

**DISTRICT OF: BRITISH COLUMBIA**  
**DIVISION NO.: 04 - Vernon**  
**COURT NO.: B-56518**  
**ESTATE NO.: 11-2643942**

**IN THE SUPREME COURT OF BRITISH COLUMBIA  
IN BANKRUPTCY AND INSOLVENCY**

**IN THE MATTER OF THE PROPOSAL OF  
ENCORE VINEYARDS LTD.  
of the City of Penticton, in the Province of British Columbia.**

**AMENDED PROPOSAL**

Encore Vineyards Ltd., the above-named Company (hereinafter called the “**Company**”), hereby submits the following Proposal under the *Bankruptcy and Insolvency Act* to all of its creditors.

**1. DEFINITIONS**

For the purposes of this Proposal, the following capitalized terms shall have the following meaning:

- (i) “**Act**” means the *Bankruptcy and Insolvency Act (Canada)*, as it may be amended from time to time;
- (ii) “**Administrative Fees and Expenses**” means the fees and expenses incurred by or on behalf of the Trustee, as more particularly described in paragraph 11 of this Proposal;
- (iii) “**Claim**” means any indebtedness, liability, action, cause of action, suit, debt, account, bond, covenant, contract, counterclaim, demand, claim, right and obligation of any nature whatsoever of the Company to any Person, whether liquidated, unliquidated, fixed, contingent, matured, legal, equitable, present, future, known or unknown, and whether by guarantee, surety or otherwise, incurred or arising or related to the period prior to the Date of Filing;
- (iv) “**Company**” means Encore Vineyards Ltd., a company incorporated under the *Business Corporations Act (British Columbia)*;
- (v) “**Court**” means the Supreme Court of British Columbia, in Bankruptcy and Insolvency;



- (vi) **“Court Approval Date”** means the date on which the Court issues an Order approving this Proposal pursuant to the provisions of the Act, all appeal periods having expired and no appeal therefrom having been dismissed and such dismissal having become final;
- (vii) **“Creditor”** means any Person who holds one or more Claims against the Company;
- (viii) **“Creditor Approval Date”** means the date on which each of the classes of impacted creditors with proven Claims approves this Proposal pursuant to the provisions of the Act;
- (ix) **“Date of the Proposal”** means May 7, 2020, being the date on which this Proposal was filed with the Official Receiver in accordance with the Act;
- (x) **“Employees”** means all of the employees of the Company;
- (xi) **“Inspectors”** means the person(s) appointed or elected as inspectors under and pursuant to the Act, in respect of the Company;
- (xii) **“Person”** shall have the meaning ascribed thereto in the Act;
- (xiii) **“Preferred Creditor”** means any Creditor which would be entitled to receive payment of any amount owed to it in priority to other Creditors as provided under section 136 of the Act should the Company become bankrupt;
- (xiv) **“Proceeds of Sale”** shall be the \$5,800,000 amount to be paid for the assets of the Company by the Purchaser;
- (xv) **“Promissory Note Holder”** refers to Encore Vintners Ltd (a company related by way commonalities of ownership) and the Promissory Note dated September 26, 2014 that it holds;
- (xvi) **“Proposal”** means this Proposal made pursuant to the Act, as amended or supplemented from time to time, and includes any schedules hereto;
- (xvii) **“Proposal Fund”** means the Proceeds of Sale less the funds required to pay the amounts owing to Bank of Montreal and Lisa Lalonde with respect to the secured amounts owed to them. This net amount will be available for distribution to Preferred Creditors, Unsecured Creditors, the Promissory Note Holder and to meet the Administrative Fees and Expenses of the Proposal;
- (xviii) **“Purchaser”** refers to Mayert Family Holdings Ltd., the entity purchasing the assets of the Company;

- (xix) “**Secured Creditor**” means any Creditor who hold a valid and enforceable mortgages, charges, liens, security interests and/or other encumbrances against any of the property or assets of the Company. Does not include the Promissory Note Holder;
- (xx) “**Shareholder**” means any holder of Series A Preferred Shares or Common Shares;
- (xxi) “**Trustee**” means BDO Canada Ltd., the trustee acting in re the Proposal of the Company or its duly appointed successor.
- (xxii) “**Unsecured Creditor**” means any Creditor other than: (i) Preferred Creditors, (ii) Promissory Note Holder and (iv) Secured Creditors to the extent of the realizable value of the security held by such Creditor over the assets of the Company;

## 2. GENERAL INTENT AND EFFECT OF THIS PROPOSAL

The purpose of this Proposal is to effect a sale of the assets of the Company to a new entity in the expectation that all Creditors will derive a greater benefit than from the continued operation of the business or from a forced liquidation of its assets.

This Proposal restructures the Company’s affairs and may amend the terms of any and all agreements between the Company and the Creditors existing as at the Date of Filing and provides the essential terms upon which all such Claims will be fully and finally resolved and settled. During the term of this Proposal until the discharge of the Trustee, all Creditors other than Secured Creditors will be stayed from commencing or continuing any proceeding or remedy against the Company or any of its property or assets in respect of a Claim including, without limitation, any proceeding or remedy to recover payment of any monies owing to Creditors, to recover or enforce any judgment against the Company in respect of a claim or to commence any formal proceedings against it other than as provided for under this Proposal or the Act.

This Proposal will, as of the Court Approval Date, be binding on the Company and all Creditors to whom this Proposal is being made and in the manner provided for in this Proposal and the Act.

## 3. CLASSIFICATION AND TREATMENT OF CLAIMS

There shall be only three classes of Creditors whose Claims are being addressed under this Proposal, which shall consist of the:

1. Secured Creditors
2. Promissory Note Holder and
3. Preferred Creditors, if any, and Unsecured Creditors.

For the purposes of this Proposal, a holder of a Claim will receive the treatment provided for in the Proposal on account of such Claim.

#### **4. POOL OF FUNDS FOR DISTRIBUTION**

The funds available for distribution to Creditors and to meet the Administrative Fees and Expenses of the Proposal will be the Proposal Fund.

#### **5. CANADA REVENUE AGENCY**

All amounts, if any, owing to Canada Revenue Agency that could be subject to a demand under Subsection 224(1.2) of the *Income Tax Act* or under any substantially similar provision of provincial legislation, that were outstanding at the Date of Filing, shall be paid in full in cash from the Proceeds of Sale within six months after the Court Approval Date.

#### **6. SECURED CREDITORS**

The Claim of all Secured Creditors shall, subject to the provisions of the Act, from the Date of the Proposal be paid in accordance with the arrangements between the Company and holder of such Claims which were in effect on the Date of the Proposal or such other terms as may be mutually agreed between them following the Date of the Proposal. It is understood that the Purchaser will seek to take over any equipment leases held by the Company. For greater clarity, no proposal is being made to the Secured Creditors.

#### **7. EMPLOYEE CLAIMS**

All Claims of Employees, if any, not exceeding the amount payable to former or current Employees which would be payable in priority under Subsection 136(1)(d) of the Act should the Company become bankrupt will be paid in cash immediately after Court Approval Date. It is understood that any Claim of an Employee in excess of the amount payable under Subsection 136(1) (d) of the Act shall be considered an unsecured Claim and shall entitle the Employee to vote on this Proposal and participate as an Unsecured Creditor under paragraph 10 of this Proposal to the extent of this excess amount.

#### **8. PREFERRED CREDITORS**

The Claims of Preferred Creditors, if any, shall be paid in full in cash, without interest, in priority to the claims of Unsecured Creditors in accordance with the Act.

#### **9. PROMISSORY NOTE HOLDER**

The claim of The Promissory Note Holder shall be paid a total sum of \$200,000 (or if the distributions under section 10 result in a net return to creditors (after levy) of less than 35%, the amount payable under this paragraph may be reduced to an amount that is not lower than \$106,000. The reduction to the amount payable under this paragraph will not be any more than what would be necessary to produce a net return under paragraph 10 of 35%). The amount payable under this paragraph will be paid less a levy as discussed in paragraph 16.

## **10. UNSECURED CREDITORS**

The claims of Unsecured Creditors shall be paid by way of cash distributions their pro rata share of the Proposal Fund available to Creditors net of amounts pursuant to paragraphs 7, 8, 9, 10, and 11 of this Proposal less a levy as discussed in paragraph 16.

## **11. ADMINISTRATIVE FEES AND EXPENSES**

All the fees, expenses and disbursements of the Trustee in and incidental to the proceedings arising out of the Proposal, including the Trustee's legal fees and disbursements, shall be paid in cash from the Proposal Fund in priority to all claims and shall be a first charge thereon.

The Trustee and its legal counsel may take interim draws in respect of their fees and disbursements in a total amount which shall not exceed the total reasonable and actual time charges and disbursements at the date of the interim draw, subject to final taxation by the Court, and without prior approval of the inspectors, if any inspectors are appointed.

## **12. CLAIMS AGAINST DIRECTORS OF THE COMPANY**

The Creditors hereby agree not to pursue any assessments against the Company's directors for claims against directors of the Company that arose prior to the Date of Filing and that relate to the obligations of the Company where the directors are by law liable in their capacity as directors as for the payment of such obligation.

## **13. POST-FILING CREDITORS**

Goods and services provided to the Company after the Date of the Proposal shall be paid by the Company in the ordinary course of business or in accordance with the arrangements between the Company and the relevant party which were in effect on the Date of the Proposal or such other terms as may be mutually agreed between them following the Date of the Proposal.

## **14. FRAUDULENT TRANSACTIONS**

Section 91 through and including Section 101 of the Act do not apply to this Proposal.

## **15. FUNDING OF THE PROPOSAL**

The deposit payable in accordance with the Purchaser's agreement (10% of Proceeds of Sale) to purchase will be held in trust by the Company's solicitors. Upon court approval and the closing of the transaction the net amount after paying any remaining secured balances owed to the Bank of Montreal and Lisa Lalonde will be transferred to the Trustee and will make up the Proposal Fund. It is understood that the Company's solicitors would return the deposit funds to the Purchaser should the proposal not be accepted by the Creditors and/or the Court.

## **16. DISTRIBUTIONS UNDER THE PROPOSAL**

All distributions under the Proposal shall be made by the Trustee and notwithstanding any other provisions therefor, any distributions made by the Trustee in respect of any claims pursuant to the terms hereof shall be made net of the Superintendent's Levy required to be made, pursuant to Section 147 and 60(4) of the Act.

All cash payments in respect of Employee Claims, if any, as described under paragraph 7 of this Proposal and Subsection 60(1.3)(a) of the Act, shall be made according to their priority following the Court Approval Date.

All cash payments to Canada Revenue Agency, if any, as described under paragraph 5 of this Proposal, shall be made within six months of the Court Approval Date or as agreed with Canada Revenue Agency.

All cash payments to the respective Preferred Creditors, Unsecured Creditors, the and the Promissory Note Holder as described under paragraphs 7 and 8, 9, 10 and 11 of this Proposal, shall be made by the Trustee at its discretion with the concurrence of the Inspectors, if any. These payments made by the Trustee shall be without interest or penalty and subject to deduction of the BIA Section 147 levy payable to the Superintendent of Bankruptcy, which is calculated as follows:

- (a) 5% on the amount up to \$1,000,000;
- (b) 1.25% on the amount over \$1,000,000 and up to \$2,000,000; and
- (c) 0.25% on the amount over \$2,000,000.

## **17. EFFECT OF DISTRIBUTIONS**

Creditors will accept upon payment in full of the payments provided for in this Proposal in complete satisfaction of all their Claims and all liens, certificates of pending litigation, executions or any similar charges or actions or proceedings in respect of such Claims, and such Claims will have no effect in law or in equity against the property assets or undertaking of the Company.

## 18. EFFECT OF DISTRIBUTIONS

Creditors will accept upon payment in full of the payments provided for in this Proposal in complete satisfaction of all their Claims and all liens, certificates of pending litigation, executions or any similar charges or actions or proceedings in respect of such Claims, and such Claims will have no effect in law or in equity against the property assets or undertaking of the Company.

## 19. SHAREHOLDERS

The Act requires that all classes of creditors are paid in full prior to any equity Shareholder being allowed a distribution. The Proposal Fund will not result in full payment of all creditors' claims. Accordingly Shareholders are not considered a class of creditors for purposes of the Proposal and may not file claims, vote or participate in any distributions under this Proposal with respect to their equity claims.

## 20. INSPECTORS

The Creditors may appoint one or more, but not more than five, inspectors under this proposal whose powers shall be restricted to advising the Trustee in matters that may be referred to them by the Trustee.

## 21. BDO CANADA LIMITED

BDO Canada Limited shall be the Trustee under this Proposal and upon issuance of all payments provided for in this Proposal, the Trustee shall be entitled to be discharged from its obligations under the terms of this Proposal. The Trustee is acting in its capacity as Trustee under this Proposal and not in its personal capacity and shall not be responsible or liable for any obligations of the Company.

Dated at Penticton, British Columbia this 26<sup>th</sup> day of May, 2020.

Encore Vineyards Ltd.

Per:



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Christa-Lee Bond  
President & Chief Executive Officer



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Witness