



FORCE FILED

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

**NOTICE OF APPLICATION**

**Name of applicant:** Alvarez & Marsal Canada Inc., in its capacity as court-appointed Monitor of the Petitioners (the "**Monitor**").

To: The Service List, a copy of which is attached hereto as **Schedule "A"**

TAKE NOTICE that an application will be made by the applicant before the Honourable Madam Justice Gropper in person at 800 Smithe Street, Vancouver BC on December 10, 2024 at 9:00 a.m. for the orders set out in Part 1 below.

The applicant estimates that the application will take 30 minutes.

This matter is not within the jurisdiction of an associate judge. Madam Justice Gropper is seized of these proceedings. The date and time of this application has been set by Scheduling.

**Part 1 ORDERS SOUGHT**

1. An order abridging the time for service of this Notice of Application such that the application is properly returnable on December 10, 2024.
2. An order, in substantially the form attached hereto as **Schedule "B"** (the "**Auction and Stay Extension Order**");

- (a) approving the Liquidation and Auction Agreement (the “**Auction Agreement**”) between BC Tree Fruits Cooperative (“**BCTFC**”) and Maynards Industries II Canada Ltd. (“**Maynards**”) for the sale of the assets located at 880 Vaughan Avenue, Kelowna, British Columbia (the “**Vaughan Property**”) and described in Schedule “A” of the Auction Agreement; and
  - (b) granting an extension of the Stay Period (as defined below) to and including February 14, 2025.
3. Such further and other relief as this Honourable Court may deem just.

## **Part 2 FACTUAL BASIS**

4. Capitalized terms used and not otherwise defined herein have the meanings ascribed to them in the seventh report of the Monitor dated December 6, 2024, (the “**Seventh Report**”).

### Background

5. On August 26, 2024, this court granted an amended and restated initial order which, among other things, appointed A&M as the Monitor of the Petitioners with certain enhanced powers, and extended the stay of proceedings up to and including November 3, 2024 (the “**Stay Period**”). By order made October 24, 2024, this court extended the Stay Period to December 13, 2024.
6. Prior to these CCAA proceedings, a division of BCTFC was in the business of crafting a premium cider using fruit from local growers in the Okanagan. The cidery was located at the Vaughan Property.
7. On November 27, 2024, this court granted an order approving the sale of the Vaughan Property pursuant to the Vaughan Accepted Offer.
8. The sale of the Vaughan Property is set to close on December 11, 2024, however, there remains considerable equipment, including equipment related to BCTFC’s cidery business, which must be removed from the Vaughan Property (the “**Vaughan Equipment**”).

9. The Monitor has made arrangements with the purchaser of the Vaughan Property for the Vaughan Equipment to remain onsite until February 14, 2025 to facilitate its liquidation and removal.
10. The Monitor has negotiated the Auction Agreement pursuant to which:
  - (a) Maynards will manage the sale and/or auction of the Vaughan Equipment;
  - (b) Maynards will collect and retain a buyer's premium of 18% and be reimbursed for expenses not exceeding \$25,000;  
the assets will be sold "as is where is", without representations or warranties; and
  - (c) the sale process will be conducted over four to six weeks, with an auction tentatively being held during the week of January 6, 2025.
11. The Monitor supports the Auction Agreement for the following reasons:
  - (a) the terms are commercially reasonable and appropriate in the circumstances given the need for BCTFC to vacate the Vaughan Property before the end of January 2025;
  - (b) the Auction Agreement contemplates a buyer's premium, and not a seller's commission, which is favourable to the estate; and
  - (c) CIBC supports the Auction Agreement.

#### The Stay of Proceedings

12. The Stay Period is currently set to expire on December 13, 2024. Pursuant to the proposed Auction and Stay Extension Order, the Monitor is seeking to extend the Stay Period to and including February 14, 2025.
13. CIBC has agreed in writing to extend the maturity date of the Interim Lending Facility to February 15, 2025, and the Monitor understands that CIBC may formalize or otherwise document this agreement.
14. The Monitor's revised cash flow forecast demonstrates that the Petitioners will have sufficient liquidity to fund their obligations and the costs of these CCAA proceedings throughout the proposed extended Stay Period. The revised cash flow forecast is attached as Appendix A to the Seventh Report.

15. In addition, the Monitor supports extending the Stay Period to February 14, 2025, for the following reasons:
- (a) the extension will provide the Petitioners with an opportunity to continue to advance the sale of the remaining BCTFC assets, the sale of brokerage-listed properties, and other assets with a view to maximizing the value for stakeholders in the most expedient manner possible;
  - (b) no creditor of the Petitioners would be materially prejudiced by the extension of the Stay Period; and
  - (c) the Petitioners have acted in good faith and with due diligence with regard to these CCAA proceedings since the date of the Initial Order.

### **Part 3 LEGAL BASIS**

16. The Monitor relies on:
- (a) the CCAA;
  - (b) *Supreme Court Civil Rules*, in particular Rules 8-1, 13-1, and 22-4;
  - (c) the inherent and equitable jurisdiction of this Court; and
  - (d) such further and other legal bases and authorities as counsel may advise and this Court may permit.

#### Approval of the Auction Agreement

17. Section 36 of the CCAA provides the statutory basis for approval of a sale outside the ordinary course of business in CCAA proceedings.
18. Section 36(5) of the CCAA sets out the non-exhaustive list of factors to be considered in respect of a sale of an insolvent debtor's assets:
- (a) whether the process leading to the proposed sale or disposition was reasonable in the circumstances;
  - (b) whether the monitor approved the process leading to the proposed sale or disposition;

- (c) whether the monitor filed with the court a report stating that in their opinion the sale or disposition would be more beneficial to the creditors than a sale or disposition under a bankruptcy;
  - (d) the extent to which the creditors were consulted;
  - (e) the effects of the proposed sale or disposition on the creditors and other interested parties; and
  - (f) whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.
19. In addition to the factors set out above, the court should consider all of the circumstances to determine whether the proposed sale is fair and reasonable, an analysis that focuses on the process used to attempt to obtain the best price for the assets in question for the benefit of creditors. To that end, courts have also considered the so-called "Soundair" factors, which are:<sup>1</sup>
- (a) whether sufficient effort has been made to obtain the best price and that the debtor has not acted improvidently;
  - (b) the interests of all parties;
  - (c) the efficacy and integrity of the process by which offers have been obtained; and
  - (d) whether there has been unfairness in the working out of the process.
20. Courts will generally approve a sale where the monitor is of the view that the sale price and terms are commercially reasonable and satisfactory.<sup>2</sup>
21. The Monitor submits that approval of the Auction Agreement is appropriate for the following reasons:

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<sup>1</sup> *Royal Bank of Canada v Soundair Corp.*, 1991 CanLII 2727 (ONCA); *Veris Gold Corp. (Re)*, 2015 BCSC 1204, at paras. 22-25; *North American Tungsten Corporation Ltd (Re)*, 2016 BCSC 12 at paras. 29-30 [*North American Tungsten*].

<sup>2</sup> *North American Tungsten*, at para. 30.

- (a) The terms of the Auction Agreement and the process and transactions contemplated thereunder are fair and commercially reasonable and consistent with industry standards.
- (b) The process and transactions contemplated under the Auction Agreement are necessary given the need for BCTFC to vacate the Vaughan Property before the end of January 2025.
- (c) Approval of the proposed sale process for the Vaughan Equipment, including the Auction Agreement, is supported by CIBC.

Extension of the Stay Period

- 22. The Stay Period is currently set to expire on December 13, 2024.
- 23. Subsection 11.02(2) of the CCAA provides that an applicant may apply for an extension of the stay of proceedings for a period that the court considered necessary on terms that the court may impose. In accordance with subsection 11.02(3) of the CCAA, the applicant must satisfy the court that:
  - (a) circumstances exist that make the extension of the stay of proceedings appropriate; and
  - (b) the petitioners have acted, and are acting, in good faith and with due diligence.
- 24. In assessing whether an extension of the Stay Period is appropriate in the circumstances, this court inquires whether the extension advances the remedial purpose of the CCAA.

*North American Tungsten Corp, Re*, 2015 BCSC 1376, at para. 26

- 25. The Monitor supports an extension of the stay of proceedings to February 14, 2025, including for the following reasons:
  - (a) during the proposed extension of the Stay Period, the Petitioners will have an opportunity to continue to advance and conclude the sale of brokerage-listed properties and other assets with a view to maximizing value for stakeholders in the most expedient manner possible;
  - (b) the Petitioners are forecast to have sufficient liquidity to continue operating in the ordinary course of business during the requested extension of the Stay Period and operate within the limits of the Interim Lending Facility;
  - (c) no creditor of the Petitioners would be materially prejudiced by the extension of the Stay Period; and

- (d) the Petitioners have acted in good faith and with due diligence in these CCAA Proceedings since the date of the Initial Order.

*Seventh Report*, at para. 12.

26. The Monitor recommends that the Auction and Stay Extension Order be granted.

**Part 4 MATERIAL TO BE RELIED ON**

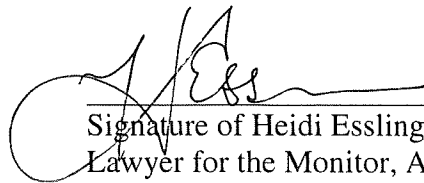
27. Seventh Report of the Monitor, dated December 6, 2024.

28. Such further and other materials as counsel may advise and this Court may allow.

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

- (a) file an Application Response in Form 33,
- (b) file the original of every affidavit, and of every other document, that
  - (i) you intend to refer to at the hearing of this application, and
  - (ii) has not already been filed in the proceeding, and
- (c) serve on the applicant 2 copies of the following, and on every other party of record one copy of the following:
  - (i) a copy of the filed Application Response;
  - (ii) a copy of each of the filed affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on that person;
  - (iii) if this application is brought under Rule 9-7, any notice that you are required to give under Rule 9-7(9).

Dated: 06-Dec-2024

  
\_\_\_\_\_  
Signature of Heidi Esslinger  
Lawyer for the Monitor, Alvarez & Marsal  
Canada Inc.

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

Order made

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

☐ with the following variations and additional terms:

.....  
.....  
.....

Date:

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

The Solicitors for the Monitor are Fasken Martineau DuMoulin LLP, whose office address and address for delivery is 550 Burrard Street, Suite 2900, Vancouver, BC V6C 0A3 Telephone: +1 604 631 3131 Facsimile: +1 604 631 3232 E-mail: kjackson@fasken.com (Reference: Kibben Jackson/285937.00020)



**APPENDIX****THIS APPLICATION INVOLVES THE FOLLOWING:**

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

**SCHEDULE "A"**

No. S245481  
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AND

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

PETITIONERS

**CCAA SERVICE LIST**

As at November 18, 2024

<p>Fasken Martineau DuMoulin LLP Attention: <b>Kibben Jackson</b> <b>Mishaal Gill</b> <b>Heidi Esslinger</b> <b>Suzanne Volkow</b> Email: <a href="mailto:kjackson@fasken.com">kjackson@fasken.com</a> <a href="mailto:mgill@fasken.com">mgill@fasken.com</a> <a href="mailto:hesslinger@fasken.com">hesslinger@fasken.com</a> <a href="mailto:svolkow@fasken.com">svolkow@fasken.com</a> <a href="mailto:jbeaulieu@fasken.com">jbeaulieu@fasken.com</a> <a href="mailto:richeung@fasken.com">richeung@fasken.com</a></p> <p><i>Counsel for the Monitor, Alvarez &amp; Marsal Canada Inc.</i></p>	<p>Norton Rose Fulbright Canada LLP Attention: <b>Howard Gorman, K.C.</b> <b>Candace Formosa</b> Email: <a href="mailto:howard.gorman@nortonrosefulbright.com">howard.gorman@nortonrosefulbright.com</a> <a href="mailto:candace.formosa@nortonrosefulbright.com">candace.formosa@nortonrosefulbright.com</a></p> <p><i>Counsel for the Petitioners</i></p>
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<p>Alvarez &amp; Marsal Canada Inc.</p> <p>Attention: <b>Todd Martin</b> <b>Anthony Tillman</b> <b>Pinky Law</b> <b>Monica Cheung</b></p> <p>Email: <a href="mailto:tmartin@alvarezandmarsal.com">tmartin@alvarezandmarsal.com</a> <a href="mailto:atillman@alvarezandmarsal.com">atillman@alvarezandmarsal.com</a> <a href="mailto:pinky.law@alvarezandmarsal.com">pinky.law@alvarezandmarsal.com</a> <a href="mailto:monicacheung@alvarezandmarsal.com">monicacheung@alvarezandmarsal.com</a></p> <p><i>Court Appointed Monitor</i></p>	<p>Blake Cassels &amp; Graydon LLP</p> <p>Attention: <b>Peter Rubin</b> <b>Peter Bychawski</b></p> <p>Email: <a href="mailto:peter.rubin@blakes.com">peter.rubin@blakes.com</a> <a href="mailto:peter.bychawski@blakes.com">peter.bychawski@blakes.com</a> <a href="mailto:jennifer.alambre@blakes.com">jennifer.alambre@blakes.com</a></p> <p><i>Counsel for Canadian Imperial Bank of Commerce</i></p>
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<p>Dentons Canada LLP</p> <p>Attention: <b>Jordan Schultz</b> <b>Cassandra Federico</b> <b>Chelsea Denton</b></p> <p>Email: <a href="mailto:jordan.schultz@dentons.com">jordan.schultz@dentons.com</a> <a href="mailto:cassandra.federico@dentons.com">cassandra.federico@dentons.com</a> <a href="mailto:chelsea.denton@dentons.com">chelsea.denton@dentons.com</a></p> <p><i>Counsel for Bayer Cropscience Inc.</i></p>	<p>FH&amp;P Lawyers LLP</p> <p>Attention: <b>Clay Williams</b> <b>Wendy Advocaat</b> <b>Wendy Cheung</b></p> <p>Email: <a href="mailto:cwilliams@fhplawyers.com">cwilliams@fhplawyers.com</a> <a href="mailto:wadvocaat@fhplawyers.com">wadvocaat@fhplawyers.com</a> <a href="mailto:wcheung@fhplawyers.com">wcheung@fhplawyers.com</a></p> <p><i>Counsel for Glacier Heights Refrigeration Inc., Keldon Electric Ltd., Rock Welding Ltd., Armitage Electric and Van Doren Sales North Inc.</i></p>
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**SCHEDULE "B"**

**AUCTION AND STAY EXTENSION ORDER**

*[see attached]*

No. S245481  
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**IN THE SUPREME COURT OF BRITISH COLUMBIA**

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

PETITIONERS

**ORDER MADE AFTER APPLICATION**

**(LIQUIDATION AND STAY EXTENSION)**

BEFORE THE HONOURABLE )  
JUSTICE GROPPER ) December 10, 2024  
)

ON THE APPLICATION OF Alvarez & Marsal Canada Inc. in its capacity as monitor of the Petitioners (in such capacity, the “**Monitor**”) coming on for hearing at Vancouver, British Columbia, on the 10<sup>th</sup> day of December 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 Seventh Report of the Monitor to the Court dated December 6, 2024, AND PURSUANT TO the *Companies' Creditors Arrangement Act*, R.S.C. 1985 c. C-36, as amended, the British Columbia *Supreme Court Civil Rules*, and the inherent jurisdiction of this Court;

THIS COURT ORDERS AND DECLARES THAT:

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

**Stay Extension**

2. All relief granted under the Amended and Restated Initial Order of this court made herein on August 26, 2024, including the Stay Period provided for in paragraph 17 therein, is hereby extended to and including February 14, 2025.

**Auction Agreement**

3. Capitalized terms used but not otherwise defined in this order have the meanings ascribed to them in the Auction and Liquidation Agreement dated December [●], 2024 (the “**Auction Agreement**”) between the Monitor, in its capacity as the Monitor of BC Tree Fruits Cooperative (“**BCTFC**”), and Maynards Industries II Canada Ltd. (“**Maynards**”), a copy of which is attached as **Schedule “B”** hereto.
4. In this Order, the following terms shall bear the meanings given to them below:
  - (a) “**Assets**” means the assets located at 880 Vaughan Avenue, Kelowna, British Columbia, and more particularly described in Schedule “A” to the Auction Agreement.
  - (b) “**Claims**” means 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; and
  - (c) “**Encumbrances**” means any encumbrances or charges created by any orders of this court, and any and all charges, security interests or claims evidenced by



registrations pursuant to the *Personal Property Security Act*, R.S.B.C. 1996, c. 359 (the "PPSA"), or any other personal property registry system.

### **Approval of Auction Agreement**

5. The sale of the Assets is hereby approved and the Auction Agreement is commercially reasonable. The execution of the Auction Agreement by the Monitor on behalf of BCTFC, and the engagement of Maynards as contemplated thereby, is hereby authorized and approved, and BCTFC and Maynards are hereby authorized and directed to execute and deliver such additional, related and ancillary documents and assurances governing or giving effect to the transactions contemplated in the Auction Agreement as BCTFC and Maynards deem reasonably necessary or advisable to conclude the transactions effected by the liquidation.
6. Any requirement of BCTFC or Maynards to issue notices under section 59 of the PPSA is hereby dispensed with.
7. Upon Maynards receiving the proceeds of sale from the Assets which are to be paid to BCTFC or the Monitor in accordance with the Auction Agreement (the "**Net Sale Proceeds**"), all such proceeds shall immediately be impressed with a charge in favour of BCTFC and shall be held in trust for the benefit of BCTFC until such time as the Net Sale Proceeds are received by the Monitor or BCTFC. While held by Maynards, the Net Sale Proceeds shall be held in a separate trust account for the benefit of BCTFC.

### **Vesting of Property**

8. BCTFC and Maynards are authorized to market and sell the Assets in accordance with the terms of the Auction Agreement and this order, and, upon the payment of the purchase price for any such Assets in accordance with the Auction Agreement and this order, all rights, title and interest in and to such Assets shall vest absolutely and exclusively in the person or persons acquiring the Assets (each, a "**Purchaser**") free and clear of and from any and all Claims including, without limiting the generality of the foregoing, all Encumbrances, and, for greater certainty, this Court orders that all of the Claims and

Encumbrances affecting or relating to the Assets are expunged and discharged as against the Assets upon payment of the Net Sale Proceeds by Maynards to the Monitor or BCTFC.

9. From and after the completion of the Sale Process (including the payment of the Net Sale Proceeds by Maynards to BCTFC or the Monitor), the Monitor is authorized to discharge from the British Columbia Personal Property Registry (the “PPR”) any claim registered against any of the Assets being auctioned and/or sold by Maynards, to the extent the security interest is registered against the interest of BCTFC or against any serial number of the Assets.
10. No authorization, approval or other action by and no notice to or filing with any governmental authority or regulatory body exercising jurisdiction over the Assets is required for the due execution, delivery and performance by BCTFC of the Auction Agreement.
11. For the purposes of determining the nature and priority of the Encumbrances, the Net Sale Proceeds stand in the place and stead of the Assets sold in accordance with the Auction Agreement and this order, and upon payment of the purchase price for the Assets by the Purchaser, all Encumbrances shall attach to the Net Sale Proceeds with the same priority as they had with respect to the Assets sold immediately prior to their sale, as if such Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.
12. Upon the completion of the transactions contemplated by this Order and the Auction Agreement, BCTFC and all persons who claim by, through or under BCTFC in respect of the Assets, and all persons or entities having any Claims of any kind whatsoever in respect of the Assets shall stand absolutely and forever barred, estopped, foreclosed from and permanently enjoined from pursuing, asserting, or claiming any right, title, interest or other Claims whatsoever in respect of or to the Assets and to the extent that any such persons or entities remain in possession or control of any of the Assets, certificates, instruments, or other indicia or title representing or evidencing any right, title or interest in and to the Assets, they shall forthwith deliver possession thereof to the Purchasers (or their nominee) or to Maynards.

13. The Purchasers shall, by virtue of the completion of the transactions contemplated by this Order and the Auction Agreement, have no liability of any kind whatsoever in respect of any Claims against BCTFC.
14. The Purchasers (or their nominee) shall be entitled to enter into and upon, hold and enjoy the Assets for their own use and benefit without any interference of or by BCTFC or any person claiming by through or against BCTFC.

#### **General**

15. Notwithstanding:
  - (a) these proceedings;
  - (b) any applications for a bankruptcy order in respect of BCTFC now or hereafter made pursuant to the *Bankruptcy and Insolvency Act* and any bankruptcy order issued pursuant to any such applications; and
  - (c) any assignment in bankruptcy made by or in respect of the BCTFC,

the vesting of the Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of BCTFC and shall not be void or voidable by creditors of the BCTFC, nor shall it constitute or be deemed to be a transfer at undervalue, fraudulent preference, assignment, fraudulent conveyance or other reviewable transaction under the *Bankruptcy and Insolvency Act* 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.
16. The Monitor, Maynards or any other party shall have liberty to apply for such further or other directions or relief as may be necessary or desirable to give effect to this Order.

17. 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:

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

BY THE COURT

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REGISTRAR

**Schedule A – Appearance List**

Counsel	Party

**Schedule B – Auction Agreement**

*[to be attached]*

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

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ORDER MADE AFTER APPLICATION

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