

**THOMAS CANNING (MAIDSTONE) LIMITED AND  
692194 ONTARIO LIMITED**

**November 1, 2017**

Court File No. CV-17-11773-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

**BETWEEN:**

**BRIDGING FINANCE INC., as agent for SPROTT BRIDGING INCOME FUND LP**

**Applicant**

**- and -**

**THOMAS CANNING (MAIDSTONE) LIMITED and 692194 ONTARIO LIMITED**

**Respondents**

**APPLICATION UNDER subsections 47(1) and 243(1) of the *Bankruptcy and Insolvency Act*,  
R.S.C. 1985, c. B-3, as amended, and under section 101 of the  
*Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended**

**FOURTH REPORT OF RICHTER ADVISORY GROUP INC.  
IN ITS CAPACITY AS RECEIVER OF  
THOMAS CANNING (MAIDSTONE) LIMITED and 692194 ONTARIO LIMITED**

**November 1, 2017**

## APPENDICES

- APPENDIX "A" MONITOR ORDER DATED MAY 1, 2017
- APPENDIX "B" RECEIVERSHIP ORDER DATED JUNE 21, 2017
- APPENDIX "C" APPROVAL AND VESTING ORDER DATED JUNE 21, 2017
- APPENDIX "D" ENDORSEMENT OF THE HONOURABLE MR. JUSTICE HAINEY DATED SEPTEMBER 13, 2017
- APPENDIX "E" FIRST REPORT OF THE RECEIVER DATED SEPTEMBER 18, 2017 (WITHOUT APPENDICES)
- APPENDIX "F" SECOND REPORT OF THE RECEIVER DATED SEPTEMBER 25, 2017 (WITHOUT APPENDICES)
- APPENDIX "G" ENDORSEMENT OF THE HONOURABLE MR. JUSTICE MCEWEN DATED SEPTEMBER 27, 2017, ORDER OF THE HONOURABLE MR. JUSTICE MCEWEN DATED SEPTEMBER 27, 2017 AND ENDORSEMENT OF THE HONOURABLE MR. JUSTICE MCEWEN DATED OCTOBER 6, 2017
- APPENDIX "H" ENDORSEMENT OF THE HONOURABLE MR. JUSTICE MCEWEN DATED OCTOBER 13, 2017
- APPENDIX "I" ENDORSEMENT OF THE HONOURABLE MR. JUSTICE MCEWEN DATED OCTOBER 16, 2017

## I. INTRODUCTION

1. Pursuant to the Order of The Honourable Mr. Justice Newbould of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated May 1, 2017 (the "**Monitor Order**"), Richter Advisory Group Inc. ("**Richter**") was appointed as monitor (the "**Monitor**") of all of the assets, properties and undertakings (collectively, the "**Property**") of Thomas Canning (Maidstone) Limited ("**TCL**") and 692194 Ontario Limited (together with TCL, the "**Company**") pursuant to section 101 of the *Courts of Justice Act*, R.S.O. 1990 c. C.43, as amended (the "**CJA**"). A copy of the Monitor Order is attached hereto and marked as **Appendix "A"**.
2. Pursuant to the Monitor Order, the Court authorized the Monitor to market the Company's business and Property in accordance with the terms of a refinancing, investment and/or sale process (the "**RISP**") agreed to by the Company and the Applicant, Bridging Finance Inc., as agent for Sprott Bridging Income Fund LP ("**Bridging**").
3. Following completion of the RISP, Bridging proceeded with its application for the appointment of Richter as receiver of the Company and the Property for the purposes of, among other things, completing the sale transaction with the successful offeror.
4. Pursuant to the Order of The Honourable Madam Justice Conway dated June 21, 2017 (the "**Receivership Order**"), Richter was appointed as receiver (the "**Receiver**") of the Company and the Property under section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended and section 101 of the CJA. A copy of the Receivership Order is attached hereto and marked as **Appendix "B"**.
5. Additionally, the Court, pursuant to the Approval and Vesting Order dated June 21, 2017 (the "**Approval and Vesting Order**"), approved a sale of substantially all of the Property to 2581150 Ontario Inc. (the "**Purchaser**") (the "**Sale Transaction**"). The Purchaser was the only party that had an outstanding offer to purchase the Property. The Company did not oppose and consented to the approval of the Sale Transaction by the Court. The Sale Transaction with the Purchaser closed on July 7, 2017. A copy of the Approval and Vesting Order is attached hereto and marked as **Appendix "C"**.
6. In its receivership application, Bridging requested that the Court authorize the Receiver to distribute the net proceeds from the Sale Transaction to Bridging as senior secured creditor, less any reserves the Receiver determined were necessary to be maintained for the administration of the receivership proceeding.

7. As a result of the issues raised by the Company and the Ontario Farm Marketing Commission (the "**Commission**") at the hearing, the parties agreed to paragraph 24 of the Receivership Order, which provides that:

"**THIS COURT ORDERS** that the Receiver is hereby authorized, upon the closing of the sale transaction approved by the Court pursuant to the Approval and Vesting Order dated June 21, 2017, to: ...

(b) distribute the net sale proceeds to the Applicant, subject to a \$1,200,000 reserve, the entitlements and priority of claims to which reserve (including those claims set out in the Affidavit of William Thomas sworn June 20, 2017 and/or the Affidavit of James Clark sworn June 20, 2017) shall be subject to further Order of this Court."

8. The Company also requested that certain fees and disbursements of its counsel, Blaney, McMurtry LLP ("**Blaney**"), and amounts owed to suppliers that the Company alleged supplied goods and/or services to the Company during the time of the Monitor's appointment, be paid out of the net proceeds from the Sale Transaction in priority to Bridging's security interest in the sale proceeds.
9. On July 5, 2017, the respective parties appeared before Justice Conway in chambers, at which time the Court ordered that any motions related to the entitlement of the \$1.2 million being held in reserve by the Receiver as agreed to by the parties (the "**Reserve**"), be scheduled for September 11, 2017. As a result of an administrative request received from the Court, the motions were subsequently scheduled to be heard on September 27, 2017.
10. On September 8, 2017, the Monitor served a notice to the parties identified in the Affidavit of William Thomas sworn June 20, 2017 as having supplied goods and/or services to the Company during the Monitor's appointment, informing them that there would be motions before the Court on September 27, 2017 with respect to the net sale proceeds of the Property.
11. On September 13, 2017, parties appeared in chambers before The Honourable Mr. Justice Hainey to discuss matters related to the motions scheduled to be heard on September 27, 2017. As a result of the attendance, and information requests made of the Receiver by the former principals of the Company, the Court issued an endorsement setting out litigation timetables (the "**Litigation Timetable**") for the hearing of the motions related to the Reserve, which were to proceed on September 27, 2017. A copy of the endorsement is attached hereto and marked as **Appendix "D"**.

12. As outlined in the Litigation Timetable, materials from parties seeking payment out of the Reserve were to be received by September 15, 2017, and the Receiver was required to file its first report by September 18, 2017.
13. The following three (3) parties (the "**Reserve Parties**") served responding motion records and facts in connection with the motions returnable on September 27, 2017 with respect to the Reserve:
  - (a) Rol-Land Farms and Greenhouses Inc. ("**Rol-Land**");
  - (b) 2016 Growers<sup>1</sup>; and
  - (c) the Company.<sup>2</sup>
14. The first report of Richter, in its capacity as Receiver (the "**First Report**") was served on September 18, 2017 as required by the Litigation Timetable, a copy of which, without appendices, is attached hereto and marked as **Appendix "E"**.
15. The second report of Richter, in its capacity as Receiver (the "**Second Report**") was served on September 25, 2017 and detailed the matters related to the motions to be heard by the Court on September 27, 2017 with respect to the Reserve. A copy of the Second Report, without appendices, is attached hereto and marked as **Appendix "F"**.
16. On September 25, 2017, William Thomas, a former principal of the Company, served a motion record seeking an order from the Court authorizing him to complete a settlement with the Canadian Food Inspection Agency (the "**CFIA**") on behalf of TCL with respect to TCL pleading guilty to twelve counts of product mislabeling (the "**CFIA Guilty Plea**").
17. On September 27, 2017, parties appeared in Court before The Honourable Mr. Justice McEwen with respect to Mr. Thomas' motion for leave of the Court regarding the CFIA Guilty Plea, and the motions with respect to the relief sought by the Reserve Parties regarding the Reserve.
18. With respect to Mr. Thomas' motion regarding the CFIA Guilty Plea, the Court issued an endorsement granting the relief sought, subject to the parties agreeing to a form of order. Attached hereto and collectively marked as **Appendix "G"** are copies of the Endorsement dated September 27, 2017, the Order of Justice McEwen dated September 27, 2017 and the Endorsement dated October 6, 2017.

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<sup>1</sup> The 2016 Growers are comprised of the nine parties that commenced an action against TCL, among others, on March 6, 2017.

<sup>2</sup> The Receiver has raised the issue with Blaney as to the basis upon which they can purport to continue to represent the Company given the provisions of the Receivership Order.

19. With respect to the motions argued concerning the Reserve by the Reserve Parties, the Court reserved its decision following the hearing of the motions. On October 13, 2017, the Court issued an endorsement dismissing the claims of Rol-Land Farms and the 2016 Growers to the Reserve. Additionally, regarding the Company's claim to the Reserve with respect to Blaney's fees, the Court required a subsequent motion to be brought by the Company and requested that this subsequent motion be scheduled at a 9:30 am appointment. A copy of the endorsement is attached hereto and marked as **Appendix "H"**.
20. On October 16, 2017, parties appeared at a 9:30 am appointment in chambers before Justice McEwen to discuss matters related to outstanding motions in the proceeding. As a result of the attendance, the Court issued an endorsement setting out new litigation timetables (the **"Revised Litigation Timetable"**) for the hearing of the motions which are to be heard on November 28, 2017, related to: (i) Mr. Thomas' motion for leave to represent the Company in connection with the Blaney fees issue, (ii) if leave is granted, the Company's motion for payment of Blaney's fees from the Reserve in priority to Bridging, and (iii) the remaining funds in the Reserve. A copy of the endorsement is attached hereto as **Appendix "I"**.

## II. PURPOSE OF REPORT

21. The purpose of this fourth report of Richter, in its capacity as Receiver (the **"Fourth Report"**) dated November 1, 2017 is to provide this Court with information with respect to Reserve and recommend that this Court grant an order authorizing and directing the Receiver to make an interim distribution to Bridging in respect of its secured claim against the Property in the amount \$200,000.

## III. QUALIFICATIONS

22. In preparing this Fourth Report, the Receiver has relied upon unaudited financial information, the Company's books and records, financial information prepared by the Company and discussions with management (collectively, the **"Information"**). The Receiver has reviewed the Information for reasonableness, internal consistency, and use in the context in which it was provided, and in consideration of the nature of the evidence provided to this Court, in relation to the relief sought therein. The Receiver has not, however, audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Generally Accepted Auditing Standards (**"GAAS"**) pursuant to the Canadian Institute of Chartered Accountants Handbook and, as such, the Receiver express no opinion or other form of assurance contemplated under GAAS in respect of the Information. An examination of the Company's financial forecasts in accordance with the *Canadian Institute of Chartered Accountants Handbook* has not been performed. Future-oriented financial information reported on or relied

upon in this Fourth Report is based on management's assumptions regarding future events; actual results achieved may vary from forecast and such variations may be material.

23. Unless otherwise noted, all monetary amounts contained in this Fourth Report are expressed in Canadian dollars.

#### **IV. RESERVE**

24. As noted above, Richter was appointed by the Court as Receiver on June 21, 2017 pursuant to the terms of the Receivership Order. With regards to potential items impacting the Reserve, the following paragraphs within the Receivership Order are highlighted below:
- (a) Paragraph 3 empowered and authorized, but not obligated, the Receiver to take possession and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property; to receive, preserve and protect the Property; etc.;
  - (b) Paragraph 19 provided that the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hand, against the fees and disbursements, including legal fees and disbursements, incurred at the normal rates and charges of the Receiver or its counsel; and
  - (c) Paragraph 24 authorized the Receiver to repay the principal amount, and all interest that accrued thereon, borrowed by the Interim Receiver in accordance with the Interim Receivership Order and secured by the Interim Receiver's Borrowing Charge and distribute the net sale proceeds (regarding the Sale Transaction) to Bridging, subject to the Reserve.
25. As detailed in the First Report, the Receiver received \$20.0 million from the Purchaser on the closing of the Sale Transaction. In accordance with the provisions of the Receivership Order, the Receiver has distributed \$18.8 million to Bridging and maintained the \$1.2 million Reserve.
26. Based on actual operating, administration and professional costs incurred to date and the estimated costs to complete the receivership proceeding, the Receiver proposes an interim distribution to Bridging in the amount of \$200,000 from the Reserve, detailed as follows:



Thomas Canning (Maidstone) Limited Reserve Summary Estimate as at October 31, 2017				
	Status	Amounts	Legend	Notes
<b>Reserve Amount</b>		\$ 1,200,000	A	
<b>Estimated Priority Claims</b>				
Source deductions	Actual	(8,521)		
Priority payables (unpaid wages, vacation, etc.)	Actual	(23,316)		
<b>Total Estimated Priority Claims</b>		<b>\$ (31,837)</b>	B	
Independent contractors	Actual	(11,632)		
Migrant workers - return airfare, hotel & travel airport	Actual	(3,001)		
Other operating costs (utilities, security, locksmith etc.)	Actual	(13,890)		
Lease costs	Actual	(24,229)		
Estimated remaining operating costs	Estimated	(25,000)		
<b>Total Other Costs</b>		<b>\$ (77,752)</b>	C	
Monitor's fees	Actual	(283,103)		
Receiver's fees - actual to Oct 13, 2017	Actual	(182,762)		
Monitor's counsel fees	Actual	(56,462)		
Receiver's counsel fees - actual & WIP to Oct 30, 2017	Estimate	(46,389)		
Estimated remaining fees to complete	Estimate	(100,000)		
<b>Total Professional Fees</b>		<b>\$ (668,717)</b>	D	
Est. HST paid on the above disbursements	Estimate	(95,139)	E	1
Interim Receiver's Borrowing Charge	Actual	(78,154)	F	
Contingency	Estimate	(75,000)	G	
<b>Total Estimated Costs</b>		<b>\$ (1,026,598)</b>	H = B+C+D+E+F+G	
Recovery of CRA HST refunds from receivership		95,139	I	1
<b>Net Proceeds from the Reserve</b>		<b>\$ 268,541</b>	J = A + H + I	
<b>Proposed Distribution</b>		<b>\$ 200,000</b>		
<b>Notes:</b>				
1) HST paid on disbursements during the Receivership should be recoverable from CRA as the Receiver will be in a net refund position. Timing of this refund is uncertain.				
2) Any HST recoverable from the Company's pre-filing returns (estimated at \$160-\$180k) is subject to the asset purchaser agreement with the purchaser of the Company's assets. This may be subject to CRA audit and timing of this refund is uncertain.				

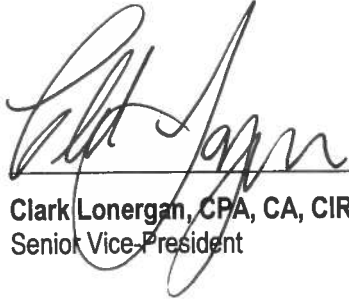
27. As set out above, in the event that the Court approves the \$200,000 distribution to Bridging, the Receiver will still have the following amounts set aside and available in the Reserve with respect to this proceeding going forward:

- (a) \$100,000 estimate for fees to complete the receivership proceeding;
- (b) \$25,000 estimate for remaining operating costs;
- (c) \$75,000 contingency amount; and

(d) \$68,541 surplus amount.

All of which is respectfully submitted on the 1<sup>st</sup> day of November, 2017.

**Richter Advisory Group Inc.  
As Receiver of  
Thomas Canning (Maidstone) Limited and 692194 Ontario Limited  
and not in its personal capacity**



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**Clark Lonergan, CPA, CA, CIRP, LIT**  
Senior Vice-President

# **APPENDIX “A”**

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE MR

) MONDAY, THE 1<sup>ST</sup> DAY

)

JUSTICE NEWBOULD

) OF MAY, 2017

BETWEEN:

**BRIDGING FINANCE INC.,  
as agent for SPROTT BRIDGING INCOME FUND LP**

Applicant

- and -

**THOMAS CANNING (MAIDSTONE) LIMITED and 692194 ONTARIO LIMITED**

Respondents

**IN THE MATTER OF AN APPLICATION PURSUANT TO SUBSECTIONS 47(1) AND  
243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS  
AMENDED, AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c.  
C.43, AS AMENDED**

**ORDER  
(Appointment of Monitor)**

**THIS APPLICATION** made by the Applicant for an Order pursuant to section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the “CJA”), appointing Richter Advisory Group Inc. (“**Richter**”) as monitor (in such capacity, the “**Monitor**”) of each of Thomas Canning (Maidstone) Limited (“**Thomas Canning**”) and 692194 Ontario Limited (together with Thomas Canning, the “**Debtors**”), was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the affidavit of Graham Marr sworn April 19, 2017, and the exhibits thereto, and the Report of Richter in its capacity as Court-appointed Interim Receiver (the “**Interim Receiver**”) dated April 28, 2017 (the “**IR Report**”), and on hearing the submissions of counsel for the Applicant, counsel for the Debtors and no one appearing for any other person although duly served as appears from the affidavit of service of Paula Hoosain sworn April 21, 2017 and on reading the consent of Richter to act as the Monitor,

## **SERVICE**

1. **THIS COURT ORDERS** that the time for service of the Notice of Application and the Application Record is hereby validated and that this Application is properly returnable today and hereby dispenses with further service thereof.

## **INTERIM RECEIVERSHIP**

2. **THIS COURT ORDERS** that the IR Report, and the activities of the Interim Receiver referred to therein, be and are hereby approved.

3. **THIS COURT ORDERS** that Richter is hereby discharged as Interim Receiver of the undertaking, property and assets of the Debtors, provided however that, notwithstanding its discharge herein, (a) Richter shall remain Interim Receiver for the performance of such incidental duties as may be required to complete the administration of the interim receivership herein (the “**Interim Receivership**”), and (b) Richter shall continue to have the benefit of the provisions of the Interim Receivership Order made in this proceeding on April 20, 2017 (the “**Interim Receivership Order**”), including the Interim Receivership Charge (as such term is defined in the Interim Receivership Order) and all approvals, protections and stays of proceedings in favour of Richter in its capacity as Interim Receiver.

4. **THIS COURT ORDERS AND DECLARES** that the Interim Receiver, having not taken possession or the Debtors’ current assets, did and does not have the obligations of a receiver under sections 81.4(5) or 81.6(3) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”) or under the *Wage Earner Protection Program Act*, S.C. 2005, c. 47, s. 1 (“**WEPPA**”).

5. **THIS COURT ORDERS** that Richter is authorized to take down the Interim Receivership Case Website established pursuant to paragraph 23 of the Interim Receivership Order.

6. **THIS COURT ORDERS AND DECLARES** that Richter be and is hereby released and discharged from any and all liability that Richter now has or may hereafter have by reason of, or in any way arising out of, the acts or omissions of Richter while acting in its capacity as Interim Receiver herein, save and except for any gross negligence or wilful misconduct on the Interim Receiver's part. Without limiting the generality of the foregoing, Richter is hereby forever released and discharged from any and all liability relating to matters that were raised, or which could have been raised, in the within Interim Receivership proceedings, save and except for any gross negligence or wilful misconduct on the Interim Receiver's part.

7. **THIS COURT ORDERS** that, notwithstanding its discharge hereby, the Interim Receiver and its legal counsel shall pass their accounts in accordance with paragraph 17 of the Interim Receivership Order at a later date.

#### **APPOINTMENT**

8. **THIS COURT ORDERS** that pursuant to section 101 of the CJA, Richter is hereby appointed Monitor of the Debtors and of all of their assets, undertakings and properties (the “Property”).

#### **MONITOR’S POWERS**

9. **THIS COURT ORDERS** that the Monitor is hereby empowered and authorized, but not obligated, to act at once in respect of the Debtors and the Property and, without in any way limiting the generality of the foregoing, the Monitor is hereby expressly empowered and authorized to do any of the following where the Monitor considers it necessary or desirable:

- (a) to monitor, make recommendations and approve of all matters concerning the management and operation of the Debtors’ business as has been agreed to between the Debtors and the Applicant;

- (b) to market the Debtors' business and/or any or all of the Property in accordance with the terms of such refinancing, investment and/or sale process as agreed to among and between the Applicant, the Debtors and the Monitor, provided any resulting sale or sales of all or substantially all of the Property acquired for or used in relation to the business of Thomas Canning shall be subject to prior approval of this Court on motion brought by the Debtors or the Applicant in the Receivership Proceedings;
- (c) to engage consultants, appraisers, examiners, advisors, 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 Monitor's powers and duties, including without limitation those conferred by this Order;
- (d) to report to, meet with and discuss with such affected Persons (as defined below) as the Monitor deems appropriate on all matters relating to the Property, and to share information, subject to such terms as to confidentiality as the Monitor deems advisable; and
- (e) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.

10. **THIS COURT ORDERS AND DECLARES** that:

- (a) the Monitor shall not take possession or control, nor shall it be deemed to have taken possession or control, of the Debtors' business or the Property;
- (b) the Monitor shall not be and shall not be deemed to be a receiver for purposes of subsection 243(1) of the BIA; and
- (c) the appointment of the Monitor shall not be and shall not be deemed to be a change of control of the Debtors.

## **DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE MONITOR**

11. **THIS COURT ORDERS** that (i) the Debtors, (ii) all of their current and former directors, officers, employees, agents, advisors, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) 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 Monitor of the existence of any Property in such Person’s possession or control and shall grant immediate and continued access to the Property to the Monitor.

12. **THIS COURT ORDERS** that all Persons shall forthwith advise the Monitor 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 Debtors, 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 provide to the Monitor or permit the Monitor to make, retain and take away copies thereof and grant to the Monitor unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 12 or in paragraph 13 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 Monitor due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

13. **THIS COURT ORDERS** that 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 forthwith give unfettered access to the Monitor for the purpose of allowing the Monitor 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 Monitor in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Monitor. Further, for the purposes of this paragraph, all Persons shall provide the Monitor with all such assistance in gaining immediate access to the information in the Records as the Monitor may in its discretion require including



providing the Monitor with instructions on the use of any computer or other system and providing the Monitor 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 MONITOR**

14. **THIS COURT ORDERS** that no proceeding or enforcement process in any court or tribunal (each, a “**Proceeding**”), shall be commenced or continued against the Monitor except with the written consent of the Monitor or with leave of this Court.

#### **NO INTERFERENCE WITH THE DEBTORS**

15. **THIS COURT ORDERS** that no regulatory body shall discontinue, fail to honour, alter, repudiate or terminate or cease to perform any right, renewal right, contract, agreement, certificate, certification, consent, approval, licence or permit in favour of or held by Thomas Canning or Thomas Canning’s manufacturing plant without written consent of the Monitor or leave of this Court.

#### **EMPLOYEES**

16. **THIS COURT ORDERS** that all employees of the Debtors shall remain the employees of the Debtors until such time as the Debtors’ may terminate the employment of such employees. The Monitor shall not be liable for any employee-related liabilities, including: (a) any successor employer liabilities; (b) any obligations of a receiver under sections 81.4(5) or 81.6(3) of the BIA or under WEPPA; or (c) any liability as an employer or sponsor of any workers employed or to be employed by the Debtors through the Temporary Foreign Worker Program or the International Mobility Program.

#### **PIPEDA**

17. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Monitor 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**”). 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 Monitor, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtors, and shall return all other personal information to the Monitor, or ensure that all other personal information is destroyed.

### **LIMITATION ON ENVIRONMENTAL LIABILITIES**

18. **THIS COURT ORDERS** that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, “**Possession**”) of any of the Property that might 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 law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the “**Environmental Legislation**”). The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor’s duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation.

### **LIMITATION ON THE MONITOR’S LIABILITY**

19. **THIS COURT ORDERS** that the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the any protections afforded the Monitor herein or by any applicable legislation.

### **MONITOR’S ACCOUNTS**

20. **THIS COURT ORDERS** that the Monitor and counsel to the Monitor shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, and that the Monitor and counsel to the Monitor shall be entitled to and are hereby granted a charge (the

“**Monitor’s 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 that the Monitor’s 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 the Interim Receiver’s Charge (as defined in the Interim Receivership Order), with which it shall rank *pari passu*. The Monitor’s Charge shall rank in priority to the Interim Receiver’s Borrowings Charge (as defined in the Interim Receivership Order).

21. **THIS COURT ORDERS** that the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

#### **CASH MANAGEMENT**

22. **THIS COURT ORDERS** that the Debtors shall be required to continue to comply with cash management arrangements as set out and required under letter credit agreement dated July 3, 2015, as amended, between Thomas Canning, the Applicant and others, and the blocked account agreement dated June 29, 2015 entered into between Bank of Montreal, the Applicant and Thomas Canning.

#### **GENERAL**

23. **THIS COURT ORDERS** that the Monitor may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

24. **THIS COURT ORDERS** that nothing in this Order shall prevent the Monitor from acting as a BIA section 243(1) receiver or a trustee in bankruptcy of the Debtors.

25. **THIS COURT HEREBY REQUESTS** 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 Monitor and/or the Debtors and their respective 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

Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Monitor and its agents in carrying out the terms of this Order.

26. **THIS COURT ORDERS** that the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, 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 Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

27. **THIS COURT ORDERS** that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Debtors and the Monitor and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

  
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ENTERED AT / INSCRIT À TORONTO  
ON / BOOK NO:  
LE / DANS LE REGISTRE NO:

MAY 01 2017

PER / PAR: 

**BRIDGING FINANCE INC., as agent for  
SPROT BRIDGING INCOME FUND LP**  
Applicant

And **THOMAS CANNING (MAIDSTONE) LIMITED and 692194  
ONTARIO LIMITED**  
Respondents

Court File No. CV-17-11773-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST  
PROCEEDING COMMENCED AT TORONTO**

**ORDER  
(APPOINTMENT OF MONITOR)**

**AIRD & BERLIS LLP**  
Barristers and Solicitors  
Brookfield Place  
Suite 1800, Box 754  
181 Bay Street  
Toronto, Ontario M5J 2T9

**Sam Babe - LSUC No. 49498B**  
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Lawyers for the Applicant

# **APPENDIX “B”**

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE ) WEDNESDAY, THE 21<sup>ST</sup> DAY  
JUSTICE CONWAY ) OF JUNE, 2017



BETWEEN:

**BRIDGING FINANCE INC.,  
as agent for SPROTT BRIDGING INCOME FUND LP**

Applicant

- and -

**THOMAS CANNING (MAIDSTONE) LIMITED and 692194 ONTARIO LIMITED**

Respondents

**IN THE MATTER OF AN APPLICATION PURSUANT TO SUBSECTIONS 47(1) AND  
243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS  
AMENDED, AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c.  
C.43, AS AMENDED**

**ORDER  
(Appointment of Receiver)**

**THIS APPLICATION** made by the Applicant for an Order pursuant to subsection 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”), and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the “**CJA**”), appointing Richter Advisory Group Inc. (“**Richter**”) as receiver (in such capacity, the “**Receiver**”) without security, of all of the assets, undertakings and properties of each of Thomas Canning (Maidstone) Limited (“**Thomas Canning**”) and 692194 Ontario Limited (together with Thomas Canning, the “**Debtors**”) acquired for, or used in relation to a business carried on by the Debtors, was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the Report of Richter in its capacities as Court-appointed Monitor (the “**Monitor**”) and Interim Receiver dated June 15, 2017, and on hearing the submissions of counsel for the Applicant, counsel for the Debtors, counsel for the Monitor and no one appearing for any other person although duly served as appears from the affidavits of service of Kyle Plunkett and Daphne Porter sworn June 16, 2017 and on reading the consent of Richter to act as the Receiver,

### **SERVICE**

1. **THIS COURT ORDERS** that the time for service of the Notice of Return of Application and the Return Application Record is hereby validated and that this Application is properly returnable today and hereby dispenses with further service thereof.

### **APPOINTMENT OF RECEIVER**

2. **THIS COURT ORDERS** that pursuant to subsection 243(1) of the BIA and section 101 of the CJA, Richter is hereby appointed Receiver, without security, of all of the assets, undertakings and properties of the Debtors including all proceeds thereof (the “**Property**”).

### **RECEIVER’S POWERS**

3. **THIS COURT ORDERS** that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Debtors and 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 of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;



- (c) to manage, operate, and carry on the business of the Debtors, including the powers to enter into any agreements, incur 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 Debtors;
- (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 Debtors or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtors and to exercise all remedies of the Debtors in collecting such monies, including, without limitation, to enforce any security held by the Debtors;
- (g) to settle, extend or compromise any indebtedness owing to the Debtors;
- (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 Debtors, for any purpose pursuant to this Order;
- (i) to undertake environmental or workers' health and safety assessments of the Property and operations of the Debtors;
- (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 Debtors, 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 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;
- (l) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,
  - (i) without the approval of this Court in respect of any transaction not exceeding \$250,000, provided that the aggregate consideration for all such transactions does not exceed \$1,000,000; 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 subsection 63(4) of the Ontario *Personal Property Security Act*, or section 31 of the Ontario *Mortgages Act*, as the case may be, shall not be required;

- (m) 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;
- (n) 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;
- (o) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (p) 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 Debtors;

- (q) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtors, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtors;
- (r) to exercise any shareholder, partnership, joint venture or other rights which the Debtors may have;
- (s) to exercise any and all rights of the Debtors under any certificate, certification, consent, approval, licence or permit in favour of or held by the Debtors or Thomas Canning's manufacturing plant, including those granted by any governmental or regulatory body; 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 Debtors, and without interference from any other Person.

#### **DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER**

4. **THIS COURT ORDERS** that (i) the Debtors, (ii) all of their current and former directors, officers, employees, agents, advisors, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) 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. Without limiting the foregoing, 2190330 Ontario Ltd. shall grant the Receiver such access to the Property of the Debtors located on the real property of the legal description PT LT 290, CON STR MAIDSTONE AS IN R1425228, LAKESHORE, PIN 75016-0085 (LT), as the Receiver may require for the continued operation

and/or removal of such Property, or as the Receiver may require to give any purchaser of such Property the same access.

5. **THIS COURT ORDERS** that 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 Debtors, 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 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. **THIS COURT ORDERS** that 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 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. **THIS COURT ORDERS** that 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 DEBTORS OR THE PROPERTY**

8. **THIS COURT ORDERS** that no Proceeding against or in respect of the Debtors 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 Debtors or the Property are hereby stayed and suspended pending further Order of this Court.

#### **NO EXERCISE OF RIGHTS OR REMEDIES**

9. **THIS COURT ORDERS** that all rights and remedies against the Debtors, 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 Debtors to carry on any business which the Debtors are not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtors 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.

#### **NO INTERFERENCE WITH THE RECEIVER**

10. **THIS COURT ORDERS** that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, certificate, certification, consent, approval, licence or permit in favour of or held by the Debtors or Thomas Canning’s manufacturing plant without written consent of the Receiver or leave of this Court.

#### **CONTINUATION OF SERVICES**

11. **THIS COURT ORDERS** that all Persons having oral or written agreements with the Debtors 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 the Debtors 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 that the Receiver shall be entitled to the continued use of the Debtors' 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 Debtors 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.

#### **RECEIVER TO HOLD FUNDS**

12. **THIS COURT ORDERS** that all funds, monies, cheques, instruments, and other forms of payments 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**

13. **THIS COURT ORDERS** that all employees of the Debtors are hereby terminated. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA or any liability as an employer or sponsor of any workers employed or to be employed by the Debtors through the Temporary Foreign Worker Program or the International Mobility Program, 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) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

## PIPEDA

14. **THIS COURT ORDERS** that, 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**”). 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. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtors, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

## LIMITATION ON ENVIRONMENTAL LIABILITIES

15. **THIS COURT ORDERS** that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, “**Possession**”) of any of the Property that might 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 law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (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. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver’s duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

## **LIMITATION ON THE RECEIVER'S LIABILITY**

16. **THIS COURT ORDERS** that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part, or in respect of its obligations under sections 81.4(5) or 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**

17. **THIS COURT ORDERS** that 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 that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the "**Receiver's 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 that the Receiver's 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. For greater certainty, the Receiver's Charge shall rank in priority to the Interim Receiver's Charge and the Interim Receiver's Borrowings Charge (as such terms are defined in the Interim Receivership Order made in this proceeding on April 20, 2017) and to the Monitor's Charge (as defined in the Monitor Order made in this proceeding on May 1, 2017).

18. **THIS COURT ORDERS** that the Receiver and its legal counsel shall pass their 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 Commercial List of the Ontario Superior Court of Justice.

19. **THIS COURT ORDERS** that 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 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 by this Court.



## **FUNDING OF THE RECEIVERSHIP**

20. **THIS COURT ORDERS** that 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 \$600,000 (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 funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. 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 Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA. For greater certainty, the Receiver’s Borrowings Charge shall rank in priority to the Interim Receiver’s Charge, the Interim Receiver’s Borrowings Charge and the Monitor’s Charge.

21. **THIS COURT ORDERS** that 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.

22. **THIS COURT ORDERS** that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as **Schedule “A”** hereto (the “**Receiver’s Certificates**”) for any amount borrowed by it pursuant to this Order.

23. **THIS COURT ORDERS** that 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.

## **PAYMENTS AND DISTRIBUTION**

24. **THE COURT ORDERS** that the Receiver is hereby authorized, upon the closing of the sale transaction approved by this Court pursuant to the Approval and Vesting Order dated June 21, 2017, to:

- (a) repay the principal amount, and all interest that has accrued thereon, borrowed by the Interim Receiver in accordance with the Interim Receivership Order and secured by the Interim Receiver's Borrowings Charge; and
- (b) distribute the net sale proceeds to the Applicant, subject to a \$1,200,000 reserve, the entitlements and priority of claims to which reserve (including those claims set out in the Affidavit of William Thomas sworn June 20, 2017 and/or the Affidavit of James Clark sworn June 20, 2017) shall be subject to further Order of this Court.

## **JOINT ADMINISTRATION**

25. **THIS COURT ORDERS** and directs that the receiverships and estates of the Debtors be jointly administered.

## **SERVICE AND NOTICE**

26. **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the "**Protocol**") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL '<http://www.richter.ca/Folder/Insolvency-Cases/T/Thomas-Canning-Limited>'.

27. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Receiver is at liberty to serve or distribute this Order, any

other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Debtors' creditors or other interested parties at their respective addresses as last shown on the records of the Debtors and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

28. **THIS COURT ORDERS** that the Applicant, the Receiver and their respective counsel are at liberty to serve or distribute this Order, any other materials and orders as may be reasonably required in these proceedings, including any notices, or other correspondence, by forwarding true copies thereof by electronic message to the Debtors' creditors or other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or juridical obligation, and notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations*, Reg. 81000-2-175 (SOR/DORS).

#### **GENERAL**

29. **THIS COURT ORDERS** that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

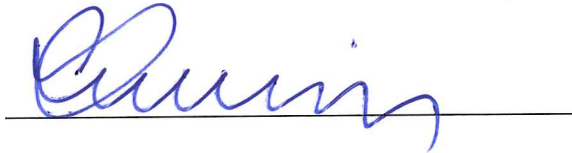
30. **THIS COURT ORDERS** that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtors.

31. **THIS COURT HEREBY REQUESTS** 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.

32. **THIS COURT ORDERS** that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, 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 as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

33. **THIS COURT ORDERS** that the Applicant shall have its costs of this Application, up to and including entry and service of this Order, provided for by the terms of the Applicant's security or, if not so provided by the Applicant's security, then on a substantial indemnity basis to be paid by the Receiver from each of the Debtors' estates with such priority and at such time as this Court may determine.

34. **THIS COURT ORDERS** that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.



**C. Irwin  
Registrar**

ENTERED AT / INSCRIT À TORONTO  
ON / BOOK NO:  
LE / DANS LE REGISTRE NO:

JUN 22 2017

PER / PAR: 

**SCHEDULE "A"**  
**RECEIVER CERTIFICATE**

**CERTIFICATE NO.** \_\_\_\_

**AMOUNT \$** \_\_\_\_\_

1. **THIS IS TO CERTIFY** that Richter Advisory Group Inc., the receiver (the "**Receiver**") of the assets, undertakings and properties of each of Thomas Canning (Maidstone) Limited and 692194 Ontario Limited (together, the "**Debtors**") acquired for, or used in relation to a business carried on by the Debtors, including all proceeds thereof (collectively, the "**Property**") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated the 21<sup>st</sup> day of June, 2017 (the "**Order**") made in an action having Court file number CV-17-11773-00CL, 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.

2. 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.

3. 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, 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* (Canada), and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

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

5. 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.

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

7. 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 \_\_\_\_\_, 2017.

**RICHTER ADVISORY GROUP INC.**, solely in its capacity as Receiver of the Thomas Canning (Maidstone) Limited and 692194 Ontario Limited, and not in its corporate or personal capacity

Per:

\_\_\_\_\_  
Name:

Title:

**BRIDGING FINANCE INC., as agent for  
SPROT BRIDGING INCOME FUND LP**  
Applicant

And **THOMAS CANNING (MAIDSTONE) LIMITED and 692194  
ONTARIO LIMITED**

Respondents

Court File No. CV-17-11773-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST  
PROCEEDING COMMENCED AT TORONTO**

**ORDER  
(APPOINTMENT OF RECEIVER)**

**AIRD & BERLIS LLP**  
Barristers and Solicitors  
Brookfield Place  
Suite 1800, Box 754  
181 Bay Street  
Toronto, Ontario M5J 2T9

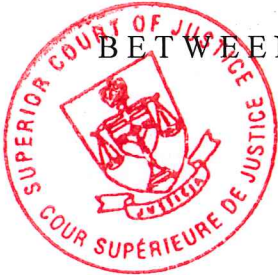
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Lawyers for the Applicant

# **APPENDIX “C”**



**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE ) WEDNESDAY, THE 21<sup>ST</sup> DAY  
JUSTICE **CONWAY** ) OF JUNE, 2017



BETWEEN:

**BRIDGING FINANCE INC.,  
as agent for SPROTT BRIDGING INCOME FUND LP**

Applicant

- and -

**THOMAS CANNING (MAIDSTONE) LIMITED and 692194 ONTARIO LIMITED**

Respondents

**IN THE MATTER OF AN APPLICATION PURSUANT TO SUBSECTIONS 47(1) AND  
243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS  
AMENDED, AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c.  
C.43, AS AMENDED**

**APPROVAL AND VESTING ORDER**

**THIS MOTION**, made by Bridging Finance Inc. for an order approving the sale transaction (the “**Transaction**”) contemplated by an asset purchase agreement dated June 15, 2017 (the “**Sale Agreement**”) and made between 2581150 Ontario Inc. (the “**Purchaser**”) and Richter Advisory Group Inc. (“**Richter**”) in its capacity as the Court-appointed receiver (the “**Receiver**”) of the undertakings, properties and assets of each of Thomas Canning (Maidstone) Limited (“**Thomas Canning**”) and 692194 Ontario Limited (together with Thomas Canning, the “**Debtors**”), as appended to the Report of Richter in its capacity as Interim Receiver and Monitor

in these proceedings dated June 15, 2017 (the “**Report**”), and vesting in the Purchaser the Debtors’ right, title and interest in and to the assets described in the Sale Agreement (the “**Purchased Assets**”), was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the Report and on hearing the submissions of counsel for the Receiver, counsel for the Debtors, counsel for Bridging, counsel for the Ontario Farm Products Marketing Commission and no one appearing for any other person on the service list, although properly served as appears from the affidavits of Kyle Plunkett and Daphne Porter sworn June 16, 2017, filed:

1. **THIS COURT ORDERS AND DECLARES** that the Sale Agreement and the Transaction are hereby approved, and the execution of the Sale Agreement by the Receiver is hereby authorized and approved, with such minor amendments as the Receiver may deem necessary. 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 for the conveyance of the Purchased Assets to the Purchaser.
2. **THIS COURT ORDERS AND DECLARES** that 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 Debtors’ right, title and interest in and to the Purchased Assets described in the Sale Agreement, including, without limitation, those listed on **Schedule B** hereto, shall vest absolutely in the Purchaser, 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 Orders of the Honourable Justice Newbould dated April 20, 2017 and May 1, 2017 in this proceeding; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property

registry system; and (iii) 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**) 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.

3. **THIS COURT ORDERS** that the Purchaser shall be entitled to take delivery of those Purchased Assets comprised of the 50 acres of organic tomatoes being grown under contract by 959699 Ontario Inc. o/a DeNijs Organic Farms, in the normal course and upon release of the funds held in escrow for payment of the same, regardless of the assignability or status of Thomas Canning’s Ontario Farm Products Marketing Commission procurement license #1944-18.
4. **THIS COURT ORDERS** that upon the registration in the Land Registry Office for the Land Titles Division of Windsor of an Application for Vesting Order in the form prescribed by the *Land Titles Act*, the Land Registrar is hereby directed to enter the Purchaser as the owner of the subject real property identified in Schedule B hereto (the “**Real Property**”) in fee simple, and is hereby directed to delete and expunge from title to the Real Property all of the Claims listed in **Schedule C** hereto.
5. **THIS COURT ORDERS** that 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.
6. **THIS COURT ORDERS AND DIRECTS** the Receiver to file with the Court a copy of the Receiver’s Certificate, forthwith after delivery thereof.

7. **THIS COURT ORDERS AND DECLARES** that the assumption of the Bridging Indebtedness, as such term is defined in the Sale Agreement, by the Purchaser pursuant to the Sale Agreement shall be effective as at the date of the Receiver's discharge in these proceedings.
8. **THIS COURT ORDERS** that, 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 Debtors' records pertaining to the Debtors' 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 Debtors.
9. **THIS COURT ORDERS** that, 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 Debtors and any bankruptcy order issued pursuant to any such applications; and
  - (c) any assignment in bankruptcy made in respect of the Debtors;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 Debtors and shall not be void or voidable by creditors of the Debtors, nor shall it constitute nor be deemed to be a settlement, fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, 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.
10. **THIS COURT HEREBY REQUESTS** 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 ~~including, without limitation, the Ontario Farm Products Marketing Commission and the Canadian Food Inspection Agency,~~ 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. Be



ENTERED AT / INSCRIT À TORONTO  
ON / BOOK NO:  
LE / DANS LE REGISTRE NO:

JUN 21 2017

PER / PAR: 

**SCHEDULE A  
FORM OF RECEIVER'S CERTIFICATE**

Court File No. CV-17-11773-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

B E T W E E N:

**BRIDGING FINANCE INC.,  
as agent for SPROTT BRIDGING INCOME FUND LP**

Applicant

- and -

**THOMAS CANNING (MAIDSTONE) LIMITED and 692194 ONTARIO LIMITED**

Respondents


**RECEIVER'S CERTIFICATE**

RECITALS

- A. Pursuant to an Order of the Honourable <\*> of the Ontario Superior Court of Justice (the "**Court**") dated June 21, 2017, Richter Advisory Group Inc. was appointed as the receiver (the "**Receiver**") of the undertakings, properties and assets of Thomas Canning (Maidstone) Limited and 692194 Ontario Limited (collectively, the "**Debtors**").
- B. Pursuant to an Order of the Court dated June 21, 2017, the Court approved the asset purchase agreement made as of June 15, 2017 (the "**Sale Agreement**") between the Receiver and 2581150 Ontario Inc. (the "**Purchaser**") and provided for the vesting in the Purchaser of the Debtors' 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 5 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 section Article 5 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.
4. This Certificate was delivered by the Receiver at \_\_\_\_\_ on , 2017.

**RICHTER ADVISORY GROUP INC., in its capacity as Receiver of the undertakings, properties and assets of THOMAS CANNING (MAIDSTONE) LIMITED and 692194 ONTARIO LIMITED, and not in its personal capacity**

Per: \_\_\_\_\_  
Name:  
Title:

## **SCHEDULE B**

### **PURCHASED ASSETS**

All of the properties, assets and undertakings of the Debtors (collectively, the “**Purchased Assets**”) including but not limited to:

- (a) all accounts receivable, bills receivable, trade accounts, book debts and insurance claims Related to the Business, including recoverable deposits, including any unpaid interest on such items and any security or collateral for such items;
- (b) all books, records, files and papers Related to the Business or the Purchased Assets including, but not limited to, drawings, manuals and data related to equipment, computer hardware and software and phone systems, computer system passwords, combinations and keys to locks and other safety and storage systems, sales and purchases correspondence, trade association files, lists of present and former customers and suppliers, security and alarm system records, personnel, employment and other records, and all copies and recordings of the foregoing;
- (c) all rights and interests of the Debtors to and in all pending and/or executory contracts, agreements, licences (including, without limitation, all software licences), leases and arrangements;
- (d) the goodwill related to the business carried on by the Debtors (the “**Business**”), including all right, title and interest of the Debtors in, to and in respect of all elements which contribute to the goodwill related to the Business, including goodwill represented by customer and supplier lists and the logos of the Debtors;
- (e) the intellectual property including, without limitation:
  - (i) all business and trade names, corporate names, brand names and slogans Related to the Business including “Thomas’ Utopia Brand”;
  - (ii) all inventions, patents, patent rights, patent applications (including all reissues, divisions, continuations, continuations-in-part and extensions of any patent or patent application), industrial designs and applications for registration of industrial designs and associated rights related to the Business;
  - (iii) all copyrights and trade-marks (whether used with goods or services and including the goodwill attaching to such trade-marks), registrations and applications for trade-marks and copyrights (and all future income from such trade-marks and copyrights) related to the Business;
  - (iv) all rights and interests in and to processes, lab journals, notebooks, data, trade secrets, designs, know-how, product formulae and information, manufacturing, engineering and other drawings and manuals, technology, blue prints, research and development reports, agency agreements, technical information, technical assistance, engineering data, design and engineering specifications, and similar



materials recording or evidencing expertise or information Related to the Business;

- (v) all other intellectual and industrial property rights throughout the world related to the Business;
- (vi) all rights of the Debtors in all confidentiality, non-compete, non-solicitation and intellectual property assignment agreements;
- (vii) all licences of the intellectual property listed in items (i) to (vi) above;
- (viii) all future income and proceeds from any of the intellectual property and licences listed in items (i) to (vi) above and the licenses listed in item (vii) above;
- (ix) all rights to damages and profits by reason of the infringement of any of the intellectual property listed in items (i) to (vii) above;
- (x) all phone numbers; and,
- (xi) all websites, including [www.thomasutopiabrand](http://www.thomasutopiabrand) and [www.thomascanning.com](http://www.thomascanning.com);
- (f) all inventories of stock-in-trade and merchandise including seedlings, crops, materials, supplies, finished goods, repair and service parts related to the Business (collectively, the “**Inventory**”) including, without limitation, those in possession of suppliers, customers and other third parties (including, without limitation, the 50 acres of organic tomatoes being grown under contract by 959699 Ontario Inc. o/a DeNijs Organic Farms);
- (g) all licences, permits, filings, authorizations, registrations, certificates of approval, approvals, grants, quotas, commitments, rights, privileges or indicia of authority related to the Business or necessary for the conduct of the Business;
- (h) all machinery, equipment, furniture, fixtures, computer systems and equipment and other chattels related to the Business;
- (i) all rights and interests of the Debtors to and in all customer orders for purchases of Inventory; and
- (j) the all real property of the Debtors including, without limitation, the following:
  - (i) **PIN 75228-0009 (LT)**  
PT LT 28-29 CON 9 MAIDSTONE AS IN R305027, PT 2 12R9420; T/W R1042854; S/T MB18413; LAKESHORE; SUBJECT TO AN EASEMENT IN GROSS OVER PT. 1 12R24775 AS IN CE502602
  - (ii) **PIN 75228-0005 (LT)**  
PT LT 27 CON 10 MAIDSTONE AS IN R442677; LAKESHORE

(iii) **PIN 75228-0067 (LT)**

PT LT 27 CON 10; LAKESHORE DESIGNATED AS PT 2 12R20686,

(iv) **PIN 75016-0010 (LT)**

PT LT 289 CON STR MAIDSTONE AS IN R305027 (THIRDLY) EXCEPT  
PTS 3, 4 R423541; S/T MB18404; LAKESHORE

(v) **PIN 75016-0009 (LT)**

PT LT 289 CON STR MAIDSTONE AS IN R1119864; S/T MB18355;  
LAKESHORE

(vi) **PIN 75016-0021 (LT)**

PT LT 291 CON STR MAIDSTONE PTS 1, 2 RD138 EXCEPT PT 1 RD273 &  
PT 1 12R376; S/T R389219; LAKESHORE

(vii) **PIN 75016-0019 (LT)**

PT LT 289-290 CON STR MAIDSTONE AS IN R645962, R463774 & R305027  
(FIRSTLY) EXCEPT PT 1 12R2096 & PTS 9, 10 R423541; S/T MB18409,  
MB18414, R902964; LAKESHORE

**SCHEDULE C**  
**CLAIMS TO BE DELETED AND EXPUNGED FROM TITLE TO REAL PROPERTY**

**PIN 75228-0009 (LT)**

1. Instrument Number R233025 registered on January 5, 1961 being an Assignment of Lease
2. Instrument Number CE665518 registered on July 3, 2015 being a Charge in the principal amount of \$21,365,650.00 in favour of Bridging Finance Inc.
3. Instrument Number CE665523 registered on July 3, 2015 being a Notice of Assignment of Rents-General in favour of Bridging Finance Inc.

**PIN 75228-0005 (LT)**

1. Instrument Number CE665518 registered on July 3, 2015 being a Charge in the principal amount of \$21,365,650.00 in favour of Bridging Finance Inc.
2. Instrument Number CE665523 registered on July 3, 2015 being a Notice of Assignment of Rents-General in favour of Bridging Finance Inc.

**PIN 75228-0067 (LT)**

1. Instrument Number CE665518 registered on July 3, 2015 being a Charge in the principal amount of \$21,365,650.00 in favour of Bridging Finance Inc.
2. Instrument Number CE665523 registered on July 3, 2015 being a Notice of Assignment of Rents-General in favour of Bridging Finance Inc.

**PIN 75016-0010 (LT)**

1. Instrument Number CE665518 registered on July 3, 2015 being a Charge in the principal amount of \$21,365,650.00 in favour of Bridging Finance Inc.
2. Instrument Number CE665523 registered on July 3, 2015 being a Notice of Assignment of Rents-General in favour of Bridging Finance Inc.

**PIN 75016-0009 (LT)**

1. Instrument Number CE665518 registered on July 3, 2015 being a Charge in the principal amount of \$21,365,650.00 in favour of Bridging Finance Inc.
2. Instrument Number CE665523 registered on July 3, 2015 being a Notice of Assignment of Rents-General in favour of Bridging Finance Inc.

**PIN 75016-0021 (LT)**

1. Instrument Number R720043Z registered on December 22, 1977 being an Application to Annex Restrictive Covenant
2. Instrument Number CE665518 registered on July 3, 2015 being a Charge in the principal amount of \$21,365,650.00 in favour of Bridging Finance Inc.
3. Instrument Number CE665523 registered on July 3, 2015 being a Notice of Assignment of Rents-General in favour of Bridging Finance Inc.

**PIN 75016-0019 (LT)**

1. Instrument Number R902964 registered on March 8, 1984 being an Agreement for Right-of-Way in favour of Union Gas Limited (expired)
2. Instrument Number CE665518 registered on July 3, 2015 being a Charge in the principal amount of \$21,365,650.00 in favour of Bridging Finance Inc.
3. Instrument Number CE665523 registered on July 3, 2015 being a Notice of Assignment of Rents-General in favour of Bridging Finance Inc.

**SCHEDULE D**  
**PERMITTED ENCUMBRANCES, EASEMENTS AND RESTRICTIVE COVENANTS**  
**RELATED TO THE REAL PROPERTY**

**(unaffected by the Vesting Order)**

**PIN 75228-0009 (LT)**

1. Instrument Number MB18413 registered on February 1, 1949 being a Transfer of Easement in favour of Bell Telephone Co. of Canada
2. Instrument Number R305027 registered on June 9, 1964 being a Transfer
3. Instrument Number 12R4451 registered on June 23, 1978 being a Reference Plan
4. Instrument Number 12R9420 registered on April 11, 1988 being a Reference Plan
5. Instrument Number R1042854 registered on April 13, 1988 being a Transfer
6. Instrument Number R1073171 registered on January 9, 1989 being a Notice of Claim
7. Instrument Number 12R24775 registered on August 17, 2011 being a Reference Plan
8. Instrument Number CE502602 registered on January 11, 2012 being a Transfer of Easement in favour of Hydro One Networks Inc.

**PIN 75228-0005 (LT)**

1. Instrument Number R442677 registered on June 19, 1969 being a Transfer

**PIN 75228-0067 (LT)**

1. Instrument Number 12R20686 registered on August 12, 2003 being a Reference Plan
2. Instrument Number CE52782 registered on January 6, 2004 being a Transfer

**PIN 75016-0010 (LT)**

1. Instrument Number MB18404 registered on January 21, 1949 being a Transfer of Easement in favour of The Bell Telephone Company of Canada
2. Instrument Number R305027 registered on June 9, 1964 being a Transfer
3. Instrument Number R1073182 registered on January 9, 1989 being a Notice of Claim

**PIN 75016-0009 (LT)**

1. Instrument Number MB18355 registered on November 23, 1948 a Transfer of Easement in favour of The Bell Telephone Company of Canada

2. Instrument Number R1042301 registered on April 7, 1988 being a Notice of Claim
3. Instrument Number R1119864 registered on February 26, 1990 being a Transfer

**PIN 75016-0021 (LT)**

1. Instrument Number R38129 registered on July 20, 1967 being a Transfer of Easement in favour of The Bell Telephone Company of Canada
2. Instrument Number RD138 registered on June 27, 1969 being a Reference Plan
3. Instrument Number R720043 registered on December 22, 1977 being a Transfer

**PIN 75016-0019 (LT)**

1. Instrument Number MB18409 registered on January 21, 1949 being a Transfer of Easement in favour of Bell Telephone Co. of Can.
2. Instrument Number MB18414 registered on February 1, 1949 being a Transfer of Easement in favour of Bell Telephone Co. of Canada
3. Instrument Number R305027 registered on June 9, 1964 being a Transfer
4. Instrument Number R463774 registered on March 10, 1970 being a Transfer
5. Instrument Number R645962 registered on October 16, 1975 being a Transfer
6. Instrument Number 12R7427 registered on January 20, 1984 being a Reference Plan
7. Instrument Number R1073173 registered on January 9, 1989 being a Notice of Claim
8. Instrument Number R1073175 registered on January 9, 1989 being a Notice of Claim
9. Instrument Number R1497830 registered on August 21, 2000 being a Site Plan Agreement

**BRIDGING FINANCE INC., as agent for  
SPROTT BRIDGING INCOME FUND LP**  
Applicant

and **THOMAS CANNING (MAIDSTONE) LIMITED and 692194  
ONTARIO LIMITED**  
Respondents

Court File No. CV-17-11773-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST  
PROCEEDING COMMENCED AT TORONTO**

**APPROVAL AND VESTING ORDER**

**AIRD & BERLIS LLP**  
Barristers and Solicitors  
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Lawyers for the Applicant

# **APPENDIX “D”**



9:30 A.M.  
COUNSEL SLIP

H

COURT FILE NO CV-17-11773-00CL

DATE SEP 13, 2017

NO ON LIST 6

TITLE OF  
PROCEEDING BRIDGING FINANCE INC.  
THOMAS CANNING et al.

COUNSEL FOR:  
PLAINTIFF(S)  
APPLICANT(S)  
PETITIONER(S)

Sim Rappos  
for the Court appointed Monitor and Receiver

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DEFENDANT(S)  
RESPONDENT(S)

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& KEN ROSENSTEIN

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dullmann@blaney.com

Handwritten signature/initials  
Oct 17

September 13/17  
My Endorsement  
is attached.  
Hainey J

## Time table

### September 27, 2017 motion:

- September 15, 2017: Facts to be served by any party seeking payment out of holdback funds on behalf of the legal fees of the Company or with respect to claims of suppliers with respect to monitor proceedings
- September 22, 2017: Responding facts to be served
- September 29, 2017: Reply facts to be served

### October 17, 2017 motion:

- September 18, 2017: Receiver report to be served
- September 22, 2017: Written questions to be delivered to the Receiver
- September 27, 2017: Receiver to deliver response to written questions
- September 29, 2017: any additional evidence to be served
- October 6, 2017: Monitor to serve its facts

- October 11, 2017: responding facts to be served
- October 16, 2017: reply facts to be served

The Monitor's appraisal motion is returnable on October 17, 2017 and is peremptory on all parties and shall proceed to be heard on that date with no further adjournment.

Hanning J.

Sephenbed 13/17

# APPENDIX “E”

## **THOMAS CANNING (MAIDSTONE) LIMITED AND 692194 ONTARIO LIMITED**

**September 18, 2017**

Court File No. CV-17-11773-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

BETWEEN:

**BRIDGING FINANCE INC., as agent for SPROTT BRIDGING INCOME FUND LP**

Applicant

- and -

**THOMAS CANNING (MAIDSTONE) LIMITED and 692194 ONTARIO LIMITED**

Respondents

**APPLICATION UNDER subsections 47(1) and 243(1) of the *Bankruptcy and Insolvency Act*,  
R.S.C. 1985, c. B-3, as amended, and under section 101 of the  
*Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended**

**FIRST REPORT OF RICHTER ADVISORY GROUP INC.  
IN ITS CAPACITY AS RECEIVER OF  
THOMAS CANNING (MAIDSTONE) LIMITED and 692194 ONTARIO LIMITED**

September 18, 2017

## I. BACKGROUND

1. Pursuant to the Order of The Honourable Mr. Justice Newbould of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated April 20, 2017 (the "**Interim Receivership Order**"), Richter Advisory Group Inc. ("**Richter**") was appointed as interim receiver (the "**Interim Receiver**") of all of the assets, properties and undertakings (collectively, the "**Property**") of Thomas Canning (Maidstone) Limited ("**TCL**") and 692194 Ontario Limited (together with TCL, the "**Company**") under section 47(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "**BIA**").
2. The appointment of an interim receiver was sought, on an *ex parte* basis, by the Company's senior secured lender, Bridging Finance Inc. as agent for Sprott Bridging Income Fund LP ("**Bridging**" or the "**Lender**").
3. The Court set a comeback date of April 28, 2017 for the hearing of Bridging's application for the appointment of Richter as receiver of the Property under section 243(1) of the BIA and section 101 of the *Courts of Justice Act*, R.S.O. 1990 c. C.43, as amended (the "**CJA**").
4. The comeback hearing was subsequently adjourned to May 1, 2017 to afford the parties with additional time to negotiate an acceptable resolution.
5. Bridging and the Company entered into an accommodation agreement dated April 29, 2017 (the "**Accommodation Agreement**"), which, among other things, established a refinancing, investment and/or sale solicitation process (the "**RISP**"), and required the appointment of Richter as a Court-appointed monitor to supervise and assist the Company (but not to have control over the business or to have control over or take possession of the Property).
6. Pursuant to the Order of Justice Newbould dated May 1, 2017 (the "**Monitor Order**"), the Court, among other things:
  - (a) appointed Richter as monitor of the Company and the Property pursuant to section 101 of the CJA (the "**Monitor**");
  - (b) outlined the powers of the Monitor, which included but was not limited to, monitoring, making recommendations and approving all matters concerning the management and operation of the Company's business, and marketing the Company's business and/or Property under the RISP as set out in the Accommodation Agreement;

- (c) approved the Interim Receiver's report dated April 28, 2017 and the activities of the Interim Receiver described therein; and
  - (d) discharged the Interim Receiver from its duties, except for the performance of certain incidental duties, as required, as set out in the Interim Receivership Order.
7. As detailed in the Report of the Interim Receiver and the Monitor dated June 15, 2017 (the "**June 15 Report**"), the RISP had been completed and an offer from Mr. Santosh Mahal, on behalf of a company to be incorporated ("**Mahal**"), to purchase substantially all of the Company's Property, was selected as the winning bidder by the Monitor and Bridging.
8. To facilitate the completion of the sale transaction with 2581150 Ontario Inc., a company owned by Mahal (the "**Purchaser**"), as contemplated under the Mahal offer (the "**Sale Transaction**"), Bridging revived its receivership application returnable June 21, 2017 and requested that the Court grant orders:
- (a) appointing Richter as receiver of the Company and the Property pursuant to section 243(1) of the BIA and section 101 of the CJA (the "**Receiver**");
  - (b) authorizing and directing the Receiver to execute an asset purchase agreement dated June 15, 2017 (the "**APA**");
  - (c) approving the APA and authorizing and directing the Receiver to take all necessary steps to complete the Sale Transaction;
  - (d) vesting in the Purchaser the right, title and interest of the Company in and to the Purchased Assets (as defined in the APA), free and clear of all claims and encumbrances (other than permitted encumbrances under the APA); and
  - (e) authorizing and directing the Receiver, upon the closing of the Sale Transaction, to:
    - (i) repay the Interim Receiver's borrowings and associated interest charges;
    - (ii) pay the fees and disbursements of the Monitor and its counsel, Chaitons LLP ("**Chaitons**"), as approved by the Court; and
    - (iii) distribute the net sale proceeds (net of reasonable reserves as determined by the Receiver) to Bridging.



9. The Interim Receiver and the Monitor also brought a motion returnable June 21, 2017 seeking an order granting the following relief:
- (a) approving the Interim Receiver's statement of receipts and disbursements for the period from April 20, 2017 to and including May 31, 2017 (the "**IR R&D**");
  - (b) approving the fees and disbursements of the Interim Receiver and its counsel, Chaitons;
  - (c) authorizing and directing the Interim Receiver to distribute the net proceeds outlined in the IR R&D, including any future net proceeds, if any are received, to the Lender;
  - (d) terminating the interim receivership proceedings, including termination of the Interim Receiver's Charge and the Interim Receiver's Borrowing Charge (as defined in the Interim Receivership Order), upon the repayment of the Interim Receiver's borrowings (including interest) by the Receiver following the closing of the Sale Transaction or any other sale, and the Interim Receiver filing a discharge certificate with the Court (the "**IR Discharge Certificate**");
  - (e) approving the fees and disbursements of the Monitor and its counsel, Chaitons, to completion of the proceeding; and
  - (f) in the event that the Receiver was appointed, discharging Richter as Monitor, which was to include the termination of the Monitor's Charge (as defined in the Monitor Order) following payment of the Monitor's fees and disbursements and upon the Monitor filing a discharge certificate with the Court (the "**Monitor Discharge Certificate**"). On the filing of the Monitor Discharge Certificate, Richter was to be released from any and all liability that Richter had or may have by reason of, or in any way arising out of, the acts or omissions of Richter while acting in its capacity as Monitor, save and except for any gross negligence or willful misconduct on the Monitor's part.
10. In response to the return of Bridging's receivership application and the motion brought by the Monitor, the Company served a responding motion record containing an affidavit of William Thomas sworn June 20, 2017 (the "**Thomas Affidavit**"). In the Thomas Affidavit, the Company requested that the Monitor's motion be adjourned until after the completion of the Sale Transaction.
11. The Company also requested that the fees and disbursements of its counsel, Blaney, McMurtry LLP, and amounts owed to suppliers that the Company alleged supplied goods and/or services to the Company during the Monitor's appointment, be paid out of the net proceeds from the Sale Transaction in priority to Bridging's interest in the sale proceeds.

12. The Sale Transaction was approved by the Court pursuant to the Approval and Vesting Order of The Honourable Madam Justice Conway dated June 21, 2017 (the "**Approval and Vesting Order**"), a copy of which is attached hereto as **Appendix "A"**. The Company did not oppose the approval of the Sale Transaction by the Court. Additionally, the Court granted the relief sought by the Interim Receiver in the Order dated June 21, 2017. The Interim Receiver completed the remaining incidental duties and was discharged upon filing the IR Discharge Certificate with the Court of July 31, 2017.
13. The Court appointed Richter as Receiver pursuant to the Order (Appointment of Receiver) of Justice Conway dated June 21, 2017 (the "**Receivership Order**"), a copy of which is attached hereto as **Appendix "B"**. As noted above, Bridging's application requested that the net proceeds from the Sale Transaction be distributed to Bridging. As a result of the issues raised by the Company and the Ontario Farm Marketing Commission (the "**Commission**"), the parties agreed to paragraph 24 of the Receivership Order, which provides that:

**"THIS COURT ORDERS** that the Receiver is hereby authorized, upon the closing of the sale transaction approved by the Court pursuant to the Approval and Vesting Order dated June 21, 2017, to: ...

(b) distribute the net sale proceeds to the Applicant, subject to a \$1,200,000 reserve, the entitlements and priority of claims to which reserve (including those claims set out in the Affidavit of William Thomas sworn June 20, 2017 and/or the Affidavit of James Clark sworn June 20, 2017) shall be subject to further Order of this Court."
14. With respect to the relief sought by the Monitor, as noted in Justice Conway's endorsement dated June 21, 2017, a copy of which is attached hereto as **Appendix "C"**, the Monitor's motion was adjourned to be scheduled at a 9:30 am chambers appointment on July 5, 2017.
15. On July 5, 2017, the parties appeared before Justice Conway in chambers, at which time the Court ordered that the Monitor's motion, and matters related to the entitlement of the \$1.2 million being held in reserve by the Receiver as agreed to by the parties (the "**Reserve**"), be scheduled for September 11, 2017. As a result of an administrative request received from the Court, the motions were subsequently scheduled to be heard on September 27, 2017.
16. On September 13, 2017, parties appeared in chambers before The Honourable Mr. Justice Hainey to discuss matters related to the motions scheduled to be heard on September 27, 2017. As a result of the attendance, and information requests made of the Receiver by the former principals of the Company, the Court issued an endorsement setting out litigation timetables for the hearing of the motions related to the Reserve, which was to proceed on September 27, 2017, and the Monitor's motion, which was re-scheduled

to be heard on October 17, 2017. The litigation timetable requires the Receiver to serve a report by September 18, 2017. A copy of the endorsement is attached hereto as **Appendix "D"**.

## **II. PURPOSE OF REPORT**

17. The purpose of this report (the "**Report**") is to detail matters related to the appointment of the Receiver and the completion of the Sale Transaction.

## **III. QUALIFICATIONS**

18. In preparing this Report, the Receiver has relied upon unaudited financial information, the Company's books and records, financial information prepared by the Company and discussions with management (collectively, the "**Information**"). The Receiver has reviewed the Information for reasonableness, internal consistency, and use in the context in which it was provided, and in consideration of the nature of the evidence provided to this Court, in relation to the relief sought therein. The Receiver has not, however, audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Generally Accepted Auditing Standards ("**GAAS**") pursuant to the Canadian Institute of Chartered Accountants Handbook and, as such, the Receiver expresses no opinion or other form of assurance contemplated under GAAS in respect of the Information. An examination of the Company's financial forecasts in accordance with the *Canadian Institute of Chartered Accountants Handbook* has not been performed. Future-oriented financial information reported on or relied upon in this Report is based on management's assumptions regarding future events; actual results achieved may vary from forecast and such variations may be material.
19. Unless otherwise noted, all monetary amounts contained in this Report are expressed in Canadian dollars.

## **IV. RECEIVER'S ACTIVITIES SINCE ITS APPOINTMENT**

20. This section details certain of the activities of the Receiver since its appointment on June 21, 2017. This section is not an exhaustive report on the Receiver's activities since its appointment, which the Receiver will provide in its next and expected final report to the Court.
21. Immediately upon issuance of the Receivership Order, the Receiver attended at the Company's premises in Maidstone, Ontario to take possession and secure the Company's assets, and books and records located therein.

22. At the time of the Receiver's appointment, the Company was in the midst of its seasonal slow period and as a result it had minimal employees, and was only dealing with equipment repair and maintenance activity and limited shipping operations.
23. Following its appointment, the Receiver's initial activities included:
- (a) informing the Company's employees, including workers employed by the Company through the Temporary Foreign Worker Program or the International Mobility Program, that their employment had been terminated pursuant to paragraph 13 of the Receivership Order;
  - (b) holding numerous discussions with the Company's foreign migrant workers and coordinating with the Jamaican Liaison Office and the Mexican migrant workers regarding their departure from the Company's premises and/or the country as required. As a result of the Receiver's efforts, all of the Mexican migrant workers were returned to Mexico and the Jamaican migrant workers were placed under the care of the Jamaican Liaison Office;
  - (c) informing the Canadian full time and part time employees that the Receiver and/or the Purchaser may communicate with them shortly to inquire about their interest in assisting the Receiver and/or the Purchaser should assistance be required;
  - (d) entering into consulting arrangements with certain former employees on a term and task basis to assist the Receiver in its administration, including human resource activities (final pay, records of employment and T4 documents), HST filings, and taking steps to arrange for the release of the Company's inventory that was located at a third-party warehouse;
  - (e) changing the locks and securing the premises;
  - (f) responding to demands from a party that was attempting to take possession of certain mobile units located at the Company's premises;
  - (g) corresponding with the Commission with respect to a hearing that was scheduled to take place with respect to the Company's marketing license;
  - (h) determining the amounts owed under the *Wage Earners Protection Program Act* and liaising with Service Canada on these amounts;

- (i) taking possession of the Company's books and records and, among other things, taking steps to complete administrative filings/mailings and HST returns that had been outstanding since June 2016, and to file corporate income tax returns;
- (j) repaying the Interim Receiver's borrowings and accumulated interest to Bridging;
- (k) corresponding with tote lessors; and
- (l) arranging for the continuation of all applicable utilities, insurance and security at the premises.

## **V. SALE TRANSACTION**

- 24. As noted above, the APA was approved by the Court pursuant to the Approval and Vesting Order. A copy of the APA, as executed by the Receiver in accordance with the Approval and Vesting Order, is attached hereto as **Appendix "E"**.
- 25. Pursuant to the terms of the APA, the closing date for the Sale Transaction was to be June 21, 2017 or such later date as the parties may agree to in writing. As noted in the June 15 Report, it was the intent of the parties to close the Sale Transaction on June 21, 2017 or shortly thereafter.
- 26. As previously reported by the Monitor, a \$2.0 million deposit was received by the Monitor from Mahal in connection with the Sale Transaction.
- 27. Following its appointment, the Receiver worked closely with the Purchaser in an attempt to close the Sale Transaction as soon as possible. The Purchaser required additional time to complete its financing arrangements with its lender, which were particularly complex given that the Purchaser, as part of the APA, would be assuming the Company's indebtedness to Bridging, and such amount would not be conclusively determined until the completion of the receivership proceeding. The Receiver was supportive of this extension due to the level of communication with the Purchaser and its lender, the significant Deposit already received by the Receiver, the fact that the only other offer received during the RISP had been retracted by the offeror (a principal of the Company), and the minimal level of Company operations during this period.
- 28. As a result, the parties agreed to an extension of the closing date under the APA to July 7, 2017. The Sale Transaction was completed on that day. In connection with the closing, the Receiver received \$20.0 million from the Purchaser (\$18.0 million on closing and the \$2.0 million deposit), and the Purchaser entered into an assumption agreement with Bridging with respect to the Company's indebtedness that had been assumed by the Purchaser.

29. In accordance with the terms of the Receivership Order, the Receiver has distributed \$18.8 million of the net sale proceeds to Bridging and is maintaining funds for the Reserve in accordance with the Receivership Order.

## VI. ADDITIONAL MATTERS

30. As noted above, the former principals of the Company have requested additional information from the Receiver, which they believe is relevant to the Monitor's motion scheduled for October 17, 2017. This section responds to the information requests.

### Totes and Customers

31. Notwithstanding that the Sale Transaction was completed on July 7, 2017, the Receiver arranged with the Purchaser to have certain tomato produce storage units (known as "Totes") remain at the premises while the Receiver corresponded with Totes lessors regarding the return of empty totes that were situated at the premises and dealing with totes that were filled with tomato paste inventory that had been purchased by the Purchaser.
32. The Receiver understands that the majority of the empty Totes have been removed from the Purchaser's premises.
33. The Receiver issued letters to the Company's customers on or around July 12, 2017, notifying them of the Receiver's appointment, the Sale Transaction, and contact information for the Receiver. Since its appointment, the Receiver has collected cash receipts from the outstanding accounts receivables that were deposited to the Company's bank accounts or mailed to the Company. The Receiver has remitted these proceeds to the Purchaser in accordance with the APA.

### Status of the Business

34. The Receiver has been informed by the Purchaser that it has been unable to recommence the Company's operations since the completion of the Sale Transaction for a number of reasons, including the state of the premises as at closing, the administrative and regulatory steps required of the Canadian Food Inspection Agency (the "CFIA") and the Commission, which have been more difficult than expected given the state of the business as at the time of closing and the outstanding charges laid by the CFIA against the Company and Mr. William Thomas under the *Food and Drugs Act*, the *Canada Agricultural Products Act*, the *Consumer Packaging and Liability Act*, and the fact that a dispute arose with the remaining supplier of tomato crops, 959699 Ontario Inc. o/a DeNijs Organic Farms ("DeNijs").

35. Given the knowledge that Richter had acquired in its capacities as the Interim Receiver, Monitor and Receiver, at the request of the Purchaser, Richter has assisted the Purchaser in setting up the process and procedures for full inventory count as required by the CFIA.

**Escrow Arrangement**

36. As previously reported to the Court in the June 15 Report, the Company entered into an agreement with DeNijs in May 2017 for DeNijs to grow tomato seedlings to be processed by the Company. In connection with the agreement and the requirements imposed by the Commission, the parties entered into an escrow agreement with the Lender dated May 19, 2017, wherein \$472,500 was deposited with Aird & Berlis LLP as escrow agent (the "**Escrow Agent**").
37. Based on the correspondence exchanged by the parties, the Receiver understands that the parties are in dispute as to the state of the tomato crops and whether DeNijs was able to deliver the crops in accordance with the agreement. The Escrow Agent has indicated that, due to the conflict between the parties, it will not release the funds until the parties resolve the conflict.
38. The Receiver was recently informed, through its counsel, that DeNijs intends to commence an action for the release of the escrow funds.

All of which is respectfully submitted on the 18<sup>th</sup> day of September, 2017.

**Richter Advisory Group Inc.**  
**as Receiver of Thomas Canning (Maidstone) Limited and 692194 Ontario Limited**  
**and not in its personal capacity**



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**Clark Lonergan, CPA, CA, CIRP, LIT**  
Senior Vice-President

# APPENDIX “F”



**THOMAS CANNING (MAIDSTONE) LIMITED AND  
692194 ONTARIO LIMITED**

**September 25, 2017**

Court File No. CV-17-11773-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

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**BETWEEN:**

**BRIDGING FINANCE INC., as agent for SPROTT BRIDGING INCOME FUND LP**

**Applicant**

**- and -**

**THOMAS CANNING (MAIDSTONE) LIMITED and 692194 ONTARIO LIMITED**

**Respondents**

**APPLICATION UNDER subsections 47(1) and 243(1) of the *Bankruptcy and Insolvency Act*,  
R.S.C. 1985, c. B-3, as amended, and under section 101 of the  
*Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended**

**SECOND REPORT OF RICHTER ADVISORY GROUP INC.  
IN ITS CAPACITY AS RECEIVER OF  
THOMAS CANNING (MAIDSTONE) LIMITED and 692194 ONTARIO LIMITED**

**September 25, 2017**

## APPENDICES

- APPENDIX "A" NOTICE LETTER OF MOTIONS BEFORE THE COURT ON SEPTEMBER 27, 2017
- APPENDIX "B" LIST OF NOTIFIED PARTIES OF MOTIONS BEFORE THE COURT ON SEPTEMBER 27, 2017
- APPENDIX "C" ENDORSEMENT OF THE HONOURABLE MR. JUSTICE HAINEY DATED SEPTEMBER 13, 2017
- APPENDIX "D" REPORT OF THE RECEIVER DATED SEPTEMBER 18, 2017 (WITH APPENDICES)
- APPENDIX "E" REPORT OF THE INTERIM RECEIVER AND MONITOR DATED JUNE 15, 2017 (W/O APPENDICES)
- APPENDIX "F" CARTHER PLANTS LTD. ORGANIC TOMATO PLANT CONTRACT DATED MARCH 30, 2017 AND INVOICE DATED MARCH 31, 2017
- APPENDIX "G" SPEEDLING PLANT ORDER FORM/CONTRACT DATED APRIL 17, 2017
- APPENDIX "H" BLANEY, MCMURTRY LLP INVOICE DATED APRIL 30, 2017

## I. INTRODUCTION

1. Pursuant to the Order of The Honourable Mr. Justice Newbould of the Ontario Superior Court of Justice (Commercial List) (the "Court") dated April 20, 2017 (the "Interim Receivership Order" or "IR Order"), Richter Advisory Group Inc. ("Richter") was appointed as interim receiver (the "Interim Receiver") of all of the assets, properties and undertakings (collectively, the "Property") of Thomas Canning (Maidstone) Limited ("TCL") and 692194 Ontario Limited (together with TCL, the "Company") under section 47(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "BIA").
2. The appointment of an interim receiver was sought, on an *ex parte* basis, by the Company's senior secured lender, Bridging Finance Inc. as agent for Sprott Bridging Income Fund LP ("Bridging" or the "Lender").
3. The Court set a comeback date of April 28, 2017 for the hearing of Bridging's application for the appointment of Richter as receiver of the Property under section 243(1) of the BIA and section 101 of the *Courts of Justice Act*, R.S.O. 1990 c. C.43, as amended (the "CJA").
4. The comeback hearing was subsequently adjourned to May 1, 2017 to afford the parties with additional time to negotiate an acceptable resolution.
5. Bridging and the Company entered into an accommodation agreement dated April 29, 2017 (the "Accommodation Agreement"), which, among other things, established a refinancing, investment and/or sale solicitation process (the "RISP"), and required the appointment of Richter as a Court-appointed monitor to supervise and assist the Company (but not to have control over the business or to have control over or take possession of the Property).
6. Pursuant to the Order of Justice Newbould dated May 1, 2017 (the "Monitor Order"), the Court, among other things:
  - (a) appointed Richter as monitor of the Company and the Property pursuant to section 101 of the CJA (the "Monitor");
  - (b) outlined the powers of the Monitor, which included but was not limited to, monitoring, making recommendations and approving all matters concerning the management and operation of the Company's business, and marketing the Company's business and/or Property under the RISP as set out in the Accommodation Agreement;
  - (c) approved the Interim Receiver's report dated April 28, 2017 (the "IR Report") and the activities of the Interim Receiver described therein; and

- (d) discharged the Interim Receiver from its duties, except for the performance of certain incidental duties, as required, as set out in the Interim Receivership Order.
7. As detailed in the report of the Interim Receiver and the Monitor dated June 15, 2017 (the "June 15 Report"), the RISP had been completed and an offer from Mr. Santosh Mahal, on behalf of a company to be incorporated ("Mahal"), to purchase substantially all of the Company's Property, was selected as the winning bidder by the Monitor and Bridging.
8. To facilitate the completion of the sale transaction with 2581150 Ontario Inc., a company owned by Mahal (the "Purchaser"), as contemplated under the Mahal offer (the "Sale Transaction"), Bridging revived its receivership application returnable June 21, 2017 and requested that the Court grant orders:
- (a) appointing Richter as receiver of the Company and the Property pursuant to section 243(1) of the BIA and section 101 of the CJA (the "Receiver");
  - (b) authorizing and directing the Receiver to execute an asset purchase agreement dated June 15, 2017 (the "APA");
  - (c) approving the APA and authorizing and directing the Receiver to take all necessary steps to complete the Sale Transaction;
  - (d) vesting in the Purchaser the right, title and interest of the Company in and to the Purchased Assets (as defined in the APA), free and clear of all claims and encumbrances (other than permitted encumbrances under the APA); and
  - (e) authorizing and directing the Receiver, upon the closing of the Sale Transaction, to:
    - (i) repay the Interim Receiver's borrowings and associated interest charges;
    - (ii) pay the fees and disbursements of the Monitor and its counsel, Chaitons LLP ("Chaitons"), as approved by the Court; and
    - (iii) distribute the net sale proceeds (net of reasonable reserves as determined by the Receiver) to Bridging.
9. The Interim Receiver and the Monitor also brought a motion returnable June 21, 2017 seeking an order granting the following relief:

- (a) approving the Interim Receiver's statement of receipts and disbursements for the period from April 20, 2017 to and including May 31, 2017 (the "IR R&D");
  - (b) approving the fees and disbursements of the Interim Receiver and its counsel, Chaitons;
  - (c) authorizing and directing the Interim Receiver to distribute the net proceeds outlined in the IR R&D, including any future net proceeds, if any are received, to the Lender;
  - (d) terminating the interim receivership proceedings, including termination of the Interim Receiver's Charge and the Interim Receiver's Borrowing Charge (as defined in the Interim Receivership Order), upon the repayment of the Interim Receiver's borrowings (including interest) by the Receiver following the closing of the Sale Transaction or any other sale, and the Interim Receiver filing a discharge certificate with the Court (the "IR Discharge Certificate");
  - (e) approving the fees and disbursements of the Monitor and its counsel, Chaitons, to completion of the proceeding; and
  - (f) in the event that the Receiver was appointed, discharging Richter as Monitor, which was to include the termination of the Monitor's Charge (as defined in the Monitor Order) following payment of the Monitor's fees and disbursements and upon the Monitor filing a discharge certificate with the Court (the "Monitor Discharge Certificate"). On the filing of the Monitor Discharge Certificate, Richter was to be released from any and all liability that Richter had or may have by reason of, or in any way arising out of, the acts or omissions of Richter while acting in its capacity as Monitor, save and except for any gross negligence or willful misconduct on the Monitor's part.
10. In response to the return of Bridging's receivership application and the motion brought by the Monitor, the Company served a responding motion record containing an affidavit of William Thomas sworn June 20, 2017 (the "Thomas Affidavit"). In the Thomas Affidavit, the Company requested that the Monitor's motion be adjourned until after the completion of the Sale Transaction.
11. The Company also requested that the fees and disbursements of its counsel, Blaney, McMurtry LLP ("Blaney"), and amounts owed to suppliers that the Company alleged had supplied goods and/or services to the Company during the Monitor's appointment, be paid out of the net proceeds from the Sale Transaction in priority to Bridging's interest in the sale proceeds.
12. The Sale Transaction was approved by the Court pursuant to an approval and vesting order of the Honourable Madam Justice Conway dated June 21, 2017 (the "Approval and Vesting Order"). The

Company did not oppose and in fact supported the approval of the Sale Transaction by the Court. Additionally, the Court granted the relief sought by the Interim Receiver in the Order dated June 21, 2017. The Interim Receiver completed the remaining incidental duties and was discharged upon filing the IR Discharge Certificate with the Court of July 31, 2017.

13. The Court appointed Richter as Receiver pursuant to the Order (Appointment of Receiver) of Justice Conway dated June 21, 2017 (the "Receivership Order").
14. As noted above, Bridging's application requested that the net proceeds from the Sale Transaction be distributed to Bridging. As a result of the issues raised by the Company and the Ontario Farm Marketing Commission (the "Commission"), the parties agreed to paragraph 24 of the Receivership Order, which provided for a \$1.2 million reserve (the "Reserve"), where entitlements and priority of claims with regards to this Reserve shall be subject to a further Order of the Court.
15. With respect to the relief sought by the Monitor, the Monitor's motion was adjourned to be scheduled at a 9:30 am chambers appointment on July 5, 2017.
16. On July 5, 2017, the parties appeared before Justice Conway in chambers, at which time the Court ordered that the Monitor's motion, and matters related to the entitlement of the Reserve, be scheduled for September 11, 2017. As a result of an administrative request received from the Court, the motions were subsequently scheduled to be heard on September 27, 2017.
17. On September 8, 2017, the Monitor served a notice to the parties identified in the Thomas Affidavit as having supplied goods and/or services to the Company during the Monitor's appointment, informing them that there would be motions before the Court on September 27, 2017 with respect to the net sale proceeds of the Property. A copy of the notice letter and list of parties are respectively attached hereto as **Appendix "A"** and **Appendix "B"**.
18. On September 13, 2017, parties appeared in chambers before The Honourable Mr. Justice Hainey to discuss matters related to the motions scheduled to be heard on September 27, 2017. As a result of the attendance, and information requests made of the Receiver by the former principals of the Company, the Court issued an endorsement setting out litigation timetables (the "Litigation Timetable") for the hearing of the motions related to the Reserve, which were to proceed on September 27, 2017, and the Monitor's motion, which was re-scheduled to be heard on October 17, 2017. A copy of the endorsement is attached hereto as **Appendix "C"**.

19. As outlined in the Litigation Timetable, parties seeking payments out of the Reserve on behalf of the legal fees of the Company or with respect to claims of suppliers during the monitor proceedings were to be received by September 15, 2017. Additionally, as outlined in the Litigation Timetable the Receiver was required to file its first report by September 18, 2017.

20. The following three (3) parties have served responding motion records and facts in connection with the motions returnable on September 27, 2017:

(a) Rol-Land Farms and Greenhouses Inc. ("Rol-Land");

(b) 2016 Growers<sup>1</sup>; and

(c) the Company.<sup>2</sup>

21. The first report of Richter, in its capacity as Receiver (the "First Report") was served on September 18, 2017 as required by the Litigation Timetable, a copy of which is attached hereto as Appendix "D".

22. This report, which is being submitted by Richter, in its capacity as Receiver (the "Second Report"), should be read in conjunction with the June 15 Report for background concerning the items addressed in this report. This Second Report adopts the definitions contained in the June 15 Report. A copy of the June 15 Report (without appendices) is attached hereto as Appendix "E".

## II. PURPOSE OF REPORT

23. The purpose of the Second Report is to provide the Court with information with respect to the claims made by Rol-Land, the 2016 Growers and the Company re: Blaney.

## III. QUALIFICATIONS

24. In preparing this Second Report, the Receiver has relied upon unaudited financial information, the Company's books and records, financial information prepared by the Company and discussions with management (collectively, the "Information"). The Receiver has reviewed the Information for reasonableness, internal consistency, and use in the context in which it was provided, and in consideration of the nature of the evidence provided to this Court, in relation to the relief sought therein. The Receiver has not, however, audited or otherwise attempted to verify the accuracy or completeness of the Information in a

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<sup>1</sup> The 2016 Growers are comprised of the nine parties that commenced an action against TCL, among others, on March 6, 2017.

<sup>2</sup> The Receiver has raised the issue with Blaney as to the basis upon which they can purport to continue to represent the Company given the provisions of the Receivership Order. Blaney has not provided a detailed response to date.



manner that would wholly or partially comply with Generally Accepted Auditing Standards ("GAAS") pursuant to the Canadian Institute of Chartered Accountants Handbook and, as such, the Receiver express no opinion or other form of assurance contemplated under GAAS in respect of the Information. An examination of the Company's financial forecasts in accordance with the *Canadian Institute of Chartered Accountants Handbook* has not been performed. Future-oriented financial information reported on or relied upon in this Second Report is based on management's assumptions regarding future events; actual results achieved may vary from forecast and such variations may be material.

25. Unless otherwise noted, all monetary amounts contained in this Second Report are expressed in Canadian dollars.

#### **IV. CLAIMS OF 2016 GROWERS**

26. The 2016 Growers are seeking payment of all or a part of the Reserve in connection with amounts they are owed by the Company with respect to the 2016 production season. The 2016 Growers rely on the Affidavit of Ian S. Wright sworn September 15, 2017 (the "Wright Affidavit") in support of their position.
27. As outlined in the June 15 Report, the Company had aggressive production targets for the 2016 production season, which were not achieved by TCL. As a result, the majority (approximately 70% of 1,100 acres) of the 2016 tomato feedstock contracts with fourteen (14) tomato field growers were not fulfilled.
28. As a result of these production issues, and as noted in the Wright Affidavit, the nine (9) 2016 Growers commenced an action against TCL, amongst others, on March 6, 2017, seeking damages for breach of contract in the aggregate amount of \$2,852,529.84. A copy of the statement of claim of the 2016 Growers is attached as Exhibit "A" to the Wright Affidavit.
29. TCL was able to reach a settlement with three (3) of the fourteen (14) parties that provided 2016 tomato feedstock production. Of the remaining three parties, one (1) was able to mitigate its damages, and two (2) parties have not taken any active steps against TCL.
30. As noted in the Wright Affidavit, the Receiver, in accordance with its statutory obligations, sent a notice to the Company's creditors as listed on their books and records. The notice contained a listing of the amounts owed by the Company.
31. Based on the books and records of TCL, it had in excess of \$4.88 million in unsecured liabilities as of the date of the Receiver's appointment, which does not include amounts in connection with any claims of secured creditors that will not be realizing any recovery on their secured claims. The claims of the 2016

Growers make up \$2,852,529.54 of this amount, which results in the Company having listed unsecured liabilities in excess of \$2.0 million to unsecured creditors, in addition to the amounts claimed by the 2016 Growers.

32. The Receiver is not aware of the 2016 Growers disputing that they are unsecured creditors of TCL.
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## **V. CLAIMS OF ROL-LAND**

33. Rol-Land is seeking payment of \$85,414.98 with respect to a contract it entered into with TCL for the production of tomato seedlings for the 2017 production season. Rol-Land relies on the Affidavit of Lynn Debrouwer sworn September 8, 2017 (the "Debrouwer Affidavit") in support of its position.
34. In the Debrouwer Affidavit and Rol-Land's factum, Rol-Land argues that the Court should order payment to it of \$85,414.98 from the Reserve, on the basis that:
- (a) it was not provided with notice of the appointment of the Interim Receiver, and learned of the appointment of the Interim Receiver from a third party on April 30, 2017;
  - (b) the tomato plants had already been seeded in the greenhouse by the time it learned of the appointment of the Interim Receiver;
  - (c) it was not provided with notice of the discharge of the Interim Receiver and appointment of the Monitor; and
  - (d) it was not notified by the Monitor to stop producing the tomato plants or that it would not be paid for them.

### **2017 Production**

35. TCL entered into contracts with seedling producers (greenhouses), including Rol-Land, to secure up to 400 acres of tomato feedstock for 2017 production. The Debrouwer Affidavit provides details with respect to the contract entered into by TCL and Rol-Land, which was entered into on March 29, 2017, over three weeks prior to the appointment of the Interim Receiver. A copy of the Rol-Land contract is attached as Exhibit "A" to the Debrouwer Affidavit.
36. Based on a review of the Rol-Land contract, it appears that Rol-Land did not require any upfront down payment from TCL in connection with the services to be provided by Rol-Land. The contract provides that the first payment was to be due on May 31, 2017, and would be in an amount of 50% of the entire cost of the contract.

37. In addition to Rol-Land, TCL entered into contracts with two (2) other seedling producers (greenhouses), Carther Plants Limited ("Carther") and Speedling Inc. ("Speedling"). A copy of the Carther contract and invoices is attached hereto as Appendix "F". A copy of the Speedling contract is attached hereto as Appendix "G".
38. Both of these contracts were entered into by TCL prior to the appointment of the Interim Receiver, with the Carther contract dated March 30, 2017, and the Speedling contract dated April 17, 2017.
39. The Carther contract required TCL to make an 80% upfront down payment prior to the planting of the organic tomato seeds, with the remaining payment due on June 15, 2017. The Receiver understands that TCL made this upfront payment to Carther.
40. The Speedling contract required TCL to make a 50% upfront down payment prior to the planting of the organic tomato seeds. The Receiver understands that TCL made this upfront payment to Speedling.

**Appointment of Interim Receiver – April 21, 2017**

41. Pursuant the IR Order, the Interim Receiver was empowered and authorized, but not obligated, to act in respect of the Property. It was the goal of the Company's stakeholders, including the Interim Receiver, to maintain business operations with as minimal interference as possible, until Bridging's receivership application could be heard on April 28, 2017, or an alternative solution could be agreed upon by Bridging and the Company.
42. As a result, during its appointment, which lasted eleven (11) days, the Interim Receiver exercised only those powers that were necessary to monitor and safeguard the Property. The Interim Receiver was never in control of the business and business operations continued as normal during this period by the Company. This fact is reflected in the Debrouwer Affidavit, as Rol-Land was in contact with a principal of the Company, who confirmed that he was in control of and making decisions in relation to the Company's business.
43. The complete activities of the Interim Receiver are detailed in the IR Report; however some relevant activities for reference are included below:
  - (a) proceeded to change the locks on certain of the entry/shipping doors, where possible, in an effort to secure the Premises and safeguard the Property. However, due to the unique configuration (buildings with large openings with no doors, large sliding doors, etc.) and age of the buildings on the Premises, securing all areas was not feasible;

- (b) engaged an outside security company to remain on-site at all times while the Interim Receiver was not present, to further secure the Premises and safeguard the Property;
  - (c) established procedures for monitoring the Company's cash receipts and cash disbursements, including but not limited to: (i) reviewing the Company's funding requests for critical payments, and submitting these funding requests to the Lender on the Company's behalf; (ii) observing payments made by the Company to ensure they were made in accordance with the funding requests; (iii) gaining read-only access to the Company's depository and disbursement bank accounts held at the Bank of Montreal, with the Bridging's assistance; and (iv) opening mail received at the Premises in order to monitor customer payments and information pertinent to the Property; and
  - (d) monitored shipping activity from the Premises, including review of supporting documentation. The Interim Receiver did not monitor activity from the Third Party Warehouse, as it understood that shipments from the Third Party Warehouse are only made to the Premises, and not directly to customers.
44. Notice of the Interim Receiver's appointment was given to those parties statutorily required under the BIA, to those parties with registered security under the *Personal Property Security Act (Ontario)*, and to certain government agencies. The Receiver understands that the notice provisions contained in section 245 of the BIA do not extend to an interim receiver. However, pursuant to the IR Order, the Interim Receiver set up a website to contain all relevant documents associated with these proceedings, which were later removed pursuant to the Monitor Order.
45. At the request of the Company, its principals, and Blaney, the Interim Receiver, other than the notice and service list noted above, was not in contact with the Company's creditors during the interim receivership proceeding that lasted from April 20, 2017 to May 1, 2017.
46. At no time did the Interim Receiver make use of the powers granted to it in the IR Order to compel continuation of services, nor was it ever in control of the Company's business. At all times the Interim Receiver worked with the Company and Blaney to alleviate their concerns regarding notice of the appointment of the Interim Receiver being given to third parties.

#### **Monitorship – May 1, 2017**

47. Bridging, the Company and Management (as Limited Guarantors) entered into the Accommodation Agreement, which, among other things, required the appointment of Richter as a Court-appointed monitor to supervise and assist the Company (but not to have control over the business or to have control over or take

possession of the Property), required the preparation of 13-week cash flow projections to provide short-term visibility to the Company stakeholders, and outlined the RISP.

48. As previously outlined in this report, the Court appointed Richter as Monitor pursuant the Monitor Order dated May 1, 2017, under section 101 of the CJA. The Monitor Order outlined the powers of the Monitor, which included but was not limited to, monitoring, making recommendations and approving all matters concerning the management and operation of the Company's business, and marketing the Company's business and/or Property under the RISP as set out in the Accommodation Agreement.
49. Pursuant to the Monitor Order, the Monitor:
  - (a) was empowered and authorized, but not obligated, to act in respect of the Company and Property;
  - (b) would not take possession or control of the Company's business or the Property; and
  - (c) would not be a receiver for the purposes of subsection 243 (1) of the BIA.
50. The Monitor Order contained no stay of proceeding against the Company, and as such creditors were able to take enforcement steps and/or exercise any remedies that were available to them.
51. The goal of the Company's stakeholders in seeking the Monitor Order was to allow for a court officer to supervise and monitor the Company's adherence to the terms of the Accommodation Agreement, including providing short-term visibility into the Company's cash flow, monitoring the Company's operations and implementing the RISP to allow for a potential sale or refinance transaction without impacting the business's enterprise valuation which may have been negatively impacted by a sale under BIA proceedings.
52. Given that the Monitor was deemed not to be a receiver under the BIA, notice provisions under sections 245 (1) and 246 (1) of the BIA did not apply and the Company's unsecured creditors never received notice of the appointment of the Monitor.
53. Management maintained control of vendor relationships during the Monitor proceedings; including ordering new product and negotiating the associated payment terms required to continue the supply of goods. Certain vendors required cash in advance and payment of past due accounts prior to shipment of new product given the Company's financial position and the significant amount of the Company's past due accounts. As noted previously, vendors and growers were already requiring accelerated payment terms prior to the appointment of the Interim Receiver or Monitor.

54. The Company sourced 50 acres of organic tomato feedstock supply for processing in 2017. The Company arranged for the growing contract to be executed and funds placed in escrow to pay the grower once the respective feedstock was ready for delivery. The seedling supply for these 50 organic acres was released by Carther once the remaining outstanding 20% balance was paid by the Company. Carther had attempted to contact the Monitor to inquire about payment of its outstanding balance. The Monitor instructed Management to contact Carther directly as the Monitor was not in control of the business. Management indicated that Carther would not release any seedlings unless full payment was made prior to shipment. Management included the remaining Carther payment on a subsequent funding request and the funds were released by Bridging and Carther was paid in full.
55. Management was never able to support or provide a business plan that supported 400 acres of 2017 tomato feedstock production and as a result only 50 acres was contracted.
56. The Monitor was not in contact with the trade vendors, growers or other suppliers during the Monitor proceeding and the Monitor Order contained no powers to compel continued supply from vendors.
57. It is not correct, as alleged by Rol-Land, that the Monitor agreed to and approved a plan for TCL to plant 400 acres.
58. Additionally, despite Rol-Land's allegation, the Monitor has taken no position as to whether Rol-Land's supply was for post-filing goods and services, as there was no "filing" by the Company under a bankruptcy or insolvency statute.
59. Lastly, Rol-Land has described itself as a "critical supplier", and its supply was critical to the continuing operations of the business of the Company. This statement lacks any logical support, as the goods were never supplied by Rol-Land and the Company's business was sold without the respective goods being supplied to or required by the Purchaser.
60. Richer in its capacities as Interim Receiver, Monitor and Receiver, vehemently denies the assertion made by Rol-Land that it failed in its duties as an officer of the Court and preferred the interests of Bridging over other parties.

## **VI. CLAIMS OF THE COMPANY RE: BLANEY**

61. The Accommodation Agreement provided that Bridging would fund the payment of reasonable fees and disbursements of Blaney incurred in connection with the Accommodation Agreement or the Monitor Order, up to a maximum amount of \$20,000 and the reasonable fees and disbursements incurred by said counsel

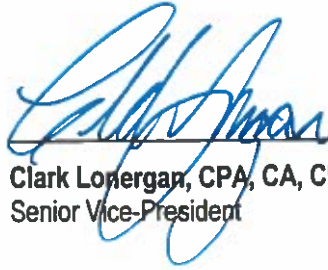
during the Forbearance Period (as defined in the Accommodation Agreement) but excepting any fees and disbursements relating to work done in opposition to the motions brought by the Monitor or Bridging in connection with the RISP or any transaction resulting from the RISP.

62. The Company, in its funding request of June 14, 2017, included the Blaney fees and disbursements in the amount of \$18,510 (plus HST) in connection with the Accommodation Agreement/Monitor Order. A copy of this invoice is attached hereto as **Appendix "H"**. The request for funding of these fees was rejected by Bridging, as it was asserting that the Company was in breach of the terms of the Accommodation Agreement. The Company once again included these fees on its last pre-receivership funding request on June 20, 2017, and again Bridging did not fund this payment.

All of which is respectfully submitted on the 25<sup>th</sup> day of September, 2017.

**Richter Advisory Group Inc.  
As Receiver of  
Thomas Canning (Maidstone) Limited and 692194 Ontario Limited  
and not in its personal capacity**

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**Clark Loneragan, CPA, CA, CIRP, LIT**  
Senior Vice-President



# APPENDIX “G”

Sept 27/17

Commercial List Court File No. CV-17-11773-00CL

BRIDGING FINANCE INC., AS AGENT  
FOR SPROTT BRIDGING INCOME FUND L.P.  
Applicant

THOMAS CANNING (MAIDSTONE) LIMITED  
and 692194 ONTARIO LIMITED  
Respondents

27 Sept 17

Motion is suggested.

The relief sought is granted.  
Mr Thomas will provide me  
with the formal order to be  
signed. I should note that  
the Review raised concerns  
about the form of Mr Thomas's  
affidavit. I agree with  
these concerns but since all  
parties agree that we do not  
object when the order should

So as sought.

MCL

ONTARIO  
SUPERIOR COURT OF JUSTICE

COMMERCIAL LIST

Proceeding commenced at Toronto

MOTION RECORD OF THE MOVING PARTY,  
WILLIAM THOMAS

(Returnable September 27, 2017)

BLANEY MCMURTRY LLP  
Barristers & Solicitors  
2 Queen Street East, Suite 1500  
Toronto ON M5C 3G5

David T. Ullmann (LSUC #423571)  
Fax: (416) 594-2437  
Email: [dullmann@blaney.com](mailto:dullmann@blaney.com)

Alexandra Teodorescu (LSUC # 63889D)  
Tel: (416) 596-4279  
Email: [ateodorescu@blaney.com](mailto:ateodorescu@blaney.com)

Lawyers for the Moving Party, William Thomas



Court File Number: CV-17-11773-0002

Superior Court of Justice  
Commercial List

FILE/DIRECTION/ORDER

Bridgway Finance  
Plaintiff(s)

AND

Thomas Canning  
Defendant(s)

Case Management ☐ Yes ☐ No by Judge: \_\_\_\_\_

Counsel	Telephone No:	Facsimile No:
<u>A. Teoclerum</u>		

- ☐ Order ☐ Direction for Registrar (No formal order need be taken out)  
☐ Above action transferred to the Commercial List at Toronto (No formal order need be taken out)  
☐ Adjourned to: \_\_\_\_\_  
☐ Time Table approved (as follows):

Counsel advises that the order sought has been approved by the Receiver and the Crown as well as the owners of Thomas Canning (Mainstone) Limited. Parties to this proceeding do not oppose order as per draft filed & agreed.

6 Oct 17  
Date

McE...  
Judge's Signature

☐ Additional Pages \_\_\_\_\_

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

THE HONOURABLE ) WEDNESDAY, THE 27<sup>TH</sup> DAY  
MR. JUSTICE McEWEN ) OF SEPTEMBER, 2017

BETWEEN:

BRIDGING FINANCE INC.,  
as agent for SPROTT BRIDGING INCOME FUND L.P.

Applicant

- and -

THOMAS CANNING (MAIDSTONE) LIMITED  
and 692194 ONTARIO LIMITED

Respondents

**IN THE MATTER OF AN APPLICATION PURSUANT TO SUBSECTIONS 47(1) AND  
243(1) OF THE *BANKRUPTCY ACT AND INSOLVENCY ACT* R.S.C. 1985, c. B-3, AS  
AMENDED, AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O 1990, c.  
C.43, AS AMENDED**

**ORDER**

**THIS MOTION** made by William Thomas (“**Mr. Thomas**”) for an Order authorizing Mr. Thomas to represent Thomas Canning (Maidstone) Limited, in the matter of *R v Thomas Canning (Maidstone) Limited and William Thomas*, and which charges are currently before the Ontario Court of Justice, Court file Number 0811 998 15 20670 (the “**Criminal Proceeding**”), concerning an investigation by the Canadian Food Inspection Agency, was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the Motion Record of Mr. Thomas, and on hearing the submissions of counsel for the moving party, the Receiver, and those other parties present, and no one appearing for any other person although duly served as appears from the affidavit of service of Alexandra Teodorescu, filed,

**THIS COURT HEREBY ORDERS** that

1. Mr. Thomas is authorized to represent Thomas Canning (Maidstone) Limited in the matter of the Criminal Proceeding;
2. Counsel representing Mr. Thomas in the matter of the prosecution of the Criminal Proceeding, is authorized to represent both Mr. Thomas and Thomas Canning (Maidstone) Limited;
3. The representation of the said corporation in the said prosecution as provided for in paragraphs 1 and 2 hereof is limited to or for the sole purpose of a resolution of the Criminal Proceeding, specifically,
  - a. Counsel for Mr. Thomas and Thomas Canning (Maidstone) Limited, and the Crown will propose the following joint submission to the Honourable Justice presiding in the Criminal Proceeding, so as to resolve the matter:
    - i. That Thomas Canning (Maidstone) Limited, will plead guilty to count 1 on the Information, namely that the said corporation did commit the offence under section 5(1) of the *Food and Drugs Act*, RSC 1985, c. F-27, during the period September 1, 2013 to July 3, 2015, by unlawfully labelling canned tomato products in a manner that created an erroneous impression that regular tomato products were organic;
    - ii. That Thomas Canning (Maidstone) Limited and the Crown will submit to the Court an Agreed Statement of Facts outlining all of the facts;
    - iii. That Thomas Canning (Maidstone) Limited and the Crown have agreed that an appropriate sentence for this offence is a fine of \$40,000, to be paid forthwith,

in light of all of the current and changed financial circumstances and status of Thomas Canning (Maidstone) Limited;

- iv. That the said proposed guilty plea is to be entered by the corporation by November 6, 2017, or earlier but no later than November 23, 2017, which dates are currently set for the prosecution to continue, after which this authorization expires;
- v. That the said proposed joint submission of a fine in the amount of \$40,000, will be made to the Ontario Court of Justice, however, Thomas Canning (Maidstone) Limited and Mr. Thomas accept that the Court is not bound by the said joint submission;
- vi. That the amount of the fine, whether it be the proposed joint fine of \$40,000 accepted by the Ontario Court of Justice or the fine ultimately imposed by the Court, will be at no cost to Richter Advisory Group Inc., in its capacities as Court-appointed Interim Receiver, Court-appointed Monitor and Court-appointed Receiver in this proceeding, or requires no payment by the Receiver from any amounts recovered or collected in connection with this proceeding; and further that it will be the responsibility of Mr. Thomas to make the payment, whatever the sentence imposed;
- vii. That the joint submission of a sentence of \$40,000, or the fine ultimately imposed by the Court, is contingent on the fine being paid forthwith by Mr. Thomas;
- viii. That the ultimate sentence and fine imposed, will be paid into Court, as required by the Criminal Code, payable to the Ministry of Finance, Court File Number 0811 998 15 20670;
- ix. That all other charges against the said corporation will be withdrawn upon the entering of the guilty plea and sentence;

- x. That all charges against the Director, Mr. Thomas, will be withdrawn upon the corporation entering a plea of guilty and being sentenced.



A handwritten signature in black ink, appearing to read 'McEust', is written over a horizontal line.

ENTERED AT / INSCRIT A TORONTO  
ON / BOOK NO:  
LE / DANS LE REGISTRE NO:

OCT 06 2017

PER / PAR 

IN THE MATTER OF AN APPLICATION PURSUANT TO SUBSECTIONS 47(1) AND 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED, AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c. C.43, AS AMENDED

Commercial List Court File No. CV-17-11773-00CL

**BRIDGING FINANCE INC., AS AGENT  
FOR SPROTT BRIDGING INCOME FUND L.P.**  
Applicant

**THOMAS CANNING (MAIDSTONE) LIMITED  
and 692194 ONTARIO LIMITED**  
Respondents

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceeding commenced at Toronto

**ORDER**

**BLANEY MCMURTRY LLP**  
Barristers & Solicitors  
2 Queen Street East, Suite 1500  
Toronto ON M5C 3G5

**David T. Ullmann** (LSUC #423571)  
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Email: [dullmann@blaney.com](mailto:dullmann@blaney.com)

**Alexandra Teodorescu** (LSUC # 63889D)  
Tel: (416) 596-4279  
Email: [ateodorescu@blaney.com](mailto:ateodorescu@blaney.com)

Lawyers for the Moving Party, William Thomas



# APPENDIX ‘H’

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

BRIDGING FINANCE INC., as agent for  
SPROTT BRIDGING INCOME FUND LP

Applicant

– and –

THOMAS CANNING (MAIDSTONE)  
LIMITED and 692194 ONTARIO  
LIMITED

Respondents

)  
)  
) *S. Babe*, for the Applicant  
)  
)

)  
) *D. Ullmann* and *A. Teodorescu* for the  
) Respondents  
)

) *S. Flaherty*, for Rol-land Farms Ltd. and  
) Greenhouses Inc.  
)

) *J. Goudy*, for 2016 Growers  
)

) *S. Rappos*, for the Receiver  
)

) *V. Glasser*, for Ontario Farm Products  
) Marketing Commission  
)

) *R. Reynolds*, for 959699 Ontario Ltd.  
)

) HEARD: September 27, 2017

IN THE MATTER OF AN APPLICATION PURSUANT TO SUBSECTIONS 47(1) AND  
243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS  
AMENDED, AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c.  
C.43, AS AMENDED

ENDORSEMENT

MR. JUSTICE T. MCEWEN

[1] This motion involves the distribution of the remaining Net Sale Proceeds (the “Reserve”) with respect to the sales transaction which was approved by way of an Approval and Vesting

Order made in this proceeding on June 21, 2017 concerning the sale of Thomas Canning (Maidstone) Ltd. and 692194 Ontario Limited ("Thomas Canning"). Thomas Canning, for several years, operated a business processing tomatoes. At that time the court also made an order appointing Richter Advisory Group Inc. as the Receiver ("Richter") and authorizing Richter to distribute the Net Sale Proceeds to the applicant Bridging Finance Inc. ("Bridging") subject to the Reserve which totals \$1.2 million. The court further ordered that the entitlements and priority claims with respect to the Reserve be subject to further determination.

[2] It is on that basis that this matter has returned to the court.

[3] Four entities contest the distribution of the Reserve as follows:

- Bridging
- Thomas Canning
- Rol-land Farms and Greenhouses Inc. ("Rol-land Farms")
- 2016 Growers

[4] Bridging, as the senior secured lender, claims that it is entitled to the entire amount of the Reserve. The other three companies submit that they are entitled to a portion of the Reserve in priority to Bridging.

[5] I will first provide a general overview of the history of this matter and then deal with each of the contested claims.

### **Background**

[6] On April 20, 2017, Bridging moved on an *ex parte* basis to have Richter appointed as Interim Receiver, pursuant to section 47(1) of the *Bankruptcy and Insolvency Act*, with respect to Thomas Canning. Subsequent to the order being made Bridging and Thomas Canning entered into an Accommodation Agreement, which provided, amongst other things, that Bridging would continue to provide funding to Thomas Canning and forebear from enforcing its security.

[7] A portion of the Accommodation Agreement provided that Bridging, subject to Richter's review and recommendation, would fund the reasonable fees and disbursements of Thomas Canning's counsel Blaney McMurty LLP ("Blaney"), in connection with the Accommodation Agreement or the Monitor Order, subject to certain terms and conditions.

[8] On May 1, 2017, a Monitor Order was made pursuant to section 101 of the *Courts of Justice Act*. Richter was also appointed Monitor. The relationship between Richter and Thomas Canning was a difficult one, with Richter stating in its June 15, 2017 report that Thomas Canning had "hindered and frustrated" Richter's ability to efficiently perform its duties. Richter cited a number of problems it encountered including Thomas Canning providing misleading comments, mischaracterizing inventory, tampering with expiration dates on products and failing to generally cooperate in reconciling accounting records and cash balances.

[9] On June 14, 2017, Bridging refused payment of Blaney's accounts taking the position that the Accommodation Agreement had been breached by Thomas Canning.

[10] Ultimately, on June 21, 2017, a sale of Thomas Canning was approved by the court and Richter was appointed as Receiver.

[11] As noted, Bridging claims entitlement to the entire amount of the \$1.2 million Reserve, while Rol-land Farms, 2016 Growers, and Thomas Canning make competing claims for portions of that amount.

[12] Rol-land Farms, 2016 Growers and Thomas Canning concede that Bridging, as the senior secured creditor, has not been made whole and is otherwise entitled to the Reserve. Each, however, presents various theories as to why they should share in the distribution of the Reserve in priority to Bridging.

[13] I will deal with each of these claims in turn.

#### **Rol-land Farms**

[14] Rol-land Farms is a grower of tomato seedling plants and had a contract with Thomas Canning, prior to the interim receivership, to supply plants to Thomas Canning. It issued invoices on May 1, 2017, and June 19, 2017, totaling \$85,414.94.

[15] Rol-land Farms takes the position that it is entitled to payment of its invoices from the Reserve in priority to Bridging.

[16] Rol-land Farms makes two submissions in this regard:

- i. Bridging and Richter undertook obligations to pay Rol-land Farms through the order obtained by Bridging on April 20, 2017, which, it says, compelled Rol-land Farms to supply the seedlings to the benefit of Bridging and Richter; and
- ii. Richter failed in its duty as an officer of the court by preferring the interest of Bridging over the interests of the creditors, particularly Rol-land Farms.

[17] I disagree with the submissions of Rol-land Farms in both instances.

[18] First, I disagree that Bridging or Richter undertook any form of separate and distinct obligation to pay Rol-land Farms.

[19] Rol-land Farms, in this regard, primarily relies upon on paragraph 11 of the Interim Receiver Order, which reads as follows:

#### **CONTINUATION OF SERVICES**

THIS COURT ORDERS that all Persons having oral or written agreements with the Debtors 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 the Debtors 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 Interim Receiver, and that the Interim Receiver shall be entitled to the continued use of the Debtors' 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 Interim Receiver in accordance with normal payment practices of the Debtors or such other practices as may be agreed upon by the supplier or service provider and the Interim Receiver, or as may be ordered by this Court (emphasis added).

[20] The problem with Rol-land Farms' submission is that Rol-land Farms concedes that neither Richter nor Bridging ever required Rol-land Farms to continue its services. Rol-land Farms nonetheless submits that, even though neither Bridging nor Richter required delivery, they "indirectly" took on an obligation as a result of Rol-land Farms honouring its contract with Thomas Canning. In my view, this is unsupportable in law. Paragraph 11, clearly sets out that written agreements cannot be discontinued when "such goods and services as may be required by the Interim Receiver". As neither Richter, nor Bridging, compelled any delivery, Rol-land Farms' argument is unsustainable. Also, nothing in the order speaks to any type of "indirect" obligation, nor is there any evidence of such obligation being undertaken.

[21] In support of its position Rol-land Farms relies upon the decision of the Ontario Court of Appeal in *Re St. Marys Paper Inc.* 1994 CanLII 1232 (ON CA). In my view, however, the *St. Marys* case is entirely distinguishable since in that case the trustee in bankruptcy specifically required certain services which did not occur here.

[22] Furthermore, the contract between Rol-land Farms and Thomas Canning was entered into prior to Richter's appointment as Interim Receiver. The unfortunate reality is that Rol-land Farms did not protect itself by requiring any form of prepayment of the contract. As an unsecured creditor its interests are therefore subordinate to those of Bridging.

[23] Second, there is no support for the argument that Richter unfairly preferred the interests of Bridging. It should be noted that Rol-land Farms does not take the position that Richter somehow acted maliciously, but rather that it simply and unfairly preferred the interests of Bridging over Rol-land Farms.

[24] In this regard, Rol-land Farms relies upon the Asset Purchasing Agreement ("APA"), dated June 15, 2017, in which the contract Rol-land Farms had with Thomas Canning was excluded when the business was sold.

[25] There are a number of difficulties with Rol-land Farms' submission. The APA was approved by the court in the June 21, 2017 sale approval; Richter was not in contact with suppliers; and the Monitor Order did not compel Richter to take steps with respect to creditors. Richter simply conducted a sales process. I am comfortable that Richter upheld its duty in this regard.

[26] Further, it was solely in the discretion of the purchaser, as per APA, to decide what contracts to purchase.

[27] Last, in any event, Rol-land Farms' claim, as an unsecured creditor, would still rank behind Bridging's claim.

### **2016 Growers**

[28] The 2016 Growers, like Rol-land Farms, also had contracts with Thomas Canning. In their case, with respect to the sale of tomatoes. Thomas Canning failed to honour the contracts and the 2016 Growers claim that they sustained damages in excess of \$2.8 million.

[29] At the hearing of the motion, unlike Rol-land Farms, the 2016 Growers did not take the position that either Bridging or Richter acted unfairly or inequitably. They concede that the law of equitable subordination does not apply and are not pursuing any claims concerning the contracts. Rather, the 2016 Growers submit that they should be compensated for the legal costs thrown away with respect to the Commission hearings, which were not stayed during the receivership but, ultimately, terminated once the sales process was completed.

[30] The 2016 Growers submit that they participated in the Commission hearings in good faith and therefore suffered prejudice by incurring legal fees to participate before the Commission which hearings ultimately became redundant. They therefore seek the costs thrown away in appearing before the Commission in the amount of \$7,235.35.

[31] I have some sympathy for the 2016 Growers in that they participated, in good faith, in the Commission hearings, which were ultimately not completed once the sale transpired. I do not find, however, that an unfairness resulted that would permit its claim for legal fees to rank in priority to Bridging. The order of Justice Conway specifically did not stay the Commission hearings. As both this matter and the Commission hearings moved forward there was always a risk that the Commission hearings would not be completed and that a sale would take place.

### **Thomas Canning**

[32] Thomas Canning seeks to enforce the provisions of the Accommodation Agreement which stipulates, generally speaking, that Bridging is to pay for the reasonable fees of Blaney.

[33] The difficulty with this submission is that the provisions of paragraph 3 of the Receivership Order provides the Receiver with the authority to exercise all of the rights of Thomas Canning.

[34] Where Thomas Canning is trying to enforce the provisions of the Accommodation Agreement it is my view that Thomas Canning should first bring a motion for leave as to whether the relief sought can be pursued. Thereafter, I will require a full record and argument as to whether the Accommodation Agreement was breached and whether Bridging has an obligation to pay the Blaney accounts.

[35] The Accommodation Agreement stipulates that the Blaney accounts are subject to a test of reasonableness. The parties submit that I should perform that examination, as opposed to Richter, given the history of this matter. I have agreed to do so.

**Disposition**

[36] The claims of Rol-land Farms and the 2016 Growers are dismissed.

[37] Insofar as to the claim of Thomas Canning is concerned, a subsequent motion will have to be brought. I will meet with counsel at a 9:30 am appointment with respect to scheduling the motion. I am also prepared to hear submissions about what should now be done with respect to the Reserve, if anything.

[38] If the parties cannot agree on costs, this can also be discussed at the 9:30 am appointment, and a timetable for written submissions will be set.

A handwritten signature in black ink, appearing to read 'McEwen', is written over a horizontal line.

**Mr. Justice T. McEwen**

**CITATION:** Bridging Finance Inc. v. Thomas Canning, 2017 ONSC 6048  
**COURT FILE NO.:** CV-17-11773-00CL  
**DATE:** 20171013

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**

**BETWEEN:**

BRIDGING FINANCE INC., as agent for SPROTT  
BRIDGING INCOME FUND LP

Applicant

– and –

THOMAS CANNING (MAIDSTONE) LIMITED and  
692194 ONTARIO LIMITED

Respondents

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**ENDORSEMENT**

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**Mr. Justice T. McEwen**

Released: October 13, 2017



# **APPENDIX “I”**

Court File Number: CV-17-0001773-0000

Superior Court of Justice  
Commercial List

FILE/DIRECTION/ORDER

Bridging Plaintiff(s)  
AND  
Thomas Canine Defendant(s)

Case Management ☐ Yes ☐ No by Judge: \_\_\_\_\_

Counsel	Telephone No:	Facsimile No:
see last		

- ☐ Order ☐ Direction for Registrar (No formal order need be taken out)  
☐ Above action transferred to the Commercial List at Toronto (No formal order need be taken out)  
☐ Adjourned to: \_\_\_\_\_  
☐ Time Table approved (as follows):

I conducted an e.c.-today. The following shall occur:  
(1) A motion shall be heard on Nov 28/17 to deal with the fees motion (include leave) and the distribution issue. The attached timetable shall be adhered to.  
(2) The motion to the Receiver for directions shall be heard on Dec 11/18  
19 Oct 17 McE  
Date Judge's Signature

☒ Additional Pages one

Court File Number: \_\_\_\_\_

Superior Court of Justice  
Commercial List

**FILE/DIRECTION/ORDER**

Judges Endorsment Continued

Both motions are scheduled for 2  
hours before me.

Any problems with the above  
will be dealt with by me  
@ a 9:30 spot.

McE

## Schedule

- ① Thomas Canning materials for leave and payment of Blaney McMurtry fees by Nov. 1<sup>st</sup>
- ② Report of Receiver re: Reserve by Nov. 1<sup>st</sup>
- ③ Responding materials by Bridging by Nov. 10<sup>th</sup>
- ④ Cross-examinations - week of Nov. 13<sup>th</sup>
- ⑤ Factum of Thomas Canning on Nov. 21<sup>st</sup>
- ⑥ Factum of Bridging on Nov. 24<sup>th</sup>