

SUPREME COURT OF NOVA SCOTIA

Application by Victory Farms Incorporated and Jonathan Mullen Mink Ranch Limited (the "Applicants") for relief under the Companies' Creditors Arrangement Act

AFFIDAVIT

I, Maurice P. Chiasson, Q.C., of Halifax, Province of Nova Scotia, make oath and give evidence as follows:

- 1. I am counsel for American Legend Cooperative.
2. I have personal knowledge of the evidence sworn to in this affidavit except where otherwise stated to be based on information or belief.
3. I state, in this affidavit, the source of any information that is not based on my own personal knowledge, and I state my belief of the source.
4. American Legend Cooperative ("American Legend") is a secured creditor of Victory Farms Incorporated.
5. Attached at Exhibit "A" is a copy of the Subordination and Intercreditor Agreement dated October 9, 2015 between American Legend, North America Fur Auctions Inc. ("NAFA") and Victory Farms Incorporated and Jonathan L. Mullen.
6. I am advised by my client and do verily believe that Anne Daffern, an employee at American Legend, received an email on August 29, 2016 from Doug Lawson of NAFA. A copy of the email of August 29, 2016 from Mr. Lawson to Ms. Daffern is attached at Exhibit "B".

Sworn to before me on the 15th day of September, 2016, at Halifax, Province of Nova Scotia

Sara Scott (handwritten signature)

SARA L. SCOTT
Barrister of the Supreme Court of Nova Scotia

Maurice P. Chiasson (handwritten signature)

Maurice P. Chiasson, Q.C.

2016

Hfx No. 454744

This is Exhibit "A" referred to in the
Affidavit of Maurice Chiasson, sworn to
before me on September 15, 2016



SARA L. SCOTT
A Barrister of the Supreme
Court of Nova Scotia

SUBORDINATION AND INTERCREDITOR AGREEMENT

THIS SUBORDINATION AND INTERCREDITOR AGREEMENT ("Agreement") is entered into as of the 9th day of October, 2015, by and among:

American Legend Cooperative ("Lender")

and

North American Fur Auctions Inc. ("NAFA")

and

Victory Farms Incorporated and Jonathan L. Mullen
(collectively the "Borrower")

RECITALS:

A. In connection with various loans and other financial accommodations, the Borrower is indebted to Lender (both originally and as successor in interest to Farm Credit Canada and Fur Farmers of Canada Marketing Association Incorporated) (collectively, the "**ALC Loans**"), which indebtedness is secured by various security agreements granting a security interest in the Borrower's present and future mink livestock (including the offspring thereof), pelts, pelt production and all proceed thereof and therefrom (collectively, the "**Subject Collateral**") as well as in various other assets of the Borrower.

B. NAFA has agreed to make an initial non-revolving loan to the Borrower (the "**Initial Non-Revolving Loan**") in an amount equal to (i) the principal amount (in US dollars) of funding provided by Lender to the Borrower between March 1, 2015 and the date hereof, to finance the Borrower's 2015 mink production (the exact amount to be confirmed in writing by Lender as of the date hereof), plus (ii) an additional amount determined by NAFA to be necessary to complete the financing of the Borrower's 2015 production year, provided, however, that the aggregate principal amount to be advanced under the Initial Non-Revolving Loan, together with the aggregate principal amount of any Kit Loans (as defined below) for the 2015 production year, shall in no event exceed CDN \$40 per mink pelt produced by the Borrower in the 2015 production year.

C. The portion of the Initial Non-Revolving Loan specified in Recital B.(i) above shall be advanced within 5 business days after the date hereof and shall be disbursed directly to Lender by wire transfer for application to the Borrower's indebtedness to Lender.

D. The remaining portion of the Initial Non-Revolving Loan shall be advanced and disbursed as agreed between NAFA and the Borrower.

E. NAFA has agreed to make an additional non-revolving loan to the Borrower (the "**Additional Non-Revolving Loan**") in the amount of CDN \$2,000,000.00, with an initial advance of CDN \$1,000,000.00 to be made on the date of the advance on the Initial Non-Revolving Loan specified in Recital C above and with the remaining advance of CDN \$1,000,000.00 to be made no later than September 1, 2016, provided the Borrower satisfies the condition that the Borrower consign to NAFA the Borrower's 2016 mink pelt production.

F. All amounts advanced under the Additional Non-Revolving Loan, as specified in Recital E above, shall be disbursed directly to Lender by wire transfer for application to the Borrower's indebtedness to Lender.

G. Amounts repaid on the Initial Non-Revolving Loan and the Additional Non-Revolving Loan may not be re-advanced, provided the 2016 advance of the Additional Non-Revolving Loan shall not be considered a re-advance of any amounts repaid by the Borrower.

H. NAFA may at its discretion make other loans to the Borrower for the purpose of financing the rearing, feeding and maintaining (but not the acquisition) of mink livestock ("**Kit Loans**") and collectively with the Initial Non-Revolving Loan and the Additional Non-Revolving Loan, the "**NAFA Loans**") provided, however, that (i) Kit Loans for the 2015 production year shall be subject to the limitation set forth in Recital B above, and (ii) Kit Loans for any subsequent production year shall not exceed CDN \$40 per mink pelt produced by the Borrower for such production year.

I. The NAFA Loans, as well as any other loans made by NAFA to the Borrower pursuant to Section 9 below, are or will be secured by various security agreements granting a security interest in various assets of the Borrower, including but not limited to the Subject Collateral.

J. As a condition of NAFA agreeing to make the Initial Non-Revolving Loan and the Additional Non-Revolving Loan, Lender, NAFA and the Borrower have each agreed to enter into this Agreement to set out their mutual rights and obligations with respect to the security granted by the Borrower to NAFA and Lender, as the case may be, and the manners and priority to the proceeds of the various assets of the Borrower, including the Subject Collateral and various matters relating thereto.

NOW THEREFORE, in consideration of the promises and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto hereby agree as follows:

1. **Incorporation of Recitals.** The terms of the above Recitals are incorporated into this Agreement by reference.
2. **Consent.** NAFA acknowledges and consents to the creation and existence of the ALC Loans and Lender's security interests in assets of the Borrower, and Lender acknowledges and consents to the creation and existence of the NAFA Loans and NAFA's security interests in assets of the Borrower.

3. **Subordination.** Subject to the other terms and conditions of this Agreement, Lender, NAFA and the Borrower agree that the security interests of Lender and of NAFA in assets of the Borrower shall have the following priorities as against one another:
- a) With respect to that portion of the Subject Collateral produced during the 2015 production year:
 - i. NAFA's security interest shall form a charge in priority to Lender's security interest to the extent of all amounts (inclusive of accrued interest and costs) owing from the Borrower to NAFA pursuant to Initial Non-Revolving Loan and the Additional Non-Revolving Loan; and
 - ii. NAFA's security interest and Lender's security interest shall rank *pari-passu* in respect of any remaining amounts owed by the Borrower pursuant to the ALC Loans and the NAFA Loans (exclusive of any Kit Loans for production years after 2015), and any proceeds therefrom remaining after the payment of the priority charge contained in subparagraph (a)(i) shall be divided between NAFA and Lender on a pro-rata basis in proportion to the outstanding balances of the NAFA Loans (exclusive of any Kit Loans for production years after 2015) and the ALC Loans, respectively, determined as of the date all or any portion of the Subject Collateral produced during the 2015 production year is first sold;
 - b) With respect to the Subject Collateral produced after the 2015 production year:
 - i. NAFA's security interest shall form a charge in priority to Lender's security interest to the extent of all amounts (inclusive of accrued interest and costs) owing from the Borrower to NAFA pursuant to any Kit Loans advanced from time to time, and (if any balance remains) pursuant to the Initial Non-Revolving Loan and the Additional Non-Revolving Loan; and
 - ii. the security interests of NAFA and Lender shall rank in accordance with applicable law without reference to this Agreement after the payment of the priority charge contained in subparagraph (b)(i).
 - c) With respect to any other collateral (meaning collateral other than the Subject Collateral produced during or after the 2015 production year), the priority of the security interests of NAFA and Lender shall be determined in accordance with applicable law without reference to this Agreement.
4. **Application.** The subordinations and postponements contained herein shall apply in all events and circumstances regardless of:
- a) the date of execution, attachments, registration or perfection of any of the security interests of NAFA or Lender;
 - b) the date of advance or advances made by NAFA or Lender to the Borrower;

- c) the date of any event of default committed by the Borrower pursuant to any of NAFA's security agreements, Lender's security agreements or any of the loan or other agreements granted by the Borrower in relation thereto or the date of the crystallization of any floating charges held by either NAFA or Lender; and
 - d) except with respect to paragraphs 3(b)(ii) and 3(c) above, any priority granted by any principal of law or any status, including, without limitation, the *Personal Property Security Act* (Nova Scotia), the *Bank Act* (Canada), or any other similar legislation applicable to NAFA's security interests, Lender's security interests or the Borrower in any other jurisdictions that may affect the priorities, covenants or agreements set out herein.
5. **Allocation of Proceeds** Any proceeds from the sale of the Subject Collateral received by the Borrower or by either NAFA or Lender shall be dealt with according to the preceding provisions hereof as though such proceeds were paid or payable as proceeds of realization of the Subject Collateral to which they relate and all proceed received by the Borrower shall be held in trust for the benefit of Lender or NAFA, as the case may be, in accordance with the provisions and priorities contained in this Agreement.
6. **Perfecting Status.** Each of NAFA and Lender agrees to maintain its security interest in the Subject Collateral at all times in a fully perfected status in accordance with applicable law, enforceable against third parties (including without limitation any trustee in bankruptcy or the like). To the extent that either Lender or NAFA fails to do so, the priorities as prescribed in this Agreement shall terminate in relation to the Subject Collateral or portion thereof, impacted by the failure of Lender or NAFA, as the case may be, to maintain the perfected status of its security unless Lender or NAFA, as the case may be, is able to re-perfect its security interest in the Subject Collateral or portion thereof within a reasonable period of time and without any loss of priority against third parties. In the event that any security interest of Lender or NAFA is claimed by a trustee in Bankruptcy, or found by a court of competent jurisdiction, to be unenforceable, invalid, unregistered or unperfected (the "**Impugned Security**"), then the priority provisions as set out in Sections 3 and 4 hereof shall not apply to the Impugned Security to the extent that the Impugned Security is so claimed or found to be unenforceable, invalid, unregistered or unperfected as against a third party unless Lender or NAFA, as the case may be, shall be diligently contesting such claim or appealing such decision and has provided the other with satisfactory indemnities.
7. **Covenants of the Lenders.** Each of NAFA and Lender:
- a) covenants to and in favor of the other not to take any action to defeat the priorities set forth in this Agreement;
 - b) waives any right it may have to require the other to marshal in its favor;
 - c) shall do, perform, execute and deliver all acts deeds and document as may be necessary from time to time to give full force and effect to the intent of this Agreement, provided, however, that no consent of the Borrower shall be necessary

to any amendment of the terms hereof by Lender and NAFA unless the interest of the Borrower are directly affected thereby; and

- d) shall use its best efforts to give prompt written notice to the other of any default under its loans or security or any action taken by it against the Borrower to enforce its security and such notice may be given prior to or forthwith after taking such action, but failure to give such notice will not give rise to a cause of action or right to damages or other remedy absent a specific breach of the provisions of this Agreement.

8. Covenants of the Borrower. The Borrower hereby confirms to and covenants with Lender and NAFA, that:

- a) so long as any of the indebtedness of the Borrower under the ALC Loans or the NADA Loans remains outstanding, the Borrower shall stand possessed of its assets so charged for Lender and NAFA in accordance with their respective interests and priorities as herein set out; and
- b) none of the provisions of this Agreement creates any rights in favor of the Borrower to affect the manner in which Lender or NAFA or any receiver and manager appointed by either of them over the property, assets and undertaking of the Borrower exercises its rights under the ALC Security and the NAFA Security.

9. Borrower Relationship. Notwithstanding anything contained herein, the Borrower shall not be bound by any statements as to balance outstanding, interest rate or currency in relation to any of the ALC Loans or the NAFA loans and such information is included for the information and benefit of ALC and NAFA. All loan balances, repayment terms, interest rates, currencies and other terms and conditions relating to the NAFA Loans and the ALC Loans shall be determined under and governed by the various loan agreements and related documents executed by the Borrower and delivered to NAFA or ALC, as the case may be, from time to time in relation to the NAFA Loans and the ALC Loans.

10. Additional Loans. Nothing in this Agreement shall restrict or prevent NAFA from:

- (a) renewing or revising the NAFA Loans, without increasing the amounts due thereunder;
- (b) extending additional loans or credit to the Borrower, other than the NAFA Loans, from time to time, (which additional loans shall not be included within the definition of "NAFA Loans" as set forth above); or
- (b) taking additional security from the Borrower for any existing or increased loan facilities or credits.

11. Non-Waiver. Nothing in this Agreement shall constitute or be construed as a waiver by Lender or NAFA of any defaults by the Borrower on the Borrower's obligations to Lender or NAFA, as the case may be, or of Lender's or NADA's rights to enforce the

applicable loan, security and related documents in accordance with their terms, subject at all times to the priorities contained herein.

12. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the Province of Nova Scotia and the Federal Laws of Canada applicable therein.
13. **Assignment.** Each of Lender and NAFA agrees that it will not assign all or part of any of its security or loans, except to an assignee that has agreed in writing with the other party to be bound by the terms, conditions and priorities contained in this Agreement.
14. **Enurement.** This Agreement shall ensure to the benefit of and be binding upon each of the parties hereto and their respective heirs, executors, administrators, successors and permitted assigns
15. **Time is of the Essence.** Time shall in all respect be of the essence hereof, provided that the time for doing or completing any matter provided or contemplated in this Agreement may be extended or abridged by an agreement in writing executed by the parties hereto.
16. **Term.** This Agreement shall continue in full force and effect until the date on which it is terminated by a written agreement signed by both NAFA and Lender or until such time as either NAFA or Lender grants a release of all its security and such release or releases are duly registered in all applicable and appropriate registries.
17. **Counterparts.** This Agreement may be executed in any number of counterparts and by different parties to this Agreement in separate counterparts, each of which, when so executed, shall be deemed to be an original and all of which taken together shall constitute one and the same Agreement.

[signature page follows]

IN WITNESS WHEREOF, the parties hereto have caused this Subordination and Intercreditor Agreement to be executed as of the date first above written.

American Legend Cooperative

By: [Signature]
Printed Name: Anna P. Daffern
Title: CFO

North American Fur Auctions Inc.

By: _____
Printed Name: _____
Title: _____

Victory Farms Incorporated

By: _____
Printed Name: _____
Title: _____

Jonathan L. Mullen

Subordination Agreement

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IN WITNESS WHEREOF, the parties hereto have caused this Subordination and Intercreditor Agreement to be executed as of the date first above written.

American Legend Cooperative

By: [Signature]
Printed Name: Aimee P. D'Alora
Title: CFO

North American Fur Auctions Inc.

By: [Signature]
Printed Name: Elizabeth L. Anderson
Title: [Signature]

Victory Farms Incorporated

By: [Signature]
Printed Name: Jonathan Mullen
Title: President

Jonathan L. Mullen

[Signature]

2016

Hfx No. 454744

This is Exhibit "B" referred to in the
Affidavit of Maurice Chiasson, sworn to
before me on September 15, 2016



SARA L. SCOTT
A Barrister of the Supreme
Court of Nova Scotia

Redacted - Solicitor / Client Privilege

From: Doug Lawson [mailto:dlawson@nafa.ca]
Sent: Monday, August 29, 2016 6:15 AM
To: Anne Daffern
Subject: RE: Installment Due

Anne, thanks for your note. Unfortunately, I do not think that NAFA is in a position to forward the \$1 million to ALC on September 1st for the following reasons.

First, we have not yet signed a 2016/17 consignment agreement with Victory Farms as they still owe us money from the previous year. This was a condition of the payment to ALC as per the Agreement.

Secondly, it now appears that as of August 31, 2016, Victory will be seeking bankruptcy protection, and thus cannot by itself sign a consignment agreement as a going concern without court approval, nor can it guarantee the delivery of the mink to NAFA. Therefore, we cannot pay ALC funds for which there may be no value to be received in return until the fate of Victory Farms has ultimately been resolved.

Douglas Lawson
Senior Vice President &
CFO North American Fur
Auctions
(o) 416-213-2162
(m) 416-5754454

From: Anne Daffern [mailto:ADaffern@americanlegend.com]
Sent: August-25-16 1:00 PM
To: Doug Lawson <dlawson@nafa.ca>
Subject: Installment Due

Hi Doug – I hope you are enjoying the summer.

As you know, the agreement we reached last year with respect to Victory Farms provides for NAFA to make a payment of
CN \$1 million to ALC by September 1, 2016. I have attached the wire instructions for our Canadian account.

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Thanks,
Anne