



FORCE FILED

No. S241161  
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,  
R.S.C. 1985, c. C-36, AS AMENDED

BETWEEN:

THE BANK OF NOVA SCOTIA

PETITIONER

AND:

BIFANO CONSOLIDATED INC.,  
BIFANO FARMS INC.,  
NATA FARMS INC.,  
SSC VENTURES (NO. 105) LTD. and  
SPALLUMCHEEN FARM LTD.

RESPONDENTS

NOTICE OF APPLICATION

Name of Applicants: The Petitioner, the Bank of Nova Scotia ("BNS")

To: The Service List and the other parties listed in Schedule "A"

TAKE NOTICE THAT an application will be made by BNS to the Honourable Madam Justice Fitzpatrick, at the courthouse at 800 Smithe Street, Vancouver, British Columbia, on Monday, June 24, 2024, at 10:00 a.m. for the orders sought in Part 1 below.

The applicant estimates that the application will take a 1.5 hours.

- ☒ This matter is not within the jurisdiction of an associate judge. Madam Justice Fitzpatrick is seized of these proceedings. The time for this application has been set with Scheduling.

**Part 1: ORDERS SOUGHT**

1. An order (the "Receivership Order"), substantially in the form set out in Schedule "B" hereto, among other things:
  - (a) discharging Alvarez & Marsal Canada Inc. ("A&M") as Monitor (in such capacity, the "Monitor") of Bifano Consolidated Inc., Bifano Farms Inc., Nata Farms Inc.,

SSC Ventures (No. 105) Ltd. and Spallumcheen Farm Ltd. (together, the “**Debtor**”), as appointed by the initial order (the “**Initial Order**”) made pursuant to the *Companies’ Creditors Arrangement Act*, RSC 1985, c C-36, as amended (the “**CCAA**”) in these proceedings on February 28, 2024;

- (b) appointing A&M as receiver and manager (in such capacity, the “**Receiver**”), without security, of all of the assets, undertakings and property (together, the “**Property**”) of the Debtor pursuant to section 243 of *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the “**BIA**”) and section 39 of the *Law and Equity Act*, R.S.B.C. 1996, c. 253 (the “**LEA**”);
- (c) declaring that the Debtor and its former employees meet the criteria provided for in WEPPA (as defined herein) and the regulations thereunder, such that WEPPA applies to each of the Debtor and its former employees; and
- (d) authorizing A&M, as Receiver, to sell the Debtor’s milk quota and livestock inventory, without further court approval.

## **Part 2: FACTUAL BASIS**

- 2. Capitalized terms used herein have the same meanings as ascribed to them in the Third Report of the Monitor, to be filed herein (the “**Third Report**”), unless otherwise defined.
- 3. The Monitor has filed several reports to this Court in these proceedings, including the First Report of the Monitor dated March 8, 2024, the Second Report of the Monitor dated May 16, 2024 and the Third Report.
- 4. On February 28, 2024, the Honourable Madam Justice Fitzpatrick granted the Initial Order, among other things:
  - (a) appointing A&M as Monitor of the Debtor with certain enhanced powers;
  - (b) granting a stay of proceedings (the “**Stay**”) until March 11, 2024;

- (c) approving \$1,500,000 in interim financing (the “**Interim Financing**”) to be advanced by BNS in order to finance the Debtor’s working capital requirements and other general corporate purposes; and
  - (d) granting the following charges (together, the “**CCAA Charges**”) as security for the obligations of the Debtor to the beneficiaries of each charge (each as defined in the Initial Order):
    - (i) the Administration Charge to secure the fees and disbursements of the Debtor’s counsel, the Monitor and the Monitor’s counsel, to the maximum aggregate amount of \$150,000;
    - (ii) the Interim Lender’s Charge to secure the amounts advanced under the Interim Financing, to the maximum amount of \$250,000; and
    - (iii) the Director’s Charge in favour of the directors and officers of the Debtors, to the maximum amount of \$150,000.
5. On March 11, 2024, on the applications of BNS, the Honourable Madam Justice Fitzpatrick granted:
- (a) an Amended And Restated Initial Order (the “**ARIO**”), whereby, among other things, the Stay was extended to May 24, 2024 and the Interim Lender’s Charge was increased to the maximum amount of \$1,500,000; and
  - (b) a sale process order (the “**Sale Process Order**”) approving the proposed sale process (the “**Sale Process**”) in respect of the Property.
6. On May 21, 2024, on the application of the Monitor, the Honourable Madam Justice Sharma granted an order extending the Stay to July 12, 2024.

### *Sale Process*

7. In accordance with the Sale Process Order, the Monitor commenced the Sale Process on March 15, 2024, by preparing and distributing a teaser letter and confidentiality agreement to 43 known potentially interested parties identified across Canada. Ten parties executed

and delivered the confidentiality agreement to the Monitor and were provided access to the data room created by the Monitor in respect of the Sale Process.

8. Upon commencing the Sale Process, and in accordance with the terms of the Sale Process Order, the Monitor amended the target dates of the Sale Process, including extending the bid deadline to May 10, 2024. As at May 10, 2024, the Monitor had received three bids, each accompanied by a deposit.
9. The Monitor reviewed all of the received bids and, after discussing each with BNS, determined that none of the bids were acceptable as a Successful Bid (as defined in the Sale Process Order). The Monitor then notified each of the respective bidders that their bid was not accepted and returned the deposits to the appropriate bidder.
10. After the deposits had been returned, one of the parties who made submitted a bid proposed revised terms for a potential transaction. Following discussions, BNS confirmed that the terms of the offer were not acceptable and, in the circumstances, BNS was not supportive of extending the CCAA to pursue or further negotiate the proposed terms.

#### *Receivership Order*

11. After considering all options and in consultation with various stakeholders, it is BNS' understanding that the Monitor is of the view that the Sale Process will not result in a satisfactory going concern sale of the Property or an alternative refinancing transaction and, accordingly, BNS is concerned that the operating costs, which include significant shortfalls, are no longer justified.
12. In the Third Report, the Monitor advised, after viewing the results of the Sale Process and discussing alternatives with BNS, that:
  - (a) the prospect of a restructuring of the Debtor was remote and, in its view, there would be little benefit in continuing the relief under the ARIO, given the circumstances, namely short-term liquidity constraints;
  - (b) it would be prudent to shutter the Debtor's operations and effect an orderly and expeditious liquidation of the Debtor's assets; and

- (c) the Receiver Order would better allow A&M to efficiently and effectively attend to the liquidation of the Property to the benefit of all stakeholders, including the Debtor's creditors.
13. BNS agrees with the Monitor and is of the view that the Receivership Order will best enable the timely and orderly liquidation of the Debtor's assets.
14. BNS understands that the Receiver intends to monetize the Debtor's assets, including milk quota and livestock inventory, using the BC Milk Marketing Board Quota Exchange and a third-party auction house, respectively. Accordingly, the proposed Receivership Order authorizes A&M as receiver to sell quota and livestock without further court approval. Since the sales for those assets will take place in a public auction, the Monitor is satisfied that this is a commercially reasonable approach for selling such assets.
15. Prior to the granting of a Receivership Order by this Honourable Court, BNS has confirmed that it will make the necessary funding available to the Monitor to pay all outstanding expenses for goods and services provided to the Debtor during the pendency of the CCAA proceedings.

#### *WEPPA*

16. During the course of these proceedings, and as previously advised to this Court, the Debtor's trucking operations were shuttered in March 2024. As a result, the Debtor terminated 46 employees on March 15, 2024, and one (1) additional employee on April 9, 2024, all of whom were employees of Nata Farms Inc. ("**Nata**").
17. The Receivership Order includes a declaration that the Debtor and its former employees meet the criteria in the *Wage Earner Protection Program Regulations*, SOR/2008-222 and that for those former employees, the *Wage Earner Protection Program Act (Canada)*, SC 2005, c 47, s 1 ("**WEPPA**") applies.

#### **Part 3: LEGAL BASIS**

18. BNS relies on:

- (a) Rules 1-3, 10-2, and 22-1 of the *Supreme Court Civil Rules*:

- (b) The *BIA*, section 243;
- (c) the *LEA*, R.S.B.C. 1996, c. 253, section 39;
- (d) the *Personal Property Security Act*, R.S.B.C. 1996, c. 359; and
- (e) such other legal basis as counsel may advise.

*Receivership Order*

- 19. BNS applies for the Receivership Order, among other things, discharging the Monitor and appointing A&M as the Receiver.
- 20. Where warranted, courts in Canada have granted receivership orders in the course of proceedings commenced under the CCAA.<sup>1</sup>
- 21. The test to appoint a receiver is articulated in different ways in the authorities:
  - (a) Where a debtor is in default of its obligations, the appointment of a receiver should be made as a matter of course unless the debtor can show that there are compelling commercial or other reasons why such an order ought not be made.

*United Savings Credit Union v. F & R Brokers Inc.* (2003), 15 B.C.L.R. (4th) 347 (B.C. S.C.); *Canadian Imperial Bank of Commerce v. Can-Pacific Farms Inc.*, 2012 BCSC 437.
  - (b) The overarching consideration of the court in an application to appoint a receiver is whether it is just and convenient in all of the circumstances.

*Cascade Divide Enterprises Inc. v. Laliberte*, 2013 BCSC 263;  
*Maple Trade Finance Inc. v. CY Oriental Holdings Ltd.*, 2009 BCSC 1527.

- 22. Regardless of which articulation of the test is applied, the appointment of a receiver in these proceedings is appropriate in the circumstances.
- 23. There are a number of factors that may figure in the determination of whether it is appropriate to appoint a receiver:

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<sup>1</sup> *Arrangement relatif à Cirque du Soleil Canada Inc.*, 2020 QCCS 2124; *Ravelston Corporation Ltd. (Re)*, 2005 O. J. No. 1643 (Super. Ct.)



- (a) whether irreparable harm might be caused if no order were made;
- (b) the risk to the security holder taking into consideration the size of the debtor's equity in the assets and the need for protection or safeguarding of the assets while litigation takes place;
- (c) the nature of the property;
- (d) the apprehended or actual waste of the debtor's assets;
- (e) the preservation and protection of the property;
- (f) the balance of convenience to the parties;
- (g) the fact that the creditor has the right to appoint a receiver under the documentation provided for the loan;
- (h) the enforcement of rights under a security instrument where the security-holder encounters or expects to encounter difficulty with the debtor and others;
- (i) the principle that the appointment of a receiver is extraordinary relief which should be granted cautiously and sparingly;
- (j) the consideration of whether a court appointment is necessary to enable the receiver to carry out its' duties more efficiently;
- (k) the effect of the order upon the parties;
- (l) the length of time that a receiver may be in place;
- (m) the conduct of the parties;
- (n) the cost to the parties;
- (o) the likelihood of maximizing return to the parties;
- (p) the goal of facilitating the duties of the receiver.

*Maple Trade Finance Inc. v. CY Oriental Holdings Ltd.*, 2009 BCSC 1527.

24. On the whole, the factors favour the granting of the Receivership Order as, among other things:
- (a) it has become apparent that a restructuring of the Debtor is not feasible and, accordingly, a liquidation of the Property is required;
  - (b) the Monitor, who has overseen these proceedings since its appointment on February 28, 2024, is of the view that the granting of the Receivership Order will enable it to best liquidate the Property to the benefit of the various stakeholders in these proceedings;
  - (c) it is in the best interest of the stakeholders, primarily the Debtor's various creditors, that the Receivership Order be granted; and
  - (d) no party will be prejudiced by the appointment of a receiver.

*WEPPA*

25. Pursuant to Section 5(1) of WEPPA, an individual is eligible to receive a payment if the following conditions are met:
- (a) the employment of an individual was ended for a reason prescribed by regulation;
  - (b) the former employer is the subject of a CCAA proceeding;
  - (c) the individual is owed eligible wages by the former employer; and
  - (d) a court makes a determination that pursuant to subsection 5(5) of WEPPA that the former employer meets the criteria prescribed by regulation.
26. Section 5(5) of WEPPA states that, on application by any person, a court pursuant to the CCAA may determine that a former employee meets criteria prescribed by regulation. Section 3.2 of the Regulations to WEPPA states:



For the purposes of subsection 5(5) of the Act, a court may determine whether the former employer is the former employer all of whose employees in Canada have been terminated other than any retained to wind down its business operations”.

27. In its Third Report, the Monitor confirmed:
- (a) the employment of the individuals was terminated (a reason prescribed by regulation);
  - (b) the former employer, Nata, is a Respondent in these CCAA Proceedings; and
  - (c) the individuals are owed eligible wages by the former employer, Nata.
28. Accordingly, BNS seeks a declaration to be included in the Receivership Order that the provisions of WEPPA applies to each of the Debtor and its former employees.

**Part 4: MATERIAL TO BE RELIED ON**

29. Affidavit #1 of James Cook made February 13, 2024;
30. First Report to Court of the Monitor filed March 8, 2024;
31. Second Report to Court of the Monitor filed May 16, 2024;
32. Third Report to Court of the Monitor (to be filed);
33. Initial Order granted February 28, 2024;
34. Amended and Restated Initial Order granted March 11, 2024;
35. Sale Process Order granted March 11, 2024; and
36. Such further and other materials as counsel may advise and the Court may allow.

**TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION:** If you wish to respond to this Notice of Application, you must, within 5 business days after service of this Notice of Application or, if this application is brought under Rule 9-7, within 8 business days after service of this Notice of Application,

- (a) file an Application Response in Form 33,

- (b) file the original of every affidavit, and of every other document, that
  - (i) you intend to refer to at the hearing of this application, and
  - (ii) has not already been filed in the proceeding, and
- (c) serve on the applicant 2 copies of the following, and on every other party of record one copy of the following:
  - (i) a copy of the filed Application Response;
  - (ii) a copy of each of the filed affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on that person;
  - (iii) if this application is brought under Rule 9-7, any notice that you are required to give under Rule 9-7(9).

Dated: June 19, 2024



Signature of Lisa Hiebert  
Lawyer for Applicant

***To be completed by the court only:***

Order made

☐ in the terms requested in paragraphs ..... of Part 1 of this Notice of Application

☐ with the following variations and additional terms:

.....  
.....

Date:

.....  
Signature of ☐ Judge ☐ Associate Judge

The Solicitors for the Applicant are Fasken Martineau DuMoulin LLP, whose office address and address for delivery is 550 Burrard Street, Suite 2900, Vancouver, BC V6C 0A3 Telephone: +1 604 631 3131 Facsimile: +1 604 631 3232 E-mail: lhiebert@fasken.com (Reference: Lisa Hiebert/240537.05745)

## APPENDIX

### THIS APPLICATION INVOLVES THE FOLLOWING:

- ☐ discovery: comply with demand for documents
- ☐ discovery: production of additional documents
- ☐ other matters concerning document discovery
- ☐ extend oral discovery
- ☐ other matter concerning oral discovery
- ☐ amend pleadings
- ☐ add/change parties
- ☐ summary judgment
- ☐ summary trial
- ☐ service
- ☐ mediation
- ☐ adjournments
- ☐ proceedings at trial
- ☐ case plan orders: amend
- ☐ case plan orders: other
- ☐ experts
- ☒ none of the above

**SCHEDULE "A"**

**SERVICE LIST**

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

BETWEEN:

THE BANK OF NOVA SCOTIA

PETITIONER

AND:

BIFANO CONSOLIDATED INC.,  
BIFANO FARMS INC.,  
NATA FARMS INC.,  
SSC VENTURES (NO. 105) LTD. AND  
SPALLUMCHEEN FARM LTD.

RESPONDENTS

**SERVICE LIST**

Current to: June 5, 2024

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**SCHEDULE “B”**

**DRAFT ORDER**

IN THE SUPREME COURT OF BRITISH COLUMBIA

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,  
R.S.C. 1985, c. C-36, AS AMENDED

BETWEEN:

THE BANK OF NOVA SCOTIA

PETITIONER

AND:

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BIFANO FARMS INC.,  
NATA FARMS INC.,  
SSC VENTURES (NO. 105) LTD. and  
SPALLUMCHEEN FARM LTD.

RESPONDENTS

ORDER MADE AFTER APPLICATION

BEFORE THE HONOURABLE )  
MADAM JUSTICE FITZPATRICK ) JUNE 24, 2024  
)

ON THE APPLICATION of The Bank of Nova Scotia ("**BNS**", or the "**Applicant**") for an order pursuant to Section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "**BIA**") and Section 39 of the *Law and Equity Act*, R.S.B.C. 1996, c. 253, as amended (the "**LEA**") appointing Alvarez & Marsal Canada Inc. as receiver and manager (in such capacity, the "**Receiver**") without security, of all of the assets, undertakings and property of Bifano Consolidated Inc., Bifano Farms Inc., Nata Farms Inc., SSC Ventures (No. 105) Ltd. and Spallumcheen Farm Ltd. (together, the "**Debtor**") coming on for hearing this day at Vancouver, British Columbia.

AND ON READING the Affidavit #1 of James Cook made February 13, 2024 ("**Cook #1**"), the third report to court of Alvarez & Marsal Canada Inc. in its capacity as monitor of the Debtor dated June 19, 2024 (the "**Third Report**"), and the consent of Alvarez & Marsal Canada Inc. to act as Receiver; AND ON HEARING [●], counsel for the Applicant and those parties represented by counsel as listed on Schedule "A" hereto, and no one else appearing, although duly served.

THIS COURT ORDERS AND DECLARES that:

1. The time for service of the Notice of Application for this Order and the supporting material is hereby abridged and this application is properly returnable today and any further service thereof is hereby dispensed with.

**APPOINTMENT**

2. Pursuant to Section 243(1) of the BIA and Section 39 of the LEA, Alvarez & Marsal Canada Inc. is appointed Receiver, without security, of all of the assets, undertakings and property of the Debtor, including all proceeds (the “**Property**”).

**RECEIVER’S POWERS**

3. The Receiver is 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 expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:
  - (a) to take possession of and exercise control over the Property and any and all receipts and disbursements arising out of or from the Property;
  - (b) to receive, preserve and protect the Property, or any part or parts thereof, including, but not limited to, changing locks and security codes, relocation of Property, engaging independent security personnel, taking physical inventories and placing insurance coverage;
  - (c) to manage operate and carry on the business of the Debtor, 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 of the business, or cease to perform any contracts of the Debtor;
  - (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 Receiver’s powers and duties, including, without limitation, those conferred by this Order;
  - (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtor or any part or parts thereof;
  - (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting these amounts, including, without limitation, enforcement of any security held by the Debtor;
  - (g) to settle, extend or compromise any indebtedness owing to the Debtor;

- (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 the Debtor, for any purpose pursuant to this Order;
- (i) to undertake environmental or workers' health and safety assessments of the Property and operations of the Debtor;
- (j) to initiate, manage and direct all legal proceedings now pending or hereafter pending (including appeals or applications for judicial review) in respect of the Debtor, the Property or the Receiver, including initiating, prosecuting, continuing, defending, settling or compromising the proceedings;
- (k) to market any or all of 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 considers 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 a single transaction for consideration up to \$50,000, provided that the aggregate consideration for all such transactions does not exceed \$500,000;
  - (ii) of any transaction in which the individual or aggregate purchase price exceeds the limits set out in subparagraph (i) above,and in each such case notice under Section 59(10) of the Personal Property Security Act, R.S.B.C. 1996, c. 359 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, free and clear of any liens or encumbrances;
- (n) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver considers appropriate on all matters relating to the Property and the receivership, and to share information, subject to confidentiality terms as the Receiver considers appropriate;
- (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 considered necessary or appropriate by the Receiver, in the name of the Debtor;
- (q) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limitation, the ability to enter into occupation agreements for any property owned or leased by the Debtor;



- (r) to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have; and
- (s) 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 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), including the Debtor, and without interference from any other Person.

- 4. Notwithstanding anything to the contrary herein, including the limits on sales of the Property set out in paragraph 3(l) hereof, the Receiver is hereby authorized to sell, by itself or through one or more agents, all of the Debtors' cattle inventory (the "**Cattle**") and milk quota (the "**Milk Quota**") at such times and at such prices as the Receiver deems appropriate. All Cattle and Milk Quota sold by the Receiver shall, upon receipt by the Receiver of the purchase price therefor, vest in the purchaser free and clear of all encumbrances.

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

- 5. Each of (i) the Debtor; (ii) all of the Debtor's 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 (collectively, "**Persons**" and each 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 dependent on maintaining possession) to the Receiver upon the Receiver's request.
- 6. All Persons, other than governmental authorities, 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 the Debtor, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (collectively, the "**Records**") in that Person's possession or control. Upon request, governmental authorities shall advise the Receiver of the existence of any Records in that Person's possession or control.
- 7. Upon request, all Persons shall provide to the Receiver or permit the Receiver to make, retain and take away copies of the Records and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities, provided however that nothing in paragraphs 5, 6 or 7 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 solicitor client privilege or 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 an 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 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 require including, without limitation, 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.

#### **CCAA ORDERS**

9. Alvarez & Marsal Canada Inc. is hereby discharged as Monitor (in such capacity, the “**Monitor**”) of the Debtor, as appointed by the Amended and Restated Initial Order (the “**ARIO**”) made in these proceedings on March 11, 2024.
10. The Receiver is authorized to pay from funds in its possession, including any funds borrowed by the Receiver in accordance with its borrowing authority granted hereunder, any outstanding obligations incurred by the Debtor after February 28, 2024 (the date on which the initial order was granted herein pursuant to the CCAA).
11. The Charges (as defined in the ARIO) shall secure all amounts owing as of the date of this Order, but shall not secure amounts incurred after the date of this Order.

#### **NO PROCEEDINGS AGAINST THE RECEIVER**

12. 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 THE DEBTOR OR THE PROPERTY**

13. No Proceeding against or in respect of the Debtor 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 the Debtor or the Property are 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 and provided that no further step shall be taken in respect of the Proceeding except for service of the initiating documentation on the Debtor and the Receiver.

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

14. All rights and remedies (including, without limitation, set-off rights) against the Debtor, the Receiver, or affecting the Property, are stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that nothing in this Order

shall (i) empower the Receiver or the Debtor to carry on any business which the Debtor is not lawfully entitled to carry on, (ii) affect the rights of any regulatory body as set forth in section 69.6(2) of the BIA, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien. This stay and suspension shall not apply in respect of any “eligible financial contract” as defined in the BIA.

#### **NO INTERFERENCE WITH THE RECEIVER**

15. 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, without written consent of the Receiver or leave of this Court. Nothing in this Order shall prohibit any party to an eligible financial contract from closing out and terminating such contract in accordance with its terms.

#### **CONTINUATION OF SERVICES**

16. 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 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 the 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 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 Receiver, or as may be ordered by this Court.

#### **RECEIVER TO HOLD FUNDS**

17. 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, 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.

#### **EMPLOYEES**

18. Subject to the employees’ right to terminate their employment, all employees of the Debtor shall remain the employees of the Debtor until such time as the Receiver, on the Debtor’s behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities of the Debtor, including any successor employer

liabilities as referred to in Section 14.06(1.2) of the BIA, other than amounts the Receiver may specifically agree in writing to pay or in respect of obligations imposed specifically on receivers by applicable legislation, including sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*, S.C. 2005, c.47 (“**WEPPA**”). The Receiver shall be liable for any employee-related liabilities, including wages, severance pay, termination pay, vacation pay, and pension or benefit amounts relating to any employees that the Receiver may hire in accordance with the terms and conditions of such employment by the Receiver.

19. Pursuant to section 5(5) of WEPPA, the Debtor and its collective former employees meet the criteria prescribed by section 3.2 of the *Wage Earner Protection Program Regulations*, SOR/2008-222.

#### **PERSONAL INFORMATION**

20. Pursuant to Section 7(3)(c) of the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5 or Section 18(1)(o) of the *Personal Information Protection Act*, S.B.C. 2003, c. 63, the Receiver may 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 the Debtor, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

#### **LIMITATION ON ENVIRONMENTAL LIABILITIES**

21. Nothing in this Order shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, “**Possession**”) of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release, or deposit of a substance contrary to any federal, provincial or other law relating to the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination (collectively “**Environmental Legislation**”), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation.
22. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver’s duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless the Receiver is actually in possession.



23. Notwithstanding anything in federal or provincial law, the Receiver is not personally liable in that position for any environmental condition that arises or environmental damage that occurred:
- (a) before the Receiver's appointment; or,
  - (b) 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.
24. Notwithstanding anything in federal or provincial law, but subject to the preceding paragraph of this Order, where an order is made which has the effect of requiring the Receiver to remedy any environmental condition or environmental damage affecting the Property, if the Receiver complies with the BIA section 14.06(4), the Receiver is not personally liable for the 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.

#### **LIMITATION ON THE RECEIVER'S LIABILITY**

25. The Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except:
- (a) any gross negligence or wilful misconduct on its part; or
  - (b) amounts in respect of obligations imposed specifically on receivers by applicable legislation.

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

#### **RECEIVER'S ACCOUNTS**

26. The Receiver and its legal counsel are granted a charge (the "**Receiver's Charge**") on the Property as security for the payment of their fees and disbursements, in each case at their standard rates, in respect of these proceedings, whether incurred before or after the making of this Order. The Receiver's 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 the Charges (as defined in the ARIO) and Sections 14.06(7), 81.4(4), and 81.6(2) of the BIA. For greater clarity, and as noted in paragraph 11, the Charges do not secure amounts incurred after the date of this Order.
27. The Receiver and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are referred to a judge of the Supreme Court of British Columbia and may be heard on a summary basis.
28. 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 legal fees and disbursements, incurred at the standard 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

29. The Receiver is authorized and 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 \$500,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as the Receiver 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 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, the Charges (as defined in the ARIIO) and the charges as set out in Sections 14.06(7), 81.4(4), and 81.6(2) of the BIA. For greater clarity, and as noted in paragraph 11, the Charges do not secure amounts incurred after the date of this Order.
30. 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.
31. The Receiver is authorized to issue certificates substantially in the form annexed as Schedule “B” hereto (the “**Receiver’s Certificates**”) for any amount borrowed by it pursuant to this Order.
32. 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

33. 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 Property.

### SERVICE AND NOTICE OF MATERIALS

34. The Receiver shall establish and maintain a website in respect of these proceedings at: <https://www.alvarezandmarsal.com/BifanoNata> (the “**Website**”) and shall post there as soon as practicable:
  - (a) all materials prescribed by statute or regulation to be made publicly available, including pursuant to Rule 10-2 of the *Supreme Court Civil Rules*; and



- (b) all applications, reports, affidavits, orders and other materials filed in these proceedings by or on behalf of the Receiver, except such materials as are confidential and the subject of a sealing order or pending application for a sealing order.
35. Any Person who is served with a copy of this Order and that wishes to be served with any future application or other materials in these proceedings must provide to counsel for each of the Receiver and the Applicant a demand for notice in the form attached as Schedule "C" (the "**Demand for Notice**"). The Receiver and the Applicant need only provide further notice in respect of these proceedings to Persons that have delivered a properly completed Demand for Notice. The failure of any Person to provide a properly completed Demand for Notice releases the Receiver and the Applicant from any requirement to provide further notice in respect of these proceedings until such Person delivers a properly completed Demand for Notice.
36. The Receiver shall maintain a service list identifying all parties that have delivered a properly completed Demand for Notice (the "**Service List**"). The Receiver shall post and maintain an up-to-date form of the Service List on the Website.
37. Any interested party, including the Receiver, may serve any court materials in these proceedings by facsimile or by emailing a PDF or other electronic copy of such materials to the numbers or addresses, as applicable, set out on the Service List. Any interested party, including the Receiver, may serve any court materials in these proceedings by mail to any party on the Service List that has not provided a facsimile number or email address, and materials delivered by mail shall be deemed received five (5) days after mailing.
38. Notwithstanding the preceding paragraph of this Order, service of the Notice of Application and any affidavits filed in support shall be made on the Federal and British Columbia Crowns in accordance with the *Crown Liability and Proceedings Act*, R.S.C. 1985, c. C-50 and its regulations for the Federal Crown and the *Crown Proceedings Act*, R.S.B.C. 1996 c. 89 in respect of the British Columbia Crown.
39. The Receiver and its counsel are authorised to serve or distribute this Order, any other orders and any other materials as may be reasonably required in these proceedings, including any notices or other correspondence, by forwarding copies by facsimile or by email to The Debtor's creditors or other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of any legal or juridical obligation and notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations*.

## GENERAL

40. Any interested party may apply to this Court to vary or amend this Order on not less than seven (7) clear business days' notice to the Service List and to any other party who may be affected by the variation or amendment, or upon such other notice, if any, as this Court may order.

41. The Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.
42. Nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtor.
43. This Court requests the aid, recognition and assistance of any court, tribunal, regulatory or administrative body having jurisdiction, wherever located, to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All such courts, tribunals and regulatory and administrative bodies are 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.
44. The Receiver is authorized and empowered to apply to any court, tribunal or regulatory or administrative body, wherever located, for recognition of this Order and for assistance in carrying out the terms of this Order and the 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.
45. The Applicant shall have its costs of this motion, up to and including entry and service of this Order, as provided for by the terms of the Applicant's security or, if not so provided by the Applicant's security, then on a substantial indemnity basis to be paid by the Receiver from the Debtor's estate with such priority and at such time as this Court may determine.
46. Endorsement of this Order by counsel appearing on this application other than counsel for the Applicant is dispensed with.

THE FOLLOWING PARTIES APPROVE OF THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

APPROVED BY:

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[●], lawyer for the Applicant

BY THE COURT

DISTRICT REGISTRAR

**SCHEDULE “A”**

List of Counsel

Counsel Name	Party

**SCHEDULE "B"**

Receiver's Certificate

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

AMOUNT

\$ \_\_\_\_\_

1. THIS IS TO CERTIFY that Alvarez & Marsal Canada Inc. (in such capacity, the **"Receiver"**), the receiver and manager of all of the assets, undertakings and property of Bifano Consolidated Inc., Bifano Farms Inc., Nata Farms Inc., SSC Ventures (No. 105) Ltd. and Spallumcheen Farm Ltd. (collectively, the **"Debtor"**) acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (collectively, the **"Property"**) appointed by Order of the Supreme Court of British Columbia (the **"Court"**) dated the 24<sup>th</sup> day of June, 2024 (the **"Order"**) made in SCBC Action No. S-S241161, Vancouver Registry, 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 \_\_\_\_\_ 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, 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*, and the right of the Receiver to indemnify itself out of the 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 to permit the 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 Receiver does not undertake, and it is not under any personal liability, to pay any sum under this Certificate in respect of which it may issue certificates under the terms of the Order.

DATED the [REDACTED] day of [REDACTED], 2024.

Alvarez & Marsal Canada Inc., solely in its  
capacity as Receiver of the Property, and not  
in its personal or corporate capacity

Per:  
Name:  
Title:

**SCHEDULE "C"**

Demand For Notice

**TO:** **Alvarez & Marsal Canada Inc.**  
c/o Lawson Lundell LLP  
1600-925 West Georgia Street  
Vancouver, B.C. V6C 3L2  
Attention: Bryan Gibbons and Noor Mann  
Email: [nmann@lawsonlundell.com](mailto:nmann@lawsonlundell.com)

**AND TO:**

**Re: In the matter of the Receivership of Bifano Consolidated Inc., et al.**

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

1. By email, at the following address (or addresses):

\_\_\_\_\_

OR

2. By facsimile, at the following facsimile number (or numbers):

\_\_\_\_\_

OR

3. By mail, at the following address:

\_\_\_\_\_

Name of Creditor: \_\_\_\_\_

Name of Counsel (if any): \_\_\_\_\_

Creditor's Contact Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Creditor's Contact Phone Number: \_\_\_\_\_