



This is the 2nd affidavit  
of Amarjit Singh Lalli in this case  
and was made on February 26, 2025

No. S245481  
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

AND

IN THE MATTER OF THE *COOPERATIVE ASSOCIATION ACT*, S.B.C. 1999, c. 28

AND

IN THE MATTER OF BC TREE FRUITS COOPERATIVE, BC TREE FRUITS INDUSTRIES  
LIMITED and GROWERS SUPPLY COMPANY LIMITED

PETITIONERS

**AFFIDAVIT**

I, Amarjit Singh Lalli, orchardist, of 1900 Mckenzie Road, Kelowna, British Columbia, AFFIRM  
THAT:

1. I am an orchardist in the Okanagan region of British Columbia, a voting member of the BC Tree Fruits Cooperative (the "**BCTFC**"), and the appointed representative for the BCTFC voting members (the "**Members**") pursuant to the order of The Honourable Justice Gropper pronounced on August 26, 2024. As such, I have personal knowledge of the matters deposed to herein. Where I have relied on other sources of information, I have so stated and I believe them to be true.
2. BCTFC owns the real property located at 3335 & 3345 Sexsmith Road, and 3670 Highway 97, in Kelowna, B.C. (collectively, the "**Sexsmith Property**").

**I. INTRODUCTION**

3. In September 2024, Novem Pharmaceuticals Inc. ("**Novem**") publicized its proposed purchase of the Sexsmith Property (the "**First Sexsmith Deal**"). A press release issued regarding the First Sexsmith Deal can be accessed at

<https://www.businesswire.com/news/home/20240906827801/en/NOVEM-Extends-Lifeline-to-B.C.%E2%80%99s-Tree-Fruit-Industry-With-Purchase-of-Bankrupt-BC-Tree-Fruits-Cooperative-Property> and a true copy of this press release, as accessed on February 26, 2025, is attached hereto as **Exhibit “A”**.

4. Conditions were not met on the First Sexsmith Deal and the sale did not go forward as expected. In December 2024, the monitor, Alvarez & Marsal Canada Inc. (the “**Monitor**”), informed counsel to the Members that the Sexsmith Property would continue being marketed through HM Realty.
5. On February 21, 2025, the Monitor filed a notice of application seeking to approve a sale of the Sexsmith Property to Novem for approximately \$19.25 million (the “**Second Sexsmith Deal**”).
6. The Sexsmith Property has a 2025 assessed value of approximately \$33.4 million. True copies of property assessments obtained from B.C. Assessment are attached hereto as **Exhibit “B”**.

## **II. INADEQUACY OF MARKETING**

7. The Members oppose the Second Sexsmith Deal due to the low price compared to the assessed value, the inadequacy of marketing of the Sexsmith Property after the First Sexsmith Deal did not proceed, and the short time period between when the first Sexsmith Deal did not proceed and this second offer is being brought before the Court.
8. The Members:
  - (a) are not aware of the efforts by the Monitor or HM Realty to publicize the re-marketing of the Sexsmith Property after the First Sexsmith Deal did not proceed; and
  - (b) are concerned that re-marketing of the Sexsmith Property was ineffective after the First Sexsmith Deal did not proceed, given that the proposed Second Sexsmith Deal is significantly below the assessed value of the Sexsmith Property.

9. The Members are particularly concerned about lack of sufficient detail in HM Realty's marketing report for the Sexsmith Property (the "**Marketing Report**"), as attached at Appendix A to the Monitor's Report filed February 24, 2025 (the "**Tenth Monitor's Report**").
10. The Members are concerned that Novem, having leased the Sexsmith Property since September 2024, was aware of certain benefits associated with the Sexsmith Property that were not disclosed to other prospective buyers in the Marketing Report.
11. For example, Novem's executed offer with the Monitor dated February 11, 2025 for the Second Sexsmith Deal attached at Appendix B to the Tenth Monitor's Report (the "**Sexsmith Accepted Offer**") contemplates Novem to receive 39,772 bulk wooden bins (the "**Bulk Bins**") and other machinery and equipment on the Sexsmith Property as part of the Purchased Assets (as defined in the Sexsmith Accepted Offer).
12. The Members are concerned as the Bulk Bins and other machinery and equipment were not advertised in the Marketing Report. The Members also understand that the prices of Bulk Bins range from \$50 per bin to \$75 per bin and that the Bulk Bins that Novem is receiving could garner over \$1.98 million in sales, which was not disclosed to potential buyers. A true copy of an email from Laurel Van Dam, Vice President, Grower Relations & Corporate Affairs at BCTFC of estimated Bulk Bin sale prices is attached hereto as **Exhibit "C"**. This email forms the basis of my \$1.98 million calculation (\$50, being the lower price point for a full wooden bin x 39,772 bins). Attached hereto as **Exhibit "D"** is a true copy of Novem's controlled atmosphere storage booking prices for the season, sent by Novem to grower Gordie Sandhu, as part as a Novem Master Services & Supply Agreement.
13. In addition to the Bulk Bins, the Marketing Report did not disclose: (i) any potential lease revenue from the Sexsmith Property, or (ii) the total controlled atmosphere capacity of the Sexsmith Property. The Members are concerned that both of these details would have been accessible to Novem in its role as lessee, but not available to other prospective purchasers. The Marketing Report only specifies that the combined total of controlled atmosphere, cold storage, and office space is 148,888 square feet, without delineating proportions (i.e

controlled atmosphere square footage vs. cold storage square footage vs. office space square footage) or specifying total Bulk Bin capacity of controlled atmosphere storage.

14. Finally, given that the First Sexsmith Deal was announced and publicized in September 2024, the Members are concerned that there was insufficient time from December 2024 when the Sexsmith Property was re-marketed to the date of the accepted offer for the Second Sexsmith Deal. Given the significant news traction of the First Sexsmith Deal, the Members are worried that many prospective purchasers were not aware that the First Sexsmith deal did not go forward and that the Sexsmith Property was back on the market. The Growers are further concerned that the pre-mature announcement of the First Sexsmith Deal may have been a breach of Novem's confidentiality obligations in connection with the sales process.

### **III. THE STRUCTURE OF THE SEXSMITH ACCEPTED OFFER**

15. In addition to the Members' concerns regarding the adequacy of the HM Realty's efforts to publicize the re-marketing of the Sexsmith Property, the Members also have several concerns regarding the structure of Sexsmith Accepted Offer.

#### *The Bin Sale Proceeds*

16. Given that the Sexsmith Accepted Offer is already \$14.15 million below the 2025 assessed value of the Sexsmith Property of \$33.4 million, the Members are concerned about how the Bin Sale Proceeds (as defined in the Sexsmith Accepted Offer) can, at the option of Novem, comprise part of the Purchase Price (as defined in the Sexsmith Accepted Offer).
17. In particular, both Section 6.1 and Section 10.15 of the Sexsmith Accepted Offer specifies that previous Bin Sale Proceeds from wooden storage bins sold by Novem prior to closing may comprise part of the Purchase Price, yet in no place does the Sexsmith Accepted Offer specify what the Bin Sale Proceeds are, or what percentage of Purchase Price is composed of the Bin Sale Proceeds.
18. The Members are concerned that permitting undisclosed Bin Sale Proceeds from a past unrelated transaction to be credited against the Purchase Price – especially in a deal already

\$14.15 million below the Sexsmith Property's assessed value – dilutes the actual price paid for the Sexsmith Property, which was already marketed well below its assessed value.

Equipment Forming Part of the Purchased Assets

19. The Members are concerned that the inclusion of the Bulk Bins and other machinery and equipment as part of Novem's Purchased Assets in the Sexsmith Accepted Offer also dilutes the Purchase Price given that these items can be easily sold. Not only does the inclusion of the Bulk Bins and equipment represent a disadvantage to other prospective purchasers who may not have known about the opportunity to receive these assets in a sale, but the inclusion also dilutes the Purchase Price when considering their capacity to be sold and offset the \$19.25 million offer.

The Deposit

20. The Members are concerned about the structure of the deposit as contemplated in the Sexsmith Accepted Offer. Section 4.11 of the Tenth Monitor's Report indicates that \$600,000 of the \$1,600,000 deposit will be composed of a payment made in connection with a September 5, 2024 lease agreement entered into between the Monitor and Novem with respect to the Sexsmith Property.
21. The Members are concerned that a payment tied to a separate lease agreement – related to valid rent owed to the BCTFC and unrelated at the time to the Second Sexsmith Deal – dilutes the Purchase Price, as after the termination of the First Sexsmith Deal, this \$600,000 was to be used as rent money and not intended as a credit against the Purchase Price on a future sale.

Warren Sarafinchan's Commission

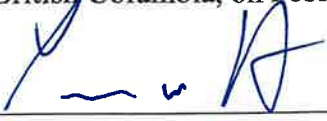
22. The Members are concerned that the BCTFC's ex-Chief Executive Officer, Warren Sarafinchan will receive \$48,125 in commission pursuant to the Sexsmith Accepted Offer.
23. The Members are concerned that by acting as advisor to Novem in its purchase of the Sexsmith Property from BCTFC, Mr. Sarafinchan has placed himself in a direct conflict of interest with the contractual obligations of his employment contract.

24. I am aware from my experience on the board of directors for BCTFC that Mr. Saranfinchan would have confidentiality provisions in his contract requiring him to hold confidential information of BCTFC in trust and that this would likely be in breach of those obligations.

#### IV. CONCLUSION

25. The Members understand from the Tenth Monitor's Report that as of February 19, 2025, BCTFC's primary secured creditor, CIBC, is effectively paid out, meaning that BCTFC's unsecured creditors, including the Members, are the primary remaining stakeholders.
26. Further, it is unlikely that any new apples will be added to the controlled atmosphere storage at the Sexsmith Property until the fall. The Summerland and Keremeos properties also have controlled atmosphere storage and the Sexsmith Property's controlled atmosphere storage is not at full capacity, with only 5000 bins currently in controlled atmosphere storage as of the date of this Affidavit.
27. The Members oppose the Second Sexsmith Deal and ask this Court to allow more time for a proper re-marketing of the Sexsmith Property, maximizing the potential value for the remaining stakeholders.
28. I acknowledge the solemnity of making a sworn statement/solemn declaration and acknowledge the consequences of making an untrue statement.
29. I was not physically present before the person before whom this affidavit was sworn or affirmed but was in that person's presence using video conferencing.

AFFIRMED BEFORE ME at Vancouver, )  
British Columbia, on February 26, 2025. )

  
\_\_\_\_\_  
A Commissioner/Notary Public for taking )  
affidavits for British Columbia )

  
\_\_\_\_\_  
AMARJIT SINGH LALLI

**LUCAS HODGSON**  
**BARRISTER & SOLICITOR**  
Osler, Hoskin & Harcourt LLP  
Suite 3000, Bentall Four  
1055 Dunsmuir Street  
Vancouver, BC V7X 1K3  
TELEPHONE: 236.466.2843

This is **Exhibit "A"** referred to in the second affidavit of Amarjit Singh Lalli

Affirmed before at Vancouver, British Columbia

This 26<sup>th</sup> day of February, 2025

A handwritten signature in blue ink, consisting of a stylized 'A' followed by a horizontal line and a large 'B'.

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Commissioner/Notary Public for the Province of British Columbia



## **NOVEM Extends Lifeline to B.C.'s Tree Fruit Industry With Purchase of Bankrupt BC Tree Fruits Cooperative Property**

Media event at the BC Tree Fruits Cooperative Sexsmith Road property at 1:00 p.m. today

September 06, 2024 02:38 PM Eastern Daylight Time

KELOWNA, British Columbia--(BUSINESS WIRE)--Today, NOVEM has agreed to terms to purchase BC Tree Fruits' largest controlled atmosphere and cold chain storage facility in Kelowna, B.C. Prior to closing the transaction, NOVEM will lease the facility on an emergency-basis to allow the tree-fruit industry to avoid the loss of as many as 25 million pounds of apples.

This year's harvest, and the livelihoods of hundreds of growers and thousands of workers, was put at significant risk when BC Tree Fruits Cooperative announced that it would cease operations and enter bankruptcy proceedings.

"Saving this year's harvest is our immediate goal," said Colin Davison, CEO of NOVEM. "But we believe NOVEM can also play a role in helping farmers create a modernized version of the Canadian fruit tree industry here in British Columbia."

"However, we can't do it alone. Strengthening Canada's food security should be of national interest and a priority for all levels of government over the long term. Private industry is doing its part, but it will take government support to cultivate an industry that is more sustainable and stable."

Finalizing and funding this transaction is expected to require the support of provincial and federal governments. Government officials at both levels have expressed support for the project leading up to the signed conditional purchase agreement for the facility. The emergency lease on the facility will run through the entire fruit season, or upon closing of this financial transaction.

NOVEM has already secured committed contracts from most of the major packing houses in B.C.'s Interior and the space is expected to be 100 per cent committed prior to September 15—just one week after possession.

NOVEM, which has facilities in Kelowna and Edmonton, plans to continue storage operations at the Sexsmith Road site as well as expand the facility to accommodate future growth plans across a broader range of the overarching Agrifood industry. Those plans also include upgrades to existing operations and an increase in the overall controlled ambient storage and cold chain capacity to support the biopharmaceuticals and pharmaceutical industries.

These expansion plans will increase employment opportunities in the region, including new staff working at the facilities and local farms.

For more information about this exciting purchase and its impact in B.C., please visit NOVEM at [novempharma.com](https://novempharma.com).



There will be remarks from NOVEM's CEO, Colin Davison, a tour of the facility, as well as opportunities for interviews.

**WHO:** CEO of NOVEM Pharmaceuticals, Colin Davison.  
**WHAT:** Announcing NOVEM's acquisition of the BC Tree Fruits Cooperative Sexsmith Road property.  
**WHERE:** 3335 Sexsmith Rd, Kelowna, BC V1X 7T5, Kelowna.  
**WHEN:** Friday, September 6, 2024, at 1:00 p.m.  
**WHY:** NOVEM has agreed to terms to purchase BC Tree Fruits' largest controlled atmosphere and cold chain storage facility and will lease the facility on an emergency-basis to allow the tree-fruit industry to avoid the loss of as many as 25 million pounds of apples.

#### About NOVEM

NOVEM specializes in combining processing and packaging, with cold chain warehouse and distribution services for the Agrifood, Pharmaceutical and Biopharmaceutical industries. Novem has warehouses across Canada and has international partners for global exports and distribution.

#### Contacts

##### **Media:**

Daffyd Roderick


[daffyd.roderick@pathfinderstratcomms.com](mailto:daffyd.roderick@pathfinderstratcomms.com)

(416) 704-7186


This is **Exhibit "B"** referred to in the second affidavit of Amarjit Singh Lalli

Affirmed before at Vancouver, British Columbia

This 26<sup>th</sup> day of February, 2025

A handwritten signature in blue ink, consisting of a stylized 'A' followed by a horizontal line and a large 'R'.

Commissioner/Notary Public for the Province of British Columbia

BC ASSESSMENT

The information in this report is provided for your information and convenience. If the information has been altered for any reason from the format in which it was originally received verification may be required by BC Assessment. In any case of doubt, the official BC Assessment records shall prevail.

3335 SEXSMITH RD KELOWNA VIX 7T5

Area-Jurisdiction-Roll: 19-217-06774.208



Total value

\$25,325,000

2025 assessment as of July 1, 2024

|                     |              |
|---------------------|--------------|
| Land                | \$24,954,000 |
| Buildings           | \$371,000    |
| Previous year value | \$26,216,000 |
| Land                | \$25,845,000 |
| Buildings           | \$371,000    |

Property information

|                       |                    |
|-----------------------|--------------------|
| Year built            | 1982               |
| Description           | Warehouse, Storage |
| Bedrooms              |                    |
| Baths                 |                    |
| Carports              |                    |
| Garages               |                    |
| Land size             | 13.64 Acres        |
| First floor area      |                    |
| Second floor area     |                    |
| Basement finish area  |                    |
| Strata area           |                    |
| Building storeys      | 3                  |
| Gross leasable area   | 105,934            |
| Net leasable area     |                    |
| No.of apartment units |                    |

Legal description and parcel ID

LOT 1, PLAN KAP36362, SECTION 35, TOWNSHIP 26,  
OSOYOOS DIV OF YALE LAND DISTRICT  
PID: 003-285-359

Sales history (last 3 full calendar years)

No sales history for the last 3 full calendar years

Manufactured home

|            |
|------------|
| Width      |
| Length     |
| Total area |

Comments

Property has more than one structure; Property Details may be for multiple structures

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Store and access favourite properties across devices



Compare property information and assessment values



View recently viewed properties



The information in this report is provided for your information and convenience. If the information has been altered for any reason from the format in which it was originally received verification may be required by BC Assessment. In any case of doubt, the official BC Assessment records shall prevail.

**3345 SEXSMITH RD KELOWNA V1X 7T5**  
Area-Jurisdiction-Roll: 19-217-06676.000



**Total value                   \$796,000**

2025 assessment as of July 1, 2024

|                     |           |
|---------------------|-----------|
| Land                | \$796,000 |
| Buildings           | \$0       |
| Previous year value | \$435,600 |
| Land                | \$435,600 |
| Buildings           | \$0       |

**Property information**

|                       |             |
|-----------------------|-------------|
| Year built            |             |
| Description           | Vacant IC&I |
| Bedrooms              |             |
| Baths                 |             |
| Carports              |             |
| Garages               |             |
| Land size             | .181 Acres  |
| First floor area      |             |
| Second floor area     |             |
| Basement finish area  |             |
| Strata area           |             |
| Building storeys      |             |
| Gross leasable area   |             |
| Net leasable area     |             |
| No.of apartment units |             |

**Legal description and parcel ID**

LOT 2, PLAN KAP2946, SECTION 35, TOWNSHIP 26,  
OSOYOOS DIV OF YALE LAND DISTRICT, PORTION W 40 FT  
PID: 010-931-121

**Sales history (last 3 full calendar years)**

No sales history for the last 3 full calendar years

**Manufactured home**

|            |
|------------|
| Width      |
| Length     |
| Total area |

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View recently viewed properties

BC ASSESSMENT

The information in this report is provided for your information and convenience. If the information has been altered for any reason from the format in which it was originally received verification may be required by BC Assessment. In any case of doubt, the official BC Assessment records shall prevail.

3670 HIGHWAY 97 N KELOWNA V1X 5C2

Area-Jurisdiction-Roll: 19-217-06701.001



Total value

\$7,279,000

2025 assessment as of July 1, 2024

|                     |             |
|---------------------|-------------|
| Land                | \$7,279,000 |
| Buildings           | \$0         |
| Previous year value | \$2,899,000 |
| Land                | \$2,899,000 |
| Buildings           | \$0         |

Property information

|                       |             |
|-----------------------|-------------|
| Year built            |             |
| Description           | Vacant IC&I |
| Bedrooms              |             |
| Baths                 |             |
| Carports              |             |
| Garages               |             |
| Land size             | 4.591 Acres |
| First floor area      |             |
| Second floor area     |             |
| Basement finish area  |             |
| Strata area           |             |
| Building storeys      |             |
| Gross leasable area   |             |
| Net leasable area     |             |
| No.of apartment units |             |

Legal description and parcel ID

LOT A, PLAN KAP4410, SECTION 35, TOWNSHIP 26,  
OSOYOOS DIV OF YALE LAND DISTRICT, EXCEPT PLAN RD  
ON PL 37429 AND AND H8110 (2) PLAN 37430  
PID: 005-312-060

Sales history (last 3 full calendar years)

No sales history for the last 3 full calendar years

Manufactured home

|            |
|------------|
| Width      |
| Length     |
| Total area |

Register with BC Assessment

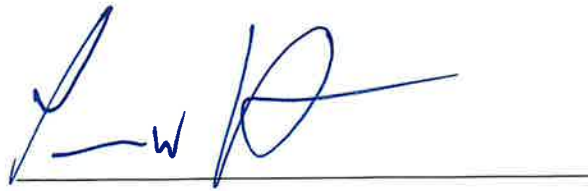
-  Search properties on a map
-  Store and access favourite properties across devices
-  Compare property information and assessment values
-  View recently viewed properties



This is **Exhibit "C"** referred to in the second affidavit of Amarjit Singh Lalli

Affirmed before at Vancouver, British Columbia

This 26<sup>th</sup> day of February, 2025

A handwritten signature in blue ink, consisting of stylized initials and a surname, is written over a horizontal line.

Commissioner/Notary Public for the Province of British Columbia

## WOODEN BINS available for purchase

1 message

Laurel Van Dam &lt;LVanDam@bctree.com&gt;

Fri, Aug 2, 2024 at 1:01 PM

Dear Growers,

We have received many requests from government, industry stakeholders, and the grower community to make bins available for harvest. There is a shortage of empty bins available across the fruit industry to harvest into, so we are making some wooden bins available for purchase. Plastic bins will not be available at this time.

If you are interested in purchasing wooden bins, please carefully follow the steps below. **PRICES ARE FIRM AND ARE NON-NEGOTIABLE. Purchases will be pre-paid via CREDIT CARD or CERTIFIED CHEQUE only.**

| Bin Style                | Firm Price | Notes                           |
|--------------------------|------------|---------------------------------|
| Full Wooden              | \$50-\$75  | Price dependent on condition    |
| Half Wooden              | \$30       |                                 |
| Full Wooden White Stripe | \$30       | Not food safe. Not for food use |
| Half Wooden White Stripe | \$20       | Not food safe. Not for food use |

### Steps to purchase bins:

1. Send an email to Craig Ogilvie at [cogilvie@bctree.com](mailto:cogilvie@bctree.com) AND Laurel Van Dam at [Lvandam@bctree.com](mailto:Lvandam@bctree.com)
2. **Subject line in email: BIN PURCHASE** (this is important so emails do not get misplaced)
3. Indicate in email:
  - a. Your name and grower number
  - b. Style and quantity of bins you would like to purchase
  - c. The preferred location to pick-up (we will do our best, but not guaranteed). Options are: Sexsmith Road Kelowna or Oliver Packing house

### Steps once email is submitted:

1. Craig will contact you concerning your BIN PURCHASE email to confirm availability
2. You will be given instructions of how to **pre-pay** for the bins via **CREDIT CARD or CERTIFIED CHEQUE**. No "on account", cash or standard cheque payment will be allowed.
3. Once payment is confirmed, Craig will then set up an appointment for pick up with you. Note that the process of confirming availability and the processing of payment may take a few days. There are few employees left in the organization to accomplish this project.

Thank you for your ongoing patience during these difficult times.

Respectfully,

**Laurel Van Dam**

*Vice President, Grower Relations & Corporate Affairs*

**Email:** lvandam@bctree.com | **phone:** 250.470.4226 | **mobile:** 250.808.0928 | **fax:** 250.470.4515

**NOTE NEW MAILING ADDRESS**

**BC Tree Fruits Cooperative | BC Tree Fruits Cider Company | Growers Supply Company Limited**

PO Box 2668, Kelowna BC V1X 6A7



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The information contained in this e-mail is confidential information and is intended only for the use of the intended recipient. If the reader of this e-mail is not the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this communication is strictly prohibited and unlawful. If you have received this e-mail in error, please notify the sender immediately, and delete this e-mail. Thank you.

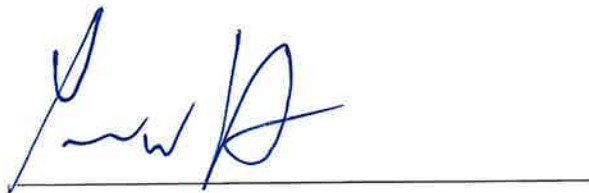
You're receiving this message because you're a member of the member group from BC Tree Fruits. To take part in this conversation, reply all to this message.

[View group files](#) | [Leave group](#) | [Learn more about Microsoft 365 Groups](#)

This is **Exhibit "D"** referred to in the second affidavit of Amarjit Singh Lalli

Affirmed before at Vancouver, British Columbia

This 26<sup>th</sup> day of February, 2025

A handwritten signature in blue ink, consisting of stylized cursive letters, is written over a solid horizontal line.

Commissioner/Notary Public for the Province of British Columbia

**SCHEDULE "E"**  
CA Storage Booking

| Rooms/Pallet Positions | Price for Season<br>(August to May) | CA Rooms | Estimated Cold<br>Chain Spaces<br>Required | Estimated Dry<br>Storage Spaces<br>Required |
|------------------------|-------------------------------------|----------|--|---|
| Rm 57 (2609 Bins)      | \$260,900.00                        |          |  |   |
| Rm 56 (2609 Bins)      | \$260,900.00                        |          |  |   |
| Rm 51 (2410 Bins)      | \$240,100.00                        |          |  |   |
| Rm 50 (2410 Bins)      | \$240,100.00                        |          |  |   |

**Process for securing CA and COLD CHAIN Space:**

1. Execute the Master Services & Supply Agreement prior to Friday September 13<sup>th</sup> and issue a PO for the CA & COLD CHAIN Storage you are committing too.
2. Payment of the deposit invoice will need to be made within 48hrs or the space allocated will be opened to other parties.

**Process for Bin Purchases:**

3. Issue PO for bins you'd like.
4. Invoice to be issued, payments to be made prior to pickup.