

Court File No. CV-14-10443-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN :

MERIDIAN CREDIT UNION LIMITED

Applicant

-and-

VANDERMEER GREENHOUSES LTD.

Respondent

APPLICATION UNDER section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985 c. B-3, as amended, section 101 of the *Courts of Justice Act*, R.S.O. 1990 c. C.43, as amended, and Rule 14.05(3)(g) of the *Rules of Civil Procedure*

**APPLICATION RECORD
(Returnable on February 21, 2014)**

February 7, 2014

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(Incorrectly named in this action as Vincor (c.o.b. as "Constellation Brands"))

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ONTARIO
SUPERIOR COURT OF JUSTICE

Court File No.

CV-14-10443-00CL

BETWEEN:

MERIDIAN CREDIT UNION LIMITED

Applicant

-and-

VANDERMEER GREENHOUSES LTD.

Respondent

APPLICATION UNDER section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985 c. B-3, as amended, section 101 of the *Courts of Justice Act*, R.S.O. 1990 c. C.43, as amended, and Rule 14.05(3)(g) of the *Rules of Civil Procedure*

NOTICE OF APPLICATION

TO THE RESPONDENT:

A LEGAL PROCEEDING HAS BEEN COMMENCED by the applicant. The claim made by the applicant appears on the following page.

THIS APPLICATION will come on for hearing on *Friday, the 21st day of February, 2014*, at 10:00 a.m. at 330 University Avenue, Toronto, Ontario, M5G 1R7.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the Rules of Civil Procedure, serve it on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in the court office, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but at least 4 days before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date: February 7th, 2014

Issued by:  Registrar

Address of court office:

330 University Avenue
Toronto, Ontario
M5G 1R7

TO: SEE SERVICE LIST ATTACHED

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APPLICATION

1. **THE APPLICANT, MERIDIAN CREDIT UNION LIMITED (“Meridian”) MAKES AN APPLICATION FOR:**
 - a) if necessary, an order abridging the time for service and filing of this notice of application and the application record, validating service effected to date, and an order dispensing with service thereof on any party other than the persons served;
 - b) an order appointing Zeifman Partners Inc. as receiver (in such capacities, the “Receiver”), without security of all the assets, undertakings, and properties of the Respondents, substantially in the form of the draft order attached hereto as Schedule “A”;
 - c) costs of this application on a substantial indemnity basis; and
 - d) such further and other relief as this Honourable Court should deem just.

2. **THE GROUNDS FOR THE APPLICATION ARE:**
 - a) The Respondent (“Vandermeer”) is an insolvent Ontario corporation that operates a chrysanthemum greenhouse and a biogas digester (which produces energy sold to the Ontario Power Authority), both located in Niagara-on-the-Lake, Ontario. The Applicant (“Meridian”) is the Respondent's primary secured creditor. Zeifman Partners Inc. (“Zeifman”) has been operating the Respondent as a privately-appointed receiver and manager since July 19, 2011, while marketing the business for sale as a going concern.

- b) Vandermeer's debt to Meridian has increased to \$6,787,334.39 as at January 28, 2014. The increase is due in part to accruing interest, but is also due to protective costs incurred to maintain the flower and digester divisions, and also due to the continued operation of the Company's business by Zeifman during the marketing efforts.
- c) The marketing effort by Zeifman has recently generated interest from at least one serious potential purchaser. Given the ongoing controversy surrounding certain litigation that has arisen; the need to conclusively assign certain key agreements to any purchaser; the lack of any representations or warranties that will be made to any purchaser; and the desire of any purchaser to obtain clear title to the assets of the Company, it would be both just and convenient to have any sale effected through a court-approved process and vesting order, on notice to all affected parties. The sale of the Company's business as a going concern, which can best be effected through a court-appointed receivership, is also in the public interest, because it will preserve the employment of those working in the Company's operations, and it will ensure the continued operation of a valuable alternative renewable energy source.
- d) Meridian as a secured creditor wishes to ensure an orderly sale and distribution of the Company's assets.
- e) Meridian wishes to take any and all steps necessary to protect the security granted by the Company to Meridian and realize on same.

- f) Zeifman is a licenced trustee in bankruptcy and is familiar with the circumstances of the Meridian loan and security, having been involved as receiver and manager of the Company for the past two-and-a-half years.
- g) Zeifman has consented to act as court-appointed receiver with respect to the Company.
- h) Section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985 c. B-3, as amended.
- i) Section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended.
- j) Rules 1.04, 2.03, 3.02 (1), 14.05(3) (g) and (h), 16.04 (1) and 38 of the *Rules of Civil Procedure*.
- k) Such further and other grounds as counsel may advise and as this Honourable Court should deem just.

3. **The following documentary evidence will be used at the hearing of the application:**

- a) The affidavit of Bernie Huber sworn January 31, 2014 and the exhibits attached thereto;
- b) The consent of Zeifman Partners Inc. to act as receiver of the Respondent; and
- c) Such further evidence as counsel may advise and as this Honourable Court may permit.

DATE OF ISSUE: February 7, 2014

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Lawyers for the Applicant

Schedule "A"

Court File No.

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE) WEEKDAY, THE #
)
JUSTICE) DAY OF MONTH, 20YR

MERIDIAN CREDIT UNION LIMITED

Applicant

-and-

VANDERMEER GREENHOUSES LTD.

Respondent

APPLICATION UNDER section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985 c. B-3, as amended, section 101 of the *Courts of Justice Act*, R.S.O. 1990 c. C.43, as amended, and Rule 14.05(3)(g) of the *Rules of Civil Procedure*

ORDER

THIS APPLICATION for an Order pursuant to section 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 Zeifman Partners Inc. as receiver (in such capacities, the "Receiver") without security, of all of the assets, undertakings and properties of Vandermeer Greenhouses Ltd. (the "Debtor") acquired for, or used in relation

to a business carried on by the Debtor, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Bernie Huber sworn January 31, 2014 and the Exhibits thereto and on hearing the submissions of counsel for [NAMES], no one appearing for [NAME] although duly served as appears from the affidavit of service of [NAME] sworn [DATE] and on reading the consent of Zeifman Partners Inc. to act as the Receiver,

SERVICE

1. THIS COURT ORDERS that the time for service of the Notice of Motion and the Motion is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

APPOINTMENT

2. THIS COURT ORDERS that pursuant to section 243(1) of the BIA and section 101 of the CJA, Zeifman Partners Inc. is hereby appointed Receiver, without security, of all of the assets, undertakings and properties of the Debtor acquired for, or used in relation to a business carried on by the Debtor, 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 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 of 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

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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 Debtor, 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 Debtor;
- (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 Debtor or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor;
- (g) to settle, extend or compromise any indebtedness owing to the Debtor;
- (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 Debtor, for any purpose pursuant to this Order;
- (i) to undertake environmental or workers' health and safety assessments of the Property and operations of the Debtor;
- (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 Debtor, the Property or the Receiver, and to

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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 \$50,000.00, provided that the aggregate consideration for all such transactions does not exceed \$100,000.00; 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, and in each case the Ontario *Bulk Sales Act* shall not apply.

- (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 Debtor;
- (q) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtor;
- (r) to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have; and
- (s) 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 Debtor, and without interference from any other Person.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

4. THIS COURT ORDERS that (i) the Debtor, (ii) all of its current and former directors, officers, employees, agents, 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.

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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 Debtor, 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 DEBTOR OR THE PROPERTY

8. THIS COURT ORDERS that no Proceeding against or in respect of the Debtor 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 Debtor 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 Debtor, 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 Debtor to carry on any business which the Debtor is not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtor 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, licence or permit in favour of or held by the Debtor, 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 Debtor or statutory or regulatory mandates for the supply of goods and/or services, including

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without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Debtor 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 Debtor's 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 Debtor 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 Debtor shall remain the employees of the Debtor until such time as the Receiver, on the Debtor's behalf, may terminate the employment of such employees. 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, 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 shall 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 Debtor, 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.

18. THIS COURT ORDERS that the Receiver and its legal counsel shall pass its 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 \$100,000.00 (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.

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.

GENERAL

24. 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.

- 12 -

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

26. 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.

27. 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.

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

29. 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.

SCHEDULE "A"
RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. THIS IS TO CERTIFY that Zeifman Partners Inc., the receiver (the "Receiver") of the assets, undertakings and properties Vandemeer Greenhouses Ltd. acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (collectively, the "Property") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "Court") dated the ____ of MONTH, 20YR (the "Order") made in an action having Court file number ____-CL-____, 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*, 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 MONTH, 20YR.

ZEIFMAN PARTNERS INC., solely in its capacity
as Receiver of the Property, and not in its personal capacity

Per: _____
Name:
Title:

MERIDIAN CREDIT UNION LIMITED

Plaintiff

-and-

VANDERMEER GREENHOUSES LTD.

Defendant CV-14-10443-00CL

Court File No.

ONTARIO

SUPERIOR COURT OF JUSTICE

PROCEEDINGS COMMENCED AT
TORONTO

NOTICE OF APPLICATION

FLETT BECCARIO

Barristers & Solicitors
190 Division Street
P. O. Box 340
Welland, Ontario
L3B 5P9

Tel: 905-732-4481
Fax: 905-732-2020

Lawyers for the plaintiff

J. ROSS MACFARLANE
LSUC# 36417N

TAB 2

Court File No.

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN :

MERIDIAN CREDIT UNION LIMITED

Applicant

-and-

VANDERMEER GREENHOUSES LTD.

Respondent

APPLICATION UNDER section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985 c. B-3, as amended, section 101 of the *Courts of Justice Act*, R.S.O. 1990 c. C.43, as amended, and Rule 14.05(3)(g) of the *Rules of Civil Procedure*

AFFIDAVIT OF BERNIE HUBER

I, BERNIE HUBER, of the City of St. Catharines, in the Regional Municipality of Niagara and Province of Ontario, MAKE OATH AND SAY:

- 1. I am a Senior Commercial Credit Specialist with the Applicant, Meridian Credit Union Limited ("Meridian"). I have responsibility for matters pertaining to Vandermeer Greenhouses Ltd. (the "Company") and, as such, have personal knowledge of the matters to which I depose.
- 2. Where this affidavit has been made based on information received from others I verily believe it to be true.

BACKGROUND

3. The Company is incorporated under the laws of the Province of Ontario.
Attached hereto as Exhibit "A" is a copy of a Corporation Profile Report produced by the Ontario Ministry of Government Services dated February 25, 2011, with respect to the Company.
4. The Company carries on business as a commercial greenhouse, growing chrysanthemums for the wholesale cut flower market. In addition, the Company operates upon its property a biogas digester which creates electricity that is sold to the Ontario power grid.
5. Meridian is a Credit Union engaged in the business of lending money, and is the successor of Niagara Credit Union Limited, following the amalgamation of Niagara Credit Union Limited and HEP COE Credit Union Limited on April 1, 2005..

THE LOAN FACILITIES AND SECURITY

6. Meridian and the Company entered into a Credit Facilities Agreement dated March 29, 2010 and accepted and acknowledged by the Company on April 14, 2010 (the "Facility Letter"). The Facility Letter provides for the repayment of a revolving operating loan to a maximum of \$450,000.00 (which was to have decreased to \$200,000.00 on October 1, 2012) plus interest at the rate of prime

plus 2.0% per annum; a term loan in the amount of \$1,013,106.00 repayable with interest at 6.42% per annum; a term loan in the amount of \$2,300,700.00 repayable with interest at prime plus 2.0% per annum; a term loan in the amount of \$950,000.00 repayable with interest at 5.10% per annum; as well as a letter of credit in the amount of \$14,060 repayable with interest at prime plus 2.0% per annum if drawn. Attached hereto as Exhibit "B" is a true copy of the Facility Letter.

- 7. As security for the Company's obligations to Meridian, the Company executed a Business Loan General Security Agreement April 19, 2001. Attached hereto as Exhibit "C" is a true copy of the general security agreement. The general security agreement was authorized by a specific resolution of the board of directors of the Company dated April 19, 2001, a copy of which is attached hereto as Exhibit "D".

- 8. As further security for the obligations of the Company, Meridian has obtained a guarantee from John A. Van Berkel and Anna C. Van Berkel.

- 9. Meridian perfected its security interest by registration pursuant to the provisions of the *Personal Property Security Act* and has been continuously perfected thereunder since September 21, 1989. The only other registration made under the said Act was on January 26, 2009 by Ryder Truck Rental Canada Ltd.. Attached hereto as Exhibit "E" is a copy of a Personal Property Security Registration System search dated January 17, 2014 with a file currency of January 16, 2014.

10. As further security for the obligations of the Company, the Company granted to Meridian a collateral charge/mortgage of land upon its lands located on Four Mile Creek Road in Niagara-on-the-Lake (the "Charged Lands"), which was registered on August 15, 2008 as Instrument number NR185256 (the "Meridian Charge"). A true copy of the Meridian Charge, together with a copy of Standard Charge Terms No. 200522, is attached and marked collectively as Exhibit "F".

MERIDIAN DEMANDS

11. On March 11, 2011, I delivered a Notice of Intent to Realize on Security to the Company as required under section 21 of the *Farm Debt Mediation Act* (the "FDMA Notice"). Attached as Exhibit "G" is a true copy of the FDMA notice.
12. After the period provided for in the FDMA Notice had expired, demand was made and a notice of intention to enforce security was sent by registered mail to the Company. Attached hereto collectively as Exhibit "H" are true copies of the demand letter and notice dated April 1, 2011 and mailed by registered mail that day, together with the registered mail receipt.
13. As at the date of the demand, the amount due to Meridian by the Company was \$4,173,170.56. The Company was required to pay this sum plus interest from April 1, 2011 at the rates specified in the Facility Letter. At the date of demand, Meridian's prime rate was 3.0%.

14. The demands expired on April 13, 2011, and neither the Company nor guarantors had paid the amounts demanded.

THE PRIVATE RECEIVERSHIP

15. On July 19, 2011, Meridan, with the consent of the Company, appointed Zeifman Partners Inc. ("Zeifman") as receiver/manager of the Company. Attached hereto collectively as Exhibit "I" are copies of the signed appointment dated July 19, 2011, as well as Zeifman's Notice and Statement of Receiver dated July 25, 2011.
16. Zeifman has continued to manage the operations of the Company, including both the greenhouse and the digester, to date, while marketing the property and undertaking of the Company for sale.

SUMMARY OF THE DIGESTER OPERATIONS AND RELATED ISSUES

17. The operation of the biogas digester located on the Charged Lands has been carried on by Zeifman in accordance with the terms of its appointment by Meridian. The operation is regulated by the Ontario Ministry of the Environment ("MOE"), as well as the Ontario Ministry of Agriculture and Food ("OMAF"). Energy is sold to the Ontario Power Authority ("OPA") pursuant to an agreement under the Renewable Energy Standard Offer Program ("RESOP") between the Company and OPA. The RESOP Agreement was acknowledged in an agreement among Zeifman, Meridian, and OPA dated December 12, 2011, a copy of which is attached hereto as Exhibit "J".

18. The MOE issued a Provisional Certificate of Approval for the biogas digester dated October 30, 2009, and amended March 25, 2011 (together, the "MOE Certificate"). A copy of the MOE Certificate is attached and marked as Exhibit "K".

19. As required from time to time, Zeifman has cooperated with requests for information from, and investigations conducted by, both the MOE and OMAF. Zeifman has also overseen various repairs and improvements to the digester that have been required over the course of the appointment, the cost of which has been borne by Meridian.

20. In May, 2012, Zeifman and Meridian became aware of an application made by Richard and Judi Zirger (the "Zirgers"), who own property adjacent to the Charged Lands, to the Normal Farm Practices Protection Board ("NFPPB").

21. Attached as Exhibit "L" is a copy of correspondence from the NFPPB erroneously addressed to "Vandermeer Nurseries", but received by Zeifman at the Company's address.

22. Zeifman and Meridian participated in the NFPPB hearing process, and prepared to attend a four-day hearing scheduled to proceed on November 13, 2012. The Zirgers attended and sought an adjournment that was granted on terms, and in December 2012 withdrew their application to the NFPPB.

23. In December, 2013, the Zirgers commenced an action in the Superior Court of Justice at Toronto against the company, Meridian, and several other defendants concerning the operation of the digester. A copy of the statement of claim issued December 19, 2013, in Court File Number CV-13-495252 is attached and marked as Exhibit "M".

BASIS FOR APPOINTMENT OF A RECEIVER

24. The debt to Meridian has increased to \$6,787,334.39 as at January 28, 2014. Attached and marked as Exhibit "N" is a copy of an account statement dated January 28, 2014. The increase is due in part to accruing interest, but is also due to protective costs incurred to maintain the flower and digester divisions, and also due to the continued operation of the Company's business by Zeifman during the marketing efforts.
25. The marketing effort by Zeifman has recently generated interest from at least one serious potential purchaser. Given the ongoing controversy surrounding the claims made by the Zirgers; the need to conclusively assign the RESOP Agreement, the MOE Certificate, and other key agreements to any purchaser; the lack of any representations or warranties that will be made to any purchaser; and the desire of any purchaser to obtain clear title to the assets of the Company, I believe that it would be both just and convenient to have any sale effected through a court-approved process and vesting order, on notice to all affected parties. The sale of the Company's business as a going concern, which

can best be effected through a court-appointed receivership, is also in the public interest, because it will preserve the employment of those working in the Company's operations, and it will ensure the continued operation of a valuable alternative renewable energy source.

- 26. Meridian as a secured creditor wishes to ensure an orderly sale and distribution of the Company's assets.

- 27. Meridian wishes to take any and all steps necessary to protect the security granted by the Company to Meridian and realize on same.

- 28. I believe that in all of the circumstances, it would be just and convenient for the Court to appoint a receiver as sought in Meridian's application.

- 29. Meridian proposes that Zeifman be appointed as receiver of the Company. Zeifman is a licenced trustee in bankruptcy and is familiar with the circumstances of the Meridian loan and security, having been involved as receiver and manager of the Company for the past two-and-a-half years.

- 30. Zeifman has consented to act as court-appointed receiver with respect to the Company.

31. I make this affidavit in support of Meridian's application for the appointment of a receiver over the assets of the Company, and for no other or improper purpose.

Sworn before me at the City of St. Catharines, in the Regional Municipality of Niagara this 31 day of January, 2014

Rina D'Angela, a Commissioner, etc., Province of Ontario, for Flett, Beccario, Barristers and Solicitors, and Conveyancers Inc. Expires August 21, 2015.

A Commissioner, etc.

Rina D'Angela

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)
)
) 
BERNIE HUBER

THIS IS EXHIBIT "A"
TO THE AFFIDAVIT OF
BERNIE HUBER
SWORN BEFORE ME AT THE CITY OF ST. CATHARINES
IN THE REGIONAL MUNICIPALITY OF NIAGARA
THIS 31 DAY OF JANUARY, 2014



A Commissioner, etc.

Rina D'Angela, a Commissioner, etc.,
Province of Ontario, for Flett, Beccario,
Barristers and Solicitors, and
Conveyancers Inc.
Expires August 21, 2015.

Request ID: 012948245
Transaction ID: 43645442
Category ID: UN/E

Province of Ontario
Ministry of Government Services

Date Report Produced: 2011/02/25
Time Report Produced: 10:23:55
Page: 1

CORPORATION PROFILE REPORT

Ontario Corp Number	Corporation Name	Incorporation Date
500986	VANDERMEER GREENHOUSES LTD.	1981/12/31
		Jurisdiction
		ONTARIO
Corporation Type	Corporation Status	Former Jurisdiction
ONTARIO BUSINESS CORP.	ACTIVE	NOT APPLICABLE
Registered Office Address		Date Amalgamated
2021 FOUR MILE CREEK ROAD RR #3 NIAGARA ON THE LAKE ONTARIO CANADA LOS 1J0		NOT APPLICABLE
		New Amal. Number
		NOT APPLICABLE
		Notice Date
		NOT APPLICABLE
Mailing Address		Letter Date
2021 FOUR MILE CREEK ROAD RR #3 NIAGARA ON THE LAKE ONTARIO CANADA LOS 1J0		NOT APPLICABLE
		Revival Date
		NOT APPLICABLE
		Continuation Date
		NOT APPLICABLE
		Transferred Out Date
		NOT APPLICABLE
		Cancel/Inactive Date
		NOT APPLICABLE
		EP Licence Eff.Date
		NOT APPLICABLE
		EP Licence Term.Date
		NOT APPLICABLE
	Number of Directors	Date Commenced
	Minimum Maximum	in Ontario
	00001 00010	NOT APPLICABLE
Activity Classification		Date Ceased
NOT AVAILABLE		in Ontario
		NOT APPLICABLE

Request ID: 012948245
Transaction ID: 43645442
Category ID: UN/E

Province of Ontario
Ministry of Government Services

Date Report Produced: 2011/02/25
Time Report Produced: 10:23:55
Page: 2

CORPORATION PROFILE REPORT

Ontario Corp Number	Corporation Name
500986	VANDERMEER GREENHOUSES LTD.

Corporate Name History	Effective Date
VANDERMEER GREENHOUSES LTD.	1981/12/31

Current Business Name(s) Exist:	NO
Expired Business Name(s) Exist:	NO

Administrator:	Address
Name (Individual / Corporation)	
JOHN VANBERKEL	2021 CREEK ROAD RR 3 NIAGARA-ON-THE-LAKE ONTARIO CANADA L0S 1J0

Date Began	First Director	Resident Canadian
1981/12/31	NOT APPLICABLE	
Designation	Officer Type	
DIRECTOR		Y

Request ID: 012948245
Transaction ID: 43645442
Category ID: UN/E

Province of Ontario
Ministry of Government Services

Date Report Produced: 2011/02/25
Time Report Produced: 10:23:55
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CORPORATION PROFILE REPORT

Ontario Corp Number	Corporation Name
500986	VANDERMEER GREENHOUSES LTD.

Administrator: Name (Individual / Corporation)	Address
ANGIE VANBERKEL	2003 CREEK ROAD RR 33 NIAGARA-ON-THE-LAKE ONTARIO CANADA LOS 1J0

Date Began	First Director	
1981/12/31	NOT APPLICABLE	
Designation	Officer Type	Resident Canadian
DIRECTOR		Y

Administrator: Name (Individual / Corporation)	Address
ANGIE VANBERKEL	2003 R R # 3 NIAGARA-ON-THE-LAKE ONTARIO CANADA LOS 1J0

Date Began	First Director	
1995/07/31	NOT APPLICABLE	
Designation	Officer Type	Resident Canadian
OFFICER	OTHER	Y

Request ID: 012948245
Transaction ID: 43645442
Category ID: UN/E

Province of Ontario
Ministry of Government Services

Date Report Produced: 2011/02/25
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CORPORATION PROFILE REPORT

Ontario Corp Number	Corporation Name
500986	VANDERMEER GREENHOUSES LTD.

Administrator: Name (Individual / Corporation)	Address
JOHN VANBERKEL	2021 CREEK ROAD RR 3 NIAGARA-ON-THE-LAKE ONTARIO CANADA LOS 1J0

Date Began	First Director	
1995/07/31	NOT APPLICABLE	
Designation	Officer Type	Resident Canadian
OFFICER	PRESIDENT	Y

Administrator: Name (Individual / Corporation)	Address
ANGIE VANBERKEL	2003 CREEK ROAD RR 33 NIAGARA-ON-THE-LAKE ONTARIO CANADA LOS 1J0

Date Began	First Director	
1995/07/31	NOT APPLICABLE	
Designation	Officer Type	Resident Canadian
OFFICER	VICE-PRESIDENT	Y

Request ID: 012948245
Transaction ID: 43645442
Category ID: UN/E

Province of Ontario
Ministry of Government Services

Date Report Produced: 2011/02/25
Time Report Produced: 10:23:55
Page: 5

CORPORATION PROFILE REPORT

Ontario Corp Number

Corporation Name

500986

VANDERMEER GREENHOUSES LTD.

Last Document Recorded

Act/Code	Description	Form	Date
CIA	ANNUAL RETURN 2009	1C	2010/05/27

THIS REPORT SETS OUT THE MOST RECENT INFORMATION FILED BY THE CORPORATION ON OR AFTER JUNE 27, 1992, AND RECORDED IN THE ONTARIO BUSINESS INFORMATION SYSTEM AS AT THE DATE AND TIME OF PRINTING. ALL PERSONS WHO ARE RECORDED AS CURRENT DIRECTORS OR OFFICERS ARE INCLUDED IN THE LIST OF ADMINISTRATORS.

PLEASE NOTE THAT WHEN THE SAME INDIVIDUAL HOLDS MULTIPLE 'OTHER UNTITLED' OFFICER POSITIONS, AS INDICATED ON A FORM 1 UNDER THE *CORPORATIONS INFORMATION ACT*, ONLY ONE OF THESE 'OTHER UNTITLED' POSITIONS HELD BY THAT INDIVIDUAL WILL BE REFLECTED ON THIS REPORT.

ADDITIONAL HISTORICAL INFORMATION MAY EXIST ON MICROFICHE.

The issuance of this report in electronic form is authorized by the Director of Companies and Personal Property Security Branch.



445 King Street West, Suite 400
 Toronto, Ontario M5V 1K4
 Phone 416-595-7177 or 1-800-668-8208
 Fax 416-595-1268 or 1-800-667-3146
 www.eservicecorp.ca

Receipt No: C149281
 Receipt Date: Feb. 25, 2011
 GST#: 83397 6863 RT0001

Corporate Services Electronic Receipt

Sold To
 FLETT, BECCARIO & CO.
 190 DIVISION STREET
 WELLAND, ON
 L3B 5P9

Ship To
 FLETT, BECCARIO & CO.
 190 DIVISION STREET
 WELLAND, ON
 L3B 5P9

Customer No.	Client Reference	Order No.	Date Ordered	Date Complete	Receipt Terms	Loc
333975	32786	660084	Feb. 25, 2011 10:25:37 AM	Feb. 25, 2011 10:25:59 AM	NET 30 DAYS	11

Client Contact Info.
 Karen Dobrint (905) 732-4481 ext. 281
 kdobrint@flettbeccario.com
 500986 | VANDERMEER GREENHOUSES LTD.

ESC Contact Info.
 ESC Administrator (416) 595-7177
 searchandreg@eservicecorp.ca

LN	Product Code	Product Description	QTY	GST/HST	PST	Unit Price	Net Price
1	32500177	ONBIS Reports/Ontario/Corporation Profile Report/Uncertified	1	x		\$12.000	\$12.00
2	GD	GOV'T DISB. -NO GST/HST	1			\$8.000	\$8.00
Totals:						\$20.00	\$20.00
HST:							\$1.56
Receipt Total:							\$21.56

This receipt is an original receipt. **Please arrange to deliver receipt to your firm's accounts payable representative.**

TERMS: NET 30 DAYS - 1 1/2% PER MONTH (18% PER ANNUM) INTEREST CHARGED ON OVERDUE ACCOUNTS. NO RETURNS WITHOUT PRIOR AUTHORIZATION.

Please be advised effective June 1st, 2010 shipping fees will be increased for packages sent by courier. For further information please contact us.



41

THIS IS EXHIBIT "B"
TO THE AFFIDAVIT OF
BERNIE HUBER
SWORN BEFORE ME AT THE CITY OF ST. CATHARINES
IN THE REGIONAL MUNICIPALITY OF NIAGARA
THIS 31 DAY OF JANUARY, 2014



A Commissioner, etc.

Rina D'Angela, a Commissioner, etc.,
Province of Ontario, for Flett, Beccario,
Barristers and Solicitors, and
Conveyancers Inc.
Expires August 21, 2015.



Commercial Business Centre
1567 Niagara Stone Rd
Virgil, Ontario L0S 1T0
Tel: (905) 468-5755
Fax: (905) 468-2261

March 29, 2010

Vandermeer Greenhouses Ltd.
2003 Creek Road, R.R. #3
Niagara-on-the-Lake, ON
L0S 1J0

Attention Mr. John Van Berkel and Mrs. Anna Van Berkel and Mr. Randy Van Berkel

Re: Credit Agreement

On the basis of the financial and other information provided to us, Meridian Credit Union Limited ("Meridian") has authorized the following credit facilities ("Credit Facilities") on the terms and conditions set out below. This agreement ("Credit Agreement") cancels and supersedes all such previous agreements. The attached Schedule A is an integral part of this Credit Agreement.

BORROWER: Vandermeer Greenhouses Ltd. ("Member")

CREDIT FACILITIES AND AMOUNT:	1.	Operating Line: to a maximum of	\$450,000
		The Operating Loan limit will decrease to \$200,000 on October 1, 2010.	
	2.	Term Loan: #9 to a maximum of	\$1,013,106
	3.	Term Loan: #13 to a maximum of	\$2,300,700
	4.	Term Loan: New 1	\$950,000
	5.	Term Loan: New 2	100,000
	6.	Letter of Credit Line: to a maximum of	\$14,060

JAB ALB

PURPOSE:	1.	Operating Line:	For regular ongoing working capital requirements.
	2.	Term Loan: #9	to renew the existing term loan for greenhouse renovations.
	3.	Term Loan: #13	Purchase/installation of anaerobic digester
	4.	Term Loan: New 1	to refinance existing term loans and restore working capital.
	5.	Term Loan: New 2	Restore working capital pending future shareholder injection.
	6.	Letter of Credit Line:	To meet government requirements.

JAB ALB

TERM:	1.	Operating Line:	On demand.
	2.	Term Loan: #9	On demand.
	3.	Term Loan: #13	On demand.
	4.	Term Loan: New 1	On demand.
	5.	Term Loan: New 2	On demand.
	6.	Letter of Credit Line:	On demand if drawn.

JAB ALB

AMORTIZATION:	2.	Term Loan: #9	11.42 years
	3.	Term Loan: #13	9.5 years
	4.	Term Loan: New 1	7.0 years
	5.	Term Loan: New 2	Due in full by March 31, 2011.
		6.	Letter of Credit Line:

JAB ALB

INTEREST RATES Interest on the daily principal balance of the Credit Facilities shall be, unless otherwise specified, calculated daily, compounded monthly, and accrue at an annual rate equal to:

- 1. Operating Line Prime Rate plus 2.00%. Prime Rate is currently 2.25%.
- 2. Term Loan #9 Fixed rate 6.42% maturing April 30, 2011.
- 3. Term Loan #13 Prime Rate plus 2.00%. Prime Rate is currently 2.25%.
- 4. Term Loan New 1 Fixed Rate of 5.10% maturing April 30, 2011.
- 5. ~~Term Loan New 2 Prime Rate plus 3.00%. Prime Rate is currently 2.25%.~~
- 6. Letter(s) of Credit Prime Rate plus 2.00% if drawn. Prime Rate is currently 2.25%

JOB AUB

REPAYMENT All Credit Facilities, unless otherwise noted, are available on a demand basis only. Any prepayment shall be subject to the provisions of Schedule A.

- 1. Operating Line Interest only due and payable monthly. **The Operating Line limit will revert to \$200,000 on October 1, 2010.**
- 2. Term Loan #9 Blended regular monthly payments of principal and interest of \$10,465.
- 3. Term Loan #13 Blended regular monthly payments of principal and interest of \$24,585.
- 4. Term Loan New 1 Blended regular monthly payments of principal and interest of \$13,472.
- 5. ~~Term Loan New 2 Interest due and payable monthly, principal due and payable in full by March 31, 2010.~~
- 6. Letter of Credit Line Due and payable in full on demand if the Letters of Credit are drawn by the beneficiary.

JOB AUB

CREDIT FEES

- 1. Arrangement/Renewal Fee An annual renewal fee of \$2,000 is due and payable on acceptance of this Credit Agreement.
- 2. Administration Fees A monthly administration fee of \$50 per each calendar month, for review and monitoring of the account on an ongoing basis is at this time waived.
- 3. Letter of Credit Fees Based on 2.00% per annum, calculated against the face amount and over the term of each Letter of Credit, subject to a minimum fee of \$250 per Letter of Credit, payable upon issuance.
- 4. Amendment Fees Amendments to authorized Credit Facility, as requested by the Member, will be subject to a minimum fee of \$250 per request, subject to the complexity and circumstances of each request as mutually agreed upon between the Member and Meridian.

- 5. Additional Fees Covenant Breaches/Late Reporting/Events of Default – will each be subject to a minimum fee \$500, per occurrence where such condition has not previously been approved by Meridian in writing.

EXPENSES

The Member shall pay all reasonable legal fees and disbursements in respect of this Credit Agreement, the preparation and issue of the Security Documents, the enforcement and preservation of Meridian's rights and remedies, and all reasonable fees and costs relating to appraisals, insurance consultation, credit reporting and responding to demands of any government or any agency or department thereof, whether or not the documentation is completed or any funds are advanced under this Credit Agreement.

SECURITY

The present and future indebtedness and liability of the Member to Meridian shall be secured by the following security, evidenced by documents in form satisfactory to Meridian (collectively, the "**Security Documents**") registered or recorded as required by Meridian in first position (unless specifically noted or consented to otherwise), and provided prior to any advances or availability being made under this Credit Agreement.

1. General Security Agreement providing a floating first charge over all present and after acquired assets of Vandermeer Greenhouses Ltd.
2. First Position Collateral Mortgage, for \$5,000,000 registered in the name of Vandermeer Greenhouses Ltd., on the property and buildings located at 2003-2021 Creek Road, Niagara-on-the-Lake, Ontario.
3. Hypothecation of Funds on Deposit in the amount of; the full deposit balance held on deposit in the Agri Advantage Savings Account of Vandermeer Greenhouses Ltd., account #572355 sub 0 with a present balance on deposit of \$13,143.
4. Assignment of Fire Insurance, indicating Meridian as first loss payee or first mortgagee on the subject property, including coverage over buildings, equipment, inventory, and the anaerobic digester. The fire insurance is to be on a full replacement basis with no cross liability.
5. Assignment of Key Man Life Insurance in the amount of \$1,000,000 on the life of John Van Berkel and \$1,000,000 on the life of Anna Van Berkel.
6. Joint and Several Guarantee and Postponement of Claim in favour of Meridian for an unlimited amount given by John Van Berkel and Anna Van Berkel.
7. Indemnity Agreement re: Letter of Credit.

CONDITIONS

The initial and continued availability of the Credit Facilities is contingent upon compliance and satisfaction of each of the following conditions and covenants together with those set out in the Security Documentation and Schedule A until such time as all debts and liabilities under this Credit Agreement have been discharged in full and each of the Credit Facilities have been withdrawn by Meridian:

1. Delivery Conditions

Meridian shall have received each of the following:

- All the Security Documents duly authorized, executed and delivered and registered or recorded as Meridian may require;
- Duly executed copy of this Credit Agreement;
- Payment of the Arrangement/Renewal Fee;
- Such financial and other information or documents relating to the Member as Meridian may reasonably require;
- **A copy of the new RESOP Contract increasing rate paid to .169 cents per kilowatt hour with the Contract to run for a 20 year period from April 30, 2010.**

2. Reporting Covenants

The Member shall provide Meridian with each of the following:

Annual year-end financial statements prepared by a Chartered Accountant under a Review Engagement are to be provided to the Credit Union within 90 days of the Member's fiscal year-end.

Semi-annual internally prepared financial statements (Income and Expense Statements and Balance Sheet) are to be provided within 25 days of the half year-end of June 30, 2010.

ACCOUNTANT PREPARED JLB MB

Annual Budget/Cash Flow projections are to be provided concurrently with the annual fiscal year-end statements to include Profit and Loss projections, Cash Flow projections and projected Balance Sheet for the subsequent fiscal year.

3. Financial Covenants

The Member will:

1.) Generate a Debt Service Ratio (DSR) of 1.15 for fiscal 2010. The DSR will be measured on an annual basis based on the Accountant prepared fiscal year-end financial statements. The DSR is defined as;

EBITDA less a reserve of 10% of gross revenues from power revenues and power savings generated by the anaerobic digester over;

Total annual debt servicing costs including interest paid on the Operating Line of Credit, plus the annual principal and interest payments on all Term Loans, plus the costs of servicing all other loans and capital leases owing by the Member.

For fiscal 2009 the Member generated a DSR of .25 and thus fell short of the DSR covenant in place for fiscal 2009 of 1.0 as set out in the previous Credit Agreement dated November 13, 2009. Notwithstanding the default, we agree subject to the terms of this letter to forbear, and not take any action to enforce our rights under the Credit Agreement at this time. Meridian expressly reserves all of its right and remedies under the Credit Agreement and to take such action as it may consider appropriate and does not waive its right to enforce any of the default provisions of the Credit Agreement now or at any time in the future.

2.) The Member will deposit monthly the sum of 10% of Gross Power Sales Revenues together with 10% of Power usage savings into the Member's Business Advantage Savings Account and this account shall represent a maintenance, repair and replacement reserve for the Anaerobic Digester/Engine system.

4. Negative Covenants

The Member shall not, without the prior written consent of Meridian:
Make Capital Expenditures of no more that \$25,000 during fiscal 2010.


EVENTS OF DEFAULT

See Schedule A.


Kindly indicate your acceptance of this Credit Agreement by signing and returning to us the enclosed duplicate of this letter by no later than April 12, 2010, at which point this letter and all agreements contained herein shall become null and void.

Yours truly,

MERIDIAN CREDIT UNION LIMITED



Tom Brooks
Account Manager, Commercial Services

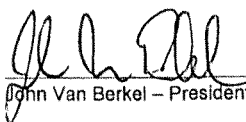


Ken Janzen
Senior Director & Regional Manager,
Commercial Services

ACKNOWLEDGEMENT

The arrangements set out above are hereby acknowledged and accepted by:


Vandermeer Greenhouses Ltd.



 Signature of Authorized Officer
 (I have the authority to bind the Corporation)

John Van Berkel – President

 Date April 14, 2010



 Signature of Authorized Officer
 (I have the authority to bind the Corporation)


Anna Van Berkel

 Date April 14, 2010

GUARANTORS

Each of the Guarantors hereby acknowledges and confirms that it understands all the terms & conditions contained therein with respect to its respective Guarantee and Postponement of Claim:

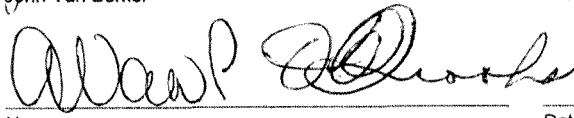
John Van Berkel



 Guarantor Signature

John Van Berkel

 Date April 14, 2010



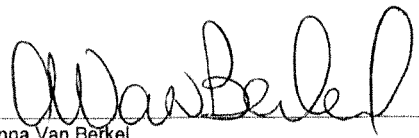
 Witness Signature

Anna Van Berkel

 Name

 Date April 14, 2010

Anna Van Berkel




 Guarantor Signature

Anna Van Berkel

 Name

 Date April 14, 2010



 Witness Signature

 Name

 Date April 14, 2010

SCHEDULE "A" TO CREDIT AGREEMENT

The credit commitment as described in the Credit Agreement shall be governed by the following terms and conditions:

Definitions

For the purpose of the Credit Agreement, the following terms shall have the meanings indicated below:

"Acceptable Inventory" means the lower of cost or net realizable value, as determined by Meridian from a review of the most recent financial statements and inventory declaration provided by the Member, of all materials owned by the Member for resale or for production of goods for resale, as defined by Generally Accepted Accounting Principles ("GAAP"), all of which the security constituted by the Security Documents shall rank as a valid first mortgage, first ranking transfer or first security interest and which is not subject to any security interest or other encumbrance or any other right or claim which ranks or is capable of ranking in priority to the security constituted by the Security Documents including, without limitation, rights of unpaid suppliers under the *Bankruptcy and Insolvency Act* (Canada) to repossess inventory within 30 days after delivery.

"Acceptable Receivables" means the aggregate of accounts receivable of the Member, as defined by GAAP and as determined by the most recent financial statements and/or aged list of accounts receivable of the Member, over which the security constituted by the Security Documents shall rank as a valid first assignment or first security interest, from customers approved by Meridian.

"Business Day" means a day upon which Meridian is open for business;

"Credit Agreement" means the letter from Meridian to the Member to which this Schedule is attached, together with this Schedule, and includes all amendments and replacements thereof;

"Government Authority" means any government legislature, regulatory authority, agency, commission, board or court or other law, regulation or rule making entity having or purporting to have jurisdiction on behalf of any nation, state, country or other subdivision;

"Guarantors" means the party or parties that are to execute a guarantee or guarantees of the indebtedness of the Member to Meridian as part of the Security Documents;

"Legal Requirement" means all laws, statutes, codes, ordinances, orders, awards, judgments, decrees, injunctions, rules, regulations, authorizations, consents, approvals, orders, permits, franchises, licenses, directions and requirements of any Governmental Authority;

"Prime Rate" means the floating annual rate of interest established and recorded as such by Meridian from time to time as a reference rate for purposes of determining rates of interest it will charge on loans denominated in Canadian dollars;

"COF Rate" means the fixed annual rate of interest established and recorded as such by Meridian from time to time as being the aggregate cost of the requested funds on an annual fixed rate basis for a period of 30, 60, 90, or 180 days or 1, 2, 3, 4 or 5 years, as selected by the Member (but maturing not later than the final date for payment of the subject Loan, in any event), including dealer commissions and such reserves as are applicable;

"US Base Rate" means the annual rate of interest established and recorded as such by Meridian from time to time as a reference rate for purposes of determining rates of interest it will charge on loans denominated in United States dollars.

"Potential Preferred Claims" means, at any time and from time to time, all claims secured by a lien created by or arising under statute or regulation or arising under common law without the explicit consent of the obligor, which rank or are capable of ranking prior to or *pari passu* with the security constituted by the Security Documents against all or any part of property and assets secured thereby, whether then existing or, in Meridian's sole judgment, likely to arise including, without limitation, claims on amount of unremitted source deductions, income tax, goods and services tax, sales tax, workers compensation premiums, director liabilities and such other claims given priority to the claims of secured creditors or excluded from the property of a bankrupt divisible among creditors under the *Bankruptcy and Insolvency Act (Canada)*.

Acknowledgement

The Member acknowledges that the actual recording of the amount of any advance or repayment thereof under the Loan(s), and interest, fees and other amounts due in connection with the Loan(s), in an account of the Member maintained by Meridian shall constitute *prima facie* evidence of the Member's indebtedness and liability from time to time under the Loan(s); provided that the obligation of the Member to repay any indebtedness and liability in accordance with the terms and conditions of the Loan(s) shall not be affected by the failure of Meridian to make such recording. The Member also acknowledges being indebted to Meridian for principal amounts shown as outstanding from time to time in Meridian's account records, and all accrued and unpaid interest in respect of such amounts, in accordance with the terms and conditions of this Credit Agreement.

Governing Law

This Credit Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario.

Currency

All dollar amounts expressed in this Credit Agreement shall refer to Canadian Dollars unless otherwise specified.

Authorization

The Member for good and valuable consideration authorizes Meridian to accept Telecopier and electronic communications on behalf of the Member as full and sufficient authority to act in accordance with communications as received by Meridian from the Member.

The Member shall be bound by all such telecopier and electronic communications from itself in the same manner and extent as if such communications were originally handwritten and signed by the Member, and the Member shall hold Meridian at all times fully indemnified from all claims and demands in respect of all such instructions, in the event such telecopier and electronic communications, were made without authority or otherwise.

Interest, Fees and Payment

- (a) Interest on the daily balance of principal advanced under the Credit Agreement and remaining unpaid from time to time shall be payable by the Member as set out in the Credit Agreement both before and after default and judgment;
- (b) The fees collected by Meridian shall be its property as consideration for the time, effort and expense incurred by it in the review of documents and financial statements, and the Member acknowledges and agrees that the determination of these costs is not feasible and that the fees set out in the Credit Agreement represent a reasonable estimate of such costs;

- (c) Any amounts which become payable to Meridian under the Credit Agreement or the Security Documents and which are not paid when due shall accrue interest and be payable from the due date at an annual rate equal to Meridian's Prime Rate plus 5%, compounded and payable monthly on the last day of each month, both before and after default and judgment, if no other interest rate is expressed for such amounts;
- (d) In the event Meridian authorizes for the Member a higher debit balance than the maximum amount authorized under this agreement, the Member agrees to repay such excess amount on demand with interest at Meridian's prescribed rate for such excess advances from time to time, being 21 per cent per annum at the present time. Such excess amounts are deemed to be secured by any security taken by Meridian pursuant to the terms hereof and all payments or credits to the account of the Member shall be deemed to have been applied first to the repayment of any such excess amounts.
- (e) All payments by the Member to Meridian shall be made at the address of the branch of Meridian set out on the Credit Agreement or at such other place as Meridian may specify in writing from time to time. Any payment delivered or made to Meridian by 1:00 p.m. local time at the place where such payment is to be made shall be credited as of that day, but if made afterwards shall be credited as of the next day on which the said branch is open for business;
- (f) Notwithstanding anything to the contrary contained in the Credit Agreement, Meridian may, in its discretion, make an advance under the Credit Facility to pay any unpaid interest or fees which have become due under the terms of the Credit Agreement;
- (g) The obligation of the Member to make all payments under the Credit Agreement and the Security Documents shall be absolute and unconditional and shall not be limited or affected by any circumstance, including, without limitation:
 - (i) any set-off, compensation, counterclaim, recoupment, defense or other right which the Member may have against Meridian or anyone else for any reason whatsoever; or
 - (ii) any insolvency, bankruptcy, reorganization or similar proceedings by or against the Member.

Prepayment

Floating Rate Loans: Permitted at any time without penalty.

Fixed Rate Loans: The Member may not make any payments in addition to those required on the stipulated dates prior to the term maturity date except for an annual prepayment provision, not exceeding 10% of the original principal amount. This right of prepayment is not cumulative such that if the Member does not use this privilege in a calendar year, the Member cannot carry forward this right of prepayment for that calendar year to any following calendar year.

Any additional prepayment, in whole or in part, will be applied in inverse order of maturity, by payment in full of all outstanding principal, interest, applicable expenses and discharge costs, and subject to a prepayment penalty consisting of the greater of:

- (a) three months interest, based on the unpaid principal balance as at the payout date,
- and
- (b) the interest rate differential, being an amount calculated by multiplying the difference between the "existing" annual interest rate and the then "current" ^{*} annual interest rate as at prepayment date, by the unpaid principal balance as at the requested payout date, and calculated with respect to the remaining portion of the term of the loan.

^{*} defined and based on COF Rate for a term closest to the remaining term of the loan, plus applicable interest rate spread similar to that used for existing rate

Credit Covenants

In addition to the covenants previously set out, each of the following shall apply until all the Credit Facilities are repaid in full and cancelled:

- (a) The Member will:
 - (i) maintain its membership with Meridian while any portion of the facilities remain outstanding or committed. A \$25.00 share deposit is required;
 - (ii) permit Meridian or associated agents access at all reasonable times to any premises where collateral covered Meridian security may be located and Meridian or its agents may inspect such collateral and all related documents and records; and
 - (iii) agree that Meridian will provide all day to day business banking services for the Member.
- (b) The Member shall not, without the prior written consent of Meridian:
 - (i) grant or allow any lien, charge, privilege, hypothec or other encumbrance, whether fixed or floating, to be registered against or exist on any of its assets, and in particular, without limiting the generality of the foregoing, shall not grant a trust deed or other instrument in favour of a trustee;
 - (ii) become guarantor or endorser or otherwise become liable upon any note or other obligation other than in the normal course of business of the Member;
 - (iii) declare or pay dividends on any class or kind of its shares, repurchase or redeem any of its shares or reduce its capital in any way whatsoever or repay any shareholders' advances. Such approval will not be unreasonably withheld so long as financial results and account performance is satisfactory; or
 - (iv) amalgamate with or permit all or substantially all of its assets to be acquired by any other person, firm or corporation or permit any reorganization or change of control of the Member.
- (c) The scheduled property tax payments are to be paid up to date at all times.
- (d) Insurance coverage is to be maintained, sufficient to substantially replace all assets in the event of loss.
- (e) The regular rent/lease payments on all rented/leased premises are to be maintained up to date at all times.
- (f) Meridian shall have the right to waive the delivery of any Security Documents or the performance of any term or condition of the Credit Agreement, and may advance all or any portion of the Credit Facility prior to satisfaction of any of the aforesaid conditions precedent, but any such waiver by Meridian of any obligation or condition shall not constitute a waiver of such obligation or condition for any future advance.
- (g) All financial terms and covenants shall be determined in accordance with GAAP, applied consistently.
- (h) Any amount payable by the Member to Meridian under the Credit Agreement or the Security Documents may be debited to any account of the Member with Meridian.

Events of Default

Without limiting the entitlement of Meridian to direct repayment at any time of any Credit Facility repayable upon demand upon the occurrence of any one of the following "Events of Default," Meridian may, by written notice to the Member, declare all the unpaid principal of and accrued interest for all Credit Facilities to be due and payable whereupon the same shall become due and payable forthwith.

- (a) The Member fails to make any payment of interest or principal when due pursuant to this Credit Agreement;
- (b) There is a breach by the Member of any other term or condition contained in this Credit Agreement;
- (c) A representation and warranty contained herein is incorrect in any material respect;
- (d) Any bankruptcy, reorganization, arrangement, insolvency or liquidation proceedings or other proceedings for the relief of debtors are instituted by or against the Member and, if instituted against the Member, are allowed against or consented to by the Member or are not dismissed or stayed within five (5) days after such institution;
- (e) There occurs or is reasonably likely to occur, in the sole discretion of Meridian:
 - (i) a material adverse change in the financial condition of the Member.
 - (ii) an unacceptable change in ownership of the Member.
 - (iii) legal implications detrimental to the affairs of the Member.
- (f) Any default occurs under any Security Document or under any other credits or loan agreements to which the Member is a party;
- (g) The Member is in default in making a payment of any other indebtedness incurred, assumed or guaranteed by it and the effect of such default is to permit the holder of such obligation to cause such obligation to become due prior to its stated maturity;
- (h) Meridian in good faith believes that the ability of the Member to pay any of its obligations to Meridian or to perform any of the covenants contained herein is impaired or the security referred to herein is impaired or is in jeopardy.

Representations

The Member represents and warrants that:

- (a) The Member has full power, authority and legal right to borrow in the manner and on the terms and conditions set out in this Credit Agreement, to execute and deliver the acceptance of this letter and to carry out the terms and conditions of this Credit Agreement and the security referred to herein;
- (b) The execution and delivery of the acceptance of this Credit Agreement and the carrying out of the terms of this Credit Agreement and of the Security Documents do not violate any law, order or regulation applicable to the Member and have been (will be) duly and validly authorized by the Member;
- (c) This Credit Agreement as accepted and the Security Documents as delivered are valid and are legally enforceable against the Member in accordance with their respective terms except to the extent that the enforcement thereof may be limited by bankruptcy, insolvency or similar laws affecting the enforcement of creditor's rights generally;

- (d) The Member is not in default under the provisions of any agreement evidencing, guaranteeing or relating to any outstanding indebtedness or liability and the execution of the acceptance of this Credit Agreement and the delivery of the Security Documents will not constitute a breach of any agreement to which the Member is a party;
- (e) There are no actions, suits or proceedings pending or threatened against the Member before any court or government department, commission, board or agency which, if determined adversely, would have a material adverse effect on the financial condition of the Member.

(f) Representations and Covenants re: Hazardous Substances

- (i) To the best of the Member's knowledge after due and diligent inquiry, no regulated, hazardous or toxic substances are being stored on any of the Member's premises (the "**Premises**") or any adjacent property, nor have any such substances been stored or used on the Premises or any adjacent property prior to the Member's ownership, possession or control of the Premises. The Member agrees to provide written notice to Meridian immediately upon the Member becoming aware that the Premises or any adjacent property are being or have been contaminated with regulated, hazardous or toxic substances. The Member will not permit any activities on the Premises which directly or indirectly could result in the Premises or any other property being contaminated with regulated, hazardous or toxic substances. For the purposes of the Credit Agreement, the term "regulated, hazardous or toxic substances" means any substance, defined or designated as hazardous or toxic wastes, hazardous or toxic material, a hazardous, toxic or radioactive substance or other similar term, by any applicable federal, provincial or local statute, regulation or ordinance now or in the future in effect, or any substance or materials, the use or disposition of which is regulated by any such statute, regulation or ordinance;
- (ii) The Member shall promptly comply with all statutes, regulations and ordinances, and with all orders, decrees or judgments of governmental authorities or courts having jurisdiction, relating to the use, collection, storage, treatment, control, removal or cleanup of regulated, hazardous or toxic substances in, on, or under the Premises or in, on or under any adjacent property that becomes contaminated with regulated, hazardous or toxic substances as a result of construction, operations or other activities on, or the contamination of, the Premises, or incorporated in any improvements thereon. Meridian may, but shall not be obligated to, enter upon the Premises and take such actions and incur such costs and expenses to effect such compliance as it deems advisable and the Member shall reimburse Meridian on demand for the full amount of all costs and expenses incurred by Meridian in connection with such compliance activities; and
- (iii) The assets of the Member which are now or in the future encumbered by the Security Documents are hereby further mortgaged and charged to Meridian, and Meridian shall have a security interest in such assets, as security for the repayment of such costs and expenses and interest thereon, as if such costs and expenses had originally formed part of the Credit Agreement.

(g) Representations and Covenants re: Environmental Issues

- (i) Any property mortgaged does not contain any pollutants, dangerous substances, liquid waste, industrial waste, toxic substances, hazardous wastes, hazardous materials, hazardous substances or contaminants. To the best of the Member's knowledge, after due inquiry and investigation, none of these substances have ever been released into the environment as a result of any of the activities conducted on the property mortgaged and future usage will be limited to environmentally acceptable activities in compliance with all current and future applicable international, federal, provincial or municipal laws, by-laws, statutes, regulations, orders, permits or judgements, relating to the environment or occupational health and safety ("**Environmental Laws**");

- (ii) There are no claims, actions, investigations, liens, prosecutions, notices, work orders, control orders, stop orders or directives, written or oral, ("**Orders**") of any kind issued or pending by any third party, court or international, federal, provincial or municipal ministry, department or agency ("**Environmental Authority**") which enforces current and future applicable international, federal, provincial or municipal laws, by-laws, statutes, regulations, orders, permits or judgements, relating to the environment or occupational health and safety ("**Environmental Laws**") with respect of any activities of the Member, or any property owned by the Member, past or present, as they relate to any and all Environmental Laws. There are no circumstances, current or contemplated, which might give rise to any such Order;
- (iii) To the best of the Member's knowledge, after due inquiry and investigation, any property mortgaged and its existing and prior uses comply and have at all times complied with all Environmental Laws.

The Member shall pay, at the Member's sole cost and expense, the entire cost of any environmental audit deemed necessary by Meridian in Meridian's sole discretion. Such audit shall be performed by a duly licensed engineer acceptable to Meridian. The scope of any environmental audit shall be at Meridian's sole discretion. The auditor performing the environmental audit, its employees and agents shall be granted full access to the property mortgaged and all buildings thereon to perform any testing or investigation deemed necessary by the auditor in the auditor's sole discretion.

The Member shall ensure that the representations and warranties of the Member are true and correct at this time and throughout the term of the Credit Facilities.

Waiver or Variation

No term or condition of the Credit Agreement or any of the Security Documents may be waived or varied orally or by any course of conduct of any officer, employee or agent of Meridian. Any amendment to the Credit Agreement or the Security Documents must be in writing and signed by a duly authorized officer of Meridian.

Credit Reporting

The Member and each Guarantor consent to Meridian obtaining from any credit reporting agency or from any person such information as Meridian may require at any time, and consents to the disclosure at any time of any information concerning the Member and any Guarantor to any credit grantor with whom the Member and any Guarantor has financial relations or to any credit reporting agency.

Time of Essence

Time shall be of the essence of this Credit Agreement.

Survival

All terms, conditions, representations and warranties of this letter shall survive the closing of the credit facilities contemplated and neither the preparation, nor registration or any documents related to the transaction shall bind Meridian to advance funds under the commitment.

No Merger

It is understood and agreed that the execution and delivery of the mortgage and other security documents shall in no way merge or extinguish this Credit Agreement or its terms and conditions.

The terms and conditions of this Credit Agreement shall continue in full force and effect; provided however, in the case of any inconsistency between the provisions of this Credit Agreement, and the provisions of any of the Security Agreements, the provisions of this Credit Agreement shall prevail.

Assignment

This Credit Agreement and the Security Documents may not be assigned, transferred or otherwise disposed of by the Member without the prior written consent of Meridian, which consent may be arbitrarily withheld. Meridian may, without notice to and without the consent of the Member or any Guarantor, assign, syndicate, securitize, transfer or grant participation interests in the whole or any part of this Credit Agreement, the Credit Facilities, the Security Documents and any and all right, title, benefits, remedies and obligations relating thereto. The Member and each Guarantor agrees to co-operate with Meridian in connection with any such assignment, syndication, securitization, transfer or grant of participation interests including, without limitation, the delivery of an Estoppel certificate in a form satisfactory to Meridian.

Notices

Any notices contemplated herein shall be in writing given by authenticated Telecopier or electronic, and any such notice, shall be deemed to have been given when sent.

THIS IS EXHIBIT "C"
TO THE AFFIDAVIT OF
BERNIE HUBER
SWORN BEFORE ME AT THE CITY OF ST. CATHARINES
IN THE REGIONAL MUNICIPALITY OF NIAGARA
THIS 31 DAY OF JANUARY, 2014



A Commissioner, etc.

Rina D'Angela, a Commissioner. etc.,
Province of Ontario. for Flett, Beccario,
Barristers and Solicitors. and
Conveyancers Inc.
Expires August 21, 2015.

BUSINESS LOAN
GENERAL SECURITY AGREEMENT

TO: **Niagara Credit Union Limited** (hereinafter called the "Credit Union")
We **Vandermeer Greenhouses Ltd.** (hereinafter called the "Assignor")

hereby assign and transfer to the Credit Union, as a general and continuing collateral security for payment of all existing and future indebtedness and liability of the Assignor to the Credit Union whosoever and howsoever incurred and any ultimate unpaid balance thereof, all property of the kinds described in paragraph 2 below of which the Assignor is now or may hereafter become the owner.

1. DEFINITIONS

In this Agreement,

- (a) "PPSA" means the Personal Property Security Act (Ontario), as from time to time amended, and any Act that may be substituted therefor.
- (b) "Receivables" means all debts, accounts, claims, moneys and choses in action now due or hereafter to become due or owing to the Assignor, or any one or more of them.
- (c) "Inventory" means all goods now or hereafter forming part of the inventory of the Assignor or any one or more of them, including, without limiting the generality of the foregoing, goods held for sale or lease; goods furnished or to be furnished under contracts of service; goods which are raw materials or work in process; goods used in or procured for packing; materials used or consumed in the business of the Assignor; emblements; growing crops that become such within one year after the execution of this agreement; timber to be cut; oil, gas and other minerals to be extracted; and goods described in paragraph 9 below.
- (d) "Equipment" means all goods, exclusive of inventory or consumer goods, now or hereafter owned by the Assignor or any one or more of them, which are used or are intended for use in or about the business conducted by the Assignor or in the places referred to in paragraph 8 and including, without limiting the generality of the foregoing, machinery, fixtures, furniture, plant; vehicles of any sort or description; the property described in paragraph 10 below; and all accessories installed in or affixed, attached or appertaining to any of the foregoing.
- (e) "Documents of Title" shall have the meaning ascribed to it in the PPSA and shall include, without limiting the generality of the foregoing, all warehouse receipts and bills of lading whether negotiable or not.
- (f) "Chattel Paper", "goods" and "instrument" shall have the meanings respectively ascribed to them in the PPSA.
- (g) "Intangibles" means all personal property, including choses in actions that is not goods, chattel paper, documents of title, instruments, money or securities but including all present or future contractual rights, licences, quotas, goodwill, patents, trademarks, copyrights, and other industrial or intellectual property.

2. SECURITY INTEREST

As security for the payment and performance of all existing and future liabilities and indebtedness of the Assignor, or any one or more of them, to the Credit Union, howsoever arising, the Assignor hereby grants to the Credit Union a continuing security interest in the business undertaking of the Assignor and in all property of the following kinds now owned or hereafter acquired by the Assignor or by any one or more of them:

- (a) Inventory;
- (b) Equipment;
- (c) Receivables;
- (d) Chattel Paper;
- (e) Documents of Title;
- (f) All books and papers recording, evidencing or relating to the Receivables, Chattel Paper or Documents of Title, and all securities, bills, notes, instruments or other documents now or hereafter held by or on behalf of the Assignor or any one or more of them with respect to the said Receivables, Chattel Paper or Documents of Title;
- (g) All shares, stock, warrants, bonds, debentures, debenture stock or other securities including, without limiting the generality of the foregoing, the securities listed in paragraph 11 hereof, together with renewals thereof, substitutions therefor, accretions thereto and all rights and claims in respect thereof;
- (h) Intangibles;
- (i) All proceeds and products of any or all the foregoing, including any compensation for Collateral damaged, expropriated, stolen or destroyed.

The above named property, whether now owned or hereafter acquired, shall herein after be called the "Collateral".

3. WARRANTIES AND COVENANTS

- (a) Except for the security interest granted hereby the Assignor or any one or more of them is (and as to collateral to be acquired after the date hereby, shall be) the owner of the Collateral free and clear of all liens, charges, claims, encumbrances, taxes or assessments.
- (b) The Assignor will not sell, offer to sell, transfer, pledge or mortgage the Collateral, nor will the Assignor suffer to exist any other security interest in the Collateral in favour of any person other than the Credit Union, without the prior written consent of the Credit Union. All proceeds of sales shall be received as trustee for the Credit Union and shall be forthwith paid over to the Credit Union.
- (c) The Assignor shall, during the currency of this Agreement, insure and keep insured the Collateral to its full insurable value for fire, theft and such other risks as the Credit Union may reasonably require, and will, at the request of the Credit Union, pay such further premium as is necessary to obtain an endorsement that the security interest of the Credit Union will not be invalidated by any breach of statutory condition. The proceeds of any insurance held pursuant to this paragraph shall be payable to the Credit Union and any proceeds of such insurance shall, at the option of the Credit Union, be applied to the replacement of the Collateral or towards repayment of any indebtedness of the Assignor or any one or more of them to the Credit Union. Should the Assignor neglect to maintain such insurance the Credit Union may insure, any premiums paid by the Credit Union together with interest thereon shall be payable by the Assignor to the Credit Union upon demand. The Assignor will deposit a certified copy of the policy of such insurance with the Credit Union on request, or obtain an insurance endorsement in favour of the Credit Union.
- (d) The Assignor shall provide from time to time upon request from the Credit Union, written information relating to the Collateral or any part thereof, and the Credit Union shall be entitled from time to time to inspect the tangible Collateral including, without limitation, the books and records referred to in paragraph 2(f) above wherever located. For such purpose the Credit Union shall have access to all places where the Collateral or any part thereof is located, and to all premises occupied by the Assignor.
- (e) The Assignor warrants that all motor vehicles owned by the Assignor are used (and as to motor vehicles to be acquired after the date hereby, shall be) primarily in or about the business conducted by the Assignor.
- (f) The Assignor covenants to promptly advise the Assignee of the year, make, model and Vehicle Identification Number of any item of equipment that is a motor vehicle acquired by the Assignor after the date of this Agreement.

4. EVENTS OF DEFAULT

Any or all of the liabilities or indebtedness of the Assignor or any one or more of them to the Credit Union shall, at the option of the Credit Union and notwithstanding any time or credit allowed by any instrument evidencing a liability, be immediately due and payable without notice or demand upon the occurrence of any of the following events (hereinafter referred to as "Event(s) of Default"):

- (a) Default in the payment or performance when due or payable of any liability of the Assignor or of any one or more of them, or of any endorser, guarantor or surety for any liability of the Assignor or any one or more of them to the Credit Union;
- (b) Default by the Assignor of any obligation or covenant contained herein;
- (c) Proof that any warranty, representation or statement made by the Assignor or furnished to the Credit Union herein, or in the application for any loan, or in any loan agreement between the Assignor and the Credit Union, was false in any material respect when made or furnished;
- (d) Any loss, theft, damage or destruction of Collateral or any part of it, or the making of any levy, seizure or attachment thereto or the appointment of a receiver of any part thereof;
- (e) If the Credit Union should at any time deem itself insecure, bearing in mind the extent of the liabilities secured hereby, the value of the Collateral and any other relevant considerations;
- (f) The death, dissolution, termination of existence, insolvency, business failure, or commencement of any proceedings under the Bankruptcy and Insolvency Act affecting the Assignor or any one or more of them.

5. REMEDIES

Upon any Event of Default and at any time thereafter the Credit Union, at its option, may declare that all indebtedness and obligations secured by this agreement shall immediately become due and payable, and:

- (a) The Credit Union shall then have all rights and remedies of a secured party under the PPSA.
- (b) The Credit Union shall then be constituted to appoint in writing any person to be a receiver (which term shall include a receiver and manager) of the Collateral, including any rents and profits thereof, and may remove any receiver and appoint another in his stead. Such receiver so appointed shall have power to take possession of the Collateral and to carry on or concur in carrying on the business of the Assignor, and to sell or concur in selling the Collateral or any part thereof. Any such receiver shall for all purposes be deemed to be the agent of the

Assignor. The Credit Union may from time to time fix the remuneration of such receiver. All moneys from time to time received by such receiver shall be paid by him first in discharge of all rents, taxes, rates, insurance premiums and outgoings affecting the Collateral, secondly in payment of his remuneration as receiver, thirdly in keeping in good standing any liens and charges on the Collateral prior to the security constituted by this Agreement, and fourthly in or toward payment of such parts of the indebtedness and liability of the Assignor to the Credit Union as to the Credit Union seems best, and any residue of such moneys so received shall be paid to the Assignor. The Credit Union in appointing or refraining from appointing such receiver shall not incur any liability to the receiver, the Assignor or otherwise.

- (c) The Credit Union may then collect, realize, sell or otherwise deal with the Receivables or any part thereof in such manner, upon such terms and conditions at such time or times, and without notice to the Assignor, as may seem to it advisable. The Credit Union shall not be liable or accountable for any failure to collect, realize, sell, or obtain payment of the Receivables or any part thereof, and shall not be bound to institute proceedings for the purpose of collecting, realizing or obtaining payment of the same or for the purpose of preserving any rights of the Credit Union, the Assignor or any other person, firm or corporation in respect of the same. All moneys collected or received by the Assignor in respect of the Receivables shall be received as trustee for the Credit Union and shall be forthwith paid over to the Credit Union. All moneys collected or received by the Credit Union in respect of the Receivables or other Collateral may be applied on account of such parts of the indebtedness and liability of the Assignor as to the Credit Union seems best or, in the discretion of the Credit Union, may be released to the Assignor, all without prejudice to the liability of the Assignor or the Credit Union's right to hold and realize this security.

6. CHARGES AND EXPENSES

The Credit Union may charge on its own behalf and pay to others reasonable sums for expenses incurred and for services rendered (expressly including legal advice and services) in or in connection with realizing, disposing of, retaining or collecting the Collateral or any part thereof. Such sums shall be a first charge on the proceeds of realization, disposition or collection. The Credit Union may at its option pay taxes, discharge any encumbrance or charge claimed (whether validly or not) against the Collateral and pay any amount which, in the Credit Union's sole discretion, it may consider requisite to secure possession of the Collateral with or without litigation or compromise. The Credit Union may settle any litigation in respect of the Collateral or the possession thereof, and may pay for insurance, repairs and maintenance to the Collateral, and any sum so paid by the Credit Union shall constitute indebtedness of the Assignor secured hereunder which the Assignor shall repay on demand.

7. POSSESSION OF COLLATERAL

Until default, the Assignor may have possession of the Collateral and enjoy the same subject to the terms hereof. However, whether or not default has occurred, the Credit Union may at any time request that debtors on the Receivables be notified of the Credit Union's security interest. Until such notification is made, the Assignor shall continue to collect Receivables but shall hold the proceeds received from collection in trust for the Credit Union without commingling the same with other funds, and shall turn the same over to the Credit Union immediately upon receipt in the identical form received.

8. LOCATION OF COLLATERAL

Except for any property described in paragraph 11 hereof, the Collateral, insofar as it consists of tangible property, is now and will hereafter be kept at the place or places, listed below. None of the Collateral shall be removed from such place or places without the written consent of the Credit Union.

2003 and 2021 Creek Road
Niagara-on-the-Lake ON

9. SUPPLEMENTARY DESCRIPTION OF INVENTORY

All crops grown at the location described in paragraph 8

10. SUPPLEMENTARY DESCRIPTION OF EQUIPMENT

11. SUPPLEMENTARY DESCRIPTION OF SECURITIES

12. GENERAL

- (a) This Agreement shall be a continuing agreement in every respect.
- (b) This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario.
- (c) The Assignor may terminate this Agreement by delivering written notice to the Credit Union at any time when the Assignor, or each of them, is not indebted or liable to the Credit Union. No remedy for the enforcement of the rights of the Credit Union hereunder shall be exclusive of or dependent on any other such remedy and any one or more of such remedies may from time to time be exercised independently or in combination. The security interest created or provided for by this Agreement is intended to attach when this Agreement is signed by the Assignor and delivered to the Credit Union. For greater certainty it is declared that any and all future loans, advances or other value which the Credit Union may in its discretion make or extend to or for the account of the Assignor or of any one or more of them shall be secured by this Agreement. If more than one person executes this Agreement their obligations hereunder shall be joint and several.
- (d) In construing the Agreement, the word "Assignor" and the personal pronouns "he" or "his" and any verb relating thereto shall be read and construed as the number and gender of the parties signing this Agreement may require.
- (e) The Credit Union may grant extensions of time and other indulgences, take and give up securities, accept compositions, grant releases and discharges and otherwise deal with the Assignor, debtors of the Assignor, sureties and others, and with the Collateral and other securities, as the Credit Union may see fit and without prejudice to the liability of the Assignor or the Credit Union's right to hold and realize this security.

Signed, Sealed and Delivered this 19 day of April, 2001 at Virgil, Ontario.

(If space insufficient, attach a duly signed and witnessed schedule)

To be completed by sole proprietor or partners

Witness Signature of Assignor
Witness Signature of Assignor

Middle Initial	Date of Birth Day, Month, Year	Gender M/F

Vandermeer greenhouses Ltd.

Corporation and/or Trade Name of Assignor

To be completed by incorporated business

Per [Signature] Authorized Signing Officer John VanBerke1 Title President
Per [Signature] Authorized Signing Officer Anna VanBerke1 Title Secretary-Treasurer

THIS IS EXHIBIT "D"
TO THE AFFIDAVIT OF
BERNIE HUBER
SWORN BEFORE ME AT THE CITY OF ST. CATHARINES
IN THE REGIONAL MUNICIPALITY OF NIAGARA
THIS 31 DAY OF JANUARY, 2014



A Commissioner, etc.

Rina D'Angela, a Commissioner, etc.,
Province of Ontario, for Flett, Beccario,
Barristers and Solicitors, and
Conveyancers Inc.
Expires August 21, 2015.

00

**SPECIFIC RESOLUTION OF THE BOARD OF DIRECTORS
OF**

Vandermeer Greenhouses Ltd.

BE IT RESOLVED:

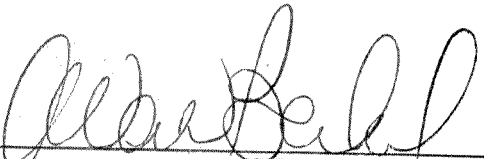
1. That as security for the existing and future liabilities of the Corporation to Niagara Credit Union Limited (herein "NCU"), this Corporation execute and deliver to NCU, a General Security Agreement under the Personal Property Security Act which shall serve as continuing security for all obligations of the Corporation to NCU, in the form provided by NCU; and

2. That President, Secretary or any one of them is/are hereby authorized to execute on behalf of this Corporation, documents of security and all other deeds, documents, instruments and writings, if any, incidental or to give effect thereto, and to do all other things, which they may consider to be necessary, desirable or useful for fulfilling the Corporation's obligation to NCU, including affixing the Corporation seal to all documents executed by them.

The undersigned secretary of the Corporation, hereby certifies the foregoing to be a true copy of a Resolution of the Board of Directors of the Corporation, passed at a meeting duly held on the 6th day of April, 2001.

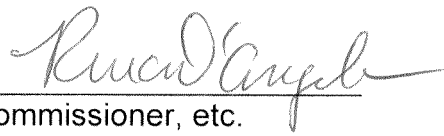
Dated at Virgil this 19 day of April 2001.

WITNESS the Corporate Seal of the Corporation



SECRETARY c/s

THIS IS EXHIBIT "E"
TO THE AFFIDAVIT OF
BERNIE HUBER
SWORN BEFORE ME AT THE CITY OF ST. CATHARINES
IN THE REGIONAL MUNICIPALITY OF NIAGARA
THIS 31 DAY OF JANUARY, 2014



A Commissioner, etc.

Rina D'Angela, a Commissioner, etc.,
Province of Ontario, for Flett, Beccario,
Barristers and Solicitors, and
Conveyancers Inc.
Expires August 21, 2015.

67

PSSME04 PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM 01/17/2014
 DISPLAY 2C REGISTRATION - SCREEN 1 10:39:27
 ACCOUNT : 001793-0101 FAMILY : 2 OF 2 ENQUIRY PAGE : 5 OF 8
 FILE CURRENCY : 16JAN 2014
 SEARCH : BD : VANDERMEER GREENHOUSES LTD.

FILE NUMBER 935970795
 PAGE TOT REGISTRATION NUM REG TYPE
 01 CAUTION : 01 OF 001 MV SCHED: 20020906 1838 1531 8552
 21 REFERENCE FILE NUMBER : 935970795
 22 AMEND PAGE: NO PAGE: X CHANGE: B RENEWAL REN YEARS: 5 CORR PER:
 23 REFERENCE DEBTOR/ IND NAME:
 24 TRANSFEROR: BUS NAME: VANDERMEER GREENHOUSES LTD.
 25 OTHER CHANGE:
 26 REASON:
 27 /DESCR:
 28 :
 02/05 IND/TRANSFEE:
 03/06 BUS NAME/TRFEE:

OCN:
 04/07 ADDRESS:
 CITY: PROV: POSTAL CODE:

29 ASSIGNOR:
 08 SECURED PARTY/LIEN CLAIMANT/ASSIGNEE :
 09 ADDRESS :

CITY : PROV : POSTAL CODE :
 CONS. MV DATE OF NO FIXED
 GOODS INVTRY EQUIP ACCTS OTHER INCL AMOUNT MATURITY OR MAT DATE

10
 11
 12
 13
 14
 15

16 NAME : CANADIAN SECURITIES REGISTRATION SYSTEMS
 17 ADDRESS : 4126 NORLAND AVENUE
 CITY : BURNABY PROV : BC POSTAL CODE : V5G 3S8

68

PSSME04 PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM 01/17/2014
 DISPLAY 2C REGISTRATION - SCREEN 1 10:39:32
 ACCOUNT : 001793-0101 FAMILY : 2 OF 2 ENQUIRY PAGE : 6 OF 8
 FILE CURRENCY : 16JAN 2014
 SEARCH : BD : VANDERMEER GREENHOUSES LTD.

FILE NUMBER 935970795
 PAGE TOT REGISTRATION NUM REG TYPE
 01 CAUTION : 01 OF 001 MV SCHED: 20070820 1456 1530 1460
 21 REFERENCE FILE NUMBER : 935970795
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 23 REFERENCE DEBTOR/ IND NAME:
 24 TRANSFEROR: BUS NAME: VANDERMEER GREENHOUSES LTD.
 25 OTHER CHANGE:
 26 REASON: AMEND SECURED PARTY NAME
 27 /DESCR:
 28 :
 02/05 IND/TRANSFEEEE:
 03/06 BUS NAME/TRFEE:

OCN:

04/07 ADDRESS:
 CITY: PROV: POSTAL CODE:

29 ASSIGNOR:

08 SECURED PARTY/LIEN CLAIMANT/ASSIGNEE :
 MERIDIAN CREDIT UNION LIMITED

09 ADDRESS : P.O.BOX 220, HIGHWAY 55
 CITY : VIRGIL PROV : ON POSTAL CODE : L0S 1T0
 CONS. MV DATE OF NO FIXED
 GOODS INVTRY EQUIP ACCTS OTHER INCL AMOUNT MATURITY OR MAT DATE

10
 11
 12
 13
 14
 15

16 NAME : CANADIAN SECURITIES REGISTRATION SYSTEMS

17 ADDRESS : 4126 NORLAND AVENUE

CITY : BURNABY PROV : BC POSTAL CODE : V5G 3S8

70

PSSME04 PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM 01/17/2014
 DISPLAY 2C REGISTRATION - SCREEN 1 10:39:38
 ACCOUNT : 001793-0101 FAMILY : 2 OF 2 ENQUIRY PAGE : 8 OF 8
 FILE CURRENCY : 16JAN 2014
 SEARCH : BD : VANDERMEER GREENHOUSES LTD.

FILE NUMBER 935970795
 PAGE TOT REGISTRATION NUM REG TYPE
 01 CAUTION : 01 OF 001 MV SCHED: 20120813 1947 1531 4047
 21 REFERENCE FILE NUMBER : 935970795
 22 AMEND PAGE: NO PAGE: X CHANGE: B RENEWAL REN YEARS: 5 CORR PER:
 23 REFERENCE DEBTOR/ IND NAME:
 24 TRANSFEROR: BUS NAME: VANDERMEER GREENHOUSES LTD.
 25 OTHER CHANGE:
 26 REASON:
 27 /DESCR:
 28 ;
 02/05 IND/TRANSFEEE:
 03/06 BUS NAME/TRFEE:

04/07 ADDRESS: OCN:
 CITY: PROV: POSTAL CODE:

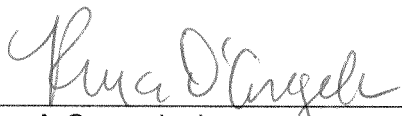
29 ASSIGNOR:
 08 SECURED PARTY/LIEN CLAIMANT/ASSIGNEE :
 09 ADDRESS :
 CITY : PROV : POSTAL CODE :
 CONS. MV DATE OF NO FIXED
 GOODS INVTRY EQUIP ACCTS OTHER INCL AMOUNT MATURITY OR MAT DATE

10
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16 NAME : CANADIAN SECURITIES REGISTRATION SYSTEMS
 17 ADDRESS : 4126 NORLAND AVENUE
 CITY : BURNABY PROV : BC POSTAL CODE : V5G 3S8

LAST SCREEN

THIS IS EXHIBIT "F"
TO THE AFFIDAVIT OF
BERNIE HUBER
SWORN BEFORE ME AT THE CITY OF ST. CATHARINES
IN THE REGIONAL MUNICIPALITY OF NIAGARA
THIS 31 DAY OF JANUARY, 2014



A Commissioner, etc.

Rina D'Angela, a Commissioner, etc.,
Province of Ontario, for Flett, Beccario,
Barristers and Solicitors, and
Conveyancers Inc.
Expires August 21, 2015.

Properties

PIN 46390 - 0008 LT Interest/Estate Fee Simple
 Description PT LT 3 TP PL 167 NIAGARA PT 2 30R4733; NIAGARA-ON-THE-LAKE
 Address NIAGARA ON THE LAKE

PIN 46390 - 0011 LT Interest/Estate Fee Simple
 Description PT LT 4 TP PL 167 NIAGARA PT 2 30R4110; NIAGARA-ON-THE-LAKE
 Address NIAGARA ON THE LAKE

PIN 46390 - 0007 LT Interest/Estate Fee Simple
 Description PT LT 2-3 TP PL 167 NIAGARA AS IN RO532676, PT 1, 3, 4 30R4733; S/T RO532677;
 NIAGARA-ON-THE-LAKE
 Address 2021 FOUR MILE CREEK ROAD
 NIAGARA ON THE LAKE

PIN 46390 - 0074 LT Interest/Estate Fee Simple
 Description PT LT 108 PL M11, PTS 2 & 3 30R10152; NIAGARA ON THE LAKE; M11 IS CONFIRMED
 BY PL BA179; M11 IS NOT A PLAN OF SUBDIVISION WITHIN THE MEANING OF THE
 PLANNING ACT
 Address NIAGARA ON THE LAKE

Chargor(s)

The chargor(s) hereby charges the land to the chargee(s). The chargor(s) acknowledges the receipt of the charge and the standard charge terms, if any.

Name VANDERMEER GREENHOUSES LTD.
 Address for Service 2021 Creek Road,
 R.R. #3,
 Niagara on the Lake, ON L0S 1J0

I, John Adrian Van Berkel, President; and I, Anna Clazina Van Berkel, Secretary, have the authority to bind the corporation. This document is not authorized under Power of Attorney by this party.

Chargee(s)	Capacity	Share
-------------------	-----------------	--------------

Name	MERIDIAN CREDIT UNION LIMITED	
Address for Service	1567 Highway 55 P.O. Box 220 Virgil, ON L0S 1T0	

Provisions

Principal \$5,000,000.00 Currency CDN
 Calculation Period
 Balance Due Date On Demand
 Interest Rate 24.0%
 Payments
 Interest Adjustment Date
 Payment Date
 First Payment Date
 Last Payment Date
 Standard Charge Terms 200522
 Insurance Amount full insurable value
 Guarantor

Additional Provisions

See Schedules

Signed By

Jamie Walz	63 Ontario St. St. Catharines L2R 6W8	acting for Chargor (s)	Signed	2008 08 12
Tel	905-685-5435			
Fax	9056853143			

Submitted By

REID, MCNAUGHTON	63 Ontario St. St. Catharines L2R 6W8			2008 08 15
Tel	905-685-5435			
Fax	9056853143			

Fees/Taxes/Payment

Statutory Registration Fee	\$60.00
Total Paid	\$60.00

File Number

Chargor Client File Number :	08-0473-15
Chargee Client File Number :	561852

SCHEDULE FOR ALL COLLATERAL MORTGAGES

SCHEDULE "A"

PAYMENT PROVISIONS

This Charge is given as continuing security for payment to the Chargee of all debts and liabilities, present or future, direct or indirect, absolute or contingent, matured or not, at any time owing by the Chargor to the Chargee (such debts and liabilities being hereinafter called the "liabilities"), but the Chargor's liability hereunder being limited to the sum of "the Credit Limit" (being the Principal Amount stated on Page 1 of this Charge/Mortgage) with interest at the rate hereinafter set out;

The Chargor covenants to pay each and every liability to the Chargee punctually as the same falls due; provided that this Charge is void upon payment on demand of the ultimate balance of the liabilities and all promissory notes, bills of exchange, guarantees and any other instruments whatsoever from time to time representing the liabilities or any part thereof, not exceeding the principal sum of "the Credit Limit" (being the Principal Amount stated on Page 1 of this Charge/Mortgage) together with interest thereon at the rate of 24.00 per centum per annum as well after as before maturity and both before and after default and all other amounts payable by the Chargor hereunder.

(SCHEDULE FOR COMMERCIAL / FARM / RESIDENTIAL / CONSTRUCTION MORTGAGES)

SCHEDULE "B"

ADDITIONAL PROVISIONS

RECEIVER

Notwithstanding anything herein contained it is declared and agreed that at any time and from time to time when there shall be default under the provisions of these presents the chargee may at such time and from time to time and with or without entry into possession of the charged premises or any part thereof by writing under its corporate seal appoint a receiver of the charged premises or any part thereof and of the rents and profits thereof and with or without security and may from time to time by similar writing remove any receiver and appoint another in his stead and that, in making any such appointment or removal, the chargee shall be deemed to be acting as the agent or attorney for the chargor. Upon the appointment of any such receiver or receivers from time to time the following provisions shall apply:

1. That the statutory declaration of an officer of the chargee as to default under the provisions of these presents shall be conclusive evidence thereof.
2. That every such receiver shall be the irrevocable agent or attorney of the chargor for the collection of all rents falling due in respect of the charged premises or any part thereof whether in respect of any tenancies created in priority to these presents or subsequent thereto;
3. That every such receiver may, in the discretion of the chargee and by writing under its corporate seal, be vested with all or any of the powers and discretions of the chargee;
4. That the chargee may from time to time by such writing fix the remuneration of every such receiver who shall be entitled to deduct the same out of the charged premises or the proceeds thereof;
5. That every such receiver shall, so far as concerns responsibility for his acts or omissions, be deemed the agent or attorney of the chargor and in no event the agent of the chargee;
6. That the appointment of every such receiver by the chargee shall not incur or create any liability on the part of the chargee to the receiver in any respect and such appointment or anything which may be done by any such receiver or the removal of any such receiver or the termination of any such receivership shall not have the effect of constituting the chargee a chargee in possession in respect of the charged premises or any part thereof;
7. That every such receiver shall from time to time have the power to rent any portion of the demised premises which may become vacant for such term and subject to such provisions as he may deem advisable or expedient and in so doing every such receiver shall act as the attorney or agent of the chargor and he shall have authority to execute under seal any lease of any such premises in the name of and on behalf of the chargor and the chargor undertakes to ratify and confirm whatever any such receiver may do in the premises;
8. That every such receiver shall have full power to take all steps he deems appropriate to complete any unfinished construction upon the charged premises with the intent that the charged premises and the buildings thereof when so completed shall be the complete structure as represented by the chargor to the chargee for the purpose of obtaining this charge loan;
9. That every such receiver shall have full power to manage, operate, amend, repair, alter or extend the charged premises or any part thereof in the name of the chargor for the purpose of securing the payment of rental from the charged premises or any part thereof;
10. That no such receiver be liable to the chargor to account for monies or damages other than cash received by him in respect of the charged premises or any part thereof and out of such cash so received every such receiver shall in the following order pay:
 - (a) His remuneration aforesaid;
 - (b) All payments made or incurred by him in connection with the management, operation, amendment, repair, alteration or extension of the charged premises or any part thereof; or completion of any unfinished construction upon same;
 - (c) In payment of interest, principal and other money which may, from time to time, be or become charged upon the charged premises in priority to these presents, and all taxes, insurance premiums and every proper expenditure made or incurred by him in respect to the charged premises or any part thereof;
 - (d) The chargee in payment of all interest due or falling due under this charge and the balance to be applied upon principal due and payable and secured by this charge; and
 - (e) Thereafter any surplus remaining in the hands of every such receiver to the chargor, its successors and assigns.

**LAND REGISTRATION REFORM ACT, 1984
SET OF STANDARD CHARGE TERMS**

Filed by Meridian Credit Union Limited

Filing Date: June 6, 2005

Filing Number: 200522

The following set of standard charge terms shall be deemed to be included in every Charge in which this set is referred to by its filing number and as provided in Section 9 of the Act.

STATUTORY COVENANTS EXCLUDED

1. The Covenants deemed to be included in the Charge under Sub-Section 7(1), Clauses 1 and 2 of the Land Registration Reform Act, 1984, are hereby expressly excluded and replaced by the following Covenants.

COVENANTS IN LIEU OF STATUTORY COVENANTS

2. The Chargor hereby Covenants, promises and agrees to and with the Chargee as follows:

(i) **Authority to Charge the Lands and Premises**

That the Chargor now has good right, full power and lawful and absolute authority to charge the Lands and to give the Charge to the Chargee upon the Covenants contained in the Charge.

(ii) **No Act to Encumber**

That the Chargor has not done, committed, executed or wilfully or knowingly suffered any act, deed, matter or thing whatsoever whereby or by means whereof the Lands, or any part or parcel thereof, is or shall or may be in any way impeached, charged, affected, or encumbered in title, estate or otherwise, except as the records of the Land Registry Office disclose.

(iii) **Good Title in Fee Simple**

That the Chargor, at the time of the execution and delivery of the Charge, is, and stands solely, rightfully and lawfully seized of a good, sure, perfect, absolute and indefeasible estate of inheritance, in fee simple, of and in the Lands and the premises described in the Charge and in every part and parcel thereof, without any manner of trusts, reservations, limitations, provisos, conditions or any other matter or thing to alter, charge, change, encumber or defeat the same, except those contained in the original grant thereof from the Crown.

(iv) **Lands and Buildings Not Contaminated**

That the Buildings on the Lands are not insulated with urea formaldehyde foam and do not contain asbestos building materials, polychlorinated biphenyls, radioactive substances or other Hazardous Materials; no Hazardous Materials have been released into the natural environment from or through the Lands; to the best of the Chargor's knowledge, information and belief, after conducting all reasonable inquiries, no Hazardous Materials have been released into the natural environment from properties adjoining the Lands or from properties located within the immediate vicinity of the Lands, except as expressly permitted, licensed or authorized by Government Authority; the Lands have never been used as a land-fill or waste disposal site; no Hazardous Materials are or have ever been stored on or under the Lands; to the best of the Chargor's knowledge, information and belief, after having conducted all reasonable inquiries, no Hazardous Materials are or have ever been stored on or under properties adjoining the Lands or on or under properties within the immediate vicinity of the Lands; the condition of the soil on the Lands is such that it will not prevent or restrict future development of the Lands for commercial purposes.

"Hazardous Material" means any contaminants, pollutants, substances or materials that, when released to the natural environment, could cause, at some immediate or future time, harm or degradation to the natural environment or risk to human health, whether or not such contaminants, pollutants, substances or materials are or shall become prohibited, controlled or regulated by any Government Authority and any "contaminants", "dangerous substances", "hazardous materials", "hazardous substances", "hazardous wastes", "industrial wastes", "liquid wastes", "pollutants" and "toxic substances", all as defined in, referred to or contemplated in federal, provincial and/or municipal legislation, regulations, orders and/or ordinances relating to environment, health and/or safety matters.

(v) **Promise to Pay and Perform**

That the Chargor will pay or cause to be paid to the Chargee the full principal amount and interest secured by the Charge in the manner of payment provided by the Charge, without any deduction or abatement, and shall do, observe, perform, fulfil and keep all the provisions, covenants, agreements and stipulations contained in the Charge. That the Chargor will comply with all orders issued by regulatory authorities and all environmental laws, regulations, and ordinances. That the Chargor will pay, as they fall due, all taxes, rates, assessments, and penalties, whether municipal, local, parliamentary, judicial, or administrative, which now or may hereafter be imposed, charged or levied upon the Lands or against the Chargor, and when required, produce for the Chargee receipts evidencing payment of the same.

The Chargee shall have the right from time to time to estimate the amount of taxes on the charged Lands and premises for each year and to require the Chargor to pay in each month a specified portion of such estimated amount in addition to the monthly instalments stipulated in this Charge (if any); and the Chargor covenants and agrees when so required to pay to the Chargee in addition to the monthly instalments herein mentioned (if any) such specified portion of the said taxes with each of the twelve succeeding monthly instalments herein mentioned next falling due, and the Chargor shall also pay to the Chargee on demand the amount, if any by which the actual taxes exceed such estimated amount. If the principal and interest are repayable on demand only, this amount on account of taxes shall be paid to the Chargee in each month on a day designated by the Chargee. If, before any amount on account of taxes so paid to the Chargee shall have been applied against taxes, there shall be arrears in the payment of principal and/or interest due and payable under this Charge, the Chargee may apply such amount paid on account of taxes instead towards payment of the arrears of principal and/or interest. The Chargee is not obligated to pay interest to the Chargor on amounts paid to the Chargee on account of taxes for the period of time immediately preceding the date the amounts are applied against taxes.

If the payment provisions in this Charge require the Chargor to make payments of principal and interest monthly, the Chargor and the Chargee may from time to time agree that payments of principal and interest (and any amount on account of taxes, if applicable) shall be made more frequently than monthly, in which case the Chargor shall comply with the terms of any such agreement instead of the payment provisions prescribed in this Charge.

If this Charge contains an interest adjustment date, the Chargor further covenants to pay, on such date, interest at the rate set forth in the Charge and all money advanced by the Chargee to the Chargor under the Charge, prior to such interest adjustment date.

(vi)

Obligation to Insure

That the Chargor will immediately insure, unless already insured, and during the continuance of the Charge keep insured against loss or damage by fire, in such proportions upon each building as may be required by the Chargee, the buildings and the land to the amount of not less than their full insurable value in dollars of lawful money of Canada. Such insurance shall be placed with a company approved by the Chargee. Buildings shall include all buildings whether now or hereafter erected on the Lands, and such insurance shall include not only insurance against loss or damage by fire, but also insurance against loss or damage by explosion, tempest, tornado, cyclone, lightning and all other extended perils customarily provided in insurance policies. Evidence of continuation of all such insurance having been effected shall be produced to the Chargee at least three (3) days before the expiration thereof; otherwise, the Chargee may provide therefor and charge the premium paid and interest thereon, at the rate provided for in the Charge, to the Chargor and the same shall be payable forthwith and shall also be a Charge upon the Lands. It is further agreed that the Chargee may, at any time, require any insurance of the buildings to be cancelled and new insurance effected by a company to be named by the Chargee, and also of his own accord, may effect or maintain any insurance herein provided for in the Charge and the cost of effecting or maintaining same shall also be a Charge upon the Lands. Policies of insurance herein required shall provide that loss, if any, shall be payable to the Chargee as his interest may appear, subject to the standard form of mortgage clause approved by the Insurance Bureau of Canada which shall be attached to the policy of insurance.

(vii)

Obligation to Repair and to Remediate Environmental Contamination

That the Chargor will keep the Lands and the buildings, erections and improvements thereon, in good condition and repair according to the nature and description thereof respectively, and the Chargee may, whenever he deems necessary, by his agent, enter upon and inspect the Lands and make such repairs as he deems necessary, and the reasonable cost of such inspection and repairs with interest at the rate provided for in the Charge shall be added to the principal amount and be payable forthwith and be a charge upon the Lands prior to all claims thereon subsequent to the Charge.

That in the event that, for any reason whatsoever, the representations and covenants contained in subsections 2(iv) and 2(viii) (a) (ii) regarding the Lands are not true or are breached or shall become untrue or breached any time after the registration of this Charge, then the Chargor shall forthwith conduct appropriate removal/remedial action and such removal/remedial action shall be pre-approved by the Chargee, acting reasonably. The Chargor shall conduct such appropriate environmental assessments as the Chargee may reasonably require in its discretion in order to give its approval. If the Chargor fails to conduct such assessments and/or to take appropriate remedial action, the Chargor hereby permits the Chargee to enter upon the Lands to conduct the assessments and/or effect the remedial action, and the reasonable cost of such assessments and/or remediation shall be added to the principal amount and be payable forthwith and be a charge upon the Lands prior to all claims subsequent to the Charge.

(viii)

Alterations

(a) That the Chargor will not

- (i) Permit waste to be committed or suffered on the charged premises;
- (ii) Discharge or permit the discharge into the natural environment of the charged

premises and/or neighbouring lands of any contaminant in an amount, concentration or level in excess of that prescribed by the regulations under the Environmental Protection Act of Ontario, or any similar or successor legislation, or if the contaminant is likely to cause an adverse effect; and

(iii) Suffer or permit any change in the general nature of the occupancy of the charged premises.

(b) That it will not remove or destroy any of the buildings, plant, machinery and equipment comprised in the improvements other than as herein otherwise provided; provided that nothing herein shall prevent the removal of any such property from one part of the charged premises to another or the temporary removal of any such property for purposes of repair, and provided further that the Chargor may remove, dismantle, sell, exchange or otherwise dispose of any plant, machinery or equipment which has become obsolete, worn out, unserviceable or unnecessary for use in the conduct of any business conducted on the premises if such plant, machinery or equipment is replaced by plant, machinery and equipment of at least equal value or if the value of such plant, machinery or equipment so dealt with in one transaction and not so replaced does not exceed \$5,000; provided that such removal or other disposition does not impair the successful operation of the charged premises;

(c) That the Chargor will not make or permit to be made any alterations, additions to, or subtractions from the charged premises without the consent of the Chargee in writing, which consent shall not be unreasonably withheld.

(d) That the Chargor, if the purpose of the Charge is to finance an improvement to the lands and/or buildings, will make the improvement only in accordance with plans and specifications previously approved by the Chargee and complete the improvements as quickly as possible.

(ix) **Obligation to Notify Chargee of Changes**

That the Chargor will forthwith provide the Chargee with full particulars of any change or happening affecting any of the following, namely, (a) the spousal status of the Chargor, and (b) qualification of the said Lands as a matrimonial home within the meaning of the Family Law Act, as amended, the intention being that the Chargee shall be kept fully informed of the names and addresses of any spouse who is not an owner but who has a right of possession in the said Lands by virtue of the said Act. In furtherance of such intention, the Chargor agrees to furnish the Chargee with such evidence in connection with either of (a) and (b) above as the Chargee may, from time to time, request.

(x) **Membership in Meridian Credit Union Limited**

That during the currency of this Charge the Chargor will maintain at all times his status as a member in good standing of Meridian Credit Union Limited in accordance with its by-laws and resolutions.

(xi) **Obligation to Maintain an Account out of which Payments can be drawn**

That, if regular payments of principal and interest (and taxes, if applicable) are required by the provisions of this Charge, the Chargor will maintain, with a branch of Meridian Credit Union Limited, an account of a type satisfactory to the Chargee, and complete an authorization, in a form approved by the Chargee, whereby such account is automatically debited by an amount equal to each payment of principal and interest (and taxes, if applicable), when each payment is due. The Chargor covenants to ensure that such account always has sufficient funds on deposit to satisfy each such payment when due. If the Chargor breaches this covenant, or cancels the said authorization or closes the account, then any such action or omission shall constitute a default under this Charge. The Chargor agrees to pay to the Chargee its current administration and processing fees for breaches of this covenant.

(xii) **Prohibition Against Subsequent Encumbrances**

That the Chargor will ensure that the Lands will remain free and clear of all encumbrances, liens, mortgages, charges, Personal Property Security interests and financing agreements subordinate to the Chargee's interest throughout the term of this Charge and any renewal or renewals thereof, except those approved in writing.

(xiii) **Casualty, Legal or Environmental Claim**

That the Chargor will give immediate notice in writing to the Chargee of any damage caused by fire or any other casualty to, or legal claim against, the said Lands.

That the Chargor will give immediate notice in writing to the Chargee of the receipt of material governmental or third party notices of violation, claims, suits, orders, or permit or approval revocations relating to environmental risks, and of any discharges or spills on or emanating from said Lands within the meaning of the Environmental Protection Act of Ontario, or any similar or successor legislation.

(xiv) **Ontario New Home Warranties Plan Act**

That if the land and buildings are subject to the requirements of the Ontario New Home

Warranties Plan Act of Ontario, or any similar successor legislation, the Chargor will comply with such requirements and reimburse the Chargee for any costs which it may incur in effecting compliance or enforcing the Chargor's rights on its behalf if it fails to do so.

CHARGEES RIGHT TO ACCELERATE PAYMENT OF PRINCIPAL AND INTEREST

3. In the event of:

- (i) The Chargor selling, conveying, transferring or leasing, or entering into any agreement to complete the same, of the title to any interest in the Lands hereby charged to a purchaser, grantee, transferee, or lessee not approved in writing by the Chargee;
- (ii) The failure of such a purchaser, grantee, transferee or lessee to:
 - (a) Apply for and receive the Chargee's written approval as aforesaid;
 - (b) Personally assume all the obligations of the Chargor under this Charge; and
 - (c) Execute an Assumption Agreement in the form required by the Chargee;
- (iii) The death or total permanent disability of the Chargor;
- (iv) The insolvency of the Chargor or any Guarantor;
- (v) The expiration of three (3) months following the Chargor's withdrawal or expulsion from membership in Meridian Credit Union Limited;
- (vi) The winding up or dissolution of the Chargor or any Guarantor (if applicable); or
- (vii) The Chargor neglecting to keep the buildings, erections and improvements in good condition and repair, or permitting any act of waste in the land (as to which the Chargee shall be sole judge), or making default as to any of the covenants, provisoes, agreements or conditions contained in the Charge or in any Charge to which this Charge is subject;

All monies secured by the Charge shall, at the option of the Chargee, forthwith become due and payable, and in default of payment of same with interest, as in the case of payment before maturity, the power of entering upon and leasing or selling the Lands and Premises hereby given and all the remedies herein contained may be exercised forthwith. The exercise of the said option by the Chargee shall not be valid unless expressed in writing and signed by an employee of the Chargee.

CHARGEES RIGHTS ON DEFAULT

4.

(i) **Interest After Default**

In case default shall be made in payment of any sum to become due for interest at the time provided for payment in the Charge, compound interest shall be payable and the sum in arrears for interest from time to time, as well after as before maturity, shall bear interest at the rate provided for in the Charge. In case the interest and compound interest are not paid within three months from the time of default, a rest shall be made, and compound interest at the rate provided for in the Charge shall be payable on the aggregate amount then due, as well after as before maturity and so on from time to time, and all such interest and compound interest shall be a Charge upon the land.

(ii) **Right to Distrain**

If the Chargor shall make default in payment of any part of the interest payable under the Charge, at any of the dates or times fixed for the payment thereof, it shall be lawful for the Chargee to distrain therefor upon the land or any part thereof, and by distress warrant, to recover by way of rent reserved, as in the case of a demise of the land, so much of such interest as shall, from time to time, be or remain in arrears and unpaid, together with all costs, charges and expense attending such levy or distress, as in like cases of distress for rent. Provided that the Chargee may distrain for arrears of principal in the same manner as if the same were arrears of interest.

(iii) **Waiver of Default**

The Chargor agrees that the Chargee may, in writing, at any time or times after default, waive such default and upon such waiver the time or times for payment of said principal amount shall be as set out in this Charge, and further that any such waiver shall apply only to the particular default waived and shall not operate as a waiver of any other or future default.

(iv) **Extensions, Renewals and Variations in Terms Not to Prejudice**

Unless the Chargee agrees in writing to the contrary, the obligations hereunder of the original Chargor and the Guarantors shall survive the granting by the Chargee to the original Chargor or anyone claiming under him, including subsequent owners of the lands or of any part thereof, of any extension of time or renewal or variation in terms in respect of the Charge (whether by informal

arrangement or by way of a formal Extension, Renewal, or Amending Agreement signed by the Chargor, or subsequent owner, as the case may be). The Charge may be Renewed, Extended or Amended by an Agreement in writing, prior to, at, or after maturity for any term, with or without an increased rate of interest, between the Chargee and the original Chargor, or subsequent owner, as the case may be, with or without notice to, or the concurrence of, the Guarantors, if any, or any subsequent encumbrancers, and/or the original Chargor in the case of an Agreement with a subsequent owner. A Renewal or Extension of this Charge shall be deemed to not create a new Charge, but rather is an extension of this Charge, notwithstanding that a Renewal or Extension Agreement may amend the effective date of this Charge. It shall not be necessary to register any such Agreement in order to retain priority for the Charge so altered over any instrument registered subsequent to the Charge. Provided that nothing contained in this paragraph shall infer any right of renewal upon the Chargor.

(v) **Entry on Default**

From and after default shall happen to be made of or in the payment of the principal amount, or the interest payable thereon, or any part of either thereof, as provided in this Charge, or in the doing, observing, performing, fulfilling or keeping of some one or more of the provisions, agreements or stipulations contained herein contrary to the true intent and meaning of this Charge, then and in every case it shall and may be lawful to and for the said Chargee to peaceably and quietly enter into, have, hold, use, occupy, possess, and enjoy the lands hereby charged free and clear and freely and clearly acquitted, exonerated and discharged of and from all former conveyances, mortgages, charges, rights, annuities, debts, executions and recognizances, and of and from all manner of other charges or encumbrances whatsoever without the let, suit, hindrance, interruption or denial of the Chargor, or any other person or persons whatsoever.

If the default includes a breach by the Chargor of his covenant to complete an improvement in accordance with the plans and specifications previously approved by the Chargee, the Chargee may, at its discretion, complete the improvement, subject to such reasonable changes in plans and specifications as a prudent owner would make under the circumstances.

(vi) **Power of Sale**

The Chargee, on default of payment for at least fifteen (15) days may, on at least thirty-five (35) days' notice in writing given to the Chargor, enter on and lease the Lands or sell the Lands. Such notice shall be given to such persons and in such manner and form and within such time as provided in the Mortgages Act. In the event that the giving of such notice shall not be required by law, or to the extent that such requirements shall not be applicable, it is agreed that notice may be effectually given by leaving it with a grown-up person on the Lands, if occupied, or by placing it on the Lands, if unoccupied, or at the option of the Chargee, by mailing it in a registered letter addressed to the Chargor at his last known address, or by publishing it once in a newspaper published in a county or district in which the land is situate; and such notice shall be sufficient, although not addressed to any person or persons by name or designations; and notwithstanding that any person could be affected thereby may be unknown, unascertained, or under disability. Provided further, that in case default be made in a payment of the principal amount or interest or any part thereof, and such default continues for two months after any payment of either falls due, then the Chargee may exercise the foregoing powers of entering, leasing or selling, or any of them without any notice, it being understood and agreed, however, that if the giving of notice by the Chargee shall be required by law, then notice shall be given to such persons and in such manner and form, within such time as so required by law. It is hereby further agreed that the whole or any part of parts of the Lands may be sold by public auction or private contract, or partly one or partly the other; and that the proceeds of any sale hereunder may be applied first in payment of any costs, charges, legal fees (as between solicitor and client) and expenses which may be incurred in taking, recovering and keeping possession of, managing, repairing and improving in accordance with the terms of this Charge, and inspecting the Lands or by reason of non-payment or procuring the payment of monies, secured by the Charge or otherwise, and secondly in payment of all amounts of principal and interest owing under the Charge; and if any surplus shall remain after fully satisfying the claims of the Chargee as aforesaid, same shall be paid to the Chargor, or as he may direct. The costs, charges, and expenses referred to above shall include, but not be limited to, reasonable administration fees charged by the Chargee to the Chargor for the labour of employees expended in managing and inspecting the Lands and premises on behalf of the Chargee in its capacity as chargee in possession. The Chargee may sell any of the Lands, on such terms as to credit and otherwise as shall appear to him most advantageous, and for such prices as can reasonably be obtained therefor, and may make any stipulations as to title or evidence or commencement of title or otherwise which he shall deem proper, and may buy in or rescind or vary any contracts for the sale of the whole or any part of the Lands, and resell without being answerable for loss occasioned thereby, and in the case of a sale on credit the Chargee shall be bound to pay the Chargor only such monies as have been actually received from purchasers, after the satisfaction of the claim to the Chargee, and for any of said purposes may make and execute all agreements and assurances as he shall think fit. Any purchaser or lessee shall not be bound to see the propriety or regularity of any sale or lease, or be affected by express notice that any sale or lease is improper, and no want of notice or publication when required hereby shall invalidate any sale or lease hereunder.

(vii) **Further Assurances**

From and after default in the payment of the principal amounts secured by the Charge, or the interest thereon, or any part of such principal or interest or in the doing, observing, performing, fulfilling or keeping of some one or more of the covenants set forth in the Charge then, and in every such case,

the Chargor and all and every other person whosoever having, or lawfully claiming, or who shall have or lawfully claim any estate, right, title, interest or trust of, in, to or out of the Lands shall, from time to time, and at all times thereafter, at the proper costs and charges of the Chargor make, do, suffer and execute, or cause or procure to be made, done, suffered and executed, all and every such further and other reasonable act or acts, deed or deeds, devises, conveyances and assurances in the law for the further, better and more perfectly and absolutely conveying and assuring the Lands unto the Chargee, as by the Chargee or his solicitor, shall or may be lawfully and reasonably devised, advised or required.

ADDITIONAL TERMS AND CONDITIONS

5.

(i) **Costs Added to Principal**

The Chargee may pay all premiums of insurance and all taxes, rates, levies, charges, assessments, utility and heating charges, which shall from time to time fall due and be unpaid in respect of the Lands, and that such payments together with all costs, charges, legal fees (as between solicitor and client) and expenses which may be incurred in taking, recovering and keeping possession of, managing, repairing and improving the Lands and premises in accordance with the terms of this Charge, and inspecting the Lands and of negotiating the charge, investigating title, and registering the Charge and other necessary deeds, and generally in any other proceedings taken in connection with or to realize upon the security given in the Charge (including legal fees and real estate commissions and other costs incurred in selling or leasing the Lands or in exercising the power of entering, lease and sale contained in the Charge) shall be, with interest at the rate provided for in the Charge, a charge upon the land in favour of the Chargee pursuant to the terms of the Charge and the Chargee may pay or satisfy any lien upon the land, which payments with interest at the rate provided for in the Charge, shall likewise be a charge upon the land in favour of the Chargee. Provided, and it is hereby further agreed, that all amounts paid by the Chargee, as aforesaid, shall be added to the principal amount secured by the Charge and shall be payable forthwith, with interest, at the rate provided for in the Charge.

(ii) **Partial Releases**

The Chargee may, at his discretion, at all times, release any part or parts of the Lands or any other security or any surety for the money secured under the Charge, either with or without any sufficient consideration therefor, without responsibility therefor, and without thereby releasing any other part of the Lands or any person from the Charge or from any of the covenants contained in the Charge, and without being accountable to the Chargor for the value thereof, or for any monies except those actually received by the Chargee. It is agreed that every part or lot into which the Lands is or may hereafter be divided, does and shall stand charged for the whole monies secured under the Charge, and no person shall have the right to require the mortgage monies to be apportioned.

(iii) **Discharge**

Upon repayment in full of the monies secured hereby, all accrued interest and charges, and any bonus, if applicable, the Chargee shall sign a cessation of this Charge or, if requested by the Chargor, a transfer of the Charge, and send it to the Chargor within a reasonable time. The Chargor shall pay to the Chargee its usual administrative fee for preparing and signing the Cessation of Charge or Transfer of Charge, whether the Cessation or Transfer is prepared by the Chargee or by the Chargor or his solicitor. The Chargor is solely responsible for registering the Cessation or Transfer on title, at his own expense.

(iv) **Other Security**

This Charge is, in addition to and not in substitution for, any other security held by the Chargee for all or any part of the monies secured hereby. It is understood and agreed that the Chargee may pursue its remedies thereunder or hereunder concurrently or successively, at its option, in the event of default. Any judgment or recovery thereunder or hereunder shall not affect the right of the Chargee to realize upon this or any other security.

(v) **No Right of Prepayment**

This Charge is closed in that the Chargor shall have no right to prepay any part or parts of the monies secured hereby, at any time or times, prior to the date of maturity, provided however, that the Chargee may, in its sole discretion,

- (a) Apply towards payment of the monies secured hereby, any monies received by it under any policy of group insurance carried by it on the lives of its borrowing members; and
- (b) Calculate interest on a daily basis on the unpaid balance remaining outstanding, on the last previous payment date stipulated herein, and shall then apply said payment received first, in payment of interest so calculated to be due, and the balance, to be applied in reduction of the principal sum, upon receiving a payment from the Chargor, on any date or dates, other than the dates stipulated herein.

(vi) **Non-Merger of Covenants**

The taking of a judgment or judgments on any of the covenants herein, shall not operate as a merger of the covenants, or affect the Chargee's right to interest, at the rate and times provided for in the Charge; and further that any judgment shall provide that interest shall thereon be computed, at the same rate and in the same manner as provided in the Charge, until the judgment shall have been fully paid and satisfied.

(vii) **Date of Charge**

If this Charge contains an interest adjustment date, the date of this Charge shall be deemed to be the interest adjustment date stated in the Charge, notwithstanding that the Charge may have been executed on an earlier date. If this Charge does not contain an interest adjustment date, the date of this Charge shall be deemed to be the date of signature thereof by the first named Chargor.

(viii) **Recovery of Fees**

The Chargor agrees to pay to the Chargee, when due, the Chargee's then current administration and processing fees in connection with the preparation of any Mortgage Statement for Assumption purposes, Amending or other Agreements, statements for information purposes, any fees referred to in Paragraph 4(VI), charges for cheques relating to this Charge where payment has been refused due to insufficient funds or for any other reason and generally any fees in connection with the proper administration of this Charge. Any such fees and charges, if unpaid, shall be added to the principal outstanding pursuant to this Charge, and shall bear interest at the rate required by this Charge. The amount of any such fees or charges in effect at any particular time is available from any branch of Meridian Credit Union Limited, upon request.

CONDOMINIUM

6.

If the charged Lands is a condominium unit and its appurtenant interest in the common areas, pursuant to the Condominium Act of Ontario, the following provisions shall form part of this Charge:

The Chargee is hereby irrevocably authorized and empowered to exercise the right of the Chargor as an Owner of the Lands, to vote or consent in all matters relating to the affairs of the Condominium Corporation named in the Charge, provided that:

- (i) The Chargor shall be entitled to exercise the right to vote or consent, unless the Chargee gives notice of its intention to exercise such rights. Any such notice may be for an indeterminate period of time, or for a limited period of time, or for a specific meeting or matter.
- (ii) The Chargee shall not, by virtue of the assignment to the Chargee of the right to vote or consent, be under any obligation to vote or consent or protect the interests of the Chargor.
- (iii) The exercise of the right to vote or consent shall not constitute the Chargee a mortgagee in possession.

GUARANTEE CLAUSE

7.

IN CONSIDERATION of the making, by the Chargee to the Chargor, the loan hereby secured, the Guarantors who have duly executed page one of this Charge:

- (i) Agree to be jointly and severally liable with the Chargor, for the due payment of all monies payable hereunder, at the times and in the manner herein provided;
- (ii) Unconditionally guarantee full performance and discharge by the Chargor of all of his obligations pursuant to the provisions hereof, at the times and in the manner herein provided; notwithstanding that the obligations of the Chargor hereunder may be void or unenforceable at law or in equity or pursuant to statute.
- (iii) Agree to indemnify and save harmless the Chargee against and from all losses, damages, costs and expenses which the Chargee may sustain, incur, or become liable for, by reason of:
 - (a) The failure, for any reason whatsoever, of the Chargor to pay the money expressed to be payable pursuant to the provisions of this Charge;
 - (b) The failure, for any reason whatsoever, of the Chargor to do and perform any other act, matter or thing pursuant to the provisions of this Charge;
 - (c) Any act, action, or proceeding of or by the Chargee, for or in connection with the recovery of the said monies, or the obtaining of performance by the Chargor or any other act, matter or thing pursuant to the provisions of this Charge;
- (iv) Agree that the Chargee may at any time, and from time to time, and without notice to the Guarantors, or any consent or concurrence by them, make any settlement, extension, renewal or variation in terms of the said Charge (whether by informal arrangement or by way of a formal Extension, Renewal or Amending Agreement signed by the original Chargor or a subsequent owner prior to, at or after maturity) or take surrender any security, and that no such thing done by the Chargee nor any carelessness or neglect by the Chargee in asserting its rights, nor any other thing of the foregoing, loss by operation of law of any right of the Chargee against the Chargor, nor the loss or destruction of any security, shall in any way release or diminish the liability

of the Guarantors hereunder, so long as any monies expressed by this Charge to be payable remain unpaid or the Chargee has not been reimbursed for all such losses, damages, costs, charges and expenses as aforesaid, and

- (v) Agree that the Chargee shall not be obliged to proceed against the Chargor, or to enforce or exhaust any security before proceeding to enforce its obligations herein set out, and that enforcement of such obligations may take place before, after or contemporaneously with the enforcement of any debt or obligation of the Chargor, or the enforcement of any security for any such debt or obligation.

INTERPRETATION

8.

It is hereby agreed, that in construing this Charge, the words "Chargor", "Chargee" and "Guarantors", and the personal pronouns "he", "his", "him", "they" or "them" relating thereto and used therewith, shall be read and construed as "Chargor" or "Chargors", "Chargee" or "Chargees", "Guarantor" or "Guarantors", and "he", "she", "it" or "they", "his", "her", "its" or "their" and "him", "her", "it" or "them" respectively, as the number and gender of the party or parties referred to in each case require, and the number and the verb agreeing therewith shall be construed as agreeing with the said word or pronoun so substituted. Furthermore, all rights, advantages, privileges, immunities, powers and things hereby secured to the "Chargor" or "Chargors", "Chargee" or "Chargees", shall be equally secured to and exercisable by his, her its or their heirs, executors, administrators and assigns or successors and assigns, as the case may be. All covenants, liabilities and obligations entered into or imposed hereunder upon the "Chargor" or "Chargors", "Chargee" or "Chargees", "Guarantor" or "Guarantors" shall be equally binding upon his, her, its or their heirs, executors, administrators and assigns, or successors and assigns as the case may be; and all such covenants, liabilities and obligations shall be made by the Chargors or Guarantors jointly and severally, unless the Charge specifies otherwise.

DEFINED TERMS


9.

It is hereby further agreed that all words appearing in this Charge that are defined in Section 1 of the Land Registration Reform Act, 1984, except the word "successor", shall be read and construed as having the meaning assigned to them by Section 1 of the Land Registration Reform Act, 1984.

ACKNOWLEDGEMENT OF RECEIPT

We, the undersigned, hereby acknowledge receipt of a copy of these Standard Charge Terms, this _____ day of _____.

THIS IS EXHIBIT "G"
TO THE AFFIDAVIT OF
BERNIE HUBER
SWORN BEFORE ME AT THE CITY OF ST. CATHARINES
IN THE REGIONAL MUNICIPALITY OF NIAGARA
THIS 31 DAY OF JANUARY, 2014



A Commissioner, etc.

Rina D'Angela, a Commissioner, etc.,
Province of Ontario, for Flett, Beccario,
Barristers and Solicitors, and
Conveyancers Inc.
Expires August 21, 2015.

Acknowledge receipt hand delivered March 11, 2011

J. Huber

86



Agriculture and Agri-Food Canada
Farm Debt Mediation Service

Agriculture et Agroalimentaire Canada
Service de médiation en matière d'endettement agricole

PROTECTED B / PROTÉGÉ B

NOTICE OF INTENT TO REALIZE ON SECURITY
PRÉAVIS DE RÉALISATION DE SÛRETÉ

As required under Section 21 of the Farm Debt Mediation Act, you are hereby notified that it is the intent of...
Conformément à l'article 21 de la Loi sur la médiation en matière d'endettement agricole, vous êtes, par la présente, avisé qu'il est dans l'intention de...

To realize on security given against the assets of...
De réaliser sur la sûreté contre les biens de...

The security being
La sûreté qui est:

General Security Agreement dated April 19, 2001

on / sur Inventory, Equipment, Accounts & Motor Vehicles

\$5,000,000.00 Mortgage registered as No. NR185256

PIN Nos. 46390-0008 (LT), 46390-0007(LT), 46390-0011(LT),
46390-0074(LT), Niagara-on-the-Lake

Dated this 11
Daté ce 11

day of March

2011

at

St. Catharines, Ontario

Meridian Credit Union Limited
Per: Bernie Huber

Signature of Secured Creditor or authorized representative

905-988-4042 Ext. 2197

Printed Creditor Name
Imprimez le nom du créancier

Signature of Secured Creditor or authorized representative
Signature du créancier garanti ou du représentant autorisé

Creditor Phone Number
Numéro de téléphone du créancier

You are hereby notified of your right to make application under Section 5 of the Farm Debt Mediation Act for a review of your financial affairs, mediation with your creditors, and to obtain a stay of proceedings against this action. Provided you are:

Vous êtes, par la présente, avisé de votre droit de présenter une demande en vertu de l'article 5 de la Loi sur la médiation en matière d'endettement agricole en vue d'un examen de vos affaires financières, de la médiation avec vos créanciers et de l'obtention d'une suspension des procédures contre cette action. Sous réserve que vous êtes:

- a) currently engaged in farming for commercial purposes; and
b) insolvent, meaning that you are:
- unable to meet your obligations as they generally become due; or
- have ceased paying your current obligations in the ordinary course of business as they generally become due; or
- the aggregate of your property is not, at fair valuation, sufficient, or if disposed of at a fairly conducted sale under legal process would not be sufficient, to enable payment of all your obligations, due and accruing due.

- a) actuellement engagé en agriculture à des fins commerciales;
b) insolvable, ce qui signifie:
- que vous ne pouvez vous acquitter de vos obligations au fur et à mesure de leurs échéances; ou
- que vous avez cessé de vous acquitter de vos obligations courantes dans le cours ordinaire de vos affaires au fur et à mesure de leurs échéances; ou
- que la totalité de vos biens n'est pas suffisante, d'après une juste estimation, ou ne suffirait pas, s'il en était disposé lors d'une vente régulièrement effectuée par autorité de justice, pour permettre l'acquittement de toutes vos obligations échues ou à échoir.

A secured creditor must wait 15 business days after this notice has been deemed served before beginning action to realize on their security. You may apply for mediation and a stay of proceedings at any time, before, during, or after the 15 business day period, by making an application to the Farm Debt Mediation Service.

Le créancier garanti doit attendre 15 jours ouvrables après que cet avis ait été réputé avoir été signifié pour prendre des mesures en vue de réaliser la garantie. Vous pouvez demander une médiation et une suspension des procédures en tout temps, c'est-à-dire avant, pendant ou après les 15 jours ouvrables, en présentant une demande en ce sens au Service de médiation en matière d'endettement agricole.

The Farm Debt Mediation Service provides qualified farm financial counselors to conduct a financial review and to prepare a recovery plan for your mediation meeting. Qualified mediators are provided to help you and your creditors reach a mutually satisfactory arrangement.

Le Service de médiation en matière d'endettement agricole offre les services de conseillers financiers compétents en agriculture qui peuvent mener un examen financier et préparer un plan de recouvrement en prévision de votre réunion de médiation. Les services de médiateurs compétents sont offerts pour vous aider ainsi que vos créanciers à conclure un accord satisfaisant pour toutes les parties.

Application forms and more information about the service can be obtained from:

Vous pouvez obtenir les formulaires de demande et un complément d'information sur le service auprès de:

Farm Debt Mediation Service / Service de médiation en matière d'endettement agricole
1-866-452-5556

The information you provide on this document is collected by Agriculture and Agri-Food Canada under the authority of the Farm Debt Mediation Act for the purpose of facilitating financial arrangements between farmers and their creditors. Personal information will be protected under the provisions of the Privacy Act and will be stored in Personal Information Bank AAFCC-PIU-227. Information may be accessible or protected as required under the provisions of the Access to Information Act.

Les renseignements que vous fournissez dans le présent document sont recueillis par Agriculture et Agroalimentaire Canada en vertu de la Loi sur la médiation en matière d'endettement agricole afin de faciliter la conclusion d'arrangements financiers entre les agriculteurs/trices et leurs créanciers. Les renseignements personnels seront protégés en vertu de la Loi sur la protection des renseignements personnels et seront versés au Fichier de renseignements personnels AAFCC-PIU-227. Les renseignements peuvent être accessibles ou protégés selon ce que prévoit la Loi sur l'accès à l'information.

AAFC / AAC4805a (2005-01)

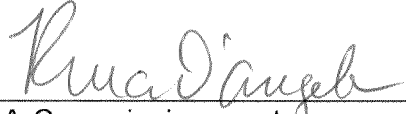
Copy: 1 Farmer / Copie: 1 Agriculteur(trice)

2 Administrator / Administrateur

3 Creditor / Créancier



THIS IS EXHIBIT "H"
TO THE AFFIDAVIT OF
BERNIE HUBER
SWORN BEFORE ME AT THE CITY OF ST. CATHARINES
IN THE REGIONAL MUNICIPALITY OF NIAGARA
THIS 31 DAY OF JANUARY, 2014



A Commissioner, etc.

Rina D'Angela, a Commissioner, etc.,
Province of Ontario, for Flett, Beccario,
Barristers and Solicitors, and
Conveyancers Inc.
Expires August 21, 2015.

FLETT BECCARIO

(Founded 1919)

Flett Beccario, Barristers & Solicitors
Mailing: P. O. Box 340, Welland, ON L3B 5P9
Courier: 190 Division Street, Welland, ON L3B 4A2

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Tel: 905-732-4481
Toll Free 1-866-473-5388

Reply To: Anthony D'Amico, LL.B. Ex. 237
Tel No: (905) 732-4481
Fax No: (905) 734-7719
E-mail: adamico@flettbeccario.com
Assistant: Carolyn Ort, Ext 233
cort@flettbeccario.com

April 1, 2011

Registered mail

Vandermeer Greenhouses Ltd.
2003 Creek Road, R.R.#1
Niagara-on-the-Lake, Ontario
L0S 1J0

Attention: John Van Berkel and Anna Van Berkel

Dear Sir and Madam:

Re: Vandermeer Greenhouses Ltd. ("Company")

We are solicitors for Meridian Credit Union Limited ("Meridian") regarding this matter. We have been instructed by the Meridian to demand payment by the Company of the principal and interest owing to the Meridian as follows:

1. Credit Agreement dated March 29, 2010:
 - a) Revolving Operating Line to a maximum of \$450,000.00 repayable with interest at prime plus 2.0%

Outstanding Balance	\$295,075.18
Interest to April 1, 2011	2,128.50
	<hr/>
Daily rate thereafter \$40.42	\$297,203.68
 - b) Term Loan No. 9 repayable with interest at 6.42%

Outstanding Balance	\$976,207.27
Interest to April 1, 2011	5,500.93
	<hr/>
Daily rate thereafter \$171.71	\$981,708.20

c) Term Loan No. 13, repayable with interest at prime plus 2.0%	
Outstanding Balance	\$2,188,667.59
Interest to April 1, 2011	9,602.85
	<hr/>
Daily rate thereafter \$299.82	\$2,198,270.44
d) Demand Loan No. 15 repayable with interest at 5.10%	
Outstanding Balance	\$678,888.13
Interest to April 1, 2011	3,038.19
	<hr/>
Daily rate thereafter \$94.86	\$679,926.32
e) Letter of Credit in the amount of \$14,000.00 repayable with interest at prime plus 2.0%	
Outstanding Balance	\$14,000.00
Interest to April 1, 2011	61.92
	<hr/>
Daily rate thereafter \$1.92	\$14,061.92
	<hr/>
Total...	\$4,173,170.56

The Meridian's prime rate as of the date of this letter is 3.0%.

The interest rates for the Revolving Operating Line, the Term Loan No. 13 and the Letter of Credit described above, will vary whenever the Meridian's prime rate is varied so that at all times the interest rates shall be the Meridian's prime rate, then in effect, plus the interest rate factors listed above.

It is necessary that payment in full be received by us by 5:00 p.m on Wednesday, April 13, 2011, failing which the Meridian will take whatever remedies it deems are appropriate to collect the full amount of the indebtedness and liability.

Enclosed is a Notice of Intention to Enforce Security pursuant to the *Bankruptcy and Insolvency Act*.

Yours truly



ANTHONY D'AMICO
for the firm

AD:co
enclosure
c.c. Meridian Credit Union Limited

NOTICE OF INTENTION TO ENFORCE SECURITY
(Subsection 244(1))

TO: Vandermeer Greenhouses Ltd., an insolvent person

TAKE NOTICE THAT:

1. Meridian Credit Union Limited, a secured creditor, intends to enforce its security on the insolvent person's property described as:

- (a) Inventory;
- (b) Equipment;
- (c) Receivables;
- (d) Chattel Paper;
- (e) Documents of Title;
- (f) All books and papers recording, evidencing or relating to the Receivables, Chattel Paper or Documents of Title and all securities, bills, notes, instruments or other documents now or hereafter held by or on behalf of the Assignor or any one or more of them with respect to the said Receivables, Chattel Paper or Documents of Title;
- (g) All shares, stock, warrants, bonds, debentures, debenture stock or other securities together with renewals thereof, substitutions therefor, accretions thereto and all rights and claims in respect thereof;
- (h) Intangibles;
- (i) All proceeds and products of any or all of the foregoing, including any compensation for Collateral damaged, expropriated, stolen or destroyed.
- (j) property described in PIN numbers 46390-0007, 46390-0008, 46390-011 and 46390-0074.

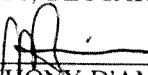
2. The security that is to be enforced is in the form of:

- General Security Agreement dated April 19, 2001
- Charge/Mortgage registered as Instrument No. NR185256 on August 15, 2008 in the principal amount of \$5,000,000.00 over all 4 PINS described above

3. The total amount of indebtedness secured by the security is \$4,173,170.56 plus interest and costs as provided by the security.

4. The secured creditor will not have the right to enforce the security until after the expiry of the 10-day period after this notice is sent unless the insolvent person consents to an earlier enforcement.

DATED at Welland, this 1st day of April, 2011.

Meridian Credit Union Limited
By its solicitors,
FLETT, BECCARIO,
Per: 

ANTHONY D'AMICO
for the Firm

Caroilyn Ort

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From: Carolyn Ort
Sent: Friday, April 01, 2011 9:08 AM
To: Bernie Huber
Subject: FW: Vandermeer

Attachments: 001.PDF



001.PDF (109 KB)

Good morning:

As discussed, attached is the demand letter and BIA Notice regarding this matter which will be hand delivered. We confirm that we will also be forwarding a copy to the Company today by registered mail.

Carolyn

CANADA POST

REGISTRATION RECEIPT (Bulk)

This receipt is necessary if enquiry is desired.


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Mailed By
(Name and address of firm)
FLETT BECCARIO
190 Division Street
P. O. Box 340
Welland, Ontario
L3B 5P9

Stamp
Of Post Office:

Vandermeer Greenhouses Ltd.
2003 Creek Road, R.R.#1
Niagara-on-the-Lake, Ontario
L0S 1J0

Attention: John Van Berkel and Anna Van Berkel

R	Registered	Recommandé	
	Domestic	Régime intérieur	
To	Destinataire	SRV DELIVERY	FOUR CONFIRMER
VANDERMEER GREENHOUSES LTD		1 888 556-6333	
2003 CREEK ROAD		www.canadapost.ca	
RR #1		www.postescanada.ca	
NIAGARA-ON-THE-LAKE		Registered Mail	▶ S
ONTARIO L0S 1J0		Trace	
ATTENTION JOHN VAN BERKEL		Signature	
CUSTOMER RECEIPT		REC'D BY CLIENT	

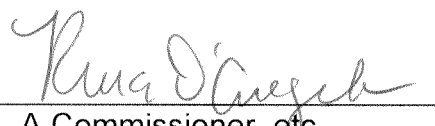
Sheet No. 1 of 1

No. Of Articles: 1

Accepted by
(Postal Employee's Signature)

CO

THIS IS EXHIBIT "I"
TO THE AFFIDAVIT OF
BERNIE HUBER
SWORN BEFORE ME AT THE CITY OF ST. CATHARINES
IN THE REGIONAL MUNICIPALITY OF NIAGARA
THIS 31 DAY OF JANUARY, 2014



A Commissioner, etc.

Rina D'Angela, a Commissioner, etc.,
Province of Ontario, for Flett, Beccario,
Barristers and Solicitors, and
Conveyancers Inc.
Expires August 21, 2015.

APPOINTMENT

TO: ZEIFMAN PARTNERS INC.

RE: VANDERMEER GREENHOUSES LTD.

Meridian Credit Union Limited, 75 Corporate Park Drive, St. Catharines, Ontario, L2S 3W3 ("Meridian"), holds a General Security Agreement, dated April 19, 2001 and a Mortgage/Charge dated August 15, 2008 ("Mortgage") from Vandermeer Greenhouses Ltd. ("Debtor"), as part of the security for payment and satisfaction of any and all obligations, indebtedness and liabilities of the Debtor to the Meridian. In the GSA and the Mortgage, the Debtor granted to the Meridian a mortgage/charge over the property municipally known as 2021 Four Mile Creek Road, Niagara-on-the-Lake, Ontario and a security interest in all other undertakings of the Debtor including all Equipment, Fixtures, Leasehold Interest, Accounts Receivable, Inventory, Contractual Rights, Goodwill, Patents, Trademarks and Copyrights then owned or thereafter acquired by or on behalf of the Debtor (hereinafter collectively referred to as the "Collateral").

Events of default under the GSA and the Mortgage having occurred and the charge and security interest provided therein having become enforceable pursuant to the provisions thereof, the Meridian hereby appoints Zeifman Partners Inc. of the City of Toronto, in the Province of Ontario, to be the Receiver/Manager of the Debtor pursuant to the GSA and the Mortgage with all and every power and authority specified by the GSA and the Mortgage in this regard and instructs Zeifman Partners Inc. to seize, protect and realize upon such Collateral for the benefit of the Meridian and, if necessary, manage and operate the undertakings of the Debtor pending the completion of the realization.

The said Zeifman Partners Inc., as Receiver/Manager, shall be deemed to be the Agent of the Debtor, and further, the Debtor, pursuant to the provisions of the GSA and the Mortgage, shall be solely responsible for Zeifman Partners Inc. its acts or defaults and for its remuneration and expenses, and the Meridian, as holder of the GSA and the Mortgage, shall not by reason of this appointment, be in any way responsible for any misconduct on the part of Zeifman Partners Inc., as Receiver/Manager.

All monies received by such Receiver/Manager, after providing for all costs, charges and expenses of, or incidental to, the exercise of any of its power, including legal fees, shall be applied in and towards the satisfaction of any and all obligations, debts and liabilities of the Debtor to the Meridian.

The rights and powers conferred hereby may be supplemented to by any rights that the holder of the GSA and the Mortgage may from time to time confer upon the Receiver/Manager.

This appointment may be executed in counterparts and facsimile and email copies of signatures shall be treated as originals for all purposes.

Dated at St. Catharines, Ontario, this 19th day of July, 2011.

MERIDIAN CREDIT UNION LIMITED

Per: [Signature]
Bernie Huber, Manager
I have authority to bind the Meridian

Zeifman Partners Inc. hereby consents to act as Receiver/Manager of Vandermeer Greenhouses Ltd. in accordance with the terms and conditions of the foregoing.

Dated at Toronto, Ontario this 19th day of July, 2011.

ZEIFMAN PARTNERS INC.

Per: [Signature]
Allan Rutman
I have authority to bind the Corporation

The undersigned hereby consents to the appointment of Zeifman Partners Inc., as Receiver/Manager of Vandermeer Greenhouses Ltd. in accordance with the terms and conditions of the foregoing.

Dated at Not this 19th day of July, 2011.

VANDERMEER GREENHOUSES LTD.

per: [Signature]
John Van Berkel

per: [Signature]
Anna Van Berkel

We have authority to bind the Corporation

JUL 28 2011

ZEIFMAN PARTNERS INC.

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Notice and Statement of the Receiver
(Section 245(1) and 246(1) of the Bankruptcy and Insolvency Act)

The Receiver gives notice and declares that:

1. On the 19th day of July, 2011, Zeifman Partners Inc. became the Receiver in respect of the property, assets and undertaking of Vandermeer Greenhouses Ltd. ("Vandermeer" or the "Company") an insolvent. The book values of the property are detailed below:

Asset	Book Value
Accounts Receivable	\$ 177,759
Inventory	\$ 96,350
Land, Building and Equipment	\$ 4,834,286

The figures represented above are net book values reported in the Company's books and records, and are not representative of realizable values.

Zeifman Partners Inc. became a Receiver by virtue of being appointed by Meridian Credit Union Limited pursuant to a General Security Agreement dated April 19, 2001 and a charge/mortgage registered August 15, 2008.

2. The undersigned took possession and control of the property described above on the 19th day of July, 2011.
3. The following information relates to the receivership:

Address of insolvent person: 2021 Four Mile Creek Road
Niagara-on-the-Lake, Ontario
L0S 1J0

Principal line of business: Cut Flower Chrysanthemum grower

Location of Business: 2021 Four Mile Creek Road
Niagara-on-the-Lake, Ontario
L0S 1J0

1 Toronto Street, Suite 910
Toronto, Ontario
M5C 2V6
Tel: (416) 861-1487
Fax: (416) 256-4001
www.zeifmans.ca

ZEIFMAN PARTNERS INC.

Page 2

Amount owed by the insolvent company to each creditor who holds security on the property described above:

Name of Secured Creditor	Address	Claim
<i>Meridian Credit Union Limited</i>	75 Corporate Park Drive St. Catharines, Ontario L2S 3W3	\$ 4,180,180

The following additional party has registered a security interest under the Personal Property Security Act:

Ryder Truck Rental Canada Ltd.	700 Creditstone Ave Concord, Ontario L4K 5A5
--------------------------------	--

- (a) The list of other creditors of the insolvent person and the amount owed to each creditor is attached hereto as Appendix "A". The total amount due by the insolvent person to these other creditors is \$730,021.

The amounts presented in the attached schedule were obtained from records of the insolvent person that are available to the Receiver. No acknowledgement is made concerning the amounts owing.

- (b) The intended plan of action of the Receiver during the receivership, to the extent that such a plan has been determined, is to continue operating the business while soliciting offers for the sale of the assets as a going concern.

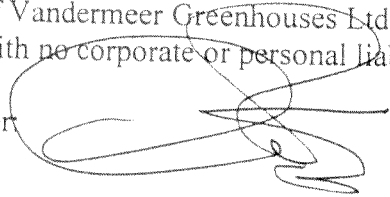
- (c) Contact person for the Receiver: Ben Rutman
Telephone: (416) 256-4002 ext. 258
Fax: (416) 256-4003
Email: br@zeifmans.ca

Dated at Toronto this 25th day of July, 2011.

Yours very truly,

ZEIFMAN PARTNERS INC.
solely in its capacity as Receiver and Manager
of Vandermeer Greenhouses Ltd.
with no corporate or personal liability

per



Allan A. Rutman, CA, MBA

- Creditor Mailing List -

Appendix "A"

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Creditor Type	Name	Attention	Address	Claim \$
Unsecured	All in One		Unit C1 227 Bunting Road St. Catharines ON L2M 3Y2	114.92
	Bell Canada	Insolvency Group	1 Alexandre Graham Bell Aile E3 Verdun QC H3E 3B3 Fax: (514) 766-7326	1.00
	Bercomex Horti & Agro Solutions		Postbox 2209 Hoorn, The Netherlands 1620EE	6,319.49
	Canada Revenue Agency-London TSO		10548 6740 RT 0001, RP0001, E000 Revenue Collections Division, Regional Intake Centre for Insolve 451 Talbot St., 3rd Floor London ON N6A 4R3	5,335.00
	CHEP (Canada) Inc.		Postal Station A P.O. Box 46030 Toronto ON M5W 4K9	223.78
	ElectroMecanique		P.O. Box 721 4033 Victoria Ave Vineland ON L0R 2C0	578.56
	Enbridge	Candy Harris	Bankruptcy Department P.O. Box 650 Scarborough ON M1K 5E3 Fax: (905) 762-3633	1.00
	Enns Battery & Tire Ltd.,		R.R. #3 Creek Rd. Niagara-on-the-Lake ON L0S 1J0	2,760.33
	Flamingo Holland Inc.,		P.O. Box 800 272 Prospect Street St. George ON N0E 1N0	17,250.19
	Flowers Canada Inc.		Unit 7 45 Speedvale Avenue East Gueiph ON N1H 1J2	6,328.00
	Gale's Gas Bars Limited		4388 Portage Rd. Niagara Falls ON L2E 6A4	7,117.03
	Global Horticultural Inc.		4222 Sann Rd., Beamsville ON L0R 1B0	539.83
	Gold Leaf Garden Products Limited		912-21 Overlea Blvd., Toronto ON M4H 1P2	1,035.06
	Growers Greenhouse Supplie		3559 North Service Rd., Vineland Station ON L0R 2E0	524.32
	Growers Requisites Ltd.		1915 Settrington Drive Kingsville ON N9Y 2E5	5,196.92
	Johnston Equipment		5990 Avebury Road Mississauga ON L5R 3R2	135.81
	Kam's Grower Supply		10 Kingsmill Avenue Gueiph ON N1E 5V9	2,665.90
	Lambert Peat Moss Inc.		106, Chemin Lambert Riviere-Ouelle QC G0L 2C0	19,910.43
	Louth And Niagara Orchards		Box 43 Virgil ON L0S 1T0	5,786.24
	Maple Crest Farms		316 Mud Street Grassie ON L0R 1M0	6,983.40
	Moore Packaging Corporation		191 John Street Barrie ON L4N 2L4	3,926.75
	Morningside Greenhouses		585 Sobie Road Beamsville ON L0R 1B2	7,217.42
	Niagara Rubber Supply Inc		94 Dunkirk Road St. Catharines ON L2P 3H4	318.66

- Creditor Mailing List -

Creditor Type	Name	Attention	Address	Claim \$
Unsecured	Penner Home Centre		Box 75 Virgil ON L0S 1T0	577.15
	PfanET Biogas Solutions		Suite #201 26 Hiscott Street St. Catharines ON L2R 1C6	2,566.93
	Planet Paper Box Inc.		2841 Langstaff Road Concord ON L4K 4W7	8,644.50
	Rougoor Electric		796 Creek Rd., R.R.#4 Niagara-on-the-Lake ON L0S 1J0	5,169.67
	Ryder Truck Rental Canada Ltd		PO Box 9464 Station A. Toronto ON M5W 4E1	2,074.56
	Signs & Stanco		Unit 12 4400 Montrose Road Niagara Falls ON L2H 1K2	480.25
	Slaman Greenhouses Ltd.		RR #2 1 Concession 7 Road Burford ON N0E 1A0	3,362.88
	United Parcel Service Canada Ltd.		P.O. Box 4900, Station A Toronto ON M5W 0A7	465.05
	Van Geest Bros Ltd.		1877 Seventh St. Louth St. Catharines ON L2R 6P9	537.88
	Van Houtte Coffee Services Inc.		8215, 17th Avenue Montreal ON H1Z 4J9	198.64
	VanBerkel, John and Angie		2003 Four Mile Creek Road Niagara-On-The-Lake ON L0S 1J0	575,679.00
	Vandermeer, Peter & Wilamena		1993 Four Mile Creek Road Niagara-On-The-Lake ON L0S 1J0	19,034.00
	Water Energy Technologies		Units A6-7 3375 North Service Road Burlington ON L7N 3G2	6,360.43
	Workplace Safety & Insurance Board		3272893 200 Front Street West Toronto ON M5V 3J1	1,338.00
	Yield Energy Inc.		Suite 114 42 Industrial St. Toronto ON M4G 1Y9	2,921.05
	Zwart Systems		4881 Union Road Beamsville ON L0R 1B4	341.03

THIS IS EXHIBIT "J"
TO THE AFFIDAVIT OF
BERNIE HUBER
SWORN BEFORE ME AT THE CITY OF ST. CATHARINES
IN THE REGIONAL MUNICIPALITY OF NIAGARA
THIS 30 DAY OF JANUARY, 2014



A Commissioner, etc.

Rina D'Angela, a Commissioner, etc.,
Province of Ontario, for Flett, Beccario,
Barristers and Solicitors, and
Conveyancers Inc.
Expires August 21, 2015.



120 Adelaide Street West
Suite 1600
Toronto, Ontario M5H 1T1
T: 416-967-7474
F: 416-967-1947
www.powerauthority.on.ca

RENEWABLE ENERGY STANDARD OFFER PROGRAM -
ACKNOWLEDGEMENT RE SECURED LENDER

THIS ACKNOWLEDGEMENT AGREEMENT (this "Agreement") is made as of the 12 day of December, 2011.

BETWEEN:

ZEIFMAN PARTNERS INC., a corporation formed under the laws of Ontario

(the "Receiver");

- and -

MERIDIAN CREDIT UNION LIMITED, a corporation formed under the laws of Ontario

(the "Secured Lender")

- and -

ONTARIO POWER AUTHORITY, a statutory corporation without share capital incorporated under the laws of the Province of Ontario

(the "OPA");

WHEREAS Vandermeer Greenhouses Ltd. (the "Generator") and the OPA entered into a Renewable Energy Standard Offer Program Contract dated July 25, 2008 designated as RESOP# 13588, as amended by the Advanced RESOP FIT Amendment between the OPA and the Generator, dated May 11, 2010 (the "Contract");

AND WHEREAS the Generator informed the OPA upon entering into the Contract that Meridian Credit Union was a Secured Lender, as provided for in Section 9 of the Contract, and that it had granted security against, inter alia, all of its right, title, entitlement and interest in and to the Contract in favour of the Secured Lender pursuant to the security agreements identified in Schedule "A" (collectively, the "Security Agreements"), as security for its present and future indebtedness, liability and obligation under and in respect of the Credit Agreement dated March 29, 2010, as amended and extended (the "Secured Debt");

AND WHEREAS the Secured Lender enforced on its security interest pursuant to the Secured Lender's Security Agreement between the Secured Lender and the Generator, and as contemplated in Section 9.2(2) of the Contract on April 1, 2011 by notice to the Generator, which notice is attached as Schedule "B" hereto;

AND WHEREAS the Receiver was appointed as receiver of the Generator on July 19, 2011;

AND WHEREAS the Receiver intends hold the Contract and manage the assets of the Generator, including but not limited to the Contract and the Contract Facility, until such time as it identifies a purchaser of such assets to which the Generator's assets may be sold and, consequently, the Contract assigned;

NOW THEREFORE THIS AGREEMENT WITNESSES that, in consideration of the mutual covenants and agreements herein contained and for other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged) the parties hereto covenant and agree as follows:

1. **Defined Terms**

All capitalized terms not defined herein, or other terms used herein, and defined in Schedule 2 to the RESOP Contract – Standard Definitions of the Contract shall have the respective meanings ascribed thereto in Schedule 2 to the RESOP Contract – Standard Definitions of the Contract.

2. **Representations and Warranties**

Each of the Receiver, in its capacity as Receiver of the Generator, and the Secured Lender, on a joint and several basis, represents and warrants to the OPA, acknowledging that the OPA is relying on such representations and warranties as a condition of entering into this Agreement, as follows:

- (a) the Recitals hereto are true and correct;
- (b) the Receiver is acting for and on behalf of the Secured Lender;
- (c) other than the existence of the receivership and, therefore, a breach of Section 7.1(20) of the Contract, neither the Receiver nor the Secured Lender is aware of any Generator Event of Default that has not been remedied has occurred;
- (d) the Receiver has the power and authority to act on behalf of the Generator in respect of the Contract;
- (e) to the knowledge of the Receiver and the Secured Lender, there are no actual or potential actions, causes of action, suits, debts, dues, accounts, bonds, claims or demands whatsoever of the Generator, against or in respect of the OPA, by reason of, or in any way arising out of the Contract, or any other contract or obligations as between the Generator or any Affiliate of the Generator, and the OPA as at the date of this Agreement (collectively, "Claims"), and neither the Receiver nor the Secured Lender is aware, after due inquiry, of any, actual or potential Claims, or any act, event, circumstance or thing which, with notice or the passage of time or lapse of cure period, would give rise to a Claim, that it or its successors, heirs, executors, estate trustees, administrators or assigns, had, have or may have;
- (f) no Force Majeure is occurring and neither the Receiver nor the Secured Lender is aware of any reason that any Force Majeure may occur;

- (g) each of the Secured Lender and the Receiver have complied with Article 9 of the Contract as of the date hereof;
- (h) the Secured Lender has entered into this Agreement and holds the security granted pursuant to the Security Agreements; and
- (i) the address of the Secured Lender and the Receiver to which notices may be sent pursuant to Section 11.2 of the Contract is set out in Section 8 of this Agreement.

3. Agreement of the Secured Lender

Each of the Secured Lender and the Receiver covenants and agrees as follows:

- (a) all of the security registrations made pursuant to the *Personal Property Security Act* (Ontario) in respect of the Security Agreements are set out in Schedule "A";
- (b) the Secured Lender and the Receiver will provide the OPA with written notice of any change in the identity or address of the Secured Lender;
- (c) each of the Secured Lender and the Receiver agrees that it will comply with Section 9.2(2) of the Contract;
- (d) the Receiver and the Secured Lender will be bound by the requirements and obligations of the Contract in acting on behalf of the Generator, including, without limitation the restrictions on and requirements in respect of assignment in Section 13.4 of the Contract;
- (e) the Receiver and the Secured Lender direct the OPA to deal directly with the Receiver on all matters with respect to the Contract as of the date of the Agreement; and
- (f) this Agreement shall not be deemed to waive or modify in any respect any rights of the OPA under the Contract except as expressly provided for in this Agreement.

4. Acknowledgment of the OPA

Subject to the terms of this Agreement, the OPA hereby acknowledges and confirms that, as at the date of this Agreement:

- (a) the Secured Lender constitutes the Secured Lender for the purposes of the Contract and, without limiting the generality of the foregoing, each of the Secured Lender and the Receiver is entitled to the benefit of the provisions of Section 9.2 of the Contract in favour of a Secured Lender and is entitled to enforce the same as if the Secured Lender, and the Receiver acting on its behalf, were a party to the Contract; and

- (b) the OPA acknowledges that the Receiver may exercise any of the Secured Lender's rights under Section 9.2 of the Contract for the purposes of enforcing on the Secured Lender's security in accordance with Section 9.2(4) of the Contract;

5. **Contracts in Full Force and Effect**

The parties hereto confirm that the Contract remains in full force and effect in accordance with its terms and that this Agreement shall not be deemed to waive or modify in any respect any rights of the OPA under the Contract except as expressly provided in this Agreement.

6. **Confidentiality**

This Agreement constitutes Confidential Information and shall be subject to Section 13 of Schedule 1 of the Contract.

7. **Execution and Delivery**

This Agreement may be executed by the parties hereto in counterparts and may be executed and delivered by facsimile and all such counterparts and facsimiles shall together constitute one and the same agreement.

8. **Other**

- (a) Except where the context requires otherwise, the provisions contained in Sections 1.1, 1.2, 1.3, 1.4, 1.5, 1.6, 1.7, 1.9, 11.2, 12, 13.6, 13.7, 13.8, 13.9, of Schedule 1 of the Contract apply in the construction and interpretation of this Agreement, provided references therein to the "Agreement" shall be construed and deemed to be references to this Agreement.

9. **Notices**

All notices to the OPA shall be addressed to each of them as provided in the Contract. All notices to the Secured Lender and the Receiver shall be addressed to it as follows:

To the Secured Lender:

Meridian Credit Union Limited
75 Corporate Park Drive
St. Catharines, Ontario
L2S 3W3

Attention: Mr. Bernie Huber
Senior Commercial Credit Specialist
Phone: 905-988-4042
Fax: 905-988-3868
E-mail: Bernie.Huber@meridiancu.ca

To the Receiver:

Zeifman Partners Inc.
201 Bridgeland Avenue
Toronto, Ontario
M6A 1Y7

Attention: Allan A. Rutman
Phone: 416-256-4005
Fax: 416-256-4001
E-mail: aar@zeifmans.ca

10. **Governing Law**

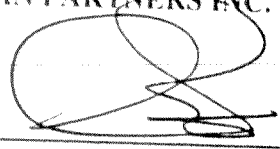
This Agreement shall be governed by and interpreted in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the day first written above.

NOTE: If the Supplier is natural person.

ZEIFMAN PARTNERS INC.

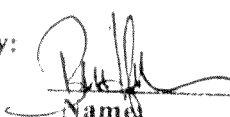
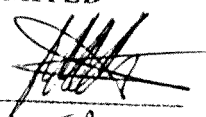
By: 

Name: Mark Cutler

Title: President

I have the authority to bind the corporation.

MERIDIAN CREDIT UNION LIMITED

By:  


Name: _____

J. PETERS
Dir. COMMERCIAL CREDIT

Title: _____

I have the authority to bind the corporation.

ONTARIO POWER AUTHORITY

By: 

Name: _____

JoAnne C. Butler
Vice President, Electricity Resources

I have the authority to bind the corporation.

**Schedule A
Security Agreements**

General Security Agreement dated April 19, 2001



BUSINESS LOAN
GENERAL SECURITY AGREEMENT

Schedule A

TO: Niagara Credit Union Limited
VIA Vandermeer Greenhouses Ltd. (hereinafter called the "Credit Union")

hereby assign and transfer to the Credit Union, as a general and continuing collateral security for payment of all existing and future indebtedness and liability of the Assignor to the Credit Union wherever and whenever incurred and any ultimate unpaid balance thereof, all property of the kinds described in paragraph 2 below of which the Assignor is now or may hereafter become the owner. (hereinafter called the "Assignor")

1. DEFINITIONS

In this Agreement,

- (a) "PPSA" means the Personal Property Security Act (Ontario), as from time to time amended, and any Act that may be substituted therefor.
- (b) "Receivables" means all debts, accounts, claims, moneys and choses in action now due or hereafter to become due or owing to the Assignor, or any one or more of them.
- (c) "Inventory" means all goods now or hereafter forming part of the inventory of the Assignor or any one or more of them, including, without limiting the generality of the foregoing, goods held for sale or lease, goods furnished or to be furnished under contracts of service, goods which are raw materials or work in process, goods used in or procured for packing, materials used or contained in the business of the Assignor, emblements, growing crops that become such within one year after the execution of this Agreement, timber to be cut, oil, gas and other minerals to be extracted, and goods described in paragraph 3 below.
- (d) "Equipment" means all goods, inclusive of inventory or consumer goods, now or hereafter owned by the Assignor or any one or more of them, which are used or are intended for use in or about the business conducted by the Assignor or in the places referred to in paragraph 8 and including, without limiting the generality of the foregoing, machinery, fixtures, furniture, plant, vehicles of any sort or description, the property described in paragraph 10 below, and all accessories installed in or affixed, attached or appearing to any of the foregoing.
- (e) "Documents of Title" shall have the meaning ascribed to it in the PPSA and shall include, without limiting the generality of the foregoing, all warehouse receipts and bills of lading whether negotiable or not.
- (f) "Chattel Paper", "goods" and "instrument" shall have the meanings respectively ascribed to them in the PPSA.
- (g) "Intangible" means all personal property, including choses in action that is not goods, chattel paper, documents of title, instruments, money or securities but including all present or future contractual rights, royalties, quotas, goodwill, patents, trademarks, copyrights, and other industrial or intellectual property.

2. SECURITY INTEREST

As security for the payment and performance of all existing and future liabilities and indebtedness of the Assignor, or any one or more of them, to the Credit Union, however arising, the Assignor hereby grants to the Credit Union a continuing security interest in the business undertaking of the Assignor and in all property of the following kinds now owned or hereafter acquired by the Assignor or by any one or more of them:

- (a) Inventory;
- (b) Equipment;
- (c) Receivables;
- (d) Chattel Paper;
- (e) Documents of Title;
- (f) All books and papers recording, evidencing or relating to the Receivables, Chattel Paper or Documents of Title, and all securities, bills, notes, instruments or other documents now or hereafter held by or on behalf of the Assignor or any one or more of them with respect to the said Receivables, Chattel Paper or Documents of Title;
- (g) All shares, stock, warrants, bonds, debentures, debenture stock or other securities including, without limiting the generality of the foregoing, the securities listed in paragraph 11 hereof, together with renewals thereof, substitutions therefor, accretions thereto and all rights and claims in respect thereof;
- (h) Intangibles;
- (i) All proceeds and products of any or all the foregoing, including any compensation for collateral damaged, expropriated, stolen or destroyed.

The above named property, whether now owned or hereafter acquired, shall herein after be called the "Collateral".

3. WARRANTIES AND COVENANTS

- (a) Except for the security interest granted hereby the Assignor or any one or more of them is (and as to collateral to be acquired after the date hereby, shall be) the owner of the Collateral free and clear of all liens, charges, claims, encumbrances, taxes or assessments.
- (b) The Assignor will not sell, offer to sell, transfer, pledge or mortgage the Collateral, nor will the Assignor suffer to exist any other security interest in the Collateral in favour of any person other than the Credit Union, without the prior written consent of the Credit Union. All proceeds of sales shall be received as trustee for the Credit Union and shall be forthwith paid over to the Credit Union.
- (c) The Assignor shall, during the currency of this Agreement, insure and keep insured the Collateral to its full insurable value for fire, theft and such other risks as the Credit Union may reasonably require, and will, at the request of the Credit Union, pay such further premium as is necessary to obtain an endorsement that the security interest of the Credit Union will not be invalidated by any breach of statutory condition. The proceeds of any insurance held pursuant to this paragraph shall be payable to the Credit Union and any proceeds of such insurance shall, at the option of the Credit Union, be applied to the replacement of the Collateral or towards repayment of any indebtedness of the Assignor or any one or more of them to the Credit Union. Should the Assignor neglect to maintain such insurance the Credit Union may insure, any premiums paid by the Credit Union together with interest thereon shall be payable by the Assignor to the Credit Union upon demand. The Assignor will deposit a certified copy of the policy of such insurance with the Credit Union on request, or obtain an insurance endorsement in favour of the Credit Union.
- (d) The Assignor shall provide from time to time upon request from the Credit Union, written information relating to the Collateral or any part thereof, and the Credit Union shall be entitled from time to time to inspect the tangible Collateral including, without limitation, the books and records referred to in paragraph 2(f) above wherever located. For such purpose the Credit Union shall have access to all places where the Collateral or any part thereof is located, and to all premises occupied by the Assignor.
- (e) The Assignor warrants that all motor vehicles owned by the Assignor are used (and as to motor vehicles to be acquired after the date hereby, shall be) primarily in or about the business conducted by the Assignor.
- (f) The Assignor covenants to promptly advise the Assignee of the year, make, model and Vehicle Identification Number of any item of equipment that is a motor vehicle acquired by the Assignor after the date of this Agreement.

4. EVENTS OF DEFAULT

Any or all of the liabilities or indebtedness of the Assignor or any one or more of them to the Credit Union shall, at the option of the Credit Union and notwithstanding any time or credit allowed by any instrument evidencing a liability, be immediately due and payable without notice or demand upon the occurrence of any of the following events (hereinafter referred to as "Events of Default"):

- (a) Default in the payment or performance when due or payable of any liability of the Assignor or of any one or more of them, or of any guarantor, surety or surety for any liability of the Assignor or any one or more of them to the Credit Union;
- (b) Default by the Assignor of any obligation or covenant contained herein;
- (c) Proof that any warranty, representation or statement made by the Assignor or furnished to the Credit Union herein, or in the application for any loan, or in any loan agreement between the Assignor and the Credit Union, was false in any material respect, when made or furnished;
- (d) Any loss, theft, damage or destruction of Collateral or any part of it, or the making of any levy, seizure or attachment thereto or the appointment of a receiver of any part thereof;
- (e) If the Credit Union should at any time deem itself insecure, bearing in mind the extent of the facilities secured hereby, the value of the Collateral and any other relevant considerations;
- (f) The death, dissolution, termination of assistance, insolvency, business failure, or commencement of any proceedings under the Bankruptcy and Insolvency Act affecting the Assignor or any one or more of them.

5. REMEDIES

Upon any Event of Default and at any time thereafter the Credit Union, at its option, may declare that all indebtedness and obligations incurred by this agreement shall immediately become due and payable, and:

- (a) The Credit Union shall then have all rights and remedies of a secured party under the PPSA;
- (b) The Credit Union shall then be authorized to appoint in writing any person to be a receiver (which term shall include a receiver and manager) of the Collateral, including any (one and profits thereof, and may remove any receiver and appoint another in his stead. Such receiver so appointed shall have power to take possession of the Collateral and to carry on or control in carrying on the business of the Assignor, and to sell or convey the Collateral or any part thereof. Any such receiver shall for all purposes be deemed to be the agent of the

Assignor. The Credit Union may from time to time for the remuneration of such receiver. All moneys from time to time received by such receiver shall be paid by him first in discharge of all rents, taxes, rates, insurance premiums and outgoings affecting the Collateral, secondly in payment of the remuneration as receiver, thirdly in keeping in good standing any liens and charges on the Collateral prior to the security constituted by this Agreement, and fourthly in or toward payment of such parts of the indebtedness and liability of the Assignor to the Credit Union as to the Credit Union seems best, and any surplus of such moneys so received shall be paid to the Assignor. The Credit Union in appointing or retaining from appointing such receiver shall not incur any liability to the receiver, the Assignor or otherwise.

(d) The Credit Union may then collect, realize, sell or otherwise deal with the Receivables or any part thereof in such manner, upon such terms and conditions at such time or times, and without notice to the Assignor, as may seem to it advisable. The Credit Union shall not be liable or accountable for any failure to collect, realize, sell, or obtain payment of the Receivables or any part thereof, and shall not be bound to institute proceedings for the purpose of collecting, realizing or obtaining payment of the same or for the purpose of preserving any rights of the Credit Union, the Assignor or any other person, firm or corporation in respect of the same. All moneys collected or received by the Assignor in respect of the Receivables shall be received as trustee for the Credit Union and shall be forthwith paid over to the Credit Union. All moneys collected or received by the Credit Union in respect of the Receivables or other Collateral may be applied on account of such parts of the indebtedness and liability of the Assignor as to the Credit Union seems best or, in the discretion of the Credit Union, may be released to the Assignor, all without prejudice to the liability of the Assignor or the Credit Union's right to hold and realize this security.

6. CHARGES AND EXPENSES

The Credit Union may charge on its own behalf and pay to others reasonable sums for expenses incurred and for services rendered (expressly including legal advice and services) in or in connection with realizing, disposing of, retaining or collecting the Collateral or any part thereof. Such sums shall be a first charge on the proceeds of realization, disposition or collection. The Credit Union may at its option pay taxes, discharge any encumbrance or charge claimed (whether validly or not) against the Collateral and pay any amount which, in the Credit Union's sole discretion, it may consider requisite to secure possession of the Collateral with or without litigation or compromise. The Credit Union may settle any litigation in respect of the Collateral or the possession thereof, and may pay for insurance, repairs and maintenance to the Collateral, and any sum so paid by the Credit Union shall constitute indebtedness of the Assignor secured hereunder which the Assignor shall repay on demand.

7. POSSESSION OF COLLATERAL

Until default, the Assignor may have possession of the Collateral and enjoy the same subject to the terms hereof. However, whether or not default has occurred, the Credit Union may at any time request that debtors on the Receivables be notified of the Credit Union's security interest. Until such notification is made, the Assignor shall continue to collect Receivables but shall hold the proceeds received from collection in trust for the Credit Union without commingling the same with other funds, and shall turn the same over to the Credit Union immediately upon receipt in the identical form received.

8. LOCATION OF COLLATERAL

Except for any property described in paragraph 11 hereof, the Collateral, insofar as it consists of tangible property, is now and will hereafter be kept at the place or places, listed below. None of the Collateral shall be removed from such place or places without the written consent of the Credit Union.

2003 and 2021 Creek Road
Niagara-on-the-Lake ON

9. SUPPLEMENTARY DESCRIPTION OF INVENTORY

All crops grown at the location described in paragraph 8

10. SUPPLEMENTARY DESCRIPTION OF EQUIPMENT

11. SUPPLEMENTARY DESCRIPTION OF SECURITIES

12. GENERAL

- (a) This Agreement shall be a continuing agreement in every respect.
- (b) This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario.
- (c) The Assignor may terminate this Agreement by delivering written notice to the Credit Union at any time when the Assignor, or each of them, is not indebted or liable to the Credit Union. No remedy for the enforcement of the rights of the Credit Union hereunder shall be exclusive of or dependent on any other such remedy and any one or more of such remedies may from time to time be exercised independently or in combination. The security interest created or provided for by this Agreement is intended to attach when this Agreement is signed by the Assignor and delivered to the Credit Union. For greater certainty it is declared that any and all future loans, advances or other value which the Credit Union may in its discretion make or extend to or for the account of the Assignor or of any one or more of them shall be secured by this Agreement. If more than one person executes this Agreement their obligations hereunder shall be joint and several.
- (d) In construing this Agreement, the word "Assignor" and the personal pronouns "he" or "his" and any verb relating thereto shall be read and construed as the number and gender of the parties signing this Agreement may require.
- (e) The Credit Union may grant extensions of time and other indulgences, take and give up securities, accept compositions, grant releases and discharges and otherwise deal with the Assignor, debtors of the Assignor, sureties and others, and with the Collateral and other securities, as the Credit Union may see fit and without prejudice to the liability of the Assignor or the Credit Union's right to hold and realize this security.

Signed, Sealed and Delivered this 19 day of April, 2001 at Virgil, Ontario.

If space insufficient, attach a duly signed and witnessed schedule

To be completed by either assignor or partners

Witness

Signature of Assignor

Witness

Signature of Assignor

Married Initial	Date of Birth Day, Month, Year	Gender M/F

Vandermeer greenhouses Ltd.
Corporation and/or Trade Name of Assignor

For _____
Authorized Signing Officer John VanBerkele The President

For _____
Authorized Signing Officer Anna VanBerkele The Secretary-Treasurer

To be completed by authorized business

**Schedule B
Enforcement of Security Interest**

Letter of Demand dated April 1, 2011



FLETT BECCARIO

Schedule B

Flett Beccario, Barristers & Solicitors
Mailing: P. O. Box 340, Welland, ON L3B 5P9
Courier: 190 Division Street, Welland, ON L3B 4A2

(Founded 1919)

Tel: 905-732-4481
Toll Free 1-866-473-5388

Reply To: Anthony D'Amico, LL.B. Ex. 237
Tel No: (905) 732-4481
Fax No: (905) 734-7719
E-mail: adamico@flettbeccario.com
Assistant: Carolyn Ort, Ext 233
cort@flettbeccario.com

April 1, 2011

Registered mail

Vandermeer Greenhouses Ltd.
2003 Creek Road, R.R.#1
Niagara-on-the-Lake, Ontario
LOS 1J0

Attention: John Van Berkel and Anna Van Berkel

Dear Sir and Madam:

Re: Vandermeer Greenhouses Ltd. ("Company")

We are solicitors for Meridian Credit Union Limited ("Meridian") regarding this matter. We have been instructed by the Meridian to demand payment by the Company of the principal and interest owing to the Meridian as follows:

1. Credit Agreement dated March 29, 2010:
 - a) Revolving Operating Line to a maximum of \$450,000.00 repayable with interest at prime plus 2.0%

Outstanding Balance	\$295,075.18
Interest to April 1, 2011	2,128.50
	\$297,203.68
 - b) Term Loan No. 9 repayable with interest at 6.42%

Outstanding Balance	\$976,207.27
Interest to April 1, 2011	5,500.93
	\$981,708.20
- Daily rate thereafter \$171.71

c) Term Loan No. 13, repayable with interest at prime plus 2.0%	
Outstanding Balance	\$2,188,667.59
Interest to April 1, 2011	9,602.85
	\$2,198,270.44
Daily rate thereafter \$299.82	
d) Demand Loan No. 15 repayable with interest at 5.10%	
Outstanding Balance	\$678,888.13
Interest to April 1, 2011	3,038.19
	\$679,926.32
Daily rate thereafter \$94.86	
e) Letter of Credit in the amount of \$14,000.00	
repayable with interest at prime plus 2.0%	
Outstanding Balance	\$14,000.00
Interest to April 1, 2011	61.92
	\$14,061.92
Daily rate thereafter \$1.92	
	Total... \$4,173,170.56

The Meridian's prime rate as of the date of this letter is 3.0%.

The interest rates for the Revolving Operating Line, the Term Loan No. 13 and the Letter of Credit described above, will vary whenever the Meridian's prime rate is varied so that at all times the interest rates shall be the Meridian's prime rate, then in effect, plus the interest rate factors listed above.

It is necessary that payment in full be received by us by 5:00 p.m on Wednesday, April 13, 2011, failing which the Meridian will take whatever remedies it deems are appropriate to collect the full amount of the indebtedness and liability.

Enclosed is a Notice of Intention to Enforce Security pursuant to the *Bankruptcy and Insolvency Act*.

Yours truly



ANTHONY D'AMICO
for the firm

AD:co
enclosure
c.c. Meridian Credit Union Limited



FORM 86

NOTICE OF INTENTION TO ENFORCE SECURITY
(Subsection 244(1))

TO: Vandermeer Greenhouses Ltd., an insolvent person

TAKE NOTICE THAT:

1. Meridian Credit Union Limited, a secured creditor, intends to enforce its security on the insolvent person's property described as:

- (a) Inventory;
- (b) Equipment;
- (c) Receivables;
- (d) Chattel Paper;
- (e) Documents of Title;
- (f) All books and papers recording, evidencing or relating to the Receivables, Chattel Paper or Documents of Title and all securities, bills, notes, instruments or other documents now or hereafter held by or on behalf of the Assignor or any one or more of them with respect to the said Receivables, Chattel Paper or Documents of Title;
- (g) All shares, stock, warrants, bonds, debentures, debenture stock or other securities together with renewals thereof, substitutions therefor, accretions thereto and all rights and claims in respect thereof;
- (h) Intangibles;
- (i) All proceeds and products of any or all of the foregoing, including any compensation for Collateral damaged, expropriated, stolen or destroyed.
- (j) property described in PIN numbers 46390-0007, 46390-0008, 46390-011 and 46390-0074.

2. The security that is to be enforced is in the form of:

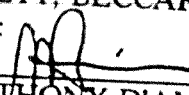
- General Security Agreement dated April 19, 2001
- Charge/Mortgage registered as Instrument No. NR185256 on August 15, 2008 in the principal amount of \$5,000,000.00 over all 4 PINS described above

3. The total amount of indebtedness secured by the security is \$4,173,170.56 plus interest and costs as provided by the security.

4. The secured creditor will not have the right to enforce the security until after the expiry of the 10-day period after this notice is sent unless the insolvent person consents to an earlier enforcement.

DATED at Welland, this 1st day of April, 2011.

Meridian Credit Union Limited
By its solicitors,
FLETT, BECCARIO,

Per: 

ANTHONY D'AMICO
for the Firm



THIS IS EXHIBIT "K"
TO THE AFFIDAVIT OF
BERNIE HUBER
SWORN BEFORE ME AT THE CITY OF ST. CATHARINES
IN THE REGIONAL MUNICIPALITY OF NIAGARA
THIS 31 DAY OF JANUARY, 2014



A Commissioner, etc.

Rina D'Angela, a Commissioner, etc.,
Province of Ontario, for Flett, Beccario,
Barristers and Solicitors, and
Conveyancers Inc.
Expires August 21, 2015.



PROVISIONAL CERTIFICATE OF APPROVAL
WASTE DISPOSAL SITE
NUMBER 9512-7QNNZJ
Issue Date: October 30, 2009

Vandermeer Greenhouses Ltd.
2021 Four Mile Creek Rd
Niagara-on-the-Lake, Ontario
L0S 1J0

Site Location: 2021 Four Mile Creek Rd
Town of Niagara-on-the-Lake, Regional Municipality of Niagara

You have applied in accordance with Section 27 of the Environmental Protection Act for approval of:

a farm-based anaerobic digestion facility on a 6.7 hectare site,

to process Organic Feedstock to generate electricity for use in the Greenhouse, with surplus electricity to be provided to the provincial grid.

Note: Use of the site for any other type of waste is not approved under this Certificate, and requires obtaining a separate approval amending this Certificate.

For the purpose of this Provisional Certificate of Approval and the terms and conditions specified below, the following definitions apply:

"Act" means the *Environmental Protection Act*, R.S.O. 1990, c.E-19, as amended;

"Agricultural waste" has the same meaning as "agricultural waste" as defined in *O. Reg. 347*, as amended;

"Certificate" means this entire provisional Certificate of Approval and includes any schedules attached to it, the application and the supporting documentation listed in Schedule "A";

"DAF" means flocculation and scum waste from dissolved air floatation (DAF) systems from wastewater for the production of animal- or plant-based materials or from the production of any other food for human consumption;

"Director" means any *Ministry* employee appointed in writing by the Minister pursuant to section 5 of the *Act* as a Director for the purposes of Part V of the *Act*;

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"District Manager" means the District Manager of the Niagara District Office of the *Ministry*;

"Exhausted" means the capacity of the activated carbon adsorption unit is reached and the activated carbon is no longer able to effectively reduce odour emissions to the atmosphere;

"FOG" means fats, oils and grease (FOG), of plant and animal origin, and accompanying food residuals collected from grease interceptors and/or grease traps at food production, food processing and/or food wholesale and retail facilities;

"Ministry" means the Ontario Ministry of the Environment;

"NMA " means *Nutrient Management Act* , 2002, S.O. 2002, c. 4, as amended from time to time;

"O. Reg. 347" means Ontario Regulation 347, R.R.O. 1990, General - Waste Management, made under the *Act* , as amended from time to time;

"on-farm anaerobic digestion materials" means anaerobic digestion materials that are generated at an agricultural operation;

"Organic Feedstock" means the organic waste as approved in Part B, Conditions 1.2 and 1.3 of this *Certificate*;

"Organic Waste" means materials limited to solid or liquid municipal and industrial waste derived from plants or animals, listed in Part B, Condition 1.2 of this *Certificate*, and all readily biodegradable;

"Owner" means any person that is responsible for the establishment or operation of the *Site* being approved by this *Certificate*, and includes Vandermeer Greenhouses Ltd., its successors and assigns;

"OWRA " means the *Ontario Water Resources Act* , R.S.O. 1990, c. O.40, as amended;

"PA " means the *Pesticides Act* , R.S.O. 1990, c. P-11, as amended from time to time;

"Provincial Officer" means any person designated in writing by the Minister as a provincial officer pursuant to Section 5 of the *OWRA* or Section 5 of the *Act* or Section 17 of *PA* or Section 4 of *NMA* or Section 8 of *SDWA*;

"Rejected Waste" means the incoming waste received at the *Site* that does not meet the incoming *organic waste* quality criteria set out in this *Certificate* or which is not approved for receipt at the *Site* in accordance with this *Certificate*;

"Residual Waste" means waste resulting from the storage and/or processing of the *organic waste* at the *Site* and which cannot be anaerobically digested and is destined for final disposal;

"SDWA " means *Safe Drinking Water Act* , 2002, S.O. 2002, c. 32, as amended from time to time;

"Site" means the entire 6.7 hectare waste disposal (processing) site located at 2021 Four Mile Creek Rd, Town of Niagara-on-the-Lake, Ontario; and

"Trained Personnel" means staff employed by the *Owner* and trained in accordance with the requirements of this *Certificate*.

You are hereby notified that this approval is issued to you subject to the terms and conditions outlined below:

TERMS AND CONDITIONS

PART A. GENERAL

1. COMPLIANCE

- (1.1) The *Owner* shall ensure compliance with all the conditions of this *Certificate* and shall ensure that any person authorized to carry out work on or operate any aspect of the *Site* is notified of this *Certificate* and the conditions herein and shall take all reasonable measures to ensure any such person complies with the same.
- (1.2) Any person authorized to carry out work on or operate any aspect of the *Site* shall comply with the conditions of this *Certificate*.

2. BUILD, etc. IN ACCORDANCE

- (2.1) Except as otherwise provided by this *Certificate*, the *Site* shall be designed, developed, built, operated and maintained in accordance with the application for this *Certificate* dated October 1, 2008, signed and submitted by Randy Van Berkel, Manager and the supporting documentation listed in the attached Schedule "A".

3. INTERPRETATION

- (3.1) Where there is a conflict between a provision of any document, including the application referred to in this *Certificate* and the conditions of this *Certificate*, the conditions in this *Certificate* shall take precedence.
- (3.2) Where there is a conflict between the application and a provision in any documents listed in Schedule "A", the application shall take precedence, unless it is clear that the purpose of the document was to amend the application and that the Ministry approved the amendment.
- (3.3) Where there is a conflict between any two documents listed in Schedule "A", other than the application, the document bearing the most recent date shall take precedence.
- (3.4) The requirements of this *Certificate* are severable. If any requirement of this *Certificate*, or the application of any requirement of this *Certificate* to any circumstance, is held invalid or unenforceable, the application of such requirement to other circumstances and the remainder of this *Certificate* shall not be affected thereby.

4. OTHER LEGAL OBLIGATIONS

- (4.1) The issuance of, and compliance with the conditions of this *Certificate* does not:
 - (a) relieve any person of any obligation to comply with any provision of any applicable statute, regulation or other legal requirement; or
 - (b) limit in any way the authority of the *Ministry* to require certain steps be taken or to require the *Owner* to furnish any further information related to compliance with this *Certificate*.

5. ADVERSE EFFECTS

- (5.1) The Site shall be constructed, operated and maintained in a manner which ensures the health and safety of all persons and prevents adverse effects on the natural environment or on any persons.
- (5.2) The *Owner* shall take steps to minimize and ameliorate any adverse effect on the natural environment or impairment of water quality resulting from the Site, including such accelerated or additional monitoring as may be necessary to determine the nature and extent of the effect or impairment.
- (5.3) Despite an *Owner* or any other person fulfilling any obligations imposed by this *Certificate*, the person remains responsible for any contravention of any other condition of this *Certificate* or any applicable statute, regulation, or other legal requirement resulting from any act or emission that caused the adverse effect to the natural environment or impairment of water quality.
- (5.4) If at any time odours, pests, litter, dust, noise or other such negative effects are generated at this *Site* and cause an adverse effect, the *Owner* shall take immediate appropriate remedial action that may be necessary to alleviate the adverse effect, including suspension of all waste management activities if necessary.

6. CHANGE OF OWNER

- (6.1) The *Owner* shall notify the *Director* in writing, and forward a copy of the notification to the *District Manager*, within thirty (30) days of the occurrence of any changes:
- (a) the ownership of the *Site*;
 - (b) the operator of the *Site*;
 - (c) the address of the *Owner*;
 - (d) the partners, where the *Owner* is or at any time becomes a partnership and a copy of the most recent declaration filed under the *Business Names Act*, R.S.O. 1990, c. B.17, as amended, shall be included in the notification;
 - (e) the name of the corporation where the *Owner* is or at any time becomes a corporation, other than a municipal corporation, and a copy of the most current information filed under the *Corporations Information Act*, R.S.O. 1990, c. C.39, as amended, shall be included in the notification.
- (6.2) No portion of this *Site* shall be transferred or encumbered prior to or after closing of the *Site* unless the *Director* is notified in advance and sufficient financial assurance is deposited with the *Ministry* to ensure that these conditions will be carried out. In the event of any change in ownership of the *Site*, other than change to a successor municipality, the *Owner* shall notify the successor of and provide the successor with a copy of this *Certificate*, and the *Owner* shall provide a copy of the notification to the *District Manager* and the *Director*.

7. INSPECTIONS BY THE MINISTRY

- (7.1) No person shall hinder or obstruct a *Provincial Officer* from carrying out any and all

inspections authorized by the *OWRA*, the *Act*, the *PA*, the *SDWA* or the *NMA* of any place to which this *Certificate* relates, and without limiting the foregoing:

- (a) to enter upon the premises where the approved processing is undertaken, or the location where the records required by the conditions of this *Certificate* are kept;
- (b) to have access to, inspect, and copy any records required to be kept by the conditions of this *Certificate*;
- (c) to inspect the *Site*, related equipment and appurtenances;
- (d) to inspect the practices, procedures, or operations required by the conditions of this *Certificate*; and
- (e) to sample and monitor for the purposes of assessing compliance with the terms and conditions of this *Certificate* or the *Act*, the *OWRA*, the *PA*, the *SDWA* or the *NMA*.

8. INFORMATION AND RECORD RETENTION

- (8.1) Any information requested by the *Ministry*, concerning the operation of the *Site* and its operation under this *Certificate*, including but not limited to any records required to be kept by this *Certificate* shall be provided to the *Ministry*, immediately upon request. Records shall be retained for two (2) years except as otherwise authorized in writing by the *Director*.
- (8.2) The receipt of any information by the *Ministry* or the failure of the *Ministry* to prosecute any person or to require any person to take any action, under this *Certificate* or under any statute, regulation or other legal requirement, in relation to the information, shall not be construed as:
 - (a) an approval, waiver, or justification by the *Ministry* of any act or omission of any person that contravenes any term or condition of this *Certificate* or any statute, regulation or other legal requirement; or
 - (b) acceptance by the *Ministry* of the information's completeness or accuracy.
- (8.3) The *Owner* shall ensure that a copy of this *Certificate*, in its entirety and including all its Notices of Amendment, and documentation listed in Schedule "A", are retained at the *Site* at all times.

9. FINANCIAL ASSURANCE

- (9.1) (a) Within thirty (30) days of issuance of this *Certificate* the *Owner* shall submit to the *Director*, Financial Assurance, as defined in Section 131 of the *Act*, for the amount of fourteen thousand and sixty dollars (\$14,060.00). This Financial Assurance shall be in a form acceptable to the *Director* and shall provide sufficient funds for the transportation, *Site* clean-up and disposal of all quantities of waste on the *Site* at any one time.
- (b) Commencing on October 31, 2010 and at intervals of one year thereafter, the *Owner* shall submit to the *Director*, a re-evaluation of the amount of Financial Assurance

to implement the actions required under Part A, Condition (9.1)(a). The re-evaluation shall include an assessment based on any new information relating to the environmental conditions of the Site and shall include the costs of additional monitoring and/or implementation of contingency plans required by the *Director* upon review of the closure plan and annual reports. The Financial Assurance must be submitted to the *Director* within ten (10) days of written acceptance of the re-evaluation by the *Director*.

- (c) The amount of Financial Assurance is subject to review at any time by the *Director* and may be amended at his/her discretion. If any Financial Assurance is scheduled to expire or notice is received, indicating Financial Assurance will not be renewed, and satisfactory methods have not been made to replace the Financial assurance at least sixty (60) days before the Financial Assurance terminates, the Financial Assurance shall forthwith be replaced by cash.

PART B. SITE OPERATIONS, etc.

1. SERVICE AREA, APPROVED WASTE TYPES

- (1.1) The service area for the *Site* is the Province of Ontario.
- (1.2) The operation of this *Site* is limited to receipt and processing of the following types of *organic waste*:
 - (a) liquid fats, oils and grease (FOG), of plant and animal origin, and accompanying food residuals collected from grease interceptors and/or grease traps at food production, food processing and/or food wholesale and retail facilities;
 - (b) liquid flocculation and scum waste from dissolved air floatation (DAF) systems from wastewater for the production of animal- or plant-based materials or from the production of any other food for human consumption;
 - (c) solid DAF from wastewater for the production of animal- or plant-based materials or from the production of any other food for human consumption that has been treated to a minimum temperature of 70°C for a minimum of one (1) hour or at a minimum temperature of 50°C for a minimum of twenty (20) hours, to ensure complete inactivation of pathogens prior to being delivered to the *Site*. Reports confirming treatment, provided by the supplier of the solid DAF, shall be maintained at the *Site* to verify compliance with this condition; and
 - (d) dried spent grain and solubles (DSGS) from an ethanol plant.
- (1.3) (a) Notwithstanding Condition 1.2, the *Site* may receive *agricultural waste* and *O. Reg 267/03* Schedule 1 and 2 off-farm anaerobic digestion materials;
- (b) In accordance with Item 7, grape pomace received from Vincor Canada is considered to be *agricultural waste* and may be accepted at the *Site*. Should the process in the production of the grapes as described in Item 7 change, or should the *Owner* wish to accept grape pomace from a new source, the *Owner* shall notify the *Director* and the *District Office* and provide supporting information for review to

determine whether the grape pomace will continue to be, or is, considered *agricultural waste*; and

(c) At least 50 per cent, by volume, of the total amount of waste treated in the anaerobic digesters at the *Site* shall be *on-farm anaerobic digestion materials*.

(1.4) The *Owner* shall not accept at the *Site* any waste that is classified as hazardous waste in accordance with *O. Reg. 347* and any waste that is classified as "Specified Risk Materials" as defined by the *Canadian Food Inspection Agency Feed Act, 1993*.

2. APPROVED WASTE RATES & WASTE STORAGE DURATION/HANDLING

(2.1) The total amount of *organic waste* approved to be accepted at the *Site* each day shall not exceed:

(a) 20 tonnes of (liquid) *FOG* and (solid and/or liquid) *DAF*; and

(b) 50 tonnes of dried spent grain and solubles.

(2.2) *Organic waste* approved to be stored at the *Site* is subject to the following limitations:

(a) No more than 45 cubic metres (45,000 L) or tonnes of *FOG* shall be stored in the *FOG* Input Tank (as identified in Item 6 of Schedule "A") at the *Site* at any one time;

(b) No more than 30 cubic metres (30,000 L) or tonnes of *DAF* shall be stored in the *FOG* Input Tank (liquid *DAF*) and in the Bunkers (solid *DAF*) (as identified in Item 6 of Schedule "A") at the *Site* at any one time;

(c) No more than 4 cubic metres (4,000 L) of waste shall be stored in the pasteurizer (located in the Control Building as identified in Item 6 of Schedule "A") at the *Site* at any one time; and

(d) No more than 50 tonnes of dried spent grain and solubles shall be stored in the Bunkers (as identified in Item 6 of Schedule "A") at the *Site* at any one time.

(2.3) In the event that the *organic waste* cannot be processed at the *Site* and the *Site* is at its approved *organic waste* storage capacity, the *Owner* shall cease accepting additional *organic waste*. Receipt of additional *organic waste* may be resumed once such receipt complies with the waste storage limits approved in this *Certificate*.

(2.4) All liquid *organic waste* shall be forthwith loaded into the liquid *organic waste* storage tanks (as described in Condition 2.2 (a) and (b)).

(2.5) *Organic waste* and *Digestate* stored in the Bunkers and *Digestate* Storage (as identified in Item 6 of Schedule "A") shall be covered completely and in a manner that minimizes the generation of wastewater and odours.

(2.6) The *Owner* shall ensure that the incoming *organic waste* received at the *Site*, and handled in accordance with this *Certificate*, is used as a feedstock in the on-*Site* anaerobic digester.

(2.7) The *Owner* shall ensure that the *organic waste* levels in the storage tanks/areas are

monitored and controlled on a continuous basis and that any high level alarms are operational at all times.

- (2.8) The anaerobic digesters and storage facilities shall maintain setbacks distances as required by the *NMA* and its regulations.

3. OPERATING HOURS

- (3.1) The *Owner* is approved to operate twenty-four (24) hours per day, seven (7) days per week.

4. WASTE SCREENING & TRACKING

- (4.1) (a) All loads of incoming *organic waste* shall be accompanied by documentation containing the results of the required waste characterization or the identification of a pre-approved generator of the waste.
 (b) *Trained personnel* shall inspect the required documentation prior to acceptance of the incoming *organic waste* at the *Site*.
- (4.2) *Organic waste* that has not been characterized in accordance with this *Certificate* or that is not accompanied by the required documentation shall not be accepted at the *Site* and shall immediately be directed off the *Site*.
- (4.3) The *Owner* shall only accept the incoming *organic waste* that is delivered in vehicles that have been approved as required by the *Ministry*.
- (4.4) The *Owner* shall establish and implement a waste screening and tracking system for all *organic waste* received, processed, stored at and transferred from the *Site*.

5. REJECTED WASTE HANDLING

- (5.1) In the event that waste that is not approved under this *Certificate* is inadvertently accepted at the *Site*, the *Owner* shall ensure that the *rejected waste* is:
- (a) stored in a way that ensures that no adverse effects result from such storage;
 - (b) segregated from all other waste;
 - (c) handled and removed from the *Site* in accordance with *O. Reg. 347* and the *Act*;
 - (d) removed from the *Site* within forty-eight (48) hours of its receipt or as acceptable to the *District Manager*.
- (5.2) (a) In the event that a waste load is refused or unacceptable waste is inadvertently accepted at the *Site*, a record shall be made in the daily log book or in an electronic file of the reason why the waste was refused and the origin of the waste, if known.
- (b) The *District Manager* shall be notified in writing of the receipt of unacceptable loads within three (3) business days of its receipt.
- (c) The following information shall be included in the notification to the *District Manager*:
- (i) quantity and type of waste refused;
 - (ii) source of the waste, if known;

- (iii) final destination of the rejected waste: and
- (iv) time and date of receipt & time and date of removal from the *Site*.

6. RESIDUAL WASTE HANDLING

- (6.1) The *Owner* shall ensure that the *organic waste* storage areas are cleaned out annually, or more frequently if necessary, and that the *residual waste* from the bottom of the tanks is handled in accordance with *O.Reg. 347* and the *Act*.
- (6.2) *Residual waste* removed from the *Site* for final disposal shall only be disposed of at a site for which a Provisional Certificate of Approval has been issued by the *Ministry* and the site is approved to receive this type and quantity of waste.
- (6.3)
 - (a) All *residual waste* shall be stored within the confines of an enclosed storage container.
 - (b) The *Owner* shall remove the residual waste from the *Site* as soon as the storage container is full or as directed by the *District Manager*.

7. SIGNAGE

- (7.1) The *Owner* shall ensure that a sign is posted at the entrance to the *Site*, readable from the nearest public roadway bordering the *Site*. The following information shall be included on the sign:
 - (a) name of the *Owner*;
 - (b) this *Certificate* number;
 - (c) normal hours of operation;
 - (d) *Owner's* telephone number to which complaints may be directed;
 - (e) *Owner's* twenty-four hour emergency telephone number (if different from above);
 - (f) a warning against unauthorized access; and
 - (g) a warning against dumping at the *Site*.

8. SITE SECURITY

- (8.1) All unloading and loading of *organic waste* and all waste processing at the *Site* shall at all times be undertaken by *Trained Personnel* and/or haulers approved by the *ministry*.
- (8.2) The *Owner* shall ensure that access to the *Site* is regulated and that access to the *organic waste* unloading/loading areas, storage tanks/areas and pasteurizer is restricted to authorized personnel.
- (8.3) The *Owner* shall ensure the *Site* is operated in a safe and secure manner, and that waste is properly handled, contained or stored so as not to pose any threat to the general public and the *Site* personnel.

9. EQUIPMENT & SITE INSPECTIONS & MAINTENANCE

- (9.1) Within three (3) months from the date of this *Certificate*, the *Owner* shall prepare a comprehensive written inspection program which includes inspections of all aspects of the *Site's* operations including the following:

- (a) buildings, pasteurizer tank and all related piping and equipment;
 - (b) storage facility and the containment areas;
 - (c) monitoring wells (in accordance with Item 2, Schedule "A");
 - (d) presence of leaks and drips;
 - (e) security fencing, gates, barriers and signs;
 - (f) any air pollution control equipment; and
 - (g) off-site impacts such as odour, dust, litter, etc.
- (9.2) When the *organic waste* storage tanks/areas are cleaned out, the tanks/areas shall be internally inspected to ensure the integrity of its structure.
- (9.3) The inspections are to be undertaken daily by *trained personnel* in accordance with the inspection program to ensure that all equipment and facilities at the *Site* are maintained in good working order at all times and that no off-site impacts are occurring. Any deficiencies detected during these regular inspections must be promptly corrected.
- (9.4) The *Owner* shall develop and implement a preventative maintenance program for all on-*Site* equipment associated with the processing and managing of *organic waste* and control of odour and dust emissions. The preventative maintenance program shall be maintained up-to-date and shall be available for inspection by a *Provincial Officer* upon request.

10. QUALITY CONTROL MONITORING OF WASTE

- (10.1) (a) The *Owner* shall ensure that prior to being accepted at the *Site* for the first time, at least one (1) representative sample of the *organic waste* is obtained from the proposed waste stream and analysed during the fourteen (14)-day period preceding its first-time receipt at the *Site*;
- (b) The incoming *organic waste* may be considered a pre-approved source once it meets the required quality criteria, in accordance with this *Certificate* and has been classified as such by the *Owner*; and
- (c) The incoming *organic waste* shall be re-characterized following any process changes, operational issues or other factors that may affect the quality of *organic waste* streams from the pre-approved source.
- (10.2) Subsequent sampling and analysis shall be conducted for every 1,000 cubic metres of the *organic waste* or once a year, whichever comes first, provided the *organic waste* is of the same type and is from the same source.
- (10.3) The *Owner* shall ensure that the procedure for taking samples, as required by this *Certificate*, complies with the *Ministry's* most current "Sampling and Analysis Protocol for Ontario Regulation 267/03 made under the *NMA*" and that the samples are analysed for the metals identified in Column 1 of the following Table 1, in accordance with the frequencies specified in this *Certificate*.

TABLE 1

Column 1	Column 2	Column 3

Regulated Metal	Maximum metal concentration in materials that contain total solids dry weight of 10,000 milligrams or more per litre (mg/kg of total solids dry wt)	Maximum metal concentration in materials that contain total solids dry weight of less than 10,000 milligrams per litre (mg/L)
Arsenic	170	1.70
Cadmium	34	0.34
Chromium	2,800	28
Cobalt	340	3.40
Copper	1,700	17
Lead	1,100	11
Mercury	11	0.11
Molybdenum	94	0.94
Nickel	420	4.20
Selenium	34	0.34
Zinc	4,200	42

- (10.4) The analysis of samples of the incoming *organic waste* shall be performed by:
- a laboratory that is accredited by the Ministry of Agriculture, Food and Rural Affairs for that purpose; or
 - a laboratory that is accredited in accordance with the International Standard ISO/IEC 17025 — General Requirement for the Competence of Testing and Calibration Laboratories, dated December 15, 1999, as amended from time to time; Standards Council of Canada; or Canadian Association for Laboratory Accreditation.
- (10.5) (a) The incoming *organic waste* shall not be accepted at the *Site* if the analytical requirements listed in this *Certificate* have not been fulfilled or if the analysis of the waste determines that the metal content in the waste exceeds the metal content limits set out in Table 1, above.
- (b) In order to resume accepting a given *organic waste* stream following previous rejection, the *Owner* shall ensure that the analytical requirements listed in this *Certificate* have been fulfilled and that two (2) representative samples of the said *organic waste* stream generate analytical results which, separately and consecutively, do not exceed the metal content limits set out in Table 1, above.
- (10.6) Should results of the subsequent testing of the *organic waste* fail to meet the criteria specified in this *Certificate*, this waste stream shall be removed from the *Site* and disposed of in accordance with *O. Reg. 347* and the *Act*.

II. OPERATION OF THE PASTEURIZER

- (11.1) *FOG* and liquid *DAF* accepted at the *Site* shall be treated in the pasteurizer (located in the Control Building as identified in Item 6 of Schedule "A") at a minimum temperature of

70°C for a minimum of one (1) hour or at a minimum temperature of 50°C for a minimum of twenty (20) hours, to ensure complete inactivation of pathogens.

- (11.2) The temperature in the pasteurizer must be monitored to verify compliance with Part B. Condition 11.1 above.

12. HOUSEKEEPING & NUISANCE CONTROL

Traffic

- (12.1) The *Owner* shall ensure that there is no queuing or parking of vehicles that are waiting to enter the *Site* on any roadway that is not a distinct part of the *Site*.

Trucks

- (12.2) (a) The *Owner* shall ensure that the exterior of all vehicles leaving the *Site* are clear of debris and that vehicles do not drag waste, dirt or other contaminants out onto streets.
- (b) The *Owner* shall ensure that the exterior of all trucks delivering waste to the *Site* is cleaned prior to leaving the *Site*, as needed.

Litter

- (12.3) The *Owner* shall:
- take all practical steps to prevent the escape of litter from the *Site*;
 - pick up litter around the *Site* on a daily basis, or more frequently if necessary; and
 - if necessary, erect litter fences around the areas causing a litter problem.

Dust

- (12.4) (a) The *Owner* shall ensure that all on-site roads and operations areas are regularly swept/washed to prevent dust impacts off-site.
- (b) The *Owner* shall regularly clean, if necessary, all equipment and storage areas that are used to handle and process the *organic waste* at the *Site*.

Vermin & Vector

- (12.5) Prior to the receipt of any waste at the *Site*, the *Owner* shall:
- implement necessary housekeeping procedures to eliminate sources of attraction for vermin and vectors; and
 - if necessary, hire a qualified, licensed pest control professional to design and implement a pest control plan for the *Site*.

Noise

- (12.6) The *Owner* shall take all necessary measures to minimize noise emissions to the atmosphere from the *Site*.

Odour Control

- (12.7) The *Owner* shall electronically monitor the over/under pressure relief valves on the Digesters to ensure that if they are open, it is recorded and the *Owner* is notified. Should

any unintentional raw (untreated) biogas be released from the over/under pressure relief valves to the atmosphere, regardless of quantity, and leave the *Site*, the *Owner* shall immediately notify the *Ministry* in accordance with the Part B, Conditions 17.1 and 17.2.

- (12.8) The *Owner* shall maintain the biogas flare at the *Site*, so that in the instance of a process upset, the flare may be utilized to burn off-spec gases.
- (12.9) (a) If in the opinion of the *District Manager*, the operation of the *Site* results in odour complaint(s), the *Owner* shall, in consultation with the *District Manager*, undertake appropriate steps to eliminate the source of odour, which may include installation of an activated carbon adsorption unit / charcoal filter or an engineered cover for storage areas;
- (b) If the odour nuisance originating from the *Site* is not eliminated in accordance with Part B, Condition 12.9 (a), the *Owner* shall discontinue the receipt of waste until additional, appropriate construction/installation of odour prevention measures are completed satisfactorily to the *District Manager* and the odour nuisance is eliminated;
- (12.10)(a) The *Owner* shall operate any activated carbon adsorption unit / charcoal filter in such a way that the activated carbon is replaced before it is *Exhausted*.
- (b) In the event that the activated carbon adsorption unit / charcoal filter or engineered cover are found to be ineffective, the *Owner* shall cease accepting additional *organic waste*, until such time that a new contingency measure is proposed, approved by the *Director* and implemented.

13. COMPLAINT RESPONSE PROCEDURE

- (13.1) If at any time, the *Owner* receives complaints regarding the operation of the *Site*, the *Owner* shall respond to these complaints according to the following procedure:
 - (a) The *Owner* shall retain a written or electronic record of each complaint. The information recorded shall include the following:
 - (i) name, address and the telephone number of the complainant;
 - (ii) time and date of the complaint;
 - (iii) waste management activities undertaken at the time of the complaint;
 - (iv) general meteorological conditions including, but not limited to the ambient temperature, approximate wind speed and direction and sunny versus cloudy, inversion versus clear and windy, etc. at the time of the complaint;
 - (v) details of the complaint;
 - (vi) actions taken to remediate the cause of the complaint; and
 - (vii) proposed actions to be taken to prevent reoccurrence in the future.
 - (b) The *Owner*, upon receipt of the complaint regarding the operation of the *Site*, shall initiate appropriate steps to determine all possible causes of the complaint and proceed to take the necessary actions to eliminate the cause of the complaint and forward a formal reply to the complainant.

- (c) The *Owner* shall notify the *District Office* immediately after receiving the complaint and explain the actions that will be taken to resolve the complaint and any recommendations for remedial measures, and managerial or operational changes to reasonably avoid the reoccurrence of similar incidents.

14. OPERATIONS MANUAL

- (14.1) (a) The *Owner* shall prepare an Operations Manual for use by the *Site* personnel. As a minimum, the Operations Manual shall contain the following:
- (i) outline the responsibilities of *Site* personnel;
 - (ii) personnel training protocols;
 - (iii) waste receiving and screening procedures;
 - (iv) waste unloading, handling and storage procedures;
 - (v) waste processing procedures;
 - (vi) sampling and testing procedures;
 - (vii) *Site* inspections, spill, fire, upset and leakage recording procedures;
 - (viii) procedure for handling complaints as described in this *Certificate*;
 - (ix) as-built drawings identifying flows, directions, etc.
- (b) A copy of this Operations Manual shall be kept at the *Site*, must be accessible to personnel at all times and must be updated, as required.

15. STAFF TRAINING

- (15.1) The *Owner* shall ensure that all personnel are trained in the procedures contained in the Operations Manual and as follows:
- (a) relevant waste management legislation, regulations and guidelines;
 - (b) environmental, and occupational health and safety concerns pertaining to the waste to be handled;
 - (c) management procedures including the use and operation of equipment for the processes and wastes to be handled;
 - (d) recording procedures;
 - (e) emergency first-aid information;
 - (f) specific written procedures for the control of adverse effects from the *Site*;
 - (g) specific written procedures for refusal of unacceptable waste loads;
 - (h) the terms, conditions and operating requirements of this *Certificate*.
- (15.2) Within one year of the issuance of this *Certificate* or within one year of the hire date, all personnel involved in operating the *Site* shall complete the Biogas Systems Operators' Course offered by the Ontario Ministry of Agricultural, Food and Rural Affairs.
- (15.3) The *Owner* shall ensure that all personnel are trained in the requirements of this *Certificate*:
- (a) upon commencing employment at the *Site* or in accordance with Part B, Condition 15.2;
 - (b) whenever procedures identified in Part B, Conditions 14.1 and 15.1 are updated.

16. CONTINGENCY MEASURES & EMERGENCY SITUATION RESPONSE

- (16.1) Within three (3) months from the date of this *Certificate*, the *Owner* shall develop and implement a Contingency and Emergency Response Plan. The Plan shall include, as a minimum:
 - (a) emergency response procedures to be undertaken in the event of a spill, process upset, fire, explosion or medical emergency;
 - (b) a list of contingency equipment (e.g. fire suppression equipment, spill clean-up kits, etc.) available in the event of a spill, process upset, fire, explosion or medical emergency;
 - (c) a list of names and telephone numbers of resources available for emergency response; and
 - (d) a notification protocol with names and telephone numbers of persons to be contacted, including company personnel, the *Ministry's* Spills Action Centre and District Office, the local Fire and Police departments; the local Municipality, the local Medical Officer of Health and the Ministry of Labour.
- (16.2) The *Owner* shall ensure that:
 - (a) the contingency equipment and materials outlined in the Contingency and Emergency Response Plan are in a good state of repair, fully operational and immediately available; and
 - (b) all *Site* personnel are fully trained in the use of the equipment and materials required for the emergency response situation and in the procedures to be employed in the event of an emergency.
- (16.3) The *Owner* shall ensure that:
 - (a) a copy of the Contingency & Emergency Response Plan is kept in a prominent, central location available to all staff at all times; and
 - (b) the plan is reviewed on an annual basis as a minimum. In particular the *Owner* shall ensure that the contact names and telephone numbers required under Condition 16.1(d) are up-to-date.
- (16.4) The *Owner* shall ensure that if the contingency measures described in Part B, Condition 12.6 to address odour emissions to the atmosphere from the *organic waste* storage tank are implemented, a suitably sized, spare activated carbon filter cartridge is retained at the *Site* at all times.

17. SPILLS RESPONSE & REPORTING

- (17.1) All spills, as defined by the *EPA*, shall be immediately reported to the *Ministry's* Spills Action Centre at 1-800-268-6060 and shall be recorded in a written log or an electronic file format, and include the following information:
 - (a) the type and amount of material spilled;
 - (b) a description of how the material was cleaned up and stored; and
 - (c) the location and time of final disposal, if any.

- (17.2) The *Owner* shall submit to the *District Manager* a written report within three (3) days outlining the nature of the spill, remedial measure(s) taken and the measure(s) taken to prevent future occurrences at the *Site*.

18. RECORDS KEEPING

- (18.1) All records required by this *Certificate* shall be available at the *Site* for inspection by a *Provincial Officer* upon request.

Sampling & Testing Records

- (18.2) The *Owner* shall establish and maintain a written or digital record of all sampling and testing activities at the *Site* and the analytical data records undertaken by the waste generator(s). This record shall include, as a minimum, the following information:
- (a) waste sampled, sample collection locations and volume collected;
 - (b) day and time of collection;
 - (c) sample handling procedures;
 - (d) parameters tested for and the resulting concentrations;
 - (e) name of the laboratory facility conducting the testing;
 - (f) conclusions drawn with respect to the results of the monitoring and testing.

Monitoring Records

- (18.3) The *Owner* shall establish and maintain a written or digital record of all monitoring activities at the *Site* as required by this *Certificate*.

Daily Activities

- (18.4) The *Owner* shall maintain on-*Site*, a written or digital record of activities undertaken at the *Site*. All measurements shall be recorded in consistent metric units of measurement. The record shall include, as a minimum, the following:
- (a) date of record;
 - (b) quantity, source (name and address of generator) and type of *organic waste* received at the *Site*, including incoming waste characterization results, if applicable;
 - (c) name and address of company and/or person delivering the *organic waste* to the *Site*;
 - (d) quantity and type of waste stored at the *Site*, including the *organic waste* levels in the storage areas;
 - (e) type and quantity of waste processed at the *Site*;
 - (f) quantity, type and the receiving site(s) Certificate of Approval number(s) of *rejected* and *residual waste*, transferred off-site for final disposal;
 - (g) date and quantity of *Digestate* transferred off-*site* and the address of the final destination of the *Digestate*;
 - (h) housecleaning activities, including litter collection and site cleaning activities; and
 - (i) whether the biogas flare was utilized and the duration of its use.

Inspections

- (18.5) The *Owner* shall maintain an on-*Site* written or digital record of the inspections required by this *Certificate*. The records shall include, as a minimum:
- (a) the name and signature of person that conducted the inspection;
 - (b) the date and time of the inspection;
 - (c) the list of any deficiencies discovered;
 - (d) the recommendations for remedial action; and
 - (e) the date, time and description of actions taken.

Staff Training Report

- (18.6) The *Owner* shall maintain an on-*Site* written or digital record of training as required by this *Certificate*. The record shall include, as a minimum:
- (a) date of training;
 - (b) name and signature of person who has been trained; and
 - (c) description of the training provided (include statement as to whether person has completed the Biogas Systems Operators' Course).

Annual Report

- (18.7) The *Owner* shall keep a written or digital file of all records in order to complete an Annual Report by October 31st of each year, covering the previous calendar year. The Report shall be prepared and retained at the *Owners's* place of business. This Report shall include as a minimum the following information:
- (a) monthly summary by source, including waste type and quantity of *organic waste* received at the *Site*, including a copy of results of all analysis conducted on the incoming wastes;
 - (b) monthly amount of *residual* and/or *rejected waste* transferred from the *Site* for disposal, including waste type and disposal destination;
 - (c) monthly amount of *Digestate* transferred from the *Site*, including disposal destination(s);
 - (d) annual mass balance of the total amount of the *organic waste* received at the *Site*;
 - (e) an annual summary of any deficiencies, spills, incidents, items of non-compliance, process aberrations or other emergency situations that occurred at this *Site* and any remedial/mitigative action taken to correct them and to prevent future occurrences;
 - (f) any changes to the Operations Manual or the Closure Plan that have been approved by the *Director* since the last Annual Report; and
 - (g) a statement as to the compliance with all conditions of this *Certificate* and with the inspections, monitoring, and reporting requirements of the conditions herein.

19. WASTEWATER MANAGEMENT

- (19.1) (a) The *Owner* shall ensure that all wastewater generated in the unloading / loading and storage areas is contained and collected in sufficiently designed wastewater storage tanks and either utilized in the process or disposed of at a *Ministry* approved site:
- (b) The *Owner* shall regularly empty, clean and disinfect if necessary, all wastewater storage tanks.
- (19.2) Should seepage (wastewater) from the storage areas and unloading/loading waste areas occur and leave the *Site*, the *Owner* shall immediately notify the *Ministry* in accordance with the Part B, Conditions 17.1 and 17.2.

20. CLOSURE

- (20.1) (a) The *Owner* shall submit, for approval by the *Director*, a written Closure Plan six (6) months prior to the permanent closure of the *Site*. This plan must include, as a minimum, a description of the work that will be done to facilitate closure of the *Site* and a schedule for completion of that work; and
- (b) within ten (10) days after closure of the *Site*, the *Owner* must notify the *Director*, in writing, that the *Site* is closed and that the Closure Plan has been implemented.

21. COMPLIANCE WITH APPLICABLE REGULATIONS

- (21.1) Notwithstanding the Conditions of this *Certificate*, if a new regulation(s) are in place for management of nutrients on agricultural lands, then the *Owner* shall immediately comply with the new regulation(s).

Schedule "A"

This Schedule "A" forms part of this Provisional Certificate of Approval 9512-7QNNZJ for a Waste Disposal Site

1. Application for a Certificate of Approval for a Waste Disposal Site dated October 1, 2008, signed and submitted by Randy Van Berkel, including the following supporting documentation:
 - a. Description of Proposal (Background, Proposal, Surrounding Land Uses, Official Plan Designation, Zoning Bylaw, Existing Anaerobic Digester System, Changes Proposed, Contingency Planning)
 - b. Application Form
 - c. Cost Form
 - d. Proof of Incorporation
 - e. Site Plan Agreement
 - f. Approved Site Plan
 - g. Approved Grading Plan
 - h. Digester Structural Drawings
 - i. Bunker Drawing
 - j. Digester System Layout
2. Letter dated November 19, 2008 from Clare Riepma, President, Riepma Consultants to Sanja Jankovic, MOE re: financial assurance calculation and list of adjoining property owners in receipt of notification letter.
3. E-mail dated January 10, 2009 [10:37 AM] from Clare Riepma, President, Riepma Consultants to B. Wilkinson, MOE re: request to add DAF to list of Organic Wastes to be received in anaerobic digester for processing.
4. Letter dated January 26, 2009 from Clare Riepma, President, Riepma Consultants to B. Wilkinson, MOE re: additional information on pasteurizer, storage tank, spills contingency, odour control, organic waste sources, percentage of total input materials into the anaerobic digester.
5. Letter dated January 28, 2009 from Clare Riepma, President, Riepma Consultants to B. Wilkinson, MOE re: revised financial assurance calculation & third party quote.
6. Letter dated August 5, 2009 from Clare Riepma, President, Riepma Consultants to B. Wilkinson, MOE re: additional wastes and financial assurance including a new Site Plan illustration.
7. E-mail dated October 1, 2009 from Randy Van Berkel, Vandermeer Greenhouses to P. Cline, MOE including attachments.

The reasons for the imposition of these terms and conditions are as follows:

PART A REASONS

GENERAL

Conditions 1, 3, 4, 5 and 8 are included to clarify the legal rights and responsibilities of the applicant.

Condition(s) 2 is included to ensure that the Site is operated in accordance with the application and supporting documentation submitted by the Owner, and not in a manner which the Director has not been asked to consider.

Condition 6.1 is included to ensure that the Site is operated under the corporate name which appears on the application form submitted for this approval and to ensure that the Director is informed of any changes.

Condition 6.2 is included to restrict potential transfer or encumbrance of the Site without the approval of the Director and to ensure that any transfer of encumbrance can be made only on the basis that it will not endanger compliance with this Certificate.

Condition(s) 7 is included to ensure that the appropriate Ministry staff has ready access to the operations of the Site which are approved under this Certificate. The Condition is supplementary to the powers of entry afforded a Provincial Officer pursuant to the Act, the OWRA, the PA, the NMA and the SDWA.

Condition(s) 9 is included to ensure that sufficient funds are available to the Ministry to clean up the Site in the event that the Owner is unable or unwilling to do so.

PART B REASONS

SERVICE AREA, APPROVED WASTE TYPES, RATES & STORAGE

Conditions 1, 2.1 and 2.2 are included to specify the approved waste types, the approved service area from which waste may be accepted at the Site and the approved waste receipt rates based on the Owner's application and the supporting documentation. Condition 2.2 is also included to specify the maximum amount of waste that is approved to be stored at the Site as proposed in the financial assurance calculations.

Conditions 2.3, 2.4, 2.5 and 2.7 are included to ensure that the waste storage does not result in an adverse effect or a hazard to the natural environment or any person.

Condition 2.6 is included to ensure that the Organic Waste received at the Site is properly processed prior to its land application

OPERATING HOURS

Condition 3 is included to specify the hours of operation for the Site.

WASTE SCREENING & TRACKING

Condition(s) 4 is included to ensure that only the approved waste types are accepted and processed at the Site.

REJECTED WASTE

Condition(s) 5 is included to specify the requirements for handling of the rejected waste that was inadvertently received at the Site.

RESIDUAL WASTE

Condition(s) 6 is included to specify the requirements for handling of the residual waste resulting from the processing activities at the Site.

SIGNAGE

Condition 7 is included to ensure that the Site's users, operators and the public are fully aware of important information and restrictions related to the operation of the Site.

SITE SECURITY

Condition(s) 8 is included to ensure that the Site is sufficiently secured, supervised and operated by properly trained personnel and to ensure controlled access and integrity of the Site by preventing unauthorized access when the Site is closed and no site personnel is on duty.

EQUIPMENT & SITE INSPECTIONS & MAINTENANCE

Condition(s) 9 is included to require the Site to be maintained and inspected thoroughly and on a regular basis to ensure that the operations at the Site are undertaken in a manner which does not result in an adverse effect or a hazard to the health and safety of the environment or any person.

QUALITY CONTROL

Condition(s) 10 is included to require all waste received at the Site and transferred from the Site to be characterized so that only waste approved by this Certificate is handled at the Site and that all waste transferred from the Site is handled in accordance with the Ministry's requirements.

OPERATION OF THE PASTEURIZER

Condition 11 is included to specify the minimum temperature and pasteurization processing duration requirements necessary for complete inactivation of pathogens in the FOG and DAF.

HOUSEKEEPING & NUISANCE CONTROL

Condition(s) 12 is included to ensure that the Site is operated and maintained in an environmentally acceptable manner which does not result in a negative impact on the natural environment or any

person.

COMPLAINT RESPONSE PROCEDURE

Condition 13 is included to ensure that the District Manager is informed of any complaints with respect to the operation of the Site, which would indicate problems with the operation of the Site and non-compliance with the Act. Condition 13 is also included to ensure that any complaints regarding Site operations at the Site are responded to in a timely manner.

OPERATIONS MANUAL & TRAINING

Conditions 14 and 15 are included to ensure that personnel employed at the Site are fully aware and properly trained on the requirements and restrictions related to Site operations under this Certificate.

CONTINGENCY MEASURES & EMERGENCY SITUATION RESPONSE

Condition 16 is included to ensure that the Owner is prepared and properly equipped to take action in the event of a spill or another emergency situation. Condition 16.4 is also included to require the Owner to be prepared at all times to replace activated carbon filter medium once it is exhausted.

Condition 17 is included to require further spill notification to the Ministry, in addition to the requirements already listed in Part X of the Act.

RECORDS KEEPING

Condition 18 is included to ensure that detailed records of Site activities, inspections, monitoring and upsets are recorded and maintained for inspection and information purposes.

WASTEWATER MANAGEMENT

Condition 19 is included to ensure that the wastewater generated at the Site is handled in accordance with the Ministry's requirements and in a manner which does not result in a negative impact on the natural environment or any person.

CLOSURE

Condition 20 is included to ensure that final closure of the Site is completed in accordance with Ministry's standards.

In accordance with Section 139 of the Environmental Protection Act, R.S.O. 1990, Chapter E-19, as amended, you may by written Notice served upon me, the Environmental Review Tribunal and in accordance with Section 47 of the Environmental Bill of Rights, S.O. 1993, Chapter 28, the Environmental Commissioner, within 15 days after receipt of this Notice, require a hearing by the Tribunal. The Environmental Commissioner will place notice of your appeal on the Environmental Registry. Section 142 of the Environmental Protection Act, provides that the Notice requiring the hearing shall state:

1. The portions of the approval or each term or condition in the approval in respect of which the hearing is required, and;
2. The grounds on which you intend to rely at the hearing in relation to each portion appealed.

The Notice should also include:

- 3. The name of the appellant;
- 4. The address of the appellant;
- 5. The Certificate of Approval number;
- 6. The date of the Certificate of Approval;
- 7. The name of the Director;
- 8. The municipality within which the works are located;

And the Notice should be signed and dated by the appellant.

This Notice must be served upon:

The Secretary*
 Environmental Review Tribunal
 655 Bay Street, 15th Floor
 Toronto, Ontario
 M5G 1E5

AND

The Environmental Commissioner
 1075 Bay Street, 6th Floor
 Suite 605
 Toronto, Ontario
 M5S 2B1

AND

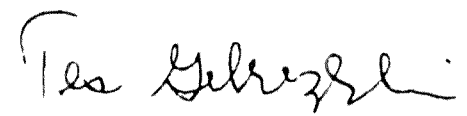
The Director
 Section 39, *Environmental Protection Act*
 Ministry of the Environment
 2 St. Clair Avenue West, Floor 12A
 Toronto, Ontario
 M4V 1L5

* Further information on the Environmental Review Tribunal's requirements for an appeal can be obtained directly from the Tribunal at: Tel: (416) 314-4600, Fax: (416) 314-4506 or www.ert.gov.on.ca

This instrument is subject to Section 38 of the Environmental Bill of Rights, that allows residents of Ontario to seek leave to appeal the decision on this instrument. Residents of Ontario may seek leave to appeal within 15 days from the date this decision is placed on the Environmental Registry. By accessing the Environmental Registry at www.ene.gov.on.ca, you can determine when the leave to appeal period ends.

The above noted waste disposal site is approved under Section 39 of the Environmental Protection Act.

DATED AT TORONTO this 30th day of October, 2009



Tesfaye Gebrezghi, P.Eng.
 Director
 Section 39, *Environmental Protection Act*

BW/
 c: District Manager, MOE Niagara
 Clare Riepma, Riepma Consultants Inc.



Ministry of the Environment
Ministère de l'Environnement

AMENDMENT TO PROVISIONAL CERTIFICATE OF APPROVAL
WASTE DISPOSAL SITE
NUMBER 9512-7QNNZJ
Notice No. 1
Issue Date: March 25, 2011

Vandermeer Greenhouses Ltd.
2021 Four Mile Creek Rd
Niagara-on-the-Lake, Ontario
L0S 1J0

Site Location: Vandermeer Greenhouses Ltd.
2021 Four Mile Creek Rd
Niagara-on-the-Lake Town, Regional Municipality of Niagara
L0S 1J0

You are hereby notified that I have amended Provisional Certificate of Approval No. 9512-7QNNZJ issued on October 30, 2009 for a farm-based anaerobic digestion facility on a 6.7 hectare site, as follows:

I. Conditions 9.1 (a), (b) and (c) are hereby revoked and replaced with the following:

9.0 FINANCIAL ASSURANCE

9.1 (a) The Owner shall maintain with the Ministry, Financial Assurance as defined in Section 131 of the EPA, in the amount of \$14,060.00. This Financial assurance shall provide sufficient funds for the analysis, transportation, site clean-up, monitoring, supervision and disposal of all quantities of waste on the Site at any one time.

9.1 (b) Commencing on April 30, 2014 and at intervals of three (3) years thereafter, the Owner shall submit to the Director, a re-evaluation of the amount of Financial Assurance to implement the actions required under Condition 9.1(a). The re-evaluation shall include an assessment based on any new information relating to the environmental conditions of the Site and shall include the costs of additional monitoring and/or implementation of contingency plans required by the Director upon review of the closure plan and annual reports. The Financial Assurance must be submitted to the Director within twenty (20) days of written acceptance of the re-evaluation by the Director.

9.1 (c) Commencing on April 30, 2012, the Owner shall prepare and maintain at the Site an updated re-evaluation of the amount of Financial Assurance required to implement the actions required under Condition 9.1(a) for each of the intervening years in which a re-evaluation is not required to be submitted the Director under Condition 9.1(b). The re-evaluation shall be made available to the Ministry, upon request.

9.1 (d) The amount of Financial Assurance is subject to review at any time by the Director and may be amended at his/her discretion. If any Financial Assurance is scheduled to expire or notice is received, indicating Financial Assurance will not be renewed, and satisfactory methods have not been made to replace the Financial Assurance at least sixty (60) days before the Financial Assurance terminates, the Financial Assurance shall forthwith be replaced by cash.

II. The following item is hereby added to Schedule "A":

8. Letter dated November 8, 2010 addressed to the Ministry of the Environment from Clare Riepma, Riepma Consultations Inc., re: Vandermeer Greenhouses Anaerobic Digester, Certificate of Approval 7620-7KMNCE, Financial Assurance.

9. Email dated March 24, 2011 [2:03 PM] from Clare Riepma, Riepma Consultants Inc., to Lucie Guichelaar, Waste Evaluator, MOE, re: Financial Assurance.

CONTENT COPY OF ORIGINAL

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The reason for this amendment to the Certificate of Approval is as follows:

The reason for Conditions 9.1 is to ensure that sufficient funds are available to the Ministry to clean up the Site in the event that it appears the Owner is unable or unwilling to do so.

This Notice shall constitute part of the approval issued under Provisional Certificate of Approval No. 9512-7QNNZJ dated October 30, 2009, as amended.

In accordance with Section 139 of the Environmental Protection Act, R.S.O. 1990, Chapter E-19, as amended, you may by written notice served upon me and the Environmental Review Tribunal within 15 days after receipt of this Notice, require a hearing by the Tribunal. Section 142 of the Environmental Protection Act, provides that the Notice requiring the hearing shall state:

1. The portions of the approval or each term or condition in the approval in respect of which the hearing is required, and;
2. The grounds on which you intend to rely at the hearing in relation to each portion appealed.

The Notice should also include:

3. The name of the appellant;
4. The address of the appellant;
5. The Certificate of Approval number;
6. The date of the Certificate of Approval;
7. The name of the Director;
8. The municipality within which the waste disposal site is located;

And the Notice should be signed and dated by the appellant.

This Notice must be served upon:

The Secretary*
Environmental Review Tribunal
555 Bay Street, 15th Floor
Toronto, Ontario
M5G 1E5

AND

The Director
Section 39, *Environmental Protection Act*
Ministry of the Environment
2 St. Clair Avenue West, Floor 12A
Toronto, Ontario
M4V 1L5

* Further information on the Environmental Review Tribunal's requirements for an appeal can be obtained directly from the Tribunal at: Tel: (416) 314-4600, Fax: (416) 314-4506 or www.ert.gov.on.ca


The above noted waste disposal site is approved under Section 39 of the Environmental Protection Act.

DATED AT TORONTO this 25th day of March, 2011

Tesfaye Gebrezghi, P.Eng.
Director
Section 39, *Environmental Protection Act*

LG/
c: District Manager, MOE Niagara
Clare Riepma, Vandermeer Greenhouses Ltd.

THIS IS EXHIBIT "L"
TO THE AFFIDAVIT OF
BERNIE HUBER
SWORN BEFORE ME AT THE CITY OF ST. CATHARINES
IN THE REGIONAL MUNICIPALITY OF NIAGARA
THIS 31 DAY OF JANUARY, 2014



A Commissioner, etc.

Rina D'Angela, a Commissioner, etc.,
Province of Ontario, for Flett, Beccario,
Barristers and Solicitors, and
Conveyancers Inc.
Expires August 21, 2015.

Normal Farm Practices
Protection Board

3rd Floor
1 Stone Road West
Guelph, Ontario N1G 4Y2
Tel: (519) 826-3549
Fax: (519) 826-3259

Commission de protection
des pratiques agricoles
normales

3^e étage
1 Stone Road West
Guelph (Ontario) N1G 4Y2
Tél.: (519) 826-3549
Télééc.: (519) 826-3259



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Normal Farm Practices Protection Board

May 17, 2012

BY COURIER

Mr. Randy van Berkel
Vandermeer Nurseries
2021 Four Mile Creek Road
Niagara-on-the-Lake, ON, L0S 1J0.

Dear Mr. van Berkel:

Re: Request for Hearing regarding Vandermeer Nurseries

We have received a request for a hearing under section 5 of the *Farming and Food Production Protection Act, 1998*. The application relates to noise, odour, dust, vibration, smoke and flies associated with the operation of an anaerobic digester at Vandermeer Nurseries, 2021 Four Mile Creek Road, Niagara-on-the-Lake, Ontario, L0S 1J0. A copy of the application is attached.

The Board will review the information and respond to the request.

Information on the Normal Farm Practices Protection Board and the Farming & Food Production Protection Act is available from the website <http://www.omafra.gov.on.ca/english/engineer/nfppb/nfppb.htm>, or by contacting the Agricultural Information Contact Centre at 1-877-424-1300, ag.info.omafra@ontario.ca.

If you have any questions, please contact me at (519) 826-3549 or finbar.desir@ontario.ca.

Yours truly,

Finbar Desir, Secretary
Normal Farm Practices Protection Board

c: Glenn C. Walker, Chair, Normal Farm Practices Protection Board
Anthony Little, Vice-Chair

attachment



Marshall Kirewskie

Barristers & Solicitors

144

Paul David Marshall
B.A., B.Ed., LL.B.
E-mail: p.marshall@bellnet.ca

Cassandra Kirewskie
M.A., LL.B.
E-mail: ckirewskie@bc3net.ca

Nick Kirewskie
OFFICE MANAGER
E-mail: nktlaw@bellnet.ca

May 15, 2012

By Regular Mail & Fax to: (519) 826-3259

Normal Farm Practices Protection Board
Ministry of Agriculture, Food and Rural Affairs
1 Stone Road West
Guelph, Ontario
N1G 4Y2

Dear Board Members:

RE: Vandermeer Nurseries' Anaerobic Digester
2021 Four Mile Creek Road Niagara on the Lake L0S 1J0
Certificate of Approval #9512-70NNZJ (October 30, 2009)

We represent Judy and Richard Zirger. The Zirgers live at 59 Hunter Road, RR #3, Niagara on the Lake, next to Vandermeer Nurseries. Together with other residents, the Zirgers have been experiencing unusual vibrations, noises, odours and other disturbances.

The Zirgers believe that the source of all these and other disturbances is Vandermeer Nurseries' anaerobic digester. For some time, they and other residents have been working with Vandermeer Nurseries and officials from the Province of Ontario (both the Ministries of Environment and Agriculture), the Town of Niagara on the Lake and the Region of Niagara to eliminate these disturbances.

The Town of Niagara on the Lake has established a working group to deal with complaints emanating from the anaerobic digester. The Vandermeer Working Group is comprised of the following members:

- Don Hilborn, OMAFRA
- Randy van Berkel, Vandermeer Greenhouse
- Hugh Fraser, OMAFRA
- Paul Cline, MOE
- George Lepp, Farm Representative
- Lola Emberson, Town of NOTL
- Richard Zirger, neighbour

58 Dunn Street, Suite 201, Oakville, ON L6J 3C7
Tel: (905) 842-5070 Fax: (905) 842-4123 E-mail: mktlaw@bellnet.ca

P.001/010

(FAX)905 842 4123

15:25 Marshall & Kirewskie 05/15/2012

P.3/7

To: 416 256 4003

MAY-22-2012 14:43 From:

- Charlene Quevillon, neighbour
- Dan LaValle, neighbour
- Ron Planche, EA to Kim Craitor, MPP
- Stephen Bedford, Town of NOTL
- Sandra Philip, Region of Niagara, Public Health

From time to time other individuals representing other stakeholders join the Group. The Working Group meets regularly to document and address odour and noise complaints.

While some steps have been taken to reduce odours and noise from the site, the Zirgers continue to experience disturbances that cannot be resolved through the process in place. In the Zirgers' view, these disturbances are not only interfering with the enjoyment and use of their property, but also pose health and safety risks.

The Working Group's mandate is to ameliorate the sounds and odours coming from the digester. It cannot decide whether operating a waste disposal site is a normal farm practice. Nor can it determine whether the conversion of off-site generated organic waste at the Vandermeer site to commercial energy is a normal farm practice. More importantly, the Group lacks the power to order that the digester cease operating.

Neighbours have been encouraged to bring an application for a Hearing before this Board at Working Group meetings. Accordingly, please find enclosed both a Hearing Application on the prescribed form and a Notice of Application for a Hearing before the Board following the *Ontario Rules of Civil Procedure*.

Given that there have been very significant efforts made by both parties and also by third parties to address and resolve the Zirgers' complaints and that those efforts have been unsuccessful, the Applicants respectfully ask the Board to use its discretion to waive its pre-hearing mediation requirement. For the reasons set out herein and in our Notice of Application, we respectfully ask that the Board accept our application for a Hearing. Kindly confirm your acceptance of our application and advise as to when this matter will be heard.

Thank you.

Sincerely,



Paul Marshall
/nk

Encls.

NORMAL FARM PRACTICES PROTECTION BOARD

IN THE MATTER OF a hearing under the *Farming and Food Production and Protection Act*, 1998, S.O. 1998, Ch.1;

AND IN THE MATTER OF an application for a determination as to whether operating a waste disposal site and converting off-site generated organic waste to commercial energy at Vandermeer Nurseries in the Town of Niagara on the Lake is a normal farm practice;

BETWEEN:

RICHARD ZIRGER AND JUDY ZIRGER

Applicants

and

VANDERMEER GREENHOUSES LTD.

Respondent

NOTICE OF APPLICATION

TO THE RESPONDENT

A LEGAL PROCEEDING HAS BEEN COMMENCED by the applicants. The claim made by the applicants appears on the following pages.

THIS APPLICATION will come on for a hearing before the Normal Farm Practices Protection Board (the "Board") at a date and time to be determined by the Board.

IF YOU WISH TO OPPOSE THIS APPLICATION, you or an Ontario lawyer acting for you should forthwith prepare a notice of appearance in a form similar to Form 38A prescribed by the Ontario Rules of Civil Procedure, serve it on the applicants' lawyer or, where the applicant does not

P.003/010

(FAX)905 842 4123

05/15/2012 15:25 Marshall & Kirewskie

P.4/7

To:416 256 4003

MAY-22-2012 14:43 From:

have a lawyer, serve it on the applicant, and file it, with proof of service, with the Board and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE BOARD OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the applicants' lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it with proof of service, with the Board, as soon as possible, but not later than 2 days before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, A DECISION MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

If you wish to oppose this application but are unable to pay legal fees, legal aid may be available to you by contacting a local Legal Aid office.

APPLICATION

1. The Applicants make an application for:
 - a) an Order pursuant to Rule 5 of the Normal Farm Practices and Protection Board Rules of Procedure (the "Rules") dispensing with the Farm Practices Conflict Resolution Process;
 - b) a determination pursuant to s. 5 of the *Farming and Food Production and Protection Act*, S.O. 1998, Ch.1, as to whether the disturbances coming from Vandermeer Nurseries at 2021 Four Mile Creek Road, Niagara on the Lake ("Vandermeer Nurseries"), result from a normal farm practice;
 - c) an Order that Vandermeer Nurseries cease operating its anaerobic digester;
 - d) an Order for costs, including HST; and,
 - e) such other and further relief as this Board deems just.

2. The grounds for this application are that:
 - a) the Applicants are directly affected by the disturbances coming from Vandermeer Nurseries;
 - b) the parties have made numerous and on-going attempts to resolve their conflict but been unsuccessful;
 - c) the Town of Niagara on the Lake, Niagara Region, and the Ministries of the Environment and Agriculture have each provided assistance to the parties but have been unable to resolve their conflict;
 - d) that none of the Respondent's attempts to mitigate the odour, noise, vibration and emissions from the digester have been successful;
 - e) the location of an anaerobic digester within close proximity of the property line on a small farm property within a protected greenbelt in a residential and fruit farming community poses an environmental, health and safety risk;
 - f) waste disposal and commercial energy generation are not normal farm practices;
 - g) the Applicants' quiet enjoyment and use of their fruit farm has been destroyed by the loud noises, putrid smells and noxious fumes emanating from the Respondent's digester;
 - h) the Respondent's digester has created a health and safety hazard by inviting unusual numbers of rats, seagulls, insects and flies to the area;
 - i) the Board has the power to declare that waste disposal and the conversion off-site generated organic waste to commercial energy are not normal farm practices;
 - j) the Board has the power to order the Respondent to stop operating its anaerobic digester as it is causing a disturbance.

P.005/010

FAX905 842 4123

15:25 Marshall & Kirewskie 05/15/2012

P.5/7

To: 416 256 4003

From: 14:43 22-2012 MAY

3. To facilitate the hearing of this application, the Applicants hereby request an Order compelling the Respondent to disclose all of the following documents and records:

- a) copies of all records and supporting documentation submitted by Randy Van Berkel in application for a Certificate of Approval to operate a Waste Disposal Site at 2021 Four Mile Creek Road;
- b) copies of all government approvals for the anaerobic digester, including design specifications, minimum distance separation calculations and any consideration that was given to the location of the digester;
- c) copies of any records considering the potential for the digester posing environmental, health and safety risks;
- d) copies of all records describing the Respondent's attempts to mitigate the odour, noise, vibration and emissions from the digester, including any consultations that were made with third parties for same;
- e) copies of all documents showing the receipt of off farm waste and all documents describing its content;
- f) copies of all signage at the site;
- g) copies of all documents related to the release of untreated biogas at the site, including each instance when the flare was in operation, its duration and why it was utilized;
- h) copies of all odour, noise and other nuisance complaints and particulars of any responses, actions or measures taken or recommended to reduce or eliminate same;
- i) copies of any and all records confirming the enrolment and completion of the Biogas Systems Operators' course by personnel employed by the Respondent and any other training for employment at the site;
- j) copies of all records pertaining to health and safety precautions at the site, including emergency preparedness measures and procedures and staff training at the site;
- k) copies of the results of any and all analyses concerning emissions, metal concentrations, noise, vibrations and odour emanating from the site and also the nutrient content of the digestate;
- l) copies of any and all information and records concerning the quantities of digestate transferred off-site and particulars concerning its final destination and use;
- m) copies of all the Respondent's annual reports concerning the operation of the digester;
- n) copies of any and all charges under environmental legislation relating to the operation of the digester; and,
- o) copies of all applications for government funding of the digester project, including any and all responses and approvals thereto.

4. In respect of the hearing of this application, the applicants will make a motion on a date to be set by the Board for:

- a) an Order pursuant to Rule 53 and section 62 of the *Farming and Food Production and Protection Act*, 1998, S.O. 1998, Ch.1, for a site visit to the applicants' property at 59 Hunter Road, RR #3, Niagara on the Lake, Ontario;
- b) an Order pursuant to Rule 53 and section 62 of the *Farming and Food Production and Protection Act*, 1998, S.O. 1998, Ch.1. for the inspection of the Vandermeer Nurseries' site, including its anaerobic digester;
- c) the exchange of witness statements; and,
- d) such other and further relief as this Board deems just.

5. The following documentary evidence will be used at the hearing of the application:

- a) Affidavit of Richard Zirger;
- b) Affidavit Judy Zirger;
- c) Affidavit of Charlene Quevillon;
- d) Affidavit of Dan LaValle;
- e) Affidavit of George Lepp;
- f) And such further and other evidence as we may advise and this Honourable Board permits.

6. In addition, the following persons will be available to give oral evidence as the Board deems necessary:

- a) Richard Zirger;
- b) Judy Zirger;
- c) Charlene Quevillon;
- d) Dan LaValle;
- e) And such further and other witnesses as we may advise and this Honourable Board may permit.

DATE: May 15, 2012

MARSHALL KIREWSKIE
BARRISTERS & SOLICITORS
 201 - 88 Dunn Street
 Oakville, Ontario
 L6J 3C7

Paul Marshall
 LSUC# 33983T
 (905) 842-5070 ext. 223
 Fax: (905) 842-4123

Cassandra Kirewskie
LSUC # 36765H
Tel: (905) 842-5070 ext. 224
Fax: (905) 842-4123

Solicitors for the Applicants

TO: Vandermeer Nurseries
2021 Four Mile Creek Road
Niagara on the Lake, Ontario

05/15/2012 15:26 Marshall & Kirewskie

MAY-28-2012 13:45 From:

FAX 905 842 4123

To: 14162564001

P.008/010

P.3/6

Normal Farm Practices Protection Board

HEARING APPLICATION



Application Date: 2012-04-30 (yyyy/mm/dd)

NOTE: Before an application for a hearing can be considered by the Normal Farm Practices Protection Board, the matter must have gone through the Farm Practices Conflict Resolution Process established by the Ontario Ministry of Agriculture and Food and Rural Affairs (OMAFRA). (For further information on the conflict resolution process, please contact the OMAFRA Agricultural Information Contact Centre at 1-877-424-1300).

Have the issues involved in this application been considered in OMAFRA's Normal Farm Practices Conflict Resolution Process?

Yes No [checked] Agricultural Engineer / Environmental Specialist

Unsuccessful and on-going attempts to resolve the issues have been... The personal information on this form is collected under the authority of The Farming & Food Production Protection Act... Please see attached letter.

Personal Information - Complete the following information:

(Please print or type all information)

Name of Applicant (if there are more than one applicants, add separate sheet with their information and signatures)

Richard + Judy Zirger c/o Marshall Kirewskie

Mailing Address

Cassandra Kirewskie - 88 Donn St #201

City

County

Postal Code

Oakville

Ontario

L6J 3C7

Telephone Number

Fax Number

Email Address

905 842-5070

905 842-4123 ckirewskie@bellnet.ca

Applicant's signature

[Signature] for: Richard + Judy Zirger

Name of person or municipality against whom the complaint is directed

Randy van Berkel / Vandermeer Nurseries

Address of farm or municipality

2021 Four Mile Creek Road

City

County

Postal Code

Niagara on the Lake

L0S 1J0

Telephone Number

Fax Number

905 468-2827

905 468-1519

Normal Farm Practices
Protection Board

HEARING
APPLICATION

Nuisance Complaint (under Section 5 of the Farming & Food Production Protection Act) Complete this section only if you are directly affected by a disturbance from an agricultural operation.

Nature of the Complaint (please check all that apply): <input checked="" type="checkbox"/> Noise <input checked="" type="checkbox"/> Odour <input checked="" type="checkbox"/> Dust <input type="checkbox"/> Light <input checked="" type="checkbox"/> Vibration <input type="checkbox"/> Smoke <input type="checkbox"/> Fumes	
Date(s) of the Disturbance (yyyy/mm/dd): <i>on-going from installation of the anaerobic digester</i>	
Describe how the disturbance has affected you (if this space is insufficient, attach additional pages) <i>Please see attached letter.</i>	

Please attach any additional information pertaining to the complaint.

By-law Complaint (under Section 6 of the Farming and Food Production Protection Act)
Complete this section only if your farming practice is directly affected by a municipal by-law.

Information about the by-law in question:	
By-law Number	Date the by-law was passed (yyyy/mm/dd)
Municipality that passed the by-law	
Address of the Municipal Office	
City	Postal Code
Telephone Number ()	Fax Number ()
Describe how the by-law is affecting your farming practices (if this space is insufficient, attach additional pages)	

Please attach a copy of the by-law in question and any additional information pertaining to the complaint.

Please forward the signed application and attachments to:
Normal Farm Practices Protection Board
Ministry of Agriculture, Food and Rural Affairs
1 Stone Road West Guelph, ON N1G 4Y2
Phone: (519) 828-3648, Fax: (519) 828-3259
Email: finbar.desir@ontario.ca

THIS IS EXHIBIT "M"
TO THE AFFIDAVIT OF
BERNIE HUBER
SWORN BEFORE ME AT THE CITY OF ST. CATHARINES
IN THE REGIONAL MUNICIPALITY OF NIAGARA
THIS 3 DAY OF JANUARY, 2014



A Commissioner, etc.

Rina D'Angela, a Commissioner, etc.,
Province of Ontario, for Flett, Beccario,
Barristers and Solicitors, and
Conveyancers Inc.
Expires August 21, 2015.

Court File No.: *CV-13-495252*

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:



RICHARD ZIRGER AND JUDI ZIRGER

Plaintiffs

- and -

VANDERMEER GREENHOUSES LTD; MERIDIAN CREDIT UNION; VINCOR (c.o.b. as "CONSTELLATION BRANDS"); THE ONTARIO POWER AUTHORITY; HER MAJESY THE QUEEN IN RIGHT OF ONTARIO AS REPRESENTED BY THE MINISTRY OF THE ENVIRONMENT AND THE MINISTRY OF AGRICULTURE; THE ATTORNEY GENERAL OF ONTARIO; THE CORPORATION OF THE TOWN OF NIAGARA ON THE LAKE; PLANET BIOGAS SOLUTIONS; and CEM ENGINEERING

Defendants

STATEMENT OF CLAIM

TO THE DEFENDANT(S)

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff(s). The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a Statement of Defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiff's lawyer(s) or, where the plaintiff(s) do(es) not have a lawyer, serve it on the

plaintiff(s), and file it, with proof of service, in this court office, WITHIN TWENTY DAYS after this Statement of Claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your Statement of Defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a Statement of Defence, you may serve and file a Notice of Intent to Defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your Statement of Defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

DATED: *December 19, 2013*

ISSUED BY: Christina Lewis
Registrar, Superior Court of Justice

Local Registrar

TO: Vandermeer Greenhouses Ltd.
2021 Four Mile Creek Road,
Niagara on the Lake, Ontario
L0S 1J0

SUPERIOR COURT
OF JUSTICE
383 UNIVERSITY AVE.
10TH FLOOR
TORONTO, ONTARIO
M5G 1E8

COUR SUPÉRIEURE
DE JUSTICE
383 AVE. UNIVERSITY
10E ÉTAGE
TORONTO, ONTARIO
M5G 1E8

AND TO: ATTORNEY GENERAL OF ONTARIO
Crown Law Office – Civil
McMurtry-Scott Bldg.
8th Floor, 720 Bay St
Toronto M7A 2S9

Constitutional Law Branch
4th Floor, 720 Bay Street
Toronto, Ontario
M7A 2S9

Meridian Credit Union
Niagara on the Lake, Ontario
1561 Highway 55
Virgil, Ontario

Vincor Canada
c.o.b. as "Constellation Brands"
441 Courtney Park
Mississauga, Ontario
L5T 2V3

Ontario Power Authority
Suite 1600
120 Adelaide Street West
Toronto M5H 1T1

The Corporation of the Town of Niagara on the Lake
1593 Four Mile Creek Road
Virgil, Ontario
L0S 1T0

PlanET Biogas Solutions
Unit B – 227 Bunting Road
St. Catharines, Ontario
L2M 3Y2

CEM Engineering
227 Bunting Road
St. Catharines, Ontario
L2M 3Y2

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I. SUMMARY OF CLAIM

To secure a more efficient and cost-effective source of energy for their greenhouse cut flower operation, in or around February 11, 2008, Vandermeer Nurseries began a process to obtain government authorization to situate an anaerobic digester on its property.

Although anaerobic digesters are generally installed on farm properties to address odours from excess animal waste, Vandermeer's digester was specifically intended to create energy.

Vandermeer applied to the Town of Niagara on the Lake ("NOTL") for site plan approval, building permits and to change the municipal drain, known as the "Sloma Drain." In support of its application, Vandermeer stated that it would be inputting only on-farm materials into the digester.

NOTL determined that Ministry of Environment ("MOE") approval was not required for the proposed use. Despite the fact that the Vandermeer property was zoned "greenhouse" and "agricultural purposes only," on June 2, 2008, NOTL approved Vandermeer's applications without conducting any studies or requiring Vandermeer to apply for rezoning. NOTL delegated responsibility to Vandermeer to use *best efforts* to resolve any and all noise, odour and other complaints concerning the site. It did not impose any restrictions with respect to the noise, traffic, emissions or other nuisances Vandermeer could create on its property.

Although NOTL's approval contemplated that Vandermeer might alter the composition of what it puts in its digester and recognized that a different formula would require MOE approval and/or a Nutrient Management Strategy, it did not impose any additional conditions or requirements on Vandermeer in the event that the nature of its project changed or that imminent changes to Ontario's Environmental Protection Regulations

On February 23, 2009, the *Green Energy Act* (“*GEA*”) was given first reading in the Ontario Legislature. The *GEA* was created to expand renewable energy generation in Ontario and is to be administered in a manner that promotes community consultation.

Vandermeer’s Renewable Energy Generating Facility achieved commercial operation on April 27, 2009.

The *GEA* came into force on September 24, 2009. *GEA*’s objectives were reflected in a number of legislative amendments, including amendments to the *Electricity Act*, the *Environmental Protection Act* and the *Planning Act*. Amendments to the *Electricity Act* provided for the development of a Feed-in Tariff (“*FIT Program*”), a program for the procurement of electricity from renewable sources which replaced the RESOP. Consistent with the *GEA*, one of the FIT program’s broad policy objectives is to encourage community involvement.

Projects of any renewable technology that had a capacity of 500 kW or less and were in service by 11:59 p.m. on October 1, 2009 were eligible to transition to the FIT program. Generators who had been operating under a RESOP contract obtained a contract representing the balance of the 20-year FIT contract.

On October 30, 2009, a little over one month after the *GEA* became effective, MOE granted Vandermeer a Provisional Certificate of Approval for a farm based anaerobic digestion facility under s. 27(1) of the *Environmental Protection Act*. The Director’s decision circumvented Ontario’s environmental protection regime. Vandermeer should have sought a renewable energy approval.

Vandermeer’s Certificate of Approval does not require a Nutrient Management Strategy, an environmental assessment, appropriate distance setbacks from the nearest odour receptor or compliance with Ontario’s noise regulations. Ontario interprets the Certificate to permit Vandermeer to input commercial or industrial wastes such as: pet food waste; waste from Time Hortons; and, grape pomace from an American multi-national wine and spirits producer and marketer as “agricultural waste.”

The Certificate does not set out a specific formula for digester inputs. Instead, Ontario consults with Vandermeer on an *ad hoc* basis to determine the input formula. While the digester’s legal status as an on-farm project rests on what is inputted, the input recipe is subject to change and not open to public scrutiny. Although the operation of the digester and, in particular, the input recipe have been the subject of a Freedom of Information Request, Ontario has not provided the plaintiffs with access to this information. While they live right next door, the plaintiffs have little knowledge of the activities on the site.

While Ontario has set standards for the receipt, storage and handling of off-farm waste and out-put, it has exempted Vandermeer from them. The plaintiffs will argue that the Certificate of Approval violates their section 7 *Charter* rights to life, liberty and security of the person and, in particular their right to a healthy environment.

Despite these regulatory changes, construction continued on Vandermeer's digester. Without imposing any further conditions, NOTL granted Vandermeer a permit for a control room and the building was completed in December 2009.

On May 11, 2010, Vandermeer's contract was amended by the Advanced RESOP FIT Amendment. The Amended Contract added a new definition for "on-farm biogas facility," defining it as a Renewable Generating Facility that is regulated under Part IX.1 of Ontario Regulation 267/03 made under the *Nutrient Management Act, 2002*. Ontario exempted Vandermeer from these requirements as the digester is not regulated under either instrument.

Since the digester was installed next door to the plaintiffs' peach orchard, they began experiencing respiratory issues, anxiety and sleep disorders. On a daily basis, the plaintiffs are exposed to excessive and intolerable odours, noises, vectors and vibrations emanating from the Vandermeer property. The smell in the air on their property is often putrid.

As the digester regularly produces too much methane (which is a greenhouse gas), a visible flare often operates, giving the once quiet rural agricultural neighbourhood the appearance of an industrial site. Activities at the site create a very real risk of explosion, especially since the ground is unstable and the digester formula is always changing. In or around August of this year, NOTL investigated sink holes on the Vandermeer site. The risks, nuisances and release of pollutants emanating from the property have caused the plaintiffs to lose the use and enjoyment of their farm. Recently, on advice, the plaintiffs sadly and reluctantly ploughed under their peach orchard.

Although NOTL had set up a Working Group, with Ontario's participation and input, to address the many public complaints it receives about noises, odours, vectors and other adverse impacts of the digester, to date no one has been able to eliminate the adverse effects of the digester.

Under the terms of their security agreement with Vandermeer Greenhouses, on July 19, 2011, Meridian Credit Union appointed Zeifman Partners as Vandermeer's Receiver. Since that time, the Receiver has been operating the digester.

On May 11, 2012, the plaintiffs made a number of *Freedom of Information* requests concerning the Vandermeer site and project. While NOTL, the Region of Niagara and OMAFRA responded to their request in a timely manner, as of this date, and despite many promises to the contrary, MOE has yet to fulfill its statutory obligations by responding to the plaintiffs' request.

On May 15, 2012, the plaintiffs filed an application in the Normal Farm Practices Protection Board to determine whether the activities being carried on at the Vandermeer site are normal farm practices. Appended to the plaintiffs' application was a request for documentary disclosure from Vandermeer.

Chairman Little made an Order for a four day hearing commencing on November 13, 2012. Disclosure was to be made on a voluntary basis without any guidelines or supervision by the Board and with the Receiver determining the relevance of the documents in its possession.

From the outset, the plaintiffs raised concerns about the lack of adequate disclosure. They noted that the Receiver had not disclosed any odour complaints, any internal OMAFRA documents concerning odour, seagull and fly issues or the composition of the materials placed in the digester; farm practices at Vandermeer; classification of the digestate; emails concerning problems with peach trees located around the digester; crop damage from ammonia; or any safety manuals or particulars of any specialized training Vandermeer's employees obtained to operate the digester.

On November 6, 2012, the Board refused the plaintiffs' request for an adjournment. Six days before the scheduled hearing, the Receiver delivered its limited document brief. On November 13th, the parties attended at the Board and the plaintiffs reiterated their concerns about the lack of an even playing field. The Chair reluctantly granted the plaintiffs' adjournment request on terms and despite failing to address the disclosure issues, rescheduled the hearing for February 19, 2013.

On December 7, 2012, the plaintiffs withdrew their application citing the Board's lack of impartiality, lack of structural independence, bias and errors in handling the disclosure issues.

On December 13th, the Receiver wrote to the Board accusing the plaintiffs of abusing the Board's process and reiterating its request to have the application summarily dismissed "because the applicants were so obviously not prepared to proceed, and had abused the process of the tribunal." In closing its letter, the Receiver stated: "Unless the application

is dismissed, these applicants will be allowed to continue to bring the administration of justice through this tribunal into disrepute.”

Recently, Vandermeer notified the plaintiffs of its intention to make changes to its site and operations. These changes will only increase the level of disturbances coming from the property as has every repair that has been conducted on the digester to date. Ontario has not responded to the plaintiffs' repeated requests to learn more about these changes and to make submissions in respect of them. Ontario does not have a process to ensure their voices, or the voices of the neighbours who cannot afford to participate in these proceedings and who Ontario has banned from participating in the community meetings that were set up to deal with the nuisances coming from the site, are heard.

II. THE PLAINTIFFS' CLAIM:

1. The Plaintiffs seek a declaration pursuant to s. 97 of the *Courts of Justice Act*, R.S.O. 1990, Chapter C. 43, that the activities on the defendant Vandermeer's property are not a normal farm practice within the meaning of the *Farming and Food Production Protection Act, 1998*, S.O. 1998, c.1;
2. The Plaintiffs seek a declaration under section 24(1) of the *Canadian Charter of Rights and Freedoms, Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK)*, 1982, cII, that the *Farming and Food Production Protection Act, 1998*, S.O. 1998, c.1 infringes section 7 of the *Charter of Rights and Freedoms* in that it deprives the plaintiffs of their right to life, liberty and security of the person in a manner that is contrary to the principles of fundamental justice;
3. The Plaintiffs seek a declaration under section 24(1) of the *Canadian Charter of Rights and Freedoms, Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK)*, 1982, cII, that NOTL By-law No. 4224-08 violates the plaintiffs' section 7 *Charter* right to live in a healthy environment as implicit in the plaintiffs' right to life, liberty and security of the person in a manner that is contrary to the principles of fundamental justice;
4. The Plaintiffs seek a declaration under section 24(1) of the *Charter* that the Ontario Power Authority infringed the plaintiffs' right to a healthy environment under section 7 of the *Charter* in a manner that is contrary to the principles of fundamental justice when it granted Vandermeer Nurseries a RESOP contract and later a FII contract without appropriate regulatory approvals;
5. The Plaintiffs seek a declaration under section 24(1) of the *Charter* that the Minister of Environment's failure to apply the *Environmental Bill of Rights, 1993*, S.O. 1993, c. 28, in a manner that ensured the cumulative effects were considered and minimized

when MOE made the decision to grant a Certificate of Approval violated the plaintiffs' rights under section 7 of the *Charter*;

6. The Plaintiffs seek a declaration under section 24(1) of the *Charter* that the Minister of Environment's application of s. 27(1) of the *Environmental Protection Act* is contrary to section 7 of the *Charter* in so far as it allowed Vandermeer to avoid the Renewable Energy Approval process as set out in the *Environmental Protection Act*, R.S.O. 1990, c. E.19 and the *Green Energy Act*, 2009 S.O. 2009, c. 12, Sched. A;
7. The Plaintiffs seek a declaration under section 24(1) of the *Charter* that the Minister of Environment's application of O. Reg. 347 made under the *Environmental Protection Act* is contrary to section 7 of the *Charter*;
8. The Plaintiffs seek a declaration under section 24(1) of the *Charter* that the Minister of Environment's application of O. Reg. 267 of the *Nutrient Management Act* is contrary to section 7 of the *Charter*;
9. The Plaintiffs seek a declaration under section 24(1) of the *Charter* that the Minister of Environment's decision to grant Vandermeer Nurseries a Certificate of Approval to operate a Waste Disposal Site on their Niagara on the Lake property created a public health hazard and violated the plaintiffs' section 7 *Charter* right to live in a healthy environment as implicit in the plaintiffs' right to life, liberty and security of the person in a manner that is contrary to the principles of fundamental justice;
10. The Plaintiffs seek a declaration under section 24(1) of the *Charter* that the Minister of Environment's failure to require Vandermeer to obtain a renewable energy approval retroactively violated the plaintiffs' section 7 *Charter* right to live in a healthy environment as implicit in the plaintiffs' right to life, liberty and security of the person in a manner that is contrary to the principles of fundamental justice;
11. An Order under section 24(1) of the *Charter* setting aside the Minister of Environment's decision granting Vandermeer a Certificate of Approval;
12. The Plaintiffs claim against the defendant Vandermeer Greenhouses Ltd. ("Vandermeer"):
 - a) general damages in the amount of \$5,000,000.00;
 - b) special damages in an amount to be determined at, or before, the trial of this action;
 - c) aggravated damages in the amount of \$1,000,000.00;
 - d) punitive damages in the amount of \$1,000,000.00;
 - e) an interlocutory and permanent injunction restraining Vandermeer from operating its anaerobic digester pursuant to the common law and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C. 43;
 - f) pre-judgment and post-judgment interest pursuant to the *Courts of Justice Act*, R.S.O. 1990, Chapter C. 43;
 - g) their costs of this action, including Harmonized Sales Tax; and,

h) such further and other relief as to this Honourable Court seems just.

13. The Plaintiffs claim against the defendant Meridian Credit Union ("Meridian"):

- a) general damages in the amount of \$5,000,000.00;
- b) special damages in an amount to be determined at, or before, the trial of this action;
- c) aggravated damages in the amount of \$1,000,000.00;
- d) punitive damages in the amount of \$1,000,000.00;
- e) an interlocutory and permanent injunction restraining Meridian from operating Vandermeer's anaerobic digester pursuant to the common law and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C. 43;
- f) pre-judgment and post-judgment interest pursuant to the *Courts of Justice Act*, R.S.O. 1990, Chapter C. 43;
- g) their costs of this action, including Harmonized Sales Tax; and,
- h) such further and other relief as to this Honourable Court seems just.

14. The Plaintiffs claim against the defendant Vincor ("Vincor"):

- a) general damages in the amount of \$5,000,000.00;
- b) special damages in an amount to be determined at, or before, the trial of this action;
- c) aggravated damages in the amount of \$1,000,000.00;
- d) punitive damages in the amount of \$1,000,000.00;
- e) damages pursuant to section 24(1) of the *Canadian Charter of Rights and Freedoms*;
- f) pre-judgment and post-judgment interest pursuant to the *Courts of Justice Act*, R.S.O. 1990, Chapter C. 43;
- g) their costs of this action, including Harmonized Sales Tax; and,
- h) such further and other relief as to this Honourable Court seems just.

15. The Plaintiffs claim against the defendant The Ontario Power Authority ("OPA"):

- a) general damages in the amount of \$5,000,000.00;
- b) special damages in an amount to be determined at, or before, the trial of this action;
- c) aggravated damages in the amount of \$1,000,000.00;
- d) punitive damages in the amount of \$1,000,000.00;
- e) damages pursuant to section 24(1) of the *Canadian Charter of Rights and Freedoms*;
- f) pre-judgment and post-judgment interest pursuant to the *Courts of Justice Act*, R.S.O. 1990, Chapter C. 43;
- g) their costs of this action, including Harmonized Sales Tax; and,
- h) such further and other relief as to this Honourable Court seems just.

16. The Plaintiffs claim against the defendant The Corporation of the Town of Niagara on the Lake ("NOTL"):

- a) general damages in the amount of \$5,000,000.00;
- b) special damages in an amount to be determined at, or before, the trial of this action;
- c) aggravated damages in the amount of \$1,000,000.00;
- d) punitive damages in the amount of \$1,000,000.00;
- e) damages pursuant to section 24(1) of the *Canadian Charter of Rights and Freedoms*;
- f) pre-judgment and post-judgment interest pursuant to the *Courts of Justice Act*, R.S.O. 1990, Chapter C. 43;
- g) their costs of this action, including Harmonized Sales Tax; and,
- h) such further and other relief as to this Honourable Court seems just.

17. The Plaintiffs claim against the defendant Her Majesty the Queen in Right of Ontario ("Ontario"):

- a) general damages in the amount of \$5,000,000.00;
- b) special damages in an amount to be determined at, or before, the trial of this action;
- c) aggravated damages in the amount of \$1,000,000.00;
- d) punitive damages in the amount of \$1,000,000.00;
- e) damages pursuant to section 24(1) of the *Canadian Charter of Rights and Freedoms*;
- f) pre-judgment and post-judgment interest pursuant to the *Courts of Justice Act*, R.S.O. 1990, Chapter C. 43;
- g) their costs of this action, including Harmonized Sales Tax; and,
- h) such further and other relief as to this Honourable Court seems just.

18. The Plaintiffs claim against PlanET Biogas Solutions:

- a) general damages in the amount of \$5,000,000.00;
- b) special damages in an amount to be determined at, or before, the trial of this action;
- c) aggravated damages in the amount of \$100,000.00;
- d) punitive damages in the amount of \$100,000.00;
- e) pre-judgment and post-judgment interest pursuant to the *Courts of Justice Act*, R.S.O. 1990, Chapter C. 43;
- f) their costs of this action, including Harmonized Sales Tax; and,
- g) such further and other relief as to this Honourable Court seems just.

19. The Plaintiffs claim against CEM Engineering:

- a) general damages in the amount of \$5,000,000.00;
- b) special damages in an amount to be determined at, or before, the trial of this action;
- c) aggravated damages in the amount of \$100,000.00;
- d) punitive damages in the amount of \$100,000.00;
- e) pre-judgment and post-judgment interest pursuant to the *Courts of Justice Act*, R.S.O. 1990, Chapter C. 43;
- f) their costs of this action, including Harmonized Sales Tax; and,
- g) such further and other relief as to this Honourable Court seems just.

III. THE PARTIES

i) The Plaintiffs

20. Richard and Judi Zirger (interchangeably the "Zirgers," "Richard," or "Judi") are spouses who own the property municipally known as 59 Hunter Road, RR #3, in the Town of Niagara on the Lake ("Zirger farm"). Their property was and is, at all material times, adjacent to the Vandermeer property ("Vandermeer property") at 2021 Four Mile Creek Road, Niagara on the Lake.

ii) The Defendants

a) Vandermeer Nurseries

21. Vandermeer is a corporation incorporated pursuant to the laws of Ontario. Vandermeer operates a cut flower chrysanthemum growing business from its greenhouses adjacent to the Zirger farm. At all material times, Vandermeer obtained funding from Ontario and private lenders to develop, construct and operate an anaerobic digester on its property to create energy from renewable biomass.

b) Meridian Credit Union

22. Meridian Credit Union ("Meridian") is a credit union which holds security on the Vandermeer property.

23. On July 19, 2011, Meridian appointed Zeifman Partners Inc. the Receiver in respect of the Vandermeer property, assets and undertaking.

c) The Town of Niagara on the Lake

24. NOTL is a municipality incorporated under the *Municipal Act 2001*, S.O. 2001, c.25, as amended.
25. NOTL, through its agents, servants and employees, was, at all material times, responsible for municipal zoning, approving site plans and granting building permits within its municipal boundaries, and in particular, those that Vandermeer submitted.

d) Vincor Canada (c.o.b. as "Constellation Brands")

26. Vandermeer processes grape pomace which it obtains from Vincor Canada as agricultural waste.
27. As of June 5, 2006, that is more than three years before Vandermeer's Certificate of Approval to operate a Waste Disposal Site was granted, in a deal worth \$1.58 billion Canadian dollars and which required Canadian court approval, Vincor became a subsidiary of Constellation Brands Inc. Constellation is the world's leader in premium wine with a broad portfolio of more than 100 wines, beers and spirits. In its undated public announcement on the internet, Constellation stated that it has 10,000 employees. Constellation trades on the New York Stock Exchange under the symbol "STZ."
28. As a marketer and producer of wines and related products, Vincor did not meet the legal definition of a farm operation as found in O. Reg. 347.
29. In an undated entry on its website that appears to be from 2012, Vincor International states that it was the world's 8th largest wine company by revenue. Vincor trades on the Toronto Stock Exchange under the symbol "VN." The entry also states that Vincor "engages in the production, marketing, and distribution of wines and related refreshment beverages, principally in Canada, the United Kingdom, the United States, and Australia."
30. On June 13, 2012, Vincor announced that it would now operate as Constellation Brands.

31. As a global multi-national marketing agency traded on the Toronto and New York Stock Exchanges, Constellation Brands does not meet the legal definition of a farm operation. Consequently, the materials Vandermeer obtains from Constellation do not meet the legal definition of "agricultural waste."

e) The Ontario Power Authority

32. The Ontario Power Authority ("OPA") was established by *The Electricity Restructuring Act, 2004*. The OPA, through its agents, servants and employees, was, at all material times, responsible for procuring sources of renewable energy for Ontario and in particular, renewable energy from Vandermeer Nurseries.
33. The *Electricity Restructuring Act, 2004* set out the following objectives for the OPA:
- 1) To forecast electricity demand and the adequacy and reliability of electricity resources for Ontario for the medium and long-term;
 - 2) To conduct independent planning for electricity generation, demand management, conservation and transmission and develop integrated power system plans for Ontario;
 - 3) To engage in activities in support of the goal of ensuring adequate, reliable and secure electricity supply and resources in Ontario;
 - 4) To engage in activities to facilitate the diversification of sources of electricity supply by promoting the use of cleaner energy sources and technologies, including alternative energy sources and renewable energy sources;
 - 5) To establish system-wide goals for the amount of electricity to be produced from alternative energy sources and renewable energy sources;
 - 6) To engage in activities that facilitate load management;
 - 7) To engage in activities that promote electricity conservation and the efficient use of electricity;
 - 8) To assist the Ontario Energy Board by facilitating stability in rates for certain types of customers; and,
 - 9) To collect and provide to the public and the Ontario Energy Board information relating to medium and long term electricity needs of Ontario and the adequacy and reliability of the integrated power system to meet those needs.

f) **The Queen in right of Ontario**

34. Ontario is named in these proceedings pursuant to the provisions of the *Proceedings Against the Crown Act*, R.S.O. 1990, c. P.27, as amended.
35. Ontario, as represented by the Minister of the Environment (“MOE”) and the Minister of Agriculture, Food and Rural Affairs (“OMAFRA”), are the executive branches of the provincial government in the Province of Ontario and, through its agents, servants and employees, was responsible at all material times for funding, regulating and supervising the approval, construction and operation of Vandermeer's anaerobic digester.
36. Anaerobic digestion projects could currently fall under the following *Acts* and regulations:
- Assessment Act*, R.S.O. 1990, c. A.3, as amended
 - O. Reg. 282/98*
 - Drainage Act*, R.S.O. 1990, c. D.17, as amended
 - Electricity Act, 1998*, S.O. 1998, c.15
 - O. Reg. 160/99*
 - Environmental Assessment Act*, R.S.O. 1990, c. E.18, as amended
 - Environmental Bill of Rights, 1993*, S.O. 1993, c.28, as amended
 - Environmental Protection Act*, R.S.O. 1990, c. E.19, as amended
 - RRO 1990, Regulation 347*
 - O. Reg. 359/09*
 - O. Reg. 452/09*
 - Farming and Food Production Protection Act, 1998*, S.O. 1998, c.1
 - Greenbelt Act, 2005* S.O. 2005, Ch. 1.
 - Green Energy Act, 2009*, S.O. 2009, c.12
 - Nutrient Management Act, 2002*, S.O. 2002, c.4, as amended
 - O. Reg. 106/09*
 - O. Reg. 267/03*
 - Pesticides Act*, R.S.O. 1990, c. P.11, as amended
 - O. Reg. 63/09*
 - Planning Act*, R.S.O. 1990, c. P. 13, as amended
 - O. Reg. 452/09*
 - O. Reg. 419*

g) PLANet Biogas

- 37. PlanET Biogas ("PlanET") is a corporation incorporated pursuant to the laws of Ontario. PlanET specializes in the design, construction and service of biogas plants.
- 38. Vandermeer retained PlanET to design, build and obtain permits, licenses, certificates and approvals for an anaerobic digester on its property. PlanET services Vandermeer's digester.
- 39. PlanET was contractually bound to notify Vandermeer if, after the time of the proposal or bid closing, changes were made to the applicable laws.

h) CEM Engineering

- 40. CEM is an engineering consulting firm located in St. Catharines, Ontario.
- 41. CEM offers consulting, design and project services for the biogas sector. CEM liased with NOTL concerning Vandermeer's application for site plan approval, building permits and gave advice in respect of anaerobic digestion and in particular, odours emanating from the digester. CEM advised NOTL that there would be little impact of siting an anaerobic digester on the Vandermeer property.

IV. FACTUAL SUMMARY

i) Niagara on the Lake's unique agricultural environment

- 42. All the farmland in Niagara on the Lake is primarily flat. The farms are unique in size and are much smaller than the majority of farms in Ontario. Most farms are 25 acres or less and 40% are less than 10 acres in size.
- 43. All the farmland in Niagara on the Lake is governed by the Ontario Greenbelt Plan (2005) ("Plan"), designated "Protected Countryside- Agricultural system" and a "specialty crop area – Niagara Peninsula Tender Fruit and Grape Area." Both Vandermeer Nurseries and the plaintiffs' farm are located in a protected agricultural zone for tender fruit growing.
- 44. One of the Plan's central objectives is to preserve agricultural land as a continuing commercial source of food and employment.

45. According to the Plan, lands within speciality crop areas shall not be re-designated for non-agricultural uses.
46. The Plan defines “agricultural-related uses” as “those farm-related commercial and farm-related industrial uses that are *small scale* and *directly related* to the farm operation and are required in close proximity to the farm operation.”
47. The Plan defines “minimum distance separation formulae” to mean “formulae developed by the Province to separate uses so as to reduce incompatibility concerns about *odour from livestock facilities*.”
48. The Plan defines “infrastructure” to include “waste management systems, electric power generation and transmission including *renewable energy systems...*” (emphasis in original)
49. For lands falling within the Protected Countryside, the Greenbelt Plan, all existing, expanded or new infrastructure subject to and approved under the *Planning Act* or other environmental approval is permitted provided it supports agriculture or the rural economic activity that exists and is permitted within the Greenbelt.
50. The location and construction of infrastructure and expansions, extensions, operations and maintenance of infrastructure in the Protected Countryside are subject to the following:
 - a. Planning, design and construction practices shall minimize, wherever possible, the amount of the Greenbelt, and particularly the Natural Heritage System, traversed and/or occupied by such *infrastructure* ;
 - b. Planning, design and construction practices shall minimize, wherever possible, the *negative impacts* and disturbance of the existing landscape, including, but not limited to, impacts caused by light intrusion, noise and road salt; and,
 - c. Where practicable, existing capacity and coordination with different *infrastructure* services is optimized so that the rural and existing character of the Protected Countryside and the overall urban structure for southern Ontario established by Greenbelt and any provincial growth management initiatives are supported and reinforced.
51. *Planning Act* decisions must conform to the policies in the Greenbelt Plan (2005).

ii) **The Niagara Biosphere**

52. Both the Zirger farm and the Vandermeer property are located approximately 6 km from an internationally recognized and protected area, the Niagara Escarpment Biosphere Reserve.
53. A biosphere is comprised of all the land, water and atmosphere that support life. A biosphere reserve is an international designation of recognition from UNESCO (the United Nations Educational Scientific and Cultural Organization) for an area in the world which is deemed to demonstrate a "balanced relationship between humans and the biosphere." The UNESCO designation means that collaborative efforts among people in the designated area are to promote the sustainability of local economies and communities as well as the conservation of the terrestrial/ or coastal ecosystems they are in.
54. A biosphere reserve designation gives an area international recognition for the important ecological and cultural values in an area. It also provides a mechanism to apply sound stewardship and protection to the use of resources in an area to support present and future generations.
55. Ontario's Niagara Escarpment Biosphere is only one of 16 biosphere reserves in Canada and is part of a network of 580 reserves in 114 countries.
56. The UNESCO designation recognizes the Niagara Escarpment as an internationally significant ecosystem for its special environment and unique environmental plan. The designation puts Ontario's Niagara Escarpment in the company of such other well-known biospheres as the Galapagos Islands, the Serengeti and the Florida Everglades.
57. Given its location approximately 6 km away from this internationally recognized biosphere reserve, there is a unique growing environment on the Zirger farm that merits protection.

iii) **The plaintiffs' farm**

58. Richard Zirger's family has owned the property at 59 Hunter Road continuously for over 40 years.
59. From the time his parents bought the farm, the family has grown peaches, apples, pears and other tender fruits.

- 60. In 2006, Richard's mother became unable to live independently at the farm.
- 61. In 2008, the plaintiffs bought the family farm and applied to obtain a building permit from NOTL to construct a new house on the property.
- 62. On or about May 7, 2009, NOTL granted Richard a building permit to construct a new house. On or about May 8, 2009, Richard paid NOTL's fees for lot grading, building and water metering. Construction on the new Zirger house was completed in November 2009.
- 63. Until recently, the plaintiffs used migrant workers to harvest their crops and their fruits have been sold as a cash crop.
- 64. Since Vandermeer began operating its anaerobic digester, the plaintiffs' crops have been damaged by airborne matter that is causing, among other things, premature aging of the trees and the sudden appearance of both black spots on their fruit and the Peach Tree Bore. These occurrences are only evident on the farm properties that are in line with the wind direction from the digester.
- 65. As the plaintiffs cannot sell damaged fruit, their farm is now experiencing farm losses.
- 66. More recently, the plaintiffs made the difficult decision to plough under their peach orchard as the trees were irretrievably damaged and their fruit unfit for human consumption.
- 67. The plaintiffs believe that with the Vandermeer digester located next door, any food crop they might be able to grow would not meet CanadaGAP requirements.
- 68. CanadaGAP, is an independent, not for profit food safety program for companies that produce, pack and store fruits and vegetables. It is designed to help implement effective food safety procedures within fresh produce operations. Its two manuals, one specific to Greenhouse operations, the second for other fruit and vegetable operations, have been developed by the horticultural industry and reviewed for technical soundness by Canadian government officials. The manuals are designed for companies implementing Good Agricultural Practices (GAPs) and maintaining an effective food safety program.
- 69. The manuals are based on a rigorous hazard analysis applying the seven principles of the internationally-recognized HACCP (Hazard Analysis and Critical Control Point) approach. The program was benchmarked to and officially recognized by the Global

Food Safety Initiative (GFSI). Audit and certification services for the program are delivered by accredited Certification Bodies.

70. According to section 2.1 of its fruit and vegetable manual, food production sites must be assessed for biological, chemical and physical hazards due to previous use and adjacent agricultural and non-agricultural activities.

71. The plaintiffs believe that the activities on the Vandermeer site jeopardize food safety. In particular, they believe that as a result of situating the digester on the Vandermeer property, they will never be able to demonstrate to CanadaGAP that there is no threat to food safety from

- a) cross-contamination from crops with novel traits;
- b) air, water and soil pollution from the Vandermeer site; or,
- c) unusually high levels of animal and bird activity with associated feces.

72. The plaintiffs are especially concerned about the effect of the growing rat and mouse population on food safety and have recently noticed that a snowy owl is living near the digester, suggesting that the rodent population is abnormally high.

iv) Vandermeer Greenhouses

73. Vandermeer operates two greenhouse sites, one in Ajax, Ontario, the other next to the Zirger farm in Niagara on the Lake. Vandermeer grows flowers at both locations.

74. The Vandermeer's property in Niagara on the Lake is 6.7 hectares in size, with approximately 280,000 sq. feet of greenhouse space.

75. The Vandermeer property is subject to two site specific by-laws. In 1986, NOTL passed by-law No. 500DU-86, an amendment to by-law 500A-74, which zoned the property "Special Exemption 21.A.2 V Greenhouse Establishment Zone," permitting a greenhouse operation.

76. According to By-law 500 Dv-86, an anaerobic digester is not a permitted use on the part of the Vandermeer property that is zoned "Special Exemption 21.A.2 V Greenhouse Establishment Zone." The digester is not an accessory structure to the permitted use.

77. Greenhouses can be operated anywhere as they are not dependent on the quality of the soil or natural growing conditions. In fact, greenhouses are often used to overcome

shortcomings in the growing qualities of land, such as a short growing season or low levels of light.

78. Heating is one of the greatest costs associated with greenhouse operations. The higher costs of heating a greenhouse with natural gas or oil has lead greenhouse operators to switch to alternative fuels, including biogas.
79. To reduce its costs, in May 2006, Vandermeer attempted to obtain approval for a wind turbine system on its Niagara property. At the public hearings held to consider the project, area residents expressed their disapproval. Vandermeer abandoned the project.
80. Subsequently, Vandermeer obtained significant public funding through OMAFRA's Ontario Biogas Systems Financial Assistance Program ("OBSFA") to assist it with the costs of developing an anaerobic digester for its Niagara on the Lake site.

v) **Anaerobic Digestion**

81. Anaerobic digesters are commonly used to handle excess animal manure at cattle, poultry and swine operations, to control odour from manure and to create energy. These facilities are usually located on large farm properties, a considerable distance away from neighbouring farms.
82. There is a continuing controversy over whether anaerobic digestion creates green energy and some proposals for digesters have been fought off by community opposition as digesters are known to facilitate factory farming, emit gases and raise safety issues.
83. An anaerobic digester composts (or "digests") organic materials in a machine that limits access to oxygen. This encourages the generation of methane and carbon dioxide ("biogas") which is then burned as fuel through an energy recovery system to make electricity and heat. Non-agricultural source materials produce more gas than farm based materials which, in turn, allows for greater rates of power generation.
84. Methane is extremely flammable and may form explosive mixtures with air. Methane is also an asphyxiant and may displace oxygen in an enclosed space. Possible health effects of breathing in methane at high concentrations, resulting in oxygen deficiency, are increased breathing and pulse rates, lack of muscular coordination, emotional upset, nausea and vomiting, loss of consciousness, respiratory collapse and death.

85. Methane off-gas can penetrate the interiors of buildings and expose occupants to significant levels of methane. Some buildings have specially engineered recovery systems below their basements to actively capture methane and vent it away.
86. Where there is more gas than the energy recovery system can use, either through high gas production rates or poor maintenance of the system, flares can be used to eliminate excess gas that pose health and safety risks.
87. The handling of digester feedstock and the process of anaerobic digestion produces other gases including (but not limited to): nitrogen and sulphur oxides; hydrogen sulfide; particulate matter; carbon monoxide and ammonia. The presence of these gases also poses safety risks, including (but not limited to): explosion; asphyxiation; disease; excessive noise and hydrogen sulphide poisoning. Biogas and its constituents, many of which are colourless and odourless, can unknowingly expose operators and visitors to serious bodily harm and in some circumstances, exposure has been fatal. Appropriate test equipment must be available at all times to monitor gas levels in the digester.
88. Common hazards associated with anaerobic digesters also include drowning, spills, electric shock, chemical burns and noise exposure. Several anaerobic digesters have been damaged or destroyed by fires fuelled with biogas. In light of the risk of explosion, significant safety precautions must be taken. No open flames should ever be used near a digester. Also, equipment such as large engines and electric generators should be inspected daily and must be suitable to the environment so that a spark will not ignite the highly combustible gas anaerobic digestion produces. There must be no smoking near the digester.
89. As a consequence of these risks, extreme caution and adequate signage are necessary when working with biogas. Digester-associated tasks and maintenance should be performed without anyone having to enter confined spaces, including pits. Adequate ventilation, appropriate precautions, good work practices, engineering controls, and adequate personal protective equipment minimize the dangers associated with biogas. All employees associated with anaerobic digestion systems or who manage organic residuals must be appropriately trained and both safety equipment and an emergency

action plan must be in place, clearly visible to all visitors, and made available to all local emergency services.

90. The solid, post-digestion remains of the process of anaerobic digestion, commonly known as the "digestate," are often sold to be used as fertilizer. Since the digestate may contain chemical contaminants, in many jurisdictions there are regulations which specify its permissible contents and how it may be used. These management criteria aid in the control of algae producing pollutants, inhibiting the contamination of ground and surface water.
91. The risk of ground or surface water pollution is compounded where an anaerobic digestion operation uses feedstock from other farm or non-agricultural sources. Improper on-site feedstock storage of imported feedstock material can increase the risk of algae producing nutrients leaching into ground and surface waters.

vi) Approvals Process for Biogas Systems in Ontario

92. According to the Ontario Ministry of Agriculture, Food and Rural Affairs ("OMAFRA") there are four main approval routes for biogas systems in Ontario, based on the type of material being digested, and the type of energy produced. Those four processes are:
- a) Nutrient Management Regulated Mixed Anaerobic Digestion Facility (RMADF) approval for manure-based biogas systems mixing up to 25 percent of certain off-farm materials, and producing any type of power output;
 - b) Renewable Energy Approvals (REA) for all electricity-based biogas projects (except systems with RMADF approval or agricultural systems at a farm with a Nutrient Management Strategy);
 - c) Certificate of Approval for non-electricity biogas projects (such as using biogas as a heating fuel) using waste as inputs; or,
 - d) No approval for non-electricity biogas systems using only exempt wastes such as agricultural waste.
93. Vandermeer's project does not comply with any of these approval routes.

vii) Vandermeer's project

94. On February 11, 2008, Vandermeer submitted a site plan application to the Planning and Development Services department at NOTL proposing the development of primary and secondary Anaerobic Digester tanks, a Digestate Storage tank, input or feedstock storage bunkers, and a generation station. The site plan drawing shows that Vandermeer was planning to build two generators on its site, with a combined nameplate capacity of 750 kwh hours.
95. The anaerobic digester was designed with a cogeneration unit so that heat and power could be provided to Vandermeer's greenhouse and excess power could be sold to the grid.
96. Vandermeer has represented to the community that its project provides "green energy to power and heat [their] greenhouses and ... significantly reduce [their] carbon footprint." In media interviews given after construction was completed, it reportedly promised that there would be no odours from the digester and that the facility is "an asset to the community." In an undated letter it alleges it sent to its neighbours, Vandermeer said: "We believe that going green is the right thing to do for the environment, as well as the smart thing to do to manage energy costs. We remain committed to being a good corporate citizen."
97. Vandermeer represented to NOTL that it would only use farm based materials, namely, chicken manure, silage and grape pomace, in its digester.
98. By letter dated March 31, 2008, MOE commented on Vandermeers' application for site plan approval. MOE confirmed that feedstock would be from the existing agricultural operation and also other agricultural based materials. MOE noted that additional approvals might be required and specifically stated that in the event that Vandermeer began accepting non-agricultural based waste, the facility would require a Certificate of Approval or an approved Nutrient Management Strategy.
99. On June 2, 2008, NOTL approved Vandermeer's application for a site plan agreement, enacting By-law No. 4224-08. In approving Vandermeer's application, NOTL established specific standards and procedures regarding the supervision and control of Vandermeer's digester.

100. According to section 14.4 of by-law 4224-08, should NOTL receive complaints regarding the noise, odour, storm run-off, traffic and/or maintenance of the site, Vandermeer is to use best efforts to resolve them. In the event that Vandermeer fails to do so, section 14.6 of the By-law provides that NOTL shall have the right on 15 days' notice enter the lands and do any work required.
101. The By-law contemplates the possibility that Vandermeer might change what it put in its digester. Section 14.1 of By-law No. 4224-08 states: "Should the Owner [Vandermeer] begin accepting non-agricultural based waste (not exempt per Ontario Regulation 347) to supplement or be wholly used as feedstock, the digester facility would require a certificate of approval from the Ministry of the Environment pursuant to the Environmental Protection Act and/or an Ontario Ministry of Agriculture, Food and Rural Affairs approved Nutrient Management Strategy pursuant to the Nutrient Management Act."
102. On June 26, 2008, NOTL granted Vandermeer Building Permit #8612 for the construction of 3 anaerobic digestion tanks. While the construction of the generation station and permanent covers for the input storage bunkers required separate and additional building permits, Vandermeer never proceeded with these as the storage bunkers are uncovered, leaving them open to the air and elements, creating putrid odours and attracting mice, rats and birds.
103. NOTL granted another building permit to Vandermeer on July 15, 2008, permitting the construction of a foundation for a pre-fabricated steel storage building (Permit #8836).
104. On or about July 25, 2008, Vandermeer signed a Renewable Energy Standard Offer Program Contract ("RESOP") with the Ontario Power Authority ("OPA") to provide electricity to the provincial grid.
105. None of the local residents were notified of or invited to consider Vandermeer's project. No public hearings were convened and NOTL did not impose any additional regulatory requirements on the project.
106. Paragraph 9 of the RESOP contract characterizes biogas as a renewable fuel. Schedule 2 defines bio-gas as the product of a renewable resource and organic matter

that is derived from a plant and available on a renewable basis as renewable biomass.

The contract defines renewable biomass and bio-gas as renewable fuels, not waste.

107. Schedule 2 defines a Renewable Generation Facility as facility that generates electricity exclusively from a renewable fuel.
108. Section 3.7 specifically prohibits Vandermeer from using any other source or fuel for generating the electricity it is selling to the grid. Section 7.1(12) provides that in the event the generator uses another type of fuel, the contract will be in default.
109. Paragraph 10 sets a contract price for the electricity generated from Vandermeer's renewable fuel.
110. The plaintiffs state that Vandermeer's project is a renewable energy project.
111. On October 1, 2008, Vandermeer sought to add non-agricultural source materials as feedstock for its digester and applied for a Certificate of Approval pursuant to s. 27 of the *Environmental Protection Act*, R.S.O. 1990, c. E.19, as amended, with Ontario's Ministry of the Environment ("MOE"). No public hearings were convened to consider Vandermeer's application.
112. The structural work for the digester was completed in or about December 2008 and the digester became operational in or about April 2009.
113. The plaintiffs state that as Vandermeer's anaerobic digester was designed for electrical production, it is a Renewable Energy Project which requires a Renewable Energy Approval ("REA") to legally operate in Ontario.
114. On October 30, 2009, MOE granted Vandermeer a Provisional Certificate of Approval for a farm based anaerobic digestion facility. The Certificate effectively transforms a portion of the Vandermeer property into a Waste Disposal Site without rezoning, studies or public consultation.
115. The Certificate states that the Site is to be constructed, operated and maintained in a manner which ensures the health and safety of all persons and prevents adverse effects on the natural environment or on any persons.
116. The Certificate does not impose any criteria for the land application of the digestate.
117. NOTL granted Vandermeer a further building permit on December 23, 2009 for the construction of a control room building (Permit #9443).

118. After Vandermeer applied for a Certificate of Approval to change its feedstock, NOTL did not take any steps to ensure that Vandermeer was in compliance with its by-laws.

viii) **Digester contents**

119. The Certificate of Approval allows Vandermeer to input a variety of materials into its digester. According to its daily log, Vandermeer uses the following inputs to feed its digester: pomace obtained from Vincor; coffee; separated solids; waste from Tim Hortons; peppers; and, pet food. It does not input any manure.

120. According to Part B, section 1 of the Certificate, Vandermeer may input:

- a) Organic waste;
- b) Agricultural waste;
- c) O. Reg. 267/03 Schedule I and Schedule II off-farm anaerobic digestion materials;
- d) Grape pomace from Vincor (considered "agricultural waste");
- e) 50% of the total input must be "on-farm anaerobic digestion materials..."

121. "On-farm anaerobic digestion materials" are anaerobic digestion materials that are generated at an agricultural operation.

a) Organic Waste

122. According to the Certificate, "Organic waste" means "materials limited to solid or liquid municipal and industrial waste derived from plants or animals, listed in Part B, Condition 1.2 of this Certificate, and all readily biodegradeable..."

123. Part B, Condition 1.2 states:

The operation of this *Site* is limited to receipt and processing of the following types of *organic waste*:

- (a) liquid fats, oils and grease (FOG), of plant and animal origin, and accompanying food residuals collected from grease interceptors and/or grease traps at food production, food processing and/or food wholesale and retail facilities;
- (b) liquid flocculation and scum waste from dissolved air floatation (DAF) systems from wastewater for the production of animal- or plant-based materials or from the production of any other food for human consumption;
- (c) solid DAF from wastewater for the production of animal- or plant-based materials or from the production of any other food for human consumption that has been treated to a minimum temperature of 70C for a minimum of one (1) hour or at a minimum temperature of 50C for a minimum of twenty (20) hours, to ensure complete inactivation of pathogens prior to being delivered to the *Site*. Reports confirming

treatment, provided by the supplier of the solid DAF, shall be maintained at the *Site* to verify compliance with this condition; and
 (d) dried spent grain and solubles (DSGS) from an ethanol plant.

124. In a Vandermeer Working Group meeting, Vandermeer was directed to stop putting DAF into the digester, highlighting the *ad hoc* way the digester is being operated. At the time, the plaintiffs were told that the lead time for this change would be 55 days. However, the plaintiffs noticed an immediate odour reduction.

b) Agricultural Waste

125. O. Reg. 347 defines “agricultural waste” as waste generated by a farm operation activity but does not include,
- (a) domestic waste that is human body waste, toilet or other bathroom waste, waste from other showers or tubs, liquid or water borne culinary waste,
 - (b) waste from a sewage works to which section 53 of the *Ontario Water Resources Act* applies,
 - (c) a dead farm animal within the meaning of Ontario Regulation 106/09 (Disposal of Dead Farm Animals) made under the *Nutrient Management Act, 2002* or a regulated dead animal within the meaning of Ontario Regulation 105/09 (Disposal of Deadstock) made under the *Food Safety and Quality Act, 2001*,
 - (d) inedible material within the meaning of Ontario Regulation 31/05 (Meat) made under the *Food Safety and Quality Act, 2001*, or
 - (e) any material that is condemned or derived from a carcass at a registered establishment within the meaning of the *Meat Inspection Act* (Canada).
126. According to O. Reg.347, a “farm operation activity” means an activity mentioned in paragraphs 1 to 4 of the definition of “farm operation.” A “farm operation” means an agricultural, aquacultural or horticultural operation, other than a race track or a zoo, that is engaged in any or all of the following:
1. Growing, producing or raising farm animals.
 2. The production of agricultural crops, including greenhouse crops, maple syrup, mushrooms, nursery stock, tobacco, trees and turf grass.

3. The processing, by the operator of the farm operation, of anything mentioned in paragraphs 1 and 2, where the processing is primarily in relation to products produced from the agricultural, aquacultural or horticultural operation.

4. The use of transport vehicles by the operator of the farm operation, to transport anything mentioned in paragraphs 1 and 2, where the use of transport vehicles is primarily in relation to products produced from the agricultural, aquacultural or horticultural operation.

127. Paragraph 1.3 (b) of Vandermeer's Certificate of Approval states:

(b) In accordance with Item 7, grape pomace received from Vincor Canada is considered to be *agricultural waste* and may be accepted at the *Site*. Should the process in the production of the grapes as described in Item 7 change, or should the *Owner* wish to accept grape pomace from a new source, the *Owner* shall notify the *Director* and the *District Office* and provide supporting information for review to determine whether the grape pomace will continue to be, or is, considered *agricultural waste*...

128. According to its internet website, Vincor Canada is not a farm operation or an agricultural operation. Vincor is Canada's largest producer and marketer of wine and related products. Its Canadian headquarters is in Mississauga. As described elsewhere herein, Vincor is a subsidiary of an American multi-national firm. Vincor Canada's waste is not "agricultural waste."

129. Vandermeer's digestate is not derived from inputs that are at least 50% agricultural-sourced material. Vandermeer does not have a Nutrient Management Plan, Nutrient Management Strategy or Non-Agricultural Source Management Plan.

130. In or around September 2013, Vandermeer notified the plaintiffs that it intended to increase productivity by adding three more local wineries as suppliers of grape pomace.

c) O. Reg. 267/03 Schedule I Waste

131. Schedule 1 of O. Reg. 267/03 of the *Nutrient Management Act* provides that:

The following materials may be received at an agricultural operation for treatment in a regulated mixed anaerobic digestion facility:

1. Waste products from animal feeds listed in Classes 1, 2, 3, 4 and 5 of Part 1 of Schedule IV to the Feeds Regulation, 1983 (SOR/83-593) made under the *Feeds Act* (Canada), excluding any materials that contain an animal product that has not been denatured.

2. Materials that previously would have been a product described in paragraph 1 but are no longer suitable for use in feeding farm animals for reasons that do not include contamination by another material.
 3. Organic waste matter derived from the drying or cleaning of field or nut crops.
 4. Organic waste matter derived from the processing of field or nut crops.
 5. Organic waste matter derived from the production of ethanol or biodiesel.
 6. Aquatic plants.
-
7. Organic waste matter derived from food processing at,
 - i. bakeries,
 - ii. confectionery processing facilities,
 - iii. dairies and facilities that process dairy products,
 - iv. fruit and vegetable processing facilities,
 - v. cereal and grain processing facilities,
 - vi. oil seed processing facilities,
 - vii. snack food manufacturing facilities,
 - viii. breweries and distilleries,
 - ix. wineries, and
 - x. beverage manufacturing facilities.
 8. Revoked: O. Reg. 338/09, s. 81 (3).
 9. Fruit and vegetable waste.
 10. Organic waste materials from a greenhouse, nursery, garden centre or flower shop that is not part of an agricultural operation
132. A regulated mixed anaerobic digestion facility is defined as a mixed anaerobic digestion facility that is regulated under Part IX.1 of the *Nutrient Management Act* and is not subject to an environmental compliance approval issued in respect of an activity mentioned in subsection 27 (1) of the *Environmental Protection Act*.
133. O.Reg. 267/03 defines a “mixed anaerobic digestion facility” as anaerobic digestion of both on-farm anaerobic digestion materials and off-farm anaerobic digestion materials in the same facility.
134. O. Reg. 267/03 defines a “mixed anaerobic digestion facility” as an anaerobic digestion facility that treats both on-farm anaerobic digestion materials and off-farm

anaerobic digestion materials on a farm unit on which an agricultural operation is carried out.

135. As Vandermeer's digester is not regulated under the *Nutrient Management Act, 2002* and operates pursuant to Certificate of Approval obtained under s. 27(1) of the *EPA*, it is not a regulated mixed anaerobic digestion facility. As a result, it has no legal authority to process waste from wineries.

136. O.Reg. 347 defines "anaerobic digestion materials" as materials that are intended for treatment in a mixed anaerobic digestion facility, whether the materials are generated at the agricultural operation or received at the agricultural operation from an outside source.

ix) Ontario's commitment to clean energy

137. In May 2009, the Legislature of Ontario passed the *Green Energy and Green Economy Act, 2009*, which enacted the *Green Energy Act, 2009* ("GEA") and amended and repealed various statutes. The legislative changes were made to pursue the policy objectives of the *GEA*, which came into force on September 9, 2009.

138. *GEA* was created to expand renewable energy generation in Ontario. One of the purposes of the *Act* is to remove barriers to green energy projects.

139. Section 1 of the *GEA* defines "renewable energy source" as an energy source that is renewed by natural processes to include biomass, biogas and biofuel. With reference to the provisions of the *Electricity Act*, *GEA* defines a "renewable energy generation facility" as a generation facility that generates electricity from a renewable energy source and it specifically excludes a waste disposal site. *GEA* incorporates the definition of "waste disposal site" from s. 25 of the *Environmental Protection Act*, R.S.O. 1990 190, c. E-19. Although the *EPA*'s definition of "waste" does not include the type of materials Vandermeer is putting in its digester, those materials are classified as "waste" by regulation.

140. According to O. Reg. 347, "agricultural waste" is waste that is generated by a "farm operation activity." A "farm operation activity" is defined by its engagement in a number of activities, including growing greenhouse crops. "On-farm anaerobic digestion materials" are those anaerobic digestion materials that are generated at an

“agricultural operation” – a term that is not defined by the Regulation and which excludes marketing agencies and fast food outlets.

141. *GEA* defines “renewable energy project” as the construction, installation, use operation, changing or retiring of a renewable energy generation facility.
142. Section 2 of the *GEA* states that it is to be administered in a manner that promotes community consultation.
143. These objectives were reflected in amendments to the *Electricity Act, 1998*, S.O. 1998, c. 15, Sch. A to create a Feed in Tariff (“FIT”) Program, to the *Environmental Protection Act*, R.S.O. 1990, c. E.19 to provide for a new streamlined renewable energy approval process, and to the *Planning Act*, R.S.O. 1990, c. P.13 to remove municipal approval requirements for renewable energy projects.
144. Ontario provides various sources of funding for biogas electricity projects. OMAFRA provided significant funding for the Vandermeer project through the Ontario Biogas Systems Financial Assistance Program.

x) **The Feed-In Tariff (“Ontario FIT Program”)**

145. On September 24, 2009, the Minister of Energy gave directions to the Ontario Power Authority (“OPA”), pursuant to s. 25.32 and 25.35 of the *Electricity Act, 1998*, to create an electricity price program for power from renewable energy sources.
146. The OPA is a corporation created without share capital established under the *Electricity Act, 1998*. The *Electricity Act, 1998* provides that the business and affairs of the OPA are to be carried on without the purpose of gain and any profits are to be used by the OPA for the purpose of carrying out its objects. The OPA acts in accordance with directions from the Minister of Energy. The objects of the OPA include forecasting electricity demand in the Province for the medium and long term.
147. Ontario amended the *Electricity Act, 1998* to provide for the development of an electricity price program, known as the Feed-In Tariff. The *Electricity Act, 1998* defines a FIT Program as:
 - a. ... a program for procurement, including a procurement process, providing standard program rules, standard contracts and standard pricing regarding classes of generation facilities differentiated by energy source or fuel type,

generator capacity and the manner by which the generation facility is used, deployed, installed or located.

148. The Ontario FIT Program is open to projects that produce electricity from renewable sources including wind, solar photovoltaic, bioenergy and waterpower up to 50 MW.

149. The direction was publicly released and set out the broad policy objectives of the FIT Program including to promote clean energy, create jobs, introduce a simpler method to procure and develop generating capacity from renewable energy sources, and, at the same time, encourage community and Aboriginal equity participation in the program.

150. On the same day, the OPA issued the FIT Rules version 1.0 defining the specific procedure pursuant to which applications would be received and processed for FIT Contracts.

151. The Minister's direction set out specific features to be included by the OPA in the design of the FIT Program including price setting, general contract provisions, transition provisions from previous renewable energy programs, domestic content, and restrictions to project siting on prime agricultural land.

152. In addition, the OPA was required to develop and deliver a number of program elements to encourage community, Aboriginal and municipal involvement. The September 24, 2009 direction also required that the OPA conduct a formal program review at least once every two years.

153. Vandermeer's project was transitioned into the FIT program.

154. As Vandermeer's anaerobic digester is a Renewable Energy Project, Vandermeer should have applied for a Renewable Energy Approval from Ontario and Ontario should have considered the project on that basis.

xi) Adverse Effects

155. Since Vandermeer's digester was constructed and commissioned, the Zirgers have noticed that noise and odour levels on their property have increased substantially. The plaintiffs believe that the Vandermeer Waste Disposal Site is the cause of these and other nuisances.

156. The Zirgers believe that off-farm waste is stored at the Vandermeer site in open bunkers, causing additional odours and inviting vectors, rats and mice.
157. While the defendants have attempted to eliminate the odours and to address the noise levels, the bunkers storing the feedstock for the digester remain open to the air and the Zirgers continue to experience unpleasant odours, unwanted vectors, spills and noises.
158. The Zirgers worry that the activities being conducted on the Vandermeer property are affecting their health. They have dull headaches and cough more often, have difficulty breathing, experience nausea, nasal and sinus pain, throat irritation and their sleep is interrupted by noises and pungent odours. They have also experienced psychiatric symptomology including: depression; anger; anxiety; irritability; hopelessness and stress.
159. As a result of these nuisances, the Zirgers have lost the use and enjoyment of their property. They cannot leave any of their windows open as the smell from the Vandermeer property is putrid and easily absorbed by the fibres in their home. They cannot sit or eat outdoors with friends or relatives nor can they enjoy gardening or invite friends or relatives over to enjoy the farm.
160. The Zirgers have also encountered difficulty retaining trades and fruit pickers to work on their farm. Trades and pickers have complained about the smell and reported suffering nausea and headaches as a result.
161. Migrant workers have also complained about the difficult working conditions caused by the putrid odours coming from the Vandermeer property. They have worked with masks over their noses to cope with the odour.

xii) **The Vandermeer Working Group**

162. Concerned neighbours insisted on NOTL becoming involved in addressing the nuisances emanating from the Vandermeer property and as a result, a Vandermeer Working Group was created with NOTL's acquiescence. The Vandermeer Working Group was formed to address the many public complaints NOTL received about noises, odours, vectors and other adverse impacts of the digester.

163. The Working Group is comprised of concerned residents and representatives from NOTL, MOE, the Region of Niagara and OMAFRA. There could have been more community involvement but, when a large number of concerned neighbours attended the third Vandermeer Working Group Meeting on July 27, 2010, Stephen Bedford, who was then the Director of NOTL's Planning Department and the Chair of the Vandermeer Working Group, restricted participation in the Group to two families and two farmers.
164. On an *ad hoc* basis, the Ministries of Agriculture and Environment are assisting Vandermeer to resolve complaints but, have not been able to eliminate the adverse effects of the digester.
165. Minutes of the Working Group's meetings contain statements suggesting that affected parties should take their concerns to the Normal Farm Practices Protection Board for a hearing. Even so, some Minutes also discourage members from doing so as they state that rather than seeking a Board hearing, it would be "more conducive to continue with open dialogue between everyone as positive changes have been made on site as a result of the Working Committee."
166. Despite the statement noted above, the plaintiffs state that little has changed as a result of the Working Group's meetings.

xiii) **The plaintiffs' attempt to obtain information about the digester**

167. On May 11, 2012, the plaintiffs made a number of *Freedom of Information* requests concerning the Vandermeer site and project.
168. While NOTL, the Region of Niagara and OMAFRA responded to their request in a timely manner, as of this date, MOE has yet to fulfill its statutory obligations by responding to the plaintiffs' request.
169. In addition, MOE has not responded to the plaintiffs' request for information concerning a change Vandermeer proposed to make in a notice they received from Vandermeer dated July 31, 2012. Despite numerous follow up letters, MOE has not responded to the plaintiffs' concerns or request for information.

xiv) **The Normal Farm Practices Board**

170. On May 15, 2012, the plaintiffs filed an application in the Normal Farm Practices Protection Board to determine whether the activities being carried on at the Vandermeer site are normal farm practices.

171. Appended to the plaintiffs' application was a request for documentary disclosure from Vandermeer. The plaintiffs sought an Order compelling Vandermeer to disclose all of the following documents and records:

- a) copies of all records and supporting documentation submitted by Randy Van Berkel in application for a Certificate of Approval to operate a Waste Disposal Site at 2021 Four Mile Creek Road;
- b) copies of all government approvals for the anaerobic digester, including design specifications, minimum distance separation calculations and any consideration that was given to the location of the digester;
- c) copies of any records considering the potential for the digester posing environmental, health and safety risks;
- d) copies of all records describing the Respondent's attempts to mitigate the odour, noise, vibration and emissions from the digester, including any consultations that were made with third parties for same;
- e) copies of all documents showing the receipt of off farm waste and all documents describing its content;
- f) copies of all signage at the site;
- g) copies of all documents related to the release of untreated biogas at the site, including each instance when the flare was in operation, its duration and why it was utilized;
- h) copies of all odour, noise and other nuisance complaints and particulars of any responses, actions or measures taken or recommended to reduce or eliminate same;
- i) copies of any and all records confirming the enrolment and completion of the Biogas Systems Operators' course by personnel employed by the Respondent and any other training for employment at the site;
- j) copies of all records pertaining to health and safety precautions at the site, including emergency preparedness measures and procedures and staff training at the site;
- k) copies of the results of any and all analyses concerning emissions, metal concentrations, noise, vibrations and odour emanating from the site and also the nutrient content of the digestate;

- l) copies of any and all information and records concerning the quantities of digestate transferred off-site and particulars concerning its final destination and use;
- m) copies of all the Respondent's annual reports concerning the operation of the digester;
- n) copies of any and all charges under environmental legislation relating to the operation of the digester; and,
- o) copies of all applications for government funding of the digester project, including any and all responses and approvals thereto.

172. On August 2, 2012, Chairman Little made an Order for a four day hearing commencing on November 13, 2012.

173. Chairman Little ordered that all documentary evidence was to be exchanged on or before September 14th at 12:00 noon. His Order did not respond to the plaintiffs' request for documentary disclosure nor specify the nature of the documents Vandermeer was to disclose. Disclosure was to be made on a voluntary basis without any guidelines or supervision by the Board, with the Receiver determining relevance.

174. On August 15, 2012, the plaintiffs wrote to OMAFRA seeking a status report on their *Freedom of Information* request.

175. On August 20, 2012, OMAFRA advised the plaintiffs that it would not make a decision on their request until September 7th and that third parties, (whom the plaintiffs believed were related to or in the employ of Vandermeer), would have 30 days to appeal their decision, following which records responsive to the request would be released, with any necessary redactions.

176. In a letter dated September 5, 2012, Vandermeer's Receiver advised the plaintiffs that it was concerned about jeopardizing any sale of the Vandermeer property and as a consequence, would be providing only limited disclosure to the Board. As a condition of receiving even this limited disclosure, Vandermeer's Receiver demanded that the plaintiffs and their counsel sign an undertaking agreeing not to use the documents for any purpose as they contained "sensitive commercial information."

177. The plaintiffs took the position that the undertaking was over-broad as many of the listed documents, including Minutes of the Vandermeer Working Group, could not be

classified as “sensitive commercial information.” Accordingly, they asked the Receiver to reconsider its position and to state grounds for each claimed confidence.

178. In a letter dated September 12, 2012, the Receiver presented a redrafted undertaking for the plaintiffs to sign but, also, indicated that as it was responding to the application as the Receiver, and not as Vandermeer. Consequently, the Receiver stated did not “know whether there is other documentation that exists that is relevant to the issues in this proceeding, or that might otherwise fall within the scope of the list set out in your application.” The Receiver committed to making “best efforts” to produce other specific documents on request, provided it determined they were relevant.
179. On September 14th, the plaintiffs wrote to the Board to advise of the state of its attempt to obtain documentary disclosure through its various *Freedom of Information* requests, to give notice that it would not be able to meet the Board’s timetable for disclosure and to request an Order for written interrogatories.
180. Also on September 14th, the plaintiffs wrote to the Receiver advising that its request for an undertaking was contrary to the Board’s Rules.
181. The Receiver replied on the same date by asserting that the plaintiffs had “an ulterior purpose” in seeking disclosure.
182. On September 18th, the plaintiffs wrote to the Board to express their concerns about the lack of disclosure and to question whether the proper parties were before the Board. They noted that the Receiver had not disclosed any odour complaints, any internal OMAFRA documents concerning odour, seagull and fly issues or the composition of the materials placed in the digester to produce gas; farm practices at Vandermeer; classification of the digestate; emails concerning problems with peach trees located around the digester; crop damage from ammonia; or any safety manuals or particulars of any specialized training Vandermeer’s employees obtained to operate the digester.
183. In light of the lack of disclosure, the plaintiffs raised concern about the fairness of the hearing and reiterated their request for written interrogatories pursuant to ss. 28 and 31 of the Board’s Rules.
184. The plaintiffs wrote to the Board again on October 18th requesting an adjournment, directing the Board’s attention to the continuing problem they were having obtaining disclosure and expressing concern that as the Board had not yet ruled on written

interrogatories, the timing of the documentary exchange would not permit follow up questions or an opportunity to retain experts. The Receiver objected to the plaintiffs' request and claimed that it would be prejudiced thereby.

185. On October 18th, the Board sent the plaintiff's a Notice of Hearing which was signed by its Secretary who stated the Board's address as: "OMAFRA, 1 Stone Road West, Guelph Ontario N1G 4Y2."

Bias: The Board is not impartial

186. The Board shares offices and staff with OMAFRA.

187. Vandermeer obtained funding for its project from OMAFRA.

188. OMAFRA employees have an on-going relationship with Vandermeer and its staff.

189. OMAFRA employees worked with Vandermeer to have its pomace and digestate exempted from the *EPA* and *Nutrient Management Act* regulations. In an email dated September 11, 2009, Don Hilborn of OMAFRA wrote to three other OMAFRA employees stating that "we need to get pomace allowed."

190. OMAFRA's employees are members of the Vandermeer Working Group. They have been working with Vandermeer to respond to the plaintiffs' odour and other complaints.

191. On May 27, 2010, well after all approvals had been granted, Jake DeBruyn, OMAFRA's main contact person on the Vandermeer project at that time, sought the assistance of another OMAFRA employee to develop a safety manual for Vandermeer.

The Board refused to order disclosure

192. To address the problems they were having obtaining disclosure, the plaintiffs asked the Board to allow it to make written interrogatories of Vandermeer.

193. On October 22, 2012, the Board decided that it would review the plaintiffs' list of questions, determine their relevancy and forward only those considered relevant to the Receiver who would then decide on which questions it would answer. The Board left scheduling responses to the parties, with a residual jurisdiction to intervene as necessary.

194. By letter dated October 31st, the Receiver advised as to its three witnesses. Two of its witnesses were OMAFRA employees and the third, an employee of MOE. As a result of this information, the plaintiffs again wrote to the Board to express concern over the lack of an even playing field. Given the lack of disclosure, the plaintiffs pointed out the advantage the Receiver would have at the hearing as the plaintiffs still had not received responses to their FOI requests nor any disclosure from Vandermeer. The plaintiffs reiterated their request for an adjournment.
195. On November 6, 2012, the Farm Board rejected the plaintiffs' request for an adjournment.
196. On November 7th, six days before the scheduled hearing, the Receiver delivered its document brief. It refused to provide any financial information showing whether its income is from growing flowers or selling renewable energy to the grid and if both, in what proportion.
197. On November 13th, the parties attended at the Board. Following a lengthy discussion that was conducted in front of Vandermeer's chief witness who is employed by OMAFRA, the Chair granted an adjournment on terms, rescheduling the hearing for February 19, 2013 without making any Orders concerning the disclosure of evidence.
198. The plaintiffs withdrew their application on December 7th, citing the Board's lack of impartiality, lack of structural independence, bias and errors of law in its handling of the disclosure issues. The plaintiffs also had concerns as to whether the proper parties were before the Board.
199. On December 13th, the Receiver wrote to the Board accusing the plaintiffs of abusing the Board's process and reiterating its request to have the application summarily dismissed "because the applicants were so obviously not prepared to proceed, and had abused the process of the tribunal." In closing its letter, the Receiver stated: "Unless the application is dismissed, these applicants will be allowed to continue to bring the administration of justice through this tribunal into disrepute."

V. LIABILITY OF THE DEFENDANTS

i) Strict Liability

200. The activities on Vandermeer's property constitute a non-natural usage of the land in the area where the plaintiffs live and where Vandermeer conducts its business in that:

- a. the plaintiffs grow fruit for human consumption and as such require no permits, permissions, public consultations, notices or studies to farm while the activities on the Vandermeer property are not properly characterized as "farming" since they require legal authorizations, permits, approvals, warning signage, notices, inspections, safety precautions, emergency planning and specialized training;
- b. the plaintiffs farm their land while the Vandermeer's property grows flowers in greenhouses and uses agricultural products to manufacture something that cannot be grown, planted, harvested or eaten and which is therefore a non-agricultural product, namely energy;
- c. the practices in the area where the plaintiffs live support fruit farming while the escape of gases into the air and water table from stockpiling rotting grapes and other feedstocks and operating the digester endanger the continued viability of the plaintiffs' orchard;
- d. while the plaintiffs experience variable profits and losses depending on sale of the yield from the year's crop of edible agricultural products, Vandermeer makes a consistent and predictable profit from selling renewable energy under a long-term contract;
- e. while the farming activities on the plaintiffs' property contribute to purifying the air and creating sweet smells, the activities on the Vandermeer property create odour and greenhouse gas emissions;
- f. the land in the area where the plaintiffs live poses no health or safety risks to its neighbours while the activities on the Vandermeer property pose a significant risk of harm to human health and the signage around the property reflects this;
- g. Vandermeer's property stores a substantial quantity of methane gas which is not usually found in greenhouses or on small tender fruit farms and which is a dangerous greenhouse gas that is highly flammable and poses an explosion risk that if materialised, could cause irreparable harm to the plaintiffs. Methane off-gas can also penetrate the interiors of buildings, displacing oxygen and exposing occupants such as the plaintiffs to significant levels of methane and creating a risk of explosion and harm to human health;
- h. the activities on Vandermeer's property create traffic of a character, noise and duration that is out of character with the traffic and noise patterns in the quiet rural neighbourhood that surrounds it;
- i. the land in the area where the plaintiffs live is warmed by the sun and open to the elements, the seasons and the natural environment while the Vandermeer's

- property has largely been covered over by greenhouses, gravel roads, unsightly equipment, storage bunkers, tanks and a large open flare;
- j. while safety on the Vandermeer property depends on releasing excess gas in an uncontrolled manner through an open flare which runs for days and weeks on end, open flares are not found on any other properties in the area and no other property poses comparable health and safety risks to its neighbours;
 - k. while neighbouring farms employ temporary migrant workers with no specialized training to tend to and pick crops, Vandermeer employs full-time, long-term employees who require significant specialized knowledge, training and supervision and who enjoy benefits and working conditions that more closely resemble factory workers than farmers;
 - l. while fruit pickers working on the plaintiffs' farm would not normally be exposed to any health or safety risks during the course of their employment but for the digester, employees at the Vandermeer property are at risk of explosion; asphyxiation; disease; excessive noise and hydrogen sulphide poisoning;
 - m. while anaerobic digesters are usually used to handle excess animal manure at large cattle, poultry and swine operations and to control odour from manure, Vandermeer's digester was never used to control odour from excess on-farm animal waste and in fact does not use proportionally 50% by volume of manure as a feedstock. As a result, excess animal waste is not a local concern that requires a remedy;
 - n. as Vandermeer's digester uses less than the 50% by volume of manure as required by Ontario regulations, it is processing industrial waste which is an unnatural use of prime agricultural lands;
 - o. while the plaintiffs only buy the amount of energy they require for themselves and to operate their farm, the Vandermeer property creates more energy than is needed to heat its greenhouse;
 - p. the feedstock Vandermeer uses, its open storage, and raw input are a cause of many on-going odour and vector problems that the plaintiffs have been experiencing;
 - q. although Vandermeer's property is zoned for mixed agricultural and residential uses, it's being used to generate energy for commercial sale, which is neither a residential or agricultural use;
 - r. the activities on the Vandermeer property are harmful to the long-term interests of local agriculture. While Vandermeer's property is in a protected tender fruit area, greenhouse cultivation of flowers can be conducted anywhere. Using the property to generate energy for commercial sale is contrary to the local land use and opposed to the long-term interests of local agriculture. These activities will negatively impact the local agriculture industry, reduce any carbon reduction benefits and compete with local agriculture if farmers decide to grow crops specifically as a feedstock for creating energy.
201. The escape of gases, odour, noise, and vectors from Vandermeer's non-natural usage of land has interfered with the plaintiffs' use and enjoyment of their property causing the plaintiffs' damage.

202. The plaintiffs also state that the conversion of off-farm waste at the Vandermeer site to commercial energy is not a normal farm practice.
203. There are significant health, safety environmental and economic risks associated with anaerobic digesters. Normal farm practices do not present these risks to neighbouring farms.
204. The plaintiffs state that Vandermeer is strictly liable to them.

ii) Nuisance

a) Private Nuisance

205. The plaintiffs state that using prime agricultural lands to dispose of waste is not a normal farm practice.
206. The plaintiffs further state that the odour, noise, pests, traffic, seepage, contamination, emissions, fumes and escape of gases from the Vandermeer site have caused unreasonable damage to their property and unreasonable interference with the enjoyment and use of their property.
207. Emissions from the digester have caused physical damage to the plaintiffs' crops and economic loss, unreasonably interfering with the plaintiffs' enjoyment and use of their property. Emissions from the digester have also caused the plaintiffs physical harm, discomfort and inconvenience.
208. Vandermeer owns the land on which the digester is situated, manages and controls the operations of the digester and/ or the Waste Disposal Site and is therefore liable to the plaintiffs for the nuisances that originate from it.

b) Public Nuisance

209. The plaintiffs submit that the siting and operation of the Waste Disposal Site has created a public nuisance.
210. The plaintiffs further submit that the operation of the anaerobic digester unreasonably interferes with the comfort and convenience of the persons residing in or coming within the sphere of its influence in that it:
- a. creates excessive noise and interferes with public rights of passage on a public roadway;

- b. poses health and safety risks from air contamination and offensive odour; and,
- c. interferes with the proper operation of the SLOMA drain and other watercourses.

211. The plaintiffs state that as the defendant NOTL is responsible for planning and granting building approvals, it knew or ought to have known that locating an anaerobic digester on a small farm property in a prime agricultural area was contrary to good planning principles as it would create constant traffic, emissions, noise, odour and vectors, causing a public nuisance.
212. The plaintiffs state that as the defendants MOE and OMAFRA have regulatory authority for environmental planning and approvals in Ontario, they knew or ought to have known that locating an anaerobic digester on a small property in a prime agricultural area would create constant traffic, emissions, noise, odour and vectors, causing a public nuisance.
213. The plaintiffs state that using prime agricultural property as a Waste Disposal site creates an unreasonable and substantial interference with public rights and in particular, the right to a healthy environment in section 7 of the *Canadian Charter of Rights and Freedoms*.
214. The plaintiffs plead and rely upon s. 103 of the *Environmental Bill of Rights*, S.O. 1993, C.28, permitting any person who has suffered personal injury or direct economic loss as a result of a public nuisance causing harm to the environment to bring an action in respect of such losses.
215. The plaintiffs state that the defendants Vandermeer, NOTL and Ontario are liable to them.

iii) Trespass

216. The plaintiffs state that Vandermeer has discharged or has caused the discharge of emissions onto their property causing damage and interference with the use and enjoyment of their land.
217. The plaintiffs therefore state that Vandermeer is liable to them in trespass.

iv) Negligence

218. The plaintiffs claim negligence against all defendants.

a) Vandermeer Nurseries

219. The plaintiffs state that Vandermeer owed them a duty of care and was negligent in that it:

- a. misrepresented to NOTL the nature of its project;
- b. misrepresented to NOTL the likely effects of its project;
- c. misrepresented to NOTL that there would be no escape of gases and no odours from the digester;
- d. misrepresented that its project was a small scale on farm project;
- e. failed to notify the plaintiffs about its application for a Certificate of Approval to convert their farm property into a Waste Disposal Site;
- f. minimized and/or misstated the impacts of its digester on neighbouring farms;
- g. failed to mitigate the adverse effects of its operation, including but not limited to: odour; noise; and vectors;
- h. failed to develop a safety manual; and,
- i. failed to properly train its staff to operate, regulate, inspect and monitor the anaerobic digester and related activities on its property.

220. The plaintiffs state that Vandermeer knew or ought to have known it was reasonably foreseeable that the anaerobic digester and emissions from the digester would pose health, safety and nuisance risks to the Zirgers, interfere with the use and enjoyment of their property, diminish their property's value, cause physical damage to the plaintiffs' crops and economic loss.

221. As a result of Vandermeer's negligence, the plaintiffs have suffered a diminution in the value of their property, crop loss and physical harm, discomfort and inconvenience.

b) CEM Engineering

222. CEM owed the plaintiffs a duty of care in that the plaintiffs are adjacent property owners who were mostly likely to be affected by the siting of an anaerobic digester on the Vandermeer property.

223. It was reasonably foreseeable that the plaintiffs would be exposed to any adverse effects of the digester.

224. CEM was responsible for designing the digester and for designing the facility to minimize odour emissions and especially emissions when materials are transferred into a storage facility and transferred from the storage facility into the mixed anaerobic digestion facility.

225. CEM was negligent in that it:

- a) misrepresented to NOTL that the Vandermeer project was an on-farm project when it knew or ought to have known that Vandermeer had applied or was contemplating applying for a RESOP program contract;
- b) misrepresented to NOTL that anaerobic digestion produces no odours;
- c) misrepresented to NOTL that the concrete vessels it designed were completely air tight when they are not and allow putrid odours to escape;
- d) misrepresented to NOTL that odours "have no opportunity to escape" when in fact they have and have caused and continue to cause the plaintiffs' damage;
- e) misrepresented that "Should [odours] escape, then anaerobic digestion (in the absence of oxygen) would cease";
- f) failed to establish the appropriate set-back requirements for the nearest odour receptor;
- g) knew or ought to have known that the digester would be using significantly less than 50% manure;
- h) knew or ought to have known that the digester was designed to utilize more than 25% off-farm waste;
- i) knew or ought to have known Vandermeer required MOE approval to operate its digester and should have obtained such approval prior to seeking site plan approval from NOTL;
- j) failed to apply for a Renewable Energy Approval when it knew or ought to have known that Vandermeer's project is a renewable energy project;
- k) ensure that the facility was designed to manage non-combusted bio-gas;
- l) failed to ensure that the methods the digester uses to store, treat and process feedstock and output minimize odour and other emissions; and,
- m) designed a project that created sink holes on the site, endangering the plaintiffs' property and lives.

226. As a result of these failures, omissions and breaches, the plaintiffs state that CEM has caused them damage.

c) The Ontario Power Authority

227. The OPA owed the plaintiffs a duty of care in that the plaintiffs are adjacent property owners who were mostly likely to be affected by the siting of an anaerobic digester on the Vandermeer property.

228. It was reasonably foreseeable that the plaintiffs would be exposed to any adverse effects of the digester.

229. The OPA was responsible for awarding Vandermeer a renewable energy contract in the form of an RESOP or FIT contract.

230. The OPA was negligent in that it failed to ensure that the Vandermeer project obtained a Renewable Energy Approval.

d) The Town of Niagara on the Lake

231. The plaintiffs state that NOTL owed them a duty of care and was negligent in that:

- i) it failed to formulate appropriate policies for protecting the unique agricultural land where the Vandermeer and Zirger farms are situated;
- ii) failed to take a precautionary approach to siting the digester on specialty crop lands zoned for tender fruit growing;
- iii) failed to take a precautionary approach to considering and deciding to approve Vandermeer's application for site plan approval, building permits and the relocation of the Sloma drain thereby breaching the plaintiffs' s. 7 *Charter* rights;
- iv) failed to consider and impose the appropriate set back distances;
- v) approved the project despite the fact that it did not comply with the *Nutrient Management Act* and *Regulations*;
- vi) relied on CEM Engineering's statements with respect to the operation of the digester and the odours it would create without independent verification or study;
- vii) approved the project when it violated zoning by-laws and the total lot coverage exceeded by-law limits;
- viii) failed to consider how changes to the materials inputted into the Vandermeer digester would impact on its consideration and approval of the

- project, and, in particular, impact on whether the project still met the regulatory criteria for “agricultural purposes,” and “on-farm” projects;
- ix) failed to consider how legislative changes to the laws applicable to the project would impact on its consideration and approval;
 - x) failed to impose a condition that in the event that Vandermeer sought to change the inputs to its digester, that it would have to initiate a new application and rezone its property appropriately;
 - xi) failed to impose a condition that in the event that Vandermeer changed its inputs and applied for a MOE Certificate of Approval to convert its farm into a waste disposal site that public notice and hearings would be required to properly assess the project, its impacts and the potential harms;
 - xii) failed to impose appropriate additional conditions to protect the plaintiffs in the event that Vandermeer obtained Ontario’s approval to make changes to the project and feedstock;
 - xiii) granted Vandermeer Nurseries municipal approvals on the basis of insufficient information before Ontario had reviewed and approved the project;
 - xiv) failed to impose, remove or alter the land use controls placed on the Vandermeer property and project;
 - xv) failed to notify the plaintiffs of Vandermeer’s application to change the use of their property;
 - xvi) failed to notify the plaintiffs of Vandermeer’s application to build an anaerobic digester on its property;
 - xvii) failed to establish legal standards for the use of anaerobic digester technology in the municipality;
 - xviii) failed to convene a public hearing to consider Vandermeer’s application for building permits;
 - xix) failed to properly assess Vandermeer’s application for site plan approval;
 - xx) failed to require Vandermeer to provide a scale drawing showing the relationship between the anaerobic digester and neighbouring land uses, including neighbours’ residences, lot lines and adjacent public roads;
 - xxi) failed to perform a Minimum Distance Separation calculation properly and prior to granting Vandermeer building permits;
 - xxii) failed to require Vandermeer to conduct an environmental impact study and/or air and odour dispersion modelling;
 - xxiii) failed to inspect and enforce its property standards and nuisance by-laws, including the Noise, Zoning, Open Air Burning; Property Standards and Clean Yards By-laws;
 - xxiv) granted Vandermeer a building permit to construct structures that contravened its by-laws, relevant Ontario laws and regulations or, in the

- alternative, that it failed to ensure compliance with its building permits and site plan agreement and in particular, failed to enter the property to remedy odour, noise and vector complaints and failed to require that Vandermeer provide a Nutrient Management Plan when it altered its material inputs;
- xxv) failed to require Vandermeer to obtain a building permit for the storage bunkers and failed to ensure that the bunkers were properly enclosed to reduce odours and other nuisances;
- xxvi) failed to ensure that all storage tanks were covered;
- xxvii) permitted Vandermeer to operate an open flare, exposing the plaintiffs to unreasonable health and safety risks;
- xxviii) failed to consult appropriate third party experts;
- xxix) promised Vandermeer quick approval;
- xxx) failed to impose spill mitigation measures to protect the Sloma Drain and Four Mile Creek from impacts and potential spills from the site;
- xxxi) approved of a design which facilitated the creation of sink holes on the site and which poses a threat to the plaintiffs' property and lives; and,
- xxxii) acted hastily.

232. The Zirgers state that NOTL knew or ought to have known it was reasonably foreseeable that the facility and emissions from the anaerobic digester would pose health, safety and nuisance risks to the Zirgers, interfere with the use and enjoyment of their property, diminish their property's value, cause physical damage to the plaintiffs' crops and economic loss.

e) Her Majesty the Queen in Right of Ontario

233. The plaintiffs state that Ontario owed them a duty of care which arises from Ontario's laws and various representations OMAFRA and MOE made to the plaintiffs at the Working Group and in other forums and was negligent in that it:

- a) did not protect and failed to take reasonable and adequate steps to protect the environment, human food crops, the plaintiffs and persons located near the digester from its adverse effects;
- b) failed to take a precautionary approach to its consideration and approval of Vandermeer's project;
- c) exempted Vandermeer's project from the *Nutrient Management Act* and Regulations;
- d) failed to impose a Nutrient Management Strategy/ Plan with a contingency plan;

- e) failed to advise the plaintiffs about Vandermeer's project and/ or application for a Certificate of Approval;
- f) failed to hold public hearings about Vandermeer's project and/ or application for a Certificate of Approval;
- g) failed to conduct an environmental assessment or impact study about Vandermeer's project and/or application;
- h) failed to properly assess Vandermeer's application for a Certificate of Approval;
- i) failed to ensure that Vandermeer's application met the requirements and regulatory changes for REA approval under the *GEA* and *Green Economy Act* and *EPA*;
- j) exempted Vandermeer's renewable energy project from the regulatory framework for renewable energy approvals and environmental protection in the province of Ontario, thereby breaching same;
- k) failed to enforce the *Green Energy Act* by requiring Vandermeer to apply for a Renewable Energy Approval;
- l) permitting Vandermeer to process off-farm waste
- m) failed to impose a Nutrient Management Strategy/ Plan on the project which describes: the procedures that will be used to decide whether the off-farm material meets the Waste Regulation requirements; how any permanent nutrient storage facilities for storage of off-farm material will meet the Waste Regulation requirements; the procedures that will be used at the operation to manage the digester's output to meet the requirements of the Waste Regulations; and, how Vandermeer's facility will meet the Waste Regulation requirements;
- n) failed to classify the digestate as "waste" and subject it to waste regulation controls;
- o) failed to ensure that Vandermeer developed a safety manual;
- p) failed to conduct adverse effect studies;
- q) failed to regulate, inspect and monitor Vandermeer's facility;
- r) failed to impose any standards to protect the Sloma Drain which is located within 50 feet of the digester and Four Mile Creek (which empties into Lake Ontario); and,
- s) approved the project when it is incompatible with local zoning and farming practices.

234. The Zirgers state that Ontario knew or ought to have known it was reasonably foreseeable that the facility, anaerobic digester and emissions from the digester would pose health, safety and nuisance risks to the Zirgers, interfere with the use and enjoyment of their property, diminish their property's value, cause physical damage to the plaintiffs' crops and economic loss.

235. The Zirgers state that Ontario knew or ought to have known it was reasonably foreseeable that the Vandermeer project qualified as a renewable energy project and should have been considered as such pursuant to s. 47.3 of the *Environmental Protection Act*.

v) *Section 7 of The Charter of Rights and Freedoms*

236. Anaerobic digesters are incapable of making chemical contaminants in the materials used to create energy disappear. Digesters are known to emit nitrogen and sulfur oxides, particulate matter, carbon monoxide and ammonia and may also release other contaminants.
237. Air pollutants with a nitrogen base (NO_x) released by the digester are similar to those from an internal combustion engine. And while emissions from vehicles are strictly regulated, the emissions standards governing digesters are low.
238. Since the burning temperatures of methane are so low, the digester does not destroy pathogens. The ammonia in the gasses coming from the waste materials will not be oxidized and will be released from the digester stack directly into the atmosphere.
239. Vandermeer flares excess gas which is not regulated and which creates a significant risk of adverse mental and physical health impacts. The plaintiffs live in a constant state of fear and worry and have lost a great deal of personal autonomy and control over their health and well-being as a result of the Vandermeer project. The Director's decision and the Ministers' failures compound these impacts.
240. The plaintiffs have been deprived of personal choices that most Canadians take for granted, such as not living in a constant state of fear for their health and safety and being able to work and engage in recreation outdoors.
241. The plaintiffs plead that the statutory process that granted Vandermeer approval to operate a Waste Disposal Site next to the plaintiffs' property violates their right to security of the person as guaranteed by section 7 of the *Canadian Charter of Rights and Freedoms*.
242. The plaintiffs plead that Ontario violated section 7 of the *Canadian Charter of Rights and Freedoms* by:
- a) failing to have a plan to respond to the public, a safety and emergency management plan, and engineering assessments and environmental reports to ensure that the Vandermeer site does not cause harm to human health, the environment, archaeology or natural heritage;
 - b) failing to conduct adverse impact studies on the Vandermeer project prior to its approval;
 - c) failing to require that public hearings be held to consider the project;
 - d) failing to appropriately monitor emissions from the site;

- e) locating a Waste Disposal Facility next to the plaintiffs' home thereby threatening the plaintiffs' physical and psychological well-being and safety;
- f) failing to respond to the plaintiffs request for access to information concerning the project and its effects; and,
- g) permitting Vandermeer to make changes to its operations on an *ad hoc* basis, without further review, study or approvals.

243. The plaintiffs plead that there are adverse health effects caused by having an anaerobic digester located so close to their home. They further plead that requiring them to prove these effects now reverses the burden of proof, violating section 7 of the *Charter*.

244. The plaintiffs further state that Ontario's decision to grant Vandermeer a Certificate of Approval was made in a manner that was contrary to the principles of fundamental justice in that Ontario has arbitrarily, without study, legislated a scheme that permits an anaerobic digester to be operating in a mixed agricultural and residential community without investigating the possibility of adverse health effects.

245. The plaintiffs further state that Ontario's decision was contrary to the principles of fundamental justice in that Ontario:

- a) failed to hold public hearings to consider the project;
- b) failed to assess the special nature of the Vandermeer site and surrounding agricultural lands;
- c) failed to conduct an environmental review of the project and its likely affect on tender fruit crops and trees; and,
- d) failed to consider the application of the precautionary principle.

V. THE PLAINTIFFS' INJURIES

246. As a result of the defendants' various breaches, the plaintiffs have suffered injuries, which include, but are not limited to:

- a. loss of use and enjoyment of their property;
- b. loss of their cash crop production;
- c. loss of their peach trees;
- d. loss of their property value;
- e. physical pain and discomfort;
- f. interrupted sleep; and,
- g. such further and other damages as may be advised prior to trial.

- 247. As a further result of the defendants' various breaches, the plaintiffs have suffered pecuniary damages up to the present and will continue to suffer pecuniary damages in the future, the full particulars of which are not known at this time but will be provided at or before the trial of this action.
- 248. The plaintiffs state that the defendants' conduct demonstrates a wanton and careless disregard of the plaintiff's legal rights and is conduct that deserves this Court's sanction in the form of aggravated, punitive and exemplary damages.
- 249. The plaintiffs plead and rely upon the provisions of the *Negligence Act*, R.S.O. 1990, c. N-1, as amended.
- 250. The plaintiffs propose that this action be tried in the City of Toronto, in the Province of Ontario.

MARSHALL KIREWSKIE

Barristers & Solicitors
201 – 88 Dunn Street
Oakville, Ontario
L6J 3C7

Paul Marshall
LSUC #: 33983T

Cassandra Kirewskie
LSUC #: 36765H

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Fax: (905) 842-4123

Counsel for the Plaintiffs

201

THIS IS EXHIBIT "N"
TO THE AFFIDAVIT OF
BERNIE HUBER
SWORN BEFORE ME AT THE CITY OF ST. CATHARINES
IN THE REGIONAL MUNICIPALITY OF NIAGARA
THIS 31 DAY OF JANUARY, 2014



A Commissioner, etc.

Rina D'Angela, a Commissioner, etc.,
Province of Ontario, for Flett, Beccario,
Barristers and Solicitors, and
Conveyancers Inc.
Expires August 21, 2015.

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STATEMENT OF LOAN AND LINE OF CREDIT BALANCE

<p>Flett, Beccario Barristers and Solicitors 190 Division Street P.O. Box 340</p> <p>ATTENTION: Ross Macfarlane</p>	<p>NAME OF DEBTOR Vandermeer Greenhouses Ltd. Guaranteed by John A. VanBerkel & Anna C. VanBerkel</p> <p>PROPERTY DESCRIPTION: 1stly: Part Lot 2, Plan TP-167, in the Town of NOTL, being the lands described in instrument no. 329325. 2ndly: Part of Lot 3, Plan TP-167 designated as parts 1, 3 & 4 on Plan 30R-4733, Town of NOTL. Subject to an easement in favour of the Town of NOTL over Part 4, on Plan 30R-4733 as in instrument no 532677. 3rdly: Part of lot 108, Plan M-11, Town of NOTL, designated as Parts 2 & 3 on Reference Plan 30R-10152. Plus Part lot 3, Township Plan 167, designated as Part 2 on Reference Plan 30R-4733, plus Part Lot 4, Township Plan 167, designated as Part 2 on Reference Plan 30R-4110 in the Town of NOTL.</p> <p>CIVIC ADDRESS: 2003 - 2021 Four Mile Creek Road, RR 3, Niagara-on-the-Lake. L0S 1J0</p> <p>INTEREST RATE: see below</p> <p>MATURITY DATE: Demand Loan #9 & 15 - April 30, 2011.</p> <p>STATEMENT EFFECTIVE: 28-Jan-14</p>
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TERMED DEMAND LOAN #9 (6.42%)	28-Jan-14	\$960,591.11
ACCRUED INTEREST TO DATE	28-Jan-14	\$164,594.96
DEMAND LOAN #13 (Prime + 2.0%)	28-Jan-14	\$2,112,622.90
ACCRUED INTEREST TO DATE	28-Jan-14	\$273,196.14
DEMAND LOAN # 15 (5.1%)	28-Jan-14	\$662,570.38
ACCRUED INTEREST TO DATE	28-Jan-14	\$90,217.38
LINE OF CREDIT (Prime + 2.0%)	28-Jan-14	\$675,540.29
ACCRUED INTEREST TO DATE	28-Jan-14	\$113,660.40
LETTER OF CREDIT (Prime + 2.0%)	28-Jan-14	\$14,060.00
ACCRUED INTEREST TO DATE	28-Jan-14	\$0.00
DEMAND LOAN # 17 (Prime + 2.0%)	28-Jan-14	\$485,000.00
ACCRUED INTEREST TO DATE	28-Jan-14	\$48,863.83
COSTS INCURRED BY ZEIFMAN & PARTNERS		\$1,186,417.00
TOTAL BALANCE OUTSTANDING:	28-Jan-14	<u>\$6,787,334.39</u>

REMARKS:

Meridian Prime is currently at 3.0%.
 Error and omissions excepted.
 Adjustments will be necessary if any entries are reversed or if taxes and/or other items are paid.

B. HUBER
 MERIDIAN CREDIT UNION LIMITED
 Senior Commercial Credit Specialist

MERIDIAN CREDIT UNION LIMITED

Plaintiff

-and-

Court File No.
VANDERMEER GREENHOUSES LTD.

Defendant

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDINGS COMMENCED AT
TORONTO

AFFIDAVIT OF BERNIE HUBER

FLETT BECCARIO
Barristers & Solicitors
190 Division Street
P.O. Box 340
Welland, Ontario
L3B 5P9

Tel: 905-732-4481
Fax: 905-732-2020

Lawyers for the plaintiff

J. ROSS MACFARLANE
LSUC# 36417N

TAB 3

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE) FRIDAY, THE 21ST
JUSTICE)
DAY OF FEBRUARY, 2014

MERIDIAN CREDIT UNION LIMITED

Applicant

-and-

VANDERMEER GREENHOUSES LTD.

Respondent

APPLICATION UNDER section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985 c. B-3, as amended, section 101 of the *Courts of Justice Act*, R.S.O. 1990 c. C.43, as amended, and Rule 14.05(3)(g) of the *Rules of Civil Procedure*

ORDER

THIS APPLICATION for an Order pursuant to section 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 Zeifman Partners Inc. as receiver (in such capacities, the "Receiver") without security, of all of the assets, undertakings and properties of Vandermeer Greenhouses Ltd. (the "Debtor") acquired for, or used in relation

to a business carried on by the Debtor, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Bernie Huber sworn January 31, 2014 and the Exhibits thereto and on hearing the submissions of counsel for [NAMES], no one appearing for [NAME] although duly served as appears from the affidavit of service of [NAME] sworn [DATE] and on reading the consent of Zeifman Partners Inc. to act as the Receiver,

SERVICE

1. THIS COURT ORDERS that the time for service of the Notice of Motion and the Motion is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

APPOINTMENT

2. THIS COURT ORDERS that pursuant to section 243(1) of the BIA and section 101 of the CJA, Zeifman Partners Inc. is hereby appointed Receiver, without security, of all of the assets, undertakings and properties of the Debtor acquired for, or used in relation to a business carried on by the Debtor, 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 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 of 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 Debtor, 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 Debtor;
- (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 Debtor or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor;
- (g) to settle, extend or compromise any indebtedness owing to the Debtor;
- (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 Debtor, for any purpose pursuant to this Order;
- (i) to undertake environmental or workers' health and safety assessments of the Property and operations of the Debtor;
- (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 Debtor, 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 \$50,000.00, provided that the aggregate consideration for all such transactions does not exceed \$250,000.00; 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, and in each case the Ontario *Bulk Sales Act* shall not apply.

- (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 Debtor;
- (q) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtor;
- (r) to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have; and
- (s) 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 Debtor, and without interference from any other Person.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

4. THIS COURT ORDERS that (i) the Debtor, (ii) all of its current and former directors, officers, employees, agents, 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.

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 Debtor, 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 DEBTOR OR THE PROPERTY

8. THIS COURT ORDERS that no Proceeding against or in respect of the Debtor 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 Debtor 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 Debtor, 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 Debtor to carry on any business which the Debtor is not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtor 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, licence or permit in favour of or held by the Debtor, 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 Debtor 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 Debtor 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 Debtor's 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 Debtor 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 Debtor shall remain the employees of the Debtor until such time as the Receiver, on the Debtor's behalf, may terminate the employment of such employees. 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, 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 shall 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 Debtor, 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.

18. THIS COURT ORDERS that the Receiver and its legal counsel shall pass its 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 \$100,000.00 (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.

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.

GENERAL

24. 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.

25. THIS COURT ORDERS that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtor.
26. 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.
27. 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.
28. THIS COURT ORDERS that the Plaintiff shall have its costs of this motion, up to and including entry and service of this Order, provided for by the terms of the Plaintiff's security or, if not so provided by the Plaintiff's security, then on a substantial indemnity basis to be paid by the Receiver from the Debtor's estate with such priority and at such time as this Court may determine.
29. 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.
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SCHEDULE "A"

RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. THIS IS TO CERTIFY that Zeifman Partners Inc., the receiver (the "Receiver") of the assets, undertakings and properties Vandermeer Greenhouses Ltd. acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (collectively, the "Property") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "Court") dated the _____ of MONTH, 20YR (the "Order") made in an action having Court file number _____-CL-_____, 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*, 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 MONTH, 20YR.

ZEIFMAN PARTNERS INC., solely in its capacity
as Receiver of the Property, and not in its personal capacity

Per: _____

Name:

Title:

TAB 4

Court File No.

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

MERIDIAN CREDIT UNION LIMITED

Applicant

-and-

VANDERMEER GREENHOUSES LTD.

Respondent

APPLICATION UNDER section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985 c. B-3, as amended, section 101 of the *Courts of Justice Act*, R.S.O. 1990 c. C.43, as amended, and Rule 14.05(3)(g) of the *Rules of Civil Procedure*

CONSENT TO ACT

ZEIFMAN PARTNERS INC. ("Zeifman") hereby consents to the appointment of Zeifman as receiver, without security, of all of the assets, undertakings and properties of VANDERMEER GREENHOUSES LTD. pursuant to the provisions of subsection 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, and the terms of an order substantially in the form filed in the above proceeding.

ZEIFMAN PARTNERS INC.



Per: Alison Rutman

Title: President