

assets described in the Sale Agreement (the "**Purchased Assets**"), was heard this day by videoconference.

ON READING the First Report and on hearing the submissions of counsel for the Receiver, no one appearing for any other person on the service list, although properly served as appears from the affidavit of Milan Singh-Cheema sworn October 31, 2023 filed:

1. **THIS COURT ORDERS AND DECLARES** that the Transaction is 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 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, and including without limitation those registrations set out in Schedule "B" hereto (collectively, the "**Claims**") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Justice Cavanagh dated October 6, 2023 (the "**Receivership Order**"); and (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.

3. **THIS COURT ORDERS** that the Quebec Personal and Real Movable Real Rights Registrar, upon presentation of a certified copy of this Order and filed Receiver's Certificate, be and is hereby authorized and directed to discharge and cancel the hypothecs registered at the Register of Personal and Movable Real Rights listed in Schedule "B" hereto.

4. **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 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.

5. **THIS COURT ORDERS AND DIRECTS** the Receiver to file with the Court a copy of the Receiver's Certificate, forthwith after delivery thereof.

6. **THIS COURT ORDERS** that, notwithstanding:

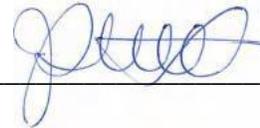
- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of the Debtors, or any of them, and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of the Debtors, or any of them;

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 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.

7. **THIS COURT ORDERS** that the purchase price contemplated by the Purchase Agreement shall be sealed and kept confidential pending further order of this Court.

8. **THIS COURT ORDERS AND DECLARES** that the Transaction is exempt from the application of the *Bulk Sales Act* (Ontario).

9. **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.



Schedule "A" – Form of Receiver's Certificate

Court File No. CV-23-00707205-00CL

ONTARIO

SUPERIOR COURT OF JUSTICE

COMMERCIAL LIST

B E T W E E N:

FARM CREDIT CANADA

Applicant

- and –

**WHYTE'S FOODS INC./LES ALIMENTS WHYTE'S INC., MAISON
GOURMET INC., TRIAK CAPITAL INC./CAPITAL TRIAK INC., AND
MARIO SAROLI SALES INC**

Respondents

**APPLICATION UNDER SECTION 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****

RECEIVER'S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable Justice Cavanagh of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated October 6, 2023 (the "**Receivership Order**"), FTI Canada Consulting Inc. was appointed as the receiver (in such capacity the "**Receiver**") of the FCC Secured Property (as defined in the Receivership Order) of Whyte's Foods Inc./Les Aliments Whyte's Inc., Maison Gourmet Inc., Triak Capital Inc./Capital Triak Inc., and Mario Saroli Sales Inc. (collectively, the "**Debtors**").

B. Pursuant to an Order of the Court dated November [6], 2023, the Court approved the asset purchase agreement made as of October 23, 2023 (the "**Sale Agreement**") between the Receiver and THS Foods Canada, Ltd. (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 7 of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser, as applicable; and (iii) the Transaction has been completed to the satisfaction of the Receiver.

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

THE RECEIVER CERTIFIES the following:

1. The Purchaser has paid and the Receiver has received the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the Sale Agreement;
2. The conditions to Closing as set out in article 7 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 [●], 2023.

**FTI Canada Consulting Inc. in its capacity as
Receiver of the FCC Secured Property, and
not in its personal or corporate capacity**

Per: _____

Name: [●]

Title: [●]

Schedule "B"

Registrations pursuant to the Register of Personal and Movable Real Rights (Quebec)

- A. Conventional hypothec dated May 14, 2020 and registered on May 15, 2020 under number 20-0415557-0004 by Whyte's Foods Inc. ("**Whyte's Foods**") in favour of Farm Credit Canada ("**FCC**") on the universality of the movable and immovable property;
- B. Security Agreement dated May 20, 2020 and registered on July 20, 2020 under number 20-0690365-0002 by Whyte's Foods in favour of FCC securing notably the feed-in tariff contract bearing identification number F-001838-SPV-130-502 dated June 16, 2011 between Agracity Ltd. and Ontario Power Authority;
- C. Conventional hypothec dated April 17, 2023 registered on April 18, 2023 under number 23-0434377-0002 by Whyte's Foods in favour of FCC on the universality of the movable and immovable property;
- D. Conventional hypothec dated April 17, 2023 registered on April 18, 2023 under number 23-0434377-0001 by Maison Gourmet Inc. in favour of FCC on the universality of the movable property; and
- E. Conventional hypothec dated May 14, 2020 and registered on May 15, 2020 under number 20-0415557-0001 by Maison Gourmet Inc. in favour of FCC on the universality of the movable property.

FARM CREDIT CANADA

and

**WHYTE'S FOODS INC./LES ALIMENTS WHYTE'S INC.,
MAISON GOURMET INC., TRIAK CAPITAL INC./CAPITAL
TRIAK INC., AND MARIO SAROLI SALES INC.**

Applicant

Respondents

Court File No.: CV-23-00707205-00CL

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

Proceedings commenced in Toronto

APPROVAL AND VESTING ORDER

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