

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

ORDER MADE AFTER APPLICATION

| | | |
|-----------------------|---|------------|
| BEFORE THE HONOURABLE |) | |
| MADAM JUSTICE GROPPER |) | 13/08/2024 |
| |) | |

THE APPLICATION of the Petitioners coming on for hearing at Vancouver, British Columbia, on the 13th day of August, 2024 (the "**Order Date**"); AND ON HEARING Howard A. Gorman, K.C. and Candace Formosa, counsel for the Petitioners and those other counsel listed on **Schedule "A"** hereto; AND UPON READING the material filed, including the First Affidavit of Douglas Pankiw sworn August 11, 2024 and the consent of Alvarez & Marsal Canada Inc. ("**A&M**") to act as Monitor; AND UPON BEING ADVISED that the secured creditors who are likely to be affected by the charges created herein were given notice; 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 Honourable Court;

THIS COURT ORDERS AND DECLARES THAT:

1. The petition is properly returnable today.

JURISDICTION

2. The Petitioners are companies to which the CCAA applies.

SUBSEQUENT HEARING DATE

3. The hearing of the Petitioners' application for an extension of the Stay Period (as defined in paragraph 15 of this Order) and for any ancillary relief shall be held at the Courthouse at 800 Smith Street, Vancouver, British Columbia at 10 a.m. on the 23 day of August, 2024 or such other date as this Court may order, *by MS Teams or as the Court otherwise directs.*

PLAN OF ARRANGEMENT

4. The Petitioners shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the "Plan").

POSSESSION OF PROPERTY AND OPERATIONS

5. Subject to this Order and any further order of this Court, the Petitioners shall remain in possession and control of their current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situated including all proceeds thereof (the "**Property**"), and continue to carry on their business (the "**Business**") in the ordinary course and in a manner consistent with the preservation of the Business and the Property. The Petitioners shall be authorized and empowered to continue to retain and employ the employees, consultants, agents, experts, accountants, counsel and such other persons (collectively, "**Assistants**") currently retained or employed by them, with liberty to retain such further Assistants as they deem reasonably necessary or desirable in the ordinary course of business or for carrying out the terms of this Order.

6. The Petitioners shall be entitled, but not required, to pay the following expenses which may have been incurred prior to the Order Date:

- (a) all outstanding wages, salaries, employee and pension benefits (including long and short term disability payments), vacation pay and expenses (but excluding severance pay) payable before or after the Order Date, in each case incurred in the ordinary course of business and consistent with the relevant compensation policies and arrangements existing at the time incurred (collectively "**Wages**"); and
- (b) the fees and disbursements of any Assistants retained or employed by the Petitioners which are related to the Petitioners' restructuring, at their standard rates and charges, including payment of the fees and disbursements of legal counsel retained by the Petitioners, whenever and wherever incurred, in respect of:
 - (i) these proceedings or any other similar proceedings in other jurisdictions in which the Petitioners or any subsidiaries or affiliated companies of the Petitioners are domiciled;
 - (ii) any litigation in which the Petitioners are named as a party or are otherwise involved, whether commenced before or after the Order Date; and
 - (iii) any related corporate matters.

7. Except as otherwise provided herein, the Petitioners shall be entitled to pay all expenses reasonably incurred by the Petitioners in carrying on the Business in the ordinary course following the Order Date, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

- (a) all expenses and capital expenditures reasonably incurred and which are necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors' and officers' insurance), maintenance and security services;
- (b) all obligations incurred by the Petitioners after the Order Date, including without limitation, with respect to goods and services actually supplied to the Petitioners following the Order Date (including those under purchase orders outstanding at the Order Date but excluding any interest on the Petitioners' obligations incurred prior to the Order Date); and

- (c) fees and disbursements of the kind referred to in paragraph 6(b) which may be incurred after the Order Date.

8. The Petitioners are authorized to remit, in accordance with legal requirements, or pay:

- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from Wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan and (iii) income taxes or any such claims which are to be paid pursuant to Section 6(3) of the CCAA;
- (b) all goods and services or other applicable sales taxes (collectively, "**Sales Taxes**") required to be remitted by the Petitioners in connection with the sale of goods and services by the Petitioners, but only where such Sales Taxes accrue or are collected after the Order Date, or where such Sales Taxes accrued or were collected prior to the Order Date but not required to be remitted until on or after the Order Date; and
- (c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal property taxes, municipal business taxes or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors.

9. Until such time as a real property lease is disclaimed in accordance with the CCAA, the Petitioners shall pay all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable as rent to the landlord under the lease) based on the terms of existing lease arrangements or as otherwise may be negotiated between the Petitioners and the landlord from time to time ("**Rent**"), for the period commencing from and including the Order Date, twice-monthly in equal payments on the first and fifteenth day of the month in advance (but not in arrears). On the date of the first of such payments, any Rent relating to the period commencing from and including the Order Date shall also be paid.

10. Except as specifically permitted herein, the Petitioners are hereby directed, until further order of this Court:

- (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Petitioners to any of their creditors as of the Order Date except that the Petitioners: (a) are hereby authorized and directed to remit to the Canadian Imperial Bank of Commerce ("**CIBC**") all funds received after the Order Date from the Petitioners' operations, real and personal property sales, and other activities (but for clarity not including any funds received by way of advances under the Interim Financing Term Sheet (as defined below)) on account of the indebtedness of the Petitioners owed pursuant to their pre-filing credit facilities with CIBC, whether such indebtedness arose before or after the Order Date (the "**CIBC Indebtedness**"), and (b) make payments as are authorized by this Order;
- (b) to make no payments in respect of any financing leases which create security interests;
- (c) to grant no security interests, trust, mortgages, liens, charges or encumbrances upon or in respect of any of their Property, nor become a guarantor or surety, nor otherwise become liable in any manner with respect to any other person or entity except as authorized by this Order;
- (d) to not grant credit except in the ordinary course of the Business only to their customers for goods and services actually supplied to those customers, provided such customers agree that there is no right of set-off in respect of amounts owing for such goods and services against any debt owing by the Petitioners to such customers as of the Order Date; and
- (e) to not incur liabilities except in the ordinary course of Business.

RESTRUCTURING

11. Subject to such requirements as are imposed by the CCAA and such covenants as may be contained in the Definitive Documents (as hereinafter defined), the Petitioners shall have the right to:

- (a) permanently or temporarily cease, downsize or shut down all or any part of their Business or operations and commence marketing efforts in respect of any of their redundant or non-material assets and to dispose of redundant or non-material assets not exceeding \$1,000,000 in any one transaction or \$5,000,000 in the aggregate;
- (b) terminate the employment of such of their employees or temporarily lay off such of their employees as it deems appropriate; and
- (c) pursue all avenues of refinancing for their Business or Property, in whole or part;

all of the foregoing to permit the Petitioners to proceed with an orderly restructuring of the Business (the "**Restructuring**").

12. The Petitioners shall provide each of the relevant landlords with notice of the Petitioners' intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Petitioners' entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors who claim a security interest in the fixtures, such landlord and the Petitioners, or by further order of this Court upon application by the Petitioners, the landlord or the applicable secured creditors on at least two (2) clear days' notice to the other parties. If the Petitioners disclaim the lease governing such leased premises in accordance with Section 32 of the CCAA, they shall not be required to pay Rent under such lease pending resolution of any dispute concerning such fixtures (other than Rent payable for the notice period provided for in Section 32(5) of the CCAA), and the disclaimer of the lease shall be without prejudice to the Petitioners' claim to the fixtures in dispute.

13. If a notice of disclaimer is delivered pursuant to Section 32 of the CCAA, then: (a) during the period prior to the effective time of the disclaimer, the landlord may show the affected leased premises to prospective tenants during normal business hours on giving the Petitioners and the Monitor 24 hours' prior written notice; and (b) at the effective time of the disclaimer, the landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims the landlord may have against the Petitioners, or any other rights the landlord might have, in respect of such lease or leased premises and the landlord shall be entitled to

notify the Petitioners of the basis on which it is taking possession and gain possession of and re-lease such leased premises to any third party or parties on such terms as the landlord considers advisable, provided that nothing herein shall relieve the landlord of its obligation to mitigate any damages claimed in connection therewith.

14. Pursuant to Section 7(3)(c) of the *Personal Information Protection and Electronics Documents Act*, S.C. 2000, c. 5 and Section 18(1)(o) of the *Personal Information Protection Act*, S.B.C. 2003, c. 63, and any regulations promulgated under authority of either Act, as applicable (the "**Relevant Enactment**"), the Petitioners, in the course of these proceedings, are permitted to, and hereby shall, disclose personal information of identifiable individuals in their possession or control to stakeholders, their advisors, prospective investors, financiers, buyers or strategic partners (collectively, "**Third Parties**"), but only to the extent desirable or required to negotiate and complete the Restructuring or to prepare and implement the Plan or transactions for that purpose; provided that the Third Parties to whom such personal information is disclosed enter into confidentiality agreements with the Petitioners binding them in the same manner and to the same extent with respect to the collection, use and disclosure of that information as if they were an organization as defined under the Relevant Enactment, and limiting the use of such information to the extent desirable or required to negotiate or complete the Restructuring or to prepare and implement the Plan or transactions for that purpose, and attorning to the jurisdiction of this Court for the purposes of that agreement. Upon the completion of the use of personal information for the limited purposes set out herein, the Third Parties shall return the personal information to the Petitioners or destroy it. If the Third Parties acquire personal information as part of the Restructuring or the preparation and implementation of the Plan or transactions in furtherance thereof, such Third Parties may, subject to this paragraph and any Relevant Enactment, continue to use the personal information in a manner which is in all respects identical to the prior use thereof by the Petitioners.

STAY OF PROCEEDINGS, RIGHTS AND REMEDIES

15. Until and including 10 days from the Order Date, or such later date as this Court may order (the "**Stay Period**"), no action, suit or proceeding in any court or tribunal (each, a "**Proceeding**") against or in respect of the Petitioners or the Monitor, or affecting the Business or the Property, shall be commenced or continued except with the written consent of the Petitioners and the Monitor or with leave of this Court, and any and all Proceedings currently

under way against or in respect of the Petitioners or affecting the Business or the Property are hereby stayed and suspended pending further order of this Court.

16. Except as otherwise provided herein and in the Interim Financing Term Sheet, during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "**Persons**" and each being a "**Person**") against or in respect of the Petitioners or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the Petitioners and the Monitor or leave of this Court.

17. Nothing in this Order, including paragraphs 15 and 16, shall: (a) empower the Petitioners to carry on any business which the Petitioners are not lawfully entitled to carry on; (b) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA; (c) prevent the filing of any registration to preserve or perfect a mortgage, charge or security interest (subject to the provisions of Section 39 of the CCAA relating to the priority of statutory Crown securities); or (d) prevent the registration or filing of a lien or claim for lien or the commencement of a Proceeding to protect lien or other rights that might otherwise be barred or extinguished by the effluxion of time, provided that no further step shall be taken in respect of such lien, claim for lien or Proceeding except for service of the initiating documentation on the Petitioners.

NO INTERFERENCE WITH RIGHTS

18. During the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Petitioners, except with the written consent of the Petitioners and the Monitor or leave of this Court.

CONTINUATION OF SERVICES

19. During the Stay Period, all Persons having oral or written agreements with the Petitioners or mandates under an enactment for the supply of goods and/or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation, services, utility or other services to

the Business or the Petitioners, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with, or terminating the supply of such goods or services as may be required by the Petitioners, and that the Petitioners shall be entitled to the continued use of their current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the Order Date are paid by the Petitioners in accordance with normal payment practices of the Petitioners or such other practices as may be agreed upon by the supplier or service provider and the Petitioners and the Monitor, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

20. Notwithstanding any provision in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided on or after the Order Date, nor shall any Person be under any obligation to advance or re-advance any monies or otherwise extend any credit to the Petitioners on or after the Order Date. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

21. During the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against the directors or officers of the Petitioners with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Petitioners whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the Petitioners, if one is filed, is sanctioned by this Court or is refused by the creditors of the Petitioners or this Court. Nothing in this Order, including in this paragraph, shall prevent the commencement of a Proceeding to preserve any claim against a director or officer of the Petitioners that might otherwise be barred or extinguished by the effluxion of time, provided that no further step shall be taken in respect of such Proceeding except for service of the initiating documentation on the applicable director or officer.

DIRECTORS AND OFFICERS INDEMNIFICATION AND CHARGE

22. The Petitioners shall indemnify their directors and officers against obligations and liabilities that they may incur as directors or officers of the Petitioners after the commencement of the within proceedings, except to the extent that, with respect to any director or officer, the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

23. The directors and officers of the Petitioners shall be entitled to the benefit of and are hereby granted a charge (the "**Directors' Charge**") on the Property, which charge shall not exceed an aggregate amount of \$350,000, as security for the indemnity provided in paragraph 22 of this Order. The Directors' Charge shall have the priority set out in paragraphs 52 and 54 herein.

24. Notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) the Petitioners' directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 22 of this Order.

APPOINTMENT OF MONITOR

25. A&M is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Petitioners with the powers and obligations set out in the CCAA or set forth herein, and the Petitioners and their shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Petitioners pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

26. The Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- (a) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;
- (b) advise the Petitioners in their development of the Plan and any amendments to the Plan;
- (c) assist the Petitioners, to the extent required by the Petitioners, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan; and
- (d) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order.

MONITOR'S EXPANDED POWERS

27. In addition to its authority and duties prescribed pursuant to the CCAA and the powers and duties set out in paragraph 26 of this Order, and without altering in any way the limitations on and obligations of the Petitioners arising under the CCAA and this Order, the Monitor shall be exclusively authorized and empowered to:

- (a) cause the Petitioners to take any action permitted to be taken by the Petitioners pursuant to the CCAA, this Order, and any other order granted in these proceedings;
- (b) take all actions and steps in the name and on behalf of the Petitioners to administer the Petitioners' restructuring, including but not limited to, winding-down the Business, liquidating the Property, disposing of assets, or such other activities as may, in the Monitor's sole opinion, be necessary or appropriate;
- (c) manage, operate and carry on the Business of the Petitioners, including the power to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform

any contract of the Petitioners, including in the name and on behalf of the Petitioners;

- (d) exercise any rights or obligations of the BC Tree Fruits Cooperative under the *Cooperative Association Act*, SBC 1999, c 28;
- (e) preserve, protect and maintain control of all the Property or any part or parts thereof;
- (f) have full and complete access to the Property, including all books, records, data, including data in electronic form, and other financial documents of the Petitioners;
- (g) rely on the books and records of the Petitioners without independent investigation, unless otherwise ordered by this Court, and, for greater certainty, the Monitor shall not be liable for any claims or damages resulting from any errors or omissions in such books, records or information;
- (h) disseminate, to the Interim Lender (as hereinafter defined), its counsel and financial advisor, financial and other information as agreed to between the Monitor and the Interim Lender which may be used in these proceedings including reporting on a basis to be agreed with the Interim Lender;
- (i) with the assistance of the Petitioners, prepare the Petitioners' cash flow statements and reporting, including as required by the Interim Lender, which information shall be delivered to the Interim Lender, its counsel and financial advisor on a periodic basis, as required under the Interim Financing Term Sheet, or as otherwise agreed to with the Interim Lender;
- (j) engage, retain, or terminate the services of, or cause the Petitioners to engage, retain or terminate the services of, any officer, employee, consultant, agent, representative, advisor, or other persons or entities, all under the supervision and direction of the Monitor, as the Monitor, in its sole opinion, deems necessary or appropriate to assist with the exercise of its powers and duties;

- (k) facilitate or assist in the preparation of the Petitioners' statutory tax and financial requirements, including employee-related remittances, T4 statements, and records of employment, in each case based solely upon the information available from the Petitioners' books and records on the basis that the Monitor shall incur no liability or obligation to any Person with respect to such reporting, remittances, statements and records;
- (l) act as an authorized representative of the Petitioners in respect of dealings with any taxing authority including the Canada Revenue Agency ("CRA"), and the Monitor shall hereby be entitled to execute any appointment or authorization form on behalf of the Petitioners that such taxing authority or CRA may require to confirm the Monitor's appointment as an authorized representative of the Petitioners for such purposes;
- (m) deal with any regulatory authority, including to execute any appointment or authorization form on behalf of the Petitioners that any regulatory authority may require to confirm the Monitor's appointment as an authorized representative of the Petitioners for such purposes;
- (n) in the name of and on behalf of the Petitioners, execute any agreement, document, instrument or writing of whatever nature in respect of any of the Petitioners' Business or Property, for any purpose pursuant to the CCAA, this Order and any other order granted in the proceedings;
- (o) exercise any shareholder, partnership, joint venture or other similar rights of the Petitioners;
- (p) market, conduct, supervise, and direct the sale, conveyance, transfer, lease, assignment or disposal of any Property or any part or parts thereof, whether or not outside of the normal course of business, subject to any approval of this Court as may be required pursuant to the CCAA and this Order, and to sign or execute on behalf and in the name of the Petitioners any conveyance or other closing documents in relation thereto;

- (q) receive and collect all monies and accounts now owed or hereafter owing to the Petitioners;
- (r) conduct, supervise and direct the continuation or commencement of any process or effort to recover money, Property, or other assets belonging or owing to the Petitioners and exercise all remedies of the Petitioners in collecting such money, Property, or other assets;
- (s) claim or cause the Petitioners to claim all insurance refunds or tax refunds, including refunds of goods and services taxes and harmonized sales taxes, to which the Petitioners are entitled;
- (t) initiate, prosecute and continue the prosecution of all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Petitioners (or their subsidiaries), the Property or the Monitor, and to settle or compromise any such proceedings;
- (u) engage, deal, communicate, negotiate, agree and settle with any creditor of the Petitioners in the name of and on behalf of the Petitioners;
- (v) to report to, meet with and discuss with such affected Persons as the Monitor considers appropriate on all matters relating to the Business, Property, and these proceedings, and to receive and share information, subject to such confidentiality terms as the Monitor considers appropriate;
- (w) in accordance with the CCAA and this Order, disclaim any contracts of the Petitioners;
- (x) propose or cause the Petitioners to propose one or more plans of distribution or plans of compromise and arrangement, provided that the Petitioners shall be deemed to have formulated any such plans and any distributions made thereunder shall be deemed to have been made by the Petitioners and not the Monitor;

- (y) assign the Petitioners into bankruptcy, and the Monitor shall be entitled but not obligated to act as the bankruptcy trustee for any of the Petitioners assigned into bankruptcy;
- (z) cause the Petitioners to perform such other functions or duties that the Petitioners are authorized to perform under the CCAA, this Order, or applicable law, in each case as the Monitor considers necessary or desirable to facilitate or assist the Petitioners in dealing with the Business, Property, operations, restructuring, wind-down, liquidation, distribution of proceeds, and any other related activities;
- (aa) perform such other duties or take any steps reasonably incidental to the exercise of any powers and obligations conferred on the Monitor by this Order or any other order of this Court; and
- (bb) apply to this Court for advice and directions in respect of the exercise and discharge of its powers and duties hereunder.

28. For greater certainty, in each case where the Monitor takes any actions or steps authorized by this Order, the CCAA, or the preceding paragraph 27, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons, including the Petitioners and their past or present directors, officers, members, and shareholders, and without interference from any other Person. The power and authority granted to the Monitor by virtue of this Order shall, if exercised in any case, be paramount to the power and authority of the Petitioners or any other Person with respect to such matters.

29. The Petitioners and their consultants, agents, representatives and advisors shall cooperate fully with the Monitor and any directions it may provide pursuant to this Order and shall provide such assistance as the Monitor may reasonably request from time to time to enable the Monitor to carry out its duties and powers pursuant to the CCAA, this Order, and any other order granted in these proceedings. The Petitioners' directors or officers (past or present) shall not be liable for any actions taken by them in accordance with a direction of the Monitor.

30. The Monitor is authorized and empowered to operate and control, on behalf of the Petitioners, all of the Petitioners' existing accounts wherever situated, including CIBC (each an "**Account**" and collectively the "**Accounts**") in such manner as the Monitor deems necessary or appropriate, including, without limitation, to:

- (a) exercise control over the funds credited or deposited to the Accounts;
- (b) effect any disbursement from the Accounts permitted by this Order or any other order granted in these proceedings;
- (c) give instructions from time to time with respect to the Accounts and the funds credited or deposited thereto, including to transfer the funds credited or deposited to such Accounts to such other account or accounts as the Monitor may direct; and
- (d) add or remove persons having signing authority with respect to any Account or to direct the closing of any Account,

and CIBC shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken in accordance with the instructions of the Monitor as to the use or application of funds transferred, paid, collected or otherwise dealt with in accordance with such instructions, and CIBC shall be authorized to act in accordance with and in reliance upon the instructions of the Monitor without any liability to any Person in respect thereof.

31. The Monitor is hereby authorized, but not required, to open one or more new accounts in its own name with CIBC (the "**Monitor's Accounts**") and receive third party funds into the Monitor's Accounts or transfer into the Monitor's Accounts such funds of the Petitioners as the Monitor, in its sole opinion, deems necessary or appropriate to assist with the exercise of the Monitor's powers and duties set out herein, provided that the monies standing to the credit of the Monitor's Accounts from time to time shall be held by the Monitor to be dealt with as permitted by this Order and any other applicable orders made in this proceeding, including to make disbursements and pay any obligations of the Petitioners.

32. Notwithstanding paragraphs 27-31, the directors or officers of the Petitioners are authorized and empowered to retain and instruct counsel to the Petitioners in these proceedings to bring applications and make submissions in these proceedings on behalf of the Petitioners on all matters affecting or relating to these proceedings.

33. **MONITOR'S PROTECTIONS**

34. In addition to the rights and protections afforded to the Monitor under this Order, under the CCAA, or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment, the carrying out of the provisions of this Order, the exercise by the Monitor of any of its powers, or the performance by the Monitor of any of its duties, save and except for any gross negligence or wilful misconduct on its part.

35. The Monitor is not and shall not be deemed to be a director, officer, or employee of the Petitioners.

36. Notwithstanding the enhancement of the Monitor's powers and duties as set forth herein, the exercise by the Monitor of any of its powers, or the performance by the Monitor of any of its duties, the Monitor:

- (a) is not, and shall not be deemed to be, an owner of any of the Property for any purpose including without limitation for purposes of Environmental Legislation (for purposes of this Order, the term "**Environmental Legislation**" shall mean any federal, provincial, territorial or other jurisdictional legislation, statute, regulation or rule of law or equity respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination, including, without limitation, the *Canadian Environmental Protection Act*, the *Fisheries Act*, the *British Columbia Environmental Management Act*, the *British Columbia Fish Protection Act* and regulations thereunder);
- (b) is not required or allowed to occupy or to take control, charge, occupation, possession or management (separately and/or collectively, "**Possession**") of any part of the Property which may be a pollutant or contaminant or cause or

contribute to a spill, discharge, release or deposit of a substance contrary to any Environmental Legislation, For greater certainty, the Monitor shall not, as a result of this Order or anything done in furtherance of the Monitor's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

37. The Monitor shall not be liable under any Environmental Legislation in respect of any Adverse Environmental Condition (for purpose of this Order, the term "**Adverse Environmental Condition**" shall include without limitation, any injury, harm, damage, impairment or adverse effect to the environmental condition of the Property and the unlawful storage or disposal of waste or other contamination on or from the Property) with respect to the Property or any part thereof that arose or occurred before the Order Date.

38. The Monitor shall not be liable under any Environmental Legislation in respect of any Adverse Environmental Condition with respect to the Property or any part thereof that arose, occurred, or continued after the date of this Order unless such Adverse Environmental Condition is caused by the gross negligence or wilful misconduct of the Monitor.

39. Notwithstanding the immediately preceding paragraph, the Monitor shall not be liable under any Environmental Legislation in respect of any Adverse Environmental Condition with respect to the Property or any part thereof which is caused by the gross negligence or wilful misconduct of the Monitor beyond the net realized cash value received and available to the Monitor from the Property.

40. All employees of the Petitioners shall remain the employees of the Petitioners. Nothing in this Order, including without limitation the enhancement of the Monitor's powers as set forth herein, the exercise by the Monitor of any of its powers, the performance by the Monitor of any of its duties, or the use or employment by the Petitioners of any person under the direction of the Monitor in connection with the Monitor's appointment and the exercise and performance of its powers and duties, shall be construed as resulting in the Monitor being an employer, successor employer or related employer of the Petitioners' employees, within the meaning of any provincial, federal, municipal legislation or common law governing employment or labour standards or any other statute, regulation or rule of law or equity for any purpose whatsoever or expose the Monitor to liability to any individuals arising from or relating to their employment by

the Petitioners. The Monitor shall not be liable for any employee related liabilities of the Petitioners, including any successor employer liabilities as provided for in section 14.06(1.2) of the *Bankruptcy and Insolvency Act* of Canada (the "**BIA**"), other than amounts the Monitor may specifically agree in writing to pay. Nothing in this Order shall, in and of itself, cause the Monitor to be liable for any employee related liabilities of the Petitioners, including wages, severance pay, termination pay, vacation pay, and pension or benefit amounts.

41. Nothing in this Order or any other Order granted in these proceedings shall constitute or be deemed to constitute the Monitor as a receiver, assignee, liquidator, administrator, receiver-manager, agent of the creditors or legal representative of the Petitioners within the meaning of any relevant legislation, including subsection 159(2) of the *Income Tax Act* (Canada), as amended (the "**ITA**"), and any distributions to creditors of the Petitioners by the Monitor will be deemed to have been made by the Petitioners themselves. Nothing in this Order shall constitute or be deemed to constitute the Monitor as a person subject to subsection 150(3) of the ITA.

42. The Monitor shall provide any creditor of the Petitioners and the Interim Lender with information provided by the Petitioners in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Petitioners is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court, required to be provided pursuant to the terms of the Definitive Documents, or on such terms as the Monitor and the Petitioners may agree.

ADMINISTRATION CHARGE

43. The Monitor, counsel to the Monitor, if any, and counsel to the Petitioners shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the Petitioners as part of the cost of these proceedings. The Petitioners are hereby authorized and directed to pay the accounts of the Monitor, counsel to the Monitor and counsel to the Petitioners on a periodic basis and, in addition, the Petitioners are hereby authorized to pay to the Monitor, counsel to the Monitor, and counsel to the Petitioners, retainers in the amount of \$75,000, \$25,000, and \$75,000, respectively, to be held by them as security for payment of their respective fees and disbursements outstanding from time to time, in addition to any existing

retainers currently being held by the Monitor, counsel to the Monitor, and counsel to the Petitioners.

44. The Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the British Columbia Supreme Court who may determine the manner in which such accounts are to be passed, including by hearing the matter on a summary basis or referring the matter to a Registrar of this Court.

45. The Monitor, counsel to the Monitor, if any, and counsel to the Petitioners shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on the Property, which charge shall not exceed an aggregate amount of \$250,000 during the Stay Period as security for their respective fees and disbursements incurred at the standard rates and charges of the Monitor and such counsel, both before and after the making of this Order which are related to the Petitioners' restructuring. The Administration Charge shall have the priority set out in paragraphs 52 and 54 hereof.

INTERIM FINANCING

46. The Petitioners are hereby authorized and empowered to obtain and borrow under a credit facility from CIBC (the "**Interim Lender**") in order to finance the continuation of the Business and preservation of the Property, provided that borrowings under such credit facility shall not exceed \$1,165,000 unless permitted by further Order of this Court.

47. Such credit facility shall be on the terms and subject to the conditions set forth in the Interim Financing Term Sheet dated August 12, 2024 (the "**Interim Financing Term Sheet**"), which is attached to Monitor's Pre-Filing Report.

48. The Petitioners are hereby authorized and empowered to execute and deliver the Interim Financing Term Sheet and such credit agreements, mortgages, charges, hypothecs and security documents, guarantees and other definitive documents (collectively, the "**Definitive Documents**"), as are contemplated by the Interim Financing Term Sheet or as may be reasonably required by the Interim Lender pursuant to the terms thereof, and the Petitioners are hereby authorized and directed to pay and perform all of their indebtedness, interest, fees,

liabilities and obligations to the Interim Lender under and pursuant to the Interim Financing Term Sheet and the Definitive Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

49. The Interim Lender shall be entitled to the benefit of and is hereby granted a charge (the "**Interim Lender's Charge**") on the Property. The Interim Lender's Charge shall not secure an obligation that exists before this Order is made. The Interim Lender's Charge shall have the priority set out in paragraphs 52 and 54 hereof.

50. Notwithstanding any other provision of this Order:

- (a) the Interim Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the Interim Lender's Charge or any of the Definitive Documents;
- (b) upon the occurrence of an event of default under any of the Definitive Documents or the Interim Lender's Charge, the Interim Lender, may cease making advances to the Petitioners and set off and/or consolidate any amounts owing by the Interim Lender to the Petitioners against the obligations of the Petitioners to the Interim Lender under the Interim Financing Term Sheet, the Definitive Documents or the Interim Lender's Charge, and upon three (3) business days notice to the Petitioners and the Monitor, may exercise any and all of its rights and remedies against the Petitioners or the Property under or pursuant to the Interim Financing Term Sheet, Definitive Documents and the Interim Lender's Charge, including without limitation, to make demand, accelerate payment and give other notices, or to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Petitioners and for the appointment of a trustee in bankruptcy of the Petitioners; and
- (c) the foregoing rights and remedies of the Interim Lender shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Petitioners or the Property.

51. The Interim Lender, in such capacity, shall be treated as unaffected in any plan of arrangement or compromise filed by the Petitioners under the CCAA, or any proposal filed by the Petitioners under the BIA with respect to any advances made under the Definitive Documents.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

52. The priorities of the Administration Charge, the Directors' Charge, the CIBC Indebtedness and the Interim Lender's Charge, as among them, shall be as follows:

First – Administration Charge (to the maximum amount of \$250,000 during the Stay Period);

Second – Interim Lender's Charge;

Third – the CIBC Indebtedness; and

Fourth – Directors' Charge (to the maximum amount of \$350,000).

53. Any security documentation evidencing, or the filing, registration or perfection of, the Administration Charge, the Interim Lender's Charge, and the Directors' Charge (collectively, the "**Charges**") shall not be required, and that the Charges shall be effective as against the Property and shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered or perfected subsequent to the Charges coming into existence, notwithstanding any failure to file, register or perfect any such Charges.

54. Each of the Charges shall constitute a mortgage, security interest, assignment by way of security and charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, mortgages, charges and encumbrances and claims of secured creditors that were provided with the filed materials referred to in the recitals of this Order, statutory or otherwise (collectively, "**Encumbrances**"), in favour of any Person, save and except those claims contemplated by Section 11.8(8) of the CCAA. The Court may expand the priority of the Charges over claims of all secured creditors of the Petitioners at the Comeback Hearing.

55. Except as otherwise expressly provided herein, or as may be approved by this Court, the Petitioners shall not grant or suffer to exist any Encumbrances over any Property that rank in

priority to, or *pari passu* with the Charges, unless the Petitioners obtains the prior written consent of the Monitor, the Interim Lender and the beneficiaries of the Administration Charge and the Director's Charge.

56. The Administration Charge, the Director's Charge, the Interim Financing Term Sheet, the Definitive Documents and the Interim Lender's Charge shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "**Chargees**") and/or the Interim Lender shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to the BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, mortgage, security agreement, debenture, sublease, offer to lease or other agreement (collectively, an "**Agreement**") which binds the Petitioners; and notwithstanding any provision to the contrary in any Agreement:

- (a) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of the Interim Financing Term Sheet or the Definitive Documents shall create or be deemed to constitute a breach by the Petitioners of any Agreement to which they are a party;
- (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the Petitioners entering into the Interim Financing Term Sheet, the creation of the Charges, or the execution, delivery or performance of the Definitive Documents; and
- (c) the payments made by the Petitioners pursuant to this Order, the Interim Financing Term Sheet or the Definitive Documents, and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

57. THIS COURT ORDERS that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the Petitioners' interest in such real property leases.

SERVICE AND NOTICE

58. The Monitor shall (a) without delay, publish in the Vancouver Sun and the Kelowna Daily Courier a notice containing the information prescribed under the CCAA, (b) within five days after Order Date, (i) make this Order publicly available in the manner prescribed under the CCAA, (ii) send, in the prescribed manner, a notice to every known creditor who has a claim against the Petitioners of more than \$1000, and (iii) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder.

59. The Petitioners and the Monitor are at liberty to serve this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or electronic transmission to the Petitioners' creditors or other interested parties at their respective addresses as last shown on the records of the Petitioners and that any such service or notice by courier, personal delivery or electronic transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

60. Any Person that wishes to be served with any application and other materials in these proceedings must deliver to the Monitor by way of ordinary mail, courier, personal delivery or electronic transmission a request to be added to a service list (the "**Service List**") to be maintained by the Monitor. The Monitor shall post and maintain an up-to-date form of the Service List on its website at: www.alvarezandmarsal.com/bctreefruits.

61. Any party to these proceedings may serve any court materials in these proceedings by emailing a PDF or other electronic copy of such materials to counsels' email addresses as recorded on the Service List from time to time, and the Monitor shall post a copy of all prescribed materials on its website at: www.alvarezandmarsal.com/bctreefruits.

62. Notwithstanding paragraphs 59 and 61 of this Order, service of the Petition, the Notice of Hearing of Petition, any affidavits filed in support of the Petition and this Order shall be made on the Federal and British Columbia Crowns in accordance with the *Crown Liability and Proceedings Act*, R.S.C. 1985, c. C-50, and regulations thereto, in respect of the Federal Crown, and the *Crown Proceeding Act*, R.S.B.C. 1996, c. 89, in respect of the British Columbia Crown.

OTHER

63. The requirement for the Petitioners to requisition a special general meeting within 7 days of August 3, 2024, is hereby waived.

GENERAL

64. The Petitioners or the Monitor may from time to time apply to this Court for directions in the discharge of its powers and duties hereunder.

65. Nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Petitioners, the Business or the Property.

66. THIS COURT REQUESTS the aid and recognition of other Canadian and foreign Courts, tribunal, regulatory or administrative bodies, including any Court or administrative tribunal of any federal or State Court or administrative body in the United States of America, to act in aid of and to be complementary to this Court in carrying out the terms of this Order where required. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Petitioners and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Petitioners and the Monitor and their respective agents in carrying out the terms of this Order.

67. Each of the Petitioners and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order and the Monitor is authorized and empowered to act as a representative in respect of the within

proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada, including acting as a foreign representative of the Petitioners to apply to the United States Bankruptcy Court for relief pursuant to Chapter 15 of the *United States Bankruptcy Code*, 11 U.S.C. §§ 101-1330, as amended.

68. The Petitioners may (subject to the provisions of the CCAA and the BIA and with the approval of the Monitor) at any time file a voluntary assignment in bankruptcy or a proposal pursuant to the commercial reorganization provisions of the BIA if and when the Petitioners determines that such a filing is appropriate.

69. The Petitioners are hereby at liberty to apply for such further interim or interlocutory relief as it deems advisable within the time limited for Persons to file and serve Responses to the Petition.

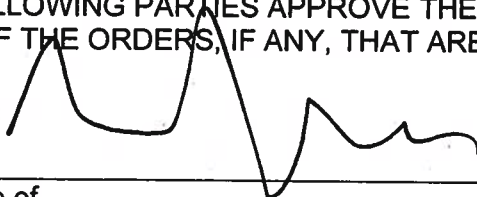
70. Leave is hereby granted to hear any application in these proceedings on two (2) clear days' notice after delivery to all parties on the Service List of such Notice of Application and all affidavits in support, subject to the Court in its discretion further abridging or extending the time for service.

71. Any interested party (including the Petitioners and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to all parties on the Service List and to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

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

73. This Order and all of its provisions are effective as of 12:01 a.m. local Vancouver time on the Order Date.

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



Signature of

☐ Party ☒ Lawyer for the Petitioners

Howard A. Gorman, K.C.

BY THE COURT



REGISTRAR

Schedule "A"

| Name of Counsel | Party |
|----------------------------------|---------------------------------------------------------------------------|
| Kibben Jackson & Heidi Esslinger | <i>Counsel for the Proposed Monitor, Alvarez & Marsal Canada Inc.</i> |
| Peter Rubin | <i>Counsel for Canadian Imperial Bank of Commerce</i> |

Amarit Bains Counsel for BC Tree Fruits members
Anthony Alavin Counsel for UFCW Local 247

No. _____
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

NORTON ROSE FULBRIGHT CANADA LLP

Barristers & Solicitors

1800 – 510 West Georgia Street

Vancouver, BC V6B 0M3

Attention: Howard A. Gorman, K.C. & Candace Formosa

CLF/

Matter# 1001252553