



No. S-245481
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

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

SIXTH REPORT OF THE MONITOR

ALVAREZ & MARSAL CANADA INC.

NOVEMBER 21, 2024

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1.0 INTRODUCTION

- 1.1 On August 13, 2024, in Supreme Court of British Columbia Action No. S-245481, Vancouver Registry (the “**CCAA Proceedings**”), the Supreme Court of British Columbia (the “**Court**”) granted BC Tree Fruits Cooperative (“**BCTFC**”), BC Tree Fruits Industries Limited (“**BCTF Industries**”) and Growers Supply Company Limited (“**GSC**”, together with BCTFC and BCTF Industries, the “**BCTF Group**” or the “**Petitioners**”) an initial order (“**Initial Order**”) under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended. Among other things, the Initial Order granted the BCTF Group an initial stay of proceedings up to and including August 23, 2024 (the “**Stay Period**”) and appointed Alvarez & Marsal Canada Inc. (“**A&M**”) as the monitor of the BCTF Group (the “**Monitor**”) with enhanced powers.
- 1.2 On August 23, 2024, the Court granted an order extending the Stay Period to August 26, 2024.
- 1.3 On August 26, 2024, the Court granted the following orders:
- a) an amended and restated initial order (the “**ARIO**”), which amends and restates the Initial Order to, among other things:
 - i. extend the Stay Period through to November 3, 2024;
 - ii. authorize the Monitor to sell the BCTF Group’s bulk bins without requirement for any further orders of the Court, irrespective of the total proceeds of such sales;
 - iii. declare that terminated employees of the BCTF Group meet the criteria established by section 3.2 of the *Wage Earner Protection Program Regulations*, SOR/2008-222;
 - iv. increase the Administration Charge, as defined in the Initial Order, from \$250,000 to \$500,000; and
 - v. increase the amount the Petitioners are authorized to borrow under a credit facility from the Interim Lender, Canadian Imperial Bank of Commerce (“**CIBC**”) and the corresponding Interim Lender’s Charge, as defined in the ARIO, from \$1.165 million to \$4.05 million;
 - b) an order (the “**SISP Order**”): (i) approving a sales and investment solicitation process in respect of certain assets of BCTFC (the “**BCTF SISP**”); (ii) approving a sales and investment solicitation process in respect of the assets of GSC and certain real property of BCTFC (together with the BCTF SISP, the “**SISPs**”); and (iii) authorizing and directing the Monitor and the Petitioners to perform their obligations and do all things necessary or desirable to perform their obligations under the SISPs; and

- c) an order: (i) appointing Mr. Amarjit Singh Lalli as the representative of all of the voting members of BCTFC; (ii) appointing Osler, Hoskin & Harcourt LLP (the “**Representative Counsel**”) as representative counsel for all of BCTFC’s voting members; and (iii) granting a charge in the amount of \$100,000 over the Petitioners’ assets as security for the payment of the Representative Counsel’s fees.
- 1.4 On October 4, 2024, upon application by the Monitor, this Honourable Court granted the following orders:
- a) a sale approval and vesting order (the “**Stonemark SAVO**”) approving the sale of 1200 Waddington Drive, Vernon, B.C. and certain inventory and equipment to Stonemark Investments Ltd. for a purchase price of \$3.2 million (the “**Stonemark Transaction**”). The Stonemark Transaction closed on October 11, 2024;
 - b) a sale approval and vesting order (the “**TerraLink SAVO**”) approving the sale of all commercial chemical and fertilizer inventory to TerraLink Horticulture Inc. for a purchase price equal to 60% of the book value of chemical inventory and 30% of the book value of fertilizer inventory (the “**Terralink Transcation**”). The Terralink Transaction closed on October 17, 2024; and
 - c) an order postponing BCTFC’s 2024 Annual General Meeting to April 30, 2025.
- 1.5 On October 15, 2024, upon application by the Monitor, this Honourable Court granted orders:
- a) approving the sale of 2605 Acland Road, Kelowna, B.C. (the “**Acland Property**”); and
 - b) approving a liquidation agreement between the Monitor and Maynards Liquidation Group Inc. (“**Maynards**”) to market and sell the remaining inventory (the “**Remaining Inventory**”) of the BCTF Group not subject to the TerraLink SAVO and the Stonemark SAVO.
- 1.6 On October 24, 2024, upon application by the Monitor, this Honourable Court granted an order authorizing BCTFC, GSC and the Monitor to enter into a Funding and Assignment Agreement with the B.C. Investment Agriculture Foundation (“**IAF**”), establishing a procedure to prove the claims of growers arising from the delivery of certain fruits to BCTFC (the “**Grower Claims**”) and authorizing the sale and assignment of the Grower Claims to IAF.
- 1.7 On October 31, 2024, upon application by the Monitor, this Honourable Court granted an order (the “**Second Stay Extension Order**”) extending the Stay Period to December 13, 2024.
- 1.8 Concurrently with filing this sixth report (the “**Sixth Report**”), the Monitor has filed an application seeking the following orders:

- a) an order (the “**Vaughan Order**”) approving the sale of 880 Vaughan Avenue, Kelowna, B.C. (the “**Vaughan Property**”); and
 - b) an order (the “**Lake Country Order**”) approving the sale of 9718 Bottom Wood Lake Road, Lake Country, B.C. (the “**Lake Country Property**”).
- 1.9 Further information regarding the CCAA Proceedings, including copies of all orders made in these proceedings and all affidavits, reports of the Monitor and other Court-filed documents and notices (other than anything filed under seal) are available on the Monitor’s website at www.alvarezandmarsal.com/bctreefruits (the “**Monitor’s Website**”).

2.0 PURPOSE OF REPORT

- 2.1 This Sixth Report has been prepared by the Monitor to provide information to this Honourable Court in respect of the following:
- a) the marketing and proposed sale of the Vaughan Property;
 - b) the marketing and proposed sale of the Lake Country Property;
 - c) an update on the sale of the Remaining Inventory;
 - d) an update on the BCTF SISP; and
 - e) the recommendations of the Monitor in respect of the foregoing, as applicable.
- 2.2 This Sixth Report should be read in conjunction with the materials filed in the CCAA Proceedings (collectively, the “**Filed Materials**”), including the first affidavit of Doug Pankiw dated August 12, 2024, as background information contained in the Filed Materials has not been included herein to avoid unnecessary duplication. Capitalized terms not defined herein have the meaning given in the Filed Materials.

3.0 TERMS OF REFERENCE

- 3.1 In preparing this report, A&M has necessarily relied upon unaudited financial and other information supplied, and representations made to it, by certain senior management of the BCTF Group (“**Management**”). Although this information has been subject to review, A&M has not conducted an audit nor otherwise attempted to verify the accuracy or completeness of any of the information prepared by Management, or otherwise provided by the Petitioners. Accordingly, A&M expresses no opinion and does not provide any other form of assurance on the accuracy and/or completeness of any information contained in this report, or otherwise used to prepare this report.

3.2 Certain of the information referred to in this report consists of financial forecasts and/or projections prepared by Management. An examination or review of financial forecasts and projections and procedures as outlined by the Chartered Professional Accountants of Canada has not been performed. Readers are cautioned that since financial forecasts and/or projections are based upon assumptions about future events and conditions that are not ascertainable, actual results will vary from those forecasts and/or projected and the variations could be significant.

3.3 Unless otherwise stated, all monetary amounts contained in this Sixth Report are expressed in Canadian dollars.

4.0 SALE OF VAUGHAN PROPERTY

4.1 As noted in the First Report of the Monitor dated August 22, 2024 (the “**First Report**”), since February 2024, BCTFC had engaged Unison HM Commercial Realty (“**Unison HM**”) to market the Vaughan Property.

4.2 The Vaughan Property is a 5.2-acre industrial property with a 195,159 square foot warehouse/storage facility currently being used by BCTFC as its head office.

4.3 The First Report noted that, at the time of the commencement of the CCAA Proceedings, BCTFC had received and accepted an offer and entered into an agreement of purchase and sale (the “**APS**”) for this property. The APS contemplated, among other things, a subject removal date of August 30, 2024 (subsequently extended to September 12, 2024) and a closing date 30 business days following the date the purchaser removed subjects (i.e. closing date on or around October 16, 2024). The purchaser under the offer did not remove subjects and, accordingly, the APS was terminated.

4.4 On September 13, 2024, the Monitor engaged Unison HM to continue marketing the Vaughan Property through a multiple listing services (“**MLS**”) contract (the “**Vaughan Listing Agreement**”).

4.5 The Vaughan Property has been listed since September 17, 2024 under the Vaughan Listing Agreement, with a list price of \$22 million.

4.6 Unison HM’s marketing efforts for the Vaughan Property (inclusive of its efforts during the listing period with BCTFC) included, among other things, organizing professional photographs, posting the listing on MLS, hosting an open house, and distributing via email a property brochure and marketing communications to its database of over 1,000 recipients.

- 4.7 Unison HM's efforts resulted in 21 private viewing appointments, as well as phone calls and listing inquiries from interested parties requesting additional information. Unison HM's marketing report for the Vaughan Property is attached hereto as Appendix "A".
- 4.8 On September 18, 2024, Mark Anthony Group of Companies ("**Mark Anthony**"), represented by Coldwell Banker Horizon Realty ("**Coldwell**"), presented an offer for the Vaughan Property in the amount of \$17 million. Upon review and in consultation with Unison HM and CIBC, the Monitor engaged in negotiations with Mark Anthony, and on September 23, 2024, the Monitor accepted an offer of \$17.5 million (the "**Vaughan Accepted Offer**"). On October 1, 2024, Mark Anthony paid a deposit of \$1.75 million, which is being held in a trust account with Coldwell.
- 4.9 The key terms of the Vaughan Accepted Offer include, among other things, (i) a closing date being 10 business days after Court approval; (ii) the property is sold on an "as-is – where, is" basis; and (iii) the sale is subject to Court approval.
- 4.10 The subjects to the Vaughan Accepted Offer were removed on October 15, 2024 and October 30, 2024, respectively, in accordance with the terms of the Vaughan Accepted Offer.
- 4.11 On October 30, 2024, the Vaughan Accepted Offer was amended to change the name of the Purchaser from Mark Anthony to Pelecanus Real Estate Ltd.
- 4.12 A copy of the Vaughan Accepted Offer is attached hereto as Appendix "B".
- 4.13 Pursuant to the Vaughan Listing Agreement, the Monitor has agreed to pay a total commission of 2% of the final purchase price, which, for the Vaughan Accepted Offer is \$350,000, of which Unison HM would receive \$218,750 and Coldwell would receive \$131,250.
- 4.14 The Monitor supports the Vaughan Accepted Offer for the following reasons:
- a) the Vaughan Property has been marketed by BCTFC and Unison HM since February 2024, and the Vaughan Accepted Offer of \$17.5 million is the best offer received to date;
 - b) the Vaughan Accepted Offer has a near-term closing date of 10 business days after Court approval, which is reasonable and consistent with typical sale timelines;
 - c) the sale transaction will allow the Monitor to avoid incurring additional holding costs in respect of the Vaughan Property, including preservation costs, statutory obligations (including property taxes) and professional fees; and
 - d) the secured lender, CIBC, is supportive of the sale.

- 4.15 It is the Monitor’s view that the Vaughan Property was marketed in an appropriate manner and the property has been exposed to the market for a reasonable amount of time. Given the current state of the real estate market for industrial commercial properties and stated interest rates, the Monitor views the transaction to be in the best interest of the creditors.

5.0 SALE OF LAKE COUNTRY PROPERTY

- 5.1 On September 4, 2024, the Monitor engaged Colliers Macaulay Nicolls Inc. (“**Colliers**”), to market for sale the Lake Country Property through a MLS contract (the “**Lake Country Listing Agreement**”).
- 5.2 The Lake Country Property, an 8.43-acre industrial site consisting of a large warehouse/controlled atmosphere storage (“**CA Storage**”) building, was listed for sale on September 4, 2024 for \$10,995,000.
- 5.3 Colliers’ marketing efforts for the Lake Country Property included, among other things, organizing professional photographs, posting the listing on MLS, and distributing via email a property brochure and marketing communications to over 3,000 prospective buyers and brokers in Colliers’ database.
- 5.4 Colliers’ efforts resulted in seven private viewing appointments, as well as phone calls and listing inquiries from interested parties requesting additional information. Colliers’ marketing report for the Lake Country Property is attached hereto as Appendix “**C**”.
- 5.5 On October 4, 2024, the District of Lake Country (the “**District**”), represented by its legal counsel, Lawson Lundell LLP, presented an offer for the Lake Country Property in the amount of \$8.7 million (the “**Lake Country Offer**”). Upon review and in consultation with Colliers and CIBC, the Monitor engaged in negotiations with the District, and on October 17, 2024, the Monitor accepted an offer of \$9.1 million (the “**Lake Country Accepted Offer**”). On October 21, 2024 and November 19, 2024, the District paid two deposits totaling \$870,000, which amount is being held in a trust account with the Monitor’s counsel.
- 5.6 The key terms of the Lake Country Accepted Offer include, among other things, (i) a closing date being the earlier of the first business day following 14 days after the date the Lake Country Order and December 12, 2024; (ii) the property is sold on an “as-is – where, is” basis; and (iii) the sale is subject to Court approval.
- 5.7 A copy of the Lake Country Accepted Offer is attached hereto as Appendix “**D**”.

- 5.8 Pursuant to the Lake Country Listing Agreement, the Monitor has agreed to pay a total commission of 2% of the final purchase price, which, for the Lake Country Accepted Offer is \$182,000.
- 5.9 The Monitor supports the Lake Country Accepted Offer for the following reasons:
- a) the Lake Country Accepted Offer totaling \$9.1 million is the best offer received to date;
 - b) the Lake Country Accepted Offer has a near-term closing date of 14 days after Court approval, which is reasonable and consistent with typical sale timelines;
 - c) the sale transaction will allow the Monitor to avoid incurring additional holding costs in respect of the Lake Country Property, including CA Storage maintenance costs, preservation costs, statutory obligations (including property taxes) and professional fees; and
 - d) the secured lender, CIBC, is supportive of the sale.
- 5.10 It is the Monitor's view that the Lake Country Property was marketed in an appropriate manner and the property has been exposed to the market for a reasonable amount of time. Given the current state of the real estate market for industrial commercial properties and stated interest rates, the Monitor views the transaction to be in the best interest of the creditors.

6.0 GSC LIQUIDATION SALE UPDATE

- 6.1 The liquidation sale of the Remaining Inventory with Maynards commenced on October 17, 2024. GSC, Maynards and the Monitor have formulated a liquidation strategy for the Remaining Inventory and are anticipating the closure of all GSC stores by the end of November 2024.
- 6.2 Maynards is in the process of preparing for two on-site auctions at GSC's Kelowna and Penticton store locations in early December 2024, to liquidate the remainder of the Remaining Inventory that is not sold by the time the GSC stores are closed.
- 6.3 As noted in the Third Report of the Monitor dated October 9, 2024, the sale of the Acland Property (GSC's Kelowna store) is scheduled to close on November 29, 2024. Accordingly, the Monitor has made arrangements with the purchaser of the Acland Property to remain on site until December 17, 2024 in order to conclude the auction and complete the removal of the inventory and equipment on site.

7.0 BCTF SISP UPDATE

- 7.1 As noted in the Second Report of the Monitor dated September 27, 2024, the Monitor commenced the BCTF SISP on August 27, 2024 by distributing marketing materials, the Confidentiality Agreement and the SISP Order to Potential Bidders (as defined in the BCTF SISP).

- 7.2 During the BCTF SISP, the Monitor received requests from Potential Bidders to extend the BCTF SISP timeline. Accordingly, and in accordance with the terms of the BCTF SISP, the timeline was extended by the Monitor, in consultation with CIBC and the Petitioners:

PHASE	ORIGINAL TARGET DATES	REVISED DATES
Phase I - Qualification		
BCTF SISP to commence	August 26, 2024	August 27, 2024
LOI Deadline for En Bloc Bids	September 27, 2024	October 18, 2024
Phase II – Final Bid Process		
Final Bid Deadline for all Bids whether En Bloc or for individual BCTFC Assets including any of the BCTFC Real Property	October 18, 2024	November 8, 2024
Final Agreement Deadline	October 31, 2024	November 15, 2024
Court Approval Deadline	November 15, 2024	November 29, 2024
Outside Closing Date	November 30, 2024	December 13, 2024

- 7.3 As of November 8, 2024, a total of 23 parties had executed Confidentiality Agreements and, upon verification of their credentials, were granted access to the electronic data room as Qualified Bidders (as defined in the BCTF SISP). A total of eight site tours have been conducted by BCTFC's Management.
- 7.4 By October 18, 2024, the LOI Deadline for en bloc bids, the Monitor had received three LOIs from two parties. Upon the Monitor's review, in consultation with CIBC and the Petitioners, the Monitor provided feedback to the parties who presented the LOIs, and invited each of them to submit a Final Bid under the BCTF SISP.
- 7.5 By the Final Bid Deadline of November 8, 2024, the Monitor had received a total of nine bids for BCTFC's assets. None of the bids received were en bloc bids. In particular, no going concern offer was presented for the packing facility located in Oliver, B.C. (the "**Oliver Packing Plant**").
- 7.6 The Monitor has reviewed the bids with the Petitioners and CIBC, and determined that, at this stage, it is not prepared to advance any of the individual BCTFC asset bids, except for one offer on certain cidery equipment for approximately \$260,000. As the offer received is lower than the threshold for sales of assets under the ARIO, the Monitor is not intending to seek court approval for this sale.

7.7 The Monitor's determination to not pursue the other individual offers is largely based on the potential impact to the Members and, more broadly, on the fruit packing industry in B.C. if the Oliver Packing Plant is left as a standalone facility with no CA Storage capabilities.

7.8 The Monitor and the Petitioners are currently assessing the next steps for the BCTF SISP assets, and will be providing an update to this Honourable Court when available.

8.0 CONCLUSION AND RECOMMENDATIONS

8.1 The Monitor respectfully recommends that this Honourable Court grant the Vaughan Order and the Lake Country Order.

All of which is respectfully submitted to this Honourable Court this 21st day of November, 2024.

Alvarez & Marsal Canada Inc.,
in its capacity as Monitor of
BC Tree Fruits Cooperative,
BC Tree Fruit Industries Limited and Growers Supply Company Limited



Per: Anthony Tillman
Senior Vice President



Per: Pinky Law
Vice President

Appendix A – Unison HM’s marketing report for the Vaughan Property



November 14, 2024

Alvares & Marsal Canada
925 West Georgia Street, Suite 902
Vancouver, BC V6C2L2

Anthony Tillman & Pinky Law

RE: 880 Vaughan Ave, Kelowna BC – Marketing Summary and Recommendation

Unison HM Commercial Realty is pleased to present this final marketing report, offer review, and broker recommendation for the property located at 880 Vaughan Ave, Kelowna BC.

Marketing Summary

The Property was listed for sale with Unison HM Commercial Realty on February 23, 2024. Subsequent to the CCAA filing, the Monitor and Unison signed a listing agreement on September 13, 2024 for the period from September 17, 2024 to December 31, 2024. During the 10 months of marketing, Unison implemented several strategies to enhance the property's visibility, optimize the exposure, and maximize the sale price.

- Original Listing Agreement: effective February 21, 2024, at a listing price of \$28,000,000
- MLS Listing: ID# 10324307
 - Realtor.ca views: 370
- Unison HM Commercial website: February 21, 2024
 - Website views: 727
- Property Brochure
- Listing Price Amendment: effective March 28, 2024 for a new price of \$22,000,000
- Non-Disclosure Agreements: 12 NDA's signed
- Open house: February 28, 2024 (approximately 20 attendees)
- Property Tours: Unison HM Commercial Realty conducted 21 tours of the property
- Email Campaigns
 - New Listing Email – February 23, 2024: 1,048 recipients
 - New Price Email – April 4, 2024: 1,516 recipients

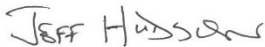
- Featured in Investment Properties Email – May 9, 2024: 1,024 recipients
- For Lease Email – September 3, 2024: 437 recipients
- Featured in October Market Update – October 7, 2024: 550 recipients
- Social Media
 - New Listing Post – February 29, 2024
 - New Price Post – April 4, 2024

Summary of Current Offer

Buyer: Pelecanus Real Estate Ltd. (assigned from original entity on CPS)
Price: \$17,500,000
Deposit: \$ 1,750,000
Buyer Conditions: Legal & Financial Advice, Inspections (these have been waived)
Closing: 10 business days following court approval

This offer was accepted on September 23, 2024. We confirm the deposit is being held in trust with Coldwell Banker Horizon Realty. The property has been thoroughly marketed to the public since February 21, 2024 and it is our recommendation that this offer be accepted because it is well within the reasonable of market conditions and the Buyer is known to be well financed.

Sincerely,



Jeff Hudson, Sales Representative
E: jeff@hmcommercial.com



Marshall McAnerney, Sales Representative
E: marshall@hmcommercial.com

*Denotes a Personal Real Estate Corporation

WEB-MARKETING



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PENDING

LARGE DOWNTOWN INDUSTRIAL WAREHOUSE/STORAGE

880 VAUGHAN AVENUE, KELOWNA, BC, V1Y 7E4

PRICE:
\$22,000,000

PHONE 250.712.3130 CONTACT US

VIEW BROCHURE

PROPERTY DESCRIPTION

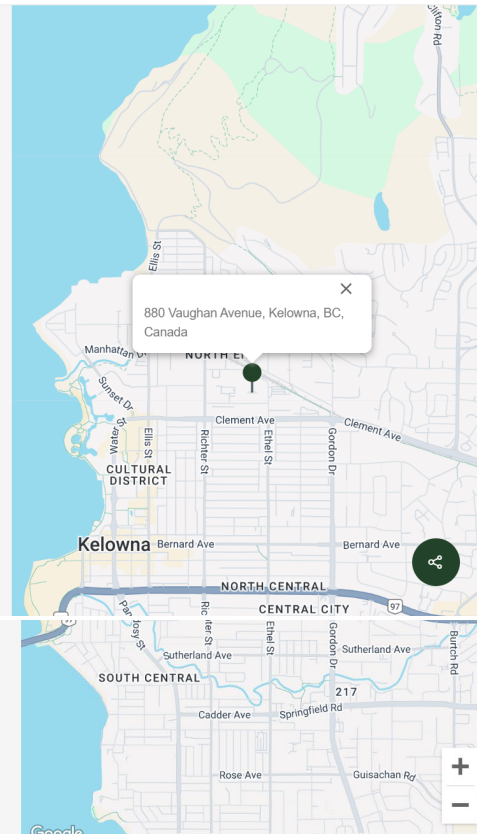
HM Commercial Realty, on behalf of Alvarez & Marsal Canada Inc., in its capacity as Court Appointed Monitor pursuant to Supreme Court of British Columbia Action No. S245481, Vancouver Registry, is pleased to present this rare opportunity to purchase 5.2 acres of industrial property with 195,159 SF warehouse/ storage facility. It is located in the heart of Kelowna's brewery district, walking distance to new UBCO Downtown Campus and Lake Okanagan.

Optimally suited as a holding property with long term potential as a mixed-use development with multifamily residential and/or student accommodation.

HIGHLIGHTS

- 5.2 acres (224,726 SF) of industrial land
- 195,159 SF building comprising of industrial warehouse/storage space
- I-2 Industrial Zoning
- 13.6 kW of available power coming into the building
- Located in the heart of Kelowna's Brewery District
- Walking distance to restaurants, breweries, Sandhill Winery & downtown amenities
- If this property is approved for mixed-use, industrial/residential rezoning, there is the possibility of achieving up to 1.75 FAR

All offers should be made out to Alvarez & Marsal Canada Inc., in its capacity as Court Appointed Monitor pursuant to Supreme Court of British Columbia Action No. S245481. See below link or contact listing agent for schedule A1 that needs to be included in every offer.



Unison

HM COMMERCIAL REALTY

250-712-3130
info@hmcommercial.com
HMcommercial.com

473 West Avenue,
Kelowna, BC
V1Y 1V9

PRINT AND DIGITAL BROCHURE



FOR SALE

BY COURT ORDER

880 Vaughan Avenue,
Kelowna, BC

PROPERTY DETAILS

- 5.2 acres and 195,159 SF building comprising of industrial warehouse/storage space
- I-2 Industrial Zoning with potential for Mixed-Use in the future
- Located in the heart of Kelowna's Brewery District
- 5 minute walk to new UBCO Downtown Campus and Lake Okanagan

UNISON HM COMMERCIAL REALTY

HMCOMMERCIAL.COM

Appendix B – Vaughan Accepted Offer

INFORMATION ABOUT THE CONTRACT OF PURCHASE AND SALE **COMMERCIAL REAL ESTATE**

THIS INFORMATION IS INCLUDED FOR THE ASSISTANCE OF THE PARTIES ONLY. IT DOES NOT FORM PART OF THE CONTRACT AND SHOULD NOT AFFECT THE PROPER INTERPRETATION OF ANY OF ITS TERMS.

1. **CONTRACT:** This document, when signed by both parties, is a legally binding contract. READ IT CAREFULLY. The parties should ensure that everything that is agreed to is in writing.
2. **DEPOSIT(S):** Section 28 of the *Real Estate Services Act* requires that money held by a brokerage in respect of a real estate transaction for which there is an agreement between the parties for the acquisition and disposition of the real estate be held by the brokerage as a stakeholder. The money is held for the real estate transaction and not on behalf of one of the parties. If a party does not remove a subject clause, the brokerage requires the written agreement of both parties in order to release the deposit. If both parties do not sign the agreement to release the deposit, then the parties will have to apply to court for a determination of the deposit issue.
3. **COMPLETION:** (Clauses 6.1 and 17) Unless the parties are prepared to actually meet at the Land Title Office and exchange title documents for the purchase price, it is, in every case, advisable for the completion of the sale to take place in the following sequence:
 - (a) The buyer pays the purchase price or down payment in trust to the buyer's lawyer or notary (who should advise the buyer of the exact amount required) several days before the completion date and the buyer signs the documents.
 - (b) The buyer's lawyer or notary prepares the documents and forwards them for signature to the seller's lawyer or notary who returns the documents to the buyer's lawyer or notary.
 - (c) The buyer's lawyer or notary then attends to the deposit of the signed title documents (and any mortgages) in the appropriate Land Title Office.
 - (d) The buyer's lawyer or notary releases the sale proceeds at the buyer's lawyer's or notary's office.

Since the seller is entitled to the seller's proceeds on the completion date, and since the sequence described above takes a day or more, it is strongly recommended that the buyer deposits the money and the signed documents AT LEAST TWO DAYS before the completion date, or at the request of the conveyancer, and that the seller delivers the signed transfer documents no later than the morning of the day before the completion date.

While it is possible to have a Saturday or Sunday completion date using the Land Title Office's electronic filing system, parties are strongly encouraged NOT to schedule a Saturday completion date as it will restrict their access to fewer lawyers or notaries who operate on Saturdays; lenders will generally not fund new mortgages on Saturdays; lenders with existing mortgages may not accept payouts on Saturdays; and other offices necessary as part of the closing process may not be open.

4. **POSSESSION:** (Clauses 7.1 and 18) The buyer should make arrangements through the REALTORS® for obtaining possession. The seller will not generally let the buyer move in before the seller has received the sale proceeds. Where residential tenants are involved, buyers and sellers should consult the *Residential Tenancy Act*.
5. **ADJUSTMENT:** (Clauses 8.1 and 19) The buyer and seller should consider any additional adjustments that are necessary given the nature of the property and how any costs are payable by tenants and whether the seller holds any of the tenant's funds with respect to such costs.

INFORMATION ABOUT THE CONTRACT OF PURCHASE AND SALE **COMMERCIAL REAL ESTATE** (continued)

6. **TITLE:** (Clause 22) It is up to the buyer to satisfy the buyer on matters of zoning or building or use restrictions, toxic or environmental hazards, encroachments on or by the property and any encumbrances which are staying on title before becoming legally bound. It is up to the seller to specify in the contract if there are any encumbrances, other than those listed in clause 22 and Schedule 22, which are staying on title before becoming legally bound. If you as the buyer are taking out a mortgage, make sure that title, zoning and building restrictions are all acceptable to your mortgage company. In certain circumstances, the mortgage company could refuse to advance funds. If you as the seller are allowing the buyer to assume your mortgage, you may still be responsible for payment of the mortgage, unless arrangements are made with your mortgage company.
7. **CUSTOMARY COSTS:** (Clause 31) In particular circumstances there may be additional costs, but the following costs are applicable in most circumstances:

Costs to be Borne by the Seller

Lawyer or Notary Fees and Expenses:

- attending to execution documents

Costs of clearing title, including:

- discharge fees charged by encumbrance holders,
- prepayment penalties.

Real Estate Commission (plus GST).

Goods and Services Tax (if applicable).

Costs to be Borne by the Buyer

Lawyer or Notary Fees and Expenses:

- searching title,
- investigating title,
- drafting documents.

Land Title Registration fees.

Survey Certificate (if required).

Costs of Mortgage, including:

- mortgage company's lawyer/notary,
- appraisal (if applicable),

Land Title Registration fees.

Fire Insurance Premium.

Sales Tax (if applicable).

Property Transfer Tax.

Goods and Services Tax (if applicable).



In addition to the above costs there maybe financial adjustments between the seller and the buyer pursuant to Clause 19.

8. **RISK:** (Clause 32) The buyer should arrange for insurance to be effective as of 12:01 am on the earlier of the completion date. The seller should maintain the seller's insurance in effect until the later of the date the seller receives the proceeds of sale, or the date the seller vacates the property.
9. **FORM OF CONTRACT:** This Contract of Purchase and Sale is designed primarily for the purchase and sale of freehold commercial real estate. If your transaction involves: a building under construction, an operating business with or without employees being hired, a sale and purchase of shares in the owner of the property, the purchase of a leasehold interest, other special circumstances, additional provisions, not contained in this form, may be needed, and professional advice should be obtained.



CONTRACT OF PURCHASE AND SALE FOR COMMERCIAL REAL ESTATE

MLS® NO: 10300812

DATE: 09/20/2024

PART 1 – INFORMATION SUMMARY

1. Prepared By			
1.1 Name of Brokerage	Coldwell Banker Horizon Realty		
1.2 Brokerage Address	# 14 1470 Harvey Avenue, Kelowna, BC v1y 9K8	Phone No.	250-860-7500
1.3 REALTOR®'s Name	Ian Watson		
1.4 Personal Real Estate Corporation			
1.5 REALTOR®'s Email Address	ian@watson-brothers.com	Fax No.	
1.6 Brokerage Phone No.	(250) 860 7500	Fax No.	
2. Parties to the Contract			
2.1 Seller	Alvarez & Marsal Canada Inc., in its capacity as Court Appointed Monitor pursuant to Supreme Court of		
	Seller British Columbia Action No. S245481, Vancouver Registry.		
	Seller		
2.2 Seller's Address	925 W Georgia Street Vancouver BC V6C 3L2		
2.3 Seller's Phone No.	7783742300	Fax No.	
2.4 Seller's Email Address			
2.5 Seller's Incorporation No.		2.6 Seller's GST No.	
2.7 Buyer	Mark Anthony Group of Companies		
	Buyer		
	Buyer		
2.8 Buyer's Address	565 Great Northern Way #100 Vancouver BC V5T 0H8		
2.9 Buyer's Phone No.		Fax No.	
2.10 Buyer's Email Address	mlebedoff@markanthony.com		
2.11 Buyer's Incorporation No.		2.12 Buyer's GST No.	
3. Property			
3.1 Civic Address of Property	880 Vaughan Avenue, Kelowna, BC V1Y 7E4		
3.2 Legal Description of Property	THE NORTHERLY 349.38 FEET OF BLOCK 30 MEASURED ALONG THE EASTERLY BOUNDARY OF SAID BLOCK BY THE FULL DEPTH THEREOF SECTION 30 TOWNSHIP 26 OSOYOOS DIVISION YALE DISTRICT PLAN 202		
PID			


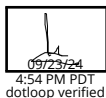
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BUYER'S INITIALS


AT

SELLER'S INITIALS

PROPERTY ADDRESS

4.	Purchase Price	\$	Clause
4.1	\$ 17,500,000 Seventeen million five hundred thousand	Dollars	14
5.	Deposit		Clause
5.1	Deposit to be provided by the following date: <input checked="" type="checkbox"/> within 5 business days of acceptance of this offer on or before October 1, 2024 <input type="checkbox"/> date _____ <input type="checkbox"/> other _____	 	15
5.2	Amount of Deposit 10% of the purchase price		15
5.3	Deposit to be paid in trust to Coldwell Banker Horizon Realty		15
6.	Completion Date		
6.1	Completion Date 10 business days after court approval		17
7.	Possession Date		
7.1	Possession Date Upon registration		18
7.2	Vacant Possession <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	7.3 All Existing Tenancies <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	18
8.	Adjustment Date		
8.1	Adjustment Date Upon the completion date		19
9.	Viewing Date		
9.1	Viewing Date 09/13/2024		21
10.	Agency Disclosure		
10.1	Seller's Designated Agent REALTOR® Marshall McAnerney REALTOR® _____ Brokerage Unison HM Commercial Realty		38A
10.2	Buyer's Designated Agent REALTOR® Ian Watson, Trish Power, Avery Watson REALTOR® _____ Brokerage Coldwell Banker Horizon Realty		38B
10.3	Limited Dual Agency Designated Agent REALTOR® _____ REALTOR® _____ Brokerage _____		38C
10.4	Date of Limited Dual Agency Agreement		38C


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PROPERTY ADDRESS

11. Acceptance			
11.1	Offer Open Until – Date 09/23/2024	Time 4pm	44
12. Schedules			
15	Deposit	Attached <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	15
16A	Buyer's Conditions	Attached <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	16
16B	Seller's Conditions	Attached <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	16
18	Accepted Tenancies	Attached <input type="checkbox"/> Yes <input type="checkbox"/> No	18
20A	Additional Included Items	Attached <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	20
20B	Excluded Items	Attached <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	20
22	Additional Permitted Encumbrances	Attached <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	22
23	Additional Seller's Warranties and Representations	Attached <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	23
24	Additional Buyer's Warranties and Representations	Attached <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	24
40	Additional Terms	Attached <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	40

PART 2 – TERMS

- 13. INFORMATION SUMMARY:** The Information Summary being Part 1 to this Contract of Purchase and Sale for Commercial Real Estate and the Schedules attached to this Contract of Purchase and Sale for Commercial Real Estate, form an integral part of this offer. The Seller and Buyer acknowledge that they have read all of Part 1 and Part 2 and the Schedules to this Contract of Purchase and Sale for Commercial Real Estate.
- 14. PURCHASE PRICE:** The purchase price of the Property will be the amount set out in Clause 4.1 (Purchase Price).
- 15. DEPOSIT:** A deposit in the amount set out in Clause 5.2 which will form part of the Purchase Price, will be paid in accordance with Clause 26 except as otherwise set out in Schedule 15 and on the terms set out in Schedule 15. All monies paid pursuant to this Clause (the "Deposit") will be delivered in trust to the party identified in Clause 5.3 and held in trust in accordance with the provisions of the *Real Estate Services Act*. In the event the Buyer fails to pay the Deposit as required by this Contract, the Seller may, at the Seller's option, terminate this Contract. The party who receives the Deposit is authorized to pay all or any portion of the Deposit to the Buyer's or Seller's conveyancer (the "Conveyancer") without further written direction of the Buyer or Seller, provided that: (a) the Conveyancer is a Lawyer or Notary; (b) such money is to be held in trust by the Conveyancer as stakeholder pursuant to the provisions of the *Real Estate Services Act* pending the completion of the transaction and not on behalf of any of the principals to the transaction; and (c) if the sale does not complete, the money should be returned to such party as stakeholder or paid into Court.
- 16. CONDITIONS:** The obligations of the Buyer described in this Contract are subject to the satisfaction or waiver of the conditions precedent set out in Schedule 16A, if any (the "Buyer's Conditions"). The Buyer's Conditions are inserted for the sole benefit of the Buyer. The satisfaction or waiver of the Buyer's Conditions will be determined in the sole discretion of the Buyer and the Buyer agrees to use reasonable efforts to satisfy the Buyer's Conditions. The Buyer's Conditions may only be satisfied or waived by the Buyer giving written notice (the "Buyer's Notice")


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BUYER'S INITIALS


SELLER'S INITIALS

PROPERTY ADDRESS

to the Seller on or before the time and date specified for each condition. Unless each Buyer's Condition is waived or declared fulfilled by delivery of the Buyer's Notice to the Seller on or before the time and date specified for each condition, this Contract will be terminated thereupon and the Deposit returnable in accordance with the *Real Estate Services Act*.

The obligations of the Seller described in this Contract are subject to the satisfaction or waiver of the conditions precedent set out in Schedule 16B, if any (the "Seller's Conditions"). The Seller's Conditions are inserted for the sole benefit of the Seller. The satisfaction or waiver of the Seller's Conditions will be determined in the sole discretion of the Seller and the Seller agrees to use reasonable efforts to satisfy the Seller's Conditions. These conditions may only be satisfied or waived by the Seller giving written notice (the "Seller's Notice") to the Buyer on or before the time and date specified for each condition. Unless each Seller's Condition is waived or declared fulfilled by delivery of the Seller's Notice to the Buyer on or before the time and date specified for each condition, this Contract will be terminated thereupon and the Deposit returnable in accordance with the *Real Estate Services Act*.

- 17. COMPLETION:** The sale will be completed on the date specified in Clause 6.1 (Completion Date) at the appropriate Land Title Office.
- 18. POSSESSION:** The Buyer will have possession of the Property at the time and on the date specified in Clause 7.1 (Possession Date) with vacant possession if so indicated in Clause 7.2, or subject to all existing tenancies if so indicated in Clause 7.3; or subject to the specified tenancies set out in Schedule 18, if so indicated in Clause 12 (if Clause 7.3 or 12 is selected, such tenancies shall be the "Accepted Tenancies").
- 19. ADJUSTMENTS:** The Buyer will assume and pay all taxes, rates, local improvement assessments, fuel, utilities, insurance, rents, tenant deposits including interest, prepaid rents, and other charges from, and including, the date set for adjustments, and all adjustments both incoming and outgoing of whatsoever nature will be made as of the date specified in Clause 8.1 (the "Adjustment Date").
- 20. INCLUDED ITEMS:** The Purchase Price includes the Accepted Tenancies, any buildings, improvements, fixtures, appurtenances and attachments thereto, and all security systems, security bars, blinds, awnings, curtain rods, tracks and valances, fixed mirrors, fixed carpeting, electric, plumbing, heating and air conditioning fixtures and all appurtenances and attachments thereto as viewed by the Buyer at the date of inspection, together with those items set out in Schedule 20A but excluding those items set out in Schedule 20B.
- 21. VIEWED:** The Property and all included items will be in substantially the same condition at the Possession Date as when viewed by the Buyer on the date specified in Clause 9.1.
- 22. TITLE:** Free and clear of all encumbrances except subsisting conditions, provisos, restrictions, exceptions and reservations, including royalties, contained in the original grant or contained in any other grant or disposition from the Crown, registered or pending restrictive covenants and rights-of-way in favour of utilities and public authorities, the Accepted Tenancies and any additional permitted encumbrances set out in Schedule 22.
- 23. ADDITIONAL SELLER'S WARRANTIES AND REPRESENTATIONS:** In addition to the representations and warranties set out in this Contract, the Seller makes the additional representations and warranties set out in Schedule 23 to the Buyer.
- 24. ADDITIONAL BUYER'S WARRANTIES AND REPRESENTATIONS:** In addition to the representations and warranties set out in this Contract, the Buyer makes the additional representations and warranties set out in Schedule 24 to the Seller.


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- 25. GST:** In addition to the Purchase Price, the applicable Goods and Services Tax ("GST") imposed under the *Excise Tax Act* (Canada) (the "Act") will be paid by the Buyer. On or before the Completion Date, the Buyer may confirm to the Seller's Lawyer or Notary that it is registered for the purposes of Part IX of the Act and will provide its registration number. If the Buyer does not confirm that it is a registrant under Part IX of the Act on or before the Completion Date, then the Buyer will pay the applicable GST to the Seller on the Completion Date and the Seller will then remit the GST as required by the Act. All taxes payable pursuant to the *Provincial Sales Tax Act* arising out of the purchase of the Property, will be paid by the Buyer and evidence of such payment will be provided to the Seller.
- 26. TENDER:** Tender or payment of monies by the Buyer to the Seller will be by bank draft, wire transfer, certified cheque, or Lawyer's/Notary's or real estate brokerage's trust cheque.
- 27. DOCUMENTS:** All documents required to give effect to this Contract will be delivered in registerable form where necessary and will be lodged for registration in the appropriate Land Title Office by 4 pm on the Completion Date.
- 27A. SELLER'S PARTICULARS AND RESIDENCY:** The Seller shall deliver to the Buyer on or before the Completion Date a statutory declaration of the Seller containing: (A) particulars regarding the Seller that are required to be included in the Buyer's Property Transfer Tax Return to be filed in connection with the completion of the transaction contemplated by this Contract (and the Seller hereby consents to the Buyer inserting such particulars on such return); and (B) if the Seller is not a non-resident of Canada as described in the non-residency provisions of the *Income Tax Act*, confirmation that the Seller is not then, and on the Completion Date will not be, a non-resident of Canada. If on the Completion Date the Seller is a non-resident of Canada as described in the residency provisions of the *Income Tax Act*, the Buyer shall be entitled to hold back from the Purchase Price the amount provided for under section 116 of the *Income Tax Act*.
- 28. TIME:** Time will be of the essence hereof, and unless the balance of the payment is paid and such formal agreement to pay the balance as may be necessary is entered into on or before the Completion Date, the Seller may, at the Seller's option, terminate this Contract, and, in such event, the amount paid by the Buyer will be non-refundable and absolutely forfeited to the Seller, subject to the provisions of Section 28 of the *Real Estate Services Act*, on account of damages, without prejudice to the Seller's other remedies.
- 29. BUYER FINANCING:** If the Buyer is relying upon a new mortgage to finance the Purchase Price, the Buyer, while still required to pay the Purchase Price on the Completion Date, may wait to pay the Purchase Price to the Seller until after the transfer and new mortgage documents have been lodged for registration in the appropriate Land Title Office, but only if, before such lodging, the Buyer has: (a) made available for tender to the Seller that portion of the Purchase Price not secured by the new mortgage, and (b) fulfilled all the new mortgagee's conditions for funding except lodging the mortgage for registration, and (c) made available to the Seller, a Lawyer's or Notary's undertaking to pay the Purchase Price upon the lodging of the transfer and new mortgage documents and the advance by the mortgagee of the mortgage proceeds pursuant to the Canadian Bar Association (BC Branch) (Real Property Section) standard undertakings (the "CBA Standard Undertakings").
- 30. CLEARING TITLE:** If the Seller has existing financial charges to be cleared from title, the Seller, while still required to clear such charges, may wait to pay and discharge existing financial charges until immediately after receipt of the Purchase Price, but in this event, the Seller agrees that payment of the Purchase Price shall be made by the Buyer's Lawyer or Notary to the Seller's Lawyer or Notary, on the CBA Standard Undertakings to pay out and discharge the financial charges, and remit the balance, if any, to the Seller.
- 31. COSTS:** The Buyer will bear all costs of the conveyance and, if applicable, any costs related to arranging a mortgage and the Seller will bear all costs of clearing title.

BUYER'S INITIALS

SELLER'S INITIALS

PROPERTY ADDRESS

- 32. RISK:** All buildings on the Property and all other items included in the purchase and sale will be, and remain, at the risk of the Seller until 12:01 am on the Completion Date. After that time, the Property and all included items will be at the risk of the Buyer. If loss or damage to the Property occurs before the Seller is paid the Purchase Price, then any insurance proceeds shall be held in trust for the Buyer and the Seller according to their interests in the Property.
- 33. GOVERNING LAW:** This Contract will be governed by the laws of the Province of British Columbia. The parties submit to the exclusive jurisdiction of the courts in the Province of British Columbia regarding any dispute that may arise out of this transaction.
- 34. CONFIDENTIALITY:** Unless the transaction contemplated by this Contract is completed, the Buyer and the Seller will keep all negotiations regarding the Property confidential, and the Buyer will not disclose to any third party the contents or effect of any documents, materials or information provided pursuant to or obtained in relation to this Contract without the prior written consent of the Seller, except that each of the Buyer and the Seller may disclose the same to its employees, inspectors, lenders, agents, advisors, consultants, potential investors and such other persons as may reasonably be required and except that the Buyer and the Seller may disclose the same as required by law or in connection with any regulatory disclosure requirements which must be satisfied in connection with the proposed sale and purchase of the Property.
- 35. PLURAL:** In this Contract, any reference to a party includes that party's heirs, executors, administrators, successors and assigns; singular includes plural and masculine includes feminine.
- 36. SURVIVAL OF REPRESENTATIONS AND WARRANTIES:** There are no representations, warranties, guarantees, promises or agreements other than those set out in this Contract and any attached Schedules. All of the warranties contained in this Contract and any attached Schedules are made as of and will be true at the Completion Date, unless otherwise agreed in writing.
- 37. PERSONAL INFORMATION:** The Buyer and the Seller hereby consent to the collection, use and disclosure by the Brokerages and by the managing broker(s), associate broker(s) and representative(s) of those Brokerages (collectively the "REALTOR®(s)") described in Clause 38, the real estate boards of which those Brokerages and REALTOR®s are members and, if the Property is listed on a Multiple Listing Service®, the real estate board that operates that Multiple Listing Service®, of personal information about the Buyer and the Seller:
- A. for all purposes consistent with the transaction contemplated herein;
 - B. if the Property is listed on a Multiple Listing Service®, for the purpose of the compilation, retention and publication by the real estate board that operates the Multiple Listing Service® and other real estate boards of any statistics including historical Multiple Listing Service® data for use by persons authorized to use the Multiple Listing Service® of that real estate board and other real estate boards;
 - C. for enforcing codes of professional conduct and ethics for members of real estate boards; and
 - D. for the purposes (and to the recipients) described in the British Columbia Real Estate Association's Privacy Notice and Consent form.

The personal information provided by the Buyer and Seller may be stored on databases outside Canada, in which case it would be subject to the laws of the jurisdiction in which it is located.

- 38. AGENCY DISCLOSURE:** The Seller and the Buyer acknowledge and confirm as follows (initial appropriate box(es) and complete details as applicable):

		
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BUYER'S INITIALS

		
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SELLER'S INITIALS

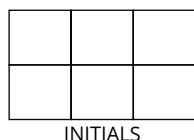
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A. The Seller acknowledges having received, read and understood the BC Financial Services Authority (BCFSA) form entitled *"Disclosure of Representation in Trading Services"* and hereby confirms that the Seller has an agency relationship with the Designated Agent(s)/REALTOR®s specified in Clause 10.1 who is/are licensed in relation to the brokerage specified in Clause 10.1.



B. The Buyer acknowledges having received, read and understood the BCFSA form entitled *"Disclosure of Representation in Trading Services"* and hereby confirms that the Buyer has an agency relationship with the Designated Agent(s)/REALTOR®(s) specified in Clause 10.2 who is/are licensed in relation to the brokerage specified in Clause 10.2.



C. The Seller and the Buyer each acknowledge having received, read and understood the BCFSA form entitled *"Disclosure of Risks Associated with Dual Agency"* and hereby confirm that they each consent to a dual agency relationship with the Designated Agent(s)/REALTOR®(s) specified in Clause 10.3 who is/are. licensed in relation to the brokerage specified in Clause 10.3, having signed a dual agency agreement with such Designated Agent(s)/REALTOR®(s) dated the date set out in Clause 10.4.



D. If only (A) has been completed, the Buyer acknowledges having received, read and understood the BCFSA form *"Disclosure of Risks to Unrepresented Parties"* from the Seller's agent listed in (A) and hereby confirms that the Buyer has no agency relationship.



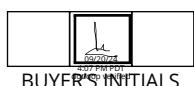
E. If only (B) has been completed, the Seller acknowledges having received, read and understood the BCFSA form *"Disclosure of Risks to Unrepresented Parties"* from the Buyer's agent listed in (B) and hereby confirms that the Seller has no agency relationship.

39. ASSIGNMENT OF REMUNERATION: The Buyer and the Seller agree that the Seller's authorization and instruction set out in clause 45(c) below is a confirmation of the equitable assignment by the Seller in the Listing Contract and is notice of the equitable assignment to anyone acting on behalf of the Buyer or Seller.

39A. RESTRICTION ON ASSIGNMENT OF CONTRACT: The Buyer and the Seller agree that this Contract: (a) must not be assigned without the written consent of the Seller; and (b) the Seller is entitled to any profit resulting from an assignment of the Contract by the Buyer or any subsequent assignee.

40. ADDITIONAL TERMS: The additional terms set out in Schedule 40 are hereby incorporated into and form a part of this Contract.

41. ACCEPTANCE IRREVOCABLE:




The Seller and the Buyer specifically confirm that this Contract of Purchase and Sale, whether executed and sealed by hand or by digital or electronic signature and seal, or otherwise, is hereby executed under seal, which is evidenced by each of the Buyer and the Seller making the deliberate, intentional and conscious act of inserting their initials (whether by hand or electronically) in the appropriate space provided beside this Section 41. The parties intend that the act of inserting their initials as set out above is to have the same effect as if this Contract of Purchase and Sale had been physically sealed by wax, stamp, embossing, sticker or any other manner. It is agreed and understood that, without limiting the foregoing, the Seller's acceptance is irrevocable including without limitation during the period prior to the date specified for the Buyer to either:

- A. fulfill or waive the terms and conditions herein contained; and/or
- B. exercise any option(s) herein contained.



PROPERTY ADDRESS

- 42. COUNTERPARTS:** The parties agree that this Contract of Purchase and Sale and any amendments or attachments thereto may be executed in counterparts by the parties and delivered originally or by facsimile, email, or other means of electronic transmission. Each such counterpart when so executed and delivered is deemed to be an original and all such counterparts of a relevant document taken together shall constitute one and the same relevant document as though the signatures of all the parties were upon the same document.
- 43. THIS IS A LEGAL DOCUMENT. READ THIS ENTIRE DOCUMENT AND INFORMATION PAGE BEFORE YOU SIGN.**
- 44. OFFER:** This offer, or counter-offer, will be open for acceptance until the time and date specified in Clause 11.1 (unless withdrawn in writing with notification to the other party of such revocation prior to notification of its acceptance), and upon acceptance of the offer, or counter-offer, by accepting in writing and notifying the other party of such acceptance, there will be a binding Contract of Purchase and Sale on the terms and conditions set forth.

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BPFE-RWMAK-KOMJ-8STD **SEAL**

BUYER

Mark Anthony Group

PRINT NAME

WITNESS

BUYER

PRINT NAME

WITNESS

BUYER

PRINT NAME

WITNESS

- 45. ACCEPTANCE:** The Seller (a) hereby accepts the above offer and agrees to complete the sale upon the terms and conditions set out above, (b) agrees to pay a commission as per the Listing Contract, and (c) authorizes and instructs the Buyer and anyone acting on behalf of the Buyer or Seller to pay the commission out of the cash proceeds of sale and forward copies of the Seller's Statement of Adjustments to the Cooperating/Listing Brokerage, as requested, forthwith after completion.

Seller's acceptance is dated this _____ day of 09/23/24 yr. _____.

The Seller declares their residency:

RESIDENT OF CANADA

AT
INITIALS

NON-RESIDENT OF CANADA

INITIALS

as defined under the *Income Tax Act*.

 Anthony Tillman **SEAL**

SELLER

Alvarez & Marsal Canada Inc., in its capacity as Court Appointed Monitor pursuant to
Supre

PRINT NAME

WITNESS

SELLER

British Columbia Action No. S245481, Vancouver Registry.

PRINT NAME

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SELLER

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WITNESS

*PREC represents Personal Real Estate Corporation

Trademarks are owned or controlled by The Canadian Real Estate Association (CREA) and identify real estate professionals who are members of CREA (REALTOR®) and/or the quality of services they provide (MLS®).

BC 2053 REV. NOV 2023

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CONTRACT OF PURCHASE AND SALE FOR COMMERCIAL REAL ESTATE SCHEDULE

MLS® NO: 10300812

DATE: 09/18/2024

RE: ADDRESS: 880 Vaughan Avenue, Kelowna, BC V1Y 7E4

THE NORTHERLY 349.38 FEET OF BLOCK 30 MEASURED ALONG THE EASTERLY BOUNDARY OF SAID BLOCK BY THE FULL DEPTH THEREOF SECTION 30 TOWNSHIP 26 OSOYOOS DIVISION YALE DISTRICT PLAN 202

LEGAL DESCRIPTION

PID: 012-603-911

FURTHER TO THE CONTRACT OF PURCHASE AND SALE DATED ~~09/18/2024~~ 09/20/2024

AT

09/23/24
4:54 PM PDT
dotloop verified

MADE BETWEEN Mark Anthony Group of Companies

Alvarez & Marsal Canada Inc., in its capacity as Court Appointed Monitor pursuant to Supreme Court of British Columbia Action No. S245481, Vancouver Registry AS BUYER(S), AND AS SELLER(S) AND COVERING

THE ABOVE-MENTIONED PROPERTY, THE UNDERSIGNED HEREBY AGREE AS FOLLOWS:

This offer is subject to the following subjects and are for the sole benefit of the Buyer.

1.) LEGAL ADVICE

Subject to the approval of this contract, both in form and in content, by the Buyer's solicitor on or before October 15 2024.


2.) PROFESSIONAL ADVICE

Subject to the Buyer on or before October 15 2024, receiving and being satisfied with, such professional advice as they deem appropriate, including but not limited to Tax advice, Legal advice satisfactory to the Buyer concerning their rights and obligations under this contract, Appraisal advice as to the current fair market value of the Property.


3.) INSPECTION OF PROPERTY

Subject to the Buyer, on or before October 30 2024 at the Buyer's expense, obtaining and approving an inspection report against the presence of Asbestos. The Seller will allow access to the property for this purpose on reasonable notice.

ACCESS and SITE VISITS The Seller(s) agrees to allow the Buyer(s), their agent or inspectors, with reasonable notice, to access the properties Land, in order to carry out such inspections, tests, assessments, and appraisals of the land and buildings as the Buyer(s) may reasonably require.



BUYER

Mark Anthony Group of Companies
PRINT NAME


WITNESS

SELLER

PRINT NAME

WITNESS


BUYER

PRINT NAME


WITNESS

SELLER

PRINT NAME

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BUYER

PRINT NAME

WITNESS

SELLER

PRINT NAME

WITNESS



CONTRACT OF PURCHASE AND SALE FOR COMMERCIAL REAL ESTATE SCHEDULE

MLS® NO: 10300812

DATE: 09/18/2024

RE: ADDRESS: 880 Vaughan Avenue, Kelowna, BC V1Y 7E4

THE NORTHERLY 349.38 FEET OF BLOCK 30 MEASURED ALONG THE EASTERLY BOUNDARY OF SAID BLOCK BY THE FULL DEPTH THEREOF SECTION 30 TOWNSHIP 26 OSOYOOS DIVISION YALE DISTRICT PLAN 202

LEGAL DESCRIPTION

PID: 012-603-911

FURTHER TO THE CONTRACT OF PURCHASE AND SALE DATED ~~09/18/2024~~ 09/20/2024

AT

09/23/24
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MADE BETWEEN Mark Anthony Group of Companies AS BUYER(S), AND

Alvarez & Marsal Canada Inc., in its capacity as Court Appointed Monitor pursuant to Supreme Court of British Columbia Action No. S245481, Vancouver Registry AS SELLER(S) AND COVERING

THE ABOVE-MENTIONED PROPERTY, THE UNDERSIGNED HEREBY AGREE AS FOLLOWS:

4.)Phase II Environment inspection

Subject to the Buyer, on or before October 30 2024 at the Buyer's expense, obtaining and approving a phase II environmental assessment report of the property against any defects which reasonably may adversely affect the property's use or value. The Seller will allow access to the property for this purpose on reasonable notice.

5.)STRUCTURAL INSPECTION

Subject to the Buyer, on or before October 30 2024 at the Buyer's expense, obtaining and approving a structural inspection report against any defects which reasonably may adversely affect the property's use or value. The Seller will allow access to the property for this purpose on reasonable notice.

6.)COURT APPROVAL

Subject to court approval which is to be no more than 30 days after final subject removal. This condition is for the sole benefit of the Seller.

The Buyer is aware the property is being sold by court approval and is sold in an "as is where is" condition.


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BUYER

BUYER

BUYER

MARK ANTHONY GROUP OF COMPANIES

PRINT NAME

PRINT NAME

PRINT NAME

WITNESS


Anthony Tillman

SELLER

Anthony Tillman

PRINT NAME

WITNESS

SELLER

PRINT NAME

WITNESS

WITNESS

WITNESS

SELLER

PRINT NAME

WITNESS

SCHEDULE "A-1"
TO THE AGREEMENT OF PURCHASE AND SALE

BETWEEN

ALVAREZ & MARSAL CANADA INC.

in its capacity as Court-appointed Monitor of BC Tree Fruits Cooperative, BC Tree Fruits Industries Limited and Growers Supply Company Limited,
and not in its personal or corporate capacity

(SELLER)

AND:

Mark Anthony Group of Companies



(BUYER)

RE:

880 Vaughan Avenue, Kelowna, British Columbia
(MUNICIPAL ADDRESS OF PROPERTY)

The parties agree that the following terms replace, modify and, where applicable override the terms of the attached contract of purchase and sale and any modifications, amendments, additions or addenda thereto, (collectively the "**Contract**"). Where any conflict arises between the terms of this Schedule "A" and the Contract, the terms of this Schedule "A" shall apply. Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in the Contract.

1. Title will be transferred to the Buyer free and clear of all registered encumbrances, other than those listed in **Appendix "A"**, in accordance with the Vesting Order (defined herein) to be sought from the Supreme Court of British Columbia (the "**Court**") in Supreme Court of British Columbia Action No. S245481, Vancouver Registry (the "**Proceeding**").
2. Any existing registered financial charges to be paid under the terms of the Vesting Order may be paid by the Seller upon receipt of the Purchase Price and the Buyer may pay the Purchase Price to the Seller's lawyer in trust on undertakings to pay those financial charges in accordance with the terms of the Vesting Order.
3. Possession will be governed by the terms of the Vesting Order.
4. The Buyer is purchasing the Property on an "as is - where is" basis as of the completion date. The Buyer agrees that the Seller has no obligation to maintain the property in the condition it may have been in at some time before the completion date contemplated by this agreement. The Buyer agrees that the Purchase Price does not include any chattels/personal property. The Seller assumes no risk with respect to the buildings on the Property or any other items included in this purchase and sale.



5. No property condition disclosure statement concerning the Property will be given by the Seller.

6. The acceptance of this offer by the Seller is in its capacity as Court-appointed Monitor of the owner of the Property pursuant to the Amended and Restated Initial Order granted August 26, 2024 (the “**ARIO**”) in the Proceeding, and not in its personal capacity or as owner of the Property. The acceptance of this offer is subject to the approval of the Court in the Proceeding and will become effective from the time an order is made approving this offer (the “**Vesting Order**”). The Seller hereby advises the Buyer that the Seller's obligations in connection with this offer, until it is approved by the Court, are limited to putting this offer before the Court. The Seller is only obligated to present the offer to the Court for approval within 30 days of the Purchaser removing all subject conditions in respect of this offer.

7. The Seller is subject to the jurisdiction and discretion of the Court to entertain other offers and to any further Orders the Court may make regarding the Property. The Seller may be compelled to advocate that the Court consider other offers in order to obtain the highest price for the Property. The Seller gives no undertaking to exclusively advocate for the acceptance of only this offer. In that regard the Buyer may wish to consider making its own arrangements to support this offer in Court if other offers are received by the Seller. The Buyer agrees the Seller will disclose the purchase price being offered to any prospective buyers indicating an intention to submit an offer to purchase the Property.

8. Acceptance of this offer by the Seller and any obligation of the Seller to put this offer before the Court may be terminated at any time before the Court makes the Vesting Order approving this sale if the mortgage which is the subject of these proceedings is redeemed, or if the mortgage is brought into good standing or at the option of the Seller in its sole discretion. This condition is for the sole benefit of the Seller.

9. Real estate commission is payable relative to this offer only if this offer is approved by the Court and the sale is completed pursuant to the Vesting Order.

10. The Buyer agrees that there may be GST and PTT payable relating to this transaction and that it is the responsibility of the Buyer to pay any such tax accruing on this sale. The Buyer agrees that the Seller may be responsible to collect and remit GST payable on this transaction. Accordingly, the Buyer agrees to pay any such tax to the Seller so that the Seller can, in turn, pay such GST as may be due and owing on this sale.

11. The Buyer is satisfied that there is no need for a holdback from the purchase price for the possibility that the Seller is not a Canadian resident for the purposes of the Income Tax Act.

12. The Buyer agrees not to holdback any part of the purchase price for any reason.


[THIS SPACE IS INTENTIONALLY BLANK]

AT

13. The Seller, as party having conduct of sale of the Property pursuant to the ARIO, is not and will not be liable to the Purchaser, nor to anyone claiming by through or under the Purchaser, for any damages, costs or expenses, including but not limited to damage caused to the Purchaser by the registered owner(s) of the Property or his/her tenants, guests, assigns, agents or persons unknown, or for them failing to provide vacant possession when required. The Purchaser acknowledges that if vacant possession is not available on the possession date, the Purchaser will complete the sale in any event. The Seller will make reasonable efforts to obtain a Writ of Possession or similar Court order, and the Purchaser acknowledges that this process may take a considerable period of time.


SELLER:

ALVAREZ & MARSAL CANADA INC. (in its capacity as Court-appointed Monitor of BC Tree Fruits Cooperative, BC Tree Fruits Industries Limited and Growers Supply Company Limited and not in its personal or corporate capacity)

SIGNED:  _____
NAME: Anthony Tillman _____
DATE: 09/23/24 _____

BUYER:



SIGNED:  _____
NAME: Matt Lebedoff _____
DATE: 09/18/2024 _____

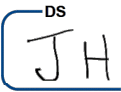
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09/18/24 10:18 AM PDT
WBG9-ED3K-6GWD-FSNU



APPENDIX “A”

LIST OF ENCUMBRANCES TO REMAIN ON TITLE

Nature of Charge	Holder of Charge	Registration No.





REMOVAL OF "SUBJECT TO CLAUSE" AND APPOINTMENT OF CONVEYANCER



COLDWELL BANKER PAGE 1 OF 1 PAGES
HORIZON REALTY

ADDRESS OF PROPERTY: 880 Vaughan Avenue, Kelowna, BC V1Y 7E4

P.I.D.: 012-603-911

DATE OF CONTRACT: 09/20/2024

BUYER: Mark Anthony Group of Companies

SELLER: Alvarez & Marsal Canada Inc., in its capacity as Court Appointed Monitor pursuant to Supreme Court of British Columbia Action No. S245481, Vancouver Registry

A. REMOVAL/WAIVER OF "SUBJECT TO CLAUSE"

WITH REFERENCE TO THE ABOVE THE SUBJECT TO CLAUSE(S) AS NOTED BELOW, IS /ARE REMOVED/WAIVED. TIME SHALL REMAIN OF THE ESSENCE.

1.) LEGAL ADVICE

Subject to the approval of this contract, both in form and in content, by the Buyer's solicitor on or before October 15, 2024.

2.) PROFESSIONAL ADVICE

Subject to the Buyer on or before October 15, 2024, receiving and being satisfied with, such professional advice as they deem appropriate, including but not limited to Tax advice, Legal advice satisfactory to the Buyer concerning the rights and obligations under this contract, Appraisal advice as to the current fair market value of the Property.

THE PARTIES AGREE THAT: (PLEASE INITIAL APPROPRIATE SET OF BOXES)




ADDITIONAL SUBJECT CLAUSE(S) REMAIN IN EFFECT ON THIS CONTRACT OF PURCHASE AND SALE.



ALL CONDITIONS HAVE BEEN REMOVED AND THIS CONTRACT IS NOW UNCONDITIONAL.

WITNESS TO BUYER(S) SIGNATURE _____

(BUYER) 

dotloop verified
10/15/24 11:51 PM CEST
JQTL-9NSV-SYKS-LQWV

DATE 10/15/2024

(BUYER) _____

WITNESS TO SELLER(S) SIGNATURE _____

(SELLER) _____


DATE _____

(SELLER) _____

B. APPOINTMENT OF CONVEYANCER

THE BUYER HEREBY APPOINTS _____ OF _____
TO COMPLETE ALL NECESSARY LEGAL AND CONVEYANCING DOCUMENTS ON THEIR BEHALF.

WITNESS TO BUYER(S) SIGNATURE _____

(BUYER) 

dotloop verified
10/15/24 11:51 PM CEST
8NQ1-29Z8-LCWW-G3YU

DATE 10/15/2024

(BUYER) _____

THE SELLER HEREBY APPOINTS _____ OF _____
TO COMPLETE ALL NECESSARY LEGAL AND CONVEYANCING DOCUMENTS ON THEIR BEHALF.

WITNESS TO SELLER(S) SIGNATURE _____

(SELLER) _____

DATE _____

(SELLER) _____



CONTRACT OF PURCHASE AND SALE ADDENDUM / AMENDMENT

MLS® NO: 10300812 DATE: 10/30/2024

RE: ADDRESS: 880 Vaughan Avenue, Kelowna, BC V1Y 7E4

LEGAL DESCRIPTION: THE NORTHERLY 349.38 FEET OF BLOCK 30 MEASURED ALONG THE EASTERLY BOUNDARY OF SAID BLOCK BY THE FULL DEPTH THEREOF SECTION 30 TOWNSHIP 26 OSOYOOS DIVISION YALE DISTRICT PLAN 202

PID: 012-603-911 OTHER PID(S):

ADDENDUM TO / AMENDMENT MADE FURTHER TO AND FORMING PART OF THE CONTRACT OF PURCHASE AND SALE

DATED 09/20/2024 MADE BETWEEN Mark Anthony Group of Companies

AS BUYER(S), AND


Alvarez & Marsal Canada Inc., in its capacity as Court Appointed Monitor pursuant to Supreme Court of British Columbia Action No.

S245481, Vancouver Registry

AS SELLER(S) AND COVERING THE ABOVE-MENTIONED PROPERTY, THE UNDERSIGNED HEREBY AGREE AS FOLLOWS:

The following is not to be construed as a counter-offer or repudiation of the Offer to Purchase and Agreement of Purchase and Sale between the Seller and the Purchaser:

The Buyer(s) and Seller(s) agree to change the purchasers name from Mark Anthony Group of Companies to Pelecanus Real Estate Ltd.

 dotloop verified
10/30/24 3:29 PM PDT
VZ7A-PR7Z-2TWQ-USUJ



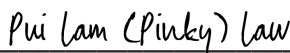
BUYER

Pelecanus Real Estate Ltd

PRINT NAME

WITNESS

Signed by:





SELLER 1D3C0C7E789C483...

Alvarez & Marsal Canada Inc.

PRINT NAME

WITNESS

BUYER

PRINT NAME

WITNESS

SELLER

PRINT NAME

WITNESS

BUYER

PRINT NAME

WITNESS

SELLER

PRINT NAME

WITNESS



ASSOCIATION OF
**INTERIOR
REALTORS®**

**REMOVAL OF "SUBJECT
TO CLAUSE" AND
APPOINTMENT OF
CONVEYANCER**



COLDWELL BANKER
HORIZON REALTY

PAGE 1 OF 1 PAGES

ADDRESS OF PROPERTY: 880 Vaughan Avenue, Kelowna, BC V1Y 7E4

P.I.D.: 012-603-911

DATE OF CONTRACT: 09/20/2024

BUYER: Pelecanus Real Estate Ltd

SELLER: Alvarez & Marsal Canada Inc., in its capacity as Court Appointed Monitor pursuant to Supreme Court of British Columbia Action No. S245481, Vancouver Registry

A. REMOVAL/WAIVER OF "SUBJECT TO CLAUSE"

WITH REFERENCE TO THE ABOVE THE SUBJECT TO CLAUSE(S) AS NOTED BELOW, IS /ARE REMOVED/WAIVED. TIME SHALL REMAIN OF THE ESSENCE.

3.) INSPECTION OF PROPERTY

Subject to the Buyer, on or before October 30 2024 at the Buyer's expense, obtaining an approving an inspection report against the presence of Asbestos. The Seller will allow access to the property for this purpose on reasonable notice.

ACCESS AND SITE VISITS The Seller(s) agrees to allow the Buyer(s), their agent or inspectors, with reasonable notice, to access the properties Land, in order to carry out such inspections, tests, assessments, and appraisals of the land and buildings as the Buyer(s) may reasonably require.

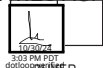
4.) PHASE II ENVIRONMENTAL INSPECTION

Subject to the Buyer, on or before October 30 2024 at the Buyer's expense, obtaining and approving a phase II environmental assessment report of the property against any defects which reasonably may adversely affect the property's use or value. The Seller will allow access to the property for this purpose on reasonable notice.

5.) STRUCTURAL INSPECTION

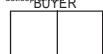
Subject to the Buyer, on or before October 30 2024 at the Buyer's expense, obtaining and approving a structural inspection report against any defects which reasonably may adversely affect the property's use or value. The Seller will allow access to the property for this purpose on reasonable notice.

THE PARTIES AGREE THAT: (PLEASE INITIAL APPROPRIATE SET OF BOXES)




ADDITIONAL SUBJECT CLAUSE(S) REMAIN IN EFFECT ON THIS CONTRACT OF PURCHASE AND SALE.

OR



ALL CONDITIONS HAVE BEEN REMOVED AND THIS CONTRACT IS NOW UNCONDITIONAL.

WITNESS TO BUYER(S) SIGNATURE _____

(BUYER) 

dotloop verified
10/30/24 3:03 PM PDT
BNQV-L0F1U-NG0Z-5ZJC

DATE 10/30/2024

(BUYER) _____

WITNESS TO SELLER(S) SIGNATURE _____

(SELLER) _____


DATE _____

(SELLER) _____

B. APPOINTMENT OF CONVEYANCER

THE BUYER HEREBY APPOINTS _____ OF _____
TO COMPLETE ALL NECESSARY LEGAL AND CONVEYANCING DOCUMENTS ON THEIR BEHALF.

WITNESS TO BUYER(S) SIGNATURE _____

(BUYER) 

dotloop verified
10/30/24 3:03 PM PDT
PBYX-CB1K-ZWEX-11U0

DATE 10/30/2024

(BUYER) _____

THE SELLER HEREBY APPOINTS _____ OF _____
TO COMPLETE ALL NECESSARY LEGAL AND CONVEYANCING DOCUMENTS ON THEIR BEHALF.

WITNESS TO SELLER(S) SIGNATURE _____

(SELLER) _____

DATE _____

(SELLER) _____

Appendix C - Colliers' marketing report for the Lake Country Property



November 8th, 2024

Alvarez & Marsal Canada

925 West Georgia Street, Suite 902
Vancouver, BC V6C 2L2

ATTN: Anthony Tillman, Pinky Law and Nishant Virmani

Re: 9718 Bottom Wood Lake Road, Lake Country | Summary of Marketing and Recommendation

Colliers is pleased to provide this final marketing report, offer review and broker recommendation for the property located at 9718 Bottom Wood Lake Road, Lake Country, BC (the "Property").

Overview of Marketing Campaign:

The Property was listed for sale with Colliers on September 4th, 2024. Over the course of the marketing period the following efforts were undertaken by Colliers to maximize the exposure of the Property and the sale price;

- **Listing Agreement** signed effective September 4th, 2024, at a listing price of \$10,995,000.00
- **MLS Listing** - ID#10323798
- **Colliers Canada website** - listing created - ID# 2016142 - 150 views to date
- **Property Brochure** - created for the Property
- **Professional Drone Aerials** - September 9th, 2024
- **Confidentiality Agreement (CA)** - 4 CA's signed
- **Data Room** - created with documents provided
- **Colliers Eblast** - September 11th, 2024 (+3,000 recipients)
- **MLS Commercial Eblast** - September 12th, 2024
(from Bill Randall account - sent to GVA - 845 Broker recipients)
- **MLS Commercial Eblast** - September 12th, 2024
(from Eric Webber's Account - sent to Okanagan brokers)
- **Signage** - 4x8 installed on site
- **Digital Ads** - Facebook and Instagram - (Campaign - September 26th, 2024 - October 10th, 2024) - to date the digital ads have received 14 interested hits
- **Print Advertising** - *Western Investor*
- **Direct phone calls and email correspondence** - with prospective buyers in key target areas in the community
- **Tours of the Property** - The Okanagan team conducted 7 tours for interested parties, 3 of which being the District of Lake Country.



Market Feedback

The Property has until recently been operating as a cold storage facility which is located within the boundary of the Provincial government Agricultural Land Reserve, "ALR". The potential for future commercial uses is severely restricted by the land use controls established within the ALR and accordingly the Property was difficult to value by interested parties who had redevelopment plans for the property. As a result of the restrictions on the future use of the Property the 3 market-based groups who toured the property did not return for further analysis. The District of Lake Country is the only group who came forward with an offer to purchase the Property.

Summary of Recommended Offer

Buyer: District of Lake Country

Purchase Price: \$9,100,000.00

Purchaser's Conditions: Removed November 8th, 2024

Initial Deposit: \$150,000.00 – payable to Seller's solicitor within five (5) Business Days of execution of Offer to be transferred to the Seller's solicitor within 5 business days of satisfaction or waiver of all Buyer's Conditions

Further Deposit: \$720,000.00 payable to Seller's solicitor within five (5) business days of satisfaction or waiver of all Buyer's Conditions

Closing Date: December 12th, 2024 (or the earlier of the first Business Day following fourteen (14) days of the Vesting Order)

This offer was accepted on October 17th, 2024 and is now firm and binding and subject only to Court approval. We are advised by the Seller's solicitor that \$870,000 deposit is being held in their trust account. The Property has been extensively marketed and as such we strongly recommend approval of this offer.

Sincerely,

Colliers

Bill Randall PREC

Executive Vice President
bill.randall@colliers.com
604 671 3077

Jennifer Darling

Senior Associate
jennifer.darling@colliers.com
778 837 5900

Eric Weber PREC

Vice President
eric.weber@colliers.com
250 212 8550

Mike Muncner

Associate
mike.muncner@colliers.com
236 457 4447

Hart Buck PREC

Senior Vice President
hart.buck@colliers.com
604 727 7001

Appendix D – Lake Country Accepted Offer

CONTRACT OF PURCHASE AND SALE

THIS AGREEMENT made as of the latest of the dates of execution set out at the end of this Agreement.

BETWEEN:

DISTRICT OF LAKE COUNTRY, a municipal corporation incorporated pursuant to the law of British Columbia and having an address at 10150 Bottom Wood Lake Road, Lake Country, BC, V4V 2M1

(the “**Buyer**”)

AND:

ALVAREZ & MARSAL CANADA INC.

in its capacity as Court-appointed Monitor of BC Tree Fruits Cooperative, BC Tree Fruits Industries Limited and Growers Supply Company Limited, and not in its personal or corporate capacity

(the “**Seller**”)

WHEREAS:

- A. The Seller was appointed by the British Columbia Supreme Court (the “**Court**”) in the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”) proceedings of BC Tree Fruits Cooperative (the “**Owner**”) as the monitor of the Owner, and in that capacity is entitled to sell the entire legal and beneficial interest of the Owner in the Property (as hereinafter defined);
- B. Subject to the approval of the Court (the “**Court Approval**”), the Seller has agreed to sell and the Buyer has agreed to purchase all of the Owner’s right, title, and interest in and to the Property, on the terms and conditions set out in this Agreement.

NOW THEREFORE, for good and valuable consideration now paid by each of the parties to the other (the receipt and sufficiency of which is hereby acknowledged) and of the mutual covenants and agreements contained in this Agreement, the parties agree as follows:

1. PURCHASE AND SALE

Subject to the terms and conditions herein set forth, the Buyer hereby agrees to purchase and the Seller agrees to sell, the lands and improvements located at 9718 Bottom Wood Lake Road, Lake Country, BC, legally described as set out in Schedule “A” (the “**Property**”), free and clear of all liens, charges, encumbrances and title notations save and except those described in Schedule “B” (collectively, the “**Permitted Encumbrances**”).

2. PURCHASE PRICE

- (a) The purchase price for the Property is the sum of **NINE MILLION ONE HUNDRED THOUSAND DOLLARS (\$9,100,000.00)** (the “**Purchase Price**”) in lawful money of Canada, subject to adjustment pursuant to Section 6, to be paid in the following manner:

- (i) an initial deposit of \$150,000 (the “**Initial Deposit**”) by way of bank wire transfer, certified cheque or bank draft payable to the Seller’s solicitors in trust within five (5) Business Days of execution of this Agreement by the Seller and the Buyer;
 - (ii) a further deposit of \$720,000 (the “**Further Deposit**” and together with the Initial Deposit, the “**Deposit**”) by way of bank wire transfer, certified cheque or bank draft payable to the Seller’s solicitors in trust within five (5) Business Days of satisfaction or waiver of all of the Buyer’s Conditions; and
 - (iii) the balance of the Purchase Price (as adjusted in accordance with this Agreement, the “**Closing Payment**”), by the Buyer’s solicitors to the Seller’s solicitors on or prior to the Closing Date in accordance with the terms of this Agreement.
- (b) The Buyer represents and warrants to the Seller that it is and will be, as of the Closing Date, registered for the purposes of Part IX of the *Excise Tax Act* (Canada) (the “**ETA**”) in accordance with the requirements of Subdivision D of Division V of the ETA and will assume responsibility to account for and report any Goods and Services Tax (“**GST**”) payable under the ETA in connection with the transactions contemplated by this Agreement. The Purchase Price does not include GST and the Buyer will pay any GST payable with respect to the acquisition of the Property in accordance with the ETA. On the Closing Date, the Buyer will deliver to the Seller a certificate (the “**GST Certificate**”) of a senior officer of the Buyer certifying, on behalf of the Buyer and without personal liability (a) that the Buyer is registered under Part IX of the ETA as of the Closing Date; (b) its registration number; and (c) that the Buyer will account for, report and remit any GST payable in respect of the purchase of the Property in accordance with the ETA. The Buyer will indemnify and hold the Seller and its directors, officers, employees, advisors and agents harmless from any liability under the ETA arising as a result of any breach of the ETA with respect to GST payable in respect of the Property, this Section 2(c), the GST Certificate or any declaration made therein and such indemnity will survive Closing.

3. CONDITIONS

- (a) The obligation of the Buyer to complete this transaction is subject to the following condition (the “**Buyer’s Condition**”) being waived or satisfied on or before that date which is the first Business Day following thirty (30) days from the date this Agreement is executed by the Buyer and the Seller (the “**Buyer’s Condition Date**”):
- (i) The Buyer reviewing and approving all the Due Diligence Materials and conducting any property related searches or reports that the Buyer deems necessary including, but not limited to, environmental searches or reports.
- (b) If the Buyer’s Condition is not satisfied or waived by notice in writing to be given by 5:00 pm PST on or before the Buyer’s Condition Date, then this Agreement is then terminated and the Initial Deposit is to be returned to the Buyer.
- (c) Upon acceptance and execution of this Agreement by the both the Buyer and the Seller, the Seller agrees to assist the Buyer in the satisfaction of the Buyer’s Condition by cooperating with the Buyer to have site inspections in furtherance of the satisfaction of the Buyer’s Condition. The Buyer shall indemnify and hold harmless the Seller for any costs, charges, fees, or obligations incurred or assessed to the Seller as a result of the actions of the Buyer with respect to the fulfillment or removal of the Buyer’s Condition.

- (d) The obligation of the Buyer and the Seller to complete this transaction is subject to the following mutual condition (the “**Mutual Condition**”) being satisfied on or before the date which is the first Business Day following fifteen (15) days after the Buyer’s Condition Date (the “**Mutual Condition Date**”):
 - (i) The Seller obtaining Court Approval and the Court issuing the Vesting Order (as defined in Schedule “C”), which order shall be substantially in the form attached hereto as Schedule “D” (with only such changes as the parties to this Agreement shall approve in their reasonable discretion, but in all cases in form and substance acceptable to the Seller) and any other related relief required to consummate the transaction contemplated hereby.
- (e) The Mutual Condition is for the mutual benefit of the Buyer and the Seller and may not be waived unilaterally by either party. Both parties agree that they will use reasonable commercial efforts to satisfy the Mutual Condition. If the Mutual Condition has not been satisfied on or before the Mutual Condition Date, then the Buyer’s and the Seller’s obligation to complete the transaction pursuant to this Agreement will be at an end.
- (f) In consideration of \$10.00 non-refundable to be paid by each party to the other party and other good and valuable consideration, the receipt and sufficiency of which are acknowledged by each party, the Seller and the Buyer both agree not to revoke their acceptance of the agreement contained herein while this Agreement remains subject to any of the conditions precedent set out in this section 3.

4. DEPOSITS

The Deposit and any accrued interest shall be dealt with as follows:

- (a) upon written notice of the waiver or satisfaction of all the Buyer’s Conditions, and upon the delivery of the Further Deposit to the Buyer’s solicitor, the Initial Deposit and Further Deposit shall be held by the Seller’s solicitor, in trust, in accordance with the terms herein;
- (b) the Deposit shall be credited against the Purchase Price, and shall not otherwise be released to either party except in accordance with this Agreement;
- (c) if the Buyer fails to complete the transaction contemplated by this Agreement, after the waiver or satisfaction of all of the Buyer’s Condition and the satisfaction of the Mutual Condition, other than as a result of the Seller’s default, then the Deposit together with accrued interest, if any, shall be forfeited to the Seller, without prejudice to any other rights or remedies of the Seller whether at law or in equity; and
- (d) if, after the Buyer’s Condition and the Mutual Condition are satisfied or waived, the Seller fails to close the transaction contemplated by this Agreement (except as a result of a default by the Buyer), then the Buyer shall thereupon be entitled to return of the Deposit, as the Buyer’s sole and exclusive remedy against the Seller.

5. CLOSING DATE AND POSSESSION

Unless otherwise agreed in writing by the Buyer and the Seller, the purchase and sale of the Property will be completed in accordance with the provisions of this Agreement on the date which is the earlier of (i) the

first Business Day following fourteen (14) days after the date of the Vesting Order; and (ii) December 12, 2024 (the “**Closing Date**”).

6. ADJUSTMENTS

The Seller and the Buyer shall adjust the Purchase Price as of the Closing Date in respect of the following items (including GST, where applicable), insofar as such items are applicable to the Property:

- (a) realty taxes, municipal taxes, and local improvement rates and charges;
- (b) utility accounts;
- (c) unless otherwise expressly provided for or set out in this Agreement, all other items reasonably capable of, and usually the subject of, adjustment in connection with the ownership, operation and management of properties similar to the Property.

The transaction contemplated herein shall be completed on the Closing Date. The Seller shall be responsible for all expenses and entitled to all revenues derived from the Property for the period prior to the Closing Date. As of and after the Closing Date, the Buyer shall be responsible for all expenses and shall be entitled to all revenues in respect of the Property.

7. REPRESENTATIONS AND WARRANTIES

- (a) The Seller represents and warrants to the Buyer that as of the date of the Agreement (unless otherwise specified) and as of the Closing Date:
 - (i) the Seller has, subject to Court Approval, the full power, authority and capacity to enter into this Agreement and to carry out the transactions contemplated herein; and
 - (ii) the Property will, on the Closing Date, be conveyed to the Buyer free and clear of any and all easements, rights of way, liens, mortgages, charges, pledges, security interests, leases and other encumbrances of whatsoever a nature or howsoever arising and any rights or privileges capable of becoming any of the foregoing, save and except for the Permitted Encumbrances or as provided in the Vesting Order.
- (b) The Seller’s representations and warranties contained in paragraph 7(a) above shall survive for a period of 12 months after the Closing Date and shall continue in full force and effect for the benefit of the Buyer for a period of one year from the Closing Date notwithstanding any independent inquiry or investigation by the Buyer or the waiver by the Buyer of any condition, the subject matter of which is contained in a representation or warranty in this Agreement.
- (c) The Buyer warrants and represents to the Seller that:
 - (i) the Buyer is a municipal corporation duly existing under the laws of British Columbia and is duly qualified to purchase and own the Property and the Buyer has full power, authority and capacity to enter into this Agreement and carry out the transactions contemplated herein;

- (ii) there is no action or proceeding pending or to the Buyer's knowledge threatened against the Buyer before any court, arbiter, arbitration panel, administrative tribunal or agency which, if decided adversely to the Buyer, might materially affect the Buyer's ability to perform its obligations hereunder;
 - (iii) neither the Buyer entering into this Agreement nor the performance of its terms will result in the breach of or constitute a default under any term or provision of any indenture, mortgage, deed of trust or other agreement to which the Buyer is bound or subject;
 - (iv) no consent or approval or registration, declaration or filing with, any governmental commission, board, court or other regulatory body is required for the execution or delivery of this Agreement by the Buyer, the validity or enforceability of this Agreement against the Buyer, or the performance by the Buyer of any of the Buyer's obligations hereunder; and
 - (v) on the Closing Date the Buyer will be duly registered for GST under the *Excise Tax Act*.
- (d) The Buyer's representations and warranties contained in paragraph 7(c) above shall survive the Closing Date and shall continue in full force and effect for the benefit of the Seller after the Closing Date.
- (e) The Buyer acknowledges that the Property is being purchased "as is, where is" on the basis set out in Schedule "C", without warranty of any kind including, without limitation, warranties of merchantability and/or fitness for a particular purpose and saves the Seller harmless from all claims resulting from or relating to the age, fitness, condition, zoning, lawful use, environmental condition or circumstances and location of the Property, and agrees to accept the Property subject to any outstanding work orders or notices or infractions as to the date of closing and subject to the existing municipal or other governmental by-laws, restrictions or orders affecting its use, including subdivision agreements and easements.

8. DELIVERY OF DUE DILIGENCE MATERIALS

The Seller shall within five (5) days of the execution of this Agreement by the Buyer and Seller to provide the Buyer with access to a data room containing any material information in the Seller's possession or control with respect to the Property (the "**Due Diligence Materials**").

9. ADDITIONAL COVENANTS OF THE SELLER

The Seller covenants with the Buyer to:

- (a) permit the Buyer and its representatives to enter onto the Property and carry out such inspections, tests, studies, appraisals, surveys and investigations of the Property as the Buyer may reasonably require;
- (b) maintain insurance coverage with respect to the Property in full force and effect until the completion of the closing of the transactions contemplated herein, in such amounts and on such terms as would a prudent owner; and

- (c) not enter into or amend any contract with respect to the Property without the prior written approval of the Buyer.

10. CLOSING DOCUMENTATION

- (a) On or before the Closing Date, the Seller will cause the Seller's solicitors to deliver to the Buyer's solicitors the following documents, duly executed as applicable, to be dealt with pursuant to Section 10(d):
 - (i) a Court-certified copy of the Vesting Order transferring the Property to the Buyer free and clear of all liens, charges, and encumbrances except for the Permitted Encumbrances (the "**Certified Vesting Order**"), together with a solicitor's letter to the Land Title Survey Authority of British Columbia authorizing its registration;
 - (ii) the Seller's statement of adjustments prepared in accordance with Section 6;
 - (iii) an assignment of all of the Seller's rights under any and all warranties, guarantees, or contractual obligations, in form and substance satisfactory to the Buyer, acting reasonably, which entitle the Seller to any rights against a contractor or supplier engaged in the repairs, maintenance, renovations, and modifications of the Property or any part of the Property, insofar as those rights can be assigned, together with the right to use the Seller's name to enforce any such unassignable warranties, guarantees, or contractual obligations, and to obtain all benefits from any legal proceedings initiated by it in the name of the Seller with respect the Property;
 - (iv) an assignment of any licences or permits required in connection with the operation of the Property;
 - (v) an assignment and assumption of Permitted Encumbrances; and
 - (vi) such other documents as may be reasonably required by the Buyer to give full effect to the intent and meaning of this Agreement.
- (b) On or before the Closing Date, the Buyer will cause the Buyer's solicitors to deliver to the Seller's solicitors the following documents to be dealt with pursuant to Section 10(e):
 - (i) any documents contemplated by Section which require execution or delivery by the Buyer, executed by the Buyer;
 - (ii) the GST Certificate (as herein defined);
 - (iii) such other documents and assurances as may be reasonably required by the Seller to give full effect to the intent and meaning of this Agreement.
- (c) Preparation of Closing Documents
 - (i) The closing documents contemplated in Sections 10(a) and 10(b) other than the Vesting Order, will be prepared by the Buyer's solicitors and delivered to the Seller's solicitors at least five (5) Business Days prior to the Closing Date; and

- (ii) all documents referred to in Sections 10(a) and 10(b) shall be in form and substance satisfactory to the solicitors for the party entitled to delivery thereof, acting reasonably.
- (d) Payment into Trust
 - (i) On or before the Closing Date, the Buyer will pay to the Buyer's solicitors in trust, by way of a certified cheque or wire transfer, funds in an amount equal to the Closing Payment.
- (e) Closing Procedure
 - (i) On the Closing Date, forthwith following the delivery by the Buyer's solicitors of the documents pursuant to Section 10(b) and the payment to the Buyer's solicitors referred to in Section 10(d) and after receipt by the Buyer's solicitors of the documents referred to in Section 10(a), the Buyer will cause the Buyer's solicitors to file the Certified Vesting Order in the Land Title Office in accordance with written undertakings settled as between the Buyer's solicitors and the Seller's solicitors.
 - (ii) Forthwith following the filing referred to in Section 10(e)(i), and upon the Buyer's solicitors being satisfied as to the title to the Property, after conducting a post filing registration check of the Property disclosing only the following:
 - (A) the existing title number to the Property;
 - (B) the Permitted Encumbrances;
 - (C) pending numbers assigned to the Certified Vesting Order; and
 - (D) pending numbers assigned to any additional documents deposited for registration by or at the direction of the Buyer,

the Buyer will cause the Closing Payment to be paid to the Seller's solicitors in trust by wire transfer of immediately available funds or as otherwise directed by the Vesting Order on the Closing Date, and thereupon the Buyer's solicitors shall be entitled to release the documents referred to in Section 10(a) to the Buyer and the Seller's solicitors shall be entitled to release to the Seller the documents referred to in Section 10(b).
- (f) Concurrent Requirements
 - (i) It is a condition of Closing that all matters of payment, execution and delivery of documents by each party to the other pursuant to the terms of this Agreement will be deemed to be concurrent requirements and it is specifically agreed that nothing will be complete at the Closing until everything required as a condition precedent at the Closing has been paid, executed and delivered.
- (g) Payment by Wire Transfer

- (i) Notwithstanding anything else contained herein, the Buyer will make all commercially reasonable efforts to ensure that the Closing Payment will be paid to and received by the Seller's solicitors on or before 5:00 p.m. (Vancouver time) on the Closing Date. Notwithstanding any provision of this Agreement, the Buyer and the Seller agree that, with respect to the Closing Payment, if the Buyer is paying the Closing Payment by way of wire transfer, and if the Buyer and the Buyer's solicitors have: (i) used commercially reasonable efforts to ensure that the Seller's solicitors will receive the Closing Payment on or before 5:00 p.m. on the Closing Date and provided evidence that such wire transfer was initiated prior to such time to the Seller's solicitors, but for any reason outside of the Buyer's control (excluding any event which is a default by the Buyer under this Agreement) the Seller's solicitors do not receive the Closing Payment by such time, then the time and date on which the Closing Payment must be received by the Seller's solicitors will be extended to 5:00 p.m. on the next Business Day following the Closing Date, so long as, in addition to the Closing Payment, the Buyer also pays to the Seller or the Seller's solicitors on such next Business Day following the Closing Date interest on the Closing Payment at a rate equal to the Prime Rate plus two percent per annum for each day from and including the Closing Date to but not including the day such payment is made. In this paragraph, "Prime Rate" means that variable annual rate of interest quoted by the main branch of Bank of Nova Scotia, Vancouver, British Columbia, from time to time as the rate of interest used by it as a reference rate for setting rates of interest on Canadian dollar loans in Canada repayable on demand and commonly referred to by such bank as its "prime rate". For example, if the Closing Date occurs on a Friday, the funds are wired on the following Monday and the Closing Payment is received by the Seller's solicitors at 6:00 p.m. (Vancouver time) the day after wiring, the Buyer will pay the Seller four days' interest on the Closing Payment.

11. RISK

(a) Risk

- (i) The Property shall be and remain at the risk of the Seller until the consummation of the purchase and sale on the Closing Date.

(b) Site Profile and Environmental Condition

- (i) The Buyer hereby waives and releases the Seller from any obligation to deliver a site profile or site disclosure statement to the Buyer for the Property as contemplated by the *Environmental Management Act*, SBC 2003, c 53 or any regulation in respect thereof.
- (ii) Within this Section 11(b), the following terms shall have the following meanings:
 - (A) "Environmental Laws" means any law, bylaw, order, ordinance, ruling, regulation or directive of any applicable federal, provincial, territorial, municipal, local or other government or governmental department agency or regulatory authority or any court of competent jurisdiction relating to environmental matters and/or regulating the import, manufacture, storage, distribution, labelling, sale, use, handling, transport or disposal of Hazardous Substances, as are in force as of the Closing Date.

- (A) “Hazardous Substances” means any underground storage tanks, any explosive or radioactive materials, pollutants, contaminants, hazardous, corrosive or toxic substances, special waste or waste of any kind, including, without limitation, compounds known as chlorobiphenyls, petroleum and any other substance or material, the storage, manufacture, disposal, treatment, generation, use, transportation, remediation or release into the environment of which is prohibited, controlled, regulated or licensed under Environmental Laws
- (iii) The Buyer acknowledges and agrees that the Seller does not make any representations or warranties with regard to the environmental condition of the Property, and the Buyer is relying solely on its own investigations and inspections to verify the existence and extent of any Hazardous Substances in, on or migrating to or from the Property, and that the environmental condition of or relating to the Property is otherwise satisfactory.
- (iv) The Buyer does hereby irrevocably release and forever discharge the Seller and each of their respective directors, officers, agents and employees from any and all claims that the Buyer has or may have against the Seller in connection with the environmental condition of the Property, any contamination or Hazardous Substances located on the Property or migrating onto the Property or from the Property or any breach of any Environmental Laws irrespective of whether such Claim arose before or after the Buyer’s acquisition of the Property pursuant to this Agreement.
- (v) The Buyer agrees that it shall not directly or indirectly commence or assert or pursue or threaten to commence, assert or pursue any type of claim (including an order issued by a governmental authority) against the Seller relating to the environmental condition of or any environmental matter or issue involving the Property including the location of contaminants or Hazardous Substances thereon or migrating thereon or therefrom.
- (vi) Without limiting the generality of the foregoing, the Buyer and the Seller acknowledge and agree that any and all costs in any way related to the environmental remediation of the Property (including any and all costs associated with the disposal of Hazardous Substances or contaminated soil) or in connection with any adjacent property contaminated by Hazardous Substances or contamination migrating from the Property shall be for the Buyer’s sole account and the Seller shall not have any liability or responsibility in connection with any such remediation costs.
- (vii) The Parties acknowledge and confirm that the provisions of this Section 11(b) constitute an agreement between them that is a private agreement respecting liability for Hazardous Substances and contamination on, in, at or under or released to, at or from the Property or otherwise associated with the Property and any contamination of adjacent properties and waters resulting from such Hazardous Substances and contamination or remediation of the Property.
- (viii) The terms of this Section 11(b) shall survive completion of the sale of the Property by the Buyer.

12. NOTICES

Any notices required or permitted to be given hereunder or any tender or delivery of documents may be sufficiently given by delivery or email (with original to follow by mail) to the Buyer at the following address:

10150 Bottom Wood Lake Road, Lake Country, BC, V4V 2M1
Attention: Paul Gipps, CAO
Email: pgipps@lakecountry.bc.ca

copy to the Buyer's solicitors:

Lawson Lundell LLP
1631 Dickson Avenue, Suite 1800
Kelowna BC V1Y 0B5
Attention: Peter MacPherson
E-mail: pmacpherson@lawsonlundell.com

and to the Seller at the following address:

925 West Georgia Street, Suite 902, Vancouver, BC V6C 3L2
Attention: Anthony Tillman and Pinky Law
Email: pinky.law@alvarezandmarsal.com and atillman@alvarezandmarsal.com

copy to the Seller's solicitors:

Fasken Martineau DuMoulin LLP
550 Burrard Street, Suite 2900
Vancouver BC V6C 0A3
Attention: Kibben Jackson
E-mail: kjackson@fasken.com

Notice shall be deemed to be given upon actual delivery.

13. CONFIDENTIALITY

Unless the transaction contemplated by this Agreement is completed, the Buyer and Seller will keep all negotiations regarding the Property confidential and the Buyer will not disclose to any third party the contents or effects of any document, materials or information provided pursuant to or obtained in relation to this Agreement without the prior written consent of the Seller, except that each of the Buyer and the Seller may disclose the same to its employees, inspectors, lenders, agents, advisors, consultants, potential investors and such other persons as may reasonably be required and expect that the Buyer and the Seller may disclose the same as required by law or in connection with the proposed sale and purchase of the Property or in connection with any legal proceedings related to this Agreement. Furthermore, the Buyer and the Seller agree that no press or other publicity release or communication to the general public concerning the proposed transaction will be issued without the other party's prior written approval, unless such disclosure is required by law.

14. ASSIGNMENT

The Buyer shall not be entitled to assign its interest in this Agreement without the prior written consent of the Seller, which consent may be withheld in the Seller's sole, absolute and unfettered discretion.

15. TIME

Specific times shall be in accordance with the system of standard or daylight-saving time in effect where the Property is located. If the date for making of any payment hereunder or the date for doing any act shall be a Saturday, Sunday or holiday in the Province of British Columbia, such date shall be extended to the first Business Day next following such date. "**Business Day**" means a day other than a Saturday, Sunday, municipal statutory holiday in British Columbia.

Time shall be of the essence of this Agreement.

16. TAXES AND FEES

- (a) The Buyer shall be responsible for payment of Property Transfer Tax and any registration fees payable in connection with the registration of the transfers and any other documents to be registered by or through the Buyer.
- (b) Each party shall pay its own legal fees with respect to this transaction.

17. COUNTERPARTS

This Agreement may be executed electronically, including by DocuSign, in any number of counterparts, and may be delivered originally, by facsimile, by Portable Document Format ("**PDF**"), or email and each such original, facsimile copy or PDF copy, when so executed and delivered shall be deemed to be an original and all of which taken together shall constitute one and the same instrument.

18. GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the laws of British Columbia and the applicable laws of Canada. The Seller and the Buyer agree to submit to the jurisdiction and the courts of British Columbia concerning any dispute relating to this Agreement or the transaction contemplated herein and to appoint respective agents for the receipt and service of process in British Columbia.

19. ENTIRE AGREEMENT

This Agreement together with any Schedules as attached constitutes the entire agreement between the Seller and the Buyer concerning the Transaction and supersedes all prior agreements, negotiations and discussions, whether oral or written, of the Seller and the Buyer. There are no agreements, representations or warranties, express, implied, statutory, collateral or otherwise, except as contained in this Agreement. This Agreement shall not be amended except in a written instrument executed by both the Seller and the Buyer or their solicitors and stated to be an amendment to this Agreement.

20. COMMISSIONS PAYABLE

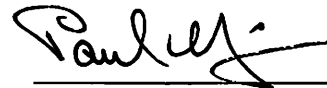
The Seller shall pay all real estate commissions arising out of the purchase and sale of the Property contemplated by this Agreement and the Seller will indemnify and save the Buyer harmless in respect of any claim or action against the Buyer on account of such real estate commissions. The Buyer represents and warrants to the Seller that the Buyer has not engaged a broker regarding the purchase of the Property and shall indemnify and save harmless the Seller from any misrepresentation in this regard.

(execution page follows)

IN WITNESS WHEREOF the Buyer has executed this Agreement as of October 17, 2024.

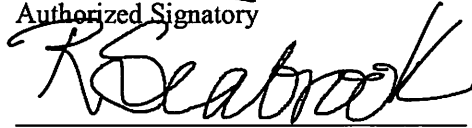
DISTRICT OF LAKE COUNTRY

PAUL GIPPS
Chief Administrative Officer



Authorized Signatory

REYNA SEABROOK
Corporate Officer



Authorized Signatory

IN WITNESS WHEREOF the Seller has executed this Agreement as of October 17, 2024.

ALVAREZ & MARSAL CANADA INC.
in its capacity as Court-appointed Monitor of BC
Tree Fruits Cooperative, BC Tree Fruits
Industries Limited and Growers Supply
Company Limited and not in its personal or
corporate capacity

Per: _____

Per: _____

IN WITNESS WHEREOF the Buyer has executed this Agreement as of October 17, 2024.

DISTRICT OF LAKE COUNTRY

Per: _____
Authorized Signatory

Authorized Signatory

IN WITNESS WHEREOF the Seller has executed this Agreement as of October 17, 2024.

ALVAREZ & MARSAL CANADA INC.
in its capacity as Court-appointed Monitor of BC
Tree Fruits Cooperative, BC Tree Fruits
Industries Limited and Growers Supply
Company Limited and not in its personal or
corporate capacity

Per: _____ 

Per: _____

SCHEDULE “A”

the “**Property**”

Address	Legal Description	PID
9718 Bottom Wood Lake Road, Lake Country, British Columbia	Lot 38 District Lot 118 Osoyoos Division Yale District Plan 457 Except Plans 17370, 22191 and 36673	009-973-532

SCHEDULE "B"

PERMITTED ENCUMBRANCES

Unless otherwise agreed in writing, title will be free and clear of all encumbrances, registrations and obligations except the following:

1. The reservations, limitations, provisions or conditions expressed in the original grants from the Crown and the statutory exceptions to title currently applicable to the Property;
2. a claim of right, title or jurisdiction which may be made or established by any aboriginal peoples by virtue of their status as aboriginal peoples to or over any lands;
3. liens for taxes, assessments, rates, duties, charges or levies not at the time due, which relate to obligations or liability assumed by the Buyer; and
4. the encumbrances listed below:

Legal Notations

HERETO IS ANNEXED RESTRICTIVE COVENANT CB750540 OVER LOT 2 SECTIONS 10 AND 11 TOWNSHIP 20 ODYD PLAN 4169; LOT 44 DISTRICT LOT 118 ODYD PLAN 457 EXCEPT PLANS 20108, 36673 AND 39429; THAT PART LOT 45 AND THAT PART LOT 46 SHOWN ON PLAN 940F DISTRICT LOT 118 ODYD PLAN 457 EXCEPT PLAN 36673

THIS CERTIFICATE OF TITLE MAY BE AFFECTED BY THE AGRICULTURAL LAND COMMISSION ACT, SEE AGRICULTURAL LAND RESERVE PLAN NO. M11328

THIS TITLE MAY BE AFFECTED BY A PERMIT UNDER MUNICIPAL ACT PART 29 (SEE DF KE23756)

THIS TITLE MAY BE AFFECTED BY A PERMIT UNDER PART 29, MUNICIPAL ACT, SEE KH28138

Charges, Liens and Interests

Nature: UNDERSURFACE RIGHTS

Registration Number: 19038E

Registration Date and Time: 1930-07-24 10:18

Registered Owner: THE DIRECTOR OF SOLDIER SETTLEMENT

Remarks: INTER ALIA SEE 55200F OTHER THAN THOSE EXCEPTED BY THE CROWN

Nature: RIGHT OF WAY

Registration Number: K22615

Registration Date and Time: 1975-05-13 14:08

Registered Owner: WINFIELD AND OKANAGAN CENTRE IRRIGATION DISTRICT

Remarks: PART ON PLAN A11771

Nature: EASEMENT

Registration Number: CB969496

Registration Date and Time: 2023-10-17 13:29

Remarks: APPURTENANT TO THAT PART OF LOT 44, LOT 45 AND LOT 46 SHOWN ON PLAN 940F DISTRICT LOT 118 ODYD PLAN 457 EXCEPT PLAN 36673; AND LOT 2 SECTIONS 10 AND 11 TOWNSHIP 20 ODYD PLAN 4169

SCHEDULE "C"

The parties agree that the following terms replace, modify and, where applicable override the terms of the attached contract of purchase and sale and any modifications, amendments, additions or addenda thereto, (collectively the "**Contract**"). Where any conflict arises between the terms of this Schedule "C" and the Contract, the terms of this Schedule "C" shall apply. Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in the Contract.

1. Title will be transferred to the Buyer free and clear of all registered encumbrances, other than those listed in Schedule "B" to the Contract in accordance with the Vesting Order (defined herein) to be sought from the Supreme Court of British Columbia (the "**Court**") in Supreme Court of British Columbia Action No. S245481, Vancouver Registry (the "**Proceeding**").
2. Any existing registered financial charges to be paid under the terms of the Vesting Order may be paid by the Seller upon receipt of the Purchase Price and the Buyer may pay the Purchase Price to the Seller's lawyer in trust on undertakings to pay those financial charges in accordance with the terms of the Vesting Order.
3. Possession will be governed by the terms of the Vesting Order.
4. The Buyer is purchasing the Property on an "as is - where is" basis as of the completion date. The Buyer agrees that the Seller has no obligation to maintain the Property in the condition it may have been in at some time before the Closing Date. The Buyer agrees that the Purchase Price does not include any chattels/personal property. The Seller assumes no risk with respect to the buildings on the Property or any other items included in this purchase and sale.
5. No property condition disclosure statement concerning the Property will be given by the Seller.
6. The acceptance of this offer by the Seller is in its capacity as Court-appointed Monitor of the owner of the Property pursuant to the Amended and Restated Initial Order granted August 26, 2024 (the "**ARIO**") in the Proceeding, and not in its personal capacity or as owner of the Property. The acceptance of this offer is subject to the approval of the Court in the Proceeding and will become effective from the time an order is made approving this offer (the "**Vesting Order**"). The Seller hereby advises the Buyer that the Seller's obligations in connection with this offer, until it is approved by the Court, are limited to putting this offer before the Court. The Seller is only obligated to present the offer to the Court for approval within 30 days of the Buyer removing all subject conditions in respect of this offer.
7. The Seller is subject to the jurisdiction and discretion of the Court to entertain other offers and to any further Orders the Court may make regarding the Property. The Seller may be compelled to advocate that the Court consider other offers in order to obtain the highest price for the Property. The Seller gives no undertaking to exclusively advocate for the acceptance of only this offer. In that regard the Buyer may wish to consider making its own arrangements to support this offer in Court if other offers are received by the Seller. The Buyer agrees the Seller will disclose the Purchase Price to any prospective buyers indicating an intention to submit an offer to purchase the Property.
8. Acceptance of this offer by the Seller and any obligation of the Seller to put this offer before the Court may be terminated at any time before the Court makes the Vesting Order approving this sale if the mortgage which is the subject of these proceedings is redeemed, or if the mortgage is brought into good standing or at the option of the Seller in its sole discretion. This condition is for the sole benefit of the Seller.

9. Real estate commission is payable relative to this offer only if this offer is approved by the Court and the sale is completed pursuant to the Vesting Order.
10. The Buyer agrees that there may be GST and PTT payable relating to this transaction and that it is the responsibility of the Buyer to pay any such tax accruing on this sale. The Buyer agrees that the Seller may be responsible to collect and remit GST payable on this transaction. Accordingly, the Buyer agrees to pay any such tax to the Seller so that the Seller can, in turn, pay such GST as may be due and owing on this sale.
11. The Buyer is satisfied that there is no need for a holdback from the Purchase Price for the possibility that the Seller is not a Canadian resident for the purposes of the Income Tax Act.
12. The Buyer agrees not to holdback any part of the Purchase Price for any reason.
13. The Seller, as party having conduct of sale of the Property pursuant to the ARIO, is not and will not be liable to the Buyer, nor to anyone claiming by through or under the Buyer, for any damages, costs or expenses, including but not limited to damage caused to the Buyer by the registered owner(s) of the Property or his/her tenants, guests, assigns, agents or persons unknown, or for them failing to provide vacant possession when required. The Buyer acknowledges that if vacant possession is not available on the possession date, the Buyer will complete the sale in any event. The Seller will make reasonable efforts to obtain a Writ of Possession or similar Court order, and the Buyer acknowledges that this process may take a considerable period of time.

SCHEDULE “D”

FORM OF VESTING ORDER

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

ORDER MADE AFTER APPLICATION

**APPROVAL AND VESTING ORDER
(LAKE COUNTRY)**

BEFORE THE HONOURABLE)
JUSTICE GROPPER) October [●], 2024
)

ON THE APPLICATION OF Alvarez & Marsal Canada Inc. (“**A&M**”) in its capacity as monitor of the Petitioners (in such capacity, the “**Monitor**”) coming on for hearing at Vancouver, British Columbia, on the [●] day of [●] 2024; AND ON HEARING Kibben Jackson and Heidi Esslinger, counsel for the Monitor, and those other counsel listed on Schedule “A” hereto, and no one else appearing although duly served, AND UPON READING the material filed, including the [●] Report of the Monitor to the Court dated [●], 2024 (the “**Report**”); AND PURSUANT TO the *Companies’ Creditors Arrangement Act*, R.S.C. 1985 c. C-36, as amended (the “**CCAA**”), the *British Columbia Supreme Court Civil Rules*, and the inherent jurisdiction of this Court;

THIS COURT ORDERS AND DECLARES THAT:

The sale transaction (the “**Transaction**”) contemplated by the Contract of Purchase and Sale dated [●], 2024 (the “**Sale Agreement**”) between the Monitor, in its capacity as the Monitor of BC Tree Fruits Cooperative (the “**Vendor**”), and District of Lake Country (the “**Purchaser**”), a copy of which is attached hereto as Schedule “B”, is hereby approved,

and the Sale Agreement is commercially reasonable. The execution of the Sale Agreement by the Monitor on behalf of the Vendor is hereby authorized and approved, and the Vendor and the Monitor are hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance to the Purchaser of the Property (as such term is defined in the Sale Agreement). The Monitor and the Purchaser shall be at liberty to extend the Closing Date (as such term is defined in the Sale Agreement) to such later date as those parties may agree, without the necessity of a further Order of this Court.

Upon: (i) receipt by the Monitor of the full amount of the Purchase Price (as such term is defined in the Sale Agreement); and (ii) delivery by the Monitor to the Purchaser of a certificate substantially in the form attached as **Schedule "C"** hereto (the "**Monitor's Certificate**"), all of the Vendor's right, title and interest in and to the Property shall vest absolutely in the Purchaser in fee simple, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by any order of this court in the within proceeding; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* of British Columbia or any other personal property registry system; and (iii) those Claims enumerated in **Schedule "D"** hereto (all of which are collectively referred to as the "Encumbrances", which term shall not include the permitted encumbrances, easements and restrictive covenants listed on **Schedule "E"** hereto), and, for greater certainty, this court orders that all of the Encumbrances are hereby expunged and discharged as against the Property.

Upon presentation for registration in the Land Title Office for the Land Title District of Kamloops of a certified copy of this order, together with a letter from Fasken Martineau DuMoulin LLP, solicitors for the Monitor, authorizing registration of this order, the British Columbia Registrar of Land Titles is hereby directed to:

enter the Purchaser as the owner of the Property identified in the Sale Agreement, together with all buildings and other structures, facilities and improvements located thereon and fixtures, systems, interests, licenses, rights, covenants, restrictive covenants, commons, ways, profits, privileges, rights, easements and appurtenances to the said hereditaments belonging, or with the same or any part thereof, held or enjoyed or appurtenant thereto, in fee simple in respect of the Property, and this court declares that it has been proved to the satisfaction of the court on investigation that the title of the Purchaser in and to the Property is a good, safe holding and marketable title and directs the BC Registrar to register indefeasible title in favour of the Purchaser as aforesaid; and

having considered the interest of third parties, to discharge, release, delete and expunge from title to the Property all of the registered Encumbrances except for those listed in Schedule "**E**" hereto.

For the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Property shall stand in the place and stead of the Property, and from and after the delivery of the Monitor's Certificate all Claims shall attach to the net proceeds from the sale of the Property with the same priority as they had with respect to the Property immediately prior to the sale, as if the Property had not been sold and remained in the possession or control of the person having had possession or control immediately prior to the sale.

The Monitor is to file with the court a copy of the Monitor's Certificate forthwith after delivery thereof.

Subject to the terms of the Sale Agreement, vacant possession of the Property, including any real property, shall be delivered by the Monitor to the Purchaser upon completion of the purchase and sale transaction contemplated in the Sale Agreement, subject to the permitted encumbrances as set out in the Sale Agreement and listed on Schedule "E" hereto.

Notwithstanding:

this CCAA proceeding or the termination thereof;

any applications for a bankruptcy order in respect of any or all of the Petitioners now or hereafter made pursuant to the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the "**BIA**") and any bankruptcy order issued pursuant to any such applications; and

any assignment in bankruptcy made by or in respect of any or all of the Petitioners,

the vesting of the Property in the Purchaser and/or any permitted assignees under the Sale Agreement pursuant to this order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Petitioners and shall not be void or voidable by creditors of the Petitioners, nor shall it constitute or be deemed to be a transfer at undervalue, fraudulent preference, assignment, fraudulent conveyance or other reviewable transaction under the BIA or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body, wherever located, to give effect to this order and to assist the Monitor and its agents in carrying out the terms of this order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Petitioners, the Purchaser and the Monitor, as an officer of this court, as may be necessary or desirable to give effect to this order or to assist the Petitioners, the Purchaser and the Monitor and its agents in carrying out the terms of this order.

The Monitor or any other party has liberty to apply for such further or other directions or relief as may be necessary or desirable to give effect to this order.

Endorsement of this Order by counsel appearing on this application other than counsel for the Monitor is hereby dispensed with.

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

Signature of Kibben Jackson
Lawyer for the Monitor, Alvarez & Marsal
Canada Inc.

BY THE COURT

REGISTRAR

Schedule “A”

LIST OF COUNSEL

[illegible]

Schedule “B”

CONTRACT OF PURCHASE AND SALE

[see attached]

Schedule “C”

FORM OF MONITOR’S CERTIFICATE

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

MONITOR’S CERTIFICATE

1. Capitalized terms used but not otherwise defined in this Monitor's Certificate shall have the meanings given to them in the order of the Supreme Court of British Columbia (the "**Court**") pronounced on [●], 2024 (the "**Approval and Vesting Order**") and the Contract of Purchase and Sale dated [●], 2024 (the "**Sale Agreement**") between the Monitor in its capacity as monitor of BC Tree Fruits Cooperative (the "**Vendor**") and District of Lake Country (the "**Purchaser**"), a copy of which is appended as Schedule "B" to the Approval and Vesting Order.
2. Pursuant to an order made on August 13, 2024, as amended and restated on August 26, 2024, the court granted the Petitioners protection from their creditors and appointed the Monitor as monitor of the Petitioners, all under the provisions of the CCAA.
3. Pursuant to the Approval and Vesting Order, the court ordered that all of the right, title and interest of the vendor in and to the Purchased Assets shall vest in the Purchaser effective upon, among other things, delivery by the Monitor of this Monitor’s Certificate to the Purchaser.

THE MONITOR HEREBY CERTIFIES as follows:

1. The Purchaser has delivered written notice to the Monitor that all applicable conditions in favour of the Purchaser under the Sale Agreement have been satisfied and/or waived, as applicable.
2. The Monitor has received the full amount of the Purchase Price under the Sale Agreement.
3. Except for delivery of this Monitor's Certificate, all of the transactions contemplated by the Sale Agreement have been implemented.

Dated at the City of Vancouver, in the Province of British Columbia, this [●] day of [●], 2024

ALVAREZ & MARSAL CANADA INC.
 acting solely in its capacity as court-appointed
 monitor of **BC TREE FRUITS**
COOPERATIVE and not in its personal or
 corporate capacity

Per: _____

Name:

Title:

Schedule “D”**CLAIMS TO BE DELETED/EXPUNGED FROM TITLE TO REAL PROPERTY**

1. The mortgage registered by Canadian Imperial Bank of Commerce on October 15, 2008, with registration number CA945413, and all extensions and modifications thereto.
2. The assignment of rents registered by Canadian Imperial Bank of Commerce on October 15, 2008, with registration number CA945414, and all extensions thereto.

Schedule "E"

PERMITTED ENCUMBRANCES

Unless otherwise agreed in writing, title will be free and clear of all encumbrances, registrations and obligations except the following:

5. The reservations, limitations, provisions or conditions expressed in the original grants from the Crown and the statutory exceptions to title currently applicable to the Property;
6. a claim of right, title or jurisdiction which may be made or established by any aboriginal peoples by virtue of their status as aboriginal peoples to or over any lands;
7. liens for taxes, assessments, rates, duties, charges or levies not at the time due, which relate to obligations or liability assumed by the Buyer; and
8. the encumbrances listed below:

Legal Notations

HERETO IS ANNEXED RESTRICTIVE COVENANT CB750540 OVER LOT 2 SECTIONS 10 AND 11 TOWNSHIP 20 ODYD PLAN 4169; LOT 44 DISTRICT LOT 118 ODYD PLAN 457 EXCEPT PLANS 20108, 36673 AND 39429; THAT PART LOT 45 AND THAT PART LOT 46 SHOWN ON PLAN 940F DISTRICT LOT 118 ODYD PLAN 457 EXCEPT PLAN 36673

THIS CERTIFICATE OF TITLE MAY BE AFFECTED BY THE AGRICULTURAL LAND COMMISSION ACT, SEE AGRICULTURAL LAND RESERVE PLAN NO. M11328

THIS TITLE MAY BE AFFECTED BY A PERMIT UNDER MUNICIPAL ACT PART 29 (SEE DF KE23756)

THIS TITLE MAY BE AFFECTED BY A PERMIT UNDER PART 29, MUNICIPAL ACT, SEE KH28138

Charges, Liens and Interests

Nature: UNDERSURFACE RIGHTS

Registration Number: 19038E

Registration Date and Time: 1930-07-24 10:18

Registered Owner: THE DIRECTOR OF SOLDIER SETTLEMENT

Remarks: INTER ALIA SEE 55200F OTHER THAN THOSE EXCEPTED BY THE CROWN

Nature: RIGHT OF WAY

Registration Number: K22615

Registration Date and Time: 1975-05-13 14:08

Registered Owner: WINFIELD AND OKANAGAN CENTRE IRRIGATION DISTRICT

Remarks: PART ON PLAN A11771

Nature: EASEMENT

Registration Number: CB969496

Registration Date and Time: 2023-10-17 13:29

Remarks: APPURTENANT TO THAT PART OF LOT 44, LOT 45 AND LOT 46 SHOWN ON PLAN 940F DISTRICT LOT 118 ODYD PLAN 457 EXCEPT PLAN 36673; AND LOT 2 SECTIONS 10 AND 11 TOWNSHIP 20 ODYD PLAN 4169

NOTICE OF WAIVER OF BUYER'S CONDITION

TO: ALVAREZ & MARSAL CANADA INC. (the "Seller")

RE: Contract of purchase and sale dated October 17, 2024 (the "Purchase Agreement") between the Seller, as seller, and **DISTRICT OF LAKE COUNTRY** (the "Buyer"), as buyer, for the purchase and sale of the lands and premises municipally described as 9718 Bottom Wood Lake Road, Lake Country, British Columbia, and legally described as PID 009-973-532 Lot 38 District Lot 118 Osoyoos Division Yale District Plan 457 Except Plans 17370, 22191 and 36673


TAKE NOTICE that effective as of the date of this Notice, the Buyer irrevocably waives the Buyer's Condition (as defined in the Purchase Agreement) set out in Section 3 of the Purchase Agreement.

All capitalized terms used but not defined in this Notice have the meanings given to them in the Purchase Agreement unless the context requires otherwise.

This Notice may be executed by electronic signatures, and delivered by electronic means.

DATED as of November 6th, 2024.

DISTRICT OF LAKE COUNTRY

By: 
Name: _____
Title: Authorized Signatory

PAUL GIPPS
Chief Administrative Officer