

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF JAMES E. WAGNER CULTIVATION  
CORPORATION, JAMES E. WAGNER CULTIVATION LTD.,  
JWC 1 LTD., JWC 2 LTD., JWC SUPPLY LTD. AND  
GROWTHSTORM INC.

(each an "**Applicant**", and collectively, the "**Applicants**")

**MOTION RECORD**

April 6, 2020

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# TAB 1

Court File No.: CV-20-00639000-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**COMMERCIAL LIST**

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF JAMES E. WAGNER CULTIVATION  
CORPORATION, JAMES E. WAGNER CULTIVATION LTD.,  
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(each an "**Applicant**", and collectively, the "**Applicants**")

Applicants

**NOTICE OF MOTION**

**(Returnable April 9, 2020)  
(Amended and Restated Initial Order and Bidding Procedures  
and Stalking Horse APA Approval Order)**

The Applicants will make a motion before the Honourable Justice Hainey of the Ontario Superior Court of Justice (Commercial List) on Thursday, April 9, 2020, at 2:00pm or as soon after that time as the motion can be heard telephonically.

**PROPOSED METHOD OF HEARING:** The motion is to be heard by telephone.

**THE MOTION IS FOR:**

1. An amended and restated initial order (the "**Amended and Restated Initial Order**") substantially in the form attached hereto as Schedule "A", *inter alia*:
  - (a) abridging the time for service of this notice of motion and the motion record and dispensing with service on any person other than those served;
  - (b) appointing Howard Capital LLC ("**HC**") as the chief restructuring officer of the Applicants (in such capacity, the "**CRO**");



- (c) increasing the Administration Charge, the Directors' Charge and the DIP Lender's Charge (each as defined in the initial order of this Court dated April 1, 2020 (the "**Initial Order**")) to \$600,000, \$1,050,000, and \$4,000,000, respectively;
  - (d) sealing the unredacted CRO Engagement Letter filed as Confidential Exhibit "1"; and
  - (e) extending the Stay Period (as defined below) until and including June 26, 2020;
2. An order (the "**Bidding Procedures and Stalking Horse APA Approval Order**") substantially in the form attached hereto as Schedule "B", approving *inter alia*:
- (a) the sale and investor solicitation process (the "**SISP**") and the bidding procedures related thereto (the "**Bidding Procedures**");
  - (b) the Asset Purchase Agreement dated as of March 31, 2020, among the Applicants, as Vendors, and Trichome Financial Corp. ("**Trichome**" or the "**DIP Lender**"), as purchaser (the "**Stalking Horse APA**") for the purposes of acting as the stalking horse bid;
  - (c) the M&A Engagement Letter and the Addendum (each as defined below); and
  - (d) the Expense Reimbursement (as defined below) provided in the Stalking Horse APA;
3. Such further and other relief as this Honourable Court deems just;

**THE GROUNDS FOR THE MOTION ARE:**

***Background***

4. On April 1, 2020, this Honourable Court granted protection to the Applicants under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") pursuant to the Initial Order;

5. Under the Initial Order, *inter alia*:

- (a) KSV Kofman Inc. was appointed as monitor of the Applicants (in such capacity, the "**Monitor**");
- (b) an initial stay of proceedings in favour of the Applicants was granted until and including April 10, 2020 (the "**Stay Period**");
- (c) the Administration Charge, Directors' Charge and DIP Lender's Charge were granted; and
- (d) the Applicants were authorized and empowered to obtain and borrow under a credit facility (the "**DIP Loan**") from Trichome up to a maximum amount of \$4,000,000;

6. The Applicants are a vertically integrated premium cannabis brand focused on the production of clean and consistent cannabis using their proprietary aeroponic platform;

7. As a result of severe liquidity issues and an inability to meet their obligations as they became due, the Applicants determined that it was in their best interest and the best interests of their stakeholders to commence these CCAA proceedings to ultimately effect a going concern sale of their business;

8. Since seeking the Initial Order the Applicants have acted, and continue to act, in good faith and with due diligence to, among other things, stabilize their business and keep it operating in the ordinary course, finalize the SISP and Bidding Procedures, and negotiate and execute an engagement letter with HC setting forth the terms of HC's appointment as CRO (the "**CRO Engagement Letter**");

#### ***The CRO and the Increase to the Administration Charge***

9. The Amended and Restated Initial Order provides for the appointment of HC as the CRO of the Applicants. Pursuant to the CRO Engagement Letter, HC will principally be responsible for restructuring initiatives focused on improving the operations, sales and profitability of the Applicants' business;

10. The CRO has extensive restructuring experience and its involvement will contribute to the success of these CCAA proceedings. The Monitor is supportive of the CRO's appointment;

11. As security for the CRO's monthly fees and expenses, the Applicants are seeking an increase to the Administration Charge up to a maximum of \$600,000. The Monitor believes that the quantum of the increase to the Administration Charge is reasonable and the increase is supported by the Applicants' first-lien lender, Trichome;

***The Stalking Horse APA, SISP and Bidding Procedures***

12. Prior to the commencement of these CCAA proceedings, the Applicants entered into discussions with Trichome to explore options to address their liquidity crisis. These discussions culminated in the Applicants entering into the Stalking Horse APA with Trichome;

13. Pursuant to the Stalking Horse APA, Trichome has agreed to act as the stalking horse bidder in the proposed SISP (in such capacity, the "**Stalking Horse Bidder**"). Among other things, the Stalking Horse APA provides for the payment of an expense reimbursement fee up to a maximum of \$100,000 (the "**Expense Reimbursement**") in the event that the Stalking Horse Bidder is not the Successful Bidder (as defined in the SISP);

14. Under the proposed SISP, Stoic Advisory Inc., in its capacity as M&A advisor to the Applicants (in such capacity, the "**M&A Advisor**"), will be responsible for the marketing and sale of the Applicants' business. In connection with the SISP, the Applicants are seeking approval of the engagement letter between the Applicants and the M&A Advisor (the "**M&A Engagement Letter**") as well as an addendum thereto (the "**Addendum**"), which together reflect the terms of the M&A Advisor's mandate;

15. The Applicants are also seeking approval of the Bidding Procedures that will govern the solicitation of higher and better offers for the Applicants' business. The Bidding Procedures were developed with the assistance of the Monitor and the M&A Advisor, and provide the process by which the M&A Advisor is to conduct the SISP for the sale of all or substantially all of the Applicants' business;

16. The Stalking Horse APA will serve as the stalking horse bid in the SISP and shall be subject to higher or otherwise better offers received as part of the SISP;

17. The SISP and Bidding Procedures will result in a fair and equitable process that will canvass the market in order to maximize value for the Applicants' stakeholders;

***Increases to the Directors' Charge and the DIP Lender's Charge***

18. Pursuant to the Initial Order, the Directors' Charge and DIP Lender's Charge were granted up to a maximum of \$450,000 and \$800,000 respectively. These charges were required to obtain the DIP Loan urgently needed by the Applicants and to ensure the participation of the Applicants' directors and officers in these CCAA proceedings. Absent these priority charges, the beneficiaries thereof would not have assumed the risks inherent to these CCAA proceedings;

19. In the Initial Order, the Directors' Charge and DIP Lender's Charge were each limited to what was reasonably necessary during the initial Stay Period. Pursuant to the Amended and Restated Initial Order, the Applicants seek to increase the quantum of the Directors' Charge and DIP Lender's Charge up to a maximum of \$1,050,000 and \$4,000,000, respectively;

20. The increased quantum of the Directors' Charge is based on the maximum potential liability of the Applicants' directors and officers during these CCAA proceedings. The Monitor and the DIP Lender are supportive of the Directors' Charge and its increased quantum;

21. The increased quantum of the DIP Lender's Charge is based on the go-forward funding needs of the Applicants to continue to operate in the ordinary course of business and is commensurate with the maximum available amount under the DIP Loan. Absent the increase to the DIP Lender's Charge, the Applicants will not be able to make additional draws under the DIP Loan;

***The Stay Extension***

22. The Initial Order granted the Applicants a stay of proceedings until and including April 10, 2020;

23. Since the granting of the Initial Order, the Applicants have been acting and continue to act in good faith and with due diligence in these CCAA proceedings to stabilize their business and develop the SISP and Bidding Procedures;

24. The Applicants require an extension of the Stay Period up to and including June 26, 2020, in order to complete the SISP and return to court to seek approval of the stalking horse bid or other Successful Bid with a view to preserving and maximizing value for the Applicants' creditors and other stakeholders;

25. It is just, convenient, necessary and in the best interest of the Applicants and their stakeholders that the Applicants be afforded the protection provided by the CCAA and an extension of the Stay Period as they attempt to sell their business as a going concern;

26. The Applicants have sufficient liquidity to fund their obligations and the costs of these CCAA proceedings through the end of the extended Stay Period;

### ***Sealing Order***

27. The CRO Engagement Letter contains commercially sensitive and personal information that, if disclosed, could be detrimental to these CCAA proceedings and the CRO's future engagements;

28. There are no other reasonable alternatives to sealing the CRO Engagement Letter from the public record and the salutary effects of sealing this information outweigh any deleterious effects of doing so;

### **OTHER GROUNDS:**

29. The provisions of the CCAA and the inherent and equitable jurisdiction of this Honourable Court;

30. Rules 1.04, 1.05, 2.03, 3.02, 14.05(2), 16, 37 and 39 of the Ontario *Rules of Civil Procedure*, R.R.O 1990, Reg. 194, as amended and sections 106 and 137 of the Ontario *Courts of Justice Act*, R.S.O. 1990, c. C.43 as amended; and

31. Such further and other grounds as counsel may advise and this honourable Court may permit;

**DOCUMENTARY EVIDENCE:**

32. The following documentary evidence will be used at the hearing of the application:
- (a) the Affidavit of Philip Armstrong sworn April 6, 2020, and the exhibits attached thereto;
  - (b) the First Report of the Monitor dated April 6, 2020; and
  - (c) such further and other evidence as counsel may advise and this Court may permit.

April 6, 2020

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Lawyers for the Applicants

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF JAMES E. WAGNER CULTIVATION LTD., JWC 1 LTD., JWC 2 LTD., JWC SUPPLY LTD. AND GROWTHSTORM INC.**

Court File No.: CV-20-00639000-00CL

***ONTARIO***  
**SUPERIOR COURT OF JUSTICE**  
**COMMERCIAL LIST**

Proceedings commenced in Toronto

**NOTICE OF MOTION**  
**(Amended and Restated Initial Order and**  
**Bidding Procedures and Stalking Horse APA**  
**Approval Order)**

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Lawyers for the Applicants

# TAB A



Court File No. CV-20-00639000-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE MR.	)	THURSDAY, THE 9 <sup>th</sup>
	)	
JUSTICE HAINEY	)	DAY OF APRIL, 2020

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
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(collectively, the "**Applicants**" and each an "**Applicant**")

**AMENDED AND RESTATED INITIAL ORDER**

(amending Initial Order dated April 1, 2020)

**THIS APPLICATION**, made by the Applicants, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") was heard this day via telephonic conference.

**ON READING** the affidavit of Nathan Woodworth sworn March 31, 2020, the affidavit of Aiden Nelms sworn March 31, 2020 and the Affidavit of Philip Armstrong sworn April 6, 2020 (the "**April 6 Affidavit**"), and the Exhibits to each affidavit thereto, and the Report of KSV Kofman Inc. ("**KSV**") dated March 31, 2020 and the Report of KSV dated April 6, 2020 (the "**First Report**"), and on being advised that Trichome Financial Corp., Lind Global Macro Fund, LP ("**Lind**") and the other secured creditors of the Applicants who are likely to be affected by the charges created herein were given notice, no one appearing for any other party although duly

served as appears from the affidavit of service of Aiden Nelms sworn April 6, 2020, and on hearing the submissions of counsel for the Applicants, the Monitor, the DIP Lender (as defined below) and Lind, and on reading the consent of KSV to act as the Monitor,

## **SERVICE**

1. **THIS COURT ORDERS** that the time for service of the Notice of Application and the Application Record is hereby abridged and validated so that this Application is properly returnable today and hereby dispenses with further service thereof.

## **APPLICATION**

2. **THIS COURT ORDERS AND DECLARES** that the Applicants are companies to which the CCAA applies.

## **PLAN OF ARRANGEMENT**

3. **THIS COURT ORDERS** that each Applicant 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**

3. **THIS COURT ORDERS** that the Applicants shall remain in possession and control of their respective current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "**Property**"). Subject to further Order of this Court, the Applicants shall continue to carry on business in a manner consistent with the preservation of their business (the "**Business**") and Property. The Applicants are 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 the carrying out of the terms of this Order.

4. **THIS COURT ORDERS** that the Applicants shall be entitled to continue to utilize the central cash management system currently in place or, with the consent of the Monitor, replace it

with another substantially similar central cash management system (the "**Cash Management System**") and that any present or future bank providing the Cash Management System shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the Applicants of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as hereinafter defined) other than the Applicants, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as provider of the Cash Management System, an unaffected creditor under the Plan with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.

5. **THIS COURT ORDERS** that, except as specifically permitted herein, the Applicants 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 any of the Applicants to any of their creditors as of this date unless such payments are contemplated under the Commitment Letter and the Definitive Documents (each as defined below) and consented to by the Monitor; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of their Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

6. **THIS COURT ORDERS** that the Applicants shall be entitled but not required to pay the following expenses whether incurred prior to or after this Order:

- (a) all outstanding and future wages, salaries, employee and pension benefits, vacation pay and employee expenses payable on or after the date of this Order, in each case incurred in the ordinary course of Business and consistent with existing compensation policies and arrangements; and
- (b) the fees and disbursements of any Assistants retained or employed by the Applicants in respect of these proceedings, at their standard rates and charges.

7. **THIS COURT ORDERS** that, except as otherwise provided to the contrary herein, the Applicants shall be entitled but not required to pay all reasonable expenses incurred by the

Applicants in carrying on the Business in the ordinary course after this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

- (a) all expenses and capital expenditures reasonably 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; and
- (b) payment for goods or services actually supplied to the Applicants following the date of this Order.

8. **THIS COURT ORDERS** that the Applicants shall 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 employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;
- (b) all goods and services or other applicable sales taxes (collectively, "**Sales Taxes**") required to be remitted by the Applicants in connection with the sale of goods and services by the Applicants, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order, 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 realty, municipal business 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 and which are attributable to or in respect of the carrying on of the Business by the Applicants.

9. **THIS COURT ORDERS** that until a real property lease is disclaimed in accordance with the CCAA, the Applicants 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 to the landlord under the lease) or as otherwise may be negotiated between the Applicants and the landlord from time to time ("**Rent**"), for the period commencing from and including the date of this Order, twice-monthly in equal payments on the first and fifteenth day of each 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 date of this Order shall also be paid.

### **RESTRUCTURING**

10. **THIS COURT ORDERS** that the Applicants shall, subject to such requirements as are imposed by the CCAA and such covenants as may be contained in the Definitive Documents (as defined below), have the right to:

- (a) permanently or temporarily cease, downsize or shut down any of its business or operations, and to dispose of redundant or non-material assets not exceeding \$100,000 in any one transaction or \$250,000 in the aggregate;
- (b) terminate the employment of such of its employees or temporarily lay off such of its employees as it deems appropriate; and
- (c) pursue all avenues of refinancing of their Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing,

each of the foregoing to permit the Applicants to proceed with an orderly restructuring of the Business.

11. **THIS COURT ORDERS** that the Applicants shall provide each of the relevant landlords with notice of the Applicants' 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 Applicants' 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, such landlord and the Applicants, or by further Order of this Court upon application by the Applicants on at least two (2) days' notice to such landlord and any such secured creditors. If an Applicant disclaims the lease governing such leased premises in accordance with Section 32 of the CCAA, it shall not be required to pay Rent under such lease pending resolution of any such dispute (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 applicable Applicant's claim to the fixtures in dispute.

12. **THIS COURT ORDERS** that if a notice of disclaimer is delivered pursuant to Section 32 of the CCAA, then (a) during the notice 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 Applicants and the Monitor 24 hours' prior written notice, and (b) at the effective time of the disclaimer, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the Applicants in respect of such lease or leased premises, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

#### **NO PROCEEDINGS AGAINST THE APPLICANTS OR THE PROPERTY**

13. **THIS COURT ORDERS** that until and including June 26, 2020, or such later date as this Court may order (the "**Stay Period**"), no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**") shall be commenced or continued against or in respect of the Applicants or the Monitor or their respective employees and representatives acting in such capacities, or affecting the Business or the Property, except with the written consent of the Applicants and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of any of the Applicants or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

#### **NO EXERCISE OF RIGHTS OR REMEDIES**

14. **THIS COURT ORDERS** that 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

Applicants or the Monitor or their respective employees and representatives acting in such capacities, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the Applicants and the Monitor, or leave of this Court, provided that nothing in this Order shall: (i) empower the Applicants to carry on any business which the Applicants are not lawfully entitled to carry on, (ii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

### **NO INTERFERENCE WITH RIGHTS**

15. **THIS COURT ORDERS** that 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 any of the Applicants, except with the written consent of the applicable Applicant and the Monitor, or leave of this Court.

### **CONTINUATION OF SERVICES**

16. **THIS COURT ORDERS** that during the Stay Period, all Persons having oral or written agreements with any of the Applicants or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, ERP software communication and other data services, centralized banking services, security services, payroll services, insurance, transportation services, utility or other services to the Business or any of the Applicants, 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 any of the Applicants, and that each of the Applicants shall be entitled to the continued use of its 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 date of this Order are paid by the applicable Applicant in accordance with normal payment practices of the applicable Applicant or such other practices as may be agreed upon by the supplier or service provider and each of the applicable Applicant and the Monitor, or as may be ordered by this Court.

## **NON-DEROGATION OF RIGHTS**

17. **THIS COURT ORDERS** that, notwithstanding anything else 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 date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the Applicants. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

## **PROCEEDINGS AGAINST DIRECTORS AND OFFICERS**

18. **THIS COURT ORDERS** that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of any of the Applicants with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of any of the Applicants 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 applicable Applicant, if one is filed, is sanctioned by this Court or is refused by the creditors of the applicable Applicant or this Court.

## **DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE**

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

20. **THIS COURT ORDERS** that the directors and officers of the Applicants 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 \$1,050,000.00, as security for the indemnity provided in paragraph 19 of this Order. The Directors' Charge shall have the priority set out in paragraphs 40 and 42 herein.



21. **THIS COURT ORDERS** that, 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 Applicants' 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 19 of this Order.

#### **APPOINTMENT OF MONITOR**

22. **THIS COURT ORDERS** that KSV is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Applicants with the powers and obligations set out in the CCAA or set forth herein and that the Applicants and their shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by any of the Applicants 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.

23. **THIS COURT ORDERS** that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- (a) monitor the Applicants' receipts and disbursements;
- (b) 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;
- (c) assist the Applicants, to the extent required by the Applicants, in their dissemination, to the DIP Lender and its counsel on a weekly basis of financial and other information as agreed to between the Applicants and the DIP Lender which may be used in these proceedings including reporting on a basis to be agreed with the DIP Lender;
- (d) advise the Applicants in their preparation of the Applicants' cash flow statements and reporting required by the DIP Lender, which information shall be reviewed with the

- Monitor and delivered to the DIP Lender and its counsel and financial advisor on a periodic basis, but not less than weekly, or as otherwise agreed to by the DIP Lender;
- (e) advise the Applicants in their development of the Plan and any amendments to the Plan;
  - (f) assist the Applicants, to the extent required by the Applicants, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;
  - (g) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Applicants, to the extent that is necessary to adequately assess the Applicants' business and financial affairs or to perform its duties arising under this Order;
  - (h) 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; and
  - (i) perform such other duties as are required by this Order or by this Court from time to time.

24. **THIS COURT ORDERS** that the Monitor shall not take possession of the Property or be deemed to take possession of Property, pursuant to any provision of any federal, provincial or other law respecting, among other things, the manufacturing, possession, processing and distribution of cannabis or cannabis products including, without limitation, under the *Cannabis Act* S.C. 2018, c.16, the *Controlled Drugs and Substances Act*, S.C. 1996, c. 19, the *Excise Tax Act*, the *Ontario Cannabis Control Act*, S.O. 2017, c. 26, Sched. 1 or other such applicable federal or provincial legislation (collectively, the "**Cannabis Legislation**"), and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof, within the meaning of any Cannabis Legislation, or otherwise, and nothing in this Order shall be construed as resulting in the Monitor being an employer or successor employer within the meaning of any statute, regulation or rule of law or equity, for any purpose whatsoever.

25. **THIS COURT ORDERS** that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law 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 *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance 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.

26. **THIS COURT ORDERS** that, in addition to the rights and protection afforded to the DIP Lender under this Order or at law, the DIP Lender shall incur no liability or obligation as a result of carrying out of the provisions of this Order, including under any Cannabis Legislation, save and except for any gross negligence or willful misconduct on its part.

27. **THIS COURT ORDERS** that the Monitor shall provide any creditor of the Applicants and the DIP Lender with information provided by the Applicants 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 Applicants is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicants may agree.

28. **THIS COURT ORDERS** that, in addition to the rights and protections afforded to the Monitor under the CCAA or as an officer of this Court, neither the Monitor nor its respective employees and representatives acting in such capacities, shall incur any liability or obligation as a result of the appointment of the Monitor or the carrying out by it of the provisions of this

Order, including under any Cannabis Legislation, save and except for any gross negligence or willful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

29. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor, and counsel to the Applicants shall be paid their reasonable fees and disbursements related to these proceedings, in each case at their standard rates and charges, whether incurred prior to, on or subsequent to, the date of this Order by the Applicants as part of the costs of these proceedings. The Applicants are hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor, and counsel for the Applicants on a weekly basis.

30. **THIS COURT ORDERS** that 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 Commercial List of the Ontario Superior Court of Justice.

31. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor, the Applicants' counsel and Howard Capital LLC ("**HC**"), in its capacity as chief restructuring officer of the Applicants (the "**CRO**") in respect of its monthly fees and expense reimbursement, 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 \$600,000.00 as security for their professional fees and disbursements incurred at their standard rates and charges or as set out in the CRO Engagement Letter (as defined below), both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 40 and 42 hereof.

#### **APPOINTMENT OF CHIEF RESTRUCTURING OFFICER**

32. **THIS COURT ORDERS** that the CRO is hereby appointed as the chief restructuring officer of the Applicants on the following terms:

- (a) the CRO shall have the powers and obligations set out in the engagement letter dated as of April 5, 2020, a redacted copy of which is attached as Exhibit "D" to the April 6 Affidavit (the "**CRO Engagement Letter**") and an unredacted copy of which is attached as confidential Exhibit "1" to the April 6 Affidavit, pursuant to which the Applicants have engaged HC to provide the services of the CRO;

- (b) HC shall be entitled, in accordance with the terms of the CRO Engagement Letter, to payment from the Applicants for obligations owing thereunder and the expenses and disbursements contemplated therein (collectively, the "**CRO Fees**");
- (c) the CRO shall be responsible for performing its functions and obligations as set out in the CRO Engagement Letter for the benefit of the Applicants and shall provide timely updates to the Monitor in respect of such functions and obligations;
- (d) the CRO shall not be or be deemed to be a director, de facto director, or employee of any of the Applicants;
- (e) nothing in this Order shall be construed as resulting in the CRO or Howard Steinberg ("**Steinberg**") being an employer, successor employer, a responsible person, operator or person with apparent authority within the meaning of any statute, regulation or rule of law, or equity (including any Environmental Legislation) for any purpose whatsoever;
- (f) neither the CRO nor Steinberg shall, as a result of the performance of their respective obligations and duties in accordance with the terms of the CRO Engagement Letter, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation or the Cannabis Legislation; provided however, if either of the CRO or Steinberg is nevertheless later found to be in Possession of any Property, then the CRO and/or Steinberg, as the case may be, shall be entitled to the benefits and protections in relation to the Applicants and such Property as are provided to a monitor under Section 11.8(3) of the CCAA; provided further however, that nothing in this sub-paragraph 32(f) shall exempt the CRO or Steinberg from any duty to report or make disclosure imposed by a law and incorporated by reference in Section 11.8(4) of the CCAA;
- (g) no action or other proceeding shall be commenced directly, or by way of counterclaim, third party claim or otherwise, against or in respect of the CRO or Steinberg, and all rights and remedies of any Person against or in respect of them are hereby stayed and suspended, except with the written consent of the CRO or with leave of this Court on notice to the Applicants, the Monitor and the CRO, provided,

- however, that nothing in this order, including this sub-paragraph 32(g) shall affect such investigations, actions, suits or proceedings by a regulatory body that are permitted by Section 11.1 of the CCAA. Notice of any such motion seeking leave of this Court shall be served upon the Applicants, the Monitor and the CRO at least seven (7) days prior to the return date of any such motion for leave;
- (h) the CRO Fees shall not be compromised pursuant to the Plan, any proposal under the *Bankruptcy and Insolvency Act* of Canada (the "**BIA**"), or any other restructuring and no such Plan, proposal, restructuring or sale transaction shall be approved that does not provide for the payment in full of all amounts due to the CRO pursuant to the terms of the CRO Engagement Letter; and
  - (i) if, but for the orders in the preceding sub-paragraphs of this paragraph 32, the CRO would have liability with respect to any losses, claims, damages or liabilities to Her Majesty the Queen in right of the Province of Ontario or would have incurred an obligation under any enactment of Ontario or Canada (including any Environmental Legislation), such liability or obligation shall be deemed to be a liability or obligation of the Applicants.

33. **THIS COURT ORDERS** that neither the CRO nor its respective employees and representatives acting in such capacities, shall incur any liability or obligation as a result of the appointment of CRO or the carrying out by it of the provisions of this Order or the CRO Engagement Letter, including under any Cannabis Legislation, save and except for any gross negligence or willful misconduct on its part.

#### **DIP FINANCING**

34. **THIS COURT ORDERS** that the Applicants are hereby authorized and empowered to obtain and borrow under a credit facility (the "**DIP Loan**") from Trichome Financial Corp. (in such capacity, the "**DIP Lender**") in order to finance the Applicants' working capital requirements and other general corporate purposes and capital expenditures, provided that borrowings under such credit facility shall not exceed \$4,000,000.00 unless permitted by further Order of this Court.

35. **THIS COURT ORDERS THAT** such credit facility shall be on the terms and subject to the conditions set forth in the commitment letter between the Applicants and the DIP Lender dated as of March 31, 2020 (the "**Commitment Letter**"), filed.

36. **THIS COURT ORDERS** that the Applicants are hereby authorized and empowered to execute and deliver such credit agreements, mortgages, charges, hypothecs and security documents, guarantees and other definitive documents (collectively, the "**Definitive Documents**"), as are contemplated by the Commitment Letter or as may be reasonably required by the DIP Lender pursuant to the terms thereof, and the Applicants are hereby authorized and directed to pay and perform all of their indebtedness, interest, fees, liabilities and obligations to the DIP Lender under and pursuant to the Commitment Letter and the Definitive Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

37. **THIS COURT ORDERS** that the DIP Lender shall be entitled to the benefit of and is hereby granted a charge (the "**DIP Lender's Charge**") on the Property, which DIP Lender's Charge shall not secure an obligation that exists before this Order is made. The DIP Lender's Charge shall have the priority set out in paragraphs 40 and 42 hereof.

38. **THIS COURT ORDERS** that, notwithstanding any other provision of this Order:

- (a) the DIP Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP Lender's Charge or any of the Definitive Documents;
- (b) upon the occurrence of an event of default under the Definitive Documents or the DIP Lender's Charge, the DIP Lender, upon 7 days' notice to the Applicants and the Monitor, may exercise any and all of its rights and remedies against the Applicants or the Property under or pursuant to the Commitment Letter, Definitive Documents and the DIP Lender's Charge, including without limitation, to cease making advances to the Applicants and set off and/or consolidate any amounts owing by the DIP Lender to the Applicants against the obligations of the Applicants to the DIP Lender under the Commitment Letter, the Definitive Documents or the DIP Lender's Charge, 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 Applicants and for the appointment of a trustee in bankruptcy of the Applicants; and
- (c) the foregoing rights and remedies of the DIP Lender shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Applicants or the Property.

39. **THIS COURT ORDERS AND DECLARES** that the DIP Lender shall be treated as unaffected in any plan of arrangement or compromise filed by the Applicants under the CCAA, or any proposal filed by the Applicants under the BIA, with respect to any advances made under the Definitive Documents.

#### **VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER**

40. **THIS COURT ORDERS** that the priorities of the Directors' Charge, the Administration Charge and the DIP Lender's Charge, as among them, shall be as follows:

First - Administration Charge (to the maximum amount of \$600,000.00);

Second - Directors' Charge (to the maximum amount of \$1,050,000.00); and

Third - DIP Lender's Charge (to the maximum amount of \$4,000,000.00).

41. **THIS COURT ORDERS** that the filing, registration or perfection of the Administration Charge, the DIP Lender's Charge or the Directors' Charge (collectively, the "**Charges**") shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

42. **THIS COURT ORDERS** that each of the Charges shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, "**Encumbrances**") in favour of any Person.



43. **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicants shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Charges, unless the Applicants also obtain the prior written consent of the Monitor, the DIP Lender and the beneficiaries of the Charges, or further Order of this Court.

44. **THIS COURT ORDERS** that the Charges, the Commitment Letter, and the Definitive Documents 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 DIP Lender thereunder 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 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, sublease, offer to lease or other agreement (collectively, an "**Agreement**") which binds the Applicants, 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 Commitment Letter or the Definitive Documents shall create or be deemed to constitute a breach by the Applicants of any Agreement to which any of them 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 Applicants entering into the Commitment Letter, the creation of the Charges, or the execution, delivery or performance of the Definitive Documents; and
- (c) the payments made by the Applicants pursuant to this Order, the Commitment Letter 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.

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

#### **RELIEF FROM REPORTING OBLIGATIONS**

46. **THIS COURT ORDERS** that none of the directors, officers, employees, or other representatives of the Applicants, nor the Monitor (and its directors, officers, employees or representatives) shall have any personal liability for failure of the Applicants to file annual information forms, annual and quarterly management discussion and analysis, annual and quarterly financial statements (including related audits, reports and certifications) for the Stay Period, which period may be extended pursuant to further Order of the Court.

#### **SEALING**

47. **THIS COURT ORDERS** that the unredacted copy of the CRO Engagement Letter filed as Confidential Exhibit "1" to the April 6 Affidavit shall be sealed and kept confidential pending further order of this Court.

#### **SERVICE AND NOTICE**

48. **THIS COURT ORDERS** that the Monitor shall (i) without delay, publish in The Globe and Mail (National Edition) a notice containing the information prescribed under the CCAA, (ii) within five days after the date of this Order, (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, or cause to be sent, in the prescribed manner, a notice to every known creditor who has a claim against any of the Applicants of more than \$1,000, and (C) 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.

49. **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the "Protocol") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to

Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL – <https://www.ksvadvisory.com/insolvency-cases/case/james-e-wagner-cultivation-corporation> (the "Website").

50. **THIS COURT ORDERS** that the Applicants and the Monitor and their respective counsel are at liberty to serve or distribute this Order, any other materials and orders as may be reasonably required in these proceedings, including any notices, or other correspondence, by forwarding true copies thereof by electronic message to the Applicants' creditors or other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or judicial obligation, and notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations*, Reg. 81000-2-175 (SOR/DORS).

#### **GENERAL**

51. **THIS COURT ORDERS** that each of the Applicants or the Monitor may from time to time apply to this Court to amend, vary or supplement this Order or for advice and directions in the discharge of its powers and duties under this Order or in the interpretation or application of this Order.

52. **THIS COURT ORDERS** that 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 Applicants, the Business or the Property.

53. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Applicants, the Monitor and their respective 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 Applicants 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 Applicants and the Monitor and their respective agents in carrying out the terms of this Order.

54. **THIS COURT ORDERS** that each of the Applicants 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 that 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.

55. **THIS COURT ORDERS** that any interested party (including the Applicants and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days notice 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.

56. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Toronto time on the date of this Order.

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**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF JAMES E. WAGNER CULTIVATION CORPORATION, JAMES E. WAGNER CULTIVATION LTD., JWC 1 LTD., JWC 2 LTD., JWC SUPPLY LTD AND GROWTHSTORM INC.**

Court File No. CV-20-00639000-00CL

***ONTARIO***  
**SUPERIOR COURT OF JUSTICE**  
**(COMMERCIAL LIST)**

Proceedings commenced in Toronto

**AMENDED AND RESTATED**  
**INITIAL ORDER**

**BENNETT JONES LLP**

One First Canadian Place  
Suite 3400, P.O. Box 130  
Toronto, Ontario  
M5X 1A4

**Sean Zweig** (LSO# 57307I)  
**Mike Shakra** (LSO# 64604K)  
**Aiden Nelms** (LSO# 74170S)

Tel: 416-863-1200  
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Lawyers for the Applicants

# TAB B

Court File No. CV-20-00639000-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE MR.	)	THURSDAY, THE 9 <sup>th</sup>
	)	
JUSTICE HAINEY	)	DAY OF APRIL, 2020

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF JAMES E. WAGNER CULTIVATION  
CORPORATION, JAMES E. WAGNER CULTIVATION LTD.,  
JWC 1 LTD., JWC 2 LTD., JWC SUPPLY LTD. AND  
GROWTHSTORM INC.

(collectively, the "**Applicants**" and each an "**Applicant**")

**ORDER**

(Bidding Procedures and Stalking Horse APA Approval)

**THIS MOTION**, made by the Applicants, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") for an order, among other things: (i) approving the bidding procedures substantially in the form attached as Schedule "A" hereto (the "**Bidding Procedures**"); (ii) approving the Stalking Horse APA (as defined below) for purposes of acting as the stalking horse bidder; and (iii) approving the M&A Advisor Agreement (as defined below), was heard this day by telephonic conference.

**ON READING** the Notice of Motion of the Applicants, the Affidavit of Philip Armstrong sworn April 6, 2020 and the Exhibits attached thereto (the "**April 6 Affidavit**"), and the First Report (the "**First Report**") dated April 6, 2020 of KSV Kofman Inc. ("**KSV**"), in its capacity as the Court appointed Monitor (the "**Monitor**"), filed, and on hearing the submissions of counsel for the Applicants, the Monitor and the DIP Lender (as defined in the April 6 Affidavit), and counsel

for those other parties appearing as indicated by the counsel sheet, no one else appearing although properly served, as appears from the affidavits of Aiden Nelms, sworn April 6, 2020, filed:

### **SERVICE AND DEFINITIONS**

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and Motion Record in respect of this Motion is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

2. **THIS COURT ORDERS** that all capitalized terms used in this Order and not otherwise defined shall have the meanings ascribed to them in the Stalking Horse APA, the Bidding Procedures or the April 6 Affidavit, as applicable

### **BIDDING PROCEDURES**

3. **THIS COURT ORDERS** that that the Bidding Procedures (subject to any amendments thereto that may be made in accordance therewith) are hereby approved.

4. **THIS COURT ORDERS** that the Applicants and their respective advisors, in consultation with the Monitor and its advisors, are hereby authorized and directed to carry out the Bidding Procedures and to take such steps and execute such documentation as may be necessary or incidental to the Bidding Procedures.

### **STALKING HORSE APA**

5. **THIS COURT ORDERS** that the bid made by the Purchaser pursuant to the Asset Purchase Agreement dated as of March 31, 2020 among the Applicants, as Vendors, and Trichome Financial Corp., as Purchaser, in the form attached as Exhibit "B" to the Affidavit of Aiden Nelms sworn March 31, 2020 (the "**Stalking Horse APA**") is hereby approved as the stalking horse bid, provided that nothing herein approves the sale and the vesting of the Purchased Assets to the Purchaser pursuant to the Stalking Horse APA and that the approval of the sale and vesting of such assets shall be considered by this Court on a subsequent motion made to this Court following completion of the sale process pursuant to the terms of the Bidding Procedures if the Stalking Horse Bidder is the Successful Bidder.



6. **THIS COURT ORDERS** that the Applicants' obligation to pay the Expense Reimbursement pursuant to section 4.2 of the Stalking Horse APA is hereby approved.

#### **M&A ADVISOR**

7. **THIS COURT ORDERS** that the Letter Agreement (the "**M&A Advisor Agreement**") dated March 20, 2020 between James E. Wagner Cultivation Corporation and Stoic Advisory Inc. (the "**M&A Advisor**"), as amended by the Letter Agreement Amendment dated April 6, 2020, each attached as Appendix D to the First Report is hereby approved.

8. **THIS COURT ORDERS** that the M&A Advisor shall not share with the Stalking Horse Bidder (or any of its representatives, agents, employees or directors), in any way, any information concerning the SISP, including, without limitation, with respect to the identity or status of potential bidders and the bids received or expected to be received, unless first expressly permitted to do so by the Monitor and the Special Committee and, if so permitted, only with a representative of the Monitor being present.

#### **PIPEDA**

9. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Applicants and the Monitor may disclose personal information of identifiable individuals to prospective purchasers or bidders for the Vendors' Assets and to their advisors, but only to the extent desirable or required to carry out the Bidding Procedures and to attempt to complete a transaction for some or all of the Vendors' Assets. Each prospective purchaser or bidder (and their respective advisors) to whom any such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information solely to its evaluation of a transaction for some or all of the Vendors' Assets, and if it does not complete such a transaction, shall return all such information to the Applicants, or in the alternative destroy all such information. The purchaser of any of the Vendors' Assets shall be entitled to continue to use the personal information provided to it, and related to such assets, in a manner that is in all material respects identical to the prior use of such information by the Applicants, and shall return all other personal information to the Applicants, or ensure that all other personal information is destroyed.

**GENERAL**

10. **THIS COURT ORDERS** that this Order shall have full force and-effect in all provinces and territories in Canada.

11. **THIS COURT ORDERS** that the Applicants and the Monitor may from time to time apply to this Court for advice and directions in the discharge of their respective powers and duties hereunder or under the Bidding Procedures.

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**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF JAMES E. WAGNER CULTIVATION CORPORATION, JAMES E. WAGNER CULTIVATION LTD., JWC 1 LTD., JWC 2 LTD., JWC SUPPLY LTD AND GROWTHSTORM INC.**

Court File No. CV-20-00639000-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

Proceedings commenced in Toronto

**ORDER**  
(Bidding Procedures and  
Stalking Horse APA Approval)

**BENNETT JONES LLP**  
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**Mike Shakra** (LSO# 64604K)  
**Aiden Nelms** (LSO# 74170S)

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Lawyers for the Applicants

# TAB 2

Court File No. CV-20-00639000-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**COMMERCIAL LIST**

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF JAMES E. WAGNER CULTIVATION  
CORPORATION, JAMES E. WAGNER CULTIVATION LTD.,  
JWC 1 LTD., JWC 2 LTD., JWC SUPPLY LTD. AND  
GROWTHSTORM INC.

(each an "**Applicant**" and collectively, the "**Applicants**")

**AFFIDAVIT OF PHILIP ARMSTRONG**

I, Philip Armstrong, of the town of Dwight, in the Province of Ontario, MAKE OATH  
AND SAY:

1. I am the lead director of the board of directors of James E. Wagner Cultivation Corporation ("**JWC**"), the parent company of James E. Wagner Cultivation Ltd. ("**JWC Ltd.**"), JWC 1 Ltd. ("**JWC1**"), JWC 2 Ltd. ("**JWC2**"), JWC Supply Ltd. ("**JWCS**") and GrowthStorm Inc. ("**GrowthStorm**", together with JWC, JWC Ltd., JWC1, JWC2 and JWCS, the "**Applicants**"). I am also a member of the Special Committee. As such, I have personal knowledge of the matters deposed to herein. Where I have relied on other sources for information, I have so stated and I believe them to be true. In preparing this affidavit, I have also consulted with the Applicants' senior management team and the Applicants' legal advisors.

2. I swear this Affidavit in support of a motion by the Applicants for: (i) an amended and restated Initial Order (the "**Amended and Restated Initial Order**"); and (ii) an order approving

the Bidding Procedures and the Stalking Horse APA (each as defined below) (the "**Bidding Procedures and Stalking Horse APA Approval Order**").

3. The Amended and Restated Initial Order, among other things:
  - (a) appoints Howard Capital LLC ("**HC**") as chief restructuring officer of the Applicants (in such capacity, the "**CRO**") as required under the DIP Term Sheet (as defined in the First Woodworth Affidavit (as defined below)) and pursuant to the CRO Engagement Letter (as defined below);
  - (b) increases the Administration Charge, the Directors' Charge and the DIP Lender's Charge (each as defined in the First Woodworth Affidavit) to \$600,000, \$1,050,000 and \$4,000,000, respectively;
  - (c) seals the unredacted CRO Engagement Letter (as defined below) filed as Confidential Exhibit "1"; and
  - (d) extends the Stay Period (as defined in paragraph 13 of the Initial Order of the Honourable Justice Hailey dated April 1, 2020 (the "**Initial Order**")) to and including June 26, 2020 (the "**Stay Extension**").
  
4. The Bidding Procedures and Stalking Horse APA Approval Order, among other things:
  - (a) approves the sale and investor solicitation process (the "**SISP**") and the bidding procedure related thereto (the "**Bidding Procedures**") as required under the DIP Term Sheet;

- (b) approves the Asset Purchase Agreement dated as of March 31, 2020 among the Applicants, as Vendors, and Trichome Financial Corp., as purchaser (each as defined in the Stalking Horse APA) (the "**Stalking Horse APA**");
- (c) approves the M&A Engagement Letter and the Addendum (both as defined below);  
and
- (d) approves the Expense Reimbursement, as defined and described in the Stalking Horse APA.

5. If granted, the relief sought in the proposed Amended and Restated Initial Order and Bidding Procedures and Stalking Horse APA Approval Order will allow the Applicants, under the supervision of the Monitor and Special Committee, to commence the SISF with a view to selling the Applicants' business as a going concern and maximizing recovery for the Applicants' stakeholders.

6. All references to monetary amounts in this affidavit are in Canadian dollars unless noted otherwise.

#### **A. INTRODUCTION AND BACKGROUND**

7. On April 1, 2020, the Applicants sought and obtained the Initial Order under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"). Among other things, the Initial Order:

- (a) granted the initial Stay Period in favour of the Applicants until and including April 10, 2020;

- (b) granted the Administration Charge, the Directors' Charge and the DIP Lender's Charge (as defined in the First Woodworth Affidavit);
- (c) approved the DIP Term Sheet; and
- (d) appointed KSV Kofman Inc. as Monitor in these CCAA proceedings (in such capacity, the "**Monitor**").

A copy of the Initial Order is attached hereto as Exhibit "A".

8. Further information with respect to the Applicants and the Applicants' business is addressed and detailed in the Affidavit of Nathan Woodworth sworn March 31, 2020 (the "**First Woodworth Affidavit**"), a copy of which (without exhibits) is attached hereto as Exhibit "B". A copy of the Affidavit of Aiden Nelms sworn March 31, 2020 (the "**Nelms Affidavit**"), which was also sworn in support of the Initial Order, is attached hereto as Exhibit "C".

9. Capitalized terms used herein that are not otherwise defined have the meaning ascribed to them in the First Woodworth Affidavit or the Nelms Affidavit, as applicable.

**(a) Update Following the Entry of the Initial Order**

10. Following the entry of the Initial Order:

- (a) the limited portion of the DIP Loan that was necessary to keep the Applicants operating in the ordinary course (including, for greater certainty, to fund payroll and limited critical expenditures) until the return of this motion, with no fees being earned thereon, was funded;



- (b) the Applicants deployed their communication plans to their employees, customers and suppliers;
- (c) the Applicants and the Monitor finalized the SISP in consultation with the M&A Advisor (as defined below);
- (d) the Applicants, in consultation with the Monitor, negotiated and entered into the CRO Engagement Letter;
- (e) management has successfully worked to stabilize the business; and
- (f) JWC's exchange listing and tier classification was downgraded from the TSX-V to the NEX.

## **B. CHIEF RESTRUCTURING OFFICER AND INDEMNITY CHARGE**

### **(a) Chief Restructuring Officer**

11. On April 5, 2020, the Applicants and HC executed an engagement letter (the "**CRO Engagement Letter**") setting forth the terms of HC's appointment as CRO of the Applicants, including the CRO's duties, responsibilities and compensation, all of which is subject to Court approval. Howard Steinberg ("**Mr. Steinberg**"), HC's managing member and sole owner, will be the primary person providing the Services (as defined below) for HC with the assistance of other consultants and/or advisors retained by HC as necessary (the "**Consultants**").

12. A redacted version of the CRO Engagement Letter is attached hereto as Exhibit "D" with an unredacted copy being filed under seal as Confidential Exhibit "1". The sealing of the unredacted CRO Engagement Letter is proposed as it contains sensitive and personal information

that, if disclosed, could be detrimental to these CCAA proceedings and could impact the CRO's ability to obtain market rates in future engagements.

13. I understand that the proposed CRO has extensive restructuring experience, including certain mandates in the cannabis space. Most recently, the proposed CRO (i) successfully led the restructuring of a company which included the sale of IP and stabilizing an ongoing relationship with a large corporate partner and (ii) successfully led the restructuring of a company wherein its role was to restructure operations to align with the capital structure of the company. Additionally, the proposed CRO has worked with some of the largest financial institutions in the world including the Royal Bank of Canada and Fortress Investment Group. I understand that the Monitor is supportive of the CRO's appointment and is satisfied with the proposed CRO's qualifications and experience.

14. As detailed in the First Woodworth Affidavit, Mr. Steinberg was appointed to the board of directors of JWC as nominee of Trichome pursuant to the Second Trichome Amendment and is a member of the Special Committee established in connection with the Special Committee Resolution. Mr. Steinberg will resign from the board of directors of JWC and the Special Committee contemporaneously with court approval of the CRO Engagement Letter.

15. As set out in the CRO Engagement Letter, the CRO will be responsible for restructuring initiatives focused on improving operations, growing sales and improving profitability (the "**Operational Restructuring**"). Specifically, the CRO will be charged with:

- (a) lending its expertise, services and assistance to the Applicants in connection with the implementation of the Operational Restructuring in the best interests of all the stakeholders of the Applicants;

- (b) developing strategic alternatives for the Operational Restructuring for consideration by the Special Committee and implementing such strategic alternatives as appropriate;
- (c) overseeing the Applicants' legal advisors involved in the CCAA proceedings and dealing with and communicating with the Applicants' lenders, creditors, and other stakeholders in an efficient manner, including, without limitation, monitoring the fees of the various advisors to the Applicants;
- (d) advising the Special Committee with respect to communications between the Applicants and its stakeholders in connection with the Operational Restructuring; and
- (e) assisting with the preparation of all filing, applications or similar materials necessary or desirable, for any regulatory approvals in connection with the CCAA proceedings (collectively, the "**Services**").

16. Under the CRO Engagement Letter, HC will receive a monthly management fee, plus the cost of the Consultants and applicable taxes. The Consultants will serve a necessary purpose in these CCAA proceedings given that Mr. Steinberg is currently located in Florida and, due to the ongoing COVID-19 pandemic, will not be able to travel to Canada. An estimate of the Consultants' monthly cost is provided in the CRO Engagement Letter.

17. In the event that the Applicants consummate a successful transaction in the SISF which provides for the payment of consideration that is equal to, or greater than, the purchase price as set out in the Stalking Horse APA, HC shall receive a success fee (the "**Success Fee**"). Should the

transaction result in all secured creditors of the Applicants being paid in full, a further success fee will be payable to the CRO (the "**Additional Fee**" and together with the Success Fee, the "**CRO Success Fees**"). The CRO Success Fees, if payable, will be paid out of the proceeds of the transaction.

18. I believe the remuneration (the particulars of which are being filed under seal) to be provided to the CRO and the Consultants is reasonable and appropriate in the circumstances. The CRO Success Fees that are payable reflect the value that will be generated to assist the Applicants to conduct their business during these proceedings without operational disruption. Additionally, if value beyond the secured debt is realized, this may also be reflective of the effort of the CRO. Additional details in respect of the CRO's engagement are contained in the CRO Engagement Letter. The Services to be provided under the CRO Engagement Letter are not duplicative of those provided by the other professionals retained in these CCAA proceedings.

19. The Applicants have agreed to provide the CRO, Mr. Steinberg and the Consultants with an indemnity in accordance with Schedule A to the CRO Engagement Letter.

20. Mr. Steinberg is currently on the Board of Directors of Trichome. Accordingly, pursuant to the terms of the CRO Engagement Letter, Mr. Steinberg, given that Trichome is the Stalking Horse Bidder (as defined below), shall recuse himself and not participate in any discussions at Trichome board meetings concerning the Applicants. The CRO's role relates only to the Operational Restructuring, and the CRO will not have any role in the SISP whatsoever.

21. HC consents to its appointment as the CRO of the Applicants.

## C. THE STALKING HORSE APA, THE SISP AND THE BIDDING PROCEDURES

### (a) The Stalking Horse APA

22. As discussed in greater detail in the First Woodworth Affidavit, JWC has been cash flow negative since its inception and has relied on equity and debt financing to fund its operations. As part of a strategy to achieve profitability, the Applicants have been in the process of expanding, with the aim of increasing their cannabis production and processing capacity and lowering their cost of sales. As a result of these efforts, the Applicants expended significant resources to date and require additional funding.

23. In an effort to address their liquidity crisis, the Applicants entered into discussions with Trichome, their first lien lender, to explore options. The parties agreed upon this consensual restructuring under the CCAA, which will see the consummation of a transaction whereby the company will emerge as a going concern with a significantly deleveraged balance sheet.

24. In addition to acting as DIP Lender, Trichome has agreed to act as the stalking horse bidder (in such capacity, the "**Stalking Horse Bidder**") under the Stalking Horse APA in the proposed SISP.

25. Trichome is a specialty finance company focused on providing flexible and creative capital solutions to the global legal cannabis market. I am advised by Sean Zweig of Bennett Jones LLP, the Applicants' insolvency counsel, that Trichome is not a "related person" to the Applicants as that term is contemplated under section 36(5) of the CCAA.

26. Key terms of the Stalking Horse APA are summarized below<sup>1</sup>:

<b>Term</b>	<b>Details</b>
<b><i>Purchase Price</i></b>	The aggregate purchase price payable by the Purchaser to the Monitor on behalf of the Vendors for the Purchased Assets is the sum of: (i) the Monetary Purchase Price, and (ii) the Assumed Obligations. The purchase price will include the Purchaser credit bidding/assuming all obligations owing under its first lien debt and DIP Loan.
<b><i>Structure</i></b>	The Applicants will sell, assign and transfer to Trichome the Purchased Assets free and clear of all Encumbrances (other than Permitted Encumbrances).
<b><i>Expense Reimbursement</i></b>	An expense reimbursement fee up to a maximum of \$100,000 inclusive of HST in the event that the Stalking Horse Bidder is not the Successful Bidder.
<b><i>Conditions</i></b>	<p>The obligations of the Vendors and the Purchaser to complete the Transaction are subject to the following conditions being fulfilled or performed:</p> <ul style="list-style-type: none"> <li>a) the Sales Process Order shall have been granted on terms satisfactory to the Purchaser and Vendors, each acting reasonably, and the Purchaser shall be the Successful Bidder;</li> <li>b) the Approval and Vesting Order shall have been obtained and shall not have been stayed, varied, or vacated;</li> <li>c) if required, the Transition Agreement shall have been approved by the Court, including without limitation an order making the Transition Agreement binding on a trustee in bankruptcy of the Vendors, and/or a receiver of the Vendors' interests in any Non-Assignable Interests;</li> <li>d) no order shall have been issued by a Governmental Authority which restrains or prohibits the completion of the Transaction; and</li> <li>e) no motion, action or proceedings shall be pending by or before a Governmental Authority to restrain or prohibit the completion of the Transaction contemplated by this Agreement.</li> </ul>

<sup>1</sup> Terms in the chart not otherwise defined herein have the meanings ascribed to them in the Stalking Horse APA.

27. I believe the Stalking Horse APA establishes a valuable baseline price that will potentially improve any bids received under the SISP. The Stalking Horse APA also provides significant value by ensuring that there will be a going concern outcome for the Applicants' business.

**(b) The SISP**

28. Pursuant to the proposed SISP, Stoic Advisory Inc. ("**Stoic**"), in its capacity as M&A advisor to the Applicants (in such capacity, the "**M&A Advisor**"), will, under the supervision of the Special Committee and the Monitor, be responsible for the marketing and sale of the Applicants' business that in its reasonable business judgment will better promote the goals of the SISP. I understand that a copy of an engagement letter (the "**M&A Engagement Letter**") between the Applicants and the M&A Advisor that was executed on March 20, 2020, before the commencement of these CCAA proceedings, will be included with the First Report of the Monitor, to be filed (the "**First Report**"). The M&A Engagement Letter did not contemplate that the M&A Advisor's mandate would be conducted in a restructuring process. Accordingly, with the assistance of the Monitor, the Applicants and the M&A Advisor have entered into an addendum to the Engagement Letter (the "**Addendum**") which reflects the terms of the SISP and the offer submitted by the Stalking Horse Bidder. The Addendum also contemplates that the Applicants shall pay the M&A Advisor a one-time work fee in the amount of \$75,000 (the "**Work Fee**") for its services upon the Court's approval of the Successful Bid (as defined in the proposed Bidding Procedures). I understand that the Addendum will also be included with the First Report.

29. I understand that under the Addendum, if a successful transaction wherein the purchasing party is not the Stalking Horse Bidder is consummated, the M&A Advisor is entitled to a success fee, in addition to the Work Fee, as follows:

<b>Amount by which successful transaction exceeds Stalking Horse Agreement</b>	<b>Success Fee %</b>
\$500,000	15%
\$500,000-\$1,000,000	25%
\$1,000,000 - \$1,500,000	30%
\$1,500,000+	10%

30. Using the hypothetical that a transaction is completed for an amount of \$1.5 million more than the Stalking Horse bid, the success fee payable to Stoic would be 3.1%. In my view, that fee is reasonable based on the time and effort that Stoic will invest conducting the SISP and the considerable risk that a transaction superior to the Stalking Horse APA may not be completed.

31. Stoic is a boutique corporate finance advisory firm focused on the global cannabis industry. Stoic offers comprehensive financial advisory services to help its clients achieve their strategic and transactional needs and provides support on mergers and acquisitions, asset acquisitions, divestitures and joint venture transactions. Stoic has extensive experience in the cannabis sector, completing 9 transactions valued at over \$2.7 billion in the space, making it one of the most active and experienced M&A firms in the area.

32. I understand that the M&A Advisor is a minority shareholder of Trichome, holding less than 3% of its shares, as well as an informal advisor to Trichome. I further understand that (i) the M&A Advisor and its principal will not receive any compensation from Trichome for acting as an informal advisor, and (ii) the M&A Advisor's principal is not a director, officer or employee of



Trichome. The M&A Advisor will not be permitted to discuss any aspect of the SISP with Trichome.

33. The M&A Advisor has a significant pre-existing relationship with the Applicants.

34. The M&A Advisor has advised the Special Committee and the Monitor that it believes that the SISP timelines are appropriate, even in the context of the current COVID-19 pandemic. The M&A Advisor has been in contact with several parties which have already expressed an interest in the opportunity, as have certain members of the Special Committee. Additionally, to facilitate diligence to be performed by parties that may have trouble attending the Applicants' premises in person, the Applicants have retained HYDE Advisory & Investments Inc. to prepare a video presentation of the critical aspects of the Applicants' facilities. Key dates for the SISP are outlined in the table below<sup>2</sup>:

Key Dates	SISP Step
April 10, 2020 at 5:00 p.m. (prevailing Eastern Time)	Delivery of Teasers and Sales Packages
April 10, 2020 at 5:00 p.m. (prevailing Eastern Time)	Confidential Data-Site to be established
May 15, 2020 at 5:00 p.m. (prevailing Eastern Time)	Bid Deadline - Due Date for Bids and Deposits
May 19 at 5 p.m. (prevailing Eastern Time)	Monitor to provide the Stalking Horse Bidder and each Qualified Bidder a schedule setting forth either or both (i) the highest or otherwise best fully binding offer for all of the Debtors' Assets and (ii) the highest or otherwise best fully binding offer(s) for all or any combination of the Purchased Assets

<sup>2</sup> Terms in the chart not otherwise defined herein have the meaning ascribed to them in the Bidding Procedures.

Key Dates	SISP Step
May 22 at 10:00 a.m. (prevailing Eastern Time)	Auction (if any)
May 29 at 10:00 a.m. (prevailing Eastern Time) (pending the Court's availability), or as soon as practicable if the Auction is not required	Approval and Sale Order hearing
June 5 at 10:00 a.m. (prevailing Eastern Time) (pending the Court's availability), or as soon as practicable if there is an Auction	Approval and Sale Order hearing

**(c) The Bidding Procedures**

35. Pursuant to the proposed Bidding Procedures and Stalking Horse APA Approval Order, the Applicants are seeking approval of the Bidding Procedures which will govern the solicitation of higher and better offers for the Applicants' business in these CCAA proceedings. The Monitor has been involved in developing the Bidding Procedures. A copy of the proposed Bidding Procedures is attached hereto as Exhibit "E".

36. The Bidding Procedures set forth the process by which the M&A Advisor intends to conduct the SISP, under the supervision of the Special Committee and the Monitor, for the sale of all or substantially all of the Applicants' business including, but not limited to, conducting the solicitation process. The Monitor will conduct the Auction in accordance with the Auction Procedures (both as defined in the Bidding Procedures), if necessary. The Stalking Horse APA will serve as the stalking horse bid in the SISP and shall be subject to higher or otherwise better offers received as part of the SISP.

37. While the Applicants are seeking bids to purchase some or all of their assets, the Applicants will also consider a bid that contemplates a plan of compromise or arrangement under the CCAA for the Applicants (a "**Plan Bid**") provided that such Plan Bid would be a Qualified Bid (as defined in the Bidding Procedures) subject to certain terms further outlined in the Bidding Procedures.

38. A summary of the salient terms of the proposed Bidding Procedures are summarized below<sup>3</sup>:

Subject	Details
<i><b>Bid Deadline</b></i>	A Qualified Bidder that desires to make a bid shall deliver written copies of its bid and the Required Bid Terms and Materials to the Monitor no later than 5:00 p.m. (prevailing Eastern time) on May 15, 2020.
<i><b>Qualified Bidder</b></i>	<p>A bidder who submits a bid in substantially the same form as the Stalking Horse Bid and includes (other than the Stalking Horse Bid), the following:</p> <p>(i) A base cash purchase price equal to or greater than CAD\$11.95 million, being the estimated amount payable under the Stalking Horse Bid (\$7.6 million), inclusive of the Closing Cash Payment, plus the amount of the DIP Facility (estimated to be approximately \$4 million) plus the Expense Reimbursement (\$100,000) and \$250,000 bid increment (collectively, the "<b>Base Purchase Price</b>"); A provision stating that the bidder's offer is irrevocably open for acceptance until the earlier of (i) the date that the Vendors' Assets have been sold pursuant to the closing of the sale approved by the Court; and (ii) the Outside Date;</p> <p>(ii) An executed copy of a proposed purchase agreement and a redline of the bidder's proposed purchase agreement reflecting variations from the Stalking Horse Bid (the "<b>Marked Agreement</b>"); and</p> <p>(iii) A cash deposit in the amount of not less than fifteen per cent (15%) of the amount of the Base Purchase Price, in the form of a wire transfer, certified cheque or such other form acceptable to the Monitor (the "<b>Bid Deposit</b>"), which shall be held in the trust account of the Monitor's solicitors (the "<b>Escrow Account</b>"). Funds</p>

<sup>3</sup> Terms in the chart not otherwise defined herein have the meanings ascribed to them in the proposed Bidding Procedures.

<b>Subject</b>	<b>Details</b>
	shall be disbursed from the Escrow Account only as follows: (i) if the Qualified Bidder is the Successful Bidder, its Bid Deposit will be applied without interest on Closing to the purchase price payable by it under its bid on the closing thereof; and (ii) if the Qualified Bidder is not the Successful Bidder, then its Bid Deposit shall be returned without interest to it forthwith following the expiration of its offer (which in the case of the Back-Up Bidder shall be following closing of the sale to the Successful Bidder).
<b><i>Qualified Bids</i></b>	Any bid meeting Qualified Bidder criteria that is received by the Monitor before the Bid Deadline is a qualified bid.
<b><i>Auction</i></b>	If one or more Qualified Bids (other than that submitted by the Stalking Horse Bidder) have been received by the Monitor on or before the Bid Deadline, the Monitor shall advise all Qualified Bidders of the Lead Bid and invite all Qualified Bidders (including the Stalking Horse Bidder) to attend the Auction to be conducted by the Monitor, in consultation with the Special Committee, in accordance with the Auction Procedures
<b><i>Approval and Vesting Order</i></b>	Subject to Court availability and the terms herein (for greater certainty the terms in the Bidding Procedures), within ten (10) business days following the Auction the Vendors shall bring a motion seeking the granting of an order by the Court authorizing the Vendors to proceed with the Sale of the Vendors' Assets to the Qualified Bidder making the Successful Bid (such order, as approved, the " <b>Approval and Vesting Order</b> ").

39. I believe, based on the information provided by the Monitor and the M&A Advisor, that the SISP and Bidding Procedures will result in a fair and equitable process that will fairly canvass the market in order to maximize value for the Applicants' assets resulting in the best outcome for the Applicants' stakeholders.

**D. THE ADMINISTRATION CHARGE, THE DIRECTORS' CHARGE AND THE DIP LENDER'S CHARGE**

**(a) The Administration Charge**

40. The Initial Order granted the Administration Charge as security for the fees and disbursements (incurred at their standard rates and charges) of the Monitor, along with its counsel and the Applicants' counsel relating to services rendered in respect of the Applicants up to a maximum of \$500,000. The Administration Charge has first priority over all other charges.

41. After further consideration, and in light of the need to provide the CRO and the Consultants with security for their fees and disbursements relating to services rendered in respect of these CCAA proceedings and their duties under the CRO Engagement Letter, the Applicants, in consultation with the Monitor, have determined that the quantum of the Administration Charge ought to be increased to a maximum of \$600,000. Trichome, the first-lien lender and the DIP Lender, is supportive of the increase to the quantum of the Administration Charge.

**(b) The Directors' Charge**

42. As is customary in CCAA proceedings, the Initial Order also granted a Directors' Charge in favour of the Directors and Officers up to a maximum of \$450,000, which reflected an estimation of potential liabilities up to the date of the Comeback Hearing. While the Applicants do have D&O Insurance, the policy has various exceptions, exclusions and carve-outs and may not provide sufficient coverage against the potential liability that the Directors and Officers could incur in connection with these CCAA proceedings. The Amended and Restated Order contemplates increasing the quantum of the Directors' Charge to a maximum of \$1,050,000.

43. The Applicants believe that the increased quantum of the Directors' Charge is reasonable in the circumstances. It is calculated based on an estimation of the maximum potential liability the Directors and Officers could have during these CCAA proceedings. I understand that the Monitor and the DIP Lender are supportive of the Directors' Charge and its increased quantum. The Directors' Charge is only in respect of prospective obligations, except for the Applicants' vacation pay liability (approximately \$110,000). The other items covered by the Directors' Charge (payroll and excise taxes) are expected to be paid in the normal course of operations.

**(c) The DIP Lender's Charge**

44. Under the terms of the Initial Order, the amount of the DIP Loan to be funded prior to the Comeback Hearing was limited to the amount necessary to continue ordinary course operations during the Stay Period, with no fees accruing to the DIP Lender, prior to the Comeback Hearing. As such, the DIP Lender's Charge sought in connection with the Initial Order was only for the amount to be accrued in the 10-day period preceding the Comeback Hearing - \$800,000.

45. In light of the go-forward funding needs of the Applicants to continue to operate in the ordinary course, the Applicants are now seeking to increase the quantum of the DIP Lender's Charge to a maximum of \$4,000,000, the maximum amount available to the Applicants under the DIP Loan.

46. Additional draws under the DIP Loan are conditional on the increase to the DIP Lender's Charge being granted. Should the Amended and Restated Initial Order not be granted and the DIP Lender's Charge not increased, the Applicants, and their stakeholders, stand to suffer material prejudice including, but not limited to, the cessation of the Applicants' business.

**E. EXTENSION OF THE STAY PERIOD**

47. Under the Initial Order, the Court granted the initial Stay Period until and including April 10, 2020. Pursuant to the Amended and Restated Initial Order, the Applicants are seeking an extension of the Stay Period until and including June 26, 2020.

48. It is necessary and in the best interests of the Applicants and their stakeholders that the Stay Period be extended until June 26, 2020, as it will allow the Applicants, with the assistance of the Monitor and the M&A Advisor, to complete the SISP and return to court for approval of the Stalking Horse APA or other Successful Bid (as defined in the proposed Bidding Procedures) which will ultimately preserve and maximize the value of the Applicants' business for their stakeholders.

49. As was demonstrated in the Cash Flow Forecast attached to the Proposed Monitor's Report, the Applicants are forecast to have sufficient liquidity to fund their obligations and the costs of these CCAA proceedings through the end of the extended Stay Period. The Applicants expect to return to Court in advance of the expiry of the Stay Extension to seek additional relief in connection with a transaction in respect of the Stalking Horse APA or other Successful Bid, as the case may be.

**F. CONCLUSION**


50. Since the granting of the Initial Order, the Applicants have acted and continue to act in good faith and with due diligence to complete a restructuring under the CCAA and stabilize their business and operations. The Applicants have also provided information to, and answered inquiries from, their various stakeholders and have contacted their critical vendors and suppliers.

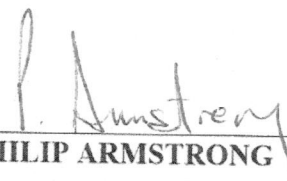
51. The Applicants continue to carry on their business in accordance with the CCAA and the Initial Order. I do not believe that any of the Applicants' stakeholders will suffer material prejudice if the Amended and Restated Initial Order and the Bidding Procedures and Stalking Horse APA Approval Order are granted as requested. I also understand that the Monitor and the DIP Lender are supportive of the relief sought in connection with the Amended and Restated Initial Order and the Bidding Procedures and Stalking Horse APA Approval Order.

52. I swear this affidavit in support of the Applicants' motion in favour of the Amended and Restated Initial Order and the Bidding Procedures and Stalking Horse APA Approval Order and for no other or improper purpose.

**SWORN BEFORE ME** at the Town of )  
Collingwood, in the Province of Ontario, on )

April 6, 2020. )

  
\_\_\_\_\_  
Commissioner for Taking Affidavits )  
(or as may be) )  
Aidan Nelms )

  
\_\_\_\_\_  
PHILIP ARMSTRONG



*This is Exhibit*.....“A”.....*referred to in the*

*affidavit of* Philip Armstrong

*sworn before me, this* 6<sup>th</sup>

*day of* April, 2020

**A COMMISSIONER FOR TAKING AFFIDAVITS**

Aiden Nelms

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE MR.

)

WEDNESDAY, THE 1<sup>st</sup>

JUSTICE HAINEY

)

DAY OF APRIL, 2020

)



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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF JAMES E. WAGNER CULTIVATION  
CORPORATION, JAMES E. WAGNER CULTIVATION LTD.,  
JWC 1 LTD., JWC 2 LTD., JWC SUPPLY LTD. AND  
GROWTHSTORM INC.

(collectively, the "**Applicants**" and each an "**Applicant**")

**INITIAL ORDER**

**THIS APPLICATION**, made by the Applicants, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") was heard this day via telephonic conference.

**ON READING** the affidavits of Nathan Woodworth sworn March 31, 2020 and Aiden Nelms sworn March 31, 2020 and the Exhibits to each affidavit thereto, and on being advised that Trichome Financial Corp., Lind Global Macro Fund, LP and the other secured creditors of the Applicants who are likely to be affected by the charges created herein were given notice, and on hearing the submissions of counsel for the Applicants, KSV Kofman Inc. ("**KSV**"), the DIP Lender (as defined below) and on reading the consent of KSV to act as the Monitor,

## SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Application and the Application Record is hereby abridged and validated so that this Application is properly returnable today and hereby dispenses with further service thereof.

## APPLICATION

2. **THIS COURT ORDERS AND DECLARES** that the Applicants are companies to which the CCAA applies.

## PLAN OF ARRANGEMENT

3. **THIS COURT ORDERS** that each Applicant 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

3. **THIS COURT ORDERS** that the Applicants shall remain in possession and control of their respective current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "**Property**"). Subject to further Order of this Court, the Applicants shall continue to carry on business in a manner consistent with the preservation of their business (the "**Business**") and Property. The Applicants are 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 the carrying out of the terms of this Order.

4. **THIS COURT ORDERS** that the Applicants shall be entitled to continue to utilize the central cash management system currently in place or, with the consent of the Monitor, replace it with another substantially similar central cash management system (the "**Cash Management System**") and that any present or future bank providing the Cash Management System shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any



transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the Applicants of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as hereinafter defined) other than the Applicants, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as provider of the Cash Management System, an unaffected creditor under the Plan with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.

5. **THIS COURT ORDERS** that, except as specifically permitted herein, the Applicants 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 any of the Applicants to any of their creditors as of this date unless such payments are contemplated under the Commitment Letter and the Definitive Documents (each as defined below) and consented to by the Monitor; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of their Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

6. **THIS COURT ORDERS** that the Applicants shall be entitled but not required to pay the following expenses whether incurred prior to or after this Order:

- (a) all outstanding and future wages, salaries, employee and pension benefits, vacation pay and employee expenses payable on or after the date of this Order, in each case incurred in the ordinary course of Business and consistent with existing compensation policies and arrangements; and
- (b) the fees and disbursements of any Assistants retained or employed by the Applicants in respect of these proceedings, at their standard rates and charges.

7. **THIS COURT ORDERS** that, except as otherwise provided to the contrary herein, the Applicants shall be entitled but not required to pay all reasonable expenses incurred by the Applicants in carrying on the Business in the ordinary course after this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

- (a) all expenses and capital expenditures reasonably 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; and
- (b) payment for goods or services actually supplied to the Applicants following the date of this Order.

8. **THIS COURT ORDERS** that the Applicants shall 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 employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;
- (b) all goods and services or other applicable sales taxes (collectively, "**Sales Taxes**") required to be remitted by the Applicants in connection with the sale of goods and services by the Applicants, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order, 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 realty, municipal business 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 and which are attributable to or in respect of the carrying on of the Business by the Applicants.

9. **THIS COURT ORDERS** that until a real property lease is disclaimed in accordance with the CCAA, the Applicants 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 to the landlord under the lease) or as otherwise



may be negotiated between the Applicants and the landlord from time to time ("**Rent**"), for the period commencing from and including the date of this Order, twice-monthly in equal payments on the first and fifteenth day of each 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 date of this Order shall also be paid.

## **RESTRUCTURING**

10. **THIS COURT ORDERS** that the Applicants shall, subject to such requirements as are imposed by the CCAA and such covenants as may be contained in the Definitive Documents (as defined below), have the right to:

- (a) permanently or temporarily cease, downsize or shut down any of its business or operations, and to dispose of redundant or non-material assets not exceeding \$100,000 in any one transaction or \$250,000 in the aggregate;
- (b) terminate the employment of such of its employees or temporarily lay off such of its employees as it deems appropriate; and
- (c) pursue all avenues of refinancing of their Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing,

each of the foregoing to permit the Applicants to proceed with an orderly restructuring of the Business .

11. **THIS COURT ORDERS** that the Applicants shall provide each of the relevant landlords with notice of the Applicants' 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 Applicants' 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, such landlord and the Applicants, or by further Order of this Court upon application by the Applicants on at least two (2) days notice to such landlord and any such secured creditors. If an Applicant disclaims the lease governing such leased premises in accordance with Section 32 of the CCAA, it shall not be required to pay Rent under such lease

pending resolution of any such dispute (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 applicable Applicant's claim to the fixtures in dispute.

12. **THIS COURT ORDERS** that if a notice of disclaimer is delivered pursuant to Section 32 of the CCAA, then (a) during the notice 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 Applicants and the Monitor 24 hours' prior written notice, and (b) at the effective time of the disclaimer, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the Applicants in respect of such lease or leased premises, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

#### **NO PROCEEDINGS AGAINST THE APPLICANTS OR THE PROPERTY**

13. **THIS COURT ORDERS** that until and including April 10, 2020, or such later date as this Court may order (the "**Stay Period**"), no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**") shall be commenced or continued against or in respect of the Applicants or the Monitor or their respective employees and representatives acting in such capacities, or affecting the Business or the Property, except with the written consent of the Applicants and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of any of the Applicants or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

#### **NO EXERCISE OF RIGHTS OR REMEDIES**

14. **THIS COURT ORDERS** that 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 Applicants or the Monitor or their respective employees and representatives acting in such capacities, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the Applicants and the Monitor, or leave of this Court, provided that nothing in this Order shall: (i) empower the Applicants to carry on any business which the



Applicants are not lawfully entitled to carry on, (ii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

#### **NO INTERFERENCE WITH RIGHTS**

15. **THIS COURT ORDERS** that 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 any of the Applicants, except with the written consent of the applicable Applicant and the Monitor, or leave of this Court.

#### **CONTINUATION OF SERVICES**

16. **THIS COURT ORDERS** that during the Stay Period, all Persons having oral or written agreements with any of the Applicants or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, ERP software communication and other data services, centralized banking services, security services, payroll services, insurance, transportation services, utility or other services to the Business or any of the Applicants, 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 any of the Applicants, and that each of the Applicants shall be entitled to the continued use of its 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 date of this Order are paid by the applicable Applicant in accordance with normal payment practices of the applicable Applicant or such other practices as may be agreed upon by the supplier or service provider and each of the applicable Applicant and the Monitor, or as may be ordered by this Court.

#### **NON-DEROGATION OF RIGHTS**

17. **THIS COURT ORDERS** that, notwithstanding anything else 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 date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-



advance any monies or otherwise extend any credit to the Applicants. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

### **PROCEEDINGS AGAINST DIRECTORS AND OFFICERS**

18. **THIS COURT ORDERS** that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of any of the Applicants with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of any of the Applicants 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 applicable Applicant, if one is filed, is sanctioned by this Court or is refused by the creditors of the applicable Applicant or this Court.

### **DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE**

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

20. **THIS COURT ORDERS** that the directors and officers of the Applicants 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 \$450,000.00, as security for the indemnity provided in paragraph 19 of this Order. The Directors' Charge shall have the priority set out in paragraphs 39 and 41 herein.

21. **THIS COURT ORDERS** that, 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 Applicants' 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 19 of this Order.

## APPOINTMENT OF MONITOR

22. **THIS COURT ORDERS** that KSV is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Applicants with the powers and obligations set out in the CCAA or set forth herein and that the Applicants and their shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by any of the Applicants 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.

23. **THIS COURT ORDERS** that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- (a) monitor the Applicants' receipts and disbursements;
- (b) 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;
- (c) assist the Applicants, to the extent required by the Applicants, in their dissemination, to the DIP Lender and its counsel on a weekly basis of financial and other information as agreed to between the Applicants and the DIP Lender which may be used in these proceedings including reporting on a basis to be agreed with the DIP Lender;
- (d) advise the Applicants in their preparation of the Applicants' cash flow statements and reporting required by the DIP Lender, which information shall be reviewed with the Monitor and delivered to the DIP Lender and its counsel and financial advisor on a periodic basis, but not less than weekly, or as otherwise agreed to by the DIP Lender;
- (e) advise the Applicants in their development of the Plan and any amendments to the Plan;



- (f) assist the Applicants, to the extent required by the Applicants, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;
- (g) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Applicants, to the extent that is necessary to adequately assess the Applicants' business and financial affairs or to perform its duties arising under this Order;
- (h) 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; and
- (i) perform such other duties as are required by this Order or by this Court from time to time.

24. **THIS COURT ORDERS** that the Monitor shall not take possession of the Property or be deemed to take possession of Property, pursuant to any provision of any federal, provincial or other law respecting, among other things, the manufacturing, possession, processing and distribution of cannabis or cannabis products including, without limitation, under the *Cannabis Act* S.C. 2018, c.16, the *Controlled Drugs and Substances Act*, S.C. 1996, c. 19, the *Excise Tax Act*, the *Ontario Cannabis Control Act*, S.O. 2017, c. 26, Sched. 1 or other such applicable federal or provincial legislation (collectively, the "**Cannabis Legislation**"), and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof, within the meaning of any Cannabis Legislation, or otherwise, and nothing in this Order shall be construed as resulting in the Monitor being an employer or successor employer within the meaning of any statute, regulation or rule of law or equity, for any purpose whatsoever.

25. **THIS COURT ORDERS** that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law 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 *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance 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.

26. **THIS COURT ORDERS** that, in addition to the rights and protection afforded to the DIP Lender under this Order or at law, the DIP Lender shall incur no liability or obligation as a result of carrying out of the provisions of this Order, including under any Cannabis Legislation, save and except for any gross negligence or willful misconduct on its part.

27. **THIS COURT ORDERS** that up to and including April 10, 2020, the Applicants shall not make any expenditures or disbursements without the prior knowledge or consent of the Monitor.

28. **THIS COURT ORDERS** that the Monitor shall provide any creditor of the Applicants and the DIP Lender with information provided by the Applicants 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 Applicants is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicants may agree.

29. **THIS COURT ORDERS** that, in addition to the rights and protections afforded to the Monitor under the CCAA or as an officer of this Court, neither the Monitor nor its respective employees and representatives acting in such capacities, shall incur any liability or obligation as a result of the appointment of the Monitor or the carrying out by it of the provisions of this Order, including under any Cannabis Legislation, save and except for any gross negligence or



willful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

30. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor, and counsel to the Applicants shall be paid their reasonable fees and disbursements related to these proceedings, in each case at their standard rates and charges, whether incurred prior to, on or subsequent to, the date of this Order by the Applicants as part of the costs of these proceedings. The Applicants are hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor, and counsel for the Applicants on a weekly basis.

31. **THIS COURT ORDERS** that 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 Commercial List of the Ontario Superior Court of Justice.

32. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor, and the Applicants' counsel 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 \$500,000.00 as security for their professional fees and disbursements incurred at their standard rates and charges, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 39 and 41 hereof.

#### **DIP FINANCING**

33. **THIS COURT ORDERS** that the Applicants are hereby authorized and empowered to obtain and borrow under a credit facility (the "**DIP Loan**") from Trichome Financial Corp. (in such capacity, the "**DIP Lender**") in order to finance the Applicants' working capital requirements and other general corporate purposes and capital expenditures, provided that borrowings under such credit facility shall not exceed \$4,000,000.00 unless permitted by further Order of this Court.

34. **THIS COURT ORDERS THAT** such credit facility shall be on the terms and subject to the conditions set forth in the commitment letter between the Applicants and the DIP Lender dated as of March 31, 2020 (the "**Commitment Letter**"), filed.

35. **THIS COURT ORDERS** that the Applicants are hereby authorized and empowered to execute and deliver such credit agreements, mortgages, charges, hypothecs and security documents, guarantees and other definitive documents (collectively, the "**Definitive Documents**"), as are contemplated by the Commitment Letter or as may be reasonably required by the DIP Lender pursuant to the terms thereof, and the Applicants are hereby authorized and directed to pay and perform all of their indebtedness, interest, fees, liabilities and obligations to the DIP Lender under and pursuant to the Commitment Letter and the Definitive Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

36. **THIS COURT ORDERS** that the DIP Lender shall be entitled to the benefit of and is hereby granted a charge (the "**DIP Lender's Charge**") on the Property, which DIP Lender's Charge shall not secure an obligation that exists before this Order is made. The DIP Lender's Charge shall have the priority set out in paragraphs 39 and 41 hereof.

37. **THIS COURT ORDERS** that, notwithstanding any other provision of this Order:

- (a) the DIP Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP Lender's Charge or any of the Definitive Documents;
- (b) upon the occurrence of an event of default under the Definitive Documents or the DIP Lender's Charge, the DIP Lender, upon 7 days' notice to the Applicants and the Monitor, may exercise any and all of its rights and remedies against the Applicants or the Property under or pursuant to the Commitment Letter, Definitive Documents and the DIP Lender's Charge, including without limitation, to cease making advances to the Applicants and set off and/or consolidate any amounts owing by the DIP Lender to the Applicants against the obligations of the Applicants to the DIP Lender under the Commitment Letter, the Definitive Documents or the DIP Lender's Charge, 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 Applicants and for the appointment of a trustee in bankruptcy of the Applicants; and



- (c) the foregoing rights and remedies of the DIP Lender shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Applicants or the Property.

38. **THIS COURT ORDERS AND DECLARES** that the DIP Lender shall be treated as unaffected in any plan of arrangement or compromise filed by the Applicants under the CCAA, or any proposal filed by the Applicants under the *Bankruptcy and Insolvency Act* of Canada (the "BIA"), with respect to any advances made under the Definitive Documents.

#### **VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER**

39. **THIS COURT ORDERS** that the priorities of the Directors' Charge, the Administration Charge and the DIP Lender's Charge, as among them, shall be as follows:

First - Administration Charge (to the maximum amount of \$500,000.00);

Second - Directors' Charge (to the maximum amount of \$450,000.00); and

Third - DIP Lender's Charge (to the maximum amount of \$800,000.00).

40. **THIS COURT ORDERS** that the filing, registration or perfection of the Administration Charge, the DIP Lender's Charge, or the Directors' Charge (collectively, the "**Charges**") shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

41. **THIS COURT ORDERS** that each of the Charges shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, "**Encumbrances**") in favour of any Person.

42. **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicants shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Charges, unless the Applicants

also obtain the prior written consent of the Monitor, the DIP Lender and the beneficiaries of the Charges, or further Order of this Court.

43. **THIS COURT ORDERS** that the Charges, the Commitment Letter, and the Definitive Documents 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 DIP Lender thereunder 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 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, sublease, offer to lease or other agreement (collectively, an "**Agreement**") which binds the Applicants, 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 Commitment Letter or the Definitive Documents shall create or be deemed to constitute a breach by the Applicants of any Agreement to which any of them 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 Applicants entering into the Commitment Letter, the creation of the Charges, or the execution, delivery or performance of the Definitive Documents; and
- (c) the payments made by the Applicants pursuant to this Order, the Commitment Letter 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.

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



## RELIEF FROM REPORTING OBLIGATIONS

45. **THIS COURT ORDERS** that none of the directors, officers, employees, or other representatives of the Applicants, nor the Monitor (and its directors, officers, employees or representatives) shall have any personal liability for failure of the Applicants to file annual information forms, annual and quarterly management discussion and analysis, annual and quarterly financial statements (including related audits, reports and certifications) for the Stay Period, which period may be extended pursuant to further Order of the Court.

## SERVICE AND NOTICE

46. **THIS COURT ORDERS** that the Monitor shall (i) without delay, publish in The Globe and Mail (National Edition) a notice containing the information prescribed under the CCAA, (ii) within five days after the date of this Order, (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, or cause to be sent, in the prescribed manner, a notice to every known creditor who has a claim against any of the Applicants of more than \$1,000, and (C) 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.

47. **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the "Protocol") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL – <https://www.ksvadvisory.com/insolvency-cases/case/james-e-wagner-cultivation-corporation> (the "Website").

48. **THIS COURT ORDERS** that the Applicants and the Monitor and their respective counsel are at liberty to serve or distribute this Order, any other materials and orders as may be

reasonably required in these proceedings, including any notices, or other correspondence, by forwarding true copies thereof by electronic message to the Applicants' creditors or other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or judicial obligation, and notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations*, Reg. 81000-2-175 (SOR/DORS).

#### **GENERAL**

49. **THIS COURT ORDERS** that each of the Applicants or the Monitor may from time to time apply to this Court to amend, vary or supplement this Order or for advice and directions in the discharge of its powers and duties under this Order or in the interpretation or application of this Order.

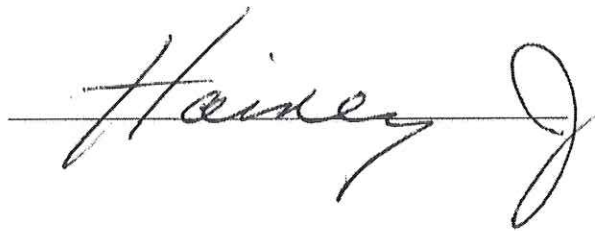
50. **THIS COURT ORDERS** that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Applicants, the Business or the Property.

51. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Applicants, the Monitor and their respective 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 Applicants 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 Applicants and the Monitor and their respective agents in carrying out the terms of this Order.

52. **THIS COURT ORDERS** that each of the Applicants 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 that 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.

53. **THIS COURT ORDERS** that any interested party (including the Applicants and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days notice 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.

54. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Toronto time on the date of this Order.

A handwritten signature in black ink, appearing to read "Heiney", written over a horizontal line. The signature is stylized and extends to the right with a large loop.

ENTERED AT / INSCRIT À TORONTO  
ON / BOOK NO:  
LE / DANS LE REGISTRE NO:

APR 01 2020

PER / PAR: RW



**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF JAMES E. WAGNER CULTIVATION CORPORATION, JAMES E. WAGNER CULTIVATION LTD., JWC 1 LTD., JWC 2 LTD., JWC 2 LTD., JWC SUPPLY LTD AND GROWTHSTORM INC.**

Court File No. CV-20-00639000-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

Proceedings commenced in Toronto

**INITIAL ORDER**

**BENNETT JONES LLP**  
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M5X 1A4  
**Sean Zweig (LSO# 573071)**  
**Mike Shakra (LSO# 64604K)**  
**Aiden Nelms (LSO# 74170S)**

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Lawyers for the Applicants

*This is Exhibit*..... **“B”** ..... *referred to in the*  
*affidavit of* Philip Armstrong .....  
*sworn before me, this* 6<sup>th</sup> .....  
*day of* April, 2020 .....

.....  
**A COMMISSIONER FOR TAKING AFFIDAVITS**  
Aiden Nelms

Court File No.

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**COMMERCIAL LIST**

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF JAMES E. WAGNER CULTIVATION  
CORPORATION, JAMES E. WAGNER CULTIVATION LTD.,  
JWC 1 LTD., JWC 2 LTD., JWC SUPPLY LTD. AND  
GROWTHSTORM INC.

(each an "**Applicant**" and collectively, the "**Applicants**")

**AFFIDAVIT OF NATHAN WOODWORTH**

I, Nathan Woodworth, of the city of Kitchener, in the Province of Ontario, MAKE OATH  
AND SAY:

1. This Affidavit is made in support of an urgent Application by James E. Wagner Cultivation Corporation ("**JWC**"), James E. Wagner Cultivation Ltd. ("**JWC Ltd.**"), JWC 1 Ltd. ("**JWC1**"), JWC 2 Ltd. ("**JWC2**"), JWC Supply Ltd. ("**JWCS**") and GrowthStorm Inc. ("**GrowthStorm**", together with JWC, JWC Ltd., JWC1, JWC2 and JWCS, the "**Applicants**") for an Order (the "**Initial Order**") and relief under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**").

2. I am the President and Chief Executive Officer of the Applicants and have served in this role since 2018. In my current role I have oversight of the Applicants' day-to-day operations. As such, I have personal knowledge of the matters deposed to herein. Where I have relied on other sources for information, I have so stated and I believe them to be true. In preparing this affidavit,

I have also consulted with the Applicants' senior management team and the Applicants' legal advisors.

3. All references to monetary amounts in this affidavit are in Canadian dollars unless noted otherwise.

#### A. INTRODUCTION AND BACKGROUND

4. The Applicants are a vertically integrated premium cannabis company and brand, which began as a collective of patients and growers under the *Medical Marijuana Access Regulations* ("*MMAR*"), focused on producing clean and consistent cannabis using their advanced and proprietary aeroponic platform.

5. The corporation that is now JWC was incorporated under the *Ontario Business Corporation Act*, R.S.O. 1990, c. B. 16 (the "*OBCA*"), in March 2017, as AIM1 Ventures Inc. ("*AIM1*") and was classified as a capital pool company. In September 2017, AIM1 completed its initial public offering and became a reporting issuer in the provinces of Ontario, British Columbia and Alberta and its shares were admitted for trading on the TSX Venture Exchange ("*TSXV*").

6. On June 7, 2018, AIM1 changed its name to the James E. Wagner Cultivation Corporation. The common shares of JWC began trading on the TSXV on June 11, 2018, under the trading symbol "JWCA". The common shares of JWC are also listed on the OTC Market Group ("*OTCQX*") under the symbol "JWCAF". JWC is a reporting issuer in the provinces of Ontario, Alberta and British Columbia.

7. JWC Ltd. employs approximately 160 people who work at (i) the office located at 860 Trillium Drive, Kitchener, Ontario (the "**860 Office**"), (ii) the 15,000 sq. ft. facility located at 855

Trillium Drive, Unit B, Kitchener, Ontario (the "**Trillium Facility**"), and/or (iii) the 345,000 sq. ft. facility located at 530 Manitou Drive, Kitchener, Ontario (the "**Manitou Facility**"). JWC Ltd. entered into separate lease agreements for the Trillium Facility and the Manitou Facility on December 13, 2013, and February 1, 2018, respectively. Approximately 100,000 sq. ft. of the Manitou Facility is currently being used as a growing facility utilizing the Applicants proprietary aeroponic platform. The Manitou Facility also serves as the head office for the Applicants.

8. JWC has been cash flow negative since its inception and has relied on equity and debt financing for funding. As part of a strategy to achieve profitability, the Applicants are in the process of expanding, with the aim of increasing their cannabis production and processing capacity and lowering their cost of goods sold. However, in connection with this expansion, the Applicants have expended significant resources to date and require additional funding.

9. The Applicants currently have very limited cash on hand and are generally unable to meet their obligations as they become due, the most pressing of which is their upcoming payroll on April 1, 2020.

10. To address their liquidity crisis, the Applicants entered into discussions with their first lien lender, Trichome (as defined below), to implement a consensual restructuring under the CCAA that would see the Applicants' business emerge as a going concern with a deleveraged balance sheet. Subject to certain conditions, Trichome has agreed to provide additional financing through a debtor-in-possession loan facility (the "**DIP Loan**") and act as the stalking-horse bidder under a stalking-horse asset purchase agreement (the "**Stalking Horse APA**") in a court-approved sale process (the "**SISP**"). However, it should be noted that no relief is being sought at this time with



respect to the Stalking Horse APA or the SISP. Relief in respect of those matters is intended to be sought at the Comeback Hearing (as defined below).

11. The proposed process will be for the benefit of all stakeholders including the Employees (as defined below), the Applicants' customers, suppliers and contracting parties and Health Canada.

12. Given their current financial circumstances, including the fact that Trichome has made demand on the Applicants and the pending payroll due on April 1, 2020, the Applicants require an urgent stay of proceedings (the "**Stay of Proceedings**") and related relief under the CCAA in order to continue operating in the ordinary course of business.

13. If the Initial Order is granted, the Applicants intend to return to Court (the "**Comeback Hearing**") within ten (10) days to seek this Court's approval of an amended and restated Initial Order (the "**Amended and Restated Initial Order**"), which, among other things, would:

- (a) Increase the amount of the Directors' Charge (as defined and described below);
- (b) approve the SISP;
- (c) approve the Stalking Horse APA for purposes of acting as the stalking horse bidder;
- (d) appoint Howard Steinberg as chief restructuring officer as required under the DIP Term Sheet; and
- (e) extend the Stay of Proceedings.

## **B. CORPORATE STRUCTURE**

14. JWC is incorporated under the *OBCA* with its registered head office located in Kitchener, Ontario. JWC is the ultimate parent company of the Applicants and is listed on the TSXV and the OTCQX. The other Applicants are direct, wholly-owned subsidiaries of JWC. A chart showing the organizational structure of the Applicants is attached hereto as Exhibit "A".

15. JWC has two wholly-owned subsidiaries, JWC Ltd. and GrowthStorm.

16. JWC Ltd. is the operating company and holds the licences issued by Health Canada that are required to grow, process and sell cannabis in Canada for the medical and recreational/adult-use markets. JWC Ltd. was incorporated under the *OBCA* on October 1, 2013 and has three wholly-owned subsidiaries: JWC1; JWC2; and JWCS, all of which were incorporated under the *OBCA* on November 29, 2017. As of the date of this Affidavit, none of these subsidiaries have, or have ever had, active business operations.

17. GrowthStorm was incorporated under the *OBCA* on November 29, 2017. As of the date of this Affidavit, GrowthStorm has no, and never has had any, active business operations.

18. JWC1, JWC2, JWCS and GrowthStorm are being included in these CCAA proceedings, despite their inactive status, given that they have guaranteed certain obligations of JWC, including the Trichome first lien debt upon which demand has been made.

## **C. THE BUSINESS OF THE APPLICANTS**

### **(a) Cannabis Industry in Canada**

19. The cannabis industry has, and continues to, rapidly evolve in Canada. Licences to produce, cultivate, and/or handle cannabis are currently regulated under the *Cannabis Act*, S.C. 2018, c. 16

(the "*Cannabis Act*"), and the *Cannabis Regulations*. In 2012, the Canadian Government announced that the *MMAR* program would be replaced with the *Marijuana for Medical Purposes Regulations* ("*MMPR*"). Under the *MMPR*, rather than licensing thousands of home growers, Health Canada licensed larger scale producers, creating and regulating a medical cannabis industry. Patients would submit their prescription to a licensed producer, select the medicine of their choice, and receive it through the mail.

20. In late 2016, the Canadian Government announced that the *MMPR* would be replaced with the *Access to Cannabis for Medical Purposes Regulations* (the "*ACMPR*"). The *ACMPR* was enacted as legislation to facilitate the development of an industry of commercial entities engaged in high volume production of medical cannabis, while also allowing individual home grow licences.

21. On October 17, 2018, the non-medical use of cannabis was legalized in Canada. On that date, the *Cannabis Act*, which regulates retail cannabis for recreational/adult-use, medical cannabis and industrial hemp in Canada, came into effect. Additionally, cannabis was removed as a controlled substance from the *Controlled Drugs and Substances Act*, S.C. 1996, c. 19, and the *ACMPR* was repealed.

22. The cannabis industry continues to be a highly regulated industry, with the *Cannabis Act* regulating the possession, cultivation, production, distribution, sale, research, testing, import and export and promotion of cannabis.

(b) **Business**

23. The Applicants' business, which is headquartered in Kitchener, Ontario, is a vertically integrated premium cannabis brand with a focus of producing clean and consistent cannabis using

their advanced and proprietary aeroponic platform. The Applicants' proprietary aeroponic platform was a process originally researched for the purpose of growing food in space and is a method in which plants are grown in a controlled air environment without the use of soil. These environments lead to targeted nutrient administration, which drives optimal growth and enhanced concentration of cannabinoid content.

24. JWC Ltd., JWC's operating arm, received its licence from Health Canada to produce medical cannabis in 2017 and, at its inception, began as a collective of patients and growers under the *MMAR*. JWC Ltd.'s license was subsequently amended to include the processing and sale of medical cannabis and JWC Ltd. currently cultivates and processes cannabis for the medical and recreational/adult-use markets and sells medical cannabis directly to consumers with medical documents in Canada.

25. The Trillium Facility is the Applicants' main processing facility, with cultivation, extraction and distribution capabilities. The Applicants are utilizing approximately 100,000 sq. ft. of the Manitou Facility as their primary growing facility.

26. JWC Ltd. is currently a party to agreements with various provincial agencies and wholesale partners in Canada for the supply of cannabis product, including (i) an agreement with the Ontario Cannabis Store, and (ii) the Province of Prince Edward Island.

(c) **Cannabis Licences**

27. JWC Ltd. currently holds 2 licences issued by Health Canada (collectively, the "**Cannabis Licences**" and each a "**Cannabis Licence**"). The first Cannabis Licence was granted on January 10, 2017, and, as amended, permits JWC Ltd. to cultivate, process and sell cannabis for the medical and recreational/adult-use markets and to sell all of the authorized classes of cannabis to

provincially/territorially authorized distributors/retailers and directly to consumers with medical documents, which includes cannabis plant seeds, cannabis plants, dried cannabis, fresh cannabis, edible cannabis, cannabis topicals, cannabis extracts and cannabis oil. The second Cannabis Licence was granted on March 29, 2019, and permits JWC Ltd. to cultivate cannabis and sell plant seeds and cannabis plants to provincially/territorially authorized distributors/retailers.

28. As the holder of the Cannabis Licences, JWC Ltd. is subject to a comprehensive and rigorous regulatory regime as set out in the *Cannabis Act* and the regulations thereunder. This regime requires ongoing compliance with a variety of operational requirements, including that directors, officers and certain management personnel must hold security clearances, compliance with site location requirements and ongoing reporting obligations.

(d) **Employees**

29. JWC Ltd. currently employs approximately 160 people on a full time basis (the "**Employees**"). 52 of the Employees are salaried while the remaining 108 are paid hourly. The Employees and their roles are further detailed in the chart below.

<b>Role</b>	<b>Trillium Facility</b>	<b>Manitou Facility</b>	<b>No Designation/ Head Office</b>
Production Staff	20	92	
<i>Post Harvest and Support</i>			15
<i>Office and Executive Staff</i>			36

30. There are no registered pension plans for the Employees and they are non-unionized. JWC, through its benefits provider Great West Life, offers health and dental benefits and life and accidental death and dismemberment insurance for all of its Employees.

(e) **Leased and Owned Property**

31. As previously noted, JWC Ltd. leases the Trillium Facility and the Manitou Facility.
32. The lease for the Trillium Facility was entered into on December 13, 2013 (the "**Trillium Lease**"). The term of the Trillium Lease is set to expire on July 30, 2021, at which time JWC Ltd. may exercise an option to renew the Trillium Lease for an additional five (5) years, subject to certain conditions. As of the date of this Affidavit, the monthly rent due under the Trillium Lease is \$8,073.00 and the Applicants are in arrears in the amount of approximately \$57,614.89.
33. The lease of the Manitou Facility was entered into on February 1, 2018, and the lease has a term of 15 years, expiring on January 31, 2033 (the "**Manitou Lease**"). The Manitou Lease has a phase rent schedule as follows (exclusive of HST and CAM charges):

<b>Year of Lease</b>	<b>Rent per Month</b>
1st Year	\$ 98,008.00
2nd Year	\$ 115,253.00
3rd Year	\$ 132,498.00
4th Year	\$ 135,372.00
5th Year	\$ 169,861.00
6th Year - 10th Year	\$ 175,610.00
11th Year - 15th Year	\$ 201,477.00

34. As of the date of this Affidavit, the Applicants are currently in arrears, in respect of the Manitou Lease, in the amount of approximately \$359,281.64 (inclusive of HST and CAM charges).
35. Additionally, JWC Ltd. leases the 860 Office where it conducts some of its day-to-day operations (the "**860 Office Lease**"). The term of the 860 Office Lease expires on May 31, 2020.

As of the date of this Affidavit monthly rent (inclusive of HST) is \$7,345. The Applicants only owe April rent and are otherwise current with respect to the 860 Office Lease.

36. The Applicants do not own any real property.

**(f) Suppliers**

37. JWC Ltd. relies on a number of vendors and third-party service providers to operate its business. For instance, security providers, lab services, seed to sell software and utility providers are all essential to JWC Ltd.'s operations. As is further detailed later in this Affidavit, the Applicants are not current with respect to certain of their obligations under a number of their agreements with these vendors and third-party service providers.

**(g) Excise Tax**

38. A federal excise duty is payable by a licensed cannabis producer under Canadian tax law when the cannabis products they package are delivered to a purchaser, as such, JWC Ltd. pays federal excise tax on a monthly basis in respect of the amount of cannabis product delivered in the prior month.

39. In addition, cannabis producers are required to post security pursuant to the *Excise Act, 2001*, S.C. 2002, c. 22. The security provides the Canada Revenue Agency ("**CRA**") with financial assurance for any outstanding excise taxes payable. The security can be posted in the form of a surety bond or a deposit with the CRA.

40. The security required to be posted with the CRA is calculated as the highest amount of cannabis duties payable for a calendar month in the previous 12 calendar months. As of the date



of this Affidavit, JWC Ltd. has provided a surety bond through Cowan Insurance Brokers in the amount of \$515,666.67.

**(h) Cash Management**

41. JWC has one (1) bank account with the Royal Bank of Canada ("**RBC**"). In addition to holding a bank account with RBC, the Applicants use RBC Express for automated clearing house, wire transfers and certain bill payments. JWC currently uses SAP Concur for invoice management and payment

42. The Applicants have provided Corporate American Express credit cards to 4 of the Employees (the "**Credit Cards**") for business expenses incurred on behalf of the Applicants including paying third party vendors when possible. The maximum combined credit limit of the Credit Cards is \$85,000. As of the date of this Affidavit, approximately \$54,577.22 was accrued and unpaid under the Credit Cards.

**D. FINANCIAL POSITION OF THE APPLICANTS**

43. As of the date of the swearing of this Affidavit, the Applicants have in the aggregate approximately \$44,000 cash on hand.

44. In addition, a copy of the JWC's unaudited, combined balance sheet as at March 1, 2020 is attached hereto as Exhibit "B". Certain information contained in this unaudited balance sheet is summarized below.



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**(a) Assets**

45. As March 1, 2020<sup>1</sup>, the assets of the Applicants had an unaudited book value of approximately \$40,971,991 and consist of the following:

<b>Current Assets: \$12,259,187</b>	
Cash and cash equivalents	\$466,276
Accounts Receivable	\$137,140
Inventory	\$6,778,518
Biological assets	\$3,637,831
Other Receivables	\$218,969
Prepaid Expenses and Deposits	\$1,020,453
<b>Non-Current Assets: \$28,693,007</b>	
Property, plant and equipment	\$19,307,730
Intangible Assets	\$103,708
Right of use assets	\$9,301,366
<b>Total Assets</b>	<b>\$40,971,991</b>

**(b) Liabilities**

46. As at March 1, 2020, the liabilities of the Applicants had an unaudited book value of approximately \$24,538,355 (as reflected below):

<b>Current Liabilities: \$4,942,089</b>	
Accounts payable and accrued liabilities	\$1,265,859
Current portion of long-term debt	\$3,676,230
<b>Non-Current Liabilities: \$19,596,266</b>	
Trichome liability	\$6,007,095
Lind liability	\$1,354,753
Royalty liability	\$2,500,430
Lease liabilities	\$11,483,824

<sup>1</sup> Values for Inventory, Biological Assets and Property, plant and equipment are only current as of December 31, 2019 due to time constraints.

<b>Shareholders' Equity: \$14,683,799</b>	
Share capital	\$39,762,436
Contributed surplus	\$2,987,636
Retained earning (deficit)	- \$28,066,273
<b>Total Liabilities and Equity</b>	<b>\$40,971,991</b>

(c) **Secured Debt**

47. Attached as Exhibit "C" are search results from searches conducted against each of the Applicants under the *Personal Property Security Act* (Ontario) (the "**PPSA**") effective March 23, 2020. Only two parties have registered financing statements against the Applicants, as further detailed below.

(i) **Trichome Financial Inc.**

48. On or about February 19, 2019, JWC entered into a loan agreement pursuant to which it borrowed \$3,500,000 by way of a single cash advance (the "**Initial Trichome Loan Agreement**") from Trichome Financial Corp. ("**Trichome**"). The proceeds from the Initial Trichome Loan Agreement were to be used to finance approximately \$1,400,000 of HVAC equipment and \$900,000 for the payment of invoices related to the construction of the Manitou Facility with the remainder going towards working capital. The Initial Trichome Loan Agreement included an interest rate of 9.25% payable monthly with no requirement to repay any principal until the maturity date of February 19, 2021. The Initial Trichome Loan Agreement also contemplated that JWC would issue bonus warrants (each an "**Initial Loan Bonus Warrant**") to Trichome to purchase 291,667 common shares of JWC. Each Initial Loan Bonus Warrant is exercisable for one common share of JWC at a strike price of \$0.80 per share. The effective interest rate of the Initial Trichome Loan Agreement is 14.71%. A copy of the Initial Trichome Loan Agreement is attached hereto as Exhibit "D".

49. The obligations of JWC under the Initial Trichome Loan Agreement are guaranteed by unlimited guarantees (the "**Trichome Guarantee**") of the other Applicants (collectively, the "**Trichome Guarantors**"). The Trichome Guarantee can be found at section 12 of the Initial Trichome Loan Agreement.

50. As general and continued security for the obligations under the Initial Trichome Loan Agreement, various first-lien security was granted to Trichome by JWC and the Trichome Guarantors. The security granted to Trichome includes, among other things:

- (a) a general security agreement made as of February 19, 2019 (the "**Trichome GSA**") granting Trichome a security interest in all of the property, assets and undertakings of JWC and each of the Trichome Guarantors;
- (b) assignments of property, each of which was made by JWC and the Trichome Guarantors in favour of Trichome, granting to Trichome a security interest in the following property: (i) all policies of insurance under an assignment of insurance dated February 19, 2019; (ii) all material contracts under an assignment of material contracts dated February 19, 2019, and Amended and Restated on November 6, 2019 (collectively, the "**Assignments**");
- (c) two share and note pledge agreements dated February 19, 2019, among (i) JWC and Trichome, and (ii) JWC Ltd. and Trichome, in each case, granting Trichome, among other things, a security interest in all of the shares in the capital stock, securities accounts, financial assets, security entitlements, and pledged notes (together, the "**Share and Note Pledge Agreements**");

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- (d) two landlord consents and agreements, each between JWC Ltd. and its landlord dated February 19, 2019, whereby the landlords consented and acknowledged JWC Ltd.'s granting to Trichome certain security interests in its leases, including a collateral assignment of JWC Ltd.'s interest in the applicable lease with its landlords (together, the "**Landlord Consent and Agreements**" and collectively with the Trichome GSA, the Assignments and the Share and Note Pledge Agreements, the "**Initial Trichome Loan Security Package**").

A copy of the Initial Trichome Loan Security Package is attached hereto as Exhibit "E".

51. On or about November 6, 2019, JWC entered into an amended and restated loan agreement with Trichome (the "**Amended Trichome Loan Agreement**") which provided financing of up to an incremental \$4,000,000 to be advanced in two tranches. The Amended Trichome Loan Agreement increased Trichome's total commitment to \$7,500,000, all of which is outstanding as at the date of this Affidavit (exclusive of costs, charges, fees or expenses) (the "**Trichome Indebtedness**"). The first tranche, in the amount of \$2,850,000 (the "**First Tranche**"), was advanced on November 6, 2019. The second tranche, of \$1,150,000 (the "**Second Tranche**"), was to be advanced conditional on the achievement of certain milestones by JWC. The Amended Trichome Loan Agreement included an interest rate of 9.25% payable monthly with no requirement to repay until its maturity on November 6, 2021. Upon the closing of the First Tranche, Trichome received a total of 984,208 common shares of JWC and 1,696,385 common share purchase warrants with each warrant having a term of two (2) years. A copy of the Amended Trichome Loan Agreement is attached hereto as Exhibit "F".

52. On or about January 9, 2020, Trichome and JWC entered into an amendment to the Amended Trichome Loan Agreement which, among other things, added a cross-default to other indebtedness as an event of default (the "**First Trichome Amendment**"). A copy of the First Trichome Amendment is attached hereto as Exhibit "G".

53. The Second Tranche was advanced on February 19, 2020. Upon the closing of the Second Tranche, Trichome received a total of 1,052,500 common shares of JWC. In connection with the closing of the Second Tranche, Trichome and JWC entered into a further amendment to the Amended Trichome Loan Agreement pursuant to which JWC granted Trichome certain rights, including the right to designate an individual as a non-voting board observer and the right to nominate one individual to serve on the board of directors of JWC (the "**Second Trichome Amendment**"). A copy of the Second Trichome Amendment is attached hereto as Exhibit "H".

54. Pursuant to the Second Trichome Amendment, on March 10, 2020, Howard Steinberg was appointed to the board of directors of JWC as nominee of Trichome.

55. On or about October 23, 2019, Trichome and JWC entered into a Factoring Agreement (the "**Factoring Agreement**") whereby certain qualified receivables could be factored. Total availability under the Factoring Agreement was initially capped at \$5.0 million and the financing of any receivables was subject to Trichome's sole discretion. As at the date of this Affidavit, no receivables are outstanding under the Factoring Agreement. A copy of the Factoring Agreement is attached hereto as Exhibit "I".

56. As security for the Factoring Agreement, JWC and each of the Trichome Guarantors granted various security interest in all of their respective current and future assets pursuant to a

general security agreement dated October 23, 2019 (the "**Factoring GSA**"). A copy of the Factoring GSA is attached hereto as Exhibit "J".

57. On or about March 31, 2020, following the occurrence certain events of default under the Amended Trichome Loan Agreement, as amended, Trichome issued notices under section 244 of the *Bankruptcy and Insolvency Act* R.S.C., 1985, c. B-3 and made demand on the Trichome Indebtedness (the "**Trichome Demands**"). Copies of the Trichome Demands are attached hereto as Exhibit "K".

(ii) **Lind Global Macro Fund LP**

58. On December 29, 2019, JWC entered into a convertible security funding agreement for up to a face amount of \$10,000,000 with Lind Global Macro Fund LP ("**Lind**") (the "**First Lind CSA**"). Only \$2,000,000 of the First Lind CSA was made available, and drawn, by JWC with any remaining amount being subject to Lind's discretion. A copy of the First Lind CSA is attached hereto as Exhibit "L".

59. The obligations of JWC under the First Lind CSA are guaranteed by JWC Ltd. and GrowthStorm (together, the "**Lind Guarantors**") (the "**First Lind CSA Guarantees**"). Copies of the First Lind CSA Guarantees are attached hereto as Exhibit "M".

60. As general and continued security for the obligations under the First Lind CSA, the security granted to Lind includes, among other things, a general security agreement made as of January 10, 2020 (the "**First Lind CSA GSA**") granting Lind a security interest in all of the property, assets and undertakings of JWC and each of the Lind Guarantors. A copy of the First Lind CSA GSA is attached hereto as Exhibit "N".



61. On January 10, 2020, Trichome and Lind entered into a subordination and postponement agreement, which provided that JWC's obligations to Lind are subordinate to its obligations to Trichome under the Trichome Loan Agreement and the Factoring Agreement (the "**Lind Subordination Agreement**"). A copy of the Lind Subordination Agreement is attached hereto as Exhibit "O".

62. On March 10, 2020, JWC entered into a second convertible security funding agreement for \$1.2 million with Lind (the "**Second Lind CSA**" and together with the First Lind CSA, the "**Lind Financing**"). A copy of the Second Lind CSA is attached hereto as Exhibit "P". The obligations of JWC under the First Lind CSA are guaranteed by the Lind Guarantors (the "**Second Lind CSA Guarantees**"). Copies of the Second Lind CSA Guarantees are attached hereto as Exhibit "Q".

63. As general and continued security for the obligations under the Second Lind CSA, the security granted to Lind includes, among other things, a general security agreement made as of March 2020 (the "**Second Lind CSA GSA**") granting Lind a security interest in all of the property, assets and undertakings of JWC and each of the Lind Guarantors. A copy of the Second Lind CSA GSA is attached hereto as Exhibit "R".

64. On March 13, 2020, the Lind Subordination Agreement was amended to confirm that the obligations under the Second Lind CSA were also subordinate to JWC's obligations to Trichome under the Trichome Loan Agreement (the "**Lind Subordination Agreement Amendment**"). The full amount under the Second Lind CSA was drawn. A copy of the Lind Subordination Agreement Amendment is attached hereto as Exhibit "S".

65. As at the date of this Affidavit, approximately \$3,900,000 is outstanding under the Lind Financing.

(d) **Unsecured Indebtedness**

(i) **Ball Construction Ltd.**

66. On February 20, 2019, JWC Ltd. entered into a Loan Agreement with Ball Construction Ltd. ("**Ball**"), an entity affiliated with Lind (the "**Ball Financing**"). Subsequent amendments to the Ball Financing occurred on March 19, 2019, July 17, 2019 and October 9, 2019 (the "**Ball Amendments**"). As at the date of this Affidavit, approximately \$3,700,000 is outstanding under the Ball Financing. Copies of the Ball Financing and Ball Amendments are attached hereto as Exhibit "T" and Exhibit "U" respectively.

67. On November 6, 2019, Trichome, Ball, JWC and JWC Ltd. entered into an amended Subordination and Postponement Agreement (the "**Ball Subordination and Postponement Agreement**"). The Ball Subordination and Postponement Agreement provides that Ball is a subordinate lender, and that any payment of all subordinate debt is unconditionally and irrevocably deferred, postponed and subordinated in all respects to the prior indefeasible payment in full of the obligations to Trichome under the amended Trichome Loan Agreement and the Factoring Agreement. A copy of the Ball Subordination and Postponement Agreement is attached hereto as Exhibit "V".

(ii) **Canopy Rivers Corporation**

68. On or about August 11, 2017, JWC, Canopy Rivers Corporation ("**Canopy Rivers**") and Canopy Growth entered into an Investment Agreement (the "**Canopy Investment Agreement**") pursuant to which JWC issued Canopy Rivers 5,391,304 common shares of JWC for \$2,500,000 and 1,347,826 common share purchase warrants (the "**Canopy Warrants**"). Canopy Rivers



exercised the Canopy Warrants in August of 2019, for proceeds of \$620,000. In connection with the Canopy Investment Agreement, Canopy Rivers also acquired 3,504,347 common shares from existing shareholders for \$975,000. A copy of the Canopy Investment Agreement is attached hereto as Exhibit "W".

69. JWC issued a debenture in favour of Canopy Rivers dated August 11, 2017, in the amount of \$2,500,000 (the "**Canopy Debenture**").

70. On or about March 29, 2018, the Canopy Debenture was considered paid in full and the Royalty Agreement between JWC and Canopy Rivers, dated August 11, 2017 (the "**Royalty Agreement**"), pursuant to which JWC agreed to pay Canopy Rivers \$0.375 per gram of cannabis produced at the Trillium Facility. The Royalty Agreement does not apply to cannabis produced at the Manitou Facility. The Royalty Agreement provides for a minimum aggregate annual royal payment of \$487,500 per year until 2038. A copy of the Royalty Agreement is attached hereto as Exhibit "X".

(iii) **Employee Liabilities**

71. Gross payroll is approximately \$350,000 biweekly. The Applicants are current with respect to the payment of payroll and the remittance of employee source deductions, however, given the current liquidity issues, the payroll due on April 1, 2020, will not be made unless the Initial Order is granted and the DIP Loan is secured.

(iv) **Other Unsecured Creditors**

72. Along with the aforementioned obligations, the Applicants' additional unsecured creditors include:

- (a) **Third Party Suppliers:** Given the nature of its business, JWC Ltd. relies on a number of vendors and third party services and, as such, are party to a number of agreements for the provision of certain essential services including, among other things, insurance, phone and internet, security, utilities, professional costs, education fees, contractor costs and other miscellaneous services and products provided in connection with operating a business in the cannabis industry. As of the date of this Affidavit, the Applicants were indebted to third party suppliers in the aggregate amount of approximately CAD\$1.4 million and US\$26,281.86.
- (b) **Landlords:** As previously noted, the Applicants do not own any real property and operate exclusively from premises leased by third party landlords. The Applicants, in the ordinary course, remit rent on a monthly basis. As at April 1, 2020, the Applicants rent was collectively in arrears in the aggregate amount of approximately \$420,000.
- (c) **Litigation:** JWC Ltd., along with a number of the Applicants' officers including myself, are subject to one piece of ongoing litigation (the "**JWC Lawsuit**"). A statement of claim was issued in the JWC Lawsuit in September of 2018 with a statement of defence filed soon thereafter. Negotiations are ongoing.

## **E. ALUMINA PARTNERS**

73. On November 6, 2018, JWC entered into a draw-down equity facility of up to \$18,000,000 (the "**Draw-Down Facility**") with Alumina Partners ("**Alumina**"). Under the Draw-Down Facility, JWC, at its discretion, is able to sell Alumina units (the "**Alumina Units**"), on a private placement basis completed in tranches, with a total value of up to \$2,000,000 per tranche, over a

24-month period. Each Alumina Unit will consist of one common share and one warrant of JWC, the purchase price of which will be agreed to by JWC and Alumina at the time the tranche is drawn down. The Draw-Down Facility was put in place to provide a potential source of funding for completion of the Manitou Facility. The Applicants viewed the Draw-Down Facility as a vehicle of last resort and, as a result, never made any draws thereon. Moreover, under the Lind Financing, drawdowns on the Alumina Facility were precluded. As at the date of this Affidavit, no amounts are owing to Alumina.

#### **F. SPECIAL COMMITTEE**

74. In response to the Applicants liquidity crisis, their financial and operational difficulties and in an effort to explore opportunities to enhance the capital of the Applicants by one or more steps, JWC's board of directors passed a resolution on March 19, 2020 (the "**Special Committee Resolution**") establishing a special committee of the board (the "**Special Committee**"). The Special Committee is comprised of (i) Raymond Alarie, (ii) Peter Kampian, (iii) Philip Armstrong and (iv) Howard Steinberg. A copy of the Special Committee Resolution is attached hereto as Exhibit "Y".

#### **G. SUMMARY OF THE PROPOSED DIP LOAN**

75. The DIP Loan Term Sheet (the "**DIP Term Sheet**") provides for a super-priority, debtor-in-possession interim, non-revolving credit facility up to a maximum amount of \$4,000,000 between, among others, JWC, as borrower, and Trichome, as lender (in such capacity, the "**Lender**"). JWC Ltd., JWC1, JWC2, JWCS and GrowthStorm (for the purposes of the DIP Term Sheet and together with JWC, the "**Credit Parties**") are guarantors of the DIP Loan. The interest rate applicable to advances under the DIP Loan is 10.00% per annum payable monthly, and an

upfront fee in the amount of \$120,000 is payable by the Borrower to the Lender in connection with the establishment of the DIP Loan. However, it should be noted that the upfront fee is not payable until after the Comeback Hearing.

76. The proceeds of the DIP Loan shall be used during the pendency of the Applicants' proceedings under the CCAA for the following purposes: (i) to fund professional fees (including, *inter alia*, fees of the Monitor, fees of counsel to the Monitor and fees of counsel to the Applicants); (ii) to fund the payment of interest and other amounts payable under the DIP Loan; and (iii) to finance operating expenses and restructuring costs in these CCAA proceedings, and for general corporate purposes of the Credit Parties. Proceeds of the DIP Loan may not be used to pay any pre-filing obligations of JWC and will be used in accordance with the agreed budget with the Lender (the "**Agreed Budget**") subject to permitted variances. The DIP Loan is required to be secured by a super-priority lien over all property and assets of the Credit Parties, subordinate only to certain permitted priority liens, including, among others, the Administration Charge and the Directors' Charge.

77. The DIP Loan is subject to customary conditions precedent, covenants and representations and warranties made by the Credit Parties to the Lender. The DIP Loan shall be repayable in full on June 30, 2020 or upon the occurrence of the implementation of a plan of compromise or arrangement within these CCAA proceedings, the closing of a bankruptcy sale, the conversion of these CCAA proceedings into a proceeding under the *Bankruptcy and Insolvency Act* (Canada), or an event of default (collectively, the "**Events of Default**" and each an "**Event of Default**") under the DIP Loan. The Events of Default include, *inter alia*: (i) customary credit facility events of default; and (ii) failure to comply with certain timelines set forth in the SISF and failure to comply with an agreed upon cash flow test whereby actual financial performance of the Credit Parties is

tested against the Agreed Budget on a weekly basis. Subject to court orders made in these CCAA proceedings, upon the occurrence of an Event of Default, the Lender may (i) elect to terminate its commitment to make interim advances, (ii) declare the DIP Loan to be immediately due and payable, (iii) apply to a court for the appointment of a receiver, an interim receiver, or receiver and manager over the Credit Parties' collateral, (iv) enhance the powers of the Monitor, (v) take all necessary steps in these CCAA proceedings, or (vi) exercise the powers and rights of a secured party under the *PPSA*.

78. The amount of the DIP Loan that is proposed to be funded prior to the Comeback Hearing is only that portion of the DIP Loan that is absolutely necessary to keep the Applicants operating in the ordinary course (including for greater certainty funding payroll) until the Comeback Hearing, with no fees being earned thereon prior to the Comeback Hearing.

## **H. RELIEF SOUGHT**

### **(a) Stay of Proceedings**

79. The Applicants urgently require a broad stay of proceedings to prevent enforcement action by, and among, Trichome and certain contractual counter parties and to provide the Applicants with additional comfort and breathing space while they pursue a transaction, all the while permitting them to continue to operate as a going concern. The Applicants are concerned about their failure to meet certain obligations as they become due. It would be detrimental to the Applicants' business if proceedings were commenced or continued or rights and remedies were executed against them and without the Stay of Proceedings, the Applicants would be unable to continue operations in the ordinary course of business.

80. The Stay of Proceedings will stabilize and preserve the value of the Applicants' business and provide the Applicants with the breathing space they need to develop and oversee an orderly SISP with minimal disruptions to current business operations. This, in turn, will help to protect the interests of the Applicants' stakeholders, including employees, suppliers, landlords, customers, lenders and Health Canada. Having regard to the circumstances, and in an effort to preserve the value of the Applicants' business, the granting of the Stay of Proceedings is in the best interests of the Applicants and their stakeholders.

(b) **Proposed Monitor**

81. It is proposed that KSV Kofman Inc. ("KSV") will act as the Monitor in the CCAA proceedings if the proposed Initial Order is issued (the "**Proposed Monitor**"). The Proposed Monitor has consented to act as the Monitor on the terms set out in the proposed Initial Order. Prior to executing its consent to act as Monitor, KSV was the informal financial advisor to Trichome. A copy of the Proposed Monitor's consent to act as monitor is attached hereto as Exhibit "Z".

(c) **Administration Charge**

82. In connection with its appointment, it is proposed that the Proposed Monitor, along with its counsel and the Applicants' counsel, be granted a Court-ordered charge as security for their respective fees and disbursements (incurred at their standard rates and charges) relating to services rendered in respect of the Applicants up to a maximum of \$500,000 (the "**Administration Charge**"). The Administration Charge is proposed to have first priority over all other charges.

83. It is important to the success of these CCAA proceedings to have the Administration Charge in place to ensure the continued involvement of critical professionals. The proposed

beneficiaries are performing distinct functions and there is no duplication of roles. In addition, given the Applicants' liquidity situation, the proposed beneficiaries of the Administration Charge have expended considerable effort without the benefit of retainers.

84. The Applicants have worked with the Proposed Monitor to estimate the proposed quantum of the Administration Charge. Trichome, the first-lien lender, is supportive of the Administration Charge.

(d) **Directors' Charge**

85. As is customary in CCAA proceedings, the Applicants are seeking to stay all proceedings against the former, current and future directors and officers of the Applicants (the "**Directors and Officers**").

86. I am advised by Edmond Lamek of DLA Piper (Canada) LLP, corporate counsel to the Applicants, and believe that, in certain circumstances, directors can be held liable for certain obligations of a company owing to employees and government entities, which may include unpaid accrued wages and unpaid accrued vacation pay, together with unremitted excise, sales, goods and services, and harmonized sales taxes.

87. The Applicants maintain director's and officer's liability insurance (the "**D&O Insurance**"). The D&O Insurance covers the Applicants' directors and their present and former officers who are or were employed by the Applicants. However, I understand that the D&O Insurance has various exceptions, exclusions and carve-outs. The D&O Insurance may not provide sufficient coverage against the potential liability that the Directors and Officers could incur in connection with these CCAA proceedings.

88. Due to the aforementioned risks, the Directors and Officers have indicated that their continued service and involvement in these CCAA proceedings is conditional upon the granting of an Order under the CCAA which grants a charge in favour of the Directors and Officers in the amount of \$450,000 (the "**Directors' Charge**"). The Directors' Charge would be subordinate to the proposed Administration Charge but will be in priority to the DIP Lender's Charge (as defined below). The Directors' Charge would act as security for the indemnification obligations for potential liabilities faced by the Directors and Officers as outlined above.

89. The Directors' Charge is necessary so that the Applicants may continue to benefit from the expertise and knowledge of the Directors and Officers, which is particularly important in a highly regulated industry such as cannabis. The ongoing involvement of the Directors and Officers is particularly important in the case of the Applicants given the strict regulatory environment in which they operate.

90. The Applicants believe that the Directors' Charge is reasonable in the circumstances. I understand that the Proposed Monitor is supportive of the Directors' Charge and its quantum.

(e) **The DIP Lender's Charge**

91. The DIP Loan is conditional on the issuance of a Court order approving the DIP Loan and granting a priority charge up to a maximum of \$800,000 (the "**DIP Lender's Charge**") as set out in the draft Initial Order. The Initial Order contemplates that the DIP Lender's Charge will rank subordinate to the Administration Charge and the Directors' Charge.



92. All of the credit advanced pursuant to the DIP Loan will be secured, *inter alia*, by the DIP Lender's Charge and the existing security and guarantees issued in favour of Trichome. The DIP Lender's Charge will not secure obligations incurred prior to the CCAA proceedings.

93. The amount to be funded prior to the Comeback Hearing will be limited to the amount necessary to continue ordinary course operations prior to the Comeback Hearing, and no fees will accrue to the DIP Lender prior to the Comeback Hearing. The DIP Lender's Charge being sought in connection with the Initial Order will only be for amount to be accrued in the 10 day period preceding the Comeback Hearing. The Applicants intend to seek an increase to the DIP Lender's Charge at the Comeback Hearing.

(f) **Cash Flow Statement**

94. I understand that a projected consolidated cash flow statement for the Applicants for the 13-week period from the week ending April 3, 2020, to the week ending June 26, 2020 (the "**Cash Flow Statement**"), will be attached to the pre-filing report of the Proposed Monitor. The cash flow projections demonstrate that debtor-in-possession financing is urgently required to provide the Applicants with the required liquidity for continued business operations in the ordinary course, including to meet their upcoming payroll obligations. As such, the Applicants are seeking approval of the DIP Loan.

95. The Cash Flow Statement has been prepared with the assistance of the Proposed Monitor and is accompanied by the prescribed representations in accordance with the CCAA.

## I. CONCLUSION

96. The Initial Order sought by the Applicants is in the best interests of the Applicants as well as the best interests of their stakeholders. The Stay of Proceedings is necessary in order to prevent enforcement actions against the Applicants, and to normalize their operations. Without the Stay of Proceedings and the DIP Loan, the Applicants face an immediate cessation of their going concern operations and their payroll obligations, the loss of their employees' jobs and the potential loss of the Cannabis Licences.

97. The Applicants are actively engaging with, and have the support of, Trichome, and, notwithstanding that relief related to the SISP and the Stalking Horse APA is not being sought until the Comeback Hearing, are entering these CCAA proceedings with a solution that will maintain their business as a going concern and maximize value for all stakeholders. I believe that a CCAA proceeding is the only viable method in the circumstances to restructure the Applicants' business and effect the transactions necessary for the benefit of all stakeholders, and that the relief sought in the Initial Order is necessary at this time to ensure the continued operations of the Applicants in the ordinary course of business.

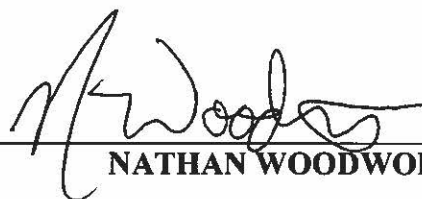
**SWORN BEFORE ME** at the City of  
Kitchener, in the Province of Ontario on  
March 31, 2020




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Commissioner for Taking Affidavits  
(or as may be)

*Eric M. Krausbaum*  
LSO 22080L




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**NATHAN WOODWORTH**

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF JAMES E. WAGNER CORPORATION, JAMES E. WAGNER CULTIVATION LTD., JWC 1 LTD., JWC 2 LTD., JWC SUPPLY LTD AND GROWTHSTORM INC.

Court File No.

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

Proceedings commenced in Toronto

**AFFIDAVIT OF NATHAN WOODWORTH**

**BENNETT JONES LLP**  
One First Canadian Place  
Suite 3400, P.O. Box 130  
Toronto, Ontario  
M5X 1A4

**Sean Zweig (LSO# 57307I)**  
**Mike Shakra (LSO# 64604K)**  
**Aiden Nelms (LSO# 74170S)**

Tel: 416-863-1200  
Fax: 416-863-1716

Lawyers for the Applicants

*This is Exhibit* ..... "C" ..... *referred to in the*

*affidavit of* Philip Armstrong .....  
*sworn before me, this* ..... 6<sup>th</sup> .....  
*day of* April, 2020 .....

.....  
**A COMMISSIONER FOR TAKING AFFIDAVITS**

Aiden Nelms

Court File No.

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**COMMERCIAL LIST**

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF JAMES E. WAGNER CULTIVATION  
CORPORATION, JAMES E. WAGNER CULTIVATION LTD.,  
JWC 1 LTD., JWC 2 LTD., JWC SUPPLY LTD. AND  
GROWTHSTORM INC.

(each an "**Applicant**" and collectively, the "**Applicants**")

**AFFIDAVIT OF AIDEN NELMS**

I, Aiden Nelms, of the city of Toronto, in the Province of Ontario, MAKE OATH AND SAY:

1. This Affidavit is made in support of an urgent Application by James E. Wagner Cultivation Corporation ("**JWC**"), James E. Wagner Cultivation Ltd. ("**JWC Ltd.**"), JWC 1 Ltd. ("**JWC1**"), JWC 2 Ltd. ("**JWC2**"), JWC Supply Ltd. ("**JWCS**") and GrowthStorm Inc. ("**GrowthStorm**", together with JWC, JWC Ltd., JWC1, JWC2 and JWCS, the "**Applicants**") for an Order (the "**Initial Order**") and relief under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**").

2. I am an associate at the law firm of Bennett Jones LLP, insolvency counsel for the Applicants. As such, I have personal knowledge of the matters to which I hereinafter depose in this Affidavit. Where I do not have personal knowledge of the matters set out herein, I have stated the source of my information and, in all cases, believe it to be true.

3. On March 31, 2020, the Applicants served their Application for the Initial Order under the CCAA. Part of the relief sought in connection with the Initial Order is the approval of the DIP Term Sheet (as defined in the Affidavit of Nathan Woodworth sworn March 31, 2020 (the "**Woodworth Affidavit**")). A copy of the DIP Term Sheet is attached hereto as Exhibit "A".
4. The Woodworth Affidavit also references the Stalking Horse APA (as defined in the Woodworth Affidavit). While the Applicants are not seeking any relief in respect of the Stalking Horse APA at this time, they intend to do so at the Comeback Hearing to be scheduled on or prior to April 10, 2020. A copy of the Stalking Horse APA is attached hereto as Exhibit "B".
5. The DIP Term Sheet and the Stalking Horse APA are both described in the Woodworth Affidavit.
6. I swear this Affidavit in support of the Applicants' Application for an Initial Order and for no other improper purpose.


**SWORN BEFORE ME** at the City of  
Collingwood, in the Province of Ontario on  
March 31, 2020

  
Commissioner for Taking Affidavits  
(or as may be)

Hayley Larkin

  
AIDEN NELMS

*This is Exhibit* \_\_\_\_\_ **“A”** \_\_\_\_\_ *referred to in the*  
*affidavit of* \_\_\_\_\_ Aiden Nelms \_\_\_\_\_  
*sworn before me, this* \_\_\_\_\_ 31<sup>st</sup> \_\_\_\_\_  
*day of* \_\_\_\_\_ March, 2020 \_\_\_\_\_

  
\_\_\_\_\_  
**A COMMISSIONER FOR TAKING AFFIDAVITS**  
Hayley Larkin

**\$4,000,000**  
**INTERIM FINANCING TERM SHEET**

**March 31, 2020**

WHEREAS the Borrower (as defined below) will make an application before the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) to restructure its debts and affairs under the *Companies’ Creditors Arrangement Act* (Canada) (the “**CCAA**”);

AND WHEREAS the Borrower has requested that the Interim Lender (as defined below) provide financing in accordance with the terms and conditions set forth herein to fund certain of the Borrower’s cash requirements during the pendency of the Borrower’s proceedings under the CCAA (the “**CCAA Proceedings**”);

NOW THEREFORE, the parties, for good and valuable consideration (the receipt and sufficiency of which are hereby irrevocably acknowledged), agree as follows:

1. **BORROWER** James E. Wagner Cultivation Corporation (the “**Borrower**”).
2. **LENDER** Trichome Financial Corp. (in its capacity as lender under the Interim Facility, the “**Interim Lender**”).
3. **GUARANTORS** James E. Wagner Cultivation Ltd., JWC 1 Ltd., JWC 2 Ltd., JWC Supply Ltd. and GrowthStorm Inc. (collectively, the “**Guarantors**” and, individually, a “**Guarantor**”).  
  
The Guarantors, together with the Borrower, are collectively referred to herein as the “**Credit Parties**” and, individually, a “**Credit Party**”.
4. **DEFINED TERMS** Capitalized terms used in this Interim Financing Term Sheet have the meanings given thereto in Schedule A.
5. **PURPOSE** The Borrower shall use the proceeds of the Interim Facility solely for the following purposes and in the following order, in each case during and for the purposes of the Borrower’s pursuit of the CCAA Proceedings:
  - (a) To fund professional fees (including fees of the Monitor, and the Chief Restructuring Officer, and the legal fees of counsel to the Interim Lender, the Credit Parties and the Monitor and the work fees payable to the M&A Advisor (as defined in the SISP)). It is agreed to and acknowledged by the Credit Parties and the Interim Lender that those fees and expenses incurred to the date hereof and



those provided for in the Agreed Budget as of the date hereof are reasonable.

- (b) To fund the payment of interest and other amounts payable under the Interim Facility under this Interim Financing Term Sheet in accordance with the terms hereof.
- (c) To finance operating expenses, restructuring costs in the CCAA Proceedings, and for general corporate purposes of the Borrower and Credit Parties, all in accordance with the Agreed Budget.
- (d) To fund such other costs and expenses as agreed to by the Interim Lender, in writing.

For greater certainty, the Borrower may not use the proceeds of the Interim Facility to pay any pre-filing obligations of the Credit Parties without the prior written consent of the Interim Lender and/or the Monitor; it being agreed by the Interim Lender that such consent is not required for the Credit Parties to pay (i) legal fees and disbursements for the pre-filing period incurred in contemplation of the CCAA Proceedings owing to counsel to the Credit Parties, (ii) taxes, accrued payroll and other ordinary course liabilities, provided that such amounts are included in the Agreed Budget or the DIP Order, or (iii) any other amounts owing by the Credit Parties to the extent specifically identified in the Agreed Budget or the DIP Order.

## 6. INTERIM FACILITY, MAXIMUM AMOUNT

A super-priority, debtor-in-possession interim, non-revolving credit facility (the “**Interim Facility**”) up to a maximum principal amount of \$4,000,000 (the “**Maximum Amount**”), subject to the terms and conditions contained herein. Advances under the Interim Facility (the “**Interim Advances**”) shall be deposited into the Deposit Account and utilized by the Credit Parties in accordance with the terms hereof.

## 7. GUARANTEES

All present and future obligations of the Credit Parties under or in connection with this Interim Financing Term Sheet and all other documents in connection with the Interim Facility (collectively, the “**Interim Financing Credit Documentation**”) will be guaranteed by unlimited guarantees by the Guarantors in form and substance satisfactory to the Interim Lender (collectively, the

“**Guarantees**”), which Guarantees form part of the Interim Financing Credit Documentation.

**8. CONDITIONS  
PRECEDENT TO  
EFFECTIVENESS  
AND INTERIM  
ADVANCES**

The effectiveness of this Interim Financing Term Sheet shall be subject to the satisfaction of the following conditions precedent, as determined by the Interim Lender:

- (a) The Interim Lender shall have had a reasonable opportunity to review advance copies of, and shall be reasonably satisfied with, all materials to be filed in respect of the CCAA Proceedings.
- (b) The Court shall have issued an order in the CCAA Proceedings (the “**DIP Order**”) on or before April 1, 2020 (the “**Outside Date**”), satisfactory to the Interim Lender and substantially in the form contained in the draft Initial Order attached hereto as Schedule B, on notice to such parties as are acceptable to the Interim Lender, which shall: (i) approve this Interim Financing Term Sheet and the Interim Facility; (ii) grant the Interim Lender a charge (the “**Interim Lender Charge**”) securing all obligations owing by the Credit Parties to the Interim Lender under this Interim Financing Term Sheet and the Interim Financing Credit Documentation (collectively, the “**Interim Financing Obligations**”), including, without limitation, all principal amount of the outstanding Interim Advances, interest thereon and Interim Financing Fees and Expenses, which shall have priority over all Liens other than the Permitted Priority Liens; and (iii) treat the Interim Lender as an unaffected creditor in the CCAA Proceedings;
- (c) The Interim Lender shall have received the Agreed Budget.
- (d) The Interim Lender shall have received a list of the key individuals designated by James E. Wagner Cultivation Ltd. as of the date of the DIP Order pursuant to the *Cannabis Act* (Canada) (the “**Cannabis Act**”), including, without limitation, the Responsible Person,

the Head of Security, the Master Grower and the Quality Assurance Person (as such terms are defined in the Cannabis Act), as well as any and all designated alternates (collectively, the “**Key Individuals**”).

- (e) The Interim Financing Credit Documentation shall be satisfactory to the Interim Lender, acting reasonably, and shall have been executed by the Credit Parties and the Interim Lender.
- (f) The Credit Parties shall have delivered to the Interim Lender, in form and substance satisfactory to the Interim Lender, a general security agreement.
- (g) The Interim Lender shall be satisfied, acting reasonably, that the Credit Parties have complied with and are continuing to comply in all material respects with all applicable laws, regulations, policies and Licenses applicable to the Borrower’s business, other than as may be permitted under a Court Order or as to which any enforcement in respect of non-compliance is stayed by a Court Order, provided the issuance of such Court Order does not result in the occurrence of an Event of Default.
- (h) The Credit Parties shall have paid all statutory liens, trust and other government claims including, without limitation, source deductions.
- (i) The Interim Lender shall have received a list of assets and liabilities of the Credit Parties, in form and substance satisfactory to the Interim Lender, acting reasonably.

Making of each Interim Advance shall be further subject to the satisfaction of the following conditions precedent (collectively, the “**Funding Conditions**”) (provided that the Funding Conditions in paragraphs (b), (c), (e), (f) and (p) shall not be conditions precedent to the initial Interim Advance), as determined by the Interim Lender:

- (a) The DIP Order shall not have been stayed, vacated or otherwise caused to be ineffective or materially amended, restated or modified, without the consent of the Interim Lender.
- (b) The CCAA Court shall have approved the engagement of Howard Steinberg or an entity controlled by him (the “**Chief Restructuring Officer**”) as the chief restructuring officer of the Borrower and the terms of the approval shall be satisfactory to the Interim Lender, acting reasonably;
- (c) The Upfront Fee and all Interim Financing Fees and Expenses for which invoices have been provided to the Borrower shall have been paid, or arrangements satisfactory to the Interim Lender acting reasonably shall have been made to pay such amounts.
- (d) The Credit Parties shall be in compliance with the : (i) DIP Order and any amendments thereto; and (ii) all other orders issued in the Borrower’s CCAA proceedings;
- (e) A SISP acceptable to the Interim Lender, acting reasonably, shall have been approved by the Court in the CCAA Proceedings.
- (f) A key employee retention plan (“**KERP**”) acceptable to the Interim Lender, acting reasonably, shall have been approved by the Court in the CCAA Proceedings within 10 days of the DIP Order or such other date as the Interim Lender may agree.
- (g) The Interim Lender shall be satisfied that the Credit Parties have complied with and are continuing to comply in all material respects with all Licenses, including, for certainty, those issued to the Borrower under the Cannabis Act and the Excise Act, other than as may be permitted under a Court Order or as to which any enforcement in respect of non-compliance is stayed by a Court Order, provided the issuance of such Court Order

does not result in the occurrence of an Event of Default.

- (h) The Credit Parties shall have paid all statutory liens, trust and other government claims including, without limitation, source deductions, except, in each case, for any such amounts that are not yet due and payable or which are in dispute in which case appropriate reserves have been made.
- (i) The Credit Parties shall be in compliance with any timetables established from time to time by them and approved by the Court (if necessary) and the Interim Lender setting out the SISP or any similar process.
- (j) All of the representations and warranties of the Credit Parties as set forth herein shall be true and accurate in all material respects.
- (k) No Default or Event of Default shall have occurred or, if applicable, shall occur as a result of the requested Interim Advance.
- (l) No Material Adverse Change shall have occurred after the date of the issuance of the DIP Order.
- (m) There shall be no Liens ranking in priority to the Interim Lender Charge, other than the Permitted Priority Liens.
- (n) The Interim Lender shall have received a written request for an Interim Advance from the Borrower, substantially in the form attached hereto as Schedule C, which shall be executed by a director or officer of the Borrower, and shall certify, *inter alia*, that (i) the requested Interim Advance is within the Maximum Amount and is consistent with the Agreed Budget, and (ii) the Borrower and the other Credit Parties are in compliance with this Interim Financing Term Sheet and the Court Orders.
- (o) The requested Interim Advance shall not cause the aggregate amount of all outstanding

Interim Advances to exceed the Maximum Amount or be greater than the amount shown on the Agreed Budget as at the date of such Interim Advance.

- (p) The comeback hearing (the “**Comeback Hearing**”) with the Court shall have occurred not more than 10 days after the issuance of the initial order by the Court in the CCAA Proceedings.

For greater certainty, the Interim Lender shall not be obligated to make any Interim Advance or otherwise make available funds pursuant to this Interim Financing Term Sheet unless and until all the foregoing applicable conditions have been satisfied and all the foregoing applicable documentation and confirmations have been obtained (for certainty, each of the same, as applicable, as a condition precedent to each Interim Advance), each in form and content satisfactory to the Interim Lender in its sole discretion (unless specified otherwise).

#### 9. **COSTS AND EXPENSES**

The Borrower shall pay all of the Interim Lender’s reasonable and documented legal fees (on a solicitor-client, full indemnity basis), out-of-pocket disbursements and any costs of realization or enforcement, in each case in connection with or otherwise related to the Interim Facility, the Interim Lender Charge, the Interim Financing Credit Documentation, or the CCAA Proceedings (collectively, the “**Interim Financing Fees and Expenses**”).

#### 10. **INTERIM FACILITY SECURITY AND PRIORITY**

All Interim Financing Obligations shall be secured by the Interim Lender Charge, which shall be a super-priority Lien over all Collateral, subordinate only to the Permitted Priority Liens. The Interim Lender Charge shall be approved by the Court on terms and conditions satisfactory to the Interim Lender.

All Collateral will be free and clear of all Liens, except for the Permitted Liens.

Notwithstanding the foregoing, and subject to the concluding sentence of this paragraph, no proceeds of any Interim Advance may be used to (a) investigate, object to or challenge in any way any claims of the Interim Lender against any of the Credit Parties in respect of the Interim Facility or of the Pre-Filing Creditor under the Pre-Filing

Secured Loan Agreement, or (b) investigate, object to or challenge in any way the validity, perfection or enforceability of the Liens created pursuant to the Interim Lender Charge. Nothing in this paragraph shall restrict the Credit Parties or the Monitor, including the engagement by the Monitor of independent legal counsel, from: (i) assessing the validity and enforceability of the Liens in respect of advances under the Pre-Filing Secured Loan Agreement, and (ii) conducting a claims process in accordance with any Court Order.

Subject to the Agreed Budget and other limitations set forth herein, the Borrower may only request and apply Interim Advances through the accounts as agreed to with the Interim Lender. In particular, to the extent that Interim Advances are requested through the account of one Credit Party, they shall be transferred to other Credit Parties solely in the manner consistent with the Agreed Budget. Except as set out in the Agreed Budget, the Borrower shall not effect, and shall not permit to occur, any distribution of funds (whether from proceeds of the Interim Facility or otherwise) from a Credit Party to any subsidiary or affiliate that is not a Credit Party.

## 11. MONITOR

The court-appointed monitor in the CCAA Proceedings shall be KSV Kofman Inc. (the “**Monitor**”). The Monitor shall be authorized to have direct discussions with the Interim Lender, and the Interim Lender shall be entitled to receive information from the Monitor from time to time.

## 12. TERM AND MATURITY

The Interim Facility shall be repayable in full on the earlier of: (i) the occurrence of any Event of Default hereunder which is continuing and has not been cured; (ii) the implementation of a plan of compromise or arrangement within the CCAA Proceedings (a “**Plan**”) which has been approved by the requisite majorities of the Credit Parties’ creditors and by an order entered by the Court; (iii) the closing of a Bankruptcy Sale within the CCAA Proceedings which has been approved by orders entered by the Court; (iv) conversion of the CCAA Proceedings into a proceeding under the *Bankruptcy and Insolvency Act* (Canada); and (v) June 30, 2020 (the earliest of such dates being the “**Maturity Date**”).

The commitment in respect of the Interim Facility shall expire on the Maturity Date and all amounts outstanding under the Interim Facility shall be repaid in full no later than the Maturity Date, without the Interim Lender being required

to make demand upon the Borrower or to give notice that the Interim Facility has expired and the obligations are due and payable. The order of the Court sanctioning any Plan shall not discharge or otherwise affect in any way any of the obligations of the Borrower and the Guarantors to the Interim Lender under the Interim Facility, other than after the permanent and indefeasible payment in cash to the Interim Lender of all obligations under the Interim Facility on or before the date the Plan is implemented.

**13. AGREED BUDGET,  
REVISED BUDGETS,  
AND OTHER  
REPORTING**

The Borrower has delivered, and the Interim Lender has accepted, on the date hereof a current weekly line item budget covering the period of at least 60 days following the date of this Interim Financing Term Sheet (together with all updates thereto approved by the Interim Lender in its sole and absolute discretion, including the Revised Budget, the “**Agreed Budget**”). A summarized version of the Agreed Budget is attached hereto as Schedule D. The Agreed Budget sets forth expected receipts and the expected operating and other expenditures to be made during each calendar week and in the aggregate for the period of time covered by the Agreed Budget.

On Wednesday of each week by 5:00 p.m. (Toronto time), commencing on the Wednesday of the calendar week following the Outside Date, the Borrower shall deliver to the Interim Lender: (a) a report showing actual cash receipts and actual expenditures for each line item in the Agreed Budget covering the previous week and comparing the foregoing amounts with the budgeted cash receipts and budgeted expenditures, respectively, set forth in the Agreed Budget for such line item during such one week period, and (b) a one week roll-forward of the Agreed Budget (the “**Revised Budget**”), which shall reflect the Borrower’s good faith projections and be in form and detail consistent with the initial Agreed Budget and subject to the approval of the Interim Lender in its sole discretion.

The Credit Parties shall, on each Variance Testing Date, explain variances exceeding 10% of the Agreed Budget for each material variable line-item of the financial statements that impact the overall consolidated financial results (the “**Budget Variance Report**”).

In addition to reporting required pursuant to section 6.1.17 of the Pre-Filing Secured Loan Agreement, which reporting the Borrower will continue to provide throughout the pendency



of the CCAA Proceedings (other than the reporting required pursuant to Sections 6.1.17.3. and 6.1.17.7 of the Pre-Filing Secured Loan Agreement and provided that the reporting required pursuant to Section 6.1.17.9 of the Pre-Filing Secured Loan Agreement may be redacted for privilege and information relating to the SISP), the Credit Parties shall provide the Interim Lender with non-consolidated income statements and balance sheets on a monthly basis (it being understood that such statements shall be drafts with estimates for inventory and biological asset valuation), no later than 5 days following the prior month-end.

#### **14. AVAILABILITY UNDER INTERIM FACILITY**

Provided that the Funding Conditions are satisfied, as determined by the Interim Lender, acting reasonably, each Interim Advance shall be made by the Interim Lender to the Borrower within two (2) Business Days of delivery by the Borrower to the Interim Lender of a written request for an Interim Advance, substantially in the form attached hereto as Schedule C; provided that, (i) if the DIP Order is obtained on or before 1:00pm (EDT), the initial Interim Advance shall be made on the same Business Day that the Borrower delivers to the Interim Lender a written request for such Interim Advance, and (ii) if the DIP Order is obtained after 1:00pm (EDT), the initial Interim Advance shall be made on the following Business Day that the Borrower delivers to the Interim Lender a written request for such Interim Advance, in each case substantially in the form attached hereto as Schedule C, and in the case of both (i) and (ii) of this proviso, the initial Interim Advance shall be initiated by the Interim Lender as soon as practicable following confirmation that the DIP Order is obtained and delivery by the Borrower to the Interim Lender of a written request for such Interim Advance, substantially in the form attached hereto as Schedule C.

Interim Advances shall be available to the Borrower in Canadian dollars. Each Interim Advance shall be in a minimum aggregate amount that is no less than \$250,000 and in excess thereof in integral multiples of \$50,000.

All proceeds of Interim Advances shall be deposited into the Deposit Account. The Deposit Account shall be subject to the Interim Lender Charge.

The initial Interim Advance shall be in an amount not in excess of \$800,000.

- 15. EVIDENCE OF INDEBTEDNESS** The Interim Lender's accounts and records constitute, in the absence of manifest error, conclusive evidence of the indebtedness of the Borrower to the Interim Lender pursuant to the Interim Facility.
- 16. VOLUNTARY PREPAYMENTS** Provided the Monitor is satisfied that there are sufficient cash reserves in the Credit Parties' bank accounts to satisfy amounts secured by the Permitted Priority Liens and amounts anticipated on the date of the voluntary prepayment under the Agreed Budget in respect of which Interim Advances were made that have not yet been incurred or paid the Borrower may prepay any amounts outstanding or any portion of any amounts outstanding under the Interim Facility at any time prior to the Maturity Date, without any prepayment fee or penalty.
- 17. FEES, INTEREST RATE AND DEFAULT RATE** An upfront fee in the amount of \$120,000 shall be payable to the Interim Lender in connection with the establishment of the Interim Facility (the "**Upfront Fee**"). The Upfront Fee shall be payable within 2 Business Days of the Comeback Hearing.
- The Interim Advances shall bear interest at a rate per annum equal to 10.00%. Such interest shall accrue daily and shall be payable monthly in arrears on each Interest Payment Date for each Interim Advance for the period from and including the date upon which the Interim Lender advances such Interim Advance to the Borrower to and including the day such Interim Advance is repaid or paid, as the case may be, to the Interim Lender, and shall be calculated on the principal amount of each Interim Advance outstanding during such period and on the basis of the actual number of days elapsed in a year of 356 or 366 days, as the case may be.
- Interest shall continue to accrue on amounts outstanding under the Pre-Filing Secured Loan Agreement pursuant to the terms of the Pre-Filing Secured Loan Agreement.
- 18. CURRENCY** Unless otherwise stated, all monetary denominations in this Interim Financing Term Sheet shall be in Canadian dollars.
- 19. REPRESENTATIONS AND WARRANTIES** Each of the Credit Parties jointly and severally represents and warrants to the Interim Lender, which representations and warranties shall be deemed to be repeated at each request for an Interim Advance, and upon which the Interim Lender

relies on entering into this Interim Financing Term Sheet and the other Interim Financing Credit Documentation, that:

- (a) Subject to the granting of the DIP Order, the execution and delivery of, and transactions contemplated by, this Interim Financing Term Sheet and the other Interim Financing Credit Documentation:
  - (i) are within the powers of each of the Credit Parties;
  - (ii) have been duly authorized by all necessary corporate and, if required, shareholder approval of each of the Credit Parties;
  - (iii) have been duly executed and delivered by or on behalf of each of the Credit Parties;
  - (iv) constitute legal, valid and binding obligations of each of the Credit Parties;
  - (v) do not require the consent or approval of, registration or filing with, or any other action by, any Governmental Authority, other than filings which may be made to register or otherwise record the Interim Lender Charge.
- (b) The activities of the Credit Parties have been conducted in material compliance with all applicable provincial, state and federal laws, subject to the provisions of the CCAA and any Court Order, unless: (i) otherwise ordered by the Court, or (ii) the sanctions for non-compliance are stayed by a Court Order.
- (c) Each of the Credit Parties has retained and continues to employ sufficient number of the Key Individuals identified as of the date of the DIP Order as are necessary to maintain the Health Canada Licenses in good standing, or such alternates as are necessary to maintain the Health Canada Licenses in good standing

and which are approved by the Minister of Health from time to time.

- (d) Each of the Credit Parties has maintained its obligations for payroll, source deductions, goods and services tax and harmonized sales tax, as applicable, and is not in arrears in respect of payment of these obligations.
- (e) Each of the Credit Parties has obtained and maintain in good standing each of the material Licenses required from the Governmental Authorities, including, without limitation, pursuant to the Cannabis Act, the Excise Act and the Health Canada Licenses, which are necessary to conduct its business.
- (f) The Agreed Budget is reasonable and prepared in good faith.
- (g) No Default or Event of Default has occurred and is continuing.
- (h) All of the representations and warranties made in the following sections of the Pre-Filing Secured Loan Agreement are true and correct in all material respects as if fully set out in this Interim Financing Term Sheet: 5.1.1 (Status), 5.1.14 (Insurance), and 5.1.25 (Related Party Transactions).
- (i) Schedule 5.1.12 of the Pre-Filing Secured Loan Agreement (as updated in writing by the Borrower to the Lender) sets forth all Material Contracts (as defined therein) of the Credit Parties, true, complete and correct copies of which have been provided to the Lender Interim Lender. All such Material Contracts are unamended.

## **20. AFFIRMATIVE COVENANTS**

Each of the Credit Parties jointly and severally covenants and agrees to perform and do each of the following until the Interim Financing Obligations are permanently and indefeasibly repaid in full and the Interim Facility is terminated:

- (a) (i) Allow the Interim Lender or its respective agents and advisors, on reasonable notice

during regular business hours, to enter on and inspect each of the Credit Parties' assets and properties; (ii) provide the Interim Lender or its respective agents or advisors, on reasonable notice and during normal business hours, full access to the books and records of the Credit Parties; and (iii) cause management of the Credit Parties to fully co-operate with the Interim Lender and the Monitor or their respective agents and advisors, as applicable.

- (b) Keep the Interim Lender and the Monitor apprised on a timely basis of all material developments with respect to the business and affairs of the Credit Parties, including (without limitation) the development of a Plan or a Restructuring Option.
- (c) Deliver to the Interim Lender and keep the Interim Lender apprised on a timely basis of all material correspondence sent to or received from any Governmental Authority, including Health Canada. For greater certainty, all correspondence regarding the Health Canada Licenses is deemed to be material.
- (d) Deliver to the Interim Lender the following reporting packages: (i) documents referred to in Section 13 above, on the dates and times specified in Section 13; (ii) copies of all pleadings, motions, applications, judicial or financial information and other documents to be filed by or on behalf of any Credit Party with the Court, in each case in a reasonable period of time prior to filing such documents with the Court to the extent practicable in the circumstances; (iii) prompt notice of material events, including, without limitation, defaults, new material litigation or changes in status of ongoing material litigation, regulatory and other filings; (iv) other reasonable information requested by the Interim Lender from time to time, (v) prompt notice of any event that could reasonably be expected to result in a Material Adverse Change (vi) copies of all material communications

received from existing or prospective clients, and (vii) without limiting the foregoing, in a timely manner and prior to effecting or incurring such transaction or expense, the Credit Parties shall deliver to the Monitor and the Interim Lender copies of any financial reporting which shows a material transaction or material expense, or a materially adverse financial position of the Credit Parties, which is not reflected in the Agreed Budget, and shall forthwith provide any reports or commentary received from the Monitor in respect of same.

- (e) Use the proceeds of the Interim Facility only for the purposes described in Section 5, and in a manner consistent with the restrictions set out herein.
- (f) Comply with the provisions of the court orders made in the CCAA Proceedings applicable to the Credit Parties (collectively, the “**Court Orders**” and each a “**Court Order**”); provided that if any such Court Order contravenes this Interim Financing Term Sheet or any of the Interim Financing Credit Documentation so as to materially adversely impact the rights or interests of the Interim Lender, as determined by the Interim Lender, the same shall be an Event of Default hereunder.
- (g) Preserve, renew and keep in full force and good standing its respective corporate existence and its respective material licenses, permits, approvals, and other authorizations required in respect of its business, properties, assets or any activities or operations carried out therein, including, without limitation, the Health Canada Licenses, unless otherwise agreed by the Interim Lender.
- (h) Preserve and maintain the security of all regulated inventory (including cannabis) in accordance with the requirements of the

Health Canada Licenses, the Cannabis Act, the Excise Act and other applicable laws.

- (i) Continue to employ some or all of the Key Individuals identified as of the date of the DIP Order as are necessary to maintain the Health Canada Licenses in good standing, or employ such alternate persons in the roles prescribed by the Cannabis Act as are necessary to maintain the Health Canada Licenses in good standing and which are approved by the Minister of Health from time to time.
- (j) Conduct all activities in a manner consistent with the Agreed Budget.
- (k) Forthwith notify the Interim Lender of the occurrence of any Default or Event of Default, including an Updated Budget Default.
- (l) Provide to the Interim Lender regular updates regarding the status of the CCAA Proceedings including, without limitation, reports on the progress of any Plan or Restructuring Option (but excluding reports on any Bankruptcy Sale and the sale process contemplated in the SISP) and any information which may otherwise be confidential, subject to same being maintained as confidential by the Interim Lender; provided however, in no event shall any information subject to privilege be required to be provided to the Interim Lender.
- (m) Comply with the covenants set forth in the following sections of the Pre-Filing Secured Loan Agreement: 6.1.4 (Insurance), 6.1.5 (Compliance with Applicable Law and Contracts) (provided that a breach of a Material Contract resulting from the insolvency of a Credit Party shall be deemed not to be a breach of this covenant), 6.1.14 (Payment of Taxes), 6.3.4 (Material Contracts) (provided that a breach of a Material Contract resulting from the insolvency of a Credit Party shall be deemed

not to be a breach of this covenant), 6.3.12 (Material Authorizations) (provided that an amendment or supplement to a Material Authorization shall be permitted if prior written notice is given to the Interim Lender of same and same is required to maintain such Material Authorization in good standing), and 6.3.16 (Affiliate Transactions).

- (n) Within 7 days hereof, deliver insurance certificates to the Interim Lender naming the Interim Lender as mortgagee and loss payee on all property insurance and an additional insured on all liability insurance, which insurance certificates and its terms shall be satisfactory to the Interim Lender, acting reasonably.

## 21. NEGATIVE COVENANTS

Each of the Credit Parties jointly and severally covenants and agrees not to do the following, other than with the prior written consent of the Interim Lender:

- (a) Transfer, lease, farm-out or otherwise dispose of all or any part of its property, assets or undertaking, except for Permitted Dispositions, without the prior written consent of the Interim Lender.
- (b) Make any investments or acquisitions of any kind, direct or indirect, in any business or otherwise other than as expressly provided for, or permitted to be incurred, in the Agreed Budget and the Court Orders.
- (c) Make any payments or distributions of any kind, including payments of principal and interest in respect of existing (pre-filing) debt or obligation, other than as may be permitted by a Court Order and that does not result in an Event of Default and is provided for in the Agreed Budget.
- (d) Create or permit to exist indebtedness (including guarantees thereof or indemnities or other financial assistance in respect thereof) other than (i) existing (pre-filing) debt, (ii) debt contemplated by this Interim



Financing Term Sheet, (iii) post-filing trade payables or other post-filing unsecured obligations incurred in the ordinary course of business in accordance with the Agreed Budget and any Court Order, and (iv) obligations or indebtedness expressly provided for, or permitted to be incurred, in the Agreed Budget and the Court Orders.

- (e) Make or give any additional financial assurances, in the form of bonds, letters of credit, guarantees or otherwise, to any person (including, without limitation, any Governmental Authority).
- (f) Create, permit to exist or seek or support a motion by another party to provide to any third party a Lien on the Collateral, other than the Permitted Liens.
- (g) Change its name, amalgamate, consolidate with or merge into, or enter into any similar transaction with any other entity.
- (h) Cease (or threaten to cease) to carry on their business or activities as currently being conducted or modify or alter in any material manner the nature and type of their operations, business or the manner in which such business is conducted.
- (i) Amend, replace or modify the Agreed Budget other than in accordance with the terms of this Interim Financing Term Sheet.
- (j) Apply for, or consent to, any Court Orders or any change or amendment to any Court Order which affects the Interim Lender, without the prior consent of the Interim Lender.
- (k) Commence, continue or seek court approval of any other restructuring transaction that will not repay the Interim Lender in full without the prior written consent of the Interim Lender, in its sole discretion.
- (l) Enter into any contract or other agreement which involves potential expenditures in

excess of \$50,000 in any fiscal year without the prior written consent of the Interim Lender.

## 22. INDEMNITY AND RELEASE

The Credit Parties agree, on a joint and several basis, to indemnify and hold harmless the Interim Lender and its respective directors, officers, employees, agents, attorneys, advisors and affiliates (all such persons and entities being referred to herein as “**Indemnified Persons**”) from and against any and all actions, suits, proceedings (including any investigations or inquiries), claims, losses, damages, liabilities or expenses of any kind or nature whatsoever (excluding indirect or consequential damages and claims for lost profits) which may be incurred by or asserted against or involve any Indemnified Person (collectively, “**Claims**”) as a result of or arising out of or in any way related to or resulting from the Interim Facility, this Interim Financing Term Sheet or any other Interim Financing Credit Documentation (regardless of whether such Claim is made in the CCAA Proceedings or any other proceeding, including a bankruptcy or insolvency proceeding) and, upon demand, to pay and reimburse any Indemnified Person for any legal or other out-of-pocket expenses incurred in connection with investigating, defending or preparing to defend any such action, suit, proceeding (including, without limitation, any inquiry or investigation) or claim (whether or not any Indemnified Person is a party to any action or proceeding out of which any such expenses arise); provided, however, the Credit Parties shall not be obligated to indemnify pursuant to this paragraph any Indemnified Person against any loss, claim, damage, expense or liability (a) to the extent it resulted from the gross negligence, bad faith or wilful misconduct of such Indemnified Person as finally determined by a court of competent jurisdiction, or (b) to the extent arising from any dispute solely among Indemnified Persons other than any claims arising out of any act or omission on the part of a Credit Party. The Credit Parties shall not be responsible or liable to any Indemnified Person or any other person for consequential or punitive damages. Each of the Indemnified Persons undertakes to repay any and all amounts paid to such Indemnified Person in accordance with this Section 22 if it is ultimately determined that such Indemnified Person is not entitled to be indemnified therefor.

The indemnities granted under this Interim Financing Term Sheet shall survive any termination of the Interim Facility.

### 23. EVENTS OF DEFAULT

The occurrence of any one or more of the following events without the Interim Lender's written consent shall constitute an event of default ("**Event of Default**") under this Interim Financing Term Sheet:

- (a) the issuance of an order of the Court (including any Court Order) or any other court of competent jurisdiction:
  - (i) dismissing the CCAA Proceedings, or lifting the stay in the CCAA Proceedings to permit (A) the enforcement of any Lien against a Credit Party, or a material portion of their respective property, assets or undertaking, or (B) the appointment of a receiver and manager, receiver, interim receiver or similar official, or substituting the Monitor or enhancing any monitor's powers, or the making of a bankruptcy order against a Credit Party; granting any Lien which is senior to or *pari passu* with the Interim Lender Charge, other than the Priority Charges;
  - (ii) staying, reversing, vacating or otherwise modifying any Interim Financing Credit Documentation or any Court Order in a manner materially adverse to the interests of the Interim Lender, as determined by the Interim Lender; or
  - (iii) directing any Credit Party to pay any post-employment benefits;
- (b) the filing of any pleading by any Credit Party seeking any of the matters set forth in paragraph (a) above, or failure of the Credit Parties to diligently oppose any party that brings an application or motion for the relief set out in paragraph (a) above;
- (c) failure of any of the Credit Parties to comply with any of the negative covenants in this Interim Financing Term Sheet or in any other

Interim Financing Credit Documentation, and to the extent such Default is capable of being remedied, such Default shall continue unremedied for a period of three (3) Business Days;

- (d) any update in the Revised Budget or Budget Variance Report (i) contemplates or forecasts an adverse change or changes from the then-existing Agreed Budget, and such change(s) constitute a Material Adverse Change or (ii) contemplates or forecasts a cash flow deficit in excess of \$100,000 prior to the Maturity Date, without the Interim Lender's approval (each, an “**Updated Budget Default**”);
- (e) the occurrence of a Material Adverse Change;
- (f) any representation or warranty by a Credit Party in this Interim Financing Term Sheet or in any other Interim Financing Credit Documentation is incorrect or misleading in any material respect;
- (g) the aggregate amount of the outstanding Interim Advances under the Interim Facility exceeds the Maximum Amount;
- (h) any material violation or breach of any Court Order;
- (i) any proceeding, motion or application is commenced or filed by any of the Credit Parties, or if commenced by another party, supported or otherwise consented to by any Credit Party, (i) seeking the invalidation, subordination or other challenging of the terms of the Interim Facility, the Interim Lender Charge, this Interim Financing Term Sheet or any of the other Interim Financing Credit Documentation; (ii) challenging the validity, priority, perfection or enforceability of the Liens created pursuant to the Interim Lender Charge; or (iii) unless the Plan or Restructuring Option provides for repayment in full of the Interim Facility, seeking the approval of any Plan or Restructuring Option

which does not have the prior written consent of the Interim Lender;

- (j) the priority of the Liens created pursuant to the Interim Lender Charge is varied without the consent of the Interim Lender;
- (k) any Plan is sanctioned or any Restructuring Option is consummated by any of the Credit Parties that is not consistent with or contravenes any provision of this Interim Financing Term Sheet or any of the other Interim Financing Credit Documentation, in a manner that is materially adverse to the interests of the Interim Lender, as determined by the Interim Lender, or would reasonably be expected to materially adversely affect the interests of the Interim Lender, as determined by the Interim Lender, unless the Interim Lender has consented thereto;
- (l) the failure of any Credit Party to maintain in good standing each of the Health Canada Licenses and such Default shall remain unremedied for a period of five (5) Business Days;
- (m) the failure of any Credit Party to continue to employ the Key Individuals identified as of the date of the DIP Order on terms sufficient to maintain the Licenses in good standing, or to employ such alternate persons in the roles prescribed by the Cannabis Act as are necessary to maintain the Licenses in good standing and which are approved by the Minister of Health from time to time;
- (n) the failure of any Credit Party to make expenditures or pay damages, fines, claims, costs or expenses to remediate, in respect of any Environmental Liabilities, required by any Governmental Authority, except as set out in the Agreed Budget, or as otherwise agreed to in writing by the Interim Lender, and such Default shall remain unremedied for

a period of three (3) Business Days after such amount is due;

- (o) failure of the Borrower to pay any principal amount owing under this Interim Financing Term Sheet when due;
- (p) failure of the Borrower to pay any interest or fees or any portion thereof owing under this Term Sheet or any other Interim Financing Credit Documentation when due and such Default shall remain unremedied for a period of three (3) Business Days after written notice from the Interim Lender to the Borrower that such amount is overdue;
- (q) failure of any Credit Party to perform or comply with any other term or covenant under this Interim Financing Term Sheet or any other Interim Financing Credit Documentation, and such Default shall continue unremedied for a period of five (5) Business Days;
- (r) any Credit Party commences an action or takes any other proceeding to obtain any form of relief against the Interim Lender, the Pre-Filing Creditor or any of their affiliates, including, without limitation, a proceeding to recover damages or to obtain payment of any amounts purported to be owing by the Interim Lender, the Pre-Filing Creditor or any of their affiliates to any Credit Party or any affiliate thereof, if the Interim Lender, the Pre-Filing Creditor or any of their affiliates disputes any of the same;
- (s) the SISP is not approved by the Court within 10 days of the issuance of the initial order by the Court in the CCAA Proceedings;
- (t) failure of any of the Credit Parties to meet the milestones set out in the SISP which are capable of being performed by the Credit Parties; and

- (u) the Credit Parties seek to, or consent to, any amendment to the SISP without the prior written consent of the Interim Lender.

## 24. REMEDIES

Upon the occurrence of an Event of Default, and subject to the Court Orders, the Interim Lender may, in its sole and absolute discretion, elect to terminate its commitment to make Interim Advances to the Borrower hereunder and declare the obligations in respect of this Interim Financing Credit Documentation to be immediately due and payable and cease making any further Interim Advances. Without limiting the foregoing remedies, upon the occurrence of an Event of Default, the Interim Lender may, in its sole and absolute discretion, elect to permanently reduce the Maximum Amount. In addition, upon the occurrence of an Event of Default, the Interim Lender may, in its sole and absolute discretion, subject to any Court Order:

- (a) apply to a court for the appointment of a receiver, an interim receiver or a receiver and manager over the Collateral to substitute the Monitor and/or enhance any powers of the Monitor, or for the appointment of a trustee in bankruptcy of the Credit Parties;
- (b) set-off or combine any amounts then owing by the Interim Lender to any of the Credit Parties against the obligations of any of the Credit Parties to the Interim Lender hereunder or under any other Interim Financing Credit Documentation;
- (c) apply to the Court for an order or orders, on terms satisfactory to the Monitor and the Interim Lender, providing the Monitor with the power, in the name of and on behalf of the Credit Parties, to take all necessary steps in the CCAA Proceedings;
- (d) subject to obtaining prior approval from the Court, exercise the powers and rights of a secured party under the *Personal Property Security Act* (Ontario), or any legislation of similar effect; and
- (e) subject to obtaining prior approval from the Court, exercise all such other rights and

remedies under the Interim Financing Credit Documentation, the Court Orders and applicable law.

The rights and remedies of the Interim Lender under this Interim Financing Term Sheet are cumulative and are in addition to and not in substitution for any other rights and remedies available at law or in equity or otherwise, including under the CCAA in the CCAA Proceedings.

**25. TAXES, YIELD PROTECTION AND INCREASED COSTS**

All repayments and prepayments of the Interim Advances will be made free and clear of any taxes, levies, imposts, duties, charges, fees, deductions or withholdings of any kind or nature whatsoever or any interest or penalties payable with respect thereto now or in the future imposed, levied, collected, withheld or assessed by any country or any political subdivision of any country (collectively “**Taxes**”). If any Taxes are required by applicable law to be withheld (“**Withholding Taxes**”) from any amount payable to the Interim Lender under this Interim Financing Term Sheet, the amount so payable to the Interim Lender shall be increased to the extent necessary to yield to the Interim Lender, on a net basis after payment of all Withholding Taxes, the amount payable under this Interim Financing Term Sheet at the rate or in the amount specified herein, and the Borrower shall provide evidence satisfactory to the Interim Lender that the Taxes have been so withheld and remitted.

If the Credit Parties pay an additional amount to the Interim Lender to account for any deduction or withholding, the Interim Lender shall reasonably cooperate with the applicable Credit Parties to obtain a refund of the amounts so withheld, including filing income tax returns in applicable jurisdictions, claiming a refund of such tax and providing evidence of entitlement to the benefits of any applicable tax treaty. The amount of any refund so received, and interest paid by the tax authority with respect to any refund, shall be paid over by the Interim Lender to the applicable Credit Parties promptly. If reasonably requested by the Credit Parties, the Interim Lender shall apply to the relevant taxing authority to obtain a waiver from such withholding requirement, and the Interim Lender shall cooperate with the applicable Credit Parties and assist such Credit Parties to minimize the amount of deductions or withholdings required.

The Borrower will reimburse the Interim Lender for any costs incurred by the Interim Lender in performing its



obligations under the Interim Financing Credit Documentation resulting from any change in law, including, without limitation, any reserve or special deposit requirements or any tax or capital requirements or any change in the compliance of the Interim Lender therewith that has the effect of increasing the cost of funding to the Interim Lender or reducing its effective rate of return on capital.

- 26. INTERIM LENDER'S APPROVALS** Any consent, approval, instruction or other expression of the Interim Lender shall be in the Interim Lender's sole and absolute discretion, unless otherwise provided in this Interim Financing Term Sheet and shall to be delivered by any written instrument, including by way of electronic mail, by the Interim Lender, or its counsel, pursuant to the terms of this Interim Financing Term Sheet.
- 27. TERMINATION BY THE CREDIT PARTIES** At any time following the indefeasible payment in full in immediately available funds of all of the outstanding Interim Financing Obligations, the Credit Parties shall be entitled to terminate this Interim Financing Term Sheet upon notice to the Interim Lender.
- 28. AMENDMENTS, WAIVERS, ETC.** No amendment or waiver of any provisions of this Interim Financing Term Sheet and any other Interim Financing Credit Documentation or consent to any departure by the Credit Parties from any provision thereof is effective unless it is in writing and signed by the Interim Lender (and in the case of amendments, the Credit Parties). Such amendment, waiver or consent shall be effective only in the specific instance and for the specific purpose for which it is given.
- 29. ASSIGNMENT** The Interim Lender may assign this Interim Financing Term Sheet and its rights and obligations hereunder, in whole or in part, or grant a participation in its respective rights and obligations hereunder, (i) at any time to an affiliate; (ii) to any person acceptable to the Interim Lender in its sole and absolute discretion with the prior written consent of the Monitor (subject in all cases to providing the Monitor with reasonable evidence that such assignee has the financial capacity to fulfill the obligations of the applicable Interim Lender hereunder). None of this Interim Financing Term Sheet, any other Interim Financing Credit Documentation nor any right or obligation hereunder may be assigned by any Credit Party.

- 30. COUNTERPARTS AND FACSIMILE SIGNATURES** This Interim Financing Term Sheet and any other Interim Financing Credit Documentation may be executed in any number of counterparts and by electronic transmission, each of which when executed and delivered shall be deemed to be an original and all of which when taken together shall constitute one and the same instrument. Any party may execute this Interim Financing Term Sheet by signing any counterpart of it.
- 31. CONFIDENTIALITY** This Interim Financing Term Sheet and all other Interim Financing Credit Documentation are delivered on the condition that each of the Credit Parties and their affiliates shall not disclose such documents or the substance of the financing arrangements proposed therein to any person or entity outside of their respective organizations, except to those professional advisors who are in a confidential relationship with them and as required in connection with any court filing in the CCAA Proceedings.
- 32. FURTHER ASSURANCES** Each of the parties hereto shall execute and deliver such additional documents, instruments, conveyances and assurances and take such further actions as may be reasonably required to carry out the provisions hereof and in each of the other Interim Financing Credit Documentation and give effect to the transactions contemplated hereby and thereby.
- 33. TIME IS OF THE ESSENCE** Time is of the essence in this Interim Financing Term Sheet.
- 34. ENTIRE AGREEMENT** The Interim Financing Credit Documentation constitute the entire agreement between the parties hereto pertaining to the matters therein set forth and supersede and replace any prior understandings or arrangements pertaining to the Interim Facility. There are no warranties, representations or agreements between the parties in connection with such matters except as specifically set forth or referred to in the Interim Financing Credit Documentation.
- 35. SEVERABILITY** Each of the provisions contained in this Interim Financing Term Sheet is distinct and severable and a declaration of invalidity, illegality or unenforceability of any such provision or part thereof by a court of competent jurisdiction shall not affect the validity or enforceability of any other provision hereof.

**36. NO THIRD-PARTY  
BENEFICIARY**

No person, other than the Credit Parties, the Interim Lender and the Indemnified Persons, is entitled to rely upon this Interim Financing Term Sheet and the parties expressly agree that this Interim Financing Term Sheet does not confer rights upon any other party.

**37. JOINT AND  
SEVERAL**

The obligations of the Credit Parties hereunder are joint and several.

**38. NOTICES**

Any notice, request or other communication hereunder to any of the parties shall be in writing and be well and sufficiently given if delivered in accordance with the notice provisions set out in the Pre-Filing Secured Loan Agreement in addition to the notice provisions set forth below:

In the case of the Credit Parties:

James E. Wagner Cultivation Corporation  
PO Box 46015  
Kitchener, Ontario  
N2E 4J3

Attention: Nathan Woodworth  
Email: [nathan@jwcmed.com](mailto:nathan@jwcmed.com)

With a copy to:

Bennett Jones LLP  
3400 – 100 King Street West  
Toronto, ON M5X 1A4

Attention: Sean Zweig  
Email: [zweigs@bennettjones.com](mailto:zweigs@bennettjones.com)

In the case of the Interim Lender:

Trichome Financial Corp.  
150 King Street West, Suite 200  
Toronto, ON M5H 1J9

Attention: Michael Ruscetta & Dan Cohen  
Email: [mruscetta@trichomefinancial.com](mailto:mruscetta@trichomefinancial.com) &  
[dcohen@trichomefinancial.com](mailto:dcohen@trichomefinancial.com)

with a copy to:

Torys LLP  
Suite 3000, 79 Wellington Street W

- 29 -

Box 270, TD Centre  
Toronto, ON M5K 1N2

Attention: Scott Bomhoff  
Email: sbomhoff@torys.com

In the case of the Monitor:

KSV Kofman Inc.  
150 King Street West, Suite 2308  
Toronto, Ontario, M5H 1J9

Attention: Bobby Kofman & Noah Goldstein  
Email: [bkofman@ksvadvisory.com](mailto:bkofman@ksvadvisory.com) &  
[ngoldstein@ksvadvisory.com](mailto:ngoldstein@ksvadvisory.com)

with copy to:

Davies Ward Phillips & Vineberg LLP  
155 Wellington Street West, 40th Floor  
Toronto, ON, M5V 3J7

Attention: Robin Schwill & Natalie Renner  
Email: [rschwill@dwpv.com](mailto:rschwill@dwpv.com) &  
[nrenner@dwpv.com](mailto:nrenner@dwpv.com)

### **39. GOVERNING LAW**

This Interim Financing Credit Documentation shall be governed by, and construed in accordance with, the laws of the Province of Ontario and the federal laws of Canada applicable therein.

IN WITNESS WHEREOF the parties hereto have executed this Agreement.


**BORROWER:**

**JAMES E. WAGNER CULTIVATION CORPORATION**

By: \_\_\_\_\_  
Name:  
Title:

**INTERIM LENDER:**

**TRICHOME FINANCIAL CORP.**

By:  \_\_\_\_\_  
Name:  
Title:

**GUARANTORS:**

**JAMES E. WAGNER CULTIVATION LTD.**

By: \_\_\_\_\_  
Name:  
Title:

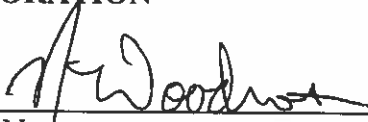
**JWC 1 LTD.**

By: \_\_\_\_\_  
Name:  
Title:

IN WITNESS WHEREOF the parties hereto have executed this Agreement.

**BORROWER:**

**JAMES E. WAGNER CULTIVATION CORPORATION**

By:   
Name:  
Title:

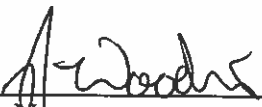
**INTERIM LENDER:**

**TRICHOME FINANCIAL CORP.**


By: \_\_\_\_\_  
Name:  
Title:

**GUARANTORS:**


**JAMES E. WAGNER CULTIVATION LTD.**

By:   
Name:  
Title:

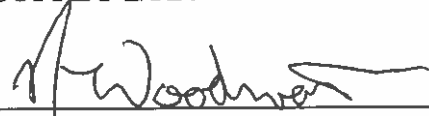
**JWC 1 LTD.**

By:   
Name:  
Title:


**JWC 2 LTD**

By:   
Name:  
Title:

**JWC SUPPLY LTD.**

By:   
Name:  
Title:

**GROWTHSTORM INC.**

By:   
Name:  
Title:

**SCHEDULE A**  
**DEFINED TERMS**

“**Administration Charge**” means the administration charge on the Collateral in an aggregate amount not to exceed \$500,000.

“**Agreed Budget**” has the meaning given thereto in Section 13.

“**Bankruptcy Sale**” means the sale of all or substantially all of the assets of the Borrower pursuant to a sale approved by the Court.

“**Borrower**” has the meaning given thereto in Section 1.

“**Budget Variance Report**” has the meaning given thereto in Section 13.

“**Business Day**” means a day, excluding Saturday and Sunday, on which banks are generally open for business in the Province of Ontario.

“**Cannabis Act**” has the meaning given there in Section 8.

“**CCAA**” has the meaning given thereto in the preamble.

“**CCAA Proceedings**” has the meaning given thereto in the preamble.

“**Chief Restructuring Officer**” has the meaning given thereto in Section 8.

“**Claims**” has the meaning given thereto in Section 22.

“**Collateral**” means all present and future assets and property of the Credit Parties, real and personal, tangible or intangible, and whether now owned or which are hereafter acquired or otherwise become the property of a Credit Party.

“**Court**” has the meaning given thereto in the preamble.

“**Court Order**” and “**Court Orders**” have the meanings given thereto in Section 20(f).

“**Credit Parties**” has the meaning given thereto in Section 3.

“**D&O Charge**” means the directors and officers charge on the Collateral in an aggregate amount not to exceed \$1,000,000.

“**Default**” means any event or condition which, with the giving of notice, lapse of time or upon a declaration or determination being made (or any combination thereof), would constitute an Event of Default.

“**Deposit Account**” means the account(s) maintained by the Credit Parties to which payments and transfers under the Interim Financing Term Sheet are to be affected, which are specified in



writing by the Borrower to the Interim Lender, or such other account or accounts as the Borrower may from time to time designate by written notice to the Interim Lender.

“**DIP Order**” has the meaning given thereto in Section 8.

“**Environmental Liabilities**” means all liabilities, obligations, responses, remedial and removal costs, investigation and feasibility study costs, capital costs, operation and maintenance costs and other costs and expenses, including fines, penalties, sanctions and interest incurred as a result of or related to any claim, investigation, proceeding or demand of any Governmental Authority against any of the Credit Parties including, without limitation, arising under or related to any law relating to the environment or in connection with any substance which is or is deemed under any applicable law to be, alone or in combination, hazardous, hazardous waste, toxic, a pollutant, a contaminant or source of pollution or contamination whether on, at, in, under, from or about or in the vicinity of any real or personal property owned by any of the Credit Parties, or any real or personal property that was previously owned, leased or occupied by any of the Credit Parties.

“**Excise Act**” has the meaning given thereto in the definition of License below.

“**Event of Default**” has the meaning given thereto in Section 23.

“**Funding Conditions**” has the meaning given there in Section 8.

“**Governmental Authority**” means any federal, provincial, state, regional, municipal or local government or any department, agency, board, tribunal or authority thereof or other political subdivision thereof and any entity or person exercising executive, legislative, judicial, regulatory or administrative functions of, or pertaining to, government or the operation thereof.

“**Guarantors**” has the meaning given thereto in Section 3.

“**Health Canada Licenses**” means all material Licenses related to cannabis and issued by Health Canada, including material Licenses to plant, grow, cultivate, extract, produce, process, store, destroy, sell, provide, ship, deliver, transport and/or distribute cannabis under applicable law, including without limitation License Nos. LIC-S0SIOQZD8S-2020 and LIC-GHASXLI39D-2019-2.

“**Indemnified Persons**” has the meaning given thereto in Section 22.

“**Interest Payment Date**” means the **last** day of each month; provided that, in any case, on the Maturity Date or, if applicable, any earlier date on which the Interim Facility is fully cancelled or permanently reduced in full, shall be an Interest Payment Date with respect to all Interim Advances then outstanding under the Interim Facility.

“**Interim Advance**” and “**Interim Advances**” have the meanings given thereto in Section 6.

“**Interim Facility**” has the meaning given thereto in Section 6.

“**Interim Financing Credit Documentation**” has the meaning given thereto in Section 7.

“**Interim Financing Fees and Expenses**” has the meaning given thereto in Section 9.

“**Interim Financing Obligations**” has the meaning given thereto in Section 8.

“**Interim Lender**” has the meaning given thereto in Section 2.

“**Interim Lender Charge**” has the meaning given thereto in Section 8.

“**KERP**” has the meaning given thereto in Section 8.

“**Key Individuals**” has the meaning given there in Section 8.

“**Licenses**” means all applications, licenses, certificates, permits, registrations and authorizations of any kind applicable to the Borrower’s business, including, for certainty, those issued to the Borrower under the *Cannabis Act* and the *Excise Act, 2001* (Canada) (the “**Excise Act**”).

“**Liens**” means all mortgages, charges, pledges, hypothecs, assignments by way of security, conditional sales or other title retention arrangements, security created under the *Bank Act* (Canada), liens, encumbrances, security interests or other interests in property, howsoever created or arising, whether fixed or floating, perfected or not, which secure payment or performance of an obligation and, including, in any event:

- (a) deposits or transfers of cash, marketable securities or other financial assets under any agreement or arrangement whereby such cash, securities or assets may be withdrawn, returned or transferred only upon fulfilment of any condition as to the discharge of any other indebtedness or other obligation to any creditor;
- (b) (i) rights of set-off or (ii) any other right of or arrangement of any kind with any creditor, which in any case are made, created or entered into, as the case may be, for the purpose of or having the effect (directly or indirectly) of (A) securing indebtedness, (B) preferring some holders of indebtedness over other holders of indebtedness or (C) having the claims of any creditor be satisfied prior to the claims of other creditors with or from the proceeds of any properties, assets or revenues of any kind now owned or later acquired (other than, with respect to (C) only, rights of set-off granted or arising in the ordinary course of business); and
- (c) absolute assignments of accounts receivable, in each of the foregoing cases, granted by the Credit Parties or against the Collateral.

“**Material Adverse Change**” means any event, circumstance, occurrence or change which, individually or in the aggregate, results, or which could reasonably be expected to result, in a material adverse change in:

- (a) the ability of any Credit Party to perform any material obligation under this Interim Financing Term Sheet and any other Interim Financing Credit Documentation or any Court Order, or the ability of any Credit Party to carry out a Plan or Restructuring Option;

- (b) the validity or enforceability of any of the Interim Lender Charge or the ranking of any of the Liens granted thereby or the material rights or remedies intended or purported to be granted to the Interim Lender under or pursuant to such Interim Lender Charge; or
- (c) the business, operations, assets, condition (financial or otherwise) or results of operations of the Credit Parties, on a consolidated basis.

“**Maturity Date**” has the meaning given thereto in Section 12.

“**Maximum Amount**” has the meaning attributed thereto in Section 6.

“**Monitor**” has the meaning given thereto in Section 11.

“**Outside Date**” has the meaning given thereto in Section 8.

“**Permitted Disposition**” means (i) inventory sold, leased or disposed of in the ordinary course of business, (ii) obsolete equipment which is being replaced with equipment of an equivalent value, (iii) assets sold, leased or disposed of during a fiscal year having an aggregate fair market value not exceeding \$100,000 for such fiscal year, and (iv) any other sale, lease or disposition expressly provided for, or permitted to be incurred, in the Agreed Budget and the Court Orders.

“**Permitted Liens**” means (i) the Interim Lender Charge; (ii) any charges created under the DIP Order or other order of the Court in the CCAA Proceedings subsequent in priority to the Interim Lender Charge, the limit and priority of each of which shall be acceptable to the Interim Lender in its discretion; (iii) valid and perfected Liens existing prior to the date hereof; (iv) inchoate statutory Liens arising after the Outside Date in respect of any accounts payable arising after the Outside Date in the ordinary course of business, provided to pay all such amounts are paid as and when due; and (v) the Permitted Priority Liens.

“**Permitted Priority Liens**” means: (a) the Priority Charges; (b) statutory super-priority Liens for unpaid employee source deductions; (c) Liens for unpaid municipal or county property taxes or utilities to the extent that are given first priority over other Liens by statute; and (d) such other Liens as may be agreed to in writing by the Interim Lender. For greater certainty, except as expressly set forth herein, Liens arising from the construction, repair, maintenance and/or improvement of real or personal property, shall not be “**Permitted Priority Liens**”.

“**Plan**” has the meaning given thereto in Section 12.

“**Pre-Filing Creditor**” means Trichome Financial Corp., as the lender under the Pre-Filing Secured Loan Agreement.

“**Pre-Filing Secured Loan Agreement**” means the amended and restated loan agreement dated November 6, 2019, between James E. Wagner Cultivation Corporation, as borrower and Trichome Financial Corp., as lender, as amended on January 9, 2020, February 19, 2020 and March 10, 2020, as may be further amended, supplemented or otherwise modified.

“**Priority Charges**” means the Administration Charge and the D&O Charge.

**“Restructuring Option”** means any transaction involving the refinancing of a Credit Party, the sale of all or substantially all of the assets of any Credit Party or any other restructuring of the Credit Parties’ businesses and operations, including any liquidation, bankruptcy or other insolvency proceeding in respect of any of Credit Party.

**“Revised Budget”** has the meaning given thereto in Section 13.

**“SISP”** means a sale and investor solicitation process.

**“Updated Budget Default”** has the meaning given thereto in Section 23(d).

**“Upfront Fee”** has the meaning given thereto in Section 17.

**“Variance Testing Date”** means, collectively, the second Wednesday occurring after the Outside Date and each Wednesday thereafter.

**SCHEDULE B**  
**FORM OF INITIAL ORDER**

Court File No.

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE MR.	)	WEDNESDAY, THE 1 <sup>ST</sup>
	)	
JUSTICE HAINEY	)	DAY OF APRIL, 2020

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF JAMES E. WAGNER CULTIVATION  
CORPORATION, JAMES E. WAGNER CULTIVATION LTD.,  
JWC 1 LTD., JWC 2 LTD., JWC SUPPLY LTD. AND  
GROWTHSTORM INC.

(collectively, the "**Applicants**" and each an "**Applicant**")

**INITIAL ORDER**

**THIS APPLICATION**, made by the Applicants, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the affidavit of Nathan Woodworth sworn March 31, 2020 and the Exhibits thereto, and on being advised that Trichome Financial Corp., Lind Global Macro Fund, LP and the other secured creditors of the Applicants who are likely to be affected by the charges created herein were given notice, and on hearing the submissions of counsel for the Applicants, KSV Kofman Inc. ("**KSV**"), the DIP Lender (as defined below) and on reading the consent of KSV to act as the Monitor,

## SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Application and the Application Record is hereby abridged and validated so that this Application is properly returnable today and hereby dispenses with further service thereof.

## APPLICATION

2. **THIS COURT ORDERS AND DECLARES** that the Applicants are companies to which the CCAA applies.

## PLAN OF ARRANGEMENT

3. **THIS COURT ORDERS** that each Applicant 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

3. **THIS COURT ORDERS** that the Applicants shall remain in possession and control of their respective current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "**Property**"). Subject to further Order of this Court, the Applicants shall continue to carry on business in a manner consistent with the preservation of their business (the "**Business**") and Property. The Applicants are 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 the carrying out of the terms of this Order.

4. **THIS COURT ORDERS** that the Applicants shall be entitled to continue to utilize the central cash management system currently in place or, with the consent of the Monitor, replace it with another substantially similar central cash management system (the "**Cash Management System**") and that any present or future bank providing the Cash Management System shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any

transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the Applicants of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as hereinafter defined) other than the Applicants, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as provider of the Cash Management System, an unaffected creditor under the Plan with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.

5. **THIS COURT ORDERS** that, except as specifically permitted herein, the Applicants 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 any of the Applicants to any of their creditors as of this date unless such payments are contemplated under the Commitment Letter and the Definitive Documents (each as defined below) and consented to by the Monitor; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of their Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

6. **THIS COURT ORDERS** that the Applicants shall be entitled but not required to pay the following expenses whether incurred prior to or after this Order:

- (a) all outstanding and future wages, salaries, employee and pension benefits, vacation pay and employee expenses payable on or after the date of this Order, in each case incurred in the ordinary course of Business and consistent with existing compensation policies and arrangements; and
- (b) the fees and disbursements of any Assistants retained or employed by the Applicants in respect of these proceedings, at their standard rates and charges.

7. **THIS COURT ORDERS** that, except as otherwise provided to the contrary herein, the Applicants shall be entitled but not required to pay all reasonable expenses incurred by the Applicants in carrying on the Business in the ordinary course after this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:



- (a) all expenses and capital expenditures reasonably 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; and
- (b) payment for goods or services actually supplied to the Applicants following the date of this Order.

8. **THIS COURT ORDERS** that the Applicants shall 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 employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;
- (b) all goods and services or other applicable sales taxes (collectively, "**Sales Taxes**") required to be remitted by the Applicants in connection with the sale of goods and services by the Applicants, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order, 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 realty, municipal business 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 and which are attributable to or in respect of the carrying on of the Business by the Applicants.

9. **THIS COURT ORDERS** that until a real property lease is disclaimed in accordance with the CCAA, the Applicants 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 to the landlord under the lease) or as otherwise

may be negotiated between the Applicants and the landlord from time to time ("**Rent**"), for the period commencing from and including the date of this Order, twice-monthly in equal payments on the first and fifteenth day of each 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 date of this Order shall also be paid.

## **RESTRUCTURING**

10. **THIS COURT ORDERS** that the Applicants shall, subject to such requirements as are imposed by the CCAA and such covenants as may be contained in the Definitive Documents (as defined below), have the right to:

- (a) permanently or temporarily cease, downsize or shut down any of its business or operations, and to dispose of redundant or non-material assets not exceeding \$100,000 in any one transaction or \$250,000 in the aggregate;
- (b) terminate the employment of such of its employees or temporarily lay off such of its employees as it deems appropriate; and
- (c) pursue all avenues of refinancing of their Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing,

each of the foregoing to permit the Applicants to proceed with an orderly restructuring of the Business .

11. **THIS COURT ORDERS** that the Applicants shall provide each of the relevant landlords with notice of the Applicants' 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 Applicants' 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, such landlord and the Applicants, or by further Order of this Court upon application by the Applicants on at least two (2) days notice to such landlord and any such secured creditors. If an Applicant disclaims the lease governing such leased premises in accordance with Section 32 of the CCAA, it shall not be required to pay Rent under such lease

pending resolution of any such dispute (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 applicable Applicant's claim to the fixtures in dispute.

12. **THIS COURT ORDERS** that if a notice of disclaimer is delivered pursuant to Section 32 of the CCAA, then (a) during the notice 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 Applicants and the Monitor 24 hours' prior written notice, and (b) at the effective time of the disclaimer, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the Applicants in respect of such lease or leased premises, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

#### **NO PROCEEDINGS AGAINST THE APPLICANTS OR THE PROPERTY**

13. **THIS COURT ORDERS** that until and including April 10, 2020, or such later date as this Court may order (the "**Stay Period**"), no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**") shall be commenced or continued against or in respect of the Applicants or the Monitor or their respective employees and representatives acting in such capacities, or affecting the Business or the Property, except with the written consent of the Applicants and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of any of the Applicants or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

#### **NO EXERCISE OF RIGHTS OR REMEDIES**

14. **THIS COURT ORDERS** that 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 Applicants or the Monitor or their respective employees and representatives acting in such capacities, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the Applicants and the Monitor, or leave of this Court, provided that nothing in this Order shall: (i) empower the Applicants to carry on any business which the

Applicants are not lawfully entitled to carry on, (ii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

#### **NO INTERFERENCE WITH RIGHTS**

15. **THIS COURT ORDERS** that 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 any of the Applicants, except with the written consent of the applicable Applicant and the Monitor, or leave of this Court.

#### **CONTINUATION OF SERVICES**

16. **THIS COURT ORDERS** that during the Stay Period, all Persons having oral or written agreements with any of the Applicants or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, ERP software communication and other data services, centralized banking services, security services, payroll services, insurance, transportation services, utility or other services to the Business or any of the Applicants, 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 any of the Applicants, and that each of the Applicants shall be entitled to the continued use of its 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 date of this Order are paid by the applicable Applicant in accordance with normal payment practices of the applicable Applicant or such other practices as may be agreed upon by the supplier or service provider and each of the applicable Applicant and the Monitor, or as may be ordered by this Court.

#### **NON-DEROGATION OF RIGHTS**

17. **THIS COURT ORDERS** that, notwithstanding anything else 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 date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-

advance any monies or otherwise extend any credit to the Applicants. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

### **PROCEEDINGS AGAINST DIRECTORS AND OFFICERS**

18. **THIS COURT ORDERS** that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of any of the Applicants with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of any of the Applicants 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 applicable Applicant, if one is filed, is sanctioned by this Court or is refused by the creditors of the applicable Applicant or this Court.

### **DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE**

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

20. **THIS COURT ORDERS** that the directors and officers of the Applicants 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 \$450,000.00, as security for the indemnity provided in paragraph 19 of this Order. The Directors' Charge shall have the priority set out in paragraphs 39 and 41 herein.

21. **THIS COURT ORDERS** that, 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 Applicants' 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 19 of this Order.

## **APPOINTMENT OF MONITOR**

22. **THIS COURT ORDERS** that KSV is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Applicants with the powers and obligations set out in the CCAA or set forth herein and that the Applicants and their shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by any of the Applicants 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.

23. **THIS COURT ORDERS** that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- (a) monitor the Applicants' receipts and disbursements;
- (b) 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;
- (c) assist the Applicants, to the extent required by the Applicants, in their dissemination, to the DIP Lender and its counsel on a weekly basis of financial and other information as agreed to between the Applicants and the DIP Lender which may be used in these proceedings including reporting on a basis to be agreed with the DIP Lender;
- (d) advise the Applicants in their preparation of the Applicants' cash flow statements and reporting required by the DIP Lender, which information shall be reviewed with the Monitor and delivered to the DIP Lender and its counsel and financial advisor on a periodic basis, but not less than weekly, or as otherwise agreed to by the DIP Lender;
- (e) advise the Applicants in their development of the Plan and any amendments to the Plan;

- (f) assist the Applicants, to the extent required by the Applicants, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;
- (g) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Applicants, to the extent that is necessary to adequately assess the Applicants' business and financial affairs or to perform its duties arising under this Order;
- (h) 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; and
- (i) perform such other duties as are required by this Order or by this Court from time to time.

24. **THIS COURT ORDERS** that the Monitor shall not take possession of the Property or be deemed to take possession of Property, pursuant to any provision of any federal, provincial or other law respecting, among other things, the manufacturing, possession, processing and distribution of cannabis or cannabis products including, without limitation, under the *Cannabis Act* S.C. 2018, c.16, the *Controlled Drugs and Substances Act*, S.C. 1996, c. 19, the *Excise Tax Act*, the *Ontario Cannabis Control Act*, S.O. 2017, c. 26, Sched. 1 or other such applicable federal or provincial legislation (collectively, the "**Cannabis Legislation**"), and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof, within the meaning of any Cannabis Legislation, or otherwise, and nothing in this Order shall be construed as resulting in the Monitor being an employer or successor employer within the meaning of any statute, regulation or rule of law or equity, for any purpose whatsoever.

25. **THIS COURT ORDERS** that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law 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 *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance 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.

26. **THIS COURT ORDERS** that, in addition to the rights and protection afforded to the DIP Lender under this Order or at law, the DIP Lender shall incur no liability or obligation as a result of carrying out of the provisions of this Order, including under any Cannabis Legislation, save and except for any gross negligence or willful misconduct on its part.

27. **THIS COURT ORDERS** that up to and including April 10, 2020, the Applicants shall not make any expenditures or disbursements without the prior knowledge or consent of the Monitor.

28. **THIS COURT ORDERS** that the Monitor shall provide any creditor of the Applicants and the DIP Lender with information provided by the Applicants 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 Applicants is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicants may agree.

29. **THIS COURT ORDERS** that, in addition to the rights and protections afforded to the Monitor under the CCAA or as an officer of this Court, neither the Monitor nor its respective employees and representatives acting in such capacities, shall incur any liability or obligation as a result of the appointment of the Monitor or the carrying out by it of the provisions of this Order, including under any Cannabis Legislation, save and except for any gross negligence or



willful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

30. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor, and counsel to the Applicants shall be paid their reasonable fees and disbursements related to these proceedings, in each case at their standard rates and charges, whether incurred prior to, on or subsequent to, the date of this Order by the Applicants as part of the costs of these proceedings. The Applicants are hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor, and counsel for the Applicants on a weekly basis.

31. **THIS COURT ORDERS** that 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 Commercial List of the Ontario Superior Court of Justice.

32. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor, and the Applicants' counsel 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 \$500,000.00 as security for their professional fees and disbursements incurred at their standard rates and charges, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 39 and 41 hereof.

#### **DIP FINANCING**

33. **THIS COURT ORDERS** that the Applicants are hereby authorized and empowered to obtain and borrow under a credit facility (the "**DIP Loan**") from Trichome Financial Corp. (in such capacity, the "**DIP Lender**") in order to finance the Applicants' working capital requirements and other general corporate purposes and capital expenditures, provided that borrowings under such credit facility shall not exceed \$4,000,000.00 unless permitted by further Order of this Court.

34. **THIS COURT ORDERS THAT** such credit facility shall be on the terms and subject to the conditions set forth in the commitment letter between the Applicants and the DIP Lender dated as of March 31, 2020 (the "**Commitment Letter**"), filed.

35. **THIS COURT ORDERS** that the Applicants are hereby authorized and empowered to execute and deliver such credit agreements, mortgages, charges, hypothecs and security documents, guarantees and other definitive documents (collectively, the "**Definitive Documents**"), as are contemplated by the Commitment Letter or as may be reasonably required by the DIP Lender pursuant to the terms thereof, and the Applicants are hereby authorized and directed to pay and perform all of their indebtedness, interest, fees, liabilities and obligations to the DIP Lender under and pursuant to the Commitment Letter and the Definitive Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

36. **THIS COURT ORDERS** that the DIP Lender shall be entitled to the benefit of and is hereby granted a charge (the "**DIP Lender's Charge**") on the Property, which DIP Lender's Charge shall not secure an obligation that exists before this Order is made. The DIP Lender's Charge shall have the priority set out in paragraphs 39 and 41 hereof.

37. **THIS COURT ORDERS** that, notwithstanding any other provision of this Order:

- (a) the DIP Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP Lender's Charge or any of the Definitive Documents;
- (b) upon the occurrence of an event of default under the Definitive Documents or the DIP Lender's Charge, the DIP Lender, upon 7 days' notice to the Applicants and the Monitor, may exercise any and all of its rights and remedies against the Applicants or the Property under or pursuant to the Commitment Letter, Definitive Documents and the DIP Lender's Charge, including without limitation, to cease making advances to the Applicants and set off and/or consolidate any amounts owing by the DIP Lender to the Applicants against the obligations of the Applicants to the DIP Lender under the Commitment Letter, the Definitive Documents or the DIP Lender's Charge, 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 Applicants and for the appointment of a trustee in bankruptcy of the Applicants; and

- (c) the foregoing rights and remedies of the DIP Lender shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Applicants or the Property.

38. **THIS COURT ORDERS AND DECLARES** that the DIP Lender shall be treated as unaffected in any plan of arrangement or compromise filed by the Applicants under the CCAA, or any proposal filed by the Applicants under the *Bankruptcy and Insolvency Act* of Canada (the "**BIA**"), with respect to any advances made under the Definitive Documents.

#### **VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER**

39. **THIS COURT ORDERS** that the priorities of the Directors' Charge, the Administration Charge and the DIP Lender's Charge, as among them, shall be as follows:

First - Administration Charge (to the maximum amount of \$500,000.00);

Second - Directors' Charge (to the maximum amount of \$450,000.00); and

Third - DIP Lender's Charge (to the maximum amount of \$800,000.00).

40. **THIS COURT ORDERS** that the filing, registration or perfection of the Administration Charge, the DIP Lender's Charge, or the Directors' Charge (collectively, the "**Charges**") shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

41. **THIS COURT ORDERS** that each of the Charges shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, "**Encumbrances**") in favour of any Person.

42. **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicants shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Charges, unless the Applicants

also obtain the prior written consent of the Monitor, the DIP Lender and the beneficiaries of the Charges, or further Order of this Court.

43. **THIS COURT ORDERS** that the Charges, the Commitment Letter, and the Definitive Documents 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 DIP Lender thereunder 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 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, sublease, offer to lease or other agreement (collectively, an "**Agreement**") which binds the Applicants, 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 Commitment Letter or the Definitive Documents shall create or be deemed to constitute a breach by the Applicants of any Agreement to which any of them 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 Applicants entering into the Commitment Letter, the creation of the Charges, or the execution, delivery or performance of the Definitive Documents; and
- (c) the payments made by the Applicants pursuant to this Order, the Commitment Letter 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.

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

#### **RELIEF FROM REPORTING OBLIGATIONS**

45. **THIS COURT ORDERS** that none of the directors, officers, employees, or other representatives of the Applicants, nor the Monitor (and its directors, officers, employees or representatives) shall have any personal liability for failure of the Applicants to file annual information forms, annual and quarterly management discussion and analysis, annual and quarterly financial statements (including related audits, reports and certifications) for the Stay Period, which period may be extended pursuant to further Order of the Court.

### **SERVICE AND NOTICE**

46. **THIS COURT ORDERS** that the Monitor shall (i) without delay, publish in The Globe and Mail (National Edition) a notice containing the information prescribed under the CCAA, (ii) within five days after the date of this Order, (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, or cause to be sent, in the prescribed manner, a notice to every known creditor who has a claim against any of the Applicants of more than \$1,000, and (C) 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.

47. **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the “**Protocol**”) is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL – <https://www.ksvadvisory.com/insolvency-cases/case/james-e-wagner-cultivation-corporation> (the “**Website**”).

48. **THIS COURT ORDERS** that the Applicants and the Monitor and their respective counsel are at liberty to serve or distribute this Order, any other materials and orders as may be reasonably required in these proceedings, including any notices, or other correspondence, by forwarding true copies thereof by electronic message to the Applicants' creditors or other

interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or judicial obligation, and notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations*, Reg. 81000-2-175 (SOR/DORS).

## **GENERAL**

49. **THIS COURT ORDERS** that each of the Applicants or the Monitor may from time to time apply to this Court to amend, vary or supplement this Order or for advice and directions in the discharge of its powers and duties under this Order or in the interpretation or application of this Order.

50. **THIS COURT ORDERS** that 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 Applicants, the Business or the Property.

51. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Applicants, the Monitor and their respective 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 Applicants 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 Applicants and the Monitor and their respective agents in carrying out the terms of this Order.

52. **THIS COURT ORDERS** that each of the Applicants 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 that 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.

53. **THIS COURT ORDERS** that any interested party (including the Applicants and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days

notice 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.

54. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Toronto time on the date of this Order.

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**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF JAMES E. WAGNER CULTIVATION CORPORATION, JAMES E. WAGNER CULTIVATION LTD., JWC 1 LTD., JWC 2 LTD., JWC SUPPLY LTD AND GROWTHSTORM INC.**

Court File No.

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

Proceedings commenced in Toronto

**INITIAL ORDER**

**BENNETT JONES LLP**

One First Canadian Place  
Suite 3400, P.O. Box 130  
Toronto, Ontario  
M5X 1A4

**Sean Zweig** (LSO# 57307I)  
**Mike Shakra** (LSO# 64604K)  
**Aiden Nelms** (LSO# 74170S)

Tel: 416-863-1200  
Fax: 416-863-1716

Lawyers for the Applicants



**SCHEDULE C**  
**REQUEST FOR ADVANCE**

**REQUEST FOR ADVANCE**

TO: Trichome Financial Corp., as Interim Lender

DATE: \_\_\_\_\_, 2020

Dear Sirs:

The undersigned refers to the interim financing term sheet dated as of \_\_\_\_\_, 2020 (the “**Term Sheet**”) made among James E. Wagner Cultivation Corporation (the “**Borrower**”), Trichome Financial Corp., as Interim Lender and James E. Wagner Cultivation Ltd., JWC 1 Ltd., JWC 2 Ltd, JWC Supply Ltd. and GrowthStorm Inc., as Guarantors.

Capitalized terms used in this Request for Advance have the same meanings herein as are ascribed thereto in the Term Sheet.

1. The Borrower hereby gives you notice pursuant to the Term Sheet that the undersigned requests an Interim Advance under the Interim Facility (the “**Interim Facility Advance**”) in the Term Sheet be deposited into the Deposit Account as follows:
  - (a) Amount of Interim Advance requested: \$ \_\_\_\_\_
  - (b) Requested funding date: \_\_\_\_\_
  - (c) Total principal amount currently outstanding (excluding this Interim Facility Advance): \$ \_\_\_\_\_
  - (d) Availability remaining under the Interim Facility (excluding this Interim Facility Advance): \$ \_\_\_\_\_
  
2. Each of the undersigned, being \_\_\_\_\_ an officer of the Borrower, hereby certify to you for and on behalf of the Borrower (and not in his or her personal capacity) as follows:
  - (a) all of the representations and warranties contained in the Term Sheet are true and correct and all of the representations and warranties in the other Interim Financing Credit Documentation are true and correct in all material respects in each case on and as of the date hereof and will be true and correct as of the date of the requested Interim Facility Advance as though made on and as of such date (unless expressly stated to be made as of a specified date);
  - (b) no Default or Event of Default has occurred and is continuing or shall result from the requested Interim Facility Advance;

- (c) the Interim Facility Advance shall not cause the aggregate amount of all outstanding Interim Advances to exceed the Maximum Amount or be greater than the amount shown on the Agreed Budget as at the date of such Interim Facility Advance;
- (d) the Interim Facility Advance is consistent with the Agreed Budget; and
- (e) the other Credit Parties are in compliance with the Term Sheet and the Court Orders.

**[Signature page follows]**

The undersigned certifies that **[he/she]** is \_\_\_\_\_, of the Borrower, and that as such **[he/she]** is authorized to execute this certificate on behalf of the Borrower. The undersigned further certifies, represents and warrants on behalf of the Borrower (and not in his or her personal capacity) that the Borrower is entitled to receive the requested Interim Advance under the terms and conditions of the Term Sheet.

**JAMES E. WAGNER CULTIVATION  
CORPORATION**

By: \_\_\_\_\_  
Name:  
Title:

**SCHEDULE D**  
**SUMMARY OF AGREED BUDGET**

James E. Wagner Cultivation Corporation, James E. Wagner Cultivation Ltd., JWC 1 Ltd., JWC 2 Ltd., JWC Supply Ltd. And Growthstorm Inc.

**Projected Statement of Cash Flow**

For the Period Ending June 26, 2020

(Unaudited; \$C)

Notes	Weeks Ending													Total
	03-Apr-20	10-Apr-20	17-Apr-20	24-Apr-20	01-May-20	08-May-20	15-May-20	22-May-20	29-May-20	05-Jun-20	12-Jun-20	19-Jun-20	26-Jun-20	
1														
<i>Receipts</i>														
Cannabis Sales	17,250	17,250	17,250	17,250	17,250	17,250	89,750	455,744	17,250	220,875	544,750	17,250	371,000	1,820,119
<i>Disbursements</i>														
Operating Costs	467,097	-	590,370	5,000	307,032	95,000	252,032	68,171	397,032	5,000	263,457	95,000	370,203	2,915,396
Occupancy Costs	388,398	-	-	-	238,398	-	-	30,000	-	456,053	-	-	30,000	1,142,849
Excise Taxes	4,000	-	-	-	167,000	-	-	-	160,500	-	-	-	-	331,500
<i>Total Operating Disbursements</i>	859,495	-	590,370	5,000	712,430	95,000	252,032	98,171	557,532	461,053	263,457	95,000	400,203	4,389,745
<i>Net Cash Flow Before the Undernoted</i>	(842,245)	17,250	(573,120)	12,250	(695,180)	(77,750)	(162,282)	357,573	(540,282)	(240,178)	281,293	(77,750)	(29,203)	(2,569,626)
Restructuring Costs	-	-	563,000	-	-	-	348,000	-	-	-	348,000	-	-	1,259,000
DIP Interest and Fees	-	-	165,465	-	-	-	19,382	-	-	-	26,475	-	-	211,321
<i>Net Cash Flow</i>	(842,245)	17,250	(1,301,584)	12,250	(695,180)	(77,750)	(529,664)	357,573	(540,282)	(240,178)	(93,182)	(77,750)	(29,203)	(4,039,948)
Opening Cash Balance	44,000	-	17,250	-	12,250	-	-	-	357,573	-	-	-	-	44,000
DIP Financing	798,245	-	1,284,334	-	682,930	77,750	529,664	-	182,709	240,178	93,182	77,750	29,203	3,995,948
Closing Cash Balance	-	17,250	-	12,250	-	-	-	357,573	-	-	-	-	-	-
DIP Loan Balance	798,245	798,245	2,082,580	2,082,580	2,765,510	2,843,260	3,372,925	3,372,925	3,555,634	3,795,812	3,888,994	3,966,744	3,995,948	3,995,948

James E. Wagner Cultivation Corporation, James E. Wagner Cultivation Ltd., JWC 1 Ltd., JWC 2 Ltd., JWC Supply Ltd. And Growthstorm Inc.

**Notes to Projected Statement of Cash Flow**

For the Period Ending June 26, 2020

(Unaudited; \$C)

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**Purpose and General Assumptions**

1. The purpose of the projection is to present a cash flow forecast of the Applicants for the period March 28, 2020 to June 26, 2020 (the "Period") in respect of their proceedings under the Companies' Creditors Arrangement Act ("CCAA"). The cash flow forecast assumes that the Applicants file for protection under the CCAA on April 1, 2020.

The cash flow projection has been prepared based on hypothetical and most probable assumptions.

**Hypothetical Assumptions**

- 2 Represents sales of cannabis to provincial, wholesale and medical customers.

**Probable Assumptions**

3. Operating costs include payroll and production costs.
4. Occupancy costs include rent and utilities.
5. Excise tax is paid one month in arrears.
6. Includes the estimated payments to the Chief Restructuring Officer, the Monitor, its counsel and the Applicants' corporate and insolvency counsel.
7. Represents interest and fees payable on the debtor-in-possession ("DIP") facility.
8. Represents projected DIP funding to be provided by Trichome Financial Corporation pursuant to the terms of the DIP Term Sheet.

*This is Exhibit*           “B”           *referred to in the*  
*affidavit of*           Aiden Nelms            
*sworn before me, this*           31<sup>st</sup>            
*day of*           March, 2020          

  
A COMMISSIONER FOR TAKING AFFIDAVITS

Hayley Larkin

**JAMES E. WAGNER CULTIVATION CORPORATION, JAMES E. WAGNER  
CULTIVATION LTD., JWC 1 LTD., JWC 2 LTD., JWC SUPPLY LTD. AND  
GROWTHSTORM INC.**

as Vendors

and

**TRICHOME FINANCIAL CORP.**

as Purchaser

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**ASSET PURCHASE AGREEMENT**

March 31, 2020

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## ASSET PURCHASE AGREEMENT

This asset purchase agreement is made as of March 31, 2020, between James E. Wagner Cultivation Corporation, a corporation governed by the laws of the Province of Ontario, James E. Wagner Cultivation Ltd., a corporation incorporated under the laws of Ontario, JWC 1 Ltd., a corporation incorporated under the laws of Ontario, JWC 2 Ltd., a corporation incorporated under the laws of Ontario, JWC Supply Ltd., a corporation incorporated under the laws of Ontario, and GrowthStorm Inc., a corporation incorporated under the laws of Ontario (collectively, the “**Vendors**”) and Trichome Financial Corp., a corporation governed by the laws of the Province of Ontario (the “**Purchaser**”).

### RECITALS:

- (1) The Vendors will commence the CCAA Proceedings within 1 Business Day of the date hereof and seek to obtain the Initial Order under the CCAA;
- (2) The Vendors will seek to have KSV Kofman Inc. appointed as Monitor of the Vendors pursuant to the Initial Order;
- (3) The Vendors will seek approval of the Court for the Sale Process Order pursuant to which the Vendors and the Monitor will conduct the Sale Process with this Agreement serving as the Stalking Horse Bid; and
- (4) The Vendors desire to sell all or substantially all of their assets and the Purchaser has agreed to purchase such assets subject to the terms and conditions set forth in this Agreement, the Sale Process and the applicable provisions of the CCAA.

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Vendors and the Purchaser agree as follows:

## ARTICLE 1 INTERPRETATION

### Section 1.1 Definitions

In this Agreement and the recitals above, the following terms have the following meanings:

**“Accounts Receivable”** means, on any date, all accounts receivable and tax refunds generated in the operation of the Vendors' business, together with any unpaid interest or fees accrued thereon which are outstanding on such date and the full benefit of all security or collateral for such amounts, including recoverable advances and deposits, but excluding any amounts owing to the Vendors as at the Closing Time from any of its shareholders or Affiliates, or from any other Person who does not deal at arm's length with any of the Vendors.

**“Affiliate”** has the meaning given to the term “affiliate” in the *Canada Business Corporations Act*.

**“Agreement”** means this asset purchase agreement, as amended from time to time in accordance with the terms hereof.

**“Applicable Law”** means, in respect of any Person, property, transaction or event, any domestic or foreign statute, law (including the common law), ordinance, rule, regulation, treaty, restriction, regulatory policy, standard, code or guideline, by-law or order, in each case, having the force of law, that applies in whole or in part to such Person, property, transaction or event.

**“Approval and Vesting Order”** means an order by the Court substantially in the form attached as Schedule **Error! Reference source not found.** authorizing the Transaction and vesting in the Purchaser (or as it may direct) all the right, title and interest of the Vendors in and to the Purchased Assets.

**“Assignment Order”** means an order or orders of the Court pursuant to section 11.3 of the CCAA and other applicable provisions of the CCAA, in form and substance satisfactory to the Purchaser and the Vendors, each acting reasonably, authorizing and approving (i) the assignment of any Consent Required Contract for which a consent, approval or waiver necessary for the assignment of such Consent Required Contract has not been obtained, (ii) the prevention of any counterparty to such Consent Required Contracts from exercising any right or remedy under such Consent Required Contracts by reason of any defaults arising from the CCAA Proceedings or the insolvency of the Vendors and (iii) the vesting in the Purchaser (or as it may direct) of all right, title and interest of the Vendors in such Consent Required Contracts.

**“Assumed Obligations”** has the meaning set out in Section 2.4.

**“Bidding Procedures”** means the bidding procedures substantially in the form attached hereto as Schedule “C”, with milestone dates therein to be settled on or before the date of the Sale Process Order;

**“Benefit Plans”** means all oral or written plans, arrangements, agreements, programs, policies, practices or undertakings of each Vendor with respect to some or all of the Employees and which provide for or relate to (i) bonus, profit sharing or deferred profit sharing, performance compensation, deferred or incentive compensation, supplemental retirement arrangements, share compensation, share purchase or share option, share appreciation rights, phantom stock, vacation or vacation pay, sick pay, employee loans, or any other compensation in addition to salary; or (ii) insured or self-insured benefits for or relating to income continuation or other benefits during absence from work (including short term disability, long term disability and workers compensation), hospitalization, health, welfare, legal costs or expenses, medical or dental treatments or expenses, life insurance, accident, death or survivor’s benefits, supplementary employment insurance, day care, tuition or professional commitments or expenses and prerequisites or similar employment benefits.

**“Books and Records”** means all files, documents, instruments, papers, books and records (whether stored or maintained in hard copy, digital or electronic format or otherwise), including tax and accounting books and records, used or intended for use by, and in the possession of the Vendors, in connection with the ownership, or operation of the Purchased Assets, including the Contracts, customer lists, customer information and account records, sales records, computer files, data processing records, employment and personnel records, sales literature, advertising and marketing data and records, credit records, records relating to suppliers and other data, in each case, relating to the Purchased Assets, and, for greater certainty, excluding the minute books and corporate records of the Vendors.

**“Business Day”** means a day on which banks are open for business in Toronto, Ontario but does not include a Saturday, Sunday or statutory holiday in the Province of Ontario.

**“CCAA”** means the *Companies’ Creditors Arrangement Act* (Canada);

**“CCAA Proceedings”** means the proceedings to be commenced by the Vendors under the CCAA;

**“Cash Flow Projections”** means the prescribed cash flow projections filed by the Vendors as part of the CCAA Proceedings.

**“Claims”** means any claim of any nature or kind (including any cross-claim or counterclaim), demand, investigation, chose in or cause of action, suit, default, assessment, litigation, third party action, arbitral proceeding or proceeding by or before any Person.

**“Closing”** means the successful completion of the Transaction.

**“Closing Cash Payment”** means an amount to be agreed among the Purchaser, the Vendors and the Monitor which will be sufficient to pay (i) any outstanding Priority Payables, (ii) accrued amounts not paid under the DIP Facility as of the Closing Date (including the fees and expenses of legal and other professionals) and (iii) the

reasonable costs (including the fees and expenses of legal and other professionals) relating to the period following the Closing Date, including, performing any transition services required, terminating the CCAA Proceeding and winding-down the estates of the Vendors (including the administration of a bankruptcy in respect of the Vendors).

“**Closing Date**” means the date that is three (3) Business Days after the date the Approval and Vesting Order is obtained or such other earlier or later date as may be agreed by the Parties.

“**Closing Time**” means 10:00 a.m. (Toronto time) on the Closing Date.

“**Consent Required Contract**” has the meaning set out in Section 2.2a).

“**Contracts**” means all of the contracts and other written agreements to which any Vendor is a party constituting part of the Purchased Assets identified in writing by the Purchaser on or before Closing, including, for greater certainty, all Contracts listed in Appendix I to **Schedule “A”** to this Agreement.

“**Court**” means Ontario Superior Court of Justice (Commercial List).

“**Credit Bid Amount**” means the amounts owing by the Vendors to the Purchaser as of the Closing Time pursuant to: (i) the Loan Agreement; and (iii) the Factoring Agreement;

“**Cure Costs**” means all amounts required to be paid pursuant to section 11.3 of the CCAA to effectuate, pursuant to the CCAA, the assignment by the Vendors and assumption by the Purchaser of Consent Required Contracts under the Assignment Order and to otherwise satisfy all requirements imposed by section 11.3 of the CCAA.

“**DIP Facility**” means the Interim Financing Credit Facility Term Sheet dated March 31, 2020, between the Vendors and the Purchaser.

“**Employee**” means an individual who is employed by a Vendor, whether on a full-time or a part-time basis, whether active or inactive as of the Closing Date, and includes an employee on short term or long term disability leave.

“**Encumbrances**” means any security interest, lien, claim, charge, hypothec, reservation of ownership, pledge, encumbrance, mortgage, adverse claim or right of a third party of any nature or kind whatsoever and any agreement, option or privilege (whether by law, contract or otherwise) capable of becoming any of the foregoing, (including any conditional sale or title retention agreement, or any capital or financing lease).

“**Excise Tax Act**” means the *Excise Tax Act* (Canada).

“**Excluded Assets**” means all of the Vendors' right, title and interest, in and to those assets and rights set forth in Schedule B.

**“Excluded Equipment”** means any equipment or machinery and any parts and components thereof, that are Excluded Assets.

**“Expense Reimbursement”** has the meaning set out in Section 4.2a).

**“Factoring Agreement”** means the Receivables Purchase Agreement made as of October 23, 2019 between JWC, in its capacity as seller thereunder and the Purchaser, in its capacity as purchaser thereunder, and each of the Vendors other than JWC as guarantors.

**“Governmental Authority”** means any domestic or foreign government, whether federal, provincial, state, territorial or municipal; and any governmental agency, ministry, department, court (including the Court), tribunal, commission, stock exchange, bureau, board or other instrumentality exercising or purporting to exercise legislative, judicial, regulatory or administrative functions of, or pertaining to, government or securities market regulation.

**“Health Canada Licenses”** means all authorizations related to cannabis and issued by Health Canada to any of the Vendors, including authorizations to plant, grow, cultivate, extract, produce, process, store, destroy, sell, provide, ship, deliver, transport and/or distribute cannabis under Applicable Law, including without limitation License Nos. LIC-S0SIOQZD8S-2020 and LIC-GHASXLI39D-2019-2.

**“Income Tax Act”** means the *Income Tax Act* (Canada).

**“Intellectual Property”** means all intellectual property of the Vendors used by or currently being developed for use in the business of the Vendors, and all rights of any of the Vendors therein, including all claims for past infringement, worldwide, whether registered or unregistered, including without limitation:

- a) all patents, patent applications and other patent rights, including provisional and continuation patents;
- b) all registered and unregistered trade-marks, service marks, logos, slogans, corporate names, business names and other indicia of origin, and all applications and registrations therefor;
- c) registered and unregistered copyrights and mask works, including all copyright in and to computer software programs and applications and registrations of such copyright;
- d) internet domain names, applications and reservations for internet domain names, uniform resource locators and the corresponding internet sites;
- e) industrial designs; and
- f) trade secrets and proprietary information not otherwise listed in (a) through (e) above, including, without limitation, all inventions (whether or not patentable), invention disclosures, moral and economic rights of authors and

inventors (however denominated), confidential information, technical data, customer lists, corporate and business names, trade names, trade dress, brand names, know-how, mask works, circuit topography, formulae, methods (whether or not patentable), designs, processes, procedures, technology, business methods, source codes, object codes, computer software programs (in either source code or object code form), databases, data collections and other proprietary information or material of any type, and all derivatives, improvements and refinements thereof, howsoever recorded or unrecorded.

**“Interim Lender”** means Trichome Financial Corp., in its capacity as interim lender under the DIP Facility;

**“JWC”** means James E. Wagner Cultivation Corporation;

**“Loan Agreement”** means the Loan Agreement dated February 19, 2019, as amended, between JWC, as borrower, and the Purchaser, as lender and each of the Vendors (other than JWC) as guarantors;

**“M&A Advisor”** means Stoic Advisory Inc.;

**“Monetary Purchase Price”** means the sum of the Credit Bid Amount and the Closing Cash Payment;

**“Monitor”** means the Person appointed by the Court to act as the monitor of the Vendors in the CCAA Proceedings, which is expected to be KSV Kofman Inc.

**“Monitor’s Certificate”** means the certificate of the Monitor contemplated by the Approval and Vesting Order certifying that the Monitor has received written confirmation in form and substance satisfactory to the Monitor from the Parties that all conditions of Closing have been satisfied or waived by the applicable Parties and that the Monitor has received the Closing Cash Payment.

**“Non-Assignable Interests”** means any Purchased Assets which, by their nature cannot be legally or practically sold and assigned by the Vendors to the Purchaser hereunder, including without limitation SRED Claims and any Consent Required Contracts for which an Assignment Order or counterparty consent has not been obtained;

**“Ordinary Course of Business”** means the ordinary course of business of the Vendors with respect to the Purchased Assets consistent with the conduct of such business on the date hereof and consistent with the Orders of the Court in the CCAA Proceedings.

**“Outside Date”** means June 30, 2020.

**“Party”** means the Purchaser and each of the Vendors.

**“Permitted Encumbrances”** means those Encumbrances set forth in Schedule **Error! Reference source not found.**

**“Person”** means any individual, partnership, limited partnership, limited liability company, joint venture, syndicate, sole proprietorship, company or corporation with or without share capital, unincorporated association, trust, trustee, executor, administrator or other legal personal representative, Governmental Authority or other entity however designated or constituted.

**“Priority Payables”** means the amounts payable by the Vendors which are secured by liens in favour of a Governmental Authority (including deemed trusts) that encumber the Purchased Assets and rank prior to the interests of the Purchaser, in its capacity as Interim Lender pursuant to the DIP Facility, arising by operation of any applicable statutory law.

**“Purchase Price”** means the Monetary Purchase Price plus the Assumed Obligations.

**“Purchased Assets”** means all of the Vendors’ right, title and interest, in and to the assets used in the business of the Vendors, including those assets set forth in Schedule A, but excluding Excluded Assets.

**“Purchaser”** has the meaning set out in the recitals hereto.

**“Representative”** means, in respect of a Party, each director, officer, employee, agent, Affiliate, manager, lender, solicitor, accountant, professional advisor, consultant, contractor and other representative of such Party or such Party’s Affiliates.

**“Sale Process Order”** means the order of the Court to be sought (i) approving the Sale Process and (ii) approving this Agreement for purposes of acting as a stalking horse bidder.

**“Sale Process”** means the Court-approved sale process pursuant to which: (i) Stoic Advisory Inc. is appointed as M&A advisor to the Vendors; and (ii) the Vendors, with the assistance and supervision of the M&A Advisor and the Monitor, shall market their assets for sale in accordance with the Bidding Procedures.

**“Sales Tax Legislation”** means Part IX of the *Excise Tax Act* and the regulations made under such legislation.

**“Sales Taxes”** means all taxes imposed under Sales Tax Legislation.

**“SRED Credits”** means all amounts claimed or claimable by the Vendors under the Government of Canada Scientific Research and Experimental Development Tax Incentive Program.

**“Stalking Horse Bid”** has the meaning set out in Section 4.1b).

“Successful Bidder” has the meaning set out in the Sales Process.

**“Tax Deduction”** has the meaning set out in Section 4.2b).

**“Transaction”** means the transaction of purchase and sale contemplated by this Agreement.

**“Transfer Taxes”** means all present and future transfer taxes, sales taxes, use taxes, production taxes, value-added taxes, goods and services taxes, land transfer taxes, registration and recording fees, and any other similar or like taxes and charges imposed by a Governmental Authority in connection with the sale, transfer or registration of the transfer of the Purchased Assets, including Sales Taxes but excluding any taxes imposed or payable under the Income Tax Act and any other applicable income tax legislation.

**“Transition Agreement”** means an agreement between the Purchaser and the Vendors (which for purposes of the Transition Agreement shall include and be binding upon a receiver or trustee in bankruptcy of any Vendor pursuant to the Approval and Vesting Order or other order of the Court acceptable to the Purchaser), pursuant to which the Vendors shall provide the Purchaser, at the Purchaser's expense, with such transition services as may reasonably be requested by the Purchaser after the Closing Date to give effect to the transaction contemplated by the Agreement, including without limitation; (i) hold any Non-Assignable Interests in trust for the Purchaser; (ii) to hold the Health Canada Licenses for the benefit of the Purchaser; (iii) administer the Non-Assignable Interests for the benefit of, and at the cost and direction of, the Purchaser; and (iv) continue the employment of any Transition Employees after the Closing Date as may be requested by the Purchaser;

**“Transition Employees”** means the Employees of the Vendors designated by the Purchaser not less than ten Business Days before the Closing Date to remain employed by the Vendors after the Closing Date, for the period(s) and on the terms set out in the Transition Agreement;

**“Vendors”** has the meaning set out in the recitals hereto.

## **Section 1.2 Interpretation Not Affected by Headings, etc.**

The division of this Agreement into sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement.

## **Section 1.3 General Construction.**

The terms “this Agreement”, “hereof”, “herein” and “hereunder” and similar expressions refer to this Agreement and not to any particular section hereof. The expression “Section” or reference to another subdivision followed by a number mean and refer to the specified Section or other subdivision of this Agreement. The language used in this Agreement is the language chosen by the Parties to express their mutual intent, and no rule of strict construction shall be applied against any Party.



#### **Section 1.4 Extended Meanings**

Words importing the singular include the plural and vice versa and words importing gender include all genders. The term “including” means “including, without limitation,” and such terms as “includes” have similar meanings.

#### **Section 1.5 Currency**

All references in this Agreement to dollars, monetary amounts or to \$ are expressed in Canadian currency unless otherwise specifically indicated.

#### **Section 1.6 Statutes**

Except as otherwise provided in this Agreement, any reference in this Agreement to a statute refers to such statute and all rules, regulations and interpretations made under it, as it or they may have been or may from time to time be modified, amended or re-enacted.

#### **Section 1.7 Schedules**

The following Schedules are incorporated in and form part of this Agreement:

Schedule A	-	Purchased Assets
Schedule B	-	Excluded Assets
Schedule C	-	Bidding Procedures
Schedule D	-	Permitted Encumbrances
Schedule E	-	Form of Approval and Vesting Order
Schedule F	-	Purchase Price Allocation

### **ARTICLE 2 SALE AND PURCHASE AND ASSIGNMENT**

#### **Section 2.1 Sale and Purchase of Assets**

Subject to the terms and conditions hereof, at the Closing Time, the Vendors hereby agree to sell, assign and transfer to the Purchaser and the Purchaser agrees to purchase from the Vendors, the Purchased Assets free and clear of all Encumbrances (other than Permitted Encumbrances) pursuant to the Approval and Vesting Order.

#### **Section 2.2 Assignment of Contracts**

In the event that there are any Contracts which are not assignable in whole or in part without the consent, approval or waiver of another party or parties to them and such consents, approvals or waivers have not yet been obtained as of the Closing Date, then:

- a) nothing in this Agreement will be construed as an assignment of any such Contract (each a “**Consent Required Contract**”);

- b) until the Approval and Vesting Order is granted, the Vendors shall use their commercially reasonable efforts to obtain any such consent, approval or waiver and the Purchaser shall provide its reasonable cooperation to assist the Vendors in obtaining any such consent, approval or waiver;
- c) if any consent, approval or waiver is not obtained for any Consent Required Contract prior to the service of the motion for the Approval and Vesting Order, the Purchaser may request that the Vendors bring a motion to the Court for issuance of an Assignment Order with respect to such Consent Required Contracts together with the motion for the Approval and Vesting Order;
- d) Pending obtaining consent or Assignment Order, the Vendors shall hold the Consent Required Contract as a Non-Assignable Interest to be administered in accordance with the Transition Agreement, and shall use commercially reasonable efforts to continue to perform their obligations under the Consent Required Contract, including engaging one or more of the Vendors as its agent to do so; and
- e) once the consent, approval or waiver to the assignment of a Consent Required Contract is obtained or the assignment of such Contract has been ordered by the Court, such Consent Required Contract shall be deemed to be assigned to the Purchaser on Closing.

With respect to each Consent Required Contract, subject to Closing and to either (i) the consent of the other parties thereto to the assignment thereof, or (ii) in the absence of such consent, the obtaining of an Assignment Order, in addition to its other obligations under this Agreement, the Purchaser shall pay the applicable Cure Costs related to such Consent Required Contract on Closing.

### **Section 2.3 "As is, Where is"**

The Purchaser acknowledges that the Vendors are selling the Purchased Assets on an "as is, where is" basis as they shall exist as at the Closing Time. The Purchaser further acknowledges that it has entered into this Agreement on the basis that the Vendors do not guarantee title to the Purchased Assets. No representation, warranty or condition is expressed or can be implied as to title, Encumbrances, description, fitness for purpose, merchantability, condition, quantity or quality or in respect of any other matter or thing whatsoever concerning the Purchased Assets or the right of the Vendors to sell or assign same save and except as expressly represented or warranted herein. Without limiting the generality of the foregoing, any and all conditions, warranties or representations expressed or implied pursuant to the *Sale of Goods Act* (Ontario) or similar legislation do not apply hereto and have been waived by the Purchaser. The description of the Purchased Assets contained in the Schedules is for purpose of identification only. Except as otherwise provided in Section 5.2, no representation, warranty or condition has or will be given by the Vendors concerning completeness or accuracy of such descriptions.

#### **Section 2.4 Assumed Obligations**

The Purchaser shall assume and perform, discharge and pay when due the following obligations and liabilities of the Vendors (the “**Assumed Obligations**”) after the Closing:

- a) the DIP Facility and all security with respect thereto, either, in the sole discretion of Trichome Financial Corp. in its capacity as Lender thereunder, by assumption thereof or refinancing thereof pursuant to exit financing;
- b) all debts, liabilities and obligations under the Contracts (to the extent assigned or transferred to the Purchaser on Closing) for the period from and after the Closing Time;
- c) the obligation and liability of the Vendors to pay Cure Costs in respect of any Contract; and
- d) all debts, liabilities and obligations arising from ownership and use of the Purchased Assets for the period from and after the Closing Time.

#### **Section 2.5 Excluded Obligations**

Other than the Assumed Obligations, the Purchaser shall not assume and shall not be liable, directly or indirectly, or otherwise responsible for any debts, liabilities or other obligations of the Vendors, including, without limiting the generality of the foregoing:

- a) all debts, liabilities, obligations or Claims related to any Benefit Plans, Employees or any Excluded Asset;
- b) all debts, liabilities and obligations related to any Purchased Asset arising out of or related to the period prior to the Closing Time;
- c) all obligations and liabilities owing by any Vendor to any Affiliate;
- d) all debts, liabilities and obligations for or related to any obligation for any taxes that are not expressly assumed by the Purchaser;
- e) all taxes imposed on or relating to the Purchased Assets that are attributable to any pre-Closing tax period whether or not any such period ends on or before the Closing Date (other than any Transfer Taxes); and
- f) all debts, liabilities and obligations of the Vendors arising under this Agreement.

### **ARTICLE 3 PURCHASE PRICE**

#### **Section 3.1 Purchase Price**

The aggregate purchase price (the “**Purchase Price**”) payable by the Purchaser to the Monitor on behalf of the Vendors for the Purchased Assets is the sum of: (i) the Monetary Purchase Price, and (ii) the Assumed Obligations. The Monetary Purchase Price shall be allocated on Closing amongst the Purchased Assets in accordance with the provisions of Schedule F.

#### **Section 3.2 Satisfaction of Purchase Price**

Provided that all conditions precedent to Closing have been satisfied or waived in accordance with Article 7, the Purchase Price shall be paid and satisfied on Closing as follows:

- a) as to the amount of the Credit Bid Amount, by the crediting and set off of the Credit Bid Amount against an amount of the Monetary Purchase Price equal to the amount of the Credit Bid Amount;
- b) as to the Closing Cash Payment, by wire transfer in immediately available funds paid to the Monitor or as the Monitor may direct in writing;
- c) as to the dollar value of the Assumed Obligations (other than the DIP Facility), by the assumption by the Purchaser of the Assumed Obligations; and
- d) in the case of the DIP Facility, either, in the sole discretion of Trichome Financial Corp as Lender thereunder, by the assumption thereof or by refinancing thereof by exit financing.

#### **Section 3.3 Transfer Taxes**

- (1) The Parties agree that:
  - a) the Purchase Price is exclusive of all Transfer Taxes and the Purchaser shall be liable for and shall pay any and all applicable Transfer Taxes pertaining to the Purchaser’s acquisition of the Purchased Assets;
  - b) subject to Section 3.3(c), the Purchaser shall pay any applicable Transfer Taxes on the Purchaser’s acquisition of the Purchased Assets in addition to the Purchase Price, either to the Monitor on behalf of the Vendors or directly to the appropriate governmental Authority, as required by Applicable Law;
  - c) if applicable, the Vendors and the Purchaser shall jointly elect that no Sales Taxes are payable pursuant to the Sales Tax Legislation with respect to the purchase and sale of the Purchased Assets under this Agreement and the Purchaser will file an election pursuant to section 167 of the Sales Tax Legislation, prepared by the Purchaser and made jointly by the Purchaser and the Vendors, in compliance with the requirements of the Sales Tax Legislation.

The Purchaser shall indemnify the Vendors for any Sales Tax, interest and penalties applicable to the Vendors on the sale of the Purchased Assets caused by the Purchaser's failure to file a valid election under section 167 of the Sales Tax Legislation within the prescribed time.

- (2) If requested by the Purchaser, the Vendors shall make:
- a) a joint election(s) to have the rules in section 22 of the Income Tax Act, and any equivalent or corresponding provision under applicable provincial or territorial tax legislation, apply in respect of the Accounts Receivable; and
  - b) a joint election(s) to have the rules in subsection 20(24) of the Income Tax Act, and any equivalent or corresponding provision under applicable provincial or territorial tax legislation, apply to the obligations of the Vendors in respect of undertakings which arise from the operation of the business to which the Purchased Assets related and to which paragraph 12(1)(a) of the Income Tax Act applies.

#### **ARTICLE 4 BIDDING PROCEDURES**

##### **Section 4.1 Bidding Procedures**

- a) The Vendors and the Purchaser acknowledge that this Agreement and the transactions contemplated hereby are subject to Court approval.
- b) The Vendors and the Purchaser acknowledge and agree that the Vendors shall apply to the Court by no later than April 13, 2020, or such other date as they may agree, for the Sale Process Order, inter alia, recognizing this Agreement, and in particular the Purchase Price, as a baseline or "stalking horse bid" (the "**Stalking Horse Bid**") and approving the Bidding Procedures, the payment of the Expense Reimbursement in the circumstances set out in Section 4.2, and the parties will use commercially reasonable efforts to have the Sale Process Order issued. The Purchaser acknowledges and agrees that the Bidding Procedures are in contemplation of determining whether a superior bid can be obtained for the Purchased Assets.

##### **Section 4.2 Expense Reimbursement**

- a) In consideration for the Purchaser's expenditure of time and money and agreement to act as the initial bidder through the Stalking Horse Bid, and the preparation of this Agreement, and in performing due diligence pursuant to this Agreement, and subject to Court approval, the Purchaser shall be entitled to an expense reimbursement amount not to exceed \$100,000 (inclusive of HST) (the "**Expense Reimbursement**"), payable by the Vendors to the Purchaser only in the event that a successful bid other than the Stalking Horse Bid is accepted by the Vendors, approved by the Court and completed. The payment of the foregoing amount shall be approved in the Sale Process Order and shall

be payable to the Purchaser out of the sale proceeds derived from and upon completion of the successful bid. Each of the parties hereto acknowledges and agrees that the foregoing amount represents a fair and reasonable estimate of the costs and damages that will be incurred by the Purchaser as a result of non-completion of this Agreement and is not intended to be punitive in nature nor to discourage competitive bidding for the Purchased Assets, business and Assumed Liabilities.

- b) The Expense Reimbursement shall be paid by the Vendors to the Purchaser without deduction or withholding for taxes (a “**Tax Deduction**”), unless a Tax Deduction is required by Applicable Law. In the event that the Vendors determine that a Tax Deduction is required by Applicable Law to be made in respect of the payment of the Expense Reimbursement, or any portion thereof, the Vendors shall pay such additional amount (the “**Additional Amount**”) as shall be required to result in the Purchaser receiving an amount equal to the amount which it would have received if no Tax Deduction had been required.

## **ARTICLE 5 REPRESENTATIONS AND WARRANTIES**

### **Section 5.1 Purchaser’s Representations**

The Purchaser represents and warrants to the Vendors as of the date hereof and acknowledges that, as of the Closing Time, the Vendors are relying on such representations and warranties in connection with entering into this Agreement and performing their obligations hereunder:

- a) the Purchaser is a corporation duly incorporated, organized and subsisting under the laws of its jurisdiction of incorporation and has the requisite power and authority to enter into this Agreement and to complete the transactions contemplated hereunder;
- b) the Purchaser has the requisite power and authority to enter into this Agreement and to complete the transactions contemplated hereunder;
- c) neither the execution of this Agreement nor the performance by the Purchaser of the Transaction will violate the Purchaser’s constating documents, any agreement to which the Purchaser is bound, any judgment or order of a court of competent jurisdiction or any Governmental Authority, or any Applicable Law. The execution and delivery of this Agreement and the consummation of the Transaction have been duly authorized by all necessary corporate action on the part of the Purchaser. This Agreement is a valid and binding obligation of the Purchaser enforceable in accordance with its terms; and
- d) the Purchaser has not committed an act of bankruptcy, is not insolvent, has not proposed a compromise or arrangement to its creditors generally, has not had any application for a bankruptcy order filed against it, has not taken any

proceeding and no proceeding has been taken to have a receiver appointed over any of its assets, has not had an encumbrancer take possession of any of its property and has not had any execution or distress become enforceable or levied against any of its property.

### **Section 5.2 Vendors' Representations**

Each of the Vendors represents and warrants to the Purchaser as of the date hereof and as of the Closing Time as follows and acknowledges that the Purchaser is relying on such representations and warranties in connection with entering into this Agreement and performing its obligations hereunder:

- a) each of the Vendors is a corporation duly incorporated, organized and subsisting under the laws of its respective jurisdiction of incorporation;
- b) each the Vendors is not a non-resident of Canada for purposes of the *Income Tax Act* or the *Excise Tax Act*, as applicable;
- c) as of the date hereof, to the best of each Vendor's actual knowledge, and without investigation, no notices of termination have been received by the Vendors under any customer or vendor contracts of the Vendors; and
- d) subject to obtaining the Sale Process Order and the Approval and Vesting Order and, if applicable, the Assignment Order, the Vendors have the requisite power and authority to enter into this Agreement and to complete the Transaction contemplated hereunder.

### **Section 5.3 Limitations**

With the exception of the Vendors' representations and warranties in Section 5.2 and the Purchaser's representations and warranties in Section 5.1, none of the Vendors or the Purchaser, or their respective Representatives, nor any of their respective officers, directors or Employees make, have made or shall be deemed to have made any other representation or warranty, express or implied, at law or in equity, in respect of the Vendors, the Purchaser, or the Purchased Assets or the sale and purchase of the Purchased Assets pursuant to this Agreement.

## **ARTICLE 6 COVENANTS**

### **Section 6.1 Conduct of Business in the Ordinary Course**

- (1) The Vendors shall use commercially reasonable efforts to conduct their business in the Ordinary Course of Business except to the extent required to allow the Vendors to comply with their obligations under this Agreement, subject in all cases to any limitation imposed by being subject to CCAA Proceedings and any Court order.

- (2) Without limiting the generality of Section 6.1(1), the Vendors shall use their commercially reasonable efforts to:
- a) remain in possession of the Purchased Assets until Closing, use the Purchased Assets only in the Ordinary Course of Business and maintain, preserve and protect the Purchased Assets in the condition in which they exist on the date hereof, other than ordinary wear and tear and other than replacements, dispositions, modifications or maintenance in the Ordinary Course of Business,
  - b) keep the Health Canada Licenses in good standing,
  - c) not dispose of any of the Purchased Assets, other than Inventory in the Ordinary Course of Business or as permitted under the Initial Order;
  - d) not disclaim any contract that is material to the business of the Vendors without the prior written consent of the Purchaser; and
  - e) not enter into any material contract or other material written agreement in respect of any of the Purchased Assets other than in the Ordinary Course of Business; except, in each case, with the prior written consent of the Purchaser, such consent not to be unreasonably withheld, or an order of the Court, and provided that such consent of the Purchaser shall be deemed to have been given with respect to any request for such a consent to which the Purchaser fails to respond within two (2) Business Days after such request is made.
- (3) The Vendors, with the assistance of the Monitor, shall provide an estimate of the Closing Cash Payment amount to the Purchaser and all other interested parties one week prior to the bid deadline.

## **Section 6.2 Actions to Satisfy Closing Conditions**

- (1) The Vendors agree to take all commercially reasonable actions so as to ensure compliance with all of the conditions set forth in Section 7.1 and Section 7.3.
- (2) If the Purchaser is the Successful Bidder, the Vendors agree prior to the Closing Date to take all commercially reasonable efforts to assist the Purchaser with the transition of customer and supplier relationships from the Vendors to the Purchaser. The Purchaser agrees to take all commercially reasonable efforts so as to ensure compliance with all of the conditions set forth in Section 7.2 and Section 7.3.

## **ARTICLE 7 CONDITIONS PRECEDENT**

### **Section 7.1 Conditions Precedent in favour of the Purchaser**

- (1) The obligation of the Purchaser to complete the Transaction is subject to the following conditions being fulfilled or performed:



- a) all representations and warranties of the Vendors contained in this Agreement shall be true in all material respects as of the Closing Time with the same effect as though made on and as of that date;
  - b) the Vendors shall have performed each of their obligations under this Agreement to the extent required to be performed at or before the Closing Time, including the delivery of each of the items required pursuant to Section 8.3;
  - c) all stays of proceedings provided for in the CCAA Proceedings, including in any Court orders granted therein, shall have remained in effect as at the Closing Time except where any such stay is terminated or lifted or amended in a manner which is not materially prejudicial to the Purchaser or which does not materially adversely affect the Purchaser's rights under this Agreement or the Purchased Assets;
  - d) the Vendors shall have entered into a Transition Agreement on terms acceptable to the Purchaser, acting reasonably; and
  - e) the Purchaser shall have obtained a valid and binding assignment of the Health Canada Licenses or replacement licenses that are substantially similar to the Health Canada Licenses, in each case on terms satisfactory to the Purchaser, in its sole discretion.
- (2) The foregoing conditions are for the exclusive benefit of the Purchaser. Any condition in this Section 7.1 may be waived by the Purchaser in whole or in part, without prejudice to any of its rights of termination in the event of non-fulfillment of any other condition in whole or in part. Any such waiver shall be binding on the Purchaser only if made in writing. If any condition set out in Section 7.1 is not satisfied or performed on or prior to the Outside Date, the Purchaser may elect on written notice to the Vendors to terminate this Agreement.

## **Section 7.2 Conditions Precedent in favour of the Vendors**

- (1) The obligation of the Vendors to complete the Transaction is subject to the following conditions being fulfilled or performed:
- a) all representations and warranties of the Purchaser contained in this Agreement shall be true in all material respects as of the Closing Time with the same effect as though made on and as of that date; and
  - b) the Purchaser shall have performed in all material respects each of its obligations under this Agreement to the extent required to be performed at or before the Closing Time, including the delivery of each of the items required pursuant to Section 8.2.
- (2) The foregoing conditions are for the exclusive benefit of the Vendors. Any condition in this Section 7.2 may be waived by the Vendors in whole or in part, without

prejudice to any of its rights of termination in the event of non-fulfilment of any other condition in whole or in part. Any such waiver shall be binding on the Vendors only if made in writing. If any condition set forth in Section 7.2 is not satisfied or performed on or prior to the Outside Date, the Vendors may elect on written notice to the Purchaser to terminate the Agreement.

### **Section 7.3 Conditions Precedent in favour of both the Purchaser and the Vendors**

- (1) The obligations of the Vendors and the Purchaser to complete the Transaction are subject to the following conditions being fulfilled or performed:
  - a) the Sales Process Order shall have been granted on terms satisfactory to the Purchaser and Vendors, each acting reasonably, and the Purchaser shall be the Successful Bidder;
  - b) the Approval and Vesting Order shall have been obtained and shall not have been stayed, varied, or vacated;
  - c) the Transition Agreement shall have been approved by the Court, including without limitation an order making the Transition Agreement binding on a trustee in bankruptcy of the Vendors, and/or a receiver of the Vendors' interests in any Non-Assignable Interests;
  - d) no order shall have been issued by a Governmental Authority which restrains or prohibits the completion of the Transaction; and
  - e) no motion, action or proceedings shall be pending by or before a Governmental Authority to restrain or prohibit the completion of the Transaction contemplated by this Agreement.
- (2) The Parties hereto acknowledge that the foregoing conditions are for the mutual benefit of the Vendors and the Purchaser. If the conditions set out in this Section 7.3 are not satisfied performed or mutually waived on or before the Outside Date, any Party shall have the option to terminate this Agreement upon written notice to the other Parties.

## **ARTICLE 8 CLOSING**

### **Section 8.1 Closing**

Subject to the conditions set out in this Agreement, the completion of the Transaction shall take place at the Closing Time at the offices of Torys LLP, or as otherwise determined by mutual agreement of the Parties in writing and the Parties shall exercise commercially reasonable efforts to cause Closing to occur at the Closing Time and, in any event, prior to the Outside Date.

## Section 8.2 Purchaser's Deliveries on Closing

At or before the Closing Time, the Purchaser shall execute and deliver, or arrange for the delivery, as the case may be, to the Vendors the following, each of which shall be in form and substance satisfactory to the Vendors, acting reasonably:

- a) the Closing Cash Payment in accordance with Section 3.2b) and evidence reasonably satisfactory to the Purchaser that the Credit Bid Amount has been set off and extinguished against the Monetary Purchase Price;
- b) payment of Transfer Taxes required by Applicable Law to be collected by any Vendor, or alternatively, if applicable, the election(s) referred to in Section 3.3(1)c) executed by the Purchaser;
- c) an executed assignment and assumption agreement evidencing the assumption by the Purchaser of the Assumed Obligations;
- d) an executed assignment agreement evidencing the assumption by the Purchaser of all Intellectual Property;
- e) a certificate dated as of the Closing Date confirming that all of the representations and warranties of the Purchaser contained in this Agreement are true in all material respects as of the Closing Time, with the same effect as though made at and as of the Closing Time, and that the Purchaser has performed in all respects the covenants to be performed by it prior to the Closing Time; and
- f) such further and other documentation as is referred to in this Agreement or as the Vendors may reasonably require to give effect to this Agreement.

## Section 8.3 Vendors' Deliveries on Closing

At or before the Closing Time, the Vendors shall execute and deliver, or arrange for the delivery, as the case may be, to the Purchaser the following, each of which shall be in form and substance satisfactory to the Purchaser, acting reasonably:

- a) the Purchased Assets, which shall be delivered *in situ* wherever located as of the Closing;
- b) the Approval and Vesting Order;
- c) the Transition Agreement;
- d) an executed assignment and assumption agreement evidencing the assignment by the Vendors of the Assumed Obligations to the Purchaser;
- e) an executed assignment agreement evidencing the assignment by the Vendors of all Intellectual Property to the Purchaser;

- f) a true and complete copy of all Assignment Orders, if any, entered by the Court;
- g) a certificate dated as of the Closing Date confirming that all of the representations and warranties of the Vendors contained in this Agreement are true in all material respects as of the Closing Time, with the same effect as though made at and as of the Closing Time, and that the Vendors have performed in all material respects the covenants to be performed by them prior to the Closing Time;
- h) if applicable, the election(s) referred to in Section 3.3(1)c) executed by the Vendors;
- i) the executed Monitor's Certificate;
- j) a valid and binding assignment of the Health Canada Licenses on terms satisfactory to the Purchaser, acting reasonably, unless replacements therefor have been obtained; and
- k) such further and other documentation as is referred to in this Agreement or as the Purchaser may reasonably require to give effect to this Agreement.

#### **Section 8.4 Possession of Assets**

- (1) On Closing, the Purchaser shall take possession of the Purchased Assets where situate at Closing. The Purchaser acknowledges that the Vendors have no obligation to deliver physical possession of the Purchased Assets to the Purchaser. In no event shall the Purchased Assets be sold, assigned, transferred or set over to the Purchaser until the conditions set out in the Approval and Vesting Order have been satisfied or waived by the Purchaser or Vendors, as applicable, and the Purchaser has satisfied all delivery requirements outlined in Section 8.2. The Purchaser shall promptly notify the Vendors of any Excluded Assets which may come into the possession or control of the Purchaser, whether before or after Closing, and thereupon shall promptly release such Excluded Assets to the Vendors, or to such other Person as the Vendors may direct in writing and, for greater certainty, title shall not be deemed to vest to the Purchaser in respect of any Excluded Assets. The Vendors shall have no obligation to remove any Excluded Equipment from any premises that constitute part of Purchased Assets. All right, title and interest in any such Excluded Equipment which is not sold or removed from such premises after three months following Closing shall vest in the Purchaser unless the Purchaser objects to such title transfer in which case, right, title and interest shall continue to vest in the Vendors but the Purchaser shall be entitled to dispose of such Excluded Equipment at the Purchaser's expense.
- (2) The Purchased Assets shall be and remain until Closing at the risk of the Vendors. In the event of material (exceeding \$100,000) damage by fire or other hazard to the Purchased Assets or any part thereof occurring before the Closing Date, the Vendors shall immediately advise the Purchaser thereof by notice in writing.

### **Section 8.5 Dispute Resolution**

If any dispute arises with respect to any matter related to the Transaction or the interpretation or enforcement of this Agreement such dispute will be determined by the Court, or by such other Person or in such other manner as the Court may direct or as mutually agreed by the Vendors and the Purchaser.

### **Section 8.6 Termination**

- (1) This Agreement shall automatically terminate at any time prior to the Closing Time by mutual written agreement of the Vendors and the Purchaser and on consent of the Monitor.
- (2) This Agreement may be terminated at any time prior to the Closing Time upon the occurrence of any of the following:
  - a) a condition precedent has not been satisfied or waived pursuant to and in accordance with Article 7 and a Party entitled to terminate this Agreement as a result thereof has delivered written notice of termination pursuant to Article 7 (provided that the terminating Party has not failed to satisfy a closing condition under this Agreement); or
  - b) Closing shall not have occurred on or prior to the Outside Date in accordance with Section 7.3 and any of the Parties shall have delivered written notice of termination to the other Parties terminating this Agreement as a result thereof (provided that the terminating Party has not failed to satisfy a closing condition under this Agreement).

### **Section 8.7 Effects of Termination and Closing**

- (1) If this Agreement is terminated pursuant to Section 8.6, all further obligations of the Parties under or pursuant to this Agreement shall terminate without further liability of any Party to the other except for the provisions of this Section 8.7 (Effects of Termination and Closing), each of which will survive termination.
- (2) If the Transaction is not completed by the Outside Date solely as a result of the Vendors' failure to perform any of their obligations under this Agreement, then the Expense Reimbursement shall become due and payable to the Purchaser in accordance with the terms of this Agreement.
- (3) Under no circumstance shall any of the Parties, their Representatives or their respective directors, officers, employees or agents be liable for any special, punitive, exemplary, consequential or indirect damages (including loss of profits) that may be alleged to result, in connection with, arising out of, or relating to this Agreement or the transactions contemplated herein.

**ARTICLE 9  
GENERAL**

**Section 9.1 Access to Books and Records**

- (1) For a period of two years from the Closing Date or for such longer period as may be reasonably required for the Vendors (or any trustee in bankruptcy of the estate of the Vendors) to comply with Applicable Law, the Purchaser will retain all original Books and Records that are transferred to the Purchaser under this Agreement. So long as any such Books and Records are retained by the Purchaser pursuant to this Agreement, the Vendors (and any representative, agent, former director or officer or trustee in bankruptcy of the estate of the Vendors, including the Monitor) has the right to inspect and to make copies (at its own expense) of them at any time upon reasonable request during normal business hours and upon reasonable notice for any proper purpose and without undue interference to the business operations of the Purchaser.

**Section 9.2 Notice**

- (1) Any notice or other communication under this Agreement shall be in writing and may be delivered by read-receipted email, addressed:
- a) in the case of the Purchaser, as follows:

**Trichome Financial Corp.**  
150 Bay Street West, Suite 200  
Toronto, Ontario  
M5H 1J9

**Attention:** Michael Ruscetta  
**Email:** mruscetta@trichomefinancial.com

With a copy to:

**Torys LLP**  
79 Wellington Street West  
Suite 3000  
Toronto, Ontario  
M5K 1N2

**Attention:** Scott Bomhof  
**Email:** sbomhof@torys.com

- b) in the case of the Vendors, as follows:

**James E. Wagner Cultivation Corporation**  
 PO Box 46015  
 Kitchener, Ontario  
 N2E 4J3

**Attention:** Nathan Woodworth  
 Email: nathan@jwcmed.com

With a copy to:

Bennett Jones LLP  
 3400 - 100 King Street West  
 Toronto, Ontario  
 M5X 1A4

**Attention:** Sean Zweig  
 Email: zweigs@bennettjones.com

- c) in each case, with a further copy to the Monitor, as follows:

**KSV Kofman Inc.**  
 150 King Street West  
 Suite 2308  
 Toronto, Ontario  
 M5H 1J9

**Attention:** Bobby Kofman/Noah Goldstein  
 Email: bkofman@ksvadvisory.com/ngoldstein@ksvadvisory.com

- (2) Any such notice or other communication, if transmitted by email before 5:00 p.m. (Toronto time) on a Business Day, will be deemed to have been given on such Business Day, and if transmitted by email after 5:00 p.m. (Toronto time) on a Business Day, will be deemed to have been given on the Business Day after the date of the transmission.
- (3) Sending a copy of a notice or other communication to a Party's legal counsel as contemplated above is for information purposes only and does not constitute delivery of the notice or other communication to that Party. The failure to send a copy of a notice or other communication to legal counsel does not invalidate delivery of that notice or other communication to a Party.

### **Section 9.3 Time**

Time shall, in all respects, be of the essence hereof, provided that the time for doing or completing any matter provided for herein may be extended or abridged by an agreement in writing signed by the Vendors and the Purchaser.

**Section 9.4 Survival**

The representations and warranties of the Parties contained in this Agreement shall merge on Closing and the covenants of the Parties contained herein to be performed after the Closing shall survive Closing and remain in full force and effect.

**Section 9.5 Personal Information**

The Purchaser hereby acknowledges that it is aware, and that it will advise its Representatives, that privacy legislation, including the *Personal Information Protection and Electronic Documents Act* (Canada), applies to certain information that may be disclosed to the Purchaser and its Representatives pursuant to this Agreement and/or the Transaction. The Purchaser agrees to comply, and cause its Representatives to comply, with such privacy legislation in connection with any such information disclosed to it or any of them.

**Section 9.6 Benefit of Agreement**

This Agreement shall enure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns.

**Section 9.7 Entire Agreement**

This Agreement, the attached Schedules hereto, constitute the entire agreement between the Parties with respect to the subject matter hereof and supersede all prior negotiations, understandings and agreements. This Agreement may not be amended or modified in any respect except by written instrument executed by all of the Parties.

**Section 9.8 Paramountcy**

In the event of any conflict or inconsistency between the provisions of this Agreement, and any other agreement, document or instrument executed or delivered in connection with this Transaction or this Agreement, the provisions of this Agreement shall prevail to the extent of such conflict or inconsistency.

**Section 9.9 Governing Law**

This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein and each of the Parties irrevocably attorns to the non-exclusive jurisdiction of the courts of the Province of Ontario.

**Section 9.10 Commission**

The parties acknowledge that the M&A Advisor has been retained and may be entitled to payment of fees in accordance with the SISP. The Purchaser agrees to indemnify the Vendors and its Representatives against any claim for compensation or commission by any third party or agent retained by the Purchaser in connection with, or in contemplation of, the Transaction and the Vendors shall indemnify the Purchaser and its Representatives for any third party or agent or broker fees or other commissions payable by the Vendors on the Purchase Price or otherwise in connection with the Transaction.



**Section 9.11 Assignment by Purchaser**

This Agreement may be assigned by the Purchaser prior to the issuance of the Approval and Vesting Order, without the prior written consent of the Vendors or the Monitor, provided that such assignee is also the holder of the Purchaser's interests under the Loan Agreement, the Factoring Agreement and the DIP Facility. If the Purchaser assigns its rights under this Agreement, (i) the Purchaser shall provide prior notice of such assignment to the Vendors, and (ii) such assignee shall agree to be bound by the terms of this Agreement to the extent of the assignment; provided, however, that any such assignment shall not relieve the Purchaser of its obligations hereunder.

**Section 9.12 Further Assurances**

Each of the Parties shall, at the request and expense of the requesting Party, take or cause to be taken such action and execute and deliver or cause to be executed and delivered to the other such conveyances, transfers, documents and further assurances as may be reasonably necessary or desirable to give effect to this Agreement.

**Section 9.13 Counterparts**

This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which shall constitute one and the same agreement. Transmission by facsimile or by e-mail of an executed counterpart of this Agreement shall be deemed to constitute due and sufficient delivery of such counterpart.

**Section 9.14 Severability**

Notwithstanding any provision herein, if a condition to complete the Transaction, or a covenant or an agreement herein is prohibited or unenforceable pursuant to Applicable Law, then such condition, covenant or agreement shall be ineffective to the extent of such prohibition or unenforceability without invalidating the other provisions hereof.

**Section 9.15 Monitor's Certificate**

The Parties acknowledge and agree that the Monitor shall be entitled to deliver to the Purchaser, and file with the Court, the executed Monitor's Certificate without independent investigation, upon receiving written confirmation from both Parties (or the applicable Party's counsel) that all conditions of Closing in favour of such Party have been satisfied or waived, and the Monitor shall have no liability to the Parties in connection therewith. The Parties further acknowledge and agree that (i) upon written confirmation from both Parties that all conditions of Closing in favour of such Party have been satisfied or waived (other than the payments contemplated in Section 3.2 and the delivery of the executed Monitor's Certificate), the Monitor may deliver the executed Monitor's Certificate to the Purchaser's counsel in escrow, with the sole condition of its release from escrow being the Monitor's written confirmation that all such funds have been received, the Monitor's Certificate will be released from escrow to the Purchaser, and the Closing shall be deemed to have occurred.

**Section 9.16 Monitor's Capacity**


The Vendors and the Purchaser acknowledge and agree that the Monitor, acting in its capacity as Monitor of the Vendors, will have no liability, in its personal capacity or otherwise, in connection with this Agreement whatsoever as Monitor.

**[THE REMAINDER OF THIS PAGE HAS BEEN LEFT INTENTIONALLY BLANK]**

IN WITNESS WHEREOF, the Parties have executed this Agreement.

PURCHASER:

**TRICHOME FINANCIAL CORP.**

By:   
Name:  
Title:

VENDORS:

**JAMES E. WAGNER CULTIVATION CORPORATION**

By: \_\_\_\_\_  
Name:  
Title:

**JAMES E. WAGNER CULTIVATION LTD.**

By: \_\_\_\_\_  
Name:  
Title:

**JWC 1 LTD.**

By: \_\_\_\_\_  
Name:  
Title:

**JWC 2 LTD.**

By: \_\_\_\_\_  
Name:  
Title:

**JWC SUPPLY LTD.**

By: \_\_\_\_\_  
Name:  
Title:

IN WITNESS WHEREOF, the Parties have executed this Agreement.


PURCHASER:

**TRICHOME FINANCIAL CORP.**


By: \_\_\_\_\_  
Name:  
Title:

VENDORS:

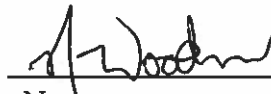
**JAMES E. WAGNER CULTIVATION CORPORATION**

By:   
Name:  
Title:


**JAMES E. WAGNER CULTIVATION LTD.**

By:   
Name:  
Title:

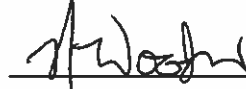
**JWC 1 LTD.**

By:   
Name:  
Title:

**JWC 2 LTD.**

By:   
Name:  
Title:

**JWC SUPPLY LTD.**

By:   
Name:  
Title:

**GROWTHSTORM INC.**

By: 

Name:

Title:

### Schedule A - Purchased Assets

- (1) All cash and cash equivalents;
- (2) All movable property, leasehold improvements and equipment, furniture, fixtures and other fixed assets, if any (excluding those that are subject to capital leases), in addition to all computer hardware used in connection with the business;
- (3) All Books and Records;
- (4) All inventory of the Vendors used in the carrying on of its business;
- (5) The benefit of all contracts or other agreements listed in Appendix 1 to this Schedule A in each case, as amended, extended, assigned or otherwise modified, which shall include, (in this Schedule A, the “**Assumed Contracts**”);
- (6) All Accounts Receivable;
- (7) All SRED Credits;
- (8) All prepaid expenses to the extent necessary for the operation of the business form and after the Closing;
- (9) All supplies owned by the Vendors and used in connection with the business;
- (10) All Intellectual Property owned or licensed by the Vendors and used in or relating to the carrying on of the business, including Intellectual Property developed by the Vendors’ employees;
- (11) All customer guarantees, customer notes, security agreements, financing statements under applicable personal property security legislation, customer deposits or collateral, filings or property securing customer obligations (in each case, solely to the extent related to any of the Accounts Receivables and/or Assumed Contracts);
- (12) All government licenses, approvals, permits or similar used in connection with the business, to the extent they are assignable; and

- (13) All goodwill associated with the business or the Purchased Assets, including the right to carry on the business in continuation of the Vendors.

## Appendix 1 to Schedule A - Assumed Contracts

The following leases:

- Lease dated December 13, 2013, between Blue Top Properties (885 Trillium) Inc. and JWC Ltd. in respect of the Facility
- Lease dated February 1, 2018, between Homer Land Corp. and JWC Ltd. in respect of the Second Facility

The following customer contracts:

- Master Cannabis Supply Agreement between JWC and Ontario Cannabis Retail Corporation dated February 19, 2020
- Supply Arrangements between JWC and Prince Edward Island Cannabis Management Corporation
- Agreements related to the Private Label and Commercial Packaging agreement between JWC and Atlantic Cultivation Limited



## Schedule B - Excluded Assets

### 1. Benefit Plans

B - 1

## Schedule C

### IN THE MATTER OF JAMES E. WAGNER CULTIVATION COPORATION JAMES E. WAGNER CULTIVATION LTD., JWC 1 LTD., JWC 2 LTD., JWC SUPPLY LTD. AND GROWTHSTORM INC. (the "VENDORS")

#### Bidding Procedures

Set forth below are the bidding procedures (the "**Bidding Procedures**") to be employed with respect to the sale (the "**Sale**") of the Vendors' assets pursuant to a court approved solicitation process in the CCAA Proceedings of the Vendors.

On April ■, 2020, the Court issued an order (the "**Sale Process Order**") approving and accepting for the purpose of conducting a "stalking horse" solicitation process (the "**Stalking Horse Process**") in accordance with these Bidding Procedures that certain asset purchase agreement dated March 31, 2020 (the "**Stalking Horse Bid**") between the Vendors and Trichome Financial Corp. (the "**Stalking Horse Bidder**"), including, without limitation, the appointment of Stoic Advisory Inc. as M&A advisor to the Vendors (the "**M&A Advisor**"), the payment of an expense reimbursement (the "**Expense Reimbursement**") by the Vendors to the Stalking Horse Bidder in accordance with the provisions of the Stalking Horse Bid, and approving these Bidding Procedures.

Subject to Court availability and the terms hereof, within ten (10) business days following the Auction (defined below) the Vendors shall bring a motion (the "**Approval and Vesting Order Motion**") seeking the granting of an order by the Court authorizing the Vendors to proceed with the Sale of the Vendors' Assets to the Qualified Bidder making the Successful Bid (each as defined below) (the "**Successful Bidder**") (such order, as approved, the "**Approval and Vesting Order**").

**Key Dates**

■ at 5:00 p.m. (prevailing Eastern Time)	Delivery of Teasers and Sales Packages
■ at 5:00 p.m. (prevailing Eastern Time)	Confidential Data-Site to be established
■ at 5:00 p.m. (prevailing Eastern Time)	Bid Deadline - Due Date for Bids and Deposits
■ at 12:00 noon (prevailing Eastern Time)	Monitor to provide the Stalking Horse Bidder and each Qualified Bidder a schedule setting forth either or both (i) the highest or otherwise best fully binding offer for all of the Debtors' Assets and (ii) the highest or otherwise best fully binding offer(s) for all or any combination of the Purchased Assets
■ at 10:00 a.m. (prevailing Eastern Time)	Auction (if any)
■ at 10:00 a.m. (prevailing Eastern Time) (pending the Court's availability), if the Auction is cancelled	Approval and Sale Order hearing
■ at 10:00 a.m. (prevailing Eastern Time) (pending the Court's availability), if there is an Auction	Approval and Sale Order hearing

**Assets to Be Sold En Bloc or Piecemeal**

The Vendors are offering for Sale all of the Vendors' right, title and interest in and to all of the Vendors' assets (the "**Vendors' Assets**") and the Vendors will consider (i) a bid for all of the Vendors' Assets (an "**En Bloc Bid**"); or (ii) separate bids to acquire some but not all of the Vendors' assets (a "**Piecemeal Bid**"), provided that the Vendors will only consider Piecemeal Bids if a combination of one or more Piecemeal Bids in the aggregate

meet the requirements to be a Qualified Bid (as defined below). The M&A Advisor under the supervision of the Special Committee of the Board of JWC (the “**Special Committee**”) and KSV Kofman Inc., in its capacity as Monitor of the Vendors (the “**Monitor**”), will be responsible for conducting the solicitation process and an auction (the “**Auction**”) (if any) on behalf of the Vendors. The Auction, if any, will be conducted by the Monitor. The Vendors’ preferred transaction structure is for En Bloc Bid.

Although the Vendors are seeking bids to purchase some or all of the Vendors’ assets, the Vendors will also consider a bid that contemplates a Plan of Restructuring for the Vendors (a “**Plan Bid**”) provided that such Plan Bid will only be a Qualified Bid if it: (i) provides for the indefeasible payment in full of the amounts owing to Trichome Financial Corp, including without limitation the secured indebtedness owing to Trichome Financial Corp. and the Expense Reimbursement amount under the Stalking Horse APA, on or before the Outside Date regardless of the timeline for such Plan Bid; (ii) has conditions that, in the reasonable opinion of the Vendors and the Monitor, are likely to be satisfied; and (iii) includes a fully-funded commitment to provide any additional interim financing required by the Vendors to complete all steps required to implement such Plan Bid, such financing to be subordinate to the existing Administration Charge, D&O Charge and DIP Charge.

### **The Bidding Process**

The M&A Advisor, under the supervision of the Special Committee and the Monitor, shall be responsible for the marketing and sale of the Vendors’ Assets pursuant to the process described by the Monitor’s Report to Court dated ■, 2020 (the “**Bidding Process**”), which is set out below. The Monitor, with the consent of the Special Committee, shall have the right to adopt such other rules for the Bidding Process (including rules that may depart from those set forth herein) that in its reasonable business judgment will better promote the goals of the Bidding Process, *provided, however*, that the adoption of any rule that materially deviates from these Bidding Procedures shall require the prior written consent of the Stalking Horse Bidder or a further Order of the Court.

### **Participation Requirements**

“**Qualified Bidder**” is a bidder who submits a bid in substantially the same form as the Stalking Horse Bid, for a cash purchase price of at least CAD\$■ and includes the Required Bid Terms and Materials (as defined below). Any bid meeting these criteria that is received by the Monitor before the Bid Deadline is a qualified bid (“**Qualified Bid**”).

### Bid Deadline

A Qualified Bidder that desires to make a bid shall deliver written copies of its bid and the Required Bid Terms and Materials to the Monitor no later than 5:00 p.m. (prevailing Eastern time) on ■, 2020 (the “**Bid Deadline**”). The Monitor shall forthwith provide copies of any bids received to the Special Committee.

### Bid Requirements

All bids (other than the Stalking Horse Bid) must include, unless such requirement is waived by the Monitor after consultation with the Special Committee, the following (collectively, the “**Required Bid Terms and Materials**”):

- (i) A base cash purchase price equal to or greater than CAD\$■, being the estimated amount payable under the Stalking Horse Bid (\$■), inclusive of the Closing Cash Payment, plus the amount of the DIP Facility plus the Expense Reimbursement (\$100,000) and \$250,000 bid increment (collectively, the “**Base Purchase Price**”);

A provision stating that the bidder’s offer is irrevocably open for acceptance until the earlier of (i) the date that the Vendors’ Assets have been sold pursuant to the closing of the sale approved by the Court; and (ii) the Outside Date;

- (ii) An executed copy of a proposed purchase agreement and a redline of the bidder’s proposed purchase agreement reflecting variations from the Stalking Horse Bid (the “**Marked Agreement**”);
- (iii) A cash deposit in the amount of not less than fifteen *per cent* (15%) of the amount of the Base Purchase Price, in the form of a wire transfer, certified cheque or such other form acceptable to the Monitor (the “**Bid Deposit**”), which shall be held in the trust account of the Monitor’s solicitors (the “**Escrow Account**”). Funds shall be disbursed from the Escrow Account only as follows: (i) if the Qualified Bidder is the Successful Bidder, its Bid Deposit will be applied without interest on Closing to the purchase price payable by it under its bid on the closing thereof; and (ii) if the Qualified Bidder is not the Successful Bidder, then its Bid Deposit shall be returned without interest to it forthwith following the expiration of its offer (which in the case of the Back-Up Bidder shall be following closing of the sale to the Successful Bidder).

For the purposes of these Bidding Procedures, the Monitor shall provide all bidders with an estimate of the anticipated amount owing under the DIP Facility as of the Closing Date, provided however that the Successful Bidder must agree to adjust its bid (either higher or lower) to reflect the actual amount owing under the DIP Facility on Closing.

A bid received from a Qualified Bidder that includes all of the Required Bid Terms and Materials and is received by the Bid Deadline is a “**Qualified Bid**”. The Monitor shall review the Qualified Bids and shall recommend to the Special Committee which Qualified Bid is the best offer. The Special Committee, in consultation with the Monitor, reserves the right to determine the value of any Qualified Bid, and which Qualified Bid constitutes the best offer (the “**Lead Bid**”). Details of the Lead Bid will be provided by the Monitor to all Qualified Bidders after the Bid Deadline and no later than 5:00p.m. (Eastern Time) two (2) Business Days before the date scheduled for the Auction.

Notwithstanding the bid requirements detailed above, the Stalking Horse Bid shall be deemed to be a Qualified Bid and the Stalking Horse Bidder shall be deemed to be a Qualified Bidder.

#### **“As Is, Where Is, With All Faults”**

The Sale of the Vendors’ Assets shall be on an “as is, where is” and “with all faults” basis and without representations, warranties, or guarantees, express, implied or statutory, written or oral, of any kind, nature, or description by the Monitor or the Vendors or their agents, representatives, partners or employees, or any of the other parties participating in the sales process pursuant to these Bid Procedures, except as may otherwise be provided in a definitive purchase agreement with the Vendors. By submitting a bid, each Qualified Bidder shall be deemed to acknowledge and represent that it has had an opportunity to conduct any and all due diligence regarding the Vendors’ Assets prior to making its bid, that it has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the Vendors’ Assets in making its bid, and that it did not rely upon any written or oral statements, representations, warranties, or guarantees, express, implied, statutory or otherwise, regarding the Vendors’ Assets, the financial performance of the Vendors’ Assets or the physical condition or location of the Vendors’ Assets, or the completeness of any information provided in connection therewith or the Auction, except as expressly stated in these Bidding Procedures or as set forth in a definitive purchase agreement with the Vendors.

#### **Free of Any and All Liens**

Except as otherwise provided in the Stalking Horse Bid or another Successful Bidder’s purchase agreement, and subject to any permitted encumbrances therein, all of the Vendors’ right, title and interest in and to the Vendors’ Assets shall be sold free and clear of all liens and encumbrances pursuant to the Approval and Vesting Order except for Permitted Encumbrances (as defined in the Stalking Horse Bid).

### The Sale and Auction Process

If one or more Qualified Bids (other than that submitted by the Stalking Horse Bidder) have been received by the Monitor on or before the Bid Deadline, the Monitor shall advise all Qualified Bidders of the Lead Bid and invite all Qualified Bidders (including the Stalking Horse Bidder) to attend the Auction to be conducted by the Monitor in accordance with the **Auction Procedures** attached hereto as Appendix 1. The Auction may be conducted in person or by video conference.

If no Qualified Bid is submitted by the Bid Deadline, then the Stalking Horse Bid shall be the Successful Bid, and the Stalking Horse Bidder shall be the Successful Bidder and the Auction shall be cancelled.

Monitor and Special Committee to Determine Highest and/or Best Bid: The Monitor shall determine after each round of offers in the Auction, in its reasonable business judgment, the best bid and shall recommend this bid to the Special Committee as the Lead Bid. In making such determination, the Monitor and the Special Committee may consider, without limitation: (i) the amount and nature of the consideration; (ii) the proposed assumption of liabilities, if any, and the related implied impact on recoveries for creditors; (iii) the ability of the Qualified Bidder in question to close the proposed transaction; (iv) the proposed closing date and the likelihood, extent and impact of any potential delays in closing; (v) any purchase price adjustment; (vi) the net economic effect of any changes made to the Stalking Horse Bid; and (vii) such other considerations as the Monitor or the Special Committee deems relevant in its reasonable business judgment. At the end of each round of offers, the Monitor shall advise the Qualified Bidders of the material terms of the then highest and/or best bid, and the basis for calculating the total consideration offered in such offer. If at the end of any round of bidding a Qualified Bidder has elected not to submit a further bid meeting the criteria set out herein (including the Minimum Bid Increment), then such Qualified Bidder shall not be entitled to continue to participate in the next round of offers or in any subsequent round.

If only one Qualified Bid is submitted after a round of offers then that Qualified Bid shall be the Successful Bidder. The next highest offer, as determined by the Special Committee based on the Monitor's recommendation (the "**Back-up Bid**"), shall be required to keep its offer open and available for acceptance until the closing of the Court Approved Sale of the Vendors' Assets to the Successful Bidder.

### Highest versus Best Offer

In determining the Lead Bid, the highest and/or best sale offer during each round of offers, and the Successful Bid, the Monitor and the Special Committee are not required to select the offer with the highest purchase price and may, exercising their reasonable business judgment, select another offer on the basis that it is the best offer even though not the highest purchase price. Without limiting the foregoing, the Monitor and the Special Committee may give such weight to the non-monetary considerations as it determines, exercising its reasonable business judgment,

is appropriate and reasonable, including those considerations described above under “Monitor and the Special Committee to Determine Highest and/or Best Bid”.

### **Expense Reimbursement**

To provide an incentive and to compensate the Stalking Horse Bidder for performing the substantial due diligence and incurring the expenses necessary in entering into the Stalking Horse Bid with the knowledge and risk that arises from participating in the sale and subsequent bidding process, the Vendors have agreed to pay the Stalking Horse Bidder, under the conditions outlined herein and in the Stalking Horse Bid, an Expense Reimbursement on account of its reasonable and documented out of pocket fees and expenses, up to a maximum of \$100,000 inclusive of HST, in the event that the Stalking Horse Bidder is not the Successful Bidder.

The Expense Reimbursement is a material inducement for, and a condition of, the Stalking Horse Bidder’s entry into the Stalking Horse Bid. The Expense Reimbursement, if payable in accordance with the Stalking Horse Bid, shall be paid in accordance with the Stalking Horse Bid and the Sale Process Order.

### **Acceptance of Qualified Bids**

The sale of the Vendors’ Assets to any Successful Bidder by the Vendors is expressly conditional upon the approval of the Successful Bid by the Court at the hearing of the Approval and Vesting Order Motion. The presentation of the Successful Bid to the Court for approval does not obligate the Vendors to close the transaction contemplated by such Successful Bid unless and until the Court approves the Successful Bid. The Vendors will be deemed to have accepted a bid only when the bid has been approved by the Court at the hearing on the Approval and Vesting Order Motion.

### **Approval and Vesting Order Motion Hearing**

The Approval and Vesting Order Motion shall, subject to court availability, be made returnable on or before ■, 2020. The Special Committee, with the consent of the Monitor, reserves its right to the extent consistent with the Stalking Horse Bid to change the date of the hearing of Approval and Vesting Order Motion in order to achieve the maximum value for the Vendors’ Assets.



### Miscellaneous

The solicitation process and these Bidding Procedures are solely for the benefit of the Vendors and nothing contained in the Sale Process Order or these Bidding Procedures shall create any rights in any other person (including, without limitation, any bidder or Qualified Bidder, and any rights as third party beneficiaries or otherwise) other than the rights expressly granted to a Successful Bidder under the Sale Process Order. The bid protections incorporated in these Bidding Procedures are solely for the benefit of the Stalking Horse Bidder.

Except as provided in the Bidding Procedures Order and Bidding Procedures, the Court shall retain jurisdiction to hear and determine all matters arising from or relating to the implementation of the Sale Process Order, the Stalking Horse Process and the Bidding Procedure.

## APPENDIX I

### Auction Procedures

#### Auction

1. If the Special Committee, based on the recommendation of the Monitor, determines to conduct an Auction pursuant to the Stalking Horse Bid Procedures, the Monitor will notify the Qualified Bidders who made a Qualified Bid that an Auction will be conducted. The Auction will be convened by the Monitor and conducted either by video conference or in person at the Toronto office of Davies Ward Phillips & Vineberg LLP at 10:00 a.m. (Eastern Time) on date that is determined by the Monitor, provided that that is not later than five (5) Business Days after the Bid Deadline, or such other place and time as the Monitor may advise. Capitalized terms used but not defined have the meaning given to them in the Stalking Horse Bid Procedures. The Auction shall be conducted in accordance with the following procedures:
  - a) Participation at The Auction. Only a Qualified Bidder is eligible to participate in the Auction. The Monitor shall provide all Qualified Bidders with the amount of the Leading Bid by 5:00pm (Eastern Time) two (2) Business Days before the date scheduled for the Auction. Each Qualified Bidder must inform the Monitor whether it intends to participate in the Auction no later than 12:00 p.m. (Eastern Time) on the Business Day prior to the Auction. Only the authorized representatives of each of the Qualified Bidders, the Monitor, the Vendors and their respective counsel and other advisors shall be permitted to attend the Auction.
  - b) Bidding at the Auction. Bidding at the Auction shall be conducted in rounds. The Leading Bid shall constitute the "Opening Bid" for the first round and the highest Overbid (as defined below) at the end of each round shall constitute the "Opening Bid" for the following round. In each round, a Qualified Bidder may submit no more than one Overbid. Any Qualified Bidder who bids in a round (including the

Qualified Bidder that submitted the Opening Bid for such round) shall be entitled to participate in the next round of bidding at the Auction.

- c) Monitor Shall Conduct the Auction. The Monitor and its advisors shall direct and preside over the Auction. At the start of each round of the Auction, the Monitor shall provide the terms of the Opening Bid to all participating Qualified Bidders at the Auction. The determination of which Qualified Bid constitutes the Opening Bid for each round shall take into account any factors that the Monitor and the Special Committee reasonably deem relevant to the value of the Qualified Bid, including, among other things, the following: (i) the amount and nature of the consideration; (ii) the proposed assumption of any liabilities and the related implied impact on recoveries for creditors; (iii) the Monitor's and the Special Committee's assessment of the certainty of the Qualified Bidder to close the proposed transaction on or before the Outside Date; (iv) the likelihood, extent and impact of any potential delays in closing; (v) the net economic effect of any changes from the Opening Bid of the previous round, and (vi) such other considerations as the Monitor or the Special Committee deems relevant in its reasonable business judgment (collectively, the "Bid Assessment Criteria"). All Bids made after the Opening Bid shall be Overbids, and shall be made and received on an open basis, and all material terms of the highest and best Overbid shall be fully disclosed to all other Qualified Bidders that are participating in the Auction. The Monitor shall maintain a record of the Opening Bid and all Overbids made and announced at the Auction.
- d) Terms of Overbids. An "Overbid" is any Bid made at the Auction subsequent to the Monitor's announcement of the Opening Bid. To submit an Overbid, in any round of the Auction, a Qualified Bidder must comply with the following conditions:
- (i) *Minimum Overbid Increment:* Any Overbid shall be made in minimum Cash Purchase Price increments of \$100,000 above the Opening Bid, or such increments as the Monitor, in consultation with the Special Committee, may determine in order to facilitate the Auction (the "Minimum Overbid Increment"). The amount of the cash purchase price consideration or value of any Overbid shall not be less than the cash purchase price consideration or value of the Opening Bid, plus the Minimum Overbid Increment(s) at that time, plus any additional Minimum Overbid Increments.
  - (ii) *The Bid Requirements same as for Qualified Bids:* Except as modified herein, an Overbid must comply with the Bid Requirements, provided, however, that the Bid Deadline shall not apply. Any Overbid made by a Qualified Bidder must provide that it remains irrevocable and binding on the Qualified Bidder and open for acceptance as a Back-Up Bid until the closing of the Successful Bid.

- (iii) *Announcing Overbids:* At the end of each round of bidding, the Monitor shall announce the identity of the Qualified Bidder and the material terms of the then highest and/or best Overbid, including the nature of the transaction, the assets proposed to be acquired and the obligations proposed to be assumed, the basis for calculating the total consideration offered in such Overbid based on, among other things, the Bid Assessment Criteria.
  - (iv) *Consideration of Overbids:* The Monitor, in consultation with the Special Committee, reserves the right to make one or more adjournments in the Auction in durations set by the Monitor to, among other things: (A) allow individual Qualified Bidders to consider how they wish to proceed; (B) consider and determine the current highest and/or best Overbid at any given time during the Auction; and, (C) give Qualified Bidders the opportunity to provide the Monitor or the Special Committee with such additional evidence as it may require that the Qualified Bidder has obtained all required internal corporate approvals, has sufficient internal resources, or has received sufficient non-contingent debt and/or equity funding commitments, to consummate the proposed transaction at the prevailing Overbid amount. The Monitor may have clarifying discussions with a Qualified Bidder, and the Monitor may allow a Qualified Bidder to make technical clarifying changes to its Overbid following such discussions. BIDDERS MUST OBTAIN ALL NECESSARY APPROVALS AND FUNDING COMMITMENTS IN ADVANCE OF THE AUCTION.
  - (v) *Failure to Bid:* If at the end of any round of bidding a Qualified Bidder (other than the Qualified Bidder that submitted the then highest and/or best Overbid or Opening Bid, as applicable) fails to submit an Overbid, then such Qualified Bidder shall not be entitled to continue to participate in the next round of the Auction.
- e) Additional Procedures. The Monitor, in consultation with the Special Committee, may adopt rules for the Auction at or prior to the Auction that will better promote the goals of the Auction, including rules pertaining to the structure of the Auction, the order of bidding provided they are not inconsistent with any of the provisions of the Stalking Horse Bid Procedures and provided further that no such rules may change the requirement that all material terms of the then highest and/or best Overbid at the end of each round of bidding will be fully disclosed to all other Qualified Bidders.
- f) Closing the Auction. The Auction shall be closed after the Special Committee, after considering the Monitor's recommendation has: (i) reviewed the final Overbid of each Qualified Bidder on the basis of financial and contractual terms and the factors relevant to the sale process, including those factors affecting the speed and

certainty of consummating the proposed sale; and (ii) identified the Successful Bid and the Back-Up Bid and the Monitor has advised the Qualified Bidders participating in the Auction of such determination

- g) Finalizing Documentation. Promptly following a Bid of a Qualified Bidder being declared the Successful Bid or the Back-Up Bid, the Qualified Bidder shall execute and deliver such revised and updated definitive transaction agreements as may be required to reflect and evidence the Successful Bid or Back-Up Bid. For greater certainty, every Bid made at Auction is deemed to be a signed and binding bid based on the bidder's original Qualified Bid.

Schedule D- Permitted Encumbrances

N/A

Schedule E- Form of Approval and Vesting Order

Court File No.

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

THE HONOURABLE ) WEEKDAY, THE #  
 )  
JUSTICE ) DAY OF MONTH, 2020  
 )

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

AND IN THE MATTER OF JAMES E. WAGNER CULTIVATION CORPORATION,  
JAMES E. WAGNER CULTIVATION LTD., JWC 1 LTD., JWC 2 LTD., JWC SUPPLY LTD.  
AND GROWTHSTORM INC.

APPROVAL AND VESTING ORDER

THIS MOTION, made by James E. Wagner Cultivation Corporation, James E. Wagner  
Cultivation Ltd., JWC 1 Ltd., JWC 2 Ltd., JWC Supply Ltd. and GrowthStorm Inc. (collectively,

the “**Vendors**”) for an order approving the sale transaction (the “**Transaction**”) contemplated by an agreement of purchase and sale (the “**Sale Agreement**”) between the Vendors and Trichome Financial Corp. (the “**Purchaser**”) dated ■ and vesting in the Purchaser all of the Vendors’ right, title and interest in and to the assets described in the Sale Agreement (the “**Purchased Assets**”), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the motion record of the Vendors, ■ Report of KSV Kofman Inc. in its capacity as Monitor (the “**Monitor**”) and on hearing the submissions of counsel for the Vendors, the Monitor and the Purchaser, no one appearing for any other person on the service list, although properly served as appears from the affidavit of [NAME] sworn [DATE] filed:

1. **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved, and the execution of the Sale Agreement by the Vendors and the Purchaser is hereby authorized and approved, with such minor amendments as the Vendors and the Purchaser, with the approval of the Monitor, may agree upon. The Vendors 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 of the Purchased Assets to the Purchaser.

2. **THIS COURT ORDERS AND DECLARES** that upon the delivery of a Monitor’s certificate to the Purchaser substantially in the form attached as Schedule A hereto (the “**Monitor’s Certificate**”), all of the Vendors’ right, title and interest in and to the Purchased Assets described in the Sale Agreement shall vest absolutely in the Purchaser, 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 the Order of the Honourable ■ dated ■, 2020 and the Order of the Honourable Justice ■ dated ■, 2020; and (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system (all of which are collectively referred to as the “**Encumbrances**”



and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

3. **THIS COURT ORDERS** that 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 that from and after the delivery of the Monitor's Certificate all Claims and Encumbrances 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 that possession or control immediately prior to the sale.

4. **THIS COURT ORDERS AND DIRECTS** the Monitor to file with the Court a copy of the Monitor's Certificate, forthwith after delivery thereof.

5. **THIS COURT ORDERS** that the Monitor may rely on written notice from the Vendors and the Purchaser regarding fulfillment of conditions to closing under the Sale Agreement and shall incur no liability with respect to the delivery of the Monitor's Certificate.

6. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Vendors and the Monitor are authorized and permitted to disclose and transfer to the Purchaser all human resources and payroll information in the Vendor's records pertaining to the Vendors' past and current employees. 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 Vendors.

7. **THIS COURT ORDERS** that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) (the "BIA") in respect of any Vendor and any bankruptcy order issued pursuant to any such applications or otherwise; and

- (c) any assignment in bankruptcy made in respect of any Vendor;

the vesting of the Purchased Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of any Vendor and shall not be void or voidable by creditors of the Vendors, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, 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.

8. **THIS COURT ORDERS** that for a period of not less than two years from the Closing Date, the Purchaser shall provide the Monitor and any trustee in bankruptcy of any Vendor with access to the books and records of the Vendor in the possession of the Purchaser during normal business hours upon request, and shall not thereafter alter or destroy such books and records without providing the Monitor or and any trustee in bankruptcy of any Vendor with 30 days prior written notice.

9. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Vendors and the Monitor and their 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 Vendors 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 Vendors and the Monitor and their agents in carrying out the terms of this Order.

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**Schedule A - Form of Monitor's Certificate**

Court File No. \_\_\_\_\_

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

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

**AND IN THE MATTER OF JAMES E. WAGNER CULTIVATION CORPORATION, JAMES  
E. WAGNER CULTIVATION LTD., JWC 1 LTD., JWC 2 LTD., JWC SUPPLY LTD. AND  
GROWTHSTORM INC.**

**MONITOR'S CERTIFICATE**

**RECITALS**

- A. James E. Wagner Cultivation Corporation, James E. Wagner Cultivation Ltd., JWC 1 Ltd., JWC 2 Ltd., JWC Supply Ltd. and GrowthStorm Inc. (collectively, the "**Vendors**") commenced these proceedings under the *Companies' Creditors Arrangement Act* on ■, 2020 (the "**CCAA Proceedings**");
- B. KSV Kofman Inc. was appointed as Monitor (the "**Monitor**") in the CCAA Proceedings;
- C. Pursuant to an Order of the Court dated ■ (the "**Approval and Vesting Order**"), the Court approved the agreement of purchase and sale made as of ■ (the "**Sale Agreement**") between the Vendors and Trichome Financial Corp. (the "**Purchaser**") and provided for the vesting in the Purchaser of the Vendors' right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Monitor to the Purchaser of a certificate confirming: (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing as set out in Article 7 of the Sale Agreement have been satisfied or waived by the Vendors and the Purchaser (as applicable); and (iii) the Transaction has been completed to the satisfaction of the Monitor.

D. Pursuant to the Approval and Vesting Order, the Monitor may rely on written notice from the Vendors and the Purchaser regarding fulfillment of conditions to closing under the Sale Agreement.

E. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.

**THE MONITOR CERTIFIES** the following:

1. The Vendors 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 Closing Cash Payment; and
3. The Transaction has been completed to the satisfaction of the Monitor.
4. This Certificate was delivered by the Monitor at \_\_\_\_\_ [TIME] on \_\_\_\_\_ [DATE].

**KSV Kofman Inc., in its capacity as  
Monitor of James E. Wagner Cultivation  
Corporation, James E. Wagner Cultivation  
Ltd., JWC 1 Ltd., JWC 2 Ltd., JWC Supply  
Ltd. and GrowthStorm Inc. , and not in its  
personal capacity**

Per: \_\_\_\_\_  
Name:  
Title:

**Schedule F- Purchase Price Allocation**

To be determined

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF JAMES E. WAGNER CORPORATION,  
JAMES E. WAGNER CULTIVATION LTD., JWC 1 LTD., JWC 2 LTD., JWC SUPPLY LTD AND GROWTHSTORM INC.**

Court File No.

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

Proceedings commenced in Toronto

**AFFIDAVIT OF AIDEN NELMS**

**BENNETT JONES LLP**  
One First Canadian Place  
Suite 3400, P.O. Box 130  
Toronto, Ontario  
M5X 1A4

**Sean Zweig (LSO# 573071)**  
**Mike Shakra (LSO# 64604K)**  
**Aiden Nelms (LSO# 74170S)**

Tel: 416-863-1200  
Fax: 416-863-1716

Lawyers for the Applicants

*This is Exhibit*..... **“D”** ..... *referred to in the*

*affidavit of* Philip Armstrong .....  
*sworn before me, this* 6<sup>th</sup> .....  
*day of* April, 2020 .....

.....  
**A COMMISSIONER FOR TAKING AFFIDAVITS**

Aiden Nelms

## ENGAGEMENT AGREEMENT

### (the "Agreement")

BY AND BETWEEN: James E. Wagner Cultivation Corporation ("**JWC**")

AND: Howard Capital LLC ("**HC**")

#### RECITALS:

A. Pursuant to an initial order granted by the Ontario Superior Court of Justice (Commercial List) (the "**Initial Order**"), JWC and its subsidiaries (collectively, the "**JWC Group**") have commenced proceedings under the Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36, as amended (the "**CCA**") to effect a financial and operational restructuring as well as a Sale and Investor Solicitation Process (the "**SISP**").

B. JWC wishes to retain the Services of HC as set out and defined below in section 2(f) herein. JWC and HC have agreed that HC will act as Chief Restructuring Officer ("**CRO**") and will perform the Services, reporting to the special committee of the Board of JWC (the "**Special Committee**"). Howard Steinberg ("**Steinberg**"), HC's Managing Member and sole owner, will be the primary person providing the Services for HC.

NOW THEREFORE in consideration of the premises and the mutual covenants herein contained, the parties hereto hereby agree as follows:

1. **TERM.** The term of this Agreement shall commence on the date that the CCA court grants an order approving this Agreement (the "**CRO Approval Order**") (the "**Effective Date**") and continue until the earlier of: a) a termination in accordance with the terms of this Agreement; and b) the closing of a sale of all or substantially all of the assets of the JWC Group.

2. **DUTIES.**

(a) **General.** HC shall provide the Services to JWC in connection with the implementation of the Operational Restructuring (as hereinafter defined) in the best interests of all the stakeholders of the JWC Group, as set out in this Agreement.

(b) **Appointment.** Subject to receipt of the CRO Approval Order, HC is hereby appointed CRO. HC shall cause Steinberg to devote his working time, skills and competence as circumstances require to the role of CRO and to effect the Operational Restructuring, as defined below. JWC acknowledges and agrees that HC and Steinberg may engage in other commitments and business activities (including outside directorships) during the term of this engagement, provided that such activities do not interfere with the effective performance of the Services of HC and Steinberg hereunder. Further, JWC acknowledges that Steinberg is on the Board of Trichome and has received restricted stock units associated with that role. Steinberg will resign from the Board of JWC and the Special Committee contemporaneously with becoming CRO. During the term of the appointment of HC as CRO, Steinberg shall recuse himself and not participate in any discussions at Trichome Board meetings concerning the JWC Group.



(c) **Reporting relationships.** HC and Steinberg shall report exclusively to the Special Committee, and shall be subject to the oversight of the Monitor (as defined below). HC and Steinberg shall also consult with the CEO, those designated by the CEO or the Special Committee, Trichome Financial Corp. ("**Trichome**") as debtor-in-possession lender, JWC's legal advisors and KSV Kofman Inc. in its capacity as the CCAA court appointed monitor of the JWC Group (the "**Monitor**"), as appropriate.

(d) **Staffing.** The Services will be provided by Steinberg and other consultants and/or advisors retained by HC (the "**Consultants**") as Steinberg may determine is appropriate and the Special Committee may agree in consultation with the Monitor. The Consultants' mandate will focus exclusively on operational improvement matters. It is currently expected that the cost of the Consultants will average approximately \$ [REDACTED] per month.

(e) **Standard of Performance.** HC shall provide the Services, including all ancillary services, in good faith. HC shall ensure that the Services are performed diligently and in accordance with professional standards of an appointment of this nature. In carrying out the Services, HC and Steinberg agree that they and the Consultants shall at all time act in a manner which is in the best interests of the JWC Group and in furtherance of the Operational Restructuring.

(f) **Specific Duties.** In connection with restructuring initiatives focussed on improving operations, growing sales and improving profitability (the "**Operational Restructuring**"), HC shall provide the following services (collectively, the "**Services**"), in each case, in accordance with this Agreement, subject to all orders of the CCAA court. For greater certainty, unless agreed to in advance in writing by the Monitor and the Special Committee, HC and Steinberg shall have no involvement whatsoever of any kind in connection with the sales and investment solicitation process contemplated to be commenced by the JWC Group ("SISP"), including, without limitation, HC shall not initiate contact or have substantive discussions with any potential bidders (other than Trichome), and shall refer any inquiries received from potential bidders to Stoic Advisory Inc. for response or as otherwise instructed by the Special Committee. The powers of HC expressly include authority, to the extent determined by HC from time to time, for management and control of any sites or facilities which any member of the JWC Group operates and for any other operating activities of the JWC Group. The Services shall include without limitation:

- developing, for consideration by the Special Committee, strategic alternatives for the Operational Restructuring and implementing such strategic alternative(s) selected by the Special Committee, as appropriate;
- overseeing the JWC Group's legal advisors involved in the CCAA proceedings and dealing with and communicating with the JWC Group's lenders, creditors, and other stakeholders in an efficient manner, including, without limitation, monitoring the fees of the various advisors to the JWC Group;
- in close consultation with the JWC Group's management, advising the Special Committee with respect to communications between the JWC Group and its stakeholders in connection with the Operational Restructuring; and
- assisting with the preparation of all filings, applications or similar materials necessary or desirable for any regulatory approvals in connection with the CCAA proceedings.

### 3. CONSIDERATION FOR CONSULTING SERVICES.

Subject to receipt of the CRO Approval Order, JWC shall provide the following consideration to HC for Services rendered hereunder:

(a) **Monthly Fees.** CAD\$ [REDACTED] per month, plus applicable taxes including HST, payable monthly in advance (the "**Monthly Fees**") commencing on the Effective Date. The Monthly Fee for the first month will be pro-rated.

(b) **Success Fee.** In the event that the JWC Group consummates a successful transaction in the SISP which provides for the payment of consideration that is equal to, or greater than, the purchase price set out in section 3.1 of the Stalking Horse Agreement (as defined in the SISP), HC shall receive a success fee equal to \$ [REDACTED]. In addition, in the event that the JWC Group consummates a successful transaction in the SISP which results in all secured creditors of the Applicants being paid in full, HC shall receive a further success fee equal to [REDACTED] % of the amount by which the aggregate transaction value of such successful transaction exceeds the secured debt of the Applicants (collectively, the "**Success Fee**"). Any Success Fee will be paid out of the proceeds of the transaction. For greater certainty, no amount shall be payable under this provision if the claims of Trichome Financial Corp. are not paid in full.

(c) **Expenses.** JWC shall reimburse HC for all reasonable documented out-of-pocket expenses incurred by it (including any applicable taxes) in connection with the Services (the "**Expenses**") upon submission of invoices therefor (including without limitation travel, in accordance with JWC's travel policy). In addition to the Monthly Fees, HC shall submit an invoice for the Expenses plus applicable taxes within one (1) month of the Expenses having been incurred. The reimbursable Expenses shall include reasonable legal fees incurred by HC in connection with the negotiation and performance of this Agreement.

4. **Consultant Fees.** JWC agrees, subject to approval in advance by the Monitor and Interim Lender, to pay for all reasonable fees and reasonable out-of-pocket expenses associated with the Consultants within (1) month of such fees or expenses having been incurred. The work to be performed by the Consultants shall not be duplicative of that performed by Steinberg or other employees of HC. The need for and use of the Consultants shall be reviewed by the Monitor and the Special Committee on a periodic basis.

5. **INFORMATION.** JWC represents and warrants to HC, and will use its commercially reasonable efforts to ensure, that all information to be provided to HC, directly or indirectly, orally or in writing, in connection with HC's engagement hereunder will be accurate and complete in all material respects and will not be misleading in any material way and will not omit to state any fact or information which might reasonably be considered material to HC in performing the Services. HC shall be entitled to rely upon such information and HC shall be under no obligation to verify independently any such information so provided or otherwise obtained by HC. HC shall also be under no obligation to investigate any changes in any of such information occurring after the date it was provided to or obtained by HC. HC shall identify and require from the JWC Group all information it needs to provide the Services. In the event that HC believes it does not have the cooperation of the JWC Group in the provision of information required to provide the Services, it shall promptly inform the Special Committee of such situation.

6. **ADDITIONAL SERVICES.** If HC is requested to perform services in addition to those described herein, then the terms and conditions relating to such services will be outlined in a

separate agreement and the fees for such services will be in addition to fees payable hereunder and will be negotiated separately and in good faith.

7. **COURT APPROVAL AND SECURITY FOR INDEMNITY AND FEES.** JWC shall seek CCAA court ("Court") approval of this Agreement pursuant to the CRO Approval Order, inform and substance reasonably satisfactory to HC. The CRO Approval Order shall:

(a) Provide that none of HC, Steinberg, the Consultants or any other person providing the Services shall incur any liability or obligation as a result of the provision the Services except as may result from gross negligence or wilful misconduct of such person;

(b) Provide that HC, Steinberg, the Consultants and any other person providing the Services shall enjoy the benefit of the stay of proceedings granted pursuant to the Initial Order;

(c) Provide that the Monthly Fees and the Expenses payable to HC hereunder are entitled to the benefit of the Administration Charge (as defined in the Initial Order, as may be amended, ranking *pari passu* with the fees and disbursements of the Monitor, legal counsel and other advisers entitled to the benefit thereof).

(d) Provide that the claims of HC, Steinberg, and any other person providing the Services to the JWC Group are not claims which may be compromised within the CCAA proceedings.

8. **TERMINATION.** Either party may terminate this Agreement at any time upon at least 5 business days' prior written notice to the other, but in the case of JWC only following approval by the Special Committee after consultation with KSV Kofman Inc. in its capacity as Monitor of the JWC Group. HC shall be entitled to receive any pro-rated Monthly Fees and reimbursement of all Expenses up to the effective termination date, and the Indemnity shall not be affected by the termination of this Agreement. The obligation of JWC to pay the Success Fee shall survive termination of this Agreement in accordance with this section 8, unless this Agreement is terminated on or before April 20, 2020, in which case, the JWC Group shall have no obligation to pay the Success Fee, even if a successful transaction is completed pursuant to the SISF, unless otherwise ordered by the Court.

9. **CONFIDENTIALITY.** HC recognizes that the Services to be performed by it hereunder are special, unique and extraordinary in that, by reason of the Services it shall provide hereunder, it will acquire Confidential Information and trade secrets concerning the operation of the JWC Group, the use or disclosure of which could cause the JWC Group, substantial losses and damages which could not be readily calculated and for which no remedy at law would be adequate. Accordingly, HC covenants and agrees with JWC on behalf of itself and its officers, directors and employees, including Steinberg, that it and they will not at any time, except as required by law or with the prior written consent of JWC or to a party bound by a confidentiality agreement if required in connection with the provision by HC of the Services hereunder, directly or indirectly, either disclose to any person, or use for their personal benefit, any secret or Confidential Information that they may learn or have learned by reason of HC's association with JWC. HC and its representatives shall use the Confidential Information for the sole purpose of rendering the Services. The term "**Confidential Information**" means any information not previously disclosed or otherwise available to the public including but not limited to, the JWC Group's products and services, facilities and methods, trade secrets and other intellectual property, systems, procedures, manuals, confidential reports, product price lists, customer lists, financial information, business plans, prospects or opportunities, and non-public information

obtained by HC from its partners, suppliers and clients. Confidential Information shall also include, without limitation, all reports prepared by HC and its representatives for the JWC Group (which reports shall be the sole property of the JWC Group), notes, analyses, compilations, studies, summaries and other materials prepared by HC, its representatives or Steinberg, containing or based, in whole or in part, on Confidential Information. If any such Confidential Information is disclosed or otherwise made available to the public (other than by way of a breach of this covenant by HC) from a source not bound by a confidentiality agreement or under another legal or fiduciary obligation of confidentiality to the JWC Group, its clients, suppliers or partners, it shall no longer be subject to the covenant set out in this paragraph 8.

In the event that HC or any of its representatives, by oral questions, interrogatories, requests for information or documents in legal proceedings, subpoena or other similar processes, are requested or become legally compelled to disclose any of the Confidential Information, HC agrees that it or its representatives, or both, as the case may be, will provide JWC with prompt written notice of such request or requirement so that JWC may seek a protective order or other appropriate remedy. If such protective order or other remedy is not obtained or JWC grants a waiver hereunder, HC or its representatives, as the case may be, who are requested to disclose the Confidential Information may furnish that portion of the information which, in the written opinion of counsel reasonably acceptable to JC, it is legally compelled to disclose; provided, however, that HC or its representatives requested to disclose the Confidential Information shall use their best efforts to obtain reliable assurance that confidential treatment will be accorded to the Confidential Information so disclosed.

Upon JWC's request, for any reason, HC and its representatives will promptly deliver to JWC all documents and other materials (and all copies and extracts thereof) constituting Confidential Information without retaining a copy of extract thereof; provided, however, that HC may retain copies of the Confidential Information (a) that is stored on HC's information technology backup and disaster recovery systems until the ordinary course deletion thereof, (b) that is maintained for compliance purposes, or (c) to the extent required to defend or maintain any litigation relating to this Agreement or the Confidential Information. If JWC requests or gives its prior written consent, HC or its representatives shall destroy all documents or other documents or other materials constituting Confidential Information in their possession, including in electronic form, (subject to the exception in the preceding sentence) with any such destruction confirmed by them in writing to JWC. Whether or not there is a return or destruction of the Confidential Information, HC and its representatives will continue to be bound by their obligations of confidentiality and other obligations hereunder.

## 10. INDEMNITY

(a) **Indemnity.** JWC hereby agrees to provide HC, the Consultants and Steinberg with an Indemnity, in accordance with Schedule A hereto, which Schedule A forms part of this Agreement, the consideration for which is the entering into of this Agreement. Such indemnity (the "**Indemnity**") shall be executed and delivered to HC and Steinberg on the execution of this Agreement. The Indemnity shall also apply to any additional services provided pursuant to paragraph 6 above until superseded or replaced by agreement of the parties in the form agreed upon.

## 11. GENERAL PROVISIONS

(a) **Independent Contractor.** Nothing contained in this Agreement shall be construed as creating a relationship between JWC on the one hand, and HC and Steinberg on the other hand, other than that of an independent contractor. HC and any of its employees, agents or representatives, including Steinberg, shall not be deemed a partner, employee, joint venturer or agent of JWC by virtue of this Agreement. JWC shall not be responsible for any employee deductions or contributions which an employer would be required to effect if any of the HC's employees, agents or representatives were JWC's employees.

(b) **Notices.** Any notice hereunder by either party to the other shall be given in writing by personal delivery, or certified mail, return receipt requested, or by facsimile transmission, in any case delivered to the applicable address set forth below:

(i) To JWC:

c/o  
Bennett Jones LLP  
3400 – 100 King Street West  
Toronto, Ontario M5X 1A4

Attention: Sean Zweig  
Email: zweigs@bennettjones.com

(ii) To HC:

Howard Capital LLC  
11 S Swinton Avenue  
Delray Beach, Florida 33444

Attention: Howard Steinberg  
Tel: (561) 997-4543  
Email: howard.steinberg@me.com

or to such other persons or other addresses as either party may specify to the other in writing.

(c) **Amendment; Waiver.** No provision of this Agreement may be amended, modified, waived or discharged unless such amendment, modification, waiver or discharge is agreed to in writing and signed by the parties. No waiver by either party hereto, at any time, of any breach by the other party hereto of, or compliance with, any condition or provision of this Agreement to be performed by such other party shall be deemed a waiver of similar or dissimilar provisions or conditions at the same or at any prior or subsequent time.

(d) **Assignment.** HC may assign this Agreement or any of its rights and obligations hereunder to an entity in which Steinberg is the sole owner with the consent of JWC and the Monitor. JWC may assign this Agreement or any of its rights and obligations hereunder upon the written approval of HC and the Monitor prior to doing so. Any unapproved assignment made in contravention of this section shall be null and void and have no legal effect.

- (e) **Severability.** The parties have carefully reviewed the provisions of this Agreement and agree that they are fair and equitable. However, in light of the possibility of differing interpretations of law and changes in circumstances, the parties agree that if any one or more of the provisions of this Agreement shall be determined by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions of this Agreement shall, to the extent permitted by law, remain in full force and effect and shall in no way be affected, impaired or invalidated. Moreover, if any of the provisions contained in this Agreement is determined by a court of competent jurisdiction to be excessively broad as to duration, activity, geographic application or subject, such provision shall be construed, by limiting or reducing it to the extent legally permitted, so as to be enforceable to the extent compatible with then applicable law.
- (f) **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal law of Canada applicable therein.
- (g) **Entire Agreement.** This Agreement contains the entire agreement of JWC, HC, and Steinberg and any predecessors or affiliates thereof with respect to the subject matter hereof, and supersedes all prior agreements, understandings and arrangements, oral and written between the parties either jointly or individually, with respect to the subject matter hereof.
- (h) **Survival.** The following provisions will survive the termination of this Agreement: Sections 3, 4,5,8,9,10, and 11.
- (i) **Counterparts.** This Agreement may be executed by the parties hereto in counterparts, each of which shall be deemed an original, but both such counterparts shall together constitute one and the same document.
- (j) **Headings.** The headings of this Agreement are for convenience and reference only and shall not be considered in construing the provisions hereof.
- (k) **Currency.** All financial references in this Agreement are to Canadian dollars unless otherwise indicated.



IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of this 5 day of April, 2020.

**JAMES E. WAGNER CULTIVATION CORPORATION**

by *Nathan Woodworth*  
6832A3268973407B0525AE86C621B68C contractworks.  
Name: Nathan Woodworth  
Title: President and CEO

**HOWARD CAPITAL LLC**

by *H. Steinberg*  
Name: Howard Steinberg  
Title: Managing Member

## SCHEDULE A

### INDEMNITY

In connection with the engagement (the "**Engagement**") of Howard Capital LLC. ("**HC**") pursuant to an agreement (the "**Agreement**") between HC and James E. Wagner Corporation ("**JWC**") dated as of April 5, 2020, JWC agrees to indemnify and hold harmless HC and its respective directors, officers, employees, partners and agents, and any other person providing services to it pursuant to the Agreement (collectively, the "**Indemnified Parties**" and individually, an "**Indemnified Party**"), from and against any and all losses, expenses, claims, actions, damages and liabilities, joint or several, including the aggregate amount paid in reasonable settlement of any actions, suits, proceedings, investigations or claims and the reasonable fees and expenses of its counsel on a solicitor and his own client basis that may be incurred in advising with respect to and/or defending any action, suit, proceeding, investigation or claim that may be made or threatened against any Indemnified Party or in enforcing this Indemnity (collectively the "**Claims**") to which any Indemnified Party may become subject or otherwise involved in any capacity insofar as the Claims relate to, are caused by, result from, arise out of or are based upon, directly or indirectly, the Engagement, and is not caused by the gross negligence and or wilful misconduct of any Indemnified Party. JWC also agrees that no Indemnified Party shall have any liability (whether directly or indirectly in contract or tort or otherwise) to it or any person asserting claims on behalf of or in right of JWC for or in connection with the Engagement except to the extent any losses, expenses, claims, actions, damages or liabilities incurred by it are determined by a court of competent jurisdiction in a final judgment that has become non-appealable to have resulted primarily from the gross negligence or wilful misconduct of any Indemnified Party.

JWC will not, without HC's written consent, settle, compromise, consent to the entry of any judgment in or otherwise seek to terminate any action, suit, proceeding, investigation or claim in respect of which indemnification may be sought hereunder unless such settlement, compromise, consent or termination includes a release of each Indemnified Party from any liabilities arising out of such action, suit, proceeding, investigation or claim.

Promptly after receiving notice of an action, suit, proceeding or claim against HC or any other Indemnified Party or receipt of notice of the commencement of any investigation which is based, directly or indirectly, upon any matter in respect of which indemnification may be sought from JWC, HC or any such other Indemnified Party will notify JWC in writing of the particulars thereof. HC and all Indemnified Parties shall fully cooperate with JWC and its subsidiaries and their counsel in the preparation of the case(s) and provide all information and documents in their possession as required by JWC's counsel.

HC and any other Indemnified Party may retain counsel to separately represent it, him or her in the defence of a Claim, provided that only one counsel can be retained by all of HC and any Indemnified Party, which shall be at the expense of JWC on a solicitor and his own client basis if (i) the JWC does not promptly assume the defence of the Claim, or (ii) JWC agrees to separate representation, or (iii) the Indemnified Party is advised by its counsel that there is an actual or potential conflict between HCs and the Indemnified Party's respective interests or additional defences are available to the Indemnified Party, which makes representation by the same counsel inappropriate.

Although this Indemnity shall not be interpreted in any way to limit the ability of the Indemnified Party to seek indemnity under any other indemnity agreement, under any insurance policy (including, without limitation, any directors' and officers' insurance policy, if applicable), or



applicable legislation to the fullest extent permitted by law, the Indemnified Party shall be under no obligation to do so nor shall JWC be entitled to rights of subrogation under any of the foregoing except if JWC has fully satisfied its obligations hereunder and except if the person against whom subrogation is claimed has no right over against the Indemnified Party as a result thereof.

This Indemnity shall enure to the benefit of each Indemnified Party, and shall survive termination of the Engagement, and shall be binding upon JWC and its successors and assigns.

This Indemnity is made pursuant to, and shall be construed, performed and enforced in accordance with, the laws of the Province of Ontario including the laws of Canada applicable therein.

All capitalized terms not otherwise defined herein have the meaning ascribed to them in the Agreement.

The obligations of JWC hereunder are in addition to any liabilities which JWC may otherwise have to HC or any other Indemnified Party.

**JAMES E. WAGNER CULTIVATION CORPORATION**

by *Nathan Woodworth*  
6832A3268973407B0525AE86C621B68C contractworks  
Name: Nathan Woodworth  
Title: President and CEO

*This is Exhibit* ..... **“E”** ..... *referred to in the*  
*affidavit of* Philip Armstrong .....  
*sworn before me, this* ..... 6<sup>th</sup> .....  
*day of* April, 2020. ....

.....  
**A COMMISSIONER FOR TAKING AFFIDAVITS**  
Aiden Nelms

## Schedule C

### IN THE MATTER OF JAMES E. WAGNER CULTIVATION COPORATION JAMES E. WAGNER CULTIVATION LTD., JWC 1 LTD., JWC 2 LTD., JWC SUPPLY LTD. AND GROWTHSTORM INC. (the "VENDORS")

#### Bidding Procedures

Set forth below are the bidding procedures (the "**Bidding Procedures**") to be employed with respect to the sale (the "**Sale**") of the Vendors' assets pursuant to a court approved solicitation process in the CCAA Proceedings of the Vendors.

On April 9, 2020, the Court issued an order (the "**Sale Process Order**") approving and accepting for the purpose of conducting a "stalking horse" solicitation process (the "**Stalking Horse Process**") in accordance with these Bidding Procedures that certain asset purchase agreement dated March 31, 2020 (the "**Stalking Horse Bid**") between the Vendors and Trichome Financial Corp. (the "**Stalking Horse Bidder**"), including, without limitation, the appointment of Stoic Advisory Inc. as M&A advisor to the Vendors (the "**M&A Advisor**"), the payment of an expense reimbursement (the "**Expense Reimbursement**") by the Vendors to the Stalking Horse Bidder in accordance with the provisions of the Stalking Horse Bid, and approving these Bidding Procedures.

Subject to Court availability and the terms hereof, the Vendors shall bring a motion (the "**Approval and Vesting Order Motion**") on or before June 5, 2020 (or, if there is no Auction, on or before May 29, 2020) seeking the granting of an order by the Court authorizing the Vendors to proceed with the Sale of the Vendors' Assets to the Qualified Bidder making the Successful Bid (each as defined below) (the "**Successful Bidder**") (such order, as approved, the "**Approval and Vesting Order**").

**Key Dates**

April 10, 2020 at 5:00 p.m. (prevailing Eastern Time) (prevailing Eastern Time)	Delivery of Teasers and Sales Packages
April 10, 2020 at 5:00 p.m. (prevailing Eastern Time)	Confidential Data-Site to be established
May 15, 2020 at 5:00 p.m. (prevailing Eastern Time)	Bid Deadline - Due Date for Bids and Deposits
May 19 at 5 p.m. (prevailing Eastern Time)	Monitor to provide the Stalking Horse Bidder and each Qualified Bidder a schedule setting forth either or both (i) the highest or otherwise best fully binding offer for all of the Debtors' Assets and (ii) the highest or otherwise best fully binding offer(s) for all or any combination of the Purchased Assets
May 22 at 10:00 a.m. (prevailing Eastern Time)	Auction (if any)
May 29 at 10:00 a.m. (prevailing Eastern Time) (pending the Court's availability), or as soon as practicable if the Auction is not required	Approval and Sale Order hearing
June 5 at 10:00 a.m. (prevailing Eastern Time) (pending the Court's availability), or as soon as practicable if there is an Auction	Approval and Sale Order hearing

**Assets to Be Sold En Bloc or Piecemeal**

The Vendors are offering for Sale all of the Vendors' right, title and interest in and to all of the Vendors' assets (the "**Vendors' Assets**") and the Vendors will consider (i) a bid for all of the Vendors' Assets (an "**En Bloc Bid**"); or (ii) separate bids to acquire some but not

all of the Vendors' assets (a "**Piecemeal Bid**"), provided that the Vendors will only consider Piecemeal Bids if a combination of one or more Piecemeal Bids in the aggregate meet the requirements to be a Qualified Bid (as defined below). The M&A Advisor under the supervision of the Special Committee of the Board of JWC (the "**Special Committee**") and KSV Kofman Inc., in its capacity as Monitor of the Vendors (the "**Monitor**"), will be responsible for conducting the solicitation process and an auction (the "**Auction**") (if any) on behalf of the Vendors. The Auction, if any, will be conducted by the Monitor. The Vendors' preferred transaction structure is for En Bloc Bid.

Although the Vendors are seeking bids to purchase some or all of the Vendors' assets, the Vendors will also consider a bid that contemplates a Plan of Restructuring for the Vendors (a "**Plan Bid**") provided that such Plan Bid will only be a Qualified Bid if it: (i) provides for the indefeasible payment in full of the amounts owing to Trichome Financial Corp, including without limitation the secured indebtedness owing to Trichome Financial Corp. and the Expense Reimbursement amount under the Stalking Horse APA, on or before the Outside Date regardless of the timeline for such Plan Bid; (ii) has conditions that, in the reasonable opinion of the Vendors and the Monitor, are likely to be satisfied; and (iii) includes a fully-funded commitment to provide any additional interim financing required by the Vendors to complete all steps required to implement such Plan Bid, such financing to be subordinate to the existing Administration Charge, D&O Charge and DIP Charge.

### The Bidding Process

The M&A Advisor, under the supervision of the Special Committee and the Monitor, shall be responsible for the marketing and sale of the Vendors' Assets pursuant to the process described by the Monitor's Report to Court dated April 6, 2020 (the "Bidding Process"), which is set out below. The Monitor, with the consent of the Special Committee, shall have the right to adopt such other rules for the Bidding Process (including rules that may depart from those set forth herein) that in its reasonable business judgment will better promote the goals of the Bidding Process, *provided, however*, that the adoption of any rule that materially deviates from these Bidding Procedures shall require the prior written consent of the Stalking Horse Bidder or a further Order of the Court.

### Participation Requirements

"**Qualified Bidder**" is a bidder who submits a bid in substantially the same form as the Stalking Horse Bid, for a cash purchase price of at least CAD\$11.95 million and includes the Required Bid Terms and Materials (as defined below). Any bid meeting these criteria that is received by the Monitor before the Bid Deadline is a qualified bid ("**Qualified Bid**").

### Bid Deadline

A Qualified Bidder that desires to make a bid shall deliver written copies of its bid and the Required Bid Terms and Materials to the Monitor no later than 5:00 p.m. (prevailing Eastern time) on May 15, 2020 (the “**Bid Deadline**”). The Monitor shall forthwith provide copies of any bids received to the Special Committee.

### Bid Requirements

All bids (other than the Stalking Horse Bid) must include, unless such requirement is waived by the Monitor after consultation with the Special Committee, the following (collectively, the “**Required Bid Terms and Materials**”):

- (i) A base cash purchase price equal to or greater than CAD\$11.95 million, being the estimated amount payable under the Stalking Horse Bid (\$7.6 million), inclusive of the Closing Cash Payment, plus the amount of the DIP Facility (estimated to be approximately \$4 million) plus the Expense Reimbursement (\$100,000) and \$250,000 bid increment (collectively, the “**Base Purchase Price**”);  
  
A provision stating that the bidder’s offer is irrevocably open for acceptance until the earlier of (i) the date that the Vendors’ Assets have been sold pursuant to the closing of the sale approved by the Court; and (ii) the Outside Date;
- (ii) An executed copy of a proposed purchase agreement and a redline of the bidder’s proposed purchase agreement reflecting variations from the Stalking Horse Bid (the “**Marked Agreement**”);
- (iii) A cash deposit in the amount of not less than fifteen *per cent* (15%) of the amount of the Base Purchase Price, in the form of a wire transfer, certified cheque or such other form acceptable to the Monitor (the “**Bid Deposit**”), which shall be held in the trust account of the Monitor’s solicitors (the “**Escrow Account**”). Funds shall be disbursed from the Escrow Account only as follows: (i) if the Qualified Bidder is the Successful Bidder, its Bid Deposit will be applied without interest on Closing to the purchase price payable by it under its bid on the closing thereof; and (ii) if the Qualified Bidder is not the Successful Bidder, then its Bid Deposit shall be returned without interest to it forthwith following the expiration of its offer (which in the case of the Back-Up Bidder shall be following closing of the sale to the Successful Bidder).

For the purposes of these Bidding Procedures, the Monitor shall provide all bidders with an estimate of the anticipated amount owing under the DIP Facility as of the Closing Date,

provided however that the Successful Bidder must agree to adjust its bid (either higher or lower) to reflect the actual amount owing under the DIP Facility on Closing.

A bid received from a Qualified Bidder that includes all of the Required Bid Terms and Materials and is received by the Bid Deadline is a “**Qualified Bid**”. The Monitor shall review the Qualified Bids and shall recommend to the Special Committee which Qualified Bid is the best offer. The Special Committee, in consultation with the Monitor, reserves the right to determine the value of any Qualified Bid, and which Qualified Bid constitutes the best offer (the “**Lead Bid**”). Details of the Lead Bid will be provided by the Monitor to all Qualified Bidders after the Bid Deadline and no later than 5:00p.m. (Eastern Time) three (3) Days before the date scheduled for the Auction.

Notwithstanding the bid requirements detailed above, the Stalking Horse Bid shall be deemed to be a Qualified Bid and the Stalking Horse Bidder shall be deemed to be a Qualified Bidder.

#### **“As Is, Where Is, With All Faults”**

The Sale of the Vendors’ Assets shall be on an “as is, where is” and “with all faults” basis and without representations, warranties, or guarantees, express, implied or statutory, written or oral, of any kind, nature, or description by the Monitor or the Vendors or their agents, representatives, partners or employees, or any of the other parties participating in the sales process pursuant to these Bid Procedures, except as may otherwise be provided in a definitive purchase agreement with the Vendors. By submitting a bid, each Qualified Bidder shall be deemed to acknowledge and represent that it has had an opportunity to conduct any and all due diligence regarding the Vendors’ Assets prior to making its bid, that it has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the Vendors’ Assets in making its bid, and that it did not rely upon any written or oral statements, representations, warranties, or guarantees, express, implied, statutory or otherwise, regarding the Vendors’ Assets, the financial performance of the Vendors’ Assets or the physical condition or location of the Vendors’ Assets, or the completeness of any information provided in connection therewith or the Auction, except as expressly stated in these Bidding Procedures or as set forth in a definitive purchase agreement with the Vendors.

#### **Free of Any and All Liens**

Except as otherwise provided in the Stalking Horse Bid or another Successful Bidder’s purchase agreement, and subject to any permitted encumbrances therein, all of the Vendors’ right, title and interest in and to the Vendors’ Assets shall be sold free and clear of all liens and encumbrances pursuant to the Approval and Vesting Order except for Permitted Encumbrances (as defined in the Stalking Horse Bid).

### The Sale and Auction Process

If one or more Qualified Bids (other than that submitted by the Stalking Horse Bidder) have been received by the Monitor on or before the Bid Deadline, the Monitor shall advise all Qualified Bidders of the Lead Bid and invite all Qualified Bidders (including the Stalking Horse Bidder) to attend the Auction to be conducted by the Monitor in accordance with the **Auction Procedures** attached hereto as Appendix 1. The Auction may be conducted in person or by video conference.

If no Qualified Bid is submitted by the Bid Deadline, then the Stalking Horse Bid shall be the Successful Bid, and the Stalking Horse Bidder shall be the Successful Bidder and the Auction shall be cancelled.

Monitor and Special Committee to Determine Highest and/or Best Bid: The Monitor shall determine after each round of offers in the Auction, in its reasonable business judgment, the best bid and shall recommend this bid to the Special Committee as the Lead Bid. In making such determination, the Monitor and the Special Committee may consider, without limitation: (i) the amount and nature of the consideration; (ii) the proposed assumption of liabilities, if any, and the related implied impact on recoveries for creditors; (iii) the ability of the Qualified Bidder in question to close the proposed transaction; (iv) the proposed closing date and the likelihood, extent and impact of any potential delays in closing; (v) any purchase price adjustment; (vi) the net economic effect of any changes made to the Stalking Horse Bid; and (vii) such other considerations as the Monitor or the Special Committee deems relevant in its reasonable business judgment. At the end of each round of offers, the Monitor shall advise the Qualified Bidders of the material terms of the then highest and/or best bid, and the basis for calculating the total consideration offered in such offer. If at the end of any round of bidding a Qualified Bidder has elected not to submit a further bid meeting the criteria set out herein (including the Minimum Bid Increment), then such Qualified Bidder shall not be entitled to continue to participate in the next round of offers or in any subsequent round.

If only one Qualified Bid is submitted after a round of offers then that Qualified Bid shall be the Successful Bidder. The next highest offer, as determined by the Special Committee based on the Monitor's recommendation (the "**Back-up Bid**"), shall be required to keep its offer open and available for acceptance until the closing of the Court Approved Sale of the Vendors' Assets to the Successful Bidder.

### Highest versus Best Offer

In determining the Lead Bid, the highest and/or best sale offer during each round of offers, and the Successful Bid, the Monitor and the Special Committee are not required to select the offer with the highest purchase price and may, exercising their reasonable business judgment, select another offer on the basis that it is the best offer even though not the highest purchase price. Without limiting the foregoing, the Monitor and the Special Committee may give such weight to the non-monetary considerations as it determines, exercising its reasonable business judgment,



is appropriate and reasonable, including those considerations described above under “Monitor and the Special Committee to Determine Highest and/or Best Bid”.

### **Expense Reimbursement**

To provide an incentive and to compensate the Stalking Horse Bidder for performing the substantial due diligence and incurring the expenses necessary in entering into the Stalking Horse Bid with the knowledge and risk that arises from participating in the sale and subsequent bidding process, the Vendors have agreed to pay the Stalking Horse Bidder, under the conditions outlined herein and in the Stalking Horse Bid, an Expense Reimbursement on account of its reasonable and documented out of pocket fees and expenses, up to a maximum of \$100,000 inclusive of HST, in the event that the Stalking Horse Bidder is not the Successful Bidder.

The Expense Reimbursement is a material inducement for, and a condition of, the Stalking Horse Bidder’s entry into the Stalking Horse Bid. The Expense Reimbursement, if payable in accordance with the Stalking Horse Bid, shall be paid in accordance with the Stalking Horse Bid and the Sale Process Order.

### **Acceptance of Qualified Bids**

The sale of the Vendors’ Assets to any Successful Bidder by the Vendors is expressly conditional upon the approval of the Successful Bid by the Court at the hearing of the Approval and Vesting Order Motion. The presentation of the Successful Bid to the Court for approval does not obligate the Vendors to close the transaction contemplated by such Successful Bid unless and until the Court approves the Successful Bid. The Vendors will be deemed to have accepted a bid only when the bid has been approved by the Court at the hearing on the Approval and Vesting Order Motion.

### **Approval and Vesting Order Motion Hearing**

The Approval and Vesting Order Motion shall, subject to court availability, be made returnable on or before June 5, 2020 (or, if there is no Auction, on or before May 29, 2020). The Special Committee, with the consent of the Monitor, reserves its right to the extent consistent with the Stalking Horse Bid to change the date of the hearing of Approval and Vesting Order Motion in order to achieve the maximum value for the Vendors’ Assets.

### Miscellaneous

The solicitation process and these Bidding Procedures are solely for the benefit of the Vendors and nothing contained in the Sale Process Order or these Bidding Procedures shall create any rights in any other person (including, without limitation, any bidder or Qualified Bidder, and any rights as third party beneficiaries or otherwise) other than the rights expressly granted to a Successful Bidder under the Sale Process Order. The bid protections incorporated in these Bidding Procedures are solely for the benefit of the Stalking Horse Bidder.

Except as provided in the Bidding Procedures Order and Bidding Procedures, the Court shall retain jurisdiction to hear and determine all matters arising from or relating to the implementation of the Sale Process Order, the Stalking Horse Process and the Bidding Procedure.

## APPENDIX I

### Auction Procedures

#### Auction

1. If the Special Committee, based on the recommendation of the Monitor, determines to conduct an Auction pursuant to the Stalking Horse Bid Procedures, the Monitor will notify the Qualified Bidders who made a Qualified Bid that an Auction will be conducted. The Auction will be convened by the Monitor and conducted either by video conference or in person at the Toronto office of Davies Ward Phillips & Vineberg LLP at 10:00 a.m. (Eastern Time) on May 22, 2020, or such other place and time as the Monitor may advise. Capitalized terms used but not defined have the meaning given to them in the Stalking Horse Bid Procedures. The Auction shall be conducted in accordance with the following procedures:
  - a) Participation at The Auction. Only a Qualified Bidder is eligible to participate in the Auction. The Monitor shall provide all Qualified Bidders with the amount of the Leading Bid by 5:00pm (Eastern Time) three (3) Days before the date scheduled for the Auction. Each Qualified Bidder must inform the Monitor whether it intends to participate in the Auction no later than 12:00 p.m. (Eastern Time) on the Business Day prior to the Auction. Only the authorized representatives of each of the Qualified Bidders, the Monitor, the Vendors and their respective counsel and other advisors shall be permitted to attend the Auction.
  - b) Bidding at the Auction. Bidding at the Auction shall be conducted in rounds. The Leading Bid shall constitute the "Opening Bid" for the first round and the highest Overbid (as defined below) at the end of each round shall constitute the "Opening Bid" for the following round. In each round, a Qualified Bidder may submit no more than one Overbid. Any Qualified Bidder who bids in a round (including the Qualified Bidder that submitted the Opening Bid for such round) shall be entitled to participate in the next round of bidding at the Auction.

- c) Monitor Shall Conduct the Auction. The Monitor and its advisors shall direct and preside over the Auction. At the start of each round of the Auction, the Monitor shall provide the terms of the Opening Bid to all participating Qualified Bidders at the Auction. The determination of which Qualified Bid constitutes the Opening Bid for each round shall take into account any factors that the Monitor and the Special Committee reasonably deem relevant to the value of the Qualified Bid, including, among other things, the following: (i) the amount and nature of the consideration; (ii) the proposed assumption of any liabilities and the related implied impact on recoveries for creditors; (iii) the Monitor's and the Special Committee's assessment of the certainty of the Qualified Bidder to close the proposed transaction on or before the Outside Date; (iv) the likelihood, extent and impact of any potential delays in closing; (v) the net economic effect of any changes from the Opening Bid of the previous round, and (vi) such other considerations as the Monitor or the Special Committee deems relevant in its reasonable business judgment (collectively, the "Bid Assessment Criteria"). All Bids made after the Opening Bid shall be Overbids, and shall be made and received on an open basis, and all material terms of the highest and best Overbid shall be fully disclosed to all other Qualified Bidders that are participating in the Auction. The Monitor shall maintain a record of the Opening Bid and all Overbids made and announced at the Auction.
- d) Terms of Overbids. An "Overbid" is any Bid made at the Auction subsequent to the Monitor's announcement of the Opening Bid. To submit an Overbid, in any round of the Auction, a Qualified Bidder must comply with the following conditions:
- (i) *Minimum Overbid Increment:* Any Overbid shall be made in minimum Cash Purchase Price increments of \$100,000 above the Opening Bid, or such increments as the Monitor, in consultation with the Special Committee, may determine in order to facilitate the Auction (the "Minimum Overbid Increment"). The amount of the cash purchase price consideration or value of any Overbid shall not be less than the cash purchase price consideration or value of the Opening Bid, plus the Minimum Overbid Increment(s) at that time, plus any additional Minimum Overbid Increments.
  - (ii) *The Bid Requirements same as for Qualified Bids:* Except as modified herein, an Overbid must comply with the Bid Requirements, provided, however, that the Bid Deadline shall not apply. Any Overbid made by a Qualified Bidder must provide that it remains irrevocable and binding on the Qualified Bidder and open for acceptance as a Back-Up Bid until the closing of the Successful Bid.
  - (iii) *Announcing Overbids:* At the end of each round of bidding, the Monitor shall announce the identity of the Qualified Bidder and the material terms

of the then highest and/or best Overbid, including the nature of the transaction, the assets proposed to be acquired and the obligations proposed to be assumed, the basis for calculating the total consideration offered in such Overbid based on, among other things, the Bid Assessment Criteria.

- (iv) *Consideration of Overbids:* The Monitor, in consultation with the Special Committee, reserves the right to make one or more adjournments in the Auction in durations set by the Monitor to, among other things: (A) allow individual Qualified Bidders to consider how they wish to proceed; (B) consider and determine the current highest and/or best Overbid at any given time during the Auction; and, (C) give Qualified Bidders the opportunity to provide the Monitor or the Special Committee with such additional evidence as it may require that the Qualified Bidder has obtained all required internal corporate approvals, has sufficient internal resources, or has received sufficient non-contingent debt and/or equity funding commitments, to consummate the proposed transaction at the prevailing Overbid amount. The Monitor may have clarifying discussions with a Qualified Bidder, and the Monitor may allow a Qualified Bidder to make technical clarifying changes to its Overbid following such discussions. BIDDERS MUST OBTAIN ALL NECESSARY APPROVALS AND FUNDING COMMITMENTS IN ADVANCE OF THE AUCTION.
  - (v) *Failure to Bid:* If at the end of any round of bidding a Qualified Bidder (other than the Qualified Bidder that submitted the then highest and/or best Overbid or Opening Bid, as applicable) fails to submit an Overbid, then such Qualified Bidder shall not be entitled to continue to participate in the next round of the Auction.
- e) Additional Procedures. The Monitor, in consultation with the Special Committee, may adopt rules for the Auction at or prior to the Auction that will better promote the goals of the Auction, including rules pertaining to the structure of the Auction, the order of bidding provided they are not inconsistent with any of the provisions of the Stalking Horse Bid Procedures and provided further that no such rules may change the requirement that all material terms of the then highest and/or best Overbid at the end of each round of bidding will be fully disclosed to all other Qualified Bidders.
- f) Closing the Auction. The Auction shall be closed after the Special Committee, after considering the Monitor's recommendation has: (i) reviewed the final Overbid of each Qualified Bidder on the basis of financial and contractual terms and the factors relevant to the sale process, including those factors affecting the speed and certainty of consummating the proposed sale; and (ii) identified the Successful Bid

and the Back-Up Bid and the Monitor has advised the Qualified Bidders participating in the Auction of such determination

- g) Finalizing Documentation. Promptly following a Bid of a Qualified Bidder being declared the Successful Bid or the Back-Up Bid, the Qualified Bidder shall execute and deliver such revised and updated definitive transaction agreements as may be required to reflect and evidence the Successful Bid or Back-Up Bid. For greater certainty, every Bid made at Auction is deemed to be a signed and binding bid based on the bidder's original Qualified Bid.

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF JAMES E. WAGNER CORPORATION, JAMES E. WAGNER CULTIVATION LTD., JWC 1 LTD., JWC 2 LTD., JWC SUPPLY LTD AND GROWTHSTORM INC.**

Court File No. CV-20-00639000-00CL

***ONTARIO***  
**SUPERIOR COURT OF JUSTICE**  
**(COMMERCIAL LIST)**

Proceedings commenced in Toronto

**AFFIDAVIT OF PHILIP ARMSTRONG**

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Lawyers for the Applicants

# TAB 3



Revised: January 21, 2014

Court File No. ~~\_\_\_\_\_~~ CV-20-00639000-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE ~~\_\_\_\_\_~~ MR. ) ~~WEEKDAY~~ THURSDAY, THE #9<sup>th</sup>  
 JUSTICE ~~\_\_\_\_\_~~ HAINES )  
 ) DAY OF ~~MONTH~~ APRIL, ~~20YR~~ 2020

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
 ARRANGEMENT OF ~~[APPLICANT'S NAME]~~ JAMES E.  
 WAGNER CULTIVATION CORPORATION, JAMES E.  
 WAGNER CULTIVATION LTD., JWC 1 LTD., JWC 2 LTD.,  
 JWC SUPPLY LTD. AND GROWTHSTORM INC.

(collectively, the "Applicants" and each an "Applicant")

AMENDED AND RESTATED INITIAL ORDER

(amending Initial Order dated April 1, 2020)

**THIS APPLICATION**, made by the Applicants, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA") was heard this day ~~at 330 University Avenue, Toronto, Ontario~~ via telephonic conference.

**ON READING** the affidavit of ~~[NAME]~~ Nathan Woodworth sworn ~~[DATE]~~ March 31, 2020, the affidavit of Aiden Nelms sworn March 31, 2020 and the Affidavit of Philip Armstrong sworn April 6, 2020 (the "April 6 Affidavit"), and the Exhibits to each affidavit thereto, and the Report of KSV Kofman Inc. ("KSV") dated March 31, 2020 and the Report of KSV dated April 6, 2020 (the "First Report"), and on being advised that Trichome Financial Corp., Lind Global Macro Fund, LP ("Lind") and the other secured creditors of the Applicants who are likely to be affected by the charges created herein were given notice, ~~and~~

~~on hearing the submissions of counsel for [NAMES],~~ no one appearing for ~~[NAME]~~<sup>1</sup> any other party although duly served as appears from the affidavit of service of ~~[NAME]~~ Aiden Nelms sworn ~~[DATE]~~ April 6, 2020, and on hearing the submissions of counsel for [NAMES], the Applicants, the Monitor, the DIP Lender (as defined below) and Lind, and on reading the consent of ~~[MONITOR'S NAME]~~ KSV to act as the Monitor,

## SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Application and the Application Record is hereby abridged and validated<sup>2</sup> so that this Application is properly returnable today and hereby dispenses with further service thereof.

## APPLICATION

2. **THIS COURT ORDERS AND DECLARES** that the ~~Applicant is a company~~ Applicants are companies to which the CCAA applies.

## PLAN OF ARRANGEMENT

~~3.~~ 3. **THIS COURT ORDERS** that ~~the~~ each Applicant 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

~~3.~~ 4. **THIS COURT ORDERS** that the Applicants shall remain in possession and control of ~~its~~ their respective current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "**Property**"). Subject to further Order of this Court, the Applicants shall continue to carry on business in a manner consistent with the preservation of ~~its~~ their business (the "**Business**") and Property. The Applicants ~~is~~ are authorized and empowered to continue to retain and employ the employees,

<sup>1</sup> ~~Include names of secured creditors or other persons who must be served before certain relief in this model Order may be granted. See, for example, CCAA Sections 11.2(1), 11.3(1), 11.4(1), 11.51(1), 11.52(1), 32(1), 32(3), 33(2) and 36(2).~~

<sup>2</sup> ~~If service is effected in a manner other than as authorized by the Ontario Rules of Civil Procedure, an order validating irregular service is required pursuant to Rule 16.08 of the Rules of Civil Procedure and may be granted in appropriate circumstances.~~

consultants, agents, experts, accountants, counsel and such other persons (collectively "Assistants") currently retained or employed by ~~it~~them, with liberty to retain such further Assistants as ~~it deems~~they deem reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

4. ~~5.~~ **THIS COURT ORDERS** that the Applicants shall be entitled to continue to utilize the central cash management system<sup>3</sup> currently in place ~~as described in~~or, with the ~~Affidavit~~consent of ~~[NAME] sworn [DATE] or~~the Monitor, replace it with another substantially similar central cash management system (the "Cash Management System") and that any present or future bank providing the Cash Management System shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the Applicants of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as hereinafter defined) other than the Applicants, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as provider of the Cash Management System, an unaffected creditor under the Plan with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.}

5. **THIS COURT ORDERS that, except as specifically permitted herein, the Applicant** ~~is~~Applicants 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 Applicant to any of its any of the Applicants to any of their creditors as of this date unless such payments are contemplated under the Commitment Letter and the Definitive Documents (each as defined below) and consented to by the Monitor; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of its ~~their~~ Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

<sup>3</sup>~~This provision should only be utilized where necessary, in view of the fact that central cash management systems often operate in a manner that consolidates the cash of applicant companies. Specific attention should be paid to cross-border and inter-company transfers of cash.~~

6. **THIS COURT ORDERS** that the Applicants shall be entitled but not required to pay the following expenses whether incurred prior to or after this Order:

- (a) all outstanding and future wages, salaries, employee and pension benefits, vacation pay and employee expenses payable on or after the date of this Order, in each case incurred in the ordinary course of ~~the~~ Business and consistent with existing compensation policies and arrangements; and
- (b) the fees and disbursements of any Assistants retained or employed by the Applicants in respect of these proceedings, at their standard rates and charges.

7. **THIS COURT ORDERS** that, except as otherwise provided to the contrary herein, the Applicants shall be entitled but not required to pay all reasonable expenses incurred by the Applicants in carrying on the Business in the ordinary course after this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

- (a) all expenses and capital expenditures reasonably 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; and
- (b) payment for goods or services actually supplied to the Applicants following the date of this Order.

8. **THIS COURT ORDERS** that the Applicants shall 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 employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;
- (b) all goods and services or other applicable sales taxes (collectively, "Sales Taxes") required to be remitted by the Applicants in connection with the sale of goods and

services by the Applicants, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order, 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 realty, municipal business 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 and which are attributable to or in respect of the carrying on of the Business by the Applicants.

9. **THIS COURT ORDERS** that until a real property lease is disclaimed ~~for-resiliated~~<sup>4</sup> in accordance with the CCAA, the Applicants 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 to the landlord under the lease) or as otherwise may be negotiated between the Applicants and the landlord from time to time ("**Rent**"), for the period commencing from and including the date of this Order, twice-monthly in equal payments on the first and fifteenth day of each 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 date of this Order shall also be paid.

~~10. — THIS COURT ORDERS that, except as specifically permitted herein, the Applicant is 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 Applicant to any of its creditors as of this date; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of its Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business.~~

## RESTRUCTURING

<sup>4</sup>The term "resiliate" should remain if there are leased premises in the Province of Quebec, but can otherwise be removed.

**10.** ~~11.~~ **THIS COURT ORDERS** that the Applicants shall, subject to such requirements as are imposed by the CCAA and such covenants as may be contained in the Definitive Documents (as ~~hereinafter~~ defined below), have the right to:

- (a) permanently or temporarily cease, downsize or shut down any of its business or operations, ~~and~~ to dispose of redundant or non-material assets not exceeding \$~~•~~100,000 in any one transaction or \$~~•~~250,000 in the aggregate~~};~~<sup>5</sup>;
- (b) ~~terminate~~ the employment of such of its employees or temporarily lay off such of its employees as it deems appropriate~~};~~ and
- (c) pursue all avenues of refinancing of ~~its~~their Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing,

~~all~~each of the foregoing to permit the Applicants to proceed with an orderly restructuring of the Business ~~(the "Restructuring")~~.

**11.** ~~12.~~ **THIS COURT ORDERS** that the Applicants shall provide each of the relevant landlords with notice of the ~~Applicant's~~Applicants' 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 ~~Applicant's~~Applicants' 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, such landlord and the Applicants, or by further Order of this Court upon application by the Applicants on at least two (2) days' notice to such landlord and any such secured creditors. If ~~the~~an Applicant disclaims ~~for~~resiliates the lease governing such leased premises in accordance with Section 32 of the CCAA, it shall not be required to pay Rent under such lease pending resolution of any such dispute (other than Rent payable for the notice period provided for in Section 32(5) of the CCAA), and the disclaimer ~~for resiliation~~ of the lease shall be without prejudice to the applicable Applicant's claim to the fixtures in dispute.

<sup>5</sup>~~Section 36 of the amended CCAA does not seem to contemplate a pre-approved power to sell (see subsection 36(3)) and moreover requires notice (subsection 36(2)) and evidence (subsection 36(7)) that may not have occurred or be available at the initial CCAA hearing.~~

**12.** ~~13.~~ **THIS COURT ORDERS** that if a notice of disclaimer ~~{or resiliation}~~ is delivered pursuant to Section 32 of the CCAA, then (a) during the notice period prior to the effective time of the disclaimer ~~{or resiliation}~~, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the Applicants and the Monitor 24 hours' prior written notice, and (b) at the effective time of the disclaimer ~~{or resiliation}~~, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the Applicants in respect of such lease or leased premises, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

#### **NO PROCEEDINGS AGAINST THE APPLICANTS OR THE PROPERTY**

**13.** ~~14.~~ **THIS COURT ORDERS** that until and including ~~{DATE—MAX. 30 DAYS}~~ June 26, 2020, or such later date as this Court may order (the "Stay Period"), no proceeding or enforcement process in any court or tribunal (each, a "Proceeding") shall be commenced or continued against or in respect of the ~~Applicant~~ Applicants or the Monitor or their respective employees and representatives acting in such capacities, or affecting the Business or the Property, except with the written consent of the ~~Applicant~~ Applicants and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of any of the Applicants or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

#### **NO EXERCISE OF RIGHTS OR REMEDIES**

**14.** ~~15.~~ **THIS COURT ORDERS** that 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 Applicants or the Monitor or their respective employees and representatives acting in such capacities, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the Applicants and the Monitor, or leave of this Court, provided that nothing in this Order shall: (i) empower the Applicants to carry on any business which the Applicants ~~is~~ are not lawfully entitled to carry on, (ii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA, (iii) prevent the

filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

#### NO INTERFERENCE WITH RIGHTS

**15.** ~~16.~~ **THIS COURT ORDERS** that 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 any of the Applicants, except with the written consent of the applicable Applicant and the Monitor, or leave of this Court.

#### CONTINUATION OF SERVICES

**16.** ~~17.~~ **THIS COURT ORDERS** that during the Stay Period, all Persons having oral or written agreements with any of the Applicants or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, ERP software communication and other data services, centralized banking services, security services, payroll services, insurance, transportation services, utility or other services to the Business or any of the Applicants, 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 any of the Applicants, and that each of the Applicants shall be entitled to the continued use of its 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 date of this Order are paid by the applicable Applicant in accordance with normal payment practices of the applicable Applicant or such other practices as may be agreed upon by the supplier or service provider and each of the applicable Applicant and the Monitor, or as may be ordered by this Court.

#### NON-DEROGATION OF RIGHTS

**17.** ~~18.~~ **THIS COURT ORDERS** that, notwithstanding anything else 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 date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or



re-advance any monies or otherwise extend any credit to the Applicants. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.<sup>6</sup>

### PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

**18.** ~~19.~~ **THIS COURT ORDERS** that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of any of the Applicants with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of any of the Applicants 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 applicable Applicant, if one is filed, is sanctioned by this Court or is refused by the creditors of the applicable Applicant or this Court.

### DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

**19.** ~~20.~~ **THIS COURT ORDERS** that the Applicants shall indemnify ~~its~~their directors and officers against obligations and liabilities that they may incur as directors or officers of the Applicants after the commencement of the within proceedings,<sup>7</sup> except to the extent that, with respect to any officer or director, the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

**20.** ~~21.~~ **THIS COURT ORDERS** that the directors and officers of the Applicants shall be entitled to the benefit of and are hereby granted a charge (the "**Directors' Charge**")<sup>8</sup> on the Property, which charge shall not exceed an aggregate amount of \$~~1,050,000.00~~, as security for the indemnity provided in paragraph ~~{20}~~19 of this Order. The Directors' Charge shall have the priority set out in paragraphs ~~{38}~~40 and ~~{40}~~42 herein.

<sup>6</sup> ~~This non-derogation provision has acquired more significance due to the recent amendments to the CCAA, since a number of actions or steps cannot be stayed, or the stay is subject to certain limits and restrictions. See, for example, CCAA Sections 11.01, 11.04, 11.06, 11.07, 11.08, 11.1(2) and 11.5(1).~~

<sup>7</sup> ~~The broad indemnity language from Section 11.51 of the CCAA has been imported into this paragraph. The granting of the indemnity (whether or not secured by a Directors' Charge), and the scope of the indemnity, are discretionary matters that should be addressed with the Court.~~

<sup>8</sup> ~~Section 11.51(3) provides that the Court may not make this security/charging order if in the Court's opinion the Applicant could obtain adequate indemnification insurance for the director or officer at a reasonable cost.~~

21. ~~22.~~ **THIS COURT ORDERS** that, 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 Applicants's 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 ~~20~~19 of this Order.

#### **APPOINTMENT OF MONITOR**

22. ~~23.~~ **THIS COURT ORDERS** that ~~[MONITOR'S NAME]~~KSV is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Applicants with the powers and obligations set out in the CCAA or set forth herein and that the Applicants and ~~its~~their shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by any of the Applicants 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.

23. ~~24.~~ **THIS COURT ORDERS** that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- (a) monitor the Applicants's receipts and disbursements;
- (b) 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;
- (c) assist the Applicants, to the extent required by the Applicants, in ~~its~~their dissemination, to the DIP Lender and its counsel on a ~~[TIME INTERVAL]~~weekly basis of financial and other information as agreed to between the Applicants and the DIP Lender which may be used in these proceedings including reporting on a basis to be agreed with the DIP Lender;
- (d) advise the Applicants in ~~its~~their preparation of the ~~Applicant's~~Applicants' cash flow statements and reporting required by the DIP Lender, which information shall be

- reviewed with the Monitor and delivered to the DIP Lender and its counsel and financial advisor on a periodic basis, but not less than ~~[TIME INTERVAL]~~ weekly, or as otherwise agreed to by the DIP Lender;
- (e) advise the Applicants in ~~its~~ their development of the Plan and any amendments to the Plan;
  - (f) assist the Applicants, to the extent required by the Applicants, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;
  - (g) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Applicants, to the extent that is necessary to adequately assess the ~~Applicant's~~ Applicants' business and financial affairs or to perform its duties arising under this Order;
  - (h) 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; and
  - (i) perform such other duties as are required by this Order or by this Court from time to time.

24. ~~25.~~ THIS COURT ORDERS that the Monitor shall not take possession of the Property, or be deemed to take possession of Property, pursuant to any provision of any federal, provincial or other law respecting, among other things, the manufacturing, possession, processing and distribution of cannabis or cannabis products including, without limitation, under the Cannabis Act S.C. 2018, c.16, the Controlled Drugs and Substances Act, S.C. 1996, c. 19, the Excise Tax Act, the Ontario Cannabis Control Act, S.O. 2017, c. 26, Sched. 1 or other such applicable federal or provincial legislation (collectively, the "Cannabis Legislation"), and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof, within the meaning of any Cannabis Legislation, or otherwise, and nothing in this Order

shall be construed as resulting in the Monitor being an employer or successor employer within the meaning of any statute, regulation or rule of law or equity, for any purpose whatsoever.

**25.** ~~26.~~ **THIS COURT ORDERS** that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law 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 *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance 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.

**26.** ~~27.~~ **THIS COURT ORDERS** that, in addition to the rights and protection afforded to the DIP Lender under this Order or at law, the DIP Lender shall incur no liability or obligation as a result of its carrying out of the provisions of this Order, including under any Cannabis Legislation, save and except for any gross negligence or willful misconduct on its part.

**27.** **THIS COURT ORDERS** that the Monitor shall provide any creditor of the Applicants and the DIP Lender with information provided by the Applicants 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 Applicants is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicants may agree.

28. **THIS COURT ORDERS** that, in addition to the rights and protections afforded to the Monitor under the CCAA or as an officer of this Court, neither the Monitor ~~shall incur no liability or obligation as a result of its~~ nor its respective employees and representatives acting in such capacities, shall incur any liability or obligation as a result of the appointment of the Monitor or the carrying out by it of the provisions of this Order, including under any Cannabis Legislation, save and except for any gross negligence or ~~wilful~~willful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

29. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor, and counsel to the Applicants shall be paid their reasonable fees and disbursements related to these proceedings, in each case at their standard rates and charges, whether incurred prior to, on or subsequent to, the date of this Order by the Applicants as part of the costs of these proceedings. The Applicants ~~is~~ are hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor, and counsel for the Applicants on a ~~[TIME INTERVAL]~~weekly basis ~~and, in addition, the Applicant is hereby authorized to pay to the Monitor, counsel to the Monitor, and counsel to the Applicant, retainers in the amount[s] of \$● [ , respectively, ] to be held by them as security for payment of their respective fees and disbursements outstanding from time to time.~~

30. **THIS COURT ORDERS** that 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 Commercial List of the Ontario Superior Court of Justice.

31. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor, ~~if any, and the Applicant's~~ Applicants' counsel and Howard Capital LLC ("HC"), in its capacity as chief restructuring officer of the Applicants (the "CRO") in respect of its monthly fees and expense reimbursement, 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 \$●, ~~600,000.00~~ as security for their professional fees and disbursements incurred at their standard rates and charges ~~or~~ as set out in the ~~Monitor and such counsel~~ CRO Engagement Letter (as defined below), both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs ~~38~~40 and ~~40~~42 hereof.

APPOINTMENT OF CHIEF RESTRUCTURING OFFICER

32. THIS COURT ORDERS that the CRO is hereby appointed as the chief restructuring officer of the Applicants on the following terms:

- (a) the CRO shall have the powers and obligations set out in the engagement letter dated as of April 5, 2020, a redacted copy of which is attached as Exhibit "D" to the April 6 Affidavit (the "CRO Engagement Letter") and an unredacted copy of which is attached as confidential Exhibit "1" to the April 6 Affidavit, pursuant to which the Applicants have engaged HC to provide the services of the CRO;
- (b) HC shall be entitled, in accordance with the terms of the CRO Engagement Letter, to payment from the Applicants for obligations owing thereunder and the expenses and disbursements contemplated therein (collectively, the "CRO Fees");
- (c) the CRO shall be responsible for performing its functions and obligations as set out in the CRO Engagement Letter for the benefit of the Applicants and shall provide timely updates to the Monitor in respect of such functions and obligations;
- (d) the CRO shall not be or be deemed to be a director, de facto director, or employee of any of the Applicants;
- (e) nothing in this Order shall be construed as resulting in the CRO or Howard Steinberg ("Steinberg") being an employer, successor employer, a responsible person, operator or person with apparent authority within the meaning of any statute, regulation or rule of law, or equity (including any Environmental Legislation) for any purpose whatsoever;
- (f) neither the CRO nor Steinberg shall, as a result of the performance of their respective obligations and duties in accordance with the terms of the CRO Engagement Letter, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation or the Cannabis Legislation;

provided however, if either of the CRO or Steinberg is nevertheless later found to be in Possession of any Property, then the CRO and/or Steinberg, as the case may be, shall be entitled to the benefits and protections in relation to the Applicants and such Property as are provided to a monitor under Section 11.8(3) of the CCAA; provided further however, that nothing in this sub-paragraph 32(f) shall exempt the CRO or Steinberg from any duty to report or make disclosure imposed by a law and incorporated by reference in Section 11.8(4) of the CCAA;

- (g) no action or other proceeding shall be commenced directly, or by way of counterclaim, third party claim or otherwise, against or in respect of the CRO or Steinberg, and all rights and remedies of any Person against or in respect of them are hereby stayed and suspended, except with the written consent of the CRO or with leave of this Court on notice to the Applicants, the Monitor and the CRO, provided, however, that nothing in this order, including this sub-paragraph 32(g) shall affect such investigations, actions, suits or proceedings by a regulatory body that are permitted by Section 11.1 of the CCAA. Notice of any such motion seeking leave of this Court shall be served upon the Applicants, the Monitor and the CRO at least seven (7) days prior to the return date of any such motion for leave;
- (h) the CRO Fees shall not be compromised pursuant to the Plan, any proposal under the *Bankruptcy and Insolvency Act of Canada* (the "BIA"), or any other restructuring and no such Plan, proposal, restructuring or sale transaction shall be approved that does not provide for the payment in full of all amounts due to the CRO pursuant to the terms of the CRO Engagement Letter; and
- (i) if, but for the orders in the preceding sub-paragraphs of this paragraph 32, the CRO would have liability with respect to any losses, claims, damages or liabilities to Her Majesty the Queen in right of the Province of Ontario or would have incurred an obligation under any enactment of Ontario or Canada (including any Environmental Legislation), such liability or obligation shall be deemed to be a liability or obligation of the Applicants.

33. THIS COURT ORDERS that neither the CRO nor its respective employees and representatives acting in such capacities, shall incur any liability or obligation as a result of the appointment of CRO or the carrying out by it of the provisions of this Order or the CRO Engagement Letter, including under any Cannabis Legislation, save and except for any gross negligence or willful misconduct on its part.

#### DIP FINANCING

34. ~~32.~~ THIS COURT ORDERS that the Applicants ~~is~~ are hereby authorized and empowered to obtain and borrow under a credit facility (the "DIP Loan") from ~~[DIP LENDER'S NAME]~~ (Trichome Financial Corp. (in such capacity, the "DIP Lender") in order to finance the Applicants's working capital requirements and other general corporate purposes and capital expenditures, provided that borrowings under such credit facility shall not exceed \$~~4,000,000.00~~ 4,000,000.00 unless permitted by further Order of this Court.

35. ~~33.~~ THIS COURT ORDERS THAT such credit facility shall be on the terms and subject to the conditions set forth in the commitment letter between the Applicants and the DIP Lender dated as of ~~[DATE]~~ March 31, 2020 (the "Commitment Letter"), filed.

36. ~~34.~~ THIS COURT ORDERS that the Applicants ~~is~~ are hereby authorized and empowered to execute and deliver such credit agreements, mortgages, charges, hypothecs and security documents, guarantees and other definitive documents (collectively, the "**Definitive Documents**"), as are contemplated by the Commitment Letter or as may be reasonably required by the DIP Lender pursuant to the terms thereof, and the Applicants ~~s~~ is are hereby authorized and directed to pay and perform all of ~~its~~ their indebtedness, interest, fees, liabilities and obligations to the DIP Lender under and pursuant to the Commitment Letter and the Definitive Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

37. ~~35.~~ THIS COURT ORDERS that the DIP Lender shall be entitled to the benefit of and is hereby granted a charge (the "**DIP Lender's Charge**") on the Property, which DIP Lender's Charge shall not secure an obligation that exists before this Order is made. The DIP Lender's Charge shall have the priority set out in paragraphs ~~[38]~~ 40 and ~~[40]~~ 42 hereof.



**38.** ~~36.~~ **THIS COURT ORDERS** that, notwithstanding any other provision of this Order:

- (a) the DIP Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP Lender's Charge or any of the Definitive Documents;
- (b) upon the occurrence of an event of default under the Definitive Documents or the DIP Lender's Charge, the DIP Lender, upon 7 days' notice to the Applicants and the Monitor, may exercise any and all of its rights and remedies against the Applicants or the Property under or pursuant to the Commitment Letter, Definitive Documents and the DIP Lender's Charge, including without limitation, to cease making advances to the Applicants and set off and/or consolidate any amounts owing by the DIP Lender to the Applicants against the obligations of the Applicants to the DIP Lender under the Commitment Letter, the Definitive Documents or the DIP Lender's Charge, 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 Applicants and for the appointment of a trustee in bankruptcy of the Applicants; and
- (c) the foregoing rights and remedies of the DIP Lender shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Applicants or the Property.

**39.** ~~37.~~ **THIS COURT ORDERS AND DECLARES** that the DIP Lender shall be treated as unaffected in any plan of arrangement or compromise filed by the Applicants under the CCAA, or any proposal filed by the Applicants under the *Bankruptcy and Insolvency Act of Canada* (the "BIA"), with respect to any advances made under the Definitive Documents.

#### **VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER**

**40.** ~~38.~~ **THIS COURT ORDERS** that the priorities of the ~~Directors'~~ Charge, the Administration Charge and the ~~DIP Lender's~~ Charge, as among them, shall be as follows<sup>9</sup>:

First ~~—~~ Administration Charge (to the maximum amount of \$~~●~~600,000.00);

Second ~~—DIP Lender's—~~ Directors' Charge (to the maximum amount of \$1,050,000.00); and

Third ~~—Directors'—~~ DIP Lender's Charge (to the maximum amount of \$~~●~~4,000,000.00).

**41.** ~~39.~~ **THIS COURT ORDERS** that the filing, registration or perfection of the ~~Directors' Charge, the~~ Administration Charge, the DIP Lender's Charge or the ~~DIP Lender's~~Directors' Charge (collectively, the "Charges") shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

**42.** ~~40.~~ **THIS COURT ORDERS** that each of the ~~Directors' Charge, the Administration Charge and the DIP Lender's Charge (all as constituted and defined herein)~~Charges shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, "Encumbrances") in favour of any Person.

**43.** ~~41.~~ **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicants shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the ~~Directors' Charge, the Administration Charge or the DIP Lender's Charge~~Charges, unless the Applicants also obtains the prior written consent of the Monitor, the DIP Lender and the beneficiaries of the ~~Directors' Charge and the Administration Charge~~Charges, or further Order of this Court.

<sup>9</sup>~~The ranking of these Charges is for illustration purposes only, and is not meant to be determinative. This ranking may be subject to negotiation, and should be tailored to the circumstances of the case before the Court. Similarly, the quantum and caps applicable to the Charges should be considered in each case. Please also note that the CCAA now permits Charges in favour of critical suppliers and others, which should also be incorporated into this Order (and the rankings, above), where appropriate.~~

**44. 42.—THIS COURT ORDERS** that the ~~Directors' Charge, the Administration Charge~~Charges, the Commitment Letter, and the Definitive Documents ~~and the DIP 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 DIP Lender thereunder 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 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, sublease, offer to lease or other agreement (collectively, an "**Agreement**") which binds the Applicants, 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 Commitment Letter or the Definitive Documents shall create or be deemed to constitute a breach by the Applicants of any Agreement to which ~~it~~ is any of them 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 Applicants entering into the Commitment Letter, the creation of the Charges, or the execution, delivery or performance of the Definitive Documents; and
- (c) the payments made by the Applicants pursuant to this Order, the Commitment Letter 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.

**45. 43.—THIS COURT ORDERS** that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the Applicants's interest in such real property leases.

#### RELIEF FROM REPORTING OBLIGATIONS

46. THIS COURT ORDERS that none of the directors, officers, employees, or other representatives of the Applicants, nor the Monitor (and its directors, officers, employees or representatives) shall have any personal liability for failure of the Applicants to file annual information forms, annual and quarterly management discussion and analysis, annual and quarterly financial statements (including related audits, reports and certifications) for the Stay Period, which period may be extended pursuant to further Order of the Court.

#### SEALING

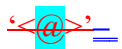
47. THIS COURT ORDERS that the unredacted copy of the CRO Engagement Letter filed as Confidential Exhibit "1" to the April 6 Affidavit shall be sealed and kept confidential pending further order of this Court.

#### SERVICE AND NOTICE

48. 44. THIS COURT ORDERS that the Monitor shall (i) without delay, publish in ~~[newspapers specified by the Court]~~ The Globe and Mail (National Edition) a notice containing the information prescribed under the CCAA, (ii) within five days after the date of this Order, (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, or cause to be sent, in the prescribed manner, a notice to every known creditor who has a claim against any of the Applicants of more than \$~~1000~~1,000, and (C) 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.

49. 45. THIS COURT ORDERS that the E-Service Protocol of the Commercial List (the "Protocol") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a

Case Website shall be established in accordance with the Protocol with the following URL



<https://www.ksvadvisory.com/insolvency-cases/case/james-e-wagner-cultivation-corporation> (the "Website").

**50.** ~~46.~~ THIS COURT ORDERS that ~~if the service or distribution of documents in accordance with the Protocol is not practicable, the Applicant~~ **Applicants** and the Monitor **and their respective counsel** are at liberty to serve or distribute this Order, any other materials and orders **as may be reasonably required** in these proceedings, **including** any notices, or other correspondence, by forwarding true copies thereof by ~~prepaid ordinary mail, courier, personal delivery or facsimile transmission~~ **electronic message** to the Applicants's creditors or other interested parties **at and** their ~~respective addresses as last shown on the records of the Applicant and that~~ **advisors. For greater certainty**, any such ~~service or distribution by courier, personal delivery or facsimile transmission~~ **or service** 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~~ **in satisfaction of a legal or judicial obligation, and notice requirements within the meaning of clause 3(c) of the Electronic Commerce Protection Regulations, Reg. 81000-2-175 (SOR/DORS).**

#### GENERAL

**51.** ~~47.~~ THIS COURT ORDERS that **each of** the Applicants or the Monitor may from time to time apply to this Court **to amend, vary or supplement this Order or** for advice and directions in the discharge of its powers and duties ~~hereunder~~ **under this Order or in the interpretation or application of this Order.**

**52.** ~~48.~~ THIS COURT ORDERS that 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 Applicants, the Business or the Property.

**53.** ~~49.~~ THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Applicants, the Monitor and their respective 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 Applicants 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 Applicants and the Monitor and their respective agents in carrying out the terms of this Order.

**54.** ~~50.~~ **THIS COURT ORDERS** that each of the Applicants 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 that 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.

**55.** ~~51.~~ **THIS COURT ORDERS** that any interested party (including the Applicants and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days notice 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.

**56.** ~~52.~~ **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. ~~Eastern Standard/Daylight Time~~ Toronto time on the date of this Order.

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF JAMES E. WAGNER CULTIVATION CORPORATION, JAMES E. WAGNER CULTIVATION LTD., JWC 1 LTD., JWC 2 LTD., JWC SUPPLY LTD AND GROWTHSTORM INC.

Court File No. CV-20-00639000-00CL

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

Proceedings commenced in Toronto

AMENDED AND RESTATED  
INITIAL ORDER

BENNETT JONES LLP  
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M5X 1A4

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Lawyers for the Applicants

# TAB 4



Court File No. [CV-20-00639000-00CL](#)

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE MR.	)	<del>WEDNESDAY</del> <a href="#">THURSDAY</a> , THE <del>1<sup>st</sup></del> <a href="#">9<sup>th</sup></a>
	)	
JUSTICE HAINEY	)	DAY OF APRIL, 2020

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF JAMES E. WAGNER CULTIVATION  
CORPORATION, JAMES E. WAGNER CULTIVATION LTD.,  
JWC 1 LTD., JWC 2 LTD., JWC SUPPLY LTD. AND  
GROWTHSTORM INC.

(collectively, the "**Applicants**" and each an "**Applicant**")

**AMENDED AND RESTATED INITIAL ORDER**

**(amending Initial Order dated April 1, 2020)**

**THIS APPLICATION**, made by the Applicants, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") was heard this day via telephonic conference.

**ON READING** the affidavits of Nathan Woodworth sworn March 31, 2020 ~~and, the~~ [affidavit of Aiden Nelms sworn March 31, 2020](#) [and the Affidavit of Philip Armstrong sworn April 6, 2020 \(the "April 6 Affidavit"\)](#), and the Exhibits to each affidavit thereto, [and the Report of KSV Kofman Inc. \("KSV"\) dated March 31, 2020 and the Report of KSV dated April 6, 2020 \(the "First Report"\)](#), and on being advised that Trichome Financial Corp., Lind Global Macro Fund, LP ("[Lind](#)") and the other secured creditors of the Applicants who are likely to be affected by the charges created herein were given notice, [no one appearing for any](#)

other party although duly served as appears from the affidavit of service of Aiden Nelms sworn April 6, 2020, and on hearing the submissions of counsel for the Applicants, ~~KSV-Kofman Inc. ("KSV")~~the Monitor, the DIP Lender (as defined below) and Lind, and on reading the consent of KSV to act as the Monitor,

#### **SERVICE**

1. **THIS COURT ORDERS** that the time for service of the Notice of Application and the Application Record is hereby abridged and validated so that this Application is properly returnable today and hereby dispenses with further service thereof.

#### **APPLICATION**

2. **THIS COURT ORDERS AND DECLARES** that the Applicants are companies to which the CCAA applies.

#### **PLAN OF ARRANGEMENT**

3. **THIS COURT ORDERS** that each Applicant 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**

3. **THIS COURT ORDERS** that the Applicants shall remain in possession and control of their respective current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "**Property**"). Subject to further Order of this Court, the Applicants shall continue to carry on business in a manner consistent with the preservation of their business (the "**Business**") and Property. The Applicants are 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 the carrying out of the terms of this Order.

4. **THIS COURT ORDERS** that the Applicants shall be entitled to continue to utilize the central cash management system currently in place or, with the consent of the Monitor, replace it with another substantially similar central cash management system (the "**Cash Management System**") and that any present or future bank providing the Cash Management System shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the Applicants of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as hereinafter defined) other than the Applicants, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as provider of the Cash Management System, an unaffected creditor under the Plan with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.

5. **THIS COURT ORDERS** that, except as specifically permitted herein, the Applicants 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 any of the Applicants to any of their creditors as of this date unless such payments are contemplated under the Commitment Letter and the Definitive Documents (each as defined below) and consented to by the Monitor; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of their Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

6. **THIS COURT ORDERS** that the Applicants shall be entitled but not required to pay the following expenses whether incurred prior to or after this Order:

- (a) all outstanding and future wages, salaries, employee and pension benefits, vacation pay and employee expenses payable on or after the date of this Order, in each case incurred in the ordinary course of Business and consistent with existing compensation policies and arrangements; and
- (b) the fees and disbursements of any Assistants retained or employed by the Applicants in respect of these proceedings, at their standard rates and charges.

7. **THIS COURT ORDERS** that, except as otherwise provided to the contrary herein, the Applicants shall be entitled but not required to pay all reasonable expenses incurred by the Applicants in carrying on the Business in the ordinary course after this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

- (a) all expenses and capital expenditures reasonably 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; and
- (b) payment for goods or services actually supplied to the Applicants following the date of this Order.

8. **THIS COURT ORDERS** that the Applicants shall 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 employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;
- (b) all goods and services or other applicable sales taxes (collectively, "**Sales Taxes**") required to be remitted by the Applicants in connection with the sale of goods and services by the Applicants, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order, 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 realty, municipal business 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 and

which are attributable to or in respect of the carrying on of the Business by the Applicants.

9. **THIS COURT ORDERS** that until a real property lease is disclaimed in accordance with the CCAA, the Applicants 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 to the landlord under the lease) or as otherwise may be negotiated between the Applicants and the landlord from time to time ("**Rent**"), for the period commencing from and including the date of this Order, twice-monthly in equal payments on the first and fifteenth day of each 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 date of this Order shall also be paid.

### **RESTRUCTURING**

10. **THIS COURT ORDERS** that the Applicants shall, subject to such requirements as are imposed by the CCAA and such covenants as may be contained in the Definitive Documents (as defined below), have the right to:

- (a) permanently or temporarily cease, downsize or shut down any of its business or operations, and to dispose of redundant or non-material assets not exceeding \$100,000 in any one transaction or \$250,000 in the aggregate;
- (b) terminate the employment of such of its employees or temporarily lay off such of its employees as it deems appropriate; and
- (c) pursue all avenues of refinancing of their Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing,

each of the foregoing to permit the Applicants to proceed with an orderly restructuring of the Business .

11. **THIS COURT ORDERS** that the Applicants shall provide each of the relevant landlords with notice of the Applicants' 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 Applicants' 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, such landlord and the Applicants, or by further Order of this Court upon application by the Applicants on at least two (2) days' notice to such landlord and any such secured creditors. If an Applicant disclaims the lease governing such leased premises in accordance with Section 32 of the CCAA, it shall not be required to pay Rent under such lease pending resolution of any such dispute (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 applicable Applicant's claim to the fixtures in dispute.

12. **THIS COURT ORDERS** that if a notice of disclaimer is delivered pursuant to Section 32 of the CCAA, then (a) during the notice 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 Applicants and the Monitor 24 hours' prior written notice, and (b) at the effective time of the disclaimer, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the Applicants in respect of such lease or leased premises, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

#### **NO PROCEEDINGS AGAINST THE APPLICANTS OR THE PROPERTY**

13. **THIS COURT ORDERS** that until and including ~~April 10~~ June 26, 2020, or such later date as this Court may order (the "**Stay Period**"), no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**") shall be commenced or continued against or in respect of the Applicants or the Monitor or their respective employees and representatives acting in such capacities, or affecting the Business or the Property, except with the written consent of the Applicants and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of any of the Applicants or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

## **NO EXERCISE OF RIGHTS OR REMEDIES**

14. **THIS COURT ORDERS** that 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 Applicants or the Monitor or their respective employees and representatives acting in such capacities, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the Applicants and the Monitor, or leave of this Court, provided that nothing in this Order shall: (i) empower the Applicants to carry on any business which the Applicants are not lawfully entitled to carry on, (ii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

## **NO INTERFERENCE WITH RIGHTS**

15. **THIS COURT ORDERS** that 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 any of the Applicants, except with the written consent of the applicable Applicant and the Monitor, or leave of this Court.

## **CONTINUATION OF SERVICES**

16. **THIS COURT ORDERS** that during the Stay Period, all Persons having oral or written agreements with any of the Applicants or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, ERP software communication and other data services, centralized banking services, security services, payroll services, insurance, transportation services, utility or other services to the Business or any of the Applicants, 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 any of the Applicants, and that each of the Applicants shall be entitled to the continued use of its 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 date of this Order are paid by the applicable Applicant in accordance with normal payment

practices of the applicable Applicant or such other practices as may be agreed upon by the supplier or service provider and each of the applicable Applicant and the Monitor, or as may be ordered by this Court.

#### **NON-DEROGATION OF RIGHTS**

17. **THIS COURT ORDERS** that, notwithstanding anything else 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 date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the Applicants. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

#### **PROCEEDINGS AGAINST DIRECTORS AND OFFICERS**

18. **THIS COURT ORDERS** that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of any of the Applicants with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of any of the Applicants 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 applicable Applicant, if one is filed, is sanctioned by this Court or is refused by the creditors of the applicable Applicant or this Court.

#### **DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE**

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

20. **THIS COURT ORDERS** that the directors and officers of the Applicants 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 \$~~450,000.00~~1,050,000.00, as security for the indemnity provided in paragraph 19 of this Order. The Directors' Charge shall have the priority set out in paragraphs ~~39~~40 and ~~41~~42 herein.

21. **THIS COURT ORDERS** that, 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 Applicants' 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 19 of this Order.

#### **APPOINTMENT OF MONITOR**

22. **THIS COURT ORDERS** that KSV is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Applicants with the powers and obligations set out in the CCAA or set forth herein and that the Applicants and their shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by any of the Applicants 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.

23. **THIS COURT ORDERS** that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- (a) monitor the Applicants' receipts and disbursements;
- (b) 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;
- (c) assist the Applicants, to the extent required by the Applicants, in their dissemination, to the DIP Lender and its counsel on a weekly basis of financial and other information as agreed to between the Applicants and the DIP Lender which may be used in these proceedings including reporting on a basis to be agreed with the DIP Lender;

- (d) advise the Applicants in their preparation of the Applicants' cash flow statements and reporting required by the DIP Lender, which information shall be reviewed with the Monitor and delivered to the DIP Lender and its counsel and financial advisor on a periodic basis, but not less than weekly, or as otherwise agreed to by the DIP Lender;
- (e) advise the Applicants in their development of the Plan and any amendments to the Plan;
- (f) assist the Applicants, to the extent required by the Applicants, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;
- (g) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Applicants, to the extent that is necessary to adequately assess the Applicants' business and financial affairs or to perform its duties arising under this Order;
- (h) 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; and
- (i) perform such other duties as are required by this Order or by this Court from time to time.

24. **THIS COURT ORDERS** that the Monitor shall not take possession of the Property or be deemed to take possession of Property, pursuant to any provision of any federal, provincial or other law respecting, among other things, the manufacturing, possession, processing and distribution of cannabis or cannabis products including, without limitation, under the *Cannabis Act* S.C. 2018, c.16, the *Controlled Drugs and Substances Act*, S.C. 1996, c. 19, the *Excise Tax Act*, the *Ontario Cannabis Control Act*, S.O. 2017, c. 26, Sched. 1 or other such applicable federal or provincial legislation (collectively, the "**Cannabis Legislation**"), and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof, within the meaning of any Cannabis Legislation, or otherwise, and nothing in this Order shall be construed as resulting in the Monitor

being an employer or successor employer within the meaning of any statute, regulation or rule of law or equity, for any purpose whatsoever.

25. **THIS COURT ORDERS** that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law 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 *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance 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.

26. **THIS COURT ORDERS** that, in addition to the rights and protection afforded to the DIP Lender under this Order or at law, the DIP Lender shall incur no liability or obligation as a result of carrying out of the provisions of this Order, including under any Cannabis Legislation, save and except for any gross negligence or willful misconduct on its part.

27. **THIS COURT ORDERS** ~~that up to and including April 10, 2020, the Applicants shall not make any expenditures or disbursements without the prior knowledge or consent of the Monitor.~~

~~28. **THIS COURT ORDERS**~~ that the Monitor shall provide any creditor of the Applicants and the DIP Lender with information provided by the Applicants 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

Applicants is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicants may agree.

**28.** ~~29.~~ **THIS COURT ORDERS** that, in addition to the rights and protections afforded to the Monitor under the CCAA or as an officer of this Court, neither the Monitor nor its respective employees and representatives acting in such capacities, shall incur any liability or obligation as a result of the appointment of the Monitor or the carrying out by it of the provisions of this Order, including under any Cannabis Legislation, save and except for any gross negligence or willful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

**29.** ~~30.~~ **THIS COURT ORDERS** that the Monitor, counsel to the Monitor, and counsel to the Applicants shall be paid their reasonable fees and disbursements related to these proceedings, in each case at their standard rates and charges, whether incurred prior to, on or subsequent to, the date of this Order by the Applicants as part of the costs of these proceedings. The Applicants are hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor, and counsel for the Applicants on a weekly basis.

**30.** ~~31.~~ **THIS COURT ORDERS** that 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 Commercial List of the Ontario Superior Court of Justice.

**31.** ~~32.~~ **THIS COURT ORDERS** that the Monitor, counsel to the Monitor, ~~and~~ the Applicants' counsel and Howard Capital LLC ("HC"), in its capacity as chief restructuring officer of the Applicants (the "CRO") in respect of its monthly fees and expense reimbursement, 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 ~~\$500,000.00~~ 600,000.00 as security for their professional fees and disbursements incurred at their standard rates and charges or as set out in the CRO Engagement Letter (as defined below), both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs ~~39~~40 and ~~41~~42 hereof.

#### **APPOINTMENT OF CHIEF RESTRUCTURING OFFICER**

32. THIS COURT ORDERS that the CRO is hereby appointed as the chief restructuring officer of the Applicants on the following terms:

- (a) the CRO shall have the powers and obligations set out in the engagement letter dated as of April 5, 2020, a redacted copy of which is attached as Exhibit "D" to the April 6 Affidavit (the "CRO Engagement Letter") and an unredacted copy of which is attached as confidential Exhibit "1" to the April 6 Affidavit, pursuant to which the Applicants have engaged HC to provide the services of the CRO;
- (b) HC shall be entitled, in accordance with the terms of the CRO Engagement Letter, to payment from the Applicants for obligations owing thereunder and the expenses and disbursements contemplated therein (collectively, the "CRO Fees");
- (c) the CRO shall be responsible for performing its functions and obligations as set out in the CRO Engagement Letter for the benefit of the Applicants and shall provide timely updates to the Monitor in respect of such functions and obligations;
- (d) the CRO shall not be or be deemed to be a director, de facto director, or employee of any of the Applicants;
- (e) nothing in this Order shall be construed as resulting in the CRO or Howard Steinberg ("Steinberg") being an employer, successor employer, a responsible person, operator or person with apparent authority within the meaning of any statute, regulation or rule of law, or equity (including any Environmental Legislation) for any purpose whatsoever;
- (f) neither the CRO nor Steinberg shall, as a result of the performance of their respective obligations and duties in accordance with the terms of the CRO Engagement Letter, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation or the Cannabis Legislation; provided however, if either of the CRO or Steinberg is nevertheless later found

- to be in Possession of any Property, then the CRO and/or Steinberg, as the case may be, shall be entitled to the benefits and protections in relation to the Applicants and such Property as are provided to a monitor under Section 11.8(3) of the CCAA; provided further however, that nothing in this sub-paragraph 32(f) shall exempt the CRO or Steinberg from any duty to report or make disclosure imposed by a law and incorporated by reference in Section 11.8(4) of the CCAA;
- (g) no action or other proceeding shall be commenced directly, or by way of counterclaim, third party claim or otherwise, against or in respect of the CRO or Steinberg, and all rights and remedies of any Person against or in respect of them are hereby stayed and suspended, except with the written consent of the CRO or with leave of this Court on notice to the Applicants, the Monitor and the CRO, provided, however, that nothing in this order, including this sub-paragraph 32(g) shall affect such investigations, actions, suits or proceedings by a regulatory body that are permitted by Section 11.1 of the CCAA. Notice of any such motion seeking leave of this Court shall be served upon the Applicants, the Monitor and the CRO at least seven (7) days prior to the return date of any such motion for leave;
- (h) the CRO Fees shall not be compromised pursuant to the Plan, any proposal under the *Bankruptcy and Insolvency Act of Canada (the "BIA")*, or any other restructuring and no such Plan, proposal, restructuring or sale transaction shall be approved that does not provide for the payment in full of all amounts due to the CRO pursuant to the terms of the CRO Engagement Letter; and
- (i) if, but for the orders in the preceding sub-paragraphs of this paragraph 32, the CRO would have liability with respect to any losses, claims, damages or liabilities to Her Majesty the Queen in right of the Province of Ontario or would have incurred an obligation under any enactment of Ontario or Canada (including any Environmental Legislation), such liability or obligation shall be deemed to be a liability or obligation of the Applicants.

33. THIS COURT ORDERS that neither the CRO nor its respective employees and representatives acting in such capacities, shall incur any liability or obligation as a result of the appointment of CRO or the carrying out by it of the provisions of this Order or the CRO Engagement Letter, including under any Cannabis Legislation, save and except for any gross negligence or willful misconduct on its part.

#### DIP FINANCING

34. ~~33.~~ THIS COURT ORDERS that the Applicants are hereby authorized and empowered to obtain and borrow under a credit facility (the "**DIP Loan**") from Trichome Financial Corp. (in such capacity, the "**DIP Lender**") in order to finance the Applicants' working capital requirements and other general corporate purposes and capital expenditures, provided that borrowings under such credit facility shall not exceed \$4,000,000.00 unless permitted by further Order of this Court.

35. ~~34.~~ THIS COURT ORDERS THAT such credit facility shall be on the terms and subject to the conditions set forth in the commitment letter between the Applicants and the DIP Lender dated as of March 31, 2020 (the "**Commitment Letter**"), filed.

36. ~~35.~~ THIS COURT ORDERS that the Applicants are hereby authorized and empowered to execute and deliver such credit agreements, mortgages, charges, hypothecs and security documents, guarantees and other definitive documents (collectively, the "**Definitive Documents**"), as are contemplated by the Commitment Letter or as may be reasonably required by the DIP Lender pursuant to the terms thereof, and the Applicants are hereby authorized and directed to pay and perform all of their indebtedness, interest, fees, liabilities and obligations to the DIP Lender under and pursuant to the Commitment Letter and the Definitive Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

37. ~~36.~~ THIS COURT ORDERS that the DIP Lender shall be entitled to the benefit of and is hereby granted a charge (the "**DIP Lender's Charge**") on the Property, which DIP Lender's Charge shall not secure an obligation that exists before this Order is made. The DIP Lender's Charge shall have the priority set out in paragraphs ~~39~~40 and ~~41~~42 hereof.

**38.** ~~37.~~ **THIS COURT ORDERS** that, notwithstanding any other provision of this Order:

- (a) the DIP Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP Lender's Charge or any of the Definitive Documents;
- (b) upon the occurrence of an event of default under the Definitive Documents or the DIP Lender's Charge, the DIP Lender, upon 7 days' notice to the Applicants and the Monitor, may exercise any and all of its rights and remedies against the Applicants or the Property under or pursuant to the Commitment Letter, Definitive Documents and the DIP Lender's Charge, including without limitation, to cease making advances to the Applicants and set off and/or consolidate any amounts owing by the DIP Lender to the Applicants against the obligations of the Applicants to the DIP Lender under the Commitment Letter, the Definitive Documents or the DIP Lender's Charge, 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 Applicants and for the appointment of a trustee in bankruptcy of the Applicants; and
- (c) the foregoing rights and remedies of the DIP Lender shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Applicants or the Property.

**39.** ~~38.~~ **THIS COURT ORDERS AND DECLARES** that the DIP Lender shall be treated as unaffected in any plan of arrangement or compromise filed by the Applicants under the CCAA, or any proposal filed by the Applicants under the ~~Bankruptcy and Insolvency Act of Canada (the "BIA")~~, with respect to any advances made under the Definitive Documents.

#### **VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER**

**40.** ~~39.~~ **THIS COURT ORDERS** that the priorities of the Directors' Charge, the Administration Charge and the DIP Lender's Charge, as among them, shall be as follows:

First - Administration Charge (to the maximum amount of \$~~500,000.00~~600,000.00);



Second - Directors' Charge (to the maximum amount of \$~~450,000.00~~1,050,000.00); and

Third - DIP Lender's Charge (to the maximum amount of \$~~800,000.00~~4,000,000.00).

41. ~~40.~~ **THIS COURT ORDERS** that the filing, registration or perfection of the Administration Charge, the DIP Lender's Charge, or the Directors' Charge (collectively, the "**Charges**") shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

42. ~~41.~~ **THIS COURT ORDERS** that each of the Charges shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, "**Encumbrances**") in favour of any Person.

43. ~~42.~~ **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicants shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Charges, unless the Applicants also obtain the prior written consent of the Monitor, the DIP Lender and the beneficiaries of the Charges, or further Order of this Court.

44. ~~43.~~ **THIS COURT ORDERS** that the Charges, the Commitment Letter, and the Definitive Documents 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 DIP Lender thereunder 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 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, sublease, offer to lease or other agreement (collectively, an "**Agreement**") which binds the Applicants, 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 Commitment Letter or the Definitive Documents shall create or be deemed to constitute a breach by the Applicants of any Agreement to which any of them 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 Applicants entering into the Commitment Letter, the creation of the Charges, or the execution, delivery or performance of the Definitive Documents; and
- (c) the payments made by the Applicants pursuant to this Order, the Commitment Letter 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.

**45.** ~~44.~~ **THIS COURT ORDERS** that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the Applicants' interest in such real property leases.

#### **RELIEF FROM REPORTING OBLIGATIONS**

**46.** ~~45.~~ **THIS COURT ORDERS** that none of the directors, officers, employees, or other representatives of the Applicants, nor the Monitor (and its directors, officers, employees or representatives) shall have any personal liability for failure of the Applicants to file annual information forms, annual and quarterly management discussion and analysis, annual and quarterly financial statements (including related audits, reports and certifications) for the Stay Period, which period may be extended pursuant to further Order of the Court.

#### **SEALING**

**47.** **THIS COURT ORDERS that the unredacted copy of the CRO Engagement Letter filed as Confidential Exhibit "1" to the April 6 Affidavit shall be sealed and kept confidential pending further order of this Court.**

## SERVICE AND NOTICE

**48.** ~~46.~~ **THIS COURT ORDERS** that the Monitor shall (i) without delay, publish in The Globe and Mail (National Edition) a notice containing the information prescribed under the CCAA, (ii) within five days after the date of this Order, (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, or cause to be sent, in the prescribed manner, a notice to every known creditor who has a claim against any of the Applicants of more than \$1,000, and (C) 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.

**49.** ~~47.~~ **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the “**Protocol**”) is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL – <https://www.ksvadvisory.com/insolvency-cases/case/james-e-wagner-cultivation-corporation> (the “**Website**”).

**50.** ~~48.~~ **THIS COURT ORDERS** that the Applicants and the Monitor and their respective counsel are at liberty to serve or distribute this Order, any other materials and orders as may be reasonably required in these proceedings, including any notices, or other correspondence, by forwarding true copies thereof by electronic message to the Applicants' creditors or other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or judicial obligation, and notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations*, Reg. 81000-2-175 (SOR/DORS).

**GENERAL**

**51.** ~~49.~~ **THIS COURT ORDERS** that each of the Applicants or the Monitor may from time to time apply to this Court to amend, vary or supplement this Order or for advice and directions in the discharge of its powers and duties under this Order or in the interpretation or application of this Order.

**52.** ~~50.~~ **THIS COURT ORDERS** that 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 Applicants, the Business or the Property.

**53.** ~~51.~~ **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Applicants, the Monitor and their respective 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 Applicants 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 Applicants and the Monitor and their respective agents in carrying out the terms of this Order.

**54.** ~~52.~~ **THIS COURT ORDERS** that each of the Applicants 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 that 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.

**55.** ~~53.~~ **THIS COURT ORDERS** that any interested party (including the Applicants and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days notice 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.

56. ~~54.~~ **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Toronto time on the date of this Order.

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AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF JAMES E. WAGNER CULTIVATION CORPORATION, JAMES E. WAGNER CULTIVATION LTD., JWC 1 LTD., JWC 2 LTD., JWC SUPPLY LTD AND GROWTHSTORM INC.

Court File No. [CV-20-00639000-00CL](#)

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**(COMMERCIAL LIST)**

Proceedings commenced in Toronto

**AMENDED AND RESTATED**  
**INITIAL ORDER**

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**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF JAMES E. WAGNER CULTIVATION LTD., JWC 1 LTD., JWC 2 LTD., JWC SUPPLY LTD. AND GROWTHSTORM INC.**

Court File No.: CV-20-00639000-00CL

***ONTARIO***  
**SUPERIOR COURT OF JUSTICE**  
**COMMERCIAL LIST**

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**MOTION RECORD**

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