

**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

August 24, 2020

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**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**")

Applicants

**NOTICE OF MOTION
(Returnable August 31, 2020)**

The Applicants will make a motion before the Honourable Justice Hainey of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") on Monday, August 31, 2020, at 9:30 a.m. or as soon after that time as the motion can be heard.

PROPOSED METHOD OF HEARING: The motion is to be heard by videoconference as a result of the COVID-19 pandemic. Please refer to the videoconference details attached at Schedule "A" hereto in order to attend the motion and advise if you intend to attend the motion by emailing Aiden Nelms at nelmsa@bennettjones.com.

THE MOTION IS FOR:

1. Should the Transaction (as defined below) close on August 28, 2020, an order (the "**Expansion of Powers and Stay Extension Order**") substantially in the form attached as Tab 3 of the motion record, *inter alia*:

- (a) if necessary, 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) granting KSV Kofman Inc. ("**KSV**") in its capacity as Court-appointed monitor (in such capacity, the "**Monitor**") the Expanded Powers (as defined below) upon the resignation of the Applicants' board of directors (the "**Directors**");
 - (c) approving certain of the Monitor's reports and activities; and
 - (d) extending the Stay Period (as defined below) until the Monitor files a certificate substantially in the form attached at Schedule "A" to the CCAA Termination Order granted by this Court on July 31, 2020 (the "**Discharge Certificate**") certifying that all matters to be attended to in connection with the Applicants' proceedings under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") have been completed to the satisfaction of the Monitor.
2. Or, in the alternative, should the Transaction fail to close on August 28, 2020, an order (the "**Fifth DIP Amendment and Stay Extension Order**") substantially in the form attached as Tab 4 of the motion record, *inter alia*:
- (a) if necessary, 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) granting the Monitor the Expanded Powers upon the resignation of the Applicants' Directors;
 - (c) authorizing the execution by the Applicants of the Fifth Amendment to the Interim Financing Term Sheet dated August 24, 2020 (the "**Fifth DIP Amendment**"), which will, among other things, increase the maximum borrowings available under the DIP Loan (as defined below) up to \$9,200,000 (which is an increase of \$1,000,000);
 - (d) authorizing an increase to the DIP Lender's Charge (as defined below) up to a maximum amount of \$9,200,000;
 - (e) approving certain of the Monitor's reports and activities; and

- (f) extending the Stay Period until and including September 30, 2020, provided that if the Transaction closes on or before September 30, 2020, the Stay Period will be automatically extended until the Monitor files the Discharge Certificate;;
3. Such further and other relief as this Honourable Court deems just;

THE GROUNDS FOR THE MOTION ARE:

Background

4. On April 1, 2020, the Court granted protection to the Applicants pursuant to an order (as amended and restated, the "**Initial Order**") under the CCAA;
5. Under the Initial Order, *inter alia*:
- (a) KSV was appointed as Monitor;
 - (b) an initial stay of proceedings in favour of the Applicants was granted until and including June 26, 2020 (the "**Stay Period**");
 - (c) the Applicants were authorized and empowered to obtain and borrow under a credit facility (the "**DIP Loan**") from Trichome Financial Corp. ("**Trichome**") as lender (in such capacity, the "**DIP Lender**") pursuant to the term sheet dated March 31, 2020, as amended (the "**DIP Term Sheet**"); and
 - (d) a charge over the Applicants' current and future assets, undertakings and properties to secure borrowings under the DIP Loan was granted in favour of the DIP Lender up to a maximum amount of \$4,000,000 (the "**DIP Lender's Charge**");
6. Pursuant to an order (the "**Bidding Procedures and Stalking Horse APA Approval Order**") dated April 9, 2020, the Court, among other things, approved:
- (a) a sale and investor solicitation process (the "**SISP**") and the bidding procedures related thereto (the "**Bidding Procedures**");
 - (b) the appointment of Howard Capital LLC as chief restructuring officer of the Applicants;

- (c) the Asset Purchase Agreement dated March 31, 2020 (the "**Stalking Horse APA**") for the purposes of acting as the Stalking Horse Bid (as defined below) in the SISP; and
 - (d) the engagement letter, as amended, between the Applicants and Stoic Advisory Inc. ("**Stoic**") as M&A advisor pursuant to which Stoic was responsible for the marketing and sale of the Applicants' business;
7. The Applicants are a vertically integrated premium cannabis brand focused on the production of clean and consistent cannabis using their proprietary aeroponic platform;
8. James E. Wagner Cultivation Ltd. ("**JWC Ltd.**") holds two (2) cannabis licenses (together, the "**Health Canada Licences**") which permit JWC Ltd. to:
- (a) cultivate, process and sell cannabis for the medical market 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; and
 - (b) cultivate cannabis and sell plant seeds and cannabis plants to provincially/territorially authorized distributors/retailers;
9. 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 (the "**CCAA Proceedings**") to ultimately effect a going concern sale of their business;
10. 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, assist Stoic as it conducted the SISP in accordance with the Bidding Procedures and Stalking Horse APA Approval Order, finalize the Transaction (as defined below), and obtain the Approval and Vesting Order (as defined below);

The Stalking Horse APA and the SISP

11. Prior to the commencement of the 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;

12. Pursuant to the Stalking Horse APA, Trichome agreed to act as the stalking horse bidder in the SISP (the "**Stalking Horse Bid**"). The Stalking Horse APA was subject to higher or otherwise better offers received as part of the SISP until the expiry of the bid deadline on May 15, 2020 (the "**Bid Deadline**");

13. No Qualified Bids (as defined in the Bidding Procedures) were received prior to the Bid Deadline apart from the Stalking Horse Bid;

Approval and Vesting Order

14. On June 2, 2020, the Court approved an Order (the "**Approval and Vesting Order**") which, among other things, approved the transaction (the "**Transaction**") contemplated by the Stalking Horse APA between Trichome as purchaser, and the Applicants as vendors, and vesting in Trichome, or as it may direct, all of the Applicants' right, title and interest in and to the assets described in the Stalking Horse APA (the "**Purchased Assets**") free and clear of and from any and all Claims or Encumbrances (each as defined in the Approval and Vesting Order). In accordance with the Stalking Horse APA, Trichome directed that title to the Purchased Assets be vested in Trichome JWC Acquisition Corp. (the "**Purchaser**");

Health Canada Licenses and the Stalking Horse APA Outside Date

15. The Transaction is conditional on the Purchaser having licenses that are substantially similar to the Health Canada Licences. The Purchaser cannot close the Transaction until it has obtained these licenses and addressed other regulatory matters;

16. Trichome, the Applicants and the Monitor have been in communication with Health Canada and the intention is to close the Transaction once the Purchaser has obtained new licenses from Health Canada and all the other regulatory matters have been addressed;

17. Pursuant to the Stalking Horse APA, the Transaction was to close by June 30, 2020 (the "**Outside Date**") unless otherwise agreed to by Trichome and the Applicants. Through a series of amendments, Trichome and the Applicants mutually agreed to extend the Outside Date to August 31, 2020 which will be extended further should the Transaction fail to close by August 28, 2020;

DIP Amendments and Increases to the DIP Lender's Charge

18. Pursuant to the Initial Order, the DIP Loan was granted up to a maximum amount of \$4,000,000 – the maximum amount available under the DIP Term Sheet. Through a series of amendments, the most recent of which was approved by the Court on July 31, 2020, the maximum amount of the DIP Loan and the corresponding DIP Lender's Charge were increased from \$7,200,000 to \$8,200,000;

19. Given the current status of the Transaction, and the uncertainty in respect of closing, the Applicants may require additional funding to continue to operate their business while the parties continue to work to acquire the necessary licenses and address other regulatory matters;

20. The Monitor is supportive of the Fifth DIP Amendment and the quantum of the corresponding increase to the DIP Loan and believes that it is in the best interests of the Applicants and their stakeholders;

21. Pursuant to the Fifth DIP Amendment and Stay Extension Order, should the Transaction not close by August 28, 2020, the Applicants seek to further increase the quantum of the DIP Lender's Charge up to a maximum of \$9,200,000. 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 while the Transaction is completed;

22. The Monitor is supportive of the increase to the DIP Lender's Charge should the Transaction not close by August 28, 2020;

The Stay Extension

23. The Stay Period currently expires on August 31, 2020;

24. Since the granting of the Initial Order, the Applicants have been acting and continue to act in good faith and with due diligence in the CCAA Proceedings to stabilize their business and maintain their ordinary course operations, assist Stoic as it conducted the SISP under the supervision of the Monitor, finalize the Transaction, obtain the Approval and Vesting Order and seek to satisfy the closing conditions for the Transaction;

25. Should the transaction close on or before August 28, 2020, the Applicants require an extension of the Stay Period until and including the date on which the Monitor files the Discharge Certificate in order to provide the Monitor with sufficient time to address various sundry matters related to the wind-down of the business following closing;

26. Should the Transaction fail to close on or before August 28, 2020, the Applicants require an extension of the Stay Period until and including September 30, 2020 in order to provide additional time to enable the Purchaser to obtain its new licenses from Health Canada, deal with all other regulatory matters and close the Transaction. In addition, if the Transaction closes on or before September 30, 2020, the Applicants require a further extension of the Stay Period until and including the date on which the Monitor files the Discharge Certificate in order to provide the Monitor with sufficient time to address various sundry matters related to the wind-down of the business following closing;

27. 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 to close the Transaction, in each circumstance;

28. The Monitor is supportive of either of the proposed extensions to the Stay Period and does not believe that it will prejudice any party;

Enhanced Powers

29. Following the closing of the Transaction, the Monitor understands that the Directors are expected to resign and the Applicants will discontinue their operations and all or substantially all employees will become employees of the Purchaser;

30. The Applicants are seeking to expand the current powers of the Monitor to address certain ancillary post-closing issues, including addressing outstanding tax filings (the "**Enhanced Powers**"). The Enhanced Powers will only become effective upon the resignation of the Directors and will ensure an orderly and efficient end to these CCAA Proceedings;

31. The Monitor is not aware of any parties who will be prejudiced by this relief;

OTHER GROUNDS:

32. The provisions of the CCAA and the inherent and equitable jurisdiction of the Court;

33. 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 section 106 of the Ontario *Courts of Justice Act*, R.S.O. 1990, c. C.43 as amended; and

34. Such further and other grounds as counsel may advise and the Court may permit;

DOCUMENTARY EVIDENCE:

35. The following documentary evidence will be used at the hearing of the motion:

- (a) the Sixth Report of the Monitor dated August 24, 2020; and
- (b) such further and other evidence as counsel may advise and the Court may permit.

August 24, 2020

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Schedule "A"

<https://us02web.zoom.us/j/81100528420>

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

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TAB 2



**Sixth Report of
KSV Kofman Inc.
as CCAA Monitor of
James E. Wagner Cultivation
Corporation, James E. Wagner
Cultivation Ltd., JWC 1 Ltd., JWC 2
Ltd., JWC Supply Ltd. and
GrowthStorm Inc.**

August 24, 2020

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COURT FILE NO.: CV-20-00639000-00CL

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SUPERIOR COURT OF JUSTICE
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**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
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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.**

SIXTH REPORT OF KSV KOFMAN INC. AS MONITOR

August 24, 2020

1.0 Introduction

1. Pursuant to an order of the Ontario Superior Court of Justice (Commercial List) (the "Court") made on April 1, 2020 (the "Initial Order"), James E. Wagner Cultivation Corporation ("JWC"), James E. Wagner Cultivation Ltd. ("JWCL"), JWC 1 Ltd. ("JWC1"), JWC 2 Ltd. ("JWC2"), JWC Supply Ltd. ("JWCS") and GrowthStorm Inc. ("GrowthStorm") (collectively, the "Companies") were granted protection under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA") and KSV Kofman Inc. ("KSV") was appointed monitor (the "Monitor").
2. Pursuant to the terms of the Initial Order, the Court, *inter alia*, approved (i) a debtor-in-possession loan facility (the "DIP Facility") in an interim maximum amount of \$800,000 from Trichome Financial Corp. ("TFC"), pursuant to a term sheet dated March 31, 2020 (the "DIP Term Sheet"), (ii) granted a charge in favour of TFC in this amount (the "DIP Lender's Charge") and (iii) granted a stay of proceedings in favour of the Companies (the "Stay of Proceedings").
3. At the comeback motion on April 9, 2020 (the "Comeback Motion"), the Court issued an Amended and Restated Initial Order (the "Amended and Restated Initial Order") and the bidding procedures and a sale and investment solicitation process (the "SISP") order (the "SISP Order").
4. The Amended and Restated Initial Order, *inter alia*, (i) approved the full amount of the DIP Facility, being \$4 million, and a corresponding increase in the DIP Lender's Charge, and (ii) extended the Stay of Proceedings.
5. The SISP Order approved, *inter alia*:
 - a. the SISP; and
 - b. an offer from TFC as the stalking horse bid in the SISP.

6. Pursuant to an order issued by the Court on May 11, 2020, the maximum amount of the DIP Facility and the DIP Lender's Charge were increased from \$4 million to \$5.5 million, which was projected to be sufficient to fund the Company's operations and the costs of these proceedings to June 30, 2020.
7. Pursuant to an order issued on June 2, 2020, the Court approved the stalking horse transaction (the "Transaction") between the Companies and TFC for the sale of substantially all of the Companies' assets pursuant to an Asset Purchase Agreement dated March 31, 2020 between the Companies and TFC, as amended (the "APA"). In accordance with the APA, TFC directed that title to the assets be vested in Trichome JWC Acquisition Corp. (the "Purchaser").
8. The Transaction is conditional on the Purchaser obtaining licenses that are substantially similar to the Health Canada Licenses, as defined below. The Purchaser cannot close the transaction until it has secured these licenses and addressed other regulatory matters.
9. Pursuant to the APA, the original outside date to complete the Transaction (the "Outside Date") was June 30, 2020. The Companies and the Purchaser have extended the Outside Date on two occasions, most recently to August 31, 2020, to provide the Purchaser with more time to obtain the licenses. In connection with extending the Outside Date, the Court has approved extensions to the Stay of Proceedings and increases to the DIP Facility and the DIP Lender's Charge. Most recently, on July 31, 2020, the Court issued an order extending the Stay of Proceedings to August 31, 2020 and increasing the maximum amount of the DIP Facility and the DIP Lender's Charge from \$7.2 million to \$8.2 million.
10. On July 31, 2020, the Court also issued an order, *inter alia*, (i) authorizing the Monitor and/or the Companies to file assignments in bankruptcy on behalf of the Companies; and (ii) terminating, upon the filing of a discharge certificate (the "Discharge Certificate"), the CCAA proceedings and discharging KSV in its capacity as the Monitor of the Companies. The termination of the CCAA proceedings and the discharge of the Monitor cannot happen prior to closing, which has not yet occurred.

1.1 August 31 Motion Date

1. The Companies have scheduled a motion returnable on August 31, 2020 (the "Motion Date"). As the Companies and the Purchaser continue to seek the required approvals and licenses from Health Canada, it is unclear if the Transaction will close prior to the Motion Date.
2. If the Transaction closes prior to the Motion Date, the Companies intend to seek an extension of the Stay of Proceedings to allow the Companies to address certain sundry issues related to the wind-down of their business. Once those are completed, the Monitor will file the Discharge Certificate. If the Transaction closes by the Motion Date, the Board of Directors is expected to resign shortly after closing and it will be necessary to expand the powers and authorities of the Monitor in such circumstance. Once the sundry matters have been addressed, the Monitor is likely to file an assignment in bankruptcy on behalf of each of the Companies.

3. If the Transaction does not close prior to the Motion Date, the Companies intend to seek an extension of the Stay of Proceedings to September 30, 2020, provided that if the Transaction then closes after the Motion Date but on or before September 30, 2020, the Companies are seeking a further extension of the Stay of Proceedings until the Discharge Certificate is filed. The Companies are also seeking an increase to the maximum amount that can be borrowed under the DIP Facility from \$8.2 million to \$9.2 million to provide additional time for the Transaction to close. The Companies and the Purchaser have agreed to extend the Outside Date to September 30, 2020 in this scenario. Additionally, under this scenario, the Board will not resign and will stay in place until the Transaction closes. However, the Companies are still seeking to expand the powers and authorities of the Monitor in such circumstance once the Board resigns.

1.2 Purposes of this Report

1. The purposes of this report (“Report”) are to:
 - a) report on the Companies’ cash flow forecast (the “Cash Flow Forecast”) from August 22, 2020 to September 30, 2020;
 - b) discuss the terms of an amendment to the DIP Term Sheet pursuant to which the maximum amount of the DIP Facility is to be increased, if required, from \$8.2 million to \$9.2 million (the “Fifth DIP Amendment”);
 - c) recommend that the Court issue an order:
 - i. if the Transaction closes prior to the Motion Date, extending the Stay of Proceedings until the Monitor files the Discharge Certificate; or, in the alternative, if the Transaction does not close prior to the Motion Date, approving the Fifth DIP Amendment, increasing the amount of the DIP Lender’s Charge to \$9.2 million and extending the Stay of Proceedings from August 31, 2020 to September 30, 2020, provided that if the Transaction closes after the Motion Date but on or before September 30, 2020, the Stay of Proceedings will be further extended until the Discharge Certificate is filed;
 - ii. granting, following the resignation of the Directors, the Monitor enhanced powers, including authority over the business and operations of the Companies; and
 - iii. approving the activities of the Monitor described herein.

For clarity, the Companies have proposed two forms of Orders, and the Monitor understands that the Companies will advise the Court at the Motion Date which Order they will be seeking based on whether the Transaction has closed.

1.3 Restrictions

1. In preparing this Report, the Monitor has relied upon the unaudited financial information of the Companies, the books and records of the Companies and discussions with the Companies, the Companies' counsel and TFC.
2. The Monitor has not audited, or otherwise attempted to verify, the accuracy or completeness of the financial information relied on to prepare this Report in a manner that complies with Canadian Auditing Standards ("CAS") pursuant to the Chartered Professional Accountants of Canada Handbook and, accordingly, the Monitor expresses no opinion or other form of assurance contemplated under the CAS in respect of such information. Any party wishing to place reliance on the financial information should perform its own diligence.
3. An examination of the Cash Flow Forecast as outlined in the Chartered Professional Accountants of Canada Handbook has not been performed. Future oriented financial information relied upon in this Report is based upon the Companies' assumptions regarding future events; actual results achieved may vary from this information and these variations may be material. The Monitor expresses no opinion or other form of assurance on whether the Cash Flow Forecast will be achieved.
4. In the context of the current COVID-19 pandemic, there is uncertainty related to consumer, supply chain, governmental and other macro-economic factors and how these and other factors may affect the Companies and their operations. The effect of COVID-19 on the Companies may be material. The full effect of COVID-19 is unknown and cannot be quantified at this time.

1.4 Currency

1. Unless otherwise noted, all currency references in this Report are in Canadian dollars.

2.0 Background

1. JWC's principal business is the production and sale of cannabis through its wholly-owned subsidiary and license holder, JWCL. The Monitor understands that JWC1, JWC2, JWCS and GrowthStorm do not presently conduct, and have never conducted, active business operations. The corporate chart for the Companies is provided in Appendix "A".
2. JWC's common shares were listed on the Toronto Stock Venture Exchange and the OTCQX. On July 29, 2020, the Ontario Securities Commission issued a cease trade order in respect of JWC's common shares.
3. The Companies' operations are based in Kitchener, Ontario. JWC leases the following three properties: (i) manufacturing facilities located at 855 Trillium Drive, Unit B, Kitchener, Ontario and 530 Manitou Drive, Kitchener Ontario; and (ii) office space located at 860 Trillium Drive, Kitchener, Ontario.

4. JWCL holds the following two cannabis licenses (jointly, the “Health Canada Licenses”):
 - a) a license which permits JWCL to cultivate, process and sell cannabis for the medical market and to sell all of the authorized classes of cannabis to provincially/territorially authorized distributors/retailers and directly to consumers with medical documents, which include cannabis plant seeds, cannabis plants, dried cannabis, fresh cannabis, edible cannabis, cannabis topicals, cannabis extracts and cannabis oil; and
 - b) a license which permits JWCL to cultivate cannabis and sell plant seeds and cannabis plants to provincially/territorially authorized distributors/retailers.
5. The Companies have approximately 110 employees. The employees are not unionized and the Companies do not maintain a pension plan.

2.1 Secured Creditors

2.1.1 TFC

1. TFC is a secured lender to the Companies pursuant to a loan agreement dated February 19, 2019, which was amended and restated on November 6, 2019 (as amended by amendments dated January 9, 2020, February 19, 2020 and March 10, 2020) (collectively, the “Loan Agreement”). The current amount outstanding under the Loan Agreement is approximately \$7.6 million.
2. TFC is also the lender to the Companies under the DIP Facility. As of August 20, 2020, the current amount owing under the DIP Facility was approximately \$8 million.

3.0 Cash Flow Forecast

1. If the Transaction does not close prior to the Motion Date, the Companies are seeking an extension of the Stay of Proceedings to September 30, 2020. The Companies have prepared the Cash Flow Forecast for the period August 22, 2020 to September 30, 2020 on the basis that the Transaction does not close prior to the Motion Date. The Cash Flow Forecast reflects that the Companies will need to borrow up to an additional \$1 million through to the end of September 2020, which would bring the balance owing under the DIP Facility to \$9.2 million. The Cash Flow Forecast and the Companies' statutory report on the cash flow pursuant to Section 10(2)(b) of the CCAA is attached as Appendix “B”.
2. Based on the Monitor’s review of the Cash Flow Forecast, the cash flow assumptions appear reasonable. The Monitor’s statutory report on the Cash Flow Forecast is attached as Appendix “C”.
3. Once the Transaction closes, whether prior to the Motion Date or after, the operations of the business will be discontinued and will require no further funding. To the extent any funding is required, it will be provided by TFC under a mechanism contemplated by the APA in the Transaction, which is referred to as the Closing Cash Payment. The Closing Cash Payment is an amount to be funded by TFC which is sufficient to cover outstanding professional fees and operating costs of the proceedings.

4.0 Fifth DIP Amendment

1. A copy of the Fifth DIP Amendment is attached as Appendix “D”.
2. The Fifth DIP Amendment will only be necessary if the Transaction has not closed by the Motion Date. Pursuant to the terms of the Fifth DIP Amendment:
 - a. the DIP Facility is to be increased by \$1 million to \$9.2 million;
 - b. the Companies are required to seek Court approval of a corresponding increase in the DIP Lender's Charge; and
 - c. the maturity date of the DIP Facility is to be extended from August 31, 2020 to September 30, 2020.
3. The Monitor recommends the Court issue an order approving the Fifth DIP Amendment if the Transaction does not close by the Motion Date as:
 - a) the Companies would require additional funding to continue to operate the business while the Companies and the Purchaser continue to address regulatory matters;
 - b) funding the business without disruption is in the interest of completing the Transaction, which will maximize recoveries and result in employment for approximately 110 individuals; and
 - c) no stakeholder is prejudiced by the Fifth DIP Amendment.

5.0 Stay Extension

1. The Stay of Proceedings currently expires on August 31, 2020.
2. The Companies require an extension of the stay of proceedings whether the Transaction closes or if it fails to close by the Motion Date. In the former case, the extension will allow the Monitor to address various sundry matters related to the wind-down of the business following closing (including assisting to deal with tax matters), and in the latter case, to continue to operate the business until the Transaction can be completed.
3. The Monitor supports the request for an extension of the Stay of Proceedings for the following reasons:
 - a) the Companies have been acting, and continue to act, in good faith and with due diligence;
 - b) no creditor will be prejudiced by the extension;
 - c) as of the date of this Report, neither the Companies nor the Monitor is aware of any party opposed to an extension; and
 - d) the Companies are projected to have sufficient liquidity regardless of the status of the Transaction at the Motion Date. Prior to closing, the Companies will be funded through the DIP Facility. Following closing, the Companies will be funded from the Closing Cash Payment.

6.0 Enhanced Powers

1. Following the closing of the Transaction, the Monitor understands that each of the Directors of the Companies is expected to resign. Shortly following closing, the Companies will discontinue their operations and all or substantially all employees will become employees of the Purchaser.
2. The Companies are seeking to expand the current powers of the Monitor to address certain ancillary post-closing issues, including addressing outstanding tax filings. The enhanced powers are only to become effective upon the resignation of the Directors and will ensure an orderly and efficient end to these CCAA proceedings. The Monitor is not aware of any parties affected or prejudiced by this relief and has agreed to take on the enhanced powers, provided the Court makes the order.

7.0 Monitor's Activities

1. The Monitor's activities from the date of its Fifth Report to Court dated May 25, 2020 have included:
 - a) corresponding regularly with the Companies, including senior executives, the Chief Restructuring Officer and the Special Committee of the Board of Directors regarding operational issues, regulatory matters and transaction related transition issues;
 - b) continuing to assist the Companies with communications to suppliers, customers and other parties;
 - c) monitoring the Companies' receipts and disbursements;
 - d) assisting the Companies to file their sales tax returns;
 - e) corresponding with Kitchener Wilmot Hydro regarding payments related to a settlement reached for the supply of electricity during the CCAA;
 - f) discussing these proceedings with TFC and its legal counsel;
 - g) assisting the Companies to prepare the weekly reporting required in connection with the DIP Facility;
 - h) assisting the Companies to prepare updated cashflow forecasts;
 - i) preparing this Report;
 - j) corresponding with TFC and its counsel and advisors regarding the Health Canada Licenses; and
 - k) considering post closing transition issues with TFC.

8.0 Conclusion and Recommendation

1. Based on the foregoing, the Monitor respectfully recommends that this Honourable Court make an order granting the relief detailed in Section 1.2 (1)(c) of this Report.

* * *

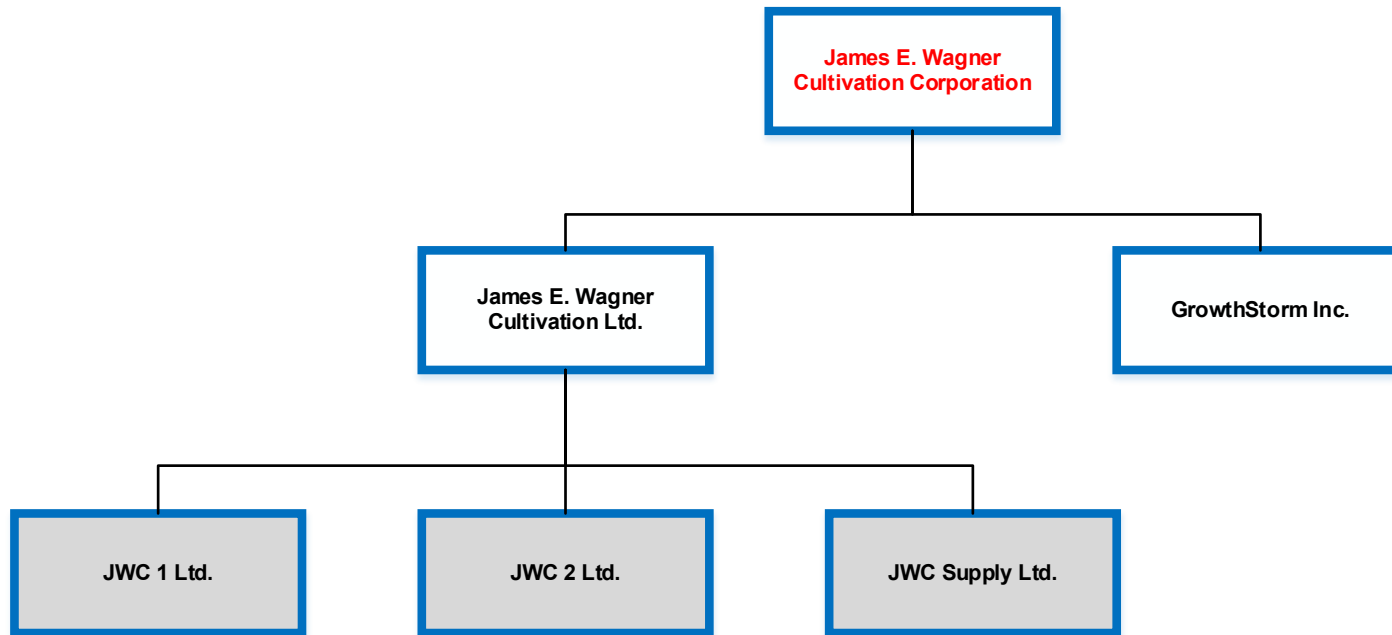
All of which is respectfully submitted,

A handwritten signature in blue ink that reads "KSV Kofman Inc." in a cursive, slightly stylized font.

**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**

Appendix “A”

James E. Wagner Cultivation Corporation Organizational Structure



Appendix “B”

James E. Wagner Cultivation Corporation and Related CCAA Applicants

Projected Statement of Cash Flow

For the Period Ending September 30, 2020

(Unaudited; \$C)

	Notes	Weeks Ending					Total
		28-Aug-20	04-Sep-20	11-Sep-20	18-Sep-20	30-Sep-20	
	1						
<i>Receipts</i>							
Collections from Cannabis Sales	2	338,035	17,250	17,250	17,250	60,802	450,587
<i>Disbursements</i>							
Operating Costs	3	11,000	299,143	77,250	299,371	56,000	742,764
Occupancy Costs	4	97,000	231,053	-	90,000	30,000	448,053
Excise Taxes	5	28,000	-	-	-	23,000	51,000
<i>Total Operating Disbursements</i>		136,000	530,196	77,250	389,371	109,000	1,241,817
<i>Net Cash Flow Before the Undernoted</i>		202,035	(512,946)	(60,000)	(372,121)	(48,198)	(791,230)
Restructuring Costs	6	-	-	115,000	-	-	115,000
DIP Interest	7	15,493	15,493	16,273	16,635	17,376	81,270
<i>Net Cash Flow</i>		186,542	(528,439)	(191,273)	(388,756)	(65,573)	(987,500)
Opening Cash Balance		181,779	368,321	-	-	-	181,779
DIP Financing	8	-	160,118	191,273	388,756	65,573	805,721
Closing Cash Balance		368,321	-	-	-	-	-
DIP Loan Balance		8,378,219	8,538,337	8,729,611	9,118,366	9,183,940	9,183,940

James E. Wagner Cultivation Corporation and Related CCAA Applicants

Notes to Projected Statement of Cash Flow

For the Period Ending September 30, 2020

(Unaudited; \$C)

Purpose and General Assumptions

1. The purpose of the projection is to present a cash flow forecast of the Companies for the period from August 22 to September 30, 2020 (the "Period") in respect of their proceedings under the Companies' Creditors Arrangement Act ("CCAA").

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.

**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.**

MANAGEMENT'S REPORT ON CASH FLOW STATEMENT
(paragraph 10(2)(b) of the CCAA)

The management 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") have developed the assumptions and prepared the attached statement of projected cash flow as of the 24th day of August, 2020 for the period August 22, 2020 to September 30, 2020 ("Cash Flow"). All such assumptions are disclosed in the notes to the Cash Flow.

The hypothetical assumptions are reasonable and consistent with the purpose of the Cash Flow as described in Note 1 to the Cash Flow, and the probable assumptions are suitably supported and consistent with the plans of the Applicants and provide a reasonable basis for the Cash Flow.

Since the Cash Flow is based on assumptions regarding future events, actual events will vary from the information presented and the variations may be material.

The Cash Flow has been prepared solely for the purpose outlined in Note 1 using a set of hypothetical and probable assumptions set out therein. Consequently, readers are cautioned that the Cash Flow may not be appropriate for other purposes.

Dated at Toronto, Ontario this 24th day of August, 2020.

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



Howard Capital LLC, Chief Restructuring Officer

Appendix “C”

**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.**

**MONITOR'S REPORT ON CASH FLOW STATEMENT
(paragraph 23(1)(b) of the CCAA)**

The attached statement of projected cash-flow 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"), as of the 24th day August, 2020, consisting of a weekly projected cash flow statement for the period August 22, 2020 to September 30, 2020 ("Cash Flow") has been prepared by the management of the Applicants for the purpose described in Note 1, using the probable and hypothetical assumptions set out in the notes to the Cash Flow.

Our review consisted of inquiries, analytical procedures and discussions related to information supplied by the management and employees of the Applicants. Since hypothetical assumptions need not be supported, our procedures with respect to them were limited to evaluating whether they were consistent with the purpose of the Cash Flow. We have also reviewed the support provided by management for the probable assumptions and the preparation and presentation of the Cash Flow.

Based on our review, nothing has come to our attention that causes us to believe that, in all material respects:

- a) the hypothetical assumptions are not consistent with the purpose of the Cash Flow;
- b) as at the date of this report, the probable assumptions developed by management are not suitably supported and consistent with the plans of the Applicants or do not provide a reasonable basis for the Cash Flow, given the hypothetical assumptions; or
- c) the Cash Flow does not reflect the probable and hypothetical assumptions.

Since the Cash Flow is based on assumptions regarding future events, actual results will vary from the information presented even if the hypothetical assumptions occur, and the variations may be material. Accordingly, we express no assurance as to whether the Cash Flow will be achieved. We express no opinion or other form of assurance with respect to the accuracy of any financial information presented in this report, or relied upon in preparing this report.

The Cash Flow has been prepared solely for the purpose described in Note 1 and readers are cautioned that it may not be appropriate for other purposes.

Dated at Toronto, Ontario this 24th day of August, 2020.

A handwritten signature in blue ink that reads "KSV Kofman Inc." in a cursive, flowing script.

**KSV KOFMAN INC.
IN ITS CAPACITY AS PROPOSED CCAA 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**

Appendix “D”

FIFTH AMENDMENT TO INTERIM FINANCING TERM SHEET

This FIFTH AMENDMENT TO INTERIM FINANCING TERM SHEET (this “**Amendment**”) is made as of August 24, 2020 between James E. Wagner Cultivation Corporation, as borrower (the “**Borrower**”), James E. Wagner Cultivation Ltd., JWC 1 Ltd., JWC 2 Ltd., JWC Supply Ltd. and Growthstorm Inc., as guarantors (collectively, the “**Guarantors**”, and together with the Borrower, the “**Obligors**”), and Trichome Financial Corp., as lender (the “**Lender**”, and together with the Obligors, the “**Parties**”).

RECITALS:

A. Reference is made to the interim financing term sheet dated as of March 31, 2020 among the Borrower, the Guarantors and the Lender, as amended by the first amendment dated as of May 4, 2020, as amended by the second amendment dated as of May 25, 2020, as amended by the third amendment dated as of June 23, 2020, as amended by the fourth amendment dated as of July 22, 2020 (as may be further amended, restated, modified, replaced or superseded from time to time, the “**Loan Agreement**”).

ARTICLE 1 INTERPRETATION

Section 1.1 Definitions. Capitalized terms not defined in this Amendment have the meanings given to them in the Loan Agreement.

Section 1.2 Headings, etc. The inclusion of headings in this Amendment is for convenience of reference only and does not affect the construction or interpretation hereof.

ARTICLE 2 AMENDMENTS TO THE LOAN AGREEMENT

Section 2.1 Amendment. Subject to the satisfaction of each of the conditions to effectiveness set forth in this Amendment, the Parties agree that the Loan Agreement is hereby amended as follows:

- 2.1.1 Section 6 (*Interim Facility, Maximum Amount*) of the Loan Agreement is hereby amended by deleting “\$8,200,000” and replacing it with “\$9,200,000”.
- 2.1.2 Section 12 (*Term and Maturity Date*) of the Loan Agreement is hereby amended by deleting “August 31, 2020” and replacing it with “September 30, 2020”.

ARTICLE 3 REPRESENTATIONS AND WARRANTIES

Section 3.1 Representations. Each Obligor represents and warrants to the Lender that, as of the date hereof (after giving effect to this Amendment):

- (a) this Amendment has been duly authorized, executed and delivered by each Obligor;
- (b) this Amendment constitutes a legal, valid and binding obligation of each Obligor, enforceable in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other applicable laws affecting creditors’ rights generally and to general principles of equity, regardless of whether considered in a proceeding in equity or at law;

- (c) the representations and warranties set forth in the Loan Agreement and the other Interim Financing Credit Documents are true and correct in all respects on and as of the date hereof as though made on and as of such date, unless stated to be made as of a specified date; and
- (d) no Default or Event of Default has occurred and is continuing.

ARTICLE 4 CONDITIONS

Section 4.1 Conditions Precedent. This Amendment shall become effective on the date upon which there has been receipt by the Lender of the following (which conditions precedent are for the sole and exclusive benefit of the Lender and may be waived by the Lender):

- 4.1.1 a counterpart of this Amendment executed by each party hereto; and
- 4.1.2 the CCAA Court shall have issued an order, in a form acceptable to the Lender and the Obligors, approving this Amendment and an extension of the CCAA Proceedings as a result of the transaction contemplated in the Asset Purchase Agreement dated as of March 31, 2020 between the Obligors, as vendors, and the Lender, as purchaser, failing to close on or before August 31, 2020.

ARTICLE 5 MISCELLANEOUS

Section 5.1 Governing Law. This Amendment shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.

Section 5.2 Benefits. This Amendment is binding upon and will inure to the benefit of the Parties and their respective permitted successors and assigns.

Section 5.3 Conflicts. If, after the date of this Amendment, any provision of this Amendment is inconsistent with any provision of the Loan Agreement, the relevant provision of this Amendment shall prevail.

Section 5.4 Interim Financing Credit Document. This Amendment constitutes an Interim Financing Credit Document for all purposes under the Loan Agreement.

Section 5.5 Counterparts. This Amendment may be executed in any number of counterparts and delivered by facsimile or PDF via email, each of which will be deemed to be an original, and all such separate counterparts shall together constitute one and the same instrument.

- signature page follows -

BORROWER:

**JAMES E. WAGNER CULTIVATION
CORPORATION**

By: PHILIP ARMSTRONG

Name:

Title:

GUARANTORS:

**JAMES E. WAGNER CULTIVATION
LTD.**

By: PHILIP ARMSTRONG

Name:

Title:

JWC 1 LTD.

By: PHILIP ARMSTRONG

Name:

Title:

JWC 2 LTD.

By: PHILIP ARMSTRONG

Name:

Title:

JWC SUPPLY LTD.

By: PHILIP ARMSTRONG

Name:

Title:

GROWTHSTORM INC.

By: PHILIP ARMSTRONG
Name:
Title:

LENDER:

TRICHOME FINANCIAL CORP.

By: 

Name: Michael Ruscetta
Title: Chief Executive Officer

TAB 3

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.)	MONDAY, THE 31 st
)	
JUSTICE HAINEY)	DAY OF AUGUST, 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.

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

MONITOR'S EXPANSION OF POWERS AND STAY EXTENSION ORDER

THIS MOTION 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 videoconference due to the COVID-19 pandemic.

ON READING the Sixth Report of KSV Kofman Inc. (the "**Monitor**") dated August 24, 2020 (the "**Sixth Report**"), and on hearing the submissions of counsel for the Applicants, the Monitor and the DIP Lender, no one appearing for any other party although duly served as appears from the affidavit of service of Aiden Nelms sworn.

SERVICE AND DEFINITIONS

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and Motion Record 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 terms not otherwise defined herein shall have the meaning ascribed to them in the Amended and Restated Initial Order dated April 9, 2020 (the "**Amended and Restated Initial Order**") and the Stalking Horse Asset Purchase Agreement dated March 31, 2020 (as amended, the "**Stalking Horse APA**"), as applicable.

STAY EXTENSION

3. **THIS COURT ORDERS** that the Stay Period be and is hereby extended until the Monitor files a certificate substantially in the form attached at Schedule "A" to the CCAA Termination Order granted by this Court of July 30, 2020 certifying that all matters to be attended to in connection with the CCAA Proceedings have been completed to the satisfaction of the Monitor.

EXPANSION OF THE MONITOR'S POWERS

4. **THIS COURT ORDERS** that upon the resignation of the Applicants' board of directors, the Monitor, without in any way limiting its powers set out in the Amended and Restated Initial Order, any other Order of this Court in the CCAA Proceedings, or under the CCAA or applicable law, is hereby authorized and empowered, but not obligated, to:

- (a) apply to this Court, on its own behalf or on behalf of the Applicants, for any orders necessary or advisable to carry out its powers and obligations under this Order or

any other Order of this Court in the CCAA Proceedings, including for advice and directions with respect to any matter;

- (b) meet and consult with any party, including former management of the Applicants and the Purchaser and its advisors with respect to the carrying out of its powers and obligations under this Order or any other Order of this Court in the CCAA Proceedings;
- (c) receive, collect and take control of all property and assets owned or hereafter owned or owing to any of the Applicants, (i) which are not Purchased Assets for and on behalf of the Applicants; and (ii) which are Purchased Assets for and on behalf of the Purchaser and to provide such property and assets to the Purchaser as applicable;
- (d) for and on behalf of the Applicants, to:
 - (i) perform, or cause the Applicants to perform, such functions or duties as the Monitor considers necessary or desirable in order to facilitate or assist the Applicants in dealing with any winding-up, dissolution, liquidation or other activities, including, without limitation,
 - (A) entering into any agreements or disclaiming any agreements; and
 - (B) taking any other action necessary or appropriate to affect a winding-up, dissolution or liquidation of any of the Applicants, including withdrawing such Applicant from qualification in any jurisdiction to do business and executing, acknowledging or filing all necessary or appropriate certificates or other documents with the appropriate governmental agency or unit on behalf of such Applicant;
 - (ii) take control of the existing bank accounts of the Applicants (the “**Bank Accounts**”) and the funds credited thereto or deposited therein; provided that, the Monitor shall endeavor to cause the Applicants to perform the obligations of the Applicants with respect to such Bank Accounts, including the payment of any fees or expenses arising in the ordinary course from the

use of the accounts. Provided always that nothing in this Order or anything done by the Monitor in furtherance of its duties as Monitor shall create any obligation or liability on the part of the Monitor in respect of any amounts owing by the Applicants on account of payment of such fees or expenses; and the financial institutions maintaining such Bank Accounts shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken in accordance with the instructions of the Monitor or as to the use or application of funds transferred, paid, collected or otherwise dealt with in accordance with such instructions and such financial institutions shall be authorized to act in accordance with and in reliance upon such instructions without any liability in respect thereof to any person. For greater certainty and except to the extent that any of the terms of the documentation applicable to the Cash Management System are inconsistent with the authorities granted to the Monitor pursuant to this sub-paragraph, nothing in this Order shall or shall be deemed to derogate from, limit, restrict or otherwise affect the protections granted pursuant to the Amended and Restated Initial Order in favour of any bank providing Cash Management Services to the Applicants; and

- (iii) exercise any shareholder, partnership, joint venture or other right or power, contractual or otherwise, which the Applicants may have, including any right or power of the Applicants set out herein in any Order of this Court in the CCAA Proceedings and in connection with any transition service agreements to which the Applicants are a party;
- (e) have access to all books and records that are the property of the Applicants in the Applicants' possession or control following the Closing Date;
- (f) cause the Applicants to file, or take such actions necessary for the preparation and filing of, on behalf of and in the name of the Applicants (i) any tax returns and (ii) the Applicants' employee-related remittances, T4 statements and records of employment for the Applicants' former employees, in either case, based solely upon the information in the Applicants' books and records and on the basis that the Monitor shall incur no liability or obligation to any person with respect to such returns, remittances, statements, records or other documentation;

- (g) cause the Applicants to claim, or claim on behalf of the Applicants, any and all rebates, refunds, and other amounts of tax (including sales taxes, capital taxes and income taxes) paid or payable by the Applicants;
- (h) provide instructions to counsel to the Applicants on behalf of the Applicants in connection with the wind-down;
- (i) have the authority to sign such agreements, instruments and other documents on behalf of each of the Applicants as the Monitor deems appropriate, whether in the Monitor's name or in the name of and on behalf of any of the Applicants (including, without limitation, tax returns and tax filings), including, in connection with the Stalking Horse APA and any transition service agreements to which the Applicants are a party;
- (j) take any and all corporate actions and actions regarding the governance of the Applicants and such actions taken by the Monitor are hereby authorized without requiring any further action or approval by the applicable entity or any former directors or officers of such entity;
- (k) on behalf of the Applicants or on its own behalf, engage or continue to engage assistants or advisors or cause the Applicants to engage or continue to engage assistants or advisors as the Monitor deems necessary or desirable to carry out the terms of this Order, the Amended and Restated Initial Order or any other Order of this Court in the CCAA Proceedings, and such persons shall be deemed to be or shall continue to be "Assistants" under the Amended and Restated Initial Order;

- (l) administer the Closing Cash Payment as the Monitor considers necessary or desirable in order to facilitate or assist the Applicants in dealing with bankruptcy, winding-up, dissolution, liquidation or other activities, whether as part of the CCAA Proceedings or otherwise, including holding the Closing Cash Payment in a segregated interest bearing account and paying from the Closing Cash Payment, in the name of and on behalf of the Applicants, the costs and fees incurred by the Applicants and the Monitor from and after the Closing Date in connection with completing the CCAA Proceedings and any bankruptcy, winding-up, dissolution, liquidation or other activities of the Applicants, including for greater certainty, the fees and disbursements of the Applicants' counsel, the Monitor and the Monitor's counsel; and
- (m) take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations,

and, in each case where the Monitor takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other persons, including the Applicants, and without interference from any person.

5. **THIS COURT ORDERS** that the Monitor is authorized to consult with the Canada Revenue Agency and/or Health Canada with respect to the disposal or destruction of any cannabis or cannabis products that form part of the Property.

PROTECTIONS OF THE MONITOR

6. **THIS COURT ORDERS** that, without limiting the provisions of the Amended and Restated Initial Order, the Monitor shall not take possession of the Property or Business and shall not be deemed to have taken possession of the Property or Business, or any part thereof.

7. **THIS COURT ORDERS** that the Monitor shall continue to have the benefit of all of the indemnities, charges, protections and priorities as set out in the CCAA, the Amended and Restated Initial Order and any other Order of this Court in the CCAA Proceedings and all such indemnities, charges, protections and priorities shall apply and extend to the Monitor in the fulfilment of its duties or the carrying out of the provisions of this Order. Nothing in this Order shall derogate from the powers of the Monitor as provided in the CCAA, the Amended and Restated Initial Order and the other Orders of this Court in the CCAA Proceedings.

8. **THIS COURT ORDERS** that Monitor shall not be liable for any employee-related liabilities of the Applicants, including any successor employer liabilities as provided for in Section 14.06(1.2) of the *Bankruptcy and Insolvency Act* (Canada), other than amounts the Monitor may specifically agree in writing to pay. Nothing in this Order shall, in and of itself, cause the Monitor to be liable for any employee related liabilities of the Applicants, including wages, severance pay, termination pay, vacation pay, and pension or benefit amounts.

9. **THIS COURT ORDERS** that the enhancement of the Monitor's powers as set forth herein, the exercise by the Monitor of any of its powers, the performance by the Monitor of any of its duties, or the use or employment by the Applicants of any person under the direction of the Monitor in connection with the Monitor's appointment and the exercise and performance of its powers and duties shall not constitute the Monitor as the employer, successor employer or related

employer of the employees of the Applicants within the meaning of the *Employment Standards Act* (Ontario) or any other provincial, federal, municipal legislation or common law governing employment or labour standards or any other statute, regulation or rule of law or equity for any purpose whatsoever or expose the Monitor to liability to any individuals arising from or relating to their employment by the Applicants. In particular, the Monitor shall not be liable to any of the employees for any wages, including severance pay, termination pay and vacation pay except for such wages as the Monitor may specifically agree to pay.

10. **THIS COURT ORDERS** that nothing in this Order and nothing done by the Monitor in carrying out its duties hereunder shall result in, or be deemed to result in, the Monitor being an employer, successor employer, responsible person, operator, officer, director, employee receiver, trustee, assignee, liquidator, administrator, legal representative, receiver-manager or agent of the Applicants, in each case, within the meaning of any statute, regulation or rule of law, or equity, for any purpose whatsoever.

11. **THIS COURT ORDERS** that, in addition to the rights and protections afforded to the Monitor under the CCAA, as an officer of this Court, or under the Amended and Restated Initial Order, the Monitor shall not incur any liability or obligation as a result of carrying out the provisions of this Order, save for gross negligence or wilful misconduct on its part, and the Monitor shall not have any liability with respect to any losses, claims, damages or liabilities, of any nature or kind, to any person from and after the date of this Order, except to the extent such losses, claims, damages or liabilities result from the gross negligence or wilful misconduct on its part.

12. **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*, R.S.C., 1985, c. E-15, 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.

COOPERATION WITH THE MONITOR

13. **THIS COURT ORDERS** that, the Purchaser and the Applicants, and their respective advisors and their current and former officers, directors, agents and representatives shall reasonably co-operate with the Monitor in the exercise of its powers pursuant to this Order or any other Order of this Court in the CCAA Proceedings, and shall provide the Monitor with such reasonable assistance as the Monitor may request from time to time to enable the Monitor to carry out and discharge its powers as set out in this Order or any other Order of this Court in the CCAA Proceedings.

APPROVAL OF THE MONITOR'S REPORTS AND ACTIVITIES

14. **THIS COURT ORDERS** that the Fourth Report of the Monitor dated June 23, 2020, the Fifth Report of the Monitor dated July 24, 2020 and the Sixth Report, and the activities of the

Monitor referred to therein be and are hereby approved; provided, however, that only the Monitor, in its personal capacity and only with respect to its own personal liability, shall be entitled to rely upon or utilize in any way such approval.

GENERAL

15. **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, or to assist the Applicants and the Monitor and their respective agents in carrying out the terms of this Order.

16. **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.

17. **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.

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

**MONITOR'S EXPANSION OF POWERS
AND STAY EXTENSION 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

TAB 4

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.)	MONDAY, THE 31 st
)	DAY OF AUGUST, 2020
JUSTICE HAINEY)	

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**")

**FIFTH DIP AMENDMENT, MONITOR'S EXPANSION OF POWERS AND STAY
EXTENSION ORDER**

THIS MOTION 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 videoconference due to the COVID-19 pandemic.

ON READING the Sixth Report of KSV Kofman Inc. (the "**Monitor**") dated August 24, 2020 (the "**Sixth Report**"), and on being advised that the secured creditors of the Applicants who are likely to be affected by the increase to the DIP Lender's Charge herein were given notice, and on hearing the submissions of counsel for the Applicants, the Monitor, and the DIP Lender, no one appearing for any other party although duly served as appears from the affidavit of service of Aiden Nelms sworn.

SERVICE AND DEFINITIONS

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and Motion Record 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 terms not otherwise defined herein shall have the meaning ascribed to them in the Amended and Restated Initial Order dated April 9, 2020 (the "**Amended and Restated Initial Order**") and the Stalking Horse Asset Purchase Agreement dated March 31, 2020 (as amended, the "**Stalking Horse APA**"), as applicable.

STAY EXTENSION

3. **THIS COURT ORDERS** that the Stay Period be and is hereby extended until and including September 30, 2020; provided that if the Closing Date occurs on or before September 30, 2020, the Stay Period shall be and is hereby extended until the Monitor files a certificate substantially in the form attached at Schedule "A" to the CCAA Termination Order granted by this Court of July 30, 2020 certifying that all matters to be attended to in connection with the CCAA Proceedings have been completed to the satisfaction of the Monitor..

DIP AMENDMENT

4. **THIS COURT ORDERS** that the execution by the Applicants of the Fifth Amendment to the Interim Financing Term Sheet dated August 24, 2020, a copy of which is attached to the Sixth Report (the "**DIP Amendment**"), is hereby authorized and approved, and the Applicants are hereby authorized and empowered to borrow up to an additional \$1,000,000 (\$9,200,000 in the aggregate) pursuant to the Commitment Letter as amended by the DIP Amendment.

5. **THIS COURT ORDERS** that:

- (a) paragraphs 34 to 39 of the Amended and Restated Initial Order shall apply to the Commitment Letter as amended by the DIP Amendment and all references to the Commitment Letter contained in the Amended and Restated Initial Order shall be deemed to be references to the Commitment Letter as amended by the DIP Amendment;
- (b) the DIP Lender's Charge shall secure all amounts owing by the Applicants to the DIP Lender under the Commitment Letter and Definitive Documents as amended by the DIP Amendment; and
- (c) for greater certainty, paragraphs 34 and 40 of the Amended and Restated Initial Order are hereby amended to replace the references to "\$8,200,000" with "\$9,200,000".

EXPANSION OF THE MONITOR'S POWERS

6. **THIS COURT ORDERS** that upon the resignation of the Applicants' board of directors, the Monitor, without in any way limiting its powers set out in the Amended and Restated Initial Order, any other Order of this Court in the CCAA Proceedings, or under the CCAA or applicable law, is hereby authorized and empowered, but not obligated, to:

- (a) apply to this Court, on its own behalf or on behalf of the Applicants, for any orders necessary or advisable to carry out its powers and obligations under this Order or any other Order of this Court in the CCAA Proceedings, including for advice and directions with respect to any matter;
- (b) meet and consult with any party, including former management of the Applicants and the Purchaser and its advisors with respect to the carrying out of its powers and

obligations under this Order or any other Order of this Court in the CCAA Proceedings;

- (c) receive, collect and take control of all property and assets owned or hereafter owned or owing to any of the Applicants, (i) which are not Purchased Assets for and on behalf of the Applicants; and (ii) which are Purchased Assets for and on behalf of the Purchaser and to provide such property and assets to the Purchaser as applicable;
- (d) for and on behalf of the Applicants, to:
 - (i) perform, or cause the Applicants to perform, such functions or duties as the Monitor considers necessary or desirable in order to facilitate or assist the Applicants in dealing with any winding-up, dissolution, liquidation or other activities, including, without limitation,
 - (A) entering into any agreements or disclaiming any agreements; and
 - (B) taking any other action necessary or appropriate to affect a winding-up, dissolution or liquidation of any of the Applicants, including withdrawing such Applicant from qualification in any jurisdiction to do business and executing, acknowledging or filing all necessary or appropriate certificates or other documents with the appropriate governmental agency or unit on behalf of such Applicant;
 - (ii) take control of the existing bank accounts of the Applicants (the “**Bank Accounts**”) and the funds credited thereto or deposited therein; provided that, the Monitor shall endeavor to cause the Applicants to perform the obligations of the Applicants with respect to such Bank Accounts, including the payment of any fees or expenses arising in the ordinary course from the use of the accounts. Provided always that nothing in this Order or anything done by the Monitor in furtherance of its duties as Monitor shall create any obligation or liability on the part of the Monitor in respect of any amounts owing by the Applicants on account of payment of such fees or expenses; and the financial institutions maintaining such Bank Accounts shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken in accordance with the instructions of the Monitor or as to the use or application of funds transferred, paid, collected or otherwise dealt with in

accordance with such instructions and such financial institutions shall be authorized to act in accordance with and in reliance upon such instructions without any liability in respect thereof to any person. For greater certainty and except to the extent that any of the terms of the documentation applicable to the Cash Management System are inconsistent with the authorities granted to the Monitor pursuant to this sub-paragraph, nothing in this Order shall or shall be deemed to derogate from, limit, restrict or otherwise affect the protections granted pursuant to the Amended and Restated Initial Order in favour of any bank providing Cash Management Services to the Applicants; and

- (iii) exercise any shareholder, partnership, joint venture or other right or power, contractual or otherwise, which the Applicants may have, including any right or power of the Applicants set out herein in any Order of this Court in the CCAA Proceedings and in connection with any transition service agreements to which the Applicants are a party;
- (e) have access to all books and records that are the property of the Applicants in the Applicants' possession or control following the Closing Date;
- (f) cause the Applicants to file, or take such actions necessary for the preparation and filing of, on behalf of and in the name of the Applicants (i) any tax returns and (ii) the Applicants' employee-related remittances, T4 statements and records of employment for the Applicants' former employees, in either case, based solely upon the information in the Applicants' books and records and on the basis that the Monitor shall incur no liability or obligation to any person with respect to such returns, remittances, statements, records or other documentation;
- (g) cause the Applicants to claim, or claim on behalf of the Applicants, any and all rebates, refunds, and other amounts of tax (including sales taxes, capital taxes and income taxes) paid or payable by the Applicants;
- (h) provide instructions to counsel to the Applicants on behalf of the Applicants in connection with the wind-down;

- (i) have the authority to sign such agreements, instruments and other documents on behalf of each of the Applicants as the Monitor deems appropriate, whether in the Monitor's name or in the name of and on behalf of any of the Applicants (including, without limitation, tax returns and tax filings), including, in connection with the Stalking Horse APA and any transition service agreements to which the Applicants are a party;
- (j) take any and all corporate actions and actions regarding the governance of the Applicants and such actions taken by the Monitor are hereby authorized without requiring any further action or approval by the applicable entity or any former directors or officers of such entity;
- (k) on behalf of the Applicants or on its own behalf, engage or continue to engage assistants or advisors or cause the Applicants to engage or continue to engage assistants or advisors as the Monitor deems necessary or desirable to carry out the terms of this Order, the Amended and Restated Initial Order or any other Order of this Court in the CCAA Proceedings, and such persons shall be deemed to be or shall continue to be "Assistants" under the Amended and Restated Initial Order;
- (l) administer the Closing Cash Payment as the Monitor considers necessary or desirable in order to facilitate or assist the Applicants in dealing with bankruptcy, winding-up, dissolution, liquidation or other activities, whether as part of the CCAA Proceedings or otherwise, including holding the Closing Cash Payment in a segregated interest bearing account and paying from the Closing Cash Payment, in the name of and on behalf of the Applicants, the costs and fees incurred by the

Applicants and the Monitor from and after the Closing Date in connection with completing the CCAA Proceedings and any bankruptcy, winding-up, dissolution, liquidation or other activities of the Applicants, including for greater certainty, the fees and disbursements of the Applicants' counsel, the Monitor and the Monitor's counsel; and

- (m) take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations,

and, in each case where the Monitor takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other persons, including the Applicants, and without interference from any person.

7. **THIS COURT ORDERS** that the Monitor is authorized to consult with the Canada Revenue Agency and/or Health Canada with respect to the disposal or destruction of any cannabis or cannabis products that form part of the Property.

PROTECTIONS OF THE MONITOR

1. **THIS COURT ORDERS** that, without limiting the provisions of the Amended and Restated Initial Order, the Monitor shall not take possession of the Property or Business and shall not be deemed to have taken possession of the Property or Business, or any part thereof.

2. **THIS COURT ORDERS** that the Monitor shall continue to have the benefit of all of the indemnities, charges, protections and priorities as set out in the CCAA, the Amended and Restated Initial Order and any other Order of this Court in the CCAA Proceedings and all such indemnities, charges, protections and priorities shall apply and extend to the Monitor in the fulfilment of its

duties or the carrying out of the provisions of this Order. Nothing in this Order shall derogate from the powers of the Monitor as provided in the CCAA, the Amended and Restated Initial Order and the other Orders of this Court in the CCAA Proceedings.

3. **THIS COURT ORDERS** that Monitor shall not be liable for any employee-related liabilities of the Applicants, including any successor employer liabilities as provided for in Section 14.06(1.2) of the *Bankruptcy and Insolvency Act* (Canada), other than amounts the Monitor may specifically agree in writing to pay. Nothing in this Order shall, in and of itself, cause the Monitor to be liable for any employee related liabilities of the Applicants, including wages, severance pay, termination pay, vacation pay, and pension or benefit amounts.

4. **THIS COURT ORDERS** that the enhancement of the Monitor's powers as set forth herein, the exercise by the Monitor of any of its powers, the performance by the Monitor of any of its duties, or the use or employment by the Applicants of any person under the direction of the Monitor in connection with the Monitor's appointment and the exercise and performance of its powers and duties shall not constitute the Monitor as the employer, successor employer or related employer of the employees of the Applicants within the meaning of the *Employment Standards Act* (Ontario) or any other provincial, federal, municipal legislation or common law governing employment or labour standards or any other statute, regulation or rule of law or equity for any purpose whatsoever or expose the Monitor to liability to any individuals arising from or relating to their employment by the Applicants. In particular, the Monitor shall not be liable to any of the employees for any wages, including severance pay, termination pay and vacation pay except for such wages as the Monitor may specifically agree to pay.

5. **THIS COURT ORDERS** that nothing in this Order and nothing done by the Monitor in carrying out its duties hereunder shall result in, or be deemed to result in, the Monitor being an employer, successor employer, responsible person, operator, officer, director, employee receiver, trustee, assignee, liquidator, administrator, legal representative, receiver-manager or agent of the Applicants, in each case, within the meaning of any statute, regulation or rule of law, or equity, for any purpose whatsoever.

6. **THIS COURT ORDERS** that, in addition to the rights and protections afforded to the Monitor under the CCAA, as an officer of this Court, or under the Amended and Restated Initial Order, the Monitor shall not incur any liability or obligation as a result of carrying out the provisions of this Order, save for gross negligence or wilful misconduct on its part, and the Monitor shall not have any liability with respect to any losses, claims, damages or liabilities, of any nature or kind, to any person from and after the date of this Order, except to the extent such losses, claims, damages or liabilities result from the gross negligence or wilful misconduct on its part.

7. **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*, R.S.C., 1985, c. E-15, 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.

COOPERATION WITH THE MONITOR

8. **THIS COURT ORDERS** that, the Purchaser and the Applicants, and their respective advisors and their current and former officers, directors, agents and representatives shall reasonably co-operate with the Monitor in the exercise of its powers pursuant to this Order or any other Order of this Court in the CCAA Proceedings, and shall provide the Monitor with such reasonable assistance as the Monitor may request from time to time to enable the Monitor to carry out and discharge its powers as set out in this Order or any other Order of this Court in the CCAA Proceedings.

APPROVAL OF THE MONITOR'S REPORTS AND ACTIVITIES

9. **THIS COURT ORDERS** that the Fourth Report of the Monitor dated June 23, 2020, the Fifth Report of the Monitor dated July 24, 2020 and the Sixth Report, and the activities of the Monitor referred to therein be and are hereby approved; provided, however, that only the Monitor, in its personal capacity and only with respect to its own personal liability, shall be entitled to rely upon or utilize in any way such approval.

GENERAL

10. **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, or to assist the Applicants and the Monitor and their respective agents in carrying out the terms of this Order.

11. **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.

12. **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.

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

**FIFTH DIP AMENDMENT, MONITOR'S
EXPANSION OF POWERS AND STAY
EXTENSION ORDER**

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MOTION RECORD

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