

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

THE HONOURABLE	)	THURSDAY, THE 17 <sup>TH</sup>
	)	
JUSTICE CONWAY	)	DAY OF NOVEMBER, 2022

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 TRICHOME FINANCIAL CORP., TRICHOME JWC ACQUISITION CORP., MYM NUTRACEUTICALS INC., TRICHOME RETAIL CORP., MYM INTERNATIONAL BRANDS INC., AND HIGHLAND GROW INC. (collectively the "**Applicants**", and each an "**Applicant**")

**AMENDED AND RESTATED INITIAL ORDER**  
**(Amending Initial Order Dated November 7, 2022)**

**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 Amended and Restated Initial Order was heard this day by judicial videoconference via Zoom.

**ON READING** the affidavits of Michael Ruscetta sworn November 7, 2022 and the Exhibits thereto (the "**Ruscetta Affidavit**") and November 11, 2022 and the Exhibits thereto, the Pre-Filing Report of KSV Restructuring Inc. ("**KSV**") as the proposed monitor dated November 7, 2022, and the First Report of KSV as the Court-appointed monitor of the Applicants (in such capacity, the "**Monitor**") dated November 14, 2022, and on being advised that the secured creditors who are likely to be affected by the charges created herein were given notice, and on hearing the submissions of counsel for the Applicants, counsel for the Monitor, counsel for Cortland Credit Lending Corporation, as agent for and on behalf of certain lenders (the "**DIP Lender**"), and such other counsel that were present, no else appearing although duly served as

appears from the affidavits of service of Joshua Foster, filed, 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 Motion and the Motion Record is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

## **APPLICATION**

2. **THIS COURT ORDERS AND DECLARES** that each of the Applicants is a company to which the CCAA applies.

## **PLAN OF ARRANGEMENT**

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

4. **THIS COURT ORDERS** that the Applicants shall remain in possession and control of their respective current and future assets, licences, 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, contractors, 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.

5. **THIS COURT ORDERS** that the Applicants shall be entitled to continue to utilize the central cash management system currently in place as described in the Ruscetta Affidavit 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: (i) 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; (ii) 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 (iii) be, in its capacity as provider of the Cash Management System, an unaffected creditor under the Plan (if any) with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.

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

- (a) all outstanding and future wages, salaries, employee and pension benefits, vacation pay and employee expenses payable prior to, 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;
- (b) with the consent of the Monitor and the DIP Lender, amounts owing for goods and services actually supplied to the Applicants prior to the date of this Order, with the Monitor considering, among other factors, whether (i) the supplier or service provider is essential to the Business and ongoing operations of the Applicants and the payment is required to ensure ongoing supply, (ii) making such payment will preserve, protect or enhance the value of the Property or the Business, (iii) making such payment is required to address regulatory concerns, and (iv) the supplier or service provider is required to continue to provide goods or services to the Applicants after the date of this Order, including pursuant to the terms of this Order;
- (c) any taxes, duties or other payments required under the Cannabis Legislation (as defined below); and

- (d) 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 and subject to the Definitive Documents (as defined below), 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 the date of 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 and tail insurance), maintenance and security services; and
- (b) payment for goods or services actually supplied to the Applicants on or 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, and (iii) 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 applicable Applicant and the landlord from time to time ("**Rent**"), for the period commencing from and including the date of this Order, monthly on the first day of each month, in advance (but not in arrears) in the amounts set out in the applicable lease or, with the consent of the Monitor and the DIP Lender, at such other time intervals and dates as may be agreed to between the applicable Applicant and landlord. 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 and in the Definitive Documents, the Applicants are hereby directed, until further Order of this Court: (i) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Applicants to any of their creditors as of this date; (ii) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of the Property; and (iii) to not grant credit or incur liabilities except in the ordinary course of the Business.

## **RESTRUCTURING**

11. **THIS COURT ORDERS** that each of the Applicants shall, subject to such requirements as are imposed by the CCAA and such covenants as may be contained in the Definitive Documents, 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 \$250,000 in any one transaction or \$1,000,000 in the aggregate;
- (b) sell inventory in the ordinary course of business consistent with past practice, or otherwise with the consent of the Monitor and the DIP Lender;

- (c) in accordance with paragraphs 12 and 13 of this Order, vacate, abandon or quit any leased premises and/or disclaim any real property lease and any ancillary agreements relating to the leased premises in accordance with Section 32 of the CCAA;
- (d) disclaim such other arrangements or agreements of any nature whatsoever with whomsoever, whether oral or written, as the applicable Applicant deems appropriate, in accordance with Section 32 of the CCAA;
- (e) terminate the employment of such of its employees or temporarily lay off such of its employees as it deems appropriate; and
- (f) pursue all avenues of refinancing of its Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing,

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

12. **THIS COURT ORDERS** that the applicable Applicant shall provide each relevant landlord with notice of such Applicant's 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 such Applicant's 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 applicable Applicant, or by further Order of this Court upon application by the applicable Applicant on at least two (2) days' notice to such landlord and any such secured creditors. If any Applicant disclaims a 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 Subsection 32(5) of the CCAA), and the disclaimer of the lease shall be without prejudice to such Applicant's claim to the fixtures in dispute.

13. **THIS COURT ORDERS** that if a notice of disclaimer is delivered pursuant to Section 32 of the CCAA, then: (i) 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 applicable Applicant and the Monitor 24 hours' prior written

notice; and (ii) 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 applicable Applicant 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 THEIR RESPECTIVE PROPERTY**

14. **THIS COURT ORDERS** that until and including February 3, 2023, 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**", and collectively, "**Proceedings**") shall be commenced or continued against or in respect of any 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 or the written consent of the Applicants and the Monitor.

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

15. **THIS COURT ORDERS** that during the Stay Period, all rights and remedies of any individual, firm, corporation, organization, governmental unit, body or agency, or any other entities (all of the foregoing, collectively being "**Persons**" and each being a "**Person**") against or in respect of any 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 any Applicant to carry on any business which such Applicant is 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**

16. **THIS COURT ORDERS** that during the Stay Period, no Person shall accelerate, suspend, discontinue, fail to honour, alter, interfere with, repudiate, rescind, terminate or cease to perform any right, renewal right, contract, agreement, lease, sublease, licence, authorization or permit in favour of or held by any of the Applicants, except with the written consent of the Applicants and the Monitor, or leave of this Court.

## **CONTINUATION OF SERVICES**

17. **THIS COURT ORDERS** that during the Stay Period, all Persons having oral or written agreements or arrangements with any of the Applicants or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, accounting services, testing and irradiation services, security 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, suspending or terminating the supply of such goods or services as may be required by any of the Applicants or exercising any other remedy provided under the agreements or arrangements, 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 the normal payment practices of the applicable Applicant or such other practices as may be agreed upon by the supplier or service provider and the applicable Applicant and the Monitor, or as may be ordered by this Court.

## **NON-DEROGATION OF RIGHTS**

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 any of the Applicants. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.



## **PROCEEDINGS AGAINST DIRECTORS AND OFFICERS**

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 Applicants, if one is filed, is sanctioned by this Court or is refused by the creditors of the Applicants or this Court.

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

20. **THIS COURT ORDERS** that the Applicants shall indemnify their directors and officers against obligations and liabilities that they may incur as a director or officer of any 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 such director's or officer's gross negligence or wilful misconduct.

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**") on the Property, which charge shall not exceed an aggregate amount of \$2,922,000, unless permitted by further Order of this Court, as security for the indemnity provided in paragraph 20 of this Order. The Directors' Charge shall have the priority set out in paragraphs 38 and 40 herein.

22. **THIS COURT ORDERS** that, notwithstanding any language in any applicable insurance policy to the contrary: (i) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge; and (ii) 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 20 of this Order.

## **APPOINTMENT OF MONITOR**

23. **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.

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' receipts and disbursements, including the management and use of any funds advanced by the DIP Lender to the Applicants under the DIP Agreement (as defined below);
- (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 bi-weekly basis, or as otherwise agreed to by the DIP Lender, 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 on a periodic basis, but not less than bi-weekly, or as otherwise agreed to by the DIP Lender;
- (e) advise the Applicants in their development of the Plan (if any) 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) monitor all payments, obligations and transfers as between the Applicants;
- (h) 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;
- (i) 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
- (j) perform such other duties as are required by this Order or by this Court from time to time.

25. **THIS COURT ORDERS** that the Monitor shall not take possession of the Property or be deemed to take possession of the 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, as amended, the *Controlled Drugs and Substances Act*, S.C. 1996, c. 19, as amended, the *Criminal Code*, R.S.C. 1985, c. C-46, as amended, the *Excise Act, 2001*, S.C. 2002, c. 22, as amended, the *Cannabis Licence Act, 2018*, S.O. 2018, c. 12, Sched. 2, as amended, the *Cannabis Control Act, 2017*, S.O. 2017, c. 26, Sched. 1, as amended, the *Ontario Cannabis Retail Corporation Act, 2017*, S.O. 2017, c. 26, Sched. 2, as amended, the *Cannabis Control Act*, S.N.S. 2018, c. 3, as amended, the *Cannabis Control and Licensing Act*, S.B.C. 2018, c. 29, as amended, the *Cannabis Distribution Act*, S.B.C. 2018, c. 28, as amended, the *Gaming, Liquor and Cannabis Act*, R.S.A. 2000, c. G-1, as amended, *The Cannabis Control (Saskatchewan) Act*, S.S. 2018, c. C-2.111, as amended, *The Liquor, Gaming and Cannabis Control Act*, C.C.S.M. c. L153, as amended, *Cannabis Regulation Act*, C.Q.L.R. c. C-5.3, as amended, the *Cannabis Control Act*, S.N.B. 2018, c. 2, as amended, *The Cannabis Retailers Licensing Act*, S.N.B. 2022, c. 5, s. 3, as amended, the *Cannabis Management Corporation Act*, S.N.B. 2018, c. 3, as amended, the *Cannabis Control Act*, R.S.P.E.I. 1988, c. C-1.2, as amended,

the *Cannabis Management Corporation Act*, R.S.P.E.I. 1988, c. C-1.3, as amended, the *Cannabis Control Act*, S.N.L. 2018, c. C-4.1, as amended, the *Cannabis Control and Regulation Act*, S.Y. 2018, c. 4, as amended, the *Cannabis Products Act*, S.N.W.T. 2018, c. 6, Sch. A, as amended, the *Cannabis Act*, S.Nu. 2018, c. 7, as amended or other such applicable federal, provincial or other legislation or regulations (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 the Property, or any part thereof within the meaning of any Cannabis Legislation or otherwise. For greater certainty, 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.

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*, the *Ontario Occupational Health and Safety Act*, the *Nova Scotia Occupational Health and Safety Act*, the *Nova Scotia Water Resources Protection Act*, or the *Nova Scotia Environment Act* and regulations thereunder (collectively, "**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.

27. **THIS COURT ORDERS** that the Monitor shall provide any creditor of the Applicants including, without limitation, 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 employees and representatives acting in such capacities shall incur any liability or obligation as a result of the Monitor's appointment or the carrying out by it of the provisions of this Order including, without limitation, under any Cannabis Legislation, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded to 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 in these proceedings shall be paid their reasonable fees and disbursements, 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 in these proceedings on a monthly basis or pursuant to such other arrangements agreed to between the Applicants and such parties.

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 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 \$750,000, unless permitted by further Order of this Court, as security for their professional fees and disbursements incurred at the standard rates and charges of the Monitor and such counsel, both before and after the making of this Order. The Administration Charge shall have the priority set out in paragraphs 38 and 40 hereof.

## **DIP FINANCING**

32. **THIS COURT ORDERS** that the Applicants are hereby authorized and empowered to obtain and borrow under a credit facility from the DIP Lender in order to finance the Applicants' working capital requirements and other general corporate purposes and capital expenditures, provided that the borrowings under such credit facility shall not exceed \$4,875,000, unless permitted by further Order of this Court.

33. **THIS COURT ORDERS** that such credit facility shall be on the terms and subject to the conditions set forth in the DIP Facility Agreement between the Applicants and the DIP Lender dated as of November 6, 2022 (as may be amended from time to time, the "**DIP Agreement**"), filed.

34. **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 DIP Agreement 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 DIP Agreement and the Definitive Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

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 exceed the amount of \$4,875,000, unless permitted by further Order of this Court, or secure an obligation that exists before this Order is made. The DIP Lender's Charge shall have the priority set out in paragraphs 38 and 40 hereof.

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 seven (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 DIP Agreement, 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 DIP Agreement, 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.

37. **THIS COURT ORDERS AND DECLARES** that, unless agreed to by the DIP Lender, the DIP Lender shall be treated as unaffected in the Plan (if any) filed by any of the Applicants under the CCAA, or any proposal filed by any of the Applicants under the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "**BIA**"), with respect to any advances made under the Definitive Documents.

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

38. **THIS COURT ORDERS** that the priorities of the Administration Charge, the Directors' Charge and the DIP Lender's Charge (collectively, the "**Charges**"), as among them, shall be as follows:

First – Administration Charge (to the maximum amount of \$750,000);

Second – Directors' Charge (to the maximum amount of \$2,922,000); and

Third – DIP Lender's Charge (to the maximum amount of \$4,875,000).

39. **THIS COURT ORDERS** that the filing, registration or perfection of 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.

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

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 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.

42. **THIS COURT ORDERS** that the Charges 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: (i) the pendency of these proceedings and the declarations of insolvency made herein; (ii) any application(s) for bankruptcy order(s) issued pursuant to the BIA, or any bankruptcy order made pursuant to such applications; (iii) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (iv) the provisions of any federal or provincial statutes; or (v) 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 any of 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 DIP Agreement or the Definitive Documents shall create or be



- deemed to constitute a breach by any of the Applicants of any Agreement to which the applicable Applicant(s) is 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 DIP Agreement, 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 DIP Agreement 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.

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 applicable Applicant's interest in such real property lease.

#### **SERVICE AND NOTICE**

44. **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; and (ii) within five (5) days after the date of this Order, (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, 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 Subsection 23(1)(a) of the CCAA and the regulations made thereunder.

45. **THIS COURT ORDERS** that the E-Service Guide of the Commercial List (the "**Guide**") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Guide (which can be found on the Commercial List website at <https://www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial/>) 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*, R.R.O. 1990, Reg. 194, as amended (the "**Rules of Civil Procedure**"). Subject to Rule 3.01(d) of

the Rules of Civil Procedure and paragraph 13 of the Guide, service of documents in accordance with the Guide will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Guide with the following URL: <https://www.ksvadvisory.com/experience/case/trichome>.

46. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Guide is not practicable, the Applicants, the Monitor, and their respective counsel are at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile or other electronic transmission to the Applicants' creditors or other interested parties at their respective addresses as last shown on the records of the Applicants and that any such service, distribution or notice shall be deemed to be received: (i) if sent by courier, on the next business day following the date of forwarding thereof; (ii) if delivered by personal delivery or facsimile or other electronic transmission, on the day so delivered; and (iii) if sent by ordinary mail, on the third business day after mailing.

47. **THIS COURT ORDERS** that the Applicants, the Monitor and each of 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 (including by e-mail) to the Applicants' creditors or other interested parties and their advisors, as applicable. For greater certainty, any such service or distribution shall be deemed to be in satisfaction of a legal or judicial obligation, and notice requirements within the meaning of Subsection 3(c) of the *Electronic Commerce Protection Regulations* (SOR/2013-221).

48. **THIS COURT ORDERS** that, except with respect to any motion to be heard pursuant to paragraph 50 of this Order, and subject to further Order of this Court in respect of urgent motions, any interested party wishing to object to the relief sought in a motion brought by the Applicants or the Monitor in these CCAA proceedings shall, subject to further Order of this Court, provide the service list in these proceedings (the "**Service List**") with responding motion materials or a written notice (including by e-mail) stating its objection to the motion and the grounds for such objection by no later than 5:00 p.m. (Eastern Time) on the date that is two (2)

days prior to the date such motion is returnable (the "**Objection Deadline**"). The Monitor shall have the ability to extend the Objection Deadline after consulting with the Applicants.

49. **THIS COURT ORDERS** that following the expiry of the Objection Deadline, counsel to the Monitor or counsel to the Applicants shall inform the Court, including, without limitation, by way of a 9:30 a.m. (Eastern Time) appointment, of the absence or the status of any objections to the applicable motion and the judge having carriage of such motion may determine: (i) whether a hearing in respect of the motion is necessary; (ii) if a hearing is necessary, the date and time of such hearing; (iii) whether such hearing will be in person, by telephone or videoconference, or by written submissions only; and (iv) the parties from whom submissions are required. In the absence of any such determination, a hearing will be held in the ordinary course on the date specified in the applicable Notice of Motion.

## **GENERAL**

50. **THIS COURT ORDERS** that any interested party that wishes to amend or vary this Order shall be entitled to appear or bring a motion before this Court on not less than seven (7) business days' notice to the Service List and any other party or parties likely to be affected by the Order sought; provided, however, that the Chargees shall be entitled to rely on this Order as granted and on the Charges and priorities set forth in paragraphs 38 and 40 hereof with respect to any fees, expenses and disbursements incurred, as applicable, until the date this Order may be amended, varied or stayed.

51. **THIS COURT ORDERS** that, notwithstanding paragraph 50 of this Order, each of the Applicants, the Monitor or the DIP Lender 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 or in the interpretation 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 any 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 are 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 the Initial Order of this Court dated November 7, 2022 is hereby amended and restated pursuant to this Order, and this Order and all of its provisions are effective as of 12:01 a.m. (Eastern Time) on the date of this Order without the need for entry or filing.

  
\_\_\_\_\_

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

Court File No.: CV-22-00689857-00CL

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT  
OF TRICHOME FINANCIAL CORP., TRICHOME JWC ACQUISITION  
CORP., MYM NUTRACEUTICALS INC., TRICHOME RETAIL CORP., MYM  
INTERNATIONAL BRANDS INC., AND HIGHLAND GROW INC.**

---

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

Proceeding commenced at Toronto

---

**AMENDED AND RESTATED INITIAL  
ORDER**

---

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

Sean Zweig (LSO# 57307I)  
Tel: (416) 777-6254  
Email: [zweigs@bennettjones.com](mailto:zweigs@bennettjones.com)

Joshua Foster (LSO# 79447K)  
Tel: (416) 777-7906  
Email: [fosterj@bennettjones.com](mailto:fosterj@bennettjones.com)

Lawyers for the Applicants