

**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. 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*

**MOTION RECORD
(Returnable on December 2, 2014)**

November 24, 2014

FOGLER, RUBINOFF LLP

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Receiver of Vandermeer Greenhouses Ltd.

AND TO: **FLETT BECCARIO**
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AND TO: **MNP LTD.**
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AND TO: **DEPARTMENT OF JUSTICE**

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Lawyers for Canada Revenue Agency

AND TO: **HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF
ONTARIO AS REPRESENTED BY THE MINISTER OF FINANCE**

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**ONTARIO
SUPERIOR COURT OF JUSTICE
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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 December 2, 2014 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 amending paragraph 20 of the Initial Order of the Honourable Mr. Justice Spence of the Ontario Superior Court of Justice dated February 21, 2014 (the "**Initial Order**"), increasing the amount that the Receiver is authorized to borrow pursuant to Receiver's Certificates from \$250,000 to \$1,000,000;
- (c) An order approving the activities and conduct of the Receiver and its legal counsel to date;
- (d) An order approving the fees and disbursements of the Receiver and its legal counsel; 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 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 anticipated completing a sale of the property of Vandermeer (the "**Property**") to Green Tower Industries Inc. ("**GTII**"), and entered into a three month lease agreement with GTII effective February 22, 2014 (the "**Lease**");

- (d) GTII failed to pay certain expenses and was thus in default of its obligations under the Lease. GTII failed to remedy its defaults, and the Lease and sale transaction were terminated effective April 28, 2014;
- (e) Since the termination of the Lease and proposed transaction with GTII, the Receiver has, among other things, communicated and negotiated with other prospective purchasers but has not yet completed a transaction;
- (f) The Receiver has borrowed \$250,000 under permitted borrowings pursuant to the Initial Order and as such, no further funds may be borrowed. The Receiver's initial borrowing limit has been exhausted for reasons that include the following:
 - (i) Borrowing was intended to be short term, pending completion of the transaction with GTII. However, the proposed transaction with GTII did not and will not close;
 - (ii) Revenue generated during receivership and, in particular;
 - (1) revenue from the anaerobic digester, was lower than expected; and
 - (2) Weak floral sales combined with operating costs that are difficult to reduce;
- (g) As a result of the above, the Receiver now requires additional funds to fund the cost of the receivership proceedings and expects that such borrowings will be for a longer period than initially anticipated;
- (h) The sum of \$1,000,000 is an appropriate limit for the Receiver's borrowing at this juncture;

- (i) The Receiver has conducted itself and the affairs of Vandermeer in accordance with the Initial Order and fees have been incurred in the course of same, full particulars of which are set out in the First Report of the Receiver appended hereto;
- (j) The fees and disbursements of the Receiver and its counsel are fair and reasonable;
- (k) Section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1995 c. B-3, as amended;
- (l) Section 101 of the *Courts of Justice Act*, R.S.O. 1990 c. C.43, as amended;
- (m) Rule 37 of the *Rules of Civil Procedure*; and
- (n) Such further and other grounds as the lawyers may advise.

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

- (a) The First Report of the Receiver dated November 17, 2014; and
- (b) Such further and other evidence as the lawyers may advise and this Honourable Court may permit.

November 24, 2014

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TO: **ZEIFMAN PARTNERS INC.**
Receiver of Vandermeer Greenhouses Ltd.

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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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Zeifman Partners Inc.

tab 2

**ONTARIO
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**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 Rubino 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.

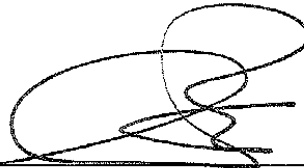
CONCLUSION

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

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke at the end, positioned above a horizontal line.

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

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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*

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]~~ 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,

any other person on the service list ✓

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.

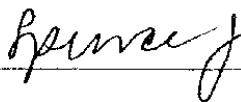
28. THIS COURT ORDERS that the Plaintiff shall have its costs of this motion, up to and including entry and service of this Order, provided for by the terms of the Plaintiff's security or, if not so provided by the Plaintiff's security, then on a substantial indemnity basis to be paid by the Receiver 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
ON / BOOK NO.:
IN / DANS LE REGISTRE NO.:

FEB 21 2014

ND



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

Court File No.: *CV-13-49552*

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:



RICHARD ZIRGER AND JUDI ZIRGER

Plaintiffs

- and -

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

Defendants

STATEMENT OF CLAIM

TO THE DEFENDANT(S)

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

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

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

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

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

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

DATED: *December 19, 2013* ISSUED BY: Christina Lewis
Registrar, Superior Court of Justice
Local Registrar

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

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

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

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

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

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

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

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

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

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

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

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I. SUMMARY OF CLAIM

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

II. THE PLAINTIFFS' CLAIM:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18. The Plaintiffs claim against PlanET Biogas Solutions:

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

19. The Plaintiffs claim against CEM Engineering:

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

III. THE PARTIES

i) The Plaintiffs

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

ii) The Defendants

a) Vandermeer Nurseries

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

b) Meridian Credit Union

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

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

c) The Town of Niagara on the Lake

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

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

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

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

e) The Ontario Power Authority

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

f) The Queen in right of Ontario

34. Ontario is named in these proceedings pursuant to the provisions of the *Proceedings Against the Crown Act*, R.S.O. 1990, c. P.27, as amended.

35. Ontario, as represented by the Minister of the Environment ("MOE") and the Minister of Agriculture, Food and Rural Affairs ("OMAFRA"), are the executive branches of the provincial government in the Province of Ontario and, through its agents, servants and employees, was responsible at all material times for funding, regulating and supervising the approval, construction and operation of Vandermeer's anaerobic digester.

36. Anaerobic digestion projects could currently fall under the following *Acts* and regulations:

Assessment Act, R.S.O. 1990, c. A.3, as amended

O. Reg. 282/98

Drainage Act, R.S.O. 1990, c. D.17, as amended

Electricity Act, 1998, S.O. 1998, c.15

O. Reg. 160/99

Environmental Assessment Act, R.S.O. 1990, c. E.18, as amended

Environmental Bill of Rights, 1993, S.O. 1993, c.28, as amended

Environmental Protection Act, R.S.O. 1990, c. E.19, as amended

RRO 1990, Regulation 347

O. Reg. 359/09

O. Reg. 452/09

Farming and Food Production Protection Act, 1998, S.O. 1998, c.1

Greenbelt Act, 2005 S.O. 2005, Ch. 1.

Green Energy Act, 2009, S.O. 2009, c.12

Nutrient Management Act, 2002, S.O. 2002, c.4, as amended

O. Reg. 106/09

O. Reg. 267/03

Pesticides Act, R.S.O. 1990, c. P.11, as amended

O. Reg. 63/09

Planning Act, R.S.O. 1990, c. P. 13, as amended

O. Reg. 452/09

O. Reg. 419

g) PLANet Biogas

- 37. PlanET Biogas ("PlanET") is a corporation incorporated pursuant to the laws of Ontario. PlanET specializes in the design, construction and service of biogas plants.
- 38. Vandermeer retained PlanET to design, build and obtain permits, licenses, certificates and approvals for an anaerobic digester on its property. PlanET services Vandermeer's digester.
- 39. PlanET was contractually bound to notify Vandermeer if, after the time of the proposal or bid closing, changes were made to the applicable laws.

h) CEM Engineering

- 40. CEM is an engineering consulting firm located in St. Catharines, Ontario.
- 41. CEM offers consulting, design and project services for the biogas sector. CEM liased with NOTL concerning Vandermeer's application for site plan approval, building permits and gave advice in respect of anaerobic digestion and in particular, odours emanating from the digester. CEM advised NOTL that there would be little impact of siting an anaerobic digester on the Vandermeer property.

IV. FACTUAL SUMMARY

i) Niagara on the Lake's unique agricultural environment

- 42. All the farmland in Niagara on the Lake is primarily flat. The farms are unique in size and are much smaller than the majority of farms in Ontario. Most farms are 25 acres or less and 40% are less than 10 acres in size.
- 43. All the farmland in Niagara on the Lake is governed by the Ontario Greenbelt Plan (2005) ("Plan"), designated "Protected Countryside- Agricultural system" and a "specialty crop area – Niagara Peninsula Tender Fruit and Grape Area." Both Vandermeer Nurseries and the plaintiffs' farm are located in a protected agricultural zone for tender fruit growing.
- 44. One of the Plan's central objectives is to preserve agricultural land as a continuing commercial source of food and employment.

45. According to the Plan, lands within speciality crop areas shall not be re-designated for non-agricultural uses.
46. The Plan defines "agricultural-related uses" as "those farm-related commercial and farm-related industrial uses that are *small scale* and *directly related* to the farm operation and are required in close proximity to the farm operation."
47. The Plan defines "minimum distance separation formulae" to mean "formulae developed by the Province to separate uses so as to reduce incompatibility concerns about *odour from livestock facilities*."
48. The Plan defines "infrastructure" to include "waste management systems, electric power generation and transmission including *renewable energy systems*..." (emphasis in original)
49. For lands falling within the Protected Countryside, the Greenbelt Plan, all existing, expanded or new infrastructure subject to and approved under the *Planning Act* or other environmental approval is permitted provided it supports agriculture or the rural economic activity that exists and is permitted within the Greenbelt.
50. The location and construction of infrastructure and expansions, extensions, operations and maintenance of infrastructure in the Protected Countryside are subject to the following:
 - a. Planning, design and construction practices shall minimize, wherever possible, the amount of the Greenbelt, and particularly the Natural Heritage System, traversed and/or occupied by such *infrastructure* ;
 - b. Planning, design and construction practices shall minimize, wherever possible, the *negative impacts* and disturbance of the existing landscape, including, but not limited to, impacts caused by light intrusion, noise and road salt; and,
 - c. Where practicable, existing capacity and coordination with different *infrastructure* services is optimized so that the rural and existing character of the Protected Countryside and the overall urban structure for southern Ontario established by Greenbelt and any provincial growth management initiatives are supported and reinforced.
51. *Planning Act* decisions must conform to the policies in the Greenbelt Plan (2005).

ii) The Niagara Biosphere

52. Both the Zirger farm and the Vandermeer property are located approximately 6 km from an internationally recognized and protected area, the Niagara Escarpment Biosphere Reserve.
53. A biosphere is comprised of all the land, water and atmosphere that support life. A biosphere reserve is an international designation of recognition from UNESCO (the United Nations Educational Scientific and Cultural Organization) for an area in the world which is deemed to demonstrate a "balanced relationship between humans and the biosphere." The UNESCO designation means that collaborative efforts among people in the designated area are to promote the sustainability of local economies and communities as well as the conservation of the terrestrial/ or coastal ecosystems they are in.
54. A biosphere reserve designation gives an area international recognition for the important ecological and cultural values in an area. It also provides a mechanism to apply sound stewardship and protection to the use of resources in an area to support present and future generations.
55. Ontario's Niagara Escarpment Biosphere is only one of 16 biosphere reserves in Canada and is part of a network of 580 reserves in 114 countries.
56. The UNESCO designation recognizes the Niagara Escarpment as an internationally significant ecosystem for its special environment and unique environmental plan. The designation puts Ontario's Niagara Escarpment in the company of such other well-known biospheres as the Galapagos Islands, the Serengeti and the Florida Everglades.
57. Given its location approximately 6 km away from this internationally recognized biosphere reserve, there is a unique growing environment on the Zirger farm that merits protection.

iii) The plaintiffs' farm

58. Richard Zirger's family has owned the property at 59 Hunter Road continuously for over 40 years.
59. From the time his parents bought the farm, the family has grown peaches, apples, pears and other tender fruits.

60. In 2006, Richard's mother became unable to live independently at the farm.
61. In 2008, the plaintiffs bought the family farm and applied to obtain a building permit from NOTL to construct a new house on the property.
62. On or about May 7, 2009, NOTL granted Richard a building permit to construct a new house. On or about May 8, 2009, Richard paid NOTL's fees for lot grading, building and water metering. Construction on the new Zirger house was completed in November 2009.
63. Until recently, the plaintiffs used migrant workers to harvest their crops and their fruits have been sold as a cash crop.
64. Since Vandermeer began operating its anaerobic digester, the plaintiffs' crops have been damaged by airborne matter that is causing, among other things, premature aging of the trees and the sudden appearance of both black spots on their fruit and the Peach Tree Bore. These occurrences are only evident on the farm properties that are in line with the wind direction from the digester.
65. As the plaintiffs cannot sell damaged fruit, their farm is now experiencing farm losses.
66. More recently, the plaintiffs made the difficult decision to plough under their peach orchard as the trees were irretrievably damaged and their fruit unfit for human consumption.
67. The plaintiffs believe that with the Vandermeer digester located next door, any food crop they might be able to grow would not meet CanadaGAP requirements.
68. CanadaGAP, is an independent, not for profit food safety program for companies that produce, pack and store fruits and vegetables. It is designed to help implement effective food safety procedures within fresh produce operations. Its two manuals, one specific to Greenhouse operations, the second for other fruit and vegetable operations, have been developed by the horticultural industry and reviewed for technical soundness by Canadian government officials. The manuals are designed for companies implementing Good Agricultural Practices (GAPs) and maintaining an effective food safety program.
69. The manuals are based on a rigorous hazard analysis applying the seven principles of the internationally-recognized HACCP (Hazard Analysis and Critical Control Point) approach. The program was benchmarked to and officially recognized by the Global

Food Safety Initiative (GFSI). Audit and certification services for the program are delivered by accredited Certification Bodies.

70. According to section 2.1 of its fruit and vegetable manual, food production sites must be assessed for biological, chemical and physical hazards due to previous use and adjacent agricultural and non-agricultural activities.

71. The plaintiffs believe that the activities on the Vandermeer site jeopardize food safety.

In particular, they believe that as a result of situating the digester on the Vandermeer property, they will never be able to demonstrate to CanadaGAP that there is no threat to food safety from

- a) cross-contamination from crops with novel traits;
- b) air, water and soil pollution from the Vandermeer site; or,
- c) unusually high levels of animal and bird activity with associated feces.

72. The plaintiffs are especially concerned about the effect of the growing rat and mouse population on food safety and have recently noticed that a snowy owl is living near the digester, suggesting that the rodent population is abnormally high.

iv) Vandermeer Greenhouses

73. Vandermeer operates two greenhouse sites, one in Ajax, Ontario, the other next to the Zirger farm in Niagara on the Lake. Vandermeer grows flowers at both locations.

74. The Vandermeer's property in Niagara on the Lake is 6.7 hectares in size, with approximately 280,000 sq. feet of greenhouse space.

75. The Vandermeer property is subject to two site specific by-laws. In 1986, NOTL passed by-law No. 500DU-86, an amendment to by-law 500A-74, which zoned the property "Special Exemption 21.A.2 V Greenhouse Establishment Zone," permitting a greenhouse operation.

76. According to By-law 500 Dv-86, an anaerobic digester is not a permitted use on the part of the Vandermeer property that is zoned "Special Exemption 21.A.2 V Greenhouse Establishment Zone." The digester is not an accessory structure to the permitted use.

77. Greenhouses can be operated anywhere as they are not dependent on the quality of the soil or natural growing conditions. In fact, greenhouses are often used to overcome

shortcomings in the growing qualities of land, such as a short growing season or low levels of light.

78. Heating is one of the greatest costs associated with greenhouse operations. The higher costs of heating a greenhouse with natural gas or oil has lead greenhouse operators to switch to alternative fuels, including biogas.
79. To reduce its costs, in May 2006, Vandermeer attempted to obtain approval for a wind turbine system on its Niagara property. At the public hearings held to consider the project, area residents expressed their disapproval. Vandermeer abandoned the project.
80. Subsequently, Vandermeer obtained significant public funding through OMAFRA's Ontario Biogas Systems Financial Assistance Program ("OBSFA") to assist it with the costs of developing an anaerobic digester for its Niagara on the Lake site.

v) Anaerobic Digestion

81. Anaerobic digesters are commonly used to handle excess animal manure at cattle, poultry and swine operations, to control odour from manure and to create energy. These facilities are usually located on large farm properties, a considerable distance away from neighbouring farms.
82. There is a continuing controversy over whether anaerobic digestion creates green energy and some proposals for digesters have been fought off by community opposition as digesters are known to facilitate factory farming, emit gases and raise safety issues.
83. An anaerobic digester composts (or "digests") organic materials in a machine that limits access to oxygen. This encourages the generation of methane and carbon dioxide ("biogas") which is then burned as fuel through an energy recovery system to make electricity and heat. Non-agricultural source materials produce more gas than farm based materials which, in turn, allows for greater rates of power generation.
84. Methane is extremely flammable and may form explosive mixtures with air. Methane is also an asphyxiant and may displace oxygen in an enclosed space. Possible health effects of breathing in methane at high concentrations, resulting in oxygen deficiency, are increased breathing and pulse rates, lack of muscular coordination, emotional upset, nausea and vomiting, loss of consciousness, respiratory collapse and death.

85. Methane off-gas can penetrate the interiors of buildings and expose occupants to significant levels of methane. Some buildings have specially engineered recovery systems below their basements to actively capture methane and vent it away.
86. Where there is more gas than the energy recovery system can use, either through high gas production rates or poor maintenance of the system, flares can be used to eliminate excess gas that pose health and safety risks.
87. The handling of digester feedstock and the process of anaerobic digestion produces other gases including (but not limited to): nitrogen and sulphur oxides; hydrogen sulfide; particulate matter; carbon monoxide and ammonia. The presence of these gases also poses safety risks, including (but not limited to): explosion; asphyxiation; disease; excessive noise and hydrogen sulphide poisoning. Biogas and its constituents, many of which are colourless and odourless, can unknowingly expose operators and visitors to serious bodily harm and in some circumstances, exposure has been fatal. Appropriate test equipment must be available at all times to monitor gas levels in the digester.
88. Common hazards associated with anaerobic digesters also include drowning, spills, electric shock, chemical burns and noise exposure. Several anaerobic digesters have been damaged or destroyed by fires fuelled with biogas. In light of the risk of explosion, significant safety precautions must be taken. No open flames should ever be used near a digester. Also, equipment such as large engines and electric generators should be inspected daily and must be suitable to the environment so that a spark will not ignite the highly combustible gas anaerobic digestion produces. There must be no smoking near the digester.
89. As a consequence of these risks, extreme caution and adequate signage are necessary when working with biogas. Digester-associated tasks and maintenance should be performed without anyone having to enter confined spaces, including pits. Adequate ventilation, appropriate precautions, good work practices, engineering controls, and adequate personal protective equipment minimize the dangers associated with biogas. All employees associated with anaerobic digestion systems or who manage organic residuals must be appropriately trained and both safety equipment and an emergency

action plan must be in place, clearly visible to all visitors, and made available to all local emergency services.

90. The solid, post-digestion remains of the process of anaerobic digestion, commonly known as the "digestate," are often sold to be used as fertilizer. Since the digestate may contain chemical contaminants, in many jurisdictions there are regulations which specify its permissible contents and how it may be used. These management criteria aid in the control of algae producing pollutants, inhibiting the contamination of ground and surface water.
91. The risk of ground or surface water pollution is compounded where an anaerobic digestion operation uses feedstock from other farm or non-agricultural sources. Improper on-site feedstock storage of imported feedstock material can increase the risk of algae producing nutrients leaching into ground and surface waters.

vi) **Approvals Process for Biogas Systems in Ontario**

92. According to the Ontario Ministry of Agriculture, Food and Rural Affairs ("OMAFRA") there are four main approval routes for biogas systems in Ontario, based on the type of material being digested, and the type of energy produced. Those four processes are:
 - a) Nutrient Management Regulated Mixed Anaerobic Digestion Facility (RMADF) approval for manure-based biogas systems mixing up to 25 percent of certain off-farm materials, and producing any type of power output;
 - b) Renewable Energy Approvals (REA) for all electricity-based biogas projects (except systems with RMADF approval or agricultural systems at a farm with a Nutrient Management Strategy);
 - c) Certificate of Approval for non-electricity biogas projects (such as using biogas as a heating fuel) using waste as inputs; or,
 - d) No approval for non-electricity biogas systems using only exempt wastes such as agricultural waste.
93. Vandermeer's project does not comply with any of these approval routes.

vii) Vandermeer's project

94. On February 11, 2008, Vandermeer submitted a site plan application to the Planning and Development Services department at NOTL proposing the development of primary and secondary Anaerobic Digester tanks, a Digestate Storage tank, input or feedstock storage bunkers, and a generation station. The site plan drawing shows that Vandermeer was planning to build two generators on its site, with a combined nameplate capacity of 750 kwh hours.
95. The anaerobic digester was designed with a cogeneration unit so that heat and power could be provided to Vandermeer's greenhouse and excess power could be sold to the grid.
96. Vandermeer has represented to the community that its project provides "green energy to power and heat [their] greenhouses and ... significantly reduce [their] carbon footprint." In media interviews given after construction was completed, it reportedly promised that there would be no odours from the digester and that the facility is "an asset to the community." In an undated letter it alleges it sent to its neighbours, Vandermeer said: "We believe that going green is the right thing to do for the environment, as well as the smart thing to do to manage energy costs. We remain committed to being a good corporate citizen."
97. Vandermeer represented to NOTL that it would only use farm based materials, namely, chicken manure, silage and grape pomace, in its digester.
98. By letter dated March 31, 2008, MOE commented on Vandermeers' application for site plan approval. MOE confirmed that feedstock would be from the existing agricultural operation and also other agricultural based materials. MOE noted that additional approvals might be required and specifically stated that in the event that Vandermeer began accepting non-agricultural based waste, the facility would require a Certificate of Approval or an approved Nutrient Management Strategy.
99. On June 2, 2008, NOTL approved Vandermeer's application for a site plan agreement, enacting By-law No. 4224-08. In approving Vandermeer's application, NOTL established specific standards and procedures regarding the supervision and control of Vandermeer's digester.

100. According to section 14.4 of by-law 4224-08, should NOTL receive complaints regarding the noise, odour, storm run-off, traffic and/or maintenance of the site, Vandermeer is to use best efforts to resolve them. In the event that Vandermeer fails to do so, section 14.6 of the By-law provides that NOTL shall have the right on 15 days' notice enter the lands and do any work required.
101. The By-law contemplates the possibility that Vandermeer might change what it put in its digester. Section 14.1 of By-law No. 4224-08 states: "Should the Owner [Vandermeer] begin accepting non-agricultural based waste (not exempt per Ontario Regulation 347) to supplement or be wholly used as feedstock, the digester facility would require a certificate of approval from the Ministry of the Environment pursuant to the Environmental Protection Act and/or an Ontario Ministry of Agriculture, Food and Rural Affairs approved Nutrient Management Strategy pursuant to the Nutrient Management Act."
102. On June 26, 2008, NOTL granted Vandermeer Building Permit #8612 for the construction of 3 anaerobic digestion tanks. While the construction of the generation station and permanent covers for the input storage bunkers required separate and additional building permits, Vandermeer never proceeded with these as the storage bunkers are uncovered, leaving them open to the air and elements, creating putrid odours and attracting mice, rats and birds.
103. NOTL granted another building permit to Vandermeer on July 15, 2008, permitting the construction of a foundation for a pre-fabricated steel storage building (Permit #8836).
104. On or about July 25, 2008, Vandermeer signed a Renewable Energy Standard Offer Program Contract ("RESOP") with the Ontario Power Authority ("OPA") to provide electricity to the provincial grid.
105. None of the local residents were notified of or invited to consider Vandermeer's project. No public hearings were convened and NOTL did not impose any additional regulatory requirements on the project.
106. Paragraph 9 of the RESOP contract characterizes biogas as a renewable fuel. Schedule 2 defines bio-gas as the product of a renewable resource and organic matter

that is derived from a plant and available on a renewable basis as renewable biomass.

The contract defines renewable biomass and bio-gas as renewable fuels, not waste.

107. Schedule 2 defines a Renewable Generation Facility as facility that generates electricity exclusively from a renewable fuel.

108. Section 3.7 specifically prohibits Vandermeer from using any other source or fuel for generating the electricity it is selling to the grid. Section 7.1(12) provides that in the event the generator uses another type of fuel, the contract will be in default.

109. Paragraph 10 sets a contract price for the electricity generated from Vandermeer's renewable fuel.

110. The plaintiffs state that Vandermeer's project is a renewable energy project.

111. On October 1, 2008, Vandermeer sought to add non-agricultural source materials as feedstock for its digester and applied for a Certificate of Approval pursuant to s. 27 of the *Environmental Protection Act*, R.S.O. 1990, c. E.19, as amended, with Ontario's Ministry of the Environment ("MOE"). No public hearings were convened to consider Vandermeer's application.

112. The structural work for the digester was completed in or about December 2008 and the digester became operational in or about April 2009.

113. The plaintiffs state that as Vandermeer's anaerobic digester was designed for electrical production, it is a Renewable Energy Project which requires a Renewable Energy Approval ("REA") to legally operate in Ontario.

114. On October 30, 2009, MOE granted Vandermeer a Provisional Certificate of Approval for a farm based anaerobic digestion facility. The Certificate effectively transforms a portion of the Vandermeer property into a Waste Disposal Site without rezoning, studies or public consultation.

115. The Certificate states that the Site is to be constructed, operated and maintained in a manner which ensures the health and safety of all persons and prevents adverse effects on the natural environment or on any persons.

116. The Certificate does not impose any criteria for the land application of the digestate.

117. NOTL granted Vandermeer a further building permit on December 23, 2009 for the construction of a control room building (Permit #9443).

118. After Vandermeer applied for a Certificate of Approval to change its feedstock, NOTL did not take any steps to ensure that Vandermeer was in compliance with its by-laws.

viii) Digester contents

119. The Certificate of Approval allows Vandermeer to input a variety of materials into its digester. According to its daily log, Vandermeer uses the following inputs to feed its digester: pomace obtained from Vincor; coffee; separated solids; waste from Tim Hortons; peppers; and, pet food. It does not input any manure.
120. According to Part B, section 1 of the Certificate, Vandermeer may input:
- a) Organic waste;
 - b) Agricultural waste;
 - c) O. Reg. 267/03 Schedule I and Schedule II off-farm anaerobic digestion materials;
 - d) Grape pomace from Vincor (considered "agricultural waste");
 - e) 50% of the total input must be "on-farm anaerobic digestion materials..."
121. "On-farm anaerobic digestion materials" are anaerobic digestion materials that are generated at an agricultural operation.

a) *Organic Waste*

122. According to the Certificate, "Organic waste" means "materials limited to solid or liquid municipal and industrial waste derived from plants or animals, listed in Part B, Condition 1.2 of this Certificate, and all readily biodegradeable..."
123. Part B, Condition 1.2 states:

The operation of this *Site* is limited to receipt and processing of the following types of *organic waste*:

- (a) liquid fats, oils and grease (FOG), of plant and animal origin, and accompanying food residuals collected from grease interceptors and/or grease traps at food production, food processing and/or food wholesale and retail facilities;
- (b) liquid flocculation and scum waste from dissolved air floatation (DAF) systems from wastewater for the production of animal- or plant-based materials or from the production of any other food for human consumption;
- (c) solid DAF from wastewater for the production of animal- or plant-based materials or from the production of any other food for human consumption that has been treated to a minimum temperature of 70C for a minimum of one (1) hour or at a minimum temperature of 50C for a minimum of twenty (20) hours, to ensure complete inactivation of pathogens prior to being delivered to the *Site*. Reports confirming

treatment, provided by the supplier of the solid DAF, shall be maintained at the *Site* to verify compliance with this condition; and
 (d) dried spent grain and solubles (DSGS) from an ethanol plant.

124. In a Vandermeer Working Group meeting, Vandermeer was directed to stop putting DAF into the digester, highlighting the *ad hoc* way the digester is being operated. At the time, the plaintiffs were told that the lead time for this change would be 55 days. However, the plaintiffs noticed an immediate odour reduction.

b) Agricultural Waste

125. O. Reg. 347 defines "agricultural waste" as waste generated by a farm operation activity but does not include,

- (a) domestic waste that is human body waste, toilet or other bathroom waste, waste from other showers or tubs, liquid or water borne culinary waste,
- (b) waste from a sewage works to which section 53 of the *Ontario Water Resources Act* applies,
- (c) a dead farm animal within the meaning of Ontario Regulation 106/09 (Disposal of Dead Farm Animals) made under the *Nutrient Management Act, 2002* or a regulated dead animal within the meaning of Ontario Regulation 105/09 (Disposal of Deadstock) made under the *Food Safety and Quality Act, 2001*,
- (d) inedible material within the meaning of Ontario Regulation 31/05 (Meat) made under the *Food Safety and Quality Act, 2001*, or
- (e) any material that is condemned or derived from a carcass at a registered establishment within the meaning of the *Meat Inspection Act* (Canada).

126. According to O. Reg 347, a "farm operation activity" means an activity mentioned in paragraphs 1 to 4 of the definition of "farm operation." A "farm operation" means an agricultural, aquacultural or horticultural operation, other than a race track or a zoo, that is engaged in any or all of the following:

- 1. Growing, producing or raising farm animals.
- 2. The production of agricultural crops, including greenhouse crops, maple syrup, mushrooms, nursery stock, tobacco, trees and turf grass.

3. The processing, by the operator of the farm operation, of anything mentioned in paragraphs 1 and 2, where the processing is primarily in relation to products produced from the agricultural, aquacultural or horticultural operation.
4. The use of transport vehicles by the operator of the farm operation, to transport anything mentioned in paragraphs 1 and 2, where the use of transport vehicles is primarily in relation to products produced from the agricultural, aquacultural or horticultural operation.

127. Paragraph 1.3 (b) of Vandermeer's Certificate of Approval states:

(b) In accordance with Item 7, grape pomace received from Vincor Canada is considered to be *agricultural waste* and may be accepted at the *Site*. Should the process in the production of the grapes as described in Item 7 change, or should the *Owner* wish to accept grape pomace from a new source, the *Owner* shall notify the *Director* and the *District Office* and provide supporting information for review to determine whether the grape pomace will continue to be, or is, considered *agricultural waste*...

128. According to its internet website, Vincor Canada is not a farm operation or an agricultural operation. Vincor is Canada's largest producer and marketer of wine and related products. Its Canadian headquarters is in Mississauga. As described elsewhere herein, Vincor is a subsidiary of an American multi-national firm. Vincor Canada's waste is not "agricultural waste."

129. Vandermeer's digestate is not derived from inputs that are at least 50% agricultural-sourced material. Vandermeer does not have a Nutrient Management Plan, Nutrient Management Strategy or Non-Agricultural Source Management Plan.

130. In or around September 2013, Vandermeer notified the plaintiffs that it intended to increase productivity by adding three more local wineries as suppliers of grape pomace.

c) O. Reg. 267/03 Schedule I Waste

131. Schedule I of O. Reg. 267/03 of the *Nutrient Management Act* provides that:

The following materials may be received at an agricultural operation for treatment in a regulated mixed anaerobic digestion facility:

1. Waste products from animal feeds listed in Classes 1, 2, 3, 4 and 5 of Part 1 of Schedule IV to the Feeds Regulation, 1983 (SOR/83-593) made under the *Feeds Act* (Canada), excluding any materials that contain an animal product that has not been denatured.

2. Materials that previously would have been a product described in paragraph 1 but are no longer suitable for use in feeding farm animals for reasons that do not include contamination by another material.
3. Organic waste matter derived from the drying or cleaning of field or nut crops.
4. Organic waste matter derived from the processing of field or nut crops.
5. Organic waste matter derived from the production of ethanol or biodiesel.
6. Aquatic plants.
7. Organic waste matter derived from food processing at,
 - i. bakeries,
 - ii. confectionery processing facilities,
 - iii. dairies and facilities that process dairy products,
 - iv. fruit and vegetable processing facilities,
 - v. cereal and grain processing facilities,
 - vi. oil seed processing facilities,
 - vii. snack food manufacturing facilities,
 - viii. breweries and distilleries,
 - ix. wineries, and
 - x. beverage manufacturing facilities.
8. Revoked: O. Reg. 338/09, s. 81 (3).
9. Fruit and vegetable waste.
10. Organic waste materials from a greenhouse, nursery, garden centre or flower shop that is not part of an agricultural operation

132. A regulated mixed anaerobic digestion facility is defined as a mixed anaerobic digestion facility that is regulated under Part IX.1 of the *Nutrient Management Act* and is not subject to an environmental compliance approval issued in respect of an activity mentioned in subsection 27 (1) of the *Environmental Protection Act*.

133. O.Reg. 267/03 defines a “mixed anaerobic digestion facility” as anaerobic digestion of both on-farm anaerobic digestion materials and off-farm anaerobic digestion materials in the same facility.

134. O. Reg. 267/03 defines a “mixed anaerobic digestion facility” as an anaerobic digestion facility that treats both on-farm anaerobic digestion materials and off-farm

anaerobic digestion materials on a farm unit on which an agricultural operation is carried out.

135. As Vandermeer's digester is not regulated under the *Nutrient Management Act, 2002* and operates pursuant to Certificate of Approval obtained under s. 27(1) of the *EPA*, it is not a regulated mixed anaerobic digestion facility. As a result, it has no legal authority to process waste from wineries.

136. O.Reg. 347 defines "anaerobic digestion materials" as materials that are intended for treatment in a mixed anaerobic digestion facility, whether the materials are generated at the agricultural operation or received at the agricultural operation from an outside source.

ix) Ontario's commitment to clean energy

137. In May 2009, the Legislature of Ontario passed the *Green Energy and Green Economy Act, 2009*, which enacted the *Green Energy Act, 2009* ("GEA") and amended and repealed various statutes. The legislative changes were made to pursue the policy objectives of the *GEA*, which came into force on September 9, 2009.

138. *GEA* was created to expand renewable energy generation in Ontario. One of the purposes of the *Act* is to remove barriers to green energy projects.

139. Section 1 of the *GEA* defines "renewable energy source" as an energy source that is renewed by natural processes to include biomass, biogas and biofuel. With reference to the provisions of the *Electricity Act*, *GEA* defines a "renewable energy generation facility" as a generation facility that generates electricity from a renewable energy source and it specifically excludes a waste disposal site. *GEA* incorporates the definition of "waste disposal site" from s. 25 of the *Environmental Protection Act*, R.S.O. 1990 190, c. E-19. Although the *EPA*'s definition of "waste" does not include the type of materials Vandermeer is putting in its digester, those materials are classified as "waste" by regulation.

140. According to O. Reg. 347, "agricultural waste" is waste that is generated by a "farm operation activity." A "farm operation activity" is defined by its engagement in a number of activities, including growing greenhouse crops. "On-farm anaerobic digestion materials" are those anaerobic digestion materials that are generated at an

"agricultural operation" – a term that is not defined by the Regulation and which excludes marketing agencies and fast food outlets.

141. *GEA* defines "renewable energy project" as the construction, installation, use operation, changing or retiring of a renewable energy generation facility.
142. Section 2 of the *GEA* states that it is to be administered in a manner that promotes community consultation.
143. These objectives were reflected in amendments to the *Electricity Act, 1998*, S.O. 1998, c. 15, Sch. A to create a Feed in Tariff ("FIT") Program, to the *Environmental Protection Act*, R.S.O. 1990, c. E.19 to provide for a new streamlined renewable energy approval process, and to the *Planning Act*, R.S.O. 1990, c. P.13 to remove municipal approval requirements for renewable energy projects.
144. Ontario provides various sources of funding for biogas electricity projects. OMAFRA provided significant funding for the Vandermeer project through the Ontario Biogas Systems Financial Assistance Program.

x) **The Feed-In Tariff ("Ontario FIT Program")**

145. On September 24, 2009, the Minister of Energy gave directions to the Ontario Power Authority ("OPA"), pursuant to s. 25.32 and 25.35 of the *Electricity Act, 1998*, to create an electricity price program for power from renewable energy sources.
146. The OPA is a corporation created without share capital established under the *Electricity Act, 1998*. The *Electricity Act, 1998* provides that the business and affairs of the OPA are to be carried on without the purpose of gain and any profits are to be used by the OPA for the purpose of carrying out its objects. The OPA acts in accordance with directions from the Minister of Energy. The objects of the OPA include forecasting electricity demand in the Province for the medium and long term.
147. Ontario amended the *Electricity Act, 1998* to provide for the development of an electricity price program, known as the Feed-In Tariff. The *Electricity Act, 1998* defines a FIT Program as:
 - a. ... a program for procurement, including a procurement process, providing standard program rules, standard contracts and standard pricing regarding classes of generation facilities differentiated by energy source or fuel type,

generator capacity and the manner by which the generation facility is used, deployed, installed or located.

148. The Ontario FIT Program is open to projects that produce electricity from renewable sources including wind, solar photovoltaic, bioenergy and waterpower up to 50 MW.

149. The direction was publicly released and set out the broad policy objectives of the FIT Program including to promote clean energy, create jobs, introduce a simpler method to procure and develop generating capacity from renewable energy sources, and, at the same time, encourage community and Aboriginal equity participation in the program.

150. On the same day, the OPA issued the FIT Rules version 1.0 defining the specific procedure pursuant to which applications would be received and processed for FIT Contracts.

151. The Minister's direction set out specific features to be included by the OPA in the design of the FIT Program including price setting, general contract provisions, transition provisions from previous renewable energy programs, domestic content, and restrictions to project siting on prime agricultural land.

152. In addition, the OPA was required to develop and deliver a number of program elements to encourage community, Aboriginal and municipal involvement. The September 24, 2009 direction also required that the OPA conduct a formal program review at least once every two years.

153. Vandermeer's project was transitioned into the FIT program.

154. As Vandermeer's anaerobic digester is a Renewable Energy Project, Vandermeer should have applied for a Renewable Energy Approval from Ontario and Ontario should have considered the project on that basis.

xi) **Adverse Effects**

155. Since Vandermeer's digester was constructed and commissioned, the Zirgers have noticed that noise and odour levels on their property have increased substantially. The plaintiffs believe that the Vandermeer Waste Disposal Site is the cause of these and other nuisances.

156. The Zirgers believe that off-farm waste is stored at the Vandermeer site in open bunkers, causing additional odours and inviting vectors, rats and mice.
157. While the defendants have attempted to eliminate the odours and to address the noise levels, the bunkers storing the feedstock for the digester remain open to the air and the Zirgers continue to experience unpleasant odours, unwanted vectors, spills and noises.
158. The Zirgers worry that the activities being conducted on the Vandermeer property are affecting their health. They have dull headaches and cough more often, have difficulty breathing, experience nausea, nasal and sinus pain, throat irritation and their sleep is interrupted by noises and pungent odours. They have also experienced psychiatric symptomology including: depression; anger; anxiety; irritability; hopelessness and stress.
159. As a result of these nuisances, the Zirgers have lost the use and enjoyment of their property. They cannot leave any of their windows open as the smell from the Vandermeer property is putrid and easily absorbed by the fibres in their home. They cannot sit or eat outdoors with friends or relatives nor can they enjoy gardening or invite friends or relatives over to enjoy the farm.
160. The Zirgers have also encountered difficulty retaining trades and fruit pickers to work on their farm. Trades and pickers have complained about the smell and reported suffering nausea and headaches as a result.
161. Migrant workers have also complained about the difficult working conditions caused by the putrid odours coming from the Vandermeer property. They have worked with masks over their noses to cope with the odour.

xii) **The Vandermeer Working Group**

162. Concerned neighbours insisted on NOTL becoming involved in addressing the nuisances emanating from the Vandermeer property and as a result, a Vandermeer Working Group was created with NOTL's acquiescence. The Vandermeer Working Group was formed to address the many public complaints NOTL received about noises, odours, vectors and other adverse impacts of the digester.

163. The Working Group is comprised of concerned residents and representatives from NOTL, MOE, the Region of Niagara and OMAFRA. There could have been more community involvement but, when a large number of concerned neighbours attended the third Vandermeer Working Group Meeting on July 27, 2010, Stephen Bedford, who was then the Director of NOTL's Planning Department and the Chair of the Vandermeer Working Group, restricted participation in the Group to two families and two farmers.
164. On an *ad hoc* basis, the Ministries of Agriculture and Environment are assisting Vandermeer to resolve complaints but, have not been able to eliminate the adverse effects of the digester.
165. Minutes of the Working Group's meetings contain statements suggesting that affected parties should take their concerns to the Normal Farm Practices Protection Board for a hearing. Even so, some Minutes also discourage members from doing so as they state that rather than seeking a Board hearing, it would be "more conducive to continue with open dialogue between everyone as positive changes have been made on site as a result of the Working Committee."
166. Despite the statement noted above, the plaintiffs state that little has changed as a result of the Working Group's meetings.

xiii) The plaintiffs' attempt to obtain information about the digester

167. On May 11, 2012, the plaintiffs made a number of *Freedom of Information* requests concerning the Vandermeer site and project.
168. While NOTL, the Region of Niagara and OMAFRA responded to their request in a timely manner, as of this date, MOE has yet to fulfill its statutory obligations by responding to the plaintiffs' request.
169. In addition, MOE has not responded to the plaintiffs' request for information concerning a change Vandermeer proposed to make in a notice they received from Vandermeer dated July 31, 2012. Despite numerous follow up letters, MOE has not responded to the plaintiffs' concerns or request for information.

xiv) **The Normal Farm Practices Board**

170. On May 15, 2012, the plaintiffs filed an application in the Normal Farm Practices Protection Board to determine whether the activities being carried on at the Vandermeer site are normal farm practices.

171. Appended to the plaintiffs' application was a request for documentary disclosure from Vandermeer. The plaintiffs sought an Order compelling Vandermeer to disclose all of the following documents and records:

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

- l) copies of any and all information and records concerning the quantities of digestate transferred off-site and particulars concerning its final destination and use;
- m) copies of all the Respondent's annual reports concerning the operation of the digester;
- n) copies of any and all charges under environmental legislation relating to the operation of the digester; and,
- o) copies of all applications for government funding of the digester project, including any and all responses and approvals thereto.

172. On August 2, 2012, Chairman Little made an Order for a four day hearing commencing on November 13, 2012.

173. Chairman Little ordered that all documentary evidence was to be exchanged on or before September 14th at 12:00 noon. His Order did not respond to the plaintiffs' request for documentary disclosure nor specify the nature of the documents Vandermeer was to disclose. Disclosure was to be made on a voluntary basis without any guidelines or supervision by the Board, with the Receiver determining relevance.

174. On August 15, 2012, the plaintiffs wrote to OMAFRA seeking a status report on their *Freedom of Information* request.

175. On August 20, 2012, OMAFRA advised the plaintiffs that it would not make a decision on their request until September 7th and that third parties, (whom the plaintiffs believed were related to or in the employ of Vandermeer), would have 30 days to appeal their decision, following which records responsive to the request would be released, with any necessary redactions.

176. In a letter dated September 5, 2012, Vandermeer's Receiver advised the plaintiffs that it was concerned about jeopardizing any sale of the Vandermeer property and as a consequence, would be providing only limited disclosure to the Board. As a condition of receiving even this limited disclosure, Vandermeer's Receiver demanded that the plaintiffs and their counsel sign an undertaking agreeing not to use the documents for any purpose as they contained "sensitive commercial information."

177. The plaintiffs took the position that the undertaking was over-broad as many of the listed documents, including Minutes of the Vandermeer Working Group, could not be

classified as "sensitive commercial information." Accordingly, they asked the Receiver to reconsider its position and to state grounds for each claimed confidence.

178. In a letter dated September 12, 2012, the Receiver presented a redrafted undertaking for the plaintiffs to sign but, also, indicated that as it was responding to the application as the Receiver, and not as Vandermeer. Consequently, the Receiver stated did not "know whether there is other documentation that exists that is relevant to the issues in this proceeding, or that might otherwise fall within the scope of the list set out in your application." The Receiver committed to making "best efforts" to produce other specific documents on request, provided it determined they were relevant.
179. On September 14th, the plaintiffs wrote to the Board to advise of the state of its attempt to obtain documentary disclosure through its various *Freedom of Information* requests, to give notice that it would not be able to meet the Board's timetable for disclosure and to request an Order for written interrogatories.
180. Also on September 14th, the plaintiffs wrote to the Receiver advising that its request for an undertaking was contrary to the Board's Rules.
181. The Receiver replied on the same date by asserting that the plaintiffs had "an ulterior purpose" in seeking disclosure.
182. On September 18th, the plaintiffs wrote to the Board to express their concerns about the lack of disclosure and to question whether the proper parties were before the Board. They noted that the Receiver had not disclosed any odour complaints, any internal OMAFRA documents concerning odour, seagull and fly issues or the composition of the materials placed in the digester to produce gas; farm practices at Vandermeer; classification of the digestate; emails concerning problems with peach trees located around the digester; crop damage from ammonia; or any safety manuals or particulars of any specialized training Vandermeer's employees obtained to operate the digester.
183. In light of the lack of disclosure, the plaintiffs raised concern about the fairness of the hearing and reiterated their request for written interrogatories pursuant to ss. 28 and 31 of the Board's Rules.
184. The plaintiffs wrote to the Board again on October 18th requesting an adjournment, directing the Board's attention to the continuing problem they were having obtaining disclosure and expressing concern that as the Board had not yet ruled on written

interrogatories, the timing of the documentary exchange would not permit follow up questions or an opportunity to retain experts. The Receiver objected to the plaintiffs' request and claimed that it would be prejudiced thereby.

185. On October 18th, the Board sent the plaintiff's a Notice of Hearing which was signed by its Secretary who stated the Board's address as: "OMAFRA, 1 Stone Road West, Guelph Ontario N1G 4Y2."

Bias: The Board is not impartial

186. The Board shares offices and staff with OMAFRA.
187. Vandermeer obtained funding for its project from OMAFRA.
188. OMAFRA employees have an on-going relationship with Vandermeer and its staff.
189. OMAFRA employees worked with Vandermeer to have its pomace and digestate exempted from the *EPA* and *Nutrient Management Act* regulations. In an email dated September 11, 2009, Don Hilborn of OMAFRA wrote to three other OMAFRA employees stating that "we need to get pomace allowed."
190. OMAFRA's employees are members of the Vandermeer Working Group. They have been working with Vandermeer to respond to the plaintiffs' odour and other complaints.
191. On May 27, 2010, well after all approvals had been granted, Jake DeBruyn, OMAFRA's main contact person on the Vandermeer project at that time, sought the assistance of another OMAFRA employee to develop a safety manual for Vandermeer.

The Board refused to order disclosure

192. To address the problems they were having obtaining disclosure, the plaintiffs asked the Board to allow it to make written interrogatories of Vandermeer.
193. On October 22, 2012, the Board decided that it would review the plaintiffs' list of questions, determine their relevancy and forward only those considered relevant to the Receiver who would then decide on which questions it would answer. The Board left scheduling responses to the parties, with a residual jurisdiction to intervene as necessary.

194. By letter dated October 31st, the Receiver advised as to its three witnesses. Two of its witnesses were OMAFRA employees and the third, an employee of MOE. As a result of this information, the plaintiffs again wrote to the Board to express concern over the lack of an even playing field. Given the lack of disclosure, the plaintiffs pointed out the advantage the Receiver would have at the hearing as the plaintiffs still had not received responses to their FOI requests nor any disclosure from Vandermeer. The plaintiffs reiterated their request for an adjournment.
195. On November 6, 2012, the Farm Board rejected the plaintiffs' request for an adjournment.
196. On November 7th, six days before the scheduled hearing, the Receiver delivered its document brief. It refused to provide any financial information showing whether its income is from growing flowers or selling renewable energy to the grid and if both, in what proportion.
197. On November 13th, the parties attended at the Board. Following a lengthy discussion that was conducted in front of Vandermeer's chief witness who is employed by OMAFRA, the Chair granted an adjournment on terms, rescheduling the hearing for February 19, 2013 without making any Orders concerning the disclosure of evidence.
198. The plaintiffs withdrew their application on December 7th, citing the Board's lack of impartiality, lack of structural independence, bias and errors of law in its handling of the disclosure issues. The plaintiffs also had concerns as to whether the proper parties were before the Board.
199. On December 13th, the Receiver wrote to the Board accusing the plaintiffs of abusing the Board's process and reiterating its request to have the application summarily dismissed "because the applicants were so obviously not prepared to proceed, and had abused the process of the tribunal." In closing its letter, the Receiver stated: "Unless the application is dismissed, these applicants will be allowed to continue to bring the administration of justice through this tribunal into disrepute."

V. LIABILITY OF THE DEFENDANTS

i) Strict Liability

200. The activities on Vandermeer's property constitute a non-natural usage of the land in the area where the plaintiffs live and where Vandermeer conducts its business in that:

- a. the plaintiffs grow fruit for human consumption and as such require no permits, permissions, public consultations, notices or studies to farm while the activities on the Vandermeer property are not properly characterized as "farming" since they require legal authorizations, permits, approvals, warning signage, notices, inspections, safety precautions, emergency planning and specialized training;
- b. the plaintiffs farm their land while the Vandermeer's property grows flowers in greenhouses and uses agricultural products to manufacture something that cannot be grown, planted, harvested or eaten and which is therefore a non-agricultural product, namely energy;
- c. the practices in the area where the plaintiffs live support fruit farming while the escape of gases into the air and water table from stockpiling rotting grapes and other feedstocks and operating the digester endanger the continued viability of the plaintiffs' orchard;
- d. while the plaintiffs experience variable profits and losses depending on sale of the yield from the year's crop of edible agricultural products, Vandermeer makes a consistent and predictable profit from selling renewable energy under a long-term contract;
- e. while the farming activities on the plaintiffs' property contribute to purifying the air and creating sweet smells, the activities on the Vandermeer property create odour and greenhouse gas emissions;
- f. the land in the area where the plaintiffs live poses no health or safety risks to its neighbours while the activities on the Vandermeer property pose a significant risk of harm to human health and the signage around the property reflects this;
- g. Vandermeer's property stores a substantial quantity of methane gas which is not usually found in greenhouses or on small tender fruit farms and which is a dangerous greenhouse gas that is highly flammable and poses an explosion risk that if materialised, could cause irreparable harm to the plaintiffs. Methane off-gas can also penetrate the interiors of buildings, displacing oxygen and exposing occupants such as the plaintiffs to significant levels of methane and creating a risk of explosion and harm to human health;
- h. the activities on Vandermeer's property create traffic of a character, noise and duration that is out of character with the traffic and noise patterns in the quiet rural neighbourhood that surrounds it;
- i. the land in the area where the plaintiffs live is warmed by the sun and open to the elements, the seasons and the natural environment while the Vandermeer's

- property has largely been covered over by greenhouses, gravel roads, unsightly equipment, storage bunkers, tanks and a large open flare;
- j. while safety on the Vandermeer property depends on releasing excess gas in an uncontrolled manner through an open flare which runs for days and weeks on end, open flares are not found on any other properties in the area and no other property poses comparable health and safety risks to its neighbours;
 - k. while neighbouring farms employ temporary migrant workers with no specialized training to tend to and pick crops, Vandermeer employs full-time, long-term employees who require significant specialized knowledge, training and supervision and who enjoy benefits and working conditions that more closely resemble factory workers than farmers;
 - l. while fruit pickers working on the plaintiffs' farm would not normally be exposed to any health or safety risks during the course of their employment but for the digester, employees at the Vandermeer property are at risk of explosion; asphyxiation; disease; excessive noise and hydrogen sulphide poisoning;
 - m. while anaerobic digesters are usually used to handle excess animal manure at large cattle, poultry and swine operations and to control odour from manure, Vandermeer's digester was never used to control odour from excess on-farm animal waste and in fact does not use proportionally 50% by volume of manure as a feedstock. As a result, excess animal waste is not a local concern that requires a remedy;
 - n. as Vandermeer's digester uses less than the 50% by volume of manure as required by Ontario regulations, it is processing industrial waste which is an unnatural use of prime agricultural lands;
 - o. while the plaintiffs only buy the amount of energy they require for themselves and to operate their farm, the Vandermeer property creates more energy than is needed to heat its greenhouse;
 - p. the feedstock Vandermeer uses, its open storage, and raw input are a cause of many on-going odour and vector problems that the plaintiffs have been experiencing;
 - q. although Vandermeer's property is zoned for mixed agricultural and residential uses, it's being used to generate energy for commercial sale, which is neither a residential or agricultural use;
 - r. the activities on the Vandermeer property are harmful to the long-term interests of local agriculture. While Vandermeer's property is in a protected tender fruit area, greenhouse cultivation of flowers can be conducted anywhere. Using the property to generate energy for commercial sale is contrary to the local land use and opposed to the long-term interests of local agriculture. These activities will negatively impact the local agriculture industry, reduce any carbon reduction benefits and compete with local agriculture if farmers decide to grow crops specifically as a feedstock for creating energy.

201. The escape of gases, odour, noise, and vectors from Vandermeer's non-natural usage of land has interfered with the plaintiffs' use and enjoyment of their property causing the plaintiffs' damage.

202. The plaintiffs also state that the conversion of off-farm waste at the Vandermeer site to commercial energy is not a normal farm practice.
203. There are significant health, safety environmental and economic risks associated with anaerobic digesters. Normal farm practices do not present these risks to neighbouring farms.
204. The plaintiffs state that Vandermeer is strictly liable to them.

ii) Nuisance

a) Private Nuisance

205. The plaintiffs state that using prime agricultural lands to dispose of waste is not a normal farm practice.
206. The plaintiffs further state that the odour, noise, pests, traffic, seepage, contamination, emissions, fumes and escape of gases from the Vandermeer site have caused unreasonable damage to their property and unreasonable interference with the enjoyment and use of their property.
207. Emissions from the digester have caused physical damage to the plaintiffs' crops and economic loss, unreasonably interfering with the plaintiffs' enjoyment and use of their property. Emissions from the digester have also caused the plaintiffs physical harm, discomfort and inconvenience.
208. Vandermeer owns the land on which the digester is situated, manages and controls the operations of the digester and/ or the Waste Disposal Site and is therefore liable to the plaintiffs for the nuisances that originate from it.

b) Public Nuisance

209. The plaintiffs submit that the siting and operation of the Waste Disposal Site has created a public nuisance.
210. The plaintiffs further submit that the operation of the anaerobic digester unreasonably interferes with the comfort and convenience of the persons residing in or coming within the sphere of its influence in that it:
- a. creates excessive noise and interferes with public rights of passage on a public roadway;

- b. poses health and safety risks from air contamination and offensive odour; and,
- c. interferes with the proper operation of the SLOMA drain and other watercourses.

211. The plaintiffs state that as the defendant NOTL is responsible for planning and granting building approvals, it knew or ought to have known that locating an anaerobic digester on a small farm property in a prime agricultural area was contrary to good planning principles as it would create constant traffic, emissions, noise, odour and vectors, causing a public nuisance.
212. The plaintiffs state that as the defendants MOE and OMAFRA have regulatory authority for environmental planning and approvals in Ontario, they knew or ought to have known that locating an anaerobic digester on a small property in a prime agricultural area would create constant traffic, emissions, noise, odour and vectors, causing a public nuisance.
213. The plaintiffs state that using prime agricultural property as a Waste Disposal site creates an unreasonable and substantial interference with public rights and in particular, the right to a healthy environment in section 7 of the Canadian *Charter of Rights and Freedoms*.
214. The plaintiffs plead and rely upon s. 103 of the *Environmental Bill of Rights*, S.O. 1993, C.28, permitting any person who has suffered personal injury or direct economic loss as a result of a public nuisance causing harm to the environment to bring an action in respect of such losses.
215. The plaintiffs state that the defendants Vandermeer, NOTL and Ontario are liable to them.

iii) Trespass

216. The plaintiffs state that Vandermeer has discharged or has caused the discharge of emissions onto their property causing damage and interference with the use and enjoyment of their land.
217. The plaintiffs therefore state that Vandermeer is liable to them in trespass.

iv) Negligence

218. The plaintiffs claim negligence against all defendants.

a) Vandermeer Nurseries

219. The plaintiffs state that Vandermeer owed them a duty of care and was negligent in that it:

- a. misrepresented to NOTL the nature of its project;
- b. misrepresented to NOTL the likely effects of its project;
- c. misrepresented to NOTL that there would be no escape of gases and no odours from the digester;
- d. misrepresented that its project was a small scale on farm project;
- e. failed to notify the plaintiffs about its application for a Certificate of Approval to convert their farm property into a Waste Disposal Site;
- f. minimized and/or misstated the impacts of its digester on neighbouring farms;
- g. failed to mitigate the adverse effects of its operation, including but not limited to: odour; noise; and vectors;
- h. failed to develop a safety manual; and,
- i. failed to properly train its staff to operate, regulate, inspect and monitor the anaerobic digester and related activities on its property.

220. The plaintiffs state that Vandermeer knew or ought to have known it was reasonably foreseeable that the anaerobic digester and emissions from the digester would pose health, safety and nuisance risks to the Zirgers, interfere with the use and enjoyment of their property, diminish their property's value, cause physical damage to the plaintiffs' crops and economic loss.

221. As a result of Vandermeer's negligence, the plaintiffs have suffered a diminution in the value of their property, crop loss and physical harm, discomfort and inconvenience.

b) CEM Engineering

222. CEM owed the plaintiffs a duty of care in that the plaintiffs are adjacent property owners who were mostly likely to be affected by the siting of an anaerobic digester on the Vandermeer property.

223. It was reasonably foreseeable that the plaintiffs would be exposed to any adverse effects of the digester.

224. CEM was responsible for designing the digester and for designing the facility to minimize odour emissions and especially emissions when materials are transferred into a storage facility and transferred from the storage facility into the mixed anaerobic digestion facility.

225. CEM was negligent in that it:

- a) misrepresented to NOTL that the Vandermeer project was an on-farm project when it knew or ought to have known that Vandermeer had applied or was contemplating applying for a RESOP program contract;
- b) misrepresented to NOTL that anaerobic digestion produces no odours;
- c) misrepresented to NOTL that the concrete vessels it designed were completely air tight when they are not and allow putrid odours to escape;
- d) misrepresented to NOTL that odours "have no opportunity to escape" when in fact they have and have caused and continue to cause the plaintiffs' damage;
- e) misrepresented that "Should [odours] escape, then anaerobic digestion (in the absence of oxygen) would cease";
- f) failed to establish the appropriate set-back requirements for the nearest odour receptor;
- g) knew or ought to have known that the digester would be using significantly less than 50% manure;
- h) knew or ought to have known that the digester was designed to utilize more than 25% off-farm waste;
- i) knew or ought to have known Vandermeer required MOE approval to operate its digester and should have obtained such approval prior to seeking site plan approval from NOTL;
- j) failed to apply for a Renewable Energy Approval when it knew or ought to have known that Vandermeer's project is a renewable energy project;
- k) ensure that the facility was designed to manage non-combusted bio-gas;
- l) failed to ensure that the methods the digester uses to store, treat and process feedstock and output minimize odour and other emissions; and,
- m) designed a project that created sink holes on the site, endangering the plaintiffs' property and lives.

226. As a result of these failures, omissions and breaches, the plaintiffs state that CEM has caused them damage.

c) The Ontario Power Authority

227. The OPA owed the plaintiffs a duty of care in that the plaintiffs are adjacent property owners who were mostly likely to be affected by the siting of an anaerobic digester on the Vandermeer property.

228. It was reasonably foreseeable that the plaintiffs would be exposed to any adverse effects of the digester.

229. The OPA was responsible for awarding Vandermeer a renewable energy contract in the form of an RESOP or FIT contract.

230. The OPA was negligent in that it failed to ensure that the Vandermeer project obtained a Renewable Energy Approval.

d) The Town of Niagara on the Lake

231. The plaintiffs state that NOTL owed them a duty of care and was negligent in that:

- i) it failed to formulate appropriate policies for protecting the unique agricultural land where the Vandermeer and Zirger farms are situated;
- ii) failed to take a precautionary approach to siting the digester on specialty crop lands zoned for tender fruit growing;
- iii) failed to take a precautionary approach to considering and deciding to approve Vandermeer's application for site plan approval, building permits and the relocation of the Sloma drain thereby breaching the plaintiffs' s. 7 *Charter* rights;
- iv) failed to consider and impose the appropriate set back distances;
- v) approved the project despite the fact that it did not comply with the *Nutrient Management Act* and *Regulations*;
- vi) relied on CEM Engineering's statements with respect to the operation of the digester and the odours it would create without independent verification or study;
- vii) approved the project when it violated zoning by-laws and the total lot coverage exceeded by-law limits;
- viii) failed to consider how changes to the materials inputted into the Vandermeer digester would impact on its consideration and approval of the

- project, and, in particular, impact on whether the project still met the regulatory criteria for "agricultural purposes," and "on-farm" projects;
- ix) failed to consider how legislative changes to the laws applicable to the project would impact on its consideration and approval;
 - x) failed to impose a condition that in the event that Vandermeer sought to change the inputs to its digester, that it would have to initiate a new application and rezone its property appropriately;
 - xi) failed to impose a condition that in the event that Vandermeer changed its inputs and applied for a MOE Certificate of Approval to convert its farm into a waste disposal site that public notice and hearings would be required to properly assess the project, its impacts and the potential harms;
 - xii) failed to impose appropriate additional conditions to protect the plaintiff's in the event that Vandermeer obtained Ontario's approval to make changes to the project and feedstock;
 - xiii) granted Vandermeer Nurseries municipal approvals on the basis of insufficient information before Ontario had reviewed and approved the project;
 - xiv) failed to impose, remove or alter the land use controls placed on the Vandermeer property and project;
 - xv) failed to notify the plaintiffs of Vandermeer's application to change the use of their property;
 - xvi) failed to notify the plaintiffs of Vandermeer's application to build an anaerobic digester on its property;
 - xvii) failed to establish legal standards for the use of anaerobic digester technology in the municipality;
 - xviii) failed to convene a public hearing to consider Vandermeer's application for building permits;
 - xix) failed to properly assess Vandermeer's application for site plan approval;
 - xx) failed to require Vandermeer to provide a scale drawing showing the relationship between the anaerobic digester and neighbouring land uses, including neighbours' residences, lot lines and adjacent public roads;
 - xxi) failed to perform a Minimum Distance Separation calculation properly and prior to granting Vandermeer building permits;
 - xxii) failed to require Vandermeer to conduct an environmental impact study and/or air and odour dispersion modelling;
 - xxiii) failed to inspect and enforce its property standards and nuisance by-laws, including the Noise, Zoning, Open Air Burning; Property Standards and Clean Yards By-laws;
 - xxiv) granted Vandermeer a building permit to construct structures that contravened its by-laws, relevant Ontario laws and regulations or, in the

- alternative, that it failed to ensure compliance with its building permits and site plan agreement and in particular, failed to enter the property to remedy odour, noise and vector complaints and failed to require that Vandermeer provide a Nutrient Management Plan when it altered its material inputs;
- xxv) failed to require Vandermeer to obtain a building permit for the storage bunkers and failed to ensure that the bunkers were properly enclosed to reduce odours and other nuisances;
 - xxvi) failed to ensure that all storage tanks were covered;
 - xxvii) permitted Vandermeer to operate an open flare, exposing the plaintiffs to unreasonable health and safety risks;
 - xxviii) failed to consult appropriate third party experts;
 - xxix) promised Vandermeer quick approval;
 - xxx) failed to impose spill mitigation measures to protect the Sloma Drain and Four Mile Creek from impacts and potential spills from the site;
 - xxxi) approved of a design which facilitated the creation of sink holes on the site and which poses a threat to the plaintiffs' property and lives; and,
 - xxxii) acted hastily.

232. The Zirgers state that NOTL knew or ought to have known it was reasonably foreseeable that the facility and emissions from the anaerobic digester would pose health, safety and nuisance risks to the Zirgers, interfere with the use and enjoyment of their property, diminish their property's value, cause physical damage to the plaintiffs' crops and economic loss.

e) Her Majesty the Queen in Right of Ontario

233. The plaintiffs state that Ontario owed them a duty of care which arises from Ontario's laws and various representations OMAFRA and MOE made to the plaintiffs at the Working Group and in other forums and was negligent in that it:

- a) did not protect and failed to take reasonable and adequate steps to protect the environment, human food crops, the plaintiffs and persons located near the digester from its adverse effects;
- b) failed to take a precautionary approach to its consideration and approval of Vandermeer's project;
- c) exempted Vandermeer's project from the *Nutrient Management Act* and Regulations;
- d) failed to impose a Nutrient Management Strategy/ Plan with a contingency plan;

- e) failed to advise the plaintiffs about Vandermeer's project and/ or application for a Certificate of Approval;
 - f) failed to hold public hearings about Vandermeer's project and/ or application for a Certificate of Approval;
 - g) failed to conduct an environmental assessment or impact study about Vandermeer's project and/or application;
 - h) failed to properly assess Vandermeer's application for a Certificate of Approval;
 - i) failed to ensure that Vandermeer's application met the requirements and regulatory changes for REA approval under the *GEA* and *Green Economy Act* and *EPA*;
 - j) exempted Vandermeer's renewable energy project from the regulatory framework for renewable energy approvals and environmental protection in the province of Ontario, thereby breaching same;
 - k) failed to enforce the *Green Energy Act* by requiring Vandermeer to apply for a Renewable Energy Approval;
 - l) permitting Vandermeer to process off-farm waste
 - m) failed to impose a Nutrient Management Strategy/ Plan on the project which describes: the procedures that will be used to decide whether the off-farm material meets the Waste Regulation requirements; how any permanent nutrient storage facilities for storage of off-farm material will meet the Waste Regulation requirements; the procedures that will be used at the operation to manage the digester's output to meet the requirements of the Waste Regulations; and, how Vandermeer's facility will meet the Waste Regulation requirements;
 - n) failed to classify the digestate as "waste" and subject it to waste regulation controls;
 - o) failed to ensure that Vandermeer developed a safety manual;
 - p) failed to conduct adverse effect studies;
 - q) failed to regulate, inspect and monitor Vandermeer's facility;
 - r) failed to impose any standards to protect the Sloma Drain which is located within 50 feet of the digester and Four Mile Creek (which empties into Lake Ontario); and,
 - s) approved the project when it is incompatible with local zoning and farming practices.
234. The Zirgers state that Ontario knew or ought to have known it was reasonably foreseeable that the facility, anaerobic digester and emissions from the digester would pose health, safety and nuisance risks to the Zirgers, interfere with the use and enjoyment of their property, diminish their property's value, cause physical damage to the plaintiffs' crops and economic loss.
235. The Zirgers state that Ontario knew or ought to have known it was reasonably foreseeable that the Vandermeer project qualified as a renewable energy project and should have been considered as such pursuant to s. 47.3 of the *Environmental Protection Act*.

v) *Section 7 of The Charter of Rights and Freedoms*

236. Anaerobic digesters are incapable of making chemical contaminants in the materials used to create energy disappear. Digesters are known to emit nitrogen and sulfur oxides, particulate matter, carbon monoxide and ammonia and may also release other contaminants.

237. Air pollutants with a nitrogen base (NOx) released by the digester are similar to those from an internal combustion engine. And while emissions from vehicles are strictly regulated, the emissions standards governing digesters are low.

238. Since the burning temperatures of methane are so low, the digester does not destroy pathogens. The ammonia in the gasses coming from the waste materials will not be oxidized and will be released from the digester stack directly into the atmosphere.

239. Vandermeer flares excess gas which is not regulated and which creates a significant risk of adverse mental and physical health impacts. The plaintiffs live in a constant state of fear and worry and have lost a great deal of personal autonomy and control over their health and well-being as a result of the Vandermeer project. The Director's decision and the Ministers' failures compound these impacts.

240. The plaintiffs have been deprived of personal choices that most Canadians take for granted, such as not living in a constant state of fear for their health and safety and being able to work and engage in recreation outdoors.

241. The plaintiffs plead that the statutory process that granted Vandermeer approval to operate a Waste Disposal Site next to the plaintiffs' property violates their right to security of the person as guaranteed by section 7 of the *Canadian Charter of Rights and Freedoms*.

242. The plaintiffs plead that Ontario violated section 7 of the *Canadian Charter of Rights and Freedoms* by:

- a) failing to have a plan to respond to the public, a safety and emergency management plan, and engineering assessments and environmental reports to ensure that the Vandermeer site does not cause harm to human health, the environment, archaeology or natural heritage;
- b) failing to conduct adverse impact studies on the Vandermeer project prior to its approval;
- c) failing to require that public hearings be held to consider the project;
- d) failing to appropriately monitor emissions from the site;

- e) locating a Waste Disposal Facility next to the plaintiffs' home thereby threatening the plaintiffs' physical and psychological well-being and safety;
- f) failing to respond to the plaintiffs request for access to information concerning the project and its effects; and,
- g) permitting Vandermeer to make changes to its operations on an *ad hoc* basis, without further review, study or approvals.

243. The plaintiffs plead that there are adverse health effects caused by having an anaerobic digester located so close to their home. They further plead that requiring them to prove these effects now reverses the burden of proof, violating section 7 of the *Charter*.

244. The plaintiffs further state that Ontario's decision to grant Vandermeer a Certificate of Approval was made in a manner that was contrary to the principles of fundamental justice in that Ontario has arbitrarily, without study, legislated a scheme that permits an anaerobic digester to be operating in a mixed agricultural and residential community without investigating the possibility of adverse health effects.

245. The plaintiffs further state that Ontario's decision was contrary to the principles of fundamental justice in that Ontario:

- a) failed to hold public hearings to consider the project;
- b) failed to assess the special nature of the Vandermeer site and surrounding agricultural lands;
- c) failed to conduct an environmental review of the project and its likely affect on tender fruit crops and trees; and,
- d) failed to consider the application of the precautionary principle.

V. THE PLAINTIFFS' INJURIES

246. As a result of the defendants' various breaches, the plaintiffs have suffered injuries, which include, but are not limited to:

- a. loss of use and enjoyment of their property;
- b. loss of their cash crop production;
- c. loss of their peach trees;
- d. loss of their property value;
- e. physical pain and discomfort;
- f. interrupted sleep; and,
- g. such further and other damages as may be advised prior to trial.

247. As a further result of the defendants' various breaches, the plaintiffs have suffered pecuniary damages up to the present and will continue to suffer pecuniary damages in the future, the full particulars of which are not known at this time but will be provided at or before the trial of this action.
248. The plaintiffs state that the defendants' conduct demonstrates a wanton and careless disregard of the plaintiff's legal rights and is conduct that deserves this Court's sanction in the form of aggravated, punitive and exemplary damages.
249. The plaintiffs plead and rely upon the provisions of the *Negligence Act*, R.S.O. 1990, c. N-1, as amended.
250. The plaintiffs propose that this action be tried in the City of Toronto, in the Province of Ontario.

MARSHALL KIREWSKIE

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Counsel for the Plaintiffs

tab C

Court File No.: CV-13-495252

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

RICHARD ZIRGER AND JUDY ZIRGER

Plaintiffs

- and -

**VANDERMEER GREENHOUSES LTD; MERIDIAN CREDIT UNION; HER MAJESY
THE QUEEN IN RIGHT OF ONTARIO AS REPRESENTED BY THE MINISTRY OF
THE ENVIRONMENT AND THE MINISTRY OF AGRICULTURE; THE ATTORNEY
GENERAL OF ONTARIO; THE CORPORATION OF THE TOWN OF NIAGARA ON
THE LAKE; PLANET BIOGAS SOLUTIONS; and CEM ENGINEERING**

Defendants

NOTICE OF DISCONTINUANCE

THE PLAINTIFFS wholly discontinue this action against the defendants, Vandermeer Greenhouses Ltd; Meridian Credit Union; Her Majesty The Queen In Right of Ontario as Represented by The Ministry of the Environment and The Ministry of Agriculture; The Attorney General of Ontario; The Corporation of The Town Of Niagara On The Lake; Planet Biogas Solutions; and CEM Engineering.

NOTE: If there is a counterclaim, the defendant should consider Rule 23.02, under which the counterclaim may be deemed to be discontinued.

NOTE: If there is a crossclaim or third party claim, the defendant should consider Rule 23.03, under which the crossclaim or third party claim may be deemed to be dismissed.

Dated at Oakville, Ontario, this 23rd day of October, 2014.

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Cassandra Kirewskie
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Zirger

- and -

Vandermeer Greenhouses Ltd. et al.

Court File No.: CV-13-495252

**SUPERIOR COURT OF JUSTICE
PROCEEDING COMMENCED AT TORONTO**

NOTICE OF DISCONTINUANCE

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Solicitors for the plaintiffs

tab D



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Barristers & Solicitors

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July 22, 2014

By Fax: 416-941-8852

Gregory Ryan Azeff
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PO Box 95
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Dear Mr. Azeff:

**RE: Richard Zirger, Judi Zirger, James Dell, Sophie Dell, Ron Quevillon, Charlene Quevillon, Dino Lavallo, Mary Lavallo, Dan Lavallo, Larry Bourk, Joan Bourk, Robert Zirger, Sharon Zirger, George Lepp, Erica Lepp and Mark Lepp v. Vandermeer Greenhouses and Niagara Anaerobic Digester Inc.
2021 Four Mile Creek Road, Niagara on the Lake**

We are in the process of completing our application for leave to commence a proceeding before the Normal Farm Practices and Protection Board. Would you kindly advise as to your availability for hearing dates in the next month?

We look forward to hearing from you.

Sincerely,

Cassandra Kirewskie

/nk

c. Clients

tab E

Eng, Chloe

From: Azeff, Greg
Sent: Wednesday, July 23, 2014 4:15 PM
To: 'ckirewskie@bellnet.ca'
Cc: 'jrmacfar@flettbeccario.com'
Subject: Vandermeer - Available dates

Cassandra: We have received your letter regarding your intended motion for leave. I have consulted with Mr. Macfarlane (cc'ed), who will also be making submissions at the hearing. August is proving difficult due to vacation schedules, but we are both available on any of the following dates:

August 12

September 8, 10, 12, 15, 18 or 19

Please let me know which date you would prefer.

Thanks,
Greg

fogler
rubinoff

Greg Azeff
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tab F



Marshall Kirewskie

Barristers & Solicitors

Paul David Marshall
B.A., B.Ed., LL.B.
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Cassandra Kirewskie
M.A., LL.B.
E-mail: ckirewskie@bellnet.ca

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

September 10, 2014

By Fax: 416-941-8852


Gregory Ryan Azeff
Fogler Rubinoff LLP
3000 - 77 King Street West
PO Box 95
Toronto, ON
M5K 1G8

Dear Mr. Azeff:

RE: Richard Zirger, Judi Zirger, James Dell, Sophie Dell, Ron Quevillon, Charlene Quevillon, Dino Lavallo, Mary Lavallo, Dan Lavallo, Larry Bourk, Joan Bourk, Robert Zirger, Sharon Zirger, George Lepp, Erica Lepp and Mark Lepp v. Vandermeer Greenhouses and Niagara Anaerobic Digester Inc.
2021 Four Mile Creek Road, Niagara on the Lake

We write to advise you that we will not be proceeding on September 18th with our application for leave to proceed against your client at the Normal Farm Practices Protection Board. We have decided to file our application in Toronto and understand from court staff that the court is booking October 31st, and the first 2 weeks of November except for November 6, 7, and 13th. Please provide us with your availability on 3 separate dates within this window so that we may complete the requisition form.

Sincerely,



Cassandra Kirewskie
/nk

tab G



Fogler, Rubinoff LLP
Lawyers

77 King Street West
Suite 3000, PO Box 95
TD Centre North Tower
Toronto, ON M5K 1G8
t: 416.864.9700 | f: 416.941.8852
foglers.com

September 10, 2014

Reply To: Greg Azeff
Direct Dial: 416.365.3716
E-mail: gazeff@foglers.com
Our File No. 14/3857

VIA EMAIL

Marshall Kirewskie
Barristers and Solicitors
88 Dunn Street
Suite 201
Oakville, ON
L6J 3C7

Attn: Cassandra Kirewskie

Dear Ms. Kirewskie:

Re: Richard Zirger, Judi Zirger, James Dell, Sophie Dell, Ron Quevillon, Charlene Quevillon, Dino Lavallo, Mary Lavallo, Dan Lavallo, Larry Bourk, Joan Bourk, Robert Zirger, Sharon Zirger, George Lepp, Erica Lepp and Mark Lepp v. Vandermeer Greenhouses and Niagara Anaerobic Digester Inc. 2021 Four Mile Creek Road, Niagara on the Lake

I am writing in response to your September 10, 2014 letter. I will be available for any of the suggested dates, except for November 12 and 13, 2014.

Yours truly,

FOGLER, RUBINOFF LLP

A handwritten signature in dark ink, appearing to read "Greg Azeff", written over a circular stamp or seal.

Greg Azeff
GA/ce

cc: Allan Rutman

tab H



88 Dunn Street, Suite 201
Oakville, ON L6J 3C7
T 905.842.5070
F 905.842.4123
mklaw@bellnet.ca

Paul David Marshall, B.A., B.Ed., LL.B.
p.marshall@bellnet.ca

Cassandra Kirewskie, M.A., LL.B.
ckkirewskie@bellnet.ca

Nick Kirewskie, Office Manager
mklaw@bellnet.ca

September 29, 2014

By Fax: 416-941-8852

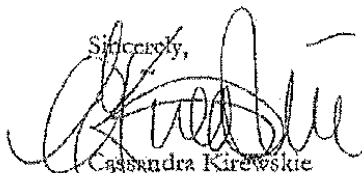
Gregory Ryan Azeff
Fogler Rubino LLP
3000 - 77 King Street West
PO Box 95
Toronto, ON
M5K 1G8

Dear Mr. Azeff:

RE: Joan Bourk; Larry Bourk; Reinhard Suelzle; Rosa Marano; Rosglia Zambito; Mario Spiewak; James Dell; Sophie Dell; Alfred Dyck; Pat McMaster; Jim McMaster; Carol Van Egmond; Ron Quevillon; Charlene Quevillon; Rick Meloen; Janet Meloen; Bruce Moore; Kristina Moore; Mary Lavallo; Sandra Moore; Jamie Werstroh; Jenna Osborne; Mike Frena; Tracey Frena; Alex Fast; Sue Fast; Robert VanNoort; Sharon VanNoort; George Lepp; Victor Klassen; Lynda Klassen; Brandon Berry; Sarah Berry; Richard Zirger; Judy Zirger; Paul Thiessen; Joanne Thiessen; Erica Lepp; Mark Lepp; Dan LaValle; Dino Lavallo; Arnold Mikolajewski; and, Esther Mikolajewski v. Zeifman Partners Inc.

We have not had the courtesy of a reply to our letter of September 10, 2014 asking for your availability. As some time has passed, the initial window we presented has closed. The next available dates for a long hearing are: November 10, 17, 24.

If we do not hear from you by Thursday October 2, 2014 as to your availability, we will set the application down for a hearing and file this correspondence with the Court as proof that we were unable to agree to a timetable.

Sincerely,

Cassandra Kirewskie
/nk

cc: Clients

tab I



Fogler, Rubinoff LLP
Lawyers

77 King Street West
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TD Centre North Tower
Toronto, ON M5K 1G8
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foglers.com

September 29, 2014

Reply To: Greg Azeff
Direct Dial: 416.365.3716
E-mail: gazeff@foglers.com
Our File No. 14/3857

VIA EMAIL & FAX

Marshall Kirewskie
Barristers and Solicitors
88 Dunn Street
Suite 201
Oakville, ON
L6J 3C7

Attn: Cassandra Kirewskie

Dear Ms. Kirewskie:

Re: Joan Bourk et al. v. Zeifman Partners Inc.

We have received your letter of today's date and have been provided with copies of correspondence between you and Mr. Macfarlane of last week, and take this opportunity to respond thereto.

With respect to your letter to the undersigned, we responded to your letter of September 10, 2014 on that same date and direct you to the attached letter in that regard. We are not responsible for your failure to set the matter down for a hearing on a timely basis.

We confirm that we are available on November 17 and 24, 2014 for the hearing, and note that this letter now represents the third time we have advised you of our availability for your motion.

With respect to your correspondence with Mr. Macfarlane, we agree that the Commercial List is the appropriate forum for the hearing of your motion, and that the appropriate proceeding for same is the receivership in which the stay was issued. Your position that Meridian Credit Union (*i.e.*, the creditor that brought the application for the order appointing the Receiver and granting the stay of proceedings) has no standing or interest in the matter is puzzling, to say the least. While you are free to move forward as you deem appropriate, you are advised that the Receiver neither consents to nor agrees with your intended course of action and will advise the court accordingly, if and when you do proceed.

We trust that the foregoing is sufficiently clear.

Yours truly,

FOGLER, RUBINOFF LLP


Greg Azeff
GA/ce

cc: Allan Rutman
J. Ross Macfarlane

Encl.

tab J

THIS AGREEMENT made as of the 22th day of February, 2014.

B E T W E E N:

ZEIFMAN PARTNERS INC., solely in its capacity as
receiver of all the property and assets and
undertaking of Vandermeer Greenhouses Ltd.

(hereinafter referred to as the "Receiver")

OF THE FIRST PART

- and -

GREEN TOWER INDUSTRIES INC.

(hereinafter referred to as the "Green Tower")

RECITALS

1. The Receiver was appointed as Receiver of the property, assets and undertakings of Vandermeer Greenhouses Ltd. ("Vandermeer") pursuant to an appointment dated July 19, 2011.
2. An Application is pending to the Ontario Superior Court of Justice ("Court") for an Order to appoint the Receiver as a Court Appointed Receiver (the "Order").
3. The Receiver and Green Tower are negotiating an agreement of purchase and sale for the sale to Green Tower of the property, assets and undertakings of Vandermeer ("Assets").
4. Green Tower has represented that it has the experience to efficiently manage and operate the business of Vandermeer ("Business") during the negotiations of the sale of the Assets to Green Tower (the "Interim Period").
5. Green Tower has further represented that it will use best efforts to preserve and protect the Assets during the Interim Period.
6. During the Interim Period, Green Tower is willing to carry on the operations of the Business for its own account, at its own financial risk and for its own financial reward, so that any profits or loss from the operation of the Business will accrue to Green Tower.

7. Green Tower has agreed to continue the operation of the Business to preserve value and to enable the Receiver to negotiate the sale of the Assets to Green Tower.

NOW THEREFORE for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged the parties agree as follows:

Operation of the Business

1. Green Tower shall manage and operate the Business during the Interim Period in a commercially reasonable manner and will use its best efforts to preserve and protect the Assets from the date of this Agreement until the earlier of the Termination of this Agreement or the completion of the sale of the Assets to Green Tower as may be approved by the Court. Without limiting the foregoing, Green Tower shall use its best efforts to respond to all service requests as best it is able and to do so on a timely basis in order to maintain the confidence of customers and the goodwill associated with the Business during the Interim Period.
2. (a) Subject to paragraph 2 (b) Green Tower shall be responsible to pay for all costs to continue the Business pursuant to this Agreement, including but not limited to the occupation costs, wages, material costs, licensing fees and equipment rental fees, and all other costs and expenses associated with the operation of the Business including but not limited to, taxes, licenses, insurance, and any other costs or liabilities incidental to operating the Business.

(b) Green Tower acknowledged the two houses on the Business premises are being occupied by Darryl Robinson and Mike Busch and Green Tower shall not be entitled to terminate their occupancy of the houses or to terminate their employment or the employment of any other employee, without consultation and the written approval of the Receiver.
3. Green Tower hereby agrees that the Receiver shall not be liable for any claims, debts, costs, expenses, damages, compensation or liabilities (the "Claims") resulting from Green Tower's possession, management and use of the Assets or Green Tower's operation of the Business and Green Tower hereby agrees to indemnify and hold the Receiver harmless from all actions, causes of action, suits, claims, demands, awards, legal fees and interest arising out of or in connection with any Claims; provided that such indemnity shall not extend to or include any Claims which may arise as a result of the Receiver's gross negligence or willful misconduct.
4. (a) Green Tower shall obtain at its expense insurance coverage which coverage shall name the Receiver and Meridian Credit Union Limited as co-insured on terms and conditions satisfactory to the Receiver with a with a minimum general liability coverage of \$5,000,000.00.

(b) The Insurance coverage is to be in effect prior to Green Tower taking control and management of the Business.

5. The Receiver makes no representations or warranties with respect to the status of the Business, the existence of any of the customers, the satisfaction of any of those customers with the Business, or any other matter or thing connected with the viability of the Business, its profitability or the effectiveness of the delivering of services to its customers. Green Tower acknowledges that it is assuming operation of the Business on an "as is, where is basis".
6. Green Tower undertakes that during the Interim Period, the Assets will be properly maintained, serviced and accounted for and protected.

The Purchase Agreement

7. During the Interim Period the Receiver and Green Tower shall use their best efforts to negotiate a sale agreement of the Assets.
8. The parties hereto acknowledge that any negotiated agreement to sell the Assets to Green Tower is subject to the approval by the Court.

Compliance and Reporting

9. Green Tower shall continue with the consulting services of Darryl Robinson at Green Tower's expense, who shall ensure Green Tower's compliance with all environmental and regulatory requirements concerning the operation of the digester and report thereon to the Receiver.
10. In addition, Green Tower shall provide regular updates and reports to the Receiver as requested by the Receiver from time to time and provide the Receiver with access to the Business such as the Receiver may require from time to time.
11. Green Tower, including its directors, officers, agents, servants, shareholders, employees and representatives shall cooperate fully with the Receiver in the exercise of its powers and discharge of its obligations.
12. Green Tower shall provide monthly reporting to the Receiver verifying payments in respect to source deductions, HST, WSIB, salaries and utilities payments. The first report for the month ending March 14, 2014 shall be due by the last day of March and on the last day of each month thereafter.

Adjustments and Payment to the Receiver

13. Green Tower shall pay the Receiver \$17,000.00 per month (or any part month) plus HST during the term of this Agreement on the 22nd day of each month beginning on February 22, 2014.

14. During the term of this Agreement the Receiver shall continue to collect the digester revenue from Niagara-on-the-Lake Hydro and apply the proceeds therefrom on account of the monthly payment described in paragraph 13.
15. The Receiver shall on a monthly basis account for the Hydro Revenue and any adjustment as to any amounts owed by one party to the other shall be paid within five (5) days of Receiver's determination of the same.

Term and Termination

16. This Agreement shall commence on February 22, 2014 and end on May 23, 2014 unless terminated earlier in accordance with paragraph 17.
17. Either party shall be entitled to terminate this Agreement on thirty (30) days' written notice to the other.
18. Upon Termination each party shall be entitled to an accounting from the other party as contemplated by this Agreement.
19. Any payment that may be payable pursuant to paragraph 18, shall be paid within five (5) days of the later of completion and delivery to Green Tower, of the accounting by the Receiver and the completion and delivery of the accounting by Green Tower to the Receiver.

Notice

20. Any notice required or permitted to be given hereunder shall be in writing and shall be effectively given if (i) delivered personally, (ii) sent by prepaid courier service or mail, or (iii) sent prepaid by telecopier, telex or other similar means of electronic communication (confirmed on the same or following day by prepaid mail) addressed, in the case of notice to the Receiver, as follows:

201 Bridgeland Avenue
Toronto, Ontario
M6A 1Y7
Attention: Allan A. Rutman
Telephone: 416-256-4005
Facsimile: 416-256-4001
email: arutman@zeifmans.ca

and in the case of notice to Green Tower, as follows:
2963 St. Charles Boulevard #40554
Kirkland, Quebec
H9H 5G8
Attention: Elias Bassile
~~Telephone:~~ email: elias@nawm.ca
Facsimile: 450-458-5414

Any notice so given shall be deemed conclusively to have been given and received when so personally delivered or sent by telex, telecopier or other electronic communication or on the second day following the sending thereof by private courier or mail. Any party hereto may change any particulars of its address for notice by notice to the others in the manner aforesaid.

General

21. *Expenses.* Each party shall be responsible for its own legal fees and other charges incurred in connection with the preparation of this Agreement, all negotiations between the parties and the consummation of the transactions contemplated hereby.
22. *Further Assurances.* Each of the parties hereto will from time to time at the other's request and expense and without further consideration, execute and deliver such other instruments of transfer, conveyance and assignment and take such further action as the other may require to more effectively complete any matter provided for herein.
23. *Entire Agreement.* This Agreement constitutes the entire agreement among the parties and except as herein stated and in the instruments and documents to be executed and delivered pursuant hereto, contains all of the representations and warranties of the respective parties. There are no oral representations or warranties among the parties of any kind. This Agreement may not be amended or modified in any respect except by written instrument signed by both parties.
24. *Applicable Law.* This Agreement shall be interpreted in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein and shall be treated in all respects as an Ontario contract.
25. *Successors and Assigns.* This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.
26. *Severability.* In the event that any of the provisions of this Agreement shall be held to be invalid or unenforceable by a Court of competent jurisdiction, the remaining provisions hereof shall nevertheless continue to be valid and enforceable as though the invalid or unenforceable provisions had not been included herein.

Counterparts

27. This Agreement may be executed in several counterparts. A counterpart, once executed, shall be deemed to be an original and such counterparts together shall constitute one and the same instrument. Counterparts may be executed either in original, fax or other electronic form and the parties may adopt any signatures received by fax or email as original signatures of the parties. Provided however that any party providing its signature in such manner shall promptly forward to the other party an original of the signed copy of this Agreement which was so faxed or emailed.

IN WITNESS WHEREOF the parties have duly executed this Agreement as of the date first above written.

ZEIFMAN PARTNERS INC. solely in its
capacity as Receiver of the
property and assets and undertakings of
Vandermeer Greenhouses Ltd.

Per:



Name: *Allan Rubman*
Title: *President*

I have the authority to bind the Corporation

GREEN TOWER INDUSTRIES INC.

Per:



Per:



We have the authority to bind the Corporation

tab K

Greg R. Azeff
E-mail: gazeff@pallettvalo.com
Direct Line: (905) 273-3022 x. 264

BY E-MAIL

April 25, 2014

Green Tower Industries Inc.
2963 St. Charles Blvd. #40554
Kirkland, Quebec
H9H 5G8

Attention: Ron Goldenberg, CFO

Dear Sirs:

Re: Receivership of Vandermeer Greenhouses Ltd.
Our File No.: 72594

We are the solicitors for Zeifman Partners Inc. in its capacity as Court-appointed Receiver and Manager of Vandermeer Greenhouses Ltd. (in such capacity, the "**Receiver**") in respect of the above-noted matter.

We refer to the Agreement between the Receiver and Green Tower Industries Inc. ("**Green Tower**") dated February 22, 2014 (the "**Agreement**") and the Acknowledgment dated February 25, 2014 (the "**Acknowledgment**") regarding the assignment of the Agreement to Niagara Anaerobic Digester Inc. and Niagara Anaerobic Greenhouse Inc. (together, the "**Assignees**"). Capitalized terms used herein are as defined in the Agreement unless otherwise defined herein.

In accordance with the Acknowledgment, Green Tower and the Assignees are jointly and severally liable for the obligations under the Agreement. Pursuant to Section 2(a) of the Agreement, Green Tower and the Assignees are required to pay all expenses associated with their operation of the Business including, without limitation, wages (collectively, the "**Expenses**").

We understand that the following Expenses are past due:

- Payroll in the amount of approximately \$16,719.43;
- Management costs in the amount of approximately \$3,390;
- Ag Energy Co-operative Ltd. account in the amount of \$37,463.52; and
- Bell Canada account in the amount of \$137.83.

The Receiver considers the failure to pay such Expenses to be in breach of the Agreement. You are hereby advised that, unless the Receiver is provided with satisfactory evidence that the Expenses have been paid by 5:00 pm EST on Friday April 25, 2014, the Receiver will treat the Agreement as having been repudiated by Green Tower and the Assignees, and the Receiver will re-possess the property, assets and undertakings of Vandermeer.

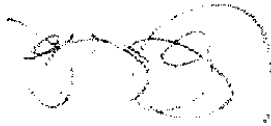
Pursuant to Section 3 of the Agreement, the Receiver will continue to hold Green Tower and the Assignees jointly and severally liable for all liabilities arising from their operation of the Business including, without limitation, any Expenses that the Receiver pays on their behalf.

The Receiver also notes that Green Tower and the Assignees have undertaken to establish a new account with Enbridge, but have not yet done so. Please confirm to the Receiver that such account has been established.

We trust that the foregoing is satisfactory.

Yours very truly,

PALLET VALO LLP



Per: Greg R. Azeff

GAZ/sg

Encl.

cc: *Zeifman Partners Inc.*
Niagara Anaerobic Digester Inc.
Niagara Anaerobic Greenhouse Inc.

tab L

SUPPLY AGREEMENT

This Agreement made this 8th day of October, 2014.

B E T W E E N:

**ZEIFMAN PARTNERS INC., in its capacity as
Receiver of Vandermeer Greenhouses Ltd.**

(the "Receiver")

- and -

**ST. DAVIDS HYDROPONICS LTD., a corporation
incorporated under the laws of the Province of
Ontario**

(the "Supplier")

WHEREAS:

- A. 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, Zeifman Partners Inc. was appointed Receiver of Vandermeer Greenhouses Ltd. ("**Vandermeer**");
- B. The Receiver is operating Vandermeer's business, which includes the operation of an anaerobic digester (the "**Business**") from premises located at 2021 Four Mile Creek Road, RR#3, Niagara on the Lake, Ontario L0S 1J0 (the "**Premises**");
- C. The Supplier wishes to enter an arrangement to deliver Loads (as defined below) to the Business for processing with a Titus II Grinder & Hopper (the "**Equipment**", as is more particularly described at Schedule "A");
- D. The Receiver has agreed to purchase the Equipment from Titus Inc. for a purchase price equal to the amount of \$151,522 after conversion to Canadian Dollars (the "**Purchase Price**"), for installation at the Premises and operation in the Business;
- E. The estimated cost of installing the Equipment is the amount of \$11,500 (the "**Installation Costs**"), which includes the cost of transportation, concrete pad installation and necessary electrical work; and
- F. The Supplier has agreed to contribute certain financing in respect of the Purchase Price and Installation Costs (together, the "**Total Cost**") through the pre-payment of Tipping Fees (as defined below), subject to the terms and conditions set out herein,

NOW THEREFORE, in consideration of the premises and mutual covenants and agreements contained in this Agreement, and for other good and valuable consideration, the

receipt and sufficiency of which are each hereby acknowledged by the parties, the parties hereto agree as follows:

ARTICLE I INTERPRETATION

1.01 Definitions

In this Agreement, the following terms shall have the meanings set out below unless the context requires otherwise:

"Agreement" means this agreement, including all schedules and all amendments or restatements, as permitted and references to **"Article"** **"Section"** or **"Schedule"** mean the specified Article, Section of, or Schedule to this Agreement and the expressions **"hereof"**, **"herein"**, **"hereto"**, **"hereunder"**, **"hereby"** and similar expressions refer to this Agreement and not to any particular Section or other portion of this Agreement;

"Business Day" means any day other than a Saturday, Sunday or statutory holiday in the Province of Ontario;

"Load" means a 30 cubic yard waste box of materials suitable for processing with the Equipment;

"Parties" means the Receiver and the Supplier together, and **"Party"** means either of them;

"Person" is to be broadly interpreted and includes an individual, a corporation, a partnership, a trust, an unincorporated organization, the government of a country or any political subdivision thereof, or any agency or department of any such government, and the executors, administrators or other legal representatives of an individual in such capacity; and

"Tipping Fees" means the fees charged to the Supplier as consideration for the Receiver's acceptance of Loads, as more particularly described at Schedule "B", and as may be amended from time to time in accordance with this Agreement,

1.02 Headings and Sections

The division of this Agreement into Articles and Sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement.

1.03 Number and Gender

Unless the context requires otherwise, words importing the singular include the plural and vice versa and words importing gender include all genders. Where the word **"including"** or **"includes"** is used in this Agreement, it means **"including (or includes) without limitation"**.

1.04 Currency

Except as otherwise expressly provided in this Agreement, all dollar amounts referred to in this Agreement are stated in Canadian dollars.

1.05 Statute References

Any reference in this Agreement to any statute or any section thereof shall, unless otherwise expressly stated, be deemed to be a reference to such statute or section as amended, restated or re-enacted from time to time.

1.06 Time Periods

Unless otherwise specified, time periods within or following which any payment is to be made or act is to be done shall be calculated by excluding the day on which the period commences and including the day on which the period ends and by extending the period to the next Business Day following if the last day of the period is not a Business Day.

1.07 Consent

Whenever a provision of this Agreement requires an approval or consent and such approval or consent is not delivered within the applicable time limit, then, unless otherwise specified, the Party whose consent or approval is required shall be conclusively deemed to have withheld same.

1.08 No Strict Construction

The language used in this Agreement is the language chosen by the Parties to express their mutual intent, and no rule of strict construction shall be applied against any Party.

1.09 Entire Agreement

This Agreement and the agreements and other documents required to be delivered pursuant to this Agreement, constitute the entire agreement between the Parties and set out all the covenants, promises, warranties, representations, conditions, understandings and agreements between the Parties relating to the subject matter of this Agreement and supersede all prior agreements, understandings, negotiations and discussions, whether oral or written. There are no covenants, promises, warranties, representations, conditions, understandings or other agreements, oral or written, express, implied or collateral between the Parties in connection with the subject matter of this Agreement except as specifically set forth in this Agreement.

1.10 Section and Schedule References

Unless the context requires otherwise, references in this Agreement to Sections or Schedules are to Sections and Schedules, as applicable, of this Agreement. The Schedules to this Agreement, listed as follows, are an integral part of this Agreement:

Schedule	Description
Schedule "A"	Equipment
Schedule "B"	Tipping Fees

ARTICLE II PURCHASE OF EQUIPMENT

2.01 Purchase of Equipment

Subject to the terms of this Agreement, the Receiver shall purchase the Equipment and shall install and operate the Equipment at the Premises.

ARTICLE III ACCEPTANCE OF LOADS

3.01 Acceptance of Loads

During the Term (as defined below), the Receiver shall accept Loads from the Supplier in consideration of payment of the Tipping Fees by the Supplier, subject to the Equipment's maximum capacity. The Supplier agrees that it shall pay such Tipping Fees and shall use best efforts to ensure that agreed-upon volumes are maintained throughout the Term.

3.02 Adjustment of Tipping Fees

The Parties agree that the Tipping Fees shall be adjusted every three (3) years during the Term, to reflect: (i) a cost of living adjustment determined by reference to Canada's Consumer Price Index, and (ii) any increase in the Receiver's expenses to a maximum of five (5) percent.

ARTICLE IV PREPAYMENT OF TIPPING FEES

4.01 Prepayment

The Supplier agrees that it shall deliver to the Receiver a prepayment of Tipping Fees in the amount of \$65,208.80 (the "**Prepayment Amount**"), as follows:

- (a) by a deposit in the amount of \$32,604.40 (the "**Deposit**"), payable upon execution of this Agreement; and
- (b) the balance in the amount of \$32,604.40 payable on the day that is forty-five (45) days from the date of this Agreement.

The Supplier shall pay the Prepayment Amount by certified cheque, bank draft or electronic funds transfer.

4.02 Application of Prepayment Amounts

The Receiver agrees that the Prepayment Amount shall be applied to and reduced by Tipping Fees that would otherwise be payable by the Supplier, until the earlier of the day: (i) on which any balance of the Prepayment Amount (the "**Prepayment Balance**") is reduced to zero, or (ii) that is eighteen (18) months after the date of this Agreement.

4.03 Termination of Operations

In the event the Business terminates ordinary course operations, the Receiver shall return any Prepayment Balance to the Supplier within 120 days of same.

ARTICLE V TERM & TERMINATION

5.01 Term

The term of this Agreement (the "**Term**") shall be the period between the date first written above and May 11, 2030 unless otherwise terminated hereunder.

5.02 Termination

This Agreement shall terminate immediately upon the occurrence of any of the following:

- (a) the Business ceases ordinary course operations;
- (b) the Receiver is unable to obtain the Equipment for any reason including, without limitation, any significant increase in cost from the estimates described in the Recitals to this Agreement; or
- (c) any Governmental Authority prohibits operation of the Equipment or otherwise prevents the Receiver from fulfilling its obligations hereunder.

ARTICLE VI CONDITIONS PRECEDENT

6.01 Conditions Precedent of the Receiver

This Agreement is subject to satisfaction of the following conditions precedent by no later than Friday October 10, 2014, failing which this Agreement shall be void:

- (a) *Executed Agreement.* The Receiver shall have received a copy of this Agreement, duly executed by the Supplier; and
- (b) *Payment of Deposit.* The Receiver shall have received the Deposit from the Supplier.

ARTICLE VII OTHER COVENANTS OF THE PARTIES; GENERAL

7.01 Expenses

Each Party shall pay its own legal, accounting, and other professional advisory fees, costs and expenses incurred in connection with the transactions contemplated in this Agreement, and the preparation, execution and delivery of this Agreement and all documents and instruments executed pursuant to this Agreement.

7.02 Notices

Any notice, consent or approval required or permitted to be given in connection with this Agreement shall be in writing and shall be sufficiently given if delivered (whether in person, by courier service or other personal method of delivery), or if transmitted by facsimile:

- (a) in the case of a notice to the Receiver at:

Zeifman Partners Inc.
1 Toronto St.
Toronto, ON
M5C 2V6, Canada
Attention: Allan Rutman

- (b) in the case of a notice to the Supplier at:

St. Davids Hydroponics Ltd.
822 Concession 7, RR#4
Niagara-on-the-Lake, Ontario
L0S 1G1
Attention: Toine Van Der Knapp

Any notice delivered or transmitted to a Party as provided above shall be deemed to have been given and received on the day it is delivered or transmitted. Any Party may, from time to time, change its address by giving notice to the other Party in accordance with the provisions of this Section.

7.03 Successors and Assigns

This Agreement shall enure to the benefit of and be binding upon the Parties and their respective successors (including any successor by reason of amalgamation of any Party) and permitted assigns. Neither Supplier may assign or transfer, whether absolutely, by way of security or otherwise, all or any part of its rights or obligations under this Agreement without the prior written consent of the Receiver.

7.04 Assignment by Receiver

Notwithstanding anything else contained herein, the Receiver may at any time assign this Agreement and any of its rights and obligations arising hereunder to any purchaser or lessor of the Equipment and upon such assignment, the Receiver shall be released and discharged from its obligations hereunder.

7.05 No Third Party Beneficiaries

This Agreement shall not confer any rights or remedies upon any Person other than the Parties and their respective successors and permitted assigns. Nothing in this Agreement shall be construed to create any rights or obligations except between the Parties, and no person or entity shall be regarded as a third party beneficiary of this Agreement.

7.06 Time of the Essence

Time shall be of the essence in respect of the obligations of the Parties under this Agreement.

7.07 Amendment

No amendment, supplement, modification or waiver or termination of this Agreement and, unless otherwise specified, no consent or approval by any Party, shall be binding unless executed in writing by the Party to be bound thereby.

7.08 Further Assurances

The Parties shall, with reasonable diligence, do all such things and provide all such reasonable assurances as may be required to consummate the transactions contemplated by this Agreement, and each Party shall provide such further documents or instruments required by any other Party as may be reasonably necessary or desirable to effect the purpose of this Agreement and carry out its provisions.

7.09 Severability

Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to that jurisdiction, be ineffective to the extent of such prohibition or unenforceability and shall be severed from the balance of this Agreement, all without affecting the remaining provisions of this Agreement or affecting the validity or enforceability of such provision in any other jurisdiction.

7.10 Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein and shall be treated in all respects as an Ontario contract.

7.11 Execution and Delivery

This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which taken together shall be deemed to constitute one and the same instrument. Counterparts may be executed and delivered either in original or faxed form or by electronic delivery in portable document format (PDF) and the parties adopt any signatures received by a receiving fax machine as original signatures of the parties; provided, however, that any party providing its signature in such manner shall promptly forward to the other party an original of the signed copy of this Agreement which was so faxed or electronically delivered.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS OF WHICH the Parties have executed this Agreement as of the date first written above.

**ZEIFMAN PARTNERS INC., in its capacity as
Receiver of Vandermeer Greenhouses Ltd. and
without personal or corporate liability**

Per: 

Name:

Title:

Aaron Rutman
PRESIDENT

ST. DAVIDS HYDROPONICS LTD.

Per: _____

Name:

Title:

SCHEDULE "A"

EQUIPMENT

Titus II Grinder & Hopper manufactured by Titus Inc.

SCHEDULE "B"

TIPPING FEES

- Cull pepper Loads will be charged out at \$85 per Load.
- Pepper silage Loads will be charged out at \$150 per Load.

tab M

SUPPLY AGREEMENT

This Agreement made this 8th day of October, 2014.

B E T W E E N:

**ZEIFMAN PARTNERS INC., in its capacity as
Receiver of Vandermeer Greenhouses Ltd.**

(the "Receiver")

- and -

**SANIMAX LIMITED., a corporation incorporated
under the laws of Canada**

(the "Supplier")

WHEREAS:

A. 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, Zeifman Partners Inc. was appointed Receiver of Vandermeer Greenhouses Ltd. ("Vandermeer");

B. The Receiver is operating Vandermeer's business, which includes the operation of an anaerobic digester (the "Business") from premises located at 2021 Four Mile Creek Road, RR#3, Niagara on the Lake, Ontario L0S 1J0 (the "Premises");

C. The Supplier wishes to enter an arrangement to deliver Loads (as defined below) to the Business for processing with a Titus II Grinder & Hopper (the "Equipment", as is more particularly described at Schedule "A");

D. The Receiver has agreed to purchase the Equipment from Titus Inc. for a purchase price equal to the amount of \$151,522 after conversion to Canadian Dollars (the "Purchase Price"), for installation at the Premises and operation in the Business;

E. The estimated cost of installing the Equipment is the amount of \$11,500 (the "Installation Costs"), which includes the cost of transportation, concrete pad installation and necessary electrical work; and

F. The Supplier has agreed to contribute certain financing in respect of the Purchase Price and Installation Costs (together, the "Total Cost") through the pre-payment of Tipping Fees (as defined below), subject to the terms and conditions set out herein,

NOW THEREFORE, in consideration of the premises and mutual covenants and agreements contained in this Agreement, and for other good and valuable consideration, the

receipt and sufficiency of which are each hereby acknowledged by the parties, the parties hereto agree as follows:

ARTICLE I INTERPRETATION

1.01 Definitions

In this Agreement, the following terms shall have the meanings set out below unless the context requires otherwise:

"Agreement" means this agreement, including all schedules and all amendments or restatements, as permitted and references to **"Article"** **"Section"** or **"Schedule"** mean the specified Article, Section of, or Schedule to this Agreement and the expressions **"hereof"**, **"herein"**, **"hereto"**, **"hereunder"**, **"hereby"** and similar expressions refer to this Agreement and not to any particular Section or other portion of this Agreement;

"Business Day" means any day other than a Saturday, Sunday or statutory holiday in the Province of Ontario;

"Load" means a 14 cubic yard waste box of materials suitable for processing with the Equipment;

"Parties" means the Receiver and the Supplier together, and **"Party"** means either of them;

"Person" is to be broadly interpreted and includes an individual, a corporation, a partnership, a trust, an unincorporated organization, the government of a country or any political subdivision thereof, or any agency or department of any such government, and the executors, administrators or other legal representatives of an individual in such capacity; and

"Tipping Fees" means the fees charged to the Supplier as consideration for the Receiver's acceptance of Loads, as more particularly described at Schedule "B", and as may be amended from time to time in accordance with this Agreement,

1.02 Headings and Sections

The division of this Agreement into Articles and Sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement.

1.03 Number and Gender

Unless the context requires otherwise, words importing the singular include the plural and vice versa and words importing gender include all genders. Where the word **"including"** or **"includes"** is used in this Agreement, it means **"including (or includes) without limitation"**.

1.04 Currency

Except as otherwise expressly provided in this Agreement, all dollar amounts referred to in this Agreement are stated in Canadian dollars.

1.05 Statute References

Any reference in this Agreement to any statute or any section thereof shall, unless otherwise expressly stated, be deemed to be a reference to such statute or section as amended, restated or re-enacted from time to time.

1.06 Time Periods

Unless otherwise specified, time periods within or following which any payment is to be made or act is to be done shall be calculated by excluding the day on which the period commences and including the day on which the period ends and by extending the period to the next Business Day following if the last day of the period is not a Business Day.

1.07 Consent

Whenever a provision of this Agreement requires an approval or consent and such approval or consent is not delivered within the applicable time limit, then, unless otherwise specified, the Party whose consent or approval is required shall be conclusively deemed to have withheld same.

1.08 No Strict Construction

The language used in this Agreement is the language chosen by the Parties to express their mutual intent, and no rule of strict construction shall be applied against any Party.

1.09 Entire Agreement

This Agreement and the agreements and other documents required to be delivered pursuant to this Agreement, constitute the entire agreement between the Parties and set out all the covenants, promises, warranties, representations, conditions, understandings and agreements between the Parties relating to the subject matter of this Agreement and supersede all prior agreements, understandings, negotiations and discussions, whether oral or written. There are no covenants, promises, warranties, representations, conditions, understandings or other agreements, oral or written, express, implied or collateral between the Parties in connection with the subject matter of this Agreement except as specifically set forth in this Agreement.

1.10 Section and Schedule References

Unless the context requires otherwise, references in this Agreement to Sections or Schedules are to Sections and Schedules, as applicable, of this Agreement. The Schedules to this Agreement, listed as follows, are an integral part of this Agreement:

Schedule	Description
Schedule "A"	Equipment
Schedule "B"	Tipping Fees

ARTICLE II PURCHASE OF EQUIPMENT

2.01 Purchase of Equipment

Subject to the terms of this Agreement, the Receiver shall purchase the Equipment and shall install and operate the Equipment at the Premises.

ARTICLE III ACCEPTANCE OF LOADS

3.01 Acceptance of Loads

During the Term (as defined below), the Receiver shall accept Loads from the Supplier in consideration of payment of the Tipping Fees by the Supplier, subject to the Equipment's maximum capacity. The Supplier agrees that it shall pay such Tipping Fees and shall use best efforts to ensure that agreed-upon volumes are maintained throughout the Term.

3.02 Adjustment of Tipping Fees

The Parties agree that the Tipping Fees shall be adjusted every three (3) years during the Term, to reflect: (i) a cost of living adjustment determined by reference to Canada's Consumer Price Index, and (ii) any increase in the Receiver's expenses to a maximum of five (5) percent.

ARTICLE IV PREPAYMENT OF TIPPING FEES

4.01 Prepayment

The Supplier agrees that it shall deliver to the Receiver a prepayment of Tipping Fees in the amount of \$65,208.80 (the "**Prepayment Amount**"), as follows:

- (a) by a deposit in the amount of \$32,604.40 (the "**Deposit**"), payable upon execution of this Agreement; and
- (b) the balance in the amount of \$32,604.40 payable on the day that is forty-five (45) days from the date of this Agreement.

The Supplier shall pay the Prepayment Amount by certified cheque, bank draft or electronic funds transfer.

4.02 Application of Prepayment Amounts

The Receiver agrees that the Prepayment Amount shall be applied to and reduced by Tipping Fees that would otherwise be payable by the Supplier, until the earlier of the day: (i) on which any balance of the Prepayment Amount (the "**Prepayment Balance**") is reduced to zero, or (ii) that is eighteen (18) months after the date of this Agreement.

4.03 Termination of Operations

In the event the Business terminates ordinary course operations, the Receiver shall return any Prepayment Balance to the Supplier within 120 days of same.

ARTICLE V TERM & TERMINATION

5.01 Term

The term of this Agreement (the "**Term**") shall be the period between the date first written above and May 11, 2030 unless otherwise terminated hereunder.

5.02 Termination

This Agreement shall terminate immediately upon the occurrence of any of the following:

- (a) the Business ceases ordinary course operations;
- (b) the Receiver is unable to obtain the Equipment for any reason including, without limitation, any significant increase in cost from the estimates described in the Recitals to this Agreement; or
- (c) any Governmental Authority prohibits operation of the Equipment or otherwise prevents the Receiver from fulfilling its obligations hereunder.

ARTICLE VI CONDITIONS PRECEDENT

6.01 Conditions Precedent of the Receiver

This Agreement is subject to satisfaction of the following conditions precedent by no later than Friday October 10, 2014, failing which this Agreement shall be void:

- (a) *Executed Agreement.* The Receiver shall have received a copy of this Agreement, duly executed by the Supplier; and
- (b) *Payment of Deposit.* The Receiver shall have received the Deposit from the Supplier.

ARTICLE VII OTHER COVENANTS OF THE PARTIES; GENERAL

7.01 Expenses

Each Party shall pay its own legal, accounting, and other professional advisory fees, costs and expenses incurred in connection with the transactions contemplated in this Agreement, and the preparation, execution and delivery of this Agreement and all documents and instruments executed pursuant to this Agreement.

7.02 Notices

Any notice, consent or approval required or permitted to be given in connection with this Agreement shall be in writing and shall be sufficiently given if delivered (whether in person, by courier service or other personal method of delivery), or if transmitted by facsimile:

- (a) in the case of a notice to the Receiver at:

Zeifman Partners Inc.
1 Toronto St.
Toronto, ON
M5C 2V6, Canada
Attention: Allan Rutman

- (b) in the case of a notice to the Supplier at:

Sanimax Limited
9900 Maurice Duplessis Blvd.
Montreal, Quebec
H1C-1G1
Attention: Mario Couture

Any notice delivered or transmitted to a Party as provided above shall be deemed to have been given and received on the day it is delivered or transmitted. Any Party may, from time to time, change its address by giving notice to the other Party in accordance with the provisions of this Section.

7.03 Successors and Assigns

This Agreement shall enure to the benefit of and be binding upon the Parties and their respective successors (including any successor by reason of amalgamation of any Party) and permitted assigns. Neither Supplier may assign or transfer, whether absolutely, by way of security or otherwise, all or any part of its rights or obligations under this Agreement without the prior written consent of the Receiver.

7.04 Assignment by Receiver

Notwithstanding anything else contained herein, the Receiver may at any time assign this Agreement and any of its rights and obligations arising hereunder to any purchaser or lessor of the Equipment and upon such assignment, the Receiver shall be released and discharged from its obligations hereunder.

7.05 No Third Party Beneficiaries

This Agreement shall not confer any rights or remedies upon any Person other than the Parties and their respective successors and permitted assigns. Nothing in this Agreement shall be construed to create any rights or obligations except between the Parties, and no person or entity shall be regarded as a third party beneficiary of this Agreement.

7.06 Time of the Essence

Time shall be of the essence in respect of the obligations of the Parties under this Agreement.

7.07 Amendment

No amendment, supplement, modification or waiver or termination of this Agreement and, unless otherwise specified, no consent or approval by any Party, shall be binding unless executed in writing by the Party to be bound thereby.

7.08 Further Assurances

The Parties shall, with reasonable diligence, do all such things and provide all such reasonable assurances as may be required to consummate the transactions contemplated by this Agreement, and each Party shall provide such further documents or instruments required by any other Party as may be reasonably necessary or desirable to effect the purpose of this Agreement and carry out its provisions.

7.09 Severability

Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to that jurisdiction, be ineffective to the extent of such prohibition or unenforceability and shall be severed from the balance of this Agreement, all without affecting the remaining provisions of this Agreement or affecting the validity or enforceability of such provision in any other jurisdiction.

7.10 Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein and shall be treated in all respects as an Ontario contract.

7.11 Execution and Delivery

This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which taken together shall be deemed to constitute one and the same instrument. Counterparts may be executed and delivered either in original or faxed form or by electronic delivery in portable document format (PDF) and the parties adopt any signatures received by a receiving fax machine as original signatures of the parties; provided, however, that any party providing its signature in such manner shall promptly forward to the other party an original of the signed copy of this Agreement which was so faxed or electronically delivered.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS OF WHICH the Parties have executed this Agreement as of the date first written above.

ZEIFMAN PARTNERS INC., in its capacity as
Receiver of Vandermeer Greenhouses Ltd. and
without personal or corporate liability

Per: 

Name:

Title:

Alan Rutman
President

SANIMAX LIMITED

Per: _____

Name:

Title:

SCHEDULE "A"

EQUIPMENT

Titus II Grinder & Hopper manufactured by Titus Inc.

SCHEDULE "B"

TIPPING FEES

- Organic material Loads will be charged out at \$10.00 per metric tonne.

tab N

ASSET PURCHASE AGREEMENT

Between

**Zeifman Partners Inc., in its capacity as
Receiver of Vandermeer Greenhouses Ltd.**

(the "Vendor")

- and -

2258324 Ontario Ltd.

(the "Purchaser")

DATED AS OF JUNE 26, 2014

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ASSET PURCHASE AGREEMENT

This Agreement made this 26th day of June, 2014.

A M O N G:

Zeifman Partners Inc., in its capacity as Receiver of Vandermeer Greenhouses Ltd.

(the "Vendor")

- and -

2258324 ONTARIO LTD., a corporation governed by the laws of Ontario

(the "Purchaser")

WHEREAS 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, Zeifman Partners Inc. was appointed Receiver of all property, assets and undertakings of Vandermeer Greenhouses Ltd. ("**Vandermeer**");

AND WHEREAS in connection therewith, the Vendor has agreed to sell, and the Purchaser has agreed to purchase all of the Vendor's right, title and interest in and to the Purchased Assets (as defined herein) in accordance with the terms of this Agreement;

NOW THEREFORE, in consideration of the premises and mutual covenants and agreements contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are each hereby acknowledged by the parties, the parties hereto agree as follows:

ARTICLE I INTERPRETATION

1.01 Definitions

In this Agreement, the following terms shall have the meanings set out below unless the context requires otherwise:

"**Agreement**" means this asset purchase agreement, including all schedules and all amendments or restatements, as permitted and references to "**Article**" "**Section**" or "**Schedule**" mean the specified Article, Section of, or Schedule to this Agreement and the expressions "hereof", "herein", "hereto", "hereunder", "hereby" and similar expressions refer to this Agreement and not to any particular Section or other portion of this Agreement;

"**Applicable Law**" means, with respect to any Person, property, transaction, event or other matter, all applicable laws, statutes, regulations, rules, by-laws, ordinances, protocols, regulatory policies,

codes, guidelines, official directives, orders, rulings, judgments and decrees of any Governmental Authority;

"Approval and Vesting Order" has the meaning given in Section 6.01;

"Assumed Contract" means a Contract listed in Schedule "B" being assumed by the Purchaser on the Closing Date, and **"Assumed Contracts"** means every Assumed Contract;

"Assumed Obligations" has the meaning given in Section 2.05;

"Books and Records" means books and records relating to the Purchased Assets, including financial, corporate, operations and sales books, records, books of account, sales and purchase records, lists of suppliers and customers, business reports, plans and projections and all other documents, surveys, plans, files, records, assessments, correspondence, and other data and information, financial or otherwise including all data, information and databases stored on computer-related or other electronic media;

"Business" means the business conducted by the Vendor prior to the Closing Date;

"Business Day" means any day other than a Saturday, Sunday or statutory holiday in the Province of Ontario;

"Claims" includes claims, demands, complaints, grievances, actions, applications, suits, causes of action, orders, charges, indictments, prosecutions or other similar processes;

"Closing" means the completion of the purchase and sale of the Purchased Assets in accordance with the provisions of this Agreement;

"Closing Date" means September 15, 2014, or such earlier or later date as may be agreed to in writing by the Parties;

"Closing Time" has the meaning given in Section 3.01;

"Contract" means any contracts, licences, leases, agreements, obligations, promises, undertakings, understandings, arrangements, documents, commitments, entitlements or engagements to which the Vendor is a party, and **"Contracts"** means every Contract;

"Court" has the meaning given in the recitals above;

"Encumbrances" means liens, charges, security interests, pledges, leases, title retention agreements, mortgages, restrictions on use, development or similar agreements, easements, rights-of-way, title defects, options or adverse claims or encumbrances of any kind or character whatsoever;

"Employee Liabilities" means any liability imposed upon the Vendor or the Purchaser pursuant to any federal or provincial legislation pursuant to which such party is deemed to be a successor employer, related employer or otherwise responsible for or liable for payment of any amounts owing to any of the current or former Employees (including, but not limited to, the Transferred

Employees), whether pursuant to the *Employment Standards Act*, 2000, S.O. 2000, c. 41, the *Pay Equity Act*, R.S.O. 1990, c. P.7, or the *Workplace Safety and Insurance Act*, 1997, S.O. 1997, c. 16, Sch. A. Without limiting the foregoing, Employee Liabilities shall include:

- (a) all salaries, wages, bonuses, commissions and other compensation (including accrued but unpaid vacation pay and any retroactive pay) and all liabilities under employee pension and benefit plans relating to employment of the current or former Employees;
- (b) all severance payments, damages for wrongful dismissal and all related costs in respect of the termination by the Vendor of the current or former Employees; and
- (c) all liabilities for claims for injury, disability, death or workers' compensation arising from or relating to employment in the Business;

"Employee" means an individual currently or formerly employed by the Vendor in the Business of the Vendor, except those Employees who are covered by any collective bargaining agreement, and **"Employees"** means every Employee;

"Excluded Assets" means any and all assets of the Vendor other than the Purchased Assets, as the Purchaser may advise prior to Closing;

"Excluded Liabilities" has the meaning given in Section 2.06;

"Governmental Authorities" means governments, regulatory authorities, governmental departments, agencies, commissions, bureaus, officials, ministers, Crown corporations, courts, bodies, boards, tribunals or dispute settlement panels or other law or regulation-making organizations or entities: (a) having or purporting to have jurisdiction on behalf of any nation, province, territory, state or other geographic or political subdivision thereof; or (b) exercising, or entitled or purporting to exercise any administrative, executive, judicial, legislative, policy, regulatory or taxing authority or power and **"Governmental Authority"** means any one of them;

"HST" means all harmonized sales tax imposed under Part IX of the *Excise Tax Act* (Canada);

"Intellectual Property" means intellectual property including, without limitation, (i) copyrights, (ii) patents, (iii) trademarks, trade names, domain names, business names, names of vessels, trade styles, logos and all other forms of business identifiers, (iv) business telephone numbers, and (v) trade secrets and all other confidential information and data in any form or format;

"Interim Period" means the period from and including the date of this Agreement to and including the Closing Date;

"Licences and Permits" means all licences, permits, filings, certificates, authorizations, approvals or indicia of authority related to the Business or the Purchased Assets or necessary for the operation or use of the Purchased Assets;

"Parties" means the Vendor and the Purchaser together, and **"Party"** means any one of them;

"Person" is to be broadly interpreted and includes an individual, a corporation, a partnership, a trust, an unincorporated organization, the government of a country or any political subdivision thereof, or any agency or department of any such government, and the executors, administrators or other legal representatives of an individual in such capacity;

"Premises" means all of the premises from which the Vendor conducted the Business located at the addresses municipally known as 2003-2021 Four Mile Creek Road, Niagara-on-the-Lake, Ontario, as may be more particularly described at Schedule "F";

"Prepaid Expenses" means all liabilities, including all operating expenses, with respect to the Purchased Assets referable in whole or in part to the period from and after the Closing Date which have been prepaid by the Vendor as at the Closing Date;

"Prospective Employees" has the meaning given in Section 7.01;

"Purchase Price" has the meaning given in Section 2.02;

"Purchased Assets" means all of the right, title of the Vendor in and to its property, assets and undertaking of whatsoever nature and kind, legal and equitable, tangible and intangible, including, without limitation, the (i) assets described in Schedule "A"; (ii) Assumed Contracts; (iii) Premises; and (iv) Intellectual Property. For greater certainty, the Purchased Assets shall not include the Excluded Assets;

"Purchaser's Solicitors" means •;

"Taxes" means all taxes, charges, fees, levies, imposts and other assessments, including all income, sales, use, goods and services, harmonized, value added, capital, capital gains, alternative, net worth, transfer, profits, withholding, payroll, employer health, excise, franchise, real property and personal property taxes, and any other taxes, customs duties, fees, assessments or similar charges in the nature of a tax including Canada Pension Plan and provincial pension plan contributions, employment insurance payments and workers compensation premiums, together with any instalments with respect thereto, and any interest, fines and penalties, imposed by any Governmental Authority, and whether disputed or not;

"Transferred Employees" has the meaning given in Section 7.01;

"Vendor's Solicitors" means Fogler, Rubinoff LLP; and

"Zirger Claim" has the meaning given in Section 4.01(c).

1.02 Headings and Sections

The division of this Agreement into Articles and Sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement.

1.03 Number and Gender

Unless the context requires otherwise, words importing the singular include the plural and vice versa and words importing gender include all genders. Where the word "including" or "includes" is used in this Agreement, it means "including (or includes) without limitation".

1.04 Currency

Except as otherwise expressly provided in this Agreement, all dollar amounts referred to in this Agreement are stated in Canadian dollars.

1.05 Statute References

Any reference in this Agreement to any statute or any section thereof shall, unless otherwise expressly stated, be deemed to be a reference to such statute or section as amended, restated or re-enacted from time to time.

1.06 Time Periods

Unless otherwise specified, time periods within or following which any payment is to be made or act is to be done shall be calculated by excluding the day on which the period commences and including the day on which the period ends and by extending the period to the next Business Day following if the last day of the period is not a Business Day.

1.07 Consent

Whenever a provision of this Agreement requires an approval or consent and such approval or consent is not delivered within the applicable time limit, then, unless otherwise specified, the Party whose consent or approval is required shall be conclusively deemed to have withheld its approval or consent.

1.08 No Strict Construction

The language used in this Agreement is the language chosen by the Parties to express their mutual intent, and no rule of strict construction shall be applied against any Party.

1.09 Entire Agreement

This Agreement and the agreements and other documents required to be delivered pursuant to this Agreement, constitute the entire agreement between the Parties and set out all the covenants, promises, warranties, representations, conditions, understandings and agreements between the Parties relating to the subject matter of this Agreement and supersede all prior agreements, understandings, negotiations and discussions, whether oral or written. There are no covenants, promises, warranties, representations, conditions, understandings or other agreements, oral or written, express, implied or collateral between the Parties in connection with the subject matter of this Agreement except as specifically set forth in this Agreement and the Purchaser shall acquire the Purchased Assets on an "as is, where is" basis subject to the benefit of the representations and warranties in this Agreement. Any cost estimates, projections or other predictions contained or

referred to in any other material that has been provided to the Purchaser or any of its affiliates, subsidiaries, agents or representatives are not and shall not be deemed to be representations or warranties of the Vendor or any of its affiliates, subsidiaries, agents, employees or representatives.

1.10 Section and Schedule References

Unless the context requires otherwise, references in this Agreement to Sections or Schedules are to Sections and Schedules, as applicable, of this Agreement. The Schedules to this Agreement, listed as follows, are an integral part of this Agreement:

Schedule	Description
Schedule "A"	Purchased Assets
Schedule "B"	Assumed Contracts
Schedule "C"	Assumed Obligations
Schedule "D"	Form of Bill of Sale
Schedule "E"	Allocation of Purchase Price
Schedule "F"	Real Property
Schedule "G"	Equipment

ARTICLE II PURCHASE AND SALE

2.01 Purchase and Sale of Purchased Assets

On the Closing Date, subject to the issuance of the Approval and Vesting Order and the other terms and conditions of this Agreement:

- (a) the Vendor shall transfer, sell, convey, assign and deliver unto the Purchaser, and the Purchaser shall acquire and accept, all of the Vendor's right, title and interest in and to the Purchased Assets; and
- (b) the Purchaser shall pay the Purchase Price as provided in Section 2.02.

2.02 Purchase Price

The amount payable by the Purchaser for the Purchased Assets, exclusive of all applicable sales and transfer taxes, shall be the amount of \$4,150,000 (the "**Purchase Price**"), subject to the Adjustments (as defined below). All such applicable sales and transfer taxes shall be paid by the Purchaser by certified cheque or bank draft, subject to the terms hereof and the availability of any exemptions or elections under any applicable legislation for such applicable sale and transfer taxes.

The Purchase Price shall be allocated amongst the Purchased Assets as agreed to by the Parties prior to Closing, in accordance with Schedule "E" attached hereto.

2.03 Satisfaction of Purchase Price

The Purchaser shall satisfy the Purchase Price as follows:

- (a) by paying to the Vendor, upon acceptance of this Agreement by the Vendor, a deposit of \$5,000 (the "Deposit"), which shall be held by the Vendor until the Closing Time and credited towards the Purchase Price upon Closing; and
- (b) by paying to the Vendor, at the Closing Time, an amount equal to \$4,145,000, representing the balance of the Purchase Price after crediting the Deposit, to be allocated among the Purchased Assets in accordance with Schedule "E" hereto.

The Vendor agrees to cause the Deposit to be placed in an interest bearing account or deposit, with all interest earned or accrued thereon to be paid or credited to the Purchaser at the Time of Closing, unless the Purchaser forfeits the Deposit as provided herein in which event the interest shall be paid to the Vendor.

2.04 Sales and Transfer Taxes; HST Election

- (a) The Purchaser shall be responsible for the payment on Closing of any Taxes that are required to be paid or remitted in connection with the consummation of the transactions contemplated hereunder. For greater certainty, the Purchaser agrees to indemnify and hold the Vendor harmless in respect of any Taxes which may be assessed against the Vendor in respect of the sale to the Purchaser of the Purchased Assets.
- (b) At the Closing, the Vendor and the Purchaser shall, if applicable, jointly execute elections under Section 167 of the *Excise Tax Act* (Canada) to have the sale of the Purchased Assets take place on a HST-free basis under Part IX of the *Excise Tax Act* (Canada) and the Purchaser shall file such election with its HST return for the reporting period in which the sale of the Purchased Assets takes place.

2.05 Assumed Obligations

At Closing, the Purchaser shall assume and be liable for the "Assumed Obligations". The Assumed Obligations shall consist of the following:

- (a) all Employee Liabilities payable to or related to any Transferred Employees;
- (b) the Vendor's liabilities and obligations under any of the Assumed Contracts, as applicable;
- (c) the obligations and liabilities described at Schedule "C"; and

- (d) all liabilities arising or accruing from the use of the Purchased Assets from and after the Closing Date.

If so required by the Vendor, the Purchaser shall enter into such specific indemnity agreement(s) and assumption agreement(s) as the Vendor may reasonably require with respect to any Assumed Obligations.

2.06 Excluded Liabilities

Except for the Assumed Obligations, the Purchaser is not assuming, and shall not be deemed to have assumed, any liabilities, obligations, Contracts (written or unwritten) or commitments of the Vendor (collectively, the "Excluded Liabilities"), whether pursuant to this Agreement or as a result of the transactions described in this Agreement. For greater certainty, the Excluded Liabilities shall include, but not be limited to, the following:

- (a) except as otherwise agreed in this Agreement, all taxes payable by the Vendor referable to the period up to the Closing Date, including present or future federal and provincial income taxes, municipal business taxes, realty taxes and school taxes;
- (b) any liabilities associated with any of the Excluded Assets; and
- (c) all Employee Liabilities with respect to any former or current Employees, except the Transferred Employees.

2.07 Adjustments

At Closing, the Purchase Price shall be adjusted as follows (the "Adjustments"):

- (a) Realty taxes, local improvement charges, utility charges, and any other like amounts payable with respect to the Real Property shall be apportioned and allowed to the Closing Date (the Closing date itself to be apportioned to the Purchaser);
- (b) The Purchase Price shall be adjusted by an amount equal to the value of Accounts Receivable purchased by the Purchaser; and
- (c) The Purchase Price shall be adjusted by an amount equal to the value of Prepaid Expenses purchased by the Purchaser
- (d) The Purchase Price shall be adjusted by an amount equal to the value of Accounts Payable assumed by the Purchaser

ARTICLE III CLOSING ARRANGEMENTS

3.01 Closing

Closing shall take place at 3 p.m. (the "Closing Time") on the Closing Date at the offices of the Vendor's Solicitors, or such other time and location as the Parties may agree upon in writing.

3.02 Tender

Any tender of documents or money under this Agreement may be made upon the Parties or their respective counsel and money may be tendered by official bank draft drawn upon a Canadian chartered bank, by negotiable cheque payable in Canadian funds and certified by a Canadian chartered bank or trust company or, by wire transfer of immediately available funds to the account specified by that Party.

3.03 Vendor's Closing Deliveries

At the Closing, the Vendor shall deliver or cause to be delivered to the Purchaser the following documents:

- (a) if applicable, the election referred to in Section 2.04(b);
- (b) a copy of the Approval and Vesting Order and the vesting certificate relating thereto;
- (c) a bill of sale and assignment substantially in the form of Schedule "D";
- (d) a bring down certificate dated as of the Closing Date, confirming that all of the representations and warranties of the Vendor contained in this Agreement are true as of the Closing Date, with the same effect as though made on and as of the Closing Date; and
- (e) an acknowledgement dated as of the Closing Date, that each of the conditions precedent in Section 4.01 of this Agreement have been fulfilled, performed or waived as of the Closing Date.

3.04 Purchaser's Closing Deliveries

At the Closing, the Purchaser shall deliver or cause to be delivered to the Vendor (or as the Vendor may otherwise direct) the following documents and payments:

- (a) the payments in respect of the amounts referred to in Section 2.03;
- (b) if applicable, the election referred to in Section 2.04(b);
- (c) a bill of sale and assignment substantially in the form of Schedule "D";

- (d) a bring down certificate dated as of the Closing Date, confirming that all of the representations and warranties of the Purchaser contained in this Agreement are true as of the Closing Date, with the same effect as though made on and as of the Closing Date;
- (c) an acknowledgement dated as of the Closing Date, that each of the conditions precedent in Section 4.02 of this Agreement have been fulfilled, performed or waived as of the Closing Date; and
- (f) such further and other documentation as is referred to in this Agreement or as the Vendor may reasonably require to complete the transactions provided for in this Agreement.

3.05 Extension of Closing Date

The Purchaser shall be permitted to extend the Closing Date by one (1) period of thirty (30) days, provided that such extension shall not be effective unless and until the Purchaser pays to the Vendor additional Deposit funds in the amount of \$5,000.

ARTICLE IV CONDITIONS PRECEDENT

4.01 Conditions Precedent of the Purchaser

The Purchaser shall not be obliged to complete the purchase and sale of the Purchased Assets pursuant to this Agreement unless, at or before the Closing Time (or such other date as may be indicated below), each of the following conditions has been satisfied, it being understood that the following conditions are included for the exclusive benefit of the Purchaser and may be waived, in whole or in part, in writing by the Purchaser at any time; and the Vendor agrees with the Purchaser to take all such actions, steps and proceedings within its reasonable control as may be necessary to ensure that the following conditions are fulfilled at or before the Closing Time:

- (a) *Representations and Warranties.* The representations and warranties of the Vendor in Section 5.01 shall be true and correct at the Closing Time;
- (b) *Vendor's Compliance.* The Vendor shall have performed and complied with all of the terms and conditions in this Agreement on its part to be performed or complied with at or before Closing and shall have executed and delivered or caused to have been executed and delivered to the Purchaser at the Closing all the deliveries contemplated in Section 3.03 or elsewhere in this Agreement;
- (c) *No Litigation.* There shall be no litigation or proceedings pending or threatened or order issued by a Governmental Authority against any of the Parties, or involving any of the Purchased Assets, for the purpose of enjoining, preventing or restraining the completion of the transactions contemplated hereby or otherwise claiming that such completion is improper, save and except for the proceeding known as *Richard Zirger et al. v. Vandermeer Greenhouses Ltd. et al* before the Ontario Superior Court of Justice in Court File No. CV-13-495252 (the "Zirger Claim");

- (d) *Satisfaction with Zirger Claim.* The Purchaser shall have been provided copies of the Statement of Claim and Statement of Defence in respect of the Zirger Claim, and shall be satisfied with its review of same, provided that in the event that the Purchaser has not advised the Vendor within seven (7) days of the date of its receipt of the Statement of Claim and Statement of Defence that the Purchaser is not satisfied with such review, the Purchaser shall be deemed to have irrevocably waived the condition precedent in this Section 4.01(d).
- (e) *Approval and Vesting Order.* The Approval and Vesting Order shall have been obtained on or by July 31, 2014.
- (f) *Compliance.* The Purchaser shall be satisfied that: (i) the Real Property is in compliance with all zoning by-laws; (ii) the Real Property is in compliance with all agreements or other documents registered on title to the Real Property which the Purchaser is willing to take title subject to, and any other requirements of any Governmental Authority; (iii) the principal building located on the Real Property may be insured against risk of fire; and (iv) the Real Property may be lawfully used for the Purchaser's intended uses, or any of them and there are no requirements of or conditions imposed (or could be imposed) by any Governmental Authority that could have the effect of preventing or in any way limiting the Purchaser's intended uses (or any of them) of the Real Property that are unacceptable to the Purchaser;
- (g) *Environmental Laws.* The Purchaser shall be satisfied that: (i) the Real Property is in material compliance with and not subject to liability or possible liability under any environmental laws, including, without limiting the generality of the foregoing, the anaerobic digester and the septic and storm water management system located thereon; (ii) the Real Property has never been used for the storage or disposal of any Substance (as defined below) contrary to any environmental law; (iii) there is no Substance on, in or under, or in any way affecting, the Real Property, and no Substance has been emitted or discharged from the Real Property or leached onto any properties abutting the Real Property, in violation of environmental laws; (iv) there are no facts, matters or circumstances which could give rise to any obligation, responsibility or liability or potential obligation, responsibility or liability on the part of an owner of the Real Property to any federal, provincial, municipal or local authority or other person to clean-up all or any part of the Real Property or any other property, take any remedial, corrective or compliance action under any environmental law, or do (or refrain from doing) anything under any order or other legal requirement made or imposed under environmental law; and (v) no Substance from any property abutting the Real Property has come onto or into the Real Property. "Substance" for purposes of the Agreement means any substance, material or other matter or thing defined, regulated by or referred to in any environmental law including without limiting the generality of the foregoing, anything defined as hazardous, toxic, deleterious, caustic, dangerous, a "contaminant", a 'pollutant', a 'dangerous good', a 'waste', a 'source of contamination', a 'designated substance', or a source of a pollutant; the Purchaser's achieving satisfaction as to the environmental matters referred to above may, in its sole discretion, involve obtaining a Phase I environmental site assessment ("Phase

1 ESA”) and if the Phase 1 ESA calls for follow up action, a Phase 2 ESA, as well as evidence that there has been legally required testing of well water with satisfactory results;

- (h) *Ministry.* The Purchaser shall be satisfied that the Ministry of the Environment (the “MOE”) will permit operations from the principal building located on the Real Property to resume forthwith after closing including, in particular, the operation of the Anaerobic Digester and the ability to receive and store material for the operation of the Anaerobic Digester will be transferred to the Purchaser;
- (i) *Employer Obligations.* The Purchaser shall be satisfied that there are no successor obligations that would become binding upon the Purchaser under employment laws and occupational health or workplace safety laws; or if there are such obligations, that same are acceptable to the Purchaser in its sole discretion;
- (j) *Compliance with Acts.* The Purchaser shall be satisfied that the transaction contemplated herein complies with the *Planning Act* (Ontario) and the *Bulk Sales Act* (Ontario) in a manner acceptable to the Purchaser in its sole discretion;
- (k) *Bartel Employment.* The Purchaser shall be satisfied that Kyle Bartel will accept an offer of employment by the Purchaser for a minimum period of six (6) months following Closing;
- (l) *Contemporaneous Purchase.* The Purchaser is able to contemporaneously purchase all of the Purchased Assets; and
- (m) *Financing.* The Purchaser has secured financing sufficient to complete the transactions contemplated herein.

4.02 Conditions Precedent of the Vendor

The Vendor shall not be obliged to complete the transactions contemplated by this Agreement unless, at or before the Closing Time, each of the following conditions has been satisfied, it being understood that the following conditions are included for the exclusive benefit of the Vendor, and may be waived, in whole or in part, in writing by the Vendor at any time; and the Purchaser agrees with the Vendor to take all such actions, steps and proceedings within the Purchaser's reasonable control as may be necessary to ensure that the following conditions are fulfilled at or before the Closing Time:

- (a) *Representations and Warranties.* The representations and warranties of the Purchaser in Section 5.02 shall be true and correct at the Closing;
- (b) *Purchaser's Compliance.* The Purchaser shall have performed and complied with all of the terms and conditions in this Agreement on its part to be performed by or complied with at or before the Closing Time and shall have executed and delivered or caused to have been executed and delivered to the Vendor at the Closing Time all the deliveries contemplated in Section 3.04 or elsewhere in this Agreement;

- (c) *No Litigation.* There shall be no litigation or proceedings pending or threatened or order issued by a Governmental Authority against any of the Parties, or involving any of the Purchased Assets, for the purpose of enjoining, preventing or restraining the completion of the transactions contemplated hereby or otherwise claiming that such completion is improper; and
- (d) *Approval and Vesting Order.* The Approval and Vesting Order shall have been obtained on or by July 31, 2014.

4.03 Non-Satisfaction of Conditions

If any condition precedent set out in this Article IV is not satisfied or performed prior to the time specified therefore, the Party for whose benefit the condition precedent is inserted may:

- (a) waive compliance with the condition, in whole or in part, in its sole discretion by written notice to the other Party and without prejudice to any of its rights of termination in the event of non-fulfilment of any other condition in whole or in part; or
- (b) elect on written notice to the other Party to terminate this Agreement before Closing.

ARTICLE V REPRESENTATIONS AND WARRANTIES

5.01 Representations and Warranties of the Vendor

As a material inducement to the Purchaser entering into this Agreement and completing the transactions contemplated by this Agreement and acknowledging that the Purchaser is entering into this Agreement in reliance upon the representations and warranties of the Vendor set out in this Section 5.01, the Vendor hereby represents and warrants to the Purchaser as follows:

- (a) *Incorporation and Power.* The Vendor is a corporation duly incorporated under the laws of the jurisdiction of its incorporation and is duly organized, validly subsisting and in good standing under such laws;
- (b) *Corporate Power and Authorization.* The Vendor has the requisite corporate power to own its property and assets, including the Purchased Assets, and to carry on the Business as it is currently conducted;
- (c) *Due Authorization.* The Vendor has all necessary corporate power, authority and capacity to enter into this Agreement and all other agreements and instruments to be executed by it as contemplated by this Agreement and to carry out its obligations under this Agreement and such other agreements and instruments. Subject to the granting of the Approval and Vesting Order, the execution and delivery of this Agreement and such other agreement and instruments and the completion of the transactions contemplated by this Agreement and such other agreements and

instruments have been duly authorized by all necessary corporate action on the part of the Vendor;

- (d) *HST.* The Vendor is a registrant under Part IX of the *Excise Tax Act* (Canada) and its registration number is *; and
- (e) *No Litigation.* There is no litigation, action, suits or proceedings pending or threatened against the Vendor, or either of them, or involving any of the Purchased Assets for the purpose of enjoining, preventing or restraining the completion of the transactions contemplated hereby or otherwise claiming that such completion is improper, save and except for the Zirger Claim.

5.02 Representations and Warranties of the Purchaser

As a material inducement to the Vendor entering into this Agreement and completing the transactions contemplated by this Agreement and acknowledging that the Vendor is entering into this Agreement in reliance upon the representations and warranties of the Purchaser set out in this Section 5.02, the Purchaser hereby represents and warrants to the Vendor as follows:

- (a) *Incorporation of the Purchaser.* The Purchaser is a corporation duly incorporated under the laws of the jurisdiction of its incorporation and is duly organized and validly subsisting under such laws;
- (b) *Due Authorization.* The Purchaser has all necessary corporate power, authority and capacity to enter into this Agreement and all other agreements and instruments to be executed by it as contemplated by this Agreement and to carry out its obligations under this Agreement and such other agreements and instruments. The execution and delivery of this Agreement and such other agreements and instruments and the completion of the transactions contemplated by this Agreement and such other agreements and instruments have been duly authorized by all necessary corporate action on the part of the Purchaser;
- (c) *Enforceability of Obligations.* Subject to the granting of the Approval and Vesting Order, this Agreement constitutes a valid and binding obligation of the Purchaser enforceable against the Purchaser in accordance with its terms subject, however, to limitations on enforcement imposed by bankruptcy, insolvency, reorganization or other laws affecting the enforcement of the rights of creditors or others and to the extent that equitable remedies such as specific performance and injunctions are only available in the discretion of the court from which they are sought;
- (d) *Approvals and Consents.* Except as otherwise provided herein or as may be required under the *Investment Canada Act* (Canada), no authorization, consent or approval of, or filing with or notice to any governmental agency, regulatory body, court or other Person is required in connection with the execution, delivery or performance of this Agreement by the Purchaser or the purchase of any of the Purchased Assets hereunder; and

- (c) *HST*. The Purchaser is a registrant under Part IX of the *Excise Tax Act* (Canada) and its registration number is •.

5.03 Survival of Representations and Warranties

- (a) The representations and warranties of the Vendor contained in Section 5.01 or any other agreement, certificate or instrument delivered pursuant to this Agreement shall survive the Closing.
- (b) The representations and warranties of the Purchaser contained in Section 5.02 or any other agreement, certificate or instrument delivered pursuant to this Agreement shall survive the Closing.

5.04 Acquisition of Assets on "As Is, Where Is" Basis

The Purchaser acknowledges that the Vendor is selling the Purchased Assets on an "as is, where is" basis as they shall exist on the Closing Date, subject to the terms of the Approval and Vesting Order. The Purchaser further acknowledges that it has entered into this Agreement on the basis that the Vendor does not guarantee title to the Purchased Assets and that the Purchaser has conducted such inspections of the condition of and title to the Purchased Assets 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 Purchased Assets or the right of the Vendor to sell or assign same save and except as expressly represented or warranted herein. Without limiting the generality of the foregoing, any and all conditions, warranties or representations, expressed or implied, pursuant to the *Sale of Goods Act* (Ontario) or similar legislation do not apply hereto and have been waived by the Purchaser. The description of the Purchased Assets contained in the Schedules hereto is for the purpose of identification only. No representation, warranty or condition has or will be given by the Vendor concerning completeness or the accuracy of the description of the Purchased Assets contained in the Schedules hereto. The Purchaser further acknowledges that all written and oral information (including analyses, financial information and projections and studies) obtained by the Purchaser from the Vendor with respect to the Purchased Assets or otherwise relating to the transactions contemplated in this Agreement has been obtained for the convenience of the Purchaser only and is not warranted to be accurate or complete.

ARTICLE VI INTERIM PERIOD

6.01 Approval and Vesting Order

As soon as practicable after the execution and delivery of this Agreement by the Parties, and in any event by no later than seven (7) Business Days following such execution and delivery, the Vendor shall file an application with the Court for an order substantially in the form and substance as approved by the Vendor and the Purchaser (the "Approval and Vesting Order") approving this Agreement, and finally and unconditionally approving the sale of the Purchased Assets to the Purchaser and the assumption of the Assumed Obligations by the Purchaser and vesting, upon the filing of the Receiver's certificate referenced below, all right, title and interest of the Vendor in

and to the Purchased Assets to the Purchaser, free and clear of all Claims, liabilities and Encumbrances pursuant to the terms and conditions of this Agreement. The Approval and Vesting Order will vest title to the Purchased Assets as aforesaid in the Purchaser subject to the Vendor delivering to the Purchaser a certificate to the effect that the transactions contemplated herein have closed and the Purchase Price has been paid. The Approval and Vesting Order shall be served upon the necessary parties, and in the time frame, as approved by the Purchaser, acting reasonably.

6.02 Access

During the Interim Period, the Purchaser shall have reasonable access to the Purchased Assets during normal business hours and at such other times as agreed to by the Vendor to, among other things, conduct such inspections of the Purchased Assets as it deems appropriate. Such inspection shall only be conducted in the presence of a representative of the Vendor. The Purchaser shall not be provided with access to any of the foregoing to the extent that such access would violate or conflict with (i) any Applicable Law to which the Vendor or any of the Purchased Assets is subject; or (ii) any agreement, instrument or understanding by which the Vendor is bound. The Purchaser shall indemnify and hold harmless the Vendor from and against all claims, demands, losses, damages, actions and costs incurred or arising from or in any way related to the inspection of the Purchased Assets by the Purchaser or attendance by the Purchaser at the Premises, save and except for any claims, demands, losses, damages, actions and costs incurred or resulting from the negligence or wilful misconduct of the Vendor.

6.03 Risk of Loss

The Purchased Assets shall remain at the risk of the Vendor, to the extent of its interest, until the earlier of (i) 12:01 a.m. on the date immediately following the Closing Date, or (ii) the Closing Time. From and after such date and time, the Purchased Assets shall be at the risk of the Purchaser.

6.04 Purchaser's Right to Close or Terminate

If, prior to Closing, the Purchased Assets are substantially damaged or destroyed by fire or other casualty, then, at its option, the Purchaser may decline to complete the transaction. Such option shall be exercised within 15 days after notification to the Purchaser by the Vendor of the occurrence of damage or destruction (or prior to the Closing Date if such occurrence takes place within 15 days of the Closing Date) in which event this Agreement shall be terminated automatically. If the Purchaser does not exercise such option, it shall complete the transaction and shall be entitled to an assignment of the proceeds of insurance referable to such damage or destruction without any abatement to the Purchase Price. Where any damage or destruction is not substantial, the Purchaser shall complete the transaction and shall be entitled to an assignment of the proceeds of insurance referable to such damage or destruction provided that such damage or destruction is insured or, otherwise, to an abatement agreed between the Vendor and the Purchaser, each acting reasonably.

6.05 Transfer and Delivery of Purchased Assets

The Purchaser acknowledges that it shall be the Purchaser's sole responsibility to obtain, at its own expense, any consents, approvals or any further documentation or assurances which may be required to carry out the terms of this Agreement, including in respect of any Purchased Assets

subject to lease or any Purchased Assets which are not assignable without the consent or other action of a third party or parties. Notwithstanding the foregoing, the Vendor shall execute and deliver to the Purchaser all such bills of sale, assignments, instruments of transfer, deeds, assurances, consents and other documents as shall be reasonably necessary to effectively transfer to the Purchaser, or as the Purchaser may direct, all the Vendor's right, title and interest in, to and under, or in respect of, the Purchased Assets, provided that any such documents shall contain no representations or warranties of the Vendor except for those provided herein; and the Vendor shall execute and deliver such documents to effect registrations, recordings and filings with Governmental Authorities as may be reasonably required in connection with the transfer of ownership to the Purchaser of the Purchased Assets.

ARTICLE VII EMPLOYEES & CONTRACTORS

7.01 Employees

- (a) Following the execution and delivery of this Agreement by the Parties, the Purchaser may provide the Vendor with a list of Employees to whom it may offer employment (the "Prospective Employees") and shall make such offers of employment, effective as of the Closing Time, to the Prospective Employees on terms and conditions which are substantially similar in the aggregate to the current terms provided. For greater certainty, the Purchaser shall not be obligated to offer employment to any Employee. The Purchaser shall provide the Vendor with a list of the names, if any, of the Prospective Employees five (5) Business Days before the Closing Date. The Purchaser shall provide notice to the Vendor on the Closing Date of the names of those Prospective Employees who accept employment with the Purchaser (such Employees are collectively referred to herein as the "Transferred Employees").
- (b) The Purchaser shall be liable for the payment of all legal obligations relating to the employment on and after the Closing Time of all Transferred Employees (other than accrued vacation and overtime pay accruing up to and including the Closing Date). All items in respect of the Transferred Employees, including premiums for employment insurance, employer health tax, worker's compensation, benefit plans, Canada Pension Plan, accrued wages, salaries, commissions, vacation pay, incentive compensation, expenses and other employee benefits which are payable to, receivable by or accrued in favour of the Transferred Employees up to the Closing Time, even if not then due, shall be the responsibility of the Vendor.

7.02 Anush Recovery Inc.

Prior to Closing, the Receiver shall use best efforts to enter into an agreement with Anush Recovery Inc. ("Anush") pursuant to which Anush shall, for a period of three (3) months immediately following the Closing Date, provide services similar to those it had been providing to the Receiver during the period immediately prior to Closing, and it is acknowledged and agreed by the Parties that such services shall be provided by Anush at the cost of the Receiver. Should the Receiver not be able to complete an agreement with Anush as set out above, the Receiver will

have no further liability in respect thereto and the inability to do so will not impact this Asset Purchase Agreement in any manner.

ARTICLE VIII TERMINATION

8.01 Termination by the Parties

This Agreement may be validly terminated:

- (a) upon the mutual written agreement of the Vendor and the Purchaser;
- (b) pursuant to Section 4.03(b) by either Party; and
- (c) pursuant to Section 6.04 by the Purchaser.

8.02 Remedies for Breach of Agreement

If this Agreement is terminated as a result of any breach of a representation, warranty, covenant or obligation of a Party, the terminating Party's right to pursue all legal remedies with respect to such breach shall survive such termination.

8.03 Vendor's Right to Retain Payments Made By Purchaser

If the Purchaser fails to comply with the terms of this Agreement, the Vendor may by notice to the Purchaser elect to treat this Agreement as having been repudiated by the Purchaser. In that event, any payments made by the Purchaser (including the deposit) shall be forfeited to the Vendor on account of its liquidated damages (and not as a penalty), and the Purchased Assets may be resold and/or reassigned by the Vendor. In addition, the Purchaser shall pay to the Vendor, on demand, the deficiency, if any, arising upon such resale and reassignment (after deducting the expenses of resale and reassignment) together with interest and all other damages or charges occasioned by or resulting from the default by the Purchaser.

8.04 Termination If No Breach of Agreement

If this Agreement is terminated other than as a result of a breach of a representation, warranty, covenant or obligation of a Party, then:

- (a) all obligations of each of the Vendor and the Purchaser hereunder shall be at an end;
- (b) the Purchaser shall destroy or return to the Vendor any Confidential Information in its possession; and
- (e) neither party shall have any right to specific performance, to recover damages or expenses or to any other remedy or relief other than as provided herein.

**ARTICLE IX
POST-CLOSING MATTERS**

9.01 Books and Records

The Purchaser shall preserve and keep the Books and Records which relate to the Purchased Assets for a period of two (2) years from the Closing Date or for any longer period as may be required by any Applicable Law or Governmental Authority. Upon reasonable advance notice, after the Closing Date, the Purchaser will grant the Vendor and, in the event the Vendor is adjudged bankrupt, any trustee of the estate of either of the Vendor and its representatives, reasonable access during normal business hours, and a licence free of charge, to use the books, records and documentation included in the Purchased Assets up to the Closing Date, including, without limitation, any employment records of the Transferred Employees and Union Employees relating to the period up to the Closing Date and any Employees engaged by the Vendor at or in respect of the Purchased Assets up to and including the Closing Date, and computer systems, tapes, disks, records and software acquired as part of the Purchased Assets.

**ARTICLE X
OTHER COVENANTS OF THE PARTIES; GENERAL**

10.01 Expenses

Each Party shall pay their respective legal, accounting, and other professional advisory fees, costs and expenses incurred in connection with the transactions contemplated in this Agreement, and the preparation, execution and delivery of this Agreement and all documents and instruments executed pursuant to this Agreement.

10.02 Notices

Any notice, consent or approval required or permitted to be given in connection with this Agreement shall be in writing and shall be sufficiently given if delivered (whether in person, by courier service or other personal method of delivery), or if transmitted by facsimile:

- (a) in the case of a notice to the Vendor at:

Zeifman Partners Inc.
1 Toronto Street, Suite 910
Toronto, Ontario M5C 2V6
Attention: Allan Rutman
Fax No: (416) 256-4001
Email: arutman@zeifmans.ca

with a copy to:

Fogler, Rubinoff LLP
Lawyers
77 King Street West
Suite 3000, P.O. Box 95

TD Centre
Toronto, Ontario M5K 1G8
Attention: Greg Azeff
Fax No: (416) 941-8852
Email: gazeff@foglars.com

(b) in the case of a notice to the Purchaser at:

•

with a copy to:

•

Any notice delivered or transmitted to a Party as provided above shall be deemed to have been given and received on the day it is delivered or transmitted, provided that it is delivered or transmitted on a Business Day prior to 5:00 p.m. local time in the place of delivery or receipt. However, if the notice is delivered or transmitted after 5:00 p.m. local time or if such day is not a Business Day then the notice shall be deemed to have been given and received on the next Business Day.

Any Party may, from time to time, change its address by giving notice to the other Party in accordance with the provisions of this Section.

10.03 Successors and Assigns

This Agreement shall enure to the benefit of and be binding upon the Parties and their respective successors (including any successor by reason of amalgamation of any Party) and permitted assigns. Neither Party may assign or transfer, whether absolutely, by way of security or otherwise, all or any part of its respective rights or obligations under this Agreement without the prior written consent of the other Party. Notwithstanding the above, the Purchaser may at any time assign any of its rights or obligations arising under this Agreement to a nominee of the Purchaser acceptable to the Vendor but, upon such assignment and completion of the transactions contemplated by this Agreement, the Purchaser shall not be released and discharged from any obligations hereunder until after Closing.

10.04 No Third Party Beneficiaries

This Agreement shall not confer any rights or remedies upon any Person other than the Parties and their respective successors and permitted assigns. Nothing in this Agreement shall be construed to create any rights or obligations except between the Parties, and no person or entity shall be regarded as a third party beneficiary of this Agreement.

10.05 Time of the Essence

Time shall be of the essence in respect of the obligations of the Parties arising prior to Closing under this Agreement.

10.06 Amendment

No amendment, supplement, modification or waiver or termination of this Agreement and, unless otherwise specified, no consent or approval by any Party, shall be binding unless executed in writing by the Party to be bound thereby.

10.07 Further Assurances

The Parties shall, with reasonable diligence, do all such things and provide all such reasonable assurances as may be required to consummate the transactions contemplated by this Agreement, and each Party shall provide such further documents or instruments required by any other Party as may be reasonably necessary or desirable to effect the purpose of this Agreement and carry out its provisions, whether before or after the Closing provided that the reasonable costs and expenses of any actions taken after Closing at the request of a Party shall be the responsibility of the requesting Party.

10.08 Severability

Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to that jurisdiction, be ineffective to the extent of such prohibition or unenforceability and shall be severed from the balance of this Agreement, all without affecting the remaining provisions of this Agreement or affecting the validity or enforceability of such provision in any other jurisdiction.

10.09 Governing Law

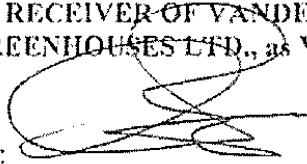
This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein and shall be treated in all respects as an Ontario contract.

10.10 Execution and Delivery

This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which taken together shall be deemed to constitute one and the same instrument. Counterparts may be executed and delivered either in original or faxed form or by electronic delivery in portable document format (PDF) and the parties adopt any signatures received by a receiving fax machine as original signatures of the parties; provided, however, that any party providing its signature in such manner shall promptly forward to the other party an original of the signed copy of this Agreement which was so faxed or electronically delivered.

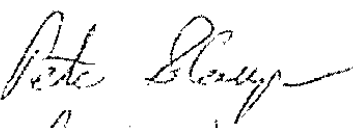
IN WITNESS OF WHICH the Parties have executed this Agreement.

ZEIFMAN PARTNERS INC., IN ITS CAPACITY
AS RECEIVER OF VANDERMEER
GREENHOUSES LTD., as Vendor

Per: 
Name: Aaron Puterman
Title: President

2258324 ONTARIO LTD., as Purchaser

Per: Greengrow Greenhouses c/o 2258324 Ontario Ltd
Name: Phyllis
Title: Vice President


President

SCHEDULE "A"

PURCHASED ASSETS

The Purchased Assets are comprised of the following:

1. The "Equipment", being:
 - (a) all Vandermeer's machinery, equipment, vehicles and other tangible personal property, wheresoever situate, as more particularly described at Schedule "G".
2. The "Assumed Contracts", being:
 - (a) the Assumed Contracts listed at Schedule "B".
3. The "Real Property", being municipally known as 2003-2021 Four Mile Creek Road, Niagara-on-the-Lake, Ontario,

Plan 167 PT Lot 2 & 3 RP 30R4733 Part 1, 3, and 4
Plan 167 PT Lots 3, 4 RP 30R4733 Part 2 RP 30R4110 Part 2
Plan M11 PT Lot 108 RP 3OR 10152 Parts 2 & 3

including all buildings, fixtures, improvements, erections, and structures located thereon; including without limitation and in both cases all fixtures set forth in the Confidential Information Memorandum dated February 23, 2012;
4. Accounts Receivable that have not previously been sold;
5. Inventory;
6. Licences and Permits;
7. Prepaid Expenses;
8. Intellectual Property;
9. Books and Records; and
10. All goodwill related to the Business,

and for greater certainty does not include the Excluded Assets.

SCHEDULE "B"
ASSUMED CONTRACTS

1. Schedule "B" is attached.
2. Such other Contracts as the Purchaser may advise prior to Closing.

- 3 -

SCHEDULE "C"
ASSUMED OBLIGATIONS

SCHEDULE "D"
FORM OF BILL OF SALE

1. Defined Terms

Capitalized terms used and not otherwise defined herein shall have the meanings ascribed to such terms in the Asset Purchase Agreement dated June 9, 2014 (the "Asset Purchase Agreement").

2. Conveyance of Business Assets

The Seller does hereby irrevocably and unconditionally sell, assign, transfer, convey and deliver to the Purchaser all of the right, title and interest of the Seller in and to the Business Assets in the manner contemplated by the Asset Purchase Agreement to own absolutely to the use of the Purchaser and its successors and assigns as of and with effect from the time of Closing, on and subject to the terms and conditions of the Asset Purchase Agreement.

3. Assignment of Business Assets

The Purchaser hereby accepts the sale, assignment, transfer, conveyance and delivery of the Purchased Assets.

4. Power of Attorney

The Seller hereby constitutes and appoints the Purchaser and its successors or assigns, the true and lawful attorney of the Seller with full power of substitution, for the benefit and at the expense of the Purchaser: (a) to institute and prosecute all proceedings which the Purchaser may deem proper in order to collect, assert or enforce any claim, right or title of any kind in or to any of the Purchased Assets, to defend or compromise any and all actions, suits or proceedings in respect of any of the Purchased Assets, and to do all such acts and things in relation thereto as the Purchaser shall deem advisable; and (b) to take all action which the Purchaser may deem proper in order to provide and preserve to the Purchaser the benefits under any of the Purchased Assets where any required consent of another party to the assignment thereof to the Purchaser pursuant to the Asset Purchase Agreement shall not have been obtained. The Seller acknowledges that the foregoing powers are coupled with an interest and shall be irrevocable by the Seller in any manner or for any reason and that the Purchaser shall be entitled to retain for its own account any amounts collected pursuant to the foregoing powers.

5. Asset Purchase Agreement

This Bill of Sale is subject to the terms and conditions set forth in the Asset Purchase Agreement and is to be construed in a manner consistent with the terms and conditions thereof. Any additional rights and obligations of the Seller or the Purchaser are as expressly provided for in the Asset Purchase Agreement. The execution and delivery of this Bill of Sale shall not impair, diminish or enhance any of the rights or obligations set forth in the Asset Purchase Agreement. The terms of this Bill of Sale shall not enlarge, reduce, modify or alter any representations, warranties or remedies set out in the Asset Purchase Agreement. In the event of any conflict between the provisions of the Asset Purchase Agreement and this Bill of Sale, the provisions of the Asset Purchase Agreement will govern.

6. Further Assurances

The parties shall promptly do, make, execute or deliver, or cause to be done, made, executed or delivered, all such further acts, documents and things as the other may reasonably require from time to time for the purpose of giving effect to this Bill of Sale and shall take all such steps as may be reasonably within its power to implement to their full extent the provision of this Bill of Sale.

7. Governing Law

This Bill of Sale shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.

8. Enurement

This Bill of Sale shall enure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

9. Execution

This Bill of Sale may be executed and delivered by facsimile or by electronic mail and in two or more counterparts and, if so executed, shall be legal, valid, binding and enforceable to the same extent as if signed originally by all parties.

IN WITNESS WHEREOF this Bill of Sale has been executed by each of the parties as of the date first written above.

**ZEIFMAN PARTNERS INC., IN ITS CAPACITY
AS RECEIVER OF VANDERMEER
GREENHOUSES LTD., as Vendor**

Per: _____
Name: _____
Title: _____

2258324 ONTARIO LTD., as Purchaser

Per: _____
Name: _____
Title: _____

SCHEDULE "E"

ALLOCATION OF PURCHASE PRICE

Allocation of the Purchase Price will be determined by the Parties on or before closing.

SCHEDULE "F"

REAL PROPERTY

The Real Property is municipally known as 2003-2021 Four Mile Creek Road, Niagara-on-the-Lake, Ontario, registered as:

Plan 167 PT Lot 2 & 3 RP 30R4733 Part 1, 3, and 4

Plan 167 PT Lots 3, 4 RP 30R4733 Part 2 RP 30R4110 Part 2

Plan M11 PT Lot 108 RP 3OR 10152 Parts 2 & 3

including all buildings, fixtures, improvements, erections and structures located thereon.

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SCHEDULE "G"
EQUIPMENT

Schedule "G" is attached.

tab 0

Zeifman Partners Inc., Court Appointed Receiver of Vandermeer Greenhouses Ltd.
Interim Statement of Receipts and Disbursements
For the Period from February 21, 2014 to November 7, 2014

	Receivership Accounts	
	CAD	
Cash Receipts		
Revenues from Operations	\$	199,280
Goods and Service Tax Refunds		17,956
Digester Revenue		112,657
Government Grant		340,333
Advances related to Maceration		69,447
Rent		32,731
Total Receipts		772,403
Cash Disbursements		
Payroll		250,994
Direct Material Purchases		113,802
Digester Input		4,975
Digester Maintenance		63,656
Greenhouse Repairs & Maintenance		16,595
Truck Lease		1,800
Auto Repairs & Maintenance		42,714
Equipment Leases		10,800
Commissions		30,635
Heat		89,115
Insurance		61,821
Office and Administration		5,533
Property Taxes		7,457
Professional Fees		73,467
Legal Fees		10,190
Consulting Fees		48,000
Telephone		2,618
Bank Charges and Interest		43,045
Dues		2,384
Utilities		97,115
Deposit on Maceration equipment		75,246
WSIB		9,670
Total Disbursements		1,061,632
Cash inflow/(outflow) from Operations	\$	(289,229)

Note:

Outstanding Receivers Fees of \$36,934.31 (inclusive of HST) have not been reflected in the above.

tab P

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

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*

AFFIDAVIT OF ALLAN A. RUTMAN

(Affirmed November 11, 2014)

I, **Allan A. Rutman**, of the City of Vaughan, in the Province of Ontario, **MAKE OATH AND SAY:**

1. I am President of Zeifman Partners Inc. and, as such, have knowledge of the matters to which I hereinafter depose. Unless I indicate to the contrary, the facts herein are within my personal knowledge and are true. Where I have indicated that I have obtained facts from other sources, I believe those facts to be true.

2. Pursuant to the Order of the Honourable Mr. Justice Spence dated February 21, 2014 (the “**Receivership Order**”), Zeifman Partners Inc. was appointed as receiver (the “**Receiver**”) of all the assets, undertakings and properties of Vandermeer Greenhouses Ltd. (“**Vandermeer**” or the “**Debtor**”) pursuant to Section 101 of the *Courts of Justice Act* (Ontario) and section 243(1) of the *Bankruptcy and Insolvency Act* (Canada).

3. The total amount of professional fees being claimed for work performed by the Receiver for the period February 21, 2014 to October 31, 2014 inclusive (the “**Fee Period**”) is CAD \$103,814.05 plus disbursements of CAD \$2,338.07 plus Harmonized Sales Tax of CAD \$13,736.44 totalling CAD \$119,888.56. Attached hereto as **Exhibit “A”** to this Affidavit are true copies of all bills of costs rendered by the Receiver on a periodic basis during the Fee Period, inclusive of details of the individuals involved in the administration of the Debtor estate and the hours and applicable rates claimed. Attached hereto as **Exhibit “B”** to this Affidavit is a summary of the bills of costs.

4. Details of the activities undertaken and services provided by the Receiver in connection with the administration of the Debtor estate is described in the First Report to the Court of the Receiver.

5. In the course of performing its duties pursuant to the Receivership Order, the Receiver and its staff have expended a total of 321.90 hours during the Fee Period. Attached hereto as **Exhibit “C”** to this Affidavit is a schedule setting out the personnel involved in the administration of the Debtor estate and the hours and applicable rates claimed for the Fee Period.

6. The Receiver has not received any remuneration or consideration other than the amount claimed herein.


7. The hourly billing rates outlined in **Exhibit “C”** to this Affidavit are comparable to the hourly rates charged by Zeifman Partners Inc. for services rendered in relation to similar proceedings.

8. To the best of my knowledge, the rates charged by the Receiver throughout the course of these proceedings are comparable to the rates charged by other accounting firms in the Toronto market for the provision of similar services.

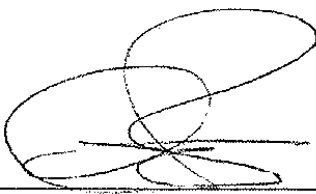
9. I verily believe that the fees and disbursements incurred by the Receiver were fair and reasonable in the circumstances.

10. This Affidavit is sworn in support of the Receiver's request for approval of the Receiver's bills of costs rendered during the Fee Period, and for no other or improper purpose.

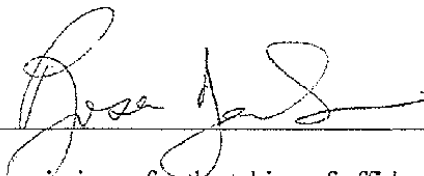
AFFIRMED BEFORE ME at the City
of *Toronto*, on *November 11*, 2014.


A Commissioner, etc.

Rosa DaSilva, a Commissioner, etc.,
Province of Ontario, for Zelfman
Partners Inc., Trustee in Bankruptcy.
Expires November 3, 2016.


Allan A. Rutman

This is Exhibit "A" to the Affidavit of
Allan A. Rutman sworn on November 11, 2014

A handwritten signature in black ink, appearing to read "Rosa DaSilva", written over a horizontal line.

A Commissioner for the taking of affidavits, etc.

Rosa DaSilva, a Commissioner, etc.,
Province of Ontario, for Zeltman
Partners Inc., Trustee in Bankruptcy.
Expires November 3, 2016.

11/11/14
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11/11/14

ZEIFMAN PARTNERS INC.

ONTARIO SUPERIOR COURT OF JUSTICE

IN THE MATTER OF THE RECEIVERSHIP OF VANDERMEER GREENHOUSES LTD. OF THE TOWN OF NIAGARA-ON-THE-LAKE, IN THE REGIONAL MUNICIPALITY OF NIAGARA, IN THE PROVINCE OF ONTARIO

BN 89573 8201 RT0001
CLIENT # 208699

INTERIM BILLING

INVOICE #41577

To: Professional services rendered in respect of the Court Appointed Receivership of
Vandermeer Greenhouses Ltd. from February 21, 2014 to February 28, 2014.

Time Charges and Expenses:

A. Rutman, Partner	A.R.	8.00 hours @	\$575.00 per hour	\$ 4,600.00
B. Rutman	B.R.	7.75 hours @	\$187.00 per hour	\$ 1,449.25
M. Stojanovic	M.S.	1.00 hours @	\$175.00 per hour	\$ 175.00
R. DaSilva	R.D.	12.25 hours @	\$175.00 per hour	\$ 2,143.75
				<u>\$ 8,368.00</u>
Miscellaneous disbursements (inclusive of HST)				<u>\$ 487.17</u>
Subtotal				<u>\$ 8,855.17</u>
H.S.T. on fees				<u>\$ 1,087.84</u>
Total Balance Due				<u><u>\$ 9,943.01</u></u>

201 Bridgeland Avenue
Toronto, Ontario
M6A 1Y7
Tel: (416) 256-4005
Fax: (416) 256-4001
www.zeifmans.ca

ZEIFMAN PARTNERS INC.

<u>Date</u>	<u>Staff</u>	<u>Time</u>	<u>Detail</u>
2/21/2014	A.R.	2.75	Engaged in email correspondence with R. Macfarlane and B. Huber re: various matters relating to court application. Email correspondence with R. Goldenberg re: additional insured on insurance policy. Email correspondence with E. Bassile re: confirmation of insurance coverage and transition. Discussion with R. DaSilva re: 246 notices; review and execute same. Review draft transition letter to vendors.
2/21/2014	B.R.	2.00	Updated bank schedule and gas schedule. Discussion with D. Robinson regarding transfer of digester change of operator.
2/21/2014	R.D.	1.25	Banking administration. Amend 246 notices. Draft transition letter to suppliers.
2/24/2014	A.R.	3.50	Attendance at premises to deal with transition of lease agreement. Discussions with B. Rutman re: various matters. Engaged in email correspondence and discussion with R. Goldenberg re: lease agreement/assignment to entities and transition letter to vendors; email correspondence with R. Macfarlane re: same. Email correspondence with M. Stojanovic re: employment standards and requirement for ROE's. Email correspondence with B. Huber and R. Macfarlane re: completion of sale transaction.
2/24/2014	B.R.	3.00	Print out supplier list, HST info., sales info. and A/R listing. Meeting with employees to notify them of change in management. Print out ROE information for employees. Discussion with D. Robinson and James.
2/24/2014	M.S.	0.50	Engaged in matters re: employee matters including confirming employment standards requirements under provincial legislation as well as requirements by Service Canada. Discussions with A. Rutman and email correspondence re: same.
2/24/2014	R.D.	2.50	Engaged in various email correspondence and discussions with R. Goldenberg, A. Rutman and B. Rutman re: transition letter to vendors. Prepare vendor list. Banking administration.
2/25/2014	A.R.	0.75	Call with D. Robinson re: transition matters. Review Court Order. Email correspondence with R. Goldenberg re: executed Acknowledgement form.

ZEIFMAN PARTNERS INC.

<u>Date</u>	<u>Staff</u>	<u>Time</u>	<u>Detail</u>
2/25/2014	B.R.	0.50	File HST and prepare WSIB payment.
2/25/2014	R.D.	4.00	Banking administration. Finalize and prepare all letters to vendors re: transition. Calls and email correspondence with Bell and Enbridge. Email transition letter to various vendors.
2/26/2014	A.R.	0.50	Review various email correspondence re: Metro orders and transition. Discussions with staff re: transition issues.
2/26/2014	B.R.	1.25	Speak with Gas Drive regarding outstanding invoice. Discussion with D. Robinson re: outstanding Gas Drive invoice and transition from Zeifmans to NAWM in regards to expenses. Update bank schedule.
2/26/2014	R.D.	1.50	Banking administration. Various discussions and email correspondence with B. Rutman re: transition issues. Calls and email correspondence with Bell and Allstream re: transition of accounts to Green Tower; email correspondence to R. Goldenberg re: same.
2/27/2014	B.R.	1.00	Update commission schedule. Call to government requesting ROE forms.
2/27/2014	M.S.	0.50	Matters re: transfer of responsibility from Receiver to Green Tower.
2/27/2014	R.D.	0.50	Draft 245 Notice; forward same to A. Rutman.
2/28/2014	A.R.	0.50	Review and execute 245 Notice re: court appointment. Email correspondence and discussions with staff re: various payable and various transition matters.
2/28/2014	R.D.	2.50	Finalize 245 Notice; prepare creditor list and mailing. Prepare supplementary list and affidavit of mailing. Banking administration. Email correspondence with R. Goldenberg re: transfer of Allstream and Bell accounts and Ryder truck lease.

And to generally all other communications, correspondence, attendances, and preparation not particularly described above.

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ZEIFMAN PARTNERS INC.

ONTARIO SUPERIOR COURT OF JUSTICE

IN THE MATTER OF THE RECEIVERSHIP OF VANDERMEER GREENHOUSES LTD. OF THE TOWN OF NIAGARA-ON-THE-LAKE, IN THE REGIONAL MUNICIPALITY OF NIAGARA, IN THE PROVINCE OF ONTARIO

BN 89573 8201 RT0001
CLIENT # 208699

INTERIM BILLING

INVOICE #41581

To: Professional services rendered in respect of the Court Appointed Receivership of
Vandermeer Greenhouses Ltd. from March 1, 2014 to March 31, 2014.

Time Charges and Expenses:

A. Rutman, Partner	A.R.	16.00 hours @	\$575.00 per hour	\$ 9,200.00
N. Jung	N.J.	0.50 hours @	\$380.00 per hour	\$ 190.00
B. Rutman	B.R.	10.50 hours @	\$187.00 per hour	\$ 1,963.50
M. Stojanovic	M.S.	1.50 hours @	\$175.00 per hour	\$ 262.50
R. DaSilva	R.D.	8.75 hours @	\$175.00 per hour	\$ 1,531.25
H. Ulloa	H.U.	0.25 hours @	\$80.00 per hour	\$ 20.00
				<u>\$ 13,167.25</u>
Miscellaneous disbursements				<u>\$ 188.66</u>
Subtotal				\$ 13,355.91
H.S.T.				<u>\$ 1,736.27</u>
Total Balance Due				<u><u>\$ 15,092.18</u></u>

201 Bridgeland Avenue
Toronto, Ontario
M6A 1Y7
Tel: (416) 256-4005
Fax: (416) 256-4001
www.zeifmans.ca

ZEIFMAN PARTNERS INC.

<u>Date</u>	<u>Staff</u>	<u>Time</u>	<u>Detail</u>
3/3/2014	R.D.	0.75	Banking administration. Email correspondence and discussion with B. Rutman re: outstanding Gas Drive invoice; review correspondence re: same.
3/4/2014	A.R.	0.50	Calls with Official Receiver's office re: court appointed estate. Review final 246(3). Email correspondence with D. Robinson re: return of Ryder truck.
3/4/2014	B.R.	1.50	Update bank schedule and Gales Gas schedule. Prepare R&D for transition period.
3/4/2014	R.D.	0.50	Calls with OR's office re: court appointment. Draft 246(3) notice; forward same to A. Rutman for review.
3/5/2014	R.D.	0.50	Banking administration.
3/6/2014	R.D.	0.25	Banking administration.
3/7/2014	A.R.	0.75	Call with R. Goldenberg re: various issues. Discussions with B. Rutman re: Ryder truck.
3/7/2014	B.R.	1.00	Discussion with D. Robinson re: curtailment fees and NAWM cash flow forecast.
3/7/2014	R.D.	0.25	Banking administration.
3/10/2014	B.R.	2.50	Work on NTR, EHT, Payroll tax and tax return.
3/11/2014	A.R.	0.75	Call with E. Bassile re: update on various matters.
3/11/2014	B.R.	1.50	Work on NTR.
3/11/2014	R.D.	0.75	Banking administration.
3/12/2014	A.R.	1.00	Review email correspondence from D. Robinson re: email correspondence from MOE re: update on CofA. Correspondence to OMAFRA and MOE re: lease agreement; email correspondence with R. Goldenberg and E. Bassile re: same. Email correspondence with B. Huber re: Zirgers letter to neighbours.
3/12/2014	B.R.	0.25	Deal with insurance questions.
3/12/2014	M.S.	0.50	January bank reconciliations.

ZEIFMAN PARTNERS INC.

<u>Date</u>	<u>Staff</u>	<u>Time</u>	<u>Detail</u>
3/12/2014	N.J.	0.50	Review T2.
3/12/2014	R.D.	0.50	Banking administration.
3/13/2014	R.D.	0.25	Banking administration.
3/14/2014	A.R.	0.50	Review email correspondence from E. Bassile re: website. Email exchange with R. Goldenberg re: request to update website. Review correspondence from D. Robinson re: MOE Application.
3/14/2014	R.D.	0.25	Call with Allift re: transition.
3/17/2014	A.R.	1.00	Engaged in various email correspondence with S. Morgan and Veronica Pochmursky o MOE re: Environmental Compliance Approval and Zirger claim; forward legal documents; email correspondence with D. Robinson re: same.
3/17/2014	B.R.	0.50	Update bank schedule.
3/17/2014	H.U.	0.25	File tax return.
3/18/2014	A.R.	2.25	Email exchange with D. Robinson re: message received from NOTL newspaper re: contaminants from digester and damage to fruit trees, MOE issues and change in formula. Review NOTL Hydro digester revenue; email exchange with B. Rutman re: same. Email correspondence re: Zirger issues and Vandermeer open house.
3/18/2014	M.S.	0.25	Banking administration and prepare February bank reconciliation for USD trust account.
3/18/2014	R.D.	0.25	Banking administration.
3/19/2014	A.R.	1.50	Email correspondence with R. Goldenberg re: rental invoice, insurance for property, hydro rebate and confirmation of payments. Call with D. Robinson. Email correspondence re: Zirger issues and Vandermeer open house.
3/19/2014	B.R.	0.25	Matters re: Gas Drive Outstanding amount.

ZEIFMAN PARTNERS INC.

<u>Date</u>	<u>Staff</u>	<u>Time</u>	<u>Detail</u>
3/19/2014	R.D.	1.50	Banking administration. Email correspondence and discussion with B. Rutman re: outstanding Gas Drive invoice; review correspondence re: same.
3/20/2014	A.R.	1.00	Review correspondence from R. Goldenberg re: calculation of hydro rebate; forward amended rent invoice. Email correspondence to B. Huber re: Vandermeer open house. Email correspondence with D. Robinson re: complaint of noise from generator and MOE matters.
3/20/2014	R.D.	0.75	Engaged in various matters re: outstanding Gas Drive invoice. Email correspondence to Ron Goldenberg re: Bell invoice.
3/21/2014	A.R.	1.50	Review ad from Niagara advance re: Zirger and fruit trees dying. Review correspondence from OPA; email correspondence to D. Robinson, R. Macfarlane and B. Huber re: same. Call with E. Bassile.
3/24/2014	A.R.	1.25	Email correspondence to B. Huber re: OPA. Email correspondence with E. Bassile re: update on neighbours. Email exchange with R. Goldenberg re: rent payment. Review correspondence from Flett Beccario to counsel of Town of Niagara on the Lake re: Zirger claim.
3/24/2014	R.D.	0.50	Banking administration.
3/25/2014	A.R.	1.25	Email exchange with R. Goldenberg re: building of website. Email exchange with B. Rutman re: AgEnergy invoice. Email correspondence and discussion with D. Robinson re: MOE issue.
3/25/2014	B.R.	1.75	Fill out ROE forms for all employees and prepare WSIB Payment.
3/25/2014	M.S.	0.75	Banking administration and prepare February bank reconciliation for CDN trust account.
3/25/2014	R.D.	0.50	Banking administration.
3/26/2014	A.R.	1.25	Email correspondence with D. Robinson re: MOE update. Email correspondence to B. Huber and R. Macfarlane re: update on MOE issue; review documentation re: same.

ZEIFMAN PARTNERS INC.

<u>Date</u>	<u>Staff</u>	<u>Time</u>	<u>Detail</u>
3/26/2014	B.R.	0.75	Update bank schedule and prepare final commission payment.
3/26/2014	R.D.	0.50	Banking administration.
3/27/2014	A.R.	1.00	Review email correspondence from V. Pochmursky re: MOE certificate of approval; discussion with E. Bassile and D. Robinson re: same. Email correspondence with R. Goldenberg re: MOE issues.
3/27/2014	R.D.	0.50	Banking administration.
3/28/2014	A.R.	0.50	Call with E. Bassile. Email confidentiality agreement to potential purchaser.
3/28/2014	R.D.	0.25	Banking administration.

And to generally all other communications, correspondence, attendances, and preparation not particularly described above.

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ZEIFMAN PARTNERS INC.

ONTARIO SUPERIOR COURT OF JUSTICE

IN THE MATTER OF THE RECEIVERSHIP OF VANDERMEER GREENHOUSES LTD. OF THE TOWN OF NIAGARA-ON-THE-LAKE, IN THE REGIONAL MUNICIPALITY OF NIAGARA, IN THE PROVINCE OF ONTARIO

BN 89573 8201 RT0001
CLIENT # 208699

INTERIM BILLING

INVOICE #41588

**To: Professional services rendered in respect of the Court Appointed Receivership of
Vandermeer Greenhouses Ltd. from April 1, 2014 to April 30, 2014.**

Time Charges and Expenses:

A. Rutman, Partner	A.R.	18.50 hours @	\$575.00 per hour	\$ 10,637.50
B. Rutman	B.R.	12.50 hours @	\$187.00 per hour	\$ 2,337.50
M. Stojanovic	M.S.	0.75 hours @	\$175.00 per hour	\$ 131.25
R. DaSilva	R.D.	9.25 hours @	\$175.00 per hour	\$ 1,618.75
				<u>\$ 14,725.00</u>
Miscellaneous disbursements				<u>\$ 189.35</u>
Subtotal				\$ 14,914.35
H.S.T.				<u>\$ 1,938.87</u>
Total Balance Due				<u>\$ 16,853.22</u>

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ZEIFMAN PARTNERS INC.

<u>Date</u>	<u>Staff</u>	<u>Time</u>	<u>Detail</u>
4/1/2014	A.R.	1.00	Email exchange with R. Goldenberg re: withdrawing application with MOE re: CoA; email correspondence to B. Huber and R. Macfarlane re: same.
4/2/2014	A.R.	1.25	Call with E. Bassile. Engaged in matters and email exchange with D. Robinson re: MOE application withdrawal.
4/2/2014	R.D.	0.25	Banking administration.
4/7/2014	A.R.	0.50	Various email exchange with R. Goldenberg re: AgriCorp and expense payment confirmation.
4/7/2014	B.R.	0.50	Dealt with water meter issue and AG Energy; discussion with D. Robinson re: same. Reply to P. Mantel questions regarding AgriStability.
4/8/2014	A.R.	0.50	Email exchange with R. Goldenberg re: AgriCorp and outstanding expenses.
4/8/2014	B.R.	0.50	Review letter prepared by R. DaSilva. Discuss remaining info. required for AgriStability.
4/8/2014	R.D.	2.00	Banking administration. Prepare letters to NOTL Hydro re: water leak and Ag Energy re: transition and collateral refund.
4/9/2014	A.R.	0.75	Email correspondence with B. Huber and E. Bassile re: withdrawing MOE application. Email correspondence from D. Robinson re: sale transaction.
4/9/2014	B.R.	0.75	Update bank schedule.
4/9/2014	R.D.	0.50	Banking administration.
4/10/2014	A.R.	0.50	Call with E. Bassile re: extension of lease agreement.
4/10/2014	B.R.	0.50	Dealt with AgriCorp matters.
4/11/2014	R.D.	0.50	Banking administration. Call to Enbridge re: final bill.
4/14/2014	B.R.	2.00	Gather all information requested by AgriCorp.

ZEIFMAN PARTNERS INC.

<u>Date</u>	<u>Staff</u>	<u>Time</u>	<u>Detail</u>
4/15/2014	M.S.	0.25	Prepare March bank reconciliation.
4/17/2014	A.R.	1.50	Review email correspondence from E. Bassile re: D. Robinson employment; email exchange with B. Huber re: same. Call with E. Bassile. Email exchange with B. Huber re: PlanET Notice of Intent to Defend re: Zirgers claim, letter to Meridian Board members, closing of Green Tower transaction and extension of lease agreement.
4/17/2014	M.S.	0.25	Banking administration.
4/21/2014	R.D.	0.25	Banking administration.
4/22/2014	R.D.	0.25	Banking administration.
4/23/2014	A.R.	2.25	Call and various email correspondence with E. Bassile re: issues and concerns. Call with R. Goldenberg. Email correspondence and call with D. Robinson re: update on operations. Email correspondence and call with B. Huber re: various issues and concerns raised by E. Bassile. Email correspondence with R. Goldenberg re: monthly rent and credits to be applied.
4/23/2014	B.R.	0.25	Determine Metro deposits related to NAWM.
4/23/2014	R.D.	0.75	Banking administration.
4/24/2014	A.R.	3.00	Conference call with E. Bassile, R. Goldenberg and B. Huber. Call with B. Huber. Call with R. Macfarlane. Various update emails to B. Huber and R. Macfarlane re: Green Tower and course of action. Various email correspondence with D. Robinson re: operational issues, gas charges and payroll. Email exchange with B. Rutman re: payroll issues.
4/24/2014	B.R.	0.75	Discussion with D. Robinson and A. Rutman regarding having payroll amounts ready for Friday. Print out and prepare.
4/24/2014	R.D.	0.75	Banking administration.

ZEIFMAN PARTNERS INC.

<u>Date</u>	<u>Staff</u>	<u>Time</u>	<u>Detail</u>
4/25/2014	A.R.	3.00	Engaged in various email correspondence and calls with B. Huber, G. Azeff and R. Macfarlane re: termination of Green Tower Lease Agreement. Various email correspondence with staff and D. Robinson re: same and various operational issues. Review correspondence to Green Tower.
4/25/2014	B.R.	5.50	Update bank schedule, check on greenhouse condition, prepare payroll info. for employees, call Bell to delay disconnection of fax line, calculate payroll liability of NAWM.
4/25/2014	R.D.	1.25	Email correspondence and discussion with A. Rutman re: documentation to forward to G. Azeff re: Green Tower's breach of lease agreement; forward same to A. Rutman. Various email correspondence re: payroll.
4/28/2014	A.R.	1.00	Email correspondence and discussions with B. Rutman and D. Robinson re: various operational issues and updates. Call with P. Cline of MOE re: Request for Participation in Air Study; email exchange with D. Robinson re: same. Email correspondence with A. Muracao re: interested party.
4/28/2014	R.D.	1.75	Banking administration. Call to Gales Gas Bar to reactivate account. Call to Bell to pay outstanding fax line charges.
4/29/2014	A.R.	1.00	Engaged in various email correspondence with D. Robinson re: updates on various operational issues. Email exchange with G. Azeff and B. Huber re: no response from Green Tower.
4/29/2014	B.R.	0.50	File HST returns for February and March.
4/29/2014	R.D.	0.50	Banking administration.
4/30/2014	A.R.	2.25	Email correspondence to B. Huber re: Zirger correspondence and MPP Visit. Call with B. Huber re: MOE request. Correspondence to MOE re: Request for Participation in Air Study. Call with D. Robinson re: update on various matters.
4/30/2014	B.R.	1.25	Update bank schedule. Ensure all cheques issued were properly recorded in simply accounting.
4/30/2014	M.S.	0.25	Prepare March bank reconciliation for USD account.

ZEIFMAN PARTNERS INC.

<u>Date</u>	<u>Staff</u>	<u>Time</u>	<u>Detail</u>
4/30/2014	R.D.	0.50	Banking administration. Email correspondence to various suppliers re: Green Tower no longer operating Vandermeer Greenhouses and forwarding invoices to Zeifmans for payment.

And to generally all other communications, correspondence, attendances, and preparation not particularly described above.

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ZEIFMAN PARTNERS INC.

ONTARIO
SUPERIOR COURT OF JUSTICE

IN THE MATTER OF THE RECEIVERSHIP OF
VANDERMEER GREENHOUSES LTD.
OF THE TOWN OF NIAGARA-ON-THE-LAKE, IN THE REGIONAL MUNICIPALITY OF
NIAGARA, IN THE PROVINCE OF ONTARIO

BN 89573 8201 RT0001
CLIENT # 208699

INTERIM BILLING

INVOICE #41599

To: Professional services rendered in respect of the Court Appointed Receivership of
Vandermeer Greenhouses Ltd. from May 1, 2014 to May 31, 2014.

Time Charges and Expenses:

A. Rutman, Partner	A.R.	13.75 hours @	\$575.00 per hour	\$	7,906.25
B. Rutman	B.R.	8.75 hours @	\$187.00 per hour	\$	1,636.25
M. Stojanovic	M.S.	0.25 hours @	\$175.00 per hour	\$	43.75
R. DaSilva	R.D.	8.00 hours @	\$175.00 per hour	\$	1,400.00
				\$	10,986.25
Miscellaneous disbursements				\$	143.71
Subtotal				\$	11,129.96
H.S.T.				\$	1,446.89
Total Balance Due				\$	12,576.85

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www.zeifmans.ca

ZEIFMAN PARTNERS INC.

<u>Date</u>	<u>Staff</u>	<u>Time</u>	<u>Detail</u>
5/1/2014	A.R.	1.75	Correspondence to V. Pochmursky of MOE re: withdrawing amendment to Environmental Compliance Approval application re: waste disposal site; email correspondence and call with D. Robinson re: same. Review email correspondence from P. Cline re: Participation in Air Study; email correspondence and discussion with D. Robinson re: same. Email exchange with D. Robinson re: no trespassing signs.
5/1/2014	R.D.	1.25	Call and email correspondence with Enbridge re: setting up new account. Calls and email correspondence with Allstream and Bell re: change of address on accounts.
5/2/2014	A.R.	1.50	Amend MOE letter re: withdrawal of application; forward same. Discussion with B. Rutman re: operations. Reviewed and engaged in various email correspondence with G. Azeff, R. Macfarlane and B. Huber re: Zirger application for hearing before the Normal Farm Practices Protection Board. Reviewed correspondence from AGEnergy re: outstanding account; email correspondence with D. Robinson re: same. Call with Jake DeBruyn of Ministry of Agriculture.
5/2/2014	B.R.	0.50	Call to government regarding corporate taxes opening UCC amounts, update bank schedule.
5/2/2014	R.D.	1.25	Banking administration. Calls and email correspondence with Allstream and 407 re: switching account back into Receiver's name.
5/5/2014	A.R.	0.75	Finalize correspondence to AGEnergy re: outstanding balance. Review draft correspondence to Normal Farm Practices Protection Board; call with G. Azeff re: same.
5/5/2014	B.R.	0.50	Bank schedule update.
5/5/2014	R.D.	0.50	Banking administration.
5/6/2014	A.R.	1.00	Email correspondence with D. Robinson re: update on Zirgers, operations and sales strategy. Email correspondence with B. Huber. Email exchange with B. Rutman re: Mack safety quote.
5/6/2014	R.D.	0.25	Banking administration.

ZEIFMAN PARTNERS INC.

<u>Date</u>	<u>Staff</u>	<u>Time</u>	<u>Detail</u>
5/7/2014	A.R.	3.00	Attendance at premises. Meeting with D. Robinson re: operational issues and sales strategy. Meeting with B. Huber.
5/8/2014	A.R.	0.50	Review Sanimax Agreement; email correspondence to G. Azeff and D. Robinson re: same. Email correspondence with B. Rutman re: Dramm order. Email exchange with D. Robinson re: sales process.
5/8/2014	B.R.	0.50	File HST for April; prepare Payroll remittance payment for April.
5/8/2014	R.D.	0.25	Banking administration.
5/9/2014	A.R.	0.50	Email correspondence and call with D. Robinson re: Sanimax agreement; review and execute same.
5/9/2014	R.D.	0.75	Banking administration.
5/12/2014	B.R.	0.25	Speak with P. Mantel regarding AgriStability request for Vandermeer Electricity expenses for the year
5/12/2014	R.D.	0.50	Banking administration.
5/13/2014	A.R.	0.50	Email exchange with B. Rutman re: insurance coverage with Hub. Review correspondence from P. Cline re: MOE financial assurance; call with D. Robinson re: same.
5/13/2014	B.R.	0.50	Bank schedule update.
5/14/2014	A.R.	0.75	Email correspondence and call with D. Robinson re: sales strategy; email correspondence to B. Huber re: same. Review correspondence from Zirger counsel to Normal Farm Practices; email exchange with G. Azeff re: same. Email correspondence with B. Huber re: MOE Financial Assurance issue.
5/14/2014	B.R.	1.50	Income statement updated (January, February, March, April).
5/15/2014	A.R.	0.50	Email correspondence with B. Huber re: leasing of greenhouse.
5/15/2014	M.S.	0.25	Prepare April 2014 bank reconciliations.

ZEIFMAN PARTNERS INC.

<u>Date</u>	<u>Staff</u>	<u>Time</u>	<u>Detail</u>
5/20/2014	A.R.	0.50	Email exchange with B. Huber re: Glasbergen interest and visit to premises.
5/20/2014	B.R.	0.25	Speak with D. Robinson regarding operations, collect outstanding invoices for payment.
5/20/2014	R.D.	1.00	Banking administration.
5/21/2014	B.R.	0.25	Bank schedule update.
5/22/2014	A.R.	0.50	Email exchange with D. Robinson re: quotes on mixer cable switchover; update on discussion with Phil Glasbergen. Email correspondence with B. Rutman re: truck repairs.
5/22/2014	B.R.	0.50	Discussion with D. Robinson regarding digester repairs, greenhouse sales, potential purchaser, car, repairs, and Sanimax digester materials.
5/26/2014	A.R.	0.75	Correspondence to P. Cline re: Financial Assurance Re-evaluation. Email correspondence to B. Huber re: replacement of mixer. Review email correspondence re: electrical connection for M.O.E. air study; call with D. Robinson re: same. Review invoice re: NOTL Hydro revenue.
5/26/2014	R.D.	0.75	Banking administration.
5/27/2014	A.R.	0.75	Engaged in email correspondence with B. Huber re: Electrical Costs for Air Survey; call with D. Robinson re: same. Email correspondence to D. Robinson re: mixer repairs. Email correspondence to B. Huber re: Receiver's Borrowing and update on MOE Financial Assurance Re-evaluation. Discussion with B. Rutman re: updated R&D.
5/27/2014	B.R.	0.25	WSIB calculation.
5/27/2014	B.R.	0.75	Update bank schedule, R&D pre and post court appointment.
5/27/2014	R.D.	1.00	Banking administration.

ZEIFMAN PARTNERS INC.

<u>Date</u>	<u>Staff</u>	<u>Time</u>	<u>Detail</u>
5/28/2014	A.R.	1.00	Review pre and post Court appointment R&D's; discussion with B. Rutman re: same. Email correspondence to B. Huber re: Receiver's Certificate. Email exchange with B. Huber re: Electrical Costs for MOE Air Survey. Review email correspondence from B. Huber re: Glasbergen update.
5/28/2014	B.R.	3.00	Work on R&D schedules pre and post court appointment
5/28/2014	R.D.	0.50	Banking administration. Draft Receiver's Certificate.

And to generally all other communications, correspondence, attendances, and preparation not particularly described above.

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ZEIFMAN PARTNERS INC.

ONTARIO
SUPERIOR COURT OF JUSTICE

IN THE MATTER OF THE RECEIVERSHIP OF
VANDERMEER GREENHOUSES LTD.
OF THE TOWN OF NIAGARA-ON-THE-LAKE, IN THE REGIONAL MUNICIPALITY OF
NIAGARA, IN THE PROVINCE OF ONTARIO

BN 89573 8201 RT0001
CLIENT # 208699

INTERIM BILLING

INVOICE #41602

To: Professional services rendered in respect of the Court Appointed Receivership of
Vandermeer Greenhouses Ltd. from June 1, 2014 to June 30, 2014.

Time Charges and Expenses:

A. Rutman, Partner	A.R.	15.00 hours @	\$575.00 per hour	\$ 8,625.00
B. Rutman	B.R.	13.15 hours @	\$187.00 per hour	\$ 2,459.05
M. Stojanovic	M.S.	14.00 hours @	\$175.00 per hour	\$ 2,450.00
R. DaSilva	R.D.	1.75 hours @	\$175.00 per hour	\$ 306.25
				<u>\$ 13,840.30</u>
Miscellaneous disbursements				<u>\$ 370.17</u>
Subtotal				\$ 14,210.47
H.S.T.				<u>\$ 1,847.36</u>
Total Balance Due				<u>\$ 16,057.83</u>

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ZEIFMAN PARTNERS INC.

<u>Date</u>	<u>Staff</u>	<u>Time</u>	<u>Detail</u>
6/2/2014	A.R.	0.50	Discussion with B. Rutman re: update on various matters.
6/2/2014	B.R.	1.00	Update R&D. Prepare the R&D for May 2014.
6/2/2014	R.D.	1.50	Banking administration.
6/3/2014	A.R.	0.25	Email correspondence and call with D. Robinson re: St. David's.
6/3/2014	B.R.	0.50	Discussions with D. Robinson re: St. David's, Lambert Peat Moss and Kotch Dyes.
6/3/2014	R.D.	0.25	Banking administration.
6/6/2014	A.R.	0.75	Engaged in matters re: St. David's including call with D. Robinson and B. Rutman.
6/6/2014	B.R.	0.75	Call with A. Rutman and D. Robinson to discuss St. David's digester inputs and financial impact of agreement. Call with D. Robinson to discuss payroll matters and employee resignations.
6/9/2014	A.R.	0.75	Email correspondence with Paul Cline.
6/9/2014	B.R.	0.25	Engaged in matters re: Green Tower Ag-Energy outstanding balance and discussion with Ag-Energy re: same.
6/10/2014	B.R.	0.75	Discussions with D. Robinson re: increase of minimum wage rate; matters re: Ag-Energy correspondence during Green Tower's operation of greenhouse. Discussions with M. Stojanovic re: banking administration matters. Discussions with D. Robinson re: gas usage over the period. Email correspondence with Peter re: Agri-Corp funds.
6/10/2014	M.S.	2.00	Banking administration.
6/11/2014	A.R.	0.25	Correspondence with B. Rutman and D. Robinson re: gas consumption.
6/11/2014	B.R.	0.75	Research into average temperature in May, 2013 versus May, 2014 and review prior year's gas billing for same period. Discussions with D. Robinson re: water account and digester repairs. Prepare May source deduction remittance to CRA.

ZEIFMAN PARTNERS INC.

<u>Date</u>	<u>Staff</u>	<u>Time</u>	<u>Detail</u>
6/11/2014	M.S.	0.75	Banking administration.
6/12/2014	A.R.	1.50	Conference call with B. Huber and D. Robinson re: potential purchaser. Email correspondence on same.
6/12/2014	B.R.	1.00	Correspondence with D. Robinson to provide figures re: various expenses for 2013. Update R&D.
6/13/2014	A.R.	1.25	Call with potential purchaser. Correspondence to B. Huber on same. Call with D. Robinson re: various matters.
6/13/2014	B.R.	0.25	Discussion with D. Robinson re: delays in digester repairs due to heavy rainfall.
6/13/2014	M.S.	0.50	Banking administration.
6/16/2014	A.R.	1.00	Call with purchaser. Correspondence with B. Huber re: terms of sale. Review term sheet and correspondence with G. Azeff re: same.
6/16/2014	B.R.	0.50	Discussions with D. Robinson re: digester repairs, greenhouse and employee matters.
6/16/2014	M.S.	1.25	Banking administration.
6/17/2014	A.R.	2.00	Email correspondence with D. Robinson in respect of hydro consumption, status report on completion of repairs and estimate on commencing operations. Engaged in matters re: draft Asset Purchase Agreement including correspondence and call with G. Azeff and review of same. Correspondence with B. Rutman re: updated lists.
6/17/2014	B.R.	4.00	Attendance at premises; discussions with D. Robinson re: digester issues including inputs and decreased energy production. Engaged in matters re: floral sales and employee issues. Inspect condition of greenhouse crop, discussion with Brian re: payroll matters. Update R&D.
6/17/2014	M.S.	2.25	Review various email correspondence re: payables. Call from supplier; discuss with B. Rutman. Banking administration.

ZEIFMAN PARTNERS INC.

<u>Date</u>	<u>Staff</u>	<u>Time</u>	<u>Detail</u>
6/18/2014	A.R.	2.25	Correspondence with various parties re: Zirger Notice of Discontinuance. Correspondence with G. Azeff re: Asset Purchase Agreement and schedules thereto.
6/18/2014	B.R.	1.25	Prepare schedule detailing contract listings. Discussion with A. Rutman re: greenhouse and digester issues.
6/18/2014	M.S.	0.25	Banking administration.
6/19/2014	A.R.	2.25	Call with G. Azeff in regards to draft Agreement of Purchase and Sale; revisions to same. Calls and email correspondence with purchaser re: various details. Correspondence re: possible interested purchaser.
6/19/2014	M.S.	1.50	Engaged in matters re: revisions to Asset Purchase Agreement and schedules thereto; email correspondence with A. Rutman on same. Banking administration.
6/20/2014	A.R.	2.75	Attendance at premises and meeting with purchaser.
6/20/2014	B.R.	0.25	Call with Pete re: AgriStability filing for the 6-month period.
6/20/2014	M.S.	0.50	Banking administration.
6/23/2014	A.R.	2.00	Engaged in calls with G. Azeff and counsel for the purchaser. Call and correspondence with purchaser.
6/24/2014	A.R.	0.75	Review correspondence from purchaser's legal counsel re: Asset Purchase Agreement. Correspondence with G. Azeff on same. Review amendments to Agreement.
6/24/2014	M.S.	1.25	Banking administration.
6/25/2014	A.R.	0.50	Correspondence with G. Azeff re: status update on Asset Purchase Agreement.
6/25/2014	B.R.	0.75	Update R&D.
6/25/2014	M.S.	0.25	Banking administration.
6/26/2014	A.R.	1.00	Engaged in matters re: draft Asset Purchase Agreement.

ZEIFMAN PARTNERS INC.

<u>Date</u>	<u>Staff</u>	<u>Time</u>	<u>Detail</u>
6/26/2014	B.R.	0.50	Engaged in matters re: digester tipping fee increase; WSIB and HST filings for May.
6/27/2014	A.R.	0.25	Correspondence with G. Azeff re: Zenger materials. Correspondence with D. Robinson.
6/27/2014	M.S.	0.50	Banking administration.
6/30/2014	A.R.	0.50	Correspondence with B. Rutman and D. Robinson.
6/30/2014	B.R.	0.65	Discussions with D. Robinson re: finalized invoices for digester repairs in relation to removal of mixer due to broken cord. Update R&D.
6/30/2014	M.S.	3.00	Banking administration.

And to generally all other communications, correspondence, attendances, and preparation not particularly described above.

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ZEIFMAN PARTNERS INC.

ONTARIO
SUPERIOR COURT OF JUSTICE

IN THE MATTER OF THE RECEIVERSHIP OF
VANDERMEER GREENHOUSES LTD.
OF THE TOWN OF NIAGARA-ON-THE-LAKE, IN THE REGIONAL MUNICIPALITY OF
NIAGARA, IN THE PROVINCE OF ONTARIO

BN 89573 8201 RT0001
CLIENT # 208699

INTERIM BILLING

INVOICE #41611

To: Professional services rendered in respect of the Court Appointed Receivership of
Vandermeer Greenhouses Ltd. from July 1, 2014 to July 31, 2014.

Time Charges and Expenses:

A. Rutman, Partner	A.R.	12.00 hours @	\$575.00 per hour	\$ 6,900.00
B. Rutman	B.R.	12.00 hours @	\$187.00 per hour	\$ 2,244.00
M. Stojanovic	M.S.	9.00 hours @	\$175.00 per hour	\$ 1,575.00
				<u>\$ 10,719.00</u>
Miscellaneous disbursements				<u>\$ 282.03</u>
Subtotal				\$ 11,001.03
H.S.T.				<u>\$ 1,430.13</u>
Total Balance Due				<u>\$ 12,431.16</u>

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www.zeifmans.ca

ZEIFMAN PARTNERS INC.

<u>Date</u>	<u>Staff</u>	<u>Time</u>	<u>Detail</u>
7/2/2014	A.R.	0.50	Engaged in matters re: Glassburger purchase. Calls and correspondence with Meridian and various other parties on concern re: contract.
7/2/2014	B.R.	1.50	Preparing draft memorandum. Discussions with D. Robinson to confirm various details.
7/2/2014	M.S.	0.50	Banking administration; email correspondence with D. Robinson re: supplier payments.
7/3/2014	A.R.	0.50	Engaged in matters re: operational issues and Ag Energy.
7/4/2014	A.R.	0.50	Correspondence with various parties re: purchaser and Ag Energy matter.
7/4/2014	M.S.	0.25	Engaged in matters re: renewal of commercial vehicle operator's registration; email correspondence with D. Robinson on same.
7/7/2014	A.R.	0.75	Correspondence with counsel re: non-disclosure agreement for purchaser. Correspondence with Meridian and D. Robinson re: purchaser and operational issues. Call with purchaser.
7/7/2014	B.R.	0.50	Correspondence to A. Rutman to provide various information. Discussion with M. Stojanovic re: auto insurance. Discussions with D. Robinson and finalize draft memo.
7/7/2014	M.S.	0.75	Finalizing renewal of commercial vehicle operator's registration; banking administration.
7/8/2014	A.R.	0.75	Assemble technical information for purchaser; forward same. Correspondence with D. Robinson and call with purchaser.
7/9/2014	A.R.	0.50	Call with D. Robinson. Correspondence with Meridian and purchaser in relation to the matter of the Zirger claim.
7/9/2014	B.R.	0.75	Update R&D. Prepare June source deductions.
7/9/2014	M.S.	0.25	Banking administration.

ZEIFMAN PARTNERS INC.

<u>Date</u>	<u>Staff</u>	<u>Time</u>	<u>Detail</u>
7/10/2014	A.R.	0.50	Correspondence with D. Robinson and B. Rutman re: Ministry of Environment trials; correspondence on various operational matters including mixer and gas production. Call with B. Huber to discuss purchaser's offer withdrawal.
7/14/2014	A.R.	0.50	Call with D. Robinson and correspondence on matters re: status of rate analysis from Enbridge; Ministry of Environment and various ongoing matters.
7/14/2014	B.R.	2.00	Engaged in preparation of draft report to Meridian including schedules.
7/14/2014	M.S.	2.25	Prepare May bank reconciliations. Banking administration.
7/15/2014	A.R.	0.50	Review draft report to Meridian. Correspondence with B. Rutman on same. Correspondence with various parties re: water billing resulting from water leak and status thereof. Correspondence with D. Robinson on operations.
7/15/2014	B.R.	3.75	Revisions to report; update Cash Flow Forecast, A/R schedule and R&D. Engaged in matters re: NOTL water bill.
7/15/2014	M.S.	1.00	Engaged in calls with NOTL Hydro re: outstanding water account resulting from a leak. Email correspondence with various parties on same. Banking administration.
7/16/2014	A.R.	1.00	Revisions to report to Meridian; finalize same. Correspondence with D. Robinson re: insurance matters.
7/16/2014	B.R.	1.25	Revisions to report; discussions with A. Rutman; finalize report.
7/16/2014	M.S.	1.50	Review correspondence from insurer's legal counsel. Engaged in matters re: Zirger claim; correspondence with A. Rutman re: previous insurance providers and letters to same. Banking administration.
7/17/2014	B.R.	0.25	Discussion with D. Robinson re: tipping fees for constellation bran.
7/18/2014	A.R.	0.75	Finalize report to Meridian. Correspondence with D. Robinson and B. Rutman re: status of various current operations issues and possible solutions thereto.

ZEIFMAN PARTNERS INC.

<u>Date</u>	<u>Staff</u>	<u>Time</u>	<u>Detail</u>
7/18/2014	M.S.	0.50	Finalizing report. Banking administration.
7/21/2014	A.R.	0.50	Correspondence with B. Huber re: report.
7/21/2014	M.S.	0.25	Banking administration.
7/22/2014	A.R.	0.50	Correspondence with D. Robinson re: Sanimax and digester plan. Correspondence with B. Rutman re: June hydro generation and deposit.
7/22/2014	B.R.	0.50	Update income statement re: professional fees from beginning of receivership.
7/22/2014	M.S.	0.50	Banking administration.
7/23/2014	A.R.	3.00	Attendance at Meridian re: meeting with B. Huber; attendance at premises re: operational issues.
7/23/2014	B.R.	1.25	Update bank schedule and R&D. Prepare and file June HST return.
7/24/2014	B.R.	0.25	Prepare and file June WSIB return.
7/24/2014	M.S.	0.50	Banking administration.
7/28/2014	A.R.	0.50	Engaged in matters re: Enbridge billing. Correspondence with D. Robinson re: AD update.
7/28/2014	M.S.	0.50	Banking administration.
7/30/2014	A.R.	0.50	Correspondence with interested party. Correspondence with D. Robinson re: operations. Correspondence with B. Huber re: interested party.
7/30/2014	M.S.	0.25	Banking administration.
7/31/2014	A.R.	0.25	Correspondence with D. Robinson re: operations.

And to generally all other communications, correspondence, attendances, and preparation not particularly described above.

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ZEIFMAN PARTNERS INC.

ONTARIO SUPERIOR COURT OF JUSTICE

IN THE MATTER OF THE RECEIVERSHIP OF VANDERMEER GREENHOUSES LTD. OF THE TOWN OF NIAGARA-ON-THE-LAKE, IN THE REGIONAL MUNICIPALITY OF NIAGARA, IN THE PROVINCE OF ONTARIO

BN 89573 8201 RT0001
CLIENT # 208699

INTERIM BILLING

INVOICE #41615

To: Professional services rendered in respect of the Court Appointed Receivership of
Vandermeer Greenhouses Ltd. from August 1, 2014 to August 31, 2014.

Time Charges and Expenses:

A. Rutman, Partner	A.R.	10.00 hours @	\$575.00 per hour	\$ 5,750.00
B. Rutman	B.R.	10.25 hours @	\$187.00 per hour	\$ 1,916.75
M. Stojanovic	M.S.	14.50 hours @	\$175.00 per hour	\$ 2,537.50
				<u>\$ 10,204.25</u>
Miscellaneous disbursements				<u>\$ 352.63</u>
Subtotal				\$ 10,556.88
H.S.T.				<u>\$ 1,372.39</u>
Total Balance Due				<u><u>\$ 11,929.27</u></u>

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www.zeifmans.ca

ZEIFMAN PARTNERS INC.

<u>Date</u>	<u>Staff</u>	<u>Time</u>	<u>Detail</u>
08/01/2014	A.R.	0.50	Correspondence with D. Robinson re: operations.
08/01/2014	B.R.	1.50	Update R&D. Prepare July month end R&D.
08/05/2014	B.R.	1.00	Engaged in payroll matters.
08/06/2014	A.R.	0.50	Correspondence with D. Robinson re: grinder and feeder operations and options.
08/06/2014	B.R.	1.75	Prepare WSIB return. Call with WSIB; prepare letter to same detailing reason for late reporting.
08/06/2014	M.S.	0.50	Banking administration.
08/07/2014	A.R.	0.25	Correspondence with B. Rutman and D. Robinson re: boiler backup fuel. Correspondence from Northbridge Insurance re: Zirger matter.
08/07/2014	M.S.	0.50	Banking administration.
08/08/2014	B.R.	0.50	Update R&D.
08/08/2014	M.S.	0.25	Banking administration.
08/11/2014	A.R.	0.25	Correspondence with B. Rutman re: dry feeder gearbox motor replacement and costs associated with same.
08/11/2014	M.S.	4.00	Banking administration.
08/12/2014	A.R.	0.75	Correspondence re: outstanding water billing. Correspondence with D. Robinson re: forklift options and update on digester and greenhouse operations.
08/12/2014	M.S.	1.00	Banking administration.
08/13/2014	A.R.	1.25	Correspondence with B. Rutman and D. Robinson on various operations matters including status on meeting with Enbridge, review quotes re: macerator, review grinder and hopper design, and water billing.
08/13/2014	B.R.	0.50	Engaged in matters re: preparation of source deductions.
08/13/2014	M.S.	0.25	Banking administration.

ZEIFMAN PARTNERS INC.

<u>Date</u>	<u>Staff</u>	<u>Time</u>	<u>Detail</u>
08/14/2014	B.R.	1.25	Update R&D.
08/14/2014	M.S.	1.00	Banking administration.
08/15/2014	M.S.	1.00	Banking administration and preparation of June bank reconciliations.
08/18/2014	A.R.	0.50	Correspondence with B. Rutman and D. Robinson re: cost of crane rental; update on Wessuc meeting and Titus drawing.
08/18/2014	B.R.	0.25	Respond to P. Mantel's inquiries re: AgriStability.
08/18/2014	M.S.	0.25	Banking administration.
08/19/2014	A.R.	0.75	Correspondence with B. Rutman and D. Robinson for clarification re: crane rental. Call with D. Robinson to discuss updates on Wessuc and Titus.
08/19/2014	B.R.	1.00	Update R&D.
08/19/2014	M.S.	2.50	Banking administration.
08/20/2014	A.R.	0.50	Correspondence with B. Rutman re: insurance matters and Agricorp follow up.
08/20/2014	M.S.	0.50	Banking administration.
08/21/2014	A.R.	0.75	Correspondence with B. Rutman and D. Robinson re: July SOP payment; request review of use on day-by-day basis to determine reduction in energy production. Correspondence with D. Robinson re: various operations matters. Review quotes for grinding units.
08/21/2014	B.R.	0.50	Update R&D.
08/22/2014	M.S.	1.00	Correspondence with A. Rutman and Northbridge Insurance re: insurance policies in relation to Zirger matter. Banking administration.
08/25/2014	A.R.	0.25	Correspondence with D. Robinson re: update on digester.
08/25/2014	M.S.	0.25	Banking administration.

ZEIFMAN PARTNERS INC.

<u>Date</u>	<u>Staff</u>	<u>Time</u>	<u>Detail</u>
08/26/2014	A.R.	0.75	Correspondence with D. Robinson and B. Rutman on various operational matters including purchase of grinder, Sanimax and St. David's, Summers agreement, and Westbrook quote request.
08/26/2014	B.R.	0.50	Discussions with D. Robinson re: poly quote, transfer of liquid digestate, scaling down of production, and Westbrook Sales quote.
08/26/2014	M.S.	1.25	Banking administration.
08/27/2014	M.S.	0.25	Banking administration.
08/28/2014	A.R.	3.00	Attendance at premises re: status update on various operational matters.
08/28/2014	B.R.	1.50	Update bank schedule. WSIB filing and prepare and file HST for July 2014.

And to generally all other communications, correspondence, attendances, and preparation not particularly described above.

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ZEIFMAN PARTNERS INC.

ONTARIO SUPERIOR COURT OF JUSTICE

IN THE MATTER OF THE RECEIVERSHIP OF VANDERMEER GREENHOUSES LTD. OF THE TOWN OF NIAGARA-ON-THE-LAKE, IN THE REGIONAL MUNICIPALITY OF NIAGARA, IN THE PROVINCE OF ONTARIO

BN 89573 8201 RT0001
CLIENT # 208699

INTERIM BILLING

INVOICE #41624

To: Professional services rendered in respect of the Court Appointed Receivership of
Vandermeer Greenhouses Ltd. from September 1, 2014 to September 30, 2014.

Time Charges and Expenses:

A. Rutman, Partner	A.R.	8.50 hours @	\$575.00 per hour	\$	4,887.50
B. Rutman	B.R.	13.25 hours @	\$187.00 per hour	\$	2,477.75
M. Stojanovic	M.S.	15.00 hours @	\$175.00 per hour	\$	2,625.00
				\$	9,990.25
Miscellaneous disbursements				\$	216.51
Subtotal				\$	10,206.76
H.S.T.				\$	1,326.88
Total Balance Due				\$	11,533.64

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ZEIFMAN PARTNERS INC.

<u>Date</u>	<u>Staff</u>	<u>Time</u>	<u>Detail</u>
9/3/2014	A.R.	0.50	Correspondence with D. Robinson re: grinder and various operations.
9/3/2014	M.S.	1.00	Banking administration.
9/4/2014	A.R.	1.25	Correspondence with D. Robinson re: memo on update of status of operations; details on removal of fiber mat formation. Correspondence with B. Huber re: August activity. Correspondence with B. Rutman re: details. Correspondence to B. Huber and provide additional details re: August activity and statement of receipts and disbursements.
9/4/2014	B.R.	2.00	Bank Schedule updates and provide breakdown of August expenses.
9/5/2014	A.R.	0.50	Correspondence with D. Robinson in relation to his recommendation for the winter cost reduction program and details thereof.
9/5/2014	B.R.	0.25	Prepare payroll taxes for August 2014
9/8/2014	M.S.	0.25	Banking administration.
9/9/2014	A.R.	0.50	Correspondence with D. Robinson re: status of discussions with companies in relation to purchase of maceration equipment, and details of trip to Ohio in relation to Titus grinder. Correspondence with B. Rutman re: preparation of report.
9/9/2014	B.R.	0.50	Call with WSIB regarding outstanding amounts.
9/9/2014	M.S.	1.25	Banking administration.
9/10/2014	A.R.	0.50	Correspondence with D. Robinson and B. Rutman re: Sanimax and St. David's participation in relation to purchase of maceration equipment, and timing thereof. Review correspondence from G. Azeff to Zirgers' counsel.

ZEIFMAN PARTNERS INC.

<u>Date</u>	<u>Staff</u>	<u>Time</u>	<u>Detail</u>
9/11/2014	A.R.	0.50	Correspondence with B. Rutman to discuss timing of report. Correspondence with D. Robinson re: update on St. David's and Sanimax's commitments re: maceration equipment and considerations to be included in agreements.
9/11/2014	B.R.	2.75	Bank Transaction schedule update, work on schedules for report. Work on commission schedule for payments to Gold Leaf Garden. Speak with Darryl regarding greenhouse and digester operations.
9/11/2014	M.S.	0.50	Banking administration.
9/12/2014	B.R.	0.50	Work on commission schedule.
9/12/2014	M.S.	0.50	Banking administration.
9/15/2014	B.R.	3.25	Work on report.
9/15/2014	M.S.	1.00	Engaged in matters re: Enbridge account including discussions with Enbridge re: reconnection of service. Banking administration. Prepare July bank reconciliations.
9/17/2014	A.R.	0.25	Correspondence with M. Stojanovic re: insurance matters in relation to Zirger claim.
9/17/2014	B.R.	3.50	Work on report and secondary cash flow forecast.
9/17/2014	M.S.	1.25	Review correspondence from Cunningham Lindsey and request for additional details re: former insurers. Correspondence with A. Rutman on same. Calls with Meester Insurance to obtain details re: prior policy. Prepare letter to Cunningham Lindsey and provide additional information. Banking administration.
9/18/2014	A.R.	2.00	Engaged in review of draft report; correspondence with B. Rutman to confirm various details; revisions to report. Correspondence with M. Stojanovic re: various insurers involved in relation to Zirger claim.
9/18/2014	B.R.	0.50	Work on report.

ZEIFMAN PARTNERS INC.

<u>Date</u>	<u>Staff</u>	<u>Time</u>	<u>Detail</u>
9/18/2014	M.S.	3.50	Calls and correspondence with various insurers in relation to the Zirger claim. Engaged in matters re: finalizing the report. Banking administration.
9/19/2014	A.R.	1.00	Correspondence with D. Robinson re: update on Enbridge contract for interruptible rate. Revisions to report; correspondence with B. Rutman on same.
9/19/2014	M.S.	0.25	Call with D. Robinson re: banking matters.
9/22/2014	A.R.	1.00	Correspondence with B. Rutman
9/22/2014	M.S.	2.25	Correspondence with B. Rutman re: finalizing details in report. Revise and finalize. Banking administration.
9/24/2014	A.R.	0.50	Correspondence re: various operations matters including Enbridge large volume contract and coolant leak and required repairs re: cooler malfunction.
9/24/2014	M.S.	0.25	Banking administration.
9/25/2014	M.S.	0.75	Engaged in matters re: Enbridge large volume distribution contract including call and correspondence with Enbridge; forward executed Schedule A. Banking administration.
9/29/2014	M.S.	0.25	Banking administration.
9/30/2014	M.S.	2.00	Banking administration.

And to generally all other communications, correspondence, attendances, and preparation not particularly described above.

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ZEIFMAN PARTNERS INC.

ONTARIO SUPERIOR COURT OF JUSTICE

IN THE MATTER OF THE RECEIVERSHIP OF VANDERMEER GREENHOUSES LTD. OF THE TOWN OF NIAGARA-ON-THE-LAKE, IN THE REGIONAL MUNICIPALITY OF NIAGARA, IN THE PROVINCE OF ONTARIO

BN 89573 8201 RT0001
CLIENT # 208699

INTERIM BILLING

INVOICE #41631

To: Professional services rendered in respect of the Court Appointed Receivership of
Vandermeer Greenhouses Ltd. from October 1, 2014 to October 31, 2014.

Time Charges and Expenses:

A. Rutman, Partner	A.R.	12.50 hours @ \$600.00 per hour	\$ 7,500.00
B. Rutman	B.R.	8.75 hours @ \$197.00 per hour	\$ 1,723.75
M. Stojanovic	M.S.	7.50 hours @ \$185.00 per hour	\$ 1,387.50
R. DaSilva	R.D.	6.50 hours @ \$185.00 per hour	\$ 1,202.50
			<u>\$ 11,813.75</u>
Miscellaneous disbursements			<u>\$ 107.84</u>
Subtotal			\$ 11,921.59
H.S.T.			<u>\$ 1,549.81</u>
Total Balance Due			<u>\$ 13,471.40</u>

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ZEIFMAN PARTNERS INC.

<u>Date</u>	<u>Staff</u>	<u>Time</u>	<u>Detail</u>
10/2/2014	A.R.	0.50	Correspondence re: operations.
10/3/2014	A.R.	0.75	Correspondence with B. Huber re: support for Receiver's recommendations in most recent report. Correspondence with D. Robinson on matters re: grinder.
10/3/2014	B.R.	2.00	Update bank schedule and finalization of September bank activity.
10/6/2014	A.R.	1.50	Correspondence and conference call with counsel and D. Robinson to discuss the purchase of Titus grinder and various matters in connection to same including details of down payment.
10/6/2014	M.S.	1.75	Review correspondence re: payment to Titus. Call and correspondence to Meridian re: issuing cheque to Titus from USD account. Banking administration.
10/7/2014	A.R.	1.25	Engaged in various email correspondence and calls with G. Azeff and D. Robinson re: Sanimax and St. David's funding agreement; review and amend same.
10/7/2014	B.R.	1.00	Bank Schedule update.
10/7/2014	M.S.	0.25	Banking administration.
10/8/2014	A.R.	1.75	Engaged in various email correspondence and calls with G. Azeff and D. Robinson re: Sanimax and St. David's draft agreements; review and execute same. Email exchange with D. Robinson re: update on discussion with Sanimax and St. David's. Discussion with M. Stojanovic re: transfer of US funds.
10/8/2014	M.S.	1.00	Correspondence to Meridian re transfer of funds from Canadian account to US; discussions with A. Rutman re: payment to Titus; banking administration.
10/9/2014	M.S.	0.25	Banking administration.
10/10/2014	M.S.	0.75	Call with Meridian to confirm funds transfer; correspondence to same to confirm exchange rate. Engaged in finalizing Titus payment matter including correspondence to D. Robinson.

ZEIFMAN PARTNERS INC.

<u>Date</u>	<u>Staff</u>	<u>Time</u>	<u>Detail</u>
10/14/2014	A.R.	0.50	Email exchange with D. Robinson re: update on Sanimax and St. David's agreements and Receiver's wiring instructions.
10/14/2014	B.R.	0.75	Prepare HST return for August 2014 and payroll taxes for September 2014.
10/14/2014	M.S.	0.50	Banking administration.
10/15/2014	A.R.	1.50	Review post court appointment R&D; email exchange and discussion with B. Rutman re: same. Email correspondence and call with G. Azeff re: increased borrowing. Review email correspondence from C. Jackson re: insurance coverage and Zirger claim; email correspondence with G. Azeff re: same. Various email correspondence re: Sanimax and St. David's executed agreements and wiring of funds. Email exchange with M. Stojanovic re: insurance coverage.
10/15/2014	B.R.	2.00	Updated R&D post court appointment. Update bank schedule.
10/15/2014	M.S.	1.50	Engaged in various matters re: payables. Correspondence to D. Robinson and B. Rutman re: same. Correspondence with Firstbrook Cassie re: details of insurance coverage. Call from supplier re: outstanding invoices. Correspondence re: payments from Sanimax and St. David's and correspondence with Meridian to confirm receipt of same.
10/15/2014	R.D.	1.50	Banking administration.
10/16/2014	M.S.	1.25	Correspondence with D. Robinson re: St. David's payment. Engaged in matters re: payables. Banking administration and prepare August bank reconciliations for USD and CAD accounts.
10/16/2014	R.D.	0.50	Banking administration.
10/17/2014	M.S.	0.25	Engaged in matters re: St. David's deposit.
10/17/2014	R.D.	1.00	Banking administration.
10/20/2014	A.R.	0.75	Review hydro bill; discussion with B. Rutman re: same. Email exchange with G. Azeff re: Receiver's borrowing. Email exchange with D. Robinson re: operational issues.

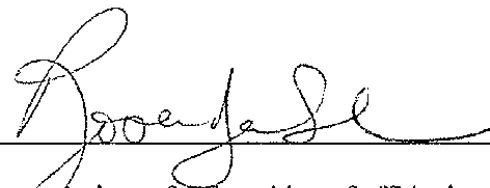
ZEIFMAN PARTNERS INC.

<u>Date</u>	<u>Staff</u>	<u>Time</u>	<u>Detail</u>
10/20/2014	B.R.	1.25	Respond to email from AgriStablity regarding Vandermeer 2013 operations. Update bank schedule.
10/20/2014	R.D.	1.25	Banking administration.
10/21/2014	R.D.	0.50	Banking administration.
10/22/2014	A.R.	3.00	Attendance at premises; review status of production limitation; grinder timing and costs and various operational issues. Email correspondence to D. Robinson re: authorized repairs and purchases. Email exchange with B. Rutman re: fiber mat removal costs.
10/23/2014	A.R.	0.50	Review Notice of Discontinuance re: Zirger claim; forward to insurers.
10/24/2014	A.R.	0.50	Email exchange with B. Rutman re: Agristability payment. Email correspondence with R. DaSilva re: Zirger claim Notice of Discontinuance.
10/27/2014	B.R.	0.25	File WSIB for September 2014.
10/27/2014	R.D.	0.25	Banking administration.
10/28/2014	B.R.	1.50	Speak with Darryl regarding preparation for maceration equipment installation and greenhouse activities. Fill in form relating to credit application (for supplier). Update bank transaction schedule.
10/28/2014	R.D.	1.50	Banking administration.

And to generally all other communications, correspondence, attendances, and preparation not particularly described above.

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This is Exhibit "B" to the Affidavit of
Allan A. Rutman sworn on November 11, 2014



A Commissioner for the taking of affidavits, etc.

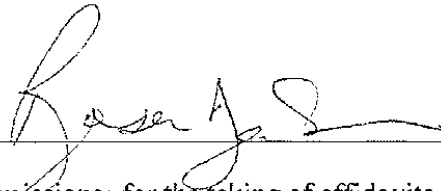
Rose Dastge, a Commissioner, etc.,
Province of Ontario, for Zelman
Partners Inc., Trustee in Bankruptcy,
Expires November 3, 2016.

Vandermeer Greenhouses Ltd.
Summary of Receiver's Fees
February 21, 2014 to October 31, 2014

Exhibit B

<u>Period</u>	<u>Fees</u>	<u>Disbursements</u>	<u>HST</u>	<u>Total</u>
February 21, 2014 - February 28, 2014	\$ 8,368.00	\$ 487.17	\$ 1,087.84	\$ 9,943.01
March 1, 2014 - March 31, 2014	13,167.25	188.66	1,736.27	\$ 15,092.18
April 1, 2014 - April 30, 2014	14,725.00	189.35	1,938.87	\$ 16,853.22
May 1, 2014 - May 31, 2014	10,986.25	143.71	1,446.89	\$ 12,576.85
June 1, 2014 to June 30, 2014	13,840.30	370.17	1,847.36	\$ 16,057.83
July 1, 2014 to July 31, 2014	10,719.00	282.03	1,430.13	\$ 12,431.16
August 1, 2014 to August 31, 2014	10,204.25	352.63	1,372.39	\$ 11,929.27
September 1, 2014 to September 30, 2014	9,990.25	216.51	1,326.88	\$ 11,533.64
October 1, 2014 to October 31, 2014	11,813.75	107.84	1,549.81	\$ 13,471.40
	<u>\$ 103,814.05</u>	<u>\$ 2,338.07</u>	<u>\$ 13,736.44</u>	<u>\$ 119,888.56</u>

This is Exhibit "C" to the Affidavit of
Allan A. Rutman sworn on November 11, 2014

A handwritten signature in black ink, appearing to read "Rosa DaSilva", is written over a horizontal line.

A Commissioner for the taking of affidavits, etc.

Rosa DaSilva, a Commissioner, etc.
Province of Ontario, for Zellman
Partners Inc., Trustee in Bankruptcy.
Expires November 3, 2016.

Vandermeer Greenhouses Ltd.
Receiver's Personnel Summary
For the Period February 21, 2014 to October 31, 2014

Exhibit C

<u>Name</u>	<u>Hours</u>	<u>Rate</u>	<u>Total</u>
A. Rutman	12.50	\$ 600.00	\$ 7,500.00
A. Rutman	101.75	\$ 575.00	\$ 58,506.25
N. Jung	0.50	\$ 380.00	\$ 190.00
B. Rutman	8.75	\$ 197.00	\$ 1,723.75
B. Rutman	88.15	\$ 187.00	\$ 16,484.05
M. Stojanovic	7.50	\$ 185.00	\$ 1,387.50
M. Stojanovic	56.00	\$ 175.00	\$ 9,800.00
R. DaSilva	6.50	\$ 185.00	\$ 1,202.50
R. DaSilva	40.00	\$ 175.00	\$ 7,000.00
H. Ulloa	0.25	\$ 80.00	\$ 20.00
Total	321.90		\$ 103,814.05
Average Hourly Rate		\$ 322.50	

tab Q

**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. 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*

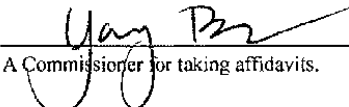
**AFFIDAVIT OF GREGORY AZEFF
SWORN NOVEMBER 12, 2014**

I, Gregory Azeff, of the City of Toronto, Province of Ontario, Barrister and Solicitor, MAKE OATH AND SAY AS FOLLOWS:

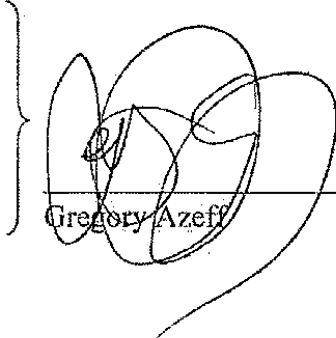
1. I am a lawyer with the law firm of Fogler, Rubinoff LLP ("FR"), lawyers for Zeifman Partners Inc. in its capacity as Receiver of Vandermeer Greenhouses Ltd. (the "Receiver") and in such capacity I have knowledge of the matters hereinafter deposed to. Unless I indicate to the contrary, the facts herein are within my personal knowledge and are true. Where I believe I have indicated that I have obtained facts from other sources, I believe those facts to be true.
2. Attached hereto as **Exhibit "A"** is a true copy of the invoices issued to the Receiver by FR for fees and disbursements incurred by FR in the course of the receivership proceedings between May 22, 2014 and October 31, 2014. The total fees charged by FR during that period were \$10,748.00, plus disbursements of \$70.04, plus Harmonized Sales Tax in the amount of \$1,406.37, for a total of \$12,224.41.

3. Attached hereto as **Exhibit "B"** is a schedule summarizing each invoice in Exhibit "A", the total billable hours charged per invoice, the total fees charged per invoice and the average hourly rate charged per invoice.
4. Attached hereto as **Exhibit "C"** is a schedule summarizing the respective years of call and billing rates of each of the lawyers at FR who acted for the Receiver.
5. To the best of my knowledge, the rates charged by FR throughout the course of this proceeding are comparable to those charged by other law firms in Toronto for the provision of similar services.
6. The hourly billing rates outlined in Exhibit "C" to this affidavit are comparable to the hourly rates charged by FR for services rendered in similar proceedings.
7. I make the affidavit in support of a motion by the Receiver for, among other things, approval of the fees and disbursements of the Receiver's counsel.

SWORN before me at the City of
Toronto, in the Province of Ontario, this
12TH day of November, 2014.


A Commissioner for taking affidavits.

Young Park
Barrister and Solicitor

} 
Gregory Azeff

This is Exhibit "A" referred to in the Affidavit of Gregory Azeff
sworn November 12, 2014



Commissioner for Taking Affidavits (or as may be)

EXHIBIT "A"

DETAILED INVOICES

July 31, 2014

Zeifman Partners Inc.
1 Toronto Street, Suite 910
Toronto ON
M5C 2V6

Attention: Allan A. Rutman, MBA, CA

IN ACCOUNT WITH
Fogler, Rubinoff LLP
77 King Street West, Suite 3000
TD Centre North Tower
P.O. Box 95
Toronto, ON
M5K 1G8
Telephone: 416-864-9700
Fax: 416-941-8852
www.foglers.com

fogler

Our File: Z0290 / 143857
Vandermeer Greenhouses

FOR PROFESSIONAL SERVICES RENDERED in connection with the above-noted matter, including:

<u>Date</u>	<u>Lawyer</u>	<u>Description</u>	<u>Hrs</u>
May-22-14	GA	Review correspondence from C. Kirewskie; Email to C. Kirewskie; Review KPMG case;	0.80
May-26-14	GA	Review and consider correspondence; Discussion with A. Engel re OMAFRA and Tribunal;	0.40
Jun-04-14	VSF	Attend notice of change.	0.60
Jun-16-14	GA	Telephone call with A. Rutman; Review and revise draft purchase agreements.	0.70
Jun-16-14	GA	Review Term Sheet; Draft Asset Purchase Agreement.	2.80
Jun-17-14	GA	Continue drafting APA; Telephone call with A. Rutman re changes to APA; Review and revise APA and forward to client; Telephone call with S. Irving re discontinuance.	2.60
Jun-19-14	GA	Telephone call with A. Rutman re changes to APA; Review changes; Letter to P. Marshall.	0.40
Jun-20-14	GA	Review correspondence.	0.10
Jun-23-14	GA	Telephone call with J. Anthony; Telephone call with A. Rutman.	0.50
Jun-24-14	GA	Telephone call with A. Rutman; Review correspondence; Revise draft agreement.	0.50
Jun-25-14	GA	Telephone call to J. Anthony re status of agreement; Review and respond to correspondence.	0.10
Jun-26-14	GA	Telephone call to J. Anthony; Email to J. Anthony; Review comments and revise agreement.	0.40
Jul-02-14	GA	Discussion with A. Rutman re Zirger issue; Review and respond to correspondence.	0.40
Jul-04-14	GA	Review and respond to correspondence from J. Anthony; Email to A. Rutman.	0.20

fogler

<u>Date</u>	<u>Lawyer</u>	<u>Description</u>	<u>Hrs</u>
Jul-07-14	GA	Review correspondence with AG Energy re disputed debt; Draft letter to AG Energy; Review and respond to correspondence; Review and revise draft Confidentiality Agreement and forward to purchaser's counsel; Review and revise letter.	1.60
Jul-07-14	GA	Telephone call with J. Anthony.	0.20
Jul-10-14	GA	Review and consider correspondence.	0.20

OUR FEE HEREIN

\$5,790.50

Summary of Fees

<u>Initials</u>	<u>Total Time</u>	<u>Hourly Rate</u>	<u>Value</u>
GA	11.90	475.00	5,652.50
VSF	0.60	230.00	138.00

Disbursements

Taxable	Faxes	\$6.10
Taxable	Postage/Registered Mail	\$16.00
Taxable	Prints	\$41.40
Taxable	Telephone	\$0.34

Total Disbursements \$63.84

Total Fees and Disbursements \$5,854.34

HST @ 13% on Fees and Taxable Disbursements \$761.07

Total Fees, Disbursements and Taxes this Bill \$6,615.41

Balance Due: \$6,615.41

**THIS IS OUR ACCOUNT HEREIN
FOGLER, RUBINOFF LLP**

THIS ACCOUNT BEARS INTEREST, COMMENCING ONE MONTH AFTER DELIVERY, AT THE RATE OF 3.30% PER ANNUM AS AUTHORIZED BY THE SOLICITORS' ACT. ANY DISBURSEMENTS NOT POSTED TO YOUR ACCOUNT ON THE DATE OF THIS STATEMENT WILL BE BILLED LATER.

E. & O.E.

GST/HST No : R119420859

Please return a copy of this account with your payment. Thank you.

Greg Azeff

September 4, 2014

Zeifman Partners Inc.
 1 Toronto Street, Suite 910
 Toronto ON
 M5C 2V6
 Attention: Allan A. Rutman, MBA, CA

IN ACCOUNT WITH
 Fogler, Rubinoff LLP
 77 King Street West, Suite 3000
 TD Centre North Tower
 P.O. Box 95
 Toronto, ON
 M5K 1G8
 Telephone: 416-864-9700
 Fax: 416-941-8852
 www.foglers.com

fogler
rubinoff

Our File: Z0290 / 143857
Vandermeer Greenhouses

FOR PROFESSIONAL SERVICES RENDERED in connection with the above-noted matter, including:

<u>Date</u>	<u>Lawyer</u>	<u>Description</u>	<u>Hrs</u>
Jul-22-14	GA	Review correspondence.	0.10
Jul-23-14	GA	Telephone call with R. Macferlane re leave motion; Review and respond to correspondence.	0.20
Jul-24-14	GA	Email to A. Rutman re statutes; Consult with A. Engel re OMAFRA issues.	0.40
Aug-10-14	AME	reviewed Notice of Application to NFP Board.	0.70
Aug-11-14	AME	conference with Greg Azeff about NFP Board powers.	0.80
Aug-11-14	GA	Met with A. Engel to discuss NFPB hearing; Consider next steps.	0.50

OUR FEE HEREIN \$1,252.50

Summary of Fees

<u>Initials</u>	<u>Total Time</u>	<u>Hourly Rate</u>	<u>Value</u>
GA	1.20	475.00	570.00
AME	1.50	455.00	682.50

Disbursements

Taxable Prints \$0.30

Total Disbursements	\$0.30
Total Fees and Disbursements	\$1,252.80
HST @ 13% on Fees and Taxable Disbursements	\$162.87
Total Fees, Disbursements and Taxes this Bill	\$1,415.67

fogler
rubinoff

Balance Due: **\$1,415.67**

**THIS IS OUR ACCOUNT HEREIN
FOGLER, RUBINOFF LLP**

THIS ACCOUNT BEARS INTEREST, COMMENCING ONE MONTH AFTER DELIVERY, AT THE RATE OF 3.30% PER ANNUM AS AUTHORIZED BY THE SOLICITORS' ACT. ANY DISBURSEMENTS NOT POSTED TO YOUR ACCOUNT ON THE DATE OF THIS STATEMENT WILL BE BILLED LATER.

E. & O.E.

GST/HST No : R119420859

Please return a copy of this account with your payment. Thank you.

Greg Azeff

October 9, 2014

Zeifman Partners Inc.
 1 Toronto Street, Suite 910
 Toronto ON
 M5C 2V6
 Attention: Allan A. Rutman, MBA, CA

IN ACCOUNT WITH
 Fogler, Rubinoff LLP
 77 King Street West, Suite 3000
 TD Centre North Tower
 P.O. Box 95
 Toronto, ON
 M5K 1G8
 Telephone: 416-864-9700
 Fax: 416-941-8852
 www.foglers.com

fogler

Our File: **Z0290 / 143857**
Vandermeer Greenhouses

FOR PROFESSIONAL SERVICES RENDERED in connection with the above-noted matter, including:

<u>Date</u>	<u>Lawyer</u>	<u>Description</u>	<u>Hrs</u>
Sep-05-14	GA	Review and respond to email.	0.10
Sep-10-14	GA	Review and respond to correspondence.	0.30
Sep-11-14	GA	Discussion with A. Engel re hearing dates.	0.20
Sep-18-14	GA	Review correspondence from R. MacFarlane.	0.10
Sep-26-14	GA	Telephone call with R. Macfarlane; Review correspondence between R. Macfarlane and Kirewskie.	0.30
Sep-29-14	GA	Review correspondence; Draft letter to Kirewskie; Telephone call with A. Rutman; Review and revise letter.	0.70

OUR FEE HEREIN

\$807.50

Summary of Fees

<u>Initials</u>	<u>Total Time</u>	<u>Hourly Rate</u>	<u>Value</u>
GA	1.70	475.00	807.50

Disbursements

Taxable	Faxes	\$3.95
Taxable	Postage/Registered Mail	\$0.75
Taxable	Prints	\$1.20

Total Disbursements **\$5.90**

Total Fees and Disbursements **\$813.40**

HST @ 13% on Fees and Taxable Disbursements **\$105.75**

fogler
inoff

Total Fees, Disbursements and Taxes this Bill

\$919.15

Balance Due:

\$919.15

THIS IS OUR ACCOUNT HEREIN
FOGLER, RUBINOFF LLP



Greg Azoff

THIS ACCOUNT BEARS INTEREST, COMMENCING ONE MONTH AFTER DELIVERY, AT THE RATE OF 3.30% PER ANNUM AS AUTHORIZED BY THE SOLICITORS' ACT. ANY DISBURSEMENTS NOT POSTED TO YOUR ACCOUNT ON THE DATE OF THIS STATEMENT WILL BE BILLED LATER.

E. & O.E.

GST/HST No : R119420859

Please return a copy of this account with your payment. Thank you.

November 4, 2014

Zeifman Partners Inc.
 1 Toronto Street, Suite 910
 Toronto ON
 M5C 2V6
 Attention: Allan A. Rutman, MBA, CA

IN ACCOUNT WITH
 Fogler, Rubinfoff LLP
 77 King Street West, Suite 3000
 TD Centre North Tower
 P.O. Box 95
 Toronto, ON
 M5K 1G8
 Telephone: 416-864-9700
 Fax: 416-941-8852
 www.foglers.com

fogler

Our File: Z0290 / 143857
 Vandermeer Greenhouses

FOR PROFESSIONAL SERVICES RENDERED in connection with the above-noted matter, including:

<u>Date</u>	<u>Lawyer</u>	<u>Description</u>	<u>Hrs</u>
Oct-06-14	GA	Conference call with A. Rutman and D. Robinson re Titus Agreement; Draft Agreement.	2.00
Oct-07-14	GA	Review and revise agreement; Telephone call with A. Rutman; Finalize draft.	1.60
Oct-08-14	GA	Review and revise Agreement; Draft Agreement for Sanimax.	0.70
Oct-15-14	GA	Review and respond to correspondence.	0.10
Oct-16-14	GA	Review correspondence.	0.10
Oct-22-14	GA	Telephone call with A. Rutman; Instructions to J. Freeman.	0.30
Oct-23-14	GA	Review and forward correspondence.	0.10
Oct-28-14	GA	Draft materials re motion including Report.	1.20

OUR FEE HEREIN \$2,897.50

Summary of Fees

<u>Initials</u>	<u>Total Time</u>	<u>Hourly Rate</u>	<u>Value</u>
GA	6.10	475.00	2,897.50

Disbursements

Total Disbursements	\$0.00
Total Fees and Disbursements	\$2,897.50
HST @ 13% on Fees and Taxable Disbursements	\$376.68
Total Fees, Disbursements and Taxes this Bill	\$3,274.18

fogler,
rubi

Balance Due: **\$3,274.18**

**THIS IS OUR ACCOUNT HEREIN
FOGLER, RUBINOFF LLP**

THIS ACCOUNT BEARS INTEREST, COMMENCING ONE MONTH AFTER DELIVERY, AT THE RATE OF 3.30% PER ANNUM AS AUTHORIZED BY THE SOLICITORS' ACT. ANY DISBURSEMENTS NOT POSTED TO YOUR ACCOUNT ON THE DATE OF THIS STATEMENT WILL BE BILLED LATER.

E. & O.E.

GST/HST No: R119420839

Please return a copy of this account with your payment. Thank you.

Greg Azeff

This is Exhibit "B" referred to in the Affidavit of Gregory Azeff
sworn November 12, 2014




Commissioner for Taking Affidavits (or as may be)

EXHIBIT "B"

SUMMARY OF FEES FOR THE PERIOD MAY 22, 2014 TO OCTOBER 31, 2014

Invoice No.	Fees	Disbursements	HST	Hours	Average Hourly Rate	Total
21495336	\$5,790.50	\$63.84	\$761.07	12.5	\$463	\$6,615.41
21496799	\$1,252.50	\$0.30	\$162.87	2.7	\$464	\$1,415.67
21498735	\$807.50	\$5.90	\$105.75	1.7	\$475	\$919.15
21400295	\$2,897.50	\$0.00	\$376.68	6.1	\$475	\$3,274.18
	\$10,748.00	\$70.04	\$1,406.37	23	\$469	\$12,224.41

This is Exhibit "C" referred to in the Affidavit of Gregory Azeff
sworn November 12, 2014



Commissioner for Taking Affidavits (or as may be)

EXHIBIT "C"

BILLING RATES OF FOGLER, RUBINOFF LLP FOR THE PERIOD MAY 22, 2014 TO OCTOBER 31, 2014

Timekeeper	Hourly Rate	Year of Call
Gregory R. Azeff	\$475.00	2002
Albert M. Engel	\$455.00	2002
V. Shane Findley	\$230.00	Litigation Clerk

MERIDIAN CREDIT UNION LIMITED
Applicant

-and-

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT
TORONTO

**AFFIDAVIT OF GREGORY AZEFF
SWORN NOVEMBER 12, 2014**

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 R

**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 SUBSECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*,
R.S.C. 1985, C. B-3, AS AMENDED, SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O.
1990, c. C.43, AS AMENDED, and RULE 14.05(3)(g) OF THE *RULES OF CIVIL PROCEDURE***

**AFFIDAVIT OF BOBBY SACHDEVA
(Sworn on November 12, 2014)**

I, BOBBY SACHDEVA, of the City of Toronto, in the Province of Ontario,
MAKE OATH AND SAY AS FOLLOWS:

1. I am a lawyer at Pallett Valo LLP ("**PV**"), previous solicitors for Zeifman Partners Inc. ("**Zeifman**"), in its capacity as Court-appointed Receiver (in such capacity, the "**Receiver**"), of all of the assets, undertakings and properties of Vandermeer Greenhouses Ltd. ("**Vandermeer**"), and, as such, I have knowledge of the matters to which I hereinafter depose. Unless I indicate to the contrary, the facts herein are within my personal knowledge and are true. Where I have indicated that I have obtained facts from other sources, I believe those facts to be true.

2. Attached hereto and marked as **Exhibit "A"** is a detailed invoice (the "**Invoice**") issued to the Receiver by PV for fees and disbursements incurred by PV between February 10,

2014 to April 25, 2014 (the "**Appointment Period**"). The total fees charged by PV to the Receiver during the Appointment Period were \$2,200.00, plus disbursements of \$69.50, plus HST of \$295.04 totaling \$2,564.54.


3. The Invoice is a fair and accurate description of the services provided and the amounts charged by PV.

4. Attached hereto and marked as **Exhibit "B"** is a schedule summarizing the Invoice in Exhibit "A", the total billable hours charged, the total fees charged and the average hourly rate charged.

5. Attached hereto and marked as **Exhibit "C"** is a schedule summarizing the billing rates, year of call, total hours and total fees charged for each lawyer that has completed work on this file during the Appointment Period.

6. I make this affidavit in support of a motion for, *inter alia*, approval of the fees and disbursements of the Receiver and its counsel and for no other or improper purpose.

SWORN BEFORE ME at the City of
Mississauga, in the Regional Municipality of
Peel on November 12, 2014

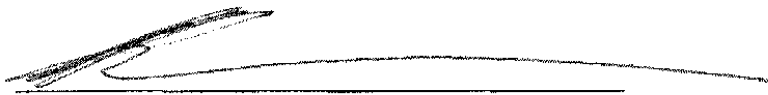


Commissioner for Taking Affidavits
(or as may be)
Alex Tschernko



BOBBY SACHDEVA

This is **Exhibit "A"** referred to in the Affidavit
of BOBBY SACHDEVA and sworn before me
this 12th day of November 2014.

A handwritten signature in dark ink, appearing to read 'Alex Scherbo', written over a horizontal line.

A Commissioner for Taking Affidavits

Alex Scherbo

EXHIBIT “A”

Detailed Invoices

FILE NO.: 50953-72594
May 28, 2014

STATEMENT NO.: 156886

COPY

Zeifman Partners Inc.
Allan A. Rutman
1 Toronto Street, Suite 910
Toronto, Ontario
M5C 2V6
Canada

RE: Receivership of Vandermeer Greenhouse Ltd.

TO OUR PROFESSIONAL SERVICES RENDERED ON YOUR BEHALF in connection
with the above-noted matter for the period ending May 26, 2014 including the following:

SUMMARY OF ACCOUNT

February 10, 2014	AIQ	Email from Applicant attaching Application Record and instructions to Nadia Gatta.	0.10	\$	18.00
February 14, 2014	GAZ	Review and consider correspondence; Discussion with A. Iqbal re various issues.	0.30	\$	135.00
February 14, 2014	AIQ	Review letter from Cassandra Kirewskie and letter from Ross Macfarlane.	0.20	\$	36.00
February 18, 2014	GAZ	Telephone discussion with A. Rutman re various issues; Discussion with A. Iqbal re various issues.	0.40	\$	180.00
February 18, 2014	AIQ	Conference call with Alan Rutman and Greg Azeff; instructions to Shallon Garrafa re motion court dates; email exchange with Shallon Garrafa and Greg Azeff re booking court motion.	0.30	\$	54.00
	GAZ	Review and consider correspondence; Discussion with A. Iqbal re motion on Friday; Telephone call with A. Rutman; Review	0.50	\$	225.00

February 19, 2014		Supplementary Application Record and revised draft Order.			
February 19, 2014	AIQ	Review correspondence; discussion with Greg Azeff re next steps.	0.30	\$	54.00
February 21, 2014	GAZ	Discussion with A.Iqbal re outcome of hearing.	0.20	\$	90.00
February 21, 2014	AIQ	Prepare for, travel to and attend motion Receivership Appointment motion.	3.50	\$	630.00
February 25, 2014	GAZ	Review and consider correspondence from OPA's counsel.	0.10	\$	45.00
February 25, 2014	AIQ	Review correspondence.	0.20	\$	36.00
February 26, 2014	AIQ	Review correspondence.	0.10	\$	18.00
March 12, 2014	GAZ	Review, consider and respond to correspondence regarding sale of property.	0.20	\$	90.00
March 12, 2014	AIQ	Review, consider and respond to correspondence.	0.20	\$	36.00
March 13, 2014	GAZ	Respond to correspondence.	0.10	\$	45.00
March 24, 2014	GAZ	Review and consider correspondence to township.	0.10	\$	45.00
March 24, 2014	AIQ	Receive, review and consider letter from John Lloyd.	0.10	\$	18.00
April 25, 2014	GAZ	Review and respond to correspondence; Multiple telephone calls with A.Rutman re letter; Draft letter to lessor; Review and revise letter.	1.50	\$	675.00

TOTAL FEES \$ 2,430.00

Fee Reduction -230.00

OUR FEE (subject to HST) \$ 2,200.00

FEE SUMMARY

Initials	Name	Hours	Billing Rate	Amount
GAZ	Greg Azeff	3.40	\$ 450.00	\$ 1,530.00
AIQ	Asim Iqbal	5.00	\$ 180.00	\$ 900.00

DISBURSEMENTS (subject to HST)**

Photocopies/Printing** \$ 69.50

Total Disbursements \$ 69.50

Total HST on Fees and Disbursements \$ 295.04

Total Fees, Disbursements and HST \$ **2,564.54**

**THIS IS OUR ACCOUNT HEREIN
PALLET VALO LLP**

Per: Bobby H. Sachdeva

Payment due upon receipt

Visa and Mastercard are accepted

REMITTANCE COPY - PLEASE RETURN WITH PAYMENT

Zeifman Partners Inc.
Allan A. Rutman
1 Toronto Street, Suite 910
Toronto, Ontario
M5C 2V6
Canada
RE: Receivership of Vandermeer Greenhouse Ltd.

File No.: 50953-72594

Bill No.: 156886

May 26, 2014

Bobby H. Sachdeva

TOTAL THIS INVOICE:

Total fee	\$	2,200.00
Total disbursements	\$	69.50
Total fee and disbursement	\$	2,269.50
Total HST on Fees and Disbursements	\$	295.04

TOTAL DUE AND OWING TO PALLETT VALO LLP **\$ 2,564.54**

You can use your MASTERCARD or VISA to pay this bill. Simply fill in the information below and return the same to our office.

☐☐

Credit Card Number:

Expiration Date:

Amount:

Card Holder Name:

Card Holder Signature:

Please return completed form by mail or fax to (905) 273-6920. Thank you.

PAYMENT DUE UPON RECEIPT OF INVOICE

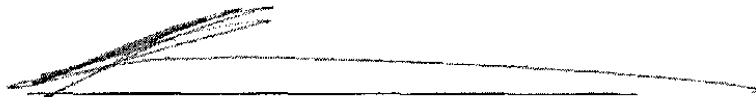
Alex Threshy

EXHIBIT "B"

Calculation of Average Hourly Billing Rates of Pallett Valo LLP for the Appointment Period

Invoice No.	Fees	Disbursements	HST	Hours	Average Hourly Rate	Total
156886	\$2,200.00	\$69.50	\$295.04	8.4	\$315.00	\$2,564.54
	<u>\$2,200.00</u>	<u>\$69.50</u>	<u>\$295.04</u>	<u>8.4</u>	<u>\$315.00</u>	<u>\$2,564.54</u>

This is **Exhibit "C"** referred to in the Affidavit
of BOBBY SACHDEVA and sworn before me
this 12th day of November 2014.

A handwritten signature in dark ink, appearing to read "Alex Tcherbo", written over a horizontal line.

A Commissioner for Taking Affidavits

Alex Tcherbo

EXHIBIT "C"

Billing Rates of Pallet Valo LLP

For the Appointment Period

	<u>Rate</u>	<u>Year of Call</u>	<u>Hours</u>	<u>Fees Docketed</u>
Greg Azeff	\$450.00	2002	3.40	\$1,530.00
Asim Iqbal	\$180.00	2012	5.00	\$900.00

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

**AFFIDAVIT OF BOBBY SACHDEVA
(SWORN November 12, 2014)**

PALLET VALO LLP
Lawyers & Trade-Mark Agents
77 City Centre Drive, West Tower,
Suite 300
Mississauga, Ontario
L5B 1M5

BOBBY H. SACHDEVA (LSUC # 34454C)

Tel: (905) 273-3300
Fax: (905) 273-6920

Previous Lawyers for the Court Appointed Receiver,
Zeifman Partners Inc.

MERIDIAN CREDIT UNION LIMITED
Applicant

-and-

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT
TORONTO

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

Fogler, Rubinoff LLP
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Lawyers for Zeifman Partners Inc.

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**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE

)

TUESDAY, THE 2nd

)

JUSTICE

)

DAY OF DECEMBER, 2014

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. 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*

ORDER

THIS MOTION, made by Zeifman Partners Inc. in its capacity as Receiver (in such capacity, the “**Receiver**”) of Vandermeer Greenhouses Ltd. (“**Vandermeer**”), was heard this day at the court house, 330 University Avenue, Toronto, Ontario.

ON READING the Motion Record, the First Report of the Receiver dated November 17, 2014 (the “**First Report**”), filed, and upon hearing submissions of counsel for the Receiver, no one else attending,

1. **THIS COURT ORDERS** that the time for service and filing of this Notice of Motion and the Motion Record be and they are hereby abridged and dispensing with further service thereof.
 2. **THIS COURT ORDERS** that paragraph 20 of the Initial Order be and is hereby amended to increase the amount that the Receiver is authorized to borrow pursuant to Receiver's Certificates from \$250,000 to \$1,000,000.
 3. **THIS COURT ORDERS** that the activities and conduct of the Receiver and its legal counsel, as disclosed in the First Report, be and they are hereby approved.
 4. **THIS COURT ORDERS** that the fees and disbursements of the Receiver and its legal counsel, as disclosed in the First Report, be and they are hereby approved.
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MERIDIAN CREDIT UNION LIMITED
Applicant

-and-

VANDERMEER GREENHOUSES LTD.
Respondent

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

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ORDER

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Lawyers for the Court-Appointed Receiver,
Zeifman Partners Inc.

MERIDIAN CREDIT UNION LIMITED
Applicant

-and-

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

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MOTION RECORD

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