

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN:

MERIDIAN CREDIT UNION LIMITED

Applicant

AND

VANDERMEER GREENHOUSES LTD.

Respondent

APPLICATION UNDER Section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1995 C. B-3, as amended, section 101 of the *Courts Of Justice Act*, R.S.O. 1990 C. C.43 as amended, and Rule 14.05(3)(8) of the *Rules of Civil Procedure*

**MOTION RECORD
(RETURNABLE NOVEMBER 17, 2017)**

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Receiver of Vandermeer Greenhouses Ltd.

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**ONTARIO
SUPERIOR COURT OF JUSTICE
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BETWEEN:

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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)(8) of the *Rules of Civil Procedure*

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Tab 1

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

B E T W E E N:

MERIDIAN CREDIT UNION LIMITED

Applicant

-and-

VANDERMEER GREENHOUSES LTD.

Respondent

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

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 Wednesday December 6, 2017 at 10:00 a.m., or as soon after that time as the Motion can be heard at the court house, 330 University Avenue, 8th Floor, Toronto, Ontario, M5G 1R7.

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

THE MOTION IS FOR:

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

- (b) An Order approving the activities and conduct of the Receiver and its legal counsel to date, as disclosed in the Seventh Report of the Receiver dated November 30, 2017 (the “**Seventh Report**”);
- (c) An Order approving the Receiver’s R&D Statement (as defined below);
- (d) An Order approving the fees and disbursements of the Receiver and its former legal counsel, to date, as set out in the Seventh Report; and
- (e) Such further and other relief as to this Honourable Court may seem just.

THE GROUNDS FOR THE MOTION ARE:

- (a) Zeifman Partners Inc. was appointed as Receiver of the Respondent, Vandermeer Greenhouses Ltd. (“**Vandermeer**”) pursuant to the Order of the Honourable Mr. Justice Spence of the Ontario Superior Court of Justice dated February 21, 2014 (the “**Initial Order**”), on the Application of the Applicant, Meridian Credit Union Limited (“**Meridian**”);
- (b) The Receiver seeks approval of its fees and disbursements as well as those of its legal counsel, Fogler, Rubinoff LLP, which has carriage of certain proceedings before the Normal Farm Practices Protection Board, and Miller Thomson LLP, which has carriage of the balance of the receivership matters;
- (c) The fees of the Receiver and its counsel are fair and reasonable;

- (d) The Receiver seeks approval of its conduct as disclosed in the Seventh Report. The Receiver has conducted itself and the affairs of Vandermeer in accordance with the Initial Order and the other Orders issued in this proceeding;
- (e) Section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985 c. B-3, as amended;
- (f) Section 101 of the *Courts of Justice Act*, R.S.O. 1990 c. C.43, as amended;
- (g) Rule 37 of the *Rules of Civil Procedure*; and
- (h) Such further and other grounds as the lawyers may advise.

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

- (i) Seventh Report of the Receiver dated November 30, 2017; and
- (j) Such further and other evidence as the lawyers may advise and this Honourable Court may permit.

November 30, 2017

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RCP-E 37A (July 1, 2007)

MERIDIAN CREDIT UNION LIMITED
Applicant

-and-

VANDERMEER GREENHOUSES LTD.
Respondent

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT
TORONTO

NOTICE OF MOTION

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Tab 2

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

B E T W E E N:

MERIDIAN CREDIT UNION LIMITED

Applicant

and

VANDERMEER GREENHOUSES LTD.

Respondent

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

**SEVENTH 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 **Appendix “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 was a cut flower chrysanthemum grower located in Niagara-on-the-Lake, Ontario. Vandermeer's primary production area was 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 owned and operated an anaerobic digestion facility capable of producing over 8,000 kwh of electricity a day.

3. All of Vandermeer's property has been sold. The receivership is continuing for the sole purpose of completing the NFPPB Proceeding (as defined below).

PURPOSE OF REPORT

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

- (a) Approving the activities and conduct of the Receiver and its counsel as disclosed herein;
- (b) Approving the Receiver's R&D Statement (as defined below);
- (c) Approving the fees and disbursements of the Receiver for services rendered for the period between February 1, 2017 and October 31, 2017;
- (d) Approving the fees and disbursements of the Receiver's legal counsel, Fogler, Rubinoff LLP, for services rendered for the period between June 21, 2017 and November 1, 2017; and
- (e) Approving the fees and disbursements of the Receiver's legal counsel, Miller Thomson LLP, for services rendered for the period between March 24, 2017 and October 25, 2017.

TERMS OF REFERENCE

5. In preparing this Seventh Report and making the comments herein the Receiver has relied upon information prepared or provided by the Respondent and information from other third-party sources (collectively, the “**Information**”). Certain of the information contained in this Seventh Report may refer to, or is based on, the Information. As the Information has been provided by various third parties or has been obtained from documents filed with the Court in this matter, the Receiver has relied on the Information and, to the extent possible, has reviewed the Information for reasonableness. However, the Receiver has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Generally Accepted Assurance Standards pursuant to the Canadian Institute of Chartered Accountants Handbook and accordingly, the Receiver expresses no opinion or other form of assurance in respect of the Information.

6. Unless otherwise stated, all dollar amounts set out in this Sixth Report are expressed in Canadian dollars.

RECEIVER'S ACTIVITIES

7. Since the filing of the Sixth Report of the Receiver dated March 27, 2017 (the “**Sixth Report**”), a copy of which is attached hereto as **Appendix “B”** (without appendices), the Receiver has engaged in the following activities:

- (a) Continued defending proceedings commenced by the Zirger Group (as defined in the Sixth Report) before the Normal Farm Practices Protection Board (the “**NFPPB**”);

- (b) Responded to the Motion regarding costs purportedly commenced by the Zirger Group;
- (c) Responded to the JR Application (as defined below) commenced by the Zirger Group; and
- (d) Communicated with Vandermeer's creditors and other stakeholders;

STATUS OF NFPPB PROCEEDING

8. Since the date of the First Report, the Receiver has been defending against an Application brought by the Zirger Group before the NFPPB (the “**NFPPB Proceeding**”) regarding the operation of the Vandermeer greenhouse and anaerobic digester. Several potential purchasers expressed concern that the relief sought by the Zirger Group in the NFPPB Proceeding could have a material impact on the future operation of the Vandermeer greenhouse. Consequently, the pendency of the NFPPB Proceeding made it very difficult to sell the Property.

9. The hearing of the NFPPB Proceeding was commenced in October 2015, and required approximately 21 full days of hearings. Oral submissions were completed in June 2016. The proceeding had been stalled due to unforeseen complications with respect to the delivery of transcripts of the *viva voce* evidence in the proceeding that delayed the parties from completing their respective written closing arguments. However, the Board has now addressed the issue and the balance of the matter has been scheduled.

10. Pursuant to the Orders of the Board dated September 22, 2017 and October 11, 2017, the Zirger Group is to deliver its final argument by December 22, 2017, the Receiver is to deliver its final argument by February 2, 2018, and the Zirger Group is to deliver any reply to the Receiver’s

final argument by February 16, 2018. Copies of the Board's Orders dated September 22, 2017 and October 11, 2017 are attached hereto as **Exhibits "C"** and **"D"**, respectively.

11. The Receiver will provide a full report to this Honourable Court regarding the NFPPB Proceeding upon its completion and the rendering of the NFPPB's decision.

ZIRGER GROUP JUDICIAL REVIEW APPLICATION

12. Pursuant to a Notice of Application dated October 24, 2016, the Zirger Group commenced an Application for Judicial Review (the **"JR Application"**) seeking an Order, among other things, quashing the Board's Order of August 12, 2016, pursuant to which the Board ruled that:

- (a) the Zirger Group and its counsel had been disrespectful to the Board and had acted in bad faith;
- (b) the Zirger Group was prohibited from bringing any further motions without leave; and
- (c) the Zirger Group had to pay an amount of \$2,500 to the Receiver in respect of costs.

13. Attached hereto as **Appendix "E"** and **"F"**, respectively, are copies of the Notice of Application dated October 24, 2016 and the Board's Order dated August 12, 2016. The Board's Order awarded, among other things, costs in the amount of \$2,500 against the Zirger Group in favour of the Receiver, which amount remains unpaid.

14. By letter dated November 28, 2017 from Cassandra Kirewskie to Stan Berger, the Zirger Group requested Mr. Berger's availability for a hearing of the JR Application.

ZIRGER GROUP MOTION RE: COSTS

15. By facsimile transmission dated August 29, 2017, the Zirger Group served a Motion Record ostensibly returnable October 26, 2017 pursuant to which the Zirger Group sought, among other things, costs in respect of the NFPPB Proceeding on a substantial indemnity basis, notwithstanding the fact that the NFPPB Proceeding is ongoing. Attached hereto as **Appendix "G"** is a copy of the Motion Record served by the Zirger Group.

16. Counsel to the Receiver subsequently learned that the Zirger Group had not taken any steps with the Commercial List office to set down its Motion for October 26, 2017 and consequently, would not be proceeding on that date.

17. By email dated October 25, 2017, the Receiver's counsel advised the Zirger Group's counsel of a number of available dates in December 2017 and January 2018. Attached as **Appendix "H"** is a copy of an email dated October 25, 2017 from Gregory Azeff of Miller Thomson LLP, counsel to the Receiver, to Cassandra Kirewskie of Marshall Kirewskie, counsel to the Zirger Group. To date, the Zirger Group has not responded to the email.

RECEIPTS & DISBURSEMENTS

18. Attached hereto as **Appendix "I"** is a copy of the Receiver's statement of receipts and disbursements for the period between February 21, 2017 and October 31, 2017 (the "**R&D Statement**").

RECEIVER'S BORROWING CERTIFICATES

19. The previously-outstanding Receiver's Borrowing Certificates have been repaid in full by the Receiver.

RECEIVER AND COUNSEL ACCOUNTS

20. The Receiver seeks approval of its fees and disbursements as well as those of its legal counsel:

- (a) Fogler, Rubinoff LLP, which is representing the Receiver in the NFPPB Proceeding; and
- (b) Miller Thomson LLP, which is representing the Receiver in respect of all other matters.

21. The Receiver's accounts for the period between February 1, 2017 and October 31, 2017 include the amounts of \$41,403.00 plus disbursements of \$148.82 plus Harmonized Sales Tax ("HST") of \$5,401.74 totalling \$44,261.31 (the "**Receiver's Accounts**"). Attached hereto as **Appendix "J"** is the Affidavit of Allan Rutman of Zeifman Partners LLP sworn November 28, 2017, incorporating copies of the Receiver's Accounts, as well as a summary of the personnel, hours and hourly rates of the Receiver.

22. The accounts of the Receiver's legal counsel, Fogler, Rubinoff LLP, for the period between June 21, 2017 and November 1, 2017 include the amounts of \$44,360.00 in respect of fees plus disbursements of \$724.02 and HST of \$5,860.93, for a total of \$50,944.95 (the "**Fogler Accounts**"). Attached hereto as **Appendix "K"** is the Affidavit of Chloe Eng of Fogler, Rubinoff LLP, sworn November 7, 2017, incorporating copies of the Fogler, Accounts, as well as a summary of the personnel, hours and hourly rates.

23. The accounts of the Receiver's legal counsel, Miller Thomson LLP, for the period between March 24, 2017 and October 25, 2017 include the amounts of \$10,953.00 in respect of fees plus

disbursements of \$960.17 and HST of \$1,527.91, for a total of \$13,441.08 (the “**MT Accounts**”). Attached hereto as **Appendix “L”** is the Affidavit of Alina Stoica of Miller Thomson LLP, sworn November 30, 2017, incorporating copies of the MT Accounts, as well as a summary of the personnel, hours and hourly rates

CONCLUSION

24. 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) Approving the Receiver's R&D Statement;
- (c) Approving the Receiver's Accounts; and
- (d) Approving the Fogler Accounts; and
- (e) Approving the MT Accounts.

November 30, 2017



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

Tab A

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE MR.) FRIDAY, THE 21ST
JUSTICE SPENCE) DAY OF FEBRUARY, 2014

MERIDIAN CREDIT UNION LIMITED

Applicant

-and-

VANDERMEER GREENHOUSES LTD.

Respondent

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

ORDER

THIS APPLICATION for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "BIA") and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "CJA") appointing Zeifman Partners Inc. as receiver (in such capacities, the "Receiver") without security, of all of the assets, undertakings and properties of Vandermeer Greenhouses Ltd. (the "Debtor") acquired for, or used in relation to a business carried on by the Debtor, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavits of Bernie Huber sworn January 31, 2014 and February 19, 2014 and the Exhibits thereto and on hearing the submissions of counsel for the Applicant and the Lawyers for Richard Zirger and Judi Zirger, no one appearing for ~~[NAME]~~ ^{any other person on the service list} although duly served as appears from the affidavit of service of Jaime Henderson sworn February 11, 2014 and February 20, 2014 and on reading the consent of Zeifman Partners Inc. to act as the Receiver,

SERVICE

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

APPOINTMENT

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

RECEIVER'S POWERS

3. THIS COURT ORDERS that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- (b) to receive, preserve, and protect of the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;

- (c) to manage, operate, and carry on the business of the Debtor, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtor;
- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtor or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor;
- (g) to settle, extend or compromise any indebtedness owing to the Debtor;
- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order;
- (i) to undertake environmental or workers' health and safety assessments of the Property and operations of the Debtor;
- (j) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtor, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby

conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;

- (k) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
- (l) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,
 - (i) without the approval of this Court in respect of any transaction not exceeding \$50,000.00, provided that the aggregate consideration for all such transactions does not exceed \$100,000.00; and
 - (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;

and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act*, [or section 31 of the Ontario *Mortgages Act*, as the case may be,] shall not be required, and in each case the Ontario *Bulk Sales Act* shall not apply.

- (m) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (n) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (o) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;

- (p) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtor;
- (q) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtor;
- (r) to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have; and
- (s) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtor, and without interference from any other Person.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

4. THIS COURT ORDERS that (i) the Debtor, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "Persons" and each being a "Person") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request.

5. THIS COURT ORDERS that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or

affairs of the Debtor, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "Records") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

6. THIS COURT ORDERS that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

NO PROCEEDINGS AGAINST THE RECEIVER

7. THIS COURT ORDERS that no proceeding or enforcement process in any court or tribunal (each, a "Proceeding"), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY

8. THIS COURT ORDERS that no Proceeding against or in respect of the Debtor or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtor or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

9. THIS COURT ORDERS that all rights and remedies against the Debtor, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Receiver or the Debtor to carry on any business which the Debtor is not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtor from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH THE RECEIVER

10. THIS COURT ORDERS that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Debtor, without written consent of the Receiver or leave of this Court.

CONTINUATION OF SERVICES

11. THIS COURT ORDERS that all Persons having oral or written agreements with the Debtor or statutory or regulatory mandates for the supply of goods and/or services, including

without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Debtor are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and that the Receiver shall be entitled to the continued use of the Debtor's current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Debtor or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

RECEIVER TO HOLD FUNDS

12. THIS COURT ORDERS that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "Post Receivership Accounts") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

EMPLOYEES

13. THIS COURT ORDERS that all employees of the Debtor shall remain the employees of the Debtor until such time as the Receiver, on the Debtor's behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

PIPEDA

14. THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "Sale"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtor, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

LIMITATION ON ENVIRONMENTAL LIABILITIES

15. THIS COURT ORDERS that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, "Possession") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "Environmental Legislation"), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

LIMITATION ON THE RECEIVER'S LIABILITY

16. THIS COURT ORDERS that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

RECEIVER'S ACCOUNTS

17. THIS COURT ORDERS that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the "Receiver's Charge") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

18. THIS COURT ORDERS that the Receiver and its legal counsel shall pass its accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

19. THIS COURT ORDERS that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the normal rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

FUNDING OF THE RECEIVERSHIP

20. THIS COURT ORDERS that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$250,000.00 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "Receiver's Borrowings Charge") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

21. THIS COURT ORDERS that neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

22. THIS COURT ORDERS that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule "A" hereto (the "Receiver's Certificates") for any amount borrowed by it pursuant to this Order.

23. THIS COURT ORDERS that the monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

GENERAL

24. THIS COURT ORDERS that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

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

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

27. THIS COURT ORDERS that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

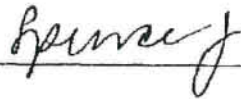
28. THIS COURT ORDERS that the Plaintiff shall have its costs of this motion, up to and including entry and service of this Order, provided for by the terms of the Plaintiff's security or, if not so provided by the Plaintiff's security, then on a substantial indemnity basis to be paid by the Receiver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

29. THIS COURT ORDERS that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

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

FEB 21 2016

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:

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

-and-

MERIDIAN CREDIT UNION LIMITED

Defendant

Plaintiff

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDINGS COMMENCED AT
TORONTO

ORDER

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

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

Lawyers for the plaintiff

J. ROSS MACFARLANE
LSUC# 36417N

Tab B

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

BETWEEN:

MERIDIAN CREDIT UNION LIMITED

Applicant

and

VANDERMEER GREENHOUSES LTD.

Respondent

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

**SIXTH 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 **Appendix “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 was a cut flower chrysanthemum grower located in Niagara-on-the-Lake, Ontario. Vandermeer's primary production area was 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 owned and operated an anaerobic digestion facility capable of producing over 8,000 kwh of electricity a day.

PURPOSE OF REPORT

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

- (a) Approving the activities and conduct of the Receiver and its counsel as disclosed herein;
- (b) Authorizing the Receiver to make a distribution to Meridian Credit Union Limited (“**Meridian**”) in an amount of up to \$1 million;
- (c) Approving the Receiver's R&D Statement (as defined below);
- (d) Approving the fees and disbursements of the Receiver for services rendered for the period between May 1, 2015 and January 31, 2017; and
- (e) Approving the fees and disbursements of the Receiver's legal counsel, Fogler, Rubinoff LLP, for services rendered for the period between May 1, 2015 and March 13, 2017.

TERMS OF REFERENCE

4. In preparing this Sixth Report and making the comments herein the Receiver has relied upon information prepared or provided by the Respondent and information from other third-party sources (collectively, the “**Information**”). Certain of the information contained in this Sixth Report may refer to, or is based on, the Information. As the Information has been provided by various third parties or has been obtained from documents filed with the Court in this matter, the

Receiver has relied on the Information and, to the extent possible, has reviewed the Information for reasonableness. However, the Receiver has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Generally Accepted Assurance Standards pursuant to the Canadian Institute of Chartered Accountants Handbook and accordingly, the Receiver expresses no opinion or other form of assurance in respect of the Information.

5. Unless otherwise stated, all dollar amounts set out in this Sixth Report are expressed in Canadian dollars.

RECEIVER'S ACTIVITIES

6. Since the filing of the Fifth Report of the Receiver dated July 19, 2016 (the “**Fifth Report**”), a copy of which is attached hereto as **Appendix “B”** (without appendices), the Receiver has engaged in the following activities:

- (a) Continued negotiating sale transaction terms with prospective purchaser of the Vandermeer property (collectively, the “**Property**”);
- (b) Continual communication with prospective purchaser regarding occupancy of the Property prior to completion of the sale;
- (c) Completed the sale of the Property;
- (d) Continued defending proceedings commenced by the Zirger Group (as defined in the Fifth Report) before the Normal Farm Practices Protection Board (the “**NFPPB**”);

- (e) Communicated with Vandermeer's creditors and other stakeholders;
- (f) Communicated with suppliers, insurance company and utility companies of sale transaction closing date;
- (g) Managed various operational matters including staffing and human resources as well as the purchase of mixers and accessories for operations;
- (h) Repaired and replaced digester equipment as required from time to time, including replacing mixers and cables on certain existing mixers;
- (i) Filed applications and negotiated grants through the AgriStability income-replacement program;
- (j) Managed repairs in respect of ordinary wear and tear to the greenhouse and trucking fleet;
- (k) Negotiated with farmers in respect of digestate delivery for the anaerobic digester;
- (l) Communicated with the Ontario Ministry of the Environment and Climate Change (the "MOE") on an ongoing basis in respect of Vandermeer's Certificate of Approval;
- (m) Continuous communication with MOE and OMAFRA; and
- (n) Engaged and managed consultants as required from time to time.

STATUS OF NFPPB PROCEEDING

7. Since the date of the First Report, the Receiver has been defending against an Application brought by the Zirger Group before the NFPPB (the “**NFPPB Proceeding**”) regarding the operation of the Vandermeer greenhouse and anaerobic digester. Several potential purchasers expressed concern that the relief sought by the Zirger Group in the NFPPB Proceeding could have a material impact on the future operation of the Vandermeer greenhouse. Consequently, the pendency of the NFPPB Proceeding made it very difficult to sell the Property.

8. The hearing of the NFPPB Proceeding was commenced in October 2015, and required approximately 21 full days of hearings. Oral submissions were completed in June 2016. The parties continue to await transcripts of the *viva voce* evidence in the proceeding before submitting written closing arguments.

9. The Receiver will provide a full report to this Honourable Court regarding the NFPPB Proceeding upon its completion and the rendering of the NFPPB’s decision.

COMPLETION OF THE SALE

10. Pursuant to the Initial Order, the Receiver was authorized to market the Property for sale. The Receiver continued its efforts to sell the Property since the date of the First Report. Details of the steps taken by the Receiver are set out in the Fifth Report.

11. The Receiver entered into an Agreement of Purchase and Sale dated February 5, 2016 and a Reinstatement and Amendment Agreement dated June 22, 2016 (together, the “**Purchase Agreement**”, which term also includes the amendments and reinstatements described at paragraph 12 below), pursuant to which Lakshana Kumarage o/a fresh 4 you agreed to purchase from the Receiver substantially all of the Property, subject to the approval of this Honourable Court.

12. The Purchase Agreement was subsequently amended and restated pursuant to a Reinstatement and Amendment of Agreement of Purchase and Sale dated December 23, 2016 and a Reinstatement and Amendment of Agreement of Purchase and Sale dated January 31, 2017 between the Receiver and 2507626 Ontario Inc. (the "**Purchaser**"), a nominee corporation on behalf of Lakshana Kumarage o/a fresh 4 you.

13. Attached hereto as **Appendix "C"** is a copy of the Purchase Agreement (including the subsequent amendments and reinstatements referenced above).

14. Pursuant to the Order of the Honourable Mr. Justice Pattillo of the Court dated July 28, 2016, as amended by the Order of the Honourable Mr. Justice Myers of the Court dated January 13, 2017 (together, the "**Approval & Vesting Order**"), the Court approved the Purchase Agreement. Attached hereto as **Appendix "D"** is a copy of the Approval & Vesting Order.

15. The transaction contemplated in the Purchase Agreement (the "**Transaction**") closed on January 27, 2017, and the Property was sold to the Purchaser for a purchase price in the amount of \$4.1 million.

16. The Purchase Agreement and the Approval & Vesting Order provide for the vesting in the Purchaser of the Debtor's right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Receiver to the Purchaser of a certificate (the "**Receiver's Certificate**") confirming, among other things, completion of the Transaction. Attached hereto as **Appendix "E"** is a copy of the executed Receiver's Certificate delivered January 31, 2017.

RECEIPTS & DISBURSEMENTS

17. Attached hereto as **Appendix "F"** is a copy of the Receiver's statement of receipts and disbursements for the period between February 21, 2014 and March 7, 2017 (the "**R&D Statement**").

RECEIVER'S BORROWING CERTIFICATES

18. The previously-outstanding Receiver's Borrowing Certificates have been repaid in full by the Receiver.

INTERIM DISTRIBUTION

19. The Receiver is currently holding funds in the amount of \$361,518 after repayment of the Receiver's Borrowing Certificates. Meridian claims the amount of approximately \$8.9 million (including enforcement costs and interest), which is secured by a mortgage in the maximum principal amount of \$5,000,000 (the "**Meridian Mortgage**"). The Receiver has received an opinion letter from its legal counsel confirming the validity and enforceability of the Meridian Mortgage.

20. The Receiver seeks authorization to make an interim distribution to Meridian in an amount of up to \$1 million.

RECEIVER AND COUNSEL ACCOUNTS

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

22. The Receiver's accounts for the period between May 1, 2015 and January 31, 2017 include the amounts of \$277,056.50 plus disbursements of \$4,137.02 plus Harmonized Sales Tax ("**HST**")

of \$36,555.16 totalling \$317,748.68 (the “**Receiver's Accounts**”). Attached hereto as **Appendix “G”** is the Affidavit of Allan Rutman of Zeifman Partners LLP sworn March 7, 2017, incorporating copies of the Receiver's Accounts, as well as a summary of the personnel, hours and hourly rates of the Receiver.

23. The accounts of the Receiver's legal counsel, Fogler, Rubinoff LLP, for the period between May 1, 2015 and March 13, 2017 include the amounts of \$348,947.36 in respect of fees plus disbursements of \$17,129.11 and HST of \$47,536.13, for a total of \$413,612.60 (the “**Counsel Accounts**”). Attached hereto as **Appendix “H”** is the Affidavit of Stephanie De Caria of Fogler, Rubinoff LLP, sworn March 23, 2017, incorporating copies of the Counsel Accounts, as well as a summary of the personnel, hours and hourly rates of the Receiver's former legal counsel.

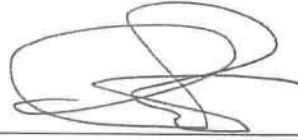
CONCLUSION

24. 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 make a distribution in an amount of up to \$1 million to Meridian;
- (c) Approving the Receiver's R&D Statement;

- (d) Approving the Receiver's Accounts; and
- (e) Approving the Counsel Accounts.

March 27, 2017



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

VANDERMEER GREENHOUSES LTD.

Respondent

MERIDIAN CREDIT UNION LIMITED

Applicant

-and-

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT
TORONTO

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

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

Greg Azeff (LSUC #45324C)

Tel: 416-365-3716

Fax: 416-941-8852

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

Tab C

**Normal Farm Practices
Protection Board**

1 Stone Road West, 2nd Floor
Guelph, Ontario N1G 4Y2
Tel: (519) 826-3433, Fax: (519) 826-4232
Email: NFPPB@ontario.ca

**Commission de protection des pratiques
agricoles normales**

1 Stone Road West, 2^e étage
Guelph (Ontario) N1G 4Y2
Tél.: (519) 826-3433, Téléc.: (519) 826-4232
Courriel: NFPPB@ontario.ca



September 22, 2016

Mr. Paul Marshall and Ms. Cassandra Kirewskie
Marshall Kirewskie Lawyers
88 Dunn St. Suite 201
Oakville, ON L6J 3C7

Dear Mr. Marshall and Ms. Kirewskie:

**Re: Dell v. Zeifman Partners Inc.
Request for Review of Decision Dated August 12, 2016**

I have reviewed the August 24, 2016 request for a review of Vice-Chair Walker's August 12, 2016 decision and order which includes an order with respect to costs and statements regarding the addition of parties. The aspects of the request that pertain to the disclosure or not of a possible sale of the operation are not relevant to my consideration of the request to review the August 12 decision and order.

The Board's review power is authorized by the *Statutory Powers and Procedures Act* and its Rules and not the *Farming and Food Production Protection Act* as suggested in the requester's materials.

I am considering the review request and the response without contacting the hearing panel. Any further submissions regarding this request are not necessary. Note that I will not be making any comment on what the final outcome of the hearing of the application will be.

In considering the procedural fairness and notice of the Board convening on August 9, 2016 aspects of the request for a review, I find that the August 12 decision and order was not a review of the Secretary's July 26 email, as is suggested by the requester, and that the Secretary's email of July 26 merely contained procedural directions for the motion on the instruction of the hearing panel Chair. The August 12 decision and order did not change the procedural directions, and was simply an order made after a Board-convened hearing date. Board staff can and do provide directions to parties when instructed to do so by the presiding Chair or Vice Chair.

I also note that, despite the claim that Rules 4 and 5 do not apply in this situation, Rules 4 and 5 do apply to proceedings including hearing events called by the Board. Their application is not contingent on a motion being validly brought within a proceeding.

Furthermore, with respect to the procedural fairness aspect of the request, the consideration of the timing and content of the communications regarding the applicant's July notice of motion and convening on the 9th are relevant. A synopsis of the key communications is found in the August 12 decision and order. In particular, from the entire contents of the Background section and the first paragraph under the heading Reasons and Decision, it is abundantly clear that a date had been convened by the Board due to the request of the applicants, and the applicants did not request the date be cancelled. The August 2 email of the Board Secretary clearly stated that the Board planned to convene the hearing on August 9 at 9:30 am. The respondents were obviously aware of this as they stated in their letter of August 8 that they would attend unless informed otherwise. It ought to have been evident that the Board would be proceeding on the 9th. The fact that the notice of motion was not re-served does not preclude the Board from convening.

The early morning email on the date of the hearing which indicated that "unless we hear otherwise by 8:45 am, it is not our intention to appear in Guelph later today" was sent too late for the Board or the respondent to respond before the set hearing time. That statement also suggests that the applicant's representative was cognizant of the plans to convene at 9:30 am and that they, or another person on their behalf, could have attended on 45 minutes' notice.

If there was any confusion on the part of the applicant's counsel that remained despite the August 2 email from the Secretary, such confusion only resulted from the applicant's counsel not obtaining an appointment to hear the motion in the first place, as is required by Rule 17. Despite the Board not being available on the applicant's counsel's first choice of date, the Board planned to convene and did convene as soon as possible thereafter, because of the request by the applicant for a date as soon as possible to hear a motion to add a party at this late stage of the proceeding.

It is appropriate for the Board to address adding purchasers or possible purchasers of the operation and to give directions at this stage of the proceeding, even on its own initiative. The August 12 decision and order indicates that the panel wished to comment on the issue of adding a party at this stage, and did so. It should be evident from that decision and order that such a motion would have no reasonable prospect of success due to the unfairness to the prospective purchaser who would not have had timely notice of the proceedings, would not have had an opportunity to hear and respond to the evidence, and would not know the case they had to meet. The language used in the Act also is clear that orders are only possible in a s. 5 application against the farmer who causes an alleged disturbance and not successor farmers. This does not mean that a decision on the merits of the application could not be made and still be meaningful even if a sale did occur, but it does make the giving of directions on this issue appropriate. This is especially so as motions to add purchasers could be made, or made then abandoned, several times, even after all the evidence has been heard after several hearing days.


While the notice of motion is a nullity, it was only so because of the disregard of the need for obtaining a date for the motion. Despite the fact that the notice was not re-served, the Board may convene a hearing on its own initiative and did so in this case. The applicant's argument

regarding Rule 15 on this point does not reflect the wording of that Rule or its correct application.

For the above reasons I find that further review of, or cancelling, varying or suspending, the August 12 decision and order is not advisable.

The respondent has requested costs for responding to this request for a review. While it may be that the applicant's counsel thought that the August 9 date was not going forward, such confusion resulted from not obtaining a motion date and assuming that the Board cannot convene without the motion being re-served, despite the August 2 email. Despite this, I am not prepared to award further costs against the applicants for this request.

Sincerely,

A handwritten signature in black ink, appearing to read "Kirk W. Walstedt". The signature is fluid and cursive, with the first name "Kirk" being the most prominent.

Kirk W. Walstedt
Chair

Dated at Maidstone, Ontario this 22nd day of September, 2016.

cc. Stanley Berger, Fogler Rubinoff LLP

Tab D

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October 11, 2017

BY Courier

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Dear Sirs and Madam:

**Re: Dell et al. v. Zeifman Partners Inc.
Normal Farm Practices Protection Board No. 2015-02**

I have reviewed the September 25, 2017 submission of the Respondent regarding a possible extension of the timelines for the final written submission. I have also reviewed the October 6, 2017 letter from the Applicants' counsel. Further submissions in the request for a review were not invited and I did not consider this letter in making this final order in the request for review. I do note, however, that the questions asked by counsel in the fifth paragraph have already been responded to, except for the request for a copy of the agreement with the court reporter. Not previously responding to this inquiry was an oversight. There was no formal agreement with the court reporter, just a request for a quote from a service provider in the area that had been retained in the past. Transcripts should be obtained directly from the court reporter, as has been previously directed.

Regarding the Respondents submission, I do agree that there should be timely conclusion to litigation. However, delays in obtaining complete transcripts were beyond the control of the Board and both parties. While subsequent to the end of the hearing of evidence in this matter motions were brought by the Applicants as noted by the Respondent on page 2 of their submission, these motions were made when transcripts were still outstanding. Those motions have now been addressed by the Board.

While the Applicants are free to pursue their application judicial review, concerns about adding parties or adducing new evidence if further time elapses before a final decision is rendered have been fully addressed by the Board. There is no need for further motions as this matter is at the stage for closing arguments. The Respondent's argument regarding disregard for Board orders to pay costs is an issue that the Respondent can pursue as part the judicial review, respecting the 2016 orders, or through other means. Attempting to re-litigate matters found to be without merit and disregarding costs orders are of concern to the Board, but these issues do not establish any prejudice to the Respondent if the time for making the final written submission is extended.

Without any compelling argument as to harm that could be suffered by the Respondent, who apparently is no longer the operator, and considering that the Applicants themselves have stated there is no urgency in rendering a final decision on their application, the timelines for serving and filing the written final argument shall remain as stated in the last paragraph of my September 21, 2017 order.

Sincerely,



Kirk W. Walstedt, Chair
Normal Farm Practices Protection Board

cc: Glenn C. Walker, Vice-Chair