

SALE AND INVESTMENT SOLICITATION PROCEDURE BC Tree Fruits Cooperative

INTRODUCTION

1. On August 13, 2024, the Supreme Court of British Columbia (the “**Court**”) granted an initial order pursuant to the *Companies’ Creditors Arrangement Act*, 1985, c C-36 granting BC Tree Fruits Cooperative (“**BCTFC**”), BC Tree Fruits Industries Limited (“**BCTF Industries**”) and Growers Supply Company Limited (collectively, the “**Companies**”) protection from their creditors and, among other things, appointing Alvarez & Marsal Canada Inc. as monitor of the Companies (the “**Monitor**”) with enhanced powers.
2. On August 26, 2024, the Court granted an order (the “**SISP Order**”) which, among other things, approved this sale and investment solicitation process (the “**SISP**”) in respect of certain assets, including without limitation certain real property, inventory, accounts receivable, intellectual property and goodwill (collectively, the “**Assets**”) and business operations (the “**Business**” and, together with the Assets, the “**Property**”) of BCTFC.
3. This SISP describes the manner in which parties may gain access to due diligence materials concerning the Property, how bids for the Property, or any parts thereof, will be submitted to and dealt with by the Monitor, and how Court approval will be sought in respect of any transaction(s) involving the Property.
4. Under this SISP, the Monitor will be soliciting bids for (i) an en bloc sale of the Property, (ii) offers for individual parcels of the real property located at 101 8911 Jubilee Road East in Summerland, 327 Co-op Avenue in Oliver, 334 Packing House Lane in Oliver, and 528 10th Avenue in Keremeos, British Columbia, having the legal descriptions set out in Schedule “A” hereto (collectively, the “**Real Property**”); or (iii) any one or more of the Assets.
5. The terms of this SISP, including the requirements, criteria and timelines set out herein, may be amended, extended, or waived by the Monitor with the consent of the Canadian Imperial Bank of Commerce (“**CIBC**”) or by further order of this Court.

“AS IS, WHERE IS” BASIS

6. Any transaction involving BCTFC or the Property (in each case, a “**Transaction**”) will be subject only to such representations, warranties, covenants, or indemnities as are expressly included in a Final Agreement (as defined in paragraph 30), but will otherwise be on an “as is, where is” basis and without surviving representations, warranties, covenants or indemnities of any kind, nature, or description by the Monitor, any of the Companies, or any of their agents, estates, advisors, professionals or otherwise. Subject to the Court granting approval and any other required orders in the form(s) contemplated by the relevant Transaction, all of the right, title and interest of BCTFC in and to the Property to be acquired will be sold free and clear of all pledges, liens, security interests, encumbrances, claims, charges, options and interests, except those expressly assumed pursuant to a Final Agreement.

TIMELINE

7. The following table sets out the target dates under the SISP:

PHASES	TARGET DATES
SISP to commence	August 26, 2024
LOI Deadline for En-Bloc Bids	September 27, 2024
Final Bid Deadline for all Bids whether En-Bloc or for individual assets including any of the parcels of Real Property	October 18, 2024
Final Agreement Deadline	October 31, 2024
Court Approval Deadline	November 15, 2024
Outside Closing Date	November 30, 2024

PHASE 1 OF THE SISP

A. Initial Solicitation of Interest

8. The Monitor may, but is not required to, cause a notice of this SISP to be published in a form satisfactory to the Monitor in any publication that the Monitor considers appropriate.
9. The Monitor, in consultation with the Companies, will prepare a list of potential bidders (the “**Known Potential Bidders**”) who may have an interest in a Transaction. Such list will include: (i) any parties that have approached the Companies or the Monitor indicating an interest in BCTFC, the Business or the Assets; and (ii) any persons who, in the Monitor’s reasonable judgment, may be interested in acquiring either all of the Property (an “**En Bloc Bid**”), or an interest in any one or more of the Assets, including any of the parcels of the Real Property (an “**Individual Asset Bid**”).
10. The Monitor, in consultation with the Companies may prepare an initial marketing or offering summary (a “**Teaser Letter**”) notifying Known Potential Bidders of the SISP and inviting the Known Potential Bidders to advise as to their interest in making an En Bloc Bid or an Individual Asset Bid (each, a “**Bid**”).
11. The Monitor may distribute to the Known Potential Bidders and any other interested persons any Teaser Letter, or other marketing material, as well as a draft form of a confidentiality agreement (the “**Confidentiality Agreement**”).
12. Subject to paragraph 13, any person who (a) executes a Confidentiality Agreement in form and substance satisfactory to the Monitor, (b) in the judgment of the Monitor appears to have a *bona fide* interest in submitting a Bid to acquire any interest in the Property, and (c) in the judgment of the Monitor appears to have the financial capabilities and the technical, managerial, and operational expertise and capabilities to

make a viable Bid, shall be deemed to be a potential bidder (each such person so deemed, a “**Potential Bidder**”).

13. A Potential Bidder need not sign a Confidentiality Agreement as long as they otherwise qualify as such, and the Monitor shall not send any confidential or commercially sensitive information to such bidders, including access to any electronic data room, but such bidders may bid on any of the Assets in any event.

B. Initial Due Diligence

14. The Monitor may prepare such marketing or other materials in addition to the Teaser Letter as they deem appropriate describing the opportunity to make a Bid for distribution to Known Potential Bidders and/or Potential Bidders.
15. The Monitor may provide Potential Bidders with access to an electronic data room that will contain such information in the possession and control of the Companies that, in the Monitor’s reasonable business judgment, will allow Potential Bidders to evaluate their interest in advancing a viable bid. For greater clarity: (a) the Monitor may make such access subject to competitive and other business considerations as the Monitor deems appropriate; and (b) the Monitor is not obligated to furnish any information relating to the Property or BCTFC except to Potential Bidders.

C. Qualified LOI Process

16. Any Potential Bidder who wishes to submit an En Bloc Bid must deliver a written, non-binding letter of intent in respect of all of the Property (each, an “**LOI**”) to the Monitor in the manner and at the address specified in Schedule “B” hereto so as to be received by the Monitor not later than 5:00 p.m. (Pacific time) on **September 27, 2024** (the “**LOI Deadline**”). An LOI shall be a qualified LOI (each, a “**Qualified LOI**”), provided that it contains:
 - (a) an acknowledgment of receipt of a copy of this SISP and the SISP Order, and their agreement to accept and be bound by their provisions;
 - (b) a letter specifying the identity of the Potential Bidder, its contact information, and full disclosure of the direct and indirect owners of the Potential Bidder and their principals (without needing to disclose non-controlling interests, in the case of public companies only);
 - (c) the anticipated structure and financing of the transaction including the anticipated sources of financing;
 - (d) a clear indication of:
 - (i) the purchase price, or purchase price range, including details of any liabilities to be assumed; and
 - (ii) the Property included and any additional assets desired to be included in the transaction;

- (e) any anticipated corporate, shareholder, internal or regulatory approvals required to close the transaction and the anticipated time frame and any anticipated impediments for obtaining such approvals;
 - (f) additional due diligence required or desired to be conducted by the Potential Bidder, if any;
 - (g) any conditions to closing that the Potential Bidder may wish to impose;
 - (h) any other terms or conditions of the bid which the Potential Bidder believes are material to the transaction; and
 - (i) such other information as may be reasonably requested by the Monitor.
17. The Monitor shall retain full discretion and authority to discuss any LOIs received, and their terms, with the applicable Potential Bidder.
 18. If it is determined by the Monitor that a Potential Bidder wishing to make an En Bloc Bid has submitted a Qualified LOI and: (i) has a bona fide interest in consummating an En Bloc Bid; (ii) has the financial, managerial, operational, technical, and other capabilities to consummate their bid; and (iii) the bid includes consideration that the Monitor, in its business judgment, deems reasonable and appropriate in the circumstances, then such Potential Bidder will be deemed a "**Qualified Bidder**".
 19. The Monitor may waive compliance with any one or more of the requirements specified in paragraph 16 and deem non-compliant Potential Bidders wishing to make En Bloc Bid to be Qualified Bidders.

PHASE 2 OF THE SISP

A. Due Diligence

20. The Monitor may, in its reasonable business judgment and subject to competitive and other business considerations, afford each Qualified Bidder and any person wishing to provide an Individual Asset Bid (an "**Individual Asset Bidder**") such access to additional due diligence materials and information relating to the Property as the Monitor deems appropriate, which may include inspections and site visits.
21. Individual Asset Bidders will be provided with a form of draft asset purchase agreement (the "**Draft APA**") that will serve as the basis for the submission of a Final Bid (as defined in paragraph 22).

B. Final Bid Process

22. Any Qualified Bidder or Individual Asset Bidder may submit a final and binding Bid (a "**Final Bid**") to the Monitor (at the address specified in **Schedule "A"**) on or before 5:00 pm (Pacific Time) on **October 18, 2024** (the "**Final Bid Deadline**").
23. A Final Bid shall be a "**Qualified Bid**" if:

- (a) in the case of an En Bloc Bid, it
 - (i) includes a duly authorized and executed purchase and sale agreement, together with all exhibits and schedules and such ancillary agreements as may be required with all exhibits and schedules;
 - (ii) specifies the purchase price, including any liabilities to be assumed;
 - (iii) indicates which of the Property is to be excluded (if any) and any additional assets desired to be included in the transaction; and
 - (iv) specifies the purchase price allocation as among the Property included in the En Bloc Bid;
- (b) in the case of an Individual Asset Bid, it:
 - (i) specifies which of the Assets are to be included in the Individual Asset Bid;
 - (ii) includes a duly authorized and executed agreement and blackline to the Draft APA, together with all exhibits and schedules and such ancillary agreements as may be required with all exhibits and schedules;
 - (iii) specifies the aggregate amount of the purchase price, including liabilities to be assumed; and
 - (iv) if applicable, specifies the purchase price allocation as among the Property included in the Individual Asset Bid;
- (c) it includes a letter stating that it is irrevocable until the earlier of (i) approval by the Court, and (ii) 30 days following the Final Bid Deadline; provided, however, that if such Bid is selected as a Winning Bid (as defined in paragraph 27) or a Backup Bid (as defined in paragraph 27), it shall remain irrevocable until the closing of the Winning Bid or the Backup Bid, as the case may be;
- (d) it does not include any request for or entitlement to any break fee, expense reimbursement or similar type of payment;
- (e) it includes written evidence of a firm, irrevocable commitment for all required funding and/or financing from a creditworthy bank or financial institution to consummate the proposed transaction, or other evidence of ability to consummate the proposed transaction that will allow the Monitor to make a determination as to the Qualified Bidder's or Individual Asset Bidder's (and its direct and indirect owners and their principals) financial and other capabilities to consummate the transaction contemplated by the Final Bid;
- (f) it includes an acknowledgement and representation that the Qualified Bidder or Individual Asset Bidder: (i) has had an opportunity to conduct any and all due diligence it considers necessary or desirable prior to making its Final Bid; (ii) has relied solely on its own independent review, investigation and inspection of any

documents, the assets to be acquired and the liabilities to be assumed; and (iii) did not rely on any written or oral statements, representations, promises, warranties or guarantees whatsoever, whether express or implied, except as expressly stated in a Final Agreement;

- (g) it fully discloses the identity of each person that is bidding or otherwise that will be sponsoring or participating in the Bid, including the identification of the bidder's direct and indirect owners and their principals (without needing to disclose non-controlling interests, in the case of public companies only), and the complete terms of any such participation;
 - (h) it provides for closing of the proposed transaction by no later than **November 30, 2024** (the "**Outside Closing Date**");
 - (i) it is accompanied by a refundable deposit (the "**Deposit**") in the form of a wire transfer (to a trust account specified by the Monitor), in an amount equal to ten percent (10%) of the total value of all cash and non-cash consideration to be paid in respect of the bid, to be held and dealt with in accordance with this SISF;
 - (j) it does not contain any conditions, other than Court approval, including that it is not conditional on: (i) any additional due diligence; (ii) any internal approvals and consents, including corporate, board or shareholder approval, that are required to close the contemplated transaction; or (iii) any governmental or regulatory approval;
 - (k) it contains other information as may be reasonably requested by the Monitor; and
 - (l) it is received by no later than the applicable Final Bid Deadline.
24. The Monitor may, in its discretion, waive compliance with any one or more of the requirements specified in paragraph 23 and deem non-compliant Final Bids to be Qualified Bids.

C. Evaluation of Bids

25. In reviewing the Qualified Bids and before determining a Winning Bid or Backup Bid, the Monitor shall retain full discretion and authority to discuss the bids received, and their terms, with the applicable Qualified Bidders or Individual Asset Bidders.
26. The Monitor, in consultation with CIBC, will review all Qualified Bids received to determine the highest or otherwise best bid(s). Evaluation criteria will include, but are not limited to:
- (a) the purchase price or net value being provided;
 - (b) the terms of the proposed transaction documents;
 - (c) the identity, circumstances, and ability of the bidder to successfully complete the contemplated transaction;
 - (d) the impact on the Companies' stakeholders;

- (e) the conditionality of the bid, including commitments for any financing required;
- (f) the timeline to closing, including potential third-party contractual arrangements or consents required to close;
- (g) the assets included, or excluded, from the proposed transaction;
- (h) the identity, circumstances, and ability of the proponents to successfully complete a transaction; and
- (i) the costs associated with the bid and its consummation, including restructuring costs.

D. Selection of Winning Bid(s) and Backup Bid(s)

- 27. With regard to the criteria enumerated in the immediately preceding section, the Monitor shall identify one or more Qualified Bids (each a **“Winning Bid”**), as well as one more backup Qualified Bids (each, a **“Backup Bid”**). A person or persons who make a Winning Bid shall be a **“Successful Bidder”** and a person or person who makes a Backup Bid shall be a **“Backup Bidder”**.
- 28. The Monitor shall notify a Successful Bidder, if any, a Backup Bidder, if any, and any other bidders of their respective status as soon as reasonably practicable in the circumstances.
- 29. The Monitor will notify a Backup Bidder, if any, that their bid is a successful Backup Bid and the Backup Bid shall remain open and capable of acceptance by BCTFC until the later of (i) the consummation of the transaction(s) contemplated by the Winning Bid(s); and (ii) the date that is 30 days after the applicable Final Agreement Deadline, as defined in paragraph 30, (the **“Backup Bid Release Date”**). For greater certainty, the Monitor shall be entitled to continue to hold the Deposit in respect of a Backup Bid until the Backup Bid Release Date.
- 30. The Monitor may, but shall have no obligation to, enter into an agreement or agreements with a Successful Bidder (a **“Final Agreement”**).
- 31. Any Final Agreement entered into with a Successful Bidder shall be executed on or before **October 31, 2024** (the **“Final Agreement Deadline”**).
- 32. The Monitor has the right not to accept any Qualified Bid. The Monitor further has the right to deal with one or more Qualified Bidders or Individual Asset Bidders to the exclusion of other persons, to accept a Qualified Bid for some or all of the Property, to accept multiple Qualified Bids and enter into multiple Final Agreements.

E. Property Not Sold

- 33. Any property not sold or liquidated or otherwise dealt with pursuant to a Winning Bid or a Backup Bid may be sold by the Monitor in any manner that the Monitor, in consultation with the Companies and CIBC, sees fit.

SISP ORDER

34. If the Monitor enters into a Final Agreement in respect of a Winning Bid, a Backup Bid, or any other bid, the Monitor shall apply for an order from the Court approving the transaction(s) contemplated by that Bid and any necessary or appropriate related relief required to consummate the transaction contemplated by that Bid. Court approval shall be a condition precedent to the consummation of any transaction or transactions contemplated by a Final Agreement.
35. The Monitor may also concurrently obtain relief approving the transaction contemplated by a Backup Bid and any necessary related relief required to consummate the transaction(s) contemplated by a Backup Bid.

DEPOSITS

36. All Deposits paid pursuant to this SISP shall be held in trust by the Monitor in a non-interest-bearing account. The Monitor shall hold the Deposits paid by each Successful Bidder and Backup Bidder in accordance with the terms of the applicable Final Agreement(s), or as may be ordered by the Court.
37. Subject to paragraph 23(i), if a Deposit is paid pursuant to this SISP, and BCTFC elects not to proceed to negotiate and settle the terms and conditions of a Final Agreement with the person that paid such Deposit, the Monitor shall return the Deposit to that person.
38. If a Qualified Bidder or Individual Asset Bidder breaches any of its obligations under its Qualified Bid, any Final Agreement, or the terms of this SISP (including the Confidentiality Agreement), then, in each case, such Qualified Bidder's or Individual Asset Bidder's Deposit will be forfeited to BCTFC as liquidated damages and not as a penalty.

SUPERVISION AND CONDUCT OF THE SISP

39. The Monitor will oversee, in all respects, the conduct of this SISP.
40. The Monitor may engage such other consultants, agents, brokers, or experts and such other persons from time to time as may be reasonably necessary to assist with this SISP.
41. BCTFC shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations under this SISP and provide the Monitor with the assistance, information and documentation that is reasonably necessary to enable the Monitor to adequately carry out the Monitor's functions in this SISP.
42. The Monitor may provide information on a confidential basis to the Companies, its directors and senior management, or any creditor(s) as the Monitor deems appropriate, provided that no party is entitled to any SISP information until such time as such party confirms in writing to the Monitor that they are not, directly or indirectly (including through affiliates or companies which they control or have a majority interest) participating in the preparation or submission of any bid pursuant to this SISP, including as a financing party (the "**Independence Confirmation**"). Parties that do not provide the Independence Confirmation are deemed to be potential bidders and are not entitled to receive information under this SISP, and shall not attend meetings with, or otherwise communicate with, Qualified Bidders or Individual Asset Bidders except with the written

consent of the Monitor (which maybe provided by email), which consent may be subject to conditions, including requiring the Monitor to attend such meetings or communications.

43. The Monitor shall determine, in its sole discretion, the manner and form of information to be provided to the Companies' directors or senior management (or any of them) or any other creditor pursuant to this SISP.
44. Notwithstanding the foregoing and anything else to the contrary in this SISP, the Monitor shall provide to CIBC information relating to this SISP, including as to any LOIs and Bids as reasonably requested by CIBC.
45. To the extent that any Potential Bidders (as defined in paragraph 12) wish to engage, discuss, or communicate with any party with an existing contractual relationship with any of the Companies in relation to this SISP or the business or assets of BCTFC, such Potential Bidders may only do so after advising the Monitor and obtaining the Monitor's consent. In considering any specific request, the Monitor shall impose such restrictions (if any) or participation by the Monitor as the Monitor deems appropriate.
46. BCTFC, the Monitor and their respective agents, estates, advisors, and professionals are not responsible for, and will have no liability with respect to, any information provided to or obtained by any Potential Bidder in connection with BCTFC or its Property.
47. Any party receiving information under this SISP, including the Companies, the Monitor, CIBC, or other persons shall keep confidential:

(a) the names, details, and all other non-public information related to Potential Bidders, LOIs, Qualified Bidders, Individual Asset Bidders, Final Bids, Qualified Bids, the Successful Bidder(s), the Winning Bid(s), the Backup Bidder(s), the Backup Bid(s), and the Final Agreement(s); and

(b) any other information provided to them and marked as confidential,

and shall only use such information to conduct or assist with this SISP, or as is reasonably necessary to seek directions from or make submissions to the Court, or to obtain, oppose, or otherwise make submissions regarding the approval of any Winning Bid or Backup Bid (as defined in paragraph 27) all while taking such steps as may be reasonably necessary so as to preserve the confidentiality of such information and protect the integrity of the SISP.

TERMINATION OF THE SISP

48. If,
 - (a) there are no Qualified LOI(s) by the LOI Deadline, or the Monitor determines that no LOIs are commercially reasonable; or
 - (b) there are no Final Bid(s) by the Final Bid Deadline; or
 - (c) there is no Qualified Bid by the Final Bid Deadline, or the Monitor determines that no Qualified Bids should be accepted; or

- (d) there is no Winning Bid; or
 - (e) a Final Agreement is not executed by the Final Agreement Deadline; or
 - (f) the transactions contemplated by the Final Agreement(s) do not close by the Outside Closing Date; or
 - (g) the Monitor, in consultation with the Companies and CIBC, decides to terminate this SISP,
- then this SISP shall, subject to any amendments, extensions or waivers granted in accordance with this SISP, terminate.

OTHER MATTERS

- 49. The SISP does not, and will not be interpreted to, create any contractual or other legal relationship between the Monitor any Potential Bidder, Qualified Bidder, Individual Asset Bidder, or any other party, other than as specifically set out in a Final Agreement executed by BCTFC or the Monitor, as applicable.
- 50. Participants in the SISP are responsible for all costs, expenses and liabilities incurred by them in connection with the submission of any bid, due diligence activities, and any other negotiations, steps, or actions, whether or not they lead to the consummation of a transaction.

SCHEDULE "A"

REAL PROPERTY

1. The property located at 101 8911 Jubilee Road East, Summerland, British Columbia, legally described as:

LOT 1, PLAN KAP25304, DISTRICT LOT 473, OSOYOOS DIV OF YALE LAND DISTRICT, PID: 005-529-018

LOT 2, PLAN KAP25304, DISTRICT LOT 473, OSOYOOS DIV OF YALE LAND DISTRICT, PID: 005-529-026

LOT 1, PLAN KAP8244, DISTRICT LOT 473, OSOYOOS DIV OF YALE LAND DISTRICT, PID: 009-868-135

2. The property located at 327 Co-op Avenue, Oliver, British Columbia, legally described as:

LOT A, PLAN EPP25807, DISTRICT LOT 2450S, SIMILKAMEEN DIV OF YALE LAND DISTRICT, PID: 029-001-285

3. The property located at 334 Packing House Lane, Oliver, British Columbia, legally described as:

LOT B, PLAN EPP25807, DISTRICT LOT 2450S, SIMILKAMEEN DIV OF YALE LAND DISTRICT, PID: 029-001-293

4. The property located at 528 10th Ave, Keremeos, British Columbia, legally described as:

LOT 1, PLAN KAP18668, DISTRICT LOT 174, SIMILKAMEEN DIV OF YALE LAND DISTRICT, EXCEPT PLAN KAP61843, PID: 008-237-051

SCHEDULE "B"**Addresses for Deliveries**

Any delivery made to the Monitor pursuant to this SISP shall be made to:

Alvarez & Marsal Canada Inc.
Licensed Insolvency Trustee
925 West Georgia Street, Suite 902
Vancouver, BC V6C 3L2

Attention: Anthony Tillman and Pinky Law
Email: pinky.law@alvarezandmarsal.com and atillman@alvarezandmarsal.com

Deliveries pursuant to this SISP by email shall be deemed to be received when sent. In all other instances, deliveries made pursuant to this SISP shall be deemed to be received when delivered to the address as identified above.