

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

SALES PROCESS APPROVAL AND VESTING ORDER

UPON Hearing the Motion of Ernst & Young Inc., as court-appointed Receiver and Receiver and Manager (the "Receiver") of certain of the undertaking, property and assets of the Respondents (collectively, the "Debtor") for an order approving the Receiver completing a sale(s) of certain

COURT OF QUEEN'S BENCH
CLERK / SAINT JOHN

REC'D
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AUG 10 2020
DEPOSE
FILED

COUR DU BANC DE LA REINE
GREFFIERE SAINT-JEAN

residual equipment of the Debtor not previously sold pursuant to an order of this Court (the “**Auction Assets**”) and the real property identified by parcel identifier 10121499 (the “**Real Property**” and, collectively with the Auction Assets, sometimes the “**Sale Property**”);

ON READING the materials filed in this matter as contained in the Record on Motion including the Report of the Receiver dated July 27, 2020 (the “**Report**”) and on hearing the submissions of counsel for the Receiver and counsel for those other parties appearing:

IT IS ORDERED THAT:

SERVICE

1. The time for service of the Notice of Motion is hereby abridged and validated so that the Motion is properly returnable today.
2. There has been good and sufficient notice, service, and delivery of the within Notice of Motion and Record on Motion and further service on any interested party is hereby dispensed with.

APPROVAL

3. The Receiver is authorized and directed to take such steps and execute such documents as may be necessary or desirable to complete the sale of the Auction Assets by way of a public auction in accordance with the terms of the auction proposal of Jardine Auctioneers and filed with the Report.
4. The Receiver is authorized and directed to take such steps and execute such documents as may be necessary or desirable to complete a sale of the Real Property in accordance with the terms of the agreement of purchase and sale with Peter Carpenter described in the confidential supplemental report of the Receiver dated July 27, 2020.

CERTIFICATE & VESTING

5. The Receiver is authorized to issue a Receiver's certificate or certificates to a purchaser substantially in the form attached as

Schedule "A" hereto (a "**Receiver's Certificate**"). Upon the delivery of a Receiver's Certificate, all of the Debtor's right, title and interest in and to the Sale Property identified in the applicable Receiver's Certificate shall vest absolutely in the purchaser, including any assignee thereof permitted under the applicable 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 this Honourable Court on June 26, 2020 appointing the Receiver; (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 Real Property, whether or not they 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 in relation to Real Property (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"** hereto (collectively, the "**Permitted Encumbrances**") in relation to the Real Property forming part of the Sale 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 the Auction Assets shall be completed by the addition of further language to any such registrations identifying the Auction Assets against which such registration is discharged on the issuance of a Receiver's Certificate.

6. 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 instead of the Sale Property, 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 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.

7. The Receiver is to file with the Court a copy of each Receiver's Certificate issued in accordance with this Order, 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

8. 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 with a copy of the executed Receiver's Certificate attached 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

9. 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

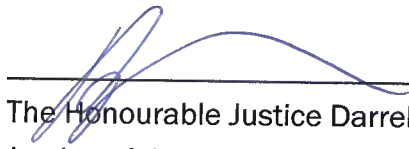
c. any assignment in bankruptcy made in respect of the Debtor;

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

10. 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 10th day of August 2020.


The Honourable Justice Darrell J. Stephenson
Justice of the Court of Queen's Bench of New
Brunswick

SCHEDULE "A"

Court File No.: SJM-46-2020

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each a New Brunswick Corporation

RESPONDENTS

RECEIVER'S CERTIFICATE



RECITALS

A. Pursuant to an Order of the Honourable Darrell J. Stephenson of the New Brunswick Court of Queen's Bench (the "**Court**") dated June 26, 2020, Ernst & Young Inc. was appointed as the Receiver and Receiver Manager (the "**Receiver**") of all of the undertaking, property and assets of Hillspring Farms Ltd., HSF Foods Ltd., Hillspring Warehouse & Logistics Inc. (collectively, the "**Debtor**") save and except certain excluded Property.

B. Pursuant to an Order of the Court dated July ____, 2020 (the "**Sales Process Approval and Vesting Order**"), the Court approved the sale of certain 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 Sales Process Approval and Vesting 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 Sales Process Approval and Vesting 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:

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Schedule "A" to Receiver's Certificate
Sale Property sold to _____, a Purchaser

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SCHEDULE "B"

Encumbrances

A. Personal Property

All registrations under the *Personal Property Security Act* (New Brunswick) and under the *Bank Act* (Canada).

B. Real Property

Item	Encumbrance	Registration No.	Parcel Identifier Number(s)
1.	Farm Credit Canada 1133 St. George BLVD SUITE 200 Moncton NB E1E 4E1 Mortgagee Créancier hypothécaire Collateral Mortgage Hypothèque subsidiaire Carleton 2018-01-11	37715373	10121499

175

SCHEDULE "C"

Permitted Encumbrances (unaffected by the Vesting Order)

A. Personal Property

None

B. Real Property

Item	Encumbrance Registration No.	Parcel Identifier Number(s)
1.	Aliant Telecom Inc. 1 Brunswick SQ PO BOX 1430 Saint John NB E2L 4K2 Easement Holder Titulaire de la servitude Agreement Convention Carleton 1974-08-08 247 - 783 123526 New Brunswick Power Corporation 515 King ST PO BOX 2000 Fredericton NB E3B 4X1 Easement Holder Titulaire de la servitude Agreement Convention Carleton 1974-08-08 247 - 783 123526	10121499

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