

**ONTARIO
SUPERIOR COURT OF JUSTICE
IN BANKRUPTCY AND INSOLVENCY**

B E T W E E N:

XQUISITE CAPITAL CORP.

Applicant

and

CRYSTAL FARMS LIMITED, JAMES GERALD TATOMIR, KRYSTAL MARTENS
and MILLIE ANN BARBERIO

Respondents

**THIRD REPORT TO THE COURT
SUBMITTED BY MNP LTD.
RECEIVER**

October 6, 2023

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1.0 Introduction and Purpose of Report

1.1. Introduction and Background

1.1.1 Crystal Farms Limited (“**CFL**”) provided freight and logistics services to local greenhouses and operated a 270 acre vegetable and cash crop farm located outside Leamington, Ontario. CFL’s operations have evolved over several decades into a multi-generational business that was managed and controlled by its president, Millie Anne Barberio (“**Barberio**”).

1.1.1. CFL’s land holdings include five main parcels which are comprised, in some cases, of multiple severed lots. The five main parcels are municipally (or legally) known as:

- (i) 1434-1436 Mersea Road D, Leamington Ontario (“**Parcel 1**”): Parcel 1 is considered the main farm and is comprised of two separate lots totaling 33 acres of land and has been improved with multiple outbuildings including the personal residence of Mr. James Tatomir;
- (ii) 1432 Mersea Road D, Leamington (“**Parcel 2**”): Parcel 2 is a personal residence occupied by Mr. Tatomir’s son.
- (iii) 1828 Mersea Road D, Leamington (“**Parcel 3**”): Parcel 3 is comprised of 12 acres of land and improved with one storage barn.
- (iv) 10 & 16 Mersea Road 19, Leamington (“**Parcel 4**”): Parcel 4 is comprised of 10 separate lots totaling 171 acres of land and has been improved with a residential dwelling and two storage barns.
- (v) Part Lot 19, concession D, Leamington (“**Parcel 5**”): Parcel 5 is comprised of two separate lots totalling 52 acres and is improved with a quonset hut for storage.

(collectively the “**Real Property**”).

1.1.2. A summary of CFL’s land holdings including their legal description and registered owner is attached as **Appendix A**.

1.1.2 The individual respondents, James Gerald Tatomir (“**Tatomir**”), Krystal Martens (“**Martens**”) and Barberio are the registered owners of certain parts of the Real Property as shown on Appendix A. Tatomir, Martens and Barberio hold those lands in bare trust for CFL.

1.1.3 Xquisite is CFL’s primary secured creditor. As at September 15, 2023, CFL was indebted to Xquisite in the amount of \$4,606,995.01, plus accruing interest and legal costs. Xquisite holds security over all of the Debtor’s assets for that indebtedness.

1.1.4 We understand CFL’s financial position deteriorated rapidly over the last several years. Within months of receiving Xquisite’s funding, CFL had already breached various terms of its finance agreements and was unable to remedy defaults. As a result, on August 17, 2022 Xquisite demanded payment and issued a Notice of Intention to Enforce Security pursuant to the *Bankruptcy and Insolvency Act* and Notice of Intention to Realize on Security pursuant to the *Farm Debt Mediation Act*.

- 1.1.5** On November 30, 2022, the Honourable Justice Dube issued an Order (the “**Appointment Order**”) appointing MNP Ltd. as receiver (the “**Receiver**”) of the assets, undertakings and properties of CFL and the real property legally owned and held in bare trust for CFL by Tatomir, Barberio and Martens acquired for, or used in relation to CFL’s business (the “**Assets**”). A copy of the Appointment Order is attached as **Appendix B**. The Appointment Order is substantially in the form of the Model Receivership Order developed by the Commercial Court Users Committee.
- 1.1.6** The Appointment Order authorized but did not obligate the Receiver to, among other things:
- Take possession of and exercise control over the Assets;
 - Manage, operate and carry on the business of CFL;
 - Initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Assets and to settle or compromise any such proceedings; and,
 - Market any or all of the Assets and negotiate such terms and conditions of sale as the Receiver may deem appropriate.
- 1.1.7** The Receiver has filed two previous reports with the Court dated March 13, 2023 (the “**First Report**”) and June 12, 2023 (the “**Second Report**”).
- 1.1.8** A copy of the First Report, without appendices and confidential supplement, is attached as **Appendix C**. The First Report was submitted in support of the Receiver’s motion for, among other things, approval of a sale process for the Real Property and farm machinery/equipment. A copy of the Order of Justice Macfarlane dated March 28, 2023 approving the First Report and the sale process outlined therein is attached as **Appendix D** (the “**Sale Process Order**”).
- 1.1.9** A copy of the Second Report, without appendices and confidential supplement, is attached as **Appendix E**. The Second Report was submitted in support of the Receiver’s motion for, among other things, approval of the sale of Parcel 5 and a John Deere Tractor. A copy of the Order of Justice Macfarlane dated May 30, 2023 approving the Second Report is attached as **Appendix F** (the “**May 30 Order**”).
- 1.1.10** For further background information on the Companies and the receivership proceedings, please refer to the Receiver’s website: <https://mnpdebt.ca/en/corporate/corporate-engagements/crystal-farms-ltd>

1.2 Purpose of Receiver’s Third Report

- 1.2.1** This constitutes the Receiver’s third report to the Court (the “**Third Report**”) in this matter and it is filed:
- i. to provide the Court with information on:
 - a. the Receiver’s activities since the Second Report;
 - b. the completion of the sales of Parcel 5 and the John Deere tractor;
 - c. the proposed sale by the Receiver of Parcel 3 and Parcel 4;

- d. the proposed distributions to Canada Revenue Agency (“**CRA**”) in respect of its deemed trust claim and to Xquisite and The Bank of Nova Scotia (“**BNS**”) in respect of their secured claims; and
 - e. to advise of CFL’s intention to file a Division I proposal (the “**Proposal**”) to address the claims of its unsecured creditors following the completion of the sales of Parcel 3 and Parcel 4.
- ii. in support of the Receiver’s motion for Orders,
- a) approving the Third Report and the confidential supplement thereto, along with the activities and conduct of the Receiver described therein;
 - b) approving the Agreement of Purchase and Sale dated September 8, 2023 between the Receiver, as vendor, and J. Byrne Farms Ltd. (“**Byrne Farms**”), as purchaser, in respect of Parcel 3 and authorizing the Receiver to complete the transaction contemplated therein (the “**Parcel 3 Transaction**”);
 - c) approving the Agreement of Purchase and Sale dated August 4, 2023 between the Receiver, as vendor, and Byrne Farms, as purchaser, in respect of Parcel 4 and authorizing the Receiver to complete the transaction contemplated therein (the “**Parcel 4 Transaction**”);
 - d) vesting Parcel 3 and Parcel 4 in Byrne Farms, or as it directs, free and clear of all encumbrances, other than permitted encumbrances;
 - e) Subject to the sales of Parcel 3 and Parcel 4 being approved by the Court and completed, authorizing and directing the Receiver to make the distributions to CRA, Xquisite and BNS as outlined in Section 5 of this report;
 - f) sealing the Confidential Supplement to the Third Report until the earlier of i) completion of the Parcel 3 Transaction and the Parcel 4 Transaction, or ii) further Order of the Court;
 - g) approving the Receiver’s Statement of Receipts and Disbursements for the period May 17, 2023 to October 2, 2023; and
 - h) approving the professional fees of the Receiver and its legal counsel.

2.0 Receiver Activities Since the Second Report

2.1 Activities since the Second Report

2.1.1 Since the Second Report, the Receiver has undertaken and performed the following activities:

- (i) As approved by the Court on May 30, 2023, the Receiver completed the sale of Parcel 5 to PKV Property Group Inc. on June 16, 2023. A copy of the Receiver's certificate is attached as **Appendix G**;
- (ii) As approved by the Court on May 30, 2023, the Receiver completed the sale of the John Deere 9120 tractor to Craven Land & Cattle Co. Ltd. on June 14, 2023. A copy of the Receiver's certificate is attached as **Appendix H**;
- (iii) Negotiated the terms of the proposed sale of Parcel 3 and Parcel 4 to Byrne Farms, the details of which are discussed later in this report;
- (iv) In accordance with the Sale Process Order, continued marketing for sale Parcel 2, Parcel 3 and Parcel 4 and liaised with the realtor, Re/Max Chatham-Kent Realty Inc. ("**Remax**") to implement price reductions as approved in the Sales Process Order;
- (v) Negotiated a lease for the 2023 crop year for the Parcel 3 and Parcel 4 acreage for \$66,450;
- (vi) Corresponded with CRA to address the status of its payroll and HST trust audits;
- (vii) Liaised with Barberio and CFL's storage manager, Jason Gagnon, to market and secure storage tenants for the 2023-2024 storage season;
- (viii) Liaised with the tenants of Parcel 4 to collect rent and keep them apprised of developments in respect of the Receiver's sale process;
- (ix) Attended periodically to inspect the Assets;
- (x) Liaised with Barberio on various matters including the status of CFL's crop insurance claim, third party owned personal property, insurance coverages and options to address unsecured creditor claims;
- (xi) Maintained a website at <https://mnpdebt.ca/en/corporate/corporate-engagements/crystal-farms-ltd> to post documents relating to the receivership that should be available to the public, including the Appointment Order;
- (xii) Administered receivership estate banking, related transactions, and reconciliations and HST reporting; and,
- (xiii) Addressed additional matters as they arose from time to time.

2.2 Canada Revenue Agency

2.2.1 As discussed in the Second Report, on January 17, 2023 and April 17, 2023, CRA submitted proofs of claim to the Receiver in the amount of \$5,638.04 and \$216,909.25 for outstanding HST and payroll source deductions respectively. Of those amounts, CRA has claimed a deemed trust property claim for HST of \$5,638.04 and for unremitted payroll source deductions of \$67,187.86 respectively (the “**Deemed Trust**”). CRA has advised the Receiver that the Deemed Trust amounts are in respect of returns filed by CFL for the 2022 tax year. CRA has advised the Receiver that it may amend the Deemed Trust and unsecured portions of its claim if it determines that the amounts realized from the Assets warrant further examination and potential reassessment of prior tax years.

2.2.2 Copies of CRA’s proofs of claim for source deductions and HST are attached as **Appendix I**.

2.3 Real Property Sales Process and Proposed Sales

2.3.1 As discussed in the First Report, the Receiver determined that it may be unnecessary to realize upon all of the Real Property and Assets to fully satisfy all creditor claims. Pursuant to the Sale Process Order, the Receiver was authorized, but not obligated, to sell all Real Property and Assets. In consultation with Xquisite and Barberio, the Receiver implemented a sale strategy to delay realizing Parcel 1 and certain equipment and machinery pending the sale of the remaining Parcels.

2.3.2 The Receiver initiated the sale process as approved in the Sale Process Order for Parcels 2-5 (collectively the “**Available Parcels**”).

2.3.3 The Available Parcels were listed for sale as follows on April 11, 2023:

Parcel No.	Initial Listing Price (\$)
Parcel 2	550,000.00
Parcel 3	400,000.00
Parcel 4	4,750,000.00
Parcel 5	1,575,000.00
	7,275,000.00

2.3.4 As discussed earlier in this report, the Receiver’s sale of Parcel 5 closed on June 16, 2023. Net sale proceeds totalling \$1,502,600 have been deposited into the Receiver’s trust account.

2.3.5 At the time of the Second Report, the Receiver had only received a non-binding offer on Parcel 2, Parcel 3 or Parcel 4. In accordance with the Sale Process Order and in consultation with Remax, the Receiver implemented the following price reductions on July 7, 2023 to promote interest in Parcel 2, Parcel 3 and Parcel 4:

Parcel No.	Initial Listing Price (\$) April 11, 2023	Amended Listing Price (\$) July 7, 2023
Parcel 2	550,000.00	495,000.00
Parcel 3	400,000.00	369,900.00
Parcel 4	4,750,000.00	4,275,000.00
	5,700,000.00	5,139,900.00

2.3.6 At the time of this report, no offers have been received on Parcel 2.

2.3.7 The Receiver’s sale process generated two separate offers on Parcel 4. The first offer dated April 28, 2023 was a non-binding en-bloc offer to purchase all Available Parcels (“**En-bloc Offer**”). Upon determining the En-bloc Offer contained several deficiencies, the Receiver rejected the offer and invited the prospective purchaser to correct and resubmit its offer. While we understand the prospective purchaser remained interested in the Available Parcels, they have not resubmitted a bona fide offer to date. The second offer on Parcel 4 was submitted by Byrne Farms on July 29, 2023. In consultation with Xquisite, the Receiver negotiated terms for the sale and ultimately accepted and entered into an agreement of purchase and sale with Byrne Farms dated August 9, 2023 (the “**Parcel 4 APS**”), subject to Court approval.

2.3.8 The Receiver’s sale process generated four separate offers on Parcel 3. The En-bloc Offer discussed above was the first offer received for Parcel 3. For the reason above, the En-bloc Offer was ultimately rejected. The Receiver attempted to negotiate with two separate buyers who submitted offers on June 2, 2023 and August 24, 2023; however, neither party responded to the Receiver’s initial counteroffer. The fourth offer was submitted by Byrne on September 6, 2023. The Receiver negotiated terms for the sale and ultimately accepted and entered an agreement of purchase and sale with Byrne Farms dated September 8, 2023 (the “**Parcel 3 APS**”), subject to Court approval.

2.3.9 If approved, the Parcel 3 APS and Parcel 4 APS are to be completed on October 27, 2023.

2.3.10 Redacted copies of the Parcel 3 APS and Parcel 4 APS are attached as **Appendix J** and **Appendix K**, respectively.

2.3.11 Unredacted copies of the Parcel 3 APS and Parcel 4 APS and details of the offers received and appraised values are being provided to the Court via the Confidential Supplement to the Third Report (the “**Confidential Supplement**”). That information is being provided on a confidential basis to avoid any prejudice which would be caused by the disclosure of that information if the Parcel 3 Transaction or Parcel 4 Transaction is not approved or, if approved, not completed, and it becomes necessary for the Receiver to remarket both parcels. Accordingly, the Receiver is requesting a sealing order for the Confidential Supplement until such time as the Parcel 3 and Parcel 4 transactions are completed.

2.3.12 Parcel 3 and Parcel 4 were marketed in accordance with the Sale Process Order. It is the Receiver’s view that both parcels have been properly exposed to the market and completing the Parcel 3 Transaction and Parcel 4 Transaction will optimize the recovery from each respective parcel.

2.3.13 Xquisite is the senior secured lender to CFL and supports the Parcel 3 Transaction and Parcel 4 Transaction.

2.4 Encumbrances to be Vested Out

2.4.1 A copy of the parcel register for Parcel 3 as at December 2, 2022 is attached as **Appendix L**. The encumbrances to be deleted from title and vested out from Parcel 3 are as follows:

Reg. No.	Date	Instrument Type	Party To
CE1000155	2021/04/01	Transfer	Crystal Farms Limited
CE1000226	2021/04/06	Charge	Xquisite Capital Corp.
CE1000227	2021/04/06	No Assign Rent Gen.	Xquisite Capital Corp.
CE1113842	2022/12/02	Apl Court Order	MNP Ltd.

Copies of the parcel registers for the 10 lots which comprise Parcel 4 are attached as **Appendix M**. The encumbrances to be deleted from title and vested out from Parcel 4 are as follows:PIN 75104-0625

Reg. No.	Date	Instrument Type	Party To
CE655991	2015/04/30	Transfer	James Gerald Tatomir
CE1000226	2021/04/06	Charge	Xquisite Capital Corp.
CE1000227	2021/04/06	No Assign Rent Gen.	Xquisite Capital Corp.
CE1113842	2022/12/02	Apl Court Order	MNP Ltd.

PIN 75104-0623

Reg. No.	Date	Instrument Type	Party To
CE655990	2015/04/30	Transfer	Crystal Farms Limited
CE1000226	2021/04/06	Charge	Xquisite Capital Corp.
CE1000227	2021/04/06	No Assign Rent Gen.	Xquisite Capital Corp.
CE1113842	2022/12/02	Apl Court Order	MNP Ltd.

PIN 75104-0137

Reg. No.	Date	Instrument Type	Party To
R1188670	1992/02/06	Transfer	Crystal Farms Limited
CE1000226	2021/04/06	Charge	Xquisite Capital Corp.
CE1000227	2021/04/06	No Assign Rent Gen.	Xquisite Capital Corp.
CE1113842	2022/12/02	Apl Court Order	MNP Ltd.

PIN 75104-0136

Reg. No.	Date	Instrument Type	Party To
R1188670	1992/02/06	Transfer	Crystal Farms Limited
CE1000226	2021/04/06	Charge	Xquisite Capital Corp.
CE1000227	2021/04/06	No Assign Rent Gen.	Xquisite Capital Corp.
CE1113842	2022/12/02	Apl Court Order	MNP Ltd.

PIN 75104-0135

Reg. No.	Date	Instrument Type	Party To
R689292	1977/02/23	Transfer	Crystal Farms Limited
R863728	1982/10/01	Transfer	Crystal Farms Limited
CE1000226	2021/04/06	Charge	Xquisite Capital Corp.
CE1000227	2021/04/06	No Assign Rent Gen.	Xquisite Capital Corp.
CE1113842	2022/12/02	Apl Court Order	MNP Ltd.

PIN 75104-0134

Reg. No.	Date	Instrument Type	Party To
R1014135	1987/06/23	Lease	Ram Petroleums Ltd.
CE641936	2014/12/23	Trans Personal Rep	Krystal Martens
CE1000226	2021/04/06	Charge	Xquisite Capital Corp.
CE1000227	2021/04/06	No Assign Rent Gen.	Xquisite Capital Corp.
CE1113842	2022/12/02	Apl Court Order	MNP Ltd.

PIN 75104-0133

Reg. No.	Date	Instrument Type	Party To
CE638592	2014/12/01	Transfer	Millie Ann Barberio
CE1000226	2021/04/06	Charge	Xquisite Capital Corp.
CE1000227	2021/04/06	No Assign Rent Gen.	Xquisite Capital Corp.
CE1113842	2022/12/02	Apl Court Order	MNP Ltd.

PIN 75104-0132

Reg. No.	Date	Instrument Type	Party To
R621595	1975/01/10	Transfer	Crystal Farms Limited
CE1000226	2021/04/06	Charge	Xquisite Capital Corp.
CE1000227	2021/04/06	No Assign Rent Gen.	Xquisite Capital Corp.
CE1113842	2022/12/02	Apl Court Order	MNP Ltd.

PIN 75104-0131

Reg. No.	Date	Instrument Type	Party To
CE641937	2014/12/23	Transfer Personal Rep	Millie Ann Barberio
CE1000226	2021/04/06	Charge	Xquisite Capital Corp.
CE1000227	2021/04/06	No Assign Rent Gen.	Xquisite Capital Corp.
CE1113842	2022/12/02	Apl Court Order	MNP Ltd.

PIN 75104-0128

Reg. No.	Date	Instrument Type	Party To
CE126114	2005/01/14	Transfer	John Sr. Tatomir, James Gerald Tatomir
CE1000226	2021/04/06	Charge	Xquisite Capital Corp.
CE1000227	2021/04/06	No Assign Rent Gen.	Xquisite Capital Corp.
CE1113842	2022/12/02	Apl Court Order	MNP Ltd.

3.0 Receiver's Final Statement of Receipts and Disbursements

3.1 Statement of Receipts and Disbursements

- 3.1.1** Attached as **Appendix N** is a summary of the Receiver's Statement of Receipts and Disbursements for the period November 30, 2022 to October 2, 2023.
- 3.1.2** Receipts of \$1,977,183 have been realized from the sale of Parcel 5, the John Deere tractor and grain inventory and collection of CFL's equity position in certain leased assets.
- 3.1.3** The Receiver has made disbursements of \$220,115 for insurance, utilities and appraisal fees and \$97,955 in respect of approved professional fees.
- 3.1.4** The Receiver has a balance of \$1,757,067 in the receivership bank account.
- 3.1.5** The Receiver has included in the Confidential Supplement a Projected Statement of Receipts and Disbursements based upon the approval and completion of the Parcel 3 Transaction and Parcel 4 Transaction.

4.0 Receiver and its Counsel's Accounts

- 4.1.1** As required in the Appointment Order, the Receiver is seeking approval of its accounts and the accounts of its legal counsel.
- 4.1.2** The Court has previously approved the Receiver's accounts totalling \$67,529.98, inclusive of disbursements and HST, for the period ending February 15, 2023 and the accounts of the Receiver's legal counsel totalling \$7,014.88, inclusive of the disbursements and HST, for the period ending February 28, 2023.
- 4.1.3** The Receiver has submitted one invoice since the Second Report for the period February 16, 2023 to September 30, 2023 in the amount of \$115,000, inclusive of disbursements and before HST. The invoice, together with the Receiver's affidavit of verification of fees, is attached as **Appendix O**.
- 4.1.4** Miller Thomson LLP ("MT"), the Receiver's legal counsel, has submitted four invoices since the Second Report as follows:

Invoice Date	Period	Amount (\$)
April 30, 2023	February 29, 2023 to April 30, 2023	16,794.41
May 31, 2023	May 1, 2023 to May 31, 2023	9,292.20
June 30, 2023	June 1, 2023 to June 30, 2023	7,587.34
August 31, 2023	July 1, 2023 to August 31, 2023	1,470.70

The invoices, together with MT's affidavit of verification of fees, are attached as **Appendix P**.

- 4.1.5** It is the Receiver's opinion that the Professional Fees are fair and reasonable and justified in the circumstances and accurately reflect the work done by the Receiver and MT in connection with the receivership during the relevant periods. The Receiver recommends approval of the Professional Fees.

5.0 Distribution to Secured Creditors

5.1 Secured Creditor Registrations

- 5.1.1** Xquisite is the only creditor holding registered security over the Real Property. Copies of the parcel registers for Parcel 3 and Parcel 4 are attached as Appendices L and M. A copy of the parcel register for Parcel 5 is attached as **Appendix Q**.
- 5.1.2** The following parties have registrations against CFL under the *Personal Property Security Act* (Ontario) (“**PPSA**”) as at October 3, 2023:
- (i) BNS
 - (ii) John Deere Financial Inc. (“**JDFI**”)
 - (iii) Xquisite
- 5.1.3** A copy of the *PPSA* search is attached as **Appendix R**.
- 5.1.4** The registrations in favour of JDFI are in respect of leased equipment which was returned by CFL to JDFI prior to the date of the Appointment Order. The Receiver is not aware of any other security held by JDFI over the Assets, or any part thereof.
- 5.1.5** At the date of the Appointment Order, the following parties also had *PPSA* registrations against CFL:
- (i) Agricultural Credit Corporation (“**ACC**”)
 - (ii) RCAP Leasing Inc. (“**RCAP Leasing**”)
 - (iii) LBEL Inc. (“**LBEL**”)
 - (iv) Transit Trailer Leasing Limited (“**TTLL**”)
- 5.1.6** ACC confirmed to the Receiver that no amount is owing to it from CFL and discharged its registration.
- 5.1.7** The registration in favour of RCAP Leasing was in respect of leased equipment that was returned by the Receiver to RCAP Leasing. RCAP Leasing discharged its registration.
- 5.1.8** The registration in favour of LBEL was in respect of leased equipment that was returned by CFL to LBEL prior to the date of the Appointment Order. LBEL discharged its registration.
- 5.1.9** The registration in favour of TTLL was in respect of leased equipment that was returned by the Receiver to TTLL. TTLL discharged its registration.
- 5.1.10** The only creditors having secured claims under the *PPSA* against the personal property of CFL of which the Receiver is aware are BNS and Xquisite.

5.2 Independent Legal Opinion

5.2.1 MT has reviewed the security held by Xquisite and BNS. Subject to the customary assumptions and qualifications, MT has provided an opinion that:

- (i) Xquisite has valid security over the Assets; and
- (ii) BNS has a valid and perfected security interest in the personal property of CFL.

5.2.2 A copy of the MT security opinion dated March 13, 2023 and supplementary opinion dated October 5, 2023 is attached as **Appendix S** to this report.

5.3 Receiver's Proposed Distribution

5.3.1 To date, the Receiver has realized the following amounts from the personal property (collectively, the "**Personal Property Proceeds**"):

- (i) \$115,000.00 from the sale of the John Deere 9120 tractor;
- (ii) \$107,609.48 from settlements in respect of CFL's equity stake in four pieces of equipment returned to TTLL;
- (iii) \$88,141.16 from the sale of 2022 crops; and
- (iv) \$80,550.00 from rental income collections for the 2023 crop year.

5.3.2 Xquisite has provided to the Receiver a draft payout statement in the amount of \$4,606,995.01 plus per diem interest of \$894.56 and ongoing legal costs from September 15, 2023.

5.3.3 BNS has provided a payout statement in the amount of \$162,194.86 plus per diem interest of \$72.65 from October 27, 2023.

5.3.4 CRA has a priority charge over the Personal Property Proceeds for the Deemed Trust amount. As at the date of this report, the Deemed Trust amount claimed by CRA is \$72,825.90. While CRA has advised the Receiver that it may amend its claim in the event that in the future it reassesses CFL for years prior to 2022, to date CRA has taken no steps to do so. In the event that a reassessment is undertaken by CRA and additional Deemed Trust amounts are determined to be owing, that claim will be dealt with in the Proposal.

5.3.5 Subject to the Parcel 3 Transaction and Parcel 4 Transaction being approved and completed, sufficient funds will be available to fully satisfy the CRA Deemed Trust claim in the amount of \$72,825,90 and the secured claims of Xquisite and BNS.

5.3.6 The Receiver recommends and seeks approval for the following distributions, subject to the approval and completion of the Parcel 3 Transaction and Parcel 4 Transaction:

- (i) \$72,825 to CRA in respect of its Deemed Trust claim;
- (ii) \$162,194.86, plus accruing per diem interest and legal costs, to BNS in respect of its secured claim; and
- (iii) \$4,606,995.01, plus accruing per diem interest and legal costs, to Xquisite in respect of its secured claim.

6.0 CFL's Proposal to Unsecured Creditors

- 6.1.1** Subject to the approval and completion of the Parcel 3 Transaction and the Parcel 4 Transaction, Barberio has confirmed that CFL intends to make a Division 1 Proposal to its unsecured creditors and to retain MNP to act as CFL's proposal Trustee.
- 6.1.2** Based on appraised values of the remaining assets (including the surplus funds estimated to be remaining after payment of the secured claims, the Deemed Trust amount and the costs and expenses of the receivership, including the professional fees of the Receiver and its legal counsel) and known unsecured claims, the Receiver anticipates there is sufficient value to pay the claims of the unsecured creditors in full. It is the Receiver's view that the filing of a Proposal is appropriate to take advantage of the claims process set out in the *Bankruptcy and Insolvency Act* to identify and value all unsecured claims.
- 6.1.3** After the sales of Parcel 3 and Parcel 4 are completed and the Proposal filed, the Receiver will file a motion with the Court for approval to pay over to the Proposal Trustee the funds remaining in the receivership bank account after completing the distributions set out in Section 5 and the payment of all costs and expenses, including professional fees, of the receivership and seek its discharge.

7.0 Order Sought

7.1.1 We submit this Second Report to the Court and respectfully request that the Court make an order as requested in paragraph 1.2.1 above.

All of which is respectfully submitted this 6th day of October, 2023.

**MNP Ltd. in its capacity as
Court Appointed Receiver of
Crystal Farms Limited
and not in its personal capacity**



Per: _____
Robert W. Smith CPA, CA, CIRP, LIT
Senior Vice President