

THE QUEEN'S BENCH

WINNIPEG CENTRE

IN THE MATTER OF: The Appointment of a Receiver pursuant to Section 243
of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-
3, as amended, and Section 55 of *The Court of Queen's
Bench Act*, C.C.S.M. c. C280

BETWEEN:

ROYAL BANK OF CANADA,

plaintiff,

- and -

KELLER & SONS FARMING LTD. and KELLER
HOLDINGS LTD.,

defendants.

NOTICE OF MOTION
(FINAL DISTRIBUTION AND DISCHARGE)
BEFORE MR. JUSTICE CHARTIER
ON WEDNESDAY, APRIL 20, 2022 at 9:00 a.m.

Thompson Dorfman Sweatman LLP
Barristers and Solicitors
1700 – 242 Hargrave Street
Winnipeg MB R3C 0V1

(Matter No. 0138084 RAM)
(Ross A. McFadyen: 204-934-2378)
(Toll Free: 1-855-483-7529)
(Email: ram@tdslaw.com)

THE QUEEN'S BENCH

WINNIPEG CENTRE

IN THE MATTER OF: The Appointment of a Receiver pursuant to Section 243
of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-
3, as amended, and Section 55 of *The Court of Queen's
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BETWEEN:

ROYAL BANK OF CANADA,

plaintiff,

- and -

KELLER & SONS FARMING LTD. and KELLER
HOLDINGS LTD.,

defendants.

NOTICE OF MOTION

ERNST & YOUNG INC. (the "**Receiver**"), in its capacity as receiver and manager of the defendants, will make a motion before Mr. Justice Chartier on Wednesday, the 20th day of April, 2022 at 9:00 a.m., or as soon after that time as the motion can be heard at the Winnipeg Law Courts Building, 408 York Avenue in Winnipeg, Manitoba.

THE MOTION IS FOR an Order, substantially in the form attached hereto and marked as Schedule "A" (the "**Final Distribution and Discharge Order**");

1. Validating or otherwise abridging the time for service of this notice of motion and the materials related thereto such that this motion is properly returnable on the stated hearing date with no further service required;
2. Providing for the assignment to the plaintiff of all the right, title and interest of the Receiver in and to the Residual Costs Award (as defined at paragraph 21 of the Fifth Report of the Receiver dated April 14, 2022 – the “**Fifth Report**”);
3. Approving and authorizing the further distribution from the funds received by the Receiver from the realization of the assets of the defendants as proposed in the Fifth Report;
4. Approving of the Fifth Report and the activities and conduct of the Receiver described therein, including the Receiver’s Statement of Receipts and Disbursements and the accounts of the Receiver and its counsel, and the further proposed final fees and disbursements of the Receiver and its counsel;
5. Providing for the discharge of the Receiver following distribution of the further funds as authorized by this Honourable Court; and
6. Such further and other relief as the circumstances of this proceeding may require and as this Honourable Court deems just.

THE GROUNDS FOR THE MOTION ARE:

1. On October 8, 2015, this Court issued an Order (the “**Receivership Order**”) appointing Ernst & Young Inc. as Receiver of the defendants, Keller & Sons Farming Ltd. and Keller Holdings Ltd. The Receiver has complied with the Receivership Order and its activities to date assisted the Court in the administration of the receivership of the defendants.
2. Pursuant to the power and authority granted to the Receiver under the Receivership Order and certain further Orders of this Court, the Receiver has acted to realized upon the assets of the defendants for the general benefit of the stakeholders as a whole.
3. The Receiver remains in receipt of funds realized from the defendants’ assets, including funds relating to a payment obtained from a claim advanced against Shilo Farms Ltd.
4. Counsel for the Receiver has reviewed the security granted by the defendants to the plaintiff (Royal Bank of Canada), National Bank of Canada (“**NBC**”) and its other creditors. Subject to the assumptions and qualifications contained in its written opinion (which is attached to and forms part of the Third Report of the Receiver dated August 5), counsel for the Receiver has advised that the plaintiff and NBC have valid and enforceable security interests in the real and personal property of the defendants referenced in each party’s security agreements and in respect of which registrations have been made against the defendants in accordance with the provisions of *The Real Property Act* and *The Personal Property Security Act* (Manitoba). Subject to

very limited exceptions, counsel for the Receiver has advised that the security held by the plaintiff and NBC ranks in priority to all other security interests and claims that may be advanced against the real and personal property of the defendants and the monies held by the Receiver as a result of the realization of assets of the defendants.

5. Pursuant to the Receiver's previous recommendations, Orders were pronounced in this proceeding on August 12, 2016 and June 30, 2017, providing for an initial interim distribution of funds realized by the Receiver to the plaintiff, NBC and Concentra Financial Services Association and the Canada Revenue Agency.

6. In its Fifth Report, the Receiver has proposed that, in accordance with the security opinion of its counsel, all funds remaining in its possession after payment of such professional fees for the Receiver and its counsel as are allowed and approved by this Honourable Court will be distributed on account of the continuing indebtedness owing by the defendants to the plaintiff and NBC. The recommendation of the Receiver is in accordance with the Amended and Restated Intercreditor Agreement involving the plaintiff, NBC and the defendants, and have been agreed to by the plaintiff and NBC.

7. The plaintiff is the only creditor with an interest in the Residual Costs Award, and the Receiver and the Plaintiff are of the view that it is more efficient to have the Residual Costs Award assigned to the Plaintiff, rather than holding up the potential discharge of the Receiver pending further efforts to collection the Residual Costs Award.

8. Subject to the Receiver completing the distribution of funds to the plaintiff and NBC as authorized by this Honourable Court, the administration of the receivership estate will be complete (or substantially complete), and it is therefore appropriate to make provision for the discharge of the Receiver.

9. Section 243 of the *Bankruptcy and Insolvency Act*, R.S.C. c. B-3.

10. Rules 3, 4, 6, 11 and 13 of the *Bankruptcy and Insolvency General Rules*, C.R.C. c. 368, as amended.

11. Paragraphs 3, 12 and 32 of the Receivership Order.

12. Section 95 of *The Corporations Act*, C.C.S.M. c. C225.

13. Rules 2.03, 3.02, 16.04, 16.08 and 37 of the *Queen's Bench Rules*, M.R. 553/88, as amended.

14. The inherent jurisdiction of this Honourable Court.

15. Such further and other grounds as counsel for the Receiver may advise and as this Honourable Court may permit.

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

1. The Fifth Report, dated April 14, 2022;

2. The Fourth Report of the Receiver, dated June 5, 2017;

3. The Third Report of the Receiver, dated August 5, 2016;
4. The Second Report of the Receiver, dated March 30, 2016;
5. The First Report of the Receiver, dated January 19, 2016;
6. The Affidavit of Gary Ivany sworn October 2, 2015; and
7. Such further and other documentary evidence as counsel for the Receiver may advise and as this Honourable Court may permit.

April 14, 2022

Thompson Dorfman Sweatman LLP
Barristers and Solicitors
1700 – 242 Hargrave Street
Winnipeg MB R3C 0V1
Ross A. McFadyen
Telephone: 204-934-2378
E-mail: ram@tdslaw.com
Counsel for the receiver and
manager of the defendants, Ernst &
Young Inc.

TO: THE SERVICE LIST (as of April 14, 2022)

**THE QUEEN'S BENCH
WINNIPEG CENTRE**

IN THE MATTER OF:

**The Appointment of a Receiver pursuant to
Section 243 of the *Bankruptcy and
Insolvency Act*, R.S.C. 1985 c.B-3, as
amended and Section 55 of *The Court of
Queen's Bench Act*, C.C.S.M. c. C280**

B E T W E N:

ROYAL BANK OF CANADA,

Plaintiff,

- and -

**KELLER & SONS FARMING LTD. and
KELLER HOLDINGS LTD.,**

Defendants.

**SERVICE LIST
As at April 14, 2022**

THOMPSON DORFMAN SWETMAN LLP

Barristers and Solicitors
1700 – 242 Hargrave Street
Winnipeg, Manitoba, R3C 0V1

ROSS A. MCFADYEN

Telephone – 204-934-2378

Fax – 204-934-0538

File No. 0138084 RAM

SERVICE LIST

<i>Party/Counsel</i>	<i>Telephone</i>	<i>Facsimile</i>	<i>Party Represented</i>
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Ernst & Young Inc. 2700 – 360 Main Street Winnipeg, MB R3C 4G3 Joe Healey E-Mail: joe.a.healey@ca.ey.com	(204) 954-5568		Receiver
Thompson Dorfman Sweatman LLP 201 Portage Ave., Suite 2200 Winnipeg, MB R3B 3L3 Ross A. McFadyen E-Mail: ram@tdslaw.com	(204) 934-2378	(204) 934-0538	Counsel for the Receiver

Thornton Grout Finnigan LLP Suite 3200, 100 Wellington Street West P.O. Box 329 Toronto, ON M5K 1K7 Grant B. Moffat E-Mail: gmoffat@tgf.ca	(416) 304-1616	(416) 304-1313	Counsel for National Bank of Canada
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Donald Legal Services 22 Sixth Street Brandon, MB R7A 3N1 Lawrence W. Donald E-Mail: ld@donaldlegal.com	(204) 729-4901	(204) 728-4477	Counsel for Karen Elizabeth Keller
Donald Legal Services 22 Sixth Street Brandon, MB R7A 3N1 Lawrence W. Donald E-Mail: ld@donaldlegal.com	(204) 729-4901	(204) 728-4477	Counsel for Redfern Farm Services Ltd.
Redfern Farm Services Ltd. 922 Douglas Street Brandon, MB R71 7B2 Candice Redfern-Broome Email: credfern@redferns.ca	(204) 725-8590		In person
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Concentra Financial Services Association 2055 Albert Street Regina, SK Kelly McMurchy E-Mail: Kelly.mcmurchy@concentrafinancial.ca	(306) 566-7440		In person
CNH Industrial Capital Canada Ltd. 4475 North Service Road, Suite 301 Burlington, ON L7J 4X7 Kelly Nicholas E-Mail: kelly.nicholas@cnhind.com John Chiavacci: E-mail: john.chiavacci@cnhind.com	(905) 633-3760 (800) 777-0552	(905) 632-6868 (888) 691-1031	In person
Calidon Financial Services Inc. 10 - 3903 Millar Avenue Saskatoon, SK S7P 0C1 Monty Bergquist E-Mail: monty@calidon.ca	(877) 956-0082	(877) 956-0083	In person

John Deere Financial Inc. 3430 SuperGoosior Court Oakville, ON L6L 0C4 Vincent Zaroda E-Mail: zarodavincenta@johndeere.com	(905) 319- 5836	(905) 319- 1809	In person
General Bank of Canada 006 - 11523 100 Avenue Edmonton, AB T5K 0J8 Email: tammy@generalbank.ca	(780) 732- 5049	(780) 443- 5628	In person
Mid-Plains Implements Ltd. P.O. Box 610 Carberry, MB R0K 0H0 Email: fokko.midplns@mymts.net	(204) 834- 2515		
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Fast Trippier Clunie Wittman LLP 10 Donald Street Winnipeg, MB R3C 1L5 Faron J. Trippier Email: ftrippier@ft-lawyers.com	(204) 925- 5302	(204) 943-7997	Counsel for Mark Keller and Duanne Taylor and Fat Cat Farms Ltd.
Manitoba Conservation and Water Stewardship Water Stewardship and Biodiversity Division - Regulatory Services P.O. Box 16 - 200 Saulteaux Crescent Winnipeg, MB R3J 3W3 Christopher McCombe Email: christopher.mccombe@gov.mb.ca			

Gallant Sales 568 Bernat Rd. Grand Pointe, MB R5A 1H5 Dave Gallant Email: dave@gallantsales.com	(204) 254- 8126	(204) 254- 8124	In person
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SCHEDULE A

(*Note changes from Model Form of Discharge Order tracked)

File No. CI 15-01-98054

THE QUEEN'S BENCH

WINNIPEG CENTRE

IN THE MATTER OF: The Appointment of a Receiver Pursuant to Section 243
of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-
3, as amended, and Section 55 of *The Court of Queen's
Bench Act*, C.C.S.M. c. C280

BETWEEN:

ROYAL BANK OF CANADA,

Plaintiff,

- and -

KELLER & SONS FARMING LTD. and KELLER
HOLDINGS LTD.,

Defendants.

DISCHARGE ORDER

Thompson Dorfman Sweatman LLP
Barristers and Solicitors
1700 – 242 Hargrave Street
Winnipeg MB R3C 0V1
(Matter No. 0138084 RAM)
(Ross A. McFadyen: 204-934-2378)
(Email: ram@tdslaw.com)

THE QUEEN'S BENCH

WINNIPEG CENTRE

THE HONOURABLE) Wednesday, the 20th day of April,
) 2022
MR. JUSTICE CHARTIER)

IN THE MATTER OF: The Appointment of a Receiver Pursuant to Section 243
of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-
3, as amended, and Section 55 of *The Court of Queen's
Bench Act*, C.C.S.M. c. C280

BETWEEN:

ROYAL BANK OF CANADA,

Plaintiff,

- and -

KELLER & SONS FARMING LTD. and KELLER
HOLDINGS LTD.,

Defendants.

DISCHARGE ORDER

THIS MOTION, made by Ernst & Young Inc. in its capacity as Court-
appointed receiver (the “**Receiver**”) of the undertaking, property and assets of the
Defendant Keller & Sons Farming Ltd. and Keller Holdings Ltd. for an Order
discharging the Receiver and certain other relief, was heard this day at the Winnipeg
Law Courts Building, 408 York Avenue in Winnipeg, Manitoba.

ON READING the Affidavit of Gary Ivany sworn October 2, 2015, the First Report of the Receiver dated January 19, 2016, the Second Report of the Receiver dated March 30, 2016, the Third Report of the Receiver dated August 5, 2016, the Fourth Report of the Receiver dated June 5, 2017, and the Fifth Report of the Receiver dated April 14, 2022 (the “Fifth Report”), and on hearing the submissions of counsel for the Receiver, counsel for the Plaintiff, and counsel for •, no one else appearing for any other person on the Service List, although served as evidenced by the Affidavit of Service of Trista Feniuk affirmed April •, 2022, filed:

1. THIS COURT ORDERS that time for service of the Notice of Motion and the supporting materials is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.
2. THIS COURT ORDERS that all the right, title and interest of the Receiver in and to the Residual Costs Award (as defined at paragraph 21 of the Fifth Report) be and is hereby assigned to the Plaintiff. The Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may reasonably be necessary or desirable to give further effect to the said assignment to the Plaintiff.
3. THIS COURT ORDERS that the conduct and activities of the Receiver, as set out in the Fifth Report, including the Receiver’s Statement of Receipts and Disbursements, are hereby approved.

4. THIS COURT ORDERS that the fees and disbursements of the Receiver and its counsel as set out in the Fifth Report (including such further fees and disbursements as may be paid out of the reserve amount as referenced at paragraph 71 of the Fifth Report), are hereby approved.

5. THIS COURT ORDERS that, subject to the payment of the further fees and disbursements of the Receiver and its counsel as outlined in the Fifth Report and as approved by this Court, the Receiver shall pay the monies remaining in its hands to the Plaintiff and to National Bank of Canada, as proposed at paragraphs 68 through 72 of the Fifth Report.

6. THIS COURT ORDERS that upon payment of the amounts set out in paragraph 4 hereof and upon the Receiver filing a certificate substantially in the form attached hereto as Schedule A to this Order certifying that it has completed the other activities described in the Fifth Report, the Receiver shall be discharged as Receiver of the undertaking, property and assets of the Defendants, provided however that notwithstanding its discharge herein: (a) the Receiver shall remain the Receiver for the performance of such incidental duties as may be required to complete the administration of the receivership herein, and (b) the Receiver shall continue to have the benefit of the provisions of all Orders made in this proceeding, including all approvals, protections and stays of proceeding in favour of Ernst & Young Inc. in its capacity as Receiver.

7. THIS COURT ORDERS AND DECLARES THAT Ernst & Young Inc. is hereby released and discharged from any and all liability that Ernst & Young Inc. now has or may hereafter have by reason of, or in any way arising out of, the acts or omissions of Ernst & Young Inc. while acting in its capacity as Receiver herein, save and except for any gross negligence or wilful misconduct on the Receiver's part. Without limiting the generality of the foregoing, Ernst & Young Inc. is hereby forever released and discharged from any and all liability relating to matters that were raised, or which could have been raised, in the within receivership proceedings, save and except for any gross negligence or wilful misconduct on the Receiver's part.

8. THIS COURT ORDERS AND DECLARES that no action or other proceeding shall be commenced against the Receiver, including its officers, directors, employees, solicitors and agents and assigns in any way arising from or related to its capacity or conduct as Receiver, except with prior leave of this Court on notice to the Receiver, and upon such terms as this Court may direct.

April , 2022

I, ROSS A. MCFADYEN OF THE FIRM OF THOMPSON DORFMAN SWEATMAN LLP HEREBY CERTIFY THAT I HAVE RECEIVED THE CONSENTS AS TO FORM OF THE FOLLOWING PARTIES: THE PLAINTIFF AND •, AS DIRECTED BY THE HONOURABLE MR. JUSTICE CHARTIER.

SCHEDULE "A"

FORM OF RECEIVER'S CERTIFICATE

THE QUEEN'S BENCH

WINNIPEG CENTRE

IN THE MATTER OF: The Appointment of a Receiver Pursuant to Section 243 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended, and Section 55 of *The Court of Queen's Bench Act*, C.C.S.M. c. C280

BETWEEN:

ROYAL BANK OF CANADA,

Plaintiff,

- and -

KELLER & SONS FARMING LTD. and KELLER
HOLDINGS LTD.,

Defendants.

RECEIVER'S CERTIFICATE

RECITALS

A. Pursuant to the Order of the Honourable Mr. Justice Schulman of the Manitoba Court of Queen's Bench (the "**Court**") dated October 8, 2015, Ernst & Young Inc. was appointed as the receiver and manager (the "**Receiver**") of the undertaking, property and assets of the Defendants.

B. Pursuant to an Order of the Court dated April 20, 2022 (the "**Discharge Order**"), the Court ordered that upon the Receiver filing with the Court a certificate certifying that it has completed the distributions as authorized and directed by paragraph • of the said Discharge Order, the Receiver shall be discharged as Receiver of the undertaking, property and assets of the Defendants.

THE RECEIVER CERTIFIES the following:

1. The Receiver has completed the distributions as authorized and directed by paragraph • of the Discharge Order; and
2. This Certificate was delivered by the Receiver at the City of Winnipeg, in Manitoba on the day of , 2022.

ERNST & YOUNG INC., in its capacity as Receiver of the undertaking, property and assets of the Defendants KELLER & SONS FARMING LTD. and KELLER HOLDINGS LTD., and not in its personal capacity

per: _____
Name: Joe Healey, CPA, CA, FCIRP, LIT
Title: Senior Vice President