

IN THE COURT OF QUEEN'S BENCH OF NEW BRUNSWICK

IN BANKRUPTCY AND INSOLVENCY

JUDICIAL DISTRICT OF FREDERICTON

IN THE MATTER OF THE RECEIVERSHIP OF:

Gray's Aqua Management Ltd., Gray Aqua Farms Ltd., Gray Aqua Group Ltd., Butter Cove Aqua Farms Ltd., Goblin Bay Aqua Farms Ltd., Jervis Island Aqua Farms Ltd., Pass-My-Can Aqua Farms Ltd., Gray Aqua Processing Ltd., M. Gray Holdings Ltd., 608672 N.B. Ltd., 608690 N.B. Ltd., 608691 N.B. Ltd., 608715 NB Limited and 608716 NB Limited

- and -

PURSUANT TO Section 33 of The *Judicature Act*, R.S.N.B. 1973, Ch. J-2, Rule 41, Rules of Court, New Brunswick and Section 243 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3

BETWEEN:

CALLIDUS CAPITAL CORPORATION

APPLICANT

- and -

GRAY'S AQUA MANAGEMENT LTD., GRAY AQUA FARMS LTD., GRAY AQUA GROUP LTD., BUTTER COVE AQUA FARMS LTD., GOBLIN BAY AQUA FARMS LTD., JERVIS ISLAND AQUA FARMS LTD., PASS-MY-CAN AQUA FARMS LTD., GRAY AQUA PROCESSING LTD., M. GRAY HOLDINGS LTD., 608672 N.B. LTD., 608690 N.B. LTD., 608691 N.B. LTD., 608715 NB LIMITED and 608716 NB LIMITED,

RESPONDENTS

APPROVAL AND VESTING ORDER

WHEREAS the motion of Ernst & Young Inc., as the Court appointed receiver and receiver-manager (the “**Receiver**”) of the property, assets and undertaking (the “**Property**”) of the Respondents, seeking, *inter alia*, direction and authorization to depopulate the fish inventory (the “**Fish Inventory**”) located at Marine Aquaculture Site MF – 0044 (the “**Site**”) either through the sale, destruction or other transfer of the Fish Inventory on the terms set out herein was heard this 1st day of September, 2016 at 427 Queen Street Fredericton, New Brunswick.

ON READING the Record on Motion including the first report of the Receiver dated August 31, 2016 (the “**First Report**”), the affidavit of Timothy Gray sworn on August 30, 2016 as director of 628228 N.B. Incorporated (“**628228**”) and the consent of 047759 NB Ltd. (“**047759**”), the consent of 628228 and the Receiver confirming the consent of the Applicant.

AND UPON HEARING:

Josh J. B. McElman, Counsel for the Receiver;

and those parties set out in **Schedule “A”** attached hereto if any.

THIS COURT ORDERS THAT:

DEFINED TERMS

1. All terms not otherwise defined in this Order shall have the meanings ascribed to them in the initial order of this Court dated April 25, 2016 (the “**Initial Order**”).

SERVICE

2. The time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this motion is properly returnable today.

3. There has been good and sufficient notice, service, and delivery of the within Notice of Motion and Record on Motion and further service on any interested party is hereby dispensed with.

APPROVAL OF DEPOPULATION

4. The Receiver is authorized and directed to take such steps and execute such documents as may be necessary or desirable to:
 - a. depopulate the Fish Inventory located at the Site either through the sale, destruction or other transfer of the Fish Inventory on such terms as the Receiver deems appropriate;
 - b. if the Receiver determines it can complete a sale of the Fish Inventory in order to depopulate the Site (the “**Fish Inventory Depopulation Sale**”), the Receiver is authorized and directed to:
 - i. complete negotiations and discussions with such parties as considered necessary by the Receiver, if any, to complete a Fish Inventory Depopulation Sale;
 - ii. enter into such agreements on such terms and conditions as the Receiver deems appropriate to complete a Fish Inventory Depopulation Sale;
 - iii. take such steps and execute such additional documents as may be necessary or desirable for the completion of the transactions required to complete a Fish Inventory Depopulation Sale;

- c. the Receiver, on being satisfied with the terms of any proposed Fish Inventory Depopulation Sale, is authorized and directed to complete such transaction and issue a Receiver's certificate in the form attached hereto as **Schedule "B"** (the **"Receiver's Certificate"**) and to execute and deliver such other documents or take such additional actions as may be necessary or desirable to convey the estate's interest in the Fish Inventory.

VESTING

5. Upon the delivery of the Receiver's Certificate or Certificates to a purchaser (a **"Purchaser"**) all rights, title and interest of the Respondent in and to the Fish Inventory identified in the applicable Receiver's Certificate (the **"Sale Property"**) shall vest absolutely and exclusively in and with the applicable Purchaser, free and clear of and from any and all interests of any person of any nature or kind, including, without limiting the foregoing, all claims, liabilities (direct, indirect, absolute or contingent) , obligations, interests, prior claims, security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, conditional sales contracts or title retention agreements, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, encumbrances, judgments, orders, pledges, assignments, writs of seizure or execution, notices of sale, options, adverse claims, executions, demands, duties, levies, charges, or other financial or monetary claims, rights of first refusal or other pre-emptive rights in favour of third parties, restrictions on transfer of title, or other claims or encumbrances, whether or not they have attached, been perfected, registered or filed and whether secured, unsecured or otherwise and whether created by or pursuant to the orders made in these proceedings or any other proceedings before the Court (collectively, the

"**Claims**") including, without limitation, all Claims evidenced by registrations pursuant to any other registry system (all of which are collectively referred to as the "**Encumbrances**"); and, for greater certainty, this Court orders that all of the Claims and Encumbrances affecting or relating to the Sale Property be expunged and discharged as against the Sale Property, in each case effective as of the applicable time and date of the Receiver's Certificate.

PROCEEDS OF SALE

6. For the purposes of determining the nature and priority of Claims and Encumbrances, the net proceeds from the sale of the Sale Property (the "**Proceeds**") shall stand in the place and stead of the Sale Property, and that from and after the delivery of a Receiver's Certificate, all Claims and Encumbrances shall attach to the Proceeds with the same priority as they had with respect to the applicable Sale Property identified in the applicable Receiver's Certificate immediately prior to the sale, as if the Sale Property had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

COMPLETION OF DEPOPULATION AND USE OF SITE

7. The Receiver may determine in its absolute discretion whether a Fish Inventory Depopulation Sale is possible or not and is under no obligation to pursue or complete such a sale.
8. Should the Receiver determine that a Fish Inventory Depopulation Sale is not possible, the Receiver is hereby authorized and directed to take all such action

as the Receiver deems appropriate to cause the Fish Inventory to be removed from the Site.

9. The Receiver may terminate its occupation of the Site once it has completed the depopulation of the Fish Inventory or a Fish Inventory Depopulation Sale and shall have no liability in relation to the Site to any party whatsoever.
10. The Receiver may remove all personal property from the Site save and except the aquaculture cages, moorings, nets and floating house. The Receiver may remove the personal property immediately or at such time as the Receiver determines is appropriate up to and including one month after the date the Fish Inventory is removed from the Site.
11. The Receiver shall have no liability of any kind to any person whatsoever in connection with or arising from it taking any action in accordance with this Order in relation to the Fish Inventory.
12. The claim of 047759 in and to the Fish Inventory or any Proceeds thereof is extinguished save an except in so much as same is addressed in an agreement it has with the Receiver dated as of August 31, 2016.

GENERAL

13. The Receiver shall file with the Court a copy of all Receiver's Certificates, after delivery thereof. The Receiver shall not be required to file, register or record this Order, notice thereof or any financing statement with respect thereto but may take such steps as it deems necessary or appropriate to register or record this Order, notice thereof or any financing statement with respect thereto, if it deems it advisable to do so. The Receiver is further authorized to execute and register discharges of any registered security or other interest

extinguished by this Order after completion of any transaction authorized herein if necessary.

14. Notwithstanding

- (a) the pendency of these proceedings; and
- (b) the insolvency of the Company;

the vesting of the Sale Property in the Purchaser pursuant to this Order shall be binding on all persons and shall not be void or voidable by any person, including, without limitation, creditors of any of the Respondent, nor shall it constitute nor be deemed to be a settlement, fraudulent preference, assignment, fraudulent conveyance or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

DATED at Moncton, New Brunswick this ____ day of September, 2016

Judge of the Court of Queen's Bench
of New Brunswick

Schedule "A"

Parties in attendance at the hearing not otherwise identified in the Order

Counsel	Firm	Client Represented

SCHEDULE "B"

Court File No. FM-22-16

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RESPONDENTS

RECEIVER'S CERTIFICATE

RECITALS

A. Pursuant to an Order of the New Brunswick Court of Queen's Bench (the "**Court**") dated April 25, 2016 (the "**Appointment Order**"), the Court appointed Ernst & Young Inc. as receiver and manager (the "**Receiver**") of the undertaking, property and assets (the "**Property**") of the Respondents and granted the Receiver those powers and authorizations as set out in the Appointment Order to dispose of certain of the Property.

B. Pursuant to an Order of the Court dated _____, 2016, the Court approved the sale of the fish inventory located at Marine Aquaculture Site MF-044 (the "**Sale Property**") and provided for the vesting in a purchaser (the "**Purchaser**") all right, title and interest in and to the Sale Property, which vesting is to be effective with respect to the Sale Property upon the delivery by the Receiver to the Purchaser of a certificate confirming: (i) the receipt by the Receiver of payment by the Purchaser of the purchase price for the Sale Property; and (ii) the sale has been completed to the satisfaction of the Receiver.

THE RECEIVER CERTIFIES THE FOLLOWING:

1. _____ is the Purchaser of the Sale Property, has paid and the Receiver has received the purchase price for the Sale Property on _____; and

2. The sale of the Sale Property to _____ has been completed to the satisfaction of the Receiver.

This Receiver's Certificate was delivered by the Receiver at_____ [TIME]
on_____ [DATE].

Ernst & Young Inc., in its capacity as
the Court appointed receiver and
receiver and manager of the
undertaking, property and assets of
the Respondents and not in its
personal capacity

Per: _____

Name:

Title: