

IN THE COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL DISTRICT OF CALGARY

BETWEEN:

NATIONAL BANK OF CANADA

Plaintiff

- and -

**McGILLIVRAY & SERA FARMS LTD., 626625 ALBERTA
LTD., 626626 ALBERTA LTD., BASTIAANSEN HOLDING
COMPANY LTD., JOS BASTIAANSEN, CORIEN
BASTIAANSEN, and BASSEM FARM CORPORATION**

Defendants

NOTICE OF MOTION

(Sale Approval and Vesting of Land and Buildings)

TAKE NOTICE that an application will be made by Ernst & Young Inc. (the "Receiver") in its capacity as Receiver of the Defendants McGillivray & Sera Farms Ltd. ("MSF"), 622625 Alberta Ltd., Bastiaansen Holdings Company Ltd., Jos Bastiaansen, and Corien Bastiaansen (collectively the "MSF Defendants") before the Honourable Madam Justice C.A. Kent in Chambers at the Court House, in the City of Calgary, in the Province of Alberta, on Monday, the 27th day of April, 2009 at 11:00 in the forenoon or so soon thereafter as counsel may be heard for an Order:

1. Abridging time for service of these motion materials, if necessary, and deeming service of the within Notice of Motion to be good and sufficient and declaring that no further parties are required to be served;
2. Authorizing and providing a Sale Approval and Vesting Order for certain lands ("the Lands") standing under certificates of title held in the name of MSF, which Lands are more particularly defined and described in the Second Receiver's Report dated April 22, 2009 and served herewith, in a form of Order generally as is attached hereto as Schedule "A";

3. Authorizing and directing the Receiver to take all steps reasonably required to carry out the terms of various Agricultural Real Estate Purchase Contracts ("the Contracts") for the purchase and sale of the Lands;
4. Directing the Registrar of the Alberta Land Registration District to cancel the existing certificates of titles for the Lands and to issue new certificates of title for the Lands in the names of the Purchasers disclosed in the Contracts or their nominees, subject only to those Permitted Encumbrances as set out in the Contracts;
5. Directing the Defendants and anyone in possession of the lands to deliver up immediate possession of the Lands;
6. Dispensing with the requirements of Section 191 of the Land Titles Act, R.S.A. 2000, c. L-4;
7. Approving the retainer of Ritchie Bros. Auctioneers to conduct the auction process ("the Auction") with is described in the Receiver's Second Report, and authorizing and directing the Receiver to take all steps reasonably required to carry out the terms of the Auction;
8. Granting such directions to the Receiver as may be necessary or appropriate with respect to the Auction and the sale of certain of the MSF Machinery and Equipment (as that term is described in the Receiver's Second Report) at the Auction, including the vesting of such MSF Machinery and Equipment in the purchasers of such goods , and
9. Such further or other relief and directions as counsel may request and this Honourable Court may deem just and appropriate.

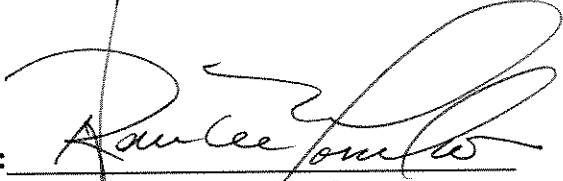
AND TAKE NOTICE that the grounds on which this application is made include the following:

1. the Sale of the Lands, as proposed by the Receiver, is in the best interest of the administration of the receivership and the stakeholders affected thereby; and
2. The relief requested is just, appropriate and in the best interest of the administration of the receivership estate.

AND FURTHER TAKE NOTICE that in support of this application the Receiver will rely on the March 16, 2009 Receivership Order granted in this Action, the Second Report of the Receiver, filed, the pleadings and proceedings filed herein and such further and other material as counsel may advise and this Honourable Court shall permit.

DATED at Calgary, Alberta, this 23rd day of April, 2009.

MACLEOD DIXON LLP

Per: 

Randal S. Van de Mosselaer
Solicitors for Ernst & Young Inc., Receiver
of McGillivray & Sera Farms Ltd., 626625
Alberta Ltd., 626626 Alberta Ltd.,
Bastiaansen Holding Company Ltd., Jos
Bastiaansen, and Corien Bastiaansen

To: Service List
And To: Clerk of the Court

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BASTIAANSEN, and BASSEM FARM CORPORATION**

Defendants

BEFORE THE HONOURABLE
MADAM JUSTICE C. A. KENT
IN CHAMBERS

) At the Calgary Courts Centre, in the City of
) Calgary, in the Province of Alberta, on
) Monday, the 27th day of April, 2009.

SALE APPROVAL AND VESTING ORDER
(Lands and Buildings)

UPON the application of Ernst & Young Inc. ("the Receiver") in its capacity as Receiver of the Defendants McGillivray & Sera Farms Ltd. ("MSF"), 622625 Alberta Ltd., Bastiaansen Holdings Company Ltd., Jos Bastiaansen, and Corien Bastiaansen (collectively the "MSF Defendants"); AND UPON hearing read the Second Report of the Receiver, filed; AND UPON hearing counsel for the Receiver and counsel for various creditors and other interested persons; AND UPON it appearing that the sales of the Lands are in the best interests of the creditors of the MSF Defendants

IT IS HEREBY ORDERED THAT:

SERVICE:

1. Service of the notice of this application and supporting materials is hereby declared to be good and sufficient, and no other person is required to have been served with notice of this application, and time for service is abridged to that actually given.

APPROVAL OF TRANSACTIONS:

2. The Agricultural Real Estate Purchase Contracts (the "Contracts") between the Receiver and each of:

- (a) Jan Jonker (or Nominee),
- (b) Niko Remijn, Jaap Remijn and Laus Stiekema (or Nominee), and
- (c) Verekamp Farms Ltd.,

(all of the foregoing being referred to collectively as "the Purchasers" and individually as a "Purchaser") respectively, which Contracts are attached as Appendix "A" to the Receiver's Second Report, with respect to the sale of those lands ("the Lands"), Buildings, Unattached Goods, Attached Goods, and water rights (all of the foregoing being collectively referred to hereinafter as "the Property"), as each of the foregoing are described and defined in each of the Contracts, are hereby approved and ratified.

3. The Receiver is hereby authorized to conclude each of the transactions contemplated by the Contracts (which transactions shall be referred to hereinafter collectively as the "Transactions" and individually as a "Transaction") and to take all such steps and execute all such documents as may reasonably be necessary to complete the Transactions contemplated therein.

VESTING OF LANDS:

4. Upon closing of each Transaction, all of MSF's right, title and interest, in and to the Lands and Property shall, without further instrument of transfer or assignment, vest in each the Purchasers in accordance with and as contemplated by each of the Contracts absolutely and forever, free and clear of and from any and all claims by, through, or under the MSF Defendants, and any of them, and free and clear of and from any and all estate, right, title, interest, and liens, including but not limited to, claims, hypothecs, mortgages, charges, liens (whether contractual, statutory or otherwise), security interests, assignments, actions, levies, taxes, judgments, writs of execution, trusts or deemed trusts (whether contractual, statutory or otherwise), options, agreements, disputes, debts,

easements, covenants, caveats, encumbrances or other rights, limitations or restrictions of any nature whatsoever including, without limitation, any rights or interests of any creditors of any of the MSF Defendants whether or not they have attached or have been perfected, registered or filed, whether secured or unsecured or otherwise, whether liquidated, unliquidated or contingent (all of the foregoing being collectively referred to hereinafter as "the Claims"), excepting only the Permitted Encumbrances (as that term is defined hereinafter), and whether such Claims came into existence prior to, subsequent to, or as a result of any previous order of this Court, by or of all persons or entities of any kind whatsoever, including, without limitation, all individuals, firms, corporations, partnerships, joint ventures, trusts, unincorporated organizations, governmental and administrative bodies, agencies, authorities or tribunals and all other natural persons or corporations, whether acting in their capacity as principals or as agents, trustees, executives, administrators or other legal representatives (collectively, the "Claimants"), including for greater certainty and without limiting the generality of the foregoing: (i) the Claims held by or in favour of the individuals and entities served (either directly or through their solicitors) with this Application; and (ii) the beneficiary of any Claims created or provided for pursuant to any previous Order of this Court in these proceeding.

5. The Purchasers shall, by virtue of the completion of the Transactions, have no liability of any kind whatsoever to any Claimants in respect of any Claims any of the Claimants may have against the MSF Defendants, or any of them.
6. The Transactions shall not be void or voidable at the instance of Claimants and shall not constitute nor shall be deemed to be a settlement, fraudulent preference, assignment, fraudulent conveyance or other challengeable or reviewable transaction under the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "BIA") or any other applicable federal or provincial legislation, and the Transactions, or any actions taken in connection therewith, shall not constitute conduct meriting an oppression remedy.
7. Nothing in this Order shall prejudice any person's *in personam* claim against any of the MSF Defendants.

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	(iii) 771 075 123 Utility Right of Way; (iv) 891 120 732 Water Resources Act Certificate; (v) 991 140 999 Caveat; (vi) 011 100 498 Easement; (vii) 031 251 395 Agreement; (viii) 041 359 689 Caveat; (ix) 041 359 690 Caveat; and (i) 041 402 351 Irrigation District Resolution.									
2.	(a) Legal Description of Lands: Plan 931 0234 Block 1 Lot 1 Excepting thereout all mines and minerals Area: 45.44 Hectares (112.28 Acres) more or less (b) Name of Purchaser: Jan Jonker (or Nominee) (c) Permitted Encumbrances: (i) 001 014 906 Irrigation Order/Notice; and (ii) 041 402 351 Irrigation District Resolution.									
3.	(a) Legal Description of Lands: The North East Quarter of Section Two (2), in Township (10), Range (11), West of the Fourth Meridian in the Province of Alberta, containing one hundred and sixty (160) acres more or less Excepting those portions on the following plans: <table><tr><td>Plan</td><td>Number</td><td>Acres more or less</td></tr><tr><td>Access Right of Way</td><td>7326GX</td><td>3</td></tr><tr><td>Road Widening</td><td>7833HI</td><td>1</td></tr></table> Excepting thereout all mines and minerals (b) Name of Purchaser:	Plan	Number	Acres more or less	Access Right of Way	7326GX	3	Road Widening	7833HI	1
Plan	Number	Acres more or less								
Access Right of Way	7326GX	3								
Road Widening	7833HI	1								

	Nico Remijn, Jaap Remijn and Laus Stiekema (c) Permitted Encumbrances: (i) 831 072 717 Irrigation Order/Notice; (ii) 841 165 249 Restrictive Covenant; and (iii) 081 423 742 Utility Right of Way.
4.	(d) Legal Description of Lands: Meridian 4 Range 11 Township 10 Section 1 Quarter North West Containing 64.7 Hectares (160 Acres) more or less Excepting the road widening on Plan 7833HI Containing .405 of a Hectare (1 Acre) more or less Excepting thereout all mines and minerals (hereinafter "the Home Quarter") (e) Name of Purchaser: Nico Remijn, Jaap Remijn and Laus Stiekema (f) Permitted Encumbrances: (i) 831 072 717 Irrigation Order/Notice; (ii) 841 165 249 Restrictive Covenant; and (iii) 881 140 038 Utility Right of Way.
5.	(g) Legal Description of Lands: The North East Quarter of Section Three (3) in Township Ten (10) Range Eleven (11) West of the Fourth Meridian Containing one hundred and sixty (160) Acres more or less, Excepting thereout out of the North East Quarter of Section Three (3) the Canal Right-of-Way on Plan 1090IX., Containing five and forty three hundredths (5.43) Acres more or less, Excepting thereout all mines and minerals (h) Name of Purchaser:

	Varekamp Farms Ltd. (i) Permitted Encumbrances: (i) 1485KX Irrigation Order/Notice; (ii) 731 011 502 Caveat; (iii) 821 050 063 Utility Right of Way; (iv) 861 005 478 Caveat; (v) 861 005 479 Caveat; (vi) 991 040 909 Caveat; (vii) 991 372 697 Caveat; and (viii) 011 309 455 Caveat.
6.	(a) Legal Description of Lands: Meridian 4 Range 11 Township 9 Section 22 Quarter North East Excepting thereout all mines and minerals (b) Name of Purchaser: Varekamp Farms Ltd. (c) Permitted Encumbrances: (x) 1485KX Irrigation Order/Notice; (xi) 731 013 419 Caveat; (xii) 771 009 717 Utility Right of Way; (xiii) 771 075 151 Utility Right of Way; (xiv) 791 013 034 Utility Right of Way; (xv) 811 151 862 Caveat; (xvi) 981 285 046 Caveat; (xvii) 981 285 047 Caveat; and

	(xviii) 091 031 329 Utility Right of Way.
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11. The issuance of new Certificates of Title for the Lands as required by this Order shall be free from all other encumbrances and claims now or hereafter registered on title, but subject to the Permitted Encumbrances and the reservations and conditions contained in the original granted from the Crown. The description of the Purchaser and/or the Purchaser's nominee in the new Certificate of Title shall be as set forth in a letter to be provided by the solicitor for each Purchaser and/or the Purchaser's nominee. Upon receipt of the following in respect of a Transaction or Transactions:

- (a) a certified copy of this Order from the Receiver's solicitor;
- (b) a letter from the Receiver confirming that the purchase price has been received or that arrangement for payment of the purchase price have been made to the Receiver's satisfaction; and
- (c) a letter from the Purchaser's solicitor setting out the name and address of the transferee,

the Registrar shall issued the new Certificates of Title accordingly.

12. The Purchasers shall have possession of the Lands and Property upon the payment of the necessary funds to the Receiver, and
- (a) with respect to all of the Lands except the Home Quarter, the respective Purchasers shall have possession of the Lands immediately upon closing of each of the Transactions, and
 - (b) with respect to the Home Quarter, the Purchaser of the Home Quarter shall have possession of the Home Quarter immediately upon closing of the Transaction in respect of the Home Quarter, but such Purchaser shall be entitled to possession of the residence located on the Home Quarter at 12 noon on July 1, 2009, at which

time the MSF Defendants and any other person having possession of the Home Quarter shall deliver up possession of same to this Purchaser;

and in default of possession being delivered up as aforesaid a Writ of Possession shall issue without further Order.

13. This Order shall be registered by the Registrar notwithstanding the requirements of section 191(1) of the *Land Titles Act*, R.S.A. 2000, c.L-7.

APPROVAL OF AUCTION

14. The Receiver is hereby authorized to conduct the Auction as described and defined in the Receiver's Second Report, and to take all such steps and execute all such documents as may reasonably be necessary to complete the process and transactions contemplated therein.

GENERAL

15. The Receiver is at liberty to reapply for further advice, assistance and direction as may be necessary to give full force and effect to the terms of this Order.

J.C.Q.B.A.

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Defendants

SALE APPROVAL AND VESTING ORDER
(LANDS AND BUILDINGS)

MACLEOD DIXON LLP
3700 Canterra Tower
400 Third Avenue SW
Calgary, Alberta T2P 4H2

Solicitor: Randal S. Van de Mosselaer
Telephone: (403) 267-8222
Fax: (403) 264-5973

File 263209

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