

COURT FILE                                    QB No. 1200 of 2018

COURT    QUEEN'S BENCH FOR SASKATCHEWAN  
IN BANKRUPTCY AND INSOLVENCY

JUDICIAL CENTRE                            SASKATOON

APPLICANT                                    CANADIAN EXOTIC GRAINS LTD.

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL  
UNDER SECTION 50.4 OF THE *BANKRUPTCY AND INSOLVENCY ACT*, RSC  
1985, c. B-3, AS AMENDED, OF CANADIAN EXOTIC GRAINS LTD.

**ORDER**  
**(Sale Approval and Vesting)**

Before the Honourable Madame Justice Rothery in Chambers the 8<sup>th</sup> day of November, 2018.

On the application of Canadian Exotic Grains Ltd. (the “**Debtor**”), and on hearing from counsel for the Debtor and counsel present on behalf of any other interested parties, and on reading the Notice of Application dated November 5, 2018, Brief of Law, the Affidavit of Jocelyn Hartsook sworn November 5, 2018 (the “**Hartsook Affidavit**”), the Third Report of the Proposal Trustee (the “**Third Report**”), Deloitte Restructuring Inc. (the “**Proposal Trustee**”), the Second Confidential Report of the Proposal Trustee (the “**Confidential Report**”), proof of compliance with General Application Practice Directive #3, and draft Order, all filed:

The Court Orders:

**GENERAL**

1. Capitalized terms not otherwise defined in this Order have the respective meanings given to them in the Hartsook Affidavit and Third Report.

**SERVICE**

2. Service of the Notice of Application and the materials filed in support thereof shall be and is hereby deemed to be good and sufficient.

**APPROVAL OF TRANSACTION**

3. Given that the sale transaction contemplated by the previous agreement of purchase and sale between the Debtor and the Purchaser dated July 13, 2018 was unable to close on the terms approved by the Sale Approval, Vesting, and Extension Order dated August 8,

2018 (the “**August SAVO**”), paragraphs 4-18 of the August SAVO are hereby superseded by paragraphs 4-17 of this Order.

4. Pursuant to subsection 65.13(1) of the *Bankruptcy and Insolvency Act*, RSC 1985, c. B-3, the sale transaction (the “**Transaction**”) contemplated by the agreement of purchase and sale (the “**Sale Agreement**”) between the Debtor and Section 12 Foods Inc. (the “**Purchaser**”) dated November 2, 2018 appended to the Second Confidential Report for the sale to the Purchaser of the Debtor’s right, title, and interest in and to the purchased assets described in the Sale Agreement (the “**Purchased Assets**”) is declared to be:
  - (a) commercially reasonable;
  - (b) in the best interests of the Debtor, its creditors, and other stakeholders; and
  - (c) is hereby authorized and approved, with such minor amendments as the Debtor and Purchaser may mutually agree to be necessary.
5. The Debtor, in consultation with and under the supervision of the Proposal Trustee, 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, subject to such amendments as the Debtor and the Purchaser may agree upon, providing that any such amendments do not materially affect the Purchase Price.

#### **VESTING OF PROPERTY**

6. Upon the Proposal Trustee determining that the First Cash Payment (as that term is defined in the Sale Agreement) has been paid by the Purchaser to Farm Credit Canada (“**FCC**”) as contemplated by Section 2.6(b) of the Sale Agreement, the Proposal Trustee shall deliver to the Purchaser a certificate substantially in the form set out in **Schedule “A”** hereto (the “**Proposal Trustee’s Certificate**”). The Proposal Trustee may rely on written notice from FCC to confirm receipt of the First Cash Payment and shall have no liability with respect to the delivery of the Proposal Trustee’s Certificate.
7. Upon delivery of the Proposal Trustee’s Certificate, all of the Debtor’s right, title, and interest in and to the Purchased Assets described in the Sale Agreement and listed on **Schedule “B”** hereto shall, save and except for the encumbrances listed in paragraphs 8 and 9 of this Order (the “**Permitted Encumbrances**”), vest absolutely in the name of the Purchaser (or its nominee, if any) free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, interests, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, judgments, enforcement charges, levies, charges, or other financial or monetary claims (collectively, “**Encumbrances**”) and all rights of others, whether or not they have attached or been perfected, registered, or filed and whether secured, unsecured, or otherwise (collectively, the “**Claims**”) and, for greater certainty, this Court orders that all of the Encumbrances (save and except for the Permitted Encumbrances) affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

8. Pursuant to section 109 of *The Land Titles Act, 2000*, SS 2000, c L-5.1, section 6.5 of *The Land Titles Conversion Facilitation Regulations*, RRS c L-5.1 Reg 2, and section 12 of *The Queen's Bench Act, 1998*, SS 1998, c Q-1.01, the Registrar of the Land Titles Office in Saskatchewan shall be and is hereby directed to accept an application (the "**LTO Application**") to surrender the existing title to the real property legally described as:

Title #146165957  
Surface Parcel #203033225  
Referenced Land Description: Blk/Par A Plan No 101077208,  
Extension 7

(the "**Real Property**")

and to set up a new title to such Real Property in the name of the Purchaser as owner free and clear of any and all Encumbrances, save and except for the following:

Interest #169905404  
Power Corporation Act Easement (s. 23)  
Holder: Saskatchewan Power Corporation  
2025 Victoria AVE, Regina, SK, Canada S4P 0S1  
Client #100307618  
Int. Register #: 120415979

Interest #176278595  
Mortgage  
Holder: Farm Credit Canada  
12040 – 149 Street NW  
Edmonton, AB, Canada T5V 1P2  
Int. Register #: 121757238

Interest #182205244  
Power Corporation Act Easement (s. 23)  
Holder: Saskatchewan Power Corporation  
2025 Victoria AVE, Regina, SK, Canada S4P 0S1  
Client #100307618  
Int. Register #: 122922345

Any and all registration charges and fees payable in regard to the LTO Application shall be to the account of the Purchaser.

9. Notwithstanding the vesting of all of the Debtor's right, title, and interest in and to the Purchased Assets in the name of the Purchaser, as contemplated by paragraph 7 of this Order, the following *PPSA* security interest registered in the Saskatchewan Personal Property Registry shall be maintained:

Registration #301518502  
Personal Property Security Agreement  
Secured Party: Farm Credit Canada  
12040 – 149 Street NW  
Edmonton, AB, Canada T5V 1P2  
General Property: All present and acquired property.

10. The Purchaser shall, by virtue of making the First Payment to FCC, have no liability of any kind whatsoever in respect of any Claims against the Debtor, save and except for the persons entitled to the benefit of the Permitted Encumbrances. For greater certainty, and without limiting the generality of the foregoing, FCC shall remain entitled to the benefit of its mortgage registered against the Real Property as Interest Register #121757238 and security interest registered against the Debtor's present and acquired property as Registration #301518502, each of which are Permitted Encumbrances, as security for the Second Cash Payment to be paid by the Purchaser to FCC on or before March 31, 2019, as contemplated by Section 2.6(c) of the Sale Agreement.
11. The Debtor and all persons who claim by, through or under the Debtor in respect of the Purchased Assets, save and except for the persons entitled to the benefit of the Permitted Encumbrances, shall stand absolutely barred and foreclosed from all estate, right, title, interest, royalty, rental and equity of redemption of the Purchased Assets and, to the extent that any such person remains in possession or control of any of the Purchased Assets, they shall forthwith deliver possession thereof to the Purchaser.
12. The Purchaser shall be entitled to enter into and upon, hold and enjoy the Purchased Assets for its own use and benefit without any interference of or by the Debtor, or any person claiming by or through or against the Debtor.
13. Immediately after the closing of the Transaction, the holders of the Permitted Encumbrances shall have no claim whatsoever against the Proposal Trustee or the Debtor.
14. Forthwith after the delivery of the Proposal Trustee's Certificate to the Purchaser (or its nominee), the Proposal Trustee shall file a copy of the Proposal Trustee's Certificate with the Court.
15. Pursuant to clause 7(3)(c) of the *Personal Information Protection and Electronic Documents Act*, SC 2000, c 5, the Debtor is hereby authorized and permitted to disclose and transfer to the Purchaser all human resources and payroll information in the Debtor's records pertaining to the Debtor's past and current employees, including personal information of those employees listed in the Sale Agreement. 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 Debtor.
16. Notwithstanding:

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of the Debtor and any bankruptcy order issued pursuant to such applications;
- (c) any assignment in bankruptcy made in respect of the Debtor, whether deemed or otherwise; and
- (d) the provisions of any federal statute, provincial statute or any other law or rule of equity,

the vesting of any of the Purchased Assets in the Purchaser pursuant to this Order and the obligations of the Debtor under the Sale Agreement, shall be binding on any trustee in bankruptcy that may be appointed in respect of the Debtor and shall not be void or voidable by creditors of the Debtor, nor shall it constitute nor be deemed to be a settlement, fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 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.

17. The Transaction is exempt from any requirement under any applicable federal or provincial law to obtain shareholder approval and is exempt from the application of any bulk sales legislation in any Canadian province or territory.

#### **SEALING OF THE SECOND CONFIDENTIAL REPORT**

18. The Second Confidential Report, including the Exhibits thereto, shall be kept sealed and confidential, and shall not form part of the public record but shall be kept separate and apart from the other contents of the Court file in respect of this matter in a sealed envelope which sets out the style of cause of these proceedings and a statement that the contents thereof are subject to a Sealing Order, and shall not be opened except:

- (a) by the Honourable Madame Justice A.R. Rothery;
- (b) pursuant to further Order of the Court; or
- (c) three months following the filing of the Proposal Trustee's Certificate with this Honourable Court.

19. An application to unseal the Second Confidential Report may be made at any time upon 14 days' notice to legal counsel for the Debtor and to the Proposal Trustee.

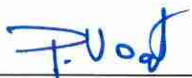
#### **MISCELLANEOUS MATTERS**

20. The Proposal Trustee, the Purchaser, FCC, and any other interested party shall be at liberty to apply for further advice, assistance, and directions as may be necessary in

order to give full force and effect to the terms of this Order and to assist and aid the parties in closing the Transaction.

21. 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 Proposal Trustee 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 as to provide such assistance to the Proposal Trustee, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Proposal Trustee and its agents in carrying out the terms of this Order.
22. This Order must be served only upon those interested parties attending or represented at the within application and service may be effected by facsimile, electronic mail, personal delivery, or courier. Service is deemed to be effected the next business day following the transmission or delivery of such documents.
23. Service of this Order on any party not attending this application is hereby dispensed with.

ISSUED at Saskatoon, Saskatchewan, this 8<sup>th</sup> day of November 2018.

  
\_\_\_\_\_  
(Deputy) Local Registrar  
:

**CONTACT INFORMATION AND ADDRESS FOR SERVICE**

|                           |  |         |
|---------------------------|--|---------|
| Name of firm:             | McDougall Gauley LLP   | Name of |
| lawyer in charge of file: | Ian A. Sutherland / Craig Frith  |         |
| Address of legal firm:    | 500-616 Main Street  |         |
|                           | Saskatoon, SK S7H 0J6  |         |
| Telephone / Fax number:   | (306) 665-5417 / (306) 652-1323  |         |
| Email address:            | <a href="mailto:isutherland@mcDougallgauley.com">isutherland@mcDougallgauley.com</a> |         |
|                           | <a href="mailto:cfrith@mcDougallgauley.com">cfrith@mcDougallgauley.com</a>           |         |

**SCHEDULE "A"**  
**FORM OF PROPOSAL TRUSTEE'S CERTIFICATE**

|                 |  |
|-----------------|--|
| COURT FILE      | QB No. 1200 of 2018  |
| COURT           | QUEEN'S BENCH FOR SASKATCHEWAN<br>IN BANKRUPTCY AND INSOLVENCY |
| JUDICIAL CENTRE | SASKATOON  |
| APPLICANT       | CANADIAN EXOTIC GRAINS LTD.                                    |

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL  
UNDER SECTION 50.4 OF THE *BANKRUPTCY AND INSOLVENCY ACT*, RSC  
1985, c. B-3, AS AMENDED, OF CANADIAN EXOTIC GRAINS LTD.

**PROPOSAL TRUSTEE'S CERTIFICATE**

**RECITALS**

- A. Pursuant to an Order of the Court dated [Date], the Court approved the agreement of purchase and sale made as of November 2, 2018 (the "**Sale Agreement**") between Canadian Exotic Grains Ltd. (the "**Debtor**") and Section 12 Foods Inc. (the "**Purchaser**") and provided for the vesting in the Purchaser of the Debtor's 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 Proposal Trustee to the Purchaser of a certificate confirming (i) the payment by the Purchaser to Farm Credit Canada ("**FCC**") of the First Cash Payment (as that term is defined in the Sale Agreement) for the Purchased Assets; and (ii) that the conditions to Closing as set out in Article 5 of the Sale Agreement have been satisfied or waived by the Debtor and the Purchaser.
- B. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.

**THE PROPOSAL TRUSTEE CERTIFIES** the following:

1. The Proposal Trustee has received written confirmation from FCC stating that the Purchaser has paid and FCC has received the First Cash Payment for the Purchased Assets payable on the Closing Date pursuant to the Sale Agreement; and
2. The Proposal Trustee has received written confirmation from both the Debtor and the Purchaser that the conditions to Closing as set out in Article 5 of the Sale Agreement have been satisfied or waived by the Debtor and the Purchaser.

This Certificate was delivered by the Proposal Trustee at [Time] on [Date].

**Deloitte Restructuring Inc. in its capacity as  
Proposal Trustee respecting Canadian  
Exotic Grains Ltd. and not in its personal  
capacity.**

**Per; \_\_\_\_\_**

**Name:**

**Title:**



**SCHEDULE "B"**  
**PURCHASED ASSETS**

As particularized in the Asset Purchase Agreement dated November 2, 2018 between the Debtor and the Purchaser:

All of the property and assets of every kind and description and wheresoever situate, owned by the Debtor and used or utilized by the Debtor in the business of the operation of a pulse and spice processing marketing business (the "**Business**") of the Debtor, including without limiting the generality of the foregoing, all of the assets of the Business shown or reflected in the Financial Statements as being owned by the Debtor and/or used in the Business, other than the assets which have been disposed of or consumed in the ordinary course of the Business since the date of the Financial Statements, and for greater certainty, the Purchased Assets shall include, but shall not be limited to:

- (a) the Real Property;
- (b) the Assigned Agreements, being:

Purchase Agreements

- (i) #1835 with KAST Farms Ltd.

Sales Agreement

- (ii) #1734 with McCormick Ingredients
- (iii) #1800 with Hensall District Co-operative, Incorporated
- (iv) #1808 with Phoenicia Group Inc.
- (v) #1809 with Unico Inc.
- (vi) #1785630 with Baldom USA Inc.
- (vii) #1811 with Golden Taste Inc.

- (c) the Goodwill, being:
  - (i) the right or interest of the Purchaser following Closing to represent itself as carrying on the Business in continuation of and in succession to the Debtor;
  - (ii) the rights to the telephone numbers, facsimile numbers, used by the Debtor in connection with the Business to the extent that the same may be assigned by the Debtor to the Purchaser;
  - (iii) the operational standards or procedures of the Business (ISO 22:000); and

- (iv) customer and producer lists for the Business;
- (d) the Books and Records; being:
  - (i) means all sales and purchase records, employee records, ISO documentation, lists of suppliers and customers, credit and pricing information, files, ledgers, correspondence, lists, recipes, manuals, drawings, blueprints, reports, texts, notes, engineering designs or drawings or other information, environmental or feasibility studies, appraisals, memoranda, computer discs, tapes, back-up tapes or other means of electronic storage, and all other records or documents or information of any nature or kind whatsoever of or relating to the Business or the Purchased Assets, including all records and documents accessible through any computer system or electronically;
- (e) the Inventory, being:
  - (i) all grain and product in the possession of the Debtor and allocated or acquired by the Vendor for the closing and completion of the Assigned Agreements; and
  - (ii) all packaging materials; and
- (f) the Machinery, Equipment, Vehicles, Furniture and Tools, being all of the machinery, equipment, furniture and tools normally utilized in the operation of the Business including, without limitation, the machinery, equipment, furniture and tools listed and described below:

|         |                  |          |
|---------|------------------|----------|
| Bin #5  | Steel hopper     | 1600 bu. |
| Bin #6  | Steel hopper     | 1600 bu. |
| Bin #7  | Steel hopper     | 1900 bu. |
| Bin #8  | Steel hopper     | 1900 bu. |
| Bin #68 | Steel hopper     | 2300 bu. |
| Bin #69 | Steel hopper     | 2300 bu. |
| Bin #79 | Steel flatbottom | 3500 bu. |
| Bin #81 | Steel hopper     | 2000 bu. |
| Bin #82 | Steel hopper     | 2000 bu. |
| Bin #83 | Steel hopper     | 2000 bu. |
| Bin #84 | Steel hopper     | 2300 bu. |
| Bin #85 | Steel hopper     | 2300 bu. |
| Bin #86 | Steel hopper     | 2300 bu. |
| Bin #87 | Steel hopper     | 2300 bu. |
| Bin #88 | Steel hopper     | 2300 bu. |
| Bin #89 | Steel hopper     | 2300 bu. |
| Bin #90 | Steel hopper     | 2300 bu. |
| Bin #91 | Steel hopper     | 2300 bu. |
| Bin #92 | Steel hopper     | 2300 bu. |
| Bin #93 | Steel hopper     | 2300 bu. |
| Bin #94 | Steel hopper     | 2300 bu. |

|                               |              |                  |
|-------------------------------|--------------|------------------|
| Bin #95                       | Steel hopper | 2300 bu.         |
| Bin #96                       | Steel hopper | 2300 bu.         |
| Bin #97                       | Steel hopper | 4000 bu.         |
| Bin #98                       | Steel hopper | 4000 bu.         |
| Bin #99                       | Steel hopper | 4000 bu.         |
| Bin #100                      | Steel hopper | 4000 bu.         |
| Bin #101                      | Steel hopper | 4000 bu.         |
| Bin #102                      | Steel hopper | 3500 bu.         |
| RB1                           | Steel hopper | 4500 bu.         |
| RB2                           | Steel hopper | 4500 bu.         |
| SB2                           | Steel hopper | 4500 bu.         |
| SB3                           | Steel hopper | 3000 bu.         |
| <b>Total storage capacity</b> |              | <b>91000 BU.</b> |

### Shop Contents

- (a) tools, parts, misc shop items

### Grain Handling System

- (a) all attached fixtures and equipment necessary to operate the system and bag product: Bagger, Bag Closers, Bag Handling Conveyors, scales, air compressor, Forklifts x 2 (with safety cage), etc.

### Grain Cleaner

- (a) all attached fixtures and equipment necessary to operate cleaning equipment: Garratt PF 144 Air / Screen Machines x 2 3 Carter Indents (sn: C004367-5 2016, C004367-4 2016, C004367-3 2015) Model 2353 Garratt Destoner (sn:21518 2015) Bench Industries Debearder

#### Screens

##### Round Hole

- o 4 of 30R
- o 8 of 26R
- o 4 of 24R
- o 4 of 23R
- o 4 of 21.5R
- o 8 of 20R
- o 4 of 19R
- o 4 of 18 R
- o 4 of 14R
- o 4 of 12R
- o 4 of 10R
- o 4 of 6R

##### Slotted Hole

- o 8 of 16S
- o 4 of 8S
- o 8 of 4S
- o 4 of 3.5S

#### Batco 1814 LP Conveyor

#### Other Equipment

- (a) 40 foot Sea-Can
- (b) 2000 Batco Grain Conveyor
- (c) Fuel Tanks - One Diesel, Two Gas
- (d) 2002 Blue Tandem 900 bu. box
- (e) 7" - 35' Brandt Electric Auger
- (f) 8" - 47' Brandt 2010 25 HP and Mover

#### Office Equipment

- (a) LG Computer with ViewSonic Screens - x 5
- (b) Complete Networking System
- (c) HP Printers x 2
- (d) Brother Photocopier & Fax Machine
- (e) Office Furniture and attached fixtures
- (f) Phone System
- (g) Office Supplies

#### Vehicles

- (a) 1998 GMC Extended Cab truck
- (b) Kenworth Semi & Trailer
- (c) GMC Tandem Truck
- (d) International Tandem Truck
- (e) Massey Tractor with Blade
- (f) Grain Vac

**SCHEDULE "C"  
CLAIMS**

Nil