

DUPLICATE ORIGINAL

COURT FILE NUMBER Q.B. 915 of 2019

COURT OF QUEEN'S BENCH FOR SASKATCHEWAN
IN BANKRUPTCY AND INSOLVENCY

JUDICIAL CENTRE SASKATOON

IN THE MATTER OF THE INTERIM RECEIVERSHIP OF BECKERLAND FARMS INC.

Before the Honourable Madame Justice A.R. Rothery in Chambers the 5th day of July 2019.

Upon the application of Ian A. Sutherland, counsel for Business Development Bank of Canada ("BDC"), in respect of Beckerland Farms Inc. (the "Debtor"); and upon having read the Originating Application, the Affidavit of Jennifer Koh, the Affidavit of John Gabrysh, the Affidavit of Shelby Braun, the consent of MNP Ltd. to act as receiver, the brief of law, and the draft Interim Receivership Order; all filed; and upon hearing counsel for BDC and the Debtor;

The Court Orders:

SERVICE

1. To the extent required, the time for service of notice of the application for this order is hereby abridged and service thereof is deemed good and sufficient.

APPOINTMENT

2. Pursuant to section 47(1) of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 ("BIA") and section 64(8) of *The Personal Property Security Act, 1993*, SS 1993, c P-6.2 (the "PPSA"), MNP Ltd. is hereby appointed interim receiver ("Interim Receiver"), without security, of all of assets, undertakings and properties of the Debtor acquired for, or used in relation to the business carried on by the Debtor, including all proceeds thereof (the "Property").
3. The Interim Receiver's appointment under this Order shall continue in full force and effect until 11:59 p.m. on July 11, 2019 or until further Order of the Court. Unless this Order is extended by further Order of the Court, the Interim Receiver shall be automatically discharged at 11:59 p.m. on July 11, 2019.
4. No provision of this Order shall be deemed or interpreted so as to limit or restrict the powers of the Debtor's board of directors to control and administer the Debtor's business and financial affairs.

INTERIM RECEIVER'S POWERS

5. The Interim 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 Interim Receiver is hereby expressly empowered and authorized to do any of the following where the Interim Receiver considers it necessary or desirable:
 - (a) to inspect and report upon the condition of the Property, or any part or parts thereof;
 - (b) to preserve and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;

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- (c) 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 Interim Receiver's powers and duties including, without limitation, those conferred by this Order;
- (d) to undertake environmental or workers' health and safety assessments of the Property and operations of the Debtor;
- (e) to report to, meet with and discuss with such affected Persons (as defined below) as the Interim Receiver deems appropriate all matters relating to the Property and the interim receivership, and to share information, subject to such terms as to confidentiality as the Interim Receiver deems advisable;
- (f) 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 Interim Receiver, in the name of the Debtor;
- (g) to utilize money borrowed by the Interim Receiver for anything determined to be integral to the preservation of the Property;
- (h) to report to the Court and creditors of the Debtor regarding the status of the business and financial affairs of the Debtor deemed relevant by the Interim Receiver; and
- (i) 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 Interim Receiver takes any such actions or steps, it shall be authorized and empowered to do so without interference from any other Person.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE INTERIM RECEIVER

- 6. (i) The Debtor, (ii) all of its 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 Interim 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 Interim Receiver.
- 7. All Persons shall forthwith advise the Interim 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 Debtor, 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 Interim Receiver or permit the Interim Receiver to make, retain and take away copies thereof and grant to the Interim Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto provided, however, that nothing in this paragraph 7 or in paragraph 8 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 Interim 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.
- 8. 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 Interim Receiver for the purpose of allowing the Interim 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 Interim Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Interim Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Interim Receiver with all such assistance in gaining immediate access to the information in the Records as the Interim Receiver may in its discretion require, including providing the Interim Receiver with instructions on the use of any computer or other system and providing the Interim 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 INTERIM RECEIVER

9. No proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**") shall be commenced or continued against the Interim Receiver except with the written consent of the Interim Receiver or with leave of this Court.

NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY

10. No Proceeding against or in respect of the Debtor or the Property shall be commenced or continued except with the written consent of the Interim Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtor or the Property are hereby stayed and suspended pending further Order of this Court, provided, however, that nothing in this Order shall: (i) 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; or (ii) affect a Regulatory Body's investigation in respect of the Debtor or an action, suit or proceeding that is taken in respect of the Debtor by or before the Regulatory Body, other than the enforcement of a payment order by the Regulatory Body or the Court. "**Regulatory Body**" means a person or body that has powers, duties or functions relating to the enforcement or administration of an Act of Parliament or of the legislature of a province.

NO EXERCISE OF RIGHTS OR REMEDIES

11. All rights and remedies (including, without limitation, set-off rights) against the Debtor or the Interim Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Interim Receiver or leave of this Court, provided however that nothing in this paragraph shall: (i) empower the Interim Receiver or the Debtor to carry on any business which the Debtor is not lawfully entitled to carry on; (ii) exempt the Interim Receiver or the Debtor 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 mortgage or security interest; or (iv) prevent the registration or filing of a lien or claim for lien or the commencement of a Proceeding to protect a lien or other rights that might otherwise be barred or extinguished by the effluxion of time, provided that no further steps shall be taken in respect of such lien, claim for lien or Proceeding except for service of the initiating documentation on the Debtor and the Interim Receiver. The stay and suspension shall not apply in respect of any "**Eligible Financial Contract**" as defined in section 65.1 of the BIA.

NO INTERFERENCE WITH THE INTERIM RECEIVER

12. 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 Debtor, including, without limitation, insurance coverage, without written consent of the Interim Receiver or leave of this Court. Nothing in this Order shall prohibit any party to an Eligible Financial Contract with the Debtor from terminating such contract or exercising any rights of set-off, in accordance with its terms.

CONTINUATION OF SERVICES

13. All Persons having oral or written agreements with the Debtor 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 Debtor, 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 Interim Receiver, and the Interim Receiver shall be entitled to the continued use of the Debtor's 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 Interim Receiver in accordance with normal payment practices of the Debtor or such other practices as may be agreed upon by the supplier or service provider and the Interim Receiver, or as may be ordered by this Court.

ORDINARY COURSE BANKING

14. If the Debtor is still conducting business, it shall continue to conduct its business, financial, and banking affairs in the ordinary course of business, subject to the right of the Interim Receiver to conduct detailed daily reviews of the same and to report on the same.

EMPLOYEES

15. Subject to the employees' rights to terminate their employment, all employees of the Debtor shall remain the employees of the Debtor. The Interim Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Interim Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5), 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*, SC 2005, c 47.

LIMITATION ON ENVIRONMENTAL LIABILITIES

16. (a) Notwithstanding anything in any federal or provincial law, the Interim Receiver is not personally liable in that position for any environmental condition that arose or environmental damage that occurred:
- (i) before the Interim Receiver's appointment; or
 - (ii) after the Interim Receiver's appointment unless it is established that the condition arose or the damage occurred as a result of the Interim Receiver's gross negligence or wilful misconduct.
- (b) Nothing in sub-paragraph (a) exempts the Interim 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 Interim Receiver to remedy any environmental condition or environmental damage affecting the Property, the Interim 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 ten (10) days after the order is made if no time is so specified, within ten (10) days after the appointment of the Interim Receiver, if the order is in effect when the Interim Receiver is appointed, or during the period of the stay referred to in clause (ii) below, the Interim 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 ten (10) days after the order is made or within ten (10) days after the appointment of the Interim Receiver, if the order is in effect when the Interim Receiver is appointed, by,
 - A. the court or body having jurisdiction under the law pursuant to which the order was made to enable the Interim 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 Interim 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 Interim Receiver by section 14.06 of the BIA or any other applicable legislation.

LIMITATION ON THE INTERIM RECEIVER'S LIABILITY

- 17. Except for gross negligence or wilful misconduct, as a result of its appointment or carrying out the provisions of this Order the Interim Receiver shall incur no liability or obligation that exceeds an amount for which it may obtain full indemnity from the Property. Nothing in this Order shall derogate from any limitation on liability or other protection afforded to the Interim Receiver under any applicable law, including, without limitation, Sections 14.06, 81.4(5) or 81.6(3) of the BIA.

INTERIM RECEIVER'S ACCOUNTS

- 18. The Interim Receiver and counsel to the Interim Receiver shall be paid their reasonable fees and disbursements and the Interim Receiver and counsel to the Interim Receiver shall be entitled to, and are hereby granted, a charge (the "**Interim Receiver's Charge**") on the Property as security for such fees and disbursements both before and after the making of this Order in respect of these proceedings, and the Interim Receivers' 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.
- 19. The Interim Receiver and its legal counsel shall pass their accounts from time to time.
- 20. Prior to the passing of its accounts, the Interim 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, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

FUNDING OF THE INTERIM RECEIVERSHIP

- 21. The Interim Receiver shall be at liberty and 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 at any time exceed \$200,000.00 (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 Interim 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 "**Interim 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 Interim Receiver's Charge and the charges set out in sections 14.06(7), 81.4(4) and 81.6(2) of the BIA.

22. Neither the Interim Receiver's Borrowings Charge nor any other security granted by the Interim Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.
23. The Interim Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule "A" hereto (the "Interim Receiver's Certificates") for any amount borrowed by it pursuant to this Order.
24. The monies from time to time borrowed by the Interim Receiver pursuant to this Order or any further order of this Court and any and all Interim 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 Interim Receiver's Certificates.

ALLOCATION

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

GENERAL

26. The Interim Receiver may, from time to time, apply to this Court for advice and directions in the discharge of its powers and duties hereunder.
27. Nothing in this Order shall prevent the Interim Receiver from acting as a trustee in bankruptcy of the Debtor.
28. Unless otherwise ordered by this Court, the Interim Receiver will report to the Court from time to time, which reporting is not required to be in affidavit form and shall be considered by this Court as evidence.
29. 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 Interim 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 Interim Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Interim Receiver and its agents in carrying out the terms of this Order.
30. The Interim Receiver shall 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, and for the recognition that the Interim 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.
31. BDC shall have its costs of this application, up to and including entry and service of this Order, provided for by the terms of BDC's security or, if not so provided by BDC's security, then on a substantial indemnity basis to be paid by the Interim Receiver from the Debtor's estate with such priority and at such time as this Court may determine.
32. Any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Interim 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.

NOTICE

33. Neither BDC nor the Interim Receiver shall be required to send notice of this Order to any person pursuant to section 245(1) of the BIA.

ISSUED at the City of Saskatoon, in the Province of Saskatchewan, this 5th day of July, 2019.


DEPUTY LOCAL REGISTRAR

This document was delivered by:

McDougall Gauley LLP, counsel for the applicant, Business Development Bank of Canada
500-616 Main Street, Saskatoon, SK S7H 0J6
Attention: Ian A. Sutherland
Email: isutherland@mcdougallgauley.com

TO: Local Registrar, Judicial Centre of Saskatoon

AND TO: Rusnak Balacko Kachur Rusnak, counsel for the respondent, Beckerland Farms Inc.
7 Broadway Street East, PO Box 1148, Yorkton, SK S3N 2X3
Attention: Wayne M. Rusnak, Q.C.
Email: wayne@rbkrlaw.com



SCHEDULE "A"

INTERIM RECEIVER'S CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. THIS IS TO CERTIFY that MNP Ltd., the interim receiver (the "Interim Receiver") of the assets, undertakings and properties of Beckerland Farms Inc. (the "Debtor") acquired for, or used in relation to the Debtor's business, including all proceeds thereof (the "Property"), appointed by Order of the Court of Queen's Bench of Saskatchewan (the "Court") issued the ____ day of __, 20__ (the "Order") made in action QB No. ____ of 2019, Judicial Centre of Saskatoon, has received as such Interim Receiver from the holder of this certificate (the "Lender") the principal sum of \$_____, being part of the total principal sum of \$_____ which the Interim 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 Interim 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 in the *Bankruptcy and Insolvency Act* (Canada) and the right of the Interim 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 Interim 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 Interim 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 Interim Receiver does not undertake 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 _____, 20__.

MNP Ltd. solely in its capacity as Interim Receiver of the
Property, and not in its personal capacity

Per: _____
Name:
Title:

SCHEDULE "B"

COVER LETTER OF DEMAND FOR NOTICE

[Date]

[Address]

[Address]

[Address]

[Address]

Attention:

RE: IN THE MATTER OF THE INTERIM RECEIVERSHIP OF BECKERLAND FARMS INC.

An Interim Receiver has been appointed by Order of the Court of Queen's Bench for Saskatchewan over the property, assets and undertaking of Beckerland Farms Inc. A copy of the Court Order appointing MNP Ltd. as Interim Receiver is posted on the Case Website at: www.mnpdebt.ca/beckerland.

You may wish to monitor these proceedings. If you wish to do so, you may obtain up to date information respecting all court matters, including court applications and Interim Receiver's reports by accessing the Case Website at www.mnpdebt.ca/beckerland.

If at any time, you would like to be served with court documents relating to further proceedings in relation to this matter, please complete the Demand for Notice attached to this letter and send the same by email or facsimile to each of the following persons:

1. Business Development Bank of Canada
c/o McDougall Gauley LLP
500-616 Main Street, Saskatoon, SK S7H 0J6
Attention: Shelby Braun
Email: sbraun@mcdougallgauley.com

2. MNP Ltd.
1500, 640 – 5th Avenue SW, Calgary, AB T2P 3G4
Attention: Victor Kroeger and Rick Anderson
Email: Victor.Kroeger@mnp.ca and Rick.Anderson@mnp.ca

If you do not properly complete a request for service and forward that request by email to each of the above-referenced persons indicating that you require to be served with court documents in these proceedings, then you will not receive, nor will you be entitled to receive, any further notice of the proceedings.

DEMAND FOR NOTICE

TO:

1. Business Development Bank of Canada
c/o McDougall Gauley LLP
500-616 Main Street, Saskatoon, SK S7H 0J6
Attention: Shelby Braun
Email: sbraun@mcdougallgauley.com
Fax: (306) 652-1323

2. MNP Ltd.
1500, 640 – 5th Avenue SW, Calgary, AB T2P 3G4
Attention: Rick Anderson
Email: Rick.Anderson@mnp.ca
Fax: (403) 537-8437

Re: In the Matter of the Interim Receivership of Beckerland Farms Inc.

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

(a) by email, at the following email address:

_____, or

(b) I do not have the ability to receive electronic mail, and am therefore eligible to request, and do hereby request, notice by facsimile at the following facsimile number:

_____.

Signature: _____

Name of Creditor: _____

Address of Creditor: _____

Phone Number: _____