



No. S245481  
Vancouver Registry

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,  
R.S.C. 1985, c. C-36, AS AMENDED

AND

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

AND

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

PETITIONERS

**NOTICE OF APPLICATION**

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

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

TAKE NOTICE that an application will be made by the applicant before the Honourable Madam Justice Gropper in person at 800 Smithe Street, Vancouver BC on February 27, 2025 at 9:00 a.m. for the orders set out in Part 1 below.

The applicant estimates that the application will take 30 minutes.

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

**Part 1 ORDERS SOUGHT**

1. An order abridging the time for service of this Notice of Application such that the application is properly returnable on February 27, 2025.
2. An order, in substantially the form attached hereto as **Schedule "B"**, (the "**Sexsmith Order**");

- (a) approving the purchase and sale of 3335 - 3345 Sexsmith Road and 3670 Highway 97 North, Kelowna, British Columbia (collectively, the “**Sexsmith Property**”) and the Sexsmith Accepted Offer (as defined below); and
  - (b) authorizing payment of pre-filing debt owed to Grant Thornton LLP (“**GT**”) related to the preparation of audited financial statements (the “**GT Order**”).
3. Such further and other relief as this Honourable Court may deem just.

## **Part 2 FACTUAL BASIS**

4. Capitalized terms used and not otherwise defined herein have the meanings ascribed to them in the Tenth Report of the Monitor dated February 21, 2025 (the “**Tenth Report**”).

### Background

5. On August 26, 2024, this court granted, among other orders, an amended and restated initial order which, among other things, appointed A&M as monitor of the Petitioners with certain enhanced powers, including to market and sell the Petitioners’ assets.
6. Prior to these CCAA Proceedings, BCTFC owned a number of packaging and fruit storage facilities in British Columbia, through which BCTFC packaged, promoted and sold fruit produced by local fruit growers.
7. Since the commencement of these CCAA Proceedings, BCTFC, through the Monitor, has actively marketed and sold many of its facilities to restructure its affairs.

### Sale of the Sexsmith Property

8. The Sexsmith Property is an assembly of three properties totalling 18.41 acres of land. It consists of approximately 148,888 square feet of controlled atmosphere and cold storage facilities, and office space.
9. The Sexsmith Property has been actively marketed for sale for approximately 17 months.
10. Starting in September 2023, the Sexsmith Property was listed for sale by Unison HM Commercial Realty (“**HM Realty**”) for \$28 million.<sup>1</sup>
11. HM Realty’s marketing efforts for the Sexsmith Property included, among other things, organizing professional photographs, posting the listing on MLS, organizing a virtual data

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<sup>1</sup> First Report of the Monitor dated August 22, 2024, at para. 4.26 [**First Report**]; Tenth Report, at para. 4.4.

room, conducting various property tours, distributing a property brochure and marketing communications to its database of over 1,000 recipients.<sup>2</sup>

12. HM Realty's efforts resulted in, among other things, 15 parties signing non-disclosure agreements to gain access to further information regarding the Sexsmith Property. A copy of HM Realty's marketing report for the Sexsmith Property is attached to the Tenth Report as Appendix "A".
13. BCTFC received an offer for the Sexsmith Property prior to the commencement of these CCAA proceedings, which BCTFC in consultation with the Monitor did not pursue.<sup>3</sup> Instead, after discussions with Management, CIBC (the then senior secured creditor), and HM Realty, on September 5, 2024, the Monitor entered into an Agreement of Purchase and Sale (the "**First Sexsmith PSA**") and a short-term lease agreement with Novem.<sup>4</sup>
14. The First Sexsmith PSA was subject to certain conditions in favour of Novem that Novem was required to fulfil or waive by December 3, 2024.<sup>5</sup> The First Sexsmith PSA was terminated because the conditions were not waived.<sup>6</sup>
15. On December 18, 2024, Novem presented a new offer of \$18,000,000 for the Sexsmith Property. After negotiations, on February 11, 2025, the Monitor accepted an offer from Novem of \$19,250,000, with a \$1,600,000 deposit, which was assigned to Ocorp Holdings Ltd. (the "**Sexsmith Accepted Offer**").<sup>7</sup> Copies of the agreements are attached to the Tenth Report as Appendices "B" and C".
16. The Sexsmith Accepted Offer includes the following key terms:
  - (a) a closing date of March 31, 2025;
  - (b) the Sexsmith Property is to be sold on an "as-is – where, is" basis; and
  - (c) the sale is subject to Court approval.

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<sup>2</sup> Tenth Report, at para. 4.5; see also Appendix "A" of the Tenth Report, which is a copy of HM Realty's marketing report.

<sup>3</sup> First Report, at para. 8.6; Second Report of the Monitor dated September 27, 2024, at para. 6.4 [*Second Report*].

<sup>4</sup> Second Report, at para. 6.4.; Tenth Report at para. 4.6.

<sup>5</sup> Seventh Report of the Monitor, dated December 6, 2024, at para. 7.2 [*Seventh Report*]; Tenth Report, at para. 4.7.

<sup>6</sup> *Ibid.*

<sup>7</sup> Tenth Report, at para. 4.9.

17. The Monitor supports the Sexsmith Accepted Offer for the following reasons:<sup>8</sup>
- (a) the Sexsmith Property has been marketed since September 2023;
  - (b) the offer of \$19.25 million is the best and only viable offer received to date;
  - (c) the Sexsmith Accepted Offer has a near-term closing date of March 31, 2025, which is reasonable and consistent with typical sale timelines;
  - (d) the sale transaction will allow the Monitor to avoid incurring additional holding costs in respect of the Sexsmith Property.
18. The Monitor is of the 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.<sup>9</sup>
19. Since the execution of the Sexsmith Accepted Offer, HM Realty has continued to market the property and seek competing bids pursuant to Practice Direction #62.

#### **Payment of Pre-filing Claims**

20. BCTFC is required to file audited financial statements under the Cooperative Association Act, SBC 1999. BCTFC has engaged GT to prepare its audited financial statements for many years.
21. Prior to the commencement of these CCAA Proceedings, GT partially prepared BCTFC's 2024 audited financial statements, and is owed \$62,947.50 for such services.<sup>10</sup>
22. GT has indicated that, due to independence concerns, it will not be able to complete the 2024 audit unless the pre-filing debt owing to them is settled.<sup>11</sup>
23. The Monitor is of the view that paying GT's pre-filing debt is in the best interests of the Petitioners, Members, and other creditors as, among other things, payment of the pre-filing debt will avoid the Petitioners incurring unnecessary costs from engaging a new auditor.<sup>12</sup>

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<sup>8</sup> Tenth Report, at para. 4.14.

<sup>9</sup> Tenth Report, at para. 4.15.

<sup>10</sup> Tenth Report, at para. 7.2.

<sup>11</sup> *Ibid.*

<sup>12</sup> Tenth Report, at para. 7.4.

### **Part 3 LEGAL BASIS**

24. The Monitor relies on:

- (a) the CCAA;
- (b) *Supreme Court Civil Rules*;
- (c) the inherent and equitable jurisdiction of this Court; and
- (d) such further and other legal bases and authorities as counsel may advise and this Court may permit.

#### Approval of the Sexsmith Accepted Offer

25. Section 36 of the CCAA provides the statutory basis for approval of a sale outside the ordinary course of business in CCAA proceedings.

26. Section 36(5) of the CCAA sets out the non-exhaustive list of factors to be considered in respect of a sale of an insolvent debtor's assets:

- (a) whether the process leading to the proposed sale or disposition was reasonable in the circumstances;
- (b) whether the monitor approved the process leading to the proposed sale or disposition;
- (c) whether the monitor filed with the court a report stating that in their opinion the sale or disposition would be more beneficial to the creditors than a sale or disposition under a bankruptcy;
- (d) the extent to which the creditors were consulted;
- (e) the effects of the proposed sale or disposition on the creditors and other interested parties; and
- (f) whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.

27. In addition to the factors set out above, the court should consider all of the circumstances to determine whether the proposed sale is fair and reasonable, an analysis that focuses on the process used to attempt to obtain the best price for the assets in question for the benefit

of creditors. To that end, courts have also considered the so-called “Soundair” factors, which are:<sup>13</sup>

- (a) whether sufficient effort has been made to obtain the best price and that the debtor has not acted improvidently;
  - (b) the interests of all parties;
  - (c) the efficacy and integrity of the process by which offers have been obtained; and
  - (d) whether there has been unfairness in the working out of the process.
28. Courts will generally approve a sale where the monitor is of the view that the sale price and terms are commercially reasonable and satisfactory.<sup>14</sup>
29. The Monitor submits that approval of the Sexsmith Accepted Offer is appropriate for the following reasons:
- (a) the marketing efforts of HM Realty was fair and transparent, and resulted in the Sexsmith Property being sufficiently marketed to potential buyers;
  - (b) the Monitor approves of the Sexsmith Accepted Offer;
  - (c) the Sexsmith Property has been marketed since September 2023, and the Sexsmith Accepted Offer of \$19.25 million is the best and only viable offer received to date;
  - (d) the Sexsmith Accepted Offer has a near-term closing date; and
  - (e) the sale transaction will allow the Monitor to avoid incurring additional holding costs in respect of the Sexsmith Property, including preservation costs, statutory obligations (including property taxes) and professional fees

#### Payment of Pre-Filing Claims

30. A court may exercise its inherent jurisdiction to permit payment of pre-filing obligations to persons whose services are critical to the ongoing operations of the debtor companies.

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<sup>13</sup> *Royal Bank of Canada v. Soundair Corp.*, 1991 CanLII 2727 (ONCA); *Veris Gold Corp. (Re)*, 2015 BCSC 1204, at paras. 22-25; *North American Tungsten Corporation Ltd (Re)*, 2016 BCSC 12 at paras. 29-30 [*North American Tungsten*].

<sup>14</sup> *North American Tungsten*, at para. 30.



31. Courts will consider the following non-exhaustive factors in determining whether to grant such relief:<sup>15</sup>
- (a) whether the goods and services are integral to the business of the applicants;
  - (b) the applicants' dependency on the uninterrupted supply of the goods or services;
  - (c) the fact that no payments will be made without the consent of the Monitor; and
  - (d) the effect on the debtors' operations and ability to restructure if it could not make such payments.
32. As noted by Justice Fitzpatrick in *Soccer Express Trading Corp. (Re)*, the factual circumstances supporting payments of pre-filing debt may differ, but often involve one or more of the following factors:<sup>16</sup>
- (a) the debtors having sufficient cash flow for such payment;
  - (b) the support of the debtor;
  - (c) the support of the Monitor;
  - (d) the likely payment of some amount to the unsecured creditor in any event under a plan;
  - (e) need on the part of the supplier;
  - (f) authorization to make such payments only as required and with ongoing approval and oversight by the Monitor; and
  - (g) that such payment will secure the ongoing cooperation of the supplier for the continued supply of goods or services.
33. In the case at hand, the Monitor submits that the GT Order should be approved for the following reasons:
- (a) the Monitor supports the GT Order;
  - (b) the services provided by GT are required to ensure the Petitioners' compliance with applicable statutory requirements for corporate entities;

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<sup>15</sup> *Nordstrom Canada Retail, Inc.*, 2023 ONSC 1422 at para .52; citing *Index Energy Mills Road Corporation (Re)*, 2017 ONSC 4944 at para. 31.

<sup>16</sup> *Soccer Express Trading Corp. (Re)*, 2020 BCSC 749, at para. 82, citing *Canwest Global Communications (Re)*, 2010 ONSC 222, at para. 41, *Cinram International Inc. (Re)*, 2012 ONSC 3767 at paras. 23-24, 66-71, and *Northstar Aerospace, Inc. (Re)*, 2012 ONSC 4546 at paras. 11-15.

- (c) such payment is necessary to secure the ongoing cooperation of GT for the continued supply of auditing services;
- (d) payment of the pre-filing debt will avoid the Petitioners incurring unnecessary costs from engaging a new auditor; and
- (e) the Monitor is of the view that payment of GT's pre-filing debt is in the best interests of the Petitioners, Members, and other creditors.

**Part 4 MATERIAL TO BE RELIED ON**

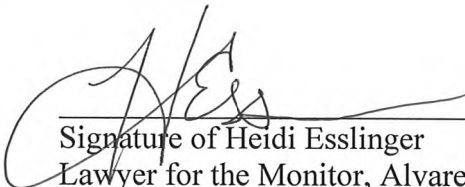
34. Tenth Report of the Monitor, dated February 21, 2025.

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

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

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

Dated: 21-Feb-2025

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



*To be completed by the court only:*

Order made

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

☐ with the following variations and additional terms:

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

Date:

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

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

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

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

**SCHEDULE "A"**

No. S245481  
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**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

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AND

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

PETITIONERS

**CCAA SERVICE LIST**

As at December 16, 2024

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| <p>Fasken Martineau DuMoulin LLP<br/>Attention: <b>Kibben Jackson</b><br/><b>Mishaal Gill</b><br/><b>Heidi Esslinger</b><br/><b>Suzanne Volkow</b><br/>Email: <a href="mailto:kjackson@fasken.com">kjackson@fasken.com</a><br/><a href="mailto:mgill@fasken.com">mgill@fasken.com</a><br/><a href="mailto:hesslinger@fasken.com">hesslinger@fasken.com</a><br/><a href="mailto:svolkow@fasken.com">svolkow@fasken.com</a><br/><a href="mailto:jbeaulieu@fasken.com">jbeaulieu@fasken.com</a><br/><a href="mailto:richeung@fasken.com">richeung@fasken.com</a></p> <p><i>Counsel for the Monitor, Alvarez &amp; Marsal<br/>Canada Inc.</i></p> | <p>Norton Rose Fulbright Canada LLP<br/>Attention: <b>Howard Gorman, K.C.</b><br/><b>Nathan Jones</b><br/>Email: <a href="mailto:howard.gorman@nortonrosefulbright.com">howard.gorman@nortonrosefulbright.com</a><br/><a href="mailto:Nathan.Jones@nortonrosefulbright.com">Nathan.Jones@nortonrosefulbright.com</a></p> <p><i>Counsel for the Petitioners</i></p> |
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| <p>Alvarez &amp; Marsal Canada Inc.</p> <p>Attention: <b>Todd Martin</b><br/><b>Anthony Tillman</b><br/><b>Pinky Law</b><br/><b>Monica Cheung</b></p> <p>Email: <a href="mailto:tmartin@alvarezandmarsal.com">tmartin@alvarezandmarsal.com</a><br/><a href="mailto:atillman@alvarezandmarsal.com">atillman@alvarezandmarsal.com</a><br/><a href="mailto:pinky.law@alvarezandmarsal.com">pinky.law@alvarezandmarsal.com</a><br/><a href="mailto:monicacheung@alvarezandmarsal.com">monicacheung@alvarezandmarsal.com</a></p> <p><i>Court Appointed Monitor</i></p> | <p>Blake Cassels &amp; Graydon LLP</p> <p>Attention: <b>Peter Rubin</b><br/><b>Peter Bychawski</b></p> <p>Email: <a href="mailto:peter.rubin@blakes.com">peter.rubin@blakes.com</a><br/><a href="mailto:peter.bychawski@blakes.com">peter.bychawski@blakes.com</a><br/><a href="mailto:jennifer.alambre@blakes.com">jennifer.alambre@blakes.com</a></p> <p><i>Counsel for Canadian Imperial Bank of Commerce</i></p> |
| <p>PricewaterhouseCoopers Inc.</p> <p>Attention: <b>Michelle Grant</b><br/><b>Michelle Pickett</b></p> <p>Email: <a href="mailto:michelle.grant@pwc.com">michelle.grant@pwc.com</a><br/><a href="mailto:michelle.pickett@pwc.com">michelle.pickett@pwc.com</a></p>  | <p>Koskie Glavin Gordon</p> <p>Attention: <b>Anthony Glavin</b><br/><b>Dawid Cieloszczyk</b></p> <p>Email: <a href="mailto:glavin@koskieglavin.com">glavin@koskieglavin.com</a><br/><a href="mailto:dcieloszczyk@koskieglavin.com">dcieloszczyk@koskieglavin.com</a></p> <p><i>Counsel for UFCW Local 247</i></p>  |
| <p>Osler LLP</p> <p>Attention: <b>Mary Buttery, K.C.</b><br/><b>Emma Newbery</b><br/><b>Christian Garton</b></p> <p>Email: <a href="mailto:mbuttery@osler.com">mbuttery@osler.com</a><br/><a href="mailto:enewbery@osler.com">enewbery@osler.com</a><br/><a href="mailto:cgarton@osler.com">cgarton@osler.com</a></p> <p><i>Counsel for BC Tree Fruits members</i></p>  | <p>Province of British Columbia</p> <p>Attention: <b>Aaron Welch</b></p> <p>Email: <a href="mailto:aaron.welch@gov.bc.ca">aaron.welch@gov.bc.ca</a><br/><a href="mailto:AGLSBRevTaxInsolvency@gov.bc.ca">AGLSBRevTaxInsolvency@gov.bc.ca</a></p>   |

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| <p>Dentons Canada LLP</p> <p>Attention: <b>Jordan Schultz</b><br/><b>Cassandra Federico</b><br/><b>Chelsea Denton</b></p> <p>Email: <a href="mailto:jordan.schultz@dentons.com">jordan.schultz@dentons.com</a><br/><a href="mailto:cassandra.federico@dentons.com">cassandra.federico@dentons.com</a><br/><a href="mailto:chelsea.denton@dentons.com">chelsea.denton@dentons.com</a></p> <p><i>Counsel for Bayer Cropscience Inc.</i></p> | <p>FH&amp;P Lawyers LLP</p> <p>Attention: <b>Clay Williams</b><br/><b>Wendy Advocaat</b><br/><b>Wendy Cheung</b></p> <p>Email: <a href="mailto:cwilliams@fhplawyers.com">cwilliams@fhplawyers.com</a><br/><a href="mailto:wadvocaat@fhplawyers.com">wadvocaat@fhplawyers.com</a><br/><a href="mailto:wcheung@fhplawyers.com">wcheung@fhplawyers.com</a></p> <p><i>Counsel for Glacier Heights Refrigeration Inc.,<br/>Keldon Electric Ltd., Rock Welding Ltd.,<br/>Armitage Electric and Van Doren Sales North Inc.</i></p> |
| <p>MLT Aikins LLP</p> <p>Attention: <b>Lisa Ridgedale</b><br/><b>Marisa McGarry</b></p> <p>Email: <a href="mailto:lrridgedale@mltaikins.com">lrridgedale@mltaikins.com</a><br/><a href="mailto:mwarnick@mltaikins.com">mwarnick@mltaikins.com</a><br/><a href="mailto:mmcgarry@mltaikins.com">mmcgarry@mltaikins.com</a></p> <p><i>Counsel for AgResource</i></p>   | <p>Department of Justice Canada<br/>British Columbia Regional Office</p> <p>Attention: <b>Aminollah Sabzevari</b><br/><b>Charlotte Woo</b><br/><b>Khanh Gonzalez</b></p> <p>Email: <a href="mailto:Aminollah.Sabzevari@justice.gc.ca">Aminollah.Sabzevari@justice.gc.ca</a><br/><a href="mailto:Charlotte.Woo@justice.gc.ca">Charlotte.Woo@justice.gc.ca</a><br/><a href="mailto:Khanh.Gonzalez@justice.gc.ca">Khanh.Gonzalez@justice.gc.ca</a></p>   |
| <p>Lax O'Sullivan Lisus Gottlieb LLP</p> <p>Attention: <b>Rahool Agarwal</b><br/><b>Annecy Pang</b></p> <p>Email: <a href="mailto:ragarwal@lolg.ca">ragarwal@lolg.ca</a><br/><a href="mailto:apang@lolg.ca">apang@lolg.ca</a></p> <p><i>Counsel for Mangal Capital Inc.</i></p>   | <p>Dentons Canada LLP</p> <p>Attention: <b>Eamonn Watson</b><br/><b>Afshan Naveed</b></p> <p>Email: <a href="mailto:Eamonn.watson@dentons.com">Eamonn.watson@dentons.com</a><br/><a href="mailto:Afshan.naveed@dentons.com">Afshan.naveed@dentons.com</a></p> <p><i>Counsel for BC Investment Agriculture Foundation</i></p>  |
| <p>Mission Bottle Washing Co. Ltd.</p> <p>Attention: <b>Maged Said</b></p> <p>Email: <a href="mailto:msaid@mbwco.ca">msaid@mbwco.ca</a></p>   | <p>Vernon Law</p> <p>Attention: <b>Steven Dvorak</b></p> <p>Email: <a href="mailto:sdd@vernonlaw.ca">sdd@vernonlaw.ca</a></p> <p><i>Counsel for N.M. Bartlett Inc.</i></p>  |

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**SCHEDULE "B"**  
**SEXSMITH ORDER**

*[see attached]*

**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

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

PETITIONERS

**ORDER MADE AFTER APPLICATION**

BEFORE THE HONOURABLE )  
JUSTICE GROPPER ) February 27, 2025  
)

ON THE APPLICATION OF Alvarez & Marsal Canada Inc. in its capacity as monitor of the Petitioners (in such capacity, the “**Monitor**”) coming on for hearing at Vancouver, British Columbia, on the 27<sup>th</sup> day of February, 2025; AND ON HEARING 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 Tenth Report of the Monitor to the Court dated February 21, 2025 (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 time for service of this notice of application and supporting materials is hereby abridged such that the notice of application is properly returnable today.

**PRE-FILING PAYMENTS**

2. The Petitioners shall be entitled to pay Grant Thornton LLP amounts owing to them for services rendered prior to August 13, 2025 up to \$65,000.

## SALE APPROVAL

3. The sale transaction (the “**Transaction**”) contemplated by the Offer to Purchase and Agreement of Purchase and Sale dated February 11, 2025 between BC Tree Fruits Cooperative (“**BCTFC**”) and Novem Pharmaceuticals Inc., as assigned to Ocorp Holdings Ltd. (the “**Purchaser**”) by the Assignment and Assumption Agreement dated February 21, 2025 (together, the “**Sale Agreement**”), copies of which agreements are attached as Appendices “B” and “C” to the Report, 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).
4. 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 “B” 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 “C” 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 “D” hereto), and, for greater certainty, this court orders that all of the Encumbrances are hereby expunged and discharged as against the Purchased Assets.
5. 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 "D" hereto.
- 6. 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.
- 7. The Monitor is to file with the court a copy of the Monitor's Certificate forthwith after delivery thereof.
- 8. 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.
- 9. 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 "D" hereto.
- 10. 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.

11. 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.
12. 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.
13. 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 Heidi Esslinger  
Lawyer for the Monitor, Alvarez & Marsal  
Canada Inc.

BY THE COURT

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REGISTRAR

**Schedule “A”**

**LIST OF COUNSEL**

| <b>Counsel Name/Litigant</b> | <b>Party Represented</b> |
|------------------------------|--------------------------|
|                              |                          |
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**Schedule “B”**

**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 February 27, 2025 (the "**Approval and Vesting Order**") and the Offer to Purchase and Agreement of Purchase and Sale dated February 11, 2025 between BC Tree Fruits Cooperative ("**BCTFC**") and Novem Pharmaceuticals Inc., as assigned to Ocorp Holdings Ltd. (the "**Purchaser**") by the Assignment and Assumption Agreement dated February 21, 2024 (together, the "**Sale Agreement**").
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 “C”**

### **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 "D"**

### **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