

Court File No.: SJM-46-2020

IN THE COURT OF QUEEN'S BENCH OF NEW BRUNSWICK

IN BANKRUPTCY AND INSOLVENCY

JUDICIAL DISTRICT OF SAINT JOHN

IN THE MATTER OF THE RECEIVERSHIP OF:

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

-and-

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

BETWEEN:

FARM CREDIT CANADA, a Federal Crown Corporation

-and-

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

APPLICANTS,

- and -

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

RESPONDENTS

NOTICE OF MOTION
(FORM 37A)

TO: The Persons on the Service List attached as **Schedule "A"** to this Notice of Motion

Ernst & Young Inc. as the Court appointed receiver and receiver-manager (the "**Receiver**") of certain property, assets and undertaking (the "**Property**") of 693528 NB LTD., formerly Hillspring Farms Ltd. ("**Hillspring**"), HSF Foods Ltd. ("**HSF**") and 693206 NB INC., formerly Hillspring Warehouse & Logistics Inc. (collectively, the "**Respondent**") pursuant to the Order of the Court dated June 29, 2020 and effective as of June 26, 2020 (the "**Initial Order**") will apply to the Court of Queen's Bench, at 10 Peel Plaza, Saint John, New Brunswick, on the 9th day of December 2020, at 10:00 a.m. ADT for, *inter alia*, the following relief:

1. if necessary, an order abridging and validating the timing and method of service of the Notice of Motion, Receiver's Report(s) and the Record on Motion so that this Motion is properly returnable and further service is dispensed with;
2. an order substantially in the form and substance of the draft order attached hereto as **Schedule "B"** (the "**Sales Process Approval and Vesting Order**"):
 - a. declaring that the Receiver is authorized to sell the real property identified by parcel identifier 10264810 (the "**Real Property**") by way of private sale pursuant to the agreement of purchase and sale with Antrim Developments Inc. (the "**Antrim Transaction**") enclosed with the report of the Receiver filed in support of this motion (the "**Second Report**") and to take such steps and execute such documents as may be necessary or desirable for the sale of the Real Property;
 - b. declaring that the Receiver is authorized to take such steps and execute such documents as may be necessary or desirable for the sale of thirteen (13) units of personal property of the Respondent forming part of the Property (the "**Personal Property**") and described in the Second Report by way of public auction as described in the Receiver's Second Report (the "**2021 Auction**");
 - c. an order authorizing and approving the execution and delivery by the Receiver of a receiver's certificate or certificates (a "**Receiver's 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 Personal Property and the

Real Property (collectively, the “Sale Property”);

- d. an order declaring that upon the delivery of a Receiver’s Certificate, all right, title and interest in and to the applicable Sale Property 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 Sales Process Approval and Vesting Order;
 - e. an order that to the extent necessary, declaring that for the purposes of determining the nature and priority of claims, the net proceeds from the sale of any Sale Property (the “Sale Property Proceeds”) shall stand in the place and stead of the Sale Property sold, and that from and after the delivery of the Receiver’s Certificate all claims and encumbrances shall attach to the Sale Property Proceeds with the same priority as they had with respect to such Sale Property immediately prior to the sale;
 - f. authorizing and approving the Receiver making the distributions set out in the Second Report on such terms and conditions as the Receiver may determine are appropriate (collectively, the “Distributions”);
3. such further and other relief as may be just.

The grounds upon which the Applicant relies are as follows:

1. the relief sought by the Receiver is appropriate in the circumstances and is in accordance with the jurisdiction of this Court;
2. the Sale Property has been appraised by the Receiver and is of a type that can be sold through the sales processes proposed by the Receiver and reflected in the Sales Process Approval and Vesting Order;
3. the Receiver has considered the various methods by which it could realize on the Sale Property and has concluded that the method of an auction of the Personal Property as contemplated by the 2021 Auction and the Antrim Transaction is the commercially reasonable manner to realize on this Property;
4. the Receiver has consulted with the secured creditors having an interest in

the Sale Property and they have confirmed their support for the within request for the Sales Process Approval and Vesting Order and the sales process contemplated therein;

5. the approval of the sales process, and the other requested relief as set out in the Sales Process Approval and Vesting Order, is in the best interests of the Respondent's stakeholders as:
 - a. it provides, or is the result of, a clear and transparent process for all stakeholders in relation to the sale of the Sale Property;
 - b. will allow the Receiver to commence an auction process in relation to the Personal Property that will allow any purchaser at that auction to have confidence in the integrity of the sale and obtain a Receiver's Certificate to evidence same;
 - c. the proposed 2021 Auction will be consistent with the previous auction approved by the Court;
 - d. the sale price of the Real Property is supported by the appraisals and the Antrim Transaction was reached through the listing of the Real Property with a realtor in a public process;
 - e. The process to achieve the Antrim Transaction has been fair to all stakeholders;
6. the proposed Distributions are appropriate given the state of the proceedings and the interests of the parties;
7. as to all of the relief requested, the Receiver will also rely on such other grounds as may be appropriate and which this Honourable Court may permit; and
8. the Rules including Rules 1, 1.03, 2, 2.01, 2.02, 3, 3.02, 4.05 (6) 18, 18.09, 37, 39, 41, 41.04 and 41.06, the Judicature Act including section 33, and the *Bankruptcy and Insolvency Act* (R.S.C., 1985, c. B-3).

UPON the hearing of the motion the following affidavit or other documentary evidence will be presented:

1. The Second Report of the Receiver to be filed prior to the hearing;

2. all materials filed to date with the Court in this matter; and
3. such further and other affidavits or documentary evidence as counsel may advise and this Honourable Court may permit.

You are advised that:

1. you are entitled to issue documents and present evidence at the hearing in English or French or both;
2. the applicant intends to proceed in the English language; and
3. if you intend to proceed in the other official language, an interpreter may be required and you must so advise the Clerk at least 7 days before the hearing.

DATED at Saint John, New Brunswick this 1st day of December, 2020

COX & PALMER

Per:


Josh J.B. McElman of Cox & Palmer,
Solicitors for Ernst & Young Inc., as court appointed
receiver and receiver-manager of the Respondents

Cox & Palmer
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Schedule "A"

Service List

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IN BANKRUPTCY AND INSOLVENCY JUDICIAL DISTRICT OF SAINT JOHN

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RESPONDENTS

SERVICE LIST

Hillspring Farms Ltd. et al.

Farm Credit Canada c/o Cox & Palmer Brunswick Square, Suite 1500, 1 Germain Street, Saint John, NB E2L 4V1 Attention: Jason Inman Email: jason.inman@fcc-fac.ca	Cox & Palmer Brunswick Square, Suite 1500, 1 Germain Street, Saint John, NB E2L 4V1 Attention: Josh McElman Email: jmcelman@coxandpalmer.com <i>Counsel to Farm Credit Canada</i>
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Bank of Nova Scotia - Atlantic CAU 1465 Brenton Street, 4th Floor Halifax NS B3J3T4 Canada and The Bank of Nova Scotia 10 Wright Boulevard Stratford, ON N5A 7X9 Attention: Faryaal Butt and Cymanthia Elliott Emails: Faryaal.butt@scotiabank.com; cymanthia.elliott@scotiabank.com	Bank of Montreal Working Capital Solutions 115 S. LaSalle Street, 19th Floor Chicago IL 60603 USA Attention: Global Trade & Banking
Business Development Bank of Canada 30 Knowledge Park Dr., Suite 101 Fredericton, NB E3C 2R2 Attention: Patrick Caissie Email: Patrick.Caissie@bdc.ca	Wickwire Holm Barristers & Solicitors 300 - 1801 Hollis Street PO Box 1054 Halifax, NS B3J 2X6 Attention: Marc Dunning Email: mdunning@wickwireholm.com <i>Counsel to Business Development Bank of Canada</i>
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Email: tony.richardson@mcinnescooper.com	
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Master Packaging Inc. 300 Union Street Saint John, NB E2L 4Z2 P.O. Box 2667 Charlottetown, PE C1A 8C3 Attention: Marcus Kennedy Email: Kennedy.Marcus@master-packaging.com	De Lage Landen Financial Services Canada Inc. 3450 Superior Court, Unit 1 Oakville ON L6L 0C4 <u>Agent</u> Stewart McKelvey Corporate Services (NB) Inc. 44 Chipman Hill Suite 1000 PO Box 20105 Stn, Brunswick Square Saint John, NB E2L 5B2 Attention: Maurice Chiasson Email: mchiasson@stewartmckelvey.com
Oregon Potato Company	Marty's Electric Ltd.

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RW Burpee Carpentry & Contracting Ltd., 1306 Rte 560 Jacksontown, NB E7M 3L7 <u>Agent:</u> Purvis Culbert Law 105 Connell Street Unit 5 Woodstock, NB E7M 1K7 Attention: Timothy T. Culbert Email: tim@purvisculbertlaw.ca	Siemens Canada Limited and Dresser-Rand Canada ULC 1577 North Service Road E Oakville, ON L6H 0H6 <u>Agent</u> Stewart McKelvey Corporate Services (NB) Inc. 44 Chipman Hill Suite 1000 PO Box 20105 Stn, Brunswick Square Saint John, NB E2L 5B2 Attention: Maurice Chiasson Email: mchiasson@stewartmckelvey.com
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Province of New Brunswick Departments

Department of Energy & Natural Resources Minister of Natural Resources and Energy PO BOX/CP 6000 Fredericton NB E3B 5H1 Email: dnr_mrnweb@gnb.ca; Bryan.Mills@gnb.ca	Department of Finance Revenue and Taxation Division P.O. Box 100 Fredericton, N.B. E3B 1B0 Email: wwwfin@gnb.ca; Bryan.Mills@gnb.ca
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Department of Environment and Local Government Marysville Place P. O. Box 6000 Fredericton, NB E3B 5H1 Email: elg/egl-info@gnb.ca ; Bryan.Mills@gnb.ca	Office of the Attorney General for New Brunswick Civil Litigation Group Chancery Place 675 King Street Fredericton, NB E3B 1E9 Attention: Jean-Francois Dupuis, Lawyer Tel: (506) 453-4313 Fax (506) 453-3275 Email: jean-francois.dupuis@gnb.ca ; Bryan.Mills@gnb.ca
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Federal Government

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Schedule "B"

Sales Process Approval and Vesting Order

Court File No.: SJM-46-2020

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IN BANKRUPTCY AND INSOLVENCY

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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 (the "Property") of the Respondents (collectively, the "Debtor") for an order approving the Receiver completing a sale(s) of certain personal property of the Debtor set out in **Schedule "A"** hereto forming part of the Property (the "Personal Property") and the real property identified by parcel identifier 10264810 (the "Real Property" and, collectively with the Personal Property, sometimes the "Sale Property");

ON READING the materials filed in this matter as contained in the Record on Motion including the Second Report of the Receiver dated _____, 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 to take such steps and execute such documents as may be necessary or desirable to complete the sale of the Personal Property by way of a public auction with Jardine Auctioneers on the terms and conditions as set out in 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 Antrim described in the Report.

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 "B"** 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 "C"** 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 "D"** 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 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 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 stead 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 "C" hereto from title to such Real Property, other than the Permitted Encumbrances identified in Schedule "D" 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.

DISTRIBUTION

10. The Receiver is hereby authorized to make the distributions set out on its Report or such portion thereof as the Receiver deems appropriate and on such additional terms as the Receiver may deem appropriate. Any amount not distributed as provided herein shall be held by the Receiver pending further Order of this Court.

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 _____, 2020.

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

Schedule "A"

Personal Property

1. Case IH Combine 7088
2. Sprayer, SPX3320
3. 2003 Case International MX285
4. 2017 LKWD 656 6-Row Windrower
5. Betterbuilt Seed Piece Treater
6. Lockwood 2 Row Harvester
7. Lockwood Planter # 2
8. Case 966 Tractor
9. Lockwood 6 Row Windrower
10. Big Jim 36ft. Superflex packer, 5 section, 19 inch notched ductile wheels, highway light kit, mud scrapers Conveyor
11. 2012 Lockwood 506P Planter
12. Lockwood 2 Row Harvester 472AH
13. Mayrath 8" PTO Grain Auger-48" Long on Wheels

SCHEDULE "B"

Court File No.: SJM-46-2020

IN THE COURT OF QUEEN'S BENCH OF NEW BRUNSWICK

IN BANKRUPTCY AND INSOLVENCY

JUDICIAL DISTRICT OF SAINT JOHN

IN THE MATTER OF THE RECEIVERSHIP OF:

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

-and-

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

BETWEEN:

FARM CREDIT CANADA, a Federal Crown Corporation

-and-

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

APPLICANTS,

- and -

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

RESPONDENTS

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 _____, 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:

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

SCHEDULE "C"

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 2015-05-06 - 34811720		10264810
2.	Ernst & Young Inc. 1871 Hollis ST SUITE 500 Halifax NS B3E 0C3 Claimant Réclamant Court Vesting Order Ordonnance d'envoi en possession Carleton 2020-07-03 - 40214166		10264810

SCHEDULE "D"

Permitted Encumbrances (unaffected by the Vesting Order)

A. Personal Property

None

B. Real Property

Item	Encumbrance Registration No.	Parcel Number(s)	Identifier
1.	Aliant Telecom Inc. 1 Brunswick SQ PO BOX 1430 Saint John NB E2L 4K2 Easement Holder Titulaire de la servitude Retracement & Plan or Return of Survey Retracer et plan ou document d'arpentage Carleton 1986-01-30 - 156239A	10264810	
2.	New Brunswick Power Corporation 515 King ST PO BOX 2000 Fredericton NB E3B 4X1 Easement Holder Titulaire de la servitude Retracement & Plan or Return of Survey Retracer et plan ou document d'arpentage Carleton 1986-01-30 - 156239A	10264810	
3.	Town of Woodstock 824 Main ST Woodstock NB E7M 2E8 Easement Holder Titulaire de la servitude Retracement & Plan or Return of Survey Retracer et plan ou document d'arpentage Carleton 1986-01-30 - 156239A	10264810	

4.	Aliant Telecom Inc. 1 Brunswick SQ PO BOX 1430 Saint John NB E2L 4K2 Easement Holder Titulaire de la servitude Agreement Convention Carleton 1992-07-15 543 - 321 177178	10264810
5.	New Brunswick Power Corporation 515 King ST PO BOX 2000 Fredericton NB E3B 4X1 Easement Holder Titulaire de la servitude Agreement Convention Carleton 1992-07-15 543-32 177178	10264810