



This is the first affidavit of
Erin Welte in this case and
was made on December 4, 2023

No. S-240358
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN

NATIONAL BANK OF CANADA

PETITIONER

AND

**1326 MANN FARM INC., K P DRYWALL LTD., 13 MANN FARMS B.C. LTD.,
and DYKE VALLEY BERRY FARMS LTD.**

RESPONDENTS

AFFIDAVIT

I, Erin Welte, of Calgary, in the Province of Alberta, senior manager, SWEAR THAT:

1. I am a Senior Manager, Special Loans at the National Bank of Canada (the "**Bank**"), the petitioner in this proceeding, and as such I have personal knowledge of the matters deposed to in this affidavit, except where I depose to a matter based on information from an informant I identify, in which case I believe that both the information from the informant and the resulting statement are true.

2. This affidavit is made in support of the orders sought by the Bank in its petition filed in this proceeding, including an order that FTI Consulting Canada Inc. ("**FTI**") be appointed as receiver (the "**Receiver**") of the property, assets, and undertakings of the Respondents pursuant to section 243(1) of the *Bankruptcy and Insolvency Act* (Canada) (the "**BIA**") and section 39 of the *Law and Equity Act* (British Columbia).

I. INTRODUCTION

3. The Bank provided 1326 Mann Farm Inc. ("**Mann Farm**") with a line of credit to a maximum amount of CAD \$300,000, a term loan of \$11,492,000 (the "**Property Term Loan**"), a term loan of \$2,500,000 (the "**Shares Term Loan**"), and Mastercard credit cards to a maximum amount of \$50,000 each pursuant to the terms of an Offer of Financing dated January 14, 2022 (the "**2022 Offer of Financing**"). The 2022 Offer of Financing facilitated the purchase of 1251773 B.C. Ltd. ("**125 Ltd.**") by Mann Farm. 125 Ltd. which had previously entered into an Offer of Financing dated June 29, 2020 (the "**2020 Offer of Financing**") with the Bank on a similar terms to the 2022 Offer of Financing.

4. A copy of the 2022 Offer of Financing is attached to Affidavit #1 of Jennifer Alambre made September 21, 2023 (the "**Alambre Affidavit**") as **Exhibit "A"**. A copy of the 2020 Offer of Financing is attached to the Alambre Affidavit as **Exhibit "Y"**.

5. The security underlying both the 2022 Offer of Financing and the 2020 Offer of Financing included a mortgage on a farm property owned by Dyke Valley Berry Farms Ltd. ("**Dyke Valley**") located at 8201 Dyke Road, Abbotsford, B.C. (the "**Farm**"). Dyke Valley was owned by 125 Ltd. and is now owned by Mann Farm.

6. Mann Farm's interests in the Farm, associated fixtures and other property that form part of Mann Farm's business and operations are collectively referred to in this affidavit as the "**Farm Properties**".

7. The Respondent Mann Farm is a British Columbia corporation that ostensibly operates the Farm Properties. Copies of a BC Registry Services company summary for the Respondents are attached to the Alambre Affidavit as **Exhibits "UU", "VV", "WW", and "XX"**.

8. Mann Farm's obligations to the Bank under the 2022 Offer of Financing are guaranteed by K P Drywall Ltd. ("**K P Drywall**"), 13 Mann Farms B.C. Ltd. ("**13 Mann Farms**"), Gurmeet Mann, and Komalpreet Mann (the "**Guarantors**").

9. To secure the payment of its obligations to the Bank, Mann Farm and certain Guarantors granted to the Bank a comprehensive security package over assets, undertakings, and property, as further described below, including a first-ranking collateral mortgage over lands

on which the Farm Properties operate and a general security agreement with respect to the personal property of Mann Farm and certain Guarantors.

10. Mann Farm's obligations under the 2022 Offer of Financing were also secured by an Acknowledgement and Confirmation Agreement wherein 125 Ltd. and Dyke Valley agreed that security documents executed in relation to the 2020 Offer of Financing also secured the 2022 Offer of Financing. A copy of Acknowledgement and Confirmation Agreement is attached to the Alambre Affidavit as **Exhibit "O"**.

11. Mann Farm has been in default of its obligations under the Offer of Financing since at least August 29, 2023. As of November 30, 2023, the amount owing to the Bank is \$13,761,823.37 (not including accruing fees and costs including legal and financial advisor fees (the "**Indebtedness**").

12. Mann Farm has not complied with the Bank's September 13, 2023, demand for payment of the Indebtedness.

13. Notwithstanding the Respondents being in default of their obligations for over four (4) months and its failure to comply with a demand for payment for approximately four (4) months, the Bank has to date refrained from exercising its contractual rights to enforce its security.

14. Despite the four (4) month period that has been granted by the Bank, the Respondents have not repaid the Bank and has not refinanced, obtained investment in, and/or sold its interest in the Farm Properties to meet its obligations to the Bank.

15. Over the past four (4) months, in addition to its payment default, Mann Farm has failed to follow through on several of its commitments to the Bank, including by neglecting to comply with its obligations to provide the Bank with routine financial information required for the Bank to assess whether its security may be at risk. These failures amount to further breaches of contractual commitments to the Bank.

16. Further to its contractual entitlement, the Bank seeks the immediate appointment of a receiver over the the assets, undertakings, and property of the Respondents to protect the Bank's secured position, prevent against the potential impairment of the value of the Respondents' property, and assume conduct of the sale process for the Farm Properties in the interest of all affected stakeholders.

II. MANN FARM'S BUSINESS AND PROPERTY

A. *Business Operations*

17. There is limited information available to the Bank about Mann Farm's current business and operations. The Farm has changed hands a number of times in recent years. It was purchased in 2020 by Jaswant Mann through 125 Ltd. Shortly thereafter Mann Farm was incorporated by Gurmeet Mann and Komalpreet Mann (each of an unknown relation to Jaswant Mann).

18. As per the information known to the Bank, the Farm is approximately 161.67 acres. It has historically been used as a cranberry farm. Gurmeet Mann and Komalpreet Mann have been involved in other blueberry farms in Aldergrove and Mission. The Bank has been told by Mann Farm that the Farm is transitioning to support blueberry crops rather than cranberry. As of 2022, the Bank by Mann Farm was told that the Farm was comprised of approximately 75 acres of blueberries and 65 acres of cranberries.

19. During 2020, based on information provided to the Bank, 125 Ltd. reported sales of approximately \$1,600,000 million in relation to the Farm. However, the financial statements containing this information did not meet the requirements of the 2020 Offer of Financing.

20. During 2023, Mann Farm has not proceeded to provide the Bank with information about its plans during the year's growing season or the proceeds of sales from the growing season.

B. *The Farm Properties*

21. The Farm is purportedly operated by Mann Farm and located near the Fraser River in Abbotsford with a PID of 024-200-981 and a legal description of Lot 1 Section 28 Township 14 New Westminster District Plan LMP38638.

22. The Farm is ostensibly an operating agricultural property. According to information provided to the Bank, it had previously been operated as a cranberry and blueberry farm.

23. Improvements on the Farm include a 6,000 square foot cannery and a 6,000 square foot shed. There are also various berms to support the croplands and some other

structures. Inspections of the Farm have also shown farming machinery, equipment and vehicles on the Farm.

III. THE BANK LOANS AND SECURITY

A. *Credit Facilities*

24. The Bank originally entered into the 2020 Offer of Financing with 125 Ltd. which provided for multiple credit facilities. Specifically:

- (a) the Bank provided 125 Ltd. with a line of credit to a maximum amount of CAD \$300,000;
- (b) the Bank provided 125 Ltd. with a term loan of \$11,979,000; and
- (c) the Bank provided 125 Ltd. with MasterCard credit cards to a maximum amount of \$50,000;

(collectively, the “**2020 Obligations**”).

25. Following a corporate restructuring, the Bank later entered into the 2022 Offer of Financing with Mann Farm which provided for multiple credit facilities. Specifically:

- (a) the Bank provided Mann Farm with a line of credit to a maximum amount of CAD \$300,000 (the “**Line of Credit**”);
- (b) the Bank provided Mann Farm with a term loan of \$11,492,000 (the “**Property Term Loan**”);
- (c) the Bank provided Mann Farm with a line of credit of \$2,500,000 (the “**Shares Term Loan**”); and
- (d) the Bank provided Mann Farm with MasterCard credit cards to a maximum amount of \$50,000 (the “**MasterCards**”).

26. In summary, the following credit facilities (the “**Credit Facilities**”) were made available by the Bank to 125 Ltd. and/or Mann Farm pursuant to the 2020 Offer of Financing and the 2022 Offer of Financing:

Credit Number	Purpose of Facility	Description	Authorized Amount
2020 Offer of Financing			
1	Finance day-to-day operations	Line of credit	\$300,000
2	Finance the acquisition of Dyke Valley Berry Farms Ltd.	Term loan	\$11,979,000
3	Finance day-to-day purchases made with credit cards	MasterCards	\$50,000
2022 Offer of Financing			
4	Finance day-to-day operations	Line of credit	\$300,000
5	Assumption of existing term loan set out in the 2020 Offer of Financing, the balance of which is \$11,492,000 which is to be maintained by Mann Farm after the purchase of shares of 125 Ltd.	Term loan	\$11,492,000
6	Finance the acquisition by Mann Farm of the all shares in 125 Ltd.	Term loan	\$2,500,000
7	Finance day-to-day purchases made with credit cards	MasterCards	\$50,000

B. Security for the Credit Facilities

27. To secure its obligations under the Offer of Financing, Mann Farm granted the Bank security (the “**Security**”) over its assets, undertakings, and property.

28. The Guarantors have each granted an unlimited guarantee with respect to Mann Farm’s obligations to the Bank under the 2022 Offer of Financing (the “**Guarantees**”). Copies of the Guarantees is attached as **Exhibit “E”, “F”, “G”, “H”, “Q”, “R”, “S”, and “T”** to the Alambre Affidavit.

29. Mann Farm granted a general security agreement to secure its obligations to the Bank under the 2022 Offer of Financing (the “**Mann Farm GSA**”). The guarantors K P Drywall

and 13 Mann Farms also granted a general security agreement to secure the obligations to the Bank under the 2022 Offer of Financing (the "**K P Drywall GSA**", and "**13 Mann Farms GSA**", respectively). Copies of the Mann Farm GSA, K P Drywall GSA, and 13 Mann Farms GSA are attached as **Exhibits "B", "C", and "D"**, to the Alambre Affidavit.

30. The Bank has registered the GSAs in the British Columbia Personal Property Registry (the "**PPR**"). PPR search results for Mann Farm, K P Drywall, 13 Mann Farms, and Dyke Valley are attached as **Exhibits "QQ", "RR", "SS", and "TT"** to the Alambre Affidavit.

31. Mann Farm and the Guarantors have also granted the Bank certain other security, including:

- (a) Subordination Agreements between the Bank and Mann Farm and/or the Guarantors, copies of which are attached as **Exhibits "I", "J", "K", "L", "U", "V", "W", and "X"** to the Alambre Affidavit;
- (b) An Environmental Indemnity Agreement between the Bank, Mann Farm, 125 Ltd., K P Drywall, Dye Valley, Gurmeet Mann, and Komalpreet Mann, a copy of which is attached as **Exhibit "M"** to the Alambre Affidavit;
- (c) An Assignment of Insurance Agreement designating the Bank as beneficiary under insurance policies covering the Farm. Copies of these documents are attached as **Exhibit "N"** to the Alambre Affidavit.

32. Pursuant to the Acknowledgement and Confirmation Agreement, Mann Farm, 125 Ltd. and Dyke Valley also agreed that all obligations, debts, and liabilities owing to the Bank in connection with the 2022 Offer of Financing and/or the 2020 Offer of Financing would be secured by the security that included:

- (a) A general security agreement granted by 125 Ltd. dated July 15, 2020 and registered under base registration number 346135M (the "**125 Ltd. GSA**");
- (b) A general security agreement granted by Dyke Valley. dated July 15, 2020 and registered under base registration number 389399M (the "**Dyke Valley GSA**" and together with the Mann Farm GSA, the K P Drywall GSA, the 13 Mann Farms, and the 125 Ltd. GSA, the "**GSAs**"); and

- (c) An unlimited mortgage and assignment of rents charging the lands located on the Farm granted by Dyke Valley and registered under registration numbers CA9349298 and CA 8349399.

33. The Security includes a first-ranking collateral mortgage on the Farm and the pursuant to a Mortgage executed July 15, 2020 (the "**Mortgage**"), a copy of which is attached to the Alambre Affidavit as **Exhibits "FF"** and "**GG**" along with a copy of a Land Title Office search print showing the registration of the Mortgage. Also attached as **Exhibit "HH"** to the Alambre Affidavit are the Bank's standard mortgage terms (MT140002) to which the Mortgage is subject.

34. Land Titles Office search prints for the Farm is attached as **Exhibit "PP"** to the Alambre Affidavit.

V. THE RESPONDENT'S PAYMENT DEFAULT AND FAILURES TO MAKE REQUIRED DISCLOSURES

35. Pursuant to the 2022 Offer of Financing, Mann Farm and the Bank agreed to an expiry date of July 31, 2023, for the Property Term Loan. By August 1, 2023, Mann Farm did not repay the Property Term Loan, nor did the Bank agree to extend the term.

36. Separate from the expiry of the Property Term Loan, Mann Farm has been in default of other obligations under the Offer of Financing. Mann Farm had failed to provide a growers statement within 120 days of fiscal year-end, failed to provide review engagement financial statements for Mann Farm within 120 days of fiscal year-end for 2022 or 2021, failed to provide notice to reader financial statements for K P Drywall and 13 Mann Farms within 120 days of fiscal year-end, failed to pay property tax arrears on the Farm, among other things.

37. In the period from August 2023 to the present, the Bank has made efforts in an attempt to work with Mann Farm to resolve payment difficulties, remedy the payment defaults, and to obtain further information from Mann Farm that would allow the Bank to assess whether its Security is in jeopardy.

38. On August 1, 2023, I emailed Mann Farm regarding the expiry of the term of the Property Term Loan and advised of various reporting defaults. On August 1, I received a phone call from Gurmeet Mann and Gurleen, who I was informed was his daughter, where we discussed that financial reporting had not been provided for two years and the loan had expired. On August 2, 2023, Gurmeet Mann asked whether the Bank would accept "notice to reader" financial

statements rather than “review engagement” financial statements and I advised that the Bank would not. A copy of the August 2, 2023, email is attached as **Exhibit “JJ”** to the Alambre Affidavit.

39. On August 29, 2023, counsel for the Bank sent a letter to Mann Farm, Dyke Valley, 125 Ltd., and the Guarantors advising of various defaults. Specifically:

- (a) Mann Farm had not paid the term loan upon the expiry of its term on July 31, 2023;
- (b) Mann Farm and Dyke Valley were required to present a Growers Statement to the Bank within 120 days of fiscal year end. No Growers Statement had been provided by Mann Farm nor Dyke Valley for year-end 2021 and 2022;
- (c) Review Engagement financial statements for Mann Farm were to be delivered to the Bank within 120 days of fiscal year end. No such financial statements had been provided for year-end 2021 and 2022;
- (d) Notice to reader financial statements for K P Drywall were to be delivered to the Bank within 120 days of fiscal year end. No such financial statements had been provided for year-end 2021 and 2022;
- (e) Notice to reader financial statements for 13 Mann Farms were to be delivered to the Bank within 120 days of fiscal year end. No such financial statements have been provided for year-end 2021 and 2022;
- (f) An annual cash flow sweep from K P Drywall in the amount of \$100,000 was to be applied to permanently reduce the Share Term Loan which has not occurred for 2021 and 2022;
- (g) Due the reporting defaults the Bank had not been able to determine compliance with the fixed charge coverage ratio of not less than 1.20 for both 2021 and 2022 as it requires financial information of K P Drywall and 13 Mann Farm;
- (h) Property taxes were in arrears on the Farm for 2022 and accruing in 2023; and
- (i) Dyke Valley and/or Mann Farm were to maintain insurance coverage on the Property against loss or damages and send a copy of all insurance policies covering the Farm and renewals upon receipt to the Bank. No current or renewed

insurance policies have been provided to National for the Property for the years 2022 and 2023.

A copy of the August 29, 2023, email and enclosed letter is attached as **Exhibit "KK"** to the Alambre Affidavit.

40. On September 11, 2023, Gurmeet Mann provided notice to reader financial statements for 2022 for Mann Farm and K P Drywall. Copies of these financial statements are attached as **Exhibit "FFF"**.

41. On September 13, 2023, counsel for the Bank delivered a letter demanding payment of all outstanding indebtedness and providing notices pursuant to section 244 of the *Bankruptcy and Insolvency Act* and pursuant to section 21 of the *Farm Debt Mediation Act*. A copy of the April 17, 2023, email enclosing these notices is attached as **Exhibit "LL"** to the Alambre Affidavit.

42. On September 14 and 19, 2023, Gurmeet Mann attended a branch of the Bank and attempted to draw \$90,000 from the operating line of credit.

43. On September 21, 2023, I delivered a letter to Mann Farm advising that it would no longer be able to draw on the MasterCards or the Line of Credit. A copy of the September 21, 2023, email is attached as **Exhibit "MM"** to the Alambre Affidavit.

44. On October 5, 2023, Harsimranjeet Mann contacted counsel for the Bank and advised that they were retained by Mann Farm. A copy of the October 5, 2023, email is attached as **Exhibit "NN"** to the Alambre Affidavit.

45. On October 27, 2023, counsel for the Bank advised counsel for Mann Farm that the Bank intended to commence enforcement proceedings as no response had been received since to the September 13, 2023 letter demanding payment other than the email on October 5. Counsel for Mann Farm advised that they would an "affirmative answer" about its ability to refinance by November 30, 2023. Counsel for the Bank responded that the Bank would need more information to assess the sources, timing, and terms of potential alternative financings and the Bank would be proceeding with preparing enforcement materials. A copy of the October 27 to November 7, 2023, email chain is attached as **Exhibit "OO"** to the Alambre Affidavit.

46. As of the date of this affidavit, no further information of any kind has been provided by Mann Farm or its counsel about its efforts to refinance.

47. The Bank's efforts to engage with Mann Farm has not been successful, as confirmed by the ongoing defaults. As of the date this affidavit was made, Mann Farm has not repaid the Credit Facilities notwithstanding the expiry of the term of the Property Term Loan and the demand for payment. Further, Mann Farm has not remedied the defaults identified and defined in **Exhibit "KK"** of the Alambre Affidavit.

48. Section 8.1 of the Standard Mortgage Terms (MT140002) attached as **Exhibit "HH"** to the Alambre Affidavit states that, among other things, a default occurs under the Mortgage if the mortgagor fails to perform any of the Obligations of any Agreement or the mortgage or the mortgagor breaches any promise, condition or agreement made to the Bank under the mortgage or any Agreement.

49. Obligations is defined in the Standard Mortgage Terms (MT140002) as including all obligations, indebtedness and liabilities of the mortgagor to the Bank. Agreement is defined as including any agreement or document that gives rise to any Obligations.

50. Section 9.2 of the Standard Mortgage Terms (MT140002) states that, among other things, the Bank may demand immediate payment or performance of any or all of the "Obligations", in which case such "Obligations" become immediately due and payable.

51. Section 9.2(i) of the Standard Mortgage Terms (MT140002) states that, among other things, the Bank may appoint a receiver upon default.

52. Section 5.1 of the GSAs granted by Mann Farm, K P Drywall, 13 Mann Farms, Dyke Valley, and 125 Ltd. attached as **Exhibits "B", "C", "D", "Q", "AA", and "BB"** to the Alambre Affidavit state that the debtor will be in default if, among other things, the debtor does not pay the Bank when payable any sum owing under the Obligations or is in default under any other agreement with the Bank.

53. Section 5.3(i) of the GSAs states that the Bank may appoint a receiver upon default.

54. Section 1 of the unlimited guarantee of the Guarantors attached as **Exhibits "E", "F", "G", "H", "Q", "R", "S", "T"** to the Alambre Affidavit states that the signatory guarantees payment to the Bank of all future debts and liabilities of Mann Farm.

55. The amounts owed by Mann Farm to the Bank as of November 30, 2023, under the 2022 Offer of Financing, are set out on the payout statement attached my affidavit as **Exhibit "A"**.

56. I confirm that the only amount owing for early payment is the prepayment interest as set out in Exhibit A.

57. I know of no facts which would constitute a defense to the claim or part of the claim of the Bank against Mann Farm for payment of the Indebtedness.

VII. THE NEED FOR A COURT-APPOINTED RECEIVER

58. Mann Farm has failed to repay the Indebtedness to the Bank as required under the 2022 Offer of Financing. Notwithstanding the four (4) month grace period granted by the Bank, Mann Farm has not found a solution to its financial problems.

59. Over a period of approximately four (4) months, the Bank has made efforts to engage with Mann Farm and provided it with ample opportunity to restructure its financial affairs in a manner that would allow them to meet their obligations to the Bank. However, during this grace period Mann Farm has not managed to reduce its liability to the Bank.

60. In addition to their long-standing Defaults, the expiry of its term, and the failure to respond to demands for payment, Mann Farm has in the Bank's view also not been fully forthcoming in providing the Bank with required documentation and information about the status of its business and financial affairs.

61. Specifically, Mann Farm's conduct in, among other things:

- (a) providing incomplete or non-verifiable information about farm and business operations;
- (b) not fully remedying numerous defaults despite ample opportunity;

- (c) not complying with various reporting obligations in respect of financial statements;
and
- (d) not diligently pursuing commercially reasonable sale opportunities for the Farm Properties or to secure refinancing,

have led the Bank to lose confidence in Mann Farm's willingness to work diligently, transparently, and in good faith to satisfy their obligations to the Bank.

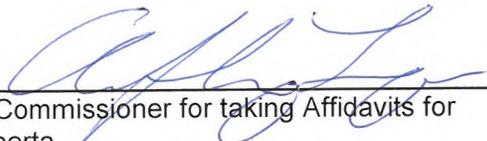
62. The Bank has determined that it now needs to take steps to enforce its Security through the appointment of a receiver, a contractual right that the Bank negotiated when executing the 2022 Offer of Financing and obtaining security in the form of the Mortgage and the GSAs. The Bank is of the view that such action is necessary to protect and preserve the value of its Security. In particular, the opaque nature of Mann Farm's business requires the Receiver to be appointed over the Respondents' assets, undertakings, and properties (over which the Bank has Security) to ensure that the status quo of Mann Farm's business is preserved during the enforcement process.

63. In the Bank's view, the appointment of the Receiver with the powers to require access to the Mann Farm's business and financial information is necessary to obtain an accurate picture of Mann Farm's business, its value, and available options for realization. Additionally, it is the Bank's position that it is necessary and expedient that the Farm Properties be sold. The Bank accordingly requests that, upon appointment, the Receiver have the powers necessary to pursue a transparent, orderly, and timely sale process for the Farm Properties under the supervision of this Court.

IX. CONCLUSION

64. The Bank has given Mann Farm many months since expiry of the Property Term Loan on July 31, 2023, for payment to repay the amounts owing under the 2022 Offer of Financing and to pursue options for restructuring their financial affairs. At this stage, the Bank has lost confidence in Mann Farm's ability to either meet its obligations to the Bank or to diligently pursue a commercially reasonable refinancing of the Farm Properties. The Bank is of the view that the appointment of a Receiver is just and convenient in the circumstances.

SWORN BEFORE ME at Calgary, Alberta
on December 4, 2023



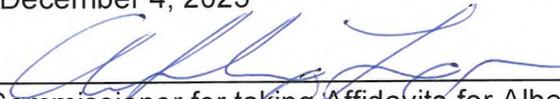
A Commissioner for taking Affidavits for
Alberta

Anthony Lyons
Barrister & Solicitor



Erin Welte

This is Exhibit "A" referred to in Affidavit #1 of
Erin Welte made before me at Calgary, Alberta
on December 4, 2023

A handwritten signature in blue ink, appearing to read 'Anthony Lyons', written over a horizontal line.

A Commissioner for taking Affidavits for Alberta

Anthony Lyons
Barrister & Solicitor

 NATIONAL BANK		
1326 MANN FARM INC.		
Indebtedness to National Bank of Canada		
November 30, 2023		
	Credit facility loan # 060025631470 (P + 1.75%)	\$197,385.41
	Accrued Interest	\$4,038.15
	Per diem: \$48.4	
	Term Loan # 020655132372 (3.55%)	\$2,409,490.70
	Accrued Interest	\$22,497.38
	Prepayment interest	\$21,325.64
	Per diem: \$234.35	
	Term Loan # 020655136572 (3.70%)	\$10,914,382.94
	Accrued Interest	\$173,703.15
	Per diem : \$1,106.39	
	Subtotal	\$13,742,823.37
	Late reporting Fees	\$19,000.00
	Total	\$13,761,823.37

(1) Subject to balance fluctuations daily.

(2) Subject to Prime Rate change. Canadian Prime is 7.20% as of the date of this statement.

(3) Subject to additional legal and professional fees