

SUPREME COURT
OF BRITISH COLUMBIA
VANCOUVER REGISTRY

JAN 18 2024



S - 2 4 0 3 5 8
No.
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

PETITION TO THE COURT

ON NOTICE TO:

1326 Mann Farm Inc.
12101 84th Avenue
Surrey, BC, V3W 3G4

K P Drywall Ltd.
13371 61A Avenue
Surrey, BC, V3X 1L9

13 Mann Farms B.C. Ltd.
12101 84th Avenue
Surrey, BC, V3W 3G4

Dyke Valley Berry Farms Ltd.
8391 152A Street
Surrey, BC, V3S 8M8

This proceeding is brought for the relief set out in Part 1 below by National Bank of Canada.

Orders, including orders granting the relief claimed, may be made against you, without any further notice to you, if you fail to file the Response to Petition within the time for response.

Time for Response To Petition

A Response to Petition must be filed and served on the Petitioner,

- (a) if you were served with the Petition anywhere in Canada, within 21 days after that service,

- (b) if you were served with the Petition anywhere in the United States of America, within 35 days after that service,
- (c) if you were served with the Petition anywhere else, within 49 days after that service, or
- (d) if the time for response has been set by order of the court, within that time.

(1)	The address of the registry is: 800 Smithe Street Vancouver, BC V6Z 2E1
(2)	The ADDRESS FOR SERVICE of the Petitioner is: Blake, Cassels & Graydon LLP Barristers & Solicitors 3500 - 1133 Melville Street Vancouver, BC V6E 4E5 Attention: Peter L. Rubin and Danny Urquhart
	E-mail address for service of the Petitioner: vancouver.service@blakes.com; and peter.rubin@blakes.com; and danny.urquhart@blakes.com (delivery to all three email addresses is required for service)
(3)	The name and office address of the Petitioner's lawyer is: Blake, Cassels & Graydon LLP Barristers & Solicitors 3500 - 1133 Melville Street Vancouver, BC V6E 4E5 Attention: Peter L. Rubin and Danny Urquhart

CLAIM OF THE PETITIONER

Part 1: ORDER SOUGHT

1. An order (the "**Receivership Order**") substantially in the form attached as **Schedule "A"** appointing FTI Consulting Canada Inc. ("**FTI**") as receiver of the property, assets, and undertakings of 1326 Mann Farm Inc. ("**Mann Farm**"), K P Drywall Ltd. ("**K P Drywall**"), 13 Mann Farms B.C. Ltd. ("**13 Mann Farms**"), and Dyke Valley Berry Farms Ltd. ("**Dyke Valley**").
2. Such further and other relief as counsel may advise and this Court deems to be just and convenient in the circumstances.

Part 2: FACTUAL BASIS

Introduction

3. The Petitioner, National Bank of Canada (the “**Bank**”), is a Canadian Schedule I Bank under the *Bank Act*, SC 1991, c 46.
4. Mann Farm is a debtor to the Bank with a registered office of 12101 84th Avenue, Surrey, B.C.
5. K P Drywall is a debtor to the Bank with a registered office of 13371 61A Avenue, Surrey, B.C.
6. 13 Mann Farms is a debtor to the Bank with a registered office of 12101 84th Avenue, Surrey, B.C.
7. Dyke Valley is a debtor to the Bank with a registered office of 8391 152A Street, Surrey, B.C.
8. K P Drywall Ltd., 13 Mann Farms BC Ltd., Gurmeet Mann, and Komalpreet Mann are guarantors of the financings between Mann Farm and the Bank.
9. Pursuant to an Offer of Financing dated January 14, 2022 (the “**2022 Offer of Financing**”), the Bank provided Mann Farm:
 - (a) a line of credit to a maximum amount of CAD \$300,000 to finance day-to day operations;
 - (b) a term loan of CAD \$11,492,000 (the “**Property Term Loan**”) to pay-out a pre-existing term loan originally in the amount of CAD \$11,970,000 in favour of 1251773 B.C. Ltd. (“**125 Ltd.**”) which was to be maintained by Mann Farm upon purchase of the shares of 125 Ltd.;
 - (c) a term loan of CAD \$2,500,000 to finance the acquisition of the shares in 125 Ltd.; and
 - (d) Mastercard credit cards to a maximum amount of CAD \$50,000 to finance day-to-day operations.

10. Pursuant to the 2022 Offer of Financing, general security agreements were granted in favour of the Bank by Mann Farm, K P Drywall and 13 Mann Farms.

11. The 2022 Offer of Financing followed an earlier Offer of Financing between 125 Ltd. and the Bank dated June 29, 2020 (the "**2020 Offer of Financing**"). The 2020 Offer of Financing was secured by a 1st ranking mortgage on the lands owned by Dyke Valley and located at 8201 Dyke Road, Abbotsford, B.C. (the "**Farm**") as well as general security agreements granted by Dyke Valley and 125 Ltd. in favour of the Bank.

12. Pursuant to an Acknowledgement and Confirmation Agreement dated June 28, 2022, Mann Farm, 125 Ltd. and Dyke Valley agreed that certain security executed in relation to the 2020 Offer of Financing would secure the obligations under the 2022 Offer of Financing.

13. On February 8, 2022, 125 Ltd. amalgamated into Mann Farm.

14. The term of the Property Term Loan expired on July 31, 2023, without renewal, extension nor repayment.

15. As a result of the failure to repay the Bank in accordance with the 2022 Offer of Financing, the Bank has been forced to, and has effectively, provided financing to Mann Farm for much longer, and at a much lower interest rate, than it had contractually agreed to when entering into the 2022 Offer of Financing.

16. Further, Mann Farm has been in default of various obligations under the Offer of Financing and related documents for a number of months (the "**Defaults**"). These defaults have accumulated over time.

17. On September 13, 2023, the Bank exercised its right to demand payment of Mann Farm's outstanding indebtedness as well demand payment from guarantors, including K P Drywall, 13 Mann Farms, and Dyke Valley. To date, Mann Farm, K P Drywall, 13 Mann Farms, and Dyke Valley have refused or otherwise been unable or unwilling to make payment in response to the demand and the expiry of the Property Term Loan.

18. The Bank has provided the Respondents with ample opportunity to remedy the Defaults, find a solution to their financial problems or restructure their financial affairs in a manner that would allow them to meet their obligations to the Bank.

19. Notwithstanding the extended period provided to them by the Bank, the Respondents remain indebted to the Bank under the 2022 Offer of Financing for \$13,761,823.37 (excluding accruing fees and costs including legal and financial advisor fees) as of November 30, 2023.

20. Among the persistent issues of particular concern to the Bank in relation to the Defaults, is that Mann Farm has not been fully forthcoming in providing the Bank with routine financial information required for the Bank to assess whether its security may be at risk – in breach of its obligations to the Bank.

21. Having refrained from the exercise of its contractual rights (including under the Mortgage and GSA as defined below) to enforce its rights, including its contractual right to appoint a receiver, for approximately five (5) months, the Bank has determined to take enforcement steps including through the appointment of a receiver.

The Farm

22. 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.

23. 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.

24. 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.

The Credit Facilities

25. 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**”).

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

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

27. 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	Term loan	\$11,492,000

	Farm after the purchase of shares of 125 Ltd.		
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

Security for the Credit Facilities

28. K P Drywall, 13 Mann Farms, Gurmeet Mann, and Komalpreet Mann have each granted an unlimited guarantee with respect to Mann Farm’s obligations to the Bank under the 2022 Offer of Financing (the “**2022 Guarantees**”).

29. In addition, Dyke Valley provided an unlimited guarantee with respect to 125 Ltd.’s obligations to the Bank (the “**Dyke Valley Guarantee**”, and together with the 2022 Guarantees, the “**Guarantees**”).

30. To secure its obligations under the 2022 Offer of Finance and Guarantees, the Respondents also granted the Bank security (the “**Security**”) over their assets, undertakings, and property.

31. The Security includes, among other things, a first-ranking collateral mortgage on the Farm (the “**Mortgage**”). The Respondents further each granted a general security agreement (the “**GSAs**”) to secure their obligations to the Bank.

The Respondents’ Defaults

32. The Respondents have been in persistent and escalating defaults of their obligations under the 2022 Offer of Financing and related agreements.

33. Pursuant to the 2022 Offer of Financing, Mann Farm and the Bank contractually 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.

34. Separate from the expiry of the Property Term Loan, Mann Farm has been in default of other obligations under the Offer of Financing. In particular, 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, 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.

35. 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, among other matters, assess whether its Security is in jeopardy.

36. On August 1, 2023, Mann Farm was advised that the term of the Property Term Loan had expired and there were various reporting defaults under the 2022 Offer of Financing.

37. On August 29, 2023, counsel for the Bank sent a letter to the Respondents 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.

38. On September 13, 2023, the Bank through counsel delivered a letter to the Respondents, which among other things:

- (h) demanded payment of the outstanding amounts under each of the Credit Facilities, including pursuant to the Guarantees, inclusive of accrued interest, fees, indemnities, legal fees and other amounts payable which at that time amounted to \$13,644,811.74; and
- (i) reserved all rights and remedies including under the Mortgage and GSAs.

39. On the same day, the Bank delivered notices pursuant to section 244 of the *Bankruptcy and Insolvency Act* and pursuant to section 21 of the *Farm Debt Mediation Act* to the Respondents.

40. Notwithstanding demands for payment, the Respondents have failed to pay the outstanding obligations to the Bank.

41. In addition to the long-standing defaults and expiry of the Term Loan, Mann Farm has also not been fully forthcoming in providing the Bank with required documentation and information about the status of its business and financial affairs, or acted diligently to refinance the Farm Properties. Specifically, Mann Farm's conduct in, among other things:

- (a) providing 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.

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

42. In the circumstances, the Bank has determined that the appointment of the Receiver is necessary to (a) gain access to Mann Farm's business and financial information to assess the Bank's security, (b) obtain an accurate picture of Mann Farm's business and operations, and (c) pursue and implement a transparent, orderly, and timely sale process for the business or the Farm Properties under the supervision of this Court.

43. The Bank has delivered to the Respondents notices of intention to enforce security as required by section 244 of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 (the "BIA") and pursuant to section 21 of the *Farm Debt Mediation Act*, (S.C. 1997, c. 21).

Part 3: LEGAL BASIS

Jurisdiction to Grant the Requested Relief

44. The jurisdiction of this Court to grant the Receivership Order is found in subsection 39(1) of the *Law and Equity Act*, R.S.B.C. 1996, c. 253 and section 243 of the BIA, among other statutes.

The Test for Appointing a Receiver

45. Subsection 39(1) of the *Law and Equity Act* allows for the appointment of a receiver where it is "just or convenient" to do so.

46. Section 243 of the BIA provides that this Court may appoint a receiver to do any or all of the following if it considers it to be "just or convenient" to do so:

- (a) take possession of all or substantially all of the inventory, accounts receivable or other property of an insolvent person or bankrupt that was acquired for or used in relation to a business carried on by the insolvent person or bankrupt;

- (b) exercise any control that the court considers advisable over that property and over the insolvent person's or bankrupt's business; or
- (c) take any other action that the court considers advisable.

47. In *Maple Trade Finance Inc. v. CY Oriental Holdings Ltd.*, this Court identified several factors that may inform a holistic determination of whether it is "just and convenient" to appoint a receiver, including:

- (a) whether irreparable harm might be caused if no order were made, although it is not essential for a creditor to establish irreparable harm if a receiver is not appointed, particularly where the appointment of a receiver is authorized by the security documentation;
- (b) the risk to the security holder taking into consideration the size of the debtor's equity in the assets and the need for protection or safeguarding of the assets while litigation takes place;
- (c) the nature of the property;
- (d) the apprehended or actual waste of the debtor's assets;
- (e) the preservation and protection of the property pending judicial resolution;
- (f) the balance of convenience to the parties;
- (g) the fact that the creditor has the right to appoint a receiver under the documentation provided for the loan;
- (h) the enforcement of rights under a security instrument where the security-holder encounters or expects to encounter difficulty with the debtor and others;
- (i) the principle that the appointment of a receiver is extraordinary relief which should be granted cautiously and sparingly;
- (j) the consideration of whether a court appointment is necessary to enable the receiver to carry out its duties more efficiently;
- (k) the effect of the order upon the parties;
- (l) the conduct of the parties;
- (m) the length of time that a receiver may be in place;
- (n) the cost to the parties;

- (o) the likelihood of maximizing return to the parties;
- (p) the goal of facilitating the duties of the receiver.

Maple Trade Finance Inc. v. CY Oriental Holdings Ltd., 2009 BCSC 1527 at para. 25.

48. In applying these factors, this Court has held that the contractual right of a secured creditor to apply for a receiver under a security agreement is a 'strong factor' in support of the imposition of a receiver and that 'considerable weight' can be placed on that contractual right.

Maple Trade Finance Inc. v. CY Oriental Holdings Ltd., 2009 BCSC 1527 at para. 26; see also See also Canadian Imperial Bank of Commerce v. Can-Pacific Farms Inc. 2012 BCSC 437 at para. 16; Bank of Montreal v. Gian's Business Centre Inc., 2016 BCSC 2348 at paras. 22 – 23 and Ward Western Holdings Corp. v. Brosseuk, 2022 BCCA 32, paras. 65-66

It is Just and Convenient to Appoint a Receiver in the Circumstances

49. In the present case, the Bank should be entitled to the appointment of a receiver over the property, assets, and undertakings of Respondents. The Mortgage and GSAs have been in default since as least September 13, 2023 and the term of the loan expired five (5) months ago. The Respondents have each provided an express covenant agreeing to the appointment of a receiver in the event of default. This Court has held that it should not ordinarily interfere with a contract between the parties. There are no compelling commercial or other reason why the Receivership Order ought not to be made.

50. In addition, it is just and convenient in the present circumstances to appoint a receiver over Mann Farm's assets, undertakings, and property on the terms sought by the Bank for, among others, the following reasons:

- (a) Mann Farm is indebted to the Bank for approximately \$13,761,823.37 as of November 2023 and has defaulted on its obligations to the Bank under the 2022 Offer of Financing, the Guarantees, Mortgage, the GSAs, and other related agreements;
- (b) The Property Term Loan has been outstanding for over five (5) months after expiry of its term at an interest rate that was not intended to apply for such a period;

- (c) the Bank has given the Respondents more than five (5) months to restructure their financial affairs in a manner that would allow it to meet their obligations to the Bank;
- (d) the Bank has lost confidence in Mann Farm's willingness to work diligently, transparently, and in good faith to satisfy its obligations to the Bank;
- (e) the Bank has virtually no transparency into the operations, assets or affairs of the Respondents and limited ability to verify the diminution of its security;
- (f) the Mortgage and the GSAs grant the Bank the contractual right to appoint a receiver with the powers sought in the Receivership Order;
- (g) the opaque nature of Mann Farm's business, and the nature of the Farm Properties requires the Receiver to be appointed over Mann Farm's 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 and sale process;
- (h) it is necessary and expedient that the business or Farm Properties be sold and that any marketing and sale process with respect to the Farm Properties be transparent, orderly, timely, and undertaken under the supervision of this Court;
- (i) the appointment of the Receiver with the powers to require access to the Respondents' business and financial information is necessary to obtain an accurate picture of their businesses, to protect the Bank's security interest, limit its losses, and prevent further dissipation of assets;
- (j) the appointment of a receiver will protect the interests of all stakeholders; and
- (k) the balance of convenience favours the appointment of a receiver in these circumstances.

51. For the above reasons, the Bank submits that it is just and convenient that this Court appoint FTI as receiver of all the Respondents' assets, undertakings, and property on the terms set out in the proposed Receivership Order.

52. The Bank further relies on Rules 10-2 (Receivers) and 13-5 (Sales by Court) of the *Supreme Court Civil Rules*, BC Reg 168/2009 as well as section 282 of the *Business Corporations Act*, [SBC 2002] C. 57.

Part 4: MATERIALS TO BE RELIED ON

- 53. Affidavit #1 of Erin Welte, made on December 4, 2023;
- 54. Affidavit #1 of Jennifer Alambre, made on December 4, 2023; and
- 55. Such other materials as counsel may advise and this Court allows.

The Petitioner estimates that the hearing of the Petition will take 30 minutes.

Date: January 18, 2024

Signature of Danny Urquhart
Lawyer for Petitioner

<i>To be completed by the court only:</i>	
Order made	
<input type="checkbox"/> in the terms requested in paragraphs of Part 1 of this petition	
<input type="checkbox"/> with the following variations and additional terms:	
.....	
.....	
.....	
Date:[dd/mmm/yyyy].....
	Signature of [] Judge [] Master

Schedule "A"

No.
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

ORDER MADE AFTER APPLICATION

(APPOINTMENT OF RECEIVER)

BEFORE THE HONOURABLE

)
)
)
)

, 2024

ON THE APPLICATION of the Petitioner 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 39 of the *Law and Equity Act*, R.S.B.C. 1996 c. 253, as amended (the "**LEA**") appointing FTI Consulting Canada Inc. ("**FTI**") as Receiver (in such capacity, the "**Receiver**") without security, of all of the assets, undertakings and property of 1326 Mann Farm Inc., K P Drywall Ltd., 13 Mann Farms B.C. Ltd., and Dyke Valley Berry Farms Ltd. ("**Debtors**") acquired for, or used in relation to a business carried on by the Debtors, coming on for hearing this day at 800 Smithe Street, Vancouver, British Columbia.

AND ON READING Affidavit #1 of Erin Welte made December 4, 2023 and Affidavit #1 Jennifer Alambre, made December 4, 2023, and the consent of FTI to act as the Receiver; AND ON HEARING Danny Urquhart, counsel for National Bank of Canada; Mary Buttery, K.C., counsel for FTI, and no one else appearing.

THIS COURT ORDERS AND DECLARES that:

APPOINTMENT

1. Pursuant to Section 243(1) of the BIA and Section 39 of the LEA, FTI is appointed Receiver, without security, of all of the assets, undertakings and property of the Debtors, including all proceeds (the "**Property**").

RECEIVER'S POWERS

2. The Receiver is 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 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 receipts and disbursements arising out of or from the Property;
 - (b) to receive, preserve and protect the Property, or any part or parts thereof, including, but not limited to, changing locks and security codes, relocation of Property, engaging independent security personnel, taking physical inventories and placing insurance coverage;
 - (c) to manage, operate and carry on the business of the Debtors, 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 Debtors;
 - (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 Debtors or any part or parts thereof;
 - (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtors and to exercise all remedies of the Debtors in collecting these amounts, including, without limitation, enforcement of any security held by the Debtors;
 - (g) to settle, extend or compromise any indebtedness owing to the Debtors;
 - (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 Debtors, for any purpose pursuant to this Order;
 - (i) to undertake environmental or workers' health and safety assessments of the Property and operations of the Debtors;
 - (j) to initiate, manage and direct all legal proceedings now pending or hereafter pending (including appeals or applications for judicial review) in respect of the

Debtors, the Property or the Receiver, including initiating, prosecuting, continuing, defending, settling or compromising the proceedings;

- (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 considers 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 a single transaction for consideration up to \$500,000 provided that the aggregate consideration for all such transactions does not exceed \$1,000,000, and
 - (ii) with the approval of this Court in respect of any transaction in which the individual or aggregate purchase price exceeds the limits set out in subparagraph (i) above,

and in each such case notice under Section 59(10) of the *Personal Property Security Act*, R.S.B.C. 1996, c. 359 shall not be required;

- (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, free and clear of any liens or encumbrances;
- (n) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver considers appropriate on all matters relating to the Property and the receivership, and to share information, subject to confidentiality terms as the Receiver considers appropriate;
- (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 considered necessary or appropriate by the Receiver, in the name of the Debtors;
- (q) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtors, including, without limitation, the ability to enter into occupation agreements for any property owned or leased by the Debtors;
- (r) to exercise any shareholder, partnership, joint venture or other rights which the Debtors may have;
- (s) to apply for remedies available under the BIA, including to declare or make an assignment into bankruptcy in respect of the Debtors; and
- (t) 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 Debtors, and without interference from any other Person.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

3. Each of (i) the Debtors; (ii) all of the Debtors' 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 (collectively, "**Persons**" and each 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 (excluding Property subject to liens the validity of which is dependent on maintaining possession) to the Receiver upon the Receiver's request.
4. All Persons, other than governmental authorities, 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 Debtors, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (collectively, the "**Records**") in that Person's possession or control. Upon request, governmental authorities shall advise the Receiver of the existence of any Records in that Person's possession or control.
5. Upon request, all Persons shall provide to the Receiver or permit the Receiver to make, retain and take away copies of the Records and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities, provided however that nothing in paragraphs 4, 5, or 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 solicitor client privilege or statutory provisions prohibiting such disclosure.
6. If any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by an 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 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 require including, without limitation, 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. 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 DEBTORS OR THE PROPERTY

8. No Proceeding against or in respect of the Debtors 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 Debtors or the Property are stayed and suspended pending further Order of this Court; provided, however, that nothing in this Order shall prevent any Person from commencing a Proceeding regarding a claim that might otherwise become barred by statute or an existing agreement if such Proceeding is not commenced before the expiration of the stay provided by this paragraph and provided that no further step shall be taken in respect of the Proceeding except for service of the initiating documentation on the Debtors and the Receiver.

NO EXERCISE OF RIGHTS OR REMEDIES

9. All rights and remedies (including, without limitation, set-off rights) against the Debtors, the Receiver, or affecting the Property, are stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that nothing in this Order shall (i) empower the Receiver or the Debtors to carry on any business which the Debtors are not lawfully entitled to carry on, (ii) affect the rights of any regulatory body as set forth in section 69.6(2) of the BIA, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien. This stay and suspension shall not apply in respect of any "eligible financial contract" as defined in the BIA.

NO INTERFERENCE WITH THE RECEIVER

10. 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 Debtors, without written consent of the Receiver or leave of this Court. Nothing in this Order shall prohibit any party to an eligible financial contract from closing out and terminating such contract in accordance with its terms.

CONTINUATION OF SERVICES

11. All Persons having oral or written agreements with the Debtors 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 Debtors are 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 the Receiver shall be entitled to the continued use of the Debtors' 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 Debtors 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. 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. Subject to the employees' right to terminate their employment, all employees of the Debtors shall remain the employees of the Debtors until such time as the Receiver, on the Debtors' behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities of the Debtors, including any successor employer liabilities as referred to in Section 14.06(1.2) of the BIA, other than amounts the Receiver may specifically agree in writing to pay or in respect of obligations imposed specifically on receivers by applicable legislation, including sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*, S.C. 2005, c.47. The Receiver shall be liable for any employee-related liabilities, including wages, severance pay, termination pay, vacation pay, and pension or benefit amounts relating to any employees that the Receiver may hire in accordance with the terms and conditions of such employment by the Receiver. The Receiver is empowered but not obligated to interact with, and provide direction to, individuals who are on the Property, but are not employed by the Debtors, in matters relating to safety, access and use of the Property.

PERSONAL INFORMATION

14. Pursuant to Section 7(3)(c) of the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5 or Section 18(1)(o) of the *Personal Information Protection Act*, S.B.C. 2003, c. 63, the Receiver may 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 Debtors, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

LIMITATION ON ENVIRONMENTAL LIABILITIES

15. Nothing in this Order 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 relating to the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination (collectively "**Environmental Legislation**"), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation.

16. 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 the Receiver is actually in possession.
17. Notwithstanding anything in federal or provincial law, the Receiver is not personally liable in that position for any environmental condition that arises or environmental damage that occurred:
 - (a) before the Receiver's appointment; or,
 - (b) after the Receiver's appointment, unless it is established that the condition arose or the damage occurred as a result of the Receiver's gross negligence or wilful misconduct.
18. Notwithstanding anything in federal or provincial law, but subject to paragraph 17 of this Order, where an order is made which has the effect of requiring the Receiver to remedy any environmental condition or environmental damage affecting the Property, if the Receiver complies with the BIA section 14.06(4), the Receiver is not personally liable for the failure to comply with the order and is not personally liable for any costs that are or would be incurred by any Person in carrying out the terms of the order.

LIMITATION ON THE RECEIVER'S LIABILITY

19. 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:
 - (a) any gross negligence or wilful misconduct on its part; or
 - (b) amounts in respect of obligations imposed specifically on receivers by applicable legislation.

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

20. The Receiver and its legal counsel, if any, are granted a charge (the "**Receiver's Charge**") on the Property as security for the payment of their fees and disbursements, in each case at their standard rates, in respect of these proceedings, whether incurred before or after the making of this Order. 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.

21. The Receiver and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are referred to a judge of the Supreme Court of British Columbia and may be heard on a summary basis.
22. 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 standard 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

23. The Receiver is authorized and 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 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as the Receiver 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 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.
24. 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.
25. The Receiver is 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.
26. 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.

ALLOCATION

27. Any interested party may apply to this Court on notice to any other party likely to be affected for an order allocating the Receiver's Charge and Receiver's Borrowings Charge amongst the Property.

SERVICE AND NOTICE OF MATERIALS

28. The Receiver shall establish and maintain a website in respect of these proceedings at: <http://cfcanada.fticonsulting.com/mannfarm> (the "**Website**") and shall post there as soon as practicable:

- (a) all materials prescribed by statute or regulation to be made publicly available, including pursuant to Rule 10-2 of the *Supreme Court Civil Rules*; and,
 - (b) all applications, reports, affidavits, orders and other materials filed in these proceedings by or on behalf of the Receiver, except such materials as are confidential and the subject of a sealing order or pending application for a sealing order.
29. Any Person who is served with a copy of this Order and that wishes to be served with any future application or other materials in these proceedings must provide to counsel for each of the Receiver and the Applicant a demand for notice in the form attached as Schedule B (the "**Demand for Notice**"). The Receiver and the Applicant need only provide further notice in respect of these proceedings to Persons that have delivered a properly completed Demand for Notice. The failure of any Person to provide a properly completed Demand for Notice releases the Receiver and the Applicant from any requirement to provide further notice in respect of these proceedings until such Person delivers a properly completed Demand for Notice.
30. The Receiver shall maintain a service list identifying all parties that have delivered a properly completed Demand for Notice (the "**Service List**"). The Receiver shall post and maintain an up-to-date form of the Service List on the Website.
31. Any interested party, including the Receiver, may serve any court materials in these proceedings by facsimile or by emailing a PDF or other electronic copy of such materials to the numbers or addresses, as applicable, set out on the Service List. Any interested party, including the Receiver, may serve any court materials in these proceedings by mail to any party on the Service List that has not provided a facsimile number or email address, and materials delivered by mail shall be deemed received five (5) days after mailing.
32. Notwithstanding paragraph 31 of this Order, service of the Petition and any affidavits filed in support shall be made on the Federal and British Columbia Crowns in accordance with the *Crown Liability and Proceedings Act*, R.S.C. 1985, c.C-50 and its regulations for the Federal Crown and the *Crown Proceedings Act*, R.S.B.C. 1996 c.89 in respect of the British Columbia Crown.
33. The Receiver and its counsel are authorised to serve or distribute this Order, any other orders and any other materials as may be reasonably required in these proceedings, including any notices or other correspondence, by forwarding copies by facsimile or by email to the Debtors' creditors or other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of any legal or juridical obligation and notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations*.

GENERAL

34. Any interested party may apply to this Court to vary or amend this Order on not less than seven (7) clear business days' notice to the Service List and to any other party who may be affected by the variation or amendment, or upon such other notice, if any, as this Court may order.

35. The Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.
36. Nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtors.
37. This Court requests the aid, recognition and assistance of any court, tribunal, regulatory or administrative body having jurisdiction, wherever located, to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All such courts, tribunals and regulatory and administrative bodies are 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.
38. The Receiver is authorized and empowered to apply to any court, tribunal or regulatory or administrative body, wherever located, for recognition of this Order and for assistance in carrying out the terms of this Order and 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.
39. The Petitioner shall have its costs of this petition, up to and including entry and service of this Order, as provided for by the terms of the Petitioner's security or, if not so provided by the Petitioner's security, then on a substantial indemnity basis to be paid by the Receiver from the Debtors' estate with such priority and at such time as this Court may determine.
40. Endorsement of this Order by counsel appearing on this application other than the Petitioner is dispensed with.

THE FOLLOWING PARTIES APPROVE OF THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

APPROVED BY:

Signature of Danny Urquhart, lawyer for the
Petitioner

BY THE COURT

DISTRICT REGISTRAR

SCHEDULE "A"

RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT

\$ _____

1. THIS IS TO CERTIFY that FTI Consulting Canada Inc., the Receiver (the "**Receiver**") of all of the assets, undertakings and properties of 1326 Mann Farm Inc., K P Drywall Ltd., 13 Mann Farms B.C. Ltd., and Dyke Valley Berry Farms Ltd. acquired for, or used in relation to a business carried on by the Debtors, including all proceeds thereof (collectively, the "**Property**") appointed by Order of the Supreme Court of British Columbia (the "**Court**") dated the _____ day of _____, 202_ (the "**Order**") made in SCBC Action No. _____, Vancouver Registry 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 _____ 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 the 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 _____.
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 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 under this Certificate in respect of which it may issue certificates under the terms of the Order.

DATED the _____ day of _____, 202_.

FTI Consulting Canada Inc., solely in its capacity as Receiver of the Property, and not in its personal capacity

Per:
Name:
Title:

SCHEDULE "B"

Demand for Notice

TO: National Bank of Canada
c/o Blake, Cassels & Graydon LLP
Attention: Peter Rubin/Danny Urquhart
Email: peter.rubin@blakes.com/danny.urquhart@blakes.com

AND TO: FTI Consulting Canada Inc.
c/o Osler, Hoskin & Harcourt LLP
Attention: Mary Buttery, K.C.
Email: mbuttery@osler.com

Re: In the matter of the Receivership of 1326 Mann Farm Inc., K P Drywall Ltd., 13 Mann Farms B.C. Ltd., and Dyke Valley Berry Farms Ltd.

I hereby request that notice of all further proceedings in the above Receivership be sent to me in the following manner:

1. By email, at the following address (or addresses):

OR

2. By facsimile, at the following facsimile number (or numbers):

OR

3. By mail, at the following address:

Name of Creditor: _____

Name of Counsel (if any): _____

Creditor's Contact Address: _____

Creditor's Contact Phone Number: _____

Action No. _____
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

RECEIVERSHIP ORDER

BLAKE, CASSELS & GRAYDON LLP
Barristers & Solicitors
3500, 1133 Melville Street
Vancouver, BC V6E 4E5
1.604.631.3300
Agent: Dye & Durham

Counsel: Danny Urrquhart
Matter No. 00030237.000388