

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

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*

**MOTION RECORD
(Motion Returnable July 28, 2016)**

July 19, 2016

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**ONTARIO
SUPERIOR COURT OF JUSTICE
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**ONTARIO
SUPERIOR COURT OF JUSTICE
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-and-

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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 MOTION

Zeifman Partners Inc., in its capacity as Receiver of Vandermeer Greenhouses Ltd. (in such capacity, the “**Receiver**”), will make a Motion to a Judge presiding over the Commercial List on Thursday July 28, 2016 at 10:00 a.m., or as soon after that time as the Motion can be heard at the court house, 330 University Avenue, 8th Floor, Toronto, Ontario, M5G 1R7.

PROPOSED METHOD OF HEARING: The Motion is to be heard orally.

THE MOTION IS FOR:

- (a) If necessary, an Order abridging the time for service and filing of this notice of motion and the motion record and dispensing with the further service thereof;

- (b) an Order approving the Purchase Agreement (as defined below) and the transaction contemplated therein (the "**Proposed Transaction**") and vesting the Property (as defined below) in the Purchaser (as defined below), in accordance with the form of Approval and Vesting Order attached hereto as Schedule "A";
- (c) An Order sealing the unredacted Purchase Agreement until the closing of the transaction contemplated therein;
- (d) An Order approving the activities and conduct of the Receiver and its legal counsel to date, as disclosed in the Fifth Report of the Receiver dated July 19, 2016 (the "**Fifth Report**"); and
- (e) Such further and other relief as to this Honourable Court may seem just.

THE GROUNDS FOR THE MOTION ARE:

- (a) Zeifman Partners Inc. was appointed as Receiver of the Respondent, Vandermeer Greenhouses Ltd. ("**Vandermeer**") pursuant to the Order of the Honourable Mr. Justice Spence of the Ontario Superior Court of Justice dated February 21, 2014 (the "**Initial Order**"), on the Application of the Applicant, Meridian Credit Union Limited ("**Meridian**");
- (b) Vandermeer is a cut flower chrysanthemum grower located in Niagara-on-the-Lake, Ontario. Vandermeer also owns and operates an anaerobic digestion facility;

- (c) The Receiver has, among other things, identified, communicated and negotiated with other prospective purchasers in respect of Vandermeer's highly-specialized property (collectively, the "**Property**") but has not yet completed a transaction;
- (d) The Receiver's efforts to sell the Property have been significantly frustrated by the pendency of third-party proceedings potentially affecting the Property and its operations;
- (e) The Receiver has entered into an Agreement of Purchase and Sale and Reinstatement and Amendment Agreement dated June 22, 2016 (together, the "**Purchase Agreement**") with Lakshana Kumara o/a fresh 4 you (the "**Purchaser**"), pursuant to which the Purchaser will purchase from the Receiver substantially all of the Property, subject to the approval of this Honourable Court;
- (f) The Receiver recommends that the Proposed Transaction be approved by this Honourable Court;
- (g) The Receiver has made significant efforts over a protracted period of time to sell and obtain the highest price available for the Property, and has not acted improvidently in entering the Purchase Agreement;
- (h) It is unlikely that a better offer will be obtained through any continued marketing of the Property;
- (i) Completion of the Proposed Transaction is in the best interests of all of the affected parties;

- (j) There has been no unfairness in the process through which the Property has been marketed for sale;
- (k) The Receiver has not acted improvidently in entering the Purchase Agreement;
- (l) The Receiver has conducted itself and the affairs of Vandermeer in accordance with the Initial Order and the other Orders issued in this proceeding, particulars of which are set out in the Fifth Report;
- (m) Disclosure of the purchase price set out in the Purchase Agreement could have a deleterious effect on any future efforts by the Receiver to sell the Property in the event that the Proposed Transaction does not close. Consequently, the Receiver has redacted the purchase price in the Fifth Report served upon other parties in the proceeding;
- (n) The Receiver recommends that this Honourable Court issue an Order sealing the purchase price until closing of the Proposed Transaction;
- (o) Section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985 c. B-3, as amended;
- (p) Sections 100 and 101 of the *Courts of Justice Act*, R.S.O. 1990 c. C.43, as amended;
- (q) Rule 37 of the *Rules of Civil Procedure*; and
- (r) Such further and other grounds as the lawyers may advise.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the Motion:

- (a) Fifth Report of the Receiver dated July 19, 2016; and
- (b) Such further and other evidence as the lawyers may advise and this Honourable Court may permit.

July 19, 2016

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MERIDIAN CREDIT UNION LIMITED
Applicant

-and- VANDERMEER GREENHOUSES LTD.
Respondent

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT
TORONTO

NOTICE OF MOTION

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**ONTARIO
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BETWEEN:

MERIDIAN CREDIT UNION LIMITED

Applicant

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VANDERMEER GREENHOUSES LTD.

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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*

**FIFTH REPORT OF ZEIFMAN PARTNERS INC., IN ITS
CAPACITY AS COURT-APPOINTED RECEIVER**

1. Pursuant to the Order of the Honourable Mr. Justice Spence of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated February 21, 2014 (the "**Initial Order**", a copy of which is attached hereto as **Exhibit "A"**), on the Application of the Applicant, Meridian Credit Union Limited ("**Meridian**"), Zeifman Partners Inc. was appointed as Receiver (in such capacity, the "**Receiver**") of the Respondent, Vandermeer Greenhouses Ltd. ("**Vandermeer**").

2. Vandermeer is a cut flower chrysanthemum grower located in Niagara-on-the-Lake, Ontario. Vandermeer's primary production area is a ground crop with a plant capacity of over 5.9 million stems. The property is 16.5 acres and includes a 275,000 square foot greenhouse and two

residences. Vandermeer also owns and operates an anaerobic digestion facility capable of producing over 8,000 kwh of electricity a day.

PURPOSE OF REPORT

3. The Receiver has filed this Fifth Report in order to update the Court regarding certain of its activities and in support of a Motion seeking an Order, among other things:

- (a) Approving the Purchase Agreement (as defined below) and vesting the Property (as defined below) in the Purchaser (as defined below), in accordance with the form of Approval and Vesting Order attached as Schedule "A" to the Notice of Motion herein;
- (b) Sealing the unredacted Purchase Agreement until the closing of the transaction contemplated therein; and
- (c) Approving the activities and conduct of the Receiver and its counsel as disclosed herein.

RECEIVER'S ACTIVITIES

4. Since the filing of the Fourth Report of the Receiver dated May 27, 2015 (the "**Fourth Report**"), a copy of which is attached hereto as **Exhibit "B"** (without exhibits), the Receiver has engaged in the following activities:

- (a) Identified and contacted potential purchasers of the Vandermeer property (collectively, the "**Property**");
- (b) Updated the Receiver's Confidential Information Memorandum for potential purchasers;

- (c) Communicated with third parties expressing interest in acquiring the Property;
- (d) Attempted to negotiate transaction terms with prospective purchasers of the Property;
- (e) Negotiated the Purchase Agreement with the Purchaser (as such terms are defined below);
- (f) Communicated with Vandermeer's creditors and other stakeholders;
- (g) Defended proceedings commenced by the Zirger Group (as defined in the Fourth Report) before the Normal Farm Practices Protection Board (the "NFPPB");
- (h) Managed various operational matters including staffing and human resources as well as the purchase of mixers and accessories for operations;
- (i) Repaired and replaced digester equipment as required from time to time, including replacing mixers and cables on certain existing mixers;
- (j) Filed applications and negotiated grants through the AgriStability income-replacement program;
- (k) Managed repairs in respect of ordinary wear and tear to the greenhouse and trucking fleet;
- (l) Negotiated with farmers in respect of digestate delivery for the anaerobic digester;

- (m) Communicated with the Ontario Ministry of the Environment and Climate Change (the "MOE") on an ongoing basis in respect of Vandermeer's Certificate of Approval; and
- (n) Engaged and managed consultants as required from time to time.

5. As noted in paragraph 3 above, this Fifth Report is filed in support of a proposed sale of the Property (the "**Proposed Transaction**"). Details regarding the Receiver's other activities shall be set out in a future Receiver's Report.

EFFORTS TO SELL PROPERTY

6. Pursuant to the Initial Order, the Receiver was authorized to market the Property for sale. Details regarding the Receiver's initial efforts to sell the Property are set out in the First Report of the Receiver dated November 17, 2014 (the "**First Report**"), a copy of which is attached hereto as **Exhibit "C"** (without exhibits).

7. The Receiver has continued its efforts to sell the Property since the date of the First Report. Details of the steps taken by the Receiver are set out at paragraphs 14 through 19 below. However, as set out more particularly below, the Receiver's efforts in this regard have been significantly frustrated by factors which include the highly-specialized nature of the Property as well as the pendency of third-party proceedings potentially affecting the Property and its operations.

IMPACT OF NFPPB PROCEEDING

8. Since the date of the First Report, the Receiver has been defending against an Application brought by the Zirger Group (as defined in the Fourth Report) before the NFPPB (the "**NFPPB Proceeding**") regarding the operation of the Vandermeer greenhouse and anaerobic digester.

Several potential purchasers expressed concern that the relief sought by the Zirger Group in the NFPPB Proceeding could have a material impact on the future operation of the Vandermeer greenhouse. Consequently, the pendency of the NFPPB Proceeding has made it very difficult to sell the Property.

9. The hearing of the NFPPB Proceeding was commenced in October 2015, and required approximately 20 full days of hearings. Oral submissions were completed in June 2016. The parties are now awaiting transcripts of the *viva voce* evidence in the proceeding before submitting written closing arguments.

10. The Receiver will provide a full report to this Honourable Court regarding the NFPPB Proceeding upon its completion.

THE PROPOSED TRANSACTION

11. The Receiver has entered into an Agreement of Purchase and Sale dated February 5, 2016 and a Reinstatement and Amendment Agreement dated June 22, 2016 (together, the "**Purchase Agreement**") with Lakshana Kumarage o/a fresh 4 you (the "**Purchaser**"), pursuant to which the Purchaser will purchase from the Receiver substantially all of the Property, subject to the approval of this Honourable Court.

12. A copy of the Purchase Agreement (redacted to maintain the confidentiality of the proposed purchase price) is attached hereto as **Exhibit "D"**. An unredacted copy of the Purchase Agreement will be filed under seal.

13. The Receiver is of the view that the Purchase Agreement and the Proposed Transaction should be approved by this Honourable Court.

14. The Receiver has made significant efforts over a protracted period of time to sell and obtain the highest price available for the Property, and has not acted improvidently in entering the Purchase Agreement. The Receiver is of the view that it is unlikely that a better offer will be obtained through any continued marketing of the Property.

15. Completion of the Proposed Transaction is in the best interest of all of the affected parties. In particular, the first-ranking secured creditor, Meridian, is supportive of the Proposed Transaction despite the fact that it will sustain a significant shortfall. Meridian has funded the receivership proceeding since its inception and Vandermeer's indebtedness to Meridian significantly exceeds any reasonable assessment of the value of the Property. As such, Meridian is the only party with any legitimate economic interest in the outcome of the sale.

16. The Property is highly specialized. In particular, any party operating the facility will require expertise in both commercial greenhouse operations as well as management and operation of the anaerobic digester. The Receiver (with the assistance of Meridian) has attempted to identify and solicit interest from third parties invested in waste management, recycling and/or anaerobic digesters as well as users of greenhouse space for agriculture.

17. The recent performance of the anaerobic digester has been inconsistent and it has therefore been difficult for potential purchasers to assess its contribution to overheads.

18. In light of the foregoing, there have been relatively few parties who expressed any serious interest in acquiring the Property. Those parties who did previously express an interest in the Property had limited investment capital and the Receiver was unable to negotiate acceptable acquisition terms with any of them.

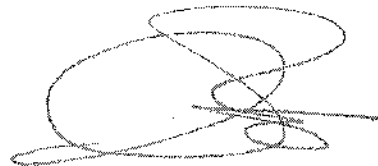
19. There has been no unfairness in the process through which the Property has been marketed for sale.

CONCLUSION

20. For all of the above reasons, the Receiver respectfully requests that this Honourable Court issue an Order:

- (a) Approving the Purchase Agreement and vesting the Property in the Purchaser, in accordance with the form of Approval and Vesting Order attached as Schedule "A" to the Notice of Motion herein;
- (b) Sealing the unredacted Purchase Agreement until the closing of the Proposed Transaction; and
- (c) Approving the activities and conduct of the Receiver and its counsel as disclosed herein.

July 19, 2016



ZEIFMAN PARTNERS INC., in its capacity
as the Court-appointed receiver of Vandermeer
Greenhouses Ltd. and not in its personal or
corporate capacity

tab A

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE MR.) FRIDAY, THE 21ST
JUSTICE SPENCE) 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 affidavits of Bernie Huber sworn January 31, 2014 and February 19, 2014 and the Exhibits thereto and on hearing the submissions of counsel for the Applicant and the Lawyers for Richard Zirger and Judi Zirger, no one appearing for ~~(NAME)~~ ^{any other person on the service list} although duly served as appears from the affidavit of service of Jaime Henderson sworn February 11, 2014 and February 20, 2014 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 \$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.

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 \$250,000.00 (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.

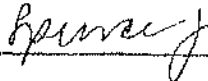
28. THIS COURT ORDERS that the Plaintiff shall have its costs of this motion, up to and including entry and service of this Order, provided for by the terms of the Plaintiff's security or, if not so provided by the Plaintiff's security, then on a substantial indemnity basis to be paid by the Receiver 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.

ENTERED AT / INSCRIT A TORONTO
BY / BOOK NO:
LE / DANS LE REGISTRE NO.:

FEB 21 2016

NS



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:

MERIDIAN CREDIT UNION LIMITED

Plaintiff

-and

Court File No. CV-14-10443-00CL
VANDERMEER GREENHOUSES LTD.

Defendant

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDINGS COMMENCED AT
TORONTO

ORDER

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 B

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

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*

**FOURTH REPORT OF ZEIFMAN PARTNERS INC., IN ITS
CAPACITY AS COURT-APPOINTED RECEIVER**

1. Pursuant to the Order of the Honourable Mr. Justice Spence of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated February 21, 2014 (the "**Initial Order**", a copy of which is attached hereto as **Exhibit "A"**), on the Application of the Applicant, Meridian Credit Union Limited ("**Meridian**"), Zeifman Partners Inc. was appointed as Receiver (in such capacity, the "**Receiver**") of the Respondent, Vandermeer Greenhouses Ltd. ("**Vandermeer**").

2. Vandermeer is a cut flower chrysanthemum grower located in Niagara-on-the-Lake, Ontario. Vandermeer's primary production area is a ground crop with a plant capacity of over 5.9 million stems. The property is 16.5 acres and includes a 275,000 square foot greenhouse and two

residences. Vandermeer also owns and operates an anaerobic digestion facility capable of producing over 8,000 kwh of electricity a day.

PURPOSE OF REPORT

3. The Receiver has filed this Fourth Report in order to update the Court regarding its activities and in support of a Motion seeking an Order, among other things:

- (a) Dismissing the Application commenced by Richard Zirger *et al.* (collectively, the "**Zirger Group**") in Court File No. CV-15-522653 (the "**SCJ Application**"), with costs in favour of the Receiver and Meridian; or
- (b) In the alternative to subparagraph (a) above, scheduling the hearing of a Motion to dismiss the SCJ Application;
- (c) Authorizing the Receiver to borrow an amount of up to \$2,000,000 in order to fund the cost of the receivership proceeding;
- (d) Approving the activities and conduct of the Receiver and its counsel as disclosed herein; and
- (e) Approving the fees and disbursements of the Receiver and its legal counsel.

RECEIVER'S ACTIVITIES

4. Since the filing of the First Report of the Receiver dated November 17, 2014 (the "**First Report**"), the Receiver has engaged in the following activities:

- (a) Communicated with creditors and other stakeholders;

- (b) Responded to and managed legal claims commenced by third parties against Vandermeer and the Receiver, among others;
- (c) Managed various operational matters including staffing and human resources as well as the purchase of mixers and accessories for operations;
- (d) Repaired and replaced digester equipment as required from time to time, including replacing mixers and cables on certain existing mixers;
- (e) Selectively reduced inventory as a conservatory and protective measure;
- (f) Updated the Receiver's Confidential Information Memorandum for potential purchasers;
- (g) Negotiated with a potential tenant for a sublease of certain space within the greenhouse;
- (h) Filed an application and negotiated grants through the AgriStability income-replacement program;
- (i) Managed matters related to the curtailment and supply of gas to the facility;
- (j) Communicated with third parties expressing interest in acquiring Vandermeer's property and delivered a "sign back" in respect of offer received;
- (k) Communicated with the Ontario Ministry of the Environment and Climate Change (the "MOE") on an ongoing basis in respect of Vandermeer's Certificate of Approval;

- (l) Engaged and managed consultants as required from time to time; and
- (m) Negotiated potential transaction terms with prospective purchasers of the Property.

STATUS OF ZIRGER PROCEEDINGS

5. The Receiver seeks an Order dismissing the SCJ Application, with costs in favour of the Receiver. The events related to the various legal proceedings commenced by members of the Zirger Group are described in detail in the Second Report of the Receiver dated March 30, 2015 (the "**Second Report**") and the Third Report of the Receiver dated April 17, 2015 (the "**Third Report**"). Copies of the Second Report and the Third Report are attached hereto (without exhibits) as **Exhibits "B"** and "**C**", respectively.

6. In addition, attached hereto as **Exhibit "D"** is a summary chronology of events related to the Zirger Group and its activities including the various legal and administrative proceedings commenced by its members.

7. The Receiver had agreed to attend a motion to be brought by the Zirger Group on April 2, 2015 for an Order lifting the stay of proceedings. However, on March 27, 2015, the Receiver's counsel received a full banker's box containing the Zirger Group's materials, including a nine volume application record (the "**Application Record**") filed in connection with the SCJ Application, as well as a Supplementary Affidavit, Factum and Book of Authorities.

8. The Notice of Application included in the Application Record (the "**Notice of Application**", a copy of which is attached hereto as **Exhibit "E"**) was issued by the Ontario Superior Court of Justice on February 24, 2015 and was returnable April 2, 2015. The Notice of Application indicated that the Zirger Group was seeking a broad range of orders that went far

beyond a request for leave to proceed. In particular, the Zirger Group sought various Orders under the *Farming and Food Production Protection Act* (Ontario) (the "FFPPA") prohibiting the Receiver from engaging in certain agricultural activities.

9. The Receiver did not consent to the issuance of the Notice of Application or the commencement of the SCJ Application. Furthermore, the Zirger Group had not been granted authority by Order issued by this Honourable Court to do so. Consequently, the SCJ Application was commenced in breach of the Initial Order.

10. The SCJ Application was, on its face, returnable Thursday April 2, 2015. The Receiver's counsel contacted counsel to the Zirger Group to advise of the inappropriateness of the Zirger Group's conduct in breaching the stay of proceedings, its late delivery of its voluminous materials and its failure to bring the matter before the Commercial List, as well as the Receiver's intention to attend before the Commercial List at a 9:30 chambers attendance on Tuesday March 31, 2015. A copy of a letter dated March 27, 2015 from the Receiver's counsel to the Zirger Group's counsel is attached hereto as **Exhibit "F"**.

11. On March 31, 2015, counsel to each of the Receiver, Meridian and the Zirger Group attended in chambers before the Honourable Mr. Justice McEwen, who referred the matter to the Judge hearing the SCJ Application.

12. Following the attendance before the Honourable Mr. Justice McEwen, by letter dated April 1, 2015, the Receiver's counsel requested that the Zirger Group consent to an adjournment of the SCJ Application returnable April 2, 2015. A copy of the letter dated April 1, 2015 is attached hereto as **Exhibit "G"**.

13. The Zirger Group did not consent to the requested adjournment. Accordingly, on April 2, 2015, the parties attended before the Honourable Mr. Justice Morawetz, who stayed the SCJ Application and directed the Zirger Group to bring a Motion to lift the stay in the Commercial List. A copy of the Endorsement of the Honourable Mr. Justice Morawetz dated April 2, 2015 is attached hereto as **Exhibit "H"**.

14. On April 23, 2015, the parties attended before the Honourable Mr. Justice Wilton-Siegel. The stay of proceedings was not lifted for the purpose of the SCJ Application. Instead, the Honourable Mr. Justice Wilton-Siegel issued an Endorsement, on the consent of the Receiver and the Zirger Group, directing that, among other things, the stay under the Initial Order be lifted to permit the Zirger Group to commence a proceeding before the Normal Farm Practices Protection Board (the "**Board**"). A copy of the Endorsement of the Honourable Mr. Justice Wilton-Siegel dated April 23, 2015 is attached hereto at **Exhibit "I"**.

15. On May 8, 2015, the Zirger Group delivered a copy of its latest Application (the "**Board Application**") to the Board. Attached hereto as **Exhibit "J"** is a copy of a letter dated May 8, 2015 from the Zirger Group's counsel to the Board, enclosing the Board Application.

16. Attached hereto as **Exhibit "K"** is a copy of a letter dated May 19, 2015 from the Zirger Group's counsel to the Board, raising concerns regarding the Board's impartiality and requesting certain information and accommodations from the Board.

17. The letter to the Board dated May 19, 2015 references an earlier letter from the Zirger Group's counsel to the Board, pursuant to which an earlier application by members of the Zirger Group to the Board was voluntarily withdrawn. Attached hereto as **Exhibit "L"** is a copy of a letter dated December 7, 2012 from the Zirger Group's counsel to the Board.

18. The Receiver's counsel has requested available dates from the Zirger Group's counsel for the hearing of the Motion to dismiss the SCJ Application. By letter to the Receiver's counsel dated May 19, 2015 (a copy of which is attached hereto as **Exhibit "M"**), the Zirger Group's counsel declined to provide available dates for the hearing until the Zirger Group has reviewed the relevant materials. Consequently, in the alternative to an Order dismissing the SCJ Application, the Receiver seeks an Order scheduling the hearing of the Motion.

COSTS UNNECESSARILY INCURRED

19. The Zirger Group's abandoned proceedings and other conduct have resulted in a significant amount of costs thrown away. The Receiver is of the view that an award of costs is appropriate for the following reasons:

- (a) The SCJ Application was the third proceeding in respect of Vandermeer's operations commenced by members of the Zirger Group. Each such proceeding has dealt with substantially the same complaints. The first two proceedings were voluntarily withdrawn by the Zirger Group;
- (b) Since July 2014, the Receiver provided dates for the hearing of a lift stay motion in at least six (6) different instances, yet in each such instance the Zirger Group failed to proceed, without explanation;
- (c) The Zirger Group's motion for an Order lifting the stay of proceedings was brought in the wrong court, despite the advice of counsel to the Receiver as well as counsel to Meridian;

- (d) The Zirger Group refused to serve the parties on the service list (other than the Receiver), despite the advice of counsel to the Receiver as well as the repeated requests of Meridian's counsel. Accordingly, the motion returnable April 2, 2015 could not have properly proceeded on that date;
- (e) The SCJ Application was commenced in flagrant breach of the Initial Order and the stay of proceedings thereunder. The Zirger Group refused to consent to the Receiver's request for an adjournment of the April 2, 2015 hearing, despite its late service of the voluminous Application Record. Consequently, between the date of service (*i.e.*, March 27, 2015) and the return date of April 2, 2015, the Receiver had to review a significant amount of material unrelated to a simple motion to lift the stay of proceedings, expending substantial estate resources;
- (f) The SCJ Application had no reasonable prospect of success, insofar as the FFPPA expressly prohibits any court from granting substantially all of the relief sought by the Zirger Group thereunder; and
- (g) The Zirger Group failed to serve the SCJ Application materials on a number of parties including, in particular, the Board, against which the Zirger Group sought declaratory relief. Accordingly, the SCJ Application could not have properly proceeded at the attendance on April 23, 2015.

20. Attached hereto as **Exhibit "N"** is a schedule setting out the approximate amounts incurred in response to the Zirger Group's conduct since the commencement of this proceeding. The schedule indicates that a total of approximately \$55,000.00 has been spent in response to the Zirger Group's activities, conduct and correspondence since July 2014. Such costs do not include the

significant costs incurred by Zeifman and paid by Meridian prior to the court appointment under the Initial Order, in responding to an application to the Board that was ultimately voluntary withdrawn.

EFFORTS TO SELL PROPERTY

21. Pursuant to the Initial Order, the Receiver was authorized to market the Property for sale.

22. Since the date of the First Report, the Receiver has received expressions of interest as well as an offer to purchase the Property. The Receiver has communicated with such third parties, and delivered a "sign back" in response to the offer received. Despite such efforts, thus far the Property has not been sold.

23. The Receiver has continued to update the Confidential Information Memorandum for potential purchasers.

MISCELLANEOUS

24. The Receiver has undertaken the following additional activities since the date of the First Report:

- (a) Negotiated grants through AgriStability, a margin-based program which enables producers to protect farm operations against large declines in farm income. A program payment is triggered when a producer's margin (*i.e.*, allowable revenue less allowable expenses) in the program year drops below the producer's average margin from previous years;
- (b) Managed matters related to the curtailment and supply of gas to the greenhouse facility;

- (c) Communicated with the MOE on an ongoing basis in respect of Vandermeer's Certificate of Approval; and
- (d) Engaged and managed consultants as required from time to time.

RECEIPTS & DISBURSEMENTS

25. Attached hereto as **Exhibit "O"** is a copy of the Receiver's statement of receipts and disbursements for the period between February 24, 2014 and April 23, 2015 (the "**R&D Statement**").

APPROVAL OF FEES AND DISBURSEMENTS

26. The Receiver seeks approval of its fees and disbursements as well as those of its legal counsel, Fogler, Rubinoff LLP.

27. The Receiver's accounts for the period between November 1, 2014 and April 30, 2015 include the amounts of \$90,792.75 in fees and \$1,432.41 in disbursements plus Harmonized Sales Tax ("**HST**") in the amount of \$11,989.27, for a total amount of \$104,214.43 (the "**Receiver's Accounts**"). Attached hereto as **Exhibit "P"** is the Affidavit of Allan Rutman of Zeifman Partners LLP sworn May 26, 2015 incorporating copies of the Receiver's Accounts, as well as a summary of the personnel, hours and hourly rates of the Receiver.

28. The accounts of the Receiver's legal counsel for the period between November 1, 2014 and April 30, 2015 include the amounts of \$59,805.00 in fees and \$1,809.30 in disbursements plus HST in the amount of \$7,976.85, for a total amount of \$69,591.15 (the "**Counsel Accounts**"). Attached hereto as **Exhibit "Q"** is the Affidavit of Gregory Azeff of Fogler, Rubinoff LLP,

counsel to the Receiver, sworn May 27, 2015, incorporating copies of the Counsel Accounts, as well as a summary of the personnel, hours and hourly rates of the Receiver's legal counsel.

INCREASE TO BORROWING LIMIT

29. The Initial Order authorized the Receiver to borrow an amount of up to \$250,000 in order to fund the receivership. Pursuant to the Order of the Honourable Mr. Justice Newbould dated December 2, 2014 (a copy of which is attached hereto as **Exhibit "R"**), the Initial Order was amended to increase the amount that the Receiver is authorized to borrow from \$250,000 to \$1,000,000.

30. As shown in the R&D Statement, the Receiver requires additional funding to complete the receivership.

31. The Receiver's borrowing limit has been exceeded for reasons that include the following:

- (a) Counsel for the Receiver has had to engage with third party litigants (*i.e.*, the Zirger Group) to an extent substantially beyond what would have been foreseeable at earlier stages of the Receivership;
- (b) The receivership proceedings have continued for a longer period than had initially been anticipated;
- (c) Lower than expected revenue from the anaerobic digester; and
- (d) Weak floral sales combined with operating costs that have proved difficult to reduce.

32. The Receiver recommends that this Honourable Court grant an Order increasing the borrowing limit by the amount of \$1,000,000, to a maximum amount of \$2,000,000.

CONCLUSION

33. For all of the above reasons, the Receiver respectfully requests that this Honourable Court issue an Order:

- (a) Dismissing the SCJ Application, with costs in favour of the Receiver and Meridian;
- (b) In the alternative to subparagraph (a), scheduling the Receiver's Motion for an Order dismissing the SCJ Application;
- (c) Authorizing the Receiver to borrow an amount of up to \$2,000,000 in order to fund the cost of the receivership proceeding;
- (d) Approving the activities and conduct of the Receiver and its counsel as disclosed herein; and
- (e) Approving the fees and disbursements of the Receiver and its legal counsel.

May 27, 2015



ZEIFMAN PARTNERS INC., in its capacity
as the Court-appointed receiver of Vandermeer
Greenhouses Ltd. and not in its personal or
corporate capacity

MERIDIAN CREDIT UNION LIMITED
Applicant

-and-

VANDERMEER GREENHOUSES LTD.
Respondent

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT
TORONTO

**FOURTH REPORT OF ZEIFMAN
PARTNERS INC., IN ITS CAPACITY AS
COURT-APPOINTED RECEIVER**

Fogler, Rubinoff LLP
77 King Street West
Suite 3000, PO Box 95
TD Centre North Tower
Toronto, ON M5K 1G8

Greg Azeff (LSUC #45324C)
Tel: 416-365-3716
Fax: 416-941-8852

Lawyers for Zeifman Partners Inc.

tab C

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

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. 1995 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*

**FIRST REPORT OF ZEIFMAN PARTNERS INC., IN ITS
CAPACITY AS COURT-APPOINTED RECEIVER**

1. Pursuant to the Order of the Honourable Mr. Justice Spence of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated February 21, 2014 (the "**Initial Order**", a copy of which is attached hereto as **Exhibit "A"**), on the Application of the Applicant, Meridian Credit Union Limited ("**Meridian**"), Zeifman Partners Inc. was appointed as Receiver (in such capacity, the "**Receiver**") of the Respondent, Vandermeer Greenhouses Ltd. ("**Vandermeer**").

2. Vandermeer is a cut flower chrysanthemum grower located in Niagara-on-the-Lake, Ontario. Vandermeer's primary production area is a ground crop with a plant capacity of over 5.9 million stems. The property is 16.5 acres and includes a 275,000 square foot greenhouse and two

residences. Vandermeer also owns and operates an anaerobic digestion facility capable of producing over 8,000 kwh of electricity a day.

PURPOSE OF REPORT

3. The Receiver has filed this First Report in order to update the Court regarding its activities and in support of a Motion seeking an Order, among other things:

- (a) Approving the activities and conduct of the Receiver and its counsel as disclosed herein;
- (b) Authorizing the Receiver to borrow an amount of up to \$1,000,000 in order to fund the cost of the receivership proceeding; and
- (c) Approving the fees and disbursements of the Receiver and its legal counsel.

RECEIVER'S ACTIVITIES

4. Since the date of its appointment under the Initial Order, the Receiver has engaged in the following activities:

- (a) Communicated with creditors and other stakeholders;
- (b) Responded to and managed legal claims commenced by third-parties against Vandermeer and the Receiver, among others;
- (c) Negotiated and entered into the Supply Agreements (as defined below);
- (d) Managed various operational matters including:
 - (i) staffing and human resources,

- (ii) purchase of grinder and accessories for operations, and
- (iii) repair and replacement of digester equipment as required from time to time;
- (e) Communicated with third parties expressing an interest in acquiring Vandermeer's property (the "**Property**");
- (f) Entered into a short-term lease with Green Tower Industries Inc. ("**GTII**"); and
- (g) Negotiated transaction terms with prospective purchasers of the Property.

STATUS OF LITIGATION

5. Pursuant to a Statement of Claim dated December 19, 2013 (the "**Zirger Claim**"), Richard Zirger and Judi Zirger commenced an action against Vandermeer, Meridian and various other parties. A copy of the Zirger Claim is attached hereto as **Exhibit "B"**.

6. On October 23, 2014, the Receiver was provided with a copy of a Notice of Discontinuance dated October 23, 2014 in respect of the Zirger Claim. A copy of the Notice of Discontinuance is attached hereto as **Exhibit "C"**.

7. By letter dated July 22, 2014, Marshall Kirewskie, legal counsel to Richard Zirger and Judi Zirger, contacted the Receiver's counsel to advise that an application for leave to commence a proceeding before the Normal Farm Practices and Protection Board was being brought on behalf of Richard Zirger, Judi Zirger and a number of other individuals, and to request advice regarding available hearing dates for same. A copy of the letter dated July 22, 2014 is attached hereto as **Exhibit "D"**.

8. By email dated July 23, 2014 from Gregory Azeff of Fogler, Rubinoff LLP, counsel to the Receiver, to Cassandra Kirewskie of Marshall Kirewskie, the Receiver provided seven (7) acceptable dates in August and September for the hearing. A copy of the email dated July 23, 2014 is attached hereto as **Exhibit "E"**.

9. By letter to the Receiver's counsel dated September 10, 2014, Cassandra Kirewskie advised that her clients would not be proceeding with their application for leave to proceed before the Normal Farm Practices and Protection Board on September 18, 2014. Ms. Kirewskie requested advice regarding the Receiver's availability for a hearing in late October and early November, 2014. A copy of the letter dated September 10, 2014 is attached hereto as **Exhibit "F"**.

10. By letter dated September 10, 2014 from Gregory Azeff to Cassandra Kirewskie, the Receiver provided its advice regarding available dates for the hearing in late October and early November, 2014. A copy of the letter dated September 10, 2014 is attached hereto as **Exhibit "G"**.

11. By letter to the Receiver's counsel dated September 29, 2014, Cassandra Kirewskie took the position that the Receiver had not replied to her correspondence of September 10, 2014, and advised that in the event she did not hear from the Receiver prior to October 2, 2014, the matter would be set down for a hearing on a date in November 2014, without regard to the Receiver's availability. A copy of the letter dated September 29, 2014 is attached hereto as **Exhibit "H"**.

12. By letter dated September 29, 2014 from Gregory Azeff to Cassandra Kirewskie, the Receiver reminded Ms. Kirewskie that it had in fact responded to her letter of September 10, 2014, and provided her with a copy of such response. The Receiver also advised as to its

availability for a hearing in November 2014. A copy of the letter dated September 29, 2014 (without enclosures) is attached hereto as **Exhibit "I"**.

13. Other than its receipt of the Notice of Discontinuance in respect of the Zirger Claim, the Receiver has not heard anything further from Ms. Kirewskie since the Receiver's letter dated September 29, 2014.

GTII LEASE

14. The Receiver anticipated completing a sale of the Property to GTII, and entered into a three month lease with GTII effective February 22, 2014. Attached hereto as **Exhibit "J"** is a copy of the lease agreement between the Receiver and GTII.

15. GTII subsequently assigned its rights under the lease to Niagara Anaerobic Digester Inc. and Niagara Anaerobic Greenhouse Inc., but remained liable thereunder.

16. GTII failed to pay certain expenses and was thus in default of its obligations under the lease agreement. By letter from the Receiver's counsel dated April 25, 2014, the Receiver notified GTII of its defaults and demanded that such defaults be remedied forthwith. GTII failed to remedy the defaults, and the lease agreement was terminated effective April 28, 2014. A copy of the letter dated April 25, 2014 is attached hereto as **Exhibit "K"**.

SUPPLY AGREEMENTS

17. The Receiver had been processing materials supplied by North American Waste Management ("NAWM"), a party related to GTII, through the digester pending completion of the sale. Unfortunately, as a result of changes to its business model, GTII did not proceed with

the proposed transaction, and with the ending of the GTII interest in the Property, NAWM ceased supplying materials for processing.

18. The Receiver agreed to accept materials from other sources to replace those previously supplied by NAWM, but such materials have proved to be in a more solid form than those supplied by NAWM, which was in a macerated state with smaller and less solid material. The mixers in the digester are unable to process material in the more-solid form, and consequently digester operations have been limited pending deliver of a grinder to accommodate raw materials.

19. Pursuant to agreements between the Receiver and each of St. Davids Hydroponics Ltd. ("SDHL") and Sanimax Limited ("**Sanimax**"), SDHL and Sanimax agreed to provide funding for the Receiver to purchase a Titus II Grinder & Hopper (the "**Equipment**") required for processing of certain types of materials. Copies of the agreements with SDHL (the "**SDHL Agreement**") and Sanimax (the "**Sanimax Agreement**") are attached hereto as **Exhibits "L"** and "**M**", respectively, with the pricing redacted.

20. Pursuant to the SDHL Agreement and the Sanimax Agreement (together, the "**Supply Agreements**"), the Receiver agreed to purchase the Equipment from Titus Inc. for a purchase price equal to the amount of \$151,522 and to accept materials from each of SDHL and Sanimax for processing.

21. The Supply Agreements for digester inputs are intended to complement agreements with the Ontario Power Authority for the sale of energy and are expected to enhance the value of the Anaerobic Digester segment of Vandermeer's business.

EFFORTS TO SELL PROPERTY

22. Pursuant to the Initial Order, the Receiver was authorized to market the Property for sale.

23. As noted above, although the Receiver had initially anticipated selling the Property to GTII, the proposed transaction did not proceed.

24. Pursuant to an Asset Purchase Agreement dated June 26, 2014 (the "**APA**"), the Receiver agreed to sell the Property to 2258324 Ontario Ltd. (the "**Purchaser**"). A copy of the APA (with the purchase price redacted) is attached hereto as **Exhibit "N"**.

25. The APA contained a condition precedent in favour of the Purchaser, pursuant to which the Purchaser had the opportunity to review the Zirger Claim and related materials before committing to the transaction.

26. On July 10, 2014, the Purchaser's counsel contacted the Receiver's counsel to advise that the Purchaser would not be proceeding with the transaction contemplated in the APA. The Purchaser continues to express interest but to date no further offers have been received.

RECEIPTS & DISBURSEMENTS

27. Attached hereto as **Exhibit "O"** is a copy of the Receiver's statement of receipts and disbursements for the period ended November 7, 2014 (the "**R&D Statement**").

APPROVAL OF FEES AND DISBURSEMENTS

28. The Receiver seeks approval of its fees and disbursements as well as those of its legal counsel, Fogler Rubinoff LLP, and its former legal counsel, Pallett Valo LLP.

29. The Receiver's accounts for the period between February 21, 2014 and October 31, 2014 include the amounts of \$103,814.05 in fees and \$2,338.07 in disbursements plus Harmonized Sales Tax ("**HST**") in the amount of \$13,736.44, for a total amount of \$119,888.56 (the "**Receiver's Accounts**"). Attached hereto as **Exhibit "P"** is the Affidavit of Allan Rutman of Zeifman Partners LLP sworn November 11, 2014 incorporating copies of the Receiver's Accounts, as well as a summary of the personnel, hours and hourly rates of the Receiver.

30. The accounts of the Receiver's legal counsel for the period between May 22, 2014 and October 31, 2014 include the amounts of \$10,748.00 in fees and \$70.04 in disbursements plus HST in the amount of \$1,406.37, for a total amount of \$12,224.41 (the "**Counsel Accounts**"). Attached hereto as **Exhibit "Q"** is the Affidavit of Gregory Azeff of Fogler, Rubinoff LLP, counsel to the Receiver, sworn November 12, 2014, incorporating copies of the Counsel Accounts, as well as a summary of the personnel, hours and hourly rates of the Receiver's legal counsel.

31. The accounts of the Receiver's former legal counsel for the period between February 21, 2014 and April 25, 2014 include the amounts of \$2,200.00 in fees and \$69.50 in disbursements plus HST in the amount of \$295.04, for a total amount of \$2,564.54 (the "**Former Counsel Accounts**"). Attached hereto as **Exhibit "R"** is the Affidavit of Bobby Sachdeva of Pallett Valo LLP, former counsel to the Receiver, sworn November 12, 2014, incorporating copies of the Former Counsel Accounts, as well as a summary of the personnel, hours and hourly rates of the Receiver's former legal counsel.

INCREASE TO BORROWING LIMIT

32. The Initial Order authorized the Receiver to borrow an amount of up to \$250,000 in order to fund the receivership. As shown in the R&D Statement, the Receiver requires additional funding to complete the receivership.

33. The Receiver's borrowing limit has been exceeded for reasons that include the following:

- (a) Borrowing was intended to be short term, pending completion of an Agreement of Purchase and Sale with GTII. Unfortunately, as a result of changes to its business model, GTII did not proceed with the proposed transaction. As such, funding needs are for a longer term and for a more significant amount than initially projected;
- (b) Lower than expected digester revenue; and
- (c) Weak floral sales combined with operating costs that are difficult to reduce.

34. The Receiver recommends that this Honourable Court grant an Order increasing the borrowing limit by the amount of \$750,000, to a maximum amount of \$1,000,000.

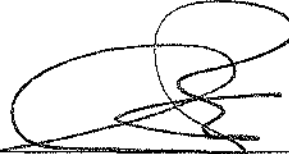
CONCLUSION

35. For all of the above reasons, the Receiver respectfully requests that this Honourable Court issue an Order:

- (a) Approving the activities and conduct of the Receiver and its counsel as disclosed herein;

- (b) Authorizing the Receiver to borrow an amount of up to \$1,000,000 in order to fund the cost of the receivership proceeding; and
- (c) Approving the fees and disbursements of the Receiver and its current and former legal counsel.

November 17, 2014



ZEIFMAN PARTNERS INC., in its capacity
as the Court-appointed receiver of Vandermeer
Greenhouses Ltd. and not in its personal or
corporate capacity

tab D

Agreement of Purchase and Sale
Commercial

Form 500
REVISED 2013

This Agreement of Purchase and Sale dated this 5 day of February, 2013

BUYER, **LAKSHANA KUMARAGE**, operating as fresh & you,
of the County of York

SELLER, **ZEIFMAN PARTNERS INC.**, in its capacity as Real Estate Broker,
of the County of York

REAL PROPERTY:

located at: **2003-2021 FOUR MILE CREEK ROAD**

in the City of **East**

FOUR MILE CREEK ROAD

in the **Town of Niagara-on-the-Lake**

having a lot coverage of **16.51 Acres**

as shown on **See Schedule "A" Attached**

PURCHASE PRICE:

[Redacted]

[Redacted]
[Redacted]
[Redacted]

DEPOSIT: **Upon acceptance**

Four Thousand

1,000.00

The Seller, **Zeifman Partners Inc.**, in its capacity as Real Estate Broker, hereby agrees to sell to the Buyer, **Lakshana Kumarage**, operating as **fresh & you**, the above described real property, together with all fixtures and improvements thereon, and all rights and interests therein, to the Buyer, subject to the conditions set forth herein.

Buyer agrees to pay the balance as made previously set out in Form 500

SCHEDULES A and B

1. **IRREVOCABILITY** The offer is irrevocable for a period of 14 days.

Witness my hand and seal this 5 day of February, 2013.

[Signature]
BUYER

and forms form part of this Agreement
[Redacted]

COMPLETION DATE: This Agreement shall be completed on or before 15 day of March, 2013.

More

INITIALS OF BUYER:

1. This Agreement is subject to the Ontario Real Estate Act and the regulations made thereunder. 2. This Agreement is subject to the provisions of the Real Estate (Commercial) Act and the regulations made thereunder. 3. This Agreement is subject to the provisions of the Real Estate (Residential) Act and the regulations made thereunder. 4. This Agreement is subject to the provisions of the Real Estate (Mortgage) Act and the regulations made thereunder. 5. This Agreement is subject to the provisions of the Real Estate (Trusts) Act and the regulations made thereunder. 6. This Agreement is subject to the provisions of the Real Estate (Business) Act and the regulations made thereunder. 7. This Agreement is subject to the provisions of the Real Estate (Professional) Act and the regulations made thereunder. 8. This Agreement is subject to the provisions of the Real Estate (Consumer Protection) Act and the regulations made thereunder. 9. This Agreement is subject to the provisions of the Real Estate (Advertising) Act and the regulations made thereunder. 10. This Agreement is subject to the provisions of the Real Estate (Disclosure) Act and the regulations made thereunder. 11. This Agreement is subject to the provisions of the Real Estate (Complaints) Act and the regulations made thereunder. 12. This Agreement is subject to the provisions of the Real Estate (Ethics) Act and the regulations made thereunder. 13. This Agreement is subject to the provisions of the Real Estate (Grievance) Act and the regulations made thereunder. 14. This Agreement is subject to the provisions of the Real Estate (Hearings) Act and the regulations made thereunder. 15. This Agreement is subject to the provisions of the Real Estate (Inquiries) Act and the regulations made thereunder. 16. This Agreement is subject to the provisions of the Real Estate (Mediation) Act and the regulations made thereunder. 17. This Agreement is subject to the provisions of the Real Estate (Ombudsman) Act and the regulations made thereunder. 18. This Agreement is subject to the provisions of the Real Estate (Resolution) Act and the regulations made thereunder. 19. This Agreement is subject to the provisions of the Real Estate (Rules) Act and the regulations made thereunder. 20. This Agreement is subject to the provisions of the Real Estate (Tribunal) Act and the regulations made thereunder. 21. This Agreement is subject to the provisions of the Real Estate (Trusts) Act and the regulations made thereunder. 22. This Agreement is subject to the provisions of the Real Estate (Business) Act and the regulations made thereunder. 23. This Agreement is subject to the provisions of the Real Estate (Professional) Act and the regulations made thereunder. 24. This Agreement is subject to the provisions of the Real Estate (Consumer Protection) Act and the regulations made thereunder. 25. This Agreement is subject to the provisions of the Real Estate (Advertising) Act and the regulations made thereunder. 26. This Agreement is subject to the provisions of the Real Estate (Disclosure) Act and the regulations made thereunder. 27. This Agreement is subject to the provisions of the Real Estate (Complaints) Act and the regulations made thereunder. 28. This Agreement is subject to the provisions of the Real Estate (Ethics) Act and the regulations made thereunder. 29. This Agreement is subject to the provisions of the Real Estate (Grievance) Act and the regulations made thereunder. 30. This Agreement is subject to the provisions of the Real Estate (Hearings) Act and the regulations made thereunder. 31. This Agreement is subject to the provisions of the Real Estate (Inquiries) Act and the regulations made thereunder. 32. This Agreement is subject to the provisions of the Real Estate (Mediation) Act and the regulations made thereunder. 33. This Agreement is subject to the provisions of the Real Estate (Ombudsman) Act and the regulations made thereunder. 34. This Agreement is subject to the provisions of the Real Estate (Resolution) Act and the regulations made thereunder. 35. This Agreement is subject to the provisions of the Real Estate (Rules) Act and the regulations made thereunder. 36. This Agreement is subject to the provisions of the Real Estate (Tribunal) Act and the regulations made thereunder.

3. **NOTICES:** The Seller hereby appoints the Listing Brokerage as agent for the Seller for the purpose of giving and receiving notices pursuant to this Agreement. Where a Brokerage (Buyer's Brokerage) has entered into a representation agreement with the Buyer, the Buyer hereby appoints the Buyer's Brokerage as agent for the purpose of giving and receiving notices pursuant to this Agreement. Where a Brokerage represents both the Seller and the Buyer (multiple representation), the Brokerage shall not be appointed or authorized to be agent for either the Buyer or the Seller for the purpose of giving and receiving notices. Any notice relating hereto or provided for herein shall be in writing. In addition to any provision contained herein and in any Schedule hereto, this offer, any counteroffer, notice of acceptance thereof or any notice to be given or received pursuant to this Agreement or any Schedule hereto (any of them, "Document") shall be deemed given and received when delivered personally or hand delivered to the Address for Service provided in the Acknowledgement below, or where a facsimile number or email address is provided herein, when transmitted electronically to that facsimile number or email address, respectively, in which case, the signature(s) of the party (parties) shall be deemed to be original.

FAX No.: 416-861-1487
 (For delivery of Documents to Seller)

FAX No.: 1-805-774-6960
 (For delivery of Documents to Buyer)

Email Address: aar@zslfmans.ca
 (For delivery of Documents to Seller)

Email Address: jack-hultema@coldwellbanker.ca
 (For delivery of Documents to Buyer)

4. **CHATELS INCLUDED:**
 see Schedule B.

Unless otherwise stated in this Agreement or any Schedule hereto, Seller agrees to convey all fixtures and chattels included in the Purchase Price free from all liens, encumbrances or claims affecting the said fixtures and chattels.

5. **FIXTURES EXCLUDED:**

6. **RENTAL ITEMS (including Lease, Lease to Own):** The following equipment is rented and not included in the Purchase Price. The Buyer agrees to assume the rental contract(s), if assumable:


List to be provided.

The Buyer agrees to co-operate and execute such documentation as may be required to facilitate such assumption.

7. **HST:** If the sale of the property (Real Property as described above) is subject to Harmonized Sales Tax (HST), then such tax shall be in addition to the Purchase Price. The Seller will not collect HST if the Buyer provides to the Seller a warranty that the Buyer is registered under the Excise Tax Act ("ETA"), together with a copy of the Buyer's ETA registration, a warranty that the Buyer shall self-assess and remit the HST payable and file the prescribed form and shall indemnify the Seller in respect of any HST payable. The foregoing warranties shall not merge but shall survive the completion of the transaction. If the sale of the property is not subject to HST, Seller agrees to certify on or before closing, that the transaction is not subject to HST. Any HST on chattels, if applicable, is not included in the Purchase Price.

INITIALS OF BUYER(S): *(LUK)*

INITIALS OF SELLER(S): *(AZ)*

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Requisition Date ^{LUC} February 26, 2016

8. **TITLE SEARCH:** Buyer shall be allowed until 6:00 p.m. on the 26 day of February, 2016 (Requisition Date) to examine the title to the property at his own expense and until the date on which the conditions in this Agreement are fulfilled or otherwise waived or five days prior to completion, to satisfy himself that there are no outstanding work orders or deficiency notices affecting the property, that its present use (Agricultural) may be lawfully continued and that the principal building may be insured against risk of fire. Seller hereby consents to the municipality or other governmental agencies releasing to Buyer details of all outstanding work orders and deficiency notices affecting the property, and Seller agrees to execute and deliver such further authorizations in this regard as Buyer may reasonably require.

9. **FUTURE USE:** Seller and Buyer agree that there is no representation or warranty of any kind that the future intended use of the property by Buyer is or will be lawful except as may be specifically provided for in this Agreement.

10. **TITLE:** Provided that the title to the property is good and free from all registered restrictions, charges, liens, and encumbrances except as otherwise specifically provided in this Agreement and save and except for (a) any registered restrictions or covenants that run with the land providing that such are complied with; (b) any registered municipal agreements and registered agreements with publicly regulated utilities providing such have been complied with, or security has been posted to ensure compliance and completion, as evidenced by a letter from the relevant municipality or regulated utility; (c) any minor easements for the supply of domestic utility or telephone services to the property or adjacent properties; and (d) any easements for drainage, storm or sanitary sewers, public utility lines, telephone lines, cable television lines or other services which do not materially affect the use of the property. If within the specified times referred to in paragraph 8 any valid objection to title or to any outstanding work order or deficiency notice, or to the fact the said present use may not lawfully be continued, or that the principal building may not be insured against risk of fire is made in writing to Seller and which Seller is unable or unwilling to remove, remedy or satisfy or obtain insurance save and except against risk of fire (title insurance) in favour of the Buyer and any mortgagee, (with all related costs at the expense of the Seller), and which Buyer will not waive, this Agreement notwithstanding any intermediate acts or negotiations in respect of such objections, shall be at an end and all monies paid shall be returned without interest or deduction and Seller, listing Brokerage and Co-operating Brokerage shall not be liable for any costs or damages. Save as to any valid objection so made by such day and except for any objection going to the root of the title, Buyer shall be conclusively deemed to have accepted Seller's title to the property.

11. **CLOSING ARRANGEMENTS:** Where each of the Seller and Buyer retain a lawyer to complete the Agreement of Purchase and Sale of the property, and where the transaction will be completed by electronic registration pursuant to Part III of the Land Registration Reform Act, R.S.O. 1990, Chapter L4 and the Electronic Registration Act, S.O. 1991, Chapter 44, and any amendments thereto, the Seller and Buyer acknowledge and agree that the exchange of closing funds, non-registrable documents and other items (the "Requisite Deliveries") and the release thereof to the Seller and Buyer will (a) not occur at the same time as the registration of the transfer/deed (and any other documents intended to be registered in connection with the completion of this transaction) and (b) be subject to conditions whereby the lawyer(s) receiving any of the Requisite Deliveries will be required to hold same in trust and not release same except in accordance with the terms of a document registration agreement between the said lawyers. The Seller and Buyer irrevocably instruct the said lawyers to be bound by the document registration agreement which is recommended from time to time by the Law Society of Upper Canada. Unless otherwise agreed to by the lawyers, such exchange of the Requisite Deliveries will occur in the applicable Land Titles Office or such other location agreeable to both lawyers.


12. **DOCUMENTS AND DISCHARGE:** Buyer shall not call for the production of any title deed, abstract, survey or other evidence of title to the property except such as are in the possession or control of Seller. If requested by Buyer, Seller will deliver any sketch or survey of the property within Seller's control to Buyer as soon as possible and prior to the Requisition Date. If a discharge of any Charge/Mortgage held by a corporation incorporated pursuant to the Trust And Loan Companies Act (Canada), Chartered Bank, Trust Company, Credit Union, Caisse Populaire or Insurance Company and which is not to be assumed by Buyer on completion, is not available in registrable form on completion, Buyer agrees to accept Seller's lawyer's personal undertaking to obtain, out of the closing funds, a discharge in registrable form and to register same, or cause same to be registered, on title within a reasonable period of time after completion, provided that on or before completion Seller shall provide to Buyer a mortgage statement prepared by the mortgagee setting out the balance required to obtain the discharge, and, where a real-time electronic cleared funds transfer system is not being used, a direction executed by Seller directing payment to the mortgagee of the amount required to obtain the discharge out of the balance due on completion.

13. **INSPECTION:** Buyer acknowledges having had the opportunity to inspect the property and understands that upon acceptance of this offer there shall be a binding agreement of purchase and sale between Buyer and Seller.

14. **INSURANCE:** All buildings on the property and all other things being purchased shall be and remain until completion of the risk of Seller. Pending completion, Seller shall hold all insurance policies, if any, and the proceeds thereof in trust for the parties as their interests may appear ~~in the event of substantial damage. Buyer may either terminate this Agreement and have all monies paid returned without interest or deduction or else take the proceeds of any insurance and complete the purchase.~~ No insurance shall be transferred on completion. If Seller is taking back a Charge/Mortgage, or Buyer is assuming a Charge/Mortgage, Buyer shall supply Seller with reasonable evidence of adequate insurance to protect Seller's or other mortgagee's interest on completion.

INITIALS OF BUYER(S): LUC

INITIALS OF SELLER(S): [Signature]

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28. **SUCCESSORS AND ASSIGNS:** The heirs, executors, administrators, successors and assigns of the undersigned are bound by the terms herein.

SIGNED, SEALED AND DELIVERED in the presence of:

IN WITNESS whereof I have hereunto set my hand and seal:

(Witness) *Jack Hultema*

[Signature]
[Buyer/Authorized Signing Officer]

(Seal)

DATE Feb 8 - 2016

(Witness)

[Buyer/Authorized Signing Officer]

(Seal)

DATE

I, the Undersigned Seller, agree to the above offer. I hereby irrevocably instruct my lawyer to pay directly to the brokerage(s) with whom I have agreed to pay commission, the unpaid balance of the commission together with applicable harmonized sales tax and any other taxes or any interest due applicable, from the proceeds of the sale prior to any payment to the undersigned on completion, as advised by the brokerage(s) to my lawyer.

SIGNED, SEALED AND DELIVERED in the presence of:

IN WITNESS whereof I have hereunto set my hand and seal:

(Witness) *[Signature]*

[Signature]
[Seller/Authorized Signing Officer]

(Seal)

DATE 2/8/2016

(Witness)

[Seller/Authorized Signing Officer]

(Seal)

DATE

SPOUSAL CONSENT: The Undersigned Spouse of the Seller hereby consents to the disposition evidenced herein pursuant to the provisions of the Family Law Act, R.S.O. 1990, and hereby agrees with the buyer that he/she will execute all necessary or incidental documents to give full force and effect to this sale evidenced herein.

(Witness)

(Spouse)

(Seal)

DATE

CONFIRMATION OF ACCEPTANCE: Notwithstanding anything contained hereto to the contrary, I confirm this Agreement with all changes both typed and written was finally accepted by all parties at _____ a.m./p.m. this _____ day of _____, 20____.

(Signature of Seller or Buyer)

INFORMATION ON BROKERAGE(S)	
Listing Brokerage Coldwell Banker K. Miller Brokerage	Tel. No. (... 905) 774-7624
Jack Hultema	[Salesperson / Broker Name]
Co-op/Buyer Brokerage Coldwell Banker K. Miller Brokerage	Tel. No. (... 905) 774-7624
Jack Hultema	[Salesperson / Broker Name]

ACKNOWLEDGEMENT

I acknowledge receipt of my signed copy of this accepted Agreement of Purchase and Sale and I authorize the Brokerage to forward a copy to my lawyer.

I acknowledge receipt of my signed copy of this accepted Agreement of Purchase and Sale and I authorize the Brokerage to forward a copy to my lawyer.

(Seller) _____ DATE _____

(Seller) _____ DATE _____

Address for Service _____

Tel. No. (...) _____

Seller's Lawyer _____

Address _____

Email _____

() _____ FAX No. _____

(Buyer) _____ DATE _____

(Buyer) _____ DATE _____

Address for Service _____

Tel. No. (...) _____

Buyer's Lawyer _____

Address _____

Email _____

() _____ FAX No. _____

FOR OFFICE USE ONLY	COMMISSION TRUST AGREEMENT
To: Co-operating Brokerage shown on the foregoing Agreement of Purchase and Sale:	
In consideration for the Co-operating Brokerage procuring the foregoing Agreement of Purchase and Sale, I hereby declare that all moneys received or receivable by me in connection with the transaction as contemplated in the MLS® Rules and regulations of my Real Estate Board shall be receivable and held in trust. This agreement shall constitute a Commission Trust Agreement as defined in the MLS® Rules and shall be subject to and governed by the MLS® Rules pertaining to Commission Trust.	
DATED as of the date and time of the acceptance of the foregoing Agreement of Purchase and Sale. Acknowledged by:	
<i>Jack Hultema</i> [Authorized to bind the Listing Brokerage]	_____ [Authorized to bind the Co-operating Brokerage]

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15. **PLANNING ACT:** This Agreement shall be effective to create an interest in the property only if Seller complies with the subdivision control provisions of the Planning Act by completion and Seller covenants to proceed diligently at his expense to obtain any necessary consent by completion.
16. **DOCUMENT PREPARATION:** The Transfer/Deed shall, save for the Land Transfer Tax Affidavit, be prepared in registrable form at the expense of Seller, and any Charge/Mortgage to be given back by the Buyer to Seller at the expense of the Buyer. If requested by Buyer, Seller covenants that the Transfer/Deed to be delivered on completion shall contain the statements contemplated by Section 50(22) of the Planning Act, R.S.O. 1990.
17. **RESIDENCY:** (a) Subject to (b) below, the Seller represents and warrants that the Seller is not and on completion will not be a non-resident under the non-residency provisions of the Income Tax Act which representation and warranty shall survive and not merge upon the completion of this transaction and the Seller shall deliver to the Buyer a statutory declaration that Seller is not then a non-resident of Canada;
(b) provided that if the Seller is a non-resident under the non-residency provisions of the Income Tax Act, the Buyer shall be credited towards the Purchase Price with the amount, if any, necessary for Buyer to pay to the Minister of National Revenue to satisfy Buyer's liability in respect of tax payable by Seller under the non-residency provisions of the Income Tax Act by reason of this sale, Buyer shall not claim such credit if Seller delivers on completion the prescribed certificate.
18. **ADJUSTMENTS:** Any rents, mortgage interest, realty taxes including local improvement taxes and unmetered public or private utility charges and unmetered cost of fuel, as applicable, shall be apportioned and allowed to the day of completion, the day of completion itself to be apportioned to Buyer.
19. **TIME LIMITS:** Time shall in all respects be of the essence hereof provided that the time for doing or completing of any matter provided for herein may be extended or abridged by an agreement in writing signed by Seller and Buyer or by their respective lawyers who may be specifically authorized in that regard.
20. **PROPERTY ASSESSMENT:** The Buyer and Seller hereby acknowledge that the Province of Ontario has implemented current value assessment and properties may be re-assessed on an annual basis. The Buyer and Seller agree that no claim will be made against the Buyer or Seller, or any Brokerage, Broker or Salesperson, for any changes in property tax as a result of a reassessment of the property, save and except any property taxes that accrued prior to the completion of this transaction.
21. **TENDER:** Any tender of documents or money hereunder may be made upon Seller or Buyer or their respective lawyers on the day set for completion. Money shall be tendered with funds drawn on a lawyer's trust account in the form of a bank draft, certified cheque or wire transfer using the Large Value Transfer System.
22. **FAMILY LAW ACT:** Seller warrants that spousal consent is not necessary to this transaction under the provisions of the Family Law Act, R.S.O. 1990 unless Seller's spouse has executed the consent hereinafter provided.
23. ~~OFFER: Seller represents and warrants to Buyer that during the time Seller has owned the property, Seller has not caused any building on the property to be insulated with insulation containing urea formaldehyde, and that to the best of Seller's knowledge no building on the property (including any out-buildings) were contained insulation that contains urea formaldehyde. This warranty shall survive and not merge upon the completion of this transaction, and if this building is part of a multiple-unit building, this warranty shall only apply to that part of the building which is the subject of this transaction.~~ *en. LUK*
24. **LEGAL, ACCOUNTING AND ENVIRONMENTAL ADVICE:** The parties acknowledge that any information provided by the brokerage is not legal, tax or environmental advice, and that it has been recommended that the parties obtain independent professional advice prior to signing this document.
25. **CONSUMER REPORTS:** The Buyer is hereby notified that a consumer report containing credit and/or personal information may be referred to in connection with this transaction.
26. **AGREEMENT IN WRITING:** If there is conflict or discrepancy between any provision added to this Agreement (including any Schedule attached hereto) and any provision in the standard pre-set portion hereof, the added provision shall supersede the standard pre-set provision to the extent of such conflict or discrepancy. This Agreement including any Schedule attached hereto, shall constitute the entire Agreement between Buyer and Seller. There is no representation, warranty, collateral agreement or condition, which affects this Agreement other than as expressed herein. For the purposes of this Agreement, Seller means vendor and Buyer means purchaser. This Agreement shall be read with all changes of gender or number required by the context.
27. **TIME AND DATE:** Any reference to a time and date in this Agreement shall mean the time and date where the property is located.

INITIALS OF BUYER(S):

LUK

INITIALS OF SELLER(S):

[Signature]

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**Schedule A
Agreement of Purchase and Sale – Commercial**

Form 500
for use in the Province of Ontario

This Schedule is attached to and forms part of the Agreement of Purchase and Sale between:

BUYER, LAKSHANA KUMARAGE, operating as fresh 4 you

SELLER, ZEIFMAN PARTNERS INC., in its capacity as Receiver

for the purchase and sale of **2003-2021 FOUR MILE CREEK ROAD**

dated this **5** day of **February**, 20**15**

Buyer agrees to pay the balance as follows:

Legal Description:

PIN 46390-0004(LT) Part Lot 2-3 TP Plan 167 Niagara as in RO532676, Part 1, 3, 4 30R4733;
SIT RO532677; Niagara-on-the-Lake
PIN 46390-0008(LT) Part Lot 3 TP Plan 167 Niagara Part 2 30R4733; Niagara-on-the-Lake
PIN 46390-0011(LT) Part Lot 4 TP Plan 167 Niagara Part 2 30R4110; Niagara-on-the-Lake
PIN 46390-0074(LT) Part Lot 108 Plan M11, Parts 2 & 3 30R10152; Niagara-on-the-Lake

The Buyer agrees to pay the balance of the purchase price, (less the additional deposit to be delivered upon waiver of Buyer's condition) subject to adjustments, by wire transfer, bank draft or certified cheque, to the Seller on the completion of this transaction.
This agreement of purchase and sale (this "Agreement") is conditional until 5:00 p.m. on the 10th business day after its acceptance (the "Buyer Condition Date"), upon the Buyer completing its due diligence and being satisfied therewith, at its sole discretion. Such due diligence may include financial investigations, non-intrusive environmental investigations, legal investigations, zoning investigations, and any other investigations reasonably contemplated by the Buyer. This condition is inserted for the sole benefit of the Buyer and may be waived at its sole discretion. In the event that no notice is given by the Buyer that this condition has been satisfied or waived on or prior to the Buyer Condition Date then this agreement shall be null and void and all deposits shall be returned to the Buyer. Within 24 hours of waiver by Buyer of this condition, Buyer shall submit a second deposit in the amount of [REDACTED] to the Deposit holder, to be held in the same manner as the initial deposit.

SELLER'S DELIVERIES

Within five (5) business days after acceptance of this Agreement the Seller shall provide to the Buyer, the following, to the extent in its possession or control:

- (a) evidence of the cost of utilities; --
- (b) a statement indicating recent repairs and maintenance;
- (c) a statement and evidence of recent "digester" repairs and maintenance;
- (d) a statement of employee information and general staffing costs;
- (e) evidence of realty taxes; and

This form must be initialed by all parties to the Agreement of Purchase and Sale.

INITIALS OF BUYER(S): *(LKC)*

INITIALS OF SELLER(S): *[Signature]*

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Schedule A

Form 500

Agreement of Purchase and Sale - Commercial

h) a copy of the Certificate of Approval No. 0912-7QMNZJ dated October 29, 2009 issued to Vandemoer Greenhouses Ltd., its amended by amendment dated March 25, 2011, and the Feed in Tariff Agreement with Ontario Power Authority dated July 25, 2008 as amended by amendment dated May 17, 2010 and further amended by Acknowledgement re: Secured Lender dated December 11, 2011 (collectively, the "Energy Contracts");

BY 3 YEARS OF INCOME STATEMENTS FROM DIOBESTER, The Buyer acknowledges and agrees that it shall assume any leased or licensing relating to any employees that reside on site.

CLOSING DELIVERIES

The Buyer and Seller covenant and agree to provide on closing all documents and deliveries as the parties' Solicitors consider reasonably necessary or desirable to validly and effectively complete this transaction including:

- (a) an assignment, to the extent assignable, of all of the Seller's right, title and interest in and to the Energy Contracts;
- (b) an assignment to the extent assignable, of all of the right, title, and interest of the Seller in and to the business name "Vandemoer Greenhouses";
- (c) the Seller agrees to assign and the Buyer agrees to assume the Supply Agreements dated October 3, 2010 with St. Davids Hydroponics Ltd. and Sanimax Limited. Any upfront payments made by the counterparty thereunder shall be adjusted on closing; and

(d) Buyer acknowledges that the Ministry of Environment requires Letters of Credit security in support of the current Waste Disposal Permit. The current security is in the form of a Letter of Credit posted by Meridian Credit Union (the "Meridian LC"). The Buyer covenants and agrees to do all things necessary to obtain the cancellation and return of the Meridian LC on closing, including and without limitation posting such replacement security as required by the Ministry of Environment to affect such cancellation and return.

ACQUISITION ON "AS IS, WHERE IS" BASIS

The Buyer acknowledges that the Seller is selling the Property and the Contents on an "as is, where is" basis. The Buyer further acknowledges that it has entered into this Agreement on the basis that the Seller does not guarantee title to the Property and the Contents that the Buyer has conducted such inspections of the condition and title to the Property as it deemed appropriate and has satisfied itself with regard to these matters. No representation, warranty or condition is expressed or can be implied as to title, encumbrances, description, fitness for purpose, merchantability, condition, quantity or quality or in respect of any other matter or thing whatsoever concerning the Property or the Contents, or the right of the Seller to sell or assign same save and except as expressly represented or warranted herein.

TITLE

The Buyer agrees to accept title to the Property pursuant to the Applicable Vesting Order referred to below and subject to the Property being free from any lien, charge, security, other or other claim ranking in priority to the interest being conveyed to the Buyer at the Closing.

The Buyer and Seller have read and agree to the Agreement of Purchase and Sale.

INITIALS OF BUYER(S) [Signature]

INITIALS OF SELLER(S) [Signature]

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INSURANCE

Notwithstanding the terms of Section 14 of this Agreement in the event of substantial damage Seller may either terminate this Agreement and have all deposit monies paid returned without interest or deduction to the Buyer or require the Buyer to accept any insurance proceeds and complete the purchase.

SELLER CONDITIONS

The obligation of Seller to complete the transaction contemplated by this Agreement shall be conditional upon:

(a) by the Closing Date the Ontario Superior Court of Justice (Commercial List) issuing an Approval and Vesting Order approving this Agreement and the transaction contemplated herein in form and substance satisfactory to the Seller;

(b) by the Closing Date there shall be no litigation or proceedings pending or threatened or order issued for the purpose of enjoining, preventing or restraining the completion of the transactions contemplated by the Agreement or otherwise claiming that such completion is improper; and

(c) by the Buyer's Condition Date the Seller shall be satisfied, acting reasonably, with evidence to be provided by the Buyer that the Buyer: (i) is competent and experienced in agriculture and Biomass energy production and (ii) has the necessary equity and financing in place to complete this transaction.

The foregoing conditions are inserted for the sole benefit of the Seller and may be waived by it at any time. In the event any of the foregoing conditions are not satisfied or waived by notice in writing by the Seller to the Buyer on or before the applicable date referred to above, then this agreement shall be at an end and all deposits shall be returned to the Buyer.

This form must be initialed by all parties to the Agreement of Purchase and Sale.

INITIALS OF BUYER(S):

LUK

INITIALS OF SELLER(S):

[Signature]

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SCHEDULE B

VANDERMEER GREENHOUSES EQUIPMENT LIST

EQUIPMENT	DATE	SERIAL NUMBER
CHRYSANTHEMUM HARVESTER & OTHER	05/07/2001	
CHRYSANTHEMUM HARVESTER & OTHER		
BLUCKING MACHINE/MIXER ROYAL	06/27/2001	84358099
VEHICLES		
1983 WESTERN STAR TRUCK - RED		VIN#2W4PDCB60PKB21365
1991 JOHN DEERE 6420 TRACTOR - GREEN, LOADER & 2 BUCKETS		VIN#RDE130V351001
1974 PENN (ANDER) TRAILER 35,000 LITRE		VIN#01187797
TRACTOR/LIFTER-INTERNATIONAL 4500 SERIES - YELLOW		
KUBOTA TRACTOR	57/17/2001	72366
KUBOTA TRACTOR		10017
GREENHOUSE SYSTEMS		
GREENHOUSE, HEATING SYSTEM, FLOOR HEATING, CO2 DOSING SYSTEM	01/01/2001	
IRRIGATE HEATING TRANSPORT MAINS	08/05/2002	
ARGUS CONTROL SYSTEM-INTEGRATED ENVIRONMENTAL AND IRRIGATION CONTROL SYSTEM DATA RECORDING, AND EQUIPMENT MONITORING SYSTEM	08/08/2002	
AUROPEC 220A HEAD, DESIGNED FOR AREAS OF 7000 FEET OR GREATER DESIGNED FOR APPLYING CHEMICALS IN ENCLOSED AREA	01/25/2002	DRS-LVH15NS
THERMO PLUS REFRIGERATION	07/06/2003	
2 ELECTRIC MOTOR SEMI AUTOMATIC		
1 SEMI AUTOMATIC SHADIC SYSTEM/BLACK OUT FABRIC	09/11/2003	
MODER ADDITIONS	11/05/2004	

C. V. G.
H

PL200 400W HPS (500 UNITS) ALPHA J BACK LIGHT FIXTURES	1/2/2001
800 RETROFIT REFLECTORS	06/27/2002
POWER GENERATOR (@BACK OF WAREHOUSE) CHP	
HPL BOILER AND ZANTINGH BURNER	23/12/1999
QTY 2 BOILER MACHINES 150 HP CF31M3-1SE-GQ-30/15	10/08/1995
LIFTING SYSTEM	11/06/2001
DIGESTER	2008
1520 CUBIC METER PRIMARY VESSEL (3 FLYGT MIXER, 1 OVER UNDER PRESSURE VALVE) (HEATING HEADER, 3 PLATFORMS, DOUBLE ROOF BLOWER, WEEPER SYSTEM AND WELL)	
1524 CUBIC METER SECONDARY VESSEL (2 FLYGT MIXER, 1 OVER UNDER PRESSURE VALVE) (HEATING HEADER, 2 PLATFORMS, DOUBLE ROOF BLOWER, WEEPER SYSTEM AND WELL)	2008
3184 DIGESTIVE STORAGE (1 FLYGT MIXER, CENTRE POST FOR CONVERSION TO A DIGESTER) (NET PIPES THROUGH FLOOR, WEEPER SYSTEM AND WELL)	
JONRACHER 335 KW CHP UNIT (CONTAINERIZED, RADIATOR, FUEL TRAIN & CONDENSATE PH)	2008
CONTROL BUILDING (HOUSE'S MAIN CONTROL PANEL, COMPUTER SYSTEM, AIR COMPRESSOR) (GREENHOUSE'S TO DIGESTER HEAT EXCHANGE, MAIN HEAR HEADER, DESULPHURIZATION SYSTEM, FORSTAC 2000 TITRATION UNIT, FERRIC CHLORIDE INJECTION SYSTEM)	2008
30 CUBIC METER DRY FEEDER SYSTEM (CONTROL PANEL, SCALE)	2008
FAN SCREW PRESS SEPARATOR (CONTROL PANEL, SMALL PAD, ENCLOSURE AND AIR FILTRATION SYSTEM, SLURRY TANK AND 2 HP SLUDGE PUMP)	2008

K.

[Handwritten signature]

1. THE COMPANY IS A PUBLIC COMPANY AND IS LISTED ON THE NYSE, WHICH IS A
PUBLICLY TRADED MARKET.

2. THE COMPANY IS A PUBLIC COMPANY AND IS LISTED ON THE NYSE, WHICH IS A
PUBLICLY TRADED MARKET.

3. THE COMPANY IS A PUBLIC COMPANY AND IS LISTED ON THE NYSE, WHICH IS A
PUBLICLY TRADED MARKET.

4. THE COMPANY IS A PUBLIC COMPANY AND IS LISTED ON THE NYSE, WHICH IS A
PUBLICLY TRADED MARKET.

5. THE COMPANY IS A PUBLIC COMPANY AND IS LISTED ON THE NYSE, WHICH IS A
PUBLICLY TRADED MARKET.

6. THE COMPANY IS A PUBLIC COMPANY AND IS LISTED ON THE NYSE, WHICH IS A
PUBLICLY TRADED MARKET.

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**REINSTATEMENT AND AMENDMENT OF
AGREEMENT OF PURCHASE AND SALE**

THIS AGREEMENT made the 22nd day of June, 2016.

BETWEEN:

LAKSHANA KUMARAGE, operating as FRESH 4 YOU

(the "Purchaser")

OF THE FIRST PART

— and —

ZEIFMAN PARTNERS INC., in its capacity as Receiver

(the "Vendor")

OF THE SECOND PART

WHEREAS the Purchaser and the Vendor have entered into an agreement of purchase and sale dated February 5, 2016, as amended or extended from time to time (hereinafter collectively, the "Purchase Agreement") with respect to the purchase of the lands and premises municipally known as 2003 – 2021 Four Mile Creek Road, Town of Niagra-on-the-Lake, Ontario (the "Property");

AND WHEREAS capitalized terms used herein but not otherwise defined herein shall have the respective meaning ascribed to them in the Purchase Agreement;

AND WHEREAS notwithstanding that the Purchaser did not waive the condition of completing its due diligence and being satisfied therewith within the time frame set out in the Purchase Agreement, the parties hereto agree to reinstate and amend the Purchase Agreement as hereinafter set out;

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the mutual covenants, terms, conditions and agreements herein contained, the sum of Ten Dollars (\$10.00) now paid by each party to the other and for other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged), the parties hereto covenant, agree and acknowledge, one with the other as follows:

1. The Vendor and the Purchaser, covenant and agree, each to the other, that they continue to be bound by the terms of the Purchase Agreement, which is hereby reinstated and is in full force and effect, as of the date hereof.
2. The following paragraph in Schedule "A" of the Purchase Agreement is deleted in its entirety:

"The Buyer agrees to pay the purchase price, (less the additional deposit to be delivered upon waiver of Buyer's condition) subject to adjustments, by wire

transfer, bank draft or certified, to the Seller on completion of this transaction. This agreement of purchase and sale (this "Agreement") is conditional until 5:00 p.m. on the 10th business day after its acceptance (the "Buyer Condition Date"), upon the Buyer completing its due diligence and being satisfied therewith, at its sole discretion. Such due diligence may include financial investigations, non-intrusive environmental investigations, legal investigations, zoning investigations, and any other investigations reasonably contemplated by the Buyer. This condition is inserted for the sole benefit of the Buyer and may be waived at its sole discretion. In the event that no notice is given by the Buyer that this condition has been satisfied or waived on or prior to the Buyer Condition Date then this agreement shall be null and void and all deposits shall be returned to the Buyer. Within 24 hours of waiver by Buyer of this condition, Buyer shall submit a second deposit in the amount of [REDACTED] to the Deposit Holder, to be held in the same manner as the initial deposit."

3. The following paragraph is inserted in Schedule "A." of the Purchase Agreement:

"The Buyer agrees to pay a further sum of [REDACTED] to Zeifman Partners Inc. in its capacity as Receiver, by negotiable cheque, no later than 5:00 p.m. on June 8, 2016, as a supplementary deposit to be held in trust in the same manner as the initial deposit pending completion or other termination of this Agreement. The Buyer agrees to pay the purchase price, (less the supplementary deposit to be delivered on or before June 8, 2016), subject to adjustments, by wire transfer, bank draft or certified, to the Seller on completion of this transaction.

Completion Date: July 29, 2016
Requisition Date: July 15, 2016

Notwithstanding the completion date set out in this agreement of purchase and sale (this "Agreement"), the Buyer and Seller may, by mutual agreement in writing, advance or extend the date of completion of this transaction."

4. The parties hereto agree to do, make and execute all such further documents, agreements, assurances, acts, matters and things and take such further action as may be reasonably required by the other party from time to time, in order to carry out the true intent of this agreement and the Purchase Agreement.
5. All other terms of the Purchase Agreement shall remain the same, in full force and effect, except as amended pursuant to the terms hereof, and time shall remain of the essence hereof.
6. For the convenience of the parties, this agreement may be executed in several counterparts, and delivered by facsimile or electronic mail transmission, each of which when so executed and delivered shall be, and be deemed to be, an original instrument and such counterparts together shall constitute one and the same instrument.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF the parties hereto have caused their respective corporate seals to be affixed hereto duly attested to by the signatures of their respective proper signing officers the date and year first above written.

LAKSHANA KUMARAGE, operating as
FRESH4 YOU



Per: LAKSHANA KUMARAGE

Name:
Title: Director

Per: _____

Name:
Title:

I/We have authority to bind the above.

ZEIFMAN PARTNERS INC., in its capacity as
receiver



Per: _____

Name: Auro Rautman
Title: Partner

Per: _____

Name:
Title:

I/We have authority to bind the Corporation

MERIDIAN CREDIT UNION LIMITED
Applicant

-and-

VANDERMEER GREENHOUSES LTD.
Respondent

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT
TORONTO

**FIFTH REPORT OF ZEIFMAN
PARTNERS INC., IN ITS CAPACITY AS
COURT-APPOINTED RECEIVER**

Fogler, Rubinoff LLP
77 King Street West
Suite 3000, PO Box 95
TD Centre North Tower
Toronto, ON M5K 1G8

Greg Azeff (LSUC #45324C)
Tel: 416-365-3716
Fax: 416-941-8852

Lawyers for Zeifman Partners Inc. in its capacity as Court-
appointed Receiver of Vandermeer Greenhouses Ltd.

tab 3

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE) THURSDAY, THE 28th
)
JUSTICE) DAY OF JULY, 2016
)

B E T W E E N:

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*

t

APPROVAL AND VESTING ORDER

THIS MOTION, made by Zeifman Partners Inc. in its capacity as the Court-appointed receiver (the "Receiver") of the undertaking, property and assets of Vandermeer Greenhouses Ltd. (the "Debtor") for an order approving the sale transaction (the "Transaction") contemplated by an agreement of purchase and sale and a Reinstatement and Amendment Agreement dated June 22, 2016 (together, the "Sale Agreement") between the Receiver and Lakshana Kumaraage o/a fresh 4 you (the "Purchaser") and appended to the Report of the Receiver dated July 18, 2016 (the "Report"), and vesting in the Purchaser the Debtor's right, title and interest in and to the

assets described in the Sale Agreement (the "Purchased Assets"), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Report and on hearing the submissions of counsel for the Receiver, [NAMES OF OTHER PARTIES APPEARING], no one appearing for any other person on the service list, although properly served as appears from the affidavit of [NAME] sworn [DATE] filed:

1. THIS COURT ORDERS AND DECLARES that the time for service and filing of the notice of motion and the motion record herein shall be abridged and further service thereof shall be dispensed with.

2. THIS COURT ORDERS AND DECLARES that the Transaction is hereby approved, and the execution of the Sale Agreement by the Receiver is hereby authorized and approved, with such minor amendments as the Receiver may deem necessary. The Receiver is hereby authorized and directed to take such additional steps and execute such additional documents (including, without limitation, such minor amendments and extensions as the Receiver deems appropriate in its sole discretion) as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchaser.

3. THIS COURT ORDERS AND DECLARES that upon the delivery of a Receiver's certificate to the Purchaser substantially in the form attached as Schedule A hereto (the "Receiver's Certificate"), all of the Debtor's right, title and interest in and to the Purchased Assets described in the Sale Agreement and listed on Schedule B hereto shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "Claims") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the of the Honourable Mr. Justice Spence of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated February 21, 2014; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; and (iii) those Claims listed on Schedule C hereto (all of which are collectively referred to as the

"Encumbrances", which term shall not include the permitted encumbrances, easements and restrictive covenants listed on Schedule D) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

4. THIS COURT ORDERS that upon the registration in the Land Registry Office for the Land Titles Division of Niagara North (Land Registry Office No. 30) of an Application for Vesting Order in the form prescribed by the *Land Titles Act* and/or the *Land Registration Reform Act*, the Land Registrar is hereby directed to enter the Purchaser as the owner of the subject real property identified in Schedule B hereto (the "Real Property") in fee simple, and is hereby directed to delete and expunge from title to the Real Property all of the Claims listed in Schedule C hereto.

5. THIS COURT ORDERS that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of the Receiver's Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

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

7. THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Receiver is authorized and permitted to disclose and transfer to the Purchaser all human resources and payroll information in the Company's records pertaining to the Debtor's past and current employees. The Purchaser shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the Debtor.

8. THIS COURT ORDERS that, notwithstanding:

- (a) the pendency of these proceedings;

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

the vesting of the Purchased Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Debtor and shall not be void or voidable by creditors of the Debtor, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

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

10. THIS COURT ORDERS AND DECLARES that the purchase price set out in the Sale Agreement shall be sealed and shall not form part of the public record until the completion of the Transaction and the filing of the Receiver's Certificate.

11. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

Schedule A – Form of Receiver’s Certificate

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N:

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*

RECEIVER’S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable [NAME OF JUDGE] of the Ontario Superior Court of Justice (the "Court") dated [DATE OF ORDER], [NAME OF RECEIVER] was appointed as the receiver (the "Receiver") of the undertaking, property and assets of [DEBTOR] (the "Debtor").

B. Pursuant to an Order of the Court dated [DATE], the Court approved the agreement of purchase and sale made as of [DATE OF AGREEMENT] (the "Sale Agreement") between the Receiver [Debtor] and [NAME OF PURCHASER] (the "Purchaser") and provided for the vesting in the Purchaser of the Debtor’s right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Receiver to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing as set out in section •

of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the Receiver.

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

THE RECEIVER CERTIFIES the following:

1. The Purchaser has paid and the Receiver has received the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the Sale Agreement;
2. The conditions to Closing as set out in section • of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and
3. The Transaction has been completed to the satisfaction of the Receiver.
4. This Certificate was delivered by the Receiver at _____ [TIME] on _____ [DATE].

**[NAME OF RECEIVER], in its capacity as
Receiver of the undertaking, property and
assets of [DEBTOR], and not in its personal
capacity**

Per: _____

Name:

Title:

Schedule B – Purchased Assets

MUNICIPAL ADDRESS:

2003 – 2021 Four Mile Creek Road, Town of Niagara-On-The-Lake, Ontario

FIRSTLY:

PIN 46390–0007 (LT)

PT LT 2–3 TP PL 167 NIAGARA AS IN RO532676, PT 1, 3, 4 30R4733; S/T RO532677;
NIAGARA--ON--THE--LAKE

SECONDLY:

PIN 46390–0008 (LT)

PT LT 3 TP PL 167 NIAGARA PT 2 30R4733; NIAGARA–ON–THE–LAKE

THIRDLY:

PIN 46390–0011 (LT)

PT LT 4 TP PL 167 NIAGARA PT 2 30R4110; NIAGARA–ON–THE–LAKE

FOURTHLY

PIN 46390–0074 (LT)

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

Schedule C – Claims to be deleted and expunged from title to Real Property

1. Instrument No. NR185256 registered on August 15, 2008 being a Charge/Mortgage in favor of Meridian Credit Union Limited in the principal amount of \$5,000,000.00
2. Instrument No. NR185257 registered on August 15, 2008 being a Postponement Of Interest from Pieter Van Der Meer, Wilhelmina Van Der Meer, John Adrian Van Berkel and Anna Clazina Van Berkel to Meridian Credit Union Limited; and
3. Instrument No. RO746644 registered on October 6, 1998 being a Charge/Mortgage in favor of Pieter Van Der Meer, Wilhelmina Van Der Meer, John Adrian Van Berkel and Anna Clazina Van Berkel in the principal amount of \$1,080,326.

**Schedule D – Permitted Encumbrances, Easements and Restrictive Covenants
related to the Real Property**

(unaffected by the Vesting Order)

1. Instrument No. NTP14408 registered on June 12, 1951 being a By-Law;
2. Instrument No. 30BA179 registered on December 16, 1969 being a Plan under the Boundries Act.
3. Instrument No. 30R10152 registered on April 23, 2001 being a Reference Plan;
4. Instrument No. LT196879 registered on May 3, 2001 being a Transfer;
5. Instrument No. NR146923 registered on July 24, 2007 being a Transfer;
6. Instrument No. NR146924 registered on July 24, 2007 being a Transfer;
7. Instrument No. NR179218 registered on June 19, 2008 being a Notice of a Site Plan Agreement among The Corporation Of The Town Of Niagara-On-The-Lake, Vandermeer Greenhouses Ltd. and Meridian Credit Union Limited, Pieter Van Der Meer, Wilhelmina Van Der Meer, John Adrian Van Berkel and Anna Clazina Van Berkel;
8. Instrument No. NR235748 registered on April 7, 2010 being a Notice of a Site Plan Agreement among The Corporation Of The Town Of Niagara-On-The-Lake, Vandermeer Greenhouses Ltd. and Meridian Credit Union Limited, Pieter Van Der, Wilhelmina Van Der Meer, John Adrian Van Berkel and Anna Clazina Van Berkel;
9. Instrument No. 30R4679 registered on November 21, 1986 being a Reference Plan;
10. Instrument No. 30R4733 registered on January 2, 1987 being a Reference Plan;
11. Instrument No. RO532677 registered on January 7, 1987 being a Transfer Easement in favor of The Corporation Of The Town Of Niagara-On-The-Lake.
12. Instrument No. RO746459 registered on October 1, 1998 being a Transfer;
13. Instrument No. RO781206 registered on June 1, 2001 being a Transfer; and
14. Instrument No. 30R4110 registered on February 26, 1985 being a Reference Plan

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE) THURSDAY, THE 28th
)
JUSTICE) DAY OF JULY, 2016
)

B E T W E E N:

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*

t

APPROVAL AND VESTING ORDER

THIS MOTION, made by Zeifman Partners Inc. in its capacity as the Court-appointed receiver (the "Receiver") of the undertaking, property and assets of Vandermeer Greenhouses Ltd. (the "Debtor") for an order approving the sale transaction (the "Transaction") contemplated by an agreement of purchase and sale and a Reinstatement and Amendment Agreement dated June 22, 2016 (together, the "Sale Agreement") between the Receiver and Lakshana Kumarage o/a fresh 4 you (the "Purchaser") and appended to the Report of the Receiver dated July 18, 2016 (the "Report"), and vesting in the Purchaser the Debtor's right, title and interest in and to the assets

described in the Sale Agreement (the "Purchased Assets"), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Report and on hearing the submissions of counsel for the Receiver, [NAMES OF OTHER PARTIES APPEARING], no one appearing for any other person on the service list, although properly served as appears from the affidavit of [NAME] sworn [DATE] filed:

1. THIS COURT ORDERS AND DECLARES that the time for service and filing of the notice of motion and the motion record herein shall be abridged and further service thereof shall be dispensed with.
2. THIS COURT ORDERS AND DECLARES that the Transaction is hereby approved, and the execution of the Sale Agreement by the Receiver is hereby authorized and approved, with such minor amendments as the Receiver may deem necessary. The Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchaser.
3. THIS COURT ORDERS AND DECLARES that upon the delivery of a Receiver's certificate to the Purchaser substantially in the form attached as Schedule A hereto (the "Receiver's Certificate"), all of the Debtor's right, title and interest in and to the Purchased Assets described in the Sale Agreement and listed on Schedule B hereto shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "Claims") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the of the Honourable Mr. Justice Spence of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated February 21, 2014; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; and (iii) those Claims listed on Schedule C hereto (all of which are collectively referred to as the "Encumbrances", which term shall not include the permitted encumbrances, easements and restrictive covenants listed on

Schedule D) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

4. THIS COURT ORDERS that upon the registration in the Land Registry Office for the ~~[Registry Division of {LOCATION} of a Transfer/Deed of Land in the form prescribed by the Land Registration Reform Act duly executed by the Receiver]~~ Land Titles Division of {LOCATION} Niagara North (Land Registry Office No. 30) of an Application for Vesting Order in the form prescribed by the *Land Titles Act* and/or the *Land Registration Reform Act*, the Land Registrar is hereby directed to enter the Purchaser as the owner of the subject real property identified in Schedule B hereto (the "Real Property") in fee simple, and is hereby directed to delete and expunge from title to the Real Property all of the Claims listed in Schedule C hereto.

5. THIS COURT ORDERS that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of the Receiver's Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

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

7. THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Receiver is authorized and permitted to disclose and transfer to the Purchaser all human resources and payroll information in the Company's records pertaining to the Debtor's past and current employees. The Purchaser shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the Debtor.

8. THIS COURT ORDERS that, notwithstanding:

- (a) the pendency of these proceedings;

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

the vesting of the Purchased Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Debtor and shall not be void or voidable by creditors of the Debtor, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

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

10. THIS COURT ORDERS AND DECLARES that the purchase price set out in the Sale Agreement shall be sealed and shall not form part of the public record until the completion of the Transaction and the filing of the Receiver's Certificate.

11. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

Schedule A – Form of Receiver’s Certificate

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N:

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*

RECEIVER’S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable [NAME OF JUDGE] of the Ontario Superior Court of Justice (the "Court") dated [DATE OF ORDER], [NAME OF RECEIVER] was appointed as the receiver (the "Receiver") of the undertaking, property and assets of [DEBTOR] (the "Debtor").

B. Pursuant to an Order of the Court dated [DATE], the Court approved the agreement of purchase and sale made as of [DATE OF AGREEMENT] (the "Sale Agreement") between the Receiver [Debtor] and [NAME OF PURCHASER] (the "Purchaser") and provided for the vesting in the Purchaser of the Debtor’s right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Receiver to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for

the Purchased Assets; (ii) that the conditions to Closing as set out in section ● of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the Receiver.

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

THE RECEIVER CERTIFIES the following:

1. The Purchaser has paid and the Receiver has received the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the Sale Agreement;
2. The conditions to Closing as set out in section ● of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and
3. The Transaction has been completed to the satisfaction of the Receiver.
4. This Certificate was delivered by the Receiver at _____ [TIME] on _____ [DATE].

**[NAME OF RECEIVER], in its capacity as
Receiver of the undertaking, property and
assets of [DEBTOR], and not in its personal
capacity**

Per: _____

Name:

Title:

Schedule B – Purchased Assets

MUNICIPAL ADDRESS:

2003 – 2021 Four Mile Creek Road, Town of Niagara-On-The-Lake, Ontario

FIRSTLY:

PIN 46390-0007 (LT)

PT LT 2-3 TP PL 167 NIAGARA AS IN RO532676, PT 1, 3, 4 30R4733; S/T RO532677;

NIAGARA-ON-THE-LAKE

SECONDLY:

PIN 46390-0008 (LT)

PT LT 3 TP PL 167 NIAGARA PT 2 30R4733; NIAGARA-ON-THE-LAKE

THIRDLY:

PIN 46390-0011 (LT)

PT LT 4 TP PL 167 NIAGARA PT 2 30R4110; NIAGARA-ON-THE-LAKE

FOURTHLY

PIN 46390-0074 (LT)

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

Schedule C – Claims to be deleted and expunged from title to Real Property

1. Instrument No. NR185256 registered on August 15, 2008 being a Charge/Mortgage in favor of Meridian Credit Union Limited in the principal amount of \$5,000,000.00
2. Instrument No. NR185257 registered on August 15, 2008 being a Postponement Of Interest from Pieter Van Der Meer, Wilhelmina Van Der Meer, John Adrian Van Berkel and Anna Clazina Van Berkel to Meridian Credit Union Limited; and
3. Instrument No. RO746644 registered on October 6, 1998 being a Charge/Mortgage in favor of Pieter Van Der Meer, Wilhelmina Van Der Meer, John Adrian Van Berkel and Anna Clazina Van Berkel in the principal amount of \$1,080,326.

**Schedule D – Permitted Encumbrances, Easements and Restrictive Covenants
related to the Real Property**

(unaffected by the Vesting Order)

1. Instrument No. NTP14408 registered on June 12, 1951 being a By-Law;
2. Instrument No. 30BA179 registered on December 16, 1969 being a Plan under the Boundries Act.
3. Instrument No. 30R10152 registered on April 23, 2001 being a Reference Plan;
4. Instrument No. LT196879 registered on May 3, 2001 being a Transfer;
5. Instrument No. NR146923 registered on July 24, 2007 being a Transfer;
6. Instrument No. NR146924 registered on July 24, 2007 being a Transfer;
7. Instrument No. NR179218 registered on June 19, 2008 being a Notice of a Site Plan Agreement among The Corporation Of The Town Of Niagara-On-The-Lake, Vandermeer Greenhouses Ltd. and Meridian Credit Union Limited, Pieter Van Der Meer, Wilhelmina Van Der Meer, John Adrian Van Berkel and Anna Clazina Van Berkel;
8. Instrument No. NR235748 registered on April 7, 2010 being a Notice of a Site Plan Agreement among The Corporation Of The Town Of Niagara-On-The-Lake, Vandermeer Greenhouses Ltd. and Meridian Credit Union Limited, Pieter Van Der, Wilhelmina Van Der Meer, John Adrian Van Berkel and Anna Clazina Van Berkel;
9. Instrument No. 30R4679 registered on November 21, 1986 being a Reference Plan;
10. Instrument No. 30R4733 registered on January 2, 1987 being a Reference Plan;
11. Instrument No. RO532677 registered on January 7, 1987 being a Transfer Easement in favor of The Corporation Of The Town Of Niagara-On-The-Lake.

12. Instrument No. RO746459 registered on October 1, 1998 being a Transfer;
13. Instrument No. RO781206 registered on June 1, 2001 being a Transfer; and
14. Instrument No. 30R4110 registered on February 26, 1985 being a Reference Plan

MERIDIAN CREDIT UNION LIMITED
Applicant

-and-

VANDERMEER GREENHOUSES LTD.
Respondent

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT
TORONTO

MOTION RECORD

Fogler, Rubinoff LLP
77 King Street West
Suite 3000, PO Box 95
TD Centre North Tower
Toronto, ON M5K 1G8

Greg Azeff (LSUC #45324C)
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