

**THE QUEEN'S BENCH
WINNIPEG CENTRE**

IN THE MATTER OF THE: *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as Amended

AND IN THE MATTER OF: A Proposed Plan of Compromise or Arrangement of The Puratone Corporation, Pembina Valley Pigs Ltd. and Niverville Swine Breeders Ltd. (the "Applicants")

Application under the: *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as Amended

**NOTICE OF MOTION
(Assignment of Assumed Contracts)**

**DATE OF HEARING:
THURSDAY, THE 22ND DAY OF NOVEMBER, 2012 AT 9:00 A.M.
BEFORE: THE HONOURABLE MR. JUSTICE DEWAR**

TAYLOR McCaffrey LLP
Barristers and Solicitors
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Client File No. 15611-250 DJAC

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The Applicants will make a motion before the Honourable Mr. Justice Dewar on Thursday, November 22, 2012 at 9:00 o'clock in the forenoon or as soon after that time as the motion can be heard, at the Law Courts Building, 408 York Avenue, Winnipeg, Manitoba.

THE MOTION IS FOR:

1. An Order substantially in the form attached hereto as Appendix 1 ("Assignment of Assumed Contracts Order"):
 - a) Validating or otherwise abridging the time for service of this Notice of Motion such that the motion is properly returnable November 22, 2012 and dispenses with further service thereof;
 - b) Authorizing the Applicants to assign their interest in the Assumed Contracts as listed in Schedule "A" thereto between the Applicants and the

named Counter-Parties as part of the Purchased Assets to be transferred to Maple Leaf Foods Inc. or its permitted assignee (the "Purchaser") pursuant to the Transaction ("Transaction") approved by this Honourable Court by way of the Approval and Vesting Order pronounced November 8, 2012 (the "Approval and Vesting Order") and, upon such transfer, the Purchaser shall assume the Applicants' obligations under the Assumed Contracts.

2. Such further and other relief as to this Honourable Court may seem just.

THE GROUNDS FOR THE MOTION ARE:

1. Sections 11, 11.3 and 36 and other provisions of the *Companies Creditors Arrangements Act* R.S.C. 1985 c.C-36 amended ("CCAA").
2. Queen's Bench Rules 2.03, 3.02, 16.04, 16.08 and 37.08(2).
3. This is an urgent matter.
4. Pursuant to the Approval and Vesting Order, this Honourable Court approved the Transaction contemplated by the November 1, 2012 Asset Purchase Agreement (the "Sale Agreement") between the Applicants and Purchaser under the Sale Agreement as agreed to by Deloitte & Touche Inc. in its capacity as Monitor of the Applicants (the "Monitor").
5. Pursuant to the Sale Agreement, the Purchaser provided the Applicants with a list of agreements "Assumed Contracts" where, to the extent that a consent to the assignment of such an agreement is necessary but the applicable Counter-Parties have not

consented to the assignment, the Applicants are obliged to apply for an Order of the Court ordering and authorizing assignment of such Assumed Contracts to the Purchaser as part of the Transaction.

6. To the extent that a consent to the assignment is required for the Assumed Contracts, the Applicants are endeavouring to obtain them. However, to the extent that consents are not forthcoming, the Applicants require an Order of the Court authorizing the assignments of the Assumed Contracts to close the Transaction without the Counter-Parties' consent.

7. On November 16, 2012, this Honourable Court authorized the Applicants to assign certain agreements involving the Partially Owned Subsidiaries (as defined in the Sale Agreement).

8. The Monitor has approved the above Transaction and also the Applicants' assignment of Assumed Contracts.

9. The Purchaser will perform the obligations under the Assumed Contracts and is otherwise a fit and proper person to assume those obligations.

10. To the extent there are any monetary defaults under the Assumed Contracts, the Applicants are obliged under the Sale Agreement to pay such defaults on Closing.

11. It is appropriate in the circumstances to assign the rights and obligations under the Assumed Contracts to the Purchaser, as aforesaid.

12. Such further and other grounds as counsel may advise and this Honourable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE WILL BE USED AT THE HEARING OF THE MOTION:

1. The pleadings and proceedings herein including the Initial Order dated September 12, 2012, Affidavit of Raymond Alan Hildebrand sworn September 11, 2012, as well as the Pre-Filing and subsequent Reports of the Monitor.
2. The Affidavit of Raymond Alan Hildebrand sworn November 1st, 2012.
3. The Supplementary Affidavit of Raymond Alan Hildebrand sworn November 6, 2012.
4. The Third Report of the Monitor dated November 5, 2012.
5. The Approval and Vesting Order.
6. The Affidavit of Larry Sveinbjorn Johnson sworn November 14, 2012.
7. The Fourth Report of the Monitor dated November 14, 2012.
8. The Fifth Report of the Monitor, to be filed.
9. The Affidavit of Larry Sveinbjorn Johnson to be filed.

10. Such further and other materials as counsel may advise and this Court may permit.

November 19, 2012

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TO: THE ATTACHED SERVICE LIST

TO: THE COUNTER-PARTIES OF THE ASSUMED CONTRACTS

AND TO: BE POSTED ON THE DELOITTE WEBSITE

APPENDIX 1

No. CI 12-01-79231

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**ORDER
(Assignment of Assumed Contracts)**

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THE HONOURABLE MR.)
JUSTICE DEWAR) The 22nd day of November, 2012

IN THE MATTER OF THE: *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as Amended

AND IN THE MATTER OF: A Proposed Plan of Compromise or Arrangement of The Puratone Corporation, Pembina Valley Pigs Ltd. and Niverville Swine Breeders Ltd. (the "Applicants")

Application under the: *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as Amended

ORDER
(Assignment of Assumed Contracts)

THIS MOTION made by the Applicants for an Order authorizing the assignment of the Applicants' interest in the Assumed Contracts (as defined herein) to the Purchaser was heard this day at Winnipeg.

ON READING the pleadings and proceedings herein and in particular the Affidavit of Raymond Alan Hildebrand sworn November 1, 2012, the Affidavit of Larry Sveinbjorn Johnson sworn November ___, 2012, the Third Report of the Monitor dated November 5, 2012, the Fourth Report of the Monitor dated November 14, 2012 and the Fifth Report of the Monitor dated November ___, 2012 and on hearing the submissions of counsel for the Applicants, the Monitor, Bank of Montreal, Farm Credit Canada, and Maple Leaf Foods Inc. or its permitted assignee (the "Purchaser"), no one appearing on

behalf of any other person including those persons on the Service List and the Counter-Parties to the Assumed Contracts as appears from the Affidavit of Laura Leigh Buley sworn November ____, 2012.

1. THIS COURT ORDERS AND DECLARES that this Order shall be a continuation of the Approval and Vesting Order pronounced November 8, 2012 and entered November 13, 2012 in these proceedings ("Approval & Vesting Order") such that the same provisions set out in the Approval & Vesting Order, including without limitation paragraphs 5 and 8, apply to the assignment set out below, and all capitalized terms used herein and not otherwise defined shall have the same meaning ascribed thereto.

SERVICE VALIDATED

2. THIS COURT ORDERS that the service of the Notice of Motion and the supporting materials is hereby validated and time periods abridged so that this Motion is properly returnable today and hereby dispenses with further service thereof.

AGREEMENTS ASSIGNED

3. THIS COURT ORDERS that, upon delivery of the Monitor's Certificate, all of the rights and obligations of the Applicants in respect of the Assumed Contracts as listed in Schedule A hereto between the Applicants and the Counter-Parties listed therein (the "Assumed Contracts") shall be assigned by the Applicants to the Purchaser as part of the Transaction pursuant to Section 11.3 of the CCAA, and shall remain in full force and effect for the benefit of the Purchaser in accordance with their respective terms.

4. THIS COURT ORDERS that the assignment of the rights and obligations of the Applicants to the Purchaser under the Assumed Contracts is valid and binding upon all of the counter-parties to the Assumed Contracts, without the necessity of further documentation, as if the Purchaser was a party to the Assumed Contracts, notwithstanding any restriction, condition or prohibition contained in any such Assumed Contracts relating to the assignment thereof, including any provision requiring the consent of any party to the assignment of such Assumed Contracts.

5. THIS COURT ORDERS that each Counter-Party to the Assumed Contracts is prohibited from exercising any right or remedy under the Assumed Contracts by reason of any defaults then existing or previously committed by the Applicants under, or caused by the Applicants under, and the non-compliance of the Applicants with, any of the Assumed Contracts arising as a consequence of these CCAA proceedings or the insolvency of the Applicants, or any failure of the Applicants to perform any non-monetary obligation under the Assumed Contracts, or as a result of any actions taken pursuant to or as a result of the Sale Agreement and all such Counter-Parties shall be deemed to have waived such defaults. Any notices of default and demand given in connection with any such defaults under, or non-compliance with the Assumed Contracts, shall be deemed to have been rescinded and shall be of no further force or effect.

6. THIS COURT ORDERS that as a condition of the Closing of the Transaction, any existing monetary defaults in relation to the Assumed Contracts, other than those arising by reason of the Applicants' insolvency, the commencement of these CCAA proceedings, or the Applicants' failure to perform a non-monetary obligation, shall be paid as Cure Costs by the Applicants in accordance with the Sale Agreement.

7. THIS COURT ORDERS that notwithstanding anything contained in this Order, nothing shall derogate from the obligations of the Purchaser to assume the Assumed Contract Liabilities as defined in the Sale Agreement and to perform its obligations under the Assumed Contracts as set out in the Sale Agreement.

J.

APPROVED AS TO FORM AND CONTENT
THOMPSON DORFMAN SWEATMAN LLP

Per: _____
Solicitors for the Monitor

SCHEDULE A

ASSUMED CONTRACTS

Feed, Ingredient and Nutrition Agreements

1. Liquid Permeate Agreement dated September 10, 1998 between Puratone and Parmalat Dairy & Bakery Inc.
2. Permeate Supply Agreement dated June 24, 2009 between Puratone and Saputo Dairy Products Canada GP.

Software License Agreements

3. VMware International Limited ("VMware") Software Licenses, including terms and conditions set forth in VMware's applicable End User License Agreements, set out with respect to Contract ID No. 41570931, as follows:

<u>Product</u>	<u>Quantity</u>	<u>End Date</u>
VMware Advanced Acceleration Kit for 6 processors (includes vSphere Advanced for 6 processors, 1 vCenter Server Foundation)	1	Sept. 9, 2013
VMware vCenter Server Foundation for vSphere up to 3 hosts	1	Sept. 9, 2013
VMware vCenter Server 5 Foundation for vSphere up to 3 hosts	1	Sept. 9, 2013
VMware vSphere 4 Advanced for 1 processor	6	Sept. 9, 2013
VMware vSphere 4 Standard for 1 processor	2	Sept. 9, 2013
VMware vSphere 5 Enterprise for 1 processor	6	Sept. 9, 2013
VMware vSphere 5 Standard for 1 processor	2	Sept. 9, 2013

4. Symantec Corporation ("Symantec") Software Licenses, including terms and conditions set forth in Symantec's applicable Software License Agreement (End User License Agreement form) and Support, set out in Certificate No. 12134207 dated June 27, 2012 and Certificate No. 11727967 dated February 14, 2012, as follows:

<u>Serial No.</u>	<u>Product Name/Description</u>	<u>Quantity</u>	<u>End Date</u>
M0307328102	Backup Exec 2012 Agent for Windows Win	2	July 13, 2012
M0611931356	Backup Exec 2012 Agent for VMWare and Hyper-V Win	3	July 13, 2012
M0513032043	Protection Suite Enterprise Edition 4.0	145	July 13, 2013
M1613232352	Backup Exec 2012 Server Win	1	July 13, 2013
M5713432791	Desktop Laptop Option 7.0 Win 1-10 Users	2	Aug. 26, 2013
M7135117903	Backup Exec 2012 Agent for Applications and Databases Win	1	July 13, 2013
M5834517796	Backup Exec 2012 Agent for Applications and Databases Win	1	July 13, 2013
M5333917097	Backup Exec 2012 Agent for Applications and Databases Win	1	July 13, 2013
M0337217014	Backup Exec 2012 Agent for Applications and Databases Win	1	July 13, 2013
M2536917839	Desktop Laptop Option 7.0 Win 1-10 Users	1	July 13, 2013
M3836717254	Desktop Laptop Option 7.0 Win 1-10 Users	1	July 13, 2013
M4611656774	Desktop Laptop Option 7.0 Win 1-10 Users	1	July 13, 2013
M3121907905	Desktop Laptop Option 7.0 Win 1-10 Users	1	July 13, 2013
M1255846908	Backup Exec 2010 Agent for Windows Systems Win	1	Mar. 5, 2013

5. Double-Take Software, Inc. ("DTSI") Software Licenses, including terms and conditions set forth in DTSI's applicable End User License Agreement, for Double-Take Availability Standard Edition with first year maintenance, Contract No.'s AVAI-241108, AVAI-266136 and AVAI-83850, each with an end dated of April 19, 2013.

6. Microsoft Corporation License, including License Terms, for 2010 Microsoft Dynamics (35 users), FRx Reporter (4 users), Integration Manager and Dynamics Management Reporter (8 Administrator/Designer users, 28 Generator/Viewer users), and including all registered modules therefor, expiring January 28, 2003.
7. Feed Management Systems, Inc. ("FMS") FMS End-User Software License Agreement for Feed Mill Manager, expiring January 31, 2013, including the following:

<u>Description</u>	<u>Quantity</u>
Maint. Multi User FMM Sys Mgr, incl 1 user Annual Maintenance Plan Feb. 1, 2012 thru January 31, 2013, Serial #10100127	1
Maint. FMM User – Additional Users	6
Maint. FMM User – Additional Users	15
Maint. Advanced Pricing/Costing	1
Maint. Drug Reconciliation	1
Maint. Automatic Stage Feeding	1
Maint. Consumption Based Order Entry	1
Maint. Grain Bank	1
Maint. Purchase Contracts	1
Maint. Sales Contracts	1
Maint. Production Interface – Batching	2
Maint. Feed Tag on Demand – required FMS Feed Tags	1
Maint. Accounting Interface	1
Maint. FMS Integration Pack 1 to 5 BFW Users	1
Maint. Production Interface – Manual	2
Maint. Freight Management	1

8. FMS End-User Software License Agreement – Toolkit for Brill Formulation, expiring December 31, 2012, including the following:

	<u>Description</u>	<u>Quantity</u>
	Maint. 4 User Brill For Windows Package Annual Maintenance Plan Jan. 1, 2012 to December 31, 2012 Serial #11400605 & 10400475	1
	Maint. Multi-blend Complete – Advanced – Heritage Hog	1
	Maint. Multi Blend, Additional User	1
	Maint. Interface, Batch Controller	1
	Maint. Archiving	1
	Maint. Ingredient Swing	1
	Maint. Formula Includes	1
	Maint. Feed Tags	1
	Maint. Feed Tags Compendium Update	1
9.	Numara Software, Inc. ("Numara") Software License Agreement for TrackIT HelpDesk.	

Other Agreements

10. Consulting Services Agreement dated December 19, 2011 between Puratone and Jack Reams Agri Business Consulting.
11. License Agreement dated April 17, 2012 between The Manitoba Hydro-Electric Board and Puratone.

Genetics Agreements

12. Swine Genetics Agreement dated March 1, 2002, as amended by an Amendment to Swine Genetics Agreement dated January 1, 2011 and an Amendment to Swine Genetics Agreement dated May 1, 2012, between Newsham Choice Genetics, LLC (as successor in interest to Monsanto Choice Genetics, LLC) and Puratone.

Equipment Leases

13. Rental Agreement dated October 20, 2011 between Puratone and National Leasing Group Inc. (1 Mitel 3360 Telephone System and Equipment).
14. Lease Agreement No. 8414486-001 dated March 2, 2009 between Puratone and RFS Canada (as successor to IOS Financial Services) (AFICIO MP6000SP Digital System).

15. Master Maintenance and Sale Agreement dated November 13, 2009 between Puratone and Ikon Office Solutions, Inc. (re IOS Financial Services Leases).
16. Lease Agreement No. 8414486-002 dated November 13, 2009 between Puratone and RFS Canada (as successor to IOS Financial Services) (AFICIO MP 171 SPF).
17. Lease Agreement No. 8414486-003 between Puratone and RFS Canada (as successor to IOS Financial Services) (Aficio MP 2851SP Digital System).

Real Property Leases

18. Lease Agreement dated December 30, 2011 between Moonfleet Poultry Inc. and Puratone.
19. Lease Agreement dated March 6, 2012 between D & G Farms and Puratone.
20. Lease Agreement dated March 6, 2012 between E & M Green Gable Piglets and Puratone.
21. Lease Agreement dated December 22, 2011 between Gerald Voth & Jerry Friesen and Puratone
22. Lease Agreement dated June 8, 2012 between Jim Hiebert and Puratone.
23. Lease Agreement dated February 6, 2012 between Kindred Hogs Ltd. and Puratone.
24. Lease Agreement dated February 13, 2012 between Lone Tree Pork Inc. and Puratone.