by Mr. Keller and Mr. Taylor, and did not reference Keller or any specific parcels of land.

26. The Receiver rejected Mr. Taylor's claim via e-mail correspondence on Sunday April 24, 2016, and indicated that it intended to proceed to close the sale of the land owned by Keller to a group of companies owned by members of the Adriaansen family (the "Adriaansen Group"), as described in the Second Report.

27. On June 1, 2016, Fat Cat filed a Notice of Motion and Statement of Claim in Court File No. CI-16-01-02292 (the "Fat Cat Action"), naming the Adriaansen Group as defendants, seeking various relief including an immediate injunction preventing the Adriaansen Group from farming the Keller Lands for the 2016 growing

season. Mr. Taylor and Mr. Keller both filed affidavits in support of the application. The Receiver was not named as a party to the Fat Cat Action.

28. The Fat Cat Action resulted in a delay of the closing of the sale of the Keller Lands to the Adriaansen Group.

29. The application for an immediate injunction was not granted, and the remaining matters set out in the Fat Cat Action were adjourned for a brief period. On June 8, 2016, the Receiver filed an affidavit to refute certain statements made by both Mr. Taylor and Mr. Keller in their affidavits. As of the date of this Third Report, the Fat Cat Action has been further adjourned with the consent of the parties on a *sine die* basis.

30. The documentation provided to the Receiver by Fat Cat further referenced the purchase of a corn planter that had been owned by Keller.

31. The Receiver has reviewed the records of Keller, which indicate the purchase of a corn planter in 2014 for $250,000. The Keller records do not record any disposal of a corn planter, and the bank accounts of Keller do not reflect the deposit of any amounts from Fat Cat. The Receiver has requested additional documentation from Mr. Keller in respect of the transaction, however to date no documentation has been provided.

Amounts owed to Keller from SFL

32. As described in the First Report, all of the land, buildings and equipment owned by Keller were leased to SFL pursuant to a lease between Keller and SFL (the "SFL Lease"), for the term of May 1, 2015 to March 31, 2016, with the exception of SFL's ability to use Keller's granaries and potato storage facilities, which were leased to SFL until July 31, 2016.

33. The Receiver had previously demanded payment of the amount of $260,495.56 from SFL for arrears of rent, and had rejected SFL's claims that Keller was

responsible to pay for any items related to the Keller land, buildings or equipment other than property taxes. In addition to claims for unpaid rent, the Receiver also demanded that SFL reimburse the Receiver for damage to certain KSF Equipment in the amount of approximately $30,000.

34. On May 31, 2016, the Receiver issued distress warrants and demands to SFL in the amount of $290,427.57 plus per diem interest in the amount of $128.46 (the "Distraint Claim").

35. Mr. Keller, as general manager of SFL, was personally served with the Distraint Claim on June 3, 2016. A bailiff retained by the Receiver also executed a constructive seizure on a portion of the potato inventory owned by SFL and stored at Keller's premises.

36. No payment in respect of the Distraint Claim was made by SFL. As a result, on June 28, 2016, the Receiver's legal counsel wrote to each of McCain Foods (Canada) Ltd. ("McCain") and Simplot Canada (II) Ltd. ("Simplot") confirming that it had issued the Distraint Claim, notifying McCain and Simplot of the Receiver's claim to a portion of the potato inventory of SFL, and demanding that any proceeds payable to SFL in respect of potatoes delivered that were the subject of the Distraint Claim should be paid forthwith to the Receiver.

37. SFL immediately offered to post a letter of credit in the amount of $300,000 in favour of the Receiver in respect of the Distraint Claim, upon the Receiver withdrawing the notices issued to McCain and Simplot.

38. The form of letter of credit proposed by SFL was not an irrevocable letter of credit but appeared to be a letter of confirmation from SFL's lenders, and was not acceptable to the Receiver. SFL subsequently agreed to pay the amount of $300,000 to SFL's legal counsel under trust conditions acceptable to the Receiver. Simplot and McCain were notified that the Receiver had rescinded the Distraint Claim notice later in the day on June 28, 2016.

39. The Receiver expects that ultimate resolution of the Distraint Claim will require litigation between the Receiver and SFL.

Reimbursement Claims Issued by SFL

40. Throughout the course of the receivership, SFL has periodically issued various invoices for reimbursement of items that had been agreed to and paid by the Receiver.

41. In addition, the Receiver has agreed to sell certain assets to SFL, which have been invoiced to SFL and paid to the Receiver. SFL has also reimbursed the Receiver for certain operational expenses that were incurred for utilities, employee wages, etc.

42. One invoice from SFL to the Receiver in the amount of $3,465.00, was issued by SFL in November 2015 for repair work on a 2013 John Deere 4940 High Clearance Sprayer (the "Sprayer"). The Receiver has previously described damage to the Sprayer in the Second Report. As the Receiver is of the view that repairs to the KSF Equipment are the responsibility of SFL, the Receiver refused to pay this invoice.

43. At the conclusion of the hearing of the appeal of the order of this Honourable Court authorizing the sale of the Keller Lands to the Adriaansen Group, Mr. Keller verbally advised the Receiver that given the decision of the Court of Appeal, SFL would be invoicing the Receiver for additional reimbursement amounts.

44. In April and May 2016, SFL issued the following invoices to the Receiver which had not previously been discussed with the Receiver:

a) Invoice 100132 (April 25, 2016) in the amount of $37,495.50 for supply and application of rye seed to five Keller fields during the fall of 2015;

b) Invoice 100139 (April 29, 2016) in the amount of $36,976.80 for the application of nitrogen and phosphorous to two Keller fields during the fall of 2015;

c) Invoice 100140 (May 3, 2016) in the amount of $14,280.00 for cultivation and levelling work performed by SFL to three Keller fields during the fall of 2015; and

d) Invoice 100142 (May 4, 2016) in the amount of $24,552.15 for grass and alfalfa applied to 349 acres (no field(s) were specified).

(collectively, the "Disputed SFL Invoices")

45. No supporting documentation setting out the details of the quantity, pricing or field application certification was attached to the Disputed SFL Invoices. The aggregate total of the Disputed SFL Invoices is $113,304.45. The Receiver does not agree that it is responsible for and has refused to pay the Disputed SFL Invoices.

Amounts owed to Elk Haven by SFL

46. In addition to amounts owed to Keller by SFL, the Receiver had demanded payment of the amount of $839,191.49 from SFL, and had rejected SFL's set-off claims against amounts owed by KSF to SFL. To date, SFL has not responded to the Receiver's demands and has not remitted payment of the amount demanded.

47. The Receiver expects that resolution of these amounts will require litigation between the Receiver and SFL.

Secured indebtedness of RBC and National Bank of Canada

48. As described in the affidavit of Gary Ivany sworn October 2, 2015 (the "Ivany Affidavit") that was filed in connection with the motion to appoint the Receiver, the principal secured creditors of Keller are RBC and National Bank of Canada

("NBC"). The respective priority between RBC and NBC with respect to certain of Keller's assets is governed by an intercreditor agreement dated June 5, 2014 (the "Intercreditor Agreement").

49. The Intercreditor Agreement establishes that after payment of costs of enforcement, the realization from Keller's assets subject to (a) the collateral mortgages pledged by Keller, (b) a general assignment of leases and rents in respect of the Keller Lands, and (c) specific assignment of contracts between KSF and Elk Haven Farms relating to the Keller Lands are to be shared on a "pari passu" basis between RBC and NBC (the "Pari Passu Assets").

50. The Ivany Affidavit also describes security held by RBC over present and after-acquired property of Keller which is in addition to the security held by RBC in the Pari Passu Assets.

51. At the Receiver's request, each of RBC and NBC provided the Receiver with updated balances owing to each creditor as at July 28, 2016. RBC and NBC have advised the Receiver that the balances owing are as follows:

a) RBC (debt applicable to the Pari Passu Assets) - $10,895,506.79;

b) RBC (debt not applicable to the Pari Passu Assets) - $5,455,410.65

c) RBC – enforcement costs paid directly by RBC - $282,142.20; and

d) NBC (debt applicable to the Pari Passu Assets) - $9,012,508.37.

REALIZATION OF ASSETS

Equipment

52. As noted in the Second Report, KSF's equipment (the "KSF Equipment") was comprised primarily of specialized farm equipment, farm support vehicles, a fleet of trucks and trailers for transporting crops from fields to storage or processing

facilities and miscellaneous other equipment. The KSF Equipment was sold via public auction on March 17, 2016 (the "Auction").

Closing of the Sale of Land, Buildings and Equipment

53. The Receiver's efforts to sell Keller's land, buildings and equipment assets (the "Keller Lands") and its recommendation to sell the Keller Lands to the Adriaansen Group are described in the Second Report.

54. The Receiver's application to sell the Keller Lands to the Adriaansen Group was opposed by SFL and Mr. Keller. SFL and Mr. Keller filed notices of appeal, which appeals were ultimately dismissed with costs by the Manitoba Court of Appeal.

55. The Fat Cat Action further delayed the closing of the sale pending the determination of whether or not an injunction would be granted.

56. On June 30, 2015, the Receiver executed the Receiver's Certificate to confirm the closing of the sale transaction, and is in receipt of closing proceeds of approximately $19,700,000. The Receiver and the Adriaansen Group are finalizing the quantum of the adjustment for crop inputs paid by the Receiver, with the result that the Receiver expects to realize an additional $300,000 in sale proceeds.

57. The closing proceeds realized by the Receiver includes additional proceeds in the amount of approximately $352,000 in respect of amounts realized by the Receiver from the subsequent re-sale of Parcel 4, as described in the Second Confidential Report.

58. In connection with the closing of the transaction, the Receiver paid unpaid property tax arrears of approximately $167,000 to the Rural Municipalities of Cornwallis, Glenboro-South Cypress, North Cypress-Langford, and Oakland-Wawanesa.

59. As part of the closing statement of adjustments, the Adriaansen Group paid the 2016 property taxes, and was credited the portion of those 2016 property taxes that related to the period prior to the agreed adjustment date of April 22, 2016 (i.e. the 2016 property taxes for the period January 1, 2016 to the adjustment date were the responsibility of the Receiver and paid by way of a credit to the closing proceeds paid to the Receiver).

THE RECEIVER'S ANALYSIS OF THE CLAIMS OF VARIOUS STAKEHOLDERS TO THE PROCEEDS FROM THE SALE OF KELLER'S ASSETS

Independent Security Opinion from TDS

60. TDS has provided the Receiver with its written opinion on the claims of various creditors of Keller (the "TDS Opinion"). A copy of the TDS Opinion is attached to this Third Report as Appendix "A".

61. The TDS Opinion confirms that the security interest of RBC in all of the personal and after-acquired property of KSF ranks in priority to the claims of all other creditors, with the exception of certain equipment financiers who claimed purchase money security interests in specific pieces of equipment.

62. In addition to the foregoing, TDS confirmed the prior-ranking security position in priority to RBC for certain purchase money security interests claimed by the following equipment financiers:

   a) John Deere Financial Inc. and related entities ("John Deere"), with the exception of John Deere's claims to the proceeds of a 2011 D450E Windrower and a 2011 625DH Platform;
   b) CNH Capital Canada Ltd.;
   c) Calidon Financial Services Inc. ("Calidon"); and
   d) General Bank of Canada.

   (collectively, the "Valid PMSI Claims")

63. The specific assets that are subject to the Valid PMSI Claims were repossessed by the various equipment financiers and no proceeds of realization were generated by the Receiver. The circumstances surrounding the equipment claimed by Calidon is described in the First Report and the TDS Opinion.

64. The TDS Opinion further confirms that both RBC and NBC had valid prior-ranking security positions with respect to the Pari Passu Assets, subject only to the claim of Concentra Financial Services Association ("Concentra") in respect of a specific grain storage bin, and certain defined statutory claims of CRA in respect of unpaid employee source deduction remittances.

65. The TDS Opinion indicates that the secured claims of the following parties are subordinate to the claims of RBC and NBC:

a) Farm Credit Canada;
b) Redfern Farm Services Ltd.;
c) Karen Keller;
d) John Deere (in respect of the 2011 D450E Windrower and the 2011 625DH Platform);
e) Gallant Sales ("Gallant");
f) Mid-Plains Implements Ltd. ("Mid-Plains"); and
g) Custom Truck Sales Inc. ("CTS").

Claims to Specific Pieces of Equipment Used in Keller's Farming Operations

66. Prior to the Auction, Mr. Keller, SFL and other parties attempted to assert ownership and/or prior-ranking security claims to certain pieces of KSF Equipment. The vast majority of these claims were resolved between the parties, and for assets where the Receiver was satisfied with the third party ownership claim, the Receiver excluded these assets from the Auction.

67. Certain of the third party ownership claims were not accepted by the Receiver, due to conflicting and/or incomplete documentation to support such claims.

68. Upon notice to these affected parties, the relevant items were sold in the Auction, and the Receiver advised the affected parties that it would hold the specific sale proceeds of these items in trust prior to making any application to distribute the proceeds.

69. Prior to the Auction, the Receiver agreed to sell certain assets to SFL, including two pickup trucks, as well as two Logan Live Bottom Potato Boxes, for an aggregate purchase price of $45,000 plus GST. The potato boxes had been purchased from Gallant Sales and delivered to Keller in December 2014 and February 2015, and partially paid for by way of a trade in of other used farm equipment. As noted in the TDS Opinion, RBC has a first-ranking claim on the proceeds of the sale of these assets.

70. The Receiver is aware of the following potential claims on assets sold in the Auction:

Equipment Description	**Claim Asserted By**	**Auction Sale Proceeds**
Caterpillar 435 Scraper	Mark Keller on behalf of Rod McLaren	$19,000
Fruehauf Tri-axle Tank Trailer	Mark Keller on behalf of Josef and/or Maria Keller	$16,000
D450E Windrower	John Deere	$64,000
Kenworth T800 Tractor	CTS	$41,000
Harriston 4008 8 Row Planter	SFL	$14,000
Double L 973 4 Row Potato Harvester	Mid-Plains	$100,000
Logan Yield Pro 8 Row Potato Hiller	Mark Keller	$7,500
Logan Yield Pro 8 Row Potato Hiller	Gallant Sales	$10,000

Caterpillar 435 Scraper

71. Mr. Keller advised the Receiver that the Caterpillar 435 Scraper (the "Scraper") was owned by an adjacent land owner, Rod McLaren, and had been loaned to Keller for use in its farming operations for a number of years. Mr. Keller, on behalf of SFL, initially refused to deliver the Scraper to the Auction site. Upon a review of the books and records of Keller, the Receiver learned that Keller had purchased a Caterpillar Scraper from SFL a number of years previously. SFL ultimately delivered the Scraper to the Auction site. Accordingly, the Receiver is of the view that Mr. McLaren's potential claim to the proceeds of the Scraper is invalid.

Fruehauf Tank Trailer

72. Mr. Keller advised the Receiver that the Fruehauf Tri-Axle Tank Trailer (the "Tanker") had been purchased by his parents personally, and provided a copy of an April 2006 cheque in the amount of $20,000 payable to Keller in support of this claim. Upon a review of the books and records of Keller, the Receiver noted a deposit of $20,000 from Josef Keller on April 20, 2006 with the account memo notation "Luzia buyout", along with a corresponding payment from Keller the same day to Meighen Haddad & Co. for $20,000. Accordingly, the Receiver is of the view that Mr. Keller's potential claim to the proceeds of the Tanker is invalid.

John Deere Windrower and Platform

73. The circumstances surrounding John Deere's secured claim to the 2011 D450E Windrower and a 2011 625DH Platform are described in the Second Report. The Receiver is of the view that John Deere has a valid secured claim, but as confirmed in the TDS Opinion, John Deere's claim is subordinate to the secured claim of RBC. Accordingly, the Receiver is of the view that RBC has a first-priority claim to the proceeds of this asset.

Kenworth T800 Truck Tractor

74. The Second Report describes the circumstances surrounding CTS' purported garage keeper's lien claim to the Kenworth T800 Tractor. As confirmed in the TDS Opinion, the Receiver is of the view that any claim CTS may have to the proceeds of this vehicle are subordinate to the secured claims of RBC.

Harriston 4008 Eight Row Planter

75. Mr. Keller, on behalf of SFL, advised the Receiver that the Harriston 4008 8 Row Crop Planter (the "4008 Planter") was initially owned by Keller, and was traded to SFL in 2011 in exchange for a portion of unpaid land rent. Mr. Keller further advised that there were no invoices or documentation to support this claim. Accordingly, in the absence of any supporting documentation, the Receiver is of the view that SFL's potential claim to the proceeds of the 4008 Planter is invalid. The Receiver observed that SFL purchased the 4008 Planter at the Auction.

Double L 974 Four Row Potato Harvester

76. Mid-Plains has asserted that it is the owner of a Double L 974 4 Row Potato Harvester (the "Harvester"). The Receiver has been provided with conflicting documentation in respect of the Harvester.

77. In October 2015, the Receiver was provided with a hand-written invoice from Mid-Plains dated April 28, 2015 that was marked "rental agreement" in the amount of $40,000 USD, paid by Keller on May 8, 2015. The Receiver was also provided with a proof of property claim in support of Mid-Plains' ownership claim. The Receiver requested additional information from Mid-Plains to assess the claim.

78. In December 2015, Mid-Plains advised the Receiver that KSF had a balance owing of $105,000 USD. Mid-Plains provided the Receiver with a copy of an invoice dated August 26, 2014 indicating that KSF was the purchaser, and Mid-Plains was the vendor, for a purchase price of $184,500 USD, and referenced a down payment of $20,000 USD paid by Keller, for a net payable amount of

$164,500 USD. This invoice is signed by both Mid-Plains and Keller, and includes signed acknowledgements of a "lien note" confirming the balance owing to Mid-Plains by Keller.

79. In March 2016, prior to the Auction, the Receiver spoke with a representative from Mid-Plains who confirmed as follows:

    a) The unit was initially purchased by KSF, and a down payment was made in August 2014;

    b) KSF took possession of the Harvester in the fall of 2014, and payment was due in November 2014. KSF was unable to make the payment;

    c) In April 2015, the parties agreed to a "rental payment" as an arrangement to facilitate payment over time. The April 2015 payment made by KSF was apparently intended to represent payment for the 2015 harvest season and was intended to reduce the principal balance owing. No rental term was agreed between the parties;

    d) Full payment was due to Mid-Plains in the fall of 2015; and

    e) Mid-Plains never registered any security interest in the Harvester in the Personal Property Registry.

80. Accordingly, the Receiver is of the view that the Harvester is owned by KSF, and Mid-Plains has an unregistered claim as a creditor of KSF.

Logan Yield Pro Eight Row Potato Hiller – claim by Mark Keller

81. Mr. Keller advised the Receiver that approximately two years before the receivership, he had personally purchased a Logan Yield Pro 8 Row Potato Hiller (the "First Hiller"). Mr. Keller did not provide any documentation to support this claim. The Receiver requested copies of any documentation to support Mr.

Keller's claim, but to date has not received any such supporting documents. Accordingly, the Receiver is of the view that Mr. Keller's claim is not supported.

Logan Yield Pro Eight Row Potato Hiller – Claim by Gallant Sales

82. The Receiver was provided with an invoice from Gallant Sales which included the purchase of a Logan Yield Pro Water Dammer, with the same serial number (1511-7001) as a Logan Yield Pro 8 Row Potato Hiller that was sold at the Auction (the "Second Hiller"). The Second Hiller was included in the same invoice as the purchase of potato boxes described previously in paragraph 69. As noted in the TDS Opinion, RBC has a first-ranking claim on the proceeds of the sale of the Second Hiller.

PROFESSIONAL FEES OF THE RECEIVER AND ITS LEGAL COUNSEL

83. A summary of the Receiver's accounts are attached as Appendix B to this Third Report. The Receiver's total fees to date are $423,615.61 (excluding GST).

84. A summary of the bills and costs (excluding GST) for TDS is also set out in Appendix B. The total fees and disbursements paid to TDS to date are $122,500.72 (excluding GST).

85. The Receiver has examined the legal bills of costs referred to above. In the Receiver's opinion, the services referred to therein have been duly authorized and rendered and the charges therein are reasonable.

86. In the Receiver's view the fees and disbursements incurred by the Receiver and its counsel are reasonable. The hourly rates charged by the Receiver and its counsel throughout the course of these proceedings are comparable to the hourly rates charged by EY and TDS for services rendered in relation to similar proceedings.

THE RECEIVER'S INTERIM STATEMENT OF RECEIPTS AND DISBURSEMENTS

87. The Receiver's interim statement of receipts and disbursements for the period March 25, 2016 to July 27, 2016 (the "Reporting Period") is attached as Appendix C to this Third Report.

88. The Receiver's interim statement of receipts and disbursements also includes a column indicating the Receiver's aggregate receipts and disbursements for the period from the commencement of the receivership on October 8, 2015 to July 27, 2016 for reference purposes.

89. Receipts during the Reporting Period totalled approximately $22,455,000, comprised of the following:

   a) Proceeds of approximately $2,516,000 from the sale of equipment, which is comprised of the gross proceeds of the Auction. The amounts payable to Ritchie Bros. Auctioneers for commissions and expenses are described below;

   b) Proceeds of approximately $19,728,000 in respect of the sale of the Keller Lands. The Receiver notes that this amount includes a deposit of $985,000 that was paid to the Receiver by the Adriaansen Group in March 2015 and was deposited prior to the Reporting Period, but was not reported in the Second Report for the reasons as described in the Second Report;

   c) Proceeds of approximately $125,000 received from Sun Life in respect of the cash surrender value of life insurance;

   d) Various refunds of approximately $81,000, representing refunds from MPI and Keller's insurance broker, representing the return of unearned insurance premiums previously paid, plus a refund of pre-receivership WCB premiums; and

e) Miscellaneous receipts of approximately $5,000 comprised principally of interest earned on estate trust funds.

90. Disbursements during the Reporting Period totalled approximately $1,570,000, comprised of the following:

a) Repayment of outstanding Receiver's certificates and interest thereon in the amount of approximately $769,000;

b) Professional fees of approximately $381,000, representing payments in respect of advances on the Receiver's fees and disbursements, as well as the fees and disbursements of TDS;

c) Commissions, fees and expenses of approximately $220,000 related to the Auction;

d) Pre-receivership property tax arrears in the amount of approximately $167,000;

e) Site utilities, telephone and other operational expenditures of approximately $8,000; and

f) Miscellaneous disbursements of approximately $25,000 which principally represents amounts paid for GST and PST on disbursements, and other miscellaneous disbursements.

91. As at July 27, 2016, the Receiver had cash on hand of approximately $20,971,000, which represents the cumulative excess of receipts over disbursements for the period from the commencement of the receivership to July 27, 2016.

92. All outstanding and previously issued Receiver's Certificates that supported outstanding borrowings in respect of the Receiver's Borrowings Charge (as

defined in the Initial Order) have been fully repaid, such that the outstanding borrowings of the Receiver are $nil.

THE RECEIVER'S PROPOSED DISTRIBUTION OF EXCESS FUNDS ON HAND

93. As noted above, the Receiver has cash on hand of approximately $20,971,000. Based on the information as set out in this Third Report and the TDS Opinion, the Receiver is of the view that it is appropriate to make an interim distribution to certain secured creditors.

94. Based on the TDS Opinion, the only creditors with valid claims to any of the proceeds realized by the Receiver that rank in priority to the claims of RBC and NBC are Concentra and CRA.

CRA Claims

95. The Receiver has received two separate demands from CRA for outstanding payroll source deduction withholdings, one dated in November 2015 and another dated in February 2016. The totals demanded by CRA are different in each claim, but refer to the same date of assessment in August 2015. The Receiver is investigating the source of these differences with CRA officials.

96. The most recent demand from CRA claims a total liability of approximately $88,000, which includes the employer portion of CPP and EI premiums, as well as penalties and interest.

97. In addition to the amounts claimed in respect of unpaid source deductions, the Ivany Affidavit references a demand for unpaid GST in the amount of approximately $83,000.

98. A substantial portion of the amounts demanded by CRA would be considered as an unsecured claim in the event that a bankruptcy of Keller occurred. As set out in paragraph 3(r) of the Initial Order, the Receiver has the power to assign either

of KSF or Holdings into bankruptcy. The Receiver expects to file an assignment in bankruptcy in respect of KSF in the near future.

Concentra Claim

99. The TDS Opinion confirms that the claim of Concentra ranks in priority to the secured claims of RBC and NBC with respect to the Pari Passu Assets. Representatives of Concentra have advised the Receiver that as at August 5, 2016, its secured claim is $25,812.03.

Claims of RBC and NBC

100. As noted previously, each of RBC and NBC have advised the Receiver that the amounts owed to them are as follows:

a) RBC – approximately $16,633,000; and

b) NBC – approximately $9,012,000.

101. The Receiver is recommending that this Honourable Court authorize an interim distribution of $20,536,600 be distributed to RBC and NBC in accordance with the terms of the Intercreditor Agreement.

102. The Receiver is further recommending that this Honourable Court authorize a distribution of $25,812.03 to Concentra, in full payment of its secured claim.

103. The Receiver is of the view that it is appropriate to maintain a reserve to fund the balance of the receivership, including a reserve for the full amount of any potential CRA claims, pending the finalization of the requested payroll and GST audits and further pending the anticipated assignment into bankruptcy for KSF. The proposed interim distribution would leave a reserve of over $400,000.

CONCLUSION AND RECOMMENDATIONS

104. The Receiver respectfully recommends that this Honourable Court grant an order:

a) approving the Third Report and the activities of the Receiver described herein, including the Receiver's Interim Statement of Receipts and Disbursements; and

b) authorizing the interim distribution proposed by the Receiver as described herein.

All of which is respectfully submitted this 5th day of August, 2016.

ERNST & YOUNG INC.
In its capacity as the Court-Appointed Receiver of Keller & Sons Farming Ltd. and Keller Holdings Ltd.

Per:

Joe Healey, CPA, CA, CIRP
Senior Vice President

Appendix A

THOMPSON DORFMAN SWEATMAN LLP

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July 28, 2016

VIA EMAIL & COURIER

Ernst & Young Inc.
Receiver of Keller & Sons Farming Ltd. and Keller Holdings Ltd.
2700 - 360 Main Street
Winnipeg, MB R3C 4G9

Attention: Joe A. Healey, Senior Vice President

Dear Sir:

Re: Security Review and Opinion for Keller & Sons Farming Ltd. and Keller Holdings Ltd.
Our Matter No. 0138084 RAM

GENERAL

On October 8, 2015, the Manitoba Court of Queen's Bench (the "Court") granted an Order (the "Receivership Order") pursuant to the provisions of the *Bankruptcy and Insolvency Act* and *The Court of Queen's Bench Act* in Queen's Bench File No. CI 15-01-98054, appointing Ernst & Young Inc. as Receiver of all the assets, undertaking and property of Keller & Sons Farming Ltd. ("KSF") and Keller Holdings Ltd. ("KHL") (collectively, "Keller").

As independent counsel for the Court-appointed Receiver, we have been asked to review the security positions of the various creditors of Keller and provide an opinion thereon.

The Receivership Order created two charges with respect to the property of Keller in favour of the Receiver, identified as the "Receiver's Charge" and the "Receiver's Borrowings Charge", which rank in priority to previous valid security interests. The primary intent of this security review is to assess priorities as of October 7, 2015, immediately prior to the coming into effect of the Receivership Order. In addition, the impact of the charges in favour of the Receiver created by the Receivership Order will be considered and our opinion thereon provided.

The primary source of the information relating to the security provided by Keller as of October 7, 2015 is the Affidavit of Gary Ivany sworn October 2, 2015 that was filed in connection with the motion for the Receivership Order. Additional searches and documentary reviews have been undertaken as required.

Corporate Organization

KSF and KHL are both corporations incorporated or amalgamated pursuant to the laws of Manitoba, with their registered offices located in Brandon, Manitoba.

It is our understanding that all of Keller's business operations are located within Manitoba.

<u>KSF - SECURITY AS OF OCTOBER 7, 2015</u>

RBC Personal Property Security

KSF executed a General Security Agreement (the "RBC-KSF GSA") in favour of the Royal Bank of Canada ("RBC") on May 25, 2011, providing RBC with a general security interest in all of its present and after-acquired personal property. We have reviewed a copy of the RBC-KSF GSA and it appears to have been validly executed on behalf of KSF.

KSF also executed a General Assignment of Leases and Rents in favour of RBC (for RBC's own benefit, and for the benefit of National Bank of Canada ("NBC")) on May 25, 2011, providing RBC and NBC with a security interest in respect of the benefit of all leases relating to the real property of KSF as mortgaged to RBC (which is referenced further below). We have reviewed a copy of the General Assignment of Leases and Rents and it appears to have been validly executed on behalf of KSF.

Further, KSF also executed a Specific Assignment of Contracts in favour of RBC (for RBC's own benefit, and for the benefit of NBC) on May 25, 2011, providing RBC and NBC with a security interest in respect of the benefit of certain contracts made by KSF with the Elk Haven Farms partnership relating to the real property of KSF as mortgaged to RBC. We have reviewed a copy of the Specific Assignment of Contract and it appears to have been validly executed on behalf of KSF.

As of October 7, 2015, RBC was shown as the secured party in relation to KSF under a series of registrations in the Personal Property Registry of Manitoba (the "PPR") (all of which had expiry dates following October 7, 2015). We are of the opinion that the security of RBC in the personal property of KSF was perfected by one or more of the said registrations and that the security interest of RBC ranks in priority to the claims of all other creditors, with the exception of certain equipment financiers mentioned further below.

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NBC Personal Property Security

According to the Affidavit of Gary Ivany, KSF executed the following security documents in favour of NBC on May 25 or 26, 2011: a General Security Agreement, an Inventory and Receivables Security Agreement, a General Assignment of Leases and Rents and a Specific Assignment of Contracts.

As of October 7, 2015, NBC was shown as having a security interest in all of KSF's present and after-acquired personal property under registration No. 201108261000 registered on May 20, 2011 in the PPR. We are of the opinion that the general security interest of NBC in the personal property of KSF was perfected by this registration, and that the security interest of NBC ranks behind only the security interest of RBC, with the exception of certain equipment financiers mentioned further below.

It must be noted that the respective security interests of RBC and NBC are dealt with in the Amended and Restated Intercreditor Agreement involving RBC, NBC, KSF and KHL dated June 5, 2014 (the "Intercreditor Agreement"). The impact of the Intercreditor Agreement will be further discussed below.

The security documentation relating specifically to NBC's security in the personal property of KSF was not actually included in the Affidavit of Gary Ivany. As such, we have not had an opportunity to review that security documentation. Nevertheless, for reasons as set out in the summary opinion below, we do not believe such a review is necessary in the circumstances.

FCC General Security Agreement

As of October 7, 2015, Farm Credit Canada ("FCC") was shown as the secured party in the PPR in relation to KSF under registration No. 201110290905 registered June 21, 2011 with collateral described as all of KSF's present and after-acquired personal property and the proceeds thereof.

The underlying security documentation relating to the registration in favour of FCC has not been reviewed. For reasons as set out in the summary opinion below, we do not believe such a review is necessary in the circumstances.

Redfern General Security Agreement

As of October 7, 2015, Redfern Farm Services Ltd. ("Redfern") was shown as the secured party in the PPR in relation to KSF under registration No. 201108599800 registered May 27, 2011 with collateral described as all of KSF's present and after-acquired personal property.

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The underlying security documentation relating to the registration in favour of Redfern has not been reviewed. For reasons as set out in the summary opinion below, we do not believe such a review is necessary in the circumstances.

KSF Bank Act Security

KSF executed an agreement in favour of RBC in May 2011 providing RBC with a security interest in certain of its property in accordance with s. 427 of the *Bank Act*. We have reviewed a copy of the agreement with RBC pursuant to the *Bank Act* and it appears to have been validly executed on behalf of KSF.

According to the Affidavit of Gary Ivany, KSF also executed an agreement in favour of NBC on May 25, 2011 providing NBC with a security interest in certain of its property in accordance with s. 427 of the *Bank Act*.

NBC registered a Notice of Intention to give security pursuant to s. 427 of the *Bank Act* on May 27, 2011, and RBC registered a Notice of Intention to give security pursuant to s. 427 of the *Bank Act* in respect of KSF on May 31, 2011. There were no other registrations under the *Bank Act* with respect to KSF as of the date of the Receivership Order.

The positions of RBC and NBC with respect to the security taken pursuant to the *Bank Act* are also governed by the terms of the Intercreditor Agreement. While we have not reviewed the actual agreement between NBC and KSF to provide security pursuant to s. 427 of the *Bank Act*, our view is that such a review is not necessary in the circumstances, for the reasons set out in the summary opinion below.

RBC Mortgages

On May 25 and July 13, 2011, KSF gave first charge collateral mortgages to RBC (collectively, the "RBC-KSF Mortgage") over all its real property in the principal amount of $34,000,000 (as amended). As per Schedule "B" of the RBC-KSF Mortgage (and Schedule "A", in the case of the July 13, 2011 mortgage document), the mortgage was provided for the benefit of RBC on its own behalf, and as agent for and on behalf of NBC, as continuing security for all liabilities, present or future, owing by KSF to either of RBC and NBC. We have reviewed a copy of the mortgage documentation and it appears to have been validly executed on behalf of KSF.

The RBC-KSF Mortgage was registered in the Morden Land Titles Office as Mortgage No. 1159694/4 on May 31, 2011 (subject to Amending Agreement No. 1194419/4) and was registered against the following titles in the name of KSF as of October 7, 2015: 1564309/4, 1829782/4, 1905772/4, 1905774/4 and 2358095/4. There are no prior mortgages or other financial obligations registered against any of these titles in priority to the RBC-KSF Mortgage.

The RBC-KSF Mortgage was registered in the Brandon Land Titles Office as Mortgage No. 1289048/2 on June 1, 2011 (subject to Amending Agreement No. 1362627/2) and was registered against the following titles in the name of KSF as of October 7, 2015: 1478927/2, 1478929/2, 1478934/2, 1478935/2, 1563709/2, 1761158/2, 2355218/2, 2356180/2, 2531513/2, 2730198/2, 2757936/2, 2757937/2, 2757938/2, 2757939/2, 2757940/2 and 2757941/2. There are no prior mortgage or other financial obligations registered against any of these titles in priority to the RBC-KSF Mortgage, with the exception of a Personal Property Security Notice registered in favour of Concentra Financial Service Association ("Concentra") as No. 1290006/2 as against title No. 1761158/2. We will provide further comment on Concentra's security below.

The RBC-KSF Mortgage as executed on behalf of KSF on July 13, 2011 was registered in the Brandon Land Titles Office as Mortgage No. 1291925/2 on July 14, 2011 (subject to Amending Agreement No. 1362628/2) and was registered against the following title in the name of KSF as of October 7, 2015: 2531512/2. There are no prior mortgages or other financial obligations registered against this title in priority to the RBC-KSF Mortgage.

It is noted that RBC also registered a Caveat against each of the above-noted titles in respect of its rights under the General Assignment of Leases and Rents agreement that was executed on behalf of KSF in favour of RBC and NBC on May 25, 2011. In our view, this Caveat does not in any manner alter the priorities established by the other security documentation referenced in this opinion, including the Intercreditor Agreement.

It is further noted that RBC also registered a personal property security notice against each of the above-noted titles pursuant to *The Personal Property Security Act* (the "PPSA"). Given RBC's priority security status over the personal property of KSF, it is possible that RBC may have maintained a sole priority status over any personal property of KSF that was subsequently affixed to the mortgaged land of KSF after it executed the RBC-KSF GSA. That said, we are not aware of any specific items of personal property of KSF that became fixtures following the execution of the RBC-KSF GSA, with the possible exception of the Bin (defined below) obtained from Concentra. The Bin, however, appears to first be subject to a prior-ranking claim in favour of Concentra. Thus, the potential priority personal property security interest of RBC in the Bin would only extend to any equity of KSF that might be said to exist with respect to the Bin.

Karen Keller Mortgage

It is noted that the majority of the titles referenced above that are subject to the RBC-KSF Mortgage are also subject to a mortgage in favour of Karen Keller. Based on the information contained in the title searches, this mortgage is for a principal amount of $1,078,000. The Karen Keller Mortgage was registered in the Brandon Land Titles Office as Mortgage No. 1378561/2 on May 21, 2015. It was registered in the Morden Land Titles Office as Mortgage No. 1203492/4 on May 22, 2015.

Our only information relating to the Karen Keller Mortgage has been obtained from the title searches we have reviewed. We have not had an opportunity to review and consider the underlying documentation in support of the Karen Keller Mortgage. For reasons as set out in the summary opinion below, we do not believe such a review is necessary in the circumstances.

John Deere

As of October 7, 2015, John Deere Financial Inc., John Deere Credit Inc. and John Deere Limited (collectively, "John Deere") were shown as secured parties in relation to KSF under a series of registrations in the PPR with respect to a number of different items of farm equipment. In each such registration, a purchase-money security interest ("PMSI") was claimed.

We reviewed the credit and security agreements between John Deere and KSF with respect to the farm equipment that remained within the possession and control of KSF as of October 7, 2015. In our view, based on that information and the registrations found in the PPR, John Deere had a priority PMSI in the farm equipment ranking ahead of all other secured creditors (including those with general security interests), <u>with the exception of certain equipment mentioned in the paragraph below</u>. As the Receiver determined there was no equity available in the John Deere equipment beyond the secured claims of John Deere (subject to the exception just mentioned), the Receiver allowed John Deere to re-possess that equipment.

Our review of the documentation provided by John Deere relating to Contract No. 110-0017450-012 (a 2011 D450E Windrower and a 2011 625DH Platform) indicated the PPR registration made in respect of that equipment in the PPR was not made in time to secure the benefit of a PMSI priority under s. 34 of the PPSA. As such, this equipment was included in the auction of the KSF equipment that occurred in March 2016. In our view, the proceeds from this equipment are subject to the prior ranking general security interest of RBC.

CNH Capital

As of October 7, 2015, CNH Capital Canada Ltd. ("CNH") was shown as the secured party in relation to KSF under one registration in the PPR with respect to a 2009 Merlo 40.7 Telehandler (the "Telehandler"). CNH claimed a PMSI with respect to this item.

We reviewed the credit and security agreements between CNH and KSF with respect to the Telehandler. In our view, based on that information and the registration in the PPR, CNH had a priority PMSI in the Telehandler ranking ahead of all other secured creditors (including those with general security interests). As the Receiver determined there was no equity available in the Telehandler beyond the secured claim of CNH, the Receiver allowed CNH to re-possess the Telehandler.

Paccar Financial

As of October 7, 2015, Paccar Financial Ltd. and Paccar Financial Services Ltd. (collectively, "Paccar") were shown as secured parties in relation to KSF under a series of registrations in the PPR with respect to a number of different motor vehicles. In each such registration, a PMSI was claimed.

While it appears that Paccar previously had a valid prior-ranking PMSI in the motor vehicles referenced in the registrations in the PPR, our understanding is that no funds were left owing to Paccar by KSF as of October 7, 2015. As such, the vehicles in which Paccar previously had an interest were included in the auction of the KSF equipment that occurred in March of 2016. We further understand that Paccar took steps to have the registrations in its favour in the PPR discharged. Given that no amounts remained owing to Paccar by KSF as at the date of the Receivership Order, our view is that the proceeds from this equipment are subject to the priority general security interest of RBC.

Calidon Financial Services

As of October 7, 2015, Calidon Financial Services Inc. ("Calidon") was shown as the secured party in relation to KSF under one registration in the PPR with respect to a RBR Venturi Floater with applicator (the "Floater").

We have reviewed the credit and security agreements between Calidon and KSF with respect to the Floater. In our view, based on that information and the registration in the PPR, Calidon had a priority PMSI in the Floater ranking ahead of all other secured creditors (including those with general security interests).

Shortly after the Receivership Order was granted, Calidon proceeded to seize and re-possess the Floater, in violation of the express terms of the Receivership Order. As such, the Receiver was unable to assess whether there might have been any equity available in the Floater beyond the secured claim of Calidon. Further, the Receiver was not able to make further use of the Floater in the fall of 2015.

Gallant Sales

As of October 7, 2015, Gallant Sales ("Gallant") was shown as the secured party in relation to KSF under one registration in the PPR relating to a 2015 Logan 24ft. Logan Pro Live Bottom Truck Box and a 2015 Logan Yield Pro Water Dammer (collectively, the "Box and Water Tank").

We have reviewed the documentation provided by Gallant with respect to the Box and Water Tank. In our view, it is clear the registration made in the PPR in favour of Gallant on August 24, 2015 was not made in time to secure the benefit of a PMSI priority under s. 34 of the PPSA. It is our understanding that the Box and Water Tank were sold by the Receiver directly to Shilo Farms Ltd. ("Shilo") shortly prior to the auction for the other equipment. This was done in part out of convenience, as Shilo was the owner of the vehicles to which the Box and Water Tank were attached. In the circumstances, we are of the view that the proceeds realized from the sale of the Box and Water Tank are subject to the prior-ranking general security interest of RBC.

Concentra Financial Services Association

As of October 7, 2015, Concentra was shown as the secured party in relation to KSF under one registration in the PPR with respect to one Westeel 42-07 32,320 bushel bin, with attachments and accessories (the "Bin"). A Personal Property Security Notice was also filed by Concentra in respect of the Bin as against the following title registered in the name of KSF: 11761158/2.

We have reviewed the credit and security agreements between Concentra and KSF with respect to the Bin. In our view, assuming that the Bin became a fixture shortly following the registration of the RBC-KSF Mortgage (which appears to be the case), Concentra does have a valid and prior-ranking security interest in the Bin, notwithstanding that it was apparently attached to the land represented by Title No. 11761158/2 and became a fixture. We expect there was not any specific consideration paid by the purchasers of the Keller lands in respect of this parcel attributable to the Bin. As such, our view is that the proceeds from the sale of this parcel are charged with a security interest in favour of Concentra in an amount required to pay-out the remaining debt owing to it in respect of the Bin.

We note that Concentra also provided the Receiver with a copy of a separate security agreement dated April 27, 2011 which appears to have been completed in conjunction with the lease agreement specifically relating to the Bin. Under this security agreement, KSF pledged 3 of its bins as security to Concentra for its ongoing liabilities to Concentra. It is not clear if one of the 3 bins referenced in this security agreement was also the Bin that is the subject of the registration in the PPR and the Personal Property Security Notice registered above. In any event, given that there was only one registration made in the PPR in favour of Concentra relating to the Bin, our view is that any further security interests of Concentra in the other property of KSF ranks behind the mortgage interests and general security interests of RBC and NBC.

General Bank of Canada

As of October 7, 2015, General Bank of Canada ("General Bank") was shown as the secured party in relation to KSF under one registration in the PPR with respect to a 2013 Chevrolet Silverado (the "Silverado"). Markus Keller was also shown as a joint debtor for this registration.

We have reviewed the credit and security agreements between General Bank and KSF with respect to the Silverado. In our view, based on that information and the registration in the PPR, General

Bank has a priority PMSI in the Silverado ranking ahead of all other secured creditors (including those with general security interests).

Our understanding is that the Silverado was not included in the auction of KSF's equipment in March of 2016 as Markus Keller agreed to assume all responsibility for payment to General Bank going forward. In connection with this, the Receiver also assessed that there was no equity available in the Silverado beyond the remaining amount owing to General Bank.

Mid-Plains Implements

As of October 7, 2015, there was no registration in the PPR relating to KSF in favour of Mid-Plains Implements Ltd. ("Mid-Plains"). Nonetheless, Mid-Plains has claimed an interest in a 2014 Double L Potato Harvester (the "Potato Harvester") that was in the possession of KSF.

We have reviewed the credit and security agreements between Mid-Plains and KSF. It appears that on or about August 26, 2014, KSF entered into a contract with Mid-Plains for the purchase of the Potato Harvester. The purchase documents contemplated Mid-Plains maintaining a lien against the Potato Harvester for the unpaid balance of the purchase price. However, it is clear from a review of the PPR that no registration was ever made by Mid-Plains with respect to the Potato Harvester. In the circumstances, it appears Mid-Plains did not take the necessary steps to secure the benefit of a PMSI priority under s. 34 of the PPSA. As such, the proceeds realized from this equipment as part of the auction that occurred in March 2016 are subject to the prior-ranking general security interest of RBC.

Custom Truck Sales

Custom Truck Sales Inc. ("CTS") is asserting a lien pursuant to *The Garage Keepers Act* with respect to a 2008 Kenworth Truck (the "Kenworth") owned by KSF. There is no registration in the PPR in favour of CTS as against KSF.

The documentation provided by CTS indicates that it supplied parts and labour in respect of the Kenworth beginning on April 22, 2015, and completed its repair work by May 15, 2015. The invoice from CTS for this repair work was issued to Shilo Farms Ltd. ("Shilo"), who at that point was leasing all of the KSF equipment for the 2015 crop production year. It appears the Kenworth was released back into the possession of Shilo on completion of this repair work.

A number of further invoices were issued thereafter to Shilo for what appear to be parts relating to the Kenworth. The total value of the invoices issued by CTS (including the initial invoice for parts and labour referenced in the paragraph above) was $28,893.00.

On June 18, 2015, CTS registered a financing statement in the PPR claiming a lien against the Kenworth pursuant to *The Garage Keepers Act*. The lien was registered against Shilo as debtor, notwithstanding that KSF was the registered owner of the vehicle.

On January 26, 2016, without the consent of the Receiver, Shilo turned over possession of the Kenworth back to CTS. Thereafter, the Receiver demanded that CTS return the Kenworth, so that it could be included in the auction of KSF's equipment set for March of 2016. CTS initially refused this request, on the basis that it held a valid possessory lien in the Kenworth under *The Garage Keepers Act*, which lien right was set to expire if it had not re-taken possession of the Kenworth prior to February 18, 2016 (being 8 months after the date of the registration of the financing statement in the PPR). Ultimately, CTS agreed to turn possession of the Kenworth back over to the Receiver so that it could be included in the auction. This was done on the basis that it was without prejudice to the right of CTS to continue to assert a valid lien against the proceeds realized from the sale of the Kenworth.

Based on our review of the documents provided by CTS, we do not believe it has a valid lien against the Kenworth pursuant to *The Garage Keepers Act*. In the first place, the financing statement was registered as against Shilo, not KSF. Section 5 of the Act indicates that in order to maintain a lien following release of the vehicle in question by a garage keeper, the financing statement must be registered against the "owner".

Leaving aside the "ownership" issue, the lien available under *The Garage Keepers Act* is specifically available in respect of "services" provided by a garage keeper relating to a vehicle. A simple supply of parts (without any related repair or installation services) is not in our view sufficient to maintain a lien under the Act.

As indicated above, the initial invoice issued by CTS relating to the Kenworth does appear to relate to "services" provided by CTS as it included both parts and labour. However, if the Kenworth was released by CTS on May 15, 2015 when the repair work was completed, the registration of the financing statement of June 18, 2015 was outside the 15 day period in which CTS was required to register a financing statement in order to maintain lien rights under *The Garage Keepers Act*. As the remaining invoices issued by CTS appear to relate only to the supply of parts, there were no "services" provided by CTS that would justify a lien under *The Garage Keepers Act*, notwithstanding the subsequent registration of a financing statement in the PPR by CTS.

In the circumstances, our view is that the proceeds realized from the sale of the Kenworth are not subject to a lien in favour of CTS, but are instead subject to the prior-ranking general security interest of RBC.

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KHL - SECURITY AS OF OCTOBER 7, 2015

RBC Personal Property Security

KHL executed a general security agreement (the "RBC-KHL GSA") in favour of RBC on May 25, 2011, providing RBC with a general security interest in all of its present and after-acquired personal property. We have reviewed a copy of the RBC-KHL GSA and it appears to have been validly executed on behalf of KSF.

KHL also executed a General Assignment of Leases and Rents in favour of RBC (for RBC's own benefit, and for the benefit of NBC) on May 25, 2011, providing RBC and NBC with a security interest in respect of the benefit of all leases relating to the real property of KHL as mortgaged to RBC (which is referenced further below). We have reviewed a copy of the General Assignment of Leases and Rents and it appears to have been validly executed on behalf of KHL.

As of October 7, 2015, RBC was shown as the secured party in relation to KHL under a series of registrations in the PPR (all of which had expiry dates following October 7, 2015). We are of the opinion that the security of RBC in the personal property of KHL was perfected by one or more of the said registrations and that the security interest of RBC ranks in priority to the claims of all other creditors.

NBC Personal Property Security

According to the Affidavit of Gary Ivany, KHL executed the following security documents in favour of NBC on May 26, 2011: a General Security Agreement and a General Assignment of Leases and Rents and a Specific Assignment of Contracts. It is noted that there was no registration in the PPR in favour of NBC as of October 7, 2015. In fact, aside from the registration in favour of RBC, there were no other registrations at all in the PPR relating to KHL.

As indicated above, the respective security interests of RBC and NBC are dealt with in the Intercreditor Agreement, which will be further discussed below.

The security documentation relating specifically to NBC and KHL was not actually included in the Affidavit of Gary Ivany. As such, we have not had an opportunity to review and consider that security documentation. Nevertheless, for reasons as set out in the summary opinion below, we do not believe such a review is necessary in the circumstances.

RBC Mortgage

On May 25, 2011, KHL gave first charge collateral mortgages to RBC (collectively, the "RBC-KHL Mortgage") over all its real property in the principal amount of $34,000,000 (as amended). As per Schedule "B" of the RBC-KHL Mortgage, the mortgage was provided for the benefit of

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RBC on its own behalf, and as agent for and on behalf of NBC, as continuing security for all liabilities, present or future, owing by KSF to either of RBC and NBC. We have reviewed a copy of the mortgage documentation and it appears to have been validly executed on behalf of KHL.

The RBC-KHL Mortgage was registered in the Morden Land Titles Office as Mortgage No. 1159697/4 on May 31, 2011 (subject to Amending Agreement No. 1194418/4) and was registered against the following titles in the name of KHL as of October 7, 2015: 2153770/4 and 2153771/4. There are no prior mortgages or other financial obligations registered against any of these titles in priority to the RBC-KHL Mortgage.

It is noted that RBC also registered a Caveat against each of the above-noted titles in respect of its rights under the General Assignment of Leases and Rents agreement that was executed on behalf of KHL in favour of RBC and NBC on May 25, 2011. In our view, this Caveat does not in any manner alter the priorities established by the other security documentation referenced in this opinion, including the Intercreditor Agreement.

It is further noted that RBC also registered a personal property security notice against each of the above-noted titles pursuant to the PPSA. Given RBC's priority security status over the personal property of KHL, it is possible that RBC may have maintained a sole priority status over any personal property of KHL that was subsequently affixed to the mortgaged land of KHL after it executed the RBC-KHL GSA. That said, we are not aware of any specific items of personal property of KHL that became fixtures following the execution of the RBC-KHL GSA.

Karen Keller Mortgage

It is noted that the titles referenced above that are subject to the RBC-KHL Mortgage are also subject to a mortgage in favour of Karen Keller. Based on the information contained in the title searches, this mortgage is for a principal amount of $1,078,000. The Karen Keller Mortgage was registered in the Morden Land Titles Office as Mortgage No. 1203492/4 on May 22, 2015.

Our only information relating to the Karen Keller Mortgage has been obtained from the title searches we have reviewed. We have not had an opportunity to review and consider the underlying documentation in support of the Karen Keller Mortgage. For reasons as set out in the summary opinion below, we do not believe such a review is necessary in the circumstances.

INTERCREDITOR AGREEMENT

On June 5, 2014, RBC, NBC, KSF and KHL executed the Intercreditor Agreement dealing with the respective security priorities in respect of the assets of KSF and KHL. Pursuant to the Intercreditor Agreement, RBC and NBC agreed that the following are defined as the "Pari Passu Security":

(a) the collateral security mortgages from both KSF and KHL to RBC (as amended), as referenced above;

(b) the General Assignment of Leases and Rents relating to the mortgaged lands, as executed by KSF and KHL in favour of both RBC and NBC; and

(c) the Specific Assignment of Contracts between KSF and the Elk Haven Farms partnership relating to the mortgaged lands.

Under the Intercreditor Agreement, RBC and NBC are to share in the Pari Passu Security on a *pari passu* basis with respect to the entirety of the NBC debt, and with respect to the following specific RBC facilities (including all unpaid principal, interest and costs relating to such facilities):

(a) the Royfarm mortgage debt owing to RBC;

(b) the "2012 Additional RBC Debt", which is identified in the Intercreditor Agreement as a non-revolving term loan in the original principal amount of $1,500,000.00. Based on discussions with Mr. Dow of Fillmore Riley LLP (legal counsel for RBC), this debt is subsumed within the $4,150,000.00 non-revolving term loan facility (Facility #2) as set out in RBC's credit facilities letter of April 25, 2014; and

(c) the "Additional Financing", which is identified as a non-revolving term loan in the principal amount of $3,300,000.00

To the extent there is payment in full of the RBC facilities mentioned in the paragraph above and all the debt owing to NBC, any remaining part of the Pari Passu Security is to stand as security in favour of RBC for the balance of any amounts owing to RBC. Furthermore, save and except for the Pari Parssu Security, the remainder of any security held by NBC is fully and completely subordinated and postponed to the security held by RBC.

Pursuant to Article 6.05 of the Intercreditor Agreement, all proceeds received by RBC or by any receiver or receiver-manager appointed by RBC shall be applied in the following manner:

(a) firstly, in payment of <u>all</u> costs, charges and expenses of and incidental to the appointment of receiver or receiver-manager and the exercise by such receiver or receiver-manager of all or any of its powers including the remuneration of the receiver or receiver-manager and all amounts properly payable by him;

(b) secondly, in payment of or in reimbursement to RBC of all reasonable costs, charges and expenses incurred in connection with the protection and realization of the RBC Security (which is defined as <u>all</u> the RBC Security, including the Pari Passu Security); and

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(c) thirdly, on account of the indebtedness due to each of the Lenders under their security, in accordance with the terms of the Intercreditor Agreement.

Government Claims

We understand that there are a number of claim as against KSF from the Crown on account of unpaid federal and provincial taxes, and workers' compensation premiums.

It is noted at under paragraph 3(r) of the Receivership Order, the Receiver was provided with the power to assign either or both of KSF and KHL into bankruptcy. While a number of the Crown claims may technically rank in priority to the security interests of RBC and NBC at this point, an assignment of KSF into bankruptcy would eliminate that priority, except in respect of Crown trust claims on account of unpaid "source deductions" from KSF (as per the provisions of s. 86(3) of the *Bankruptcy and Insolvency Act*).

At this point, we understand the Receiver intends to continue to hold proceeds from the realization of the assets of KSF and KHL in an amount in excess of the value of all the Crown claims. We further understand it is the Receiver's intention to assign KSF into bankruptcy in due course, which will have the effect of eliminating any priority for the Crown claim, except in respect of claims that fall within with provisions of s. 86(3) of the *Bankruptcy and Insolvency Act*. The Receiver also intends to provide notice to both the federal and provincial Crown of its motion seeking approval for the distribution of funds to secured creditors.

SUMMARY - OPINION ON SECURITY

Based on our review of the mortgage documents and PPR registrations, along with the General Assignment of Leases and Rents and the Specific Assignment of Contracts in favour of RBC (both of which were also made expressly for the benefit of NBC), we are satisfied that as of October 7, 2015, RBC and NBC had valid priority security positions with respect to all of the Pari Passu Security (as defined in the Intercreditor Agreement), with the exception only of the claim of Concentra relating to the Bin (as referenced above), and the Crown claims relating to unpaid source deductions.

While we have not had an opportunity to specifically review the remainder of the security documentation with respect to NBC's further interest in the personal property of KSF and KHL, our view is that such a review is not necessary given that: (a) the Intercreditor Agreement clearly gives priority to RBC with respect to all of the remaining assets of KSF and KHL that do not constitute the Pari Passu Security; and (b) it is apparent there will not be sufficient proceeds available from the assets of KSF and KHL to satisfy the claims of both RBC and NBC. As a result of the latter fact, it is also our view that a review and assessment of the security documentation relating to creditors that clearly rank behand RBC and NBC is unnecessary.

As noted at the outset, the Receivership Order provides for a priority charge over all the property of KSF and KHL in respect of the "Receiver's Charge" and the "Receiver's Borrowing's Charge". The Receivership Order also provides that the Court has discretion to allocate these charges amongst the various assets comprising the property of KSF and KHL.

In the circumstances, following payment in full of the Crown "source deduction" claims, we would recommend an allocation of the charges under the Receivership Order on a *pari passu* basis as against: (a) the proceeds realized from the Pari Passu Security; (b) the realization in favour of Concentra's secured claim in respect of the Bin; and (c) the remaining proceeds (consisting primarily of the proceeds realized from the sale of equipment). Following that allocation, and in accordance with the Intercreditor Agreement, payment (or reimbursement) should then be made on account of <u>all</u> of the reasonable costs and expenses of RBC incurred in connection with the protection and realization of its security in the assets of KSF and KHL (which includes the Pari Passu security). Again, we would recommend a *pari passu* allocation of such charges as against the proceeds realized from the Pari Passu Security and the remaining proceeds. Following this, and again in accordance with the Intercreditor Agreement, the proceeds of the Pari Passu Security should be allocated on a *pari passu* basis between the entirety of the remaining NBC debt, and the specific RBC Pari Passu debt (being the Royfarm mortgage debt, the 2012 Additional RBC Debt and the Additional Financing - all as defined in the Intercreditor Agreement). Finally, after all proceeds of the Pari Passu Security have been paid out, the remainder of any proceeds should be paid over to RBC on account of its remaining debt claim.

We trust the foregoing is satisfactory.

Yours truly,

THOMPSON DORFMAN SWEATMAN LLP

Per:

Ross A. McFadyen

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Appendix B

APPENDIX B

In the Matter of the Receivership of Keller & Sons Farming Ltd.

Schedule of Professional Fees

Summary of Invoices issued by Ernst & Young Inc.

Invoice #	Date	Total Hours	Fees	Expenses	Total (excl. GST)	
CA0189975685	12-Nov-15	478.3	$ 118,729.00	$ 10,685.61	$ 129,414.61	
CA12C500000602	28-Jun-16	1005.6	294,201.00	-	294,201.00	
Total			**$ 412,930.00**	**$ 10,685.61**	**$ 423,615.61**	**A**

Summary of Invoices issued by Thompson Dorfman Sweatman LLP

Invoice #	Date	Total Hours	Fees	Expenses / PST	Total (excl. GST)	
486082	03-Nov-15	19.6	$ 6,214.50	$ 302.57	$ 6,517.07	
490281	21-Dec-15	27.2	8,568.00	763.69	$ 9,331.69	
493284	02-Feb-16	27.1	7,805.50	772.50	$ 8,578.00	
495074	03-Mar-16	26.4	9,863.50	971.69	$ 10,835.19	
497268	30-Mar-16	28.1	6,056.50	564.59	$ 6,621.09	
499173	29-Apr-16	95	35,707.50	3,953.25	$ 39,660.75	
501530	30-May-16	47.6	16,618.00	1,533.68	$ 18,151.68	
503953	29-Jul-16	54.5	19,990.50	2,814.75	$ 22,805.25	
Total			**$ 110,824.00**	**$ 11,676.72**	**$ 122,500.72**	**B**

Total Professional Fees as reported on the Statement of Receipts and Disbursements	**$ 546,116.33**	**A + B**

Appendix C

IN THE MATTER OF THE RECEIVERSHIP OF KELLER & SONS FARMING LTD.
AND KELLER HOLDINGS LTD.

STATEMENT OF RECEIPTS AND DISBURSEMENTS

	(Reporting Period) For the period March 25, 2016 to July 27, 2016	(CUMULATIVE) For the period October 8, 2016 to July 27, 2016
RECEIPTS		
Receiver's borrowing certificate proceeds	$ -	$ 750,000.00
Pre-receivership bank account proceeds	-	124,527.59
Sale of equipment	2,516,110.00	2,561,110.00
Sale of land and buildings	19,728,330.07	19,728,330.07
Life insurance proceeds	124,833.78	124,833.78
Recovery of operational expenses from Shilo Farms Ltd.	-	19,034.09
Interest earned	5,177.80	5,344.87
Insurance and WCB refunds	80,704.48	80,704.48
Miscellaneous other receipts	-	3,120.03
Total receipts	$ 22,455,156.13	$ 23,397,004.91
DISBURSEMENTS		
Filing fees	-	$ 70.00
Future crop input purchases	-	316,545.35
Insurance	-	183,844.53
Appraisal fees	-	24,995.00
Auction commission and expenses	219,816.43	219,816.43
Professional fees (receiver and legal)	381,439.77	546,116.33
Repayment of Receiver's certificates and interest thereon	768,553.83	768,553.83
Utilities and telephone	4,631.81	36,632.98
Property tax	166,811.49	166,811.49
Payroll and related source deductions	-	57,619.69
Site operational expenses and repairs	3,317.61	60,218.42
GST/HST/PST and miscellaneous	25,208.95	44,988.60
Total disbursements	$ 1,569,779.89	$ 2,426,212.65
Excess of receipts over disbursements before distributions	$ 20,885,376.24	$ 20,970,792.26