Court File No.: SJM-46-2020

IN THE COURT OF QUEEN'S BENCH OF NEW BRUNSWICK

IN BANKRUPTCY AND INSOLVENCY

JUDICIAL DISTRICT OF SAINT JOHN

IN THE MATTER OF THE RECEIVERSHIP OF:



HILLSPRING FARMS LTD., HSF FOODS LTD. and HILLSPRING WAREHOUSE & LOGISTICS INC.

-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:

FARM CREDIT CANADA, a Federal Crown Corporation

-and-

HILLSPRING FARMS LTD., HSF FOODS LTD. and HILLSPRING WAREHOUSE & LOGISTICS INC., each a New Brunswick Corporation

APPLICANTS,

- and -

HILLSPRING FARMS LTD., HSF FOODS LTD. and HILLSPRING WAREHOUSE & LOGISTICS INC., each a New Brunswick Corporation

RESPONDENTS

## Affidavit of Jason Inman

I, Jason Inman, of the City of Charlottetown, in the Province of Prince Edward Island, MAKE OATH AND SAY AS FOLLOWS THAT:

1. I am the Senior Account Manager, Special Credit with Farm Credit Canada ("**FCC**") responsible for the Respondents' files with FCC. I have worked in FCC's Special Credit department for 9 years. I have personal knowledge of the matters hereinafter deposed to, except where otherwise stated, and in such cases I do verily believe the truth of the matters deposed to. I am authorized by FCC to make this affidavit and have reviewed FCC's business records that relate to this matter.

2. The Applicant, FCC, is a Canadian Crown corporation. FCC's mandate is to support the Canadian agriculture and agri-food industries. In the 2018-2019 fiscal year, FCC had a portfolio of $31.6 Billion with over 100,000 customers. FCC has a valuations team of 12 members who are certified appraisers Atlantic Canada, Quebec and Ontario. The FCC valuations team has also assisted in the management of the Respondents files with FCC by providing appraisals and input on the Transaction, as defined below.

3. The Respondents and co-Applicants, Hillspring Farms Ltd. ("**Hillspring**"), HSF Foods Ltd. ("**HSF**") and Hillspring Warehouse & Logistics Inc. ("**Logistics**" and sometimes collectively with Hillspring and HSF, the "**Companies**" and each a "**Company**"), are indebted to FCC.

**Background**

4. FCC extended credit to each of Hillspring and HSF (collectively sometimes, the "**Borrowers**") pursuant various loan agreements including an amended and restated credit agreement in October of 2018 with each of the Borrowers. As of March 12, 2020, the Borrowers were indebted to FCC for a total of $70,691,926.52 plus interest, costs and fees thereon until payment in full (the "**FCC Indebtedness**") comprised of:

a. advances of $24,333,722.13 to HSF; and
b. advances of $46,355,954.39 to Hillspring.

5. FCC's advances to each of the Borrowers are cross guaranteed and cross collateralized as against all of the Borrowers' assets. In addition, Logistics, along with certain of Burbank Water & Wastewater Inc., Burbank Industrial Supply Inc., From The Farm Inc., 631544 N.B. Ltd., Sunrise Seed Farms Ltd., Hillspring Thaw Ltd., Empire Construction & Fabrication Ltd., Benjamin Brake and Jeremy Brake (collectively, the "**Related Parties**" and collectively with the Companies the "**Hillspring Group**"), guaranteed the Borrowers obligations to FCC.

6. FCC was granted security for its advances in the form of general security agreements, specific personal property security agreements and collateral mortgages (collectively, the "**FCC Security**"). The FCC Security along with the credit agreements have been provided to Cox & Palmer, counsel to FCC, for filing with the Court. The FCC Security includes collateral mortgages on all but 15 parcels of real property of the Borrowers.

7. FCC's first loan to Hillspring was in 2009 and since that time FCC has made various loans to the Borrowers. Under the direction of Ben Brake and in recent years his son Jeremy Brake, the Hillspring Group grew into a very large intertwined operation in rural New Brunswick.

8. The Hillspring Group carried on a large potato farming operation through Hillspring ("**Farming**") and a potato flake manufacturing operation through HSF ("**Flakes**"). The remaining members of the Hillspring Group, other than the shareholders Ben Brake and Jeremy Brake, are corporations that carried on related operations to generally support the Farming and Flakes operations or holding corporations with assets unrelated to Farming or Flakes.

9. In 2019 the Hillspring Group had grown to a point where Hillspring, among other things:

a. cultivated approximately 7500 acres of farmland of which approximately 6300 to 6400 acres were owned and the balance were leased;

b. owned 22 potato storages, a packing shed building, seed storage buildings, 14 grain tanks and various warehouses or other buildings;

c. owned a machine repair shop, fabrication buildings, wood chip operation facilities and various related buildings; and

d. owned hundreds of pieces of farming equipment;

10. Logistics carried on the operation of a rail siding and grain seed storage site consisting of, among other things, two warehouses for storage, 23 grain tanks for storage, 1 chemical warehouse and a small electrical building.

11. Based on the financial statements presented to FCC by the Hillspring Group, the Borrowers experienced significant revenues between fiscal 2016 and 2019 with an average of $30.6 Million per year however the combined debt levels increased from $43.1 Million in 2016 to $110.3 Million in 2019.

12. The increase of the Borrowers' debt resulted from significant acquisitions of farm land and investments in Flakes. The investments did not result in increased profits and in fact the Borrowers reported combined net losses of $17.3 million for the 21 month period of May 1, 2018 to January 31, 2020.

13. FCC began to be concerned with the viability of the Borrowers' business in 2019 but continued to support the Hillspring Group given its historical profitability. FCC accommodated the Hillspring Group's request for support while it attempted to address its issues by deferring monthly principal payments of $150,357.53 starting in March, 2019 which have not resumed to this date resulting in 15 months of principal arrears totaling $2,225,362.95. In addition, FCC subordinated its collateral mortgages over 14 parcels of real property to the Canadian Imperial

Bank of Commerce ("**CIBC**") so that it could convert certain advances to term debt in support of the Hillspring Group's efforts.

14. Despite the support of CIBC and FCC in 2019, the Hillspring Group was not able to address its financial difficulties. On January 21, 2020, I took over management of FCC's files in relation to the Hillspring Group.

15. I began meeting with the Hillspring Group shortly after taking over their files with FCC and continued to meet with them as they attempted to continue to operate despite the significant losses and the lack of credit availability to carry on operations in the near term. The pending 2020 planting season for Farming required significant resources which were estimated by FCC to be in the range of $13.5 Million Dollars. The Hillspring Group did not have the resources or available credit to bear this expense.

16. In addition to the cash needs of Farming, Flakes had been unable to source sufficient raw material to operate at any level near full capacity and was unprofitable.

17. I attended at the Hillspring Group's premises on January 30, 2020 to meet with the Brakes and members of their management team. I also inspected the Hillspring Group's premises and equipment; all of which appeared to be kept in good condition.

18. Given the financial and operational issues facing the Hillspring Group, I was engaged in active monitoring of their files and regularly engaged with their management team or Ben Brake since taking over the Hillspring Group files.

19. FCC engaged Ernst & Young Inc. ("**EYI**") on February 5, 2020 to act as FCC's financial advisor with respect to the Hillspring Group. Despite the full cooperation of Ben Brake, the management team of the Hillspring Group could not provide information on a timely basis and was not in a position to respond to urgent matters that arose.

20. Through the reports of EYI on its review of the Hillspring Group as well as the ongoing discussions with Ben Brake and CIBC, FCC determined it was not in a position to advance further credit to the Hillspring Group.

21. I was advised on or about the last week of February by Ben Brake that he had begun discussions with McCain Foods Limited ("MFL") and other parties in the same industry as Farming and Flakes. Over the following weeks I remained in regular contact with Ben Brake for updates on his progress to achieving a partnership, a sale or some other arrangement that would see Farming and Flakes continue in operation.

22. The efforts of the Hillspring Group culminated in a meeting on March 4, 2020 between Ben Brake for the Hillspring Group, FCC, CIBC, MFL and their respective counsel and financial advisors in Fredericton, New Brunswick. The meeting was to discuss the situation facing the Hillspring Group and MFL's interest, if any, to pursue a potential transaction.

23. The meeting was productive in that all parties understood the scope of the issues facing the Hillspring Group and in particular the financial pressure of the pending 2020 crop season.

24. Following the meeting on March 4, 2020, FCC and its advisors engaged in regular meetings, discussions and correspondence with the Hillspring Group, CIBC and MFL. In addition, I was engaged by Ben Brake in discussions with another party who was interested in acquiring some or all of the assets related to Farming. The discussions with this other party were not successful.

25. On March 6, 2020 CIBC issued demands against the Companies and other members of the Hillspring Group.

**The Farming Business**

26. On March 11 2020, MFL presented an initial term sheet and through various discussions and negotiations an amended term sheet was issued on March 13, 2020 and finalized late that night (the "**Term Sheet**"). Pursuant to the Term Sheet, MFL agreed to pursue an acquisition of

substantially all of the assets associated with the Farming business (the "**Transaction**").

27. Despite the fact that the Transaction would result in FCC incurring a significant loss on the FCC Indebtedness, FCC consented to the Term Sheet as it provided that, among other things, MFL would provide financial and other assistance to the Companies for Farming by means of a management agreement (the "**Management Agreement**").

28. The Companies were and are insolvent and were in need of additional financing to continue their operations. Absent the financial support that MFL provided pursuant to the Management Agreement, the Companies lacked the necessary resources to plant crop for the 2020 season. I understand that the 2020 crop needed to be planned and planted on or before the end of April 2020 otherwise the value of the Companies' assets would decline significantly due to, among other things, loss of inventory, customers and risks of soil erosion. The financial and operational difficulties of the Companies were further compounded due to COVID-19.

29. The Management Agreement contemplates that the Transaction will be consummated through a court-approved receivership process. The term of the Management Agreement expired on April 29, 2020, but was extended until June 30, 2020. The Companies do not have the ability to operate as a going concern on their own after June 30, 2020.

30. In the circumstances, FCC believes that the Transaction and the amount being offered by MFL to purchase the Farming related assets are reasonable and represent the best prospect for preserving the value of the Farming business to the benefit of the Companies' stakeholders, including FCC.

31. FCC has actively participated in finalizing the due diligence related to the Transaction and documented in the final agreement of purchase and sale dated as of June 11, 2020 (the "**Sale Agreement**") between the Companies and McCain Farms, a division of McCain Produce Inc. (the "**Purchaser**"). Given the size of Farming's operations, the due diligence was significant and FCC considers the result of the process to have

benefited not only FCC but various other members of the farming community.

### The Flake Operations

32. The Term Sheet provided a means to address the Farming operation but did not address the Flakes operation. Ben Brake continued to look for alternatives for Flakes and through his efforts FCC was able to assign its security in and to the assets used in the Flakes operation.

## DEFAULT & ENFORCEMENT

33. On March 13, 2020, FCC issued demands against the Companies as well as other Related Parties for the FCC Indebtedness. The Companies are in default under the FCC Security and loan agreements.

34. By letters dated March 13, 2020, copies of which are attached hereto and marked collectively as **Exhibit "A"**, FCC demanded payment of the Companies' Indebtedness and satisfaction of their obligations to FCC.

35. Enclosed with the letters were Notices of Intention to Enforce Security in accordance with the provisions of section 244 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as well as under the Farm Debt Mediation Act.

36. FCC's collateral mortgages contain the optional covenants and conditions having number FCC-609, a copy of which is attached hereto as **Exhibit "B"**. Pursuant to article 6.2 of FCC-609, FCC may appoint or ask a court to appoint a receiver to manage, sell or liquidate the property. The various security agreements in personal property also provide that FCC can appoint or seek the Court appointment of a receiver. A copy of one of the security agreements from each of the Borrowers is attached hereto as **Exhibit "C"**.

## NEED FOR A RECEIVER

37. As set out above, Hillspring has been operating under the Management Agreement with MFL. It, along with the other members of the Hillspring Group, do not have the funds or the credit necessary to carry on operations. The assets of Farming are not unique on their own but as a collective large scale potato farming operation they form a unique group of assets.

38. FCC has concluded that the Transaction is the best method for it to realize on its security through the proposed receivership. If a receiver was not appointed to complete the Transaction, the Management Agreement would expire, the Companies would lack the necessary resources to continue their operations and FCC would not support an operating receivership and would seek to have the Farming operations shut down while exploring other methods to realize on its security, which would pose considerable risk to the value of the Companies and their assets. If the Companies' operations are ceased, there is a considerable risk that the 2020 crop will be ruined, which would significantly deplete the value of the Companies and their Farming assets.

39. FCC and the Companies have been in negotiations for some time and have been working together to sell the Companies' assets for the greatest possible return. FCC is not aware of any realistic alternative to the Transaction for the continuation of the Farming operations.

40. In addition to the normal market pressure on the potato industry, the impact of COVID-19 has been significant. The Term Sheet was agreed to

prior to the impact of COVID-19 being fully felt by the potato industry. FCC is not confident that it would receive the same value as reflected in the Transaction if FCC had to market the Farming assets to the potato farming industry today.

41. The Companies are without financing and cannot continue to deal with the assets which will remain after the closing of the Transaction if approved by this Court.

42. FCC approves the Transaction. Failure to complete the Transaction may result in a lower realization, which is not in the best interests of FCC or its other stakeholders.

43. As set out above, FCC's mandate as a Crown Corporation is to support the agriculture and food industry in Canada. In addition to the Transaction acting as a means to realize upon the FCC Security, it also provides for the assumption by the Purchaser of various leases of real property, the preservation of jobs and the continuation of the Farming operations. These parts of the Transaction will benefit the local agriculture industry in New Brunswick.

44. The Companies, through the efforts of Ben Brake, supported by Jeremy Brake along with the Purchaser, have concluded an arrangement as reflected in the Sale Agreement that FCC supports.

45. The efforts of Ben Brake greatly assisted FCC and the Companies' other stakeholders in achieving the Transaction. He has fully cooperated with FCC throughout this difficult process.

46. Therefore, in the circumstances, FCC has concluded that it is necessary to appoint Ernst & Young Inc. as the Receiver to ensure the continued operation of the Companies and to seek approval of this Court of the Transaction. I have sworn this affidavit in support of the within application for the appointment of Ernst & Young Inc. as a receiver and receiver manager, the powers and duties of which are more particularly set out in the draft orders attached to the Notice of Application including to complete the Transaction.

| | | |
|---|---|---|
| SWORN TO at the City of Charlottetown, in the Province of Prince Edward Island, this 18 day of June, 2020 | ) | |
| BEFORE ME: | ) | |
| Notary Public in and for the Province of Prince Edward Island | ) | JASON INMAN |

*This is Exhibit "A" to the Affidavit of Jason Inman SWORN TO at the City of Charlottetown, Province of Prince Edward Island, this 18 day of June 2020.*

*BEFORE ME:*

*Melanie McKenna*
*Notary Public in and for the Province of Prince Edward Island*

COX & PALMER | coxandpalmerlaw.com

New Brunswick | Newfoundland and Labrador | Nova Scotia | Prince Edward Island

March 13, 2020

**VIA REGISTERED MAIL AND EMAIL**

Hillspring Farms Ltd.
PO Box 409
Bath, NB E7J 2N2

**Attention: Benjamin Brake, Director**

Dear Mr. Brake:

**Re: Advances from Farm Credit Canada (the "Creditor")**
**Our File No.: 50016331-00499**

We are the solicitors for the Creditor and as such we are authorized to issue this demand for payment on its behalf. We are advised by the Creditor that Hillsrping Farms Ltd. (the "Debtor") is indebted to the Creditor pursuant to various loan agreements which have an outstanding balance of $46,353,254.39 as of March 12, 2020.

In addition, there is a fee payable of $150.00 per loan in relation to this demand which totals $2,700.00. As a result, the total obligation of the Debtor is $46,355,954.39 plus interest, fees and costs thereon. In addition, the Debtor has issued guarantee(s) in support of HSF Foods Ltd. ("HSF"), a related corporation. Please note the Creditor has demanded payment from HSF and the total amount due from HSF for direct debts is $24,335,972.13. As a result, in accordance with the Debtor's guarantee(s) it is liable for payment of $70,691,926.52 plus interest, fees and costs thereon (collectively, all amounts due from the Debtor under its direct borrowings or pursuant to its guarantees is the "Indebtedness"). As security for the Indebtedness, the Creditor holds various security (collectively all security agreements granted by the Debtor, the "Security").

On behalf of the Creditor, we hereby declare all of the Debtor's obligations and the Indebtedness to be due and payable and we hereby demand payment of the Debtor's Indebtedness and liabilities, and satisfaction of all obligations of the Debtor including, without limitation, those under the Security, to the Creditor, together with payment of interest, fees, costs and expenses thereon up to the date of payment.

**Josh J.B. McElman* | Partner**
Direct 506 633 2708 Main 506 632 8900 Fax 506 632 8609 Email jmcelman@coxandpalmer.com
1 Germain Street, Suite 1500 | Saint John, NB | E2L 4V1
Correspondence: P. O. Box 1324, Saint John, NB E2L 4H8
*Practicing through Josh McElman PC Inc.
2218702-

The total amount hereby demanded is the Indebtedness, namely $70,691,962.52, together with interest thereon and all fees, costs and expenses until payment. Payment is to be made forthwith.

Failing payment, the Creditor will have no other alternative but to take such steps as the Creditor considers necessary or appropriate to recover payment of the Debtor's Indebtedness and liabilities in full, including enforcement of the Security.

Enclosed is a copy of the Notice of Intention to Enforce Security, which is given to the Debtor by the Creditor pursuant to section 244(1) of the *Bankruptcy and Insolvency Act* (Canada). Also enclosed is a copy of the Notice of Intent by Secured Creditor, which is given to the Debtor by the Creditor pursuant to section 21 of the *Farm Debt Mediation Act* (Canada).

All demands remain outstanding and unsatisfied and no intermediate acts, negotiations or indulgences shall act as a waiver of the Creditor's rights, or, demand for payment, unless so expressly stated in writing.

Further, nothing herein shall waive or preclude the Creditor from taking any action available at law prior to the expiry of the foregoing notices.

Yours very truly,

Josh J.B. McElman
JJBM/taw

Enclosures

**FORM 86**
**NOTICE OF INTENTION TO ENFORCE SECURITY**
**(Subsection 244(1) of the *Bankruptcy and Insolvency Act*)**

TO: **HILLSPRING FARMS LTD.** an insolvent person (hereinafter the "**Borrower**").

TAKE NOTICE THAT:

1. **FARM CREDIT CANADA** (the "**Creditor**"), a secured creditor, intends to enforce its security on the Borrower's personal and real property described in the security set out in Schedule "A" hereto:

2. The security that is to be enforced is in the form of the agreements set out in Schedule "A" hereto (collectively, the "**Security**").

3. The total amount of the indebtedness secured by the Security is $70,691,926.52 as of March 12, 2020, together with interest therefrom and all other costs, fees, expenses and charges as set out in the Security.

4. The Creditor will not have the right to enforce the Security until after the expiration of the 10-day period after this notice is sent, unless the insolvent person consents to an earlier enforcement.

DATED at Saint John, New Brunswick, this 13th day of March, 2020.

FARM CREDIT CANADA

Per: ______________________
its solicitors, Cox & Palmer
1 Germain Street
Suite 1500, P.O. Box 1324
Saint John, N.B. E2L 4H8
Phone: (506) 632-8900
Fax: (506) 632-8809

2218808-

# Schedule A
# Hillspring Farms Ltd.

| Tab | Document | Date |
|---|---|---|
| 1. | Collateral Mortgage registered as 26757782 to PID 10094092. | 2009-01-26 |
| 2. | Collateral Mortgage registered as 27178467 to PIDs 10096105. | 2009-05-21 |
| 3. | Collateral Mortgage registered as 27181420 to PID 10088706. | 2009-05-22 |
| 4. | Mortgage registered as 27860528 to PIDs 10088706, 10087492, 10087500, 10087724, 10087740, 10088847, 10089258, 10090611, 10091536, 10093995, 10094092, 10096105, 10158970, 10158988, 10161248, 10161412, 10161420, 10161438, 10205094, 10220846, 10231371, 10252666, 10260560, 65034977, and 65114944. | 2009-10-06 |
| 5. | Mortgage registered as 28652049 to PIDs 10167013, 10167021, 10167005, 10167039, and 10167047. | 2010-04-30 |
| 6. | Security Agreement | 2011-01-28 |
| 7. | Mortgage registered as 30516745 to PIDs 10004265, 10002830, 10002939, and 10221976. | 2011-08-26 |
| 8. | Security Agreement | 2012-01-12 |
| 9. | Mortgage registered as 31319560 to PID 10094175. | 2012-04-03 |
| 10. | Security Agreement | 2012-04-27 |
| 11. | Mortgage registered as 31409791 to PID 10259836 | 2012-05-01 |
| 12. | Security Agreement | 2012-09-24 |
| 13. | Security Agreement | 2012-10-28 |
| 14. | Mortgage registered as 33269102 to PIDs 10258127, 10166981, 10094514, 10090850, 10094472, and 10166957. | 2013-10-31 |
| 15. | Security Agreement | 2013-12-02 |
| 16. | Security Agreement | 2014-09-05 |
| 17. | Mortgage registered as 34212507 to PIDs 10167906, 10092187, 10087757. | 2014-09-25 |
| 18. | Security Agreement | 2015-05-01 |
| 19. | Security Agreement | 2015-05-01 |
| 20. | Security Agreement | 2015-05-01 |
| 21. | Mortgage registered as 34807256 to PIDs 10091163, 10089159, 10091593, 10094100, 10095875, 10096790, 10159069, 10207280, 10278232, 10278240, 10278257, 10278273, 65034662, 65034688, 65112096, 65114555, and 10095883. | 2015-05-05 |
| 22. | Mortgage registered as 35871228 to PIDs 10091916, 10089472, 10091155, 10211076, 10094407, | 2016-04-25 |

| | | |
|---|---|---|
| | 10095206, 10161669, 10167468, 10248300, 10277788, 10279982, 10161685, 10280022, and 10161677. | |
| 23. | Mortgage registered as 35873406 to PIDs 10280097, 10280105, 10280113. | 2016-04-26 |
| 24. | Mortgage registered as 35971267 to PIDs 10095065, 10091676, 10091742, 10092682, 10095628, 10166783, 10234128, and 10280253. | 2016-05-30 |
| 25. | Mortgage registered as 36648500 to PIDs 65150781, 65052623, 65140253, 65150799, 65085060, 65085094, 65087835, 65087900, 65088627, 65158438, 65172827, 65084857, 65084865, 65084881, 65084899, 65084915, 65084923, 65087314, 65150757, 65215741, 65084949, 65087413, 65088619, 65217515, 65116725, 65116790, 65150807, and 65152761. | 2016-12-23 |
| 26. | Mortgage registered as 36687284 to PIDs 10226611, 10281723, 10003762, 10008993, 10218659, 10003093, 10281731, 10008506, 10003226, 10007235, 10127900, 10183937, 10002848, 10002186, 10281749, and 10002442. | 2017-01-16 |
| 27. | Mortgage registered as 36687813 to PIDs 65114027, 65085342, 65138661, 65138679, 65111486, and 65085284. | 2017-01-16 |
| 28. | Mortgage registered as 36719731 to PIDs 65085268, and 65160202. | 2017-01-16 |
| 29. | Mortgage registered as 36722636 to PIDs 35159151, and 35159060. | 2017-01-31 |
| 30. | Mortgage registered as 36727890 to PIDs 10281772, and 10090652. | 2017-02-01 |
| 31. | Mortgage registered as 36729433 to PIDs 65205981 and 65089229. | 2017-02-02 |
| 32. | Mortgage registered as 37338739 to PIDs 10272482, 10137792, 10217974, 10217982, 10218063, 10232791, 10260792, 10260800, 10275584, and 10282580. | 2017-09-01 |
| 33. | Mortgage registered as 37715365 10002913, 10087732, 10088631, 10090413, 10093987, 10158251, 10162048, 10187029, 10216125, 10273993, 10282325, 10282333, 10282358, 65041188, 65084831, and 65220535. | 2018-01-11 |
| 34. | Mortgage registered as 38544780 to PIDs 10285179, 65089351, 10214625, 10093912, and 10285393. | 2018-11-07 |
| 35. | Mortgage registered as 38562154 to PID 65224990 (part of PID 65034696). | 2018-11-07 |

Agriculture and Agri-Food Canada / Agriculture et Agroalimentaire Canada
Farm Debt Mediation Service / Service de médiation en matière d'endettement agricole

**PROTECTED B**
when completed

# NOTICE OF INTENT BY SECURED CREDITOR

As required under Section 21 of the *Farm Debt Mediation Act*, you are hereby notified that it is the intent of:

Name of creditor
Farm Credit Canada

To enforce a remedy against the property of; or commence a proceeding, action, execution or other proceeding, judicial or extra-judicial, for the recovery of a debt, the realization of the security or the taking of the property of.

Full name of farmer or business name
Hillspring Farms Ltd.

**Farmer's address**

| Unit/Suite/Apt. | Street Number | Number Suffix | Street Name | Street Type |
|---|---|---|---|---|
| | 295 | | Tarrtown | Road |

| Street direction | PO Box or Route Number | Municipality (City, Town, etc.) | Province | Postal code |
|---|---|---|---|---|
| | PO Box 409 | Bath | New Brunswick | E7J 2N2 |

| The security being (type(s) of security) | on (asset(s)) |
|---|---|
| See attached Schedule A | See attached Schedule A |
| | |
| | |
| | |
| | |

Dated this 13th day of March 2020 at Saint John, NB

Farm Credit Canada as per its solicitor
Creditor's name (print)

Signature of secured creditor or authorized representative

(506) 633-2708
Creditor's phone number and ext.

You are hereby notified of your right to make application under Section 5 of the *Farm Debt Mediation Act* for a review of your financial affairs, mediation with your creditors, and to obtain a stay of proceedings against this action. Provided you are:

a) currently engaged in farming for commercial purposes; and

b) insolvent, meaning that you are:
- unable to meet your obligations as they generally become due; or
- have ceased paying your current obligations in the ordinary course of business as they generally become due; or
- the aggregate of your property is not, at fair valuation, sufficient, or if disposed of at a fairly conducted sale under legal process would not be sufficient, to enable payment of all your obligations, due and accruing due.

**A secured creditor must wait 15 business days after this notice has been deemed served before beginning action to realize on their security. You may apply for mediation and a stay of proceedings at any time, before, during, or after the 15 business day period, by making an application to the Farm Debt Mediation Service.**

The Farm Debt Mediation Service provides qualified farm financial counsellors to conduct a financial review and to prepare a recovery plan for your mediation meeting. Qualified mediators are provided to help you and your creditors reach a mutually satisfactory arrangement.

Application forms and more information about the service can be obtained from:

**Farm Debt Mediation Service**
**1-866-452-5556**

The information you provide on this document is collected by Agriculture and Agri-Food Canada under the authority of the *Farm Debt Mediation Act* for the purpose of facilitating financial arrangements between farmers and their creditors. Personal information will be protected under the provisions of the *Privacy Act* and will be stored in Personal Information Bank AAFC-PPU-227. Information may be accessible or protected as required under the provisions of the *Access to Information Act*.



Canada

A copy of this form must be sent to the FDMS Administrator

# Schedule A
# Hillspring Farms Ltd.

| Tab | Document | Date |
|---|---|---|
| 1. | Collateral Mortgage registered as 26757782 to PID 10094092. | 2009-01-26 |
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| 4. | Mortgage registered as 27860528 to PIDs 10088706, 10087492, 10087500, 10087724, 10087740, 10088847, 10089258, 10090611, 10091536, 10093995, 10094092, 10096105, 10158970, 10158988, 10161248, 10161412, 10161420, 10161438, 10205094, 10220846, 10231371, 10252666, 10260560, 65034977, and 65114944. | 2009-10-06 |
| 5. | Mortgage registered as 28652049 to PIDs 10167013, 10167021, 10167005, 10167039, and 10167047. | 2010-04-30 |
| 6. | Security Agreement | 2011-01-28 |
| 7. | Mortgage registered as 30516745 to PIDs 10004265, 10002830, 10002939, and 10221976. | 2011-08-26 |
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| 12. | Security Agreement | 2012-09-24 |
| 13. | Security Agreement | 2012-10-28 |
| 14. | Mortgage registered as 33269102 to PIDs 10258127, 10166981, 10094514, 10090850, 10094472, and 10166957. | 2013-10-31 |
| 15. | Security Agreement | 2013-12-02 |
| 16. | Security Agreement | 2014-09-05 |
| 17. | Mortgage registered as 34212507 to PIDs 10167906, 10092187, 10087757. | 2014-09-25 |
| 18. | Security Agreement | 2015-05-01 |
| 19. | Security Agreement | 2015-05-01 |
| 20. | Security Agreement | 2015-05-01 |
| 21. | Mortgage registered as 34807256 to PIDs 10091163, 10089159, 10091593, 10094100, 10095875, 10096790, 10159069, 10207280, 10278232, 10278240, 10278257, 10278273, 65034662, 65034688, 65112096, 65114555, and 10095883. | 2015-05-05 |
| 22. | Mortgage registered as 35871228 to PIDs 10091916, 10089472, 10091155, 10211076, 10094407, | 2016-04-25 |

| | | |
|---|---|---|
| | 10095206, 10161669, 10167468, 10248300, 10277788, 10279982, 10161685, 10280022, and 10161677. | |
| 23. | Mortgage registered as 35873406 to PIDs 10280097, 10280105, 10280113. | 2016-04-26 |
| 24. | Mortgage registered as 35971267 to PIDs 10095065, 10091676, 10091742, 10092682, 10095628, 10166783, 10234128, and 10280253. | 2016-05-30 |
| 25. | Mortgage registered as 36648500 to PIDs 65150781, 65052623, 65140253, 65150799, 65085060, 65085094, 65087835, 65087900, 65088627, 65158438, 65172827, 65084857, 65084865, 65084881, 65084899, 65084915, 65084923, 65087314, 65150757, 65215741, 65084949, 65087413, 65088619, 65217515, 65116725, 65116790, 65150807, and 65152761. | 2016-12-23 |
| 26. | Mortgage registered as 36687284 to PIDs 10226611, 10281723, 10003762, 10008993, 10218659, 10003093, 10281731, 10008506, 10003226, 10007235, 10127900, 10183937, 10002848, 10002186, 10281749, and 10002442. | 2017-01-16 |
| 27. | Mortgage registered as 36687813 to PIDs 65114027, 65085342, 65138661, 65138679, 65111486, and 65085284. | 2017-01-16 |
| 28. | Mortgage registered as 36719731 to PIDs 65085268, and 65160202. | 2017-01-16 |
| 29. | Mortgage registered as 36722636 to PIDs 35159151, and 35159060. | 2017-01-31 |
| 30. | Mortgage registered as 36727890 to PIDs 10281772, and 10090652. | 2017-02-01 |
| 31. | Mortgage registered as 36729433 to PIDs 65205981 and 65089229. | 2017-02-02 |
| 32. | Mortgage registered as 37338739 to PIDs 10272482, 10137792, 10217974, 10217982, 10218063, 10232791, 10260792, 10260800, 10275584, and 10282580. | 2017-09-01 |
| 33. | Mortgage registered as 37715365 10002913, 10087732, 10088631, 10090413, 10093987, 10158251, 10162048, 10187029, 10216125, 10273993, 10282325, 10282333, 10282358, 65041188, 65084831, and 65220535. | 2018-01-11 |
| 34. | Mortgage registered as 38544780 to PIDs 10285179, 65089351, 10214625, 10093912, and 10285393. | 2018-11-07 |
| 35. | Mortgage registered as 38562154 to PID 65224990 (part of PID 65034696). | 2018-11-07 |

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New Brunswick | Newfoundland and Labrador | Nova Scotia | Prince Edward Island

March 13, 2020

VIA REGISTERED MAIL AND EMAIL

HSF Foods Ltd.
PO Box 501
Centreville, NB E7K 2M4

Attention: Benjamin Brake, Director

Dear Mr. Brake:

Re: Advances from Farm Credit Canada (the "Creditor")
Our File No.: 50016331-00499

We are the solicitors for the Creditor and as such we are authorized to issue this demand for payment on its behalf. We are advised by the Creditor that HSF Food Ltd. (the "Debtor") is indebted to the Creditor pursuant to various loan agreements which have an outstanding balance of $24,333,722.13 as of March 12, 2020.

In addition, there is a fee payable of $150.00 per loan in relation to this demand which totals $2,250.00. As a result, the total obligation of the Debtor is $24,335,972.13 plus interest, fees and costs thereon. In addition, the Debtor has issued guarantee(s) in support of Hillspring Farms Ltd. ("Hillspring"), a related corporation. Please note the Creditor has demanded payment from Hillspring and the total amount due from Hillspring for direct debts is $46,355,954.39. As a result, in accordance with the Debtor's guarantee(s) it is liable for payment of $70,691,926.52 plus interest, fees and costs thereon (collectively, all amounts due from the Debtor under its direct borrowings or pursuant to its guarantees is the "Indebtedness"). As security for the Indebtedness, the Creditor holds various security (collectively all security agreements granted by the Debtor, the "Security").

On behalf of the Creditor, we hereby declare all of the Debtor's obligations and the Indebtedness to be due and payable and we hereby demand payment of the Debtor's Indebtedness and liabilities, and satisfaction of all obligations of the Debtor including, without limitation, those under the Security, to the Creditor, together with payment of interest, fees, costs and expenses thereon up to the date of payment.

**Josh J.B. McElman*** | Partner
Direct 506 633 2708 Main 506 632 8900 Fax 506 632 8809 Email jmcelman@coxandpalmer.com
1 Germain Street, Suite 1500 | Saint John, NB | E2L 4V1
Correspondence: P. O. Box 1324, Saint John, NB E2L 4H8
*Practicing through Josh McElman PC Inc.
2218770-

The total amount hereby demanded is the Indebtedness, namely $70,691,926.52, together with interest thereon and all fees, costs and expenses until payment. Payment is to be made forthwith.

Failing payment, the Creditor will have no other alternative but to take such steps as the Creditor considers necessary or appropriate to recover payment of the Debtor's Indebtedness and liabilities in full, including enforcement of the Security.

Enclosed is a copy of the Notice of Intention to Enforce Security, which is given to the Debtor by the Creditor pursuant to section 244(1) of the *Bankruptcy and Insolvency Act* (Canada). Also enclosed is a copy of the Notice of Intent by Secured Creditor, which is given to the Debtor by the Creditor pursuant to section 21 of the *Farm Debt Mediation Act* (Canada).

All demands remain outstanding and unsatisfied and no intermediate acts, negotiations or indulgences shall act as a waiver of the Creditor's rights, or, demand for payment, unless so expressly stated in writing.

Further, nothing herein shall waive or preclude the Creditor from taking any action available at law prior to the expiry of the foregoing notices.

Yours very truly,

Josh J.B. McElman
JJBM/taw

Enclosures

**FORM 86**
**NOTICE OF INTENTION TO ENFORCE SECURITY**
**(Subsection 244(1) of the *Bankruptcy and Insolvency Act*)**

TO: **HSF FOODS LTD.** an insolvent person (hereinafter the "Borrower").

TAKE NOTICE THAT:

1. FARM CREDIT CANADA (the "Creditor"), a secured creditor, intends to enforce its security on the Borrower's personal and real property described in the security set out in Schedule "A" hereto:

2. The security that is to be enforced is in the form of the agreements set out in Schedule "A" hereto (collectively, the "Security").

3. The total amount of the indebtedness secured by the Security is $70,691,926.52 as of March 12, 2020, together with interest therefrom and all other costs, fees, expenses and charges as set out in the Security.

4. The Creditor will not have the right to enforce the Security until after the expiration of the 10-day period after this notice is sent, unless the insolvent person consents to an earlier enforcement.

DATED at Saint John, New Brunswick, this 13th day of March, 2020.

FARM CREDIT CANADA

Per: ______________________
its solicitors, Cox & Palmer
1 Germain Street
Suite 1500, P.O. Box 1324
Saint John, N.B. E2L 4H8
Phone: (506) 632-8900
Fax: (506) 632-8809

2218831

# Schedule A
# HSF Foods Ltd.

| Tab | Document | Date |
|---|---|---|
| 1. | Security Agreement | 2009-10-05 |
| 2. | Collateral Mortgage registered as 27860494 to PIDs 10080562, 10121937, 10153278. | 2009-10-06 |
| 3. | Security Agreement | 2011-01-28 |
| 4. | Security Agreement | 2012-09-24 |
| 5. | Mortgage registered as 32621907 to PIDs 35177328, 35159078, 35345537. | 2013-05-01 |
| 6. | Security Agreement | 2013-12-02 |
| 7. | Security Agreement | 2014-09-02 |
| 8. | Security Agreement | 2014-09-05 |
| 9. | Security Agreement | 2015-05-01 |
| 10. | Security Agreement | 2015-05-01 |
| 11. | Security Agreement | 2015-05-01 |
| 12. | Mortgage registered as 34811720 for PID 10264810. | 2015-05-06 |
| 13. | Mortgage registered as 37715373 to PIDs 10121499, 10277069 and 65201444. | 2018-01-11 |
| 14. | Assignment of a Power Distribution Agreement with New Brunswick Power Corporation | 2018-10-26 |

Agriculture and Agri-Food Canada / Agriculture et Agroalimentaire Canada
Farm Debt Mediation Service / Service de médiation en matière d'endettement agricole

PROTECTED B when completed

# NOTICE OF INTENT BY SECURED CREDITOR

As required under Section 21 of the *Farm Debt Mediation Act*, you are hereby notified that it is the intent of:

Name of creditor
Farm Credit Canada

To enforce a remedy against the property of; or commence a proceeding, action, execution or other proceeding, judicial or extra-judicial, for the recovery of a debt, the realization of the security or the taking of the property of:

Full name of farmer or business name
HSF Foods Ltd.

**Farmer's address**

| Unit/Suite/Apt. | Street Number | Number Suffix | Street Name | Street Type |
|---|---|---|---|---|
| | 741 | | Central | Street |

| Street direction | PO Box or Route Number | Municipality (City, Town, etc.) | Province | Postal code |
|---|---|---|---|---|
| | PO Box 501 | Centreville | New Brunswick | E7K 2M4 |

| The security being (type(s) of security) | on (asset(s)) |
|---|---|
| See attached Schedule A | See attached Schedule A |
| | |
| | |
| | |
| | |

Dated this 13th day of March, 2020 at Saint John, NB

Farm Credit Canada as per its solicitor
Creditor's name (print)

Signature of secured creditor or authorized representative

(506) 633-2708
Creditor's phone number and ext.

You are hereby notified of your right to make application under Section 5 of the *Farm Debt Mediation Act* for a review of your financial affairs, mediation with your creditors, and to obtain a stay of proceedings against this action. Provided you are:

a) currently engaged in farming for commercial purposes and

b) insolvent, meaning that you are:
- unable to meet your obligations as they generally become due or
- have ceased paying your current obligations in the ordinary course of business as they generally become due; or
- the aggregate of your property is not, at fair valuation, sufficient, or if disposed of at a fairly conducted sale under legal process would not be sufficient to enable payment of all your obligations, due and accruing due.

**A secured creditor must wait 15 business days after this notice has been deemed served before beginning action to realize on their security. You may apply for mediation and a stay of proceedings at any time, before, during, or after the 15 business day period, by making an application to the Farm Debt Mediation Service.**

The Farm Debt Mediation Service provides qualified farm financial counsellors to conduct a financial review and to prepare a recovery plan for your mediation meeting. Qualified mediators are provided to help you and your creditors reach a mutually satisfactory arrangement.

Application forms and more information about the service can be obtained from:

**Farm Debt Mediation Service**
**1-866-452-5556**

The information you provide on this document is collected by Agriculture and Agri-Food Canada under the authority of the *Farm Debt Mediation Act* for the purpose of facilitating financial arrangements between farmers and their creditors. Personal information will be protected under the provisions of the *Privacy Act* and will be stored in Personal Information Bank AAFC-PPU-227. Information may be accessible or protected as required under the provisions of the *Access to Information Act*.



Canada

A copy of this form must be sent to the FDMS Administrator

# Schedule A
# HSF Foods Ltd.

| Tab | Document | Date |
|---|---|---|
| 1. | Security Agreement | 2009-10-05 |
| 2. | Collateral Mortgage registered as 27860494 to PIDs 10080562, 10121937, 10153278. | 2009-10-06 |
| 3. | Security Agreement | 2011-01-28 |
| 4. | Security Agreement | 2012-09-24 |
| 5. | Mortgage registered as 32621907 to PIDs 35177328, 35159078, 35345537. | 2013-05-01 |
| 6. | Security Agreement | 2013-12-02 |
| 7. | Security Agreement | 2014-09-02 |
| 8. | Security Agreement | 2014-09-05 |
| 9. | Security Agreement | 2015-05-01 |
| 10. | Security Agreement | 2015-05-01 |
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| 12. | Mortgage registered as 34811720 for PID 10264810. | 2015-05-06 |
| 13. | Mortgage registered as 37715373 to PIDs 10121499, 10277069 and 65201444. | 2018-01-11 |
| 14. | Assignment of a Power Distribution Agreement with New Brunswick Power Corporation | 2018-10-26 |

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New Brunswick | Newfoundland and Labrador | Nova Scotia | Prince Edward Island

March 13, 2020

**VIA REGISTERED MAIL AND EMAIL**

Burbank Industrial Supply Inc.
741 Central Street
Centreville, NB E7K 2M4

Hillspring Thaw Ltd.
741 Central Street
Centreville, NB E7K 2M4

Hillspring Warehouse & Logistics Inc.
85 CN North Road
PO Box 7941
Grand Falls, NB E3Z 2L1

Sunrise Seed Farms Ltd.
295 Tarrtown Road
PO Box 409
Bath, NB E7J 2N2

Attention: Jeremy Brake, Director

Dear Mr. Brake:

**Re: Advances from Farm Credit Canada (the "Creditor")**
**Our File No.: 50016331-00499**

We are the solicitors for the Creditor and as such we are authorized to issue this letter on their behalf.

Demand has been made by the Creditor on Hillspring Farms Ltd. (the "Debtor") for payment in full of the Debtor's obligations to the Creditor. A copy of the Creditor's demand (the " Demand") is enclosed for your reference, together with a copy of the Notices of Intention to Enforce Security also given to the Debtor.

Each of you executed guarantees for the obligations of the Debtor to the Creditor. We hereby demand payment from you under the terms of the said guarantees the amount of $70,691,962.52 together with interest, costs, fees and expenses as set out in the Demand and your respective guarantees. Payment is to be made forthwith.

Failing payment, the Creditor will have no other alternative but to take such steps as the Creditor considers necessary or appropriate to recover payment of your obligations under your respective guarantees, including enforcement of any security held by the Creditor.

**Josh J.B. McElman*** | Partner
Direct 506 633 2708 Main 506 632 8900 Fax 506 632 8809 Email jmcelman@coxandpalmer.com
1 Germain Street, Suite 1500 | Saint John, NB | E2L 4V1
Correspondence: P. O. Box 1324, Saint John, NB E2L 4H8
*Practicing through Josh McElman PC Inc.
2219530-

All demands remain outstanding and unsatisfied and no intermediate acts, negotiations or indulgences shall act as a waiver of the Creditor's rights, or, demand for payment, unless so expressly stated in writing.

Further, nothing herein shall waive or preclude the Creditor from taking any action available at law prior to the expiry of the foregoing notices.

Yours very truly,

Josh J.B. McElman
JJBM/taw

Enclosures

Agriculture and Agri-Food Canada
Farm Debt Mediation Service

Agriculture et Agroalimentaire Canada
Service de médiation en matière d'endettement agricole

**PROTECTED B**
when completed

# NOTICE OF INTENT BY SECURED CREDITOR

As required under Section 21 of the *Farm Debt Mediation Act*, you are hereby notified that it is the intent of:

Name of creditor
Farm Credit Canada

To enforce a remedy against the property of; or commence a proceeding, action, execution or other proceeding, judicial or extra-judicial, for the recovery of a debt, the realization of the security or the taking of the property of:

Full name of farmer or business name
Burbank Industrial Supply Inc.

**Farmer's address**

| Unit/Suite/Apt. | Street Number | Number Suffix | Street Name | Street Type |
|---|---|---|---|---|
| | 741 | | Central | Street |

| Street direction | PO Box or Route Number | Municipality (City, Town, etc.) | Province | Postal code |
|---|---|---|---|---|
| | | Centreville | New Brunswick | E7K 2M4 |

| The security being (type(s) of security) | on (asset(s)) |
|---|---|
| | |
| | |
| | |
| | |
| | |

Dated this 13th day of March, 2020 at Saint John, NB

Farm Credit Canada as per its solicitor
Creditor's name (print)

Signature of secured creditor or authorized representative

(506) 633-2708
Creditor's phone number and ext

You are hereby notified of your right to make application under Section 5 of the *Farm Debt Mediation Act* for a review of your financial affairs, mediation with your creditors, and to obtain a stay of proceedings against this action. Provided you are:

a) currently engaged in farming for commercial purposes; and

b) insolvent, meaning that you are:
- unable to meet your obligations as they generally become due; or
- have ceased paying your current obligations in the ordinary course of business as they generally become due; or
- the aggregate of your property is not, at fair valuation, sufficient, or if disposed of at a fairly conducted sale under legal process would not be sufficient, to enable payment of all your obligations, due and accruing due.

**A secured creditor must wait 15 business days after this notice has been deemed served before beginning action to realize on their security. You may apply for mediation and a stay of proceedings at any time, before, during, or after the 15 business day period, by making an application to the Farm Debt Mediation Service.**

The Farm Debt Mediation Service provides qualified farm financial counsellors to conduct a financial review and to prepare a recovery plan for your mediation meeting. Qualified mediators are provided to help you and your creditors reach a mutually satisfactory arrangement.

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**Farm Debt Mediation Service**
**1-866-452-5556**

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AAFC / AAC 4805-E (2015/11) V1 1(x)



Canada

A copy of this form must be sent to the FDMS Administrator

Agriculture and Agri-Food Canada / Agriculture et Agroalimentaire Canada
Farm Debt Mediation Service / Service de médiation en matière d'endettement agricole

PROTECTED B when completed

# NOTICE OF INTENT BY SECURED CREDITOR

As required under Section 21 of the *Farm Debt Mediation Act*, you are hereby notified that it is the intent of:

Name of creditor
Farm Credit Canada

To enforce a remedy against the property of; or commence a proceeding, action, execution or other proceeding, judicial or extra-judicial, for the recovery of a debt, the realization of the security or the taking of the property of:

Full name of farmer or business name
Hillspring Thaw Ltd.

**Farmer's address**

| Unit/Suite/Apt. | Street Number | Number Suffix | Street Name | Street Type |
|---|---|---|---|---|
| | 741 | | Central | Street |

| Street direction | PO Box or Route Number | Municipality (City, Town, etc.) | Province | Postal code |
|---|---|---|---|---|
| | | Centreville | New Brunswick | E7K 2M4 |

| The security being (type(s) of security) | on (asset(s)) |
|---|---|
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| | |
| | |

Dated this 13th day of March, 2020 at Saint John, NB

Farm Credit Canada as per its solicitor
Creditor's name (print)

Signature of secured creditor or authorized representative

(506) 633-2708
Creditor's phone number and ext.

You are hereby notified of your right to make application under Section 5 of the *Farm Debt Mediation Act* for a review of your financial affairs, mediation with your creditors, and to obtain a stay of proceedings against this action. Provided you are:

a) currently engaged in farming for commercial purposes; and

b) insolvent, meaning that you are:
- unable to meet your obligations as they generally become due; or
- have ceased paying your current obligations in the ordinary course of business as they generally become due; or
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Canada

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Agriculture and Agri-Food Canada / Agriculture et Agroalimentaire Canada
Farm Debt Mediation Service / Service de médiation en matière d'endettement agricole

**PROTECTED B**
when completed

# NOTICE OF INTENT BY SECURED CREDITOR

As required under Section 21 of the *Farm Debt Mediation Act*, you are hereby notified that it is the intent of:

Name of creditor
Farm Credit Canada

To enforce a remedy against the property of; or commence a proceeding, action, execution or other proceeding, judicial or extra-judicial, for the recovery of a debt, the realization of the security or the taking of the property of

Full name of farmer or business name
Hillspring Warehouse & Logistics Inc.

**Farmer's address**

| Unit/Suite/Apt. | Street Number | Number Suffix | Street Name | Street Type |
|---|---|---|---|---|
| | 85 | | CN North | Road |

| Street direction | PO Box or Route Number | Municipality (City, Town, etc.) | Province | Postal code |
|---|---|---|---|---|
| | PO Box 7941 | Grand Falls | New Brunswick | E3Z 2L1 |

| The security being (type(s) of security) | on (asset(s)) |
|---|---|
| | |
| | |
| | |
| | |
| | |

Dated this 13th day of March, 2020 at Saint John, NB

Farm Credit Canada as per its solicitor
Creditor's name (print)

Signature of secured creditor or authorized representative

(506) 633-2708
Creditor's phone number and ext.

You are hereby notified of your right to make application under Section 5 of the *Farm Debt Mediation Act* for a review of your financial affairs, mediation with your creditors and to obtain a stay of proceedings against this action. Provided you are:

a) currently engaged in farming for commercial purposes, and

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- unable to meet your obligations as they generally become due; or
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**1-866-452-5556**

The information you provide on this document is collected by Agriculture and Agri-Food Canada under the authority of the *Farm Debt Mediation Act* for the purpose of facilitating financial arrangements between farmers and their creditors. Personal information will be protected under the provisions of the *Privacy Act* and will be stored in Personal Information Bank AAFC-PPU-227. Information may be accessible or protected as required under the provisions of the *Access to Information Act*.



A copy of this form must be sent to the FDMS Administrator

Agriculture and Agri-Food Canada / Agriculture et Agroalimentaire Canada
Farm Debt Mediation Service / Service de médiation en matière d'endettement agricole

PROTECTED B
when completed

# NOTICE OF INTENT BY SECURED CREDITOR

As required under Section 21 of the *Farm Debt Mediation Act*, you are hereby notified that it is the intent of:

Name of creditor
Farm Credit Canada

To enforce a remedy against the property of; or commence a proceeding, action, execution or other proceeding, judicial or extra-judicial, for the recovery of a debt, the realization of the security or the taking of the property of:

Full name of farmer or business name
Sunrise Seed Farms Ltd.

Farmer's address

| Unit/Suite/Apt. | Street Number | Number Suffix | Street Name | Street Type |
|---|---|---|---|---|
| | 295 | | Tarrtown | Road |

| Street direction | PO Box or Route Number | Municipality (City, Town, etc.) | Province | Postal code |
|---|---|---|---|---|
| | PO Box 409 | Bath | New Brunswick | E7J 2N2 |

| The security being (type(s) of security) | on (asset(s)) |
|---|---|
| | |
| | |
| | |
| | |
| | |

Dated this 13th day of March, 2020 at Saint John, NB

Farm Credit Canada as per its solicitor
Creditor's name (print)

Signature of secured creditor or authorized representative

(506) 633-2708
Creditor's phone number and ext.

You are hereby notified of your right to make application under Section 5 of the *Farm Debt Mediation Act* for a review of your financial affairs mediation with your creditors, and to obtain a stay of proceedings against this action. Provided you are:

a) currently engaged in farming for commercial purposes; and

b) insolvent, meaning that you are:
- unable to meet your obligations as they generally become due; or
- have ceased paying your current obligations in the ordinary course of business as they generally become due; or
- the aggregate of your property is not, at fair valuation, sufficient, or if disposed of at a fairly conducted sale under legal process would not be sufficient, to enable payment of all your obligations, due and accruing due.

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**1-866-452-5556**

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Canada

A copy of this form must be sent to the FDMS Administrator

COX & PALMER | coxandpalmerlaw.com

New Brunswick | Newfoundland and Labrador | Nova Scotia | Prince Edward Island

March 13, 2020

**VIA REGISTERED MAIL AND EMAIL**

Burbank Water & Wastewater Inc.
741 Central Street
Centreville, NB E7K 2M4

Attention: Jeremy Brake, Director

Dear Mr. Brake:

Re: Advances from Farm Credit Canada (the "Creditor")
Our File No.: 50016331-00499

We are the solicitors for the Creditor and as such we are authorized to issue this letter on their behalf.

Demand has been made by the Creditor on Hillspring Farms Ltd. and HSF Foods Ltd. (the "Related Companies"). Burbank Water & Wastewater Inc. (the "Debtor") is jointly liable with HSF Foods Ltd. and executed guarantees for the obligations of the Related Companies to the Creditor. We hereby demand payment from you under the terms of the said guarantees and for joint borrowings in the amount of $70,691,926.52 together with interest, costs, fees and expenses. Payment is to be made forthwith.

A copy of the Creditor's demands are enclosed for your reference, together with a copy of the Notices of Intention to Enforce Security also given to the Debtor.

Failing payment, the Creditor will have no other alternative but to take such steps as the Creditor considers necessary or appropriate to recover payment of your obligations under your respective guarantees, including enforcement of any security held by the Creditor.

Also enclosed is a copy of the Notice(s) of Intention to Enforce Security pursuant to section 244(1) of the *Bankruptcy and Insolvency Act* (Canada). Also enclosed is a copy of the Notice of Intent by Secured Creditor pursuant to section 21 of the *Farm Debt Mediation Act* (Canada).

**Josh J.B. McElman*** | Partner
Direct 506 633 2708 Main 506 632 8900 Fax 506 632 8809 Email jmcelman@coxandpalmer.com
1 Germain Street, Suite 1500 | Saint John, NB E2L 4V1
Correspondence: P. O. Box 1324, Saint John NB E2L 4H8
*Practicing through Josh McElman PC Inc.
2219470-

All demands remain outstanding and unsatisfied and no intermediate acts, negotiations or indulgences shall act as a waiver of the Creditor's rights, or, demand for payment, unless so expressly stated in writing.

Further, nothing herein shall waive or preclude the Creditor from taking any action available at law prior to the expiry of the foregoing notices.

Yours very truly,

Josh J.B. McElman
JJBM/taw

Enclosures

**FORM 86**
**NOTICE OF INTENTION TO ENFORCE SECURITY**
**(Subsection 244(1) of the *Bankruptcy and Insolvency Act*)**

TO: BURBANK WATER & WASTEWATER INC. an insolvent person (hereinafter the "Borrower").

TAKE NOTICE THAT:

1. FARM CREDIT CANADA (the "Creditor"), a secured creditor, intends to enforce its security on the Borrower's personal and real property described in the security set out in Schedule "A" hereto:

2. The security that is to be enforced is in the form of the agreements set out in Schedule "A" hereto (collectively, the "Security").

3. The total amount of the indebtedness secured by the Security is $70,691,926.52 as of March 12, 2020, together with interest therefrom and all other costs, fees, expenses and charges as set out in the Security.

4. The Creditor will not have the right to enforce the Security until after the expiration of the 10-day period after this notice is sent, unless the insolvent person consents to an earlier enforcement.

DATED at Saint John, New Brunswick, this 13th day of March, 2020.

FARM CREDIT CANADA

Per: ______________________
its solicitors, Cox & Palmer
1 Germain Street
Suite 1500, P.O. Box 1324
Saint John, N.B. E2L 4H8
Phone: (506) 632-8900
Fax: (506) 632-8809

2224239-

# Schedule A
# Burbank Water & Wastewater Inc.

| Tab | Document | Date |
|---|---|---|
| 1. | Security Agreement – Burbank Water & Wastewater Inc. – General Security Agreement - 408 | 2018-04-20 |
| 2. | Mortgage registered as 37938678 to PID 10284198. | 2018-04-23 |

Agriculture and Agri-Food Canada / Agriculture et Agroalimentaire Canada
Farm Debt Mediation Service / Service de médiation en matière d'endettement agricole

PROTECTED B
when completed

# NOTICE OF INTENT BY SECURED CREDITOR

As required under Section 21 of the *Farm Debt Mediation Act*, you are hereby notified that it is the intent of:

Name of creditor
Farm Credit Canada

To enforce a remedy against the property of; or commence a proceeding, action, execution or other proceeding, judicial or extra-judicial, for the recovery of a debt, the realization of the security or the taking of the property of:

Full name of farmer or business name
Burbank Water & Wastewater Inc.

**Farmer's address**

| Unit/Suite/Apt. | Street Number | Number Suffix | Street Name | Street Type |
|---|---|---|---|---|
| | 741 | | Central | Steet |

| Street direction | PO Box or Route Number | Municipality (City, Town, etc.) | Province | Postal code |
|---|---|---|---|---|
| | | Centreville | New Brunswick | E7K 2M4 |

| The security being (type(s) of security) | on (asset(s)) |
|---|---|
| See attached Schedule A | See attached Schedule A |
| | |
| | |
| | |
| | |

Dated this 13th day of March, 2020 at Saint John, NB

Farm Credit Canada as per its solicitor
Creditor's name (print)

Signature of secured creditor or authorized representative

(506) 633-2708
Creditor's phone number and ext.

You are hereby notified of your right to make application under Section 5 of the *Farm Debt Mediation Act* for a review of your financial affairs, mediation with your creditors, and to obtain a stay of proceedings against this action. Provided you are:

a) currently engaged in farming for commercial purposes, and

b) insolvent, meaning that you are:
- unable to meet your obligations as they generally become due; or
- have ceased paying your current obligations in the ordinary course of business as they generally become due; or
- the aggregate of your property is not, at fair valuation, sufficient, or if disposed of at a fairly conducted sale under legal process would not be sufficient, to enable payment of all your obligations, due and accruing due.

**A secured creditor must wait 15 business days after this notice has been deemed served before beginning action to realize on their security. You may apply for mediation and a stay of proceedings at any time, before, during, or after the 15 business day period, by making an application to the Farm Debt Mediation Service.**

The Farm Debt Mediation Service provides qualified farm financial counsellors to conduct a financial review and to prepare a recovery plan for your mediation meeting. Qualified mediators are provided to help you and your creditors reach a mutually satisfactory arrangement.

Application forms and more information about the service can be obtained from:

**Farm Debt Mediation Service**
**1-866-452-5556**

The information you provide on this document is collected by Agriculture and Agri-Food Canada under the authority of the *Farm Debt Mediation Act* for the purpose of facilitating financial arrangements between farmers and their creditors. Personal information will be protected under the provisions of the *Privacy Act* and will be stored in Personal Information Bank AAFC-PPU-227. Information may be accessible or protected as required under the provisions of the *Access to Information Act*.



Canada

A copy of this form must be sent to the FDMS Administrator

# Schedule A
# Burbank Water & Wastewater Inc.

| Tab | Document | Date |
|---|---|---|
| 1. | Security Agreement – Burbank Water & Wastewater Inc. – General Security Agreement - 408 | 2018-04-20 |
| 2. | Mortgage registered as 37938678 to PID 10284198. | 2018-04-23 |

*This is Exhibit "B" to the Affidavit of Jason Inman SWORN TO at the City of Charlottetown, Province of Prince Edward Island, this 18 day of June 2020.*

*BEFORE ME:*

Melanie McKenna
*Notary Public in and for the Province of Prince Edward Island*

Form 16

**APPLICATION FOR OPTIONAL MORTGAGE COVENANT**

***Land Titles Act*, S.N.B. 1981, c.L-1.1, s.25**

| | |
|---|---|
| Applicant: | Farm Credit Canada<br>1133 St. George Blvd., Suite 200<br>Moncton, New Brunswick E1E 4E1 |
| Optional Mortgage Covenant: | Collateral Mortgage – Farm Credit Canada<br>Hypothèque subsidiaire – Financement agricole Canada |

The Applicant applies for the assignment of a number to the specified optional mortgage covenant.

Date: February 22, 2002

FARM CREDIT CANADA * FINANCEMENT AGRICOLE CANADA CORPORATE Seal

D. Lacenaire

Applicant: Donna Lacenaire, Loan Administration Officer
Farm Credit Canada

Number assigned to the specified optional mortgage covenant: FCC-609

Deputy Registrar General of Land Titles

Maureen Whelly Mills

1 of 20

OPTIONAL MORTGAGE COVENANTS
COLLATERAL MORTGAGE
**FARM CREDIT CANADA**
Registered as Number:

1. **DEFINITIONS**

This section defines some of the specific terms You will find in these Collateral Mortgage Covenants.

**"Collateral Mortgage Form 15.1"** means the prescribed New Brunswick Form 15.1, and any form substituted for it.

**"Mortgage"** means the Farm Credit Canada Form 15.1 Collateral Mortgage, these Collateral Mortgage Terms, and any changes made by written agreement with You.

**"You"** and **"Your"** mean each person or corporation who has signed the Form 15.1 Collateral Mortgage as Mortgagor or Guarantor. This includes the personal and legal representatives of each person or corporation and any person or corporation who has assumed any obligations under the Mortgage.

**"We"**, **"Us"** and **"Our"** mean the Mortgagee, Farm Credit Canada and its legal representatives.

**"Property"** means the land described in Schedule "A" to the Collateral Mortgage Form 15.1. This includes all buildings on that land now and all improvements made before or during the time the Mortgage is in effect.

**"Principal Amount"** or **"Principal Sum"** means the total maximum principal amount of any Loan that is, or may be, secured by the Form 15.1 Collateral Mortgage.

**"Interest Rate"** means the rate of interest expressed as a percentage rate per annum, which is set out on the applicable Loan Agreement.

**"Variable Mortgage Loan Rate"** means the rate of interest expressed as a percentage rate per annum, which is set by Us from time to time.

**"Loan Agreement"** means any Promissory Note, Loan Approval and Acceptance, Loan or Credit Agreement or any similar agreement evidencing a Loan between You and Us to be secured by the Form 15.1 Collateral Mortgage. It also means any Guarantee signed by You guaranteeing the repayment to Us of a loan We made to a third party, which contingent indebtedness under the Guarantee is secured by the Form 15.1 Collateral Mortgage.

**"Loan Amount"** means the outstanding balance of any Loan or of any draw under any Loan or Guarantee after demand or of any draw under any Loan. This balance could include unpaid principal, defaulted payments, interest on defaulted payments, Other Charges and interest on Other Charges.

**"Loan"** or **"Loans"** means all Loans made by Us to You from time to time and secured by the Form 15.1 Collateral Mortgage, including the Loan made at the time the Mortgage is signed. It also means any Loan made by Us to a third party, which You have guaranteed to repay. Loans may be agreed to in Loan Agreements.

**"Guarantee"** means a form of Guarantee signed by You in which You agree to repay a Loan made by Us to a third party if the third party fails to pay the Loan.

**"Other Charges"** mean Our expenses of protecting and/or enforcing Our rights and of making payments on any prior charges against the Property.

Other charges could include but are not limited to the cost of the following:

- investigating the Property, and preparing and registering the Mortgage;
- insurance if We decide to insure You or the Property;
- appraising the Property and undertaking an environmental inspection or clean-up of the Property;
- all of Our administrative, clerical and actual legal costs on a solicitor and client basis; and
- the cost of any receiver or receiver-manager appointed by law under the Form 15.1 Collateral Mortgage.

Other charges may include expenses not listed here.

**"Prior Charges"** mean any charges or liens in existence and affecting the Property at the time of the creation of the Mortgage.

**"Hazardous Substances"** mean and include any substances declared from time to time to be hazardous, dangerous or toxic or similarly described under any applicable federal, provincial or municipal law, by-law, regulation or other enactment.

## 2. WHAT THE MORTGAGE DOES

By signing the Form 15.1 Collateral Mortgage, You acknowledge that You are indebted to Us or may become indebted to Us and agree to repay the Principal Sum or the Loan Amount outstanding with interest as set forth in any Loan Agreement. You also Mortgage Your entire estate and interest in the Property to Us, as additional and collateral security for the repayment of all the Loan Amounts up to the Principal Sum, plus interest and Other Charges.

### 2.1 Your title to the Property

You guarantee that You are the registered owner of an estate in fee simple in the Property or have an absolute right to acquire such an estate under a registered Agreement for Sale or Right to Purchase or have a registered leasehold interest in the Property and have the right to give Us the Mortgage and hereby mortgage all Your estate and interest in the Property to Us. If You acquire a greater or additional interest in the Property, it too is hereby charged by the Mortgage.

You also guarantee that there are no Prior Charges on the Property, other than those We have agreed to in any Loan approval document or Loan Agreement.

You agree to make payments on these approved prior charges as they become due.

### 2.2 Who is bound by the Mortgage

The obligations under the Mortgage are the collective and individual responsibility of all persons or corporations who have signed it.

Your legal and personal representatives and Our legal representatives must comply with the terms of the Mortgage.

### 2.3 Changing or extending the Mortgage

We may make written agreements with You to change any part of the Mortgage. This could include changing the Principal Amount or Interest Rate or both. We do not have to register any written agreement as to any such change to maintain the priority of the Mortgage.

### 2.4 Mortgage of Lease

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This provision only applies to a leasehold interest in the Property.

You represent, warrant and agree with Us that:

- You are the lawful tenant of the Property and have a good and marketable leasehold interest in the Property under a good, valid and subsisting lease, free of any encumbrance or claim, except as approved by Us;
- You have paid all rents and other monies payable under Your lease and are not in default under any of Your other obligations under Your lease;
- You have obtained the written consent of Your landlord, or have the right without such consent, to mortgage Your leasehold interest in the Property;
- You will pay all rent and other payments due and perform and observe all of Your other obligations under Your lease, in default of which We may make such payments or perform such obligations and charge same to You as Other Charges;
- You will not surrender Your lease or cause or allow it to be terminated or forfeited;
- You will not agree to any amendment to Your lease without Our prior written consent; and
- You will, as soon as possible after receipt, give Us a copy of any notice, demand or request Your receive relating to Your lease.

2.5 **Mortgage in Support of a Guarantee**

This provision applies only if the Mortgage is given in support of a Guarantee given by you to Us guaranteeing the repayment of any Loan made by us to a third party. If the Mortgage is in support of a Guarantee it will be payable on the terms set forth in the Guarantee or if the terms of payment are not set forth in the Guarantee then the Mortgage will be payable on demand by Us.

2.6 **Termination of the Mortgage**

The security interest We have in the Mortgage ends when You have met all Your obligations in the Mortgage, including payment of all the Loan Amounts.

3. **INTEREST**

3.1 **Interest rate**

You will find the interest rate on the applicable Loan Agreement.

3.2 **Interest on Your Loan**

We will charge interest from the date each advance under each Loan is made to You at the Interest Rate as may be provided in the Loan Agreement evidencing each Loan or any subsequent extensions or renewals with respect to each Loan. You agree to pay this interest and to comply with Your obligations under the Mortgage and under any Loan Agreement.

3.3 **Interest on defaulted payments**

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If You fail to make any payment on time, We will charge interest on the payment. We will calculate interest from the date the payment was due until the date You pay it. The rate of interest on defaulted payments is the Interest Rate or such lesser rate as provided in the applicable Loan Agreement.

3.4 **Interest on Other Charges**

We may add Other Charges to the Loan Amount of Your Loan. You agree to pay interest on these Other Charges from the date We incur the cost or pay the Other Charges until the date You pay Us.

In the event We advance more than one Loan to You We shall have the sole discretion to decide which Loan interest rate applies to Other Charges.

**4. VARIABLE INTEREST RATES**

The following applies to You only if interest on your Loan accrues at Our Variable Mortgage Loan Rate.

4.1 **How the variable interest rate is calculated and varies**

The Variable Mortgage Loan Rate will change automatically each time We set the rate of interest for Our Variable Mortgage Loan product.

You will not be advised by Us of any increase or decrease in Our Variable Mortgage Loan Rate until You receive an annual Mortgage Statement in which any changes in the Variable Mortgage Loan Rate will be set out. We will, however, advise you on an annual basis as to any change required with respect to your scheduled payments due to a change of Our Variable Mortgage Loan Rate.

Any failure by Us to mail the annual Mortgage Statement or the fact that You may not have received it will not prevent the variation of the rate of interest payable on Your Loan.

Our Variable Mortgage Loan Rate is available from any one of Our offices and shall be conclusive and binding as to the rate of interest applicable to Your Loan.

4.2 **Deferred interest**

If the amount of interest that has accrued on the Principal Amount from one payment to the next exceeds the amount of the payment, then such excess (the "Deferred Interest"), shall bear interest from and including the payment date at the then Variable Mortgage Loan Rate. All interest that has accrued on Deferred Interest during the payment period shall, on the first day of the following payment period, be added to and become Deferred Interest and shall bear interest from and including the payment period date at the then Variable Mortgage Loan Rate.

5. **YOUR RESPONSIBILITIES**

By signing the Mortgage You agree to carry out all of Your responsibilities under it. You also agree to be bound by and carry out all the terms and conditions under which We make a Loan. You will find these terms and conditions in the document approving the Loan or the Loan Agreement or both.

5.1 **Business plan and financial statements**

You agree to carry out any business plan that We request and have approved. You also agree to provide financial statements to Us when, and in the form, requested by Us.

5.2 **Use of Your Loan**

You agree to Use the proceeds of Your Loan(s) as described in the document approving the Loan and/or the Loan Agreement.

5.3 **Repaying Your Loan** 5 of 20

You agree to pay to Us in Canadian dollars the Principal Amount of all Loans secured by the Mortgage, plus the interest calculated half-yearly, not in advance, in regular payments as set out in the Loan Agreement. You will find the amount of each payment in the Loan Agreement related to each Loan.

You agree to make Your payments on the payment dates stated in the Loan Agreement related to each Loan.

If You are not in default on any Loan from Us, We will apply each Loan payment to the appropriate Loan as follows:

- first, to pay Other Charges;
- second, to pay the interest due; and
- third, to reduce the Principal Amount.

If You are in default on any Loan from Us, We can apply each Loan payment as We see fit.

5.4 **Prepayments**

If You are not in default on any Loan from Us, We may, but are not obligated to, grant You the right to prepay all or part of any Loan.

If We do grant You a right of prepayment on any Loan, We may require You to pay Us an additional amount representing Our costs incurred by reason of the prepayment, including all interest lost by Us as a result of the prepayment.

5.5 **Taxes on the Property**

You agree to pay all liens, taxes and rates levied or charged against the Property.

5.6 **Insuring the Property**

You agree to insure all buildings and improvements on the Property subject to the Mortgage, in Our favour, during the time the Mortgage is in effect. We must approve the insurance policy and company. We can require a certified copy of the policy and can require changes in the policy.

The insurance policy must cover loss by fire and other hazards, including extended perils coverage. The policy must be for replacement value. The policy must include a Mortgage clause stating that proceeds are payable to Us.

If You do not insure Your buildings and improvements in this manner, We can insure them and the cost will be considered as Other Charges and added to the Loan Amount of the appropriate Loan or Loans.

If any damage or loss occurs, You agree to notify Us promptly and co-operate with the insurance company.

At Our sole discretion, We may apply the insurance proceeds to any of the following:

- to repair or rebuild buildings or improvements;
- to reduce Your Loan(s); or
- pay them to You.

If We pay the insurance proceeds to You, that does not affect Your payment obligations under any Loan Agreement.

5.7 **Life Insurance** 6 of 20

If requested by Us, You agree to provide and maintain life insurance on Yourself or others in a form satisfactory to Us. The life insurance, will be assigned and payable to Us during the period of time the Mortgage is in effect. If You do not provide or maintain this insurance, We may do so and the cost will be considered as Other Charges and added to the Loan Amount of the appropriate Loan or Loans.

**5.8 Transferring the Property**

You agree not to transfer any of the Property without Our written consent. This includes creating a new parcel from the Property, or giving a lease or a license over any part of the Property.

You agree to assign to Us any agreement relating to the Property under which You receive payments. If You are not in default, We may not require these payments to be made to Us. We are not responsible for Your obligations in any such agreements.

**5.9 Removal of resources**

You agree not to remove any trees, gravel or other resources from the Property without Our written consent.

**5.10 Keeping the Property in good condition**

You agree to keep the Property in good condition. You shall not do anything that lowers the value of the Property. If You do not maintain the good condition and value of the Property We may enter and take any action We consider necessary to restore the Property. The cost of any such action may be added to the Loan Amount of the Loan or Loans of Our choosing.

**5.11 Environmental protection**

You represent and agree that:

- You and all persons You are responsible for in law will, at Your cost, comply with all relevant environmental laws as they may pertain to the Property, including those relating to the management, handling and clean-up of hazardous substances;
- the Property has not and will not be Used to store any hazardous substances above or below ground, except in the normal course of Your business at the time of the Mortgage. Any such storage in the normal course shall comply with any laws, regulations or by-laws pertaining to safe storage and/or handling of such hazardous substances;
- no hazardous substances have or will be released into the environment;
- there are no existing or threatened legal proceedings or investigations in relation to any hazardous substance affecting the Property or any environmental matter generally nor any grounds for same;
- You will advise Us of any environmental condition involving a hazardous substance or breach of environmental law on or near the Property which You may become aware of. You must remedy the environmental condition on the Property and remove any hazardous substance at Your expense within a reasonable time as determined by Us. If You fail to do so, We may, but are not obligated to, take steps to remedy this environmental condition and remove such hazardous substance. The costs, expenses or damages incurred by Us shall be added to the Loan Amount of the Loan or Loans of Our choosing;

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- You will provide Us with any environmental information respecting the Property when and as requested by Us during the time the Mortgage is in effect.

### 5.12 Paying Other Charges

You agree to pay all costs and expenses incurred by Us, including all costs and expenses to enforce or protect Our rights under the Mortgage or any Loan Agreement, including, but not limited to, all legal fees on a solicitor and his own client basis.

You agree to pay all Other Charges plus any interest thereon.

We may add Other Charges to the Loan Amount for each Loan when they occur.

### 5.13 Assignment of Rents/Lease

This provision only applies if a Loan Agreement provides for an assignment of rents or an assignment of lease as security.

You assign and transfer to Us all leases, agreements to lease and rental agreements (the "Rental Agreements") affecting the Property together with all rents payable and all rights, benefits and advantages under them.

We will not be responsible for collecting any rents or doing anything the landlord or the tenant is supposed to do under the Rental Agreement and We will not become a mortgagee in possession by this provision.

We will only be liable for monies We actually receive under this provision, after deduction of Our expenses in collecting such monies, and We will apply all such monies received against the amounts due under the Mortgage.

We will not collect any monies under this provision until You are in default under the Mortgage or in default of any other obligation You have with Us.

You will not accept prepayment of any rent due or to become due under the Rental Agreements, but will only accept payment in the amount, on the days and in the manner set out in the Rental Agreements.

## 6. OUR RIGHTS

We have rights under the Mortgage to ensure that You carry out Your responsibilities.

### 6.1 Our right of Inspection

We have the right to enter and inspect the Property for any reason and at any time, whether or not You are in default under the Mortgage or any Loan Agreement.

### 6.2 What We can do if You default

You are in default if You fail to make any payment required under any Loan Agreement on time or fail to do anything else You agreed to do under the Mortgage or in any Loan Agreement.

You are in default if any of the environmental representations are untrue at the time given or are breached during the time the Mortgage is in effect.

If You are a corporation, You are also in default if there is a change in voting control, ownership, officers and directors without Our written consent.

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If You default, We may take certain actions:

- **We may demand payment**

  If We demand payment of the Loan Amount or Loan Amounts, the Loan Amount or Amounts is/are immediately due and payable.

- **We may foreclose**

  We may take action in court to foreclose Your title to the Property and Your right to reclaim the title. If the court grants a final order of foreclosure the Property legally becomes Ours.

- **We may take sale proceedings**

  We may take immediate possession of the Property.

  We may carry on all or any part of Your business conducted on the Property.

  We may sell all or part of the Property by private sale or public auction for cash or credit or both or We may lease all or part of the Property on any terms and for any period We wish.

  Before doing any of these, We will give notice or obtain court approval if required by any applicable law.

- **We may sue You**

  We may sue You for possession.

  Where permitted by law, We may sue You for the Loan Amount and if the amount We receive from any sale of the Property does not equal the Loan Amount, We may recover the difference from You.

- **We may appoint a receiver or receiver-manager**

  We can appoint or ask a court to appoint someone to manage, sell or liquidate the Property.

- **We may take any other lawful action**

  We may take any other action or remedy provided to Us in law.

6.3 **Non - merger**

If We take any action forcing You to comply with any part of the Mortgage or any Loan Agreement relating to any Loan, or obtain a judgement against You, it will not affect Our other rights under the Mortgage or any Loan Agreement. It will also not affect Our rights under any other Mortgage or Loan Agreement You have with Us.

6.4 **Time extension**

If We delay in enforcing any of Our rights under the Mortgage, it will not affect Our other rights under the Mortgage.

6.5 **Partial release**

If We release part of the Property from the Mortgage, it will not affect Your responsibilities under the Mortgage or any Loan Agreement. Our interest will continue in the rest of the Property.

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If We release any person or corporation from any obligation under the Mortgage or any Loan Agreement, it will not affect the obligations of the remaining signers.

6.6 **Consolidation**

If You default under any terms of any other Mortgage or Loan Agreement with Us, We will consider You in default under the Mortgage.

If You default under any of the terms of the Mortgage or any Loan Agreement, We will consider You in default under any other Mortgage with Us.

6.7 **We are under no obligation to make advances to You under the Mortgage**

We may decide for any reason not to give You all or part of any Loan, even if:

- You have signed the Mortgage or a Loan Agreement or both;
- We have registered the Mortgage; and
- We have already given You part of any Loan Amount.

6.8 **Right to Re-advance**

Provided You are not in default under any terms of the Mortgage or any Loan Agreement, We may, in Our sole discretion, re-advance any principal portion of any Loan to an amount not to exceed the original Loan Amount and the Mortgage shall continue to be secured therefore.

6.9 **Differences**

Where there is any difference between the terms of the Mortgage and the terms of the document approving Your Loan or any Loan Agreement, the terms of the document approving Your Loan or any Loan Agreement will prevail.

7. **DISCHARGE**

When You have satisfied all Your obligations in the Mortgage and any Loan Agreements secured by the Mortgage, including payment of all the Loan Amounts outstanding, We will prepare and provide You with a full discharge in a reasonable time after payment in full.

8. **MISCELLANEOUS**

8.1 **Interpretation**

In interpreting the Mortgage, whenever the singular number and the masculine gender are used, the same will be construed as including the plural, and feminine and neuter where the fact or context so requires. If the Mortgage is signed by more than one person, all of the promises and agreements contained in the Mortgage will jointly and severally bind the signers.

**ENGAGEMENT HYPOTHÉCAIRE FACULTATIF**
**HYPOTHÈQUE SUBSIDIAIRE**
**FINANCEMENT AGRICOLE CANADA**
Numéro d'enregistrement:

1. **DÉFINITIONS**

La présente section définit certains des termes précis utilisés dans les clauses-types de l'hypothèque subsidiaire.

**« Formulaire d'hypothèque subsidiaire 15.1 »** s'entend du formulaire d'hypothèque subsidiaire 15.1 prescrit au Nouveau-Brunswick et de tout formulaire de remplacement.

**« Hypothèque »** s'entend du formulaire d'hypothèque subsidiaire 15.1 du Financement agricole Canada, des clauses-types de l'hypothèque subsidiaire et de toute modification apportée à celle-ci après entente par écrit avec vous.

**« Vous, votre et vos »** s'entend de chaque personne physique ou morale qui a signé l'hypothèque à titre de débiteur hypothécaire ou de garant. Cela comprend aussi les représentants personnels et juridiques de chaque personne morale ou physique ayant assumé des obligations en vertu de l'hypothèque.

**« Nous, notre et nos »** s'entend du créancier hypothécaire, soit Financement agricole Canada et ses représentants juridiques.

**« Propriété »** s'entend des biens-fonds décrits à l'annexe « A » du formulaire d'hypothèque subsidiaire 15.1. Cela comprend tous les bâtiments déjà érigés sur ces biens-fonds et toutes les améliorations effectuées avant ou pendant la durée d'application de l'hypothèque.

**« Montant du capital » ou « capital »** s'entend du montant maximal de capital de tout prêt qui est ou qui peut être garanti par l'hypothèque selon le formulaire d'hypothèque subsidiaire 15.1.

**« Taux d'intérêt »** s'entend du taux d'intérêt, exprimé sous forme de taux en pourcentage annuel, qui est fixé dans les la convention de prêt applicable.

**« Taux de prêt hypothécaire variable »** s'entend du taux d'intérêt, exprimé sous forme de taux en pourcentage annuel, qui est fixé par nous de temps à autre.

**« Convention de prêt »** s'entend de tout billet à ordre, approbation et acceptation de prêt, convention de prêt ou de crédit ou de toute entente similaire constatant un prêt contracté par vous auprès de nous et qui est garanti par la hypothèque subsidiaire 15.1. S'étend également de tout cautionnement par vous signé garantissant le remboursement à nous d'un prêt que nous avons consenti à un tiers, dont la dette éventuelle au titre du cautionnement est garantie par le formulaire d'hypothèque subsidiaire 15.1.

**« Montant du prêt »** correspond au solde impayé de tout prêt ou de tout cautionnement après mise en demeure ou de tout prélèvement en vertu du prêt. Ce solde peut comprendre le capital impayé, les paiements en souffrance, les intérêts courus sur les paiements en souffrance, les autres charges et les intérêts sur les autres charges.

**« Prêt »** s'entend de tous les prêts consentis par nous à vous de temps à autre et qui sont garantis par l'hypothèque subsidiaire 15.1, y compris le prêt consenti au moment de la signature de l'hypothèque. S'étend également de tout prêt que nous avons consenti à un tiers et dont vous avez garanti le remboursement. Des prêts peuvent être conclus dans le cadre de conventions de prêt.

**« Cautionnement »** s'entend de tout formulaire de cautionnement signé par vous dans lequel vous vous engagez à rembourser un prêt que nous avons consenti à un tiers si ce dernier ne le rembourse pas.

**« Autres charges »** s'entend des frais que nous engageons pour protéger ou exercer nos droits, ainsi que les sommes que nous déboursons pour payer des charges prioritaires grevant votre propriété.

Les autres charges peuvent comprendre, sans s'y limiter, les coûts suivants :

- les recherches sur les titres de votre propriété, ainsi que la préparation et 1'enregistrement de l'hypothèque
- 1'assurance, si nous décidons de vous assurer ou d'assurer votre propriété
- 1'évaluation de votre propriété et l'exécution d'une inspection environnementale ou la décontamination de votre propriété
- tous nos frais administratifs, de bureau et juridiques réels sur la base de frais entre procureur-client, et
- le coût de tout séquestre ou administrateur-séquestre nommé en vertu du formulaire d'hypothèque subsidiaire 15.1.

Les autres charges peuvent comprendre des frais qui ne figurent pas à la liste ci-dessus.

**« Charges antérieures »** s'entend des charges ou privilèges existant et grevant la propriété au moment de la création de l'hypothèque.

**« Substance dangereuse »** s'entend des matières dangereuses, substances toxiques, contaminants, polluants et autres substances du genre décrites dans toute loi, tout règlement ou toute ordonnance du gouvernement fédéral, provincial ou municipal.

## 2. EFFETS DE L'HYPOTHÈQUE

En signant le formulaire hypothécaire A15.1 ci-joint, vous reconnaissez que nous avons ou pouvons avoir une créance sur vous et vous vous engagez à rembourser le capital du prêt ou le solde du montant du prêt et les intérêts tel qu'il est stipulé dans toute convention de prêt. Par ailleurs, vous grevez d'une hypothèque la totalité de votre domaine ainsi que votre intérêt dans la propriété en notre faveur, à titre de sûreté complémentaire et subsidiaire pour le remboursement de tous les montants de prêt jusqu'à concurrence du capital du prêt, majoré des intérêts et des autre charges.

### 2.1 Titre de propriété

Vous garantissez que vous êtes le propriétaire inscrit d'une propriété en fief simple ou que vous avez le droit absolu d'acquérir ladite propriété en vertu d'une convention de vente ou d'un droit d'achat enregistré ou d'un intérêt locatif enregistré dans la propriété, que vous avez le droit de nous consentir l'hypothèque. Par conséquent, vous hypothéquez par la présente en notre faveur, la totalité de vos droits dans ladite propriété. Advenant que vous acquériez des droits supplémentaires dans ladite propriété, ces droits seront eux aussi assujettis à l'hypothèque.

Vous garantissez aussi que votre propriété n'est grevée d'aucune charge antérieure, autre que celles que nous avons acceptées dans un document d'approbation de prêt ou une convention de prêt.

Vous vous engagez à faire vos paiements sur ces charges antérieures approuvées à leur échéance.

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2.2 **Obligations créées par l'hypothèque**

Toutes les personnes physiques et morales qui ont apposé leur signature à l'hypothèque sont personnellement et collectivement responsables des obligations créées par celle-ci.

Vos représentants personnels et juridiques, ainsi que nos représentants juridiques, doivent se conformer à toutes les dispositions de l'hypothèque.

2.3 **Modification ou prolongation de l'hypothèque**

Nous pouvons signer une convention écrite avec vous pour modifier n'importe quelle partie de l'hypothèque, notamment prolonger la durée prévue de remboursement ou modifier le capital, le taux d'intérêt ou les deux. Nous ne sommes pas tenus d'enregistrer ces conventions écrites pour maintenir la priorité de l'hypothèque.

2.4 **Hypothèque sur biens-fonds cédés**

Cette clause ne s'applique que si l'intérêt dans la propriété grevée est un intérêt locatif.

Après entente préalable avec nous, vous reconnaissez et garantissez que :

- Vous êtes le locataire légitime de la propriété et que vous avez un intérêt locatif en bonne et due forme vendable dans ladite propriété, en vertu d'un bail en vigueur valide et libre de toutes charges ou réclamations autres que celles que nous avons acceptées et approuvées;

- Vous avez payé tout loyer et tous frais exigibles en vertu de votre bail et que vous n'êtes pas en défaut en vertu de toutes les obligations stipulées audit bail;

- Vous avez obtenu le consentement écrit de votre propriétaire ou que vous avez le droit d'hypothéquer l'intérêt locatif que vous détenez dans la propriété sans qu'il soit nécessaire d'obtenir un tel consentement;

- Vous paierez tout loyer ou tout paiement exigible et exécuterez et respecterez toutes vos autres obligations en vertu de votre bail, faute de quoi, nous réglerons lesdits paiements et exécuterons lesdites obligations et vous imputerons les dépenses correspondantes à titre d'autres frais;

- Vous ne céderez pas votre bail et ferez en sorte qu'il ne soit ni annulé ni abandonné;

- Vous ne consentirez à aucune modification de votre bail avant d'avoir obtenu notre approbation par écrit et

- Dès que possible, après réception, vous nous ferez parvenir copie de tout avis, demande ou requête relatif à votre bail.

2.5 **Hypothèque à l'appuie d'un cautionnement**

La présente clause ne s'applique que si l'hypothèque est donnée à l'appui d'un cautionnement que vous nous avez consenti en garantie du remboursement de tout prêt que nous avons consenti à un tiers. Si l'hypothèque est consentie à l'appui d'un cautionnement, elle sera payable selon les modalités énoncées dans le cautionnement ou, si les modalités de paiement ne sont pas énoncées dans le cautionnement, alors l'hypothèque sera payable sur demande de notre part.

2.6 **Extinction de l'hypothèque**

Nous perdrons nos droits de sûreté dans votre propriété lorsque vous aurez honoré toutes vos obligations en vertu de l'hypothèque, y compris le remboursement de tous les montants de prêt.

3. **INTÉRÊT**

3.1 **Taux d'intérêt**

Le taux d'intérêt est stipulé à la convention de prêt applicable.

3.2 **Intérêt sur votre prêt**

Les intérêts commenceront à courir à la date à laquelle une avance est effectuée en vertu de chaque prêt au taux d'intérêt à la convention constatant chaque prêt ou à toute convention de prolongation ou de renouvellement. Vous acceptez de payer ces intérêts et de respecter vos engagements en vertu de l'hypothèque et de toute convention de prêt.

3.3 **Intérêt sur les paiements en souffrance**

Si vous négligez de faire vos paiements à leur échéance, nous imputerons des intérêts sur ces paiements. Nous calculerons les intérêts pour la période s'échelonnant entre la date d'échéance des paiements et la date à laquelle vous les paierez. Le taux d'intérêt sur les paiements en souffrance correspond au taux d'intérêt ou au taux d'intérêt inférieur stipulé dans la convention de prêt pertinente.

3.4 **Intérêt sur les autres charges**

Nous pouvons ajouter d'autres charges au montant de votre prêt. Vous vous engagez à payer des intérêts sur ces autres charges à compter de la date à laquelle elles sont engagées et la date vous nous les payerez.

Dans les cas où nous vous avançons plus d'un prêt, nous déterminerons, à notre seule discrétion, le taux d'intérêt qui s'applique aux autres charges.

4. **TAUX D'INTÉRÊT VARIABLES**

Les dispositions suivantes s'appliquent à vous uniquement si votre prêt porte notre taux de prêt hypothécaire variable.

4.1 **Calcul et variation du taux d'intérêt**

Le taux de votre prêt hypothécaire variable changera automatiquement chaque fois que nous fixerons le taux d'intérêt de notre produit de prêt hypothécaire variable.

Vous ne serez avisé des augmentations ou diminutions de notre taux hypothécaire variable que lorsque vous recevrez votre relevé de prêt annuel, dans lequel toutes les variations de notre taux de prêt hypothécaire variable seront indiquées. Nous vous informerons cependant, chaque année, des modifications nécessaires à votre calendrier de remboursement découlant des variations de notre taux de prêt hypothécaire variable.

Les variations du taux d'intérêt variable s'appliqueront à votre prêt même si nous ne vous faisons parvenir par la poste le relevé hypothécaire annuel que vous ne le recevez pas.

Notre taux hypothécaire variable peut être obtenu de n'importe quel de nos bureaux et est le taux concluant et obligatoire applicable à votre prêt.

### 4.2 Intérêts différés

Si le montant des intérêts ayant courus, d'un paiement à l'autre, sur le montant de capital est supérieur au montant du paiement, cet excédent (appelé « intérêts différés ») portera intérêt à partir de la date du paiement au taux de prêt hypothécaire variable alors en vigueur. Tous les intérêts ayant courus sur les intérêts différés pendant la période de paiement seront, le premier jour de la période de paiement suivante, ajoutés aux intérêts différés dont ils deviendront partie. Ils porteront intérêt à partir de la date de la période de paiement au taux de prêt hypothécaire variable alors en vigueur.

## 5. VOS OBLIGATIONS

En signant l'hypothèque, vous vous engagez à vous acquitter de toutes les obligations qu'elle vous impose. Vous vous engagez aussi à respecter toutes les modalités et les conditions en vertu desquelles nous vous avons consenti le prêt. Ces modalités et conditions sont énoncées dans document d'approbation du prêt ou dans la Convention de prêt ou dans les deux.

### 5.1 Plan d'entreprise et états financiers

Vous vous engagez à suivre tout plan d'entreprise que nous avons demandé et que nous avons approuvé.

Vous vous engagez aussi à nous fournir des états financiers sur demande et dans la forme que nous les exigeons.

### 5.2 Utilisation de votre prêt

Vous vous engagez à utiliser le produit de votre prêt ou de vos prêts aux fins énoncées dans le document d'approbation du prêt et/ou dans la Convention de prêt.

### 5.3 Remboursement de votre prêt

Vous vous engagez à nous payer, en monnaie canadienne, le montant de capital de tous les prêts garantis par l'hypothèque plus les intérêts, calculés semestriellement et non à l'avance, en versements réguliers selon les modalités de remboursement prévues à la convention de prêt. Vous trouverez le montant de chaque versement dans la convention de prêt relative à chaque prêt.

Vous vous engagez à effectuer vos versements aux dates prévues dans la convention de prêt relative à chaque prêt.

Si vous n'êtes pas en défaut à l'égard d'un de vos prêts avec nous, nous imputerons chaque versement comme suit :

- premièrement, au paiement des autres charges,
- deuxièmement, au paiement des intérêts échus, et
- troisièmement, en réduction du montant de capital

Si l'un de vos prêts avec nous est en souffrance, nous imputerons les versements à notre discrétion.

### 5.4 Remboursement anticipé

Si vous n'êtes pas en défaut à l'égard d'un de vos prêts avec nous, nous pourrions, sans y être tenus, vous accorder le droit de payer par anticipation une partie ou la totalité de l'un ou l'autre de vos prêts.

Si nous vous accordons le droit de remboursement par anticipation, nous pourrions exiger que vous nous versiez un montant supplémentaire correspondant aux coûts que le remboursement anticipé nous occasionne, y compris tous les intérêts que nous aurons perdus par suite de ce remboursement.

### 5.5 Impôts fonciers

Vous vous engagez à payer tous les privilèges et tous les impôts fonciers et charges qui pourraient être perçus ou levés contre votre propriété.

### 5.6 Assurance sur la propriété

Vous vous engagez à assurer, en notre faveur, tous les bâtiments et toutes les améliorations foncières de la propriété visée par l'hypothèque, pour la durée de celle-ci. Nous devons approuver la police d'assurance et la compagnie d'assurance. Nous pouvons exiger une copie certifiée conforme de la police, ainsi que des modifications à la police.

La police d'assurance doit couvrir les pertes causées par les incendies et autres sinistres, y compris les risques annexes. Vous devez prendre une couverture à la valeur de remplacement.
La police doit contenir une clause de garantie hypothécaire stipulant que l'indemnité nous est payable.

Si vous ne souscrivez pas l'assurance exigée sur vos bâtiments et améliorations, nous pouvons les assurer et ajouter le coût de cette assurance au montant de votre prêt, à titre d'autres charges.

Vous vous engagez à nous avertir de tout dommage ou perte promptement et à collaborer avec la compagnie d'assurance.

Nous pourrons utiliser à notre seule appréciation l'indemnité d'assurance à l'une ou l'autre des fins suivantes :

- réparer ou reconstruire des bâtiments ou des améliorations;
- réduire votre (vos) prêt(s); ou
- vous remettre l'indemnité.

Si nous vous remettons le produit de l'assurance, cela ne vous dégage pas par cette action de vos obligations de paiement aux termes d'une convention de prêt avec nous.

### 5.7 Assurance-vie

Si nous vous le demandons, vous acceptez de nous fournir et de maintenir en vigueur une assurance-vie sur votre personne ou toute autre personne, en une forme que nous jugerons acceptable. Cette assurance-vie nous sera cédée et payable pendant la durée de l'hypothèque. Si vous ne nous fournissez pas cette assurance ou ne la maintenez pas en vigueur, nous pouvons le faire à votre place et en ajouter le coût au montant de votre ou de vos prêts, à titre d'autres charges.

### 5.8 Cession de votre propriété

Vous vous engagez à ne transférer aucune partie de votre propriété sans notre consentement écrit. Cela comprend la constitution d'une nouvelle parcelle ou l'octroi d'un bail ou d'une licence touchant une partie quelconque de la propriété.

Vous vous engagez à nous céder toute entente relative à votre propriété en vertu de laquelle vous recevez des paiements. Si vous n'êtes pas en défaut, nous pourrions ne pas exiger que ces paiements nous soient versés. Nous n'assumons pas la responsabilité de vos obligations en vertu de ces ententes.

5.9 **Enlèvement de ressources**

Vous vous engagez à ne pas enlever d'arbres, de gravier ou d'autres ressources de votre propriété sans notre consentement écrit.

5.10 **Entretien de votre propriété**

Vous vous engagez à garder votre propriété en bon état. Vous ne devez rien faire qui puisse en réduire la valeur. Si vous ne la gardez pas en bon état et n'en maintenez pas la valeur, nous pouvons entrer sur les lieux et de prendre les mesures qui s'imposent. Tous les coûts découlant de ces mesures pourront être ajoutés au montant de votre prêt ou de tout autre prêt que vous avez avec nous, à notre choix.

5.11 **Protection de l'environnement**

Vous déclarez ce qui suit et prenez les engagements ci-dessous :

- vous et les personnes dont vous êtes légalement responsables vous conformez, à vos frais, à toutes les lois environnementales qui s'appliquent à votre propriété, y compris celles régissant la gestion, la manutention et le nettoyage des substances dangereuses;

- la propriété n'a pas été et ne sera pas utilisée pour entreposer des substances dangereuses, à la surface ou sous la terre, sauf dans le cadre de la conduite normale de vos affaires, à la date de l'hypothèque. Tout entreposage effectué dans le cours normal des affaires sera conforme aux lois, règlements ou ordonnances qui régissent l'entreposage et la manutention sécuritaire de ces substances dangereuses;

- aucune substance dangereuse n'a été émise ou ne sera émise dans l'environnement;

- aucune procédure judiciaire ou enquête n'est en cours ou en instance en rapport avec toute substance dangereuse qui affecte la propriété ou toute question environnementale de nature générale, et il n'existe aucun motif pour qu'il y en ait;

- vous nous aviserez de toute situation environnementale causée par la présence d'une substance dangereuse et de toute infraction aux lois environnementales qui survient sur la propriété ou près de celle-ci et dont vous avez connaissance. Vous vous engagez à remédier à la situation environnementale sur la propriété et à enlever toute substance dangereuse à vos frais dans les délais que nous jugerons raisonnables. À défaut, nous pourrons, sans y être tenus, prendre des mesures pour remédier à la situation environnementale et enlever la substance dangereuse. Tous les coûts, dépenses et dommages qui en résulteront pour nous seront ajoutés au montant de votre prêt à notre choix;

- vous nous fournirez toute information touchant l'environnement qui a trait à la propriété quand nous le demanderons et en la forme que nous exigerons, pendant la durée de l'hypothèque.

5.12 **Paiement d'autres charges**

Vous vous engagez à payer tous les coûts et dépenses engagés par nous, y compris tous les coûts et dépenses que nous devons engager pour exercer ou protéger nos droits en vertu de l'hypothèque ou de toute convention de prêt, y compris, mais non limitativement, tous les frais juridiques sur une base client-avocat.

Vous vous engagez à payer toutes les autres charges et les intérêts sur celles-ci.

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Nous pourrions ajouter d'autres charges au montant de votre prêt au fur et à mesure qu'elles surviennent.

5.13 **Cession de loyers ou de baux**

La présente condition ne s'applique que si la Convention de prêt prévoit une cession des loyers ou des baux à titre de garantie.

Vous nous céderez ou nous transférerez tout bail, tout contrat de bail ou de location (« contrats de location ») rattaché à la propriété, ainsi que tous loyers payables, tous droits, bénéfices et avantages en vertu desdits contrats.
Nous ne serons pas responsables de la perception des loyers ou de toute autre tâche incombant au propriétaire ou au locataire en vertu du contrat de location, et nous ne deviendrons pas créanciers hypothécaires « en possession » en vertu de la présente disposition.

Notre responsabilité se limitera seulement aux paiements effectifs que nous recevons, en vertu de la présente disposition, et après déduction des dépenses que nous avons engagées pour la perception desdits paiements; nous affecterons tout paiement reçu aux remboursements exigibles en vertu de l'hypothèque.

Nous ne percevrons aucun paiement en vertu de la présente disposition, à moins que vous ne soyez en défaut en vertu de l'hypothèque ou de toute autre obligation que vous avez contractée à notre égard.

Vous n'accepterez aucun remboursement anticipé pour tout loyer échu ou qui viendra à échéance en vertu des contrats de location. Vous accepterez seulement les paiements dont le montant, la date d'échéance et les modalités sont indiquées dans les contrats de location.

## 6. NOS DROITS

L'hypothèque nous confère les droits suivants afin que nous puissions nous assurer que vous vous acquittez de vos obligations :

6.1 **Notre droit d'inspection**

Nous avons le droit d'accéder à votre propriété et de l'inspecter, en tout temps et pour toute raison, que vous soyez ou non en défaut en vertu de l'hypothèque ou de toute convention de prêt.

6.2 **Nos options en cas de défaut de paiement**

Vous êtes en défaut en vertu de l'hypothèque si vous ne faites pas un paiement en temps en vertu de toute convention de prêt ou si vous manquez à n'importe quel engagement que vous avez pris en vertu de l'hypothèque ou de toute convention de prêt.

Vous êtes en défaut si l'une de vos déclarations sur l'environnement était fausse au moment où vous l'avez faite ou si elle le devient pendant la durée de l'hypothèque.

Si vous empruntez en tant que société, vous êtes en défaut s'il y a changement, sans notre consentement écrit, dans le contrôle des voix, le régime de propriété ou la composition du conseil d'administration.

Si vous êtes en défaut, nous pouvons prendre une ou plusieurs des mesures suivantes :

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- **Nous pouvons exiger le remboursement du prêt**

  Si nous exigeons le remboursement du montant du prêt, le montant du prêt est immédiatement exigible et payable.

- **Nous pouvons réaliser nos garanties**

  Nous pouvons intenter une action en justice pour saisir le titre de votre propriété et votre droit de réclamer ce titre. Si la cour nous accorde une ordonnance finale de saisie, votre propriété devient légalement la nôtre.

- **Nous pouvons faire vendre la propriété**

  Nous pouvons prendre immédiatement possession de votre propriété.

  Nous pouvons poursuivre l'exploitation de votre propriété ou d'une partie de votre propriété.

  Nous pouvons vendre une partie ou la totalité de votre propriété par vente privée ou aux enchères, au comptant ou à crédit, ou les deux, ou nous pouvons louer votre propriété aux conditions et pour la durée que nous voulons.

  Avant de prendre l'une ou l'autre de ces mesures, nous devons vous donner le préavis requis par les lois pertinentes ou obtenir l'approbation de la cour.

- **Nous pouvons vous poursuivre**

  Nous pouvons vous poursuivre dans le but de prendre possession de votre propriété.
  Si le montant récupéré de la vente de votre propriété ne couvre pas le solde impayé du montant de prêt, nous pouvons vous poursuivre personnellement afin de récupérer la différence.

- **Nous pouvons nommer un séquestre ou un administrateur séquestre**

  Nous pouvons nommer quelqu'un ou demander à la cour de nommer quelqu'un pour gérer, vendre ou liquider votre propriété.

- **Nous pouvons prendre toute autre mesure judiciaire**

  Nous pouvons prendre toute autre mesure ou tout autre recours que nous accorde la loi.

**6.3 Conservation des droits**

Aucune mesure prise par nous pour vous forcer à respecter les dispositions de l'hypothèque ou de toute convention de prêt ou pour obtenir un jugement contre vous, ne porte atteinte à nos autres droits en vertu de l'hypothèque ou de toute convention de prêt ou de toute autre hypothèque ou convention de prêt que vous avez avec nous.

**6.4 Délai**

Aucun retard dans nos démarches pour vous forcer à respecter les dispositions de l'hypothèque ou pour obtenir jugement contre vous, ne porte atteinte à nos autres droits en vertu de l'hypothèque.

**6.5 Mainlevée partielle** 19 of 20

Une mainlevée partielle accordée sur une partie de votre propriété ne modifie aucunement vos obligations en vertu de l'hypothèque ou de toute convention de prêt. Nous conservons nos droits sur le reste de votre propriété.

La libération d'une personne ou d'une société de ses obligations en vertu de l'hypothèque ou de toute convention de prêt ne libère pas les autres signataires de leurs obligations.

6.6 **Liens entre les hypothèques et conventions**

Si vous ne respectez pas toutes les conditions de toute autre hypothèque ou de toute autre convention de prêt détenue avec nous, nous considérerons que vous êtes en défaut aux termes de l'hypothèque.

Si vous ne respectez pas toutes les conditions de l'hypothèque ou de toute autre convention de prêt, nous considérerons que vous êtes en défaut aux termes de toute autre hypothèque que vous détenez avec nous.

6.7 **Nous ne sommes pas tenus de vous avancer des fonds en vertu de l'hypothèque**

Nous pouvons décider, pour une raison quelconque, de ne pas vous verser une partie ou la totalité du montant de capital, même si:

- vous avez signé l'hypothèque ou convention de prêt ou les deux,
- nous avons enregistré l'hypothèque, et
- nous vous avons déjà versé une partie du montant du prêt.

6.8 **Droit de réavancer des fonds**

Si vous n'êtes en défaut à l'égard d'aucune disposition de l'hypothèque ou de toute convention de prêt, nous pouvons, à notre absolue discrétion, vous réavancer toute partie du capital de tout prêt, jusqu'à concurrence d'un montant qui n'excède pas le montant du capital original de sorte que l'hypothèque continuera à servir de garantie.

6.9 **Non-concordance**

S'il y a non-concordance entre les modalités de l'hypothèque et les modalités du document d'approbation de votre prêt ou de toute convention de prêt, les modalités du document d'approbation de votre prêt ou de la convention de prêt prévaudront.

7. **QUITTANCE**

Lorsque vous aurez rempli toutes vos obligations en vertu de l'hypothèque et de toute convention de prêt garantie par l'hypothèque, y compris le remboursement de tous les montants de prêt impayés, nous préparerons et vous ferons parvenir un document de quittance intégrale dans un délai raisonnable après le remboursement total.

8. **DISPOSITIONS GÉNÉRALES**

8.1 **Interprétation**

Aux fins de l'interprétation de l'hypothèque, chaque fois que le singulier et le masculin sont utilisés, il sera considéré qu'ils incluent le pluriel, le féminin et le neutre lorsque les faits ou le contexte l'exigent. Si l'hypothèque est signée par plus d'une personne, tous les engagements et obligations contenus dans celle-ci lieront les signataires conjointement et solidairement.

*This is Exhibit "C" to the Affidavit of Jason Inman SWORN TO at the City of Charlottetown, Province of Prince Edward Island, this 10 day of June 2020.*

*BEFORE ME:*

*Mélanie McKenna*
*Notary Public in and for the Province of Prince Edward Island*

Farm Credit Canada Canada

## Security Agreement

Customer number: 100008003

**To:** Farm Credit Canada ("FCC", "us", "we" or "our")

**Provided by:**

**Borrower(s):**

HILLSPRING FARMS LTD.

**Guarantor(s):**

**("you", "your")**

**1. What this Security Agreement does, and what property is secured**

In consideration of FCC lending money to you, you are signing and delivering this Security Agreement to give FCC a security interest in the property described in Schedule "A" attached to this Security Agreement (this property is called the "Collateral"). Our security interest in the Collateral secures the repayment of all money you owe to us at any time and the performance of your obligations under this Security Agreement and any present or future Credit Agreement or other agreement you have with us (each a "Credit Facility"). You confirm that value has been given and acknowledge that our security interest shall attach to the Collateral as soon as you have rights in such Collateral.

**2. What debts are covered by this Security Agreement**

This Security Agreement secures the full amount that we lend to you, plus interest on your loans and all of the costs, charges and expenses you have agreed to pay under any Credit Facility. If the amount you owe us is reduced and then later increases, this Security Agreement still applies to the total amount that you owe us at any time.

**3. Ownership and use of the Collateral**

By signing this Security Agreement you are assuring us that you are the owner of the Collateral and that no one else holds any mortgages or rights to any of that Collateral. If you acquire any future property that is covered by this Security Agreement, you must make sure that you obtain "good title" and that no one else has any rights in the property unless we have consented to it. Under this Security Agreement, you are not allowed to sell, lease, or transfer ownership or possession of any of the Collateral except in the ordinary course of your business. For example, you may sell inventory such as the goods you produce in your business. With our written permission, you may also sell equipment that has been replaced by new equipment or that is not needed for your business. Also, you will keep the Collateral at your place of business, unless FCC agrees otherwise. If the collateral includes quota, you agree to: (i) maintain all quota and license rights in good standing and to comply with all of requirements of the issuing Board or authority; and (ii) renew and maintain any assignment of quota given to FCC before any expiry of the same, whether pursuant to rules or regulations of the issuing Board or authority or otherwise.

4. **Insurance**

You must keep the Collateral insured against loss or damage by fire and other risks that are normally insured or as we may require. The Collateral must be insured to its full insurable value. We may require that you transfer the insurance policies to us or have us named as the loss payee. You must give us copies of the policies or proof of insurance if we ask. If you fail to maintain the insurance required by this clause, we can insure the Collateral for you and charge you for the cost, which would be added to the amount you owe us and covered by this Security Agreement. You must let us know as soon as possible of any loss or damage to any part of the Collateral.

5. **Your ongoing obligations**

By signing this Security Agreement, you agree to the following things concerning your business.

(a) Carrying on business - You must carry on your business as a going concern in a proper, efficient and businesslike manner so as to protect and preserve the Collateral. We have the right at any time to inspect the Collateral to ensure that the Collateral exists and that you are maintaining the Collateral in good condition. You must observe and conform to all valid requirements of any governmental or municipal authority relative to the Collateral;

(b) Books and records - You must keep proper accounting books and records covering your business and affairs and concerning the Collateral. We are allowed to inspect these books and records and make copies of them, if we ask. You agree to provide us with information with respect to the Collateral if we request;

(c) Taxes - You must pay all taxes, license fees, assessments or other charges applicable to your business on their due dates; and

(d) Environmental Permits - You must maintain all environmental permits, consents, clearance, etc. that are needed to lawfully carry on your business. By signing this Security Agreement you are confirming that you are presently respecting all environmental laws, regulations, rules and guidelines that apply to your business. You must stay in compliance at all times.

6. **Out-of-pocket costs and expenses, lawsuits and claims**

You are responsible for all out-of-pocket costs that we incur under this Security Agreement. Examples include but are not limited to:

(a) legal fees to prepare, register or enforce this Security Agreement;

(b) costs paid to register our security interest in the Collateral or prepare a priority agreement or similar agreement; and

(c) costs we incur to preserve, insure or seize the Collateral.

You must reimburse us for our out-of-pocket costs on demand. If you fail to pay, we are entitled to add these costs to your loan and to charge interest on these costs at the rate of 18% per year.

Repayment of our out-of-pocket expenses is secured by the Collateral to the same extent as the loans we advance to you.

If anyone sues us as a result of the use of the Collateral or any damage it has caused, we can require that you pay our costs and any loss resulting from the lawsuit, even if we agree to pay an out-of-court settlement.

7. **Limitations on the use of money**

The proceeds of any loan secured by the Collateral must be used for the purpose stated in your credit application relating to such loan.

8. **Default**

You shall be in default under this Security Agreement if any of the following things happen:

(a) If you fail to pay any amount owed to us on its due date.

(b) If you fail to strictly comply with or perform any term or condition contained in this Security Agreement or any Credit Facility.

(c) If any written statement you have made to us in this Security Agreement or in any other document you have signed is untrue in any way that we consider important.

(d) If you cannot pay your debts when they become due (insolvency) or become bankrupt or apply for protection from your creditors under any insolvency laws, if you attempt to compromise or settle your debts with creditors, or if any bankruptcy or insolvency court proceedings are started against you or by you.

(e) If a receiver, trustee, custodian or other similar official is appointed for you or any of your property.

(f) If you sell, transfer or in any other way give up possession of all or any part of the Collateral in a manner not permitted under this Security Agreement; or if you move any Collateral out of the province in which you carry on business without our written permission.

(g) If you give a security interest or other interest, other than a purchase money security interest, in the Collateral to someone else without our written permission.

(h) If your business is incorporated, it is also a default if there is a change in who owns the shares of the corporation, unless we give written permission. If your business is run by a partnership, it is a default if any partner quits or resigns, any new partner is added or the partnership is ended without our written permission.

(i) If someone else seizes or takes control of any Collateral, or threatens to do so.

(j) If you stop carrying on your business in the normal course, or threaten to do so, or sell all or substantially all of your assets.

(k) If we believe in good faith that you are not able to pay your loans owed to us or that you won't be able to perform any of your other obligations under this Security Agreement or a Credit Facility, or that the Collateral is or is about to be placed in jeopardy.

9. **Our rights if you default**

If you default we can take any one or more of the following steps and/or do anything else permitted by law to recover the amounts you owe us.

(a) Serious consequences on default – We can demand that you repay the balance of all your loans on the date specified in the notice demanding payment, including interest and other amounts added to it under the Security Agreement or the applicable credit facilities. We may also notify credit bureaus of your default. If you default, you shall be responsible for the payment of our costs incurred to collect your loans and/or repossess and sell the Collateral, plus court costs and legal fees. If you default under this Security Agreement or the credit facilities, we may consider you to be in default under any other security agreement or Credit Facility you have signed with us. You may face other serious consequences.

(b) Seizing Collateral – To the extent permitted by applicable law, we can take possession of all or any part of the Collateral either ourselves or through a receiver. We can demand that you deliver the Collateral to a place designated by us so that we may take possession. We shall be entitled to receive any rents and profits from the Collateral, to carry on your business, and sell, lease or otherwise dispose of the Collateral on terms and conditions that we consider suitable. For this purpose we are allowed to enter your place of business or any other place where the Collateral is located.

(c) Selling Collateral – We may sell the Collateral or dispose of it in any commercially reasonable way.

(d) Collecting receivables – We may collect or sell any debts owed to you by others ("receivables") on terms and conditions that we see fit. In doing this, we may agree to accept less than the amount that is owed to you in full settlement of any receivables. Even if you are not in default, you agree we can advise anyone who owes you money about this Security Agreement and require that they confirm the amount they owe you. You shall provide us with a list of all of your receivables, if we ask.

(e) Putting you into receivership – We can appoint a receiver or manager (the "receiver") to manage the Collateral or to operate your business. If we appoint a receiver, the following provisions shall apply:

(i) the receiver shall be considered to be your agent for all purposes,
(ii) you shall be required to pay the receiver's remuneration, as fixed by us,
(iii) we shall have no liability to you or anyone else concerning the appointment of a receiver or for anything the receiver does or does not do, and
(iv) you shall no longer have any right to use the Collateral or operate your business without our written permission.

(f) Powers of a receiver – If we appoint a receiver:

(i) the receiver shall have the same rights and remedies that we have under this Security Agreement and any applicable Credit Facility,
(ii) the receiver can operate your business in any way it sees fit, and
(iii) the receiver can manage and make all decisions about your business, including without limitation entering into agreements, hiring employees and purchasing equipment and inventory.

We can also ask the court to appoint a receiver and, if the court does so, the receiver shall have the powers listed in the court order. If you default we can take the following steps, plus we can do anything else permitted by law to recover the amount you owe us.

10. **Deficiency**

Where permitted by applicable laws, you shall remain liable to us for payment, and agree to pay us, of any amounts that are still owing to us following the sale or other disposal of all or any part of the Collateral.

11. **Use of proceeds from Collateral**

All proceeds we receive from the Collateral shall be applied in the following order:

(a) first, to pay the receiver's remuneration if one has been appointed;

(b) second, to pay any other expenses we incur to enforce our rights under this Security Agreement;

(c) third, to pay rents, taxes, insurance premiums and other expenses affecting the Collateral. These expenses might be incurred to preserve, repair, process or maintain the Collateral, or make it better or prepare it for sale. This clause also applies to payments we make to other creditors who have claims on the Collateral that rank ahead of ours; and

(d) lastly, to pay the amounts you owe us.

12. **Extensions and modifications**

(a) If we consider it appropriate, we may grant extensions of time or other indulgences to you that depart from the strict terms of this Security Agreement. We may also obtain additional security or release security we hold. We may also settle or release your obligations or otherwise deal with you or any other security or credit facilities we hold. None of these things affect your liability to us, or our right to hold the Collateral or enforce our rights against it, until we have been paid in full.

(b) No change of any provision of this Security Agreement may be made except by a written agreement signed by us and by you. No waiver of any provision of this Security Agreement shall be effective unless it is in writing.

13. **We have no obligation to advance funds**

Even after this Security Agreement has been signed and registered, we still do not have to advance funds to you if we decide, in our sole discretion, that it is not in our best interests to do so.

14. **Other clauses that apply to this security agreement**

(a) This Security Agreement is in addition to any other guarantee, security agreement or Credit Facility we now have with you or that is signed at a later date. These other agreements do not affect our rights or your obligations under this Security Agreement and this Security Agreement does not replace or terminate any of those other agreements.

(b) If any part of this Security Agreement turns out to be invalid for any reason, the rest of the Security Agreement shall still remain in full force and effect. In this case, this Security Agreement shall be read as if the invalid part was not included in it.

(c) The Collateral does not include the last day of the term of any lease held by you, but if you sell your interest under any such lease, you shall hold such last day in trust for us and assign it as we request.

(d) The Collateral does not include any of your rights under contracts that state that such rights cannot be subject to our security interest, but you shall hold your interest in such rights in trust for us and shall assign such rights to us if you obtain permission to do so. If we ask you to do so, you shall do your best to obtain such permission.

(e) We are not liable to you, or any other person, for any failure or delay in exercising any of our rights under this Security Agreement. The same applies to any failure on our part to take any steps to preserve rights against you or other persons, or any delay in doing so.

(f) If more than one person has signed this Security Agreement with us, everyone who has signed is responsible to us for all the obligations specified in this Security Agreement on a joint and several basis.

(g) This Security Agreement shall remain in full force and effect and we shall not discharge the security interest until all present and future debt or other obligations owing to us by you are paid or performed in full.

(h) You agree to sign all other documents that we consider necessary to carry out the intent of this Security Agreement or to exercise our rights over the Collateral. Nevertheless, you agree that we (or any receiver we may appoint or that a court may appoint) may sign any document or do anything else on your behalf as your attorney whenever necessary or expedient.

(i) A reference to this Security Agreement includes any schedules attached to it.

(j) You acknowledge that you have received a copy of this Security Agreement.

(k) To the extent permitted by law, you acknowledge that you are giving up your right to receive a copy of any financing statement, financing change statement or verification statement that we obtain when we register our security interest in the Collateral.

(l) This Security Agreement benefits our successors and binds you and your heirs, legal representatives, successors and permitted assigns. You may not transfer your obligations under this Security Agreement to anyone else without our written permission. We may transfer our rights under this Security Agreement without your permission.

(m) This Security Agreement is governed by the laws of the Province of New Brunswick and the laws of Canada applicable therein. We may commence an action or other court proceeding on this Security Agreement in the courts of this province and you agree to submit to the jurisdiction of such courts and be bound by any judgment that any such court may make. We also reserve the right to start an action or other court proceeding against you anywhere outside this province.

(n) If Saskatchewan law governs this Security Agreement, you agree that *The Limitation of Civil Rights Act* (Saskatchewan) does not apply to this Agreement or any other agreement you have with us.

☐ Form G - Waiver ☐ Form H - Certificate ☐ Corporate waiver

☐ Negotiable securities

**I have read this Security Agreement and agree to its terms.**

Dated this 1st day of May, 2015, at Woodstock
in the Province of New Brunswick.

**Borrower(s)**

**Corporation/company**

HILLSPRING FARMS LTD. (Print corporate/company name),

by Benjamin A. Brake (Print name of person signing on behalf of the corporation/company)

President (Print title of person signing on behalf of the corporation/company)

(Signature of person signing on behalf of the corporation/company)
I have authority to bind the corporation/company.

(Corporate seal if available)

**Guarantor(s)**

# Schedule "A"

You grant FCC a security interest in the following:

☒ 1. **General security agreement**

All of your present and after-acquired personal property.

☐ **Specific personal property**

☐ Specific equipment - serial numbered goods:

Equipment type:

Make or name of manufacturer:

Model:

Year:

Serial number:

*Note: "Serial numbered goods" are defined by legislation to include motor vehicles, trailers, mobile homes and aircraft. Motor vehicles include vehicles such as cars, trucks and buses. In Alberta, British Columbia, Manitoba, Saskatchewan, the Northwest Territories, New Brunswick, Nova Scotia, Prince Edward Island, and Newfoundland and Labrador, motor vehicles also include tractors and combines, but not any other machinery designed for use in farming.*

☐ Specific equipment - item description - non-serial numbered goods

< Ie. One 2004 Degelman Rock Picker, model #9350 >

together with all present and after-acquired attachments, accessories and accessions thereto.

☐ Specific equipment - kind description - non-serial numbered goods

All of your present and future

< Ie. grain bins >

☐ Livestock

All livestock, including but not limited to

< Ie. dairy cattle >

now or hereinafter acquired, all natural increases, all proceeds, all substitutions and replacements.

☐ **Quota and Licences**

FCC must have a specific security interest in "all

< Ie. dairy >

quota, now or hereinafter acquired, and all proceeds."

☐ **Other**

< Note: If the Collateral does not fit within one of the six categories, please contact FCC legal counsel for assistance in describing the Collateral. >

*All types and kinds of personal property which are proceeds of the Collateral, including without limitation, goods, crops, chattel paper, securities, investment property, documents of title, instruments, money and intangibles (including accounts).*

PROVINCE OF NEW BRUNSWICK

COUNTY OF CARLETON

I, BENJAMIN A. BRAKE, of Woodstock in the County of Carleton and Province of New Brunswick, MAKE OATH AND SAY:

1. I am the President of HILLSPRING FARMS LTD. an incorporated company, and as such have personal knowledge of all matters sworn to herein.

2. The seal affixed to the foregoing instrument is the seal of HILLSPRING FARMS LTD. and was affixed thereto by order of the Board of Directors.

3. The signature "BENJAMIN A. BRAKE" subscribed to the foregoing instrument is my signature.

4. The President is the signing officer of the company duly authorized to execute the foregoing instrument.

SWORN TO at the Town of Woodstock in the County of Carleton and Province of New Brunswick, this 1st day of May, A.D. 2015; BEFORE ME:

A Commissioner of Oaths
Being a Solicitor

Farm Credit Canada

Canada

## Security Agreement

Customer number: 100008003

To: Farm Credit Canada ("FCC", "us", "we" or "our")

**Provided by:**

**Borrower(s):**

**Guarantor(s):**

HSF FOODS LTD.

("you", "your")

### 1. What this Security Agreement does, and what property is secured

In consideration of FCC lending money to you, you are signing and delivering this Security Agreement to give FCC a security interest in the property described in Schedule "A" attached to this Security Agreement (this property is called the "Collateral"). Our security interest in the Collateral secures the repayment of all money you owe to us at any time and the performance of your obligations under this Security Agreement and any present or future Credit Agreement or other agreement you have with us (each a "Credit Facility"). You confirm that value has been given and acknowledge that our security interest shall attach to the Collateral as soon as you have rights in such Collateral.

### 2. What debts are covered by this Security Agreement

This Security Agreement secures the full amount that we lend to you, plus interest on your loans and all of the costs, charges and expenses you have agreed to pay under any Credit Facility. If the amount you owe us is reduced and then later increases, this Security Agreement still applies to the total amount that you owe us at any time.

### 3. Ownership and use of the Collateral

By signing this Security Agreement you are assuring us that you are the owner of the Collateral and that no one else holds any mortgages or rights to any of that Collateral. If you acquire any future property that is covered by this Security Agreement, you must make sure that you obtain "good title" and that no one else has any rights in the property unless we have consented to it. Under this Security Agreement, you are not allowed to sell, lease, or transfer ownership or possession of any of the Collateral except in the ordinary course of your business. For example, you may sell inventory such as the goods you produce in your business. With our written permission, you may also sell equipment that has been replaced by new equipment or that is not needed for your business. Also, you will keep the Collateral at your place of business, unless FCC agrees otherwise. If the collateral includes quota, you agree to: (i) maintain all quota and license rights in good standing and to comply with all of requirements of the issuing Board or authority; and (ii) renew and maintain any assignment of quota given to FCC before any expiry of the same, whether pursuant to rules or regulations of the issuing Board or authority or otherwise.

## 4. Insurance

You must keep the Collateral insured against loss or damage by fire and other risks that are normally insured or as we may require. The Collateral must be insured to its full insurable value. We may require that you transfer the insurance policies to us or have us named as the loss payee. You must give us copies of the policies or proof of insurance if we ask. If you fail to maintain the insurance required by this clause, we can insure the Collateral for you and charge you for the cost, which would be added to the amount you owe us and covered by this Security Agreement. You must let us know as soon as possible of any loss or damage to any part of the Collateral.

## 5. Your ongoing obligations

By signing this Security Agreement, you agree to the following things concerning your business.

(a) Carrying on business - You must carry on your business as a going concern in a proper, efficient and businesslike manner so as to protect and preserve the Collateral. We have the right at any time to inspect the Collateral to ensure that the Collateral exists and that you are maintaining the Collateral in good condition. You must observe and conform to all valid requirements of any governmental or municipal authority relative to the Collateral;

(b) Books and records - You must keep proper accounting books and records covering your business and affairs and concerning the Collateral. We are allowed to inspect these books and records and make copies of them, if we ask. You agree to provide us with information with respect to the Collateral if we request;

(c) Taxes - You must pay all taxes, license fees, assessments or other charges applicable to your business on their due dates; and

(d) Environmental Permits - You must maintain all environmental permits, consents, clearance, etc. that are needed to lawfully carry on your business. By signing this Security Agreement you are confirming that you are presently respecting all environmental laws, regulations, rules and guidelines that apply to your business. You must stay in compliance at all times.

## 6. Out-of-pocket costs and expenses, lawsuits and claims

You are responsible for all out-of-pocket costs that we incur under this Security Agreement. Examples include but are not limited to:

(a) legal fees to prepare, register or enforce this Security Agreement;

(b) costs paid to register our security interest in the Collateral or prepare a priority agreement or similar agreement; and

(c) costs we incur to preserve, insure or seize the Collateral.

You must reimburse us for our out-of-pocket costs on demand. If you fail to pay, we are entitled to add these costs to your loan and to charge interest on these costs at the rate of 18% per year.

Repayment of our out-of-pocket expenses is secured by the Collateral to the same extent as the loans we advance to you.

If anyone sues us as a result of the use of the Collateral or any damage it has caused, we can require that you pay our costs and any loss resulting from the lawsuit, even if we agree to pay an out-of-court settlement.

7. **Limitations on the use of money**

The proceeds of any loan secured by the Collateral must be used for the purpose stated in your credit application relating to such loan.

8. **Default**

You shall be in default under this Security Agreement if any of the following things happen:

(a) If you fail to pay any amount owed to us on its due date.

(b) If you fail to strictly comply with or perform any term or condition contained in this Security Agreement or any Credit Facility.

(c) If any written statement you have made to us in this Security Agreement or in any other document you have signed is untrue in any way that we consider important.

(d) If you cannot pay your debts when they become due (insolvency) or become bankrupt or apply for protection from your creditors under any insolvency laws, if you attempt to compromise or settle your debts with creditors, or if any bankruptcy or insolvency court proceedings are started against you or by you.

(e) If a receiver, trustee, custodian or other similar official is appointed for you or any of your property.

(f) If you sell, transfer or in any other way give up possession of all or any part of the Collateral in a manner not permitted under this Security Agreement; or if you move any Collateral out of the province in which you carry on business without our written permission.

(g) If you give a security interest or other interest, other than a purchase money security interest, in the Collateral to someone else without our written permission.

(h) If your business is incorporated, it is also a default if there is a change in who owns the shares of the corporation, unless we give written permission. If your business is run by a partnership, it is a default if any partner quits or resigns, any new partner is added or the partnership is ended without our written permission.

(i) If someone else seizes or takes control of any Collateral, or threatens to do so.

(j) If you stop carrying on your business in the normal course, or threaten to do so, or sell all or substantially all of your assets.

(k) If we believe in good faith that you are not able to pay your loans owed to us or that you won't be able to perform any of your other obligations under this Security Agreement or a Credit Facility, or that the Collateral is or is about to be placed in jeopardy.

9. **Our rights if you default**

If you default we can take any one or more of the following steps and/or do anything else permitted by law to recover the amounts you owe us.

(a) Serious consequences on default – We can demand that you repay the balance of all your loans on the date specified in the notice demanding payment, including interest and other amounts added to it under the Security Agreement or the applicable credit facilities. We may also notify credit bureaus of your default. If you default, you shall be responsible for the payment of our costs incurred to collect your loans and/or repossess and sell the Collateral, plus court costs and legal fees. If you default under this Security Agreement or the credit facilities, we may consider you to be in default under any other security agreement or Credit Facility you have signed with us. You may face other serious consequences.

(b) Seizing Collateral – To the extent permitted by applicable law, we can take possession of all or any part of the Collateral either ourselves or through a receiver. We can demand that you deliver the Collateral to a place designated by us so that we may take possession. We shall be entitled to receive any rents and profits from the Collateral, to carry on your business, and sell, lease or otherwise dispose of the Collateral on terms and conditions that we consider suitable. For this purpose we are allowed to enter your place of business or any other place where the Collateral is located.

(c) Selling Collateral – We may sell the Collateral or dispose of it in any commercially reasonable way.

(d) Collecting receivables – We may collect or sell any debts owed to you by others ("receivables") on terms and conditions that we see fit. In doing this, we may agree to accept less than the amount that is owed to you in full settlement of any receivables. Even if you are not in default, you agree we can advise anyone who owes you money about this Security Agreement and require that they confirm the amount they owe you. You shall provide us with a list of all of your receivables, if we ask.

(e) Putting you into receivership – We can appoint a receiver or manager (the "receiver") to manage the Collateral or to operate your business. If we appoint a receiver, the following provisions shall apply:

- (i) the receiver shall be considered to be your agent for all purposes,
- (ii) you shall be required to pay the receiver's remuneration, as fixed by us,
- (iii) we shall have no liability to you or anyone else concerning the appointment of a receiver or for anything the receiver does or does not do, and
- (iv) you shall no longer have any right to use the Collateral or operate your business without our written permission.

(f) Powers of a receiver – If we appoint a receiver:

- (i) the receiver shall have the same rights and remedies that we have under this Security Agreement and any applicable Credit Facility,
- (ii) the receiver can operate your business in any way it sees fit, and
- (iii) the receiver can manage and make all decisions about your business, including without limitation entering into agreements, hiring employees and purchasing equipment and inventory.

We can also ask the court to appoint a receiver and, if the court does so, the receiver shall have the powers listed in the court order. If you default we can take the following steps, plus we can do anything else permitted by law to recover the amount you owe us.

## 10. Deficiency

Where permitted by applicable laws, you shall remain liable to us for payment, and agree to pay us, of any amounts that are still owing to us following the sale or other disposal of all or any part of the Collateral.

## 11. Use of proceeds from Collateral

All proceeds we receive from the Collateral shall be applied in the following order:

(a) first, to pay the receiver's remuneration if one has been appointed;

(b) second, to pay any other expenses we incur to enforce our rights under this Security Agreement;

(c) third, to pay rents, taxes, insurance premiums and other expenses affecting the Collateral. These expenses might be incurred to preserve, repair, process or maintain the Collateral, or make it better or prepare it for sale. This clause also applies to payments we make to other creditors who have claims on the Collateral that rank ahead of ours; and

(d) lastly, to pay the amounts you owe us.

## 12. Extensions and modifications

(a) If we consider it appropriate, we may grant extensions of time or other indulgences to you that depart from the strict terms of this Security Agreement. We may also obtain additional security or release security we hold. We may also settle or release your obligations or otherwise deal with you or any other security or credit facilities we hold. None of these things affect your liability to us, or our right to hold the Collateral or enforce our rights against it, until we have been paid in full.

(b) No change of any provision of this Security Agreement may be made except by a written agreement signed by us and by you. No waiver of any provision of this Security Agreement shall be effective unless it is in writing.

## 13. We have no obligation to advance funds

Even after this Security Agreement has been signed and registered, we still do not have to advance funds to you if we decide, in our sole discretion, that it is not in our best interests to do so.

## 14. Other clauses that apply to this security agreement

(a) This Security Agreement is in addition to any other guarantee, security agreement or Credit Facility we now have with you or that is signed at a later date. These other agreements do not affect our rights or your obligations under this Security Agreement and this Security Agreement does not replace or terminate any of those other agreements.

(b) If any part of this Security Agreement turns out to be invalid for any reason, the rest of the Security Agreement shall still remain in full force and effect. In this case, this Security Agreement shall be read as if the invalid part was not included in it.

(c) The Collateral does not include the last day of the term of any lease held by you, but if you sell your interest under any such lease, you shall hold such last day in trust for us and assign it as we request.

(d) The Collateral does not include any of your rights under contracts that state that such rights cannot be subject to our security interest, but you shall hold your interest in such rights in trust for us and shall assign such rights to us if you obtain permission to do so. If we ask you to do so, you shall do your best to obtain such permission.

(e) We are not liable to you, or any other person, for any failure or delay in exercising any of our rights under this Security Agreement. The same applies to any failure on our part to take any steps to preserve rights against you or other persons, or any delay in doing so.

(f) If more than one person has signed this Security Agreement with us, everyone who has signed is responsible to us for all the obligations specified in this Security Agreement on a joint and several basis.

(g) This Security Agreement shall remain in full force and effect and we shall not discharge the security interest until all present and future debt or other obligations owing to us by you are paid or performed in full.

(h) You agree to sign all other documents that we consider necessary to carry out the intent of this Security Agreement or to exercise our rights over the Collateral. Nevertheless, you agree that we (or any receiver we may appoint or that a court may appoint) may sign any document or do anything else on your behalf as your attorney whenever necessary or expedient.

(i) A reference to this Security Agreement includes any schedules attached to it.

(j) You acknowledge that you have received a copy of this Security Agreement.

(k) To the extent permitted by law, you acknowledge that you are giving up your right to receive a copy of any financing statement, financing change statement or verification statement that we obtain when we register our security interest in the Collateral.

(l) This Security Agreement benefits our successors and binds you and your heirs, legal representatives, successors and permitted assigns. You may not transfer your obligations under this Security Agreement to anyone else without our written permission. We may transfer our rights under this Security Agreement without your permission.

(m) This Security Agreement is governed by the laws of the Province of New Brunswick and the laws of Canada applicable therein. We may commence an action or other court proceeding on this Security Agreement in the courts of this province and you agree to submit to the jurisdiction of such courts and be bound by any judgment that any such court may make. We also reserve the right to start an action or other court proceeding against you anywhere outside this province.

(n) If Saskatchewan law governs this Security Agreement, you agree that *The Limitation of Civil Rights Act* (Saskatchewan) does not apply to this Agreement or any other agreement you have with us.

☐ Form G - Waiver ☐ Form H - Certificate ☐ Corporate waiver

☐ Negotiable securities

**I have read this Security Agreement and agree to its terms.**

Dated this 1st day of May, 2015, at Woodstock
in the Province of New Brunswick.

**Borrower(s)**

**Guarantor(s)**

**Corporation/company**

HSF FOODS LTD. (Print corporate/company name),

by Benjamin A. Brake (Print name of person signing on behalf of the corporation/company)

President (Print title of person signing on behalf of the corporation/company)

(Signature of person signing on behalf of the corporation/company)
I have authority to bind the corporation/company

(Corporate seal if available)

## Schedule "A"

You grant FCC a security interest in the following:

☒ 1. **General security agreement**

All of your present and after-acquired personal property.

☐ **Specific personal property**

☐ Specific equipment - serial numbered goods:

Equipment type:

Make or name of manufacturer:

Model:

Year:

Serial number:

*Note: "Serial numbered goods" are defined by legislation to include motor vehicles, trailers, mobile homes and aircraft. Motor vehicles include vehicles such as cars, trucks and buses. In Alberta, British Columbia, Manitoba, Saskatchewan, the Northwest Territories, New Brunswick, Nova Scotia, Prince Edward Island, and Newfoundland and Labrador, motor vehicles also include tractors and combines, but not any other machinery designed for use in farming.*

☐ Specific equipment - item description - non-serial numbered goods

< ie. One 2004 Degelman Rock Picker, model #9350 >

together with all present and after-acquired attachments, accessories and accessions thereto.

☐ Specific equipment - kind description - non-serial numbered goods

All of your present and future

< ie. grain bins >

☐ Livestock

All livestock, including but not limited to

< ie. dairy cattle >

now or hereinafter acquired, all natural increases, all proceeds, all substitutions and replacements.

☐ **Quota and Licences**

FCC must have a specific security interest in "all

< ie. dairy >

quota, now or hereinafter acquired, and all proceeds."

☐ **Other**

< Note: If the Collateral does not fit within one of the six categories, please contact FCC legal counsel for assistance in describing the Collateral. >

*All types and kinds of personal property which are proceeds of the Collateral, including without limitation, goods, crops, chattel paper, securities, investment property, documents of title, instruments, money and intangibles (including accounts).*

PROVINCE OF NEW BRUNSWICK

COUNTY OF CARLETON

I, BENJAMIN A. BRAKE, of Woodstock in the County of Carleton and Province of New Brunswick, MAKE OATH AND SAY:

1. I am the President of HSF FOODS LTD. an incorporated company, and as such have personal knowledge of all matters sworn to herein.

2. The seal affixed to the foregoing instrument is the seal of HSF FOODS LTD. and was affixed thereto by order of the Board of Directors.

3. The signature "BENJAMIN A. BRAKE" subscribed to the foregoing instrument is my signature.

4. The President is the signing officer of the company duly authorized to execute the foregoing instrument.

SWORN TO at the Town of Woodstock in the County of Carleton and Province of New Brunswick, this 1st day of May, A.D. 2015; BEFORE ME:

A Commissioner of Oaths
Being a Solicitor