

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

BETWEEN:

NATIONAL BANK OF CANADA

Plaintiff

I hereby certify this to be a true copy of  
the original Order  
Dated this 23 day of March 2009  
for Clerk of the Court

- and -

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

Defendants

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

) At Calgary Courts Centre, in the City of  
) Calgary, in the Province of Alberta on  
) Monday, the 16th day of March, 2009.

**ORDER APPOINTING RECEIVER AND MANAGER**

**UPON** the application of National Bank of Canada in respect of the Defendants McGillivray & Sera Farms Ltd. ("MSF"), 626625 Alberta Ltd., 626626 Alberta Ltd., Bastiaansen Holding Company Ltd., Jos Bastiaansen and Corien Bastiaansen (collectively, the "Defendant Guarantors") and Bassem Farm Corporation ("Bassem") pursuant to a Notice of Motion filed November 26, 2008; **AND UPON** reading the Affidavit of Murray D'Angelo filed November 26, 2008, the Supplemental Affidavit of Murray D'Angelo filed January 12, 2009, Affidavit #3 of Murray D'Angelo filed February 12, 2009, Affidavit #4 of Murray D'Angelo filed February 17, 2009 and Affidavit #5 of Murray D'Angelo filed February 18, 2009; **AND UPON** reading the Affidavit of Walter Semkuley sworn January 19, 2009 and filed in the within proceedings and the Supplemental Affidavit of Walter Semkuley sworn February 17, 2009 and filed in the within proceedings; **AND UPON** reading the two Affidavits of Jos Bastiaansen, both sworn January 16, 2009 and the Affidavit of Jos Bastiaansen sworn February 13, 2009, all filed in the within proceedings; **AND UPON** reading transcripts of the cross-examination of Jos Bastiaansen filed January 21, 2009 and responses to undertakings provided thereon; **AND UPON** reading transcripts of the cross-examination of Walter Semkuley filed January 21, 2009 and responses to undertakings provided thereon; **AND UPON** reading transcripts of the cross-examination of Murray D'Angelo filed in the within proceedings; **AND UPON** hearing counsel for the Plaintiff; **AND UPON** hearing counsel for the MSF Defendants; **AND UPON** hearing counsel for Bassem; **AND UPON** hearing counsel for Ernst & Young Inc.; **AND UPON** reading the consent of Ernst & Young Inc. to act as Receiver and Manager of MSF and the

Defendant Guarantors, filed; **AND UPON** noting that Ernst & Young Inc. was appointed Interim Receiver of certain of the assets of the Defendants pursuant to the Order (the "Interim Receivership Order") granted in the within pleadings on February 23, 2009;

**IT IS HEREBY ORDERED AND DECLARED THAT:**

**SERVICE**

1. The time for service of the notice of application for this order is hereby abridged and service thereof is deemed good and sufficient.

**APPOINTMENT**

2. Pursuant to sections 13(2) of the *Judicature Act*, R.S.A. 2000, c.J-2, 99(a) of the *Business Corporations Act*, R.S.A. 2000, c.B-9, and 65(7) of the *Personal Property Security Act*, R.S.A. 2000, c.P-7, Ernst & Young Inc. is hereby appointed Receiver, without security, of all of MSF's and the Defendant Guarantors' current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate, including all proceeds thereof (the "Property").
3. The Receiver shall also take possession and control of all crop inventory (the "Inventory") in the possession or control of the Defendants including, without limitation, all Russet and Burbank potatoes, all Alberta Crown potatoes, all potatoes presently situate at Agristar Inc. and all seed canola. The Receiver shall dispose of the Inventory in accordance with the provisions of this Order.
4. The appointment of Ernst & Young Inc. in the Interim Receivership Order over the Proceeds and Bank Accounts (as both such terms are defined in the Interim Receivership Order) be and the same is hereby confirmed and continued.
5. Paragraphs 5 and 8 of the Interim Receivership Order be and the same are hereby vacated.

**RECEIVER'S POWERS**

6. The Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:
  - (a) to take possession and control of the Property (which, for the purposes of this Order, shall include the Inventory, Proceeds and Bank Accounts) and any and all proceeds, receipts and disbursements arising out of or from the Property;
  - (b) to receive, preserve, protect and maintain control of the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent

security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;

- (c) to manage, operate and carry on the business of MSF or any of the Defendant Guarantors, 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 other business, or cease to perform any contracts of MSF or any of the Defendant Guarantors;
- (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 powers and duties conferred by this Order;
- (e) to purchase or lease machinery, equipment, inventories, supplies, premises or other assets to continue the business of MSF or any of the Defendant Guarantors or any part or parts thereof;
- (f) in addition to the powers conferred to the Receiver in paragraph 4 herein, to receive and collect all monies and accounts now owed or hereafter owing to MSF or any of the Defendant Guarantors and to exercise all remedies of MSF or any of the Defendant Guarantors in collecting such monies, including, without limitation, to enforce any security held by MSF or any of the Defendant Guarantors;
- (g) to settle, extend or compromise any indebtedness owing to or by MSF or any of the Defendant Guarantors;
- (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 MSF or any of the Defendant Guarantors, for any purpose pursuant to this Order;
- (i) to undertake environmental or workers' health and safety assessments of the Property and operations of MSF or any of the Defendant Guarantors;
- (j) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to MSF or any of the Defendant Guarantors, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding, and provided further that nothing in this Order shall authorize the Receiver to defend or settle the action in which this Order is made unless otherwise directed by this Court.
- (k) to market any or all the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate.

- (l) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,
  - (i) without the approval of this Court in respect of any transaction not exceeding \$150,000, provided that the aggregate consideration for all such transactions does not exceed \$250,000; and
  - (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause,

and in each such case notice under subsection 60(8) of the *Personal Property Security Act*, R.S.A. 2000, c. P-7 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 thereof, free and clear of any liens or encumbrances affecting such Property;
- (n) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (o) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (p) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of MSF or any of the Defendant Guarantors;
- (q) to enter into agreements with any trustee in bankruptcy appointed in respect of MSF or any of the Defendant Guarantors, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by MSF or any of the Defendant Guarantors;
- (r) to exercise any shareholder, partnership, joint venture or other rights which MSF or any of the Defendant Guarantors may have; and
- (s) to take any steps reasonably incidental to the exercise of these powers;

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), and without interference from any other Person.

## **DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER**

7. (i) the Defendants, (ii) all of their current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "Persons" and each being a "Person") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property (excluding Property subject to liens the validity of which is dependant on maintaining possession) to the Receiver upon the Receiver's request.
8. All Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of MSF or any of the Defendant Guarantors, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "Records") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 8 or in paragraph 9 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or documents prepared in contemplation of litigation or due to statutory provisions prohibiting such disclosure.
9. If any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

## **NO PROCEEDINGS AGAINST THE RECEIVER**

10. 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 MSF OR ANY OF THE DEFENDANT GUARANTORS OR THE PROPERTY**

11. No Proceeding against or in respect of MSF or any of the Defendant Guarantors 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 MSF or any of the Defendant Guarantors or the Property, save and except the within action, are hereby 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 11.

## **NO EXERCISE OF RIGHTS OF REMEDIES**

12. All rights and remedies (including, without limitation, set-off rights) against MSF or any of the Defendant Guarantors, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that nothing in this paragraph shall (i) empower the Receiver or MSF or any of the Defendant Guarantors to carry on any business which MSF or any of the Defendant Guarantors is not lawfully entitled to carry on, (ii) exempt the Receiver or MSF or any of the Defendant Guarantors from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

## **NO INTERFERENCE WITH THE RECEIVER**

13. 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 MSF or any of the Defendant Guarantors, without written consent of the Receiver or leave of this Court. Nothing in this Order shall prohibit any party to an "eligible financial contract" (as defined in section 11.1(1) of the *Companies' Creditors Arrangement Act*) with MSF or any of the Defendant Guarantors from terminating such contract or exercising any rights of set-off, in accordance with its terms.

## **CONTINUATION OF SERVICES**

14. All Persons having oral or written agreements with MSF or any of the Defendant Guarantors 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 MSF or any of the Defendant Guarantors are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and this Court directs that the Receiver shall be entitled to the continued use of MSF or any of the Defendant Guarantors' 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 MSF or any of the Defendant Guarantors 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 AND REPORT TO THE COURT

15. 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, save and except for such portion of the Proceeds received from the sale of the Inventory, 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. The Receiver shall specifically record and report to this Court as it pertains to the receipt of proceeds arising from the disposition of Inventory. All portions of the Proceeds received from the sale of the Inventory, whether before or after the date of this Order shall be deposited into one or more new accounts to be opened by the Receiver, separate and apart from the Post Receivership Accounts (the "Inventory Accounts"). No funds whatsoever shall be distributed from the Inventory Accounts until the Inventory Issue (as defined below) has been finally determined, whether by the Inventory Issue Trial (as defined below), agreement of the parties to this Action, or further Order of this Court, provided always that nothing in this paragraph shall interfere with the Receiver's Charge over the Property, including the Inventory Accounts, or the right of the Receiver under paragraph 29 hereof to apply reasonable amounts out of the monies in its hands, including out of the Inventory Accounts, to pay for the costs of administering this receivership and exercising the powers and duties of the Receiver hereunder. The allocation of those costs which shall be incurred by the Receiver amongst the assets which are subject to this Order and the proceeds from such assets, including the Inventory, and the responsibilities of the parties to this action for payment or reimbursement of such costs, shall be subject to further direction of this Court. The Plaintiff shall indemnify any obligation of the Receiver to distribute Proceeds of the Inventory to Bassem and/or Walter Semkuley <sup>SEC. A. 1.3</sup> ~~in the event it is determined that Plaintiff has no claim to the Inventory.~~
16. Bassem's application for an interim distribution of proceeds of the sale of the Inventory, to Bassem and Walter Semkuley from the Inventory Accounts, is reserved until receipt of the Receiver's Unsecured Claims Report (as defined below).
17. The Receiver shall conduct a factual investigation (the "Investigation") and shall:
  - (a) as soon as practicable prepare a report to the Court on all unsecured claims against MSF, the Defendant Guarantors and Bassem (the "Receiver's Unsecured

Claims Report”) and shall deliver such report to all parties to the within action concurrently with delivery of the report to the Court; and

- (b) prepare a factual report to the Court (the “Receiver’s Inventory Investigation Report”) setting out its findings with respect to:
  - (i) its review and analysis of the source and use of funds by MSF and Bassam with respect to the crop inventory grown in 2008 including, without limitation, the use by MSF and Bassem of funds advanced by the Plaintiff;
  - (ii) the beneficial owner of the Inventory or portions thereof;
  - (iii) to the extent the beneficial owner is not MSF or the Defendant Guarantors, the extent to which, if any, the Plaintiff’s security attaches to such Inventory;
  - (iv) the validity and enforceability of the Plaintiff’s security; and
  - (v) any facts it considers relevant to the Inventory Issue.

- 18. Following delivery of the Receiver’s Unsecured Claim Report to the Court and all parties to the within Action, Bassem and or Walter Semkuley shall be at liberty to reapply to this Court for an order directing the Receiver to make an interim distribution of funds from the Inventory Accounts to Bassem or Walter Semkuley pending determination of the issue of beneficial ownership of the Inventory and the extent to which the Plaintiff’s security attaches to the Inventory (the “Inventory Issue”) on such terms as the Court may direct.
- 19. The Receiver’s Inventory Investigation Report shall set out all factual findings from the Investigation and shall enclose copies of all documents supporting such factual findings. The Receiver’s Inventory Investigation Report shall be delivered to all parties to within Action concurrently with its delivery to the Court.
- 20. The Receiver is directed to advise the Court within 10 days from the date this Order is filed with the Court as to the length of time it expects it will take to prepare and deliver the Receiver’s Inventory Investigation Report.

#### **TRIAL OF INVENTORY ISSUE**

- 21. Following delivery of the Receiver’s Inventory Investigation Report a trial with respect to the determination of the Inventory Issue shall be held in the within action (the “Inventory Issue Trial”). Bassem and / or Walter Semkuley shall file a document with the Court setting forth its claim to the Inventory and the Plaintiff shall file a document with the Court in response.
- 22. Counsel for Bassem and / or Walter Semkuley and counsel for the Plaintiff are directed to:

- (a) contact the trial co-ordinator to book five (5) days for the Inventory Issue Trial to be scheduled prior to the Court's 2009 summer recess; and
  - (b) file any necessary documents and complete any necessary discovery processes in order to facilitate the hearing of the Inventory Issue Trial prior to the Court's 2009 summer recess.
23. In the event parties cannot otherwise agree on the process and timelines for the hearing of the Inventory Issue Trial, the parties may seek direction from the Court.

## **EMPLOYEES**

24. Subject to employees' rights to terminate their employment, all employees of MSF or any of the Defendant Guarantors shall remain the employees of MSF or any of the Defendant Guarantors until such time as the Receiver, on MSF or any of the Defendant Guarantors' behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including wages, severance pay, termination pay, vacation pay, and pension or benefit amounts, other than such amounts as the Receiver may specifically agree in writing to pay, or such amounts as may be determined in a Proceeding before a court or tribunal of competent jurisdiction.
25. Pursuant to clause 7(3)(c) of the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "Sale"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by MSF or any of the Defendant Guarantors, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

## **LIMITATION ON ENVIRONMENTAL LIABILITIES**

26. (a) Notwithstanding anything in any federal or provincial law, the Receiver is not personally liable in that position for any environmental condition that arose or environmental damage that occurred:
- (i) before the Receiver's appointment; or
  - (ii) 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.

- (b) Nothing in sub-paragraph (a) exempts a Receiver from any duty to report or make disclosure imposed by a law referred to in that sub-paragraph.
- (c) Notwithstanding anything in any federal or provincial law, but subject to sub-paragraph (a) hereof, where an order is made which has the effect of requiring the Receiver to remedy any environmental condition or environmental damage affecting the Property, the Receiver is not personally liable for 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,
  - (i) if, within such time as is specified in the order, within 10 days after the order is made if no time is so specified, within 10 days after the appointment of the Receiver, if the order is in effect when the Receiver is appointed, or during the period of the stay referred to in clause (ii) below, the Receiver:
    - A. complies with the order, or
    - B. on notice to the person who issued the order, abandons, disposes of or otherwise releases any interest in any real property affected by the condition or damage;
  - (ii) during the period of a stay of the order granted, on application made within the time specified in the order referred to in clause (i) above, within 10 days after the order is made or within 10 days after the appointment of the Receiver, if the order is in effect when the Receiver is appointed, by,
    - A. the court or body having jurisdiction under the law pursuant to which the order was made to enable the Receiver to contest the order; or
    - B. the court having jurisdiction in bankruptcy for the purposes of assessing the economic viability of complying with the order; or
  - (iii) if the Receiver had, before the order was made, abandoned or renounced or been divested of any interest in any real property affected by the condition or damage.

Nothing in this Order shall derogate from the protection afforded to the Receiver by Section 14.06 of the BIA or any other applicable legislation.

## **RECEIVER'S ACCOUNTS**

27. Any expenditure or liability which shall properly be made or incurred by the Receiver, including the fees of the Receiver and the fees and disbursements of its legal counsel, incurred at the standard rates and charges of the Receiver and its counsel, shall be allowed to it in passing its accounts and 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 (the "Receiver's Charge").

28. The Receiver and its legal counsel shall pass their accounts from time to time.
29. 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 the legal fees and disbursements, incurred at the normal rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

#### **FUNDING OF THE RECEIVERSHIP**

30. The Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$300,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "Receiver's Borrowings Charge") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge.
31. 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.
32. The Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule "A" hereto (the "Receiver's Certificates") for any amount borrowed by it pursuant to this Order.
33. 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**

34. 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 various assets comprising the Property.

**GENERAL**

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 MSF or any of the Defendant Guarantors.
37. This Court hereby requests the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.
38. The Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order.
39. The Plaintiff shall have its costs of this motion, up to and including entry and service of this Order, provided for by the terms of the Plaintiff's security or, if not so provided by the Plaintiff's security, then on a substantial indemnity basis to be paid by the Receiver from MSF or any of the Defendant Guarantors' estate with such priority and at such time as this Court may determine.
40. Any interested party may apply to this Court to vary or amend this Order on not less than 7 days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

C.A. Kew  
J.C.C.Q.B.A.

ENTERED THIS 23 DAY OF  
MARCH, A.D. 2009

[Signature]  
CLERK OF THE COURT



## SCHEDULE "A"

### RECEIVER CERTIFICATE

CERTIFICATE NO. \_\_\_\_\_

AMOUNT \$ \_\_\_\_\_

1. THIS IS TO CERTIFY that [RECEIVER'S NAME], the interim receiver and receiver and manager (the "Receiver") of all of the assets, undertakings and properties of [DEBTOR'S NAME] appointed by Order of the Court of Queen's Bench of Alberta and Court of Queen's Bench of Alberta in Bankruptcy and Insolvency (collectively, the "Court") dated the \_\_\_\_ day of \_\_\_\_\_, 2005 (the "Order") made in action numbers \_\_\_\_\_, has received as such Receiver from the holder of this certificate (the "Lender") the principal sum of \$\_\_\_\_\_, being part of the total principal sum of \$\_\_\_\_\_ which the Receiver is authorized to borrow under and pursuant to the Order.
2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily] [monthly not in advance on the \_\_\_\_ day of each month] after the date hereof at a notional rate per annum equal to the rate of \_\_\_\_\_ per cent above the prime commercial lending rate of Bank of \_\_\_\_\_ from time to time.
3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property (as defined in the Order), in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.
4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at \*.
5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.
6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property (as defined in the Order) as authorized by the Order and as authorized by any further or other order of the Court.

7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the \_\_\_\_\_ day of • 200•.

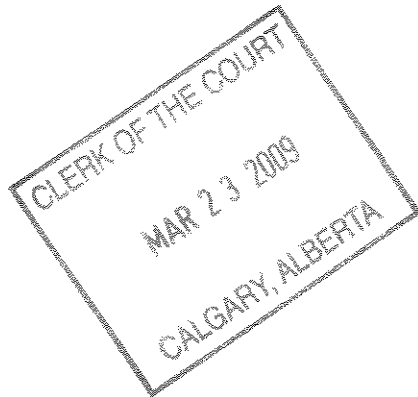
[RECEIVER'S NAME], solely in its capacity  
as Receiver of the Property (as defined in the  
Order), and not in its personal capacity

Per: \_\_\_\_\_  
Name:  
Title:

Action No: 0801-14675

2008

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

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**ORDER APPOINTING RECEIVER AND  
MANAGER**

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File No.: 065093-403945