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The Honorable Frederick P. Corbit

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF WASHINGTON

In re: BREWSTER HEIGHTS PACKING & ORCHARDS, LP, *et al.*, [1] Debtors.	Chapter 11 Case No. 26-01136-FPC11 Joint Administration Requested **BMO BANK, N.A.'S RESPONSE AND RESERVATION OF RIGHTS REGARDING (A) DEBTORS' MOTION FOR ENTRY OF AN ORDER APPROVING BID PROCEDURES FOR THE SALE OF SUBSTANTIALLY OF DEBTORS' ASSETS FREE AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES, AND OTHER INTERESTS AND GRANTING RELATED RELIEF AND (B) DEBTORS' PROPOSED TERM SHEET**

[1] The debtors are Brewster Heights Packing & Orchards, LP (Case No. 26-01136); Gebbers Farms Inc. (Case No. 26-01140); Gebbers Orchards, Inc. (Case No. 26-01141); C&M II, LLC (Case No. 26-01137); D&E Storage, LLC (Case No. 26-01138); Eastco, LLC (Case No. 26-01139); GF SA, LLC (Case No. 26-01142); Northco, LLC (Case No. 26-01143); P&G Orchards, LLC (Case No. 26-01144); REPO, LLC (Case No. 26 01145); TJF Properties, LLC (Case No. 26-01146); Westco Orchards, LLC (Case No. 26-01147); and Westco Sales, Inc. (Case No. 26-01148).

BMO Bank N.A. ("BMO"), in its capacity as administrative agent ("BMO Agent") for the prepetition secured lending group (collectively, "BMO Syndicate Lenders"), and as a lender ("BMO RE Lender" and collectively with BMO Agent and BMO Syndicate Lenders, "BMO Secured Parties") hereby files this response and reservation of rights to the *Debtors' Motion for an Order (I) Approving Bid Procedures for the Sale of Substantially All of Debtors' Assets Free and Clear of Liens, Claims, Encumbrances, and Other Interests; (II) Scheduling Certain Dates with Respect Thereto; (III) Approving the Sale of Substantially All of Debtors' Assets; (IV) Approving Assumption and Assignment Procedures; and (V) Granting Related Relief* [ECF No. 94] (the "Bid Procedures Motion") and to the Term Sheet affixed to the *Notice of Filing Term Sheet* [ECF No. 115] (the "Term Sheet") and respectfully states as follows:

I.

INTRODUCTION

Debtors' Bid Procedures Motion has been rushed with a fatally flawed Term Sheet that is defective on its face in that it proposes the sale of BMO's collateral with zero compensation. Specifically, the Term Sheet (1) purports to sell BMO's collateral but does not propose any payment to, or treatment of, BMO; (2) proposes only a "to be determined" treatment of BMO while detailing the treatment of other secured creditors; and (3) includes impermissible third-party releases of Debtors' insiders. For these reasons, BMO respectfully submits this reponse to the Term Sheet and the Bid Procedures Motion's incorporation thereof and reserves all rights to protect its interests with respect thereto.

II.

FACTUAL BACKGROUND

A. On June 4, 2026 (the "Petition Date"), each Debtor commenced a voluntary case under chapter 11 of title 11 of the United States Code (the "Bankruptcy

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Code"). Debtors continue to operate their businesses and manage their properties as debtors in possession pursuant to Bankruptcy Code §§ 1107(a) and 1108.

B. Prior to the Petition Date, (i) certain Debtors and affiliated entities ("BMO Obligors") entered into that certain Loan and Security Agreement dated as of June 10, 2021 and related loan documents, pursuant to which BMO and the other lenders party extended loans and other credit accommodations (the "BMO Syndicate Financing"), and (ii) BMO Obligors entered into that certain Loan and Security Agreement dated as of August 29, 2022 and related documents, pursuant to which the lenders party thereto the BMO RE Loan Agreement extended loans and other credit accommodations (the "BMO RE Financing").[2]

C. Pursuant to the BMO Loan Documents, BMO holds valid, perfected, and non-avoidable liens and security interests in and to substantially all personal property assets of BMO Obligors, including, without limitation, all accounts, chattel paper, instruments, inventory, equipment, deposit accounts, investment property, general intangibles, and certain real estate, and the proceeds, products, rents, and profits, and all proceeds thereof, excluding crop growing or hereafter grown after November 1, 2025 and thereafter (collectively the "BMO Prepetition Collateral").

D. The BMO Prepetition Collateral includes, but is not limited to:

a. All growing, grown, or harvested crops and other farm products growing, grown, or harvested on or from permanent plantings, including all harvested apples, cherries, and other tree crops in which the Debtors have an interest or growing, grown, harvested, or otherwise severed from the land owned, leased, operated, farmed, or possessed by that Debtors (the "Crops") during the period beginning November 1, 2024 and ending October 31, 2025 (the "2025 Crop Inventory"), all packaging and crating related to the 2025 Crop Inventory, and all, proceeds arising from or

[2] All documents associated with the BMO Syndicate Financing and BMO RE Financing shall be referred to collectively as the BMO Loan Documents.

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relating to the 2025 Crop Inventory, including but not limited to all general intangibles, insurance proceeds or government payment obligations arising from the 2025 Crop Inventory and from such Crops (the "2025 Crop Collateral");

b. all accounts receivable, trade accounts, instruments, payment intangibles and other rights of payment owing to the Debtors with respect to the 2025 Crop Collateral, together with all related rights to enforce and collect such accounts receivable, trade accounts. instruments, payment intangibles and other rights of payment, and all other rights thereto;

c. That certain real property commonly known as 125 North Star Road, Brewster, WA 98812, and all fixtures, structures and improvements located thereon (the "RE Collateral"); and

d. Certain of (1) the Debtors' vehicles, rolling stock, and farm machinery (including tractors, combines and other farm machinery), (2) the Debtors' portable irrigation motors on wheels customarily towed by a motorized vehicle, and (3) any other "equipment" of the Debtors, as defined in Article 9 of the of the Washington UCC (collectively the "Rolling Stock").

E. On June 12, 2026, Debtors filed the Bid Procedures Motion. On June 17, 2026, Debtors filed the Term Sheet.

III.

RESPONSE

Any time a debtor seeks to sell substantially all of its assets pursuant to section 363, the proposed transaction must be closely scrutinized to ensure that the creditor protections afforded later by the chapter 11 plan process are not unduly abrogated. *See In re Medical Software Solutions*, 286 B.R. 431, 445 (Bankr. D. Utah 2002) ("[W]hen a pre-confirmation [Section] 363(b) sale is of all, or substantially all, of the Debtor's property, and is proposed during the beginning stages of the case, the sale transaction should be closely scrutinized, and the proponent bears a heightened burden of proving the elements necessary for authorization.") (internal quotations omitted).

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A debtor seeking approval of a sale under section 363 must demonstrate that any liens on the property will be treated in accordance with section 363(f)—either by payment, consent, or attachment to proceeds—and courts will deny approval where the proposed transaction fails to account for secured creditors' interests. *See* 11 U.S.C. § 363(f); *see also Clear Channel Outdoor, Inc. v. Knupfer (In re PW, LLC)*, 391 B.R. 25 (9th Cir. BAP 2008) (denying motion to approve sale where sale failed to meet requirements of section 363(f)); *In re Ferris Props., Inc.*, No. 14-10491, 2015 WL 4600248, at *4 (Bankr. D. Del. July 30, 2015) (same).

As set forth above, the Term Sheet is deficient in that it: (1) purports to sell BMO's collateral free and clear of its lien but does not propose any payment to, or any treatment at all for, BMO; (2) proposes only a "to be determined" treatment of BMO's collateral while detailing the treatment of other secured creditors; and (3) includes impermissible third-party releases of Debtors' insiders. The end result is a proposed sale process that improperly prefers certain creditors to others and fails to adequately inform BMO of the terms of the sale so that it can properly evaluate the terms of the agreement, especially as those terms directly affect BMO's rights. Furthermore, other parties in interest and perhaps even potential bidders are presented with illusory sale and bid terms pertaining to BMO's collateral and without proper notice that BMO has not consented to any of this improper treatment.

I. The Term Sheet Seeks the Sale of BMO's Valuable Collateral Without Any Proposed Payment to, or Treatment of, BMO With Respect Thereto.

First, BMO has valid, perfected security interests in the BMO Prepetition Collateral that includes among other collateral, the 2025 Crop Collateral, the RE Collateral, and the Rolling Stock. The Term Sheet currently purports to sell BMO's Prepetition Collateral—expressly mentioning the 2025 Crop Collateral and Rolling

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Stock—but entirely fails to address how BMO will be treated for this sale. The BMO Prepetition Collateral is worth tens of millions of dollars, yet the Term Sheet completely ignores any payment to BMO as recompense for the sale of this valuable collateral. This exclusion is especially glaring considering the Debtors admitted in the *Declaration of Brooke McGuire in Support of the Debtors' Bankruptcy Petitions and First Day Pleadings* [ECF No. 10] (the "McGuire Declaration") that BMO has a lien on "substantially all of the Debtors' personal property assets." *See* McGuire Declaration ¶ 23. Because the Term Sheet entirely fails to propose any compensation for the sale and release of BMO's security interests in the assets it intends to sell, it must be rejected until such time as BMO's treatment is appropriately addressed.

Perhaps Debtors intend to argue the Term Sheet is intentionally vague to allow BMO to credit bid at the proposed sale. If so, this too is inadequate. There is no mention of credit bids in the Term Sheet, if the Collateral will be sold in lots nor bidding requirement for said lots. While the Bid Procedures Motion does reference the right to credit bid, it is unclear as to how secured creditors are to bid. The Bid Procedures Motion states that "a Secured Creditor shall have the right to credit bid its claim only with respect to the collateral by which such Secured Creditor is secured." Bid Procedures Motion ¶ 9. This 'credit bid' provision is equally vague. Bid procedures require appropriate specificity so that creditors can inform themselves of their treatment under the terms of the sale. *See, e.g., In re Dalton Crane, L.C.*, 641 B.R. 850, 868 (Bankr. S.D. Tex. 2022) (rejecting "auction instructions" where sufficient information regarding the sale process was excluded, including information regarding "the amount each secured creditor will be permitted to credit bid . . .").

II. The Term Sheet Proposes Only "TBD" Treatment of BMO's Prepetition Collateral.

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Beyond entirely failing to provide any proposed payment to BMO, the Term Sheet fails to properly address BMO's other collateral such as the RE Collateral whatsoever. Under the terms of the Term Sheet, BMO's treatment is listed as "to be determined." This failure to provide any treatment for BMO other than "TBD" does not allow BMO to properly evaluate the transaction. Moreover, this treatment is improper because the remaining secured creditors' treatment is appropriately addressed. It is only BMO that is left to wonder as to how its rights will be affected by the sale. This disparate treatment of BMO is baseless and must be addressed before the Court approves the terms of any sale.

III. The Term Sheet Improperly Seeks to Release Third-Party Guaranties That Are Not Property of the Estate.

Finally, the Term Sheet proposes that as a "necessary . . . condition" of the sale, the sale must include a "[r]elease by BMO . . . of all personal guaranties as to members of the Gebbers Family." BMO holds such independent, third-party guaranties. A footnote in the Term Sheet describes this condition such that it "cannot be waived unilaterally by Purchaser" and that "such waiver would also require the consent of the Guarantors . . . ." BMO certainly did not, and does not, consent to these types of waivers.

These forced third-party releases have no basis in the Bankruptcy Code and are squarely impermissible. Specifically, this Court lacks jurisdiction to alter the contract rights between BMO and the non-debtor guarantors. The guaranties are agreements between BMO and the guarantors and the Debtors have no property rights in the guaranties. *See, e.g., In re Lockland*, 887 F.2d 1171, 1177 (9th Cir. 1989) (collecting cases for proposition that contractor-debtor "has no property interest" in surety bond issued by third-party to guarantee debtor's performance); *see also In re Dunbar*, 235 B.R. 465, 476 (B.A.P. 9th Cir. 1999) ("The Martins are proceeding directly against

Surety Company of the Pacific in an attempt to collect from the contractor's bond, which is not property of the estate. The automatic stay does not enjoin such an action because it is, in essence, an action to collect from the debtor's guarantor or the guarantor's property."). As such, the Court lacks jurisdiction to affect the respective rights of the parties under the guaranties.

Here, the grant of a release is functionally a nonconsensual waiver of BMO's rights as beneficiary of the guaranty. Because the Court lacks jurisdiction to alter contract rights between non-debtor parties, there is no legal basis upon which Debtor's requested waivers can be granted. *See, e.g., In re Casamont Investors, Ltd.*, 196 B.R. 517, 521 (B.A.P. 9th Cir. 1996) ("As a general rule a bankruptcy court does not have jurisdiction in controversies between third parties not involving the debtor or property of the estate.").

In sum, BMO cannot consent to its current treatment in the Term Sheet, as incorporated into the Bid Procedures Motion. The Bid Procedures Motion should be set over until such time the Debtors can propose a valid offer and Term Sheet.

IV.

CONCLUSION

Accordingly, BMO (1) respectfully reserves all rights, to entry of an order granting the Bid Procedures Motion or otherwise affirming the Term Sheet until (a) such time as BMO's treatment thereunder is properly addressed and (b) the third-party releases are removed and (2) seeks such further relief as this Court deems just and proper.

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DATED this 29th day of June 2026.

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