Court File No.: SJM-46-2020

No. du dossier:

IN THE COURT OF QUEEN'S BENCH OF NEW BRUNSWICK

COUR DU BANC DE LA REINE DU NOVEAU-BRUNSWICK

IN BANKRUPTCY AND INSOLVENCY
JUDICIAL DISTRICT OF SAINT JOHN
IN THE MATTER OF THE RECEIVERSHIP OF:

DIVISION DE PRÉMIERE INSTANCE
CIRCONSCRIPTION JUDICIARE DE

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

ENTRE:

-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

REQUÊRANT

-et-

INTIMÉ

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.

NOTICE OF APPLICATION
(FORM 16D)

AVIS DE REQUETE
(FORMULE 16D)

2282801-

TO: The Respondents and their secured creditors

LEGAL PROCEEDINGS HAVE BEEN COMMENCED BY FILING THIS NOTICE OF APPLICATION.

The Applicants will make an application before the Court of Queen's Bench, at the Saint John Law Courts, 10 Peel Plaza, Saint John, New Brunswick, on the **26th** day of **June, 2020**, at **10:00 a.m.** as set out hereunder.

If you wish to oppose this application you must appear at the hearing of the application at the place, date, and time stated, either in person or by a New Brunswick lawyer acting on your behalf.

If you intend to appear on the hearing of the application and wish to present to the Court at that time affidavit or other documentary evidence to support your position, you must serve a copy of such evidence on the Applicants or his lawyer and, with proof of such service, file it in this Court Office prior to the hearing of the application.

If you fail to appear on the hearing of the application **AN ORDER WHICH MAY AFFECT YOU MAY BE MADE IN YOUR ABSENCE.**

You are advised that:

(a) you are entitled to issue documents and present evidence in the proceeding in English or French or both;

DESTINAIRE:

PAR LE DÉPÔT DU PRÉSENT AVIS DE REQUÊTE, UNE POURSUITE JUDICIAIRE A ÉTÉ ENGAGÉE.

Le requérant présentera une requête à la Cour à______, le______2020 à h____en vue d'obtenir l'ordonnance décrite ci-dessous.

Si vous désirez contester cette requête, vous devrez comparatre à l'audition de la requête aux lieu, date et heure indiqués, soit en personne ou par l'intermédiane d'un avocat du Nouveau Brunswick chargé de vous représenter.

Si vous prévoyez comparatre à l'audition de la requête et désirez présenter à la Cour un affidavit ou une autre preuve littérale en votre faveur, vous devrez signifier copie de cette preuve au requérant ou à son avocat et la déposez, avec une preuve de sa signification, au greffe de cette Cour avant l'audition de la requête.

Si vous ne comparaissez pas à l'audition de la requéte, **UNE ORDONNANCE POUVANT VOUS CONCERNER POURRA ÊTRE RENDUE EN VOTRE ABSENCE.**

Sachez que:

(a) vous avez le droit dans la présente instance, d'émettre des documents et de présenter votre preuve en

(b) the Applicants intend to proceed in the English language; and

(c) if you require the services of an interpreter at the hearing you must advise the clerk at least 7 days before the hearing.

THIS NOTICE is signed and sealed for the Court of Queen's Bench by Amanda J. Evans, Q.C., Clerk of the Court of Queen's Bench, Saint John, New Brunswick, on the ____ day of June, 2020.

français, en anglais ou dans les deux langues;

(b) le requérant a l'intention d'utiliser la langue __________; et

(c) si vous avez besoin des services d'un interprète à l'audience, vous devez en aviser le greffier au moins 7 jours avant l'audience.

CET AVIS est signé et scellé au nom de la Cour du Banc de la Reine par , greffier de la Cour, à, ce

_____, 2020.

____
Amanda J. Evans, Q.C., Clerk of the Court

Court of Queen's Bench
Saint John Law Courts,
10 Peel Plaza,
Saint John, New Brunswick E2L 4Y9

APPLICATION

On the hearing of this Application, the Applicants intend to apply for the following relief:

1. an Order, if necessary, for the abridgment of time for service of this application, excusing the lack of service of this application, excusing the lack of service of the Applicants' record on application or validating service pursuant to Rules 1.03, 2.01, 2.02, 3.02, 4.05(6), 18.09 and 41.04 of the New Brunswick *Rules of Court* (the "**Rules**");

2. an Order, substantially in the form of the draft Order attached hereto as **Schedule "A"** (the " **Appointment Order**") appointing Ernst & Young Inc. ("**EY**" or the "**Proposed Receiver**") as receiver and receiver manager (the "**Receiver**") over all real and personal property of 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**") except the personal and real property identified and defined in the Appointment Order as Excluded Property (the "**Property**"), without security, pursuant to Rule 41 of the Rules, section 33 of the *Judicature Act*, R.S.N.B. 1973, Ch. J-2 (the "**Judicature Act**"), and section 243 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "**BIA**"), with power to do such acts and deeds set out in the Draft Receivership Order;

3. an Order, substantially in the form and substance of the draft order attached hereto as **Schedule "B"** (the "**McCain Sale Approval and Vesting Order**"), *inter alia*:

   a. approving the transaction (the "**Transaction**") contemplated by an agreement dated as of June 11, 2020 (the "**Sale Agreement**") between the Companies and McCain Farms, a division of McCain Produce Inc. (the "**Purchaser**") and 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**"), a redacted copy of which is attached to the Report of the Proposed Receiver and a complete copy of which will be filed with the Court in the Confidential Supplemental Report of the Proposed Receiver;

b. authorizing and approving the Receiver adopting the Sale Agreement, the Farming Equipment Lease, as such term is defined in the Sale Agreement, and such other documents and taking such additional actions as may be necessary or desirable to complete the Transaction and to convey the assets more particularly set out in the Sale Agreement (the "**McCain Sale Assets**") to the Purchaser;

c. declaring that upon the delivery of a certificate or certificates to the Purchaser substantially in the form attached as Schedule "A" to the McCain Sale Approval and Vesting Order (the "**Receiver's Farming Certificate**"), all right, title and interest of the Companies in and to the McCain Sale Assets described in such Receiver's Farming Certificate shall vest absolutely in the Purchaser free and clear of and from any and all other interests, claims or encumbrances of any nature or kind other than the Permitted Encumbrances, as defined in the McCain Sale Approval and Vesting Order;

d. declaring that for the purposes of determining the nature and priority of claims, the net proceeds from the sale of the McCain Sale Assets (the "**McCain Proceeds**") shall stand in the place and stead of the McCain Sale Assets, and that from and after the delivery of the Receiver's Farming all claims and encumbrances shall attach to the McCain Proceeds with the same priority as they had with respect to the McCain Sale Assets immediately prior to the sale; and

e. authorizing and approving the Receiver distributing up to 98% of the McCain Proceeds (the "**Distribution**") as provided in the Report of the Proposed Receiver;

4. an Order, substantially in the form and substance of the draft order attached hereto as **Schedule "C"** (the "**Residual Property Sale Approval Order**"), *inter alia*:

   a. declaring that the Receiver is authorized and directed to take such steps and execute such documents as may be necessary or desirable for the sale of any or all of the personal and real property of the Companies forming part of the Property that is not the McCain Sale Assets (the "**Residual Property**"):

      i. to any person by way of private sale at such price and on such terms as are acceptable to the secured creditor, if any, having a first ranking interest therein; or

      ii. to such person that may submit an acceptable bid as part of a public auction or tender process;

   b. declaring that any public auction or tender shall be conducted on such terms as the Receiver deems appropriate provided that the Receiver shall ensure that:

      i. notice of the public auction or tender shall be advertised for a minimum period of 30 days by such methods as are typically employed by a qualified auctioneer or in a tender, as applicable;

      ii. the terms of sale shall include that all Residual Property to be disposed of will be sold on an "as is where is basis"; and

iii. any item of personal property located on the real property of the Companies, which is not part of the McCain Sale Assets, or occupied by the Receiver shall be removed without causing damage to such real property or the buildings located thereon and any purchaser shall be responsible for ensuring same and shall indemnify the Receiver for any damage;

c. authorizing and approving the execution and delivery by the Receiver of a receiver's certificate or certificates substantially in the form attached as Schedule "A" to the Residual Property Sale Approval Order in relation to the sale of the Residual Property (a "**Residual Property Certificate**") and the Receiver executing and delivering such other documents or the taking of such additional actions as may be necessary or desirable to convey the Residual Property;

d. declaring that upon the delivery of a Residual Property Certificate, all right, title and interest of the Companies in and to the Residual Property described in such Residual Property Certificate shall vest absolutely in the purchaser free and clear of and from any and all other interests, claims or encumbrances of any nature or kind other than the Permitted Encumbrances, as defined in the Residual Property Sale Approval Order;

e. declaring that for the purposes of determining the nature and priority of claims, the net proceeds from the sale of any Residual Property (the "**Residual Property Proceeds**") shall stand in the place and stead of the Residual Property sold, and that from and after the delivery of the Residual Property Certificate all claims and encumbrances shall attach to the Residual Property Proceeds with the same priority as they had with respect to such Residual Property immediately prior to the sale and be held by the Receiver pending further Order of this Court;

5. an Order, substantially in the form and substance of the draft order attached hereto as **Schedule "D"** (the "**Sealing Order**"), that the Confidential Supplemental Report of the Proposed Receiver shall be sealed, kept confidential and not form part of the public record, but rather shall be placed, separate and apart from all other contents of the Court file, in a sealed envelope and shall only be opened after the completion of the Receivership provided that parts of the Confidential Supplemental Report or the attachments thereto may be released by the Receiver following completion of the Transaction or the sale of Residual Property provided the recipient of such material executes a confidentiality agreement in form and substance acceptable to the Receiver; and

6. such further and other relief as the Applicants may advise and this Honourable Court may permit.

The capacities of all persons who are parties to the proceeding are as follows:

1. The Applicant, Farm Credit Canada is a Federal Crown Corporation under the laws of Canada ("**FCC**").

2. The Companies are each a body corporate under the laws of the Province of New Brunswick, with a registered office in the Province of New Brunswick, carrying on business in the Province of New Brunswick.

The grounds to be set out are as follows:

Background

Historical Operations and Indebtedness

1. The Companies along with the corporate Related Parties (collectively, 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 and Flakes;

2. The Hillspring Group aggressively grew their operations over the years under the direction of Ben Brake and his son, Jeremy Brake (the "**Brakes**"). By 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 operations facilities and various related buildings; and
    d. owned hundreds of pieces of farming equipment;

3. 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;

4. HSF carried on the operation of Flakes from a state of the art facility located on real property owned by it along with numerous pieces of equipment. The Flakes operation was also intertwined with the operations of Burbank Water & Wastewater Inc. and Hillspring Thaw Inc. of a water treatment plant and cogeneration power generation plant. In addition, Flakes operations required use of certain assets of Hillspring to carry on their business;

5. FCC extended credit to each of Hillspring and HSF (collectively sometimes, the "**Borrowers**") pursuant to 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 accrued 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;

6. FCC's advances to each of the Borrowers are cross guaranteed and cross collateralized as against all of the Borrowers' assets. In addition, Logistics guaranteed the Borrowers obligations to FCC along with certain of the other Related Parties;

7. 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 provides that it may seek the appointment of a receiver by the Court;

8. In addition to the financing with FCC, the Hillspring Group obtained financing from the Canadian Imperial Bank of Commerce ("**CIBC**"), Business Development Bank of Canada and other secured creditors pursuant to various equipment financing or lease arrangements;

9. CIBC extended credit to each of the Borrowers, to Logistics and to Burbank Industrial Supply Inc. pursuant to various loan agreements. As of March 3, 2020, the Companies were indebted to CIBC for a total of $20,884,993.60 plus interest, costs and fees accrued thereon until payment in full (the "**CIBC Indebtedness**") comprised of:

    a. advances of $17,811,228.20 to Hillspring;

b. advances of $2,182,480.30 and $1,000,000.00 (USD) to HSF; and

c. advances of $891,285.16 to Logistics;

10. CIBC was granted security for its advances in the form of general security agreements, specific personal property security agreements and collateral mortgages (collectively, the "**CIBC Security**");

11. The Hillspring Group had been very successful for many years; but in 2019 its operations and finances suffered as a result of significant debt from its aggressive growth, reduced profits and various market factors;

12. Since early 2019, FCC and CIBC each attempted to assist the Hillspring Group while it attempted to address its financial and operational issues;

13. In January of 2020, Hillspring and HSF did not have sufficient operating credit to continue operations in the near term and a complete inability to pay their indebtedness as and when due;

14. The Hillspring Group, as represented by Ben Brake, engaged in various discussions with FCC, CIBC and others throughout January and February of 2020 to address the Hillspring Group's outstanding issues;

15. The Hillspring Group explored various partnerships and other opportunities including sales of some or all of its assets. The Hillspring Group was unable to address its difficulties and through various meetings and discussions it was determined that a sale of all or substantially all of its assets was the only solution, as there was no prospect for the continued operation of Farming or Flakes by the Hillspring Group;

16. On March 6, 2020, CIBC issued demands together with notices of its intention to enforce security in accordance with section 244 of the BIA

and under the *Farm Debt Mediation Act* (the "**FDMA**") to the Companies and other members of the Hillspring Group. CIBC's demand was for $21,156,343.40;

17. On March 13, 2020, FCC issued demands together with notices of its intention to enforce security in accordance with section 244 of the BIA and under the FDMA to the Companies and other members of the Hillspring Group. FCC's demand was for $70,691,926.52;

18. In addition to the FCC Indebtedness and the CIBC Indebtedness totaling approximately $90 Million Dollars, the Hillspring Group was unable to meet its trade payable obligations as they became due which totaled in excess of approximately $10.6 Million;

19. Prior to and concurrently with the issuance of the demands by FCC and CIBC, the Brakes, FCC and CIBC met with or carried on discussions with the Purchaser as well as other potential purchasers either collectively or separately. The urgency of the situation was compounded by Hillspring not having sufficient funds to plant its crop for the 2020 season and the risk related to soil erosion. The 2020 crop needed to be planned and planted on or before the end of April 2020. As well, the global COVID-19 pandemic had begun which only exacerbated the operational and financial issues the Hillspring Group had been attempting to address since 2019;

Term Sheet and Assistance with Management of Operations

20. On March 13, 2020 the Hillspring Group entered into a term sheet (the "**Term Sheet**"), a redacted copy of which is attached to the Report of the Proposed Receiver, with McCain Foods Limited ("**MFL**"), a related party to the Purchaser, for the acquisition of the McCain Sale Assets, which comprise substantially all of the Farming assets;

21. The Term Sheet provided that the Transaction would be completed on or before April 29, 2020;

22. The Hillspring Group did not have the ability to continue Farming or other operations without financial and operational support while the Transaction was finalized. As addressed above, there was an urgent need to plan and plant the 2020 crop. As a result, the Hillspring Group entered into a management agreement with MFL on March 21, 2020 (the "**Management Agreement**"), a redacted copy of which is attached to the Report of the Proposed Receiver;

23. Since entering into the Management Agreement, MFL has provided the Companies with financial and other assistance to ensure the ongoing operation of the Farming business and preservation of the Farming assets while due diligence and other aspects related to the Transaction were completed. Any inventory, cash, receivables or accounts of Hillspring or other property acquired by Hillspring since the date of the Management Agreement are Excluded Property. The Purchaser has also agreed to pay all accounts created since the date of the Management Agreement;

24. Concurrently with the negotiations with MFL in relation to Farming, the Hillspring Group attempted to seek further support from its creditors for the Flakes operations. Through this process, the FCC Security in and to certain of the Excluded Property was assigned to Oregon Potato Company ("**OPC**") by an agreement dated March 24, 2020;

25. OPC also obtained assignments of debt and security to OPC from other creditors in and to the Excluded Property, or in and to assets owned by other members of the Hillspring Group that were used to carry on the Flakes operations;

26. The Hillspring Group did not have the ability to continue the Flakes operation without financial and operational support. As a result, it

entered into a management agreement with OPC Canada Inc. ("**OPC Canada**") dated as of March 31, 2020 (the "**OPC Management Agreement**");

27. Since entering into the OPC Management Agreement, HSF's operations have been managed by OPC Canada;

28. The Companies entered into the Sale Agreement with the Purchaser on June 11, 2020. The Transaction is required to close in accordance with that agreement on or before June 30, 2020 by means of a Court proceeding;

Necessity for the Appointment of the Receiver

29. The relief sought by the Applicants is appropriate in the circumstances and is in accordance with the jurisdiction of this Court under the BIA and the inherent jurisdiction of this Court;

30. The Companies:

a. do not have the necessary liquidity to carry on operations,
b. would not have been able to carry on operations without the assistance of MFL and do not have the ability to carry on operations;
c. do not have any prospect of resuming operations on their own in the future;
d. are in default of their obligations to FCC, CIBC and other parties;
e. have no ability to complete the Transaction without these proceedings; and
f. have joined in these proceedings seeking the relief set out herein.

31. MFL has been assisting Hillspring with the management of the Farming operations while working towards completion of the Transaction. The Management Agreement contemplates that the Transaction will be

consummated by way of an approval and vesting order in a receivership. Consequentially, if a Receiver is not appointed, MFL could terminate the Management Agreement which would result in the shutdown of the Farming operations causing irreparable harm to the Companies' employees and the numerous other stakeholders that will benefit from the Transaction;

32. The McCain Sale Assets individually are not unique but collectively are unique as a large potato farming, storage and seed operation. Given the uniqueness of the assembly of Farming assets and the interests of various creditors in various items of personal or real property, the Receiver, if appointed, can address the assets collectively as opposed to through a multitude of proceedings. A single proceeding will realize on the value of the assets of the Companies being sold together in the Transaction;

33. The Applicants have limited the request for the appointment of a Receiver to only an appointment over the McCain Sale Assets and assets which are subject to the security of FCC and CIBC or unencumbered. As a result, the requested relief balances the rights of various stakeholders in and to the other assets of the Hillspring Group including OPC and counterparties to various leases of personal and real property;

34. The terms of the requested Appointment Order:

a. respects the rights of the various stakeholders,
b. is in keeping with the rights granted under the FCC Security and inter-creditor arrangements,
c. provides the Receiver with the necessary power and authority to carry out its duties in an efficient and transparent manner, and
d. will provide for the orderly realization on the Companies' assets and maximize the return to stakeholders;

35. For the grounds set out herein, the appointment of the Receiver is necessary and is just and convenient in the circumstances.

36. A court appointed receiver and receiver manager will benefit all interested parties and should be granted a charge against all of the property subject to the receivership as such is just and convenient in the circumstances;

Approval of Sale Agreement

37. The relief sought by the Applicants is appropriate in the circumstances and is in accordance with the jurisdiction of this Court under the BIA and the inherent jurisdiction of this Court;

38. The approval of the Sale Agreement and the Transaction, and the other requested relief as set out in the McCain Sale Approval Order, is in the best interests of the Companies' stakeholders;

39. The process to achieve the Sale Agreement has been fair and has respected the interests of the stakeholders; which fairness and respect is reflected by the terms of the Transaction that, among other things:

a. has been structured so that the Purchaser:

i. will seek to enter into agreements with certain parties who have undocumented real property leases with Hillspring providing such parties with the ongoing benefit of renting their land;

ii. assumes or will buy out certain equipment financing or lease agreements such that all the counterparties to those agreements will benefit from the Transaction;

b. provides that the McCain Sale Assets (other than certain parcels of unencumbered real property) are assets in which FCC and CIBC hold the primary security, both of which support the Transaction;

c. resulted in the Purchaser, conditional on closing the Transaction pursuant to these proceedings, offering employment to 75 current employees of the Companies and only 1 employee did not accept the offer; which results in the Transaction having a direct and significant benefit to 74 individuals and their families; and

d. resulted in MFL ensuring the continued operation of Farming during the Management Agreement for the benefit of various local suppliers who will continue to benefit from the closing of the Transaction and the continued operation of Farming and for the benefit of the local environment, as the quality of the soil has been maintained by the planting of the 2020 crop which would not have been possible without MFL;

40. The Proposed Receiver:

a. holds all required licenses and has not acted as an auditor for the Hillspring Group;
b. has conducted a review of the Transaction,
c. is prepared to act as receiver and receiver manager; and
d. will file a report with the Court in support of the approval of the Transaction;

41. The Companies along with their primary and prior ranking secured creditors, FCC and CIBC, explored various alternatives for the sale of the McCain Sale Assets and were unable to find any alternative sale or solution to the Companies' liquidity crisis. The purchase price that will be paid as part of the Transaction is insufficient to pay the FCC Indebtedness and the CIBC Indebtedness. FCC and CIBC are the secured creditors with the primary economic interest in the McCain Sale Assets. Each of CIBC

and FCC have participated in the process to achieve the Transaction which has been open and transparent amongst the stakeholders having an interest therein;

42. CIBC is supportive of the within application and the completion of the Transaction;

43. In consideration of the Companies' financial position as well as the global economic impact of the COVID-19 pandemic, the Transaction is the best possible alternative;

44. An immediate sale is the only realistic way to provide maximum recovery for FCC and CIBC who stand in clear priority of economic interest to all others in and to the McCain Sale Assets and the only realistic way to provide maximum recovery to any counterparty to the assumed contracts or the assumed liabilities;

45. If the Transaction is not approved, the Companies will have to cease operations and the assets will be devalued, negatively impacting FCC, CIBC and other creditors and stakeholders including 74 full time employees in rural New Brunswick who will benefit from the Transaction; eroding the benefit each such party will gain from the Transaction;

46. Given that the Companies are unable to meet their obligations, are unable to carry on management of their operations without the assistance of MFL and are unable to complete the Sale Agreement without the assistance of a formal process, the within application for the appointment of the Receiver to complete the Transaction and the McCain Sale Approval and Vesting Order is appropriate in the circumstances;

Approval of Sale Process for Residual Property

47. The Residual Property has been appraised by the Proposed Receiver and is of a type that can be sold through normal sales processes as proposed in the Residual Property Sale Approval Order;

48. The Proposed Receiver intends to consider sales of the Residual Property as requested and therefore asks that it has authority to sell the Residual Property pursuant to the Residual Property Sale Approval Order the terms of which are commercially reasonable in the circumstances;

49. The relief sought by the Applicants is appropriate in the circumstances and is in accordance with the jurisdiction of this Court under the BIA and the inherent jurisdiction of this Court;

50. The Residual Property are assets subject to the first ranking security interests of FCC and CIBC, both of whom are the only secured creditors with an economic interest in the Residual Property;

51. The approval of the sales process, and the other requested relief as set out in the Residual Property Sale Approval Order, is in the best interests of the Companies stakeholders as:

   a. it provides a clear and transparent process for all stakeholders in relation to the sale of the Residual Property; and

   b. will minimize the expense of the proceedings by permitting the Receiver to complete sales without the need to return to Court for the approval of the sale of any one item of the Residual Property.

Bankruptcy of Companies

52. A bankruptcy of the Companies will assist the Receiver in carrying out its duties and it is appropriate for the Receiver to make such necessary filings given that:

    a. the Companies are insolvent;
    b. the BIA provides for the orderly and fair distribution of the property of a bankrupt among its creditors, which should minimize or eliminate various proceedings which could arise in the receivership proceedings;
    c. the BIA allows for investigations to be made of the affairs of the bankrupt; and
    d. a trustee in bankruptcy is provided with the power to administer the estate in a manner that will generally reduce costs for all involved.

Sealing of Supplemental Report

53. It will be prejudicial to the interests of the Companies' stakeholders if the financial information related to the Transaction or the Residual Property is made public because this information will adversely influence what a future prospective purchaser of the Companies' assets would be willing to pay;

54. There are no reasonable alternative measures to sealing such information from the public record;

55. The salutary effects of sealing such information from the public record greatly outweighs the deleterious effects of doing so under the circumstances;

56. As to all of the relief requested, the Applicants will also rely on such other grounds as may be appropriate and which this Honourable Court may permit; and

57. The Applicants rely on the Rules including Rules 1, 1.03, 2, 2.01, 2.02, 3, 3.02, 4.05 (6) 18, 18.09, 38, 39, 41, 41.04 and 41.06, the Judicature Act including section 33, and the BIA including sections 243, 244, 247, 248, and 249.

The documentary evidence to be relied on at the hearing of the application is:

1. Affidavit of Ben Brake, sworn to on June 18, 2020;
2. Affidavit of Jeremy Brake, sworn to on June 18, 2020;
3. Affidavit of Jason Inman, sworn to on June 18, 2020;
4. Affidavit of Supriya Sarin, sworn to on June 19. 2020;
5. Affidavit of David Boyd, sworn to on June 19. 2020;
6. Affidavits of Caleb Hunter sworn to on June 18, 2020;
7. Affidavits of Bailey Campbell sworn to on June 18, 2020;
8. Report of the Proposed Receiver to be filed prior to the hearing;
9. Confidential Supplemental Report of the Proposed Receiver to be filed prior to the hearing; and
10. such further and other documentary evidence as counsel may advise and this Honourable Court may permit.

DATED this 19th day of June, 2020.

COX & PALMER

Per: Josh McElman
Solicitors for the Applicant, Farm Credit Canada

MCINNES COOPER

Per: Stephen Kingston
Solicitors for the Applicants and Respondents, Hillspring Farms Ltd., HSF Foods Ltd. and Hillspring Warehouse & Logistics Inc.

Cox & Palmer
1 Germain Street
Brunswick Square, Suite 1500
Saint John, NB E2L 4V1

Fax: 506 632 8809
Email:
jmcelman@coxandpalmer.com

McInnes Cooper
1969 Upper Water St.,
Suite 1300, Purdy's Wharf Tower II
Halifax NS B3J 3R7

Fax: 902 425 6350
Email:
stephen.kingston@mcinnescooper.com

Schedule "A" - Appointment Order

Court File No.:_______________

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

RECEIVERSHIP ORDER

THIS APPLICATION, made by the Applicants for an Order pursuant to Section 33 of the *Judicature Act*, R.S.N.B. 1973, Ch. J-2 (the "**Judicature Act**"), Rule 41 of the Rules of Court of New Brunswick (the "**Rules**") and Section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "**BIA**") appointing Ernst & Young Inc. ("**EY**" or the "**Proposed Receiver**") as receiver and receiver manager (in such capacities, the "**Receiver**") without security, of all the Respondents' current and future assets, undertakings and properties and wherever situate including all proceeds thereof (the "**Property**") in relation to the business carried on by the Respondents except the assets set out in Schedule "A" collectively, (the "**Excluded Property**") attached hereto was heard this ___ day of ____, 2020 at ____________, ___________, New Brunswick.

ON READING the affidavit of _____________ sworn _________, 2020 and the exhibits thereto, the Report of the Proposed Receiver dated _________, 2020 and the Affidavit of ______________ sworn ____________, 2020 and the exhibits thereto, the Supplemental Confidential Report of the Proposed Receiver dated _______, 2020 and the exhibits thereto, the various affidavits of service, on hearing the submissions of counsel for the Applicants, the Respondents and the parties set out in Schedule "B" attached hereto and on reading the consent of the Proposed Receiver to act as the Receiver;

IT IS ORDERED THAT:

SERVICE

1. The time for service of the Notice of Application and the Application Record is hereby abridged and validated so that this Application is properly returnable today and hereby dispenses with further service thereof.

APPOINTMENT

2. Pursuant to section 33 of the Judicature Act, Rule 41 of the Rules and section 243(1) of the BIA, the Receiver is hereby appointed receiver and receiver manager, without security, of the Property.

RECEIVER'S POWERS

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

    a. to take possession and control of the Property and any proceeds or receipts arising from the Property but, while the Receiver is in possession of any of the Property, the Receiver must preserve and protect it;

    b. to change locks and security codes, relocate all or some of the Property to safeguard it, engage independent security personnel, take physical inventories and place insurance coverage;

    c. to manage, operate, and carry on the business of the Respondents, including the powers to enter into any agreements, incur and pay any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Respondents;

    d. to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;

e. to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Respondents, or any part or parts thereof;

f. to receive and collect all monies and accounts now owed or hereafter owing to the Respondents and to exercise all remedies of the Respondents in collecting such monies, including, without limitation, to enforce any security held by the Respondents;

g. to settle, extend or compromise any indebtedness owing to the Respondents;

h. to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Respondents, for any purpose pursuant to this Order;

i. to undertake environmental or workers' health and safety assessments of the Property and operations of the Respondents;

j. to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;

k. to make payment of any and all costs, expenses and other amounts that the Receiver determines, in its sole discretion, are necessary or advisable to preserve, protect or maintain the Property, including, without limitation taxes, municipal taxes, insurance premiums, repair and maintenance costs, costs or charges related to security, management fees, and any costs and disbursements incurred by any manager appointed by the Receiver;

l. to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;

m. to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business as may be provided in an Order of this Court or,

    i. without the approval of this Court in respect of any transaction not exceeding $100,000.00, provided that the aggregate consideration for all such transactions does not exceed $1,000,000.00; and

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

   and in each such case notice under section 59 of the *Personal Property Security Act* (New Brunswick) or pursuant to section 44 of the *Property Act* (New Brunswick) shall not be required.

n. to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;

o. to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;

p. to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;

q. to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Respondent;

r. to enter into agreements with any trustee in bankruptcy appointed in respect of the Respondent including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Respondent;

s. to exercise any shareholder, partnership, joint venture or other rights which the Respondent may have; and

t. to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations;

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

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

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

5. All Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Respondents, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "**Records**") in that Person's possession or control, and shall, subject to their right to seek a variation of this order, provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

6. If any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall, subject to their right to seek a variation of this Order, forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by

way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

NO PROCEEDINGS AGAINST THE RECEIVER

7. No proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**"), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

NO PROCEEDINGS AGAINST THE RESPONDENTS OR THE PROPERTY

8. No Proceeding against or in respect of any of the Respondents or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Respondents or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

9. All rights and remedies of any individual, firm, corporation, governmental body or agency or any other entity against the Respondents, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Receiver or the Respondents to carry on

any business which the Respondents are not lawfully entitled to carry on, (ii) exempt the Receiver or the Respondents from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien and the related filing of an action to preserve the right of a lien holder provided that the Respondents or the Receiver shall not be required to file a defence to same as the further prosecution of any such claim is stayed except with the written consent of the Receiver, or leave of this Court. All rights and remedies of any Person pursuant to any arrangement or agreement to which any of the Respondents are a party for the lease or other rental of personal property of any nature or kind are hereby restrained except with consent of the Receiver in writing or leave of this Court. The Receiver is authorized to return any Property which is subject to a lease from a third party to such Person on such terms and conditions as the Receiver considers appropriate and upon the Receiver being satisfied as to the interest of such Person in the applicable Property.

PERSONAL PROPERTY LESSORS

10. All rights and remedies of any Person pursuant to any arrangement or agreement to which either Respondent is a party for the lease or other rental of personal property of any nature or kind are hereby restrained except with consent of the Receiver in writing or leave of this Court. The Receiver is authorized to return any Property which is subject to a lease from a third party to such Person on such terms and conditions as the Receiver, acting reasonably, considers appropriate and upon the Receiver being satisfied as to the interest of such Person in the applicable Property. The return of any item by the Receiver to a Person is without prejudice to the rights or claims of any other Person to the property returned or to an interest therein.

NO INTERFERENCE WITH THE RECEIVER

11. Subject to Section 15 of this Order related to the Respondents' employees, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, license or permit in favour of or held by the Respondents, without written consent of the Receiver or leave of this Court.

CONTINUATION OF SERVICES

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

13. The Receiver, in its sole discretion, may (but shall not be obligated to) establish accounts or payment on delivery arrangements with suppliers in its name on behalf of a Respondent for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Respondent, or any of them, if the Receiver determines that the opening of such accounts is appropriate. No creditor of the Respondents shall be

under any obligation as a result this Order to advance or re-advance any monies or otherwise extend any credit to any of the Respondents.

RECEIVER TO HOLD FUNDS

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

EMPLOYEES

15. All employees of the Respondents shall remain the employees of the Respondents until such time as the Receiver, on the Respondents' behalf, may terminate the employment of such employees or they resign in accordance with their employment contracts. The Receiver shall not be liable as a result of this Order for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, wages, severance pay, termination pay, vacation pay, and pension or benefit amounts, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5), 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*, such amounts as may be determined in a Proceeding before a court or tribunal of competent jurisdiction.

16. Pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Receiver may disclose personal information of identifiable individuals to prospective purchasers or bidders

for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "**Sale**") as permitted at law. Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. A prospective purchaser or bidder requesting the disclosure of personal information shall execute such documents to confirm the agreement of such Person to maintain the confidentiality of such information on terms acceptable to the Receiver. The purchaser of any Property shall be entitled to continue to use the personal information provided to it related to the Property purchased in a manner which is in all material respects identical to the permitted prior use of such information by the Respondents, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

LIMITATION ON ENVIRONMENTAL LIABILITIES

17. Nothing herein contained shall require or obligate the Receiver to occupy or to take control, care, charge, occupation, possession or management (separately and/or collectively, "**Possession**") of any of the Property or any part thereof, that may be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other legislation, statute, regulation or rule of law or equity respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, *Canadian Environmental Protection Act, 1999* (Canada), the *Clean Water Act* (New Brunswick), the *Clean Environment Act* (New Brunswick), the *Clean Air Act* (New Brunswick), and *Unsightly Premises Act* (New Brunswick) (collectively, the "**Environmental Legislation**"), provided however that nothing herein shall

exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation.

LIMITATION ON LIABILITY

18. EY including, without limitation, any director, officer or employee of the Receiver, shall incur no liability or obligation as a result of its appointment as the Receiver or the carrying out the provisions of this Order, or in the case of any party acting as a director, officer or employee of the Receiver so long as acting in such capacity, save and except for any gross negligence, breach of contract or actionable misconduct on the part of such party, or in respect of the Receiver's obligations under sections 81.4(5) and 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

RECEIVER'S ACCOUNTS

19. The Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, and the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge to a maximum of $200,000.00 (the "**Administrative Charge**") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and the Administrative Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

20. Unless otherwise ordered by the Court, the Receiver and its legal counsel shall pass their respective accounts from time to time and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a Judge of the Court of Queen's Bench in New Brunswick in accordance with the Rules.

21. Prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees, expenses and disbursements, including legal fees and disbursements, incurred at the normal rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved in accordance with the preceding paragraph hereof.

RECEIVER'S INDEMNITY CHARGE

22. The Receiver shall be entitled to and is hereby granted a charge (the "**Receiver's Indemnity Charge**") upon all of the Property as security for all of the obligations incurred by the Receiver including obligations arising from or incident to the performance of its duties and functions under this Order including the management, operation and carrying on of all or part of the business of any of the Respondents, the BIA or otherwise, saving only liability arising from negligence or actionable misconduct of the Receiver.

23. The Receiver's Indemnity Charge shall form a second charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA and subordinate in priority to the Administrative Charge.

ALLOCATION OF COSTS

24. The Receiver shall file with the Court for its approval a report setting out the costs, fees, expenses and liability of the Receiver giving rise to the Administrative Charge, the Receiver's Indemnity Charge and the Receiver's Borrowings Charge (as defined below) and, unless the Court orders otherwise, all such costs, fees, expenses and liability shall be paid in the following manner:

    a. Firstly, applying the costs incurred in the receivership proceedings specifically attributable to an individual asset or group of assets against the realizations from such asset or group of assets;

b. Secondly, applying the costs pro rata against all of the assets based on the net realization from such asset or group of assets; and

c. Thirdly, applying non-specific costs incurred in the receivership proceedings *pro rata* against all of the assets based on the net realization from each asset or group of assets.

FUNDING OF THE RECEIVERSHIP

25. The Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed $400,000.00 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of making payments (including interim payments) required or permitted to be made by this Order (including, without limitation, payments of amounts secured by the Administrative Charge and the Receiver's Indemnity Charge). The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "**Receiver's Borrowings Charge**") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Indemnity Charge, the Administrative Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

26. Neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court on seven days' notice to the Receiver and the Applicants.

27. The Receiver is authorized to issue certificates substantially in the form annexed as Schedule "C" hereto (the "Receiver's Certificates") for any amount borrowed by it pursuant to this Order.

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

BANKRUPTCY

29. The Receiver is authorized and directed to make an assignment in bankruptcy, in accordance with the *BIA* in the name of and on behalf of the Respondents.

30. Nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Respondents and the Receiver is hereby authorized to act as the trustee of the Respondents.

GENERAL

31. The Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

32. The aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States is hereby requested to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Receiver in any foreign proceeding, or to assist the Receiver and its agents in carrying out the terms of this Order.

33. The Receiver is hereby authorized and empowered to apply to any court, tribunal, or regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Receiver is authorized and empowered to act in a representative capacity in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

34. FCC shall have its costs of this Application, up to and including entry and service of this Order, provided for by the terms of FCC's security or, if not so provided by FCC's security, then on a substantial indemnity basis to be paid by the Receiver from the Respondents' estate with such priority and at such time as this Court may determine.

35. Any interested party may apply to this Court to vary or amend this Order upon such notice required under the *Rules of the Court*, if any, or on such notice as this Court may order.

36. Any Person affected by this Order which did not receive notice in advance of the hearing of the initial application may apply to this Court to vary or amend this Order within five (5) days of such Person being served with a copy of this Order.

37. In addition to the reports to be filed by the Receiver under the BIA or New *Brunswick Business Corporations Act*, on the application to the Court of any secured creditor, the Receiver shall file a report of its activities with the Court.

38. The Receiver shall not be discharged without notice to such secured creditors and other parties as the Court directs.

Dated at __________, New Brunswick, this _____ day of June, 2020.

____

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

SCHEDULE "A"

EXCLUDED PROPERTY

SCHEDULE "B"

APPEARANCES

SCHEDULE "C"

RECEIVER CERTIFICATE

CERTIFICATE NO. _______________

AMOUNT $______________________

THIS IS TO CERTIFY that [RECEIVER'S NAME], the receiver (the "**Receiver**") of the assets, undertakings and properties [DEBTOR'S NAME] acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof save and except certain excluded assets (collectively, the "**Property**") appointed by Order of the Court of Queens Bench of New Brunswick (the "**Court**") dated the ___ day of ______, 20__ (the "**Order**") made in an action having Court file number _______, has received as such Receiver from the holder of this certificate (the "**Lender**") the principal sum of $___________, being part of the total principal sum of $___________ which the Receiver is authorized to borrow under and pursuant to the Order.

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

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

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

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

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

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

DATED the _____ day of ______________, 20__.

[RECEIVER'S NAME], solely in its capacity as Receiver of the Property, and not in its personal capacity

Per: ____________________________________

Name:

Title:

Schedule "B" - McCain Sale Approval and Vesting Order

Court File No.:_______________

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

MCCAIN SALE APPROVAL AND VESTING ORDER

UPON Hearing the Application for, *inter alia*, (i) the appointment of Ernst & Young Inc., as court-appointed Receiver and Receiver and Manager (the "**Receiver**") of all of the undertaking, property and assets of the Respondents (collectively, the "**Debtor**") save and except certain excluded Property and (ii) for an order approving the sale transaction (the "**Transaction**") contemplated by an agreement of purchase and sale (the "**Sale Agreement**") between the Debtor and McCain Farms, a division of McCain Produce Inc. (the "**Purchaser**"), a redacted copy of which is appended as an exhibit to the Report of the Receiver dated **[DATE]** (the "**Report**"), and vesting in the Purchaser all right, title and interest in and to those assets described in the Sale Agreement (the "**Purchased Assets**") pursuant to the terms thereof;

ON READING the **[affidavit]** and the Report and on hearing the submissions of counsel for the Receiver, **[NAMES OF OTHER PARTIES APPEARING]**, **[and counsel for those other parties appearing as indicated by the counsel sheet,]** no one appearing for any other person on the service list, although properly served as appears from the affidavit of **[NAME]** sworn **[DATE]** filed:

IT IS ORDERED THAT:

DEFINITIONS

1. Any capitalized terms used and not defined herein shall have the meanings given to them in the Sale Agreement.

SERVICE

2. The time for service of the Notice of Application is hereby abridged and validated so that the Application is properly returnable today.

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

APPROVAL AND VESTING

4. The Transaction is hereby approved, and that the Sale Agreement is commercially reasonable and in the best interests of the Debtor and its stakeholders. The adoption and ratification of the Sale Agreement by the Receiver is hereby authorized and approved, and the Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and the conveyance of the Sale Assets to the Purchaser. The execution of the Sale Agreement by either or both of the Debtor and the Receiver is hereby authorized and approved, with such amendments as the parties thereto may deem necessary with the consent or approval of the other part[ies] thereto, executed in writing. Either or both of the Debtor and the Receiver are hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchaser.

5. Upon the delivery of a Receiver's certificate to the Purchaser substantially in the form attached as Schedule A hereto (the "**Receiver's Certificate**"), all of the Debtor's right, title and interest in and to the Purchased Assets, including the real property legally described in Schedule B (the "**New Brunswick Property**"), shall vest absolutely in the Purchaser, including any assignee thereof permitted under the Sale Agreement, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**") including, without limiting the generality of the foregoing: **[(i) any encumbrances or charges created by the Order of the Honourable Justice [NAME] dated [DATE]]**; (ii) all charges, security interests or claims evidenced by registrations pursuant

to the *Personal Property Security Act* (New Brunswick) or any other personal property registry system; (iii) all Claims against title to the New Brunswick Property, whether or not that have been recorded or registered in the Registry Office pursuant to the *Registry Act* (New Brunswick) or in the Land Titles Office pursuant to the *Land Titles Act* (New Brunswick), or any other land registry system or other Claims; and (iv) those Claims listed on Schedule C hereto (all of which are collectively referred to as the "**Encumbrances**", which term shall not include the permitted encumbrances, easements and restrictive covenants listed on Schedule D (collectively, the "**Permitted Encumbrances**")) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

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

7. The Receiver is hereby authorized to distribute up to 98% of the net proceeds as provided in the Report of the Receiver dated ___________ or such portion thereof as the Receiver deems appropriate and on such additional terms as the Receiver may deem appropriate from facts or adjustments on closing of the Transaction. Any amount not distributed as provided herein shall be held by the Receiver pending further Order of this Court.

8. The Receiver is to file with the Court a copy of the Receiver's Certificate, forthwith after delivery thereof. The Receiver is further authorized to

execute and register discharges of any registered security or other interest extinguished by this Order following completion of the Transaction as necessary.

REAL AND IMMOVABLE PROPERTY REGISTRATIONS

9. The Registrar of Deeds or the Registrar of Land Titles shall record or register this Approval and Vesting Order in the Registry Office pursuant to *Registry Act* (New Brunswick) or in the Land Titles Office pursuant to the *Land Titles Act* (New Brunswick), as applicable, and shall enter the Purchaser as the owner of the New Brunswick Property in fee simple, and is hereby directed to delete and expunge all Encumbrances identified in Schedule C hereto from title to the New Brunswick Property, other than the Permitted Encumbrances identified in Schedule D hereto. Upon the recording or registration of this Approval and Vesting Order in the Registry Office or the Land Titles Office, as applicable, all rights, title and interest in and to the New Brunswick Property shall vest absolutely in the Purchaser, free and clear of and from any and all Encumbrances identified in Schedule C hereto, other than the Permitted Encumbrances identified in Schedule D hereto.

EQUIPMENT LEASE

10. The farming equipment lease, on substantially similar terms to the lease appended hereto as Schedule E (the "**Equipment Lease**"), is hereby approved and the execution of the Equipment Lease by the Receiver and the Debtor is hereby authorized and approved, with such minor amendments as the Receiver and the Debtor may deem necessary with the consent of the Purchaser in consultation with the Secured Lenders. The Receiver and the Debtor are hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Equipment Lease.

11. Upon the exercise of the Option (as defined in the Equipment Lease) and the delivery of the Receiver's certificate substantially in the form

attached as Schedule F hereto (the "**Receiver's Equipment Certificate**"), all of the right, title and interest in and to the equipment listed on Schedule G (the "**Farming Equipment**") hereto, shall vest absolutely in the Purchaser, including any assignee thereof permitted under the Equipment Lease, free and clear of and from any and all Encumbrances other than Permitted Encumbrances, and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Farming Equipment are hereby expunged and discharged as against the Farming Equipment, as of the time of the exercise of the Purchaser's Option pursuant to the Equipment Lease.

12. The Receiver is to file with the Court a copy of the Receiver's Equipment Certificate, forthwith after delivery thereof. The Receiver is further authorized to execute and register discharges of any registered security or other interest extinguished by this Order following exercise by the Purchaser of the Option, as necessary. Any discharge of registered security interests in personal property shall be completed by the addition of further language to any such registrations identifying the Farming Equipment against which such registration is discharged on the issuance of a Receiver's Equipment Certificate.

ADDITIONAL PROVISIONS

13. Pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Receiver is authorized and permitted to disclose and transfer to the Purchaser all human resources and payroll information in the Debtor's records pertaining to the Debtor's past and current employees. The Purchaser shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the Debtor.

14. Notwithstanding:

    a. the pendency of these proceedings;

b. any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of the Debtor and any bankruptcy order issued pursuant to any such applications; and

c. any assignment in bankruptcy made in respect of the Debtor;

the vesting of the Purchased Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Debtor and shall not be void or voidable by creditors of the Debtor, nor shall it constitute nor be deemed to be a settlement, fraudulent preference, assignment, fraudulent conveyance or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

AID AND RECOGNITION

15. The aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

DATED at Saint John, New Brunswick this ___ day of June, 2020.

____

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

SCHEDULE A

Form of Receiver's Certificate

Court File No.:_______________

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

CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable **[NAME OF JUDGE]** of the New Brunswick Court of Queen's Bench (the "**Court**") dated **[DATE OF ORDER]**, Ernst & Young Inc. was appointed as the Receiver and Receiver Manager (the "**Receiver**") of certain of the undertaking, property and assets of Hillspring Farms Ltd., HSF Foods Ltd., Hillspring Warehouse & Logistics Inc. (collectively, the "**Debtor**").

B. Pursuant to an Order of the Court dated [DATE], the Court approved the agreement of purchase and sale made as of **[DATE OF AGREEMENT]** (the "**Sale Agreement**") between the Debtor and McCain Farms, a division of McCain Produce Inc. (the "**Purchaser**") and provided for the vesting in the Purchaser of all of the Debtor's right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Receiver to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing as set out in article 6 of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the Receiver.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.

THE RECEIVER CERTIFIES the following:

1. The Purchaser has paid and the Receiver has received the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the Sale Agreement;

2. The conditions to Closing as set out in article 6 of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and

3. The Transaction has been completed to the satisfaction of the Receiver.

This Certificate was delivered by the Receiver at _______ [TIME] on _______ [DATE].

ERNST & YOUNG INC., in its capacity as Receiver of the undertaking, property and assets of HILLSPRING FARMS LTD. et al., and not in its personal capacity

Per:

____

Name:

Title:

SCHEDULE B

Purchased Real Property

SCHEDULE C

Encumbrances

SCHEDULE D

Permitted Encumbrances
(unaffected by the Vesting Order)

SCHEDULE E

Equipment Lease

SCHEDULE F

Receiver's Equipment Certificate

SCHEDULE G

Farming Equipment

Schedule "C" - Residual Property Sale Approval Order

Court File No.:______________

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

APPROVAL AND VESTING ORDER

UPON Hearing the Application for, *inter alia*, (i) the appointment of Ernst & Young Inc., as court-appointed Receiver and Receiver and Manager (the "**Receiver**") of all of the undertaking, property and assets of the Respondents (collectively, the "**Debtor**") save and except certain excluded Property and (ii) for an order approving the Receiver completing a sale(s) of all Property not forming part of the sale transaction (collectively, the "**Residual Property**") contemplated by an agreement of purchase and sale between the Debtor and McCain Farms, a division of McCain Produce Inc.;

ON READING the **[affidavit]** and the Report and on hearing the submissions of counsel for the Receiver, **[NAMES OF OTHER PARTIES APPEARING]**, **[and counsel for those other parties appearing as indicated by the counsel sheet,]** no one appearing for any other person on the service list, although properly served as appears from the affidavit of **[NAME]** sworn **[DATE]** filed:

IT IS ORDERED THAT:

SERVICE

1. The time for service of the Notice of Application is hereby abridged and validated so that the Application is properly returnable today.

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

APPROVAL

3. The Receiver is authorized and directed to take such steps and execute such documents as may be necessary or desirable to complete a sales process to effect the sale of all of the Residual Property by way of private sale, public auction or tender subject to the following terms:

a. the Receiver is authorized and directed to sell the Residual Property by way of private sale, public auction or public tender at such price and on such terms as the Receiver deems appropriate after notice to and the concurrence of such secured creditor, if any, having a first ranking interest therein;

b. any auction or tender shall be conducted on such terms as the Receiver deems appropriate provided that the Receiver shall ensure that:

    i. notice of the auction or tender shall be advertised for a minimum period of 30 days by such methods as are typically employed by a qualified auctioneer or in a tender, as applicable;

    ii. the terms of sale shall include that all Residual Property to be disposed of will be sold on an "as is where is" basis; and

    iii. any item of personal property located on the real property of the Respondents, not already sold by the Receiver, or occupied by the Receiver shall be removed without causing damage to such real property or the buildings located thereon and any purchaser shall be responsible for ensuring same and shall indemnify the Receiver for any damage;

4. The foregoing sales processes are hereby approved and confirmed as commercially reasonable and in the best interests of the estate of the Respondents.

CERTIFICATE & VESTING

5. The Receiver is authorized and directed to issue a Receiver's Residual Property Certificate upon being satisfied that the terms of the related transaction have been completed to its satisfaction.

6. Upon the delivery of a Receiver's certificate or certificates to a purchaser substantially in the form attached as Schedule A hereto (the "**Receiver's Residual Property Certificate**"), all of the Debtor's right, title and interest in and to the Residual Property identified in the applicable Receiver's Residual Property Certificate (the "**Sale Property**") shall vest absolutely in the purchaser, including any assignee thereof permitted under the Sale Agreement, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**") including, without limiting the generality of the foregoing: **[(i) any encumbrances or charges created by the Order of the Honourable Justice [NAME] dated [DATE]]**; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (New Brunswick) or any other personal property registry system; (iii) all Claims against title to the New Brunswick Property, whether or not that have been recorded or registered in the Registry Office pursuant to the *Registry Act* (New Brunswick) or in the Land Titles Office pursuant to the *Land Titles Act* (New Brunswick), or any other land registry system or other Claims; and (iv) those Claims listed on Schedule B hereto (all of which are collectively referred to as the "**Encumbrances**", which term shall not include the permitted encumbrances, easements and restrictive covenants listed on Schedule C (collectively, the "**Permitted Encumbrances**")) in relation to the real property forming part of the Residual Property and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Sale Property are hereby

expunged and discharged as against the Sale Property. Any discharge of registered security interests in personal property shall be completed by the addition of further language to any such registrations identifying the personal property against which such registration is discharged on the issuance of a Receiver's Residual Property Certificate.

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

8. The Receiver is to file with the Court a copy of the Receiver's Residual Property Certificate, forthwith after delivery thereof. The Receiver is further authorized to execute and register discharges of any registered security or other interest extinguished by this Order following completion any sale of Sale Property as necessary.

REAL AND IMMOVABLE PROPERTY REGISTRATIONS

9. The Registrar of Deeds or the Registrar of Land Titles shall record or register this Approval and Vesting Order in the Registry Office pursuant to *Registry Act* (New Brunswick) or in the Land Titles Office pursuant to the *Land Titles Act* (New Brunswick), as applicable, and shall enter the Purchaser as the owner of any real property forming part of the Sale Property in fee simple, and is hereby directed to delete and expunge all Encumbrances identified in Schedule B hereto from title to such real property, other than the Permitted Encumbrances identified in Schedule C hereto. Upon the recording or registration of this Approval and Vesting Order in the Registry Office or the Land Titles Office, as applicable, all rights, title and interest in and to the applicable real property forming part

of the Sale Property shall vest absolutely in the Purchaser, free and clear of and from any and all Encumbrances, other than the Permitted Encumbrances identified in Schedule C hereto.

ADDITIONAL PROVISIONS

10. Notwithstanding:

   a. the pendency of these proceedings;

   b. any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of the Debtor and any bankruptcy order issued pursuant to any such applications; and

   c. any assignment in bankruptcy made in respect of the Debtor;

the vesting of the Purchased Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Debtor and shall not be void or voidable by creditors of the Debtor, nor shall it constitute nor be deemed to be a settlement, fraudulent preference, assignment, fraudulent conveyance or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

AID AND RECOGNITION

11. The aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may

be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

DATED at Saint John, New Brunswick this ___ day of June, 2020.

____

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

SCHEDULE "A"

Court File No.:_______________

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

RECEIVER'S RESIDUAL PROPERTY CERTIFICATE

RECITALS

A. Pursuant to an Order of the New Brunswick Court of Queen's Bench (the "**Court**") dated June ____, 2020 (the "**Appointment Order**"), the Court appointed Ernst & Young Inc. as receiver and manager (the "**Receiver**") of certain of the undertaking, property and assets (the "**Property**") of the Respondents, and granted the Receiver those powers and authorizations as set out in the Appointment Order to dispose of certain of the Property.

B. Pursuant to an Order of the Court dated June ___, 2020 (the "**Residual Property Sale Approval Order**"), the Court approved the sale of the Respondent's personal and real property including the property identified in Schedule "A" hereto (the "**Sale Property**") and provided for the vesting in a purchaser (the "**Purchaser**") all right, title and interest in and to the Sale Property, which vesting is to be effective with respect to the Sale Property upon the delivery by the Receiver to the Purchaser of a certificate confirming: (i) the receipt by the Receiver of payment by the Purchaser of the purchase price for the Sale Property; and (ii) the sale has been completed to the satisfaction of the Receiver in accordance with the Residual Property Sale Approval Order.

THE RECEIVER CERTIFIES THE FOLLOWING:

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

2. The sale of the Sale Property to __________________________ has been completed to the satisfaction of the Receiver and in accordance with the Residual Property Sale Approval Order.

This Receiver's Certificate was delivered by the Receiver at_______ [TIME] on_______ [DATE].

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

Per: ______________________

Name:

Title:

Schedule "A" to Receiver's Certificate

Sale Property sold to ______________, a Purchaser

SCHEDULE B

Encumbrances

SCHEDULE C

Permitted Encumbrances
(unaffected by the Vesting Order)

Schedule "D" - Sealing Order

Court File No.:_______________

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

SEALING ORDER

THIS APPLICATION, made by the Applicants for an Order i) appointing Ernst & Young Inc., as Court appointed Receiver and Receiver and Manager (the "**Receiver**") of certain of the undertaking, property and assets of the Respondents (the "**Debtors**"); and ii) for an order approving the sale transaction (the "**Transaction**") was heard this ___th day of June, 2020 at _________, _______________, New Brunswick.;

ON READING the **[affidavit]** and the Report and on hearing the submissions of counsel for the Receiver, **[NAMES OF OTHER PARTIES APPEARING]**, **[and counsel for those other parties appearing as indicated by the counsel sheet,]** no one appearing for any other person on the service list, although properly served as appears from the affidavit of **[NAME]** sworn **[DATE]** filed:

IT IS HEREBY ORDERED THAT: The Confidential Supplemental Report of the Proposed Receiver dated June ___, 2020 shall be sealed, kept confidential and not form part of the public record, but rather shall be placed, separate and apart from all other contents of the Court file, in a sealed envelope and shall only be opened after the completion of the Receivership provided that the Receiver may release parts of the Confidential Supplemental Report or the attachments thereto following completion of the Transaction or the sale of Residual Property provided the recipient of such material executes a confidentiality agreement in form and substance acceptable to the Receiver.

DATED at Saint John, New Brunswick this ___ day of June, 2020.

____

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