



**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

**TENTH REPORT OF THE MONITOR**

**ALVAREZ & MARSAL CANADA INC.**

**FEBRUARY 24, 2025**

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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: (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 Transaction**”). 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. to market and sell 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 (the “**IAF 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 extending the Stay Period to December 13, 2024.
- 1.8 On November 27, 2024, upon application by the Monitor, this Honourable Court granted the following orders:

- a) an order approving the sale of 880 Vaughan Avenue, Kelowna, B.C. (the “**Vaughan Property**”). The sale of the Vaughan Property closed on December 11, 2024; and
  - b) an order approving the sale of 9718 Bottom Wood Lake Road, Creston, B.C. (the “**Lake Country Property**”). The sale of the Lake Country Property closed on December 11, 2024.
- 1.9 On December 10, 2024, upon application by the Monitor, this Honourable Court granted an order (i) extending the Stay Period to February 14, 2025; (ii) amending the Interim Financing Term Sheet; and (iii) approving the agreement between BCTFC and Maynards Industries II Canada Ltd. (“**Maynards Auction**”) to manage, market and sell equipment on site at the Vaughan Property (the “**Vaughan Equipment Auction**”).
- 1.10 On January 10, 2025, upon application by the Monitor, this Honourable Court granted an order approving the sale of 754 35th Avenue, Erickson, B.C. (the “**Creston Property**”). The sale of the Creston Property closed on January 27, 2025.
- 1.11 On January 29, 2025, upon application by the Monitor, this Honourable Court granted an order (i) approving interim financing to be provided by Pillar Capital Corp. (“**Pillar**”) in the principal amount of up to \$5 million (the “**Pillar Financing**”); (ii) authorizing a corresponding interim financing charge; and (iii) extending the Stay Period to August 29, 2025.
- 1.12 Concurrently with filing this tenth report (the “**Tenth Report**”) the Monitor has filed an application seeking orders approving:
- a) the sale of the lands located at 3335 and 3345 Sexsmith Road, Kelowna, B.C. and 3670 Highway 97, Kelowna B.C. (collectively, the “**Sexsmith Property**” and with respect to the order, the “**Sexsmith Order**”); and
  - b) payment to Grant Thornton LLP (“**GT**”) for pre-filing amounts owing related to the preparation of audited financial statements (the “**GT Order**”).
- 1.13 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](http://www.alvarezandmarsal.com/bctreefruits).

## **2.0 PURPOSE OF REPORT**

- 2.1 This Tenth 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 Sexsmith Property;

- b) an update on the repayment CIBC's secured debt;
- c) an update on the BCTF SISP;
- d) the proposed payment to GT for pre-filing amounts owing; and
- e) the recommendations of the Monitor in respect of the foregoing, as applicable.

2.2 This Tenth 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 Tenth Report are expressed in Canadian dollars.

### **4.0 SALE OF SEXSMITH PROPERTY**

4.1 As noted in the First Report of the Monitor dated August 22, 2024 (the "**First Report**"), Unison HM Commercial Realty ("**Unison HM**") was engaged by BCTFC to market the Sexsmith Property in September 2023.

- 4.2 The listing contract between BCTFC and Unison HM expired on December 31, 2024. Accordingly, on December 10, 2024, the Monitor engaged Unison HM to continue marketing the Sexsmith Property through a multiple listing services (“**MLS**”) agreement (the “**Sexsmith Listing Agreement**”), effective January 6, 2025, for an initial six-month term.
- 4.3 The Sexsmith Property is an assembly of three titles totaling 18.4 acres and includes controlled atmosphere and cold storage facilities as well as office space, collectively totaling 148,888 square feet.
- 4.4 The Sexsmith Property was initially listed for \$39 million in September 2023 and the listing price has since been reduced various times to its most recent listing price of \$23.9 million based on market feedback.
- 4.5 Unison HM’s marketing efforts for the Sexsmith Property (inclusive of its efforts during the listing period with BCTFC) included, among other things, organizing professional photographs, posting the listing on MLS, organizing a virtual data room, conducting various property tours and distributing via email a property brochure and marketing communications to its database of over 1,000 recipients, resulting in 15 parties signing non-disclosure agreements (“**NDAs**”) to gain access to further information regarding the Sexsmith Property. Unison HM’s marketing report for the Sexsmith Property is attached hereto as Appendix “**A**”.
- 4.6 As noted in the Second Report of the Monitor dated September 27, 2024, on September 5, 2024, the Monitor entered into an Agreement of Purchase and Sale (the “**Sexsmith PSA**”) and a short-term lease agreement (the “**Sexsmith Lease**”) with Novem Pharmaceuticals Inc. (“**Novem**”) with respect to the Sexsmith Property.
- 4.7 As noted in the Seventh Report of the Monitor dated December 6, 2024, the Sexsmith PSA was subject to certain conditions in favour of Novem which were to be fulfilled or waived by December 3, 2024. Ultimately, Novem’s conditions were not waived, and the Sexsmith PSA was terminated. The Monitor continued marketing the Sexsmith Property with the assistance of Unison HM.
- 4.8 Following termination of the Sexsmith PSA in early December 2024, Unison HM continued with its marketing efforts by reaching out to 24 parties who had expressed interest in the property (including the 15 parties under NDAs), which resulted in one offer (that was not accepted) and one site tour.
- 4.9 On December 18, 2024, Novem presented an offer for the Sexsmith Property in the amount of \$18,000,000. In consultation with BCTFC, the Monitor engaged in negotiations with Novem and

on February 11, 2025, the Monitor accepted an offer of \$19,250,000 (the “**Sexsmith Accepted Offer**”).

- 4.10 The key terms of the Sexsmith Accepted Offer include, among other thing, (i) a near term closing date of March 31, 2025; (ii) the property being sold on an “as is and where is” basis; and (iii) the sale is subject to Court approval.
- 4.11 In accordance with the terms of the Sexsmith Accepted Offer, Novem paid a deposit of \$1.6 million, which includes the initial deposit of \$600,000 paid to the Monitor in relation to the Sexsmith Lease, and an additional deposit of \$1 million, paid on February 19, 2025, currently held in a trust account with the Monitor’s legal counsel, Fasken Martineau DuMoulin LLP.
- 4.12 A copy of the Sexsmith Accepted Offer is attached hereto as Appendix “B”.
- 4.13 On February 21, 2025, Novem assigned assign its rights, interests, and obligations the Purchase Agreement to Ocorp Holdings Ltd., by way of an Assignment and Assumption Agreement. A copy of the Assignment and Assumption Agreement dated February 21, 2025 is attached hereto as Appendix “C”.
- 4.14 Pursuant to the Sexsmith Listing Agreement, the Monitor has agreed to pay a total commission of 2% of the final purchase price, which, for the Sexsmith Accepted Offer is \$385,000, of which Unison HM would receive \$240,625, Macdonald Realty, the brokerage representing Novem, will receive \$96,250 and Novem’s advisor, Warren Sarafinchan, will receive \$48,125.
- 4.15 The Monitor supports the Sexsmith Accepted Offer for the following reasons:
  - a) the Sexsmith Property has been marketed by BCTFC and Unison HM since September 2023, and the Sexsmith Accepted Offer of \$19.25 million is the best and only viable offer received to date;
  - b) the Sexsmith Accepted Offer has a near-term closing date of March 31, 2025, which is reasonable and consistent with typical sale timelines; and
  - c) the sale transaction will allow the Monitor to avoid incurring additional holding costs in respect of the Sexsmith Property, including preservation costs (upon the expiry of the Sexsmith Lease), statutory obligations (including property taxes) and professional fees.
- 4.16 It is the Monitor’s view that the Sexsmith 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 UPDATE ON SECURED DEBT

- 5.1 Further to the approval of the Pillar Financing on January 29, 2025, the Monitor and Pillar executed the DIP Credit Agreement dated February 12, 2025 in relation to the Pillar Financing. On February 18, 2025, the Monitor received the proceeds from the first draw request, in the amount of \$2 million, from Pillar.
- 5.2 On February 19, 2025, the Monitor initiated a wire payment to CIBC in accordance with a payout statement prepared by CIBC for full satisfaction of the Petitioners' combined indebtedness totaling \$997,000, subject to final reconciliation by CIBC.

## 6.0 UPDATE ON BCTF SISP

- 6.1 In the Sixth Report of the Monitor dated November 21, 2024 (the "**Sixth Report**"), the Monitor explained that no *en-bloc* bids were received by the Monitor in the BCTF SISP by November 8, 2024 (the "**Final Bid Deadline**"), although a total of nine bids were received for individual BCTFC's assets.
- 6.2 As outlined in the Sixth Report, the Monitor determined not to pursue the bids for individual BCTFC assets at the time (except for one offer on cidery equipment) as it would be detrimental to the Members and the fruit packing industry in B.C. if the fruit packing facility in Oliver, B.C. (the "**Oliver Packing Plant**") was left as a standalone facility with no controlled atmosphere storage capabilities.
- 6.3 Upon the sale of the Sexsmith Property (if approved), the following assets will remain as assets of the BCTF Group (collectively, the "**Remaining Assets**"):
- a) the Oliver Packing Plant (which includes equipment and apple bins);
  - b) controlled atmosphere storage at Keremeos, B.C.;
  - c) controlled atmosphere storage at Summerland, B.C.;
  - d) intellectual property and trademarks of BCTFC and GSC; and
  - e) other miscellaneous assets including laptops, phone, and furniture.
- 6.4 Following the Final Bid Deadline, the Monitor, in consultation with the Petitioners, engaged in discussions with various interested parties that expressed interest in an *en bloc* transaction that included the Oliver Packing Plant.
- 6.5 On February 13, 2025, the Monitor received an *en bloc* LOI from an interested party for the BCTFC assets including the Oliver Packing Plant. The Monitor evaluated this bid with the assistance of the

Petitioners, and determined that the offer value was substantially lower than the value of the property and equipment in question, and that the offer was not actionable.

6.6 The Monitor notes that extensive efforts have been made since August 2024 to seek an *en bloc* offer for BCTFC's assets, and that despite numerous outreaches and discussions with Management, no viable offers have been presented to date. With the 2025 fruit packing season commencing in May/June 2025, the Monitor is of the view that it is in the stakeholder's best interest to re-market the Remaining Assets without the *en bloc* preference, to potentially allow some or all of the equipment and storage facilities to be in use by the time the packing season commences.

6.7 Accordingly, commencing the week of February 24, 2025, the Monitor will be contacting all parties who have previously submitted an offer for the Remaining Assets and seek liquidation proposals from auctioneers and liquidators, with the goal to receive final bids of the Remaining Assets by March 31, 2025.

## **7.0 PAYMENT TO GRANT THORNTON LLP**

7.1 GT has served as the BCTFC's and GSC's auditor for several years and most recently, was involved in the partial preparation of the BCTFC's and GSC's 2024 audited financial statements at the time these CCAA Proceedings commenced.

7.2 As a result of the CCAA Proceedings, GT's pre-filing debt of \$62,947.50 has been subject to the stay of proceedings under the ARIO. GT has indicated that, due to independence concerns, it will not be able to complete the 2024 audits unless the pre-filing debt owing to them is settled.

7.3 BCTFC is required to file audited financial statements under the *Cooperative Association Act*, SBC 1999 (the "**Cooperative Act**").

7.4 In order to achieve compliance with the Cooperative Act and to avoid incurring further costs to the estate from engaging a new auditor, the Monitor views the payment of GT's pre-filing debt as in the best interest of the Petitioners, Members and other creditors.

## **8.0 CONCLUSION AND RECOMMENDATIONS**

8.1 The Monitor respectfully recommends that this Honourable Court grant the Sexsmith Order and GT Order.

\*\*\*\*\*

All of which is respectfully submitted to this Honourable Court this 24<sup>th</sup> day of February, 2025.

**Alvarez & Marsal Canada Inc.,**

in its capacity as Monitor of

BC Tree Fruits Cooperative,

BC Tree Fruits 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 Sexsmith Property**



February 19, 2025

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

Anthony Tillman & Pinky Law

**RE: 3335-3345 Sexsmith Road & 3670 Highway 97N, 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 3335-3345 Sexsmith Road & 3670 Highway 97N, Kelowna BC.

**Marketing Summary**

The Property was listed for sale with Unison HM Commercial Realty on September 11, 2023. Subsequent to the CCAA filing, the Monitor and Unison signed a listing agreement on December 10, 2024 for the period from January 6, 2025 to June 6, 2025. Unison implemented several strategies to enhance the property's visibility, optimize the exposure, and maximize the sale price.

- Original Listing Agreement: effective September 11, 2023 at a listing price of \$39,000,000
- Current MLS Listing: ID# 10330171 (re-listed Jan 6, 2025 at \$28,000,000)
  - Realtor.ca views:
    - 33 views in the last 7 days
    - 146 views in the last 30 days
    - 305 views since Jan 6, 2024 (beginning of listing)
- Unison HM Commercial website: Published Sept 12, 2023
  - Website views:
    - Last 7 days – 13 views
    - Last 30 days – 39 views
    - Since Jan 6, 2025 – 84 views
    - Since Sept 12, 2023 – 924 views
- Property Brochure
- Listing Price Amendment: effective February 5, 2025, reduced to \$23,950,000
- Non-Disclosure Agreements: 15 NDA's signed
- Email Campaigns
  - New Price – Jan 16, 2024, 943 recipients
  - New Listing – Feb 23, 2024, 1,048 recipients
  - New Price – April 4, 2024, 892 recipients
  - New Price – June 20, 2024, 667 recipients

- Social Media
  - New Price – April 4, 2024
  - New Price – Feb 10, 2025

#### **Summary of Current Offer**

Buyer: Novem Pharmaceuticals Inc.  
Acceptance Date: February 11, 2025  
Price: \$19,250,000  
Deposit: \$1,600,000  
Buyer Conditions: None  
Closing: March 31, 2025

Novem Pharmaceuticals entered into a lease agreement for the property on September 6, 2024 which expires on April 30, 2025. There was a previously accepted offer from this buyer on September 5, 2024, but the buyer did not remove conditions and that agreement was terminated on Dec 4, 2024.

We have been proactively discussing the property with several buyers, the majority of whom have signed NDA's. We facilitated a recent tour with a local Investor group on Thursday, Dec 14, 2024. It should be noted that most of the local fruit-grower buyer groups (already familiar with the property), did not request a tour.

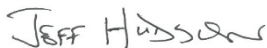
Upon the termination of the original Novem offer, we reached out to the top 24 Realtors/ Buyers who had expressed serious interest in the property, of which 15 had signed NDA's.

One of the previous offerors indicated that he had since found a solution for his business and was no longer interested in the property.

On December 11, 2024, we received an offer from a local buyer (group of growers). It contained a reasonable 30 day due diligence period, but the price was well below the list price. The offer was countered, but it was not accepted and despite our best efforts, the Buyer did not pursue further.

The property has been thoroughly marketed to the public since September 11, 2023. Based on the feedback and general sentiment from Buyers about the property, we recommend acceptance of this offer from Novem Pharmaceuticals.

Sincerely,

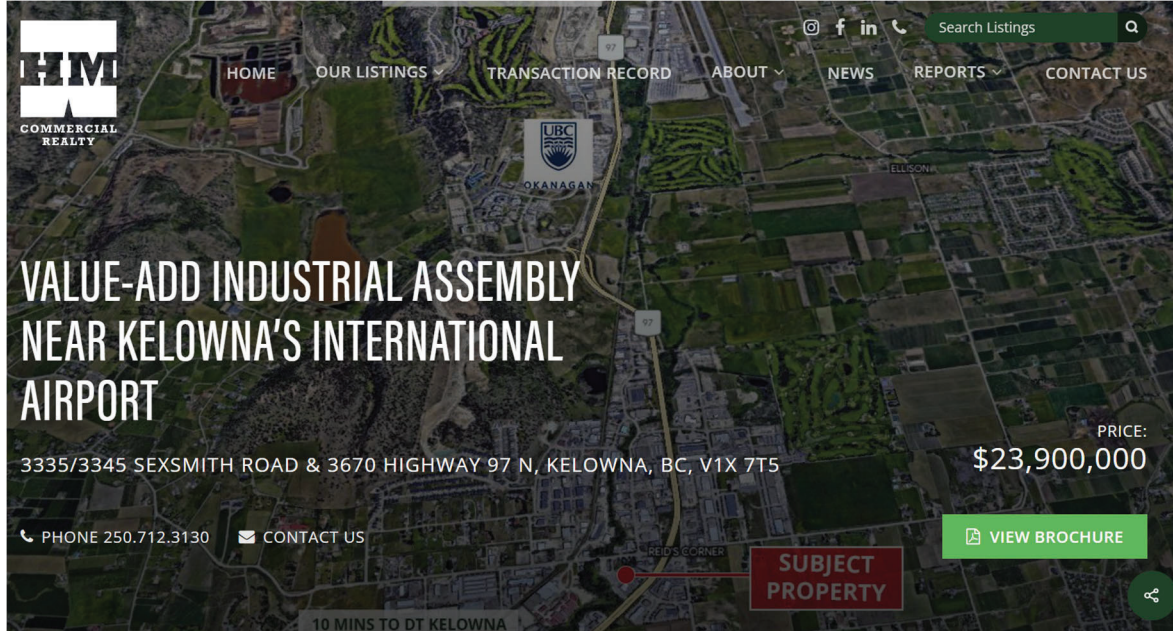


Jeff Hudson  
OKANAGAN INVESTMENT TEAM  
Personal Real Estate Corporation



Marshall McAnerney  
OKANAGAN INVESTMENT TEAM  
Personal Real Estate Corporation

## Web-listing (Feb, 2025)



**HM COMMERCIAL REALTY**

HOME OUR LISTINGS TRANSACTION RECORD ABOUT NEWS REPORTS CONTACT US

SEARCH LISTINGS

**VALUE-ADD INDUSTRIAL ASSEMBLY  
NEAR KELOWNA'S INTERNATIONAL  
AIRPORT**

3335/3345 SEXSMITH ROAD & 3670 HIGHWAY 97 N, KELOWNA, BC, V1X 7T5

PRICE: **\$23,900,000**

PHONE 250.712.3130 CONTACT US

**SUBJECT PROPERTY**

VIEW BROCHURE

10 MINS TO DT KELOWNA

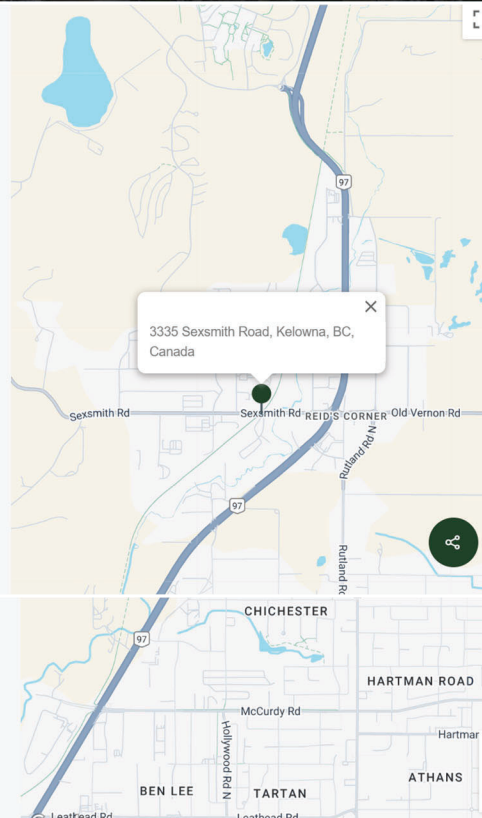
### PROPERTY DESCRIPTION

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 an extremely rare offering to acquire nearly 20 acres of industrial land in the fastest growing metropolitan city in Canada.

#### HIGHLIGHTS

- Assembly of three (3) titles totalling 18.41 acres
- +/- 148,888 sq.ft. of CA/Cold Storage warehouse and office space
- High visibility & exposure to motorists on Highway 97N
- I-2 Industrial Zoning is the most flexible
- Easy access from Highway 97N onto Sexsmith Road
- 5 minutes to YLW International Airport (new record of 2.1M passengers in 2024)
- 5 minutes to UBC Okanagan (516 acre campus is the research and innovation hub in the province's southern interior and home to over 11,562 students)

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.







# FOR SALE

BY COURT ORDER

NOW \$23,900,000

3335 Sexsmith Road, Kelowna (Property with Warehouse)

3345 Sexsmith Road, Kelowna (Industrial Bare Land)

3670 Highway 97 N, Kelowna (Park and Open Space - not in ALR)

## VALUE-ADD INDUSTRIAL ASSEMBLY NEAR KELOWNA'S AIRPORT

- 18.41 acre industrial assembly (±14 acres after creek dedications and riparian setbacks)
- 148,888 SF of CA/Cold-Storage Warehousing & Office Space
- Frontage on Sexsmith Road and exposure to Highway 97N
- Extremely rare opportunity for a parcel this size and in this area

UNISON HM COMMERCIAL REALTY

[HMCOMMERCIAL.COM](http://HMCOMMERCIAL.COM)



# PROPERTY DETAILS



CIVIC ADDRESS	□ 3335 Sexsmith Road	■ 3345 Sexsmith Road	■ 3670 Hwy 97 N
LEGAL DESCRIPTION	Lot 1 Plan KAP36362 Section 35 Township 26 Land District 41	Lot 2 Plan KAP2946 Section 35 Township 26 Land District 41 Portion W 40 FT	PLAN KAP4410 LOT A SECTION 35 TOWNSHIP 26 EXCE PT PLAN RD ON PL 37429 AND H8110 (2) PLAN 37430
PID	003-285-359	010-931-121	005-312-060
BUILDING SIZE	148,888 SF	N/A	NA
LAND AREA	13.64 acres	0.18 acres	4.59 acres
ZONING (CURRENT)	I2 General Industrial	I2 General Industrial	P3 Parks and Open Space
FUTURE LAND USE	IND;NAT Industrial/Park	IND Industrial	IND/NAT Industrial/ Natural Areas

## PRICE REDUCED

### Value-Add Industrial Assembly Near YLW



### 3335-3345 SEXSMITH ROAD, KELOWNA, BC

*HM Commercial Realty is pleased to present this extremely rare offering to acquire nearly 20 acres of industrial land in the fastest growing metropolitan city in Canada.*

- 18.41 acres and +/- 148,888 sq.ft. of CA/Cold Storage warehouse and office space
- High visibility & exposure to motorists on Highway 97N
- I-2 Industrial Zoning is the most flexible
- Easy access from Highway 97N onto Sexsmith Road
- 5 minutes to YLW International Airport (10th busiest in Canada)
- 5 minutes to UBC Okanagan (516 acre campus is the research and innovation hub in the province's southern interior and home to over 11,562 students)
- Seller will need to occupy a portion of the CA facility for 1-2 years

[VIEW THIS LISTING](#)

## **Appendix B – The Sexsmith Accepted Offer**

## OFFER TO PURCHASE AND AGREEMENT OF PURCHASE AND SALE

THIS AGREEMENT is made as of the 11<sup>th</sup> day of February, 2025

BETWEEN:

**NOVEM PHARMACEUTICALS INC.**

(the “**Purchaser**”)

AND:

**BC TREE FRUITS COOPERATIVE (“BCTFC”)**, by its Court-appointed Monitor, **ALVAREZ & MARSAL CANADA INC.** (the “**Monitor**”), acting solely in such capacity and not in its personal or corporate capacity

(collectively, BCTFC and the Monitor are referred to as the “**Vendor**”)

### WHEREAS:

- A. BCTFC is the registered and beneficial owner of the Purchased Assets (as defined herein);
- B. Pursuant to an order made on August 13, 2024 (the “**Initial Order**”), the Supreme Court of British Columbia (the “**Court**”) granted BCTFC and certain of its affiliates (collectively, the “**BCTF Group**”) protection from their creditors and appointed the Monitor as monitor of the BCTF Group, all under the provisions of the *Companies’ Creditors Arrangement Act*, R.S.C. 1985 c. C-36 (the “**CCAA**”, and the BCTF Groups’ proceedings under the CCAA, the “**CCAA Proceedings**”);
- C. On or about August 26, 2024, the Court made an order (the “**ARIO**”) amending and extending the Initial Order, including to extend the stay of proceedings under the Initial Order until November 3, 2024;
- D. Pursuant to a lease made as of the 5<sup>th</sup> day of September, 2024 (the “**Lease**”) between the Vendor, as landlord, and the Purchaser, as tenant, the Purchaser has occupancy of the Property (as defined herein) as of September 5, 2024 (the “**Lease Commencement Date**”) according to the terms and conditions of the Lease; and
- E. Subject to the approval of the Court (the “**Court Approval**”), the Vendor has agreed to sell to the Purchaser, and the Purchaser has agreed to purchase from the Vendor, the Purchased Assets on the terms and conditions set out in this Agreement.

**NOW THEREFORE**, in consideration of the covenants and agreements herein set forth, the Vendor and the Purchaser hereby covenant, acknowledge and agree as follows:



**ARTICLE 1.**  
**DEFINITIONS**

1.1 The following terms shall have the following meanings in this Agreement:

- (a) “**Acceptance Date**” means the date this Agreement is executed and accepted by the Vendor and the Purchaser;
- (b) “**Actions**” means any Claim, action, cause of action, demand, lawsuit, arbitration, inquiry, audit, notice of violation, proceeding, litigation, citation, summons, subpoena, notice of assessment, notice or reassessment or investigation of any nature, civil, criminal, administrative, investigative, regulatory or otherwise, whether at law or in equity;
- (c) “**Additional Deposit**” means the amount of the Deposit less the Initial Deposit;
- (d) “**Agreement**” means this Offer to Purchase and Agreement of Purchase and Sale, and all schedules attached hereto, as may be amended in writing from time to time with the agreement of both parties;
- (e) “**Approval and Vesting Order**” means an order issued by the Court in the CCAA Proceedings approving this Agreement and the transactions contemplated by this Agreement, and conveying to the Purchaser all of the Vendor’s right, title and interest in and to the Purchased Assets free and clear of all Encumbrances other than the Permitted Encumbrances, which order shall be substantially in the form of order attached hereto as Schedule “C” (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 Monitor).
- (f) “**Applicable Laws**” means, with respect to any person or property, any federal provincial, municipal or local statute, law, ordinance, regulation, by-law or order applicable to or binding upon such person or property or to which that person or property is subject;
- (g) “**ARIO**” has the meaning ascribed to it in Recital C.
- (h) “**BCTFC**” has the meaning ascribed thereto in the preamble.
- (i) “**BCTF Group**” has the meaning ascribed thereto in Recital B.
- (j) “**Bin Sale Proceeds**” means the proceeds from the Purchaser’s sale of BCTFC’s wooden storage bins, provided that such sale was approved by the Monitor in accordance with the terms of the Lease.
- (k) “**Buildings**” means all buildings, structures and improvements on the Lands; and “**Building**” means any one of the Buildings;

- (l) “**Business Day**” means every day except Saturdays, Sundays and statutory holidays in British Columbia;
- (m) “**CCAA**” has the meaning ascribed thereto in Recital B.
- (n) “**CCAA Proceedings**” has the meaning ascribed thereto in Recital B;
- (o) “**Certified Vesting Order**” has the meaning ascribed thereto in Section 7.1(a);
- (p) “**City**” means the City of Kelowna;
- (q) “**Claims**” means any claims, suits, proceedings, liabilities, obligations, losses, damages, penalties, judgments, costs, expenses, fines, disbursements, legal fees on a solicitor and client basis, interest, demands and actions of any nature or any kind whatsoever, and “**Claim**” means any of the foregoing.
- (r) “**Closing**” means the closing of the purchase and sale of the Purchased Assets in accordance with the provisions of this Agreement;
- (s) “**Closing Date**” means March 31, 2025, or any other date as may be agreed to in writing by the Monitor and Purchaser, or as extended pursuant to Section 10.14;
- (t) “**Closing Payment**” has the meaning ascribed thereto in Section 2.5(b);
- (u) “**Contaminants**” means any substance, including without limitation urea formaldehyde, hydrocarbons, lead, polychlorinated biphenyls (“**PCB’s**”), asbestos, vermiculite, mould, pollutants, contaminants, deleterious substances, dangerous substances or goods, hazardous, corrosive or toxic substances, hazardous wastes, wastes (including wood waste), pesticides, defoliants, and any material, including without limitation radioactive materials, asbestos-containing materials, PCB-containing equipment or materials, underground or above-ground tanks, and any other solid, liquid, gas, vapour, odour, heat, sound, vibration, radiation, or a combination of any of them, the storage, manufacture, disposal, handling, treatment, generation, use, transport, remediation or release into or presence in, the environment of which is now or hereinafter prohibited, controlled or regulated under Environmental Laws;
- (v) “**Court**” has the meaning ascribed thereto in Recital B;
- (w) “**Court Approval**” has the meaning ascribed thereto in Recital E;
- (x) “**Deposit**” means the sum of One Million Six Hundred Thousand Dollars (\$1,600,000.00) to be paid in accordance with Section 2.5(a);
- (y) “**Environmental Condition**” means:
  - (i) the presence at any time before or after the date of this Agreement of any Contaminants in, on, at or under the Property;

- (ii) the release at any time before or after the date of this Agreement of any Contaminants to, or from the Property;
- (iii) the presence at any time before or after the date of this Agreement of any Contaminants in, on, at or under any land, water, groundwater, sediments or building, improvement or structure other than the Property where such Contaminants originated from, or otherwise resulted from any operation or activity on, the Property before or after the date of this Agreement; and
- (iv) any damage, contamination, pollution, impairment, alteration, destruction of or injury to, human health or safety or to the environment resulting from any activity, operation, act or omission of any kind whatsoever on, at or relating to the Property before or after the date of this Agreement including damage, contamination, pollution, impairment, alteration or destruction of or injury to fish, fish habitat, wildlife, biota, crops, livestock, lands, soil, air (including indoor air), water, sediments, groundwater and drinking water supplies at, on or of the environment;
- (z) **“Environmental Laws”** means all applicable federal, provincial, state, municipal and local laws, statutes, ordinances, by-laws, codes and regulations, including *The Environmental Management Act* (British Columbia), and the *Environmental Protection Act* (Canada);
- (aa) **“Equipment”** means the approximately 39,772 wooden bins or the Bin Sale Proceeds, or a combination thereof, as applicable; and machinery, tools, implements, appliances, operating equipment, and office equipment set out in Schedule “D” attached hereto;
- (bb) **“Governmental Authority”** means any federal, provincial, regional, municipal or local government, or other political subdivision thereof, or any entity, authority, agency, or court or person exercising executive, legislative, judicial, regulatory or administrative functions on behalf of any such government or other political subdivision thereof;
- (cc) **“GST”** means the goods and services tax imposed under the *Excise Tax Act* (Canada);
- (dd) **“GST Certificate”** has the meaning ascribed thereto in Section 9.6;
- (ee) **“Initial Deposit”** means the non-refundable deposit in the amount of Six Hundred Thousand Dollars (\$600,000.00) paid by the Purchaser to the Monitor upon execution and delivery of the Lease;
- (ff) **“Initial Order”** has the meaning ascribed thereto in Recital B;
- (gg) **“Lands”** means the lands and premises legally described in Schedule “A” attached hereto;

- (hh) **“Land Title Office”** means that certain land title office applicable to the Property;
- (ii) **“Lease”** has the meaning ascribed thereto in Recital D;
- (jj) **“Lease Commencement Date”** has the meaning ascribed thereto in Recital D;
- (kk) **“Monitor”** has the meaning ascribed thereto in the preamble;
- (ll) **“Monitor’s Solicitors”** means Fasken Martineau DuMoulin LLP;
- (mm) **“Monitor’s Termination Right”** has the meaning set forth in Section 4.4;
- (nn) **“Mutual Condition”** means the mutual condition in Section 4.1;
- (oo) **“Mutual Condition Date”** means February 28, 2025, or such later date as extended pursuant to Section 10.14;
- (pp) **“NDA”** means the confidentiality, non-disclosure and non-use agreement between the BCTF Group and the Purchaser dated August 27, 2024, as amended or supplemented in writing from time to time;
- (qq) **“Nominee”** has the meaning ascribed thereto in Section 2.8;
- (rr) **“Ocorp”** has the meaning ascribed thereto in Section 2.9;
- (ss) **“Permitted Encumbrance”** means the encumbrances set out in Schedule “B” attached hereto;
- (tt) **“Person”** means an individual, partnership (limited or general), corporation, trust, unincorporated organization, government or any department or agency thereof, and the successors and assigns thereof or the heirs, executors, administrators or other legal representatives of an individual;
- (uu) **“Property”** means collectively, the Lands and the Buildings;
- (vv) **“PST”** has the meaning given to it in Section 9.7.
- (ww) **“Purchased Assets”** means collectively, the Property and the Equipment;
- (xx) **“Purchase Price”** has the meaning ascribed thereto in Section 2.2;
- (yy) **“Purchaser”** has the meaning ascribed thereto in the preamble;
- (zz) **“Purchaser’s Solicitors”** means Lawson Lundell LLP or such other firm of solicitors or agents as are retained by the Purchaser from time to time and written notice of which is provided to the Monitor and the Monitor’s Solicitors.
- (aaa) **“Vendor”** has the meaning ascribed thereto in the preamble; and



(bbb) “**Vendor’s Agent**” means Unison HM Commercial Realty.

**ARTICLE 2.**  
**PURCHASE AND SALE**

- 2.1 **Purchase and Sale.** The Purchaser hereby agrees to purchase the Purchased Assets from the Vendor on the terms and conditions set forth herein and the Vendor agrees to sell the Purchased Assets to the Purchaser on the terms and conditions set forth herein. The Purchaser and the Vendor acknowledge that the Purchased Assets are and shall be purchased by the Purchaser subject to the Permitted Encumbrances.
- 2.2 **Purchase Price.** The purchase price (the “**Purchase Price**”) for the Purchased Assets will be Nineteen Million Two-Hundred and Fifty Thousand Dollars (\$19,250,000.00) (exclusive of any taxes payable), subject to adjustment pursuant to Section 6.1.
- 2.3 **Purchase Price Allocation.** The Purchaser and the Vendor shall use reasonable efforts to agree upon the allocation of the Purchase Price in respect of each of the Purchased Assets on or before the Closing Date, but failure to agree upon the same will not constitute a default hereunder and will not affect the enforceability of this Agreement.
- 2.4 **Responsibility for Land Registry Fees and Property Transfer Tax.** The Purchaser will be responsible for and shall pay in full all legal and registration costs and will be required to pay the British Columbia Property Transfer Tax in relation to the purchase and sale of the Purchased Assets.
- 2.5 **Payment of Purchase Price.** The Purchase Price will be paid to the Vendor in accordance with this Agreement as follows:
- (a) by payment of the Deposit by the Purchaser to the Monitor’s Solicitors, in trust, within five (5) Business Days of the acceptance of this Agreement by the Vendor, provided that the Purchaser may elect that the Initial Deposit be credited on account of the Deposit, in which case the Purchaser will instead pay the Additional Deposit to the Monitor’s Solicitors, in trust; and
  - (b) by payment of the balance of the Purchase Price (as adjusted in accordance with this Agreement, the “**Closing Payment**”), by the Purchaser’s Solicitors to the Monitor’s Solicitors on the Closing Date in accordance with the terms of this Agreement.
- 2.6 **Application of Deposit.** The Deposit will be held in trust by the Monitor’s Solicitors and will be dealt with as follows:
- (a) if the sale and purchase of the Purchased Assets is completed in accordance with this Agreement, the Deposit will be credited on account of the Purchase Price contemporaneously with Closing;
  - (b) if following satisfaction of the Mutual Condition, the Purchaser fails to complete the purchase of the Purchased Assets in accordance with this Agreement or if the

Purchaser repudiates this Agreement, then the Deposit will be forfeited to the Monitor, without prejudice to any other rights or remedies of the Monitor whether at law or in equity;

- (c) if the Mutual Condition is not satisfied within the applicable time period contemplated herein, the Deposit will be returned to the Purchaser forthwith, as the sole remedy of the Purchaser against the Vendor; or
- (d) if following satisfaction of the Mutual Condition, and if the Purchaser is not in default of any of its obligations under this Agreement, the Vendor fails to complete the sale of the Purchased Assets in accordance with this Agreement or if the Vendor repudiates this Agreement, then the Deposit will be returned to the Purchaser as the sole remedy of the Purchaser against the Vendor.

If the Purchaser is entitled a return of the Deposit pursuant to this Section 2.6 and the Initial Deposit was credited on account of the Deposit, then the Additional Deposit shall be forthwith paid to the Purchaser and the Initial Deposit shall be returned to the Monitor to be retained and applied in accordance with the terms of the Lease, and this Agreement will terminate upon such payments being made (except as otherwise expressly provided for herein), and the Purchaser shall have no further recourse against the Vendor with respect to such default.

2.7 **Court Approval.** The Vendor and the Purchaser acknowledge that this Agreement and the transactions contemplated hereby are subject to Court Approval. The Purchaser acknowledges and agrees that, notwithstanding acceptance of this offer by the Vendor, other prospective purchasers may attend in Court in person or by agent at the hearing of the application to approve this Agreement and such prospective purchasers may make competing offers which may be approved by the Court. The Purchaser acknowledges and agrees that, to protect its interest in purchasing the Purchased Assets, it should attend at the Court hearing in person or by agent and be prepared to amend or increase its offer to purchase the Purchased Assets as the Court may permit or direct. The Purchaser acknowledges that:

- (a) the Monitor is subject to the jurisdiction and discretion of the Court to entertain other offers and to abide by any further orders the Court may make regarding the Purchased Assets;
- (b) the Monitor gives no undertaking or commitment to the Purchaser to otherwise advocate or express support for the acceptance of this Agreement;
- (c) pursuant to its fiduciary and other common law duties as a monitor and court officer, if the Court requires the Monitor to report or comment on or assess the merits of any other offers in respect of the Purchased Assets, nothing in this Agreement will preclude the Monitor from doing so; and
- (d) if the Court vacates, sets aside or varies the ARIO or the Approval and Vesting Order for any reason whatsoever, the Monitor will not be liable to the Purchaser or any other Person in any way whatsoever.

- 2.8 **Election of Nominee Purchaser.** The Purchaser may elect to nominate a subsidiary corporation in its control, a corporation of which the Purchaser, or any affiliate of the Purchaser, owns voting shares or Ocorp Holdings Ltd. as a nominee purchaser (the “**Nominee**”). The Purchaser shall provide notice to the Vendor of its election to nominate the Nominee no later than three (3) Business Days prior to the Mutual Condition Date. In the event that the Purchaser should make such election, the Vendor shall convey the Purchased Assets to the Nominee instead of the Purchaser, subject to satisfaction of all conditions set out in this Agreement. The Purchaser’s election of the Nominee shall not relieve the Purchaser of any obligations owing to the Vendor pursuant to this Agreement and the Purchaser shall remain, together with the Nominee, jointly and severally liable to the Vendor for any breach of this Agreement for which the Nominee is responsible.
- 2.9 **Assignment to Ocorp Holdings Ltd.** The Purchaser may elect to assign its rights, interests and obligations in this Agreement to Ocorp Holdings Ltd. (“**Ocorp**”), provided that:
- (a) the Purchaser will remain jointly and severally liable with Ocorp for all of the obligations of the Purchaser hereunder, including the representations, warranties, covenants, indemnities and agreements of the Purchaser; and
  - (b) the Purchaser must deliver to the Vendor, prior to such assignment becoming effective, a written agreement executed by Ocorp and the Purchaser in favour of the Vendor wherein Ocorp agrees to assume, observe and perform all of the obligations of the Purchaser hereunder, including the representations, warranties, covenants, indemnities and agreements of the Purchaser, and the Purchaser acknowledges that the assignment does not release the Purchaser from its obligations under this Agreement.

The Purchaser and Ocorp shall provide written notice to the Vendor of the assignment and assumption of this Agreement by Ocorp no later than three (3) Business Days prior to the Mutual Condition Date. In the event that the Purchaser should complete such assignment, the Vendor shall convey the Purchased Assets to Ocorp instead of the Purchaser, subject to satisfaction of all conditions set out in this Agreement. The Vendor and the Purchaser agree that the Vendor is entitled to any profit resulting from an assignment of this Agreement by the Purchaser.

### **ARTICLE 3.** **ENVIRONMENTAL**

- 3.1 **Environmental Condition of Property.** The Purchaser hereby acknowledges and agrees that:
- (a) The Vendor has not made any representation or warranty whatsoever as to the suitability of the Property (including any improvements thereon) for the Purchaser’s intended purposes, or the extent to which the Property complies with applicable zoning, health or safety standards or Applicable Laws;
  - (b) The Purchaser is acquiring the Property on an “as is and where is” basis, without any representation or warranty by the Vendor with respect to the Property’s

compliance with Environmental Laws or with respect to the Environmental Condition of the Property, and the Purchaser acknowledges and agrees that the Purchaser is responsible to satisfy itself, and to rely on its own investigations to verify, the existence and extent of any Contaminants in, on or migrating to or from the Property and that the Environmental Condition of the Property is otherwise satisfactory;

- (c) The Purchaser does hereby irrevocably release and forever discharge the Vendor and each of their respective directors, officers, agents and employees from any and all Actions and Claims that the Purchaser has or may have against the Vendor in connection with the Environmental Condition of the Property, any Contaminants 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 Purchaser's acquisition of the Property pursuant to this Agreement;
- (d) The Purchaser 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 Vendor relating to the Environmental Condition of or any environmental matter or issue involving the Property including the location of any Contaminants thereon or migrating thereon or therefrom
- (e) The Vendor and the Purchaser acknowledge and confirm that the provisions of this Section 3.1 constitute an agreement between them that is a private agreement respecting liability for Contaminants 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 Contamination or remediation of the Property; and
- (f) The terms of this Section 3.1 shall survive completion of the sale of the Purchased Assets to the Purchaser.

- 3.2 **Site Disclosure Reports.** The Purchaser hereby waives any requirement for the Vendor to provide the Purchaser with a Site Disclosure Report under the *Environmental Management Act* (British Columbia) or any regulation in respect thereof. The Purchaser acknowledges it has completed its own due diligence reports, including, environmental and building condition reports.

#### **ARTICLE 4.** **CONDITION PRECEDENT**

- 4.1 **Mutual Condition Precedent.** The obligation of the Vendor and the Purchaser to complete the sale and purchase of the Purchased Assets on the Closing Date is subject to the mutual condition (the "**Mutual Condition**") for the benefit of both the Vendor and the

Purchaser that on or before the Mutual Condition Date, the Monitor will have obtained Court Approval and the Approval and Vesting Order.

The Mutual Condition is for the mutual benefit of the parties 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 Purchaser's obligation to purchase, and the Vendor's obligation to sell, the Purchased Assets will be at an end.

## **ARTICLE 5.**

### **REPRESENTATIONS, WARRANTIES AND COVENANTS**

5.1 **Vendor's Representations, Warranties and Covenants.** The Vendor hereby represents, warrants and covenants as follows:

- (a) the Vendor has, subject to Court Approval being obtained, the full power, authority and capacity to enter into this Agreement and to carry out the transactions contemplated herein; and
- (b) the Purchased Assets will, on the Closing Date, be conveyed to the Purchaser 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 Approval and Vesting Order.

5.2 **Survival of Vendor's Representations, Warranties and Covenants.** The Vendor agrees that all representations, warranties and covenants set forth in this Agreement shall be true and correct on and as at the Closing Date as though made or given on such date, and that all such representations and warranties and all covenants, agreements and obligations of the Vendor hereunder shall not be discharged by nor merged in the closing of the transactions required and contemplated herein but shall survive such closing for a period of one year and, notwithstanding such closing, shall remain in full force and effect for the benefit of the Purchaser for a period of one year from the Closing Date.

5.3 **Purchaser's Representations, Warranties and Covenants.** The Purchaser hereby represents, warrants and covenants as follows:

- (a) the Purchaser is duly incorporated and validly existing under the laws of its jurisdiction of incorporation, and is in good standing thereunder with respect to the filing of annual reports;
- (b) the Purchaser is duly qualified to purchase and own the Purchased Assets and has full power, authority and capacity to enter into this Agreement and to carry out the transactions contemplated herein;
- (c) all necessary corporate action on the part of the directors and shareholders of the Purchaser has been taken, or will have been taken as of the Closing Date, to

authorize and approve the execution and delivery of this Agreement, the purchase of the Purchased Assets and the performance and observance of the Purchaser's obligations under this Agreement;

- (d) the execution, delivery and performance by the Purchaser of this Agreement, and the consummation of the transactions contemplated hereby, do not and will not (i) result in a violation or breach of any provision of the constating documents of the Purchaser; or (ii) result in a violation or breach of any provision of any Applicable Laws or order of any Governmental Authority;
- (e) the Purchaser is not a "non-resident" of Canada for the purposes of the *Income Tax Act* (Canada);
- (f) the Purchaser is not a non-Canadian within the meaning of the *Investment Canada Act* (Canada) or the *Prohibition on the Purchase of Residential Property by Non-Canadians Act* (Canada) and the regulations made thereunder, and will not be as of the Closing Date;
- (g) there is no action or proceeding pending or to the Purchaser's knowledge threatened against the Purchaser before any court, arbiter, arbitrator panel or administrative tribunal or agency which, if decided adversely to the Purchaser, might materially affect the Purchaser's ability to perform any of the Purchaser's obligations hereunder;
- (h) 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 Purchaser, the validity or enforceability of this Agreement against the Purchaser, or the performance by the Purchaser of any of the Purchaser's obligations hereunder;
- (i) the Purchaser will be entitled to carry out such due diligence investigations of the Purchased Assets as it reasonably requires, provided that any inspections of the Purchased Assets by the Purchaser will not injure the Purchased Assets; and
- (j) the Purchaser hereby covenants and agrees to be responsible for and will indemnify the Monitor for all damages, costs, expenses and other adverse consequences of the Purchaser's actions in connection with its access to and/or due diligence investigations regarding the Purchased Assets.

5.4 **Survival of Purchaser's Representations, Warranties and Covenants.** The Purchaser agrees that all representations, warranties and covenants set forth in this Agreement shall be true and correct on and as at the Closing Date as though made or given on such date, and that all such representations and warranties and all covenants, agreements and obligations of the Purchaser hereunder shall not be discharged by nor merged in the closing of the transactions required and contemplated herein but shall survive such closing for a period of one year and, notwithstanding such closing, shall remain in full force and effect for the benefit of the Vendor for a period of one year from the Closing Date.



- 5.5 **As Is/Where Is.** The Purchaser acknowledges that the Purchased Assets are being purchased “as is, where is” without warranty of any kind including, without limitation, warranties of merchantability and/or fitness for a particular purpose. and saves the Vendor harmless from all claims resulting from or relating to the age, fitness, condition, zoning, lawful use, environmental condition or circumstances and location of the Purchased Assets, and agrees to accept the Purchased Assets 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 agreement and easements.
- 5.6 **Trademarks.** Notwithstanding the foregoing or anything else contained herein or elsewhere, the Purchaser acknowledges and agrees that: (a) no signs, trade-marks, trade-names, logos, commercial symbols, business names or other intellectual property rights identifying “BCTFC” or “BC Tree Fruits” are conveyed or intended to be conveyed to the Purchaser as part of the Purchased Assets; and (b) all right, title and interest of the Vendor in and to all of its existing signs, trade-marks, trade-names, logos, commercial symbols, business names or other intellectual property rights identifying “BCTFC” or containing the words “BC Tree Fruits” are hereby specifically reserved and excluded from the Purchased Assets. This Section shall survive and not merge on Closing.

## **ARTICLE 6.**

### **COMPLETION AND ADJUSTMENT**

- 6.1 **Adjustments.** The Purchase Price shall be subject to adjustment for property taxes and any other items of income and expense, usually the subject of adjustment between a vendor and purchaser of real property, calculated as at the Closing Date. The Vendor will be responsible for and shall pay in full all local improvement taxes, rates, utilities, levies, assessments and other charges levied, assessed or charged against the Purchased Assets and due up to the Closing Date and the Purchaser shall assume and be responsible for all local improvement taxes, rates, utilities, assessments and other charges levied or charged against the Purchased Assets after the Closing Date. The Bin Sale Proceeds may, at the option of the Purchaser, be applied as a credit to the Purchase Price and the Closing Payment will be adjusted accordingly.
- 6.2 **Possession.** Possession shall occur and shall be governed by operation of and pursuant to the terms of the Approval and Vesting Order and any further order of the Court. The Purchaser acknowledges that the Monitor is not in possession of the Purchased Assets and has no control over whether BCTFC or any persons in possession of the Purchased Assets (including, without limitation, pursuant to the Lease) vacate the Property on the Closing Date (other than through the Approval and Vesting Order or any further order of the Court).

## **ARTICLE 7.**

### **PREPARATION OF CLOSING DOCUMENTS**

- 7.1 **Delivery of Closing Documents by Vendor.** On or before the Closing Date, the Vendor will cause the Monitor’s Solicitors to deliver to the Purchaser’s Solicitors the following documents, duly executed as applicable, to be dealt with pursuant to ARTICLE 8:

- (a) a Court-certified copy of the Approval and Vesting Order and any other orders of the Court as are necessary, all in a form registerable in all necessary offices required to effect the transfer of the Purchased Assets to the Purchaser subject only to 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;
- (b) a Statement of Adjustments prepared in accordance with Section 6.1;
- (c) a bill of sale in respect of the Vendor’s right, title and interest in and to the Equipment;
- (d) an assignment of warranties, indemnities and guarantees respecting the Purchased Assets;
- (e) a certificate of a representative of the Vendor, dated the Closing Date that, to the best of their knowledge, each of the warranties and representations of the Vendor set out in this Agreement is true and accurate on the Closing Date in all material respects; and
- (f) such further documentation relating to the completion of the transactions contemplated herein as the Purchaser may reasonably require.

7.2 **Delivery of Closing Documents by Purchaser.** On or before the Closing Date, the Purchaser will cause the Purchaser’s Solicitors to deliver to the Monitor’s Solicitors the following documents to be dealt with pursuant to Article 8:

- (a) any documents contemplated by Section 7.1 which require execution or delivery by the Purchaser, executed by the Purchaser;
- (b) a certificate of a representative of the Purchaser, dated the Closing Date that, to the best of his knowledge, each of the warranties and representations of the Purchaser set out in this Agreement is true and accurate on the Closing Date in all material respects;
- (c) the GST Certificate, executed by the Purchaser; and
- (d) such other documents and assurances as may be reasonably required by the Monitor to give full effect to the intent and meaning of this Agreement.

7.3 **Preparation of Closing Documents.** The closing documents contemplated in Sections 7.1 and 7.2 other than the Approval and Vesting Order, will be prepared by the Purchaser’s Solicitors and delivered to the Monitor’s Solicitors at least five (5) Business Days prior to the Closing Date. All documents referred to in Sections 7.1 and 7.2 shall be in form and substance satisfactory to the solicitors for the party entitled to delivery thereof, acting reasonably.



**ARTICLE 8.**  
**CLOSING PROCEDURE**

- 8.1 **Payment in Trust.** On or before the Closing Date, the Purchaser will pay to the Purchaser's Solicitors in trust, by certified cheque or wire transfer, funds in an amount equal to the Closing Payment.
- 8.2 **Registration.** On the Closing Date, forthwith following the delivery by the Purchaser's Solicitors of the documents pursuant to Section 7.2 and the payment to the Purchaser's Solicitors referred to in Section 8.1 and after receipt by the Purchaser's Solicitors of the documents referred to in Section 7.1, the Purchaser will cause the Purchaser's Solicitors to file the Certified Vesting Order in the Land Title Office, and, if applicable, the Purchaser's mortgage.
- 8.3 **Closing.** Forthwith following the filings referred to in Section 8.2 and upon the Purchaser's Solicitors being satisfied as to the title to the Lands, after conducting a post filing for registration check of the Lands disclosing only the following:
- (a) the existing title number to the Lands;
  - (b) the Permitted Encumbrances;
  - (c) pending numbers assigned to the Certified Vesting Order and, if applicable, the Purchaser's mortgage; and
  - (d) pending numbers assigned to any additional documents deposited for registration by or at the direction of the Purchaser.

the Purchaser will cause the Closing Payment to be paid to the Monitor's Solicitors in trust by wire transfer of immediately available funds or as otherwise directed by the Approval and Vesting Order prior to the Closing Date, and thereupon the Purchaser's Solicitors shall be entitled to release the documents referred to in Section 7.1 to the Purchaser and the Monitor's Solicitors shall be entitled to release to the Vendor the documents referred to in Section 7.2.

- 8.4 **Concurrent Requirements.** It is a condition of this Agreement that all requirements of Sections 8.1 to 8.3 are concurrent requirements and it is specifically agreed that nothing will be completed on the Closing Date until everything required to be paid, executed and delivered on the Closing Date has been so paid, executed and delivered and until the Purchaser's Solicitors have satisfied themselves as to title pursuant to Section 8.3.

- 8.5 **Discharge of Encumbrances by Vendor.** If on the Closing Date there are any judgments, liens, claims of lien or other financial charges against title to the Purchased Assets which are not Permitted Encumbrances, the Vendor will not be required to clear the title to the Purchased Assets prior to the receipt of the net sales proceeds of the Purchased Assets, but will be obligated to do so forthwith following receipt of such net sales proceeds and, in that event, the Purchaser's Solicitors may pay the net sales proceeds to the Monitor's Solicitors on the condition that the Monitor's Solicitors undertake to discharge any such judgment, lien, claim of lien or other financial charge.
- 8.6 **Payment by Wire Transfer.** Notwithstanding anything else contained herein, the Purchaser will make all commercially reasonable efforts to ensure that the Closing Payment will be paid to and received by the Monitor's Solicitors on or before 5:00 p.m. (Vancouver time) on the Closing Date. Notwithstanding any provision of this Agreement, the Parties agree that, with respect to the Closing Payment, if the Purchaser is paying the Closing Payment by way of wire transfer, and if the Purchaser and the Purchaser's Solicitors have: (i) used commercially reasonable efforts to ensure that the Monitor'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 Monitor's Solicitors, but for any reason outside of the Purchaser's control (excluding any event which is a default by the Purchaser under this Agreement) the Monitor'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 Monitor'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 Purchaser also pays to the Monitor or the Monitor'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 Monitor's Solicitors at 6:00 p.m. (Vancouver time) the day after wiring, the Purchaser will pay the Monitor four days' interest on the Closing Payment.
- 8.7 **Risk.** This Agreement shall constitute a binding contract of purchase and sale and TIME SHALL IN ALL RESPECTS BE OF THE ESSENCE. The Purchased Assets shall be and remain at the risk of the Vendor until the consummation of the purchase and sale on the Closing Date.
- 8.8 **Documents.** All conveyance documents shall be prepared by the Purchaser at its expense. The Certified Vesting Order shall be registered by the Purchaser at the expense of the Purchaser. Money may be tendered by way of wire transfer, bank draft, certified solicitor's trust cheque or a certified cheque drawn on a chartered bank or trust company.

**ARTICLE 9.**  
**MISCELLANEOUS**

- 9.1 **Notices.** Except as otherwise provided herein, a notice, demand or request required or permitted hereunder shall be sufficiently given if personally delivered or sent by e-mail or facsimile transmission to:

As to the Purchaser:

Novem Pharmaceuticals Inc.  
#110, 240 Beaver Lake CRT  
Kelowna, V4V 1S5  
Attention: Colin Davison  
E-mail: [Colin@novempharma.com](mailto:Colin@novempharma.com)

copy to:

Lawson Lundell LLP  
1600 - 925 West Georgia Street  
Vancouver, B.C., V6C 3L2  
Attention: Bryan C. Gibbons and Mark Johnson  
E-mail: [bgibbons@lawsonlundell.com](mailto:bgibbons@lawsonlundell.com)  
[Mark.johnson@lawsonlundell.com](mailto:Mark.johnson@lawsonlundell.com)

As to the Vendor and/or Monitor:

Alvarez & Marsal Canada Inc.  
Licensed Insolvency Trustee  
925 W Georgia Street, Unit 902  
Vancouver BC V6C 3L2  
Attention: Anthony Tillman and Pinky Law  
E-mail: [atillman@alvarezandmarsal.com](mailto:atillman@alvarezandmarsal.com) and  
[pinky.law@alvarezandmarsal.com](mailto:pinky.law@alvarezandmarsal.com)

copy to:

Fasken Martineau DuMoulin LLP  
2900 – 550 Burrard Street  
Vancouver, B.C. V6C 0A3  
Attention: Kibben Jackson and Heidi Esslinger  
E-mail: [kjackson@fasken.com](mailto:kjackson@fasken.com) and [hesslinger@fasken.com](mailto:hesslinger@fasken.com)

and any such notice, demand or request shall be deemed to have been received at the time it was delivered in the case of delivery or at the time of transmission in the case of e-mail or facsimile transmission. Either party may change its address by written notice given to the other party in the manner aforesaid.

- 9.2 **Interpretation.** Words importing the singular number only shall include the plural, and vice versa, words importing the masculine gender shall include the feminine gender and neuter gender and words importing persons shall include a natural person, firm, trust, partnership, association, corporation, government or governmental board, agency or instrumentality. The division of this Agreement into Sections and the Section headings are for convenience of reference only and shall not affect the interpretation or construction of this Agreement.
- 9.3 **Confidentiality.** Unless the transaction contemplated by this Agreement is completed, the Purchaser and Vendor will keep all negotiations regarding the Purchased Assets confidential and the Purchaser 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 Vendor, except that each of the Purchaser and the Vendor 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 Purchaser and the Vendor may disclose the same as required by law or in connection with the proposed sale and purchase of the Purchased Assets or in connection with any legal proceedings related to this Agreement. Furthermore, the Purchaser and the Vendor 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. The NDA shall survive and not merge on Closing.
- 9.4 **Enurement.** This Agreement shall enure to the benefit of and be binding upon the successors and assigns of the parties hereto.
- 9.5 **Fees and Expenses.** Each party will pay its own legal fees. The Purchaser will be responsible for all registration fees and for any other amounts which may be payable in connection with the registration of any documents registered in connection with the completion of the sale and purchase of the Purchased Assets.
- 9.6 **Goods and Services Tax.** The Purchaser represents and warrants to the Vendor 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 GST payable under the ETA in connection with the transactions contemplated by this Agreement. The Purchase Price does not include GST and the Purchaser will pay any GST payable with respect to the acquisition of the Purchased Assets in accordance with the ETA. On the Closing Date, the Purchaser will deliver to the Vendor a certificate (the "**GST Certificate**") of a senior officer of the Purchaser certifying, on behalf of the Purchaser and without personal liability (a) that the Purchaser is registered under Part IX of the ETA as of the Closing Date; (b) its registration number; and (c) that the Purchaser will account for, report and remit any GST payable in respect of the purchase of the Purchased Assets in accordance with the ETA. The Purchaser will indemnify and hold the Monitor, the Vendor and their 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 Purchased Assets, this Section 9.6, the GST Certificate or any declaration made therein and such indemnity will survive Closing.

- 9.7 **Provincial Sales Tax.** The Purchaser acknowledges that it may be liable to pay British Columbia provincial sales tax (“PST”) in respect of its purchase of some or all of the Purchased Assets. To the extent permitted under the *Provincial Sales Tax Act* (British Columbia), the Purchaser will report and remit as required by Applicable Law any such PST that is due directly to the applicable taxing authority, and otherwise will pay to the Monitor an amount equal to the PST (if any) payable by the Purchaser and collectible by the Vendor in connection with the acquisition of the Purchased Assets on Closing together with the balance of the Purchase Price. The Purchaser will indemnify and hold the Vendor and their directors, officers, employees, advisors and agents harmless from any liability related to the Purchaser’s or the Vendor’s failure to account for, or report and remit such PST and such indemnity will survive Closing.
- 9.8 **Further Assurances.** Each of the Vendor and the Purchaser shall from time to time execute and deliver all such further deeds, conveyances, transfers, documents and other instruments and do all acts and things as the other party may reasonably require in order to effectively transfer the Purchased Assets to the Purchaser and carry out the full intent and meaning of this Agreement. The provisions of this Section 9.8 shall survive and shall not merge on Closing.
- 9.9 **Governing Law.** This Agreement shall be construed and enforced in accordance with, and the rights of the parties shall be governed by, the laws of the Province of British Columbia and the federal laws of Canada applicable therein. Each of the parties hereto hereby irrevocably attorns to the exclusive jurisdiction of the courts of the Province of British Columbia.
- 9.10 **Assignment.** Except as set forth in Section 2.9 hereof, the Purchaser shall not be entitled to assign its interest in this Agreement without the prior written consent of the Monitor. A change of control of the Purchaser shall be deemed to be an assignment and shall require the prior written consent of the Monitor.
- 9.11 **Offer and Acceptance.** Acceptance of this Offer may be made by the Vendor or the Monitor’s Solicitors e-mailing a PDF or faxing an accepted copy of this Offer to the Purchaser or the Purchaser’s Solicitors on or before 5:00 p.m. on February 11, 2025, failing which this Offer shall lapse and be terminated.
- 9.12 **Facsimile and Counterparts.** This Agreement and any amendments hereto may be executed in one or more counterparts, each of which shall be deemed to be an original by the parties executing such counterpart and all of which shall be considered one and the same instrument and may be delivered by electronic means.

## **ARTICLE 10.** **SPECIAL TERMS**

- 10.1 **Court Approval.** The Monitor agrees, subject to the other terms of this Agreement, to present this Agreement to the Court for Court Approval, once all subject conditions, save

for Court Approval, have been waived or declared fulfilled, and in so doing is not contractually or otherwise liable to the Purchaser or any other party in any way.

- 10.2 **As Is/Where Is.** The Purchaser accepts the Purchased Assets “as is, where is” and saves the Monitor harmless from all claims resulting from or relating to the age, fitness, condition, zoning, lawful use, environmental condition or circumstances and location of the Purchased Assets, and agrees to accept the Purchased Assets subject to any outstanding work orders or notices or infractions as to the Closing Date and subject to the existing municipal or other governmental by-laws, restrictions or orders affecting its use, including subdivision agreement and easements.
- 10.3 **No Representations.** The Purchaser acknowledges and agrees that the Monitor is not the owner of the Purchased Assets, and the Purchaser acknowledges and agrees that the Monitor makes no representations or warranties whatsoever with respect to the Purchased Assets. The Purchaser acknowledges and agrees that it has relied entirely upon its own inspection and investigation with respect to quantity, quality and value of the Purchased Assets, and that it may change between the date of viewing of the Purchased Assets and the Closing Date.
- 10.4 **Not the Owner.** The Purchaser acknowledges and agrees that the Monitor is not the registered owner of the Lands and can make no representations as to the use of the Lands, its occupancy or vacancy, or the residency of the registered owner. To the extent any information or declaration is made by the Monitor in respect of such matters and to enable closing, they are made on information and belief and are not to be relied upon by the Purchaser.
- 10.5 **Monitor’s Capacity.** The Purchaser acknowledges that in entering into and carrying out the terms of this Agreement, the Monitor is acting in its capacity as the Monitor of BCTFC, and will have no liability in connection with this Agreement whatsoever in its capacity as Monitor, in its personal or corporate capacity, or otherwise. The provisions of this Section 10.5 shall not merge on, but shall survive, Closing.
- 10.6 **Real Estate Commission.** The Vendor shall only be responsible for any real estate commission that may be payable in respect of the sale of the Purchased Assets to the Vendor’s Agent, and the Vendor acknowledges and agrees that the Purchaser shall have no liability or obligation relating thereto.
- 10.7 **Income Tax Act.** The Monitor makes no representations as to residency of the registered owner of the Purchased Assets and will make no representations or declarations about that at Closing. The Purchaser hereby warrants and represents to the Monitor that the Purchaser has made reasonable Inquiry within the meaning of s. 116(5)(a) of the *Income Tax Act* and is satisfied that the registered owner(s) of the Purchased Assets are, or if more than one are, Canadian residents. The Purchaser agrees that upon Closing the Purchaser will pay to the Monitor, subject only to those adjustments to which the Monitor has agreed in writing, the full purchase price owing on the purchase under this Agreement without holdback under s. 116(5) of the *Income Tax Act* or related sections.



- 10.8 **No Personal Property.** The Purchaser acknowledges and agrees that the assets to be purchased under this Agreement do not include any personal property or chattels except as expressly provided herein, and that any personal property or chattels remaining in the Property are taken by the Purchaser at their own risk and expense, without representation or warranty of any kind from the Monitor as to the ownership or state of repair of any such personal property or chattels.
- 10.9 **Damages.** The Monitor 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 for damage caused to the Purchased Assets by the registered owner of the Purchased Assets or its tenants, guests, assigns, agents or by persons unknown.
- 10.10 **Competing Offers.** The Purchaser acknowledges and agrees that other prospective purchasers may attend in Court in person or by agent at the hearing of the motion to approve this Agreement and such prospective purchasers may make competing offers which may be approved by the Court. The Monitor may be compelled to advocate in favour of other offers in order to obtain the highest price for the Purchased Assets and will not provide an undertaking to advocate the acceptance of this Agreement. To protect their interests in purchasing the Purchased Assets, the Purchaser acknowledges and agrees that they should attend at the Court hearing in person or by agent and be prepared there to make such amended or increased offer to purchase the Purchased Assets as the Court may permit or direct. Notwithstanding the foregoing, the Monitor hereby agrees not to negotiate with other potential purchasers or accept any offers with respect to a purchase of the Purchased Assets prior to such Court hearing.
- 10.11 **Termination of Contract.** This Agreement may be terminated at the Monitor's sole option if at any time prior to Court Approval:
- (a) the Court varies the ARIO to remove the Monitor; or
  - (b) the Monitor determines, in its sole discretion, that it is inadvisable to present this Agreement to the Court for any reason whatsoever,
- and in any such event the Monitor shall have no further obligations or liability to the Purchaser under this Agreement or otherwise. This condition is for the sole benefit of the Monitor.
- 10.12 **Permitted Encumbrances** The Purchaser acknowledges and agrees that they are purchasing title in the Purchased Assets free and clear of all encumbrances of the parties to the proceedings concerning the Purchased Assets brought by the Monitor in the Supreme Court of British Columbia, in accordance with the Approval and Vesting Order as may be made in the CCAA Proceedings 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, existing tenancies, if any, and the Permitted Encumbrances.
- 10.13 **Property Disclosure Statement.** No property condition disclosure statement concerning

the Property forms part of this Agreement, regardless of whether or not such a statement is attached to it.

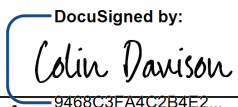
- 10.14 **Extension by Monitor.** The Monitor may, in its sole discretion, extend the Mutual Condition Date and/or the Closing Date by up to 10 days.
- 10.15 **Bin Sale Proceeds.** The Vendor acknowledges and agrees that the Bin Sale Proceeds shall form part of the Purchased Assets and shall, subject to Section 6.1, be released to the Purchaser on the Closing Date in accordance with the Lease.

*[Signature Page Follows]*



DATED this 11th day of February, 2025

**NOVEM PHARMACEUTICALS INC.**

DocuSigned by:  
  
Per: Colin Davison  
Name: **Colin Davison**  
Title: **CEO**

**ACCEPTANCE:**

The undersigned hereby accepts the above Offer on the terms and conditions contained herein.

DATED this \_\_\_\_ day of February, 2025.

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

Per: \_\_\_\_\_  
Name:  
Title:

DATED this \_\_\_\_ day of February, 2025

**NOVEM PHARMACEUTICALS INC.**

Per: \_\_\_\_\_  
**Colin Davison**  
Name:  
**CEO**  
Title:

**ACCEPTANCE:**

The undersigned hereby accepts the above Offer on the terms and conditions contained herein.

DATED this 11th day of February, 2025.

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

Per: \_\_\_\_\_  
DocuSigned by:  
*Anthony Tillman*  
AA6AACF632EB41D...  
Name: Anthony Tillman  
Title: Senior Vice  
President

**SCHEDULE “A”**  
**Lands**

1. Municipal Address: 3335 Sexsmith Road, Kelowna, B.C.  
  
Legal Description: PID: 003-285-359  
LOT 1 SECTION 35 TOWNSHIP 26 OSOYOOS DIVISION YALE  
DISTRICT PLAN 36362
2. Municipal Address: 3345 Sexsmith Road, Kelowna, B.C.  
  
Legal Description: PID: 010-931-121  
THE WEST 40 FEET OF LOT 2 SECTION 35 TOWNSHIP 26  
OSOYOOS DIVISION YALE DISTRICT PLAN 2946
3. Municipal Address: 3670 Highway 97 N, Kelowna, B.C.  
  
Legal Description: PID: 005-312-060  
LOT A SECTION 35 TOWNSHIP 26 OSOYOOS DIVISION YALE  
DISTRICT PLAN 4410 EXCEPT  
(1) ROAD ON PLAN 37429 AND H8110  
(2) PLAN 37430

**SCHEDULE "B"**  
**Permitted Encumbrances**

1. The reservations, limitations, provisions or conditions expressed in the original grants from the Crown of any of the Lands and the statutory exceptions to title currently applicable to those Lands;
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 Purchaser;
4. the Lease; and
5. the Encumbrances listed below in respect of 3335 Sexsmith Road:

(a) Legal Notations

THIS TITLE MAY BE AFFECTED BY A PERMIT UNDER PART 26 OF THE  
LOCAL GOVERNMENT ACT, SEE CA4479766

(b) Charges, Liens and Interests

Nature: UNDERSURFACE RIGHTS  
Registration Number: 33583E  
Registered Owner: THE DIRECTOR OF SOLDIER SETTLEMENT  
Remarks: INTER ALIA  
PART FORMER AMENDED LOT 3, PLAN 2022 EXCEPT PLAN B6244 (DD  
108470F) OTHER THAN THOSE EXCEPTED BY THE CROWN AND  
UNDER ROAD DEDICATED BY PLAN 36362

Nature: UNDERSURFACE RIGHTS  
Registration Number: 20724E  
Registration Date and Time: 1932-04-11 10:20  
Registered Owner: THE DIRECTOR OF SOLDIER SETTLEMENT  
Remarks: PART ON PLAN B3942 (DD 59937) OTHER THAN THOSE  
EXCEPTED BY THE CROWN

Nature: UNDERSURFACE RIGHTS  
Registration Number: 31084E  
Registration Date and Time: 1944-09-12 10:18  
Registered Owner: THE DIRECTOR OF SOLDIER SETTLEMENT  
Remarks: PART ON PLAN B5113 (DD 96472F) OTHER THAN THOSE  
EXCEPTED BY THE CROWN

Nature: STATUTORY RIGHT OF WAY  
Registration Number: V26512

Registration Date and Time: 1983-04-15 14:03  
Registered Owner: CITY OF KELOWNA  
Remarks: ANCILLARY RIGHTS

Nature: COVENANT  
Registration Number: X84827  
Registration Date and Time: 1986-02-13 12:44  
Registered Owner: CITY OF KELOWNA HER MAJESTY THE QUEEN IN  
RIGHT OF THE PROVINCE OF BRITISH COLUMBIA C/O MINISTRY OF  
ENVIRONMENT  
Remarks: INCLUDES INDEMNITY UNDER SEC 215 (2) (A) LTA

Nature: STATUTORY RIGHT OF WAY  
Registration Number: KT109029  
Registration Date and Time: 2002-10-03 12:32  
Registered Owner: CITY OF KELOWNA

Nature: STATUTORY RIGHT OF WAY  
Registration Number: CA6746654  
Registration Date and Time: 2018-04-19 14:53  
Registered Owner: FORTISBC INC. INCORPORATION NO. PA-0000087

**SCHEDULE “C”**  
**Form of Approval and 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**

BEFORE THE HONOURABLE )  
JUSTICE GROPPER )  2025  
 )

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  , 2025; 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   (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:

- 1) The sale transaction (the “**Transaction**”) contemplated by the Offer to Purchase and Agreement of Purchase and Sale dated  , 2025 (the “**Sale Agreement**”) between



BC Tree Fruits Cooperative (“**BCTFC**”) and Novem Pharmaceuticals Inc. (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 BCTFC is hereby authorized and approved, and BCTFC 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 Purchased Assets (as such term is defined in the Sale Agreement).

- 2) 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 BCTFC’s right, title and interest in and to the Purchased Assets 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 Purchased Assets.
- 3) 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:
  - a) enter the Purchaser as the owner of the Lands identified in Schedule “A” to 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 Lands, 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 Lands 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
  - b) having considered the interest of third parties, to discharge, release, delete and expunge from title to the Lands all of the registered Encumbrances except for those listed in Schedule “E” hereto.

- 4) For the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and from and after the delivery of the Monitor's Certificate all Claims shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having had possession or control immediately prior to the sale.
- 5) The Monitor is to file with the court a copy of the Monitor's Certificate forthwith after delivery thereof.
- 6) Pursuant to Section 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act* or Section 18(10)(o) of the *Personal Information Protection Act* of British Columbia, the Monitor and BCTFC are hereby authorized and permitted to disclose and transfer to the Purchaser all human resources and payroll information in BCTFC's records pertaining to the BCTFC's past and current employees that are to be retained or hired by the Purchaser. The Purchaser shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the Petitioners.
- 7) Subject to the terms of the Sale Agreement, vacant possession of the Purchased Assets, including any real property, shall be delivered by the Monitor to the Purchaser at 12:00 noon on the Closing Date (as defined in the Sale Agreement), subject to the permitted encumbrances as set out in the Sale Agreement and listed on Schedule "E" hereto.
- 8) Notwithstanding:
  - a) this CCAA proceeding or the termination thereof;
  - b) 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
  - c) any assignment in bankruptcy made by or in respect of any or all of the Petitioners,the vesting of the Purchased Assets 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.
- 9) 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.

10) 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.

11) 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.

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BY THE COURT

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REGISTRAR

**Schedule “A”**

**LIST OF COUNSEL**

<b>Counsel Name/Litigant</b>	<b>Party Represented</b>

**Schedule “B”**

**OFFER TO PURCHASE AND AGREEMENT OF PURCHASE AND SALE**

**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 [●], 2025 (the "**Approval and Vesting Order**") and the Offer to Purchase and Agreement of Purchase and Sale dated [REDACTED], 2025 (the "**Sale Agreement**") between BC Tree Fruits Cooperative ("**BCTFC**") and Novem Pharmaceuticals Inc. (the "**Purchaser**")
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 BCTFC 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. BCTFC and the Purchaser have each delivered written notice to the Monitor that all applicable conditions 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 [●], 2025**

**BC TREE FRUITS COOPERATIVE**, by their court-appointed monitor, **ALVAREZ & MARSAL CANADA INC.** acting solely in such capacity 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.
3. The claim of Builder’s Lien registered by Glacier Heights Refrigeration Inc. on July 29, 2024, with registration number CB1473321

## **Schedule “E”**

### **PERMITTED ENCUMBRANCES**

1. The reservations, limitations, provisos and conditions expressed in the original grant thereof from the Crown.
2. [●]

**SCHEDULE “D”**  
**Equipment**

[see attached]

# Asset Register CA Plants

Machinery & equipment

Rutland

Equipment Type	Amount	Make	Model	Serial Number	Frame #	Belt	Power (hp)	Voltage	RPM	Location	Year	Notes:
Compressor - Recip 1	1	Mycom	NB4	21152						Engine Room		
Motor - Recip 1	1	Toshiba	B075AVLF3UD	9805295A	3651		150	230/460	1770	Engine Room		
Compressor - Recip 2	1	Mycom	N88M	16102						Engine Room		
Motor - Recip 2	1	Toshiba	B1504VGF4U3	10502839	444T		150	230/460	1770	Engine Room		
Compressor - Recip 3	1	Mycom	N6WBHE	638468						Engine Room		
Motor - Recip 3	1	Westinghouse	ASHHIJW	XBP716A774003	404T		100	230/460	1780	Engine Room		
CP 1 - Motor	1	Brook	2314210	X895748	K213T		7.5	230/460	1740	Engine Room		
CP 1	1	Viking	2-4/540	39550						Engine Room		
CP 2 - Motor	1	Baldor		F1708235901	215T		10	230/460	770	Engine Room		
CP 2	1	Viking	2-4/540	02014H						Engine Room		
Cooling Pump 1 - Motor	1	G&L	1313480101		56J		1.5	230/460	3450/2875	Engine Room		
Defrost Pump 1 - Motor	1	WEG	HT005404PW	22AG007HN45414	W182/4T		5	230/450	1730	Engine Room		
Defrost Pump 1	1	Viking	599030	2-3540			5			Engine Room		
Defrost Pump 2 - Motor	1	Brook-Crompton Parkinson	2314210	X896409	K213T		7.5	230/460	1740	Engine Room		
Defrost Pump 2	1		2-3540	02027H			2			Engine Room		
Filter Pump - Motor	1	Hayward	C48M2N111B3	333914j2	56J		2	230	3450	Engine Room		
Filter Pump	1	Hayward	5T2615X20A	2.11019E+16						Engine Room		
Motor - Evap Fans	64	Baldor			56Z		1	240/480	1140	North Hall CA		
Motor - Evap Fans	32	Alpak			D184T		2	230/460	1140	South Hall CA		
Comp - Inst Air	2				56	4L500		115/230	1725	CA Mezzanines		
Motor - Vent Fans	2				56	4L400		208-230/460	1725	CA Hall Roofs		
Motor - Evap Fans	1	GE	9F1366N	918086	286U	LLC173	20	220/440	1760	CS 10-A		
Motor - Evap Fans	1	Toshiba	B0204DGF2U4	90499723	256T	B133		230/460	1750	CS 10-B		
Motor - Evap Fans	1	English Electric		10R28648-1	286U	B98	15	440	1710	CS 4-A		
Motor - Evap Fans	1	English Electric		10R28648-2	286U	B97	15	440	1710	CS 4-B		
Motor - Evap Fans	1	GE	9F1366N	918087	286U	C137	20	208-220/440	1750	CS 5		
Motor - Air Comp 3	1	Ingersoll Rand	47669474001	1004330920090	184T	95055453	5	208-230	3450	Sprinkler House 3		
Air Comp 3	1	Ingersoll Rand	S55	NAR10440095						Sprinkler House 3		
Motor - Air Comp 2	1	Ingersoll Rand	56283138		56	A-95859112		230	3450	Sprinkler House 2		
Air Comp 2	1	Ingersoll Rand	S53	10566747						Sprinkler House 2		
Motor - Air Comp 1	1	Marathon Elec	56C34D20R4H P		56	13X1200 A-47	3/4	115/208-230	3450	Sprinkler House 1		
Air Comp 1	1									Sprinkler House 1		No data
Power Vent	8	Dayton Electric	2C610				1/30	115	2710/3020	Mezzanine Halls		
Compressor small n2 - Motor	1	Lincoln		1940505033	326T	3VX710	50	230/460	1770	Nitrogen Room		
Compressor Small n2	1	Quincey NW	FSS204102	NA066100						Nitrogen Room		
Compressor Large n2 - Motor	1	Lincoln	SD4P75TSC61Y	7669279-01/25-04	365TSC		75	208/415	1480	Nitrogen Room		
Compressor Large n2	1	Quincey NW	FSS204102	NA066100						Nitrogen Room		Part - 144231HP1
Storex CO2 Scrubber	1	Storex	ADSST1500	2023/24				3X 460		South Hall CA		
CO2 Scrubber motor	1	Dietz-Motoren		1746156 268988 /10			7.5	400	5700	South Hall CA		
CO2 Scrubber motor	1	Dietz-Motoren		1746162 268988 /10			7.5	400	5700	South Hall CA		
Storex CO2 Scrubber	1	Storex	ADST1100	2008/035						North Mezzanine		
CO2 Scrubber motor	1	Dietz-Motoren	GR112 - E - 090 /2	622395 176688 /3C				400	5570	North Mezzanine		
CO2 Scrubber motor	1	Dietz-Motoren	GR112 - E - 090 /2	622396 176688 /3C				400	5570	North Mezzanine		

Vehicles

Location	Equipment Type	Asset	Serial Number	Year	Comments
Rutland	FORKLIFTS	8FGU25 Toyota Propane Forklift	12162		P21
Rutland	FORKLIFTS	FG25T-16 Komatsu Propane Forklift	A411666		P63
Rutland	FORKLIFTS	8FGCU25 Toyota Propane Forklift	21228		P16
Rutland	FORKLIFTS	8FGCU25 Toyota Propane Forklift	64889		P-51 Tagged out
Rutland	FORKLIFTS	FG25T-16 Komatsu Propane Forklift	A452408		P61
Rutland	FORKLIFTS	8FGCU25 Toyota Propane Forklift	43851		P62
Rutland	FORKLIFTS	8FGCU25 Toyota Propane Forklift	41515		P21
Rutland	FORKLIFTS	IT40B Clark offroad Propane Forklift	IT355 37 4148		58
Rutland	FORKLIFTS	Hyster	A119D02321X		20
Rutland	Chargers	Battery Charger			
Rutland	Genie Lift	GS-2646 Genie Scissor Lift			#49
Rutland	Pallet Jacks	Pallet Jack			
Rutland	Pallet Jacks	Pallet Jack			
Rutland	Pallet Jacks	Pallet Jack			
Rutland	Floor Cleaners	641750 Global industrial Auto Ride-On Floor Scrubber	DA0000254	2022	
Rutland	Floor Cleaners	1-MAX 28C Nilfisk Advance Walk Behind Floor Scrubber	1714925		



## **Other Equipment**

### **Office Equipment**

All office equipment located in the Premises as of September 5, 2024

#### **Bulk bins**

39,772 Wooden bins

**Appendix C - Assignment and Assumption Agreement dated February 21, 2025**

## ASSIGNMENT AND ASSUMPTION AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT is dated effective February 21, 2025 (the “**Effective Date**”).

AMONG:

**NOVEM PHARMACEUTICALS INC.**

(the “**Assignor**”)

AND:

**OCORP HOLDINGS LTD.**

(the “**Assignee**”)

AND:

**BC TREE FRUITS COOPERATIVE (“BCTFC”)**, by its Court-appointed Monitor, **ALVAREZ & MARSAL CANADA INC.** (the “**Monitor**”), acting solely in such capacity and not in its personal or corporate capacity

(collectively, BCTFC and the Monitor are referred to as the “**Vendor**”)

### WHEREAS:

- A. By an Offer to Purchase and Agreement of Purchase and Sale made February 11, 2025, (the “**Purchase Agreement**”) between the Assignor, as purchaser, and the Vendor, as vendor, the Vendor agreed to sell, and the Assignor agreed to purchase the Purchased Assets (as defined in the Purchase Agreement) all on the terms and condition set out in the Purchase Agreement (the “**Transaction**”);
- B. Pursuant to Section 2.9 of the Purchase Agreement, the Assignor is entitled to assign its rights, interests, and obligations the Purchase Agreement to the Assignee provided that the Assignee agrees in writing to assume all of the obligations of the Assignor under the Purchase Agreement and such assignment shall not release the Assignor from its obligations under the Purchase Agreement; and
- C. The Assignor has agreed to assign the Purchase Agreement and all its right, title and interest therein, including the benefit of the Deposit paid in connection therewith, to the Assignee, who has agreed to assume all of the obligations of the Assignor in and to the Purchase Agreement and to complete the Transaction in accordance with the terms thereof.

NOW THEREFORE in consideration of the mutual covenants and agreements herein contained and the sum of \$10.00, and other good and valuable consideration, the receipt and sufficiency of

which is hereby acknowledge, now paid by the Assignee to the Assignor (the receipt of which is hereby acknowledged):

1. **Definitions.** All capitalized words and phrases used in this agreement, shall have the respective meanings ascribed to them in the Purchase Agreement, save and except to the extent that they are defined herein.
2. **Assignment by Assignor to Assignee.** The Assignor hereby absolutely and irrevocably assigns, transfers and sets over unto the Assignee, for its sole use and benefit, effective from and including the Effective Date, all of the Assignor's right, title and interest in and to, the Purchase Agreement, together with any and all benefits, advantages, privileges and rights relating thereto or arising and flowing therefrom, including the Deposit, provided that such assignment shall not and does not release the Assignor from its obligations under the Purchase Agreement.
3. **Assumption by Assignee.** The Assignee hereby expressly accepts the assignment of the Purchase Agreement and also hereby agrees to assume, observe, perform and be bound by all of the Assignor's covenants, obligations and liabilities arising or flowing from and under or in any way connected with the Purchase Agreement effective from and including the Effective Date as if it had been originally named as the Purchaser.
4. **Indemnity of Assignee.** The Assignee hereby indemnifies and saves the Assignor, its officers, directors, employees and shareholders, harmless from and against any and all debts, dues, accounts, claims, costs, charges, losses, liabilities, obligations, fees, fines, penalties, interest, deficiencies, expenses, damages, disputes or actions of any and every nature and kind whatsoever and howsoever arising, at law or equity, directly or indirectly, by virtue or in respect of or pursuant to or in connection with the Purchase Agreement including, without limitation any breach of or failure by the Assignee to comply with the terms and conditions thereof from and after the Effective Date (collectively, the "**Claims**"), and any and all actions, causes of action, suits, proceedings, demands, claims, costs, legal and other expenses related or incidental thereto, including legal expenses on a solicitor-client basis.
5. **Indemnity of Assignor.** The Assignor hereby indemnifies and saves the Assignee, its officers, directors, employees and shareholders, harmless from and against any and all Claims arising or existing prior to the Effective Date and any and all actions, causes of action, suits, proceedings, demands, claims, costs, legal and other expenses related or incidental thereto, including legal expenses on a solicitor-client basis.
6. **Joint and Several.** The parties hereto acknowledge and agree that the Assignor will continue to be bound by all the obligations contained in the Purchase Agreement as if the within assignment had not occurred. The Assignor and Assignee covenant and agree with the Vendor that they shall be jointly and severally liable for the obligations and liabilities of the Assignor, as purchaser, under the Purchase Agreement and shall perform, jointly and severally, the obligations of the Purchaser pursuant to the Purchase Agreement, this agreement, and all other documents pertaining to Closing.

7. **Consent of Vendor.** The Vendor hereby consents to the within assignment of the Purchase Agreement from the Assignor to the Assignee, without in any way releasing the Assignor from its obligations and liabilities under the Purchase Agreement or any liabilities incurred in connection with the Purchase Agreement.
8. **Notices.** A notice, demand or request required or permitted hereunder or pursuant to the to Purchase Agreement to the Assignee shall be sufficiently given if personally delivered or sent by e-mail or facsimile transmission to:

Ocorp Holdings Ltd.  
#901 - 426 Beach Crescent  
Vancouver, BC V6Z 3E9  
Attention: Ter Geven Kour Opal  
E-mail: gevenopal@gmail.com

Copy to:

Pushor Mitchell LLP  
301 – 1665 Ellis Street  
Kelowna, BC V1Y 2B3  
Attention: Andrew Brunton  
E-mail: brunton@pushormitchell.com


All notice, demand or request required or permitted hereunder to the Assignor or Vendor shall be given if personally delivered or sent by e-mail to the addresses as set forth in the Purchase Agreement, as applicable.

9. **Further Assurances.** Each of the parties shall execute and deliver all such further documents and do such other things as the other party may reasonably request to give full effect to this agreement at the sole cost and expense of the requesting party.
10. **Governing Law.** This agreement shall be construed and enforced in accordance with, and the rights of the parties shall be governed by, the laws of the Province of British Columbia and the federal laws of Canada applicable therein. Each of the parties hereto hereby irrevocably attorns to the exclusive jurisdiction of the courts of the Province of British Columbia.
11. **Successors and Assigns.** This agreement shall enure to the benefit of and be binding upon the Assignee and Assignor hereto and their respective successors and assigns.
12. **Counterpart and Electronic Transmission.** This agreement may be executed by the parties and transmitted by facsimile or other electronic means (including by electronic document signing technology such as DocuSign) and, if so executed and transmitted, this agreement shall be for all purposes as effective as if the parties had delivered an executed original agreement. This agreement may be executed in several counterparts, each of which may be deemed an original, and all of such counterparts together shall constitute one and the same agreement.

**IN WITNESS WHEREOF** the parties have executed this Assignment on the date noted above.

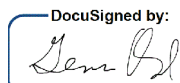
***By the Assignor:***

**NOVEM PHARMACEUTICALS INC.**

Per:  Signed by:  
16E38478645449A...  
Authorized Signatory

***By the Assignee:***

**OCORP HOLDINGS LTD.**

Per:  DocuSigned by:  
ACDCAB2DCD814DC...  
Authorized Signatory

***By the Vendor:***

**BC TREE FRUITS COOPERATIVE,**  
by their court-appointed monitor,  
**ALVAREZ & MARSAL CANADA**  
**INC.** acting solely in such capacity and not  
in its personal or corporate capacity:

Per:  DocuSigned by:  
AA6AACF632EB41D...  
Authorized Signatory

*[Signature page – Assignment and Assumption Agreement]*