

**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 TRICHOME FINANCIAL CORP., TRICHOME
JWC ACQUISITION CORP., MYM NUTRACEUTICALS INC.,
TRICHOME RETAIL CORP., MYM INTERNATIONAL BRANDS INC.,
AND HIGHLAND GROW INC.**

Applicants

**MOTION RECORD
(Returnable November 17, 2022)**

November 11, 2022

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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 TRICHOME FINANCIAL CORP., TRICHOME JWC ACQUISITION CORP., MYM NUTRACEUTICALS INC., TRICHOME RETAIL CORP., MYM INTERNATIONAL BRANDS INC., AND HIGHLAND GROW INC.

Applicants

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TAB 1

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

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

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

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

Applicants

**NOTICE OF MOTION
(Returnable November 17, 2022)**

Trichome Financial Corp. ("**Trichome**"), Trichome JWC Acquisition Corp. ("**TJAC**"), MYM Nutraceuticals Inc. ("**MYM**"), Trichome Retail Corp. ("**TRC**"), MYM International Brands Inc. ("**MYMB**") and Highland Grow Inc. ("**Highland**", and collectively with Trichome, TJAC, MYM, TRC and MYMB, the "**Applicants**") will make a motion before the Honourable Madam Justice Conway of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") on November 17, 2022 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:

- ☐ In writing under subrule 37.12.1(1).
- ☐ In writing as an opposed motion under subrule 37.12.1(4).
- ☐ In person.
- ☐ By telephone conference.
- ☒ By video conference.

At a Zoom link to be provided by the Court in advance of the motion.

THE MOTION IS FOR:

1. An amended and restated initial order (the "**Amended and Restated Initial Order**") substantially in the form of the draft order attached at Tab 3 of the Applicants' Motion Record, *inter alia*:
 - (a) abridging the time for and validating the service of this Notice of Motion and the Motion Record and dispensing with further service thereof;
 - (b) increasing the Directors' Charge and the DIP Lender's Charge (each as defined below) to the maximum amounts of \$2,922,000 and \$4,875,000, respectively; and
 - (c) extending the Initial Stay Period (as defined below) to and including February 3, 2023.
2. Such further and other relief as counsel may request and this Court deems just.

THE GROUNDS FOR THE MOTION ARE:***Background***

3. The Applicants are comprised of Trichome and five of its directly or indirectly wholly owned subsidiaries.
4. Through their licensed operating subsidiaries, TJAC and Highland, the Applicants cultivate, process and sell premium and ultra-premium cannabis for the adult-use market in Canada (the "**Canadian Business**"). Following months of liquidity challenges and despite concerted efforts to improve their financial position, conserve costs and restructure the Canadian Business, the Applicants recently faced a dire liquidity crisis.

5. Having regard to the best interests of the Applicants and their stakeholders, and after extensive review and careful consideration of the strategic options and alternatives available, the boards of directors of the Applicants resolved to seek urgent relief under the CCAA. Accordingly, on November 7, 2022, the Applicants sought and obtained an initial order (the "**Initial Order**") under the CCAA.

6. Among other things, the Initial Order:

- (a) appointed KSV Restructuring Inc. ("**KSV**") as the Monitor of the Applicants in these CCAA proceedings (in such capacity, the "**Monitor**");
- (b) stayed, until November 17, 2022 (the "**Initial Stay Period**"), all proceedings and remedies taken or that might be taken in respect of the Applicants, the Monitor or the Applicants' directors and officers (collectively, the "**Directors and Officers**"), or affecting the Canadian Business or the Property (as defined below), except with the written consent of the Applicants and the Monitor, or with leave of the Court (the "**Stay of Proceedings**");
- (c) approved the Applicants' ability to borrow under a debtor-in-possession ("**DIP**") credit facility (the "**DIP Facility**") pursuant to a DIP facility agreement dated November 6, 2022 (the "**DIP Agreement**"), among TJAC, as borrower (the "**Borrower**"), Trichome, TRC, MYM, MYMB and Highland, as guarantors, and Cortland Credit Lending Corporation, as agent for and on behalf of the lenders party thereto (the "**DIP Lender**");
- (d) authorized the Applicants to pay, with the consent of the Monitor (based on its consideration of certain non-exhaustive factors enumerated under the Initial

Order) and the DIP Lender, amounts owing for goods and services actually supplied to the Applicants prior to the date of the Initial Order; and

- (e) granted the following charges (collectively, the "**Charges**") over the Applicants' current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate, including all proceeds thereof (collectively, the "**Property**");

- (i) the Administration Charge (as defined in the Initial Order) up to a maximum amount of \$750,000;
- (ii) the Directors' Charge up to a maximum amount of \$967,000; and
- (iii) the DIP Lender's Charge up to a maximum amount of \$1,825,000.

Extending the Stay of Proceedings

7. The Stay of Proceedings will expire at the end of the Initial Stay Period, being November 17, 2022. Under the proposed Amended and Restated Initial Order, the Applicants are seeking an extension of the Stay of Proceedings to and including February 3, 2023 (the "**Stay Period**").

8. Since the granting of the Initial Order, the Applicants have acted, and continue to act, in good faith and with due diligence to stabilize and continue the Canadian Business' ordinary course operations, apprise their stakeholders of these CCAA proceedings, and advance their restructuring efforts.

9. The proposed extension of the Stay of Proceedings will, among other things, preserve the *status quo* and afford the Applicants the breathing space and stability required to advance their

restructuring efforts, develop and seek approval of a sale and investor solicitation process and continue the Canadian Business' ordinary course operations.

10. The Applicants are forecast to have sufficient liquidity, assuming the proposed Amended and Restated Initial Order is granted, to fund their obligations and the costs of these CCAA proceedings through the end of the Stay Period.

11. No creditor is expected to suffer material prejudice as a result of the proposed extension of the Stay of Proceedings. The Monitor is supportive of the proposed extension of the Stay of Proceedings and believes that it is reasonable and appropriate in the circumstances.

Increasing the Directors' Charge

12. The Initial Order granted a charge in favour of the Directors and Officers in the maximum amount of \$967,000 as security for the obligations and liabilities that the Directors and Officers may incur during the Initial Stay Period (the "**Directors' Charge**").

13. Under the proposed Amended and Restated Initial Order, the Applicants seek to increase the Directors' Charge to the maximum amount of \$2,922,000. The increased quantum of the Directors' Charge was determined by the Applicants, in collaboration with the Monitor, and is limited to the indemnification obligations and liabilities that the Directors and Officers may face during the Stay Period.

14. The Directors' Charge, as increased, will ensure the continued involvement of the Directors and Officers in these CCAA proceedings.

15. The Monitor and the DIP Lender are supportive of the proposed increase to the Directors' Charge.

Increasing the DIP Lender's Charge

16. Pursuant to the Initial Order, the DIP Lender was granted a charge on the Property in the maximum amount of \$1,825,000 to secure all amounts advanced under the DIP Facility, together with all obligations, indebtedness, fees, costs and expenses of the Borrower under the DIP Agreement and the DIP Facility (the "**DIP Lender's Charge**").

17. The quantum of the DIP Lender's Charge under the Initial Order was limited to the amount to be funded under the DIP Facility during the Initial Stay Period, being \$1,825,000. The proposed Amended and Restated Initial Order increases the quantum of the DIP Lender's Charge to the maximum amount of \$4,875,000.

18. The proposed increase to the quantum of the DIP Lender's Charge is commensurate with the maximum borrowings available under the DIP Facility and the Applicants' anticipated funding needs during the Stay Period. Pursuant to the DIP Agreement, all of the Applicants' borrowings under the DIP Facility are to be secured by the DIP Lender's Charge.

19. The Monitor is supportive of the proposed increase to the DIP Lender's Charge.

Priority of the Charges

20. Pursuant to the Initial Order, the Charges rank in priority to all Encumbrances (as defined in the Initial Order), save for Encumbrances in favour of any persons that were not served with the Applicants' notice of application for the Initial Order.

21. The Initial Order preserved the entitlement of the Applicants and the beneficiaries of the Charges to seek priority of the Charges ahead of such Encumbrances on a subsequent motion, including the within motion.

22. Under the proposed Amended and Restated Initial Order, the Applicants now seek to have the Charges rank in priority to all Encumbrances. The persons benefiting from the Encumbrances have been given notice of the within motion and the proposed form of Amended and Restated Initial Order.

Other Grounds

23. The provisions of the CCAA and the inherent and equitable jurisdiction of the Court.

24. Rules 1.04, 1.05, 2.03, 3.02, 16, 37, and 39 of the *Rules of Civil Procedure* R.R.O. 1990, Reg. 194, as amended and section 106 of the *Courts of Justice Act*, R.S.O. 190, c. C. 43, as amended.

25. Such further and other grounds as counsel may advise and this Honourable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the Motion:

26. The Pre-Filing Report of KSV as proposed Monitor dated November 7, 2022 and the appendices thereto.

27. The First Report of the Monitor and the appendices thereto, to be filed.

28. The Affidavits of Michael Ruscetta sworn November 7, 2022 and November 11, 2022, and the exhibits attached thereto.

29. Such further and other material as counsel may advise and this Honourable Court may permit.

November 11, 2022

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BRANDS INC., AND HIGHLAND GROW INC.**

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding commenced at Toronto

NOTICE OF MOTION
(Returnable November 17, 2022)

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TAB 2

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

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

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

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JWC ACQUISITION CORP., MYM NUTRACEUTICALS INC.,
TRICHOME RETAIL CORP., MYM INTERNATIONAL BRANDS INC.,
AND HIGHLAND GROW INC.**

Applicants

**AFFIDAVIT OF MICHAEL RUSCETTA
(Sworn November 11, 2022)**

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

**ONTARIO
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Applicants

**AFFIDAVIT OF MICHAEL RUSCETTA
(Sworn November 11, 2022)**

I, Michael Ruscetta, of the city of Toronto, in the Province of Ontario, **MAKE OATH AND SAY:**

1. I am the Chief Executive Officer of Trichome Financial Corp. ("**Trichome**"). I am also a director of Trichome, Trichome JWC Acquisition Corp. ("**TJAC**"), MYM Nutraceuticals Inc. ("**MYM**"), Trichome Retail Corp. ("**TRC**"), MYM International Brands Inc. ("**MYMB**") and Highland Grow Inc. ("**Highland**", and collectively with Trichome, TJAC, MYM, TRC and MYMB, the "**Applicants**"). As such, I have personal knowledge of the Applicants and the matters to which I depose in this affidavit. Where I do not possess personal knowledge, I have stated the source of my information and, in all such cases, believe it to be true.

2. I swear this affidavit in support of a motion by the Applicants for an amended and restated initial order (the "**Amended and Initial Restated Order**") pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"), *inter alia*:

- (a) extending the Initial Stay Period (as defined below) to and including February 3, 2023; and
- (b) increasing the Directors' Charge and the DIP Lender's Charge (each as defined below) to \$2,922,000 and \$4,875,000, respectively.

3. All capitalized terms not otherwise defined herein have the meaning ascribed to them in the affidavit that I previously swore in these proceedings on November 7, 2022 (the "**First Ruscetta Affidavit**") in support of the Applicants' application for an initial order under the CCAA (the "**Initial Order**"). A copy of the First Ruscetta Affidavit (without exhibits) is attached hereto as **Exhibit "A"**.

4. All references to currency in this affidavit are in Canadian dollars unless noted otherwise. The Applicants do not waive or intend to waive any applicable privilege by any statement herein.

II. BACKGROUND AND STATUS OF THE CCAA PROCEEDINGS

5. The Applicants, with the exception of Trichome, which is a direct subsidiary, are all indirect wholly owned subsidiaries of IM Cannabis Corp. ("**IMCC**"). IMCC is a publicly listed international cannabis company operating in Israel, Canada and Germany (the "**International Company**"). IMCC is headquartered in Israel and is not an Applicant in these CCAA proceedings.

6. IMCC conducts its business operations in Canada through the Applicants. Through their licensed operating subsidiaries, TJAC and Highland, the Applicants cultivate, process and sell premium and ultra-premium cannabis for the adult-use market in Canada (the "**Canadian Business**"). Following months of liquidity challenges and despite concerted efforts to improve

their financial position, conserve costs and restructure the Canadian Business, the Applicants recently faced a dire liquidity crisis.

7. Having regard to the best interests of the Applicants and their stakeholders, and after extensive review and careful consideration of the strategic options and alternatives available, the boards of directors of the Applicants resolved to seek urgent relief under the CCAA. Accordingly, the Applicants sought, and on November 7, 2022, obtained the Initial Order. Copies of the Initial Order and the accompanying endorsement of the Honourable Madam Justice Conway dated November 7, 2022 are attached hereto as **Exhibits "B" and "C"**, respectively.

8. Among other things, the Initial Order:

- (a) appointed KSV Restructuring Inc. ("**KSV**") as the Monitor of the Applicants in these CCAA proceedings (in such capacity, the "**Monitor**");
- (b) stayed, until November 17, 2022 (the "**Initial Stay Period**"), all proceedings and remedies taken or that might be taken in respect of the Applicants, the Monitor or the Applicants' directors and officers (collectively, the "**Directors and Officers**"), or affecting the Canadian Business or the Property (as defined below), except with the written consent of the Applicants and the Monitor, or with leave of the Court (the "**Stay of Proceedings**");
- (c) approved the Applicants' ability to borrow under a debtor-in-possession ("**DIP**") credit facility (the "**DIP Facility**") pursuant to a DIP facility agreement dated November 6, 2022 (the "**DIP Agreement**"), among TJAC, as borrower (the "**Borrower**"), Trichome, TRC, MYM, MYMB and Highland, as guarantors

(together with the Borrower, the "**Credit Parties**"), and Cortland Credit Lending Corporation, as agent for and on behalf of the lenders party thereto (the "**DIP Lender**");

- (d) authorized the Applicants to pay, with the consent of the Monitor (based on its consideration of certain non-exhaustive factors enumerated under the Initial Order) and the DIP Lender, amounts owing for goods and services actually supplied to the Applicants prior to the date of the Initial Order; and
- (e) granted the following charges (collectively, the "**Charges**") over the Applicants' current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate, including all proceeds thereof (collectively, the "**Property**"):
 - (i) the Administration Charge up to a maximum amount of \$750,000;
 - (ii) the Directors' Charge up to a maximum amount of \$967,000; and
 - (iii) the DIP Lender's Charge up to a maximum amount of \$1,825,000.

9. Details regarding the Applicants' financial circumstances, liquidity crisis and need for relief under the CCAA are set out in the First Ruscetta Affidavit. Such details are not repeated herein. Additional materials filed in these CCAA proceedings are available on the Monitor's website at: <https://www.ksvadvisory.com/experience/case/trichome>.

10. Since the granting of the Initial Order, the Applicants have, with the assistance and oversight of the Monitor, acted in good faith and with due diligence to, among other things:

- (a) stabilize and continue the Canadian Business' ordinary course operations;
- (b) implement a communication plan to advise key stakeholders of these CCAA proceedings and the granting of the Initial Order;
- (c) assist the Monitor in preparing notices to creditors and other stakeholders as required under the Initial Order;
- (d) conduct two virtual town halls with the Applicants' employees regarding these CCAA proceedings and their impact on the Canadian Business;
- (e) submit an advance request certificate to the DIP Lender to borrow under the DIP Facility in accordance with the DIP Agreement;
- (f) conserve costs, including through certain employee terminations, the majority of which were provided between two and four weeks working notice;
- (g) negotiate and execute a letter agreement with a financial advisor to conduct a sale and investor solicitation process ("**SISP**"), approval for which will be sought on a subsequent motion in these CCAA proceedings; and
- (h) prepare materials in support of the within motion.

11. The Applicants now seek additional relief intended to advance the purposes of these CCAA proceedings and facilitate the Applicants' restructuring efforts.

III. THE AMENDED AND RESTATED INITIAL ORDER

12. As described in the First Ruscetta Affidavit, the relief sought under the Initial Order was circumscribed to provide the stability, breathing room and financing required to prevent the immediate cessation of the Canadian Business' going concern operations and address the Applicants' severe liquidity crisis during the Initial Stay Period. The Applicants now seek to extend and expand certain of the limited relief granted under the Initial Order pursuant to the proposed Amended and Restated Initial Order. Such relief is in the best interests of the Applicants and their stakeholders, including their employees and vendors.

13. The material relief sought under the proposed Amended and Restated Initial Order is discussed below.

B. Extending the Stay of Proceedings Beyond the Initial Stay Period

14. The Stay of Proceedings under the Initial Order will expire at the end of the Initial Stay Period, being November 17, 2022. Pursuant to the proposed Amended and Restated Initial Order, the Applicants are seeking to extend the Initial Stay Period to and including February 3, 2023 (the "**Stay Period**").

15. As described in the First Ruscetta Affidavit, the Applicants require the Stay of Proceedings to prevent enforcement action by, among others, their contractual counterparties, and disruption to the Canadian Business. The Stay of Proceedings has, and if extended will, continue to preserve the *status quo* and afford the Applicants the breathing space and stability required to advance their restructuring efforts and continue the Canadian Business' ordinary course operations. Specifically, the proposed extension to the Stay of Proceedings will, among other things:

- (a) facilitate the uninterrupted continuation of the Canadian Business' ordinary course operations, preserving value for the Applicants' stakeholders, including the Applicants' employees, suppliers and regulators;
- (b) allow the Applicants to continue to develop and seek this Court's approval of a SISP; and
- (c) permit the Applicants to attempt to negotiate an asset purchase agreement for the purposes of acting as the stalking horse bid in the SISP.

16. In connection with their application for the Initial Order, the Applicants, with the assistance of the then Proposed Monitor, conducted a cash flow analysis to determine the amount required to finance their ordinary course business operations, assuming the Initial Order was granted, over the 13-week period from November 7, 2022 to February 3, 2023 (the "**Cash Flow Forecast**"). A copy of the Cash Flow Forecast was attached as appendix "C" to the Pre-Filing Report of KSV as Proposed Monitor dated November 7, 2022. The Cash Flow Forecast demonstrates that the Applicants will have sufficient cash to support their ordinary course business operations and the costs of these CCAA proceedings throughout the Stay Period, provided the proposed Amended and Restated Initial Order is granted.

17. In light of the foregoing, I believe that the proposed extension of the Stay of Proceedings is both necessary and in the best interests of the Applicants and their stakeholders. Further, I do not believe that any creditor will be materially prejudiced by the proposed extension of the Stay of Proceedings.

18. The Monitor has advised that it is supportive of the proposed extension of the Stay of Proceedings through the Stay Period and that it believes that such extension is reasonable and appropriate in the circumstances.

C. Increasing the Directors' Charge

19. The Initial Order granted a charge in favour of the Directors and Officers in the maximum amount of \$967,000 as security for the obligations and liabilities that the Directors and Officers may incur during the Initial Stay Period (the "**Directors' Charge**"). Pursuant to the proposed Amended and Restated Initial Order, the Applicants seek to increase the Directors' Charge to the maximum amount of \$2,922,000. The increased quantum of the Directors' Charge was determined by the Applicants, in collaboration with the Monitor, and is limited to the indemnification obligations and liabilities that the Directors and Officers may face during the Stay Period.

20. The Applicants' restructuring efforts have and will continue to benefit from the continued participation and commitment of the Directors and Officers, certain of which possess the security clearances necessary to operate the Canadian Business. The continued involvement of the Directors and Officers in these CCAA proceedings is, however, conditional upon the granting of the proposed increase to the Directors' Charge given, among other things:

- (a) that the existing Insurance Policies may not provide adequate coverage against the potential liabilities that the Directors and Officers could incur during these CCAA proceedings, especially in view of the relatively small annual limits benefiting the entire International Company, the applicable deductibles and the number of beneficiaries and exclusions, exceptions and carve-outs thereunder;

- (b) the risks attending these CCAA proceedings, the regulatory environment in which the Applicants operate and the significant uncertainty surrounding coverage under the Insurance Policies; and
- (c) the Applicants are unable to acquire alternative or additional directors' and officers' liability insurance capable of adequately supplementing the Insurance Policies.

21. The Applicants believe that the proposed increase to the quantum of the Directors' Charge is reasonable in the circumstances. As discussed in the First Ruscetta Affidavit, the Directors' Charge will only serve as security in respect of the indemnification obligations and potential liabilities the Directors and Officers may face in these CCAA proceedings to the extent that they do not otherwise benefit from coverage under the Insurance Policies.

22. Each of the Monitor and DIP Lender has advised that it is supportive of the proposed Directors' Charge.

23. As noted in the First Ruscetta Affidavit, the Directors and Officers anticipate seeking a release of claims against them in their capacity as directors and officers in connection with the consummation of a value-maximizing sale or restructuring transaction and the eventual termination of these CCAA proceedings.

D. Increasing the DIP Lender's Charge

24. In connection with the commencement of these CCAA proceedings, the Credit Parties entered into the DIP Agreement with the DIP Lender to address their severe liquidity crisis. As referenced above, the Initial Order:

- (a) approved the Applicants' ability to borrow under the DIP Agreement up to the maximum amount of \$4,875,000; and
- (b) granted the DIP Lender a charge on the Property in the maximum amount of \$1,825,000 to secure all amounts advanced under the DIP Facility, together with all obligations, indebtedness, fees, costs and expenses of the Borrower under the DIP Agreement and the DIP Facility (the "**DIP Lender's Charge**").

25. The amount of the DIP Facility to be funded during the Initial Stay Period was limited to that which was necessary to ensure the continued operation of the Canadian Business prior to the return of the within motion. The quantum of the DIP Lender's Charge sought pursuant to the Initial Order was correspondingly limited to the amount to be funded during the Initial Stay Period.

26. Pursuant to the DIP Agreement, all advances under the DIP Facility are to be secured by the DIP Lender's Charge. Having regard to the Cash Flow Forecast and the Applicants' funding requirements during the Stay Period, the Applicants now seek to increase the quantum of the DIP Lender's Charge pursuant to the Amended and Restated Initial Order, from \$1,825,000 to \$4,875,000 – the maximum borrowings available under the DIP Facility. In accordance with the terms of the Initial Order and the DIP Agreement, as well as the terms of the proposed Amended and Restated Initial Order, the DIP Lender's Charge does not and will not secure obligations incurred prior to these CCAA proceedings.

27. If the DIP Lender's Charge is not increased, the Applicants and their stakeholders will not be permitted to request the additional advances under the DIP Facility necessary to maintain the Canadian Business' ordinary course operations or to fund these CCAA proceedings during the Stay

Period. Accordingly, absent the proposed increase to the DIP Lender's Charge, the Applicants' will be forced to cease their ongoing operations.

28. The Monitor has advised that it is supportive of the proposed increase to the DIP Lender's Charge and that such increase is in the best interests of the Applicants and their stakeholders in the circumstances.

E. Priority of the Charges

29. Pursuant to the Initial Order, the Charges rank in priority to all Encumbrances (as defined in the Initial Order), save for Encumbrances in favour of any persons that were not served with the Applicants' notice of application for the Initial Order. The Initial Order preserved the entitlement of the Applicants and the beneficiaries of the Charges to seek priority of the Charges ahead of such Encumbrances on a subsequent motion, including the within motion. Under the proposed Amended and Restated Initial Order, the Applicants now seek to have the Charges rank in priority to all Encumbrances.

30. I am advised by Joshua Foster of Bennett Jones LLP, counsel to the Applicants, and believe that, the persons benefiting from the Encumbrances have been given notice of the within motion and the proposed form of Amended and Restated Initial Order. Further, I am advised by Mr. Foster that such persons were provided with copies of the Applicants' application materials filed in support of the Initial Order.

IV. CONCLUSION

31. Since the granting of the Initial Order, the Applicants have acted in good faith and with due diligence to, among other things, stabilize the Canadian Business, apprise their stakeholders

of these CCAA proceedings, liaise with their vendors and advance their restructuring efforts. In that time, the Applicants have maintained their ordinary course operations. With the benefit of the relief proposed under the Amended and Restated Initial Order and the assistance of the Monitor, the Applicants will be able to continue the Canadian Business' ordinary course operations and pursue their restructuring objectives for the benefit of their stakeholders.

32. I believe that the relief sought on the within motion and described above is in the best interests of the Applicants and their stakeholders. Such relief will advance the purposes of these CCAA proceedings and is supported, in each case, by the Monitor.

33. I swear this affidavit in support of the Applicants' motion for the Amended and Restated Initial Order and for no other or improper purpose.

SWORN REMOTELY by Michael Ruscetta stated as being located in the City of Toronto, in the Province of Ontario, before me at the City of Oakville, in the Province of Ontario, on November 11th, 2022 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.


JOSHUA FOSTER

Commissioner for Taking Affidavits
(or as may be)



MICHAEL RUSCETTA

TAB A

THIS IS **EXHIBIT "A"** REFERRED TO IN THE AFFIDAVIT
OF MICHAEL RUSCETTA, SWORN BEFORE ME THIS 11TH
DAY OF NOVEMBER, 2022.

Joshua Foster
JOSHUA FOSTER
A Commissioner for taking Affidavits
(or as may be)

Court File No.: _____

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

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

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

Applicants

**AFFIDAVIT OF MICHAEL RUSCETTA
(Sworn November 7, 2022)**

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Court File No.: _____

**ONTARIO
SUPERIOR COURT OF JUSTICE
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**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.**

Applicants

**AFFIDAVIT OF MICHAEL RUSCETTA
(Sworn November 7, 2022)**

I, Michael Ruscetta, of the city of Toronto, in the Province of Ontario, **MAKE OATH
AND SAY:**

1. I am the Chief Executive Officer of Trichome Financial Corp. ("**Trichome**"). I am also a director of Trichome, Trichome JWC Acquisition Corp. ("**TJAC**"), MYM Nutraceuticals Inc. ("**MYM**"), Trichome Retail Corp. ("**TRC**"), MYM International Brands Inc. ("**MYMB**") and Highland Grow Inc. ("**Highland**", and collectively with Trichome, TJAC, MYM, TRC and MYMB, the "**Applicants**"). As such, I have personal knowledge of the Applicants and the matters to which I depose in this affidavit. Where I do not possess personal knowledge, I have stated the source of my information and, in all such cases, believe it to be true.

2. All references to currency in this affidavit are in Canadian dollars unless noted otherwise. The Applicants do not waive or intend to waive any applicable privilege by any statement herein.

I. RELIEF REQUESTED

3. I swear this affidavit in support of an application by the Applicants for an order (the "**Initial Order**") pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"), *inter alia*:

- (a) declaring that each of the Applicants is a debtor company to which the CCAA applies;
- (b) appointing KSV Restructuring Inc. ("**KSV**" or the "**Proposed Monitor**") as an officer of this Court to monitor the assets, business, and affairs of the Applicants (if appointed in such capacity, the "**Monitor**");
- (c) staying, for an initial period of not more than ten days (the "**Initial Stay Period**"), all proceedings and remedies taken or that might be taken in respect of the Applicants, the Monitor or the Applicants' directors and officers (collectively, the "**Directors and Officers**"), or affecting the Applicants' business (the "**Canadian Business**") or the Property (as defined below), except with the written consent of the Applicants and the Monitor, or with leave of the Court (the "**Stay of Proceedings**");
- (d) authorizing the Applicants to continue to utilize the Cash Management System (as defined below) and to maintain the banking arrangements in place for the Applicants;

- (e) approving the Applicants' ability to borrow under a debtor-in-possession ("**DIP**") credit facility (the "**DIP Facility**") to finance their working capital requirements and other general corporate purposes, post-filing expenses and costs;
 - (f) authorizing the Applicants to pay, with the consent of the Monitor (based on its consideration of certain non-exhaustive factors enumerated under the proposed Initial Order) and the DIP Lender (as defined below), amounts owing for goods and services actually supplied to the Applicants prior to the date of the proposed Initial Order; and
 - (g) granting the following charges (collectively, the "**Charges**") over the Applicants' current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate, including all proceeds thereof (collectively, the "**Property**"):
 - (i) the Administration Charge (as defined below) up to a maximum amount of \$750,000;
 - (ii) the Directors' Charge (as defined below) up to a maximum amount of \$967,000; and
 - (iii) the DIP Lender's Charge (as defined below) up to a maximum amount of \$1,825,000.
4. If the proposed Initial Order is granted, the Applicants intend to bring a motion on November 17, 2022 (or such other date as the Court may advise) to seek (i) an order, *inter alia*,

approving a sale and investor solicitation process ("**SISP**"), and (ii) an amended and restated Initial Order (the "**Comeback Hearing**"), among other things:

- (a) extending the Initial Stay Period; and
- (b) increasing the maximum amount of certain of the Charges.

II. OVERVIEW

5. The Applicants, with the exception of Trichome, which is a direct subsidiary, are all indirect wholly owned subsidiaries of IM Cannabis Corp. ("**IMCC**"). IMCC is a publicly traded international cannabis company operating in Israel, Canada and Germany (the "**International Company**"). IMCC is not an Applicant in these CCAA proceedings.

6. IMCC focuses on providing premium cannabis products to both adult-use recreational consumers and medical patients. Its common shares trade on the NASDAQ Capital Market and the Canadian Securities Exchange under the symbol "IMCC". While IMCC is incorporated under the *Business Corporations Act*, S.B.C. 2002, c. 57, as amended (the "**BCBCA**"), and has a registered office in Vancouver, British Columbia, it is headquartered in Israel.

7. IMCC conducts its business operations in Canada through the Applicants. Through their licensed operating subsidiaries, the Applicants cultivate, process and sell premium and ultra-premium cannabis for the adult-use market in Canada. Collectively, the Applicants employ approximately 226 people who work predominantly at the Applicants' facilities in Kitchener, Ontario, and Antigonish, Nova Scotia (collectively, the "**Licensed Facilities**", and each a "**Licensed Facility**").

8. The Applicants have successfully positioned their "WAGNERS" and "Highland Grow" brands to become market leaders in the premium and ultra-premium dried flower and pre-roll segments in Canada (particularly in Ontario). The Applicants' efforts in this regard have resulted in growth in net revenue in the previous four quarters ended June 30, 2022 and the generation of consolidated net revenues of approximately \$12.9 million for the quarter ending June 30, 2022 (inclusive of revenues generated on sales to one of IMCC's Israeli subsidiaries). Contemporaneously with increasing their net revenues, the Applicants have also reduced operating losses through a combination of operational efficiencies, operating leverage and internal restructurings.

9. The Applicants' success in advancing the Canadian Business has, however, been impaired by their persistent and worsening liquidity issues. Following months of liquidity challenges, the Applicants are now facing a severe liquidity crisis, have limited cash on hand and are generally unable to meet their obligations as they become due. While the Applicants have been able to satisfy their recent payroll obligations, they have accrued significant accounts payable, the majority of which are overdue and owed to essential suppliers. Absent additional funding, the Applicants will be forced to immediately cease their operations.

10. In light of the Applicants' financial circumstances, TJAC is no longer able to satisfy the conditions precedent to obtaining further advances under its existing asset-based loan from Cortland Credit Lending Corporation ("**Cortland**"), in its capacity as administrative agent (in such capacity, the "**Agent**"), for and on behalf of the Applicants' senior secured lenders thereunder (collectively, the "**Lenders**"). However, the Applicants have engaged in discussions with the Agent regarding a consensual restructuring of the Canadian Business, including the sale or restructuring thereof pursuant to a Court-supervised SISP and other strategic transaction

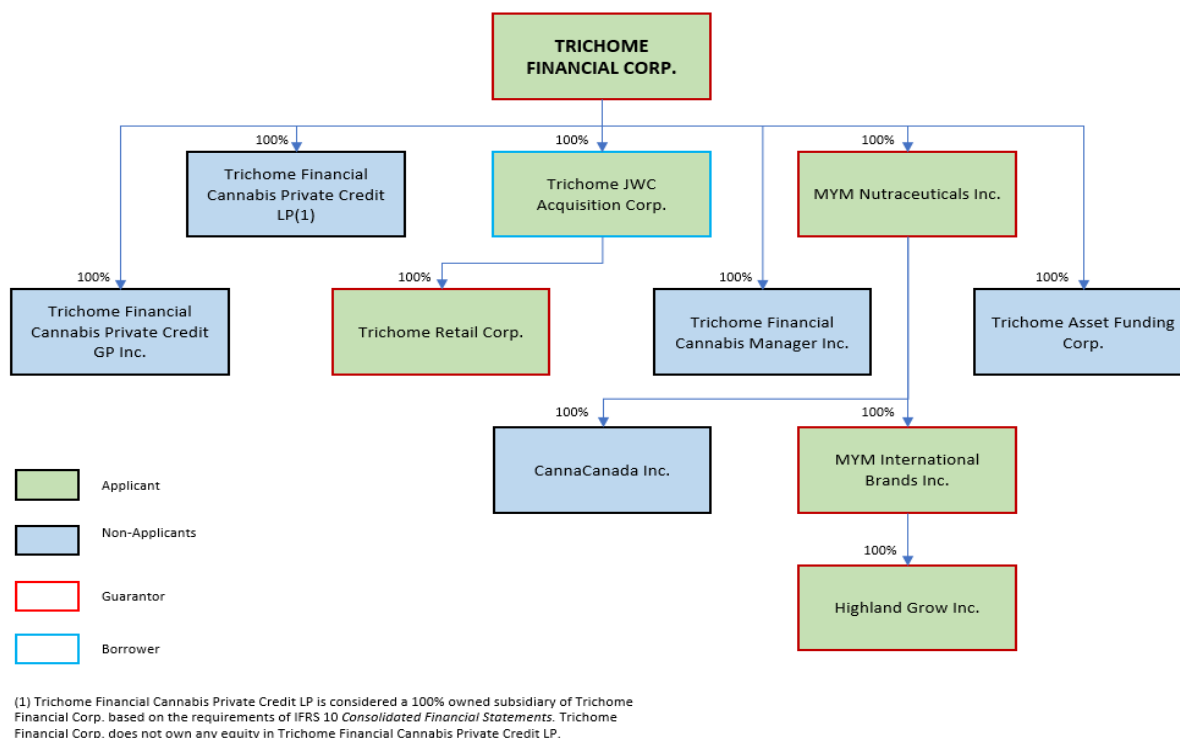
alternatives, in earnest. These discussions culminated in the proposed DIP Facility, which is in the maximum amount of \$4,875,000, and will provide the Applicants with sufficient liquidity to continue the Canadian Business in the ordinary course while the Applicants pursue their restructuring efforts.

11. These CCAA proceedings and the relief requested in the proposed Initial Order are in the best interests of the Applicants and their stakeholders, including the approximately 226 individuals employed by the Applicants. Given the Applicants' liquidity crisis, these CCAA proceedings present the only practical means of preserving and maximizing the value of the Canadian Business for the benefit of the Applicants' stakeholders.

III. CORPORATE STRUCTURE AND HISTORY

12. The Applicants in these CCAA proceedings are comprised of Trichome and five of its directly or indirectly wholly owned subsidiaries. Trichome's remaining four subsidiaries, together with one consolidated entity in which Trichome does not hold an equity interest but is required to consolidate for financial reporting purposes under the definition of control under IFRS 10 *Consolidated Financial Statements*, are not Applicants in these proceedings (collectively, the "**Non-Applicants**", and together with the Applicants, the "**Company**").

13. For clarity, below is an organizational chart with respect to the Company's corporate structure:



14. A copy of the complete organizational chart with respect to the International Company effective as of August 2022 is attached hereto as **Exhibit "A"**. The Applicants, in respect of which relief is sought in the within application, are discussed below. Corporate profile reports for each of the Applicants are collectively attached hereto as **Exhibit "B"**.

A. Trichome

15. Trichome is an Applicant in these CCAA proceedings and as referenced above, is a wholly-owned subsidiary of IMCC. Trichome is also the direct or indirect parent of each of the remaining Applicants.

16. Trichome was incorporated pursuant to the provisions of the *Business Corporations Act*, R.S.O. 1990, c. B. 16, as amended (the "**OBCA**"), on September 18, 2017 under the name "Trichome Income Fund Inc." Trichome Income Fund Inc.'s name was changed to "Trichome

Yield Corp." on September 22, 2017, and to "Trichome Financial Corp." on June 1, 2018. On October 4, 2019, Trichome amalgamated with 22 Capital Corp. and continued under the name "Trichome Financial Corp." Trichome's registered office is located at 79 Wellington Street, West, Suite 3000, Toronto, Ontario, M5K 1N2.

17. Trichome began as a specialty finance company, providing capital solutions to the Canadian cannabis market. At inception, Trichome aimed to generate optimal risk-adjusted returns through investing shareholders' capital in Canada's then burgeoning cannabis industry. To this end, Trichome focused on providing secured loans to legal participants in the Canadian cannabis industry. Additionally, Trichome entered into accounts receivable financing facilities funded through Trichome Financial Cannabis Private Credit LP ("**Trichome LP**"), which was managed by Trichome.

18. While Trichome's strategy to serve as a specialty lender provided attractive rates of return on invested capital, Trichome sought to seize the opportunity to obtain better risk-adjusted returns through acquiring and restructuring cannabis assets. This opportunity was catalyzed by certain events of default occurring under a loan agreement dated February 19, 2019 (as amended and restated, the "**JWC Loan**"), between James E. Wagner Cultivation Corporation ("**JWC**") and Trichome. As discussed in detail below, JWC's default under the JWC Loan led to Trichome's acquisition of substantially all of the assets of JWC through Trichome's designee, TJAC (the "**JWC Acquisition**"), in consensual and Court-supervised restructuring proceedings commenced by JWC and its wholly-owned subsidiaries under the CCAA in April 2020 (the "**JWC CCAA Proceedings**").

19. On March 18, 2021, IMCC acquired all of the issued and outstanding shares of Trichome (the common shares of which were previously traded on the Canadian Securities Exchange under the symbol "TFC") pursuant to a statutory plan of arrangement under the OBCA (the "**Trichome Arrangement**"). Pursuant to the Trichome Arrangement, each former holder of Trichome's shares received 0.24525 common shares of IMCC for each Trichome share held (the "**Exchange Ratio**"), and each former holder of Trichome in-the-money convertible instruments received a net payment of IMCC's common shares based on the Exchange Ratio. In connection with the closing of the Trichome Arrangement, 10,104,901 common shares of IMCC were issued to Trichome's former shareholders and former holders of in-the-money convertible instruments, and Trichome's shares were delisted from the Canadian Securities Exchange.

B. TJAC

20. TJAC is an Applicant in these CCAA proceedings and is a wholly-owned subsidiary of Trichome. TJAC is also the direct parent of TRC. TJAC was incorporated under the OBCA on May 7, 2020. Its registered office is located at 79 Wellington Street, West, Suite 3000, Toronto, Ontario, M5K 1N2.

21. TJAC was incorporated to serve as Trichome's purchaser designee under an asset purchase agreement dated March 31, 2020 (the "**Stalking Horse Agreement**"), between JWC, James E. Wagner Cultivation Ltd., JWC 1 Ltd., JWC 2 Ltd., JWC Supply Ltd., and GrowthStorm Inc., as vendors (collectively, the "**JWC Vendors**") and Trichome, as purchaser. The Stalking Horse Agreement contemplated the sale of substantially all of the JWC Vendors' assets to Trichome (or its designee) within the JWC CCAA Proceedings.

22. Prior to the JWC CCAA Proceedings, JWC was a publicly-listed company whose common shares traded on the TSXV under the symbol "JWCA" and the OTC Market Group under the symbol "JWCAF". Collectively, the JWC Vendors operated a vertically integrated premium cannabis company focused on producing cannabis using their aeroponic platform. In addition to being the JWC Vendors' senior-secured lender under the JWC Loan, Trichome also provided DIP financing to the JWC Vendors (the "**JWC DIP**") to facilitate their continued business operations while a Court-approved SISP was conducted in the JWC CCAA Proceedings (the "**JWC SISP**").

23. The Stalking Horse Agreement was ultimately declared the successful bid in the JWC SISP and Trichome, together with TJAC, completed the transaction contemplated thereunder on August 28, 2020. In accordance with the Stalking Horse Agreement, Trichome paid the JWC Vendors approximately \$17.3 million, comprised of a credit bid, the assumption of certain of the JWC Vendors' obligations and cash in consideration for substantially all of the assets of the JWC Vendors, including, among other things:

- (a) the JWC Vendors' two leased cannabis facilities in Kitchener, Ontario;
- (b) certain of the JWC Vendors' biological assets and inventory;
- (c) all intellectual property owned or licensed by the JWC Vendors and used in relation to the JWC Vendors' business; and
- (d) the benefit of all contracts or other agreements not otherwise excluded under the terms of the Stalking Horse Agreement to which the JWC Vendors were party.

C. TRC

24. TRC is an Applicant in these CCAA proceedings and is a wholly-owned subsidiary of TJAC. TRC was incorporated on April 20, 2021 under the OBCA. Its registered office is located at 150 King Street West, 214, Toronto, Ontario, M5H 1J9. Since inception, TRC has not carried on any operations.

D. MYM

25. MYM is an Applicant in these CCAA proceedings and is a wholly-owned subsidiary of Trichome. It is also the direct and indirect parent of MYMB and Highland, respectively. MYM was continued under the OBCA as of May 6, 2022. Its registered office is located at 79 Wellington Street, West, Suite 3000, Toronto, Ontario, M5K 1N2.

26. MYM was originally incorporated under the BCBCA, on July 11, 2014 as "My Marijuana Canada Inc.". On September 19, 2014, MYM's common shares were listed for trading on the Canadian Securities Exchange under the symbol "MYM". On February 24, 2016, MYM changed its name from My Marijuana Canada Inc. to "MYM Nutraceuticals Inc."

27. Through a series of transactions completed on June 30, 2020, MYM acquired the remaining total issued and outstanding capital that it did not already own of CannaCanada Inc. ("**CannaCanada**") and SublimeCulture Inc. ("**Sublime**"). As a result, CannaCanada and Sublime became wholly-owned subsidiaries of MYM. After acquiring the remaining total issued and outstanding capital of CannaCanada and Sublime, MYM completed the acquisition of Highland on July 31, 2020. Following the completion of these acquisitions, MYM operated as a Canadian

cultivator, processor and distributor of premium cannabis through its licensed operating subsidiaries, Sublime and Highland.

28. On March 31, 2021, MYM, entered into an arrangement agreement (the "**MYM Arrangement Agreement**") with IMCC and Trichome. Among other things, the MYM Arrangement Agreement contemplated IMCC's acquisition, through Trichome, of all of the issued and outstanding common shares of MYM in exchange for common shares of IMCC by way of a statutory plan of arrangement under the BCBCA (the "**MYM Arrangement**").

29. The MYM Arrangement was completed on July 9, 2021. In accordance with the terms of the MYM Arrangement Agreement, each former holder of MYM's common shares received 0.022 common shares of IMCC for each MYM common share held (rounded down to each whole share), subject to adjustment. In-the-money convertible instruments of MYM were settled for a net payment of common shares of IMCC and replacement convertible instruments of IMCC were issued in exchange for out-of-the-money convertible instruments of MYM. In connection with the MYM Arrangement, 10,073,437 common shares of IMCC were issued to MYM's former shareholders.

30. Upon completion of the MYM Arrangement, MYM became a wholly-owned subsidiary of Trichome and the common shares of MYM were delisted from the Canadian Securities Exchange.

31. On April 1, 2022, MYM sold all of the shares of Sublime it held to TJAC in consideration for an intercompany promissory note in the principal amount of \$1.04 million issued by TJAC in favour of MYM (the "**Sublime Acquisition**"). The Sublime Acquisition was a strategic initiative aimed at positioning TJAC to be more competitive in its pursuit of a retail license in Quebec.

32. On August 5, 2022, all of the issued and outstanding shares of Sublime were sold by TJAC on an "as-is, where is" basis to a group of purchasers comprised predominantly of former members of Sublime's management team. As discussed below, this sale was part of the Applicants' concerted efforts to improve its financial position, conserve costs and restructure the Canadian Business.

E. MYMB

33. MYMB is an Applicant in these CCAA proceedings and is a wholly-owned subsidiary of MYM as well as the direct parent of Highland. MYM was continued under the OBCA on May 4, 2022. Its registered office is located at 79 Wellington Street, West, Suite 3000, Toronto, Ontario, M5K 1N2.

34. MYMB was originally incorporated under the BCBCA on August 1, 2019. At inception, MYMB was intended to focus on the distribution of cannabidiol-rich consumer products. MYMB was maintained in the MYM Arrangement to preserve certain of its tax losses. MYMB does not currently carry on any operations.

F. Highland

35. Highland is an Applicant in these CCAA proceedings and is a wholly-owned subsidiary of MYMB. Highland was incorporated under the *Companies Act*, R.S.N.S. 1989, c. 81, as amended, on September 12, 2014. Its registered office is located at 302-5475 Spring Garden Road, Nova Scotia, Halifax, B3J 3T2.

36. Highland was formerly a wholly-owned subsidiary of Biome Grow Inc. ("**Biome**") until, as noted above, it was acquired by MYM on July 31, 2020 (the "**Highland Acquisition**"). The

total consideration paid for the Highland Acquisition was approximately \$12 million, consisting of, among other things:

- (a) \$1.5 million in cash;
- (b) 42,813,985 common shares in the capital of MYM at a per share price of \$0.065;
- (c) 132,551,040 class A special shares of MYMB; and
- (d) MYM's agreement to provide Biome with a loan in the principal amount of \$1 million (which could be, and was in fact, increased by the amount of certain assumed liabilities of Highland for an additional principal amount of \$1,664,141), bearing an annual interest rate of 17.5%, for a term of eighteen months, with an option to extend for an additional six months in Biome's sole discretion and upon the payment of an extension fee (the "**Biome Loan**").

G. The Non-Applicants

37. With the exception of CannaCanada, which is an indirect subsidiary, and Trichome LP, which is consolidated for financial reporting purposes as a result of the definition of control under IFRS 10 *Consolidated Financial Statements*, each of the Non-Applicants is a wholly-owned direct subsidiary of Trichome. The jurisdiction of incorporation or formation, as applicable, of each of the Non-Applicants is as follows:

- (a) *CannaCanada* – Quebec;
- (b) *Trichome Financial Cannabis GP Inc.* – Ontario;
- (c) *Trichome LP* – Ontario;

(d) *Trichome Asset Funding Corp.* – Ontario; and

(e) *Trichome Financial Cannabis Manager Inc.* – Ontario.

38. The Non-Applicants do not currently carry on any operations or have any material assets or liabilities. No relief is sought in respect of the Non-Applicants under the proposed Initial Order.

IV. BUSINESS OF THE APPLICANT

A. Cannabis Industry in Canada

39. The Canadian Business operates within Canada's rapidly evolving and highly regulated cannabis industry.

40. The *Cannabis Act*, S.C. 2018, c. 16, as amended (the "**Cannabis Act**") came into force on October 17, 2018, providing a framework for the legalization of adult-use cannabis in Canada. The Cannabis Act, and the regulations thereunder, govern the issuance of cultivation licenses for standard cultivation, industrial hemp cultivation, micro-cultivation and nursery cultivation as well as licenses for standard and micro-processing and sales licenses for medical or non-medical use. Canada's federal regulatory regime also imposes labeling and packaging restrictions for cannabis products and imposes strict requirements with respect to the possession, cultivation, production, distribution and sale of cannabis.

41. The provinces and territories of Canada are responsible for developing, implementing, maintaining and enforcing systems to oversee the distribution and sale of cannabis and cannabis accessory products within their respective province or territory. To date, all of the provinces and

territories of Canada have introduced regulatory regimes for the distribution and sale of cannabis for recreational purposes.

B. The Canadian Business

42. Trichome was created to address the lack of credit availability in the cannabis market and at inception, operated as a specialty finance company focused on providing tailored credit-based capital solutions to the Canadian and legal international cannabis industry. As the Canadian cannabis industry rationalized and consolidated, Trichome shifted its focus from specialty finance to acquiring cannabis assets at compelling valuations and financially and operationally restructuring such assets. This shift in focus was catalyzed by JWC's default under the JWC Loan, which ultimately resulted in the JWC Acquisition in the JWC CCAA Proceedings.

43. As noted previously, pursuant to the JWC Acquisition, Trichome through its wholly-owned subsidiary, TJAC, acquired substantially all of the assets of JWC and became licensed by Health Canada on August 28, 2020. Further, the JWC Acquisition resulted in Trichome, through TJAC, obtaining control of two of the Licensed Facilities, as well as certain biological assets, inventory on hand, and registered or applied for patents, trademarks and other intellectual property.

44. TJAC is now one of Trichome's two operating subsidiaries through which the Canadian Business is conducted. TJAC holds a Standard Cultivation, Standard Processing and Sale for Medical Purposes license in respect of the Trillium Facility and a Standard Cultivation and Standard Processing license in respect of the Manitou Facility (each as defined below). TJAC focuses on the cultivation, processing and sale of premium cannabis for the adult-use market in Canada under the "WAGNERS" brand. It has provincial supply agreements or similar arrangements and authorizations to sell cannabis in all provinces and territories across Canada,

except Nunavut. Its active product listings include premium dried flower, pre-rolls, infused pre-rolls and hash.

45. Highland is Trichome's second operating subsidiary. Highland became an indirect subsidiary of Trichome pursuant to the MYM Arrangement. Highland holds a single Standard Cultivation, Standard Processing and Sale for Medical Purposes license in respect of the Highland Facility (as defined below). It has traditionally focused on the cultivation, processing and sale of ultra-premium cannabis for the adult-use market in Canada under the "Highland Grow" brand. Highland's products have generally been sold to provincially-owned cannabis or third party intermediary wholesalers in the Northwest Territories, Nunavut, Yukon, British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, New Brunswick, Prince Edward Island, Nova Scotia and Newfoundland and Labrador.

46. While TJAC and Highland operate the Licensed Facilities, Trichome centrally manages all aspects of the Canadian Business from Ontario. This includes managing the Company's financial position, cash management, and strategic and other decision-making.

C. Leased Facilities and Real Property

47. TJAC leases two of the Licensed Facilities while the remaining Licensed Facility is owned by MYMB. MYM leases office space.

1. The Trillium Facility

48. TJAC leases a 15,000 sq. ft. processing and packaging facility located at 855 Trillium Drive, Unit B, Kitchener, Ontario, N2R 1J9 (the "**Trillium Facility**"). No cultivation occurs at the Trillium Facility. James E. Wagner Cultivation Ltd. entered into the lease for the Trillium Facility

on December 13, 2013 (the "**Original Trillium Lease**"). The term of the Trillium Lease originally ended on March 31, 2021, at which time James E. Wagner Cultivation Ltd. was entitled to exercise an option to renew the Trillium Lease for an additional five years, subject to certain conditions.

49. The Trillium Lease was assigned to TJAC upon the closing of the JWC Acquisition on August 28, 2020. Pursuant to a renewal agreement of lease dated November 25, 2020 (together with the Original Trillium Lease, the "**Trillium Lease**"), TJAC renewed the term of the Original Trillium Lease effective April 1, 2021, for five years until March 31, 2026.

50. As of the date of this affidavit, the monthly base rent due under the Trillium Lease is \$9,625.50, and the monthly common area expenses are approximately \$3,850. TJAC is currently in arrears with respect to the Trillium Lease having failed to pay November rent.

2. The Manitou Facility

51. TJAC leases a 345,000 sq. ft. cultivation facility located at 530 Manitou Drive, Kitchener, Ontario, N2C 1L3 (the "**Manitou Facility**"). The Manitou Facility is the Applicants' only cultivation facility. TJAC only uses approximately 115,000 sq. ft. of the Manitou Facility and as such, has been seeking to sublet the remainder.

52. James E. Wagner Cultivation Ltd. entered into an amended and restated lease agreement for the Manitou Facility on February 1, 2018 (the "**Manitou Lease**"). The Manitou Lease was assigned to TJAC upon the closing of the JWC Acquisition and has a term of fifteen years, expiring on January 31, 2033.

53. The Manitou Lease is subject to a phased rent schedule. The monthly base rent due is currently \$169,861.28, and the monthly common area maintenance and insurance expenses are

approximately \$73,803. As of the date of this affidavit, the Applicants are in arrears with respect to the Manitou Lease having failed to pay November rent. The landlord under the Manitou Lease currently holds a \$600,000 security deposit as security for the performance by TJAC of all of the terms, covenants and conditions of the Manitou Lease.

3. The Highland Facility

54. MYMB owns a 6,500 sq. ft. processing and packaging facility located at 861 Ohio East Road, Antigonish, Nova Scotia, B2G 2K8, which has an additional nineteen acres of attached farmland (the "**Highland Facility**").

55. To conserve costs in the Canadian Business the Applicants have ceased all cultivation at the Highland Facility and centralized all of the Canadian Business' cultivation at the Manitou Facility. The Highland Facility continues to be used for processing and packaging purposes.

4. Leased Office Space

56. Until recently, Trichome leased office space located at 1027 Yonge Street, Toronto, Ontario, M4W 2K9 pursuant to a sublease dated July 9, 2021 (the "**Toronto Office Lease**"). The Toronto Office Lease was on a month-to-month basis and had a monthly rent of \$10,170. The term of the Toronto Office Lease expired on October 31, 2022 and Trichome provided the requisite notice to its landlord that it did not intend to extend the Toronto Office Lease. As of the date of this affidavit, Trichome is three months in arrears in respect of the Toronto Office Lease. However, the landlord is currently holding the cumulative gross rent applicable for the first and last monthly period of the term of the lease, which amount was provided to the landlord in connection with Trichome's execution of the Toronto Office Lease.

57. MYM leases office space located at 1095 West Pender Street, Vancouver, British Columbia, V6E 2M6, pursuant to a lease dated April 13, 2018 (the "**Vancouver Office Lease**"). The Vancouver Office Lease has a term of five years, expiring on June 30, 2023 and a monthly rent of approximately \$10,568. As of the date of this affidavit, MYM is three months in arrears in respect of the Vancouver Office Lease.

D. Employees

58. The Applicants currently employ approximately 226 people and engage 12 consultants subject to consulting arrangements. Certain of the Applicants' employees are designated responsible persons or possess the security clearances required under the Cannabis Act and the regulations thereunder to operate the Canadian Business. Such persons are essential to the Canadian Business.

59. Additional details regarding the Applicants' employees and consultants, including their location and designation, is set out in the table below:

Employee Designation	Trillium Facility	Manitou Facility	Highland Facility	Overhead Corporate¹	MYM	Trichome	Total
Full Time (Hourly)	25	46	24	1	N/A	N/A	96
Full Time (Salaried)	15	41	11	54	1	8	130
Consultant	1	N/A	1	6	4	N/A	12
Total	41	87	36	61	5	8	238

60. All of the Applicants' salaried and hourly employees are paid bi-weekly. The Applicants' aggregate bi-weekly payroll obligations are approximately \$491,000 for their salaried and hourly

¹ These are individuals who are employed at one of the Leased Facilities, but their time is dedicated to more than one of the Applicants.

employees, consisting of approximately \$51,000 paid by Trichome, approximately \$380,000 paid by TJAC and approximately \$60,000 paid by MYM. As of the date of this affidavit, (i) TJAC and MYM are current on their payroll obligations, including all source deductions and (ii) Trichome is current on its bi-weekly payroll obligations but, is in arrears on certain of its consulting fees and with respect to the Withholding Tax (as defined and discussed below).

61. The Applicants' employees are non-unionized and there are no pension, retirement or deferred compensation plans for their benefit. Through their benefits provider, Green Shield Canada, the Applicants sponsor a group benefit plan offering health care, dental care, short-term disability and long-term disability benefits for all of their salaried and hourly employees.

62. The Applicants do not maintain a formal pre-determined compensation plan for their named executive officers (collectively, the "**NEOs**"). Rather, the Applicants informally evaluate the NEOs' performance when determining compensation. The NEOs compensation generally consists of a base salary, short-term cash incentives and long-term equity incentives. Certain of the NEOs are parties to employment contracts that entitle such NEOs to prescribed pay and/or benefits in the event of termination without cause.

63. As indicated above, the Applicants engage twelve consultants pursuant to consulting agreements or arrangements (collectively, the "**Consultants**"), six of which hold critical roles with the Applicants and are integral to the Canadian Business. Generally, the Consultants are paid agreed upon monthly consulting fees. As at October 28, 2022, approximately \$500,000 is owing to the Consultants.

E. Suppliers

64. The Applicants rely on vendors, third-party suppliers and service providers to conduct the Canadian Business in the ordinary course. The Applicants are not current with respect to their obligations to certain of their vendors, third-party suppliers and service providers. As of November 1, 2022, the Applicants' invoiced trade accounts payable was approximately \$7.7 million, of which approximately \$7.4 million was past due.

65. The Applicants' inability to pay their vendors, third-party suppliers and service providers in the ordinary course has negatively impacted the Canadian Business. Specifically, the Applicants have been unable to purchase cannabis from third-party suppliers and fulfill numerous hard pipeline purchase orders. This resulted in a loss of revenue of approximately \$2 million in the third quarter of 2022 as compared to the Applicants' budget for such period. The Applicants' inability to purchase cannabis from third-party suppliers and fulfill purchase orders is expected to negatively affect the Applicants' revenue in the fourth quarter of 2022 and thereafter. The Applicants' acute liquidity issues have likewise adversely impacted the Applicants' capacity to, among other things, cultivate and sell cannabis and provide outside testing services.

66. In the case of service providers, the Applicants' liquidity issues have prompted opportunistic behaviour by certain delivery services, causing the Applicants' cannabis to be held in abeyance pending immediate payment of the Applicants' arrears. In addition, Kitchener Wilmot Hydro, one of TJAC's critical utility service providers, has advised that both the Trillium Facility's and the Manitou Facility's hydro will be disconnected in light of the Applicants' existing arrears in the amount of approximately \$273,300 between November 7, 2022 and November 20, 2022. Such

a result would be catastrophic to the value of the Applicants' inventory and expected yield in the coming weeks of approximately 200kg of cannabis.

F. Excise Duty and Other Tax Obligations

67. The Applicants are liable for certain excise duties, sales taxes and withholding taxes. Each is discussed below.

1. Excise Duty

68. As of October 31, 2022, the Applicants had approximately \$847,000 in excise tax arrears net of cash security and a surety bond (the "**Excise Arrears**").

69. Cannabis producers are required to post security pursuant to the *Excise Act, 2001*, S.C. 2002, c. 22, as amended. The security provides the Canada Revenue Agency ("**CRA**") with financial assurance for any outstanding excise duty. The security can be posted in the form of a surety bond or a deposit with the CRA. Details regarding the Applicants' security posted with the CRA and the Excise Arrears are set out in the table below:

Balance/Security Type	Approximate Amount
Applicants' Accrued Excise Duty Balances Owing (arrears and accrued as at October 28, 2022)	\$2,061,000 ² (X)
Highland's Surety Bond Value Held as Security for Excise Duty	\$300,000 (Y)
TJAC's Deposits with the CRA Held as Security for Excise Duty	\$533,000 (Z)
Approximate net Excise Duty Balance Owing (net of Surety Bond and Deposits Held as Security)	\$1,228,000 (X-Y-Z)

² Of this balance, approximately \$1,250,000 is in arrears.

70. As illustrated in the Cash Flow Forecast (as defined and discussed below), the Applicants intend to pay the Excise Arrears during these CCAA proceedings.

2. Sales Taxes

71. As at the date of this affidavit, TJAC and TFC are one month in arrears on sales taxes payable in the amount of approximately \$41,000 and \$49,000, respectively. Similarly, MYM and Highland are two months in arrears on sales taxes payable in the amount of approximately \$120,000 and \$59,000, respectively, as at the date of this affidavit.

72. As indicated within the Cash Flow Forecast, TJAC, TFC and MYM intend to pay their sales tax arrears during these CCAA proceedings.

3. Withholding Taxes

73. Trichome records a liability for withholding tax in the approximate amount of \$5.3 million (excluding interest and late penalties) arising from the Trichome Arrangement (the "**Withholding Tax**"). Certain of the common shares of IMCC issued in connection with the Trichome Arrangement were withheld in accounts owned by Trichome to satisfy the Withholding Tax upon expiration of the applicable lock-up period (the "**Share Holdback**").

74. As at the date of this affidavit, the majority of the Withholding Tax remains outstanding. Further details regarding the Withholding Tax and the Share Holdback can be found in IMCC's management's discussion and analysis for the three and six months ended June 30, 2022 (the "**MD&A**") and IMCC's audited consolidated financial statements as of December 31, 2021 (the "**IMCC Audited Financial Statements**"). Copies of the MD&A and IMCC Audited Financial Statements are attached hereto as **Exhibits "C"** and **"D"**, respectively.

G. Cash Management System and Credit Cards

75. The Applicants utilize a manual cash management system to collect, manage and distribute funds used in the Canadian Business (the "**Cash Management System**"). As part of the Cash Management System, the Applicants maintain the following bank accounts:

Applicant	Accounts	Currency
Trichome	<ul style="list-style-type: none"> ▪ 2 Chequing Accounts with ATB Financial ▪ 1 Chequing Account with Alterna Savings and Credit Union Limited ▪ 1 Membership Shares Account with Alterna Savings and Credit Union Ltd. ▪ 2 Guaranteed Investment Certificates with ATB Financial (Considered restricted cash held for security against credit cards issued to the Applicants) 	(CAD)
TJAC	<ul style="list-style-type: none"> ▪ 1 Chequing Account with Alterna Savings and Credit Union Ltd. 	(CAD)
MYM	<ul style="list-style-type: none"> ▪ 3 Demand Deposit Accounts with Bank of Montreal 	(CAD)
Highland	<ul style="list-style-type: none"> ▪ 1 Demand Deposit Account with Bank of Montreal ▪ 1 Chequing Account with East Coast Credit Union Limited ▪ 1 Equity Share Account with East Coast Credit Union Limited 	(CAD)

76. Trichome also maintains two investment accounts with Cormark Securities Inc., an inactive account with Olympia Trust Company and one investment account with Cannacord Genuity Corp. With the exception of one of Trichome's investment accounts with Cormark Securities Inc., the aforementioned investment accounts are in Canadian currency. Cash received from customers in the ordinary course of business is deposited in deposit accounts held by TJAC and MYM, and is thereafter directed to Cortland. Such amounts cannot be used directly to fund the Canadian Business as they are held to be remitted to Cortland.

77. The Cash Management System gives the Applicants the ability to efficiently and accurately track and control corporate funds and ensure cash availability. The Applicants require the

continued use of the Cash Management System during these CCAA proceedings. Accordingly, the proposed Initial Order authorizes the Applicants to continue to use the Cash Management System and to maintain their existing funding and banking arrangements.

78. The Applicants also have 8 credit cards (collectively, the "**Credit Cards**"), which have been provided to certain of their employees for departmental and personal business expenses incurred on behalf of the Applicants, including paying third parties where required. The maximum combined credit limit of the Credit Cards is \$80,000. As of October 31, 2022, approximately \$37,900 is owing under the Credit Cards.

H. Intellectual Property

79. TJAC holds several registered or applied for patents, trademarks and other intellectual property, which were acquired in the JWC Acquisition. MYM likewise holds several registered or applied for patents, trademarks and other intellectual property. Certain of the aforementioned intellectual property is not material to the Canadian Business. The Applicants have not taken steps to maintain or have otherwise abandoned their non-material intellectual property.

V. FINANCIAL POSITION OF THE APPLICANT

80. As at the date of this affidavit, the Applicants have approximately \$0.3 million in cash on hand not restricted for the Agent.

81. A copy of the Company's internally prepared unaudited consolidated balance sheet for the six months ended June 30, 2022 (the "**Consolidated Balance Sheet**") is attached hereto as **Exhibit "E"**. Certain of the information contained within the Consolidated Balance Sheet is discussed below.

A. Assets

82. As at June 30, 2022, the Company had total assets with a book value of approximately \$113.8 million. The Company's assets, as at June 30, 2022, consisted of the following:

Assets	Book Value
Cash	\$2,462,934
Receivables and Recoverable Balances	\$10,764,215
Prepaid Expenses and Deposits	\$2,019,124
Inventory	\$10,767,816
Biological Assets	\$1,490,622
Other Current Assets	\$28,228
Loans Receivable	\$686,402
Intangible Assets and Goodwill	\$55,751,795
Property, Plant, and Equipment	\$15,969,485
Right of Use Assets (Leases under IFRS 16)	\$13,914,548
Total Assets	\$113,855,168

83. The realizable value of certain categories of the Company's assets would reasonably be expected to be less than the book value of such assets, and in some cases, significantly less.

B. Liabilities

84. As at June 30, 2022, the Company had total liabilities with a book value of approximately \$124.8 million. The Company's primary liabilities, as at June 30, 2022, consisted of the following:

Liabilities	Book Value
Accounts Payable and Accrued Liabilities	\$19,705,157
Deferred Revenues - Intercompany with IMCC	\$150,000
Intercompany Payable with IMCC	
IMCC Promissory Note and Accrued Interest Owing	\$10,272,767
IFRS 3 Purchase Consideration and Transaction Fees	\$63,994,172
Intercompany Balance Owing From Focus (Israeli Subsidiary) for Purchased Product	\$(99,204)
Other Intercompany Balances	\$(610,662)
Lease Liabilities	\$15,385,662
Loans Payable	\$12,107,067

Liabilities	Book Value
Deferred Tax Liability	\$3,866,079
Total Liabilities	\$124,771,038

85. As discussed in greater detail below, each of the Applicants is an Obligor under the ABL Agreement (each as defined below) and as such, has liabilities in excess of \$5 million.

C. Secured Debt

86. The Applicants' primary secured debt obligations consist of amounts owing under the ABL Agreement and the Secured Trichome Loans (as defined below). The ABL Agreement and the Secured Trichome Loans are discussed immediately below.

1. The ABL Agreement

87. On May 14, 2021, TJAC entered into a credit agreement (the "**Original ABL Agreement**") among Cortland, in its capacity as the Agent for the Lenders, TJAC, as borrower, and Trichome, as the initial guarantor. Pursuant to an instrument of assumption and joinder dated August 27, 2021 (the "**Joinder**"), Highland, MYM, MYMB and TRC (collectively, the "**Guarantors**", and together with TJAC and Trichome, the "**Obligors**") also became parties to the Original ABL Agreement. On that same date, the Original ABL Agreement was amended pursuant to an amending agreement no. 1 (and as further amended by an amending agreement no. 2 dated March 31, 2022, the "**ABL Agreement**"). A redacted copy of the ABL Agreement (inclusive of the amendments thereto) and a copy of the Joinder are attached hereto as **Exhibits "F"** and **"G"**, respectively.

88. Among other things, the ABL Agreement provides for a revolving credit facility in a maximum principal amount not to exceed \$15 million (the "**Total Commitment**"). Pursuant to the ABL Agreement, the proceeds of the revolving credit facility are to be used to finance the Obligors'

working capital requirements and other ordinary course payables. Amounts advanced under the ABL Agreement bear interest at a rate per annum equal to the greater of (i) 9.75% and (ii) the TD Prime Rate, plus 7.30%, due and payable in arrears in cash on the last day of each calendar month. In consideration for making the revolving credit facility available to TJAC, the Agent is entitled to, among other fees and reimbursements, a utilization fee of 2.4% per annum, calculated daily and payable on the last business day of each month on the unused portion of the Total Commitment.

89. The total advances under the revolving credit facility cannot exceed, at any given time, the lesser of (i) the Borrowing Base Amount (as defined in the ABL Agreement) and (ii) the Total Commitment (the "**Borrowing Limit**"). TJAC must make written requests for advances under the revolving credit facility that are attended by, among other things, a borrowing base certificate evidencing that the loan advance request does not exceed the Borrowing Limit.

90. The initial term of the ABL Agreement ends on May 14, 2023 (the "**Initial Term**"). The Initial Term may be extended for up to two additional periods of 180 days each with the mutual agreement of TJAC and the Agent no later than thirty days prior to the end of the Initial Term, subject to the continued satisfactory performance of the Obligor's obligations under the ABL Agreement and other transaction documents.

91. As of October 28, 2022, approximately \$4.73 million of principal is owing to the Agent under the ABL Agreement. As of November 1, 2022, there was an additional \$79,000 of interest accrued month-to-date.

92. As general and continuing security for the payment and performance of all of TJAC's present and future indebtedness and other obligations to the Agent and the Lenders under the ABL

Agreement (collectively, the "**Cortland Debt**"), the following security (collectively, the "**Security**") was provided to the Agent:

- (a) a general security agreement dated May 14, 2021, pursuant to which Trichome and TJAC granted a continuing security interest in favour of the Agent, for the benefit of the Agent and the Lenders, in, among other things, all of their present and after acquired personal property;
- (b) a supplement to general security agreement dated August 27, 2021, pursuant to which each of the additional Guarantors, among other things, granted a security interest in favour of the Agent, for the benefit of the Agent and the Lenders, in certain pledged equity interests held by such Guarantor (the "**Pledged Securities**"), all cash, instruments and other property received, receivable or otherwise distributed in exchange for any and all such Pledged Securities and all other collateral relating to the Pledged Securities;
- (c) a guarantee dated May 14, 2021 (the "**Initial Guarantee**"), pursuant to which Trichome, among other things, guaranteed payment to the Agent and the Lenders of (i) all present and future, direct and indirect, contingent and absolute obligations and liabilities of TJAC to the Agent and the Lenders arising under or in connection with the ABL Agreement and the Security Agreements (as defined in the ABL Agreement) and (ii) all other obligations of TJAC to the Agent and the Lenders that Trichome may from time to time acknowledge in writing are guaranteed under the Initial Guarantee (collectively, the "**Guaranteed Obligations**");

- (d) a supplement to guarantee dated August 27, 2021, pursuant to which each of the additional Guarantors, among other things, unconditionally and irrevocably guaranteed the prompt payment and performance to the Agent of all of the Guaranteed Obligations;
- (e) a Canadian patent security agreement dated May 14, 2021, pursuant to which TJAC granted a security interest in favour of the Agent in all of its right, title and interest in, to and under all (i) of its Canadian patents and all renewals and extensions thereof and (ii) all income, royalties, proceeds and liabilities at any time due or payable or asserted under and with respect any of the foregoing;
- (f) a Canadian trademark security agreement dated May 14, 2021, pursuant to which TJAC granted a security interest in favour of the Agent in all of its right, title and interest in, to and under all (i) of its Canadian trademarks and all renewals and extensions thereof, (ii) all goodwill of the business conducted with or symbolized by such trademarks, and (iii) all income, royalties, proceeds and liabilities at any time due or payable or asserted under and with respect any of the foregoing;
- (g) a Canadian trademark security agreement dated August 27, 2021, pursuant to which MYM granted a security interest in favour of the Agent in all of its right, title and interest in, to and under all (i) of its Canadian trademarks and all renewals and extensions thereof, (ii) all goodwill of the business conducted with or symbolized by such trademarks, and (iii) all income, royalties, proceeds and liabilities at any time due or payable or asserted under and with respect any of the foregoing;

- (h) a transfer and assignment of insurance dated May 14, 2021, pursuant to which Trichome and TJAC transferred and assigned to the Agent all sums of money that may become payable to Trichome and/or TJAC by any insurance policies maintained by them; and
- (i) a transfer and assignment of insurance dated August 27, 2021, pursuant to which each of the Guarantors transferred and assigned to the Agent all sums of money that may become payable to such Guarantor by any insurance policies maintained by it.

93. Copies of each of the foregoing elements comprising the Security are attached hereto as **Exhibits "H" - "P"**.

94. In connection with the ABL Agreement, IMCC entered into a postponement agreement dated August 27, 2021 (the "**Postponement Agreement**"). Pursuant to the Postponement Agreement, IMCC agreed to defer and postpone the Obligors' payment of all present and future indebtedness and other obligations to IMCC (collectively, the "**IMCC Debt**") to the Cortland Debt, except as otherwise permitted under the ABL Agreement or by the Agent. As security for the Cortland Debt, IMCC assigned and transferred the IMCC Debt to the Agent pursuant to the Postponement Agreement. A copy of the Postponement Agreement is attached hereto as **Exhibit "Q"**.

95. TJAC is currently in breach of certain terms of the ABL Agreement. Namely TJAC has failed to:

- (a) maintain a Debt Service Coverage Ratio (as defined in the ABL Agreement) of not less than 2:1 (the "**Debt Service Covenant**");

- (b) promptly, and in any event within three business days of providing notice of a Borrowing Base Shortfall (as defined in the ABL Agreement), repay the outstanding principal amount of all loan advances under the ABL Agreement by an amount required to reduce the aggregate principal amount thereof to an amount less than or equal to the Borrowing Limit (the "**Paydown Covenant Breach**"); and
- (c) comply with certain other representations, warranties and covenants under the ABL Agreement (collectively, the "**Additional Breaches**"), including, among others, TJAC's solvency and tax remittance.

96. Pursuant to a limited waiver agreement dated August 3, 2022 between the Agent and the Obligors (the "**August Limited Waiver**"), the Agent, on behalf of the Lenders, waived the Debt Service Covenant breach until September 30, 2022. On September 26, 2022 the Agent and the Obligors executed an additional limited waiver agreement (the "**September Limited Waiver**") pursuant to which the Agent, on behalf of the Lenders, waived the Paydown Covenant Breach and any Event of Default (as defined in the ABL Agreement) arising therefrom on the terms of the Limited Waiver. The September Limited Waiver does not provide a similar waiver of the Additional Breaches, including TJAC's continued breach of the Debt Service Covenant, nor any Event of Default resulting therefrom. Copies of the August Limited Wavier and the September Limited Waiver are collectively attached hereto as **Exhibit "R"**.

2. The Secured Trichome Loans

97. Upon closing the JWC Acquisition, approximately \$7 million of the then outstanding JWC DIP was assumed in the form of a secured convertible debenture dated August 28, 2020 issued by TJAC in favour of Trichome, as amended by a first amendment to secured convertible debenture

dated July 20, 2022 (as amended, the "**Secured Debenture**"). The balance of the JWC DIP, plus TJAC's anticipated future funding requirements were funded by way of a secured grid promissory note dated August 28, 2020 issued by TJAC in favour of Trichome (the "**Secured Promissory Note**", and together with the Secured Debenture, the "**Secured Trichome Loans**"). Copies of the Secured Promissory Note and the Secured Debenture are attached hereto as **Exhibits "S"** and **"T"**, respectively.

98. All advances under both the Secured Promissory Note and the Secured Debenture bear interest at a rate of 1% per annum, payable quarterly within ten business days of the first day of January, March, June and September each year. The Secured Promissory Note matured on August 28, 2022 and TJAC's indebtedness thereunder remains outstanding. The Secured Debenture matures on August 28, 2024 or such earlier date as the principal amount advanced thereunder may become due and payable.

99. As of September 30, 2022, approximately \$20.6 million (inclusive of accrued interest) and approximately \$7.1 million (inclusive of accrued interest) are owing to Trichome under the Secured Promissory Note and the Secured Debenture, respectively.

100. The following security was granted pursuant to the terms of the Secured Trichome Loans:

- (a) as continuing security for the payment of all amounts owing under the Secured Promissory Note, TJAC granted a security interest in favour of Trichome in, among other things, all of its present and future undertaking and all personal property in which TJAC at any time has any right, title or interest but, excluding any consumer goods; and

- (b) as continuing security for the payment of all amounts owing under the Secured Debenture, TJAC granted a security interest in favour of Trichome in, among other things, all of its present and future undertaking and all personal property in which TJAC at any time has any right, title or interest but, excluding any consumer goods.

101. Although the ABL Agreement contemplates the provision of a postponement, subordination and standstill agreement from Trichome in respect of any debt owed to it by TJAC, no such stand-alone agreement was executed. However, pursuant to the Initial Guarantee payment of all present and future obligations of TJAC to Trichome are to be postponed to the payment of the Cortland Debt. Further, all security interests held by Trichome for the payment of all present and future obligations of TJAC are to be subordinated to all present and future security interests held by the Agent in respect of the Guaranteed Obligations. Under the Initial Guarantee, this subordination is effective notwithstanding the order of execution, delivery, registration or perfection of such security interests, the order of advancement of funds, the order of crystallization of security, or any other matter that may affect the relative priority of such security interests.

3. Other Secured Obligations

102. Copies of the results of searches conducted against the Applicants under the *Personal Property Security Act*, R.S.O. 1990, c. P.10, as amended (the "**Ontario PPSA**") effective September 18, 2022 and September 19, 2022, as applicable, are collectively attached hereto as hereto as **Exhibit "U"**. A copy of the results of a search conducted against Highland under the *Personal Property Security Act*, 1995-96, c. 13, s. 1, as amended (the "**Nova Scotia PPSA**") effective September 21, 2022, is attached hereto as hereto as **Exhibit "V"**.

103. The Ontario PPSA and the Nova Scotia PPSA search results disclose registrations against each of the Applicants in favour of the Agent. The Ontario PPSA search results also disclose (i) two registrations against TJAC in favour of Trichome in connection with the Secured Trichome Loans and (ii) one registration against TJAC in favour of Kempenfelt, a Division of Bennington Financial Corp., in connection with a forklift leased by TJAC.

D. Unsecured Debt

1. The Applicants' Indebtedness to IMCC

104. The Applicants have previously engaged in intercompany transactions with IMCC in the ordinary course of their business, giving rise to intercompany receivables and payables. In addition to its previous ordinary course intercompany transactions, IMCC has provided an unsecured loan to Trichome pursuant to a grid promissory note dated June 28, 2021 (the "**IMCC Promissory Note**"). A copy of the IMCC Promissory Note is attached hereto as **Exhibit "W"**.

105. The aggregate outstanding principal amount of all advances to Trichome under the IMCC Promissory Note bears interest at 5% per annum until such principal amount is repaid in full, accruing on a monthly basis and payable both before and after maturity, default or judgment. The principal amount advanced under the IMCC Promissory Note, together with all unpaid interest, was due and payable in full on June 28, 2022.

106. As of September 30, 2022, approximately \$12.5 million (inclusive of accrued interest) was owing by Trichome to IMCC under the IMCC Promissory Note.

2. Other Intercompany Indebtedness

107. In the ordinary course of business, the Applicants frequently engage in intercompany transactions resulting in the creation of intercompany receivables and payables. Generally, these intercompany balances are eliminated on the consolidation of the Applicants' financial results. TJAC and Highland, as the Applicants' operating subsidiaries, also pay management fees to certain of the other Applicants in the ordinary course of business.

108. In addition to the aforementioned ordinary course intercompany transactions, Trichome has provided unsecured and interest free financing to MYM. Principally, this financing has funded operational costs for Highland and prior to its sale, Sublime. As at September 30, 2022, approximately \$3.9 million is owing to Trichome by MYM.

109. As referenced above, in connection with the Sublime Acquisition, TJAC issued an unsecured and interest free promissory note dated April 1, 2022 in the principal amount of \$1.04 million in favour of MYM (the "**TJAC Promissory Note**"). Pursuant to its terms, TJAC is permitted to repay the principal amount owing under the TJAC Promissory Note at any time or from time to time. A copy of the TJAC Promissory Note is attached hereto as **Exhibit "X"**.

3. Employee Liabilities

110. As discussed above, the Applicants' bi-weekly payroll obligations are approximately \$491,000 for their salaried and hourly employees. While the Applicants are current with respect to their payment of payroll and the remittance of employee source deductions, save for certain consulting fees and the Withholding Tax, their ability to meet their future payroll obligations,

including on November 8, 2022, is contingent on the granting of the relief sought in the proposed Initial Order.

4. Other Noteworthy Unsecured Claims

111. In addition to the aforementioned unsecured obligations, the Applicants have the following noteworthy claims:

- (a) *Accounts Payable* – As noted above, as of November 1, 2022, the Applicants' invoiced trade accounts payable balance to vendors, third party suppliers and service providers was approximately \$7.7 million, of which approximately \$7.4 million is overdue.
- (b) *Excise, Sales and Withholding Taxes* – As previously discussed, as of October 31, 2022, the Applicants had approximately \$847,000 in excise tax arrears (net of deposits and a surety bond), approximately \$268,000 in sales tax arrears, and approximately \$5.3 million in Withholding Tax.
- (c) *Outstanding Professional Fees* – The Applicants are currently indebted to certain of their professional advisors retained prior to, and for purposes other than, these CCAA proceedings.

5. Litigation Matters

112. On March 12, 2021, MYM filed a notice of civil claim in the Supreme Court of British Columbia against Robert Gietl in respect of a loan advanced to Mr. Gietl. A trial of the action was

initially scheduled for October, 2022, but has been adjourned until December 4, 2023. As at the date of this affidavit, this action remains unresolved.

113. On May 3, 2022, MYM filed an application in the Ontario Superior Court of Justice (Commercial List) for the appointment of a receiver and manager over the assets, undertaking and properties of Biome and its subsidiary, Cultivator, in connection with a default under the Biome Loan (the "**Receivership Application**"). On September 9, 2022, MYM entered into a settlement term sheet (the "**Biome Settlement**") with Biome and Cultivator pursuant to which, among other things, the maturity date of the Biome Loan was extended to December 9, 2023. On September 12, 2022, the Honourable Madam Justice Conway issued an endorsement (the "**Biome Endorsement**") adjourning the Receivership Application pending implementation of the Biome Settlement. As at the date of this affidavit, the balance of the Biome Loan, inclusive of accrued interest, is approximately \$2.9 million. A copy of the Biome Endorsement is attached hereto as **Exhibit "Y"**.

VI. EVENTS PRECEDING THESE CCAA PROCEEDINGS

114. Since the JWC Acquisition, the Applicants have materially grown the Canadian Business and positioned their "WAGNERS" and "Highland Grow" brands to become market leaders in the premium and ultra-premium dried flower and pre-roll segments in Canada. Notwithstanding the growth of the Canadian Business and the Applicants' increase in net revenue over the previous four quarters ended June 30, 2022, and reduced operating losses, the Applicants have been unable to resolve their pernicious liquidity issues. Over the last several months, the Applicants have made numerous concerted efforts to improve their financial position, conserve costs and restructure the

Canadian Business, in consultation and with the approval of IMCC. These efforts have included, among other things:

- (a) ceasing all cultivation at the Highland Facility and centralizing the Canadian Business' cultivation at the Trillium Facility and the Manitou Facility;
- (b) maximizing efficiencies in the Applicants' workforce by (i) reducing headcount and (ii) terminating certain employees needed on a part-time basis and moving such employees to consulting contracts, with a view to reducing the Applicants' aggregate payroll expenses by approximately \$2 million per annum;
- (c) selling all of the issued and outstanding shares of Sublime, which was consistently losing money, on an "as-is, where is" basis to a group of purchasers comprised predominantly of former members of Sublime's management team;
- (d) with the assistance of Cormark Securities Ltd., the advisor to IMCC's special committee, conducting an out-of-Court sale process to solicit interest from potential qualified bidders in the Applicants and/or their assets;
- (e) engaging in detailed discussions with potential qualified bidders contacted by the Applicants or Cormark Securities Ltd. regarding a purchase of the Canadian Business, in whole or in part; and
- (f) coordinating with the Agent to ensure that the Applicants would have access to capital under the ABL Agreement.

115. Despite the Applicants' best efforts, their liquidity situation has not materially improved. What is more, the Applicants have been unable to obtain alternative financing or sufficient funding to address their liquidity challenges.

116. With a view to avoiding the devastating effects of a bankruptcy or liquidation, and having regard to the best interests of the Applicants and their stakeholders, the boards of directors of the Applicants engaged advisors to discuss contingency plans should the Applicants be unable to obtain additional funding or consummate a timely out-of-Court sale transaction. That eventuality has now materialized, necessitating urgent creditor protection and additional relief under the CCAA.

VII. RELIEF SOUGHT

117. As set out above, the Applicants are currently facing a severe liquidity crisis and are unable to satisfy their liabilities as they generally become due. Without immediate relief, including additional financing and a stay of enforcement actions, the Applicants will inevitably be forced to cease their going concern operations and liquidate their assets. After extensive review and careful consideration of the strategic options and alternatives available, the boards of directors of the Applicants, with the assistance of their advisors, determined that it is in the best interests of the Applicants and their stakeholders to seek urgent relief under the CCAA.

118. The material relief sought under the proposed Initial Order is discussed below.

B. Stay of Proceedings

119. The Applicants urgently require a stay of proceedings to prevent enforcement action by, among others, their contractual counterparties and disruption to the Canadian Business.

Accordingly, the proposed Initial Order provides the Stay of Proceedings for the Initial Stay Period of not more than ten days. The proposed Stay of Proceedings extends to each of the Monitor, the Applicants, the Canadian Business, the Property and the Directors and Officers.

120. The proposed Stay of Proceedings will preserve the *status quo* and afford the Applicants the breathing space and stability required to advance their restructuring efforts, including developing a SISP and/or exploring other transaction alternatives. More to the point, it will permit the Applicants to continue to operate the Canadian Business as a going concern with minimal disruption. The continued and uninterrupted operation of the Canadian Business will preserve value for the Applicants' stakeholders and is in the best interests of, among others, the Applicants' employees, suppliers, regulators and landlords.

121. Having regard to the foregoing, the Stay of Proceedings is in the best interests of the Applicants and their stakeholders. The Proposed Monitor has advised that it is supportive of the proposed Stay of Proceedings.

C. Proposed Monitor

122. The proposed Initial Order contemplates that KSV will act as the Monitor in these CCAA proceedings. KSV has consented to act as the Monitor in these CCAA proceedings on the terms of the proposed Initial Order, if granted. A copy of KSV's consent to act as the Monitor is attached hereto as **Exhibit "Z"**.

123. I am advised by KSV that it is a "trustee" within the meaning of subsection 2(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended, and that it is not otherwise precluded from acting as the Monitor under subsection 11.7(2) of the CCAA. KSV also has

familiarity with respect to certain of the assets having been the Court-appointed monitor in the prior JWC CCAA Proceedings.

D. Administration Charge

124. Pursuant to the proposed Initial Order, the Applicants are seeking a Court-ordered charge on the Property in favour of the Monitor, as well as counsel to the Monitor and counsel to the Applicants in these CCAA proceedings up to a maximum amount of \$750,000 (the "**Administration Charge**"). The Administration Charge will secure payment of the respective fees and disbursements of the Monitor, counsel to the Monitor and counsel to the Applicants in these CCAA proceedings incurred in connection with services rendered to the Applicants. The Administration Charge is proposed to rank ahead of, and have priority over, all of the other Charges.

125. The expertise, knowledge, and continued participation of the beneficiaries of the proposed Administration Charge during these CCAA proceedings is essential to a successful restructuring of the Applicants. The beneficiaries of the proposed Administration Charge have made, and will continue to make, distinct and significant contributions to the Applicants' restructuring efforts.

126. The Applicants, in consultation with the Proposed Monitor, determined the quantum of the Administration Charge required during the Initial Stay Period, taking into account that the professionals have material accrued fees and no retainers. Such quantum is commensurate with the fees and disbursements expected to be incurred by the beneficiaries of the Administration Charge by the end of the Initial Stay Period.

127. Given the circumstances, the anticipated complexity of these CCAA proceedings and the services rendered and to be provided by the beneficiaries thereof, I believe that the proposed Administration Charge is fair and reasonable. I understand that the Proposed Monitor is of the view that the Administration Charge is appropriate in the circumstances.

E. Directors' Charge and Protections

128. A successful restructuring of the Applicants will benefit from the continued participation and commitment of the Directors and Officers, certain of which possess the security clearances necessary to operate the Canadian Business. For this reason, the Applicants seek a Court-ordered charge in favour of the Directors and Officers in the maximum amount of \$967,000 (the "**Directors' Charge**").

129. I am advised by Sean Zweig of Bennett Jones LLP, counsel to the Applicants, and believe that, in some circumstances, directors and officers of Canadian companies can be liable for certain obligations of a company, including those owed to employees and government entities. Mr. Zweig has advised me that these obligations may include, among other things, unpaid accrued wages and unpaid accrued vacation pay, together with unremitted excise, sales, goods and services, and harmonized sales taxes.

130. The Directors and Officers are currently among the potential beneficiaries under two claims-made policies maintained by IMCC for the entire International Company (together, the "**Insurance Policies**"). First, a directors' and officers' liability insurance policy, having an aggregate annual limit of USD \$5 million and deductibles of USD \$3.75 million and USD\$ 1.75 million for securities claims and other claims, respectively. Second, a side-A executive liability personal asset policy, having an aggregate annual limit of USD \$5 million.

131. In view of their relatively small annual limits, the applicable deductibles and the number of beneficiaries and exclusions, exceptions and carve-outs thereunder, the Insurance Policies may not provide adequate coverage against the potential liabilities that the Directors and Officers could incur during these CCAA proceedings. Moreover, the Applicants are unable to acquire alternative or additional directors' and officers' liability insurance capable of adequately supplementing the Insurance Policies.

132. Given the risks attending these CCAA proceedings, the regulatory environment in which the Applicants operate and the significant uncertainty surrounding coverage under the Insurance Policies, the Directors and Officers have indicated that their continued involvement in these CCAA proceedings is conditional upon the granting of the Directors' Charge. Pursuant to the proposed Initial Order, the Directors' Charge would serve as security for the indemnification obligations and potential liabilities the Directors and Officers may face in these CCAA proceedings to the extent that they do not otherwise benefit from coverage under the Insurance Policies. The Directors' Charge is proposed to rank in priority to the DIP Lender's Charge but, subordinate to the Administration Charge.

133. The quantum of the Directors' Charge was determined by the Applicants, in collaboration with the Proposed Monitor, and is limited to the indemnification obligations and liabilities that the Directors and Officers may face during the Initial Stay Period. The Applicants expect to seek an increase to the Directors' Charge at the Comeback Hearing.

134. The Applicants believe that the proposed Directors' Charge is reasonable in the circumstances. The Proposed Monitor has advised that it is supportive of the proposed Director's Charge.

135. In connection with the consummation of a value-maximizing sale or restructuring transaction and the eventual termination of these CCAA proceedings, the Directors and Officers anticipate seeking a release of claims against them in their capacity as directors and officers.

F. The DIP Facility and the DIP Lender's Charge

136. Given their ongoing liquidity crisis, and as illustrated in the Cash Flow Forecast, the Applicants require interim financing to fund their ongoing operations and pursue their restructuring efforts. To this end, TJAC, as borrower (in such capacity, the "**Borrower**"), Trichome, TRC, MYM, MYMB and Highland, as guarantors (together with the Borrower, the "**Credit Parties**"), and Cortland, as agent for and on behalf of the lenders party thereto (the "**DIP Lender**"), entered into a DIP facility agreement in respect of the DIP Facility (the "**DIP Agreement**") on November 6, 2022. A copy of the DIP Agreement is attached hereto as **Exhibit "AA"**.

137. The DIP Facility is a super-priority interim revolving credit facility (subject to certain mandatory repayment provisions). The maximum principal amount under the DIP Facility is the lesser of (i) \$4,875,000 (the "**Facility Limit**") and (ii) the Borrowing Base Amount, as calculated in accordance with the terms of the ABL Agreement, minus the amount of the Pre-Filing Obligations, plus the Over-Advance Amount (each as defined in the DIP Agreement). In accordance with the DIP Agreement, the DIP Facility is to be used during these CCAA proceedings by the Borrower to fund its working capital needs.

138. The interest rate applicable to all advances under the DIP Facility is 14% per annum, due and payable in cash on the first business day of each month. In consideration for making the DIP Facility available to the Borrower, the DIP Lender is entitled to the following:

- (a) a commitment fee equal to 2.0% of the Facility Limit;
- (b) a utilization fee of 2.4% per annum, calculated daily in accordance with the DIP Agreement on the unused portion of the DIP Facility; and
- (c) a \$100,000 deposit to cover the DIP Lender's legal and other transaction expenses, which will be paid from the initial advance under the DIP Facility.

139. The term of the DIP Facility is the earlier of (i) 16 weeks from the date of the Initial Order (the "**Maturity Date**") and (ii) any Termination Date (as defined in the DIP Agreement). All outstanding principal and interest under the DIP Facility will be due and payable on the date that the earlier of the following occur:

- (a) the Maturity Date;
- (b) the date on which any Event of Default, other than the CCAA Event of Default (as defined in the DIP Agreement), occurs or is discovered to have occurred in the past and the DIP Lender has terminated the DIP Facility by notice to the Borrower;
- (c) the date of a sale of all or a portion of the Collateral (as defined in the ABL Agreement), provided that these CCAA proceedings are concurrently terminated with the consent of the DIP Lender; and
- (d) unless waived or other consented to by the DIP Lender, the date on which any of the Credit Parties undertakes a liquidity, reorganization event, or Change of Control (as defined in the ABL Agreement).

140. The DIP Agreement provides the DIP Lender with the right to terminate the DIP Facility upon 60 days' notice to the Borrower if adverse market conditions are negatively affecting the liquidity of the lenders under the DIP Agreement. Provided however, that repayment of the outstanding advances under the DIP Facility will not be due and payable until 60 days after receipt of such notice by the Borrower, unless otherwise agreed to in writing.

141. The DIP Facility is subject to customary covenants, conditions precedent, and representations and warranties made by the Credit Parties to the DIP Lender. Additionally, the DIP Facility is conditional upon the issuance of the proposed Initial Order, approving the DIP Facility and granting a Court-ordered charge over the Property in favour of the DIP Lender to secure all amounts advanced by the DIP Lender on behalf of the lenders under the DIP Facility, together with all obligations, indebtedness, fees, costs and expenses of the Borrower under the DIP Agreement and the DIP Facility (the "**DIP Lender's Charge**"). Pursuant to the terms of the proposed Initial Order, the DIP Lender's Charge would rank subordinate to all of the other Charges. Importantly, the DIP Lender's Charge will not secure obligations incurred prior to these CCAA proceedings.

142. The amount to be funded under the DIP Facility during the Initial Stay Period is limited to the amount necessary to ensure the continued operation of the Canadian Business prior to the Comeback Hearing. The DIP Lender's Charge sought pursuant to the proposed Initial Order is correspondingly limited to the amount to be funded during the Initial Stay Period. The Applicants intends to seek an increase to the DIP Lender's Charge at the Comeback Hearing.

G. Payments Throughout these CCAA Proceedings

143. The proposed Initial Order permits (but does not require) the Applicants to make payments for all goods and services actually supplied to the Applicants in the ordinary course of business on or subsequent to the date of the proposed Initial Order. To preserve continuity in the Canadian Business, the proposed Initial Order also authorizes (but does not require) the Applicants to pay, among others, the following expenses:

- (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 the Initial Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements; and
- (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 the Initial Order, with the Monitor considering, among other factors, whether (i) the supplier or service provider is essential to the Canadian 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 Canadian 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 the Initial Order, including pursuant to the terms of the Initial Order.

144. Together, the aforementioned relief will facilitate the continued operation of the Canadian Business during the Initial Stay Period. Specifically, it will allow the Applicants to:

- (a) maintain their existing customer and supplier relationships;
- (b) ensure the uninterrupted supply of critical goods and services necessary for the Canadian Business' operation; and
- (c) address inventory deficiencies.

145. I understand that both the Proposed Monitor and the DIP Lender are supportive of the Applicants' authorization to make the aforementioned payments pursuant to the proposed Initial Order.

H. Cash Flow Forecast

146. With the assistance of the Proposed Monitor, the Applicants have conducted a cash flow analysis to determine the amount required to finance their ordinary course business operations, assuming the Initial Order is granted, over the 13-week period from November 7, 2022, to February 3, 2023 (the "**Cash Flow Forecast**"). The Cash Flow Forecast substantiates the Applicants' urgent need for the DIP Facility.

147. I understand that the Cash Flow Forecast, which is accompanied by the representations prescribed under the CCAA, will be attached to the pre-filing report of the Proposed Monitor. If appointed, the Applicants anticipate that the Monitor will report to the Court on any variances between the Cash Flow Forecast and the Applicants' actual results during these CCAA proceedings.

VIII. CONCLUSION

148. The proposed Initial Order is in the best interests of the Applicants and their stakeholders. Absent the relief requested under the proposed Initial Order, including the Stay of Proceedings and the DIP Facility, the Applicants will be forced to cease the Canadian Business' going concern operations and liquidate their assets to the detriment of their employees and other stakeholders.

149. The relief sought under the proposed Initial Order is tailored to that which is reasonably necessary to ensure the continued operation of the Canadian Business and preserve the *status quo* during the Initial Stay Period. In the circumstances, the Applicants believe that these CCAA proceedings are the best means of addressing the challenges facing the Canadian Business and effecting the restructuring transactions necessary to maximize value for their stakeholders.

SWORN REMOTELY by Michael Ruscetta stated as being located in the City of Toronto, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on November 7th, 2022 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

Joshua Foster
JOSHUA FOSTER

Commissioner for Taking Affidavits
 (or as may be)

Michael Ruscetta

MICHAEL RUSCETTA

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.

Court File No.: _____

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding commenced at Toronto

AFFIDAVIT OF MICHAEL RUSCETTA
(Sworn November 7, 2022)

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Lawyers for the Applicants

TAB B

THIS IS **EXHIBIT "B"** REFERRED TO IN THE AFFIDAVIT
OF MICHAEL RUSCETTA, SWORN BEFORE ME THIS 11TH
DAY OF NOVEMBER, 2022.

Joshua Foster

JOSHUA FOSTER

A Commissioner for taking Affidavits
(or as may be)



Court File No.: _____

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE)	MONDAY, THE 7 TH
)	
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**")

INITIAL ORDER

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

ON READING the affidavit of Michael Ruscetta sworn November 7, 2022 and the Exhibits thereto (the "**Ruscetta Affidavit**"), and the Pre-Filing Report of KSV Restructuring Inc. ("**KSV**") as the proposed monitor dated November 7, 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 KSV, 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, and on reading the consent of KSV to act as the monitor (in such capacity, the "**Monitor**"),

SERVICE

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

APPLICATION

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

POSSESSION OF PROPERTY AND OPERATIONS

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

4. **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 any plan of compromise or arrangement with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.

5. **THIS COURT ORDERS** that 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.

6. **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.

7. **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.

8. **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.

9. **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

10. **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) sell inventory in the ordinary course of business consistent with past practice, or otherwise with the consent of the Monitor and the DIP Lender;
- (b) terminate the employment of such of its employees or temporarily lay off such of its employees as it deems appropriate; and
- (c) pursue all avenues of refinancing of its 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.

NO PROCEEDINGS AGAINST THE APPLICANTS OR THEIR RESPECTIVE PROPERTY

11. **THIS COURT ORDERS** that until and including November 17, 2022, 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

12. **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

13. **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

14. **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

15. **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

16. **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

17. **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.

18. **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 \$967,000, unless permitted by further Order of this Court, as security for the indemnity provided in paragraph 17 of this Order. The Directors' Charge shall have the priority set out in paragraphs 35 and 37 herein.

19. **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 17 of this Order.

APPOINTMENT OF MONITOR

20. **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.

21. **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) monitor all payments, obligations and transfers as between the Applicants;
- (f) 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;
- (g) 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
- (h) perform such other duties as are required by this Order or by this Court from time to time.

22. **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.

23. **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.

24. **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.

25. **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.

26. **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.

27. **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.

28. **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 35 and 37 hereof.

DIP FINANCING

29. **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.

30. **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.

31. **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.

32. **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 \$1,825,000, 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 35 and 37 hereof.

33. **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.

34. **THIS COURT ORDERS AND DECLARES** that, unless agreed to by the DIP Lender, the DIP Lender shall be treated as unaffected in any plan of arrangement or compromise 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

35. **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 \$967,000); and

Third – DIP Lender's Charge (to the maximum amount of \$1,825,000).

36. **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.

37. **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; provided that the Charges shall rank behind Encumbrances in favour of any Persons that have not been served with notice of the application for this Order. The Applicants and the beneficiaries of the Charges shall be entitled to seek priority of the Charges ahead of such Encumbrances on a subsequent motion including, without limitation, on the Comeback Date (as defined below), on notice to those Persons likely to be affected thereby.

38. **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.

39. **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.

40. **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

41. **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.

42. **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/insolvency-cases/case/trichome>.

43. **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.

44. **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).

45. **THIS COURT ORDERS** that, except with respect to any motion to be heard on the Comeback Date, 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.

46. **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

47. **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 November 17, 2022 at 9:30 a.m. (Eastern Time) (the "**Comeback Date**"), and any such interested party shall give not less than two (2) business days' notice to the Service List and any other party or parties likely to be affected by the Order sought in advance of the Comeback Date; 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 35 and 37 hereof with respect to any fees, expenses and disbursements incurred, as applicable, until the date this Order may be amended, varied or stayed.

48. **THIS COURT ORDERS** that, notwithstanding paragraph 47 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.

49. **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.

50. **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.

51. **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.

52. **THIS COURT ORDERS** that 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.

A handwritten signature in blue ink is written over a horizontal line. The signature appears to be "Conway J." with a stylized flourish at the end.

**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.**

Court File No.: _____

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding commenced at Toronto

INITIAL ORDER

BENNETT JONES LLP
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Lawyers for the Applicants

TAB C

THIS IS **EXHIBIT "C"** REFERRED TO IN THE AFFIDAVIT
OF MICHAEL RUSCETTA, SWORN BEFORE ME THIS 11TH
DAY OF NOVEMBER, 2022.

Joshua Foster
JOSHUA FOSTER
A Commissioner for taking Affidavits
(or as may be)



SUPERIOR COURT OF JUSTICE

COUNSEL SLIPCOURT FILE NO.: _____ DATE: **7 November 2022**NO. ON LIST: **2**TITLE OF PROCEEDING: **TRICHOME FINANCIAL CORP et al.**BEFORE JUSTICE: **MADAM JUSTICE CONWAY****PARTICIPANT INFORMATION****For Plaintiff, Applicant, Moving Party, Crown:**

Name of Person Appearing	Name of Party	Contact Info
Sean Zweig	Applicants	zweigs@bennettjones.com
Joshua Foster	Applicants	fosterj@bennettjones.com

For Other:

Name of Person Appearing	Name of Party	Contact Info
Jane Dietrich	Proposed Monitor	jdietrich@cassels.com
Mark Freake	DIP Lender	mark.freake@dentons.com
John Salmas	DIP Lender	John.salmas@dentons.com

ENDORSEMENT OF JUSTICE CONWAY:

All defined terms used in this Endorsement shall, unless otherwise defined, have the meanings ascribed to them in the Factum of the Applicants dated November 7, 2022.

The Applicants operate in the cannabis industry. They seek an initial order pursuant to the CCAA. They are facing a severe liquidity crisis. In particular, funding is insufficient to meet payroll (due tomorrow) for their 226 employees and 12 consultants. They seek to create a stabilized environment in which to continue operations while they develop a SISP and explore other value maximizing restructuring transactions. The relief sought is recommended by the proposed Monitor, as outlined in its Pre-Filing Report.

I am satisfied that each of the Applicants is a debtor company to which the CCAA applies and that Ontario is the appropriate venue for these proceedings.

The stay of proceedings for 10 days is warranted to provide the required breathing room for the Applicants to explore their restructuring options while permitting operations to continue without interruption during that period. It is in the best interests of the stakeholders for the stay to be granted.

With respect to the DIP Facility, I have determined that the amounts to be advanced, while not insignificant, are limited to what is reasonably necessary for the continued operations of the Applicants in the ordinary course of business during the Initial Stay Period, as required by s. 11.001 of the CCAA. This is borne out by the Cash Flow Forecast, which shows that funding of just over \$1.8 million will be required to continue operations pending the comeback motion next week. The DIP Facility meets the criteria of s. 11.2(1) and (4) of the CCAA. I note that the order provides that the DIP Lender's Charge will not rank in priority to any Encumbrances in favour of any person that has not received notice of the application. Further, the charge will not secure any obligations incurred prior to the date of these proceedings.

The order provides that the Applicants may make certain pre-filing payments, with restrictions that require the consent of both the Monitor and DIP Lender. The Monitor is required to consider, among other things, whether the supplier is essential to the Canadian Business. The Monitor has advised that it will engage with the Applicants to ensure that payments to suppliers for pre-filing liabilities are limited to the extent reasonably possible. I am satisfied that the order should be granted pursuant to s. 11 of the CCAA. Since this is an initial application, I am further satisfied that the terms of the order will be restricted to what is reasonably necessary for the continued operations of the Applicants in the ordinary course of business during the Initial Stay Period, as required by s. 11.001 of the CCAA.

The Directors' Charge has been calculated to cover the exposure of the directors and officers for liabilities of the Applicants during the Initial Stay Period. I am granting the charge pursuant to s. 11.51 of the CCAA.

The Administration Charge is approved pursuant to s. 11.51 of the CCAA. In particular, I note that the professionals in question do not have retainers and have accrued significant fees already.

The comeback hearing will be before me on **November 17, 2022**. Counsel have confirmed that they will issue the Application forthwith after the hearing today. I direct that all materials be uploaded to CaseLines forthwith.

I required that paragraph 10(a) of the Draft Initial Order be deleted as it is not appropriate for the Initial Stay Period. Counsel has now revised the order accordingly.

Initial order to go as signed by me and attached to this Endorsement. This order is effective from today's date and is enforceable without the need for entry and filing.

A handwritten signature in blue ink, appearing to read "Conway J.", is located at the bottom left of the page.

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

AFFIDAVIT OF MICHAEL RUSCETTA
(Sworn November 11, 2022)

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Lawyers for the Applicants

TAB 3

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE)	THURSDAY, THE 17 TH
)	
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, the *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

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Lawyers for the Applicants

TAB 4

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE)	MONDAY <u>THURSDAY</u> , THE 7 <u>17</u> TH
)	
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 ~~APPLICATION~~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 ~~KSV~~**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~~ ~~(in such capacity, the~~
~~"Monitor")~~ Monitor,

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of ~~Application~~ Motion and the ~~Application~~ Motion Record is hereby abridged and validated so that this ~~Application~~ 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. ~~3.~~ **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. ~~4.~~ **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 ~~plan of compromise or arrangement~~) with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.

6. ~~5.~~ **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. ~~6.~~ **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. ~~7.~~ **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. ~~8.~~ **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. ~~9.~~ **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. ~~10.~~ **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) ~~(a)~~ 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) ~~(b)~~ terminate the employment of such of its employees or temporarily lay off such of its employees as it deems appropriate; and
- (f) ~~(e)~~ 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. ~~11.~~ THIS COURT ORDERS that until and including ~~November 17~~February 3, 20222023, 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. ~~12.~~ 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. ~~13.~~ **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. ~~14.~~ **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. ~~15.~~ **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. ~~16.~~ **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. ~~17.~~ **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. ~~18.~~ **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 \$~~967,000~~2,922,000, unless permitted by further Order of this Court, as security for the indemnity provided in paragraph

~~17~~20 of this Order. The Directors' Charge shall have the priority set out in paragraphs ~~35~~38 and ~~37~~40 herein.

22. ~~19.~~ **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 ~~17~~20 of this Order.

APPOINTMENT OF MONITOR

23. ~~20.~~ **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. ~~21.~~ **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) ~~(e)~~ monitor all payments, obligations and transfers as between the Applicants;

(h) ~~(f)~~ 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) ~~(g)~~ 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) ~~(h)~~ perform such other duties as are required by this Order or by this Court from time to time.

25. ~~22.~~ **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. ~~23.~~ **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. ~~24.~~ **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. ~~25.~~ **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. ~~26.~~ **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. ~~27.~~ **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. ~~28.~~ **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 ~~35~~38 and ~~37~~40 hereof.

DIP FINANCING

32. ~~29.~~ **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. ~~30.~~ **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. ~~31.~~ **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. ~~32.~~ **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 \$~~1,825,000~~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 ~~35~~38 and ~~37~~40 hereof.

36. ~~33.~~ **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. ~~34.~~ **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 ~~plan of arrangement or~~

~~compromise~~) 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. ~~35.~~ **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 \$~~967,000~~2,922,000); and

Third – DIP Lender's Charge (to the maximum amount of \$~~1,825,000~~4,875,000).

39. ~~36.~~ **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. ~~37.~~ **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; ~~provided that the Charges shall rank behind Encumbrances in favour of any Persons that have not been served with notice of the application for this Order. The Applicants and the beneficiaries of the Charges shall be entitled to seek priority of the Charges ahead of such Encumbrances on a subsequent motion including, without limitation, on the Comeback Date (as defined below), on notice to those Persons likely to be affected thereby.~~

41. ~~38.~~ **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. ~~39.~~ **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. ~~40.~~ **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. ~~41.~~ **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. ~~42.~~ **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/insolvency-cases/case/trichome>~~ <https://www.ksvadvisory.com/experience/case/trichome>.

46. ~~43.~~ **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. ~~44.~~ **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. ~~45.~~ **THIS COURT ORDERS** that, except with respect to any motion to be heard ~~on the Comeback Date~~ 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. ~~46.~~ **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. ~~47.~~ **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 ~~November 17, 2022 at 9:30 a.m. (Eastern Time) (the "Comeback Date")~~, and any such interested party shall give not less than ~~two~~seven (27) business days' notice to the Service List and any other party or parties likely to be affected by the Order sought ~~in advance of the Comeback Date~~; 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 ~~35~~38 and ~~37~~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. ~~48.~~ **THIS COURT ORDERS** that, notwithstanding paragraph ~~47~~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. ~~49.~~ **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. ~~50.~~ **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. ~~51.~~ **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. ~~52.~~ **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
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Toronto, Ontario M5X 1A4

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Lawyers for the Applicants

Document comparison by Workshare 10.0 on Friday, November 11, 2022 1:56:40 PM

Input:	
Document 1 ID	file:///C:/Users/fosterj/AppData/Local/Temp/Workshare/wmtemp5304/Order - Applicants - Trichome Financial Corp et al - 07-NOV-2022 (Final)2.DOC
Description	Order - Applicants - Trichome Financial Corp et al - 07-NOV-2022 (Final)2
Document 2 ID	file:///C:/Users/fosterj/AppData/Local/Temp/Workshare/wmtemp5304/Amended and Restated Initial Order1.DOC
Description	Amended and Restated Initial Order1
Rendering set	Standard

Legend:	
<u>Insertion</u>	
Deletion	
Moved from	
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Style change	
Format change	
Moved deletion	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	135
Deletions	94
Moved from	1
Moved to	1
Style changes	0
Format changes	0
Total changes	231

TAB 5

Revised: January 21, 2014

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE) ~~WEEKDAY~~THURSDAY, THE #
) 17TH
 JUSTICE — CONWAY)
)
 DAY OF ~~MONTH~~NOVEMBER,
20YR2022

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
 ARRANGEMENT OF ~~[APPLICANT'S NAME]~~ (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 ~~APPLICATION~~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 ~~at 330 University Avenue, Toronto, Ontario~~ by
judicial videoconference via Zoom.

ON READING the affidavits of ~~[NAME]~~ Michael Ruscetta sworn ~~[DATE]~~ 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 ~~[NAMES]~~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 ~~one~~else appearing ~~for [NAME]~~¹ although duly served as appears from the affidavits of service of ~~[NAME]~~sworn [DATE] Joshua Foster, filed, and on reading the consent of ~~[MONITOR'S NAME]~~KSV to act as the Monitor,

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of ~~Application~~Motion and the ~~Application~~Motion Record is hereby abridged and validated² so that this ~~Application~~Motion is properly returnable today and hereby dispenses with further service thereof.

APPLICATION

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

PLAN OF ARRANGEMENT

3. **THIS COURT ORDERS** that each of the Applicantss shall have the authority to file and may, subject to further ~~e~~Orders of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the "**Plan**").

¹ ~~Include names of secured creditors or other persons who must be served before certain relief in this model Order may be granted. See, for example, CCAA Sections 11.2(1), 11.3(1), 11.4(1), 11.51(1), 11.52(1), 32(1), 32(3), 33(2) and 36(2).~~

² ~~If service is effected in a manner other than as authorized by the Ontario Rules of Civil Procedure, an order validating irregular service is required pursuant to Rule 16.08 of the Rules of Civil Procedure and may be granted in appropriate circumstances.~~

POSSESSION OF PROPERTY AND OPERATIONS

4. **THIS COURT ORDERS** that the Applicants shall remain in possession and control of ~~its~~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 ~~its~~their business (the "Business") and Property. The Applicants ~~is~~ 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 ~~it~~them, with liberty to retain such further Assistants as ~~it~~they deems 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 system³ currently in place as described in the Ruscetta Affidavit ~~of~~ ~~[NAME] sworn [DATE] or~~ 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, ~~shall;~~ (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 ~~shall~~ (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.**}**

³ ~~This provision should only be utilized where necessary, in view of the fact that central cash management systems often operate in a manner that consolidates the cash of applicant companies. Specific attention should be paid to cross-border and inter-company transfers of cash.~~

6. **THIS COURT ORDERS** that the Applicants shall be entitled but not required to pay the following expenses whether incurred prior to, 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) ~~(b)~~ the fees and disbursements of any Assistants retained or employed by the Applicants in respect of these proceedings, at their standard rates and charges.

7. **THIS COURT ORDERS** that, except as otherwise provided to the contrary herein 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 ~~Applicant~~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) ~~Quebec Pension Plan,~~ and (iv) income taxes;
- (b) all goods and services or other applicable sales taxes (collectively, "Sales Taxes") required to be remitted by the Applicants in connection with the sale of goods and services by the Applicants, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order;⁴ and
- (c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the Applicants.
9. **THIS COURT ORDERS** that until a real property lease is disclaimed ~~for-resiliated~~⁴ in accordance with the CCAA, the Applicants shall pay all amounts constituting rent or payable as

⁴ ~~The term "resiliate" should remain if there are leased premises in the Province of Quebec, but can otherwise be removed.~~

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, ~~twice-monthly in equal payments on the first and fifteenth~~ 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 ~~is~~ are hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Applicants to any of ~~its~~ their creditors as of this date; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of ~~its~~ the Property; and (c) 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 ~~(as hereinafter defined)~~, 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~~ 250,000 in any one transaction or \$~~1,000,000~~ 1,000,000 in the aggregate⁵;

⁵ ~~Section 36 of the amended CCAA does not seem to contemplate a pre-approved power to sell (see subsection 36(3)) and moreover requires notice (subsection 36(2)) and evidence (subsection 36(7)) that may not have occurred or be available at the initial CCAA hearing.~~

- (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) ~~(b)~~ terminate the employment of such of its employees or temporarily lay off such of its employees as it deems appropriate; and
- (f) ~~(e)~~ 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 ~~(the "Restructuring")~~.

12. **THIS COURT ORDERS** that the applicable Applicant shall provide each ~~of the~~ relevant landlords with notice of ~~the~~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 ~~the~~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 ~~the~~any Applicant disclaims ~~for-resiliates~~ ~~the~~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 ~~for resiliation~~ of the lease shall be without prejudice to ~~the~~such Applicant's claim to the fixtures in dispute.

13. **THIS COURT ORDERS** that if a notice of disclaimer ~~for resiliation~~ is delivered pursuant to Section 32 of the CCAA, then: (a) during the notice period prior to the effective time of the disclaimer ~~for resiliation~~, 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 (b) at the effective time of the disclaimer ~~for resiliation~~, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the 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 ~~THE~~THEIR RESPECTIVE PROPERTY

14. **THIS COURT ORDERS** that until and including ~~[DATE—MAX. 30 DAYS]~~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 ~~the~~any Applicant to carry on any business which ~~the~~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 ~~Applicant~~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 ~~each of~~ 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 d 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.⁶

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

19. **THIS COURT ORDERS** that during the Stay Period, and except as permitted by ~~s~~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.

DIRECTORS² AND OFFICERS² INDEMNIFICATION AND CHARGE

20. **THIS COURT ORDERS** that the Applicants shall indemnify ~~its~~their directors and officers against obligations and liabilities that they may incur as ~~directors~~a director or ~~officers~~officer of any of the Applicants after the commencement of the within proceedings,⁷

⁶ ~~This non-derogation provision has acquired more significance due to the recent amendments to the CCAA, since a number of actions or steps cannot be stayed, or the stay is subject to certain limits and restrictions. See, for example, CCAA Sections 11.01, 11.04, 11.06, 11.07, 11.08, 11.1(2) and 11.5(1).~~

⁷ ~~The broad indemnity language from Section 11.51 of the CCAA has been imported into this paragraph. The granting of the indemnity (whether or not secured by a Directors' Charge), and the scope of the indemnity, are discretionary matters that should be addressed with the Court.~~

except to the extent that, with respect to any officer or director, the obligation or liability was incurred as a result of ~~the~~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**")⁸ on the Property, which charge shall not exceed an aggregate amount of \$~~2,922,000~~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, ~~(a)~~ (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge; ~~(b)~~ (b) the Applicants' directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph ~~{20}~~ of this Order.

APPOINTMENT OF MONITOR

23. **THIS COURT ORDERS** that ~~[MONITOR'S NAME]~~KSV is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Applicants with the powers and obligations set out in the CCAA or set forth herein and that the Applicants and ~~its~~their shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by any of the Applicants pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

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

⁸ ~~Section 11.51(3) provides that the Court may not make this security/charging order if in the Court's opinion the Applicant could obtain adequate indemnification insurance for the director or officer at a reasonable cost.~~

- (a) monitor the Applicants's 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 ~~its~~their dissemination, to the DIP Lender and its counsel on a ~~[TIME-INTERVAL]~~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 ~~its~~their preparation of the ~~Applicant's~~Applicants' cash flow statements and reporting required by the DIP Lender, which information shall be reviewed with the Monitor and delivered to the DIP Lender and its counsel on a periodic basis, but not less than ~~[TIME-INTERVAL]~~bi-weekly, or as otherwise agreed to by the DIP Lender;
- (e) advise the Applicants in ~~its~~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) ~~(g)~~ have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Applicants, to the extent that is necessary to adequately assess the Applicants's business and financial affairs or to perform its duties arising under this Order;

- (i) ~~(h)~~ be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order; and
- (j) ~~(i)~~ 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*, ~~or 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 (~~the~~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 ~~that~~ the Monitor shall provide any creditor of the ~~Applicant and~~ 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 ~~no~~any liability or obligation as a result of ~~its~~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 ~~Applicant~~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 ~~is~~ are hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and counsel for the ~~Applicant~~Applicants in these proceedings on a ~~[TIME INTERVAL]~~monthly basis ~~and, in addition, the Applicant is hereby authorized to payor pursuant to such other arrangements agreed to between the Monitor, counsel to the Monitor, and counsel to the Applicant, retainers in the amount[s] of \$●[-, respectively,] to be held by them as security for payment of their respective fees and disbursements outstanding from time to time~~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, ~~if any,~~ and the ~~Applicant's~~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 ~~in respect of these proceedings~~. The Administration Charge shall have the priority set out in paragraphs ~~{38}~~ and ~~{40}~~ hereof.

DIP FINANCING

32. **THIS COURT ORDERS** that the Applicants ~~s~~is are hereby authorized and empowered to obtain and borrow under a credit facility from ~~[DIP LENDER'S NAME]~~ (the "DIP Lender") in order to finance the Applicants'~~s~~ 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~~that such credit facility shall be on the terms and subject to the conditions set forth in the ~~commitment letter~~DIP Facility Agreement between the Applicants and the DIP Lender dated as of ~~[DATE]~~ (the "~~Commitment Letter~~November 6, 2022 (as may be amended from time to time, the "DIP Agreement")), filed.

34. **THIS COURT ORDERS** that the Applicants ~~s~~is are hereby authorized and empowered to execute and deliver such credit agreements, mortgages, charges, hypothecs and security documents, guarantees and other definitive documents (collectively, the "**Definitive Documents**"), as are contemplated by the ~~Commitment Letter~~DIP Agreement or as may be reasonably required by the DIP Lender pursuant to the terms thereof, and the Applicants ~~s~~is are hereby authorized and directed to pay and perform all of ~~its~~their indebtedness, interest, fees, liabilities and obligations to the DIP Lender under and pursuant to the ~~Commitment Letter~~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 ~~Commitment Letter~~ 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 ~~Commitment Letter~~ 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 ~~plan of arrangement or compromise~~) filed by any of the Applicants under the CCAA, or any proposal filed by any of the Applicants under the *Bankruptcy and Insolvency Act* ~~of Canada~~, 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 ~~Directors' Charge, the~~ Administration Charge, the Directors' Charge and the DIP Lender's Charge (collectively, the "Charges"), as among them, shall be as follows⁹:

⁹ ~~The ranking of these Charges is for illustration purposes only, and is not meant to be determinative. This ranking may be subject to negotiation, and should be tailored to the circumstances of the case before the Court. Similarly, the quantum and caps applicable to the Charges should be considered in each case. Please also note that the CCAA now permits Charges in favour of critical suppliers and others, which should also be incorporated into this Order (and the rankings, above), where appropriate.~~

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

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

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

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

40. **THIS COURT ORDERS** that each of the ~~Directors' Charge, the Administration Charge and the DIP Lender's Charge~~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 ~~Directors' Charge, the Administration Charge or the DIP Lender's Charge~~Charges, unless the Applicants also obtains the prior written consent of the Monitor, the DIP Lender and the beneficiaries of the ~~Directors' Charge and the Administration Charge~~Charges, or further Order of this Court.

42. **THIS COURT ORDERS** that the ~~Directors' Charge, the Administration Charge, the Commitment Letter, and the DIP Lender's Charge~~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: (a) the pendency of these proceedings and

the declarations of insolvency made herein; (~~b~~ii) any application(s) for bankruptcy order(s) issued pursuant to the BIA, or any bankruptcy order made pursuant to such applications; (~~e~~iii) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (~~d~~iv) the provisions of any federal or provincial statutes; or (~~e~~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 ~~Commitment Letter~~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 ~~it~~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 ~~Commitment Letter~~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 ~~Commitment Letter~~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 leases.

SERVICE AND NOTICE

44. **THIS COURT ORDERS** that the Monitor shall: (i) without delay, publish in ~~[newspapers specified by the Court]~~the Globe and Mail (National Edition), a notice containing the information prescribed under the CCAA; 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 \$~~1000~~1,000, and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Subsection 23(1)(a) of the CCAA and the regulations made thereunder.

45. **THIS COURT ORDERS** that the E-Service ~~Protocol~~Guide of the Commercial List (the ~~"Protocol"~~"Guide") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the ~~Protocol~~Guide (which can be found on the Commercial List website at ~~<http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>~~<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 ~~21~~13 of the ~~Protocol~~Guide, service of documents in accordance with the ~~Protocol~~Guide will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the ~~Protocol~~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 ~~Protocol~~Guide is not practicable, the ~~Applicant and~~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's creditors or other interested parties at their respective addresses as last shown on the records of the Applicants and that any such service ~~or~~, distribution ~~by courier, personal delivery or facsimile transmission~~or notice shall be deemed to be received: (i) if sent by courier, on the next business day following the date of forwarding thereof, ~~or~~; (ii) if delivered by personal delivery or facsimile transmission 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. ~~47.~~ **THIS COURT ORDERS** that, notwithstanding paragraph 50 of this Order, each of the Applicant or 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. ~~48.~~ **THIS COURT ORDERS** that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of any of the Applicants, the Business or the Property.

53. ~~49.~~ **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Applicants, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicants and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicants and the Monitor and their respective agents in carrying out the terms of this Order.

54. ~~50.~~ **THIS COURT ORDERS** that each of the Applicants and the Monitor be at liberty and ~~is~~ 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.

~~51. — THIS COURT ORDERS that any interested party (including the Applicant and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.~~

55. ~~52.~~ 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 ~~Standard/Daylight~~ 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

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Legend:	
<u>Insertion</u>	
Deletion	
<u>Moved from</u>	
<u>Moved to</u>	
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Format change	
Moved deletion	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:

	Count
Insertions	481
Deletions	249
Moved from	3
Moved to	3
Style changes	0
Format changes	0
Total changes	736

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1985, c. C-36, AS AMENDED**

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

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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

MOTION RECORD
(Returnable November 17, 2022)

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