Court File No. CV-24-00726584-00CL

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 2675970 ONTARIO INC., 2733181 ONTARIO INC., 2385816 ALBERTA LTD., 2161907 ALBERTA LTD., 2733182 ONTARIO INC., 2737503 ONTARIO INC., 2826475 ONTARIO INC., 14284585 CANADA INC., 2197130 ALBERTA LTD., 2699078 ONTARIO INC., 2708540 ONTARIO CORPORATION, 2734082 ONTARIO INC., TS WELLINGTON INC., 2742591 ONTARIO INC., 2796279 ONTARIO INC., 10006215 MANITOBA LTD., AND 80694 NEWFOUNDLAND & LABRADOR INC.

MOTION RECORD OF THE APPLICANTS
(SISP Approval and Stalking Horse Approval)
(Returnable September 18, 2024)

September 12, 2024

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TO: THE SERVICE LIST

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TAB 1

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NOTICE OF MOTION
(Approval of SISP & Stalking Horse Agreement)

2675970 Ontario Inc., 2733181 Ontario Inc., 2385816 Alberta Ltd., 2161907 Alberta Ltd., 2733182 Ontario Inc., 2737503 Ontario Inc., 2826475 Ontario Inc., 14284585 Canada Inc., 2197130 Alberta Ltd., 2699078 Ontario Inc., 2708540 Ontario Corporation, 2734082 Ontario Inc., TS Wellington Inc., 2742591 Ontario Inc., 2796279 Ontario Inc., 10006215 Manitoba Ltd., and 80694 Newfoundland & Labrador Inc. (each individually, an "**Applicant**", and collectively, the "**Applicants**") will make a motion before Justice Cavanagh of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") on September 18, 2024 at 9 :00 a.m. or as soon after that time as the motion can be heard via Zoom videoconference.

PROPOSED METHOD OF HEARING: The motion is to be heard:

☐in writing under subrule 37.12.1 (1) because it is on consent, unopposed or made without notice;

☐in writing as an opposed motion under subrule 37.12.1 (4);

☐In person;

☐By telephone conference;

X By video conference.

at the following location:

https://ca01web.zoom.us/j/61804264297?pwd=MEpzRUtlUVB0UGc4eStsVGNtYmkxUT09
Meeting ID: 618 0426 4297
Passcode: 057603

THE MOTION IS FOR:

1. a "**SISP Approval Order**" substantially in the form attached as **Tab 3** to the Motion Record, that among other things:

   (a) approves the sale and investment solicitation process attached as Schedule "A" to the SISP Approval Order (the "**SISP**");

   (b) authorizes and directs the Monitor and the Applicants to take any and all actions as may be necessary or desirable to implement and carry out the SISP in accordance with its terms and the SISP Approval Order;

   (c) authorizes and empowers the Applicants to enter into the share purchase agreement (the "**Stalking Horse Agreement**") between 2675970 Ontario Inc., ("**267 Ontario**"), and TS Investments Corp. ("**TS Investments**" or the "**Stalking Horse Bidder**"), and attached as Exhibit "D" to the Affidavit of Andrew Williams sworn September 12, 2024 (the "**Third Williams Affidavit**") with such minor amendments as may be acceptable to each of the parties thereto, with the approval of the Monitor (the "**Stalking Horse Bid**"); provided that the approval of any sale and vesting of any Property in and to the Stalking Horse Bidder shall be considered by this Court on a subsequent motion made to this Court if the

Stalking Horse Agreement is the Successful Bid (defined below) pursuant to the SISP;

(d) approves the break fee contained in the Stalking Horse Agreement (the "**Break Fee**") and authorizes and directs the Applicants to pay the Break Fee to the Stalking Horse Bidder if the Stalking Horse Bid is not the Successful Bid (as defined herein) under the SISP;

2. a further amended and restated initial order that modifies the amended and restated initial order dated September 6, 2024 (the "**ARIO**") to stay all proceedings against or in respect of DAK Capital Inc. ("**DAK**"), an entity related to the Applicants, that relate to or involve any of the Applicants or Non-Applicant Entities (as defined below) (any such proceeding a "**Related Proceeding**") except with the written consent of DAK and the Monitor, or with leave of this Court (the "**Related Proceeding Stay**"); and

3. such further and other relief as this Honourable Court deems just.

THE GROUNDS FOR THE MOTION ARE:

Overview

4. The Applicants own, operate, and franchise retail dispensaries in Canada selling premium cannabis products and accessories directly to consumers under the corporate banner "Tokyo Smoke" as well as maintain an online platform for direct-to-consumer cannabis sales and deliveries ("**Tokyo Smoke**" or the "**Business**").

5. Tokyo Smoke was one of the first chain retailers formed following the legalization of cannabis in Ontario in 2018. Conceived as an experiential retail concept, the Tokyo Smoke brand was predicated on appealing to non-legacy cannabis customers with award-winning design in desirable locations.

6. Since its inception, the Applicants have expanded their operations drastically and have become a leading cannabis retailer with a nationally recognized portfolio of banners and branding. The Applicants have 61 operating corporate retail locations and 29 franchised retail locations across Canada. The majority of the retail stores are located in Ontario, with other locations in Saskatchewan, Manitoba, and Newfoundland and Labrador.

7. The Applicants began facing financial difficulties resulting from a combination of factors including an expansion in the number of Ontario cannabis retail licenses, burdensome lease terms at underperforming retail stores, the highly-regulated nature of the industry, and the COVID-19 pandemic and associated inflationary economic environment.

8. The confluence of these factors caused the Applicants to face a severe liquidity crisis and the Applicants were unable to meet their obligations as they became due. Accordingly, on August 28, 2024, the Applicants sought and obtained relief under the CCAA pursuant to the order of Justice Cavanagh dated August 28, 2024 (the "**Initial Order**"), which was amended and restated in the ARIO dated September 6, 2024.

9. Pursuant to the ARIO, the Court, among other things:

   (a) appointed Alvarez and Marsal Canada Inc. as monitor of the Applicants (in such capacity, the "**Monitor**");

   (b) granted a stay of proceedings up to and including December 6, 2024 (the "**Stay Period**");

   (c) approved the debtor in possession term sheet dated August 27, 2024 (**"DIP Term Sheet**"), pursuant to which the Applicants are authorized to borrow up to $8 million plus interest and fees from TS Investments;

(d) extended the stay of proceedings to certain of the Applicants' affiliates (the "**Non-Applicant Entities**");

(e) approved a key employee retention plan (the "**KERP**");

(f) granted certain super-priority charges over all of the Applicants' assets, properties and undertakings (the "**Property**"), namely:

(i) an administration charge in the amount of $850,000;

(ii) a charge in favour of the TS Investments, who is the lender under the DIP Term Sheet, in the maximum principal amount of $8 million plus fees, costs, and interest;

(iii) a charge in favour of the Applicants' directors and officers in the amount of $3 million; and

(iv) a charge in favour of the beneficiaries of the KERP to the maximum amount of $218,500;

(g) authorized the Applicants to pay certain pre-filing amounts to suppliers of the Applicants, with the consent of the Monitor and in accordance with the terms of the DIP Term Sheet and the Cash Flow Projection (as defined herein);

(h) authorized the Applicants to pay post-filing interest due to the Bank of Montreal ("**BMO**"); and

(i) authorized the Applicants to continue to use the central cash management system currently in place or, with the consent of the Monitor and TS Investments, replace it with another substantially similar central cash management system (the "**Cash Management System**").

10. The Applicants commenced these CCAA proceedings to, among other things, achieve a comprehensive operational and financial restructuring plan that includes the implementation of the SISP, streamlining of operations, and restructuring unprofitable segments of the Business.

SISP Approval Order

11. The primary objectives of these CCAA proceedings are to clean up the balance sheet and reduce expenses with a view to being profitable.

12. To meet these objectives and to complement the Applicants' ongoing operational restructuring efforts, the Applicants determined that it is critical that they conduct a sale and investment solicitation process. Accordingly, the Applicants developed the SISP, in consultation with the Monitor, the Stalking Horse Bidder, and the Bank of Montreal ("**BMO**") (its senior secured lender).

13. The SISP was developed taking into account the financial circumstances of the Applicants and the amount of financing available under the DIP Term Sheet.

14. The Applicants seek approval of the SISP as it is a critical step towards a successful restructuring and the maximization of the value of the Business.

15. The SISP involves a stalking horse bid in the form of the Stalking Horse Agreement with TS Investments. The Stalking Horse Bid sets the "floor" price in any sale of the Business.

16. The SISP contemplates a two-phase bidding process that will be managed by the Monitor. The key milestones in the SISP, which are all anticipated to occur during the Stay Period, are as follows:

(a) September 20, 2024: the Monitor will publish notice of the SISP and circulate the teaser and non-disclosure agreement to a list of interested parties;

(b) October 21, 2024: the "Phase 1 Bid Deadline" by which a bidder must submit a non-binding letter of interest in accordance with the terms of the SISP;

(c) November 11, 2024: the "Phase 2 Bid Deadline" by which a bidder must submit a binding and formal offer (the "**Binding Offer**") to the Monitor in accordance with the terms of the SISP;

(d) November 13, 2024: the Applicants will select the highest or otherwise best bid (the "**Successful Bid**"), including conducting an auction (the "**Auction**"), if necessary;

(e) November 22, 2024: the Applicants will bring a motion to the Court for approval of the Successful Bid before this date; and

(f) December 6, 2024: the "Outside Date" by which to close the transaction contemplated in the Successful Bid.

17. If the Monitor receives Binding Offers other than the Stalking Horse Agreement on the Phase 2 Bid Deadline, the Monitor, in consultation with the Applicants, will direct the bidders that submitted a Binding Offer to participate in the Auction. The Auction will be conducted and administered by the Monitor in accordance with the Auction Procedures Letter (as defined in the SISP).

18. The highest bid at the Auction will be deemed the Successful Bid.

19. After the selection of a Successful Bid, the SISP contemplates:

(a) **granting of an Approval Order:** on the earliest possible date after the selection of the Successful Bid, the Applicants shall apply to the Court for one or more orders approving such Successful Bid, vesting title to the purchased assets in the name of the successful bidder, and/or vesting unwanted liabilities out of one or more of the Applicants (the "**Approval Order**"); and

(b) **closing of the transaction by the Outside Date:** the parties will close the transaction contemplated in the Successful Bid by the Outside Date, being December 6, 2024.

20. The Applicants are of the view that a Court-supervised SISP under the CCAA will be the most cost-efficient and effective means of maximizing creditor recovery.

21. The SISP satisfies the criteria in s. 36 of the CCAA, which the Court considers in determining whether to approve a sale outside of the ordinary course of business.

22. The Monitor has advised it is supportive of the SISP. BMO does not oppose the requested relief.

The Stalking Horse Agreement

23. The Applicants are seeking approval of the Stalking Horse Agreement, which will stimulate market interest by setting a "floor" price that bidders in the SISP must bid against. For clarity, the Applicants do not seek the Court's approval of the transaction contemplated in the Stalking Horse Agreement at this time. A separate motion will be brought upon conclusion of the SISP for an approval and vesting order with respect to the Successful Bid.

24. The Stalking Horse Bidder is the direct and indirect shareholder of the Applicants, as well as a significant secured lender of the Applicants.

25. The Stalking Horse Agreement provides stability to the Business as it signals to the Applicants' customers, employees and other stakeholders that the Business will continue as a going concern after these CCAA proceedings.

26. The Stalking Horse Agreement is structured as a purchase of the shares of the Applicants that will be effected through a "reverse vesting" transaction.

27. The purchase price under the Stalking Horse Agreement is made up of the following components which equal the approximate amount of $77 million:

    (a) a credit bid of the outstanding obligations payable by the Applicants pursuant to the DIP Term Sheet, all accrued and unpaid interest, fees and costs;

    (b) payment in cash or assumption of all amounts owing by the Applicants to BMO;

    (c) an amount equal to the Retained Liabilities (as defined in the Stalking Horse Agreement);

    (d) a credit bid of the amount of $31 million, representing a portion of the outstanding secured obligations payable by the Applicants pursuant to the Grid Note with TS Investments (together with (a) above, the "**Credit Bid Consideration**");

    (e) a cash payment equal to all Cure Costs (as defined in the Stalking Horse Agreement);

    (f) a cash payment equal to the Priority Payment Amount (as defined in the Stalking Horse Agreement); *plus*

    (g) a cash payment equal to the Administrative Expense Amount.

28. The Stalking Horse Agreement also entitles the Stalking Horse Bidder to a Break Fee equal to 1% of the Credit Bid Consideration, which is approximately $390,000, in the

circumstances where the Stalking Horse Agreement is not selected as the Successful Bid under the SISP. If the Stalking Horse Agreement is chosen as the Successful Bid, then no Break Fee will be payable to the Stalking Horse Bidder.

29. The quantum of the Break Fee was negotiated amongst the parties with the assistance of the Monitor. The quantum of the Break Fee is reasonable given the Stalking Horse Agreement was the product of good faith negotiations amongst counsel for the parties, and it is on the low-end of break fees that have been accepted by the Court in similar circumstances.

30. Closing of the transaction contemplated by the Stalking Horse Agreement is subject to conditions that are customary for a transaction of this nature.

31. The Stalking Horse Agreement is both fair and reasonable in the circumstances.

32. The Monitor supports the approval of the Stalking Horse Agreement for the purpose of constituting the Stalking Horse Bid under the SISP.

Further ARIO

33. The Applicants also seek an amendment to the ARIO to grant the Related Proceeding Stay. The Related Proceeding Stay being sought is until December 6, 2024, which is less than three months from the date of this affidavit.

34. DAK is a related party corporation that provides two of the Applicants, 2161907 Alberta Ltd. ("**216 Alberta**") and 267 Ontario, with management services pursuant to Management Services Agreements. As part of the management services it provides, DAK is a party to a Share Purchase Agreement between Canopy Growth Corporation ("**Canopy Growth**") and Tweed Inc. ("**Tweed**"), as vendors, 267 Ontario, as purchaser,

and DAK, as payment guarantor, dated September 23, 2022, as amended by the Amendment to Share Purchase Agreement dated December 30, 2022 (the "**SPA**").

35. On March 8, 2024, Canopy Growth, Tweed, and Tweed Leasing Corporation (collectively, the "**Canopy Claimants**") issued a Notice of Arbitration against four of the Applicants - 267 Ontario, 216 Alberta, 2733181 Ontario Inc., and 14284585 Canada Inc. (collectively, the "**TS Respondents**") - as well as DAK (the "**Canopy Arbitration**").

36. As a result of the ARIO, the Canopy Arbitration is stayed against the TS Respondents. Regardless. the Canopy Claimants have advised they wish to continue with the Canopy Arbitration against DAK**.**

37. The commencement or continuation of the Canopy Arbitration against DAK will invariably necessitate the participation of the TS Respondents. As parties to the SPA and defendants in the Canopy Arbitration, the TS Respondents and certain of their management employees may be witnesses to the impugned transaction under the SPA and/or document custodians required to provide evidence. They would be required, as a practical matter, to participate in the litigation in a substantive manner. If the TS Respondents or their management do not participate in the Canopy Arbitration, the Applicants risk findings being made in the Canopy Arbitration that could impugn their conduct and prejudice their defence.

38. The TS Respondents' participation in the Canopy Arbitration would likely consume considerable resources and manpower that would otherwise be focused on the Applicants' ongoing operational restructuring efforts, which will detrimentally impact the Applicants' restructuring and the success of these CCAA proceedings.

39. The Related Proceeding Stay does not purport to release, compromise or permanently enjoin the Related Proceeding. Rather, it imposes a temporary stay of proceedings until

December 6, 2024 to maintain stability, preserve the Applicants' and the directors' limited time and resources, and facilitate the administration of these CCAA proceedings.

40. The Monitor supports the granting of the Related Proceeding Stay in favour of DAK.

Other Grounds

41. The provisions of the CCAA including sections 11 and 36, and the inherent and equitable jurisdiction of this Honourable Court.

42. Rules 1.04, 2.01, 2.03, 3.02, 37 and 39 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended.

43. 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:

44. the Affidavit of Andrew Williams, sworn September 12, 2024 and the exhibits annexed thereto;

45. the Second Report of the Monitor, to be filed; and

46. such further and other materials as counsel may advise and as this Honourable Court may permit.

September 12, 2024

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Lawyers for the Applicants

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SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
Proceedings commenced at Toronto

NOTICE OF MOTION
(Approval of SISP & Stalking Horse Agreement)
(RETURNABLE SEPTEMBER 18, 2024)

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TAB 2

Court File No. CV-24-00726584-00CL

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 2675970 ONTARIO INC., 2733181 ONTARIO INC., 2385816 ALBERTA LTD., 2161907 ALBERTA LTD., 2733182 ONTARIO INC., 2737503 ONTARIO INC., 2826475 ONTARIO INC., 14284585 CANADA INC., 2197130 ALBERTA LTD., 2699078 ONTARIO INC., 2708540 ONTARIO CORPORATION, 2734082 ONTARIO INC., TS WELLINGTON INC., 2742591 ONTARIO INC., 2796279 ONTARIO INC., 10006215 MANITOBA LTD., AND 80694 NEWFOUNDLAND & LABRADOR INC.

AFFIDAVIT OF ANDREW WILLIAMS
(sworn September 12, 2024)

I, **ANDREW WILLIAMS**, of the City of Toronto, in the Province of Ontario, **MAKE OATH AND SAY**:

1. I am the President of each of 2675970 Ontario Inc., 2733181 Ontario Inc., 2385816 Alberta Ltd., 2161907 Alberta Ltd., 2733182 Ontario Inc., 2737503 Ontario Inc., 2826475 Ontario Inc., 14284585 Canada Inc., 2197130 Alberta Ltd., 2699078 Ontario Inc., 2708540 Ontario Corporation, 2734082 Ontario Inc., TS Wellington Inc., 2742591 Ontario Inc., 2796279 Ontario Inc., 10006215 Manitoba Ltd., and 80694 Newfoundland & Labrador Inc. (each individually, an "**Applicant**", and collectively, the "**Applicants**"). Accordingly, I have personal knowledge of the matters set out below except where I have obtained information from others. Where I have relied on information from others, I state the source of such information and verily believe it to be true.

2. This affidavit is sworn in support of the Applicants' motion for:

(a) an order (the "**SISP Approval Order**") that, among other things:

i. approves the sale and investment solicitation process attached as Schedule "A" to the SISP Approval Order (the "**SISP**");

ii. authorizes and directs the Monitor and the Applicants to take any and all actions as may be necessary or desirable to implement and carry out the SISP in accordance with its terms and the SISP Approval Order;

iii. authorizes and empowers the Applicants to enter into a share subscription agreement (the "**Stalking Horse Agreement**") between 2675970 Ontario Inc. ("**267 Ontario**") and TS Investments (in such capacity, the "**Stalking Horse Bidder**"), solely for the purpose of constituting the **"Stalking Horse Bid"** under the SISP; and

iv. approves the break fee contained in the Stalking Horse Agreement (the "**Break Fee**") and authorizes and directs the Applicants to pay the Break Fee to the Stalking Horse Bidder if the Stalking Horse Bid is not the Successful Bid (as defined herein) under the SISP.

(b) an amendment to the amended and restated initial order dated September 6, 2024 (the "**ARIO**") extending the stay of proceedings to stay all proceedings against or in respect of DAK Capital Inc. ("**DAK**"), an entity related to the Applicants, that relate to or involve any of the Applicants or Non-Applicant Entities (as defined below) (any such proceeding a "**Related Proceeding**") except with the written consent of DAK and the Monitor, or with leave of this Court (the "**Related Proceeding Stay**").

I. BACKGROUND OF THE CCAA PROCEEDING

3. The Applicants own, operate, and franchise retail dispensaries in Canada selling premium cannabis products and accessories directly to consumers under the corporate banner "Tokyo Smoke." In addition to retail dispensaries, the Applicants maintain an online platform for direct-to-consumer cannabis sales and deliveries (the "**Business**").

4. Tokyo Smoke was one of the first chain retailers formed following the legalization of cannabis in Ontario in 2018. Conceived as an experiential retail concept, the Tokyo Smoke brand was predicated on appealing to non-legacy cannabis customers with award-winning design in desirable locations.

5. Since their inception, the Applicants have significantly expanded their operations and have become a leading cannabis retailer with a nationally recognized portfolio of banners and branding. At the time of filing for protection under the *Companies' Creditors Arrangement Act* (Canada) (the "**CCAA**"), the Applicants had 61 operating corporate Tokyo Smoke retail locations and 29 franchised Tokyo Smoke retail locations across Canada. The majority of the retail stores are located in Ontario, with remaining locations in Saskatchewan, Manitoba, and Newfoundland and Labrador.

6. The Applicants began experiencing financial difficulties due to various factors, including changes in the licensing regime which devalued cannabis retail licenses and saturated the market, challenges in the cannabis retail space as a result of the lack of product differentiation and downward price pressure, burdensome real property lease terms at underperforming retail stores, and increased operating costs due to the broader economic environment.

7. As a result of the Applicants' liquidity constraints, on August 28, 2024, the Applicants sought and obtained an initial order (the "**Initial Order**") under the CCAA from the Ontario Superior Court of Justice (Commercial List) (the "**Court**").

8. At the comeback hearing, on September 6, 2024, the Applicants sought and obtained the ARIO. A copy of the ARIO is attached as **Exhibit "A"**.

9. Pursuant to the ARIO, the Court, among other things:

(a) appointed Alvarez and Marsal Canada Inc. as monitor of the Applicants (in such capacity, the "**Monitor**");

(b) granted a stay of proceedings in favour of the Applicants until and including December 6, 2024;

(c) extended the stay of proceedings to certain of the Applicants' affiliates (the "**Non-Applicant Entities**")**;**

(d) approved a DIP facility term sheet dated August 27, 2024 (the "**DIP Term Sheet**"), pursuant to which the Applicants are authorized to borrow up to $8 million from TS Investments Corp. (the "**DIP Lender**");

(e) approved a key employee retention plan (the "**KERP**"); and

(f) granted certain super-priority charges over all of the Applicants' assets, properties and undertakings (the "**Property**"), namely:

i. an administration charge in the amount of $850,000;

ii. a charge in favour of the DIP Lender in the maximum principal amount of $8 million plus fees, costs, and interest;

iii. a charge in favour of the Applicants' directors and officers in the amount of $3 million; and

iv. a charge in favour of the beneficiaries of the KERP to the maximum amount of $218,500.

10. In support of the Initial Order and the ARIO, I swore an affidavit on August 28, 2024 ("**Initial Affidavit**") and on September 3, 2024 ("**Second Affidavit**"). My Initial Affidavit provides further details on, among other things, the Applicants' Business, the Applicants' financial circumstances and the events leading up to the Applicants' insolvency. My Second Affidavit provides further details on the Applicants' activities between the granting of the Initial Order and the ARIO. My Initial Affidavit is attached (without exhibits) as **Exhibit "B".** My Second Affidavit is attached (without exhibits) as **Exhibit "C".**

II. THE SISP

11. As discussed in the Initial Affidavit, the primary objectives of these CCAA proceedings are to clean up the balance sheet and reduce expenses with a view to being profitable.

12. To meet these objectives and to complement the Applicants' ongoing operational restructuring efforts, the Applicants determined that it is critical that they conduct a sale and investment solicitation process. Accordingly, the Applicants developed the SISP, in consultation with the Monitor, the DIP Lender, and the Bank of Montreal ("**BMO**") (its senior secured lender).

13. I believe that the SISP is the best available option to maximize value for the Applicants' stakeholders. Specifically, the SISP is intended to widely expose the Applicants' Business and Property to the market and to provide a structured and orderly process for interested parties to perform due diligence and submit offers for a broad range of potential transactions (including a

sale or recapitalization). The Applicants will continue to operate in the normal course during the SISP in order to preserve and maximize going concern value of the Business.

14. The SISP involves the submission of a stalking horse bid to set the "floor" price in any sale of the Business. Accordingly, the Applicants have negotiated the Stalking Horse Agreement with TS Investments. TS Investments is the direct and indirect shareholder of the Applicants, as well as a significant secured lender of the Applicants. A copy of the Stalking Horse Agreement is attached as **Exhibit "D"**.

15. I understand that the Monitor supports the approval of the SISP, recognizing that the SISP is fair and reasonable in the circumstances, and is in the best interest of creditors. I also understand that the DIP Lender and BMO are supportive of the SISP.

16. The SISP and Stalking Horse Agreement mitigate the risk of employee resignations as a result of uncertainty around the outcome of the CCAA proceeding and will increase the likelihood that the Applicants will be able to emerge from CCAA protection as a going concern.

A. Overview of the SISP

17. The SISP contemplates a two-phase sale process that will be administered by the Court-appointed Monitor over approximately 50 days. The SISP is designed to culminate in the closing of a transaction by no later than December 6, 2024, which is the day that the stay of proceedings expires.

18. Phase 1 of the SISP ("**Phase 1**") calls for non-binding letters of interest ("**LOIs**"). The Monitor, in consultation with the Applicants, will assess the LOIs to determine which bids are a "**Phase 1 Qualified Bid**" and which bidders can participate in the second phase of the SISP (a "**Phase 2 Qualified Bidder**").

19. In the event that no Phase 1 Qualified Bid is received, or the Monitor has determined in its reasonable business judgment that it would not be appropriate to select any Phase 2 Qualified Bidders, the Monitor will declare the Stalking Horse Bidder as the best bid (the "**Successful Bid**"). In such circumstances, the SISP will not proceed to phase 2 ("**Phase 2**").

20. If there is at least one Phase 2 Qualified Bidder (other than the Stalking Horse Bidder), the SISP shall proceed to Phase 2.

21. Phase 2 of the SISP permits Phase 2 Qualified Bidders to conduct further due diligence and submit an unconditional binding offer ("**Binding Offer**") that complies with the terms specified in the SISP. A bidder that submits a Binding Offer will be considered a "**Binding Bidder**".

22. The SISP contemplates the following key milestones and deadlines:

Milestone	**Deadline**
Commencement of marketing and solicitation of interest (the "**Commencement Date**")	As soon as reasonably practicable but no later than September 20, 2024
Deadline to submit a LOI (the "**Phase 1 Bid Deadline**")	5:00 p.m. (Eastern Time) on October 21, 2024
Deadline to submit a Binding Offer (the "**Phase 2 Bid Deadline**")	5:00 p.m. (Eastern Time) on November 11, 2024
Selection of Successful Bid(s)	No later than 5:00 p.m. (Eastern Time) on November 13, 2024
Motion for Court Approval of Successful Bid(s)	As soon as reasonably practicable following the selection of the Successful Bid, but by no later than November 22, 2024
Closing of Successful Bid(s)	No later than December 6, 2024 ("**Outside Date**")

23. I believe the above milestones provide sufficient time for the Applicants to broadly canvass the market for a value-maximizing transaction. In particular, the above timeline of the SISP appropriately balances the Applicants' need for sufficient time to comprehensively market their Business with the limitations of the Applicants' financial position and available interim financing.

24. The SISP provides that the Monitor may extend the above deadlines, in consultation with the Applicants, by up to two weeks without Court approval with the exception of the Outside Date, which can only be extended with the prior written consent of the DIP Lender and BMO. The ability to extend deadlines provides the Monitor and Applicants with the necessary flexibility to maximize the Applicants' success in the SISP.

25. Each of the key milestones of the SISP are described in greater detail below.

B. Solicitation of Interest and Notice of the SISP

26. The SISP prescribes that the Monitor, in consultation with the Applicants, shall take the following steps to commence the SISP before the Commencement Date of September 20, 2024:

(a) prepare a list of known potential bidders;

(b) publish a notice of the SISP on the Monitor's Website and in any publications as may be considered appropriate by the Monitor;

(c) prepare both a process summary (the "**Teaser Letter**") describing the SISP and a form of non-disclosure agreement ("**NDA**"); and

(d) prepare and maintain a virtual data room ("**VDR**") containing due diligence information and documentation in relation to the Applicants including a copy of the Stalking Horse Agreement.

27. I understand that the Monitor has already started preparing the above-noted documents and the VDR with a view to commencing the SISP as soon as reasonably practicable following the SISP Approval Order.

28. The SISP also requires the Applicants to issue a press release about the SISP no later than the Commencement Date.

29. As soon as reasonably practicable following the granting of the SISP Approval Order, the Monitor will send the Teaser Letter and NDA to each known potential bidder and to any other party who requests a copy.

C. Phase 1: Non-Binding LOIs

30. In order to participate in Phase 1 of the SISP, an interested party must deliver an executed NDA to the Monitor, and if requested by the Monitor, evidence of its financial wherewithal to complete a transaction on a timely basis. Thereafter, the Monitor will grant the interested party access to the VDR to perform its due diligence.

31. Any party who wishes to submit a non-binding LOI must do so by the Phase 1 Bid Deadline, being October 21, 2024. An LOI will only be considered a Phase 1 Qualified Bid where it complies with certain minimum criteria including, among other things:

(a) it has been duly executed by all required parties;

(b) it provides written evidence, satisfactory to the Monitor, in consultation with the Applicants, of the participant's ability to consummate the transaction within the timeframe contemplated by the SISP;

(c) it identifies the terms and conditions of the proposed transaction including: (i) a description of the specific assets/shares that are expected to be subject to the

transaction and any assets/shares expected to be excluded; (ii) a description of those liabilities and obligations (including operating liabilities and obligations to employees) which the participant intends to assume and which liabilities and obligations it does not intend to assume and are to be excluded as part of the transaction; (iii) whether the proposed transaction is to be implemented by way of a "reverse vesting order"; (iv) any other terms of conditions of the proposed transaction that the bidder believes are material to the transaction;

(d) it identifies all proposed material conditions to closing including, without limitation, any internal, regulatory or other approvals and any form of consent, agreement or other document required from a government body, stakeholder or other third party, and an estimate of the anticipated timeframe and any anticipated impediments for obtaining such conditions, along with information sufficient for the Monitor, in consultation with the Applicants, to determine that these conditions are reasonable;

(e) it identifies any additional due diligence required to be completed in order to submit a Binding Offer; and

(f) it identifies the investment amount or purchase price that must, at a minimum, provide cash consideration sufficient to pay in full on closing of the transaction: (i) the amount equal to the purchase price in the Stalking Horse Agreement which is approximately $77 million, plus an incremental bid amount (in the minimum amount of $250,000); (ii) an administrative reserve in an amount satisfactory to the Monitor necessary to wind-down the CCAA proceeding; and (iii) a Break Fee in the amount of $390,000 as contemplated in the Stalking Horse Agreement (the aggregate of these amounts, the "**Minimum Purchase Price**"). The Monitor may deem this

criterion satisfied if the LOI, together with one or more other non-overlapping LOIs, have an aggregate value that meets or exceeds the Minimum Purchase Price ("**Aggregated Bids**").

32. Following the Phase 1 Bid Deadline, the Monitor, in consultation with the Applicants, shall assess the LOIs. If the Monitor determines that there is at least one Phase 1 Qualified Bid (other than the Stalking Horse Bid), the SISP will proceed to Phase 2. Only the bidders that submit a Phase 1 Qualified Bid will be deemed a "Phase 2 Qualified Bidder" and permitted to participate in Phase 2 of the SISP.

33. In the event that no Phase 1 Qualified Bid is received (other than the Stalking Horse Bid), or the Monitor has determined in its reasonable business judgment that it would not be appropriate to select any Phase 2 Qualified Bidders, the Monitor will declare the Stalking Horse Bid as the Successful Bid. In such circumstances, the Applicants will promptly seek Court approval of the Stalking Horse Agreement and Phase 2 of the SISP will not be conducted.

D. Phase 2 – Binding Offers

34. Phase 2 of the SISP affords the Phase 2 Qualified Bidders the opportunity to perform further due diligence and submit a formal Binding Offer.

35. Any Phase 2 Qualified Bidder (other than the Stalking Horse Bidder) that wishes to make a formal offer with respect to the Applicants' Business must submit a Binding Offer by the Phase 2 Bid Deadline, being November 11, 2024. An offer will only be considered to be a Binding Offer where it complies with certain criteria identified in the SISP including, among other things:

(a) it identifies all executory contracts of the Applicants that the Phase 2 Qualified Bidder will assume and clearly describes, for each contract or on an aggregate

basis, how all monetary defaults and non-monetary defaults will be remedied, as applicable;

(b) if the bid is structured as a "reverse vesting transaction", it includes a duly authorized and executed binding transaction agreement, including all exhibits and schedules contemplated thereby, together with a blackline against the Stalking Horse Agreement (which shall be posted in Word format in the VDR), describing the terms and conditions of the proposed transaction, including any liabilities and obligations proposed to be assumed, the purchase price, the structure and financing of the proposed transaction, and any regulatory or other third-party approvals required;

(c) if the bid is structured in a form other than a "reverse vesting transaction", it includes a duly authorized and executed definitive transaction agreement containing the detailed terms and conditions of the proposed transaction, including the Business or the assets proposed to be acquired, the obligations and liabilities to be assumed/excluded, the detailed structure of the transaction, the final purchase price or investment amount, and any other key economic terms expressed in Canadian dollars, together with all exhibits and schedules thereto, all applicable ancillary agreements with all exhibits and schedules thereto (or term sheets that describe the material terms and provisions of such ancillary agreements), and the proposed form of order(s) for the Court to consider in the motion to approve the transaction;

(d) it provides for net cash proceeds that are not less than the Minimum Purchase Price; unless it is a part of Aggregated Bids, in which case the total net cash

proceeds of the Aggregated Bids will be not less than the Minimum Purchase Price;

(e) it is accompanied by a deposit in the amount of not less than 10% of the cash purchase price payable on closing or total new investment contemplated, as the case may be (the "**Deposit**"), along with an acknowledgement (i) that if the bid of the Phase 2 Qualified Bidder is selected as the Successful Bid, the Deposit will be nonrefundable subject to approval of the Successful Bid by the Court, and (ii) of the terms of the SISP;

(f) it is not subject to any financing condition;

(g) it is unconditional, other than upon the receipt of the Approval Order (as defined below) and satisfaction of any other conditions expressly set forth in the Binding Offer;

(h) it contains or identifies the key terms and provisions to be included in any Approval Order (as defined below), including whether such order will be a "reverse vesting order"; and

(i) it is accompanied by a letter that confirms that the Binding Offer: (i) may be accepted by the Applicants by countersigning the Binding Offer; and (ii) is irrevocable and capable of acceptance until the earlier of (A) two business days after the date of closing of the Successful Bid(s); and (B) the Outside Date.

E. Selection, Approval and Closing of the Successful Bid(s)

36. At the conclusion of Phase 2 of the SISP, the Monitor will review and evaluate each offer received in consultation with the Applicants and BMO. If no Binding Offer is received (other than the Stalking Horse Agreement), the Monitor will, as soon as reasonably possible, post a notice on

its website that the SISP has concluded. In such circumstances, the Applicants will promptly seek a motion before the Court for the Approval Order (as defined below).

37. If a Binding Offer other than the Stalking Horse Agreement is received, the Monitor, in consultation with the Applicants, will direct such Binding Bidder to participate in an auction (the "**Auction**"). The Auction will be administered by the Monitor and governed by an auction procedures letter to be prepared by the Monitor and sent to all applicable Binding Bidders setting out, among other things, (a) the date, time and location of the Auction (including whether in person or by videoconference); (b) the amount of the starting bid; and (c) the initial minimum overbid.

38. The highest bid at the Auction will be deemed the Successful Bid.

39. After the selection of a Successful Bid, the SISP contemplates:

(a) **granting of an Approval Order:** on the earliest possible date after the selection of the Successful Bid, the Applicants shall apply to the Court for one or more orders approving such Successful Bid, vesting title to the purchased assets in the name of the successful bidder, and/or vesting unwanted liabilities out of one or more of the Applicants (the "**Approval Order**"); and

(b) **closing of the transaction by the Outside Date:** the parties will close the transaction contemplated in the Successful Bid by the Outside Date, being December 6, 2024.

40. On the closing of the transaction contemplated in the Successful Bid, all Binding Offers other than the Successful Bid will be deemed rejected.

III. THE STALKING HORSE AGREEMENT

41. The SISP includes the Stalking Horse Bid, in the form of the Stalking Horse Agreement, to stimulate market interest by setting a "floor" price that bidders in the SISP must bid against. Notwithstanding that all reasonable efforts outlined in the SISP will be made to solicit interest, the Stalking Horse Bid also provides comfort and assurance to stakeholders that the SISP will result in a successful transaction that will permit the Applicants will emerge from these CCAA proceedings as a going-concern for the benefit of their stakeholders including their 374 employees, suppliers, customers, franchisees, and landlords.

42. As noted above, approval of the Stalking Horse Agreement on this motion is only being sought for the purposes of approving it as the Stalking Horse Bid under the SISP. To the extent the Stalking Horse Agreement is ultimately designated as the Successful Bid in the SISP, further approval will be sought from the Court to consummate the transactions contemplated therein.

43. The principal terms of the Stalking Horse Agreement are summarized below. Defined terms used but not defined in the chart below are taken from the Stalking Horse Agreement:

Term	**Details**
Seller	267 Ontario, as the Company
Purchaser	TS Investments Corp., as Purchaser (the existing parent company of the Seller)
Transaction Structure	Reverse vesting structure share subscription agreement Prior to closing, the Company will incorporate a new company ("**Residual Co.**") to which all the Excluded Assets, Excluded Contracts, and Excluded Liabilities will be transferred as part of the Closing Sequence. Residual Co. shall have no issued or outstanding shares.

Purchased Assets	The Company shall issue to the Purchaser, and the Purchaser shall subscribe for that number and class of shares in the share capital of the Company from treasury, to be specified by the Purchaser at least two Business Days prior to the Closing Date, which shares shall be free and clear of all Encumbrances, except for any Encumbrances under any BMO Post-Closing Loan Documents ("**Purchased Shares**"). In addition to the Purchased Shares, the Retained Assets and Retained Liabilities will remain with the Purchased Entities.
Purchase Price	The total aggregate consideration payable by TS Investments for the Purchased Shares is equal to approximately $77 million representing: (a) the outstanding obligations payable by the Applicants pursuant to the DIP Term Sheet, plus all accrued and unpaid interest, fees, and costs; (b) all amounts owing by the Purchased Entities to BMO; (c) an amount equal to the Retained Liabilities (other than the amount of indebtedness owing to BMO) that have accrued as of the Closing Date, (d) the amount of $31 million, representing a portion of the outstanding secured obligations payable by the Applicants pursuant to the TS Investments Grid Note including the principal amount of such claims and interest, fees and interest accrued as of the Closing Date; as well as certain cash consideration, namely (e) the Cure Costs, (f) the Priority Payment Amount; and (e) the Administrative Expense Amount.
Excluded Assets and Excluded Liabilities	The Excluded Assets include the Cash Consideration, certain Tax matters related to the Excluded Liabilities and Excluded Assets, Excluded Contracts and Excluded Leases and certain other ancillary assets. The Stalking Horse Bidder may also exclude any other assets or liabilities five (5) days prior to the hearing for the Approval Order.
Closing Date	No later than five (5) business days after the conditions to closing have been satisfied or waived (the "**Closing Date**"). The Closing Date shall be no later than the Outside Date of December 6, 2024 or such later date agreed to by each of the Company and the Purchaser in writing in consultation with the Monitor.

Retained Liabilities	• Wages, vacation pay, and benefit plans owing to any employee that continues employment with the Applicants after the Closing Time. • Cure Costs and liabilities of the Purchased Entities under any Retained Contracts or Retained Leases being retained by the Purchaser. • Post-Filing Claims that remain outstanding as at the Closing Time. • Outstanding indebtedness under the BMO Post-Closing Loan Documents unless the Purchaser elects to pay such outstanding indebtedness in cash, or other consideration, in accordance with Section 3.2 of the Stalking Horse Agreement. • Liabilities relating to Gift Cards and The High Roller Club Rewards Program accruing to and after the Closing Time. • Intercompany Liabilities payables (and all Claims, Encumbrances relating thereto. • Tax liabilities of the Purchased Entities for any period, or the portion thereof, beginning on or after the Closing Date. • Any Retained Liabilities and any other Retained Liabilities added pursuant to Section 2.8 of the Stalking Horse Agreement.
As is, Where is	The Stalking Horse Bidder acquires the Purchased Shares on an "as is, where is basis", subject to representations and warranties of the Applicants contained in Article 4 of the Stalking Horse Agreement. I understand from my counsel that the representations and warranties contained in Article 4 are typical for share subscription agreements in the CCAA including due authorization to execute the agreement, the existence of the Applicants, and an absence of conflicts/actions that would prevent the consummation of the transaction.
Employees	The Stalking Horse Bidder will determine which employees it will assume and continue to employ prior to Closing.
Key Conditions to Closing	The key conditions for closing include: • The Stalking Horse Agreement shall be the Successful Bid (as determined pursuant to the SISP). • The SISP Approval Order and the Approval Order shall have been issued and entered and not subject to appeal. • No provision of law prevents the consummation of the transaction.

	• The parties shall receive certain transaction regulatory approvals and all licenses will be in good standing. • Employees that the Stalking Horse Bidder does not wish to retain are terminated prior to closing.

44. The Stalking Horse Agreement also entitles the Stalking Horse Bidder to a Break Fee equal to 1% of the Credit Bid Consideration (as defined in the Stalking Horse Agreement), which is $390,000, in the circumstances where the Stalking Horse Agreement is not selected as the Successful Bid under the SISP. If the Stalking Horse Agreement is chosen as the Successful Bid, then no Break Fee will be payable to the Stalking Horse Bidder.

45. The Stalking Horse Agreement was negotiated extensively between counsel for each of the Applicants and the Stalking Horse Bidder, with the oversight of the Monitor. The Break Fee is intended to compensate the Stalking Horse Bidder for the value that the Stalking Horse Bid provides to the SISP and the CCAA proceeding generally. As discussed above, the Stalking Horse Agreement provides reassurance to stakeholders that the Business will continue as a going concern, which reassurance provides stability for the Applicants at a time when stability is of paramount importance. The Stalking Horse Agreement also benefits potential bidders by providing a base valuation of the Applicants' assets and the form of the Stalking Horse Agreement for their use.

46. The quantum of the Break Fee was negotiated amongst the parties with the assistance of the Monitor. I understand from my counsel, Ms. Fell, that the parties and the Monitor are of the view that the quantum of the Break Fee is reasonable given the Stalking Horse Agreement was the product of good faith negotiations amongst counsel for the parties, and it is on the low-end of break fees that have been accepted by the Court in similar circumstances where the Stalking Horse Bidder is related to the Applicants.

47. The Stalking Horse Bidder's function as a backstop for the sales process is particularly significant given the size of the group of potential bidders in the Canadian market who will have both the capability and interest in bidding on a cannabis retail business and maintaining it as a going concern. As noted in my Initial Affidavit, the Applicants are regulated by the *Cannabis Act* (Canada) and applicable provincial and municipal cannabis legislation. Each province and territory has established its own rules and regulations governing cannabis retail activities and requires that retailers be licensed before any cannabis can be sold. In some instances, more than one license is necessary to operate a cannabis retail operation.

48. Overall, I believe that the Stalking Horse Agreement is both fair and reasonable in the circumstances. I understand that each of the Monitor, DIP Lender and BMO support the approval of the Stalking Horse Agreement solely for the purpose of approving it as the Stalking Horse Bid under the SISP.

IV. FURTHER AMENDED AND RESTATED ARIO

49. The Applicants also seek an amendment to the ARIO to grant the Related Proceeding Stay, which will stay any Related Proceeding against or in respect of DAK except with the written consent of DAK and the Monitor, or with leave of this Court. The Related Proceeding Stay being sought is until December 6, 2024, which is less than three months from the date of this affidavit.

50. As detailed in my Initial Affidavit, DAK is a related party corporation. DAK provides two of the Applicants, 2161907 Alberta Ltd. ("**216 Alberta**") and 267 Ontario, with management services pursuant to Management Services Agreements.

51. As part of the management services it provides, DAK is a party to a Share Purchase Agreement between Canopy Growth Corporation ("**Canopy Growth**") and Tweed Inc. ("**Tweed**"), as vendors, 267 Ontario, as purchaser, and DAK, as payment guarantor, dated September 23,

2022, as amended by the Amendment to Share Purchase Agreement dated December 30, 2022 (the "**SPA**").

52. Pursuant to the SPA, 267 Ontario purchased Canopy Growth's Canadian retail cannabis business.

53. On March 8, 2024, Canopy Growth, Tweed, and Tweed Leasing Corporation (collectively, the "**Canopy Claimants**") issued a Notice of Arbitration against four of the Applicants - 267 Ontario, 216 Alberta, 2733181 Ontario Inc., and 14284585 Canada Inc. (collectively, the "**TS Respondents**") - as well as DAK (the "**Canopy Arbitration**").

54. The Canopy Arbitration relates to alleged breaches of a several agreements between the Canopy Claimants, the TS Respondents, and DAK. The Canopy Claimants claim, among other things, breach of contract for unpaid amounts under the SPA, non-payment of invoices and certain unpaid rents.

55. I understand from my counsel, Caitlin Fell of Reconstruct LLP, that no procedural steps have been taken in the Canopy Arbitration since its commencement in March 2024 except that the parties agreed on an arbitrator. No timetable has been proposed to-date.

56. As a result of the ARIO, the Canopy Arbitration is stayed against the TS Respondents. Regardless, I understand from my counsel, Caitlin Fell, that counsel for the Canopy Claimants have advised they wish to continue with the Canopy Arbitration against DAK**.**

57. The allegations against DAK relate to its role as party to the SPA. As such, DAK's liability, if any, will derive from the primary liability of the TS Respondents, cannot be easily extricated from the case against the TS Respondents, and will depend on a finding that the SPA has been breached. Accordingly, the commencement or continuation of the Canopy Arbitration against DAK will invariably necessitate the participation of the TS Respondents. As parties to the SPA and

defendants in the Canopy Arbitration, the TS Respondents and certain of their management employees may be witnesses to the impugned transaction under the SPA and/or document custodians required to provide evidence. They would be required, as a practical matter, to participate in the litigation in a substantive manner. If the TS Respondents or their management do not participate in the Canopy Arbitration, the Applicants risk findings being made in the Canopy Arbitration that could impugn their conduct and prejudice their defence.

58. The TS Respondents' participation in the Canopy Arbitration would likely consume considerable resources and manpower that would otherwise be focused on the Applicants' ongoing operational restructuring efforts, which will detrimentally impact the Applicants' restructuring and the success of these CCAA proceedings. The Applicants and their upper management cannot afford to be preoccupied with the Canopy Arbitration when their time and financial resources are already strained. Diverting resources would make it even more challenging to operate the Business in the normal course while making critical decisions to effectively restructure the Business during this CCAA proceeding. The failure of these CCAA proceedings would be detrimental to the Applicants' stakeholders including employees, lenders, landlords, and customers.

59. The Related Proceeding Stay does not purport to release, compromise or permanently enjoin the Related Proceeding. Rather, it imposes a temporary stay of proceedings until December 6, 2024 to maintain stability, preserve the Applicants' and the directors' limited time and resources, and facilitate the administration of these CCAA proceedings. The parties can continue the Canopy Arbitration in respect of DAK following the conclusion of these restructuring proceedings given that the guarantee granted by DAK will not be affected or otherwise compromised in these proceedings. No prejudice results from the Related Proceeding Stay.

V. CONCLUSION

60. I believe that it is in the interests of the Applicants and their stakeholders that this Court grant the relief requested in accordance with the terms of the proposed SISP Approval Order and the further amended and restated ARIO.

61. I swear this affidavit in support of the Applicants' motion pursuant to the CCAA and for no other or improper purpose.

SWORN REMOTELY by Andrew Williams 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 this 12th day of September, 2024, in accordance with O. Reg 431/20, *Administering Oath or Declaration Remotely*.

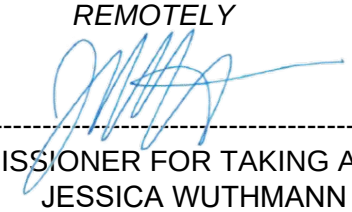
DocuSigned by:
Jessica Wuthmann
3A2B52A947404F3...

A Commissioner for taking Affidavits.
Name: Jessica Wuthmann

DocuSigned by:
Andrew Williams
0F1870E63F1941C...

Andrew Williams

THIS IS **EXHIBIT "A"** REFERRED TO IN THE
AFFIDAVIT OF ANDREW WILLIAMS SWORN REMOTELY BY ANDREW WILLIAMS
STATED AS BEING LOCATED IN THE CITY OF TORONTO BEFORE ME AT THE CITY OF
MISSISSAUGA, IN THE PROVINCE OF ONTARIO, THIS 12TH DAY OF SEPTEMBER 2024,
IN ACCORDANCE WITH O. REG 431/20, *ADMINISTERING OATH OR DECLARATION REMOTELY*



A COMMISSIONER FOR TAKING AFFIDAVITS
JESSICA WUTHMANN
LSO No. 72442W

Court File No. CV-24-00726584-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE	)	FRIDAY, THE 6TH
	)	
JUSTICE CAVANAGH	)	DAY OF SEPTEMBER, 2024

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 2675970 ONTARIO INC., 2733181 ONTARIO INC., 2385816 ALBERTA LTD., 2161907 ALBERTA LTD., 2733182 ONTARIO INC., 2737503 ONTARIO INC., 2826475 ONTARIO INC., 14284585 CANADA INC., 2197130 ALBERTA LTD., 2699078 ONTARIO INC., 2708540 ONTARIO CORPORATION, 2734082 ONTARIO INC., TS WELLINGTON INC., 2742591 ONTARIO INC., 2796279 ONTARIO INC., 10006215 MANITOBA LTD., AND 80694 NEWFOUNDLAND & LABRADOR INC. (individually, an "**Applicant**" and collectively, the "**Applicants**")

AMENDED AND RESTATED INITIAL ORDER

THIS MOTION, made by the Applicants, for an order amending and restating the initial order of Justice Cavanagh issued on August 28, 2024 (the "**Initial Filing Date**") 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.

ON READING the affidavits of Andrew Williams sworn August 28, 2024 (the "**Initial Williams Affidavit**") and September 3, 2024 (the "**Second Williams Affidavit**") and the Exhibits thereto, and the pre-filing report of Alvarez & Marsal Canada Inc. ("**A&M**"), in its capacity as proposed monitor of the Applicants, dated August 27, 2024, the first report of A&M in its capacity as monitor (in such capacity, the "**Monitor**") dated September 4, 2024, 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 to Bank of Montreal ("**BMO**"), the Applicants' senior secured lender, counsel for TS

Investments Corp. (the "**DIP Lender**") and such other counsel as were present as listed on the Counsel Slip, no one appearing for any other person although duly served as appears from the affidavits of service of Jared Rosenbaum sworn September 4, 2024 and Julie Mah sworn September 5, 2024, as filed,

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** that each of the Applicants is a company to which the CCAA applies.

PLAN OF ARRANGEMENT

3. **THIS COURT ORDERS** that 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, 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 their employees, consultants, contractors, agents, experts, accountants, counsel and such other persons (collectively "**Assistants**") currently retained or employed by them, with liberty, subject to the terms of the Definitive Documents (as hereinafter defined), 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 Initial Williams Affidavit or, with the consent of the Monitor and the DIP Lender, replace it with another substantially similar central cash management system (the "**Cash Management System**") and that any present or future bank providing the Cash Management System shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the Applicants of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person(s) (as hereinafter defined) other than the Applicants, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as provider of the Cash Management System, an unaffected creditor under the Plan with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.

6. **THIS COURT ORDERS** that the Applicants, subject to terms of the Definitive Documents, shall be entitled but not required to pay the following expenses whether incurred prior to, on or after the Initial Filing Date:

(a) all outstanding and future wages, salaries, employee and pension benefits, vacation pay and other employee related expenses payable on or after the Initial Filing Date, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements;

(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; and

(c) with the consent of the Monitor, amounts owing for goods or services actually supplied to the Applicants prior to the Initial Filing Date if, in the opinion of the Applicants following consultation with the Monitor, such payment is necessary or desirable during these proceedings.

7. **THIS COURT ORDERS** that, except as otherwise provided to the contrary herein and subject to the terms of the Definitive Documents, 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 Initial Filing Date, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

(a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors and officers insurance), maintenance and security services; and

(b) payment for goods or services actually supplied to the Applicants on or following the Initial Filing Date.

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 Initial Filing Date, or where such Sales Taxes were accrued or collected prior to the Initial Filing Date but not required to be remitted until on or after the Initial Filing Date; 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 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 Initial Filing Date, twice-monthly in equal payments on the first and fifteenth day of each month, in advance (but not in arrears). On the date of the first of such payments, any Rent relating to the period commencing from and including the Initial Filing Date shall also be paid.

10. **THIS COURT ORDERS** that, except as specifically permitted herein, the Applicants are hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Applicants to any of their creditors as of this date other than interest and expenses due and payable to BMO under the BMO Credit Agreement (as defined in the Initial Williams Affidavit); (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of their Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business. Notwithstanding the foregoing, the Applicants shall be entitled to continue to operate the Cash Management System.

RESTRUCTURING

11. **THIS COURT ORDERS** that each of the Applicants shall, subject to such requirements as are imposed by the CCAA, and subject to the terms of the Definitive Documents, have the right to:

(a) permanently or temporarily cease, downsize or shut down any of their business or operations and to dispose of redundant or non-material assets outside of the ordinary course of business not exceeding $250,000 in any one transaction or $1,000,000 in the aggregate, provided that, with respect to any leased premises, the debtors may, subject to paragraphs 12 and 13 herein, vacate, abandon or quit the whole, but not part of any leased premises and may permanently, but not temporarily cease, downsize or shut down,

(b) terminate the employment of such of their employees or temporarily lay off such of their employees as they deem appropriate, and

(c) pursue all avenues of restructuring of their Business and 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 Applicants shall provide each of the relevant landlords with notice of the Applicants' intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Applicants' entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Applicants, or by further Order of this Court upon application by the Applicants on at least two (2) days notice to such landlord and any such secured creditors. If the Applicants disclaim the lease governing such leased premises in accordance with Section 32 of the CCAA, they shall not be required to pay Rent under such lease pending resolution of any such dispute (other than Rent payable for the notice period provided for in Section 32(5) of the CCAA), and the disclaimer of the lease shall be without prejudice to the Applicants' 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 (a) during the notice period prior to the effective time of the disclaimer, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the Applicants and the Monitor 24 hours' prior written notice, and (b) at the effective time of the disclaimer, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the Applicants in respect of such lease or leased premises, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

NO PROCEEDINGS AGAINST THE APPLICANTS OR THE PROPERTY

14. **THIS COURT ORDERS** that until and including December 6, 2024, or such later date as this Court may order (the "**Stay Period**"), no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**") shall be commenced or continued against or in respect of the Applicants or the Monitor, or their respective employees and representatives acting in such capacities, or affecting their Business or their 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 the Applicants or affecting their Business or their Property are hereby stayed and suspended pending further Order of this Court.

NO PROCEEDINGS AGAINST THE NON-APPLICANT ENTITIES

15. **THIS COURT ORDERS** that during the Stay Period, no Proceeding shall be commenced or continued against or in respect of the TS-IP Holdings Ltd., TS Programs Ltd, 1000451353 Ontario Inc., and 1000451354 Ontario Inc. (collectively, the "**Non-Applicant Entities**"), or their respective employees and representatives acting in such capacities, or affecting their business or their property, except with the written consent of the Non-Applicant Entities and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Non-Applicant Entities or affecting their business or their property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

16. **THIS COURT ORDERS** that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "**Persons**" and each being a "**Person**") against or in respect of the Applicants, the Monitor, or the Non-Applicant Entities, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the Applicants and the Monitor, or leave of this Court, provided that nothing in this Order shall (i) empower the Applicants and the Non-Applicant Entities to carry on any business which they are not lawfully entitled to carry on, (ii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH RIGHTS

17. **THIS COURT ORDERS** that during the Stay Period, no Person shall discontinue, suspend, 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.

NO PRE-FILING VS POST-FILING SET-OFF

18. **THIS COURT ORDERS** that, no Person shall be entitled to set off any amounts that: (a) are or may become due to the Applicants in respect of obligations arising prior to the Initial Filing Date with any amounts that are or may become due from the Applicants in respect of obligations arising on or after the Initial Filing Date; or (b) are or may become due from the Applicants in respect of obligations arising prior to the Initial Filing Date with any amounts that are or may become due to the Applicants in respect of obligations arising on or after the Initial Filing Date, in each case without the consent of the Applicants and the Monitor, or leave of this Court.

CONTINUATION OF SERVICES

19. **THIS COURT ORDERS** that during the Stay Period, all Persons having oral or written agreements with 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, insurance, transportation services, security services, utility or other services to the Business or 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 the Applicants, and that the Applicants shall be entitled to the continued use of their 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 Initial Filing Date are paid by the Applicants in accordance with normal payment practices of the Applicants or such other practices as may be agreed upon by the supplier or service provider and each of the Applicants and the Monitor, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

20. **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 Initial Filing Date, nor shall any Person be under any obligation on or after the Initial Filing Date to advance or re-advance any monies or otherwise extend any credit to the Applicants. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

21. **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 Initial Filing Date and that relates to any obligations 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.

DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

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

23. **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 $3 million, as security for the indemnity provided in paragraph 22 of this Order. The Directors' Charge shall have the priority set out in paragraphs 44 and 46 herein.

24. **THIS COURT ORDERS** that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) the Applicants' directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 22 of this Order.

APPOINTMENT OF MONITOR

25. **THIS COURT ORDERS** that A&M is as of the Initial Filing Date 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 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.

26. **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 and the Applicants' compliance with the Cash Flow Projections (as defined in the DIP Term Sheet (as hereinafter defined)), including the management and deployment/use of funds advanced by the DIP Lender to the Applicants under the Definitive Documents;

(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 timely basis of financial and other information as agreed to between the Applicants and the DIP Lender which may be used in these proceedings, including reporting on a basis to be agreed with the DIP Lender or as required pursuant to the Definitive Documents;

(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, as agreed to by the DIP Lender or as required pursuant to the Definitive Documents;

(e) advise the Applicants in their development of the Plan and any amendments to the Plan;

(f) assist the Applicants, to the extent required by the Applicants, with the holding and administering of creditors' meetings for voting on the Plan;

(g) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of

the Applicants, to the extent that is necessary to adequately assess the Applicants' business and financial affairs or to perform its duties arising under this Order;

(h) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order; and

(i) perform such other duties as are required by this Order or by this Court from time to time.

27. **THIS COURT ORDERS** that the Monitor shall not occupy, take control, care, charge, possession or management (collectively, "**Possession**") of (or be deemed to take Possession of) or exercise any rights of control over any activities in respect of the Property or any assets, properties or undertakings of any of the Applicants', or the direct or indirect subsidiaries or affiliates of any of the Applicants for which a permit or license is issued or required 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 Ontario *Cannabis Licence Act*, 2018, S.O. 2018, c. 12, Sched. 2, as amended, the Ontario *Cannabis Control Act*, 2017, S.O. 2017, c. 26, Sched. 1, as amended, the Ontario *Cannabis Retail Corporation Act*, S.O. 2017, c. 26, Sched. 2, as amended, *The Cannabis Control (Saskatchewan) Act*, S.S. 2018, c. C-2.111, as amended, *The Cannabis Control (Saskatchewan) Regulations*, RRS, c. C-2.111 Reg 1, as amended, the Manitoba *The Liquor, Gaming and Cannabis Control Act*, C.C.S.M. c. L153, as amended, the Manitoba *Cannabis Regulation*, M.R. 120/2018, as amended, the Newfoundland and Labrador *Cannabis Control Act*, S.N. 2018, c. C-4.1, as amended, the Newfoundland and Labrador *Cannabis Control Regulations*, Nfld. Reg. 93/18, as amended, the Newfoundland and Labrador *Cannabis Licensing and Operations Regulations*, Nfld. Reg. 94/18.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 Property, or any part thereof within the meaning of any Cannabis Legislation or otherwise. For clarity, 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.

28. **THIS COURT ORDERS** that nothing herein contained shall require the Monitor to take Possession of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the Ontario *Environmental Protection Act*, the *Ontario Water Resources Act*, or the Ontario *Occupational Health and Safety Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in Possession.

29. **THIS COURT ORDERS** that the Monitor shall provide any creditor of the Applicants, including BMO, and the DIP Lender with information provided by the Applicants in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Applicants is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicants may agree.

30. **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, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, including 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 the Monitor by the CCAA or any applicable legislation.

31. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor and counsel to the Applicants shall be paid their reasonable fees and disbursements (including pre-filing fees and

disbursements), in each case at their standard rates and charges, by the Applicants as part of the costs of these proceedings, whether incurred prior to, on, or subsequent to the Initial Filing Date. The Applicants are hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and counsel for the Applicants on a weekly basis or as otherwise agreed among the parties.

32. **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.

33. **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 $850,000, as security for their professional fees and disbursements incurred at their standard rates and charges, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 44 and 46 hereof.

DIP FINANCING

34. **THIS COURT ORDERS** that the Applicants are hereby authorized and empowered to obtain and borrow, on a joint and several basis, under the DIP Facility Term Sheet dated as of August 27, 2024 and attached to the Initial Williams Affidavit as Exhibit "BB", among the Applicants as borrowers, and the DIP Lender, as lender (as may be amended, restated, supplemented and/or modified from time to time, the "**DIP Term Sheet**"), in order to finance the Applicants' working capital requirements, other general corporate purposes, accrued interest, expenses, and capital expenditures, all in accordance with the Definitive Documents, provided that borrowings under the DIP Term Sheet shall not exceed $8 million plus interest, fees and expenses, unless permitted by further Order of this Court (the "**DIP Facility**").

35. **THIS COURT ORDERS** that the DIP Facility shall be on the terms and subject to the conditions set forth in the DIP Term Sheet and the other Definitive Documents.

36. **THIS COURT ORDERS** that the Applicants are hereby authorized and empowered to execute and deliver such credit agreements, mortgages, charges, hypothecs and security documents, guarantees and other definitive documents (as may be amended, restated, supplemented and/or modified from time to time, and collectively with the DIP Term Sheet, the

"**Definitive Documents**"), as are contemplated by the DIP Term Sheet 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, expenses, liabilities and obligations to the DIP Lender under and pursuant to the DIP Term Sheet and the other Definitive Documents (collectively, the "**DIP Obligations**") as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

37. **THIS COURT ORDERS** that the DIP Lender shall be entitled to the benefit of and is hereby granted a charge (the "**DIP Lender's Charge**") on the Property as security for any and all DIP Obligations. The DIP Lender's Charge shall not secure an obligation that exists before the Initial Filing Date. The DIP Lender's Charge shall have the priority set out in paragraphs 44 and 46 hereof.

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

(a) the DIP Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP Lender's Charge or any of the Definitive Documents;

(b) upon the occurrence of an event of default under the Definitive Documents or the DIP Lender's Charge, the DIP Lender may cease making advances to the Applicants and may make demand, accelerate payment and give other notices, and, upon five (5) days notice to the Applicants and the Monitor, may exercise any and all of its other rights and remedies against the Applicants or the Property under or pursuant to the Definitive Documents and the DIP Lender's Charge, including without limitation, to 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 Definitive Documents or the DIP Lender's Charge, or to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Applicants and for the appointment of a trustee in bankruptcy of the Applicants; and

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

39. **THIS COURT ORDERS** that the DIP Lender and BMO shall be treated as unaffected in any Plan filed by the Applicants under the CCAA, or any proposal filed by any of the Applicants under the *Bankruptcy and Insolvency Act* (Canada) (the "**BIA**"), with respect to any advances made under the Definitive Documents or the BMO Credit Agreement (as defined in the Initial Williams Affidavit).

40. **THIS COURT ORDERS** that, notwithstanding anything to the contrary herein, this Order is subject to provisional execution and that if any of the provisions of this Order in connection with the Definitive Documents or the DIP Lender's Charge shall subsequently be stayed, modified, varied, amended, reversed or vacated in whole or in part (collectively, a "**Variation**"), such Variation shall not in any way impair, limit or lessen the priority, protections, rights or remedies of the DIP Lender, whether under this Order (as made prior to the Variation), under the Definitive Documents with respect to any advances made or obligations incurred prior to the DIP Lender being given notice of the Variation, and the DIP Lender shall be entitled to rely on this Order as issued (including, without limitation, the DIP Lender's Charge) for all advances so made and other obligations set out in the Definitive Documents.

KEY EMPLOYEE RETENTION PLAN

41. **THIS COURT ORDERS** that the Key Employee Retention Plan (the "**KERP**"), as described in the Second Williams Affidavit, an unredacted copy of which is attached as the Confidential Exhibit to the Second Williams Affidavit, is hereby approved and the Applicants are authorized to make payments contemplated thereunder in accordance with the terms and conditions of the KERP.

42. **THIS COURT ORDERS** that payments made by the Applicants pursuant to this Order 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 the key employees referred to in the KERP (the "**Key Employees**") shall be entitled to the benefit of and are hereby granted a charge on the Property (the "**KERP Charge**"), which charge shall not exceed an aggregate amount of $218,500 to secure any payments to the Key Employees under the KERP. The KERP Charge shall have the priority set out in paras 44 and 46 herein.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

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

First – Administration Charge (to the maximum amount of $850,000);

Second – DIP Lender's Charge (to the maximum amount of the DIP Obligations at the relevant time);

Third – Director's Charge (to the maximum amount of $3 million); and

Fourth – KERP Charge (to the maximum amounts of $218,500).

45. **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.

46. **THIS COURT ORDERS** that each of the Charges shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, "**Encumbrances**") in favour of any Person except that the DIP Lender's Charge, Director's Charge, and KERP Charge will rank subordinate to any and all amounts owed to BMO under the BMO Credit Agreement (as defined in the Initial Williams Affidavit); provided that the Charges shall rank behind Encumbrances in favour of any Person that has not been served with notice of this Application. The Applicants and the beneficiaries of the Charges (collectively, the "**Chargees**") shall be entitled to seek priority ahead of such Encumbrances on a subsequent motion on notice to those Persons likely to be affected thereby.

47. **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 and the Chargees, or further Order of this Court.

48. **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 and/or the DIP Lender thereunder shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to the BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "**Agreement**") which binds 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 Definitive Documents shall create or be deemed to constitute a breach by any of the Applicants of any Agreement to which the applicable Applicant 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 Definitive Documents, 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 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.

49. **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

50. **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 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 or by electronic message to the e-mail addresses as last shown in the Applicants' records, a notice to every known creditor who has a claim against any of the Applicants of more than $1,000, and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder; provided that the Monitor shall not be required to make the claims, names and addresses of individual creditors publicly available unless otherwise ordered by this Court.

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

52. **THIS COURT ORDERS** that the Monitor shall create, maintain and update as necessary a list of all Persons appearing in person or by counsel in this proceeding (the "**Service List**"). The Monitor shall post the Service List, as may be updated from time to time, on the Monitor's Website, provided that the Monitor shall have no liability in respect of the accuracy of or the timeliness of making any changes to the Service List.

53. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Applicants and the Monitor 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 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 or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

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

SEALING PROVISION

55. **THIS COURT ORDERS** that the Confidential Exhibit to the Second Williams Affidavit is hereby sealed and kept confidential pending further Order of the Court and shall not form part of the public record.

GENERAL

56. **THIS COURT ORDERS** that the Applicants, the Monitor, BMO 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 their respective powers and duties hereunder.

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

58. **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.

59. **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.

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

61. **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 any need for entry and filing.

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 2675970 ONTARIO INC. et al.

Court File No. CV-24-00726584-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceedings commenced at Toronto

AMENDED AND RESTATED INITIAL ORDER

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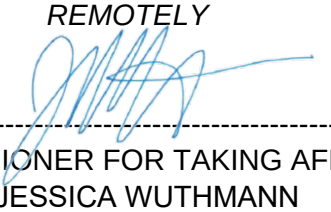
Lawyers for the Applicants

THIS IS **EXHIBIT "B"** REFERRED TO IN THE
AFFIDAVIT OF ANDREW WILLIAMS SWORN REMOTELY BY ANDREW WILLIAMS
STATED AS BEING LOCATED IN THE CITY OF TORONTO BEFORE ME AT THE CITY OF
MISSISSAUGA, IN THE PROVINCE OF ONTARIO, THIS 12TH DAY OF SEPTEMBER 2024,
IN ACCORDANCE WITH O. REG 431/20, *ADMINISTERING OATH OR DECLARATION REMOTELY*



A COMMISSIONER FOR TAKING AFFIDAVITS
JESSICA WUTHMANN
LSO No. 72442W

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 2675970 ONTARIO INC., 2733181 ONTARIO INC., 2385816 ALBERTA LTD., 2161907 ALBERTA LTD., 2733182 ONTARIO INC., 2737503 ONTARIO INC., 2826475 ONTARIO INC., 14284585 CANADA INC., 2197130 ALBERTA LTD., 2699078 ONTARIO INC., 2708540 ONTARIO CORPORATION, 2734082 ONTARIO INC., TS WELLINGTON INC., 2742591 ONTARIO INC., 2796279 ONTARIO INC., 10006215 MANITOBA LTD., AND 80694 NEWFOUNDLAND & LABRADOR INC.

AFFIDAVIT OF ANDREW WILLIAMS
(CCAA Initial Order Application)
(sworn August 28, 2024)

I, **ANDREW WILLIAMS**, of the City of Toronto, in the Province of Ontario, **MAKE OATH AND SAY**:

1. I am the President of each of 2675970 Ontario Inc., 2733181 Ontario Inc., 2385816 Alberta Ltd., 2161907 Alberta Ltd., 2733182 Ontario Inc., 2737503 Ontario Inc., 2826475 Ontario Inc., 14284585 Canada Inc., 2197130 Alberta Ltd., 2699078 Ontario Inc., 2708540 Ontario Corporation, 2734082 Ontario Inc., TS Wellington Inc., 2742591 Ontario Inc., 2796279 Ontario Inc., 10006215 Manitoba Ltd., and 80694 Newfoundland & Labrador Inc. (each individually, an "**Applicant**", and collectively, the "**Applicants**"). Accordingly, I have personal knowledge of the matters set out below except where I have obtained information from others. Where I have relied on information from others, I state the source of such information and verily believe it to be true.

2. I make this affidavit in support of the Applicants' application ("**Application**") for an order (the "**Initial Order**") pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") that, among other things:

a) abridges the time for service of the Application and the materials filed in support thereof, and dispenses with further service thereof;

b) declares that each of the Applicants is a debtor company to which the CCAA applies;

c) appoints Alvarez & Marsal Canada Inc. ("**A&M**" or the "**Proposed Monitor**") as the monitor of the Applicants in this CCAA proceeding (if appointed in such capacity, the "**Monitor**");

d) stays, for an initial period of not more than ten (10) days (the "**Initial Stay Period**"), all proceedings and remedies taken or that might be taken in respect of the Applicants, or the current, future or former directors or officers of the Applicants, or affecting the Applicants' business or any of the Applicants' current and future assets, licences, undertakings, and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof, except with the prior written consent of the Applicants and the Monitor, or with leave of the Court (the "**Stay of Proceedings**");

e) approves the Applicants' ability to borrow under a debtor-in-possession credit facility (the "**DIP Facility**") up to a maximum principal amount of $8 million, subject to the terms of the interim financing term sheet dated August 27, 2024 (the "**DIP Term Sheet**") between the Applicants, as borrowers, and TS Investments Corp. as lender ("**TS Investments**" or the "**DIP Lender**"), of which an initial amount of $3.3 million will be advanced during the 10-day Initial Stay Period (the "**Initial DIP Advance**");

f) extends the Stay of Proceedings to certain of the Applicants' affiliates, being TS-IP Holdings Ltd., TS Programs Ltd., 1000451353 Ontario Inc., and 1000451354 Ontario Inc. (the "**Non-Applicant Entities**");

g) grants the following priority charges (collectively, the "**Charges**") against the Applicants' assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "**Property**"), which charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances in favour of any person:

i. an "**Administration Charge**" in the maximum amount of $400,000 as security for the payment of the professional fees and disbursements of the Monitor, counsel to the Monitor, and counsel to the Applicants incurred in connection with the CCAA proceeding before and after the Initial Order;

ii. a "**DIP Lender's Charge**" in the maximum principal amount of the Initial DIP Advance plus interest, fees and costs as security for the Applicants' obligations under the DIP Term Sheet, and which ranks subordinate to the Administration Charge and the BMO Security (as defined below) but in priority to the Directors' Charge (as defined below); and

iii. a "**Directors' Charge**" in the maximum amount of $2.25 million, ranking subordinate to the Administration Charge, the BMO Security, and the DIP Lender's Charge, as security for the Applicants' obligations to indemnify their directors and officers from the obligations and liabilities they may incur as directors or officers of the Applicants after the commencement of the within CCAA proceeding, except for gross negligence or wilful misconduct;

h) authorizes the Applicants to pay certain pre-filing amounts to critical suppliers of the Applicants, with the consent of the Monitor and in accordance with the terms of the DIP Term Sheet and the Cash Flow Projection (as defined herein), up to maximum amount of $330,000 during the Initial Stay Period;

i) authorizes the Applicants to pay post-filing interest due to the Bank of Montreal ("**BMO**");

j) authorizes the Applicants to continue to use the Cash Management System (as defined herein); and

k) orders a comeback hearing on a date to be scheduled by the Court (the "**Comeback Hearing**").

3. If the proposed Initial Order is granted, the Applicants intend to return to the Court at the Comeback Hearing to seek:

a) an Amended and Restated Initial Order (the "**ARIO**") that, among other things:

i. extends the Stay of Proceedings;

ii. increases the permitted borrowings under the DIP Facility to the maximum principal amount of $8 million;

iii. increases the quantum of each of the Administration Charge (to a maximum amount of $850,000), the DIP Lender's Charge (to a maximum principal amount of $8 million plus interest, fees, and expenses), and the Directors' Charge (to a maximum amount of $3 million);

iv. increases the quantum that the Applicants can pay to certain suppliers for pre-filing expenses with the consent of the Monitor and in accordance with the terms of the DIP Term Sheet and the Cash Flow Projection (as defined herein) to the maximum amount of $1 million;

v. approves a key employee retention plan ("**KERP**") and authorizes the Applicants to make such payments as contemplated by the KERP in accordance with the terms and conditions of the KERP;

vi. grants a charge against the Property for the benefit of the key employees referred to in the KERP (the "**KERP Charge**"), which KERP Charge shall rank subordinate to the other Charges and the BMO Security; and

b) an order (the "**SISP Approval Order**") that, among other things:

i. authorizes and approves the Applicants' execution of a share subscription agreement (the "**Stalking Horse Agreement**") between the Applicants, as vendors, and TS Investments, as purchaser;

ii. approves a sale and investment solicitation process (the "**SISP**") in respect of the Applicants in which the Stalking Horse Agreement will serve as the stalking horse bid; and

iii. authorizes the Applicants and the Monitor to implement the SISP pursuant to its terms.

4. All references to currency in this affidavit are in Canadian dollars unless otherwise noted.

I. OVERVIEW

5. The Applicants own, operate, and franchise retail dispensaries in Canada selling premium cannabis products and accessories directly to consumers under the corporate banner "Tokyo Smoke", as well as maintain an online platform for direct-to-consumer cannabis sales and deliveries ("**Tokyo Smoke**" or the "**Business**"). There are 61 operating corporate Tokyo Smoke retail locations across Canada and 29 franchised Tokyo Smoke retail locations across Canada. The majority of the retail stores are located in Ontario, with other locations in Saskatchewan, Manitoba, and Newfoundland and Labrador.

6. Tokyo Smoke was one of the first chain retailers formed following the legalization of cannabis in Ontario in 2018. Conceived as an experiential retail concept, the Tokyo Smoke brand was predicated on appealing to non-legacy cannabis customers with award-winning design in desirable locations.

7. Cannabis retail licenses were initially scarce and difficult to obtain. The licensing process, administered by the Alcohol and Gaming Commission of Ontario ("**AGCO**"), was lottery based and the criteria to obtain a license were strict. Accordingly, licenses were valuable and the demand for recreational cannabis was anticipated to outpace supply as a result of the small number of licensed retailers.

8. Since 2018, the cannabis market has shifted dramatically as the restrictions on the licensing process eased. The number of cannabis retail licenses in Ontario has increased from less than 100 initial licenses to over 1,600 licenses. Further, due to the highly regulated nature of cannabis retail, all cannabis retail supply in the Ontario, Newfoundland, and Manitoba markets is sourced from one regulated wholesaler in each province, resulting in minimal differentiation of product between retailers. The easing of restrictions on the cannabis retail regulatory framework

and environment resulted in an oversaturation of retail outlets in the market and significant competitive price pressure among retailers.

9. The Applicants are experiencing liquidity constraints due to, among other things, changes in the licensing regime which have devalued cannabis retail licenses and saturated the market, challenges in the cannabis retail space as a result of the lack of product differentiation and downward price pressure, burdensome real property lease terms at underperforming retail stores, as well as increased operating costs due to the broader economic environment. These factors have suppressed revenue and dramatically increased costs.

10. The Applicants have determined that it is necessary to restructure the Business to meet their immediate liquidity challenges and to align the cost structure of the Business with its projected revenue stream to ensure long term viability. The Applicants have arranged interim financing from TS Investments, an existing secured creditor and direct and indirect shareholder of the Applicants, to permit them to restructure the Business. Without immediate access to interim financing, the Applicants will not be able to meet their obligations as they become due.

11. If the relief sought by the Applicants is granted, the Applicants intend to take the following restructuring steps, among others:

a) immediately disclaim certain unprofitable contracts and leases relating to underperforming stores;

b) seek to restructure and/or renegotiate certain other underperforming locations with landlords, and potentially disclaim additional leases if acceptable terms cannot be reached with the applicable landlords;

c) streamline remaining operations to reduce the Applicants' cost structure; and

d) execute a Stalking Horse Agreement with TS Investments and conduct a SISP to solicit a sale, investment or refinancing offer superior to the consideration offered by the Staking Horse Bidder in an effort to maximize realization for creditors, preserve employment, and allow the Business to continue as a going concern.

12. I do verily believe that the Applicants are insolvent and are companies to which the CCAA applies.

II. THE APPLICANTS

A. Corporate Structure

13. The Applicants are corporate entities comprising the Tokyo Smoke enterprise. A chart showing the Applicants' corporate structure including each entity's jurisdiction of incorporation and registered office is attached hereto as **Exhibit "A"**.

i. ParentCo

14. 2675970 Ontario Inc. ("**ParentCo**") is a non-operating holding company incorporated under the Ontario *Business Corporations Act*, R.S.O. 1990, c. B. 16. ParentCo's registered office is located in Toronto, Ontario and its direct sole shareholder is TS Investments. A copy of ParentCo's corporate profile report is attached hereto as **Exhibit "B"**.

15. The other Applicants are each direct or indirect wholly owned subsidiaries of ParentCo.

ii. Operating Corporations

16. The Applicants' Business includes the direct operation of Tokyo Smoke retail locations owned by the Applicants (the "**Corporate Stores**") in addition to the franchising of locations pursuant to various franchise agreements (the "**Franchised Stores**"). The Franchised Stores are owned and operated by franchisees.

17. The Applicant entities directly operating Corporate Stores or providing services to Corporate Stores are 2733182 Ontario Inc., 2826475 Ontario Inc., 2699078 Ontario Inc., 2708540 Ontario Corporation, 2734082 Ontario Inc., TS Wellington Inc., 2742591 Ontario Inc., 2796279 Ontario Inc., 2385816 Alberta Ltd., 2197130 Alberta Ltd., 2161907 Alberta Ltd., 14284585 Canada Inc. ("**142 Canada**"), 10006215 Manitoba Ltd., and 80694 Newfoundland & Labrador Inc.

iii. Special Purpose Corporations

18. The real property leases for the Corporate Stores are primarily held by 2737503 Ontario Inc. ("**LeaseCo**"). LeaseCo is the tenant under various real property leases and party to various contracts executed in connection with the operation of the Business.

19. The cannabis licenses associated with the Business are held by 2161907 Alberta Ltd. ("**LicenseCo**"). The intellectual property associated with the Business is held by a non-applicant entity TS-IP Holdings Ltd. ("**TS-IP**"). To allow for the use of the Tokyo Smoke brand and associated intellectual property by franchisees seeking to franchise Tokyo Smoke stores, LicenseCo entered into certain licensing agreements with 2733181 Ontario Inc. ("**FranchiseCo**") and TS-IP to permit FranchiseCo to license the intellectual property to franchisees. In addition, LicenseCo has indemnified the obligations of LeaseCo under certain of its real property leases.

20. FranchiseCo is the corporate entity through which the Applicants' franchising business is conducted. FranchiseCo is the franchisor under various franchise agreements with franchisees operating Tokyo Smoke Franchised Stores (the "**Franchise Agreements**").

iii. Non-Applicant Entities

21. In addition to the Applicants, ParentCo has four other subsidiaries that have not been included as Applicants in these CCAA proceedings: TS-IP, TS Programs Ltd, 1000451353 Ontario Inc., and 1000451354 Ontario Inc.

22. The primary debt obligations of the Non-Applicant Entities are to BMO and TS Investments and otherwise they have no liabilities that need to be restructured. Due to certain regulatory requirements related to the Business, the Applicants have concerns that a CCAA proceeding may impact the Non-Applicant Entities' ability to receive required governmental approvals and therefore negatively impact the value of their business and assets. However, the Non-Applicant Entities will provide post- filing cash flow to the Applicants during the CCAA proceeding and will be treated as assets of ParentCo for the purpose of any SISP or restructuring transaction in the CCAA proceeding. Accordingly, to ensure stability through the CCAA proceeding, a third-party stay is being sought to avoid any party from taking steps against the Non-Applicant Entities.

23. As noted above, TS-IP holds the intellectual property associated with the Business. TS-IP licenses the intellectual property to each of FranchiseCo, LicenseCo, and 2733182 Ontario Inc.

24. TS Programs Ltd. and 1000451354 Ontario Inc. are both entities that provide marketing services for the Applicants. Specifically, TS Programs Ltd. facilitates promotional activity for the

corporate and franchise store network including customer promotions, while 1000451354 Ontario Inc. leverages independent retail operations.

25. 1000451353 Ontario Inc. is the operating company for a potential medical cannabis business. This entity is in the process of applying for a medical cannabis license and is taking steps to prepare for a launch of the business including building out leased premises.

B. Business and Operations

26. As noted above, the Applicants are part of a cannabis retail, franchise and distribution enterprise across Canada under the brand "Tokyo Smoke". The Business involves: (i) a brick-and-mortar retail segment of Corporate Stores owned directly by the Applicants, (ii) the franchising of the Tokyo Smoke brand to franchisees who independently operate brick-and-mortar Franchised Stores pursuant to Franchise Agreements, and (iii) the sale and distribution of cannabis products and accessories via mobile applications and e-commerce platforms (the "**Digital Platform**").

27. The Business has been operating under the "Tokyo Smoke" brand since 2019 when it licensed from Tweed Franchise Inc. the exclusive right to use and sublicense the Tokyo Smoke retail concept in Ontario pursuant to a master franchise agreement. In December 2022, ParentCo acquired the license to use the Tokyo Smoke retail concept from Canopy Growth Corporation ("**Canopy Growth**") and Tweed Inc. pursuant to a Share Purchase Agreement dated September 23, 2022 (as amended on December 30, 2022).

28. The Applicants share certain management and corporate services as part of the integrated enterprise in an effort to increase cost synergies. Among other things, the Applicants share a management team, cash management system, and other corporate services. The majority of the "back office" services required by the Applicants are provided by LicenseCo, which employs Tokyo Smoke's management team.

29. All such intercompany shared services are delivered pursuant to management agreements, as well as informal arrangements and protocols, and would be unwieldy and costly to duplicate on an entity-by-entity basis. The Applicants intend to continue relying on the existing intercompany arrangements in order to continue the efficiencies achieved through integration and to avoid disrupting existing operating protocol.

i. Brick-and-Mortar Retail

30. The Applicants directly operate a total of 61 Corporate Stores, with 39 located in Ontario, 11 in Manitoba, eight in Saskatchewan, and three in Newfoundland & Labrador.

31. The Corporate Stores provide flagship experiences to customers. In contrast to other cannabis brands, Tokyo Smoke stores offer spacious square footage, polished design, and a high-end cannabis experience. Accordingly, retail space is typically leased in AAA locations with significant capital investment made to upgrade stores with aesthetic signage and design to achieve the premium customer experience that has become associated with the Tokyo Smoke brand.

32. The Applicants employ approximately 432 employees across the Corporate Stores. Corporate Store sales accounted for approximately 72.5% of the Applicants' gross revenue for the quarter ended June 2024.

ii. Franchise Retail Operations

33. There are approximately 29 Tokyo Smoke brick and mortar stores that are operated by franchisees pursuant to the franchise or licensing agreements between FranchiseCo and the respective franchisee. 28 of the Franchised Stores are in Ontario, and one is in Manitoba.

34. The Franchise Agreements provide, among other things, that FranchiseCo grant the franchisee a limited and non-exclusive license to use the Tokyo Smoke system for the development, opening and operation of a retail outlet under the brand name Tokyo Smoke and a limited and non-exclusive license to use the trademarks and other intellectual property associated with Tokyo Smoke.

35. The trademarks and intellectual property necessary to operate a Franchised Store are held by TS-IP and licensed by FranchiseCo pursuant to a licensing agreement. In turn, FranchiseCo sublicenses the intellectual property to the respective franchisees.

36. Under the respective Franchise Agreement, FranchiseCo supports franchisees with start-up assistance and training and provides consulting services to franchisees for administrative and back-office tasks. For some franchisees, FranchiseCo is also responsible for ordering cannabis inventory. None of FranchiseCo nor any other Applicant performs any cash management services for franchisees.

37. Newer franchisees are responsible for entering into a lease directly with a landlord for the lease of the retail premises. However, in the past, the franchisees entered into a sublease for the retail premises with LeaseCo, which in turn entered into a head lease with landlord. The leases and subleases are described in greater detail in paragraph 53.

38. Pursuant to the Franchise Agreements, franchisees are required to maintain their own permits for cannabis and are responsible for hiring employees and paying for inventory from designated suppliers. In consideration for the licenses and services provided by FranchiseCo, franchisees pay, among other things, an initial fee to start up the store, royalties based on gross sales generated by the retail store, consulting fees, renewal fees, and contributions to an advertising fund.

39. To secure the payments and obligations of the franchisee under the Franchise Agreement, each respective franchisee granted to FranchiseCo a security interest in all of the franchisee's present and after-acquired personal property, and pledged all of their issued and outstanding securities to FranchiseCo.

40. Franchise-related revenues account for approximately 27.5% of the Applicants' gross revenue for the quarter ended June 2024. As at the date of this affidavit, three franchisees are in default of their monetary obligations under the Franchise Agreements, with total arrears of approximately $384,059.

41. The Applicants intend to disclaim certain unprofitable Franchise Agreements as part of their restructuring under the CCAA.

iii. Mobile Applications and Online Sales

42. The Applicants maintain a Digital Platform comprised of mobile applications for customer interaction, education, communications, and e-commerce. Rights to the Digital Platform are held by LicenseCo and ParentCo. In contrast to other cannabis retailers, the Digital Platform contains extensive educational resources for customers, including resources on cannabis varieties and health and safety information related to the use of cannabis products generally.

43. The Digital Platform also includes a customer incentive and loyalty program ("**The High Roller Program**"). Customers may enroll in The High Roller Program and accumulate points by visiting Tokyo Smoke retail locations and purchasing product. Points can be exchanged for discounts and other incentives in stores or online. Approximately 502,000 customers have enrolled in The High Roller Program. The High Roller Program will not be impacted by the CCAA proceeding and customers can continue to use the program in the ordinary course.

44. Customers can purchase products through the Digital Platform for "click-and-collect" fulfilment, which channels orders to brick-and-mortar stores in the customer's region. Orders are fulfilled by Corporate Stores and participating Franchised Stores. In Manitoba and Saskatchewan, customers are able to order product online for delivery. Online purchases are processed by Merrco Payments Inc. ("**Merrco**"), an online payment platform for regulated businesses.

45. Sales through the Digital Platform accounted for less than 1% of the Applicants' gross revenue for the quarter ended June 2024, not including orders fulfilled through Franchised Stores.

C. Licenses and Certifications

46. The Applicants are regulated by the *Cannabis Act* (Canada) and applicable provincial and municipal cannabis legislation. Each province and territory has established its own rules and regulations governing cannabis retail activities and requires that retailers be licensed before any cannabis can be sold. The application process varies between provinces and territories, but generally includes oversight by the local municipality with respect to the location of the cannabis store (in relation to other landmarks such as schools) and security measures in place at the store to restrict access to cannabis.

47. In some instances, more than one license is necessary to operate a cannabis retail operation. For example, in Ontario, a person looking to establish a cannabis retail store must obtain a "**Cannabis Retail Operator License**", and the store must have a "**Cannabis Retail Store Authorization**". The manager of a cannabis retail store must hold a cannabis retail manager license.

48. In connection with the Corporate Stores, the Applicants hold the following cannabis licenses:

a. in Ontario, 41 Cannabis Retail Store Authorizations and 9 Cannabis Retail Operator Licenses issued by the AGCO;

b. in Manitoba, 11 age-restricted store cannabis licenses issued by the Manitoba Liquor, Gaming and Cannabis Authority;

c. in Saskatchewan, eight cannabis retailing licenses issued by the Saskatchewan Liquor and Gaming Authority; and

d. in Newfoundland and Labrador, three licensed cannabis retailer licenses issued by the Newfoundland and Labrador Liquor Corporation.

49. Franchisees are required to maintain their own permits and licenses in connection with the Franchised Stores. Any failure by a franchisee to abide by all regulatory requirements for the operations of a franchise constitutes a material breach and termination event under the Franchise Agreements.

D. Leases

50. The Applicants operate out of leased premises and do not own any real estate. The Applicants currently operate out of their head office located at 590 King Street West, Toronto, Ontario, which LeaseCo leases ("**Head Office Lease**"). The Applicants, in consultation with their advisors, have determined that the obligations under the Head Office Lease are too financially burdensome. The Applicants intend to disclaim the Head Office Lease, which is anticipated to save approximately $90,342.00 monthly (inclusive of GST/HST).

51. LeaseCo is the tenant under most of the Corporate Store leases. LeaseCo is a tenant under 31 leases for Corporate Stores that are currently in operation in Ontario. Various other Applicants hold the remaining leases for operating Corporate Store locations in Manitoba,

Saskatchewan, Ontario, and Newfoundland. LeaseCo and other Applicants are also tenants under certain Corporate Store leases for retail premises that were used as Corporate Store locations but have since been closed or sublet to a third party. In total, the Applicants hold 72 leases for Corporate Store locations (collectively, the "**Corporate Store Leases**").

52. As certain landlords required that the tenant's obligations under their respective leases be indemnified, LeaseCo and LicenseCo act as indemnifying parties for leases held by each other and other Applicant entities. Generally, the indemnity requires that the indemnifier will indemnify the landlord for any losses, costs and damages arising out of any failure of the tenant to pay rent or perform any other covenant under the lease. Altogether, 23 of the Corporate Store Leases are indemnified by an Applicant other than the direct tenant.

53. In Ontario, LeaseCo entered into subleases with franchisees to sublet premises to franchisees in order to operate Franchised Stores. Under this arrangement, LeaseCo enters into a head lease with a landlord for the applicable premises (the "**Head Leases**") and sublets the premises to the franchisee. In total, LeaseCo is party to 23 sublease agreements with franchisees in Ontario. One of the 23 Head Leases contains indemnifying language whereby LicenseCo indemnifies the head landlord for the obligations of the tenant under the Head Leases.

54. LicenseCo subleases one Ontario retail premises from Tweed Leasing Corporation, which sublease arises in relation to ParentCo's purchase of the Tokyo Smoke brand as well as certain retail locations from Canopy Growth in December 2022. LicenseCo further subleases the retail premises pursuant to a sub-sublease to a licensee, which operates a Tokyo Smoke store at that premises pursuant to a license agreement. On August 26, 2024, the Applicants terminated both the license agreement and sub-sublease with respect to this property. On the same date, the Applicants advised the landlord of the premises, Canopy Growth, that they have not received any rental amounts from the licensee and are therefore not in a position to pay rent to the landlord.

55. The Applicants' monthly rent expenditures (including in respect of both the Corporate Store Leases and the Head Leases) amount to approximately $1.5 million inclusive of GST/HST. As at the date of this affidavit, the Applicants are in arrears under 23 of their leases totalling approximately $719,880.

56. As the Applicants have not had the necessary financing to develop and build out certain Corporate Stores with burdensome lease terms, the Applicants are tenants in respect of seven leases for premises that were never built out or occupied by the Applicants (the "**Vacant Premises**"). The Applicants have advised the respective landlords of the Vacant Premises that the leases in respect of the Vacant Premises have been repudiated, the Applicants have abandoned the premises, and the landlords are free to re-let the premises.

57. If the relief sought by the Applicants under the CCAA is granted, the Applicants intend to reiterate to the landlords that leases in respect of the Vacant Premises have been repudiated and, out of an abundance of caution, send confirmatory disclaimers. Given the Applicants are not in possession of or using the Vacant Premises, the Applicants do not intend to pay any post-filing rent to the landlords under the Vacant Premises during the CCAA proceeding.

58. If the relief sought by the Applicants under the CCAA is granted, the Applicants also intend to disclaim certain other real property leases with no viable path to profitability with the consent of the Monitor. Given their liquidity situation, the Applicants are requesting authority to issue disclaimers immediately upon commencement of the CCAA proceeding.

E. Employees

59. In total, the Applicants employ approximately 474 employees, approximately 157 of whom are full-time employees, and 317 of whom are part-time or hourly employees.

60. Five of the Corporate Stores in Ontario are subject to collective bargaining agreements, two stores are unionized under United Food & Commercial Workers Canada, Local 175, and three stores under United Food & Commercial Workers Canada, Local 1006A. There are a total of 37 employees employed at the five unionized Corporate Stores. The Applicants do not currently intend to disclaim the unionized Corporate Stores or to terminate any unionized employees.

61. The Applicants maintain employee benefit plans and group saving plans through Industrial Alliance. In total, 209 employees receive group benefits, and 140 employees participate in the group savings plan. The Applicants do not maintain a pension plan for employees.

62. As at the date of this affidavit, there are no pre-filing source deductions owing, nor any arrears under the benefit plan, group savings plan, or the collective bargaining agreements other than wages, source deductions, and other amounts accrued in the normal course, which will be paid in the next payroll cycle.

63. The Applicants do not employ any of the persons working at Franchised Stores or for franchisees. Franchisees are responsible for employing their own employees, however, FranchiseCo assists with certain administrative services related to payroll and bookkeeping. The Applicants estimate that there are approximately 194 employees working at Franchised Stores.

F. Key Suppliers

i. Cannabis Products

64. The Applicants are not producers of cannabis or cannabis products. Instead, they purchase inventory from a small number of suppliers for sale at the Corporate Stores. They also facilitate the purchase of inventory for certain Franchised Stores.

65. Among other things, regulatory authorities in Newfoundland and Labrador, Manitoba, and Ontario mandate that all cannabis products must be purchased from a provincially approved distributor of cannabis products. In Ontario, the Ontario Cannabis Store is the sole supplier of cannabis products to retail stores. In Manitoba, the Manitoba Liquor and Lotteries supplies cannabis and cannabis products. In Newfoundland and Labrador, CannabisNL is the exclusive wholesaler for cannabis.

66. In Saskatchewan, the Applicants are able to purchase cannabis products from both provincially authorized distributors and licensed producers directly.

67. Because there are few regulated suppliers, maintaining existing supplier relationships is critical for the timely and effective supply of inventory. An interruption in supply from those critical suppliers would have a material adverse effect on the Business. As described further below, the Applicants are seeking approval to pay certain pre-filing amounts, with the consent of the Monitor, to ensure these supply relationships are maintained.

ii. Services and Other Suppliers

68. In addition to suppliers of cannabis products, the Business relies on several other providers of key products and services, including, without limitation:

a. online and in-store card, cash and gift card payment processors, including cash register software providers, pin-pad payment terminals, and transaction processing;

b. asset protection and security services – most of which are mandated by the provinces as a condition to holding cannabis retail licenses – including alarm monitoring, closed-circuit television (CCTV) monitoring, access keycard management, lock & store key managers, and online security software and services providers;

c. suppliers of services in respect of the maintenance and operation of the Digital Platform, such as payment processors, website creation and hosting, and other information technology services; and

d. other key services such as insurance, utilities, telecommunications, and delivery routing.

G. Banking and Cash Management System

69. In the ordinary course of business, the Applicants use a centralized cash management system administered from Tokyo Smoke's head office in Toronto (the "**Cash Management System**"). The Cash Management System is used to, among other things, collect revenues, including from Corporate Stores, the Digital Platform, and from franchisees, and to pay expenses including payroll, taxes, rent, supplies and utilities.

70. As part of the Cash Management System, the Applicants maintain 51 Canadian-dollar demand-deposit bank accounts with BMO:

a. 36 accounts held by 2733182 Ontario Inc. of which 35 are used for receipts and disbursements for Corporate Stores in Ontario. Each operating Corporate Store has its own account. The one remaining account is used for payroll and other operating activity for all Corporate Stores held by this entity;

b. one account held by 2708540 Ontario Corporation that is used for receipts and disbursements, including payroll, for the Corporate Stores located in Thunder Bay, Ontario;

c. one account held by 142 Canada that is used for receipts and disbursements, including payroll, for the Corporate Stores located in Saskatchewan;

d. one account held by 10006215 Manitoba Ltd. that is used for receipts and disbursements, including payroll, for the Corporate Stores located in Manitoba;

e. one account held by 80694 Newfoundland and Labrador Inc. that is used for receipts and disbursements, including payroll, for the Corporate Stores located in Newfoundland and Labrador;

f. one account held by FranchiseCo that is used for receipts and disbursements for all Franchised Stores including receipt of rent payments and collection of franchise fees;

g. one account held by 2737503 Ontario Inc. that is used for receipts and disbursements related to several but not all real property leases;

h. one account held by LicenseCo that is used for receipts and disbursements related to the corporate head office including head office rent and payroll;

i. one account held by each of TS Wellington Inc., 2734082 Ontario Inc., 2197130 AB Ltd., 2699078 Ontario Inc., 2742591 Ontario Inc., 2826475 Ontario Inc., and 2796279 Ontario Inc. (for a total of seven accounts) that is used for receipts and disbursements, including payroll, of the Corporate Store operated by the respective entity; and

j. one account held by ParentCo that is used for holding company activity not relating to operations including receiving financing from TS Investments and BMO.

71. The Applicants' accounting department reviews and reconciles the bank accounts on a monthly basis. The Applicants also review cash receipts and disbursements on a weekly basis, including forecasting weekly cash flow and comparing the forecast to actuals.

72. Payments on the Digital Platform are administered by Merrco, which deposits fund into the BMO bank account of the respective Corporate Store. The Applicants are charged fees per transaction for this service.

73. Credit and debit card transactions at Corporate Stores are also processed by Merrco, while cash handling and transfers are performed by Paysafe or Brinks depending on the store location.

74. The Applicants have one active corporate credit card held by 2733182 Ontario Inc. that is primarily used for day-to-day operating matters.

75. The Applicants use SAP Concur Technologies, Inc. ("**SAP Concur**") to permit employees to submit expenses for manager/supervisor approval. After approval by the appropriate

manager/supervisor, SAP Concur administers e-transfers of funds from the bank account of LicenseCo to reimburse employees on a daily basis.

76. The Applicants intend to continue using the Cash Management System in the normal course throughout the CCAA proceeding.

III. FINANCIAL POSITION OF THE APPLICANTS

77. A copy of the most recent audited consolidated financial statements of ParentCo, for the fiscal year ended June 30, 2023, is appended as **Exhibit "C"** hereto (the "**2023 FS**"). The 2023 FS were audited by PricewaterhouseCoopers Inc. as independent auditor.

78. The Applicants are in the process of compiling their financial statements for the fiscal year ended June 30, 2024. The latest draft consolidated financial statements of ParentCo for the fiscal year ended June 30, 2024 is appended as **Exhibit "D"** (the "**2024 FS**", and, together with the 2023 FS, the "**Financial Statements**").

79. The Financial Statements reflect a consolidated balance sheet for the Tokyo Smoke group as a whole, including the Applicants as well as Non-Applicant Entities held by ParentCo.

80. Pursuant to the 2024 FS, Tokyo Smoke had a net loss of $29.3 million for the fiscal year ended June 30, 2024.

A. Key Assets

81. The 2023 FS show that as of June 30, 2023, the Tokyo Smoke group had consolidated assets with a book value of $160.8 million. The 2024 FS show consolidated assets decreasing to a book value of $148.2 million.

ASSET	2023 FS ($)	2024 FS ($)
Cash & Equivalents	791,462	971,280
Accounts Receivable	3,257,092	3,373,849
Prepaid Expenses & Deposits	1,034,615	491,349
Income Taxes Receivable	613,230	7,531
Inventory	9,283,583	6,037,062
Current Portion of Contract Assets	75,000	-
Current Portion of Lease Payments Receivable	1,604,711	1,729,781
Property & Equipment	17,463,731	13,320,876
Right-of-Use Assets	73,874,135	66,125,642
Lease Payments Receivable	26,550,278	24,224,990
Deposits	1,782,428	2,309,462
Due from Related Parties	198,186	-
Contract Assets	1,187,834	-
Goodwill	17,644,677	20,026,213
Intangible Assets	5,450,859	4,612,803
Total Assets	**$160,811,821**	**$143,230,839**

B. Overview of Liabilities

82. The 2023 FS show that as of June 30, 2023, the Tokyo Smoke group had consolidated liabilities with a book value of $225.7 million. The 2024 FS show an increase in the total book value of liabilities to $237.4 million.

LIABILITY	2023 FS ($)	2024 FS ($)
Accounts Payable & Accrued Liabilities	16,034,185	16,762,582
Deferred Revenue	1,595,969	1,152,083
Contract Liabilities	1,554,273	1,283,406
Related-Party Debt	47,805,341	64,410,257
Lease Liabilities – Current	5,820,282	6,121,408
Long-Term Debt – Current	35,599,993	37,890,514
Lease Liabilities – Non-Current	105,924,653	98,861,697
Long-Term Debt – Non-Current	5,000,000	5,000,000
Rent Security Deposits Collected	400,256	508,295
Deferred Variable Payment	6,052,024	3,531,913
Deferred Income Tax Liability	1,869,893	1,869,893
Total Liabilities	**$225,656,869**	**$237,392,048**

83. The book value of liabilities stated in the 2024 FS exceeds the book value of assets by approximately $89.1 million.

84. The related party debt of approximately $64.4 million stated in the 2024 FS consists of certain intercompany loans advanced by certain affiliated corporations, including approximately $60.5 million owed to TS Investments, the indirect shareholder of the Applicants, approximately $3.3 million advanced by a related party corporation under common control, DAK Capital Inc. ("**RelatedCo**"), and the aggregate of approximately $617,512 in unsecured loans by various other affiliated entities.

85. The deferred variable payment of approximately $3.5 million relates to the remaining purchase price related to ParentCo's acquisition in December 2022 of all of the issued and outstanding shares one of the Applicants, 142 Canada. The deferred balance payable is an unsecured obligation of ParentCo that is calculated based, among other things, on certain performance criteria of the retail stores held by 142 Canada.

C. The BMO Credit Facilities

86. Pursuant to an amended and restated demand credit agreement dated October 7, 2022 between BMO as lender and ParentCo as borrower (as amended, restated, supplemented or otherwise modified from time to time, the "**BMO Credit Agreement**"), BMO extended the following credit facilities or banking products:

a. a revolving credit facility in the maximum principal amount of $40 million (the "**BMO Revolving Facility**") to, among other things, finance the Applicants' working capital needs as well as permitted acquisitions and investments,

b. a swingline in the maximum amount of $1 million, which comprises part of the maximum principal amount under the BMO Revolving Facility;

c. certain interest rate and currency hedging products, pursuant to which no transactions have been entered into an no amounts are owed; and

d. a MasterCard credit facility (the "**BMO MasterCard**") for general business expenses.

87. A copy of the BMO Credit Agreement (without schedules) is appended as **Exhibit "E"** hereto. As at August 21, 2024, approximately $38 million has been advanced under the BMO Revolving Facility, approximately $2,569 is outstanding under the BMO MasterCard, and, which BMO MasterCard is held in the name of the Applicant, 2733182 Ontario Inc., and approximately $600,000 has been advanced under the BMO swingline. As of the date hereof, no hedge transactions have been entered into between BMO and the Applicants.

88. ParentCo's obligations under the BMO Credit Agreement are secured by a general security interest over all of the present and after-acquired property of ParentCo granted pursuant to a general security agreement (the "**ParentCo GSA**") and a share pledge agreement by ParentCo (the "**ParentCo Share Pledge**"). A copy of the ParentCo GSA is appended hereto as **Exhibit "F**" and a copy of the ParentCo Share Pledge is appended hereto as **Exhibit "G".**

89. ParentCo's obligations under the BMO Credit Agreement are jointly and severally guaranteed by all of the Applicants and the Non-Applicant Entities and cross-collateralized and secured against their assets pursuant to the following documents, among others:

a. an unlimited guarantee from each of 2733181 Ontario Inc., 2733182 Ontario Inc., 2161907 Alberta Ltd., 2737503 Ontario Inc., 2699078 Ontario Inc., 2197130 Alberta Ltd., 2708540 Ontario Corporation, TS-IP, TS Programs Ltd., 2826475 Ontario Inc., TS Wellington Inc., 2734082 Ontario Inc., 2796279 Ontario Inc., and 2742591 Ontario Inc. in favour of BMO, pursuant to a guarantee agreement dated October 7, 2022 and secured pursuant to a general security agreement dated October 7, 2022. Copies of these documents are appended as **Exhibit "H"** hereto;

b. share pledge agreements from ParentCo and 2733182 in favour of BMO dated October 7, 2022;

c. an assignment of insurance from each of 2733181 Ontario Inc., 2733182 Ontario Inc., 2161907 Alberta Ltd., 2737503 Ontario Inc., 2699078 Ontario Inc., 2197130 Alberta Ltd., 2708540 Ontario Corporation, TS-IP, TS Programs Ltd., 2826475 Ontario Inc., TS Wellington Inc., 2734082 Ontario Inc., 2796279 Ontario Inc., and 2742591 Ontario Inc. in favour of BMO dated October 7, 2022;

d. an unlimited, joint and several guarantee from each of each of 142 Canada, 10006215 Manitoba Ltd., 80694 Newfoundland & Labrador Inc., and affiliated non-filing entities 1000451353 Ontario Inc. and 1000451354 Ontario Inc. (collectively, the "**Additional BMO Guarantors**"), pursuant to a guarantee agreement dated May 8, 2023 and secured pursuant to a general security agreement dated May 8, 2023. A copy of the guarantee agreement is appended as **Exhibit "I"** hereto and a copy of the general security agreement is appended as **Exhibit "J"** hereto;

e. an assignment of insurance from each of the Additional BMO Guarantors in favour of BMO dated May 8, 2023;

f. share pledge agreements from the Additional BMO Guarantors in favour of BMO dated May 8, 2023;

g. an unlimited guarantee from 2385816 Alberta Ltd., pursuant to a guarantee agreement dated May 15, 2024 and secured pursuant to a general security agreement dated May 15, 2024. A copy of the guarantee agreement is appended as **Exhibit "K"** hereto and a copy of the general security agreement is appended as **Exhibit "L"** hereto;

h. an assignment of insurance from 2385816 Alberta Ltd. in favour of BMO dated May 15, 2024;

i. a share pledge agreement from 2385816 Alberta Ltd. in favour of BMO dated May 15, 2024;

j. an intercompany subordination and postponement agreement dated October 7, 2022 from each of the Applicants and the Non-Applicant Entities (other than 2385816 Alberta Ltd.), in favour of BMO; and

k. an intercreditor and standstill agreement between BMO and Tweed Franchise Inc. dated October 7, 2022 subordinating Tweed Franchise Inc.'s interest to BMO's Security (as defined below).

90. BMO has registered a security interest against each of the Applicants to secure obligations owed under the BMO Credit Agreement.

91. ParentCo's obligations under the BMO Credit Agreement are also guaranteed by RelatedCo and TS Investments.

92. The BMO Credit Agreement provides that ParentCo and the guarantors will not make or acquire any investments or create or acquire new subsidiaries without the consent of BMO and providing certain security documentation. As a result of ParentCo's incorporation of 1000451353 Ontario Inc. and 1000451354 Ontario Inc., and acquisition of 10006215 Manitoba Ltd., 142 Canada, and East Coast Tweed Inc., certain covenants in the BMO Credit Agreement were unfulfilled.

93. On September 26, 2023, ParentCo and the other parties to the BMO Credit Agreement executed an amendment letter with BMO amending the BMO Credit Agreement pursuant to which

BMO agreed to waive the events of default that had occurred under the BMO Credit Agreement with respect to the creation and acquisition of subsidiaries and with respect to certain financial performance metrics. A copy of this amendment (without schedules) is appended as **Exhibit "M"** hereto.

94. On July 29, 2024, ParentCo and the other parties to the BMO Credit Agreement executed a second amendment letter with BMO amending the BMO Credit Agreement pursuant to which BMO agreed to waive the events of default that had occurred under the BMO Credit Agreement with respect to compliance with certain financial performance metrics. A copy of this amendment (without schedules) is appended as **Exhibit "N"** hereto.

95. ParentCo has continuously met its payment obligations under the BMO Credit Agreement. As the DIP Lender's Charge will rank behind the BMO Credit Agreement, the Applicants intend to continue to meet their payment obligations to BMO in accordance with the terms of the BMO Credit Agreement.

96. I have consulted with BMO in respect of the Applicants' application for relief under the CCAA. I understand that BMO does not oppose the relief being sought. The Applicants and BMO are in discussions with respect to go-forward arrangements.

D. Secured Related-Party Debt

97. The working capital needs of the Applicants have historically been funded through related-party and intercompany loans, in addition to advances made by BMO. The outstanding related party debt is set out in the 2024 FS as totalling approximately $64.4 million as at June 30, 2024.

i. TS Investments Grid Note

98. The majority of the intercompany funding has been advanced by way of secured debt by TS Investments, the direct shareholder of ParentCo and the indirect shareholder of each of the

other Applicants. Amounts advanced by TS Investments are governed by a grid promissory note dated October 7, 2022 (the "**TS Investments Grid Note**") executed between TS Investments as lender and ParentCo, FranchiseCo, LicenseCo, LeaseCo, 2733182 Ontario Inc., TS-IP, TS Programs Ltd., 2826475 Ontario Inc., 2197130 Alberta Ltd., 2699078 Ontario Inc., 2708540 Ontario Corporation, 2734082 Ontario Inc., TS Wellington Inc., 2742591 Ontario Inc., and 2796279 Ontario Inc. as borrowers. A copy of the TS Investments Grid Note is appended as **Exhibit "O"** hereto.

99. The TS Investments Grid Note has been amended on four occasions to add additional borrowers and reflect a name change to TS Investments:

a. on December 30, 2022 to add 142 Canada, 10006215 Manitoba Ltd., and 80694 Newfoundland & Labrador Inc. as borrowers;

b. on February 21, 2023 to add 1000451353 Ontario Inc., and 100045354 Ontario Inc. as borrowers;

c. on May 31, 2024 to add 2385816 Alberta Ltd. as a borrower; and

d. on August 3, 2024 to acknowledge that a party to the agreement had changed its legal name.

100. As a result of these amendments, all of the Applicants and Non-Applicant Entities are borrowers or guarantors under the TS Investments Grid Note (the "**TS Investments Borrowers**"). The four amending agreements to the TS Investments Grid Note are attached as **Exhibit "P"** hereto.

101. The TS Investments Grid Note is secured by a general security agreement dated October 7, 2022 (and as amended on December 30, 2022, February 21, 2023, May 31, 2024, and August

2, 2024) executed by the TS Investments Borrowers in favour of TS Investments (the "**TS Investments GSA**") and a guarantee dated October 7, 2022 (as amended on December 30, 2022, February 21, 2023, May 31, 2024, and August 2, 2024) executed by the TS Investments Borrowers in favour of TS Investments jointly and severally guaranteeing the obligations owed by the borrowers (the "**TS Investments Guarantee**"). The TS Investments GSA is appended as **Exhibit "Q"** hereto and the TS Investments Guarantee is appended as **Exhibit "R"** hereto.

102. TS Investments has registered a security interest in the Personal Property Security Registry against each of the Applicants in their note in the Applicants' respective jurisdictions of Ontario, Manitoba, Saskatchewan, Newfoundland and Labrador, and Alberta to secure their obligations owed under the TS Investments Grid Note. These registrations, along with the other PPSA registrations, are summarized in a table appended as **Exhibit "S"** hereto.

103. TS Investments has advanced approximately $52.5 million under the TS Investments Grid Note to ParentCo.

ii. ParentCo Grid Note

104. To facilitate funding to its affiliates, ParentCo, as lender also entered into certain intercompany lending arrangements with its subsidiaries:

a. an Accommodation Agreement dated October 7, 2022 (as amended) (the "**Accommodation Agreement**") with each of FranchiseCo, LicenseCo, LeaseCo, 2733182 Ontario Inc., TS-IP Holdings Ltd., 2197130 Alberta Inc., 2708540 Ontario Corporation, 2826475 Ontario Inc., 2734082 Ontario Inc., and TS Wellington Inc. as borrowers (collectively, the "**AA Borrowers**"). A copy of the Accommodation Agreement (without schedules) is appended as **Exhibit "T"** hereto; and

b. a grid promissory note dated October 7, 2022 (and as amended on December 30, 2022, February 21, 2023, and May 31, 2024) (the "**ParentCo Grid Note**") with each of FranchiseCo, LicenseCo, LeaseCo, 2733182 Ontario Inc., TS-IP Holdings Ltd., TS Programs Ltd., 2197130 Alberta Inc., 2699078 Ontario Inc., 2708540 Ontario Corporation, 2826475 Ontario Inc., 2734082 Ontario Inc., TS Wellington Inc., 2742591 Ontario Inc., 2796279 Ontario Inc., 1006215 Manitoba Ltd., 80694 Newfoundland & Labrador Inc., 142 Canada, 1000541353 Ontario Inc., and 2385186 Alberta Ltd. (collectively, the "**Grid Note Borrowers**"). A copy of the ParentCo Grid Note is appended as **Exhibit "U"** hereto.

105. The obligations under the Accommodation Agreement are secured by a general security agreement granted by the AA Borrowers in favour of ParentCo dated October 7, 2022, which is appended as **Exhibit "V"**, and a guarantee dated October 7, 2022 whereby the AA Borrowers jointly and severally guarantee each other's obligations to ParentCo pursuant to the Accommodation Agreement. The guarantee is appended hereto as **Exhibit "W"**.

106. In addition, the Grid Note Borrowers jointly and severally guarantee each other's obligations to ParentCo under the ParentCo Grid Note pursuant to a guarantee dated October 7, 2022 (and as amended on December 30, 2022, February 21, 2023, and May 31, 2024). The guarantee is appended hereto as **Exhibit "X"**.

107. The obligations under the ParentCo Grid Note are secured by a general security agreement granted by the Grid Note Borrowers in favour of ParentCo dated October 7, 2022 (and as amended on December 30, 2022, February 21, 2023, and May 31, 2024), which is appended as **Exhibit "Y"**.

108. ParentCo has registered security interests against each of the Applicants to secure obligations owed under the ParentCo Grid Note and Accommodation Agreement. ParentCo has

subordinated its debt and security to the debt and security of TS Investments pursuant to a Subordination Agreement dated August 23, 2024.

109. Approximately $4.025 million (without interest) is outstanding under the ParentCo Grid Note. No interest payments will be made on the ParentCo Grid Note during the CCAA proceeding.

iii. RelatedCo Guarantees

110. RelatedCo is a related party corporation under common control as the Applicants. In connection with the BMO Credit Agreement, RelatedCo has agreed to guarantee the obligations of the borrowers under the BMO Credit Agreement to a maximum of $40 million.

111. In consideration for RelatedCo guaranteeing the obligations of the borrowers under the BMO Credit Agreement, ParentCo, LicenseCo, FranchiseCo, 2733182 Ontario Inc., and LeaseCo entered into a Guarantee Fee Agreement dated February 28, 2020 with RelatedCo wherein the RelatedCo guarantors agreed to pay RelatedCo an annual fee equal to 12% of the principal sum outstanding under the BMO Credit Agreement.

112. Pursuant to Management Services Agreements, LicenseCo and ParentCo each agreed to engage the management services of RelatedCo in exchange for the payment of a fee. The obligations of LicenseCo and ParentCo to RelatedCo under the agreements are secured over all of LicenseCo and ParentCo's present and after acquired personal property, wherever located, whether not existing or hereafter arising from time to time.

113. RelatedCo has registered security interests against LicenseCo and ParentCo to secure their obligations related to the Management Services Agreements and Guarantee Fee Agreement. RelatedCo has subordinated its debt and security to the debt and security of TS Investments pursuant to a Subordination Agreement amongst the parties dated August 23, 2024.

E. Other Registered Security Interests

114. Appended as **Exhibit "S"** hereto is a table summarizing the searches against each of the Applicants under the *Personal Property Security Act* in each of Ontario, Manitoba, Saskatchewan, Alberta and Newfoundland and Labrador. In addition to registrations in favour of the secured creditors noted above, the following registrations are noted:

a. FranchiseCo has registered a security interest against 2699078 Ontario Inc. in regards to obligations under a former franchise agreement. This franchise agreement expired and no amounts are owed under this registration;

b. FranchiseCo has registered a security interest against 2733182 Ontario Inc. in regards to obligations under a former franchise agreement. This franchise agreement expired and no amounts are owed under this registration;

c. FranchiseCo has registered a security interest against 2796279 Ontario Inc. in regards to obligations under a former franchise agreement. This franchise agreement expired and no amounts are owed under this registration; and

d. LicenseCo has a registered security interest against 2708540 Ontario Corporation. LicenseCo assigned any amounts owed to it by 2708540 Ontario Corporation to ParentCo pursuant to an Assignment Agreement dated October 7, 2022. The Applicants are not aware of any amounts that are owed under this registration.

F. Unsecured Liabilities

115. The 2024 FS stated accounts payable and accrued liabilities of approximately $16.8 million, of which approximately $5 million were trade payables and operating costs accrued in the ordinary course. The Applicants' primary trade payables are related to the purchase of inventory.

i. Canopy Promissory Note

116. LicenseCo and Tweed Franchise Inc. executed an unsecured promissory note dated January 17, 2022, and amended September 23, 2022, pursuant to which Tweed Franchise Inc. advanced the principal amount of $5 million to LicenseCo (the "**Canopy Promissory Note**") as a credit facility for the purposes of developing certain retail premises. A copy of the Canopy Promissory Note, including the amendment thereto, is appended as **Exhibit "Z"** hereto.

117. As of the date of this affidavit, a total of $5 million (excluding any unpaid interest) is outstanding under the Canopy Promissory Note. The Canopy Promissory Note matures on April 15, 2025. As of the date of this affidavit I am not aware of any demands having been made by Tweed Franchise Inc. in respect of the Canopy Promissory Note.

118. LicenseCo does not intend to pay interest on the Canopy Promissory Note during the CCAA proceeding.

G. HST, Payroll and Tax Obligations

119. The Applicants accrue GST/HST, payroll and tax liabilities in the normal course of operations. GST/HST is remitted either quarterly or monthly. Because of the stub period between accrual and remittance, the Applicants have approximately $372,000 of HST in arrears as of June 30, 2024. Payroll taxes and deductions are remitted bi-weekly. Because of the stub period between accrual and remittance, the Applicants have accrued approximately $170,000 in payroll and source deductions for the previous pay period.

120. The Applicants are current in their filings and payment for corporate income tax and no corporate income taxes are owing.

H. Contingent Claims

i. Canopy Litigation

121. On or around August 15, 2024, Canopy Growth, Tweed Inc., and Tweed Leasing Corporation (collectively, the "**Canopy Plaintiffs**") commenced civil proceedings against ParentCo, LicenseCo, FranchiseCo and 142 Canada (the "**Canopy Litigation**"). Copies of the two Statements of Claim (Court File Nos.: CV-24-00725744-0000 and CV-24-00725741-0000) are appended as **Exhibit "AA"** hereto.

122. The Canopy Litigation pertains to certain Applicants' alleged breach of a number of agreements governing the parties' relationships with one another including a transitional services agreement and an acknowledgement agreement, both dated December 30, 2022, in connection with the sale of Canopy Growth's Canadian retail cannabis business to ParentCo pursuant to a Share Purchase Agreement dated September 23, 2022 (and amended on December 30, 2022) between Canopy Growth and Tweed Inc., as vendors, ParentCo, as purchaser.

123. The Canopy Plaintiffs claim, among other things, breach of contract for non-payment of invoices and certain unpaid rents, and damages of approximately $5.3 million. No Statements of Defence have been filed, and no examinations for discovery have proceeded, nor has any hearing has been scheduled to determine the Canopy Plaintiffs' claims. As at the date of this affidavit, the claims remain contingent unsecured claims.

ii. Franchisee Recission Claims

124. Several franchisees have delivered notices of recission under their respective Franchise Agreements. In connection with the recission claims, the franchisees have claimed a total of approximately $6 million in compensation under the Franchise Agreements. The recission claims stem from allegations of incomplete statutory disclosure by FranchiseCo.

125. All Franchise Agreements executed by FranchiseCo include an arbitration clause. As of the date of this affidavit, only four franchisees with claims totaling approximately $3.8 million have delivered arbitration notices. The Applicants have not yet filed defences to these claims. No determination has been made by any Court or arbitral body in respect of the recission claims, which remain unsecured contingent claims as at the date of this affidavit.

IV. CAUSES OF FINANCIAL CHALLENGES AND CASH FLOW FORECAST

126. The Tokyo Smoke brand was premised on the existence and growth of a premium cannabis market in Canada in circumstances where access to retail licenses was highly restricted, and retailers would be able to differentiate based on product quality and retail experience. Instead, the Canadian market has dramatically changed in the course of a few years since the first cannabis retail license was first granted in Ontario.

127. As a result, the capital investments made by the Applicants to establish a premium cannabis retail presence has not seen the revenue levels that were initially anticipated. The Applicants have been operating at a net loss since approximately late 2020 and have been dependent on financing to sustain their operations. The store footprint and capital structure of the Applicants is not sustainable and must be restructured for the Applicants to continue as a viable going-concern operation in the long term.

128. The following external market factors, among others, have contributed to the suppression of the cannabis market in Canada.

A. Loss of Market Share to Grey Market

129. The cannabis grey market involves the sale of cannabis products that are acquired by unlicensed persons for sale outside authorized distribution channels. Grey market sellers acquire product through various means and are able to sell product to consumers at prices much lower

than licensed retailers can offer. Grey market sellers do not conform to the regulations that are required of licensed retailers, and do not incur the same overhead in operating cannabis retail operations. It is not always apparent whether a retailer is a licensed retailer or a grey market retailer as the product sold often passes as genuine, and consumers sometimes specifically seek out grey market sellers for lower prices or increased potency beyond the legal market's maximums.

130. There is little regulation or enforcement of the cannabis grey market despite it being a known problem. The costs and resources associated with regulatory investigations and legal action allow grey market operations to continue operating for prolonged periods before shutdown. The impact of the cannabis grey market is estimated to be $2 to 4 billion across Canada and disproportionately impacts licensed retailers with legitimate operations.

B. Loosening of Retail Licensing Restrictions in Ontario

131. When cannabis retail licenses were first granted by the AGCO in Ontario in 2019, a very small number of licenses were available and applicants were required to apply under strict conditions and enter into a lottery for the awarding of licenses. At the time, cannabis licenses were scarce and valuable. Obtaining a cannabis license meant that a retailer was entitled to become one of only a few cannabis retailers to service the high demand for newly legal cannabis.

132. As part of the initial wave of investment in cannabis retail, the Applicants invested significant capital to acquire retail licenses, set up Corporate Stores in prime locations, and established a licensing model and then later a franchising model. The capital expenditures were appropriate relative to the expected return in a climate where retail licenses were scarce and difficult to obtain. The capital expenditures to establish the Business were financed in large part through the loan facilities advanced by BMO and by TS Investments.

133. Ontario has since moved to an open market system, allowing for an unlimited number of store authorizations, provided the applicants meet certain requirements. This sudden removal of the main barrier to entry to the cannabis retail industry led to a surge in competition and destabilized established cannabis retailers.

V. CASH FLOW PROJECTIONS

134. In and around the COVID-19 pandemic, the economic environment began to experience inflationary pressures, increasing the Applicants' operating costs while deteriorating profit margins. Compounded with the change in the licensing regime and oversaturation in the market, the Applicants have not been able to achieve their targeted revenues and are unable to meet their obligations as they become due. A financial and operational restructuring is required to preserve the Business as a viable going-concern operation.

135. With the assistance of the Proposed Monitor, the Applicants have prepared a 15-week cash flow statement for the period ending the week of December 6, 2024 (the "**Cash Flow Projection**"). I understand that the Cash Flow Projection will be appended to the Pre-Filing Report of the Proposed Monitor ("**Pre-Filing Report**") and will be accompanied by the prescribed representations in accordance with the CCAA.

136. The Cash Flow Projection demonstrates that the Applicants require approximately $3.220 million in interim financing as early as the week ending August 30, 2024 and a total of $7.420 million continuing over the following 15-week period. Of the entire amount, approximately $3.3 million is forecasted to be required in the Initial Stay Period.

137. It should be noted that the Cash Flow Projection includes the Non-Applicant Entities because they generate positive cash flow for ParentCo, however, the Non-Applicant Entities are not subject to any of the CCAA charges nor will they receive any funds under the DIP Term Sheet.

138. There is no reasonable prospect that the Applicants' financial condition will improve without an operational and financial restructuring and without interim financing being made available. Without the protection of the Initial Order, the Applicants would be forced to shut down operations in the short term, which would be detrimental to the Applicants' landlords, suppliers, customers, franchisees, and employees.

VI. PURPOSE OF THE CCAA APPLICATION

139. After considering the various options available, the Applicants have determined that a filing under the CCAA is in the best interests of the Applicants and their stakeholders. In particular, the Applicants believe that relief under the CCAA is in the best interests of the Business, creditors, and stakeholders for the following reasons, among others:

(a) the Applicants are facing a liquidity crisis and are unable to meet their obligations as they generally become due, or will be in such a position in the very short term;

(b) the Business requires the protection of the CCAA and the assistance of restructuring professionals to develop and implement strategic restructuring solutions, with the benefit of the breathing room necessary to do so;

(c) the Applicants require immediate interim financing, which financing is not otherwise available on reasonable terms and in a timely manner without the accompanying Court-ordered charges that are available under the CCAA;

(d) without interim financing, the Applicants will likely have to shut operations down, irretrievably destroying value for creditors, causing the loss of 474 jobs; and

(e) the involvement of a Court-appointed monitor under the CCAA will lend stability and assurance to the Applicants' stakeholders, including customers, suppliers, employees, and creditors.

140. If the relief sought is granted, the Applicants intend to take the following key restructuring steps, among others, under the supervision of the Monitor:

(a) immediately disclaim the approximately 10 burdensome Corporate Store Leases for stores which have not yet opened and/or which the Applicants do not presently operate from including the Vacated Stores;

(b) immediately disclaim approximately three Head Leases and one Franchise Agreement pursuant to which franchisees are in default of the Franchise Agreements and are operating in non-viable economic conditions;

(c) close approximately 20 underperforming Corporate Stores and disclaim the applicable leases;

(d) seek to restructure and/or renegotiate the leases for other underperforming Corporate Stores and Franchised Stores, and disclaim such leases if mutually acceptable terms cannot be reached with applicable landlords; and

(e) undertaking a SISP to canvass the market for sale, investment and recapitalization opportunities for the Business that are superior to the Stalking Horse Agreement.

141. To facilitate the SISP and provide stability and certainty for the Business, the Applicants are in advanced discussions with TS Investments on a Stalking Horse Agreement setting out the terms of a going-concern sale transaction that will contemplate the preservation of the majority of

the Applicants' core Business, continuation of employment for most employees and set the floor price for the SISP in order to maximize realization for creditors.

VII. RELIEF BEING SOUGHT

A. Stay of Proceedings

142. The Applicants require a Stay of Proceedings, including in respect of secured parties. The intention of the Stay of Proceedings is to provide the Applicants the necessary breathing room to stabilize the Business as a going concern while executing the proposed restructuring for the benefit of all stakeholders.

B. Appointment of A&M as Monitor

143. The Applicants seek the appointment of A&M as Monitor. A&M has consented to act as Monitor if so appointed. I understand that a copy of the Proposed Monitor's consent to act will be appended to its Pre-Filing Report.

144. I am advised by the Applicants' legal counsel that A&M is a licensed insolvency trustee within the meaning of section 2 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 and is not precluded from acting as Monitor as a result of any restrictions under subsection 11.7(2) of the CCAA.

145. A&M is familiar with the operations of the Applicants and A&M has reviewed and assisted in the preparation of the Cash Flow Projection, and has provided guidance and assistance in the commencement of this CCAA proceeding. As a result, A&M has developed knowledge about the Applicants, their business operations, financial challenges, strategic initiatives and restructuring efforts to date.

C. Approval of the DIP Term Sheet and Granting of a DIP Lender's Charge

146. To fund the operations and restructuring costs of the Applicants during the CCAA proceeding, the Applicants have obtained an interim financing commitment from the DIP Lender subject to the terms and conditions set out in the DIP Term Sheet. The DIP Lender is the indirect and direct shareholder of the Applicants, TS Investments, and one of the Applicants primary secured creditors. An executed copy of the DIP Term Sheet is appended hereto as **Exhibit "BB"**.

147. The DIP Term Sheet represents the best available interim financing arrangement that could be arranged by the Applicants within the timeframe needed to meet their cash flow needs given it is unlikely any other party would provide interim financing subordinate to the first secured lender, BMO. The key terms and conditions of the DIP Term Sheet are as follows:

(a) a maximum principal loan amount of $8 million, including an initial advance in the principal amount of $3.3 million;

(b) interest accruing at a rate of 13% per annum, compounded and calculated monthly;

(c) a commitment fee equal to 1% of the maximum principal loan amount;

(d) the reimbursement of the DIP Lender's reasonably incurred costs, including all legal expenses incurred by the DIP Lender in connection with the DIP Term Sheet, subject to the terms and conditions of the DIP Term Sheet and the DIP Facility;

(e) payment of all accrued interest and fees up to the maturity date upon pre-payment of the loan;

(f) a maturity date of the earlier of (i) December 6, 2024 or such later date as the DIP Lender agrees to in writing, (ii) the implementation of a plan of compromise or

arrangement, (iii) the closing of a sale transaction, (iv) the termination of the CCAA proceedings, and (v) the conversion of the CCAA proceeding into a proceeding under the *Bankruptcy and Insolvency Act*, and

(g) advances under the DIP Facility are conditional upon Court approval of the DIP Term Sheet and the granting of a Court-ordered DIP Lender's Charge in favour of the DIP Lender over all of the Property of the Applicants, subject only to the Administration Charge and the BMO Security (as defined below).

148. The DIP Facility is expected to provide sufficient liquidity to allow the Applicants to operate the Business and meet their obligations during the pendency of the CCAA proceeding. The DIP Lender requires all obligations under the DIP Term Sheet to be secured by a court-ordered priority charge. No obligations incurred prior to this CCAA proceeding will be secured.

149. In the Initial Order, the Applicants propose, and the DIP Lender agrees, that the DIP Lender's Charge of up to $3.3 million be granted and subordinated in priority to BMO's existing, pre-filing security for all amounts due under the BMO Credit Agreement ("**BMO Security**"). The amount of the DIP Lender's Charge requested is necessary and limited to what is reasonably necessary for the continued operations of the Business in the ordinary course of business during the Initial Stay Period.

150. At the Comeback Hearing the Applicants intend to seek an increase to the DIP Lender's Charge to the maximum principal amount of $8 million plus interest, fees and costs. The Cash Flow Projection reflects the need for $7.3 million in interim financing during the 13-week period, assuming no negative variance, and further amounts may be required beyond that period.

151. The Proposed Monitor has advised that it is supportive of the approval of the DIP Term Sheet and the corresponding DIP Lender's Charge.

D. Other Court-Ordered Charges

152. The Applicants propose that the Court-Ordered charges be granted in the following priority amongst themselves:

(a) first, an Administration Charge (to the maximum amount of $400,000 during the Initial Stay Period, to be increased to $850,000 at the Comeback Hearing);

(b) second, the DIP Lender's Charge (to the maximum principal amount of $3.3 million during the Initial Stay Period, to be increased to $8 million at the Comeback Hearing, plus interest, fees and costs); and

(c) third, a Directors' Charge (to the maximum amount of $2.25 million during the Initial Stay Period, to be increased to $3 million at the Comeback Hearing); and

(d) fourth, a KERP Charge (to be sought at the Comeback Hearing).

153. The DIP Lender's Charge, Directors' Charge, and KERP Charge are proposed to rank subordinate to BMO's Security. Only the Administration Charge is proposed to rank in priority to BMO's Security.

i. Administration Charge

154. The proposed Administration Charge over the Property, up to a maximum of $850,000, will secure the fees and disbursements of the Monitor, its counsel, and the Applicants' counsel. Of that amount, $400,000 is sought in respect of the Initial Stay Period. The Applicants request that the Administration Charge rank in priority to all other Encumbrances (as that term is defined in the Initial Order) and charges.

155. The Applicants have relied upon each of the restructuring professionals that are the beneficiaries of the Administration Charge in order to file this Application for CCAA protection and

to develop a restructuring plan. Each of these professionals have contributed, and will continue to contribute, significant value to the advancement of the CCAA proceeding and the completion of a successful restructuring.

156. The Administration Charge is necessary to ensure that the Applicants have the continued expertise, knowledge and participation of the restructuring professionals during this CCAA proceeding. Each of the restructuring professionals who are the beneficiaries of the Administration Charge have a discrete role in the restructuring of the Applicants.

157. The Applicants worked with the Proposed Monitor to estimate the proposed quantum of the Administration Charge. Based on those discussions, the initial quantum of the Administration Charge is fair and reasonable in the circumstances as it is commensurate with the expected complexity of the Applicants' Business and anticipated restructuring.

ii. Directors' Charge

158. The proposed Initial Order requires the Applicants to indemnify their directors and officers for the obligations and liabilities that they may incur in such capacity after the commencement of the within proceedings, except for gross negligence or wilful misconduct.

159. The Applicants maintain director and officer insurance policies for their directors and officers (the "**D&O Policies**"). However, it is not certain that those policies will provide adequate coverage to the directors and officers under the circumstances. Obtaining additional coverage during this CCAA proceeding would likely be prohibitively difficult and expensive, if at all possible.

160. I understand that the Applicants accrue certain amounts that constitute director liabilities if unpaid, including HST remittances, payroll taxes and source deductions, as well as accrued wages. While the Applicants have been paying such amounts in the normal course, HST is accrued and paid either quarterly or monthly, payroll amounts for head office employees are

accrued and paid bi-weekly, and payroll amounts for store employees are accrued and paid bi-weekly, one week in arrears. Accordingly, the Applicants have determined that the ongoing post-filing exposure for the directors is approximately three weeks of payroll obligations for store employees and two weeks of payroll obligations for head office employees, including source deduction remittances, and HST payable. That quantum does not account for any other potential liabilities, including health and safety or environmental liability. The Initial Order expressly provides that the Directors' Charge does not secure any liability otherwise covered by the D&O Policies.

161. I am concerned about my exposure as a current director and officer in the event the CCAA proceeding is terminated while accrued amounts remain unpaid. I am advised by the other board members and verily believe that they share the same concerns and would likely not remain in office without adequate indemnity.

162. The Applicants' current officers and directors have acquired significant knowledge of the cannabis retail industry workings and are familiar with the Applicants' Business. The Applicants believe that their ability to restructure would be significantly impaired without the continuation of their current board and management team.

163. I am advised by the Proposed Monitor that it supports the quantum and approval of the Directors' Charge.

E. KERP Charge

164. The success of the proposed restructuring is dependent on the involvement of certain key employees who hold key positions in the Business, perform critical operations, and have deep institutional knowledge that would be challenging to replace under the circumstances. The Applicants have developed the KERP to incentivize the retention of key employees and encourage their contributions to the restructuring process.

165. The Applicants intend to seek approval of the KERP at the Comeback Hearing and will file, on a confidential basis, details of the KERP in advance of the Comeback Hearing.

F. Ability to Pay Pre-Filing Amounts with Approval of Monitor

166. Because of the regulated nature of the Business, the Applicants acquire products and services from a relatively small number of suppliers. The Applicants also work with key service providers to host and maintain the Digital Platform. Timely payment of such suppliers, including by way of continuing pre-authorized debits, is critical to ensure the continued operations of the Business and to avoid any disruption to the Business or down-time for the Digital Platform.

167. As a result, the Applicants, in consultation with the Proposed Monitor, have reflected payments of certain pre-filing amounts in the Cash Flow Projections, which the Applicants believe are necessary to avoid disruption to the Business. The Applicants are seeking authorization to pay certain pre-filing amounts to critical suppliers of the Applicants, with the consent of the Monitor and in accordance with the terms of the DIP Term Sheet and the Cash Flow Projection (as defined herein), up to maximum amount of $330,000 during the Initial Stay Period. The Applicants will seek to increase the maximum amount that can be paid on the basis of pre-filing amounts to $1 million at the Comeback Hearing.

168. I understand that the Proposed Monitor is supportive of this relief.

G. Approval of Cash Management System

169. Given the nature and scale of the Applicants' operations through the Cash Management System, the continued use of the existing Cash Management System is required and appropriate during this CCAA proceeding. I understand that the Proposed Monitor is also supportive of this relief.

H. SISP and Stalking Horse Agreement

170. The Applicants continue to work with the Proposed Monitor and TS Investments to finalize the SISP and Stalking Horse Agreement and intend to return at a later date to seek their approval.

171. I swear this affidavit in support of the Applicants' relief pursuant to the CCAA and for no other or improper purpose.

SWORN REMOTELY by Andrew Williams 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 this 28th day of August, 2024, in accordance with O. Reg 431/20, Administering Oath *or Declaration Remotely*.

Jessica Wuthmann

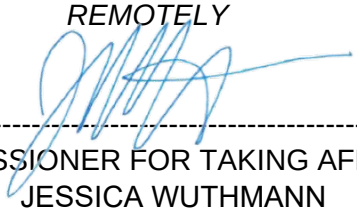
A Commissioner for taking Affidavits.
Name: Jessica Wuthmann

A Williams

A Williams (Aug 28, 2024 08:10 EDT)

Andrew Williams

THIS IS **EXHIBIT "C"** REFERRED TO IN THE
AFFIDAVIT OF ANDREW WILLIAMS SWORN REMOTELY BY ANDREW WILLIAMS
STATED AS BEING LOCATED IN THE CITY OF TORONTO BEFORE ME AT THE CITY OF
MISSISSAUGA, IN THE PROVINCE OF ONTARIO, THIS 12TH DAY OF SEPTEMBER 2024,
IN ACCORDANCE WITH O. REG 431/20, *ADMINISTERING OATH OR DECLARATION REMOTELY*



A COMMISSIONER FOR TAKING AFFIDAVITS
JESSICA WUTHMANN
LSO No. 72442W

Court File No. CV-24-00726584-00CL

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 2675970 ONTARIO INC., 2733181 ONTARIO INC., 2385816 ALBERTA LTD., 2161907 ALBERTA LTD., 2733182 ONTARIO INC., 2737503 ONTARIO INC., 2826475 ONTARIO INC., 14284585 CANADA INC., 2197130 ALBERTA LTD., 2699078 ONTARIO INC., 2708540 ONTARIO CORPORATION, 2734082 ONTARIO INC., TS WELLINGTON INC., 2742591 ONTARIO INC., 2796279 ONTARIO INC., 10006215 MANITOBA LTD., AND 80694 NEWFOUNDLAND & LABRADOR INC.

AFFIDAVIT OF ANDREW WILLIAMS
(sworn September 3, 2024)

I, **ANDREW WILLIAMS**, of the City of Toronto, in the Province of Ontario, **MAKE OATH AND SAY**:

1. I am the President of each of 2675970 Ontario Inc., 2733181 Ontario Inc., 2385816 Alberta Ltd., 2161907 Alberta Ltd., 2733182 Ontario Inc., 2737503 Ontario Inc., 2826475 Ontario Inc., 14284585 Canada Inc., 2197130 Alberta Ltd., 2699078 Ontario Inc., 2708540 Ontario Corporation, 2734082 Ontario Inc., TS Wellington Inc., 2742591 Ontario Inc., 2796279 Ontario Inc., 10006215 Manitoba Ltd., and 80694 Newfoundland & Labrador Inc. (each individually, an "**Applicant**", and collectively, the "**Applicants**"). Accordingly, I have personal knowledge of the matters set out below except where I have obtained information from others. Where I have relied on information from others, I state the source of such information and verily believe it to be true.

I. OVERVIEW

2. On August 28, 2024, the Ontario Superior Court of Justice (Commercial List) (the "**Court**") granted the Applicants' application for an initial order (the "**Initial Order**") under the *Companies' Creditors Arrangement Act* (Canada) (the "**CCAA**"). A copy of the Initial Order is attached as **Exhibit "A"** and a copy of the Endorsement of the Court regarding the Initial Order is attached as **Exhibit "B"**.

3. The Initial Order, among other things:

(a) appointed Alvarez and Marsal Canada Inc. as monitor of the Applicants (in such capacity, the "**Monitor**");

(b) granted a stay of proceedings in favour of the Applicants until and including September 6, 2024 (the "**Stay Period**");

(c) approved a DIP facility term sheet dated August 27, 2024 (the "**DIP Term Sheet**"), pursuant to which the Applicants were authorized to receive an initial advance up to $3.3 million from TS Investments Corp. (the "**DIP Lender**");

(d) granted certain super-priority charges over all of the Applicants' assets, properties and undertakings (the "**Property**") with the following order of priority amongst them:

(i) an administration charge in the maximum amount of $400,000 as security for the payment of the professional fees and disbursements incurred and to be incurred by the Monitor, counsel to the Monitor, and counsel to the Applicants (the "**Administration Charge**");

(ii) an interim financing charge in favour of the DIP Lender in the maximum principal amount of $3.3 million plus interest, fees and costs as security for the Applicants' obligations under the DIP Term Sheet (the "**DIP Lender's Charge**"), which charge is to rank subordinate to the existing security held by the Bank of Montreal ("**BMO**"); and

(iii) a charge in favour of the Applicants' directors and officers in the maximum amount of $2.25 million as security for the Applicants' obligation to indemnify them from obligations and liabilities they may incur as directors or officers of the Applicants after the granting of the Initial Order, except for gross negligence or willful misconduct (the "**Directors' Charge**"), which charge is to rank subordinate to the existing security held by BMO;

(e) authorized the Applicants to pay certain pre-filing amounts to suppliers of the Applicants, with the consent of the Monitor and in accordance with the terms of the DIP Term Sheet and the Cash Flow Projection (as defined herein), up to the maximum amount of $330,000;

(f) extended the stay of proceedings to certain of the Applicants' affiliates (the "**Non-Applicant Entities**");

(g) authorized the Applicants to pay post-filing interest due to BMO;

(h) authorized the Applicants to continue to use the Cash Management System (as defined in the Initial Order); and

(i) directed a Comeback Hearing to take place before the Court on September 6, 2024 at 8:30 a.m. (the "**Comeback Hearing**").

4. At the Comeback Hearing, the Applicants seek an amended and restated initial order (the "**ARIO**") that, among other things:

(a) extends the Stay Period up to and including December 6, 2024;

(b) increases the Administration Charge from $400,000 to $850,000;

(c) authorizes the Applicants to increase the amounts which may be borrowed by the Applicants under the DIP Term Sheet from $3.3 million to $8 million and correspondingly increases the DIP Lender's Charge to the maximum principal amount of $8 million plus interest, fees and costs;

(d) increases the Directors' Charge from $2.25 million to $3 million;

(e) approves the key employee retention plan (the "**KERP**") and grants a Court-ordered priority charge against the Property of the Applicants as security for payments under the KERP in the maximum amount of $218,500 (the "**KERP Charge**");

(f) seals Schedule 'A' of the KERP attached as **Confidential Exhibit "1"** hereto; and

(g) increases the quantum that the Applicants can pay to certain suppliers for pre-filing expenses, with the consent of the Monitor and in accordance with the terms of the DIP Term Sheet and the Cash Flow Projection (as defined herein).

II. BACKGROUND OF THE CCAA PROCEEDING

5. In support of the Initial Order, I swore an affidavit dated August 28, 2024 (the "**Initial Affidavit**") which describes in detail, among other things, the Applicants' business and financial circumstances, the events leading up to the Applicants' insolvency, and their need for relief under

the CCAA to conduct an operational and financial restructuring. The Initial Affidavit is attached (without exhibits) as **Exhibit "C".**

6. As described in the Initial Affidavit, the Applicants own, operate, and franchise retail dispensaries in Canada selling premium cannabis products and accessories directly to consumers under the corporate banner "Tokyo Smoke", as well as maintain an online platform for direct-to-consumer cannabis sales and deliveries (the "**Business**").

7. There are 61 operating corporate Tokyo Smoke retail locations and 29 franchised Tokyo Smoke retail locations across Canada. The majority of the retail stores are located in Ontario, with other locations in Saskatchewan, Manitoba, and Newfoundland and Labrador.

8. Tokyo Smoke was one of the first chain retailers formed following the legalization of cannabis in Ontario in 2018. Conceived as an experiential retail concept, the Tokyo Smoke brand was predicated on appealing to non-legacy cannabis customers with award-winning design in desirable locations.

9. The Applicants began experiencing increasing deficits and cash flow pressures. As detailed in the Initial Affidavit, the Applicants' financial difficulties were attributable to a combination of factors including changes in the licensing regime which devalued cannabis retail licenses and saturated the market, challenges in the cannabis retail space as a result of the lack of product differentiation and downward price pressure, burdensome real property lease terms at underperforming retail stores, and increased operating costs due to the broader economic environment.

10. As a result of the Applicants' liquidity constraints, the Applicants initiated these CCAA proceedings to allow the Applicants to access urgently needed financing in order to maintain the Business as a going concern and afford the Applicants the breathing room and stability to

undertake operational and financial restructuring initiatives that will support the long-term viability of the Business.

11. The continuation of the CCAA proceeding with the granting of the ARIO is critical to the ongoing operations and restructuring efforts of the Applicants. Without the ARIO and access to further funding under the DIP Term Sheet, the Applicants will have no liquidity to continue operations or to implement any operational solutions to resolve their financial issues. In such circumstances, the Applicants would be forced to cease all operations.

12. A shutdown of operations would be detrimental to the Applicants' stakeholders and creditors as it would significantly deteriorate the value of the Business. The Applicants have few hard assets and own no real estate. Most of the Applicants' value lies in their cannabis licenses, intellectual property, and goodwill in the Tokyo Smoke brand. As a result, creditor recovery is maximized by enabling the Applicants to continue as a going concern.

III. OVERVIEW OF THE APPLICANTS' ACTIVITIES SINCE THE INITIAL ORDER

13. Since the granting of the Initial Order, the Applicants, in close consultation and with the assistance of the Monitor, have acted in good faith and with due diligence to stabilize their Business and operations and consult with their stakeholders.

A. Initial Stakeholder Communications

14. Immediately after obtaining CCAA protection, the Applicants published a press release to inform various stakeholders of the granting of the Initial Order. A copy of the press release is attached as **Exhibit "D"**.

15. Shortly thereafter, individual targeted communications were also sent by the Applicants to employees and most suppliers explaining the general nature of the Initial Order and the CCAA

proceedings, the role of the Court and the Monitor, and the immediate implications of the Initial Order for each particular stakeholder group.

16. In accordance with the Initial Order, I am informed by the Monitor that it has:

(a) established a website at https://www.alvarezandmarsal.com/TokyoSmoke (the "**Monitor's Website**") on which updates on the CCAA proceedings will be posted periodically, together with all the Court materials filed in the CCAA proceedings;

(b) established a dedicated email address (tokyosmoke@alvarezandmarsal.com) and hotline to allow stakeholders to communicate directly with the Monitor in order to address any questions or concerns in respect of the CCAA proceedings;

(c) posted the Initial Order and the application materials on the Monitor's Website; and

(d) organized to publish a notice in the Globe and Mail (National Edition) containing the information prescribed under the CCAA on September 4 and 11, 2024.

B. Operational Restructuring Efforts

17. Since the granting of the Initial Order, in an effort to preserve the Applicants' liquidity during the CCAA proceedings and decrease operational costs in the long-term, the Applicants have started to close a number of retail stores.

18. As a result of the Applicants' plan to close certain retail stores, they have disclaimed certain agreements with no viable path to profitability with the consent of the Monitor. In particular, the Applicants sent notices of disclaimer for:

(a) 23 leases for leased premises wherein the Applicants currently operate or previously operated a retail store;

(b) the lease for the Applicants' head office located at 590 King Street West, Toronto, Ontario;

(c) four head leases for leased premises wherein franchisees operate a retail store pursuant to a franchise agreement and sublease;

(d) six franchise agreements with franchisees; and

(e) one head lease for leased premises wherein a licensee operates a retail store pursuant to a license agreement and sub-sublease. The license agreement was terminated by the Applicants prior to the Initial Order.

19. On August 28, 2024, the Applicants also sent confirmatory disclaimers for seven leased premises that were never built out or occupied by the Applicants (the "**Vacant Premises**"). Prior to the Initial Order, the Applicants advised the respective landlords of the Vacant Premises that the Applicants had repudiated the lease, abandoned the premises and that the landlords were free to re-let the premises. As set out in Initial Affidavit, given that the Applicants were not in possession of, occupying, or otherwise using in any manner, both prior to and following the time of the Initial Order, the Applicants do not intend to pay any post-filing rent to the landlords of these Vacant Premises during these CCAA proceedings. All other lease locations to which the Applicants are otherwise in possession of and using the premises are being paid post-filing rent in the ordinary course in accordance with the terms of the Initial Order.

20. As a result of the closure of some of the Applicants' retail stores and in an effort to preserve the Applicants' liquidity during the CCAA proceedings, the Applicants terminated 102 employees, thereby reducing their workforce to 372 employees. Of the employees terminated 94 employees worked at retail stores and eight worked at the Applicants' head office. None of the terminated employees are subject to collective bargaining agreements.

C. Development of the SISP and Negotiating the Stalking Horse Agreement

21. As discussed in the Initial Affidavit, a primary objective of these CCAA proceedings is to conduct a Court-approved sale and investment solicitation process in order to implement a long-term solution to the Applicants' liquidity challenges and maximize value for their stakeholders.

22. To meet these objectives, the Applicants, in consultation with the Monitor, are working on developing a sale and investment solicitation process (the "**SISP**"). The SISP is intended to widely expose the Applicants' Business and Property to the market and provide a structured and orderly process for interested parties to perform due diligence and submit offers for a broad range of potential transactions (including a sale or recapitalization).

23. The Applicants intend for the SISP to involve a stalking horse bid. Accordingly, the Applicants are in the process of negotiating a share subscription agreement (the "**Stalking Horse Agreement**") between 2675970 Ontario Inc., as seller, and TS Investments (a related party), as purchaser.

24. The Applicants anticipate seeking approval of the SISP and the Stalking Horse Agreement, solely for the purpose of constituting a stalking horse bid under the SISP, next week subject to Court availability.

D. Discussions with BMO

25. The Applicants and their counsel have engaged in discussions with the Applicants' senior secured creditor, BMO, to build consensus on a path forward in these CCAA proceedings.

26. As described in the Initial Affidavit, the Applicants are indebted to BMO in the approximate amount of $38.3 million (the "**BMO Debt**") under a credit agreement dated October 7, 2022 between BMO, as lender, and 2675970 Ontario Inc., as borrower, (as amended, restated,

supplemented or otherwise modified from time to time, the "**BMO Credit Agreement**"). The BMO Debt is secured over all of the assets and shares of the Applicants and Non-Applicant Entities pursuant to various security documents (the "**BMO Security**").

27. The discussions with BMO resulted in the negotiation of a forbearance agreement that has been agreed to in principle between the Applicants and BMO (the "**Forbearance Agreement**") pursuant to which, *inter alia*, BMO agrees to forbear from exercising any and all rights against the Applicants and the Non-Applicant Entities under the BMO Credit Agreement until the earlier of: (a) December 6, 2024; (b) the date on which the stay of proceedings under the CCAA is lifted or terminated; (c) the closing of a sale of similar transaction for all or substantially all of the assets and Business; (d) the conversion of the CCAA proceedings into a proceeding under the *Bankruptcy and Insolvency Act*; (e) the appointment of a receiver; or (f) the occurrence of a Forbearance Terminating Event (as defined therein). The Forbearance Agreement is in the process of being finalized.

28. I am advised by the Applicants' counsel, Jessica Wuthmann, that the Monitor was consulted during the negotiation of the Forbearance Agreement. I am also advised by Ms. Wuthmann that, subject to the finalization and execution of the Forbearance Agreement, BMO is supportive of the Applicants' requested relief in the ARIO.

E. Discussions with the Landlords

29. The Applicants, the Monitor, and their respective counsel have engaged in discussions with various of the landlords and their counsel to discuss the Applicants' go-forward operational plans and the CCAA proceedings.

30. Counsel for the landlords of 4 of the Vacant Premises have raised concerns as to whether post-filing rent is required to be paid in respect of the Vacant Premises. Accordingly, counsel for

the Applicants and the Monitor have engaged in discussions with counsel for these landlords. To the extent the issues raised by the landlords cannot be resolved consensually amongst the parties, the Applicants intend to schedule a hearing to resolve the issues raised by the landlords of the Vacant Premises.

IV. THE AMENDED AND RESTATED ORDER

A. Extension of the Stay Period

31. The Applicants are seeking to extend the Stay Period to and including December 6, 2024. The extension of the Stay Period is necessary and appropriate in the circumstances to provide the Applicants with the breathing room necessary to operate as a going concern, implement their operational restructuring and to come back before this Court to approve and conduct a stalking horse SISP.

32. As set out above, since the granting of the Initial Order, among other things, the Applicants have engaged with several stakeholder groups, including various suppliers, their employees, and landlords, and are in the process of developing the SISP in consultation with the Monitor.

33. The Applicants have also terminated employees and delivered disclaimer notices for leases and franchise agreements with a view to preserving the Applicants' liquidity.

34. Accordingly, the Applicants have acted, and are continuing to act in good faith and with due diligence in these CCAA proceedings.

35. The cash flow statement referenced in the Initial Affidavit and attached as Appendix "C" to the Pre-Filing Report of the Monitor dated August 27, 2024 ("**Cash Flow Projection**") is attached as **Exhibit "E"** to this affidavit. The Cash Flow Projection demonstrates that the

Applicants have sufficient liquidity to operate through the proposed extension of the Stay Period up to and including December 6, 2024.

36. The Applicants' stakeholders will benefit from the extension of the Stay Period.

37. The Monitor and the DIP Lender are both supportive of the proposed extension of the Stay Period.

B. Increased Administration Charge

38. The Applicants seek an increase in the Administration Charge from $400,000 to the maximum amount of $850,000. The increased quantum of the Administration Charge corresponds to the anticipated fees of the restructuring professionals during the extended Stay Period, which is reflected in the Cash Flow Projection.

39. The ARIO proposes that, as in the Initial Order, the Administration Charge will rank in first priority to all encumbrances and charges over the Applicants' Property.

40. The Initial Affidavit sets out the evidentiary basis for the appropriateness and necessity of the Administration Charge. Specifically, the Administration Charge will allow the Applicants to have continuous access to critical accounting and legal advice during the Stay Period, including to implement the SISP, effectively liaise with secured creditors and stakeholders, and assist in restructuring initiatives.

41. I understand that the Monitor, the DIP Lender and BMO support the increased quantum of the Administration Charge.

C. Increased Amounts to DIP Facility and DIP Lender's Charge

42. The initial permitted borrowings under the DIP Term Sheet, and the initial quantum of the DIP Lender's Charge granted in the Initial Order, were based on the needs of the Applicants for the 10-day initial Stay Period. The Applicants seek to increase the permitted borrowings under the DIP Term Sheet and the quantum of the DIP Lender's Charge from $3.3 million to $8 million plus fees, costs and interest.

43. As set out in the Initial Affidavit, the Cash Flow Projection indicates that the Applicants anticipate the need to draw up to $8 million under the DIP Term Sheet in order to maintain operations and fund these CCAA proceedings. Accordingly, the increased borrowings under the DIP Term Sheet are appropriate and necessary to permit the Applicants to operate their Business in the normal course and fund the costs of the proposed SISP and this CCAA proceeding.

44. It is proposed that the DIP Lender's Charge will be subordinated to the Administration Charge and the BMO Security, but will rank ahead of the Directors' Charge and the proposed KERP Charge discussed below.

45. I understand the Monitor and BMO support the Applicants' requested increase to their permitted borrowings under the DIP Term Sheet and the corresponding increase to the DIP Lender's Charge.

D. Increased Directors' Charge

46. The Applicants seek an increase in the Directors' Charge from $2.25 million to the maximum amount of $3 million. The ARIO proposes that, as in the Initial Order, the Directors' Charge will rank subordinate to the Administration Charge, the BMO Security, and the DIP Lender's Charge.

47. As described in the Initial Affidavit, the Applicants accrue certain amounts that constitute director liabilities if unpaid, including HST remittances, payroll taxes and source deductions, as well as accrued wages. While the Applicants have been paying such amounts in the normal course, HST is accrued and paid either quarterly or monthly, and payroll amounts for head office employees are accrued and paid bi-weekly.

48. As a director and officer, I am concerned about my exposure as a director and officer in the event the CCAA proceeding is terminated while accrued amounts remain unpaid. I understand from the other directors and officers that they are similarly concerned about their exposure. Accordingly, I verily believe that the Applicants' directors and officers would likely not remain in office without adequate indemnity.

49. A loss of the Applicants' directors and officers would significantly impair the Applicants' Business and ability to restructure in the CCAA proceeding. Specifically, the Applicants' current directors and officers have acquired irreplaceable knowledge of the Applicants' Business and the cannabis retail industry.

50. I am advised by the Monitor that it supports the quantum and approval of the Directors' Charge.

E. KERP and KERP Charge

51. As referenced in the Initial Affidavit, the Applicants have certain key employees who are critical to the Applicants' Business (the "**Key Employees**"). The Key Employees are certain employees who work at the Applicants' head office and act as managers, directors, and vice

presidents to various critical parts of the Business including merchandising, accounting, legal and operations.

52. Stability is paramount in these CCAA proceedings. Accordingly, the loss of any of the Key Employees would have a material adverse effect on both the Applicants' operations and the success of the restructuring process.

53. To address these risks and encourage the continued participation of the Key Employees during these CCAA proceedings, the Applicants, in consultation with the Monitor, have developed the KERP.

54. Pursuant to the terms of KERP, the Key Employees will receive a bonus payment at the earlier of: (i) the completion of a Court-approved transaction pursuant to the SISP; or (ii) the Court's approval of a plan of arrangement in these CCAA proceedings. A copy of the KERP, without Schedule "A" identifying the beneficiaries of the KERP, is attached as **Exhibit "F"**. I attach a copy of Schedule 'A' to the KERP as **Confidential Exhibit "1"**.

55. Employees forfeit their entitlement to their KERP payment if, among other things, they resign or retire, do not continue to perform their roles and responsibilities, do not meet performance expectations, or involuntarily separate for any reason, prior to the completion of a transaction pursuant to the SISP or the Court approval of a plan of arrangement in the CCAA proceedings.

56. The maximum aggregate amount payable under the KERP is $218,500. The payments contemplated in the KERP range from approximately 6.98% to 15.11% of the applicable employee's salary.

57. The proposed ARIO provides for the granting of the KERP Charge in the maximum amount of $218,500 to secure the obligations of the Applicants to the Key Employees under the KERP. It

is proposed that the KERP Charge will rank subordinate to all the other charges and the BMO Security.

58. Given the uncertainty facing the Applicants' employees, I believe that the KERP and KERP Charge is a fair and just solution for the retention of Key Employees of the Applicants.

59. If the KERP were not approved, I believe it is likely that the Key Employees will consider other employment options. Finding qualified individuals to replace them would be disruptive, difficult and time consuming, particularly given the Key Employees' institutional knowledge related to the Applicants' Business. I also believe that the Key Employees will be critical to maintaining the Applicants' ongoing operations and to assist with the conduct of the SISP, as certain Key Employees will be required in connection with any third party's due diligence during the SISP.

60. I understand both the Monitor and the DIP Lender are both supportive of the proposed KERP and KERP Charge.

61. The Applicants are also seeking to seal Schedule 'A' to the KERP, which is attached as **Confidential Exhibit "1"** hereto, as it reveals individually identifiable information, including among other things, compensation information. Disclosure of such sensitive personal and compensation information may cause harm to the Key Employees in the KERP and to the Applicants, and the protection of such information is an important commercial and privacy interest that should be protected. The Monitor is supportive of the sealing of the unredacted KERP.

62. Separate from the KERP, the Cash Flow Projection also includes certain amounts payable to employees pursuant to the short term and long-term incentive plans that form part of the employees' compensation ("**STIP/LTIP**"). A total of $581,668.02 will be paid by the Applicants in STIP/LTIP payments to current employees, which amount is comprised of $355,773.56 for certain head office employees, $123,349.32 for certain employees working at corporate retail stores, and

$102,545.14 for certain management personnel. Pursuant to the applicable and ongoing employment agreements, the Applicants intend to make such payments in the normal course on September 13, 2024 and no later than September 30, 2024. The STIP/LTIP payments are not part of the KERP payments or KERP Charge as they constitute a portion of the employees' earned compensation in the normal course which would be payable to any employees that are currently employed as at the payment date.

F. Proposed Ranking of the Court-Ordered Charges

63. The proposed ARIO provides that the charges, as amongst them, shall be as follows:

First – Administration Charge (to the maximum amount of $850,000);

Second – DIP Lender's Charge (to the maximum principal amount of $8 million plus interest, fees, and costs);

Third – Directors' Charge (to the maximum amount of $3 million); and

Fourth – KERP Charge (to the maximum amount of $218,500).

64. The DIP Lender's Charge, Directors' Charge, and KERP Charge are proposed to rank subordinate to BMO's Security. Only the Administration Charge is proposed to rank in priority to BMO's Security.

G. Payment of Pre-Filing Amounts

65. In the Initial Order, the Applicants are permitted to pay, with the consent of the Monitor and in accordance with the terms of the DIP Term Sheet and the Cash Flow Projection, up to a maximum amount of $330,000 to certain suppliers for pre-filing expenses. In the ARIO, the Applicants seek to remove the cap of $330,000.

66. As stated in the Initial Affidavit, because of the regulated nature of the Business, the Applicants acquire products and services from a relatively small number of suppliers. Timely payment of such suppliers is critical to ensure the continued operations of the Business and to avoid any disruption to the Business or down-time for the digital platform operated by the Applicants.

67. I understand that the Monitor, the DIP Lender, and BMO are supportive of this relief.

V. CONCLUSION

68. For the reasons set out above, I believe that it is in the interests of the Applicants and their stakeholders that this Court grant the relief requested in accordance with the terms of the proposed ARIO. Following the Comeback Hearing, the Applicants intend to return before the Court to approve the SISP.

69. I swear this affidavit in support of the Applicants' motion pursuant to the CCAA and for no other or improper purpose.

SWORN REMOTELY by Andrew Williams 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 this 3rd day of September, 2024, in accordance with O. Reg 431/20, *Administering Oath or Declaration Remotely*.

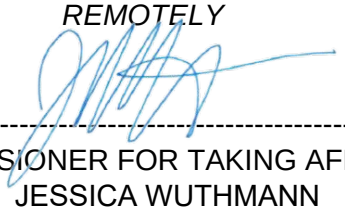
DocuSigned by:
Jessica Wuthmann
3A2B52A947404F3...

A Commissioner for taking Affidavits.
Name: Jessica Wuthmann

DocuSigned by:
Andrew Williams
0F1870E63F1941C...

Andrew Williams

THIS IS **EXHIBIT "D"** REFERRED TO IN THE
AFFIDAVIT OF ANDREW WILLIAMS SWORN REMOTELY BY ANDREW WILLIAMS
STATED AS BEING LOCATED IN THE CITY OF TORONTO BEFORE ME AT THE CITY OF
MISSISSAUGA, IN THE PROVINCE OF ONTARIO, THIS 12TH DAY OF SEPTEMBER 2024,
IN ACCORDANCE WITH O. REG 431/20, *ADMINISTERING OATH OR DECLARATION REMOTELY*



A COMMISSIONER FOR TAKING AFFIDAVITS
JESSICA WUTHMANN
LSO No. 72442W

STALKING HORSE SUBSCRIPTION AGREEMENT

2675970 ONTARIO INC.,

AS THE COMPANY

-AND-

TS INVESTMENTS CORP.,

AS PURCHASER

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THIS STALKING HORSE SUBSCRIPTION AGREEMENT is made as of September 12 , 2024

BETWEEN:

2675970 ONTARIO INC., a corporation existing under the laws of the Province of Ontario (the "**Company**")

-and-

TS INVESTMENTS CORP. a corporation existing under the laws of the Province of Ontario ("**Purchaser**")

RECITALS:

A. The Company, through certain of its wholly-owned subsidiaries, owns, operates, and franchises dispensaries in Canada selling cannabis products and accessories directly to consumers under the name "Tokyo Smoke" and maintains an online platform for direct-to-consumer cannabis sales and deliveries.

B. On August 28, 2024, the Applicants (as hereinafter defined) commenced proceedings under the CCAA (as hereinafter defined) before the Ontario Superior Court of Justice (Commercial List) (the "**CCAA Court**") to, among other things, seek creditor protection for, and certain relief in respect of, the Applicants (as hereinafter defined).

C. The Applicants plan to obtain a sales process approval order (the "**SISP Order**") from the CCAA Court approving, among other things, the SISP (as hereinafter defined).

D. Pursuant to the SISP, the Purchaser has been selected as the stalking horse bidder and as such, the Purchaser has agreed to subscribe for, and the Company has agreed to issue, the Purchased Shares on and pursuant to the terms set forth herein if Purchaser becomes the Successful Bidder (as hereinafter defined) pursuant to the SISP.

NOW THEREFORE, the Parties agree as follows:

ARTICLE 1
INTERPRETATION

1.1 Definitions

In this Agreement,

(a) "**Administration Charge**" has the meaning given to it in the Initial Order.

(b) "**Administrative Expense Amount**" means cash in the amount to be agreed to between the Monitor and the Purchaser, acting reasonably, which shall be paid to the Monitor on the Closing Date and held by the Monitor, for the benefit of Persons entitled to be paid the Administrative Expense Costs, subject to the terms hereof.

(c) "**Administrative Expense Costs**" means the reasonable and documented costs and expenses for services performed by the Monitor, Residual Co. and their respective legal counsel after the Closing Date in connection with the CCAA Proceedings, the administration of such proceedings to their conclusion and this Agreement, including any bankruptcy of the Residual Co. and services in respect of the administration of the Excluded Assets, Excluded Liabilities and Residual Co, to the extent such amount has not been pre-funded in accordance with the DIP Term Sheet prior to the Closing Date.

(d) "**Affiliate**" means, with respect to any specified Person, any other Person which, directly or indirectly, through one or more intermediaries controls, or is controlled by, or is under common control with, such specified Person (for the purposes of this definition, "control" (including, with correlative meanings, the terms "controlling," "controlled by" and "under common control with"), as used with respect to any Person, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person, whether through the ownership of voting securities, by agreement or otherwise). For greater certainty, an Affiliate of a Person shall include such Person's investment funds and managed accounts and any funds managed or directed by the same investment advisor.

(e) "**Agreement**" means this stalking horse subscription agreement and all attachments and Exhibits, in each case as the same may be supplemented, amended, restated or replaced from time to time, and the expressions "hereof", "herein", "hereto", "hereunder", "hereby" and similar expressions refer to this stalking horse subscription agreement and all attached Schedules and Exhibits, and unless otherwise indicated, references to Articles, Sections, Schedules and Exhibits are to Articles, Sections, Schedules and Exhibits in this stalking horse subscription agreement.

(f) "**Applicable Law**" means any transnational, domestic or foreign, federal, provincial, territorial, state, local or municipal (or any subdivision of any of them) law (including common law and civil law), statute, ordinance, rule, regulation, restriction, limit, by-law (zoning or otherwise), judgment, order, direction or any consent, exemption, Transaction Regulatory Approval, or any other legal requirements of, or agreements with, any Governmental Authority, that applies in whole or in part to the transactions contemplated by this Agreement, the members of the Applicants, the Purchaser, the Business, or any of the Purchased Shares or the Retained Liabilities.

(g) "**Applicants**" means, collectively, the Company, 2733181 Ontario Inc., 2385816 Alberta Ltd., 2161907 Alberta Ltd., 2733182 Ontario Inc., 2737503 Ontario Inc., 2826475 Ontario Inc., 14284585 Canada Inc., 2197130 Alberta Ltd., 2699078 Ontario Inc., 2708540 Ontario Corporation, 2734082 Ontario Inc., TS Wellington Inc., 2742591 Ontario Inc., 2796279 Ontario Inc., 10006215 Manitoba Ltd., and 80694 Newfoundland & Labrador Inc., and from and after the time Residual Co. becomes an applicant under the Initial Order, "**Applicants**" shall include Residual Co.

(h) "**Approval and Reverse Vesting Order**" means an order of the CCAA Court in a form to be mutually agreed upon by the Purchaser and the Company, each acting reasonably.

(i) "**Articles of Reorganization**" means, to the extent required, articles of reorganization in respect of the Company's authorized and issued share capital immediately prior to completion of the Transactions to provide for a redemption right in favour of the Company or such other provision acceptable to the Company and the Purchaser, acting reasonably, that would result in holders of Existing Shares ceasing to hold their Existing Shares at the time such articles are filed and effective in accordance with the Closing Sequence and receiving nil consideration, such articles of amendment to be in form and substance satisfactory to the Purchaser, acting reasonably.

(j) "**BMO**" means the Bank of Montreal.

(k) "**BMO Credit Agreement**" means the second amended and restated credit agreement dated October 7, 2022 between, *inter alia*, BMO, as administrative agent and lender, the Company, as borrower, and the guarantors party thereto, as amended, restated, supplemented or otherwise modified from time to time.

(l) "**BMO Loan Documents**" means the "Loan Documents" as defined in the BMO Credit Agreement.

(m) "**BMO Post-Closing Loan Documents**" means a credit agreement and applicable loan documentation to be entered into with BMO and the Purchased Entities to be effective on Closing which would refinance the indebtedness under, and replace, the BMO Credit Agreement, all of which shall be in form and substance satisfactory to the Purchaser and BMO.

(n) "**Break-up Fee**" has the meaning given to such term in Section 8.1(a).

(o) "**Business**" means the Company's (through its subsidiaries): (a) ownership, operation, and franchise of dispensaries in Canada selling cannabis products and accessories directly to consumers under the name "Tokyo Smoke", (b) online platform for direct-to-consumer cannabis sales and deliveries and (c) program, medical and banner lines of business.

(p) "**Business Day**" means any day, other than a Saturday or Sunday, on which the principal commercial banks in Toronto, Ontario are open for commercial banking business during normal banking hours.

(q) **"Cash Consideration"** has the meaning given to such term in Section 3.1.

(r) "**CCAA**" means the *Companies' Creditors Arrangement Act* (Canada), as amended.

(s) "**CCAA Charge Amount**" means cash in an amount sufficient to satisfy the amounts owing in respect of obligations secured by the CCAA Charges (unless such amounts will be satisfied from the Administration Expense Amount);

(t) "**CCAA Charges**" means the Administration Charge, the Director's Charge and the KERP Charge.

(u) "**CCAA Court**" has the meaning given to such term in Recital B.

(v) "**CCAA Proceedings**" means the proceedings commenced under the CCAA by the Applicants pursuant to the Initial Order.

(w) "**Claims**" means any and all demands, claims, liabilities, actions, causes of action, counterclaims, expenses, costs, damages, losses, suits, debts, sums of money, refunds, accounts, indebtedness, rights of recovery, rights of set-off, rights of recoupment and liens of whatever nature (whether direct or indirect, absolute or contingent, asserted or unasserted, secured or unsecured, matured or not yet matured due or to become due, accrued or unaccrued or liquidated or unliquidated) and including all costs, fees and expenses relating thereto.

(x) "**Closing**" means the completion of the Transactions in accordance with the provisions of this Agreement.

(y) "**Closing Date**" means a date no later than five (5) Business Days after the conditions set forth in Article 7 have been satisfied or waived, other than the conditions set forth in Article 7 that by their terms are to be satisfied or waived at the Closing (or such other date agreed to by the Parties in writing); provided that, if there is to be a Closing hereunder, then the Closing Date shall be no later than the Outside Date.

(z) "**Closing Documents**" means all contracts, agreements, certificates and instruments required by this Agreement to be delivered at or before the Closing.

(aa) "**Closing Sequence**" means the sequence set out in Schedule 11.2, which may be updated from time to time in accordance with Section 11.2 until two (2) Business Days prior to the Closing Date.

(bb) "**Closing Time**" means 10:00 a.m. (Toronto time) on the Closing Date or such other time on the Closing Date as the Parties agree in writing that the Closing Time shall take place.

(cc) "**Company**" has the meaning given to it in the recitals hereto.

(dd) "**Credit Bid Consideration**" has the meaning given to such term in Section 3.1(d).

(ee) "**Credit Bid Releases"** means a full and final release of all Applicants of their respective obligations in respect of the Credit Bid Consideration, which shall be in form and substance satisfactory to the Applicants and the Monitor, each acting reasonably.

(ff) "**Cure Costs**" means the amounts, if any, that are required to cure any monetary defaults of the Applicants under any Retained Contract, Retained Lease or Restructured Lease,.

(gg) "**DIP Credit Bid Consideration**" has the meaning given to such term in Section 3.1(a).

(hh) "**DIP Facility**" means amounts available under the DIP Term Sheet.

(ii) "**DIP Lender**" means TS Investments Corp., as lender thereunder.

(jj) "**DIP Lender's Charge**" has the meaning given to it in the Initial Order.

(kk) "**DIP Term Sheet**" means interim financing term sheet dated August 27, 2024 between the Applicants, as borrowers, and the DIP Lender, pursuant to which the DIP Lender has agreed to advance to the Applicants the DIP Facility, as may be amened from time to time.

(ll) "**Directors' Charge**" has the meaning given to it in the Initial Order.

(mm) "**Employees**" means individuals employed or retained by the Purchased Entities, on a full-time, part-time or temporary basis, including any unionized employees and those employees on disability leave, parental leave or other absence.

(nn) "**Encumbrance**" means any security interest (whether contractual, statutory or otherwise), lien, prior claim, charge, hypothec, reservation of ownership, pledge, encumbrance, mortgage, trust (including any statutory, deemed or constructive trust), option or adverse claim or encumbrance of any nature or kind.

(oo) "**Encumbrances to Be Discharged**" means all Encumbrances on the Retained Assets, including without limitation the Encumbrances listed in Schedule 1.1(oo), as such Schedule may be amended, supplemented or restated by the Purchaser from time to time up to two (2) Business Days prior to the hearing of the motion for the Approval and Reverse Vesting Order (or such other date agreed to by the Purchaser and the Company), the CCAA Charges and any other charge granted by the Court in the CCAA Proceedings, excluding only the Permitted Encumbrances.

(pp) "**Equity Interests**" means any capital share, capital stock, partnership, membership, joint venture or other ownership or equity interest, participation or securities (whether voting or nonvoting, whether preferred, common or otherwise, and including share appreciation, contingent interest or similar rights) of a Person.

(qq) "**Excluded Assets**" has the meaning given to such term in Section 2.3 including any assets that are added as Excluded Assets pursuant to Section 2.7.

(rr) "**Excluded Contracts**" means contracts of the Purchased Entities which are not Retained Contracts, including any contracts that are added as Excluded Contracts pursuant to Section 2.7.

(ss) "**Excluded Leases**" means all Leases in respect of the Leased Real Property which are not Retained Contracts of Restructured Leases, including those which have been or will be disclaimed by the Purchased Entities in the CCAA Proceedings.

(tt) "**Excluded Liabilities**" has the meaning given to such term in Section 2.5 including any liabilities that are added as Excluded Liabilities pursuant to Section 2.7.

(uu) "**Existing Shares**" means the existing common shares in the capital of the Company and other Purchased Entities which are owned, directly or indirectly, by the Company.

(vv) "**Filing Date**" means August 28, 2024.

(ww) "**Final Order**" means with respect to any order or judgment of the CCAA Court, or any other court of competent jurisdiction, with respect to the subject matter addressed in the CCAA Proceedings or the docket of any court of competent jurisdiction, that such order or judgement has not been vacated, set aside, reversed, stayed, modified or amended, and as to which the applicable periods to appeal, or seek certiorari or move for a new trial, re-argument, or rehearing has expired and no appeal, leave to appeal, or petition for certiorari or other proceedings for a new trial, re-argument, or rehearing has been timely taken or filed, or as to which any appeal has been taken or any petition for certiorari or leave to appeal that has been timely filed has been withdrawn or resolved in a manner acceptable to the Company and the Purchaser, each acting reasonably, by the highest court to which the order or judgment was appealed or from which leave to appeal or certiorari was sought or the new trial, re-argument, or rehearing shall have been denied, resulted in no modification of such order or has otherwise been dismissed with prejudice.

(xx) "**GAAP**" means generally accepted accounting principles as set out in the *CPA Canada Handbook – Accounting* for an entity that prepares its financial statements in accordance with International Financial Reporting Standards, at the relevant time, applied on a consistent basis.

(yy) "**Gift Cards**" means the gift cards purchased by customers of the Purchased Entities which can be redeemed for merchandise in the applicable Stores, subject to the terms and conditions of the gift card program in effect as at the Filing Date.

(zz) "**Governmental Authority**" means any government, regulatory authority, governmental department, agency, commission, bureau, official, minister, crown corporation, court, board, tribunal or dispute settlement panel or other law, rule or regulation-making organization or entity having or purporting to have jurisdiction on behalf of any nation, province, territory or state or any other geographic or political subdivision of any of them, or exercising, or entitled or purporting to exercise any administrative, executive, judicial, legislative, policy, regulatory or taxing authority or power.

(aaa) "**GST/HST**" means all goods and services tax and harmonized sales tax imposed under the ETA.

(bbb) "**Initial Order**" means the Amended and Restated Initial Order dated September 6, 2024 granted by the CCAA Court pursuant to the CCAA, as may be further amended and restated from time to time.

(ccc) "**Intercompany Liabilities**" means all Liabilities owing between or among the Purchased Entities and their subsidiaries (other than in connection with any amounts outstanding under the TS Investments Grid Note and the DIP Term Sheet, which in each case for greater certainty shall be released pursuant to the terms herein).

(ddd) "**KERP Charge**" has the meaning set forth in the Initial Order.

(eee) "**Leased Real Property**" means the Stores and offices of the Purchased Entities, together with any and all interests of the Purchased Entities in all plants, buildings, structures,

fixtures, erections, improvements, easements, rights-of-way and other appurtenances situated on or forming part of those premises.

(fff) "**Leases**" means the leases or agreements in the nature of a lease or right of occupancy of real property to which any Purchased Entity is a party whether as lessor or lessee, in respect of or related to the Leased Real Property.

(ggg) "**License**" or "**Licences**" means, collectively any and all permits, licences, authorizations, consents, concessions, exemptions, leases, grants, permits, rights, privileges, approvals or other evidence of authority from any Governmental Authority and related to the Business and that has been issued to, granted to, conferred upon, or otherwise created for, any Purchased Entity, relating to authorizations or otherwise to sell, provide, ship, deliver, transport and/or distribute cannabis under Applicable Law.

(hhh) "**Material Adverse Effect**" means any change, effect, event, occurrence, state of facts or development that has had a material adverse effect on: (i) the Business, assets, liabilities, financial conditions or results of operations of the Purchased Entities, taken as a whole; or (ii) prevents the ability of any of the Purchased Entities to perform their obligations under, or to consummate the transactions contemplated by, this Agreement, but excluding any such change, effect, event, occurrence, state of facts or development attributable to or arising from: (A) general economic or business conditions; (B) Canada, the U.S. or foreign economies, or financial, banking or securities markets in general, or other general business, banking, financial or economic conditions (including: (I) any disruption in any of the foregoing markets; (II) any change in the currency exchange rates; or (III) any decline or rise in the price of any security, commodity, contract or index); (C) acts of God or other calamities, pandemics (including worsening thereof), national or international political or social conditions, including the engagement and/or escalation by the U.S. or Canada in hostilities, whether or not pursuant to the declaration of a national emergency or war, or the occurrence of any military or terrorist attack upon the U.S. or Canada or any of their territories, possessions or diplomatic or consular offices or upon any military installation, equipment or personnel of the U.S. or Canada; (D) the identity of the Purchaser or its Affiliates; (E) conditions affecting generally the industry in which any of the Purchased Entities participate; (F) the public announcement of, entry into or pendency of, actions required or contemplated by or performance of obligations under, this Agreement or the transactions contemplated by this Agreement, or the identity of the Parties; (G) changes in Applicable Laws or the interpretation thereof; (H) any change in GAAP or other accounting requirements or principles; (I) national or international political, labor or social conditions; (J) the failure of the Purchased Entities to meet or achieve the results set forth in any internal projections (but not the underlying facts giving rise to such failure unless such facts are otherwise excluded pursuant to the clauses contained in this definition); or (K) any change resulting from compliance with the terms of, or any actions taken (or not taken) by any Party pursuant to or in accordance with, this Agreement; provided that the exceptions set forth in clauses (A), (B), (C), (E), (G), (H) or (I) shall not apply to the extent that such event is disproportionately adverse to the Purchased Entities, taken as a whole, as compared to other companies in the industries in which the Purchased Entities operate.

(iii) "**Monitor**" means Alvarez & Marsal Canada Inc., as court-appointed monitor of the Applicants in the CCAA Proceedings, and not in its personal or corporate capacity.

(jjj) "**Monitor's Certificate**" means the certificate delivered to the Purchaser, and filed with the CCAA Court, by the Monitor certifying that the Monitor has received written confirmation in form and substance satisfactory to the Monitor, in its sole discretion, from each of the Company and the Purchaser that all conditions to Closing have been satisfied or waived by the applicable Parties and the transactions contemplated by this Agreement have been completed.

(kkk) "**Order**" means any order of the Court made in the CCAA Proceedings, or any order, directive, judgment, decree, injunction, decision, ruling, award or writ of any Governmental Authority.

(lll) "**Outside Date**" has the meaning given to such term in Section 10.1(c).

(mmm) "**Parties**" means the Company and the Purchaser collectively, and "**Party**" means any one of them, as the context requires.

(nnn) "**Permitted Encumbrances**" means the Encumbrances listed in Schedule 1.1(nnn).

(ooo) "**Person**" includes an individual, partnership, firm, joint venture, venture capital fund, limited liability company, unlimited liability company, association, trust, entity, corporation, unincorporated association, or organization, syndicate, committee, court appointed representative, the government of a country or any political subdivision thereof, or any agency, board, tribunal, commission, bureau, instrumentality, or department of such government or political subdivision, or any other entity, howsoever designated or constituted, including any Taxing Authority, and the trustees, executors, administrators, or other legal representatives of an individual, and for greater certainty includes any Governmental Authority.

(ppp) "**Post-Filing Claims**" means any or all indebtedness, liability, or obligation of the members of the Applicants that arises during and in respect of the period commencing on the Filing Date and ending on the day immediately preceding the Closing Date in respect of services rendered or supplies provided to the Applicants during such period.

(qqq) "**Pre-Closing Reorganization**" has the meaning given to such term in Section 2.10(a).

(rrr) "**Priority Payment Amount**" means an amount equal to: (a) those priority payments prescribed under subsections 6(3), 6(5)(a) and 6(6) of the CCAA; (b) the CCAA Charge Amounts; and (c) any payments in respect of Leases that are required under the CCAA; and (d) any Claims ranking in priority to the security granted by the Purchased Entities to the Purchaser pursuant to the TS Investments GSA.

(sss) "**Purchase Price**" has the meaning given to such term in Section 3.1.

(ttt) **"Purchased Entities"** means the Company and each other Applicant (other than any Applicants which are listed as an Excluded Asset), and "**Purchased Entity"** means any one of them.

(uuu) "**Purchased Shares**" has the meaning given to such term in Section 2.1(a).

(vvv) "**Purchaser**" has the meaning given to such term in the preamble to this Agreement.

(www) "**Residual Co.**" means a corporation to be incorporated by the Company in advance of Closing, to which the Excluded Assets, Excluded Contracts and Excluded Liabilities will be transferred to as part of the Closing Sequence, which shall have no issued and outstanding shares.

(xxx) "**Restructured Leases**" means all Leases in respect of the Leased Real Property as of the Closing Date listed in Schedule 1.1(xxx) that the Purchased Entities and the applicable landlords have agreed to amend; including any Leases that are added as Restructured Leases pursuant to Section 2.8 and excluding the Excluded Leases.

(yyy) "**Retained Assets**" has the meaning given to such term in Section 2.3.

(zzz) "**Retained Contracts**" means, other than the Retained Leases, those contracts of the Purchased Entities listed in Schedule 1.1(zzz) including any contracts that are added as Retained Contracts pursuant to Section 2.8.

(aaaa) "**Retained Employees**" means all Employees of the Purchased Entities as of the Closing Date other than the Terminated Employees.

(bbbb) "**Retained Leases**" means all Restructured Leases and all other Leases in respect of Leased Real Property as of the Closing Date listed in Schedule 1.1(bbbb) and including any Leases that are added as Retained Leases pursuant to Section 2.8.

(cccc) "**Retained Liabilities**" has the meaning given to such term in Section 2.4 including any liabilities that are added as Retained Liabilities pursuant to Section 2.8.

(dddd) "**Secured Credit Bid Consideration**" has the meaning given to such term in Section 3.1(d).

(eeee) "**SISP**" means the Sale and Investment Solicitation Process approved by the SISP Order, as may be amended by the CCAA Court from time to time, which must be acceptable to the Purchaser, acting reasonably, and substantially in the form of the Sale and Investment Solicitation Process attached hereto as Exhibit A.

(ffff) "**SISP Order**" has the meaning ascribed to it in Recital C.

(gggg) "**Stalking Horse Bid**" has the meaning given to such term in the SISP.

(hhhh) "**Stores**" means all of the retail store locations of the Purchased Entities.

(iiii) "**Successful Bid**" and "**Successful Bidder**" has the meaning given to such terms in the SISP.

(jjjj) "**Tax**" and "**Taxes**" means taxes, duties, fees, premiums, assessments, imposts, levies and other charges of any kind whatsoever (including withholding on amounts paid to or by any Person) imposed by any Taxing Authority, including all interest, penalties, fines, additions to tax or other additional amounts imposed by any Taxing Authority in respect thereof, and including those levied on, or measured by, or referred to as, income, gross receipts, profits, capital, transfer, land transfer, GST/HST, value added, consumption, sales, use, excise, stamp, withholding, business, franchising, escheat, property, development, occupancy, employer health, payroll, employment, health, disability, severance, unemployment, social services, education and social security taxes, all surtaxes, all customs duties and import and export taxes, countervail and anti-dumping, all license, franchise and registration fees and all employment insurance, health insurance and Canada, Ontario, and other government pension plan premiums or contributions.

(kkkk) "**Tax Act**" means the *Income Tax Act* (Canada) and shall also include a reference to any applicable and corresponding provisions under the income tax laws of a province or territory of Canada, as applicable.

(llll) "**Tax Return**" means any return, declaration, report, statement, information statement, form, election, amendment, claim for refund, schedule or attachment thereto or other document filed or required to be filed with a Taxing Authority with respect to Taxes.

(mmmm) "**Taxing Authorities**" means His Majesty the King in right of Canada, His Majesty the King in right of any province or territory of Canada, the Canada Revenue Agency, any similar revenue or taxing authority of Canada and each and every province or territory of Canada and any political subdivision thereof, and any Canadian or other Governmental Authority exercising taxing authority or power, and "Taxing Authority" means any one of the Taxing Authorities.

(nnnn) "**Terminated Employees**" means those Employees terminated by the applicable Purchased Entity on or prior to the Closing Date at the sole discretion of the Purchaser, provided that in respect of terminations of any Employees that are unionized, the applicable Purchased Entity's prior consent is required and such terminations of any unionized Employees must comply with the applicable collective bargaining agreement.

(oooo) "**The High Roller Club Rewards Program**" means the customer loyalty program offered by the Purchased Entities.

(pppp) "**Transaction**" means, collectively, the Pre-Closing Reorganization, the purchase and issuance of the Purchased Shares pursuant to this Agreement and all other transactions contemplated by this Agreement that are to occur contemporaneously with the purchase and issuance of the Purchased Shares; and

(qqqq) "**Transaction Regulatory Approvals**" means any material license, permits approvals and/or grants required from any Governmental Authority or under any Applicable Laws relating to the business and operations of the Purchased Entities or the Purchaser that would

be required to be obtained in order to permit the Company and the Purchaser to complete the transactions contemplated by this Agreement and for the Purchased Entities to carry on the Business following the Closing Date.

(rrrr) "**TS Investments Grid Note**" means the grid promissory note dated October 7, 2022 between TS Investments Corp., as lender, and each of the Company, 2733181 Ontario Inc., 2161907 Alberta Ltd., 2737503 Ontario Inc, 2733182 Ontario Inc., TS-IP Holdings Ltd., TS Programs Ltd., 2826475 Ontario Inc., 2197130 Alberta Ltd., 2699078 Ontario Inc., 2708540 Ontario Corporation, 2734082 Ontario Inc., TS Wellington Inc., 2742591 Ontario Inc., and 2796279 Ontario Inc. as borrowers, as amended.

(ssss) "**TS Investments GSA**" means the general security agreement dated October 7, 2022 (and as amended on December 30, 2022, February 21, 2023, May 31, 2024, and August 2, 2024) executed by the borrowers and guarantors under the TS Investments Grid Note in favour of TS Investments Corp., as amended.

1.2 Statutes

Except as otherwise provided in this Agreement, any reference in this Agreement to a statute refers to such statute and all rules and regulations made under it, as it or they may have been or may from time to time be amended, re-enacted or replaced.

1.3 Headings, Table of Contents, etc.

The provision of a table of contents, the division of this Agreement into Articles, Sections and other subdivisions and the insertion of headings are for convenient reference only and do not affect the interpretation of this Agreement. The recitals to this Agreement are an integral part of this Agreement.

1.4 Gender and Number

In this Agreement, unless the context otherwise requires, words importing the singular include the plural and vice versa, and words importing gender include all genders.

1.5 Currency

Except where otherwise expressly provided, all amounts in this Agreement are stated and shall be paid in Canadian dollars. References to "$" are to Canadian dollars.

1.6 Certain Phrases

In this Agreement (i) the words "including", "includes" and "include" and any derivatives of such words mean "including (or includes or include) without limitation" and (ii) the words "the aggregate of", "the total of", "the sum of", or a phrase of similar meaning means "the aggregate (or total or sum), without duplication, of". The expression "Article", "Section" and other subdivision followed by a number, mean and refer to the specified Article, Section or other subdivision of this Agreement.

1.7 Invalidity of Provisions

Each of the provisions contained in this Agreement is distinct and severable and a declaration of invalidity or unenforceability of any such provision or part thereof by a court of competent jurisdiction shall not affect the validity or enforceability of any other provision hereof so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any Party. Upon (i) such a determination of invalidity or unenforceability or (ii) any change in Applicable Law or other action by any Governmental Authority which materially detracts from the legal or economic rights or benefits, or materially increases the obligations, of any Party or any of its Affiliates under this Agreement, the Parties shall negotiate to modify this Agreement in good faith so as to effect the original intent of the Parties as closely as possible in an acceptable manner so that the transactions contemplated by this Agreement be consummated as originally contemplated to the fullest extent possible.

1.8 Entire Agreement

This Agreement and the agreements and other documents required to be delivered pursuant to this Agreement, constitute the entire agreement among the Parties, and set out all the covenants, promises, warranties, representations, conditions and agreements among the Parties in connection with the subject matter of this Agreement, and supersede all prior agreements, understandings, negotiations and discussions, whether oral or written, pre-contractual or otherwise. There are no covenants, promises, warranties, representations, conditions, understandings or other agreements, whether oral or written, pre-contractual or otherwise, express, implied or collateral among the Parties in connection with the subject matter of this Agreement, except as specifically set forth in this Agreement and any document required to be delivered pursuant to this Agreement.

1.9 Waiver, Amendment

Except as expressly provided in this Agreement, no amendment or waiver of this Agreement shall be binding unless executed in writing by all Parties hereto, and provided that such amendment is consented to by the Monitor. No waiver of any provision of this Agreement shall constitute a waiver of any other provision nor shall any waiver of any provision of this Agreement constitute a continuing waiver unless otherwise expressly provided.

1.10 Governing Law; Jurisdiction and Venue

This Agreement, the rights and obligations of the Parties under this Agreement, and any Claim or controversy directly or indirectly based upon or arising out of this Agreement or the transactions contemplated by this Agreement (whether based on contract, tort or any other theory), including all matters of construction, validity and performance, shall in all respects be governed by, and interpreted, construed and determined in accordance with, the laws of the Province of Ontario and the federal laws of Canada applicable therein, without regard to the conflicts of law principles thereof. The Parties consent to the exclusive jurisdiction and venue of the CCAA Court for the resolution of any such disputes arising under this Agreement. Each Party agrees that service of process on such Party as provided in Section 12.7 shall be deemed effective service of process on such Party.

1.11 Incorporation of Schedules and Exhibits

Any schedule or exhibit attached thereto, and any schedule or exhibit attached to this Agreement, is an integral part of this Agreement.

1.12 Accounting Terms

All accounting terms used in this Agreement are to be interpreted in accordance with GAAP unless otherwise specified.

1.13 Non-Business Days

Whenever payments are to be made or an action is to be taken on a day which is not a Business Day, such payment will be made or such action will be taken on or not later than the next succeeding Business Day.

1.14 Computation of Time Periods

If any action may be taken within, or any right or obligation is to expire at the end of, a period of days under this Agreement, then the first day of the period is not counted, but the day of its expiry is counted.

ARTICLE 2
SUBSCRIPTION AND ASSET PURCHASE

2.1 Agreement to Subscribe for and Issue Purchased Shares

(a) Upon and subject to the terms and conditions of this Agreement, at the Closing and effective as of the Closing Time, in accordance with the Closing Sequence, the Company shall issue to the Purchaser, and the Purchaser shall subscribe for that number and class of shares in the share capital of the Company from treasury, to be specified by the Purchaser at least two Business Days prior to the Closing Date, which shares shall be free and clear of all Encumbrances, except for any Encumbrances under any BMO Post-Closing Loan Documents (the "**Purchased Shares**").

(b) Pursuant to the Approval and Reverse Vesting Order and, if required, the Articles of Reorganization, in accordance with the Closing Sequence, all Equity Interests of the Company outstanding prior to the issuance of the Purchased Shares, other than the Purchased Shares, shall be cancelled, without consideration, and the Purchased Shares shall represent 100% of the outstanding Equity Interests in the Company after such cancellation and issuance.

2.2 Excluded Assets

As of the Closing and pursuant to the Approval and Reverse Vesting Order, the assets of the Purchased Entities shall not include any of the following assets, together with any other assets as set forth on Schedule 2.2 (collectively, the "**Excluded Assets**"):

(a) the Cash Consideration;

(b) the Tax records and returns, and books and records pertaining thereto and other documents, in each case, that primarily or solely relate to any of the Excluded Liabilities or Excluded Assets, provided that the Purchased Entity may retain original copies of any such records if required by Applicable Law and provided further that the applicable Purchased Entity may take copies of all Tax records and books and records pertaining to such records to the extent necessary or useful for the carrying on of the Business after Closing, including the filing of any Tax Return;

(c) the Excluded Contracts;

(d) the Excluded Leases;

(e) any assets which are added as Excluded Assets pursuant to Section 2.7;

(f) all communications, information or records, written or oral, that are in any way related to (i) the transactions contemplated by this Agreement, (ii) the sale of the Purchased Shares, (iii) any Excluded Asset or (iv) any Excluded Liability; and

(g) any rights which accrue to Residual Co. under the transaction documents.

2.3 Retained Assets

On the Closing Date, the Purchased Entities shall retain, free and clear of any and all Encumbrances other than Permitted Encumbrances, all of the assets owned by them on the date of this Agreement and any assets acquired by them up to and including Closing, including the Retained Contracts and Licenses (the "**Retained Assets**"), except, however, any assets sold in the ordinary course of business between the date hereof and the Closing Date in accordance with the terms of this Agreement. For greater certainty, the Retained Assets shall not include the Excluded Liabilities, Excluded Assets or the Excluded Contracts, which Purchased Entities shall transfer to Residual Co. in accordance with this Agreement.

2.4 Retained Liabilities

Pursuant to this Agreement and the Approval and Reverse Vesting Order, as of the Closing Time, the only obligations and liabilities of the Purchased Entities shall consist of only the items specifically set forth below (collectively, the "**Retained Liabilities**"):

(a) wages, vacation pay, and benefit plans owing by any Purchased Entity to any Retained Employee accruing to and after the Closing Time;

(b) the Cure Costs and liabilities of the Purchased Entities under the Retained Contracts from and after the Closing Time;

(c) the Cure Costs and liabilities arising from or in connection with the performance of the Restructured Leases, as amended, and the other Retained Leases, from and after the Closing Time;

(d) the Post-Filing Claims that remain outstanding as at the Closing Time;

(e) the outstanding indebtedness under the BMO Post-Closing Loan Documents unless the Purchaser elects to pay such outstanding indebtedness in cash in accordance with Section 3.2;

(f) relating to Gift Cards and The High Roller Club Rewards Program and in each case, accruing to and after the Closing Time;

(g) the Intercompany Liabilities payables (and all Claims, Encumbrances relating thereto);

(h) Tax liabilities of the Purchased Entities for any period, or the portion thereof, beginning on or after the Closing Date;

(i) those specific Retained Liabilities set forth in Schedule 2.4; and

(j) those liabilities that are added as Retained Liabilities pursuant to Section 2.8.

2.5 Excluded Liabilities

Except for Retained Liabilities, all Claims and all debts, obligations and liabilities of the Purchased Entities or any predecessors thereof, of any kind or nature, shall be assigned to, and become the sole obligation of, Residual Co. pursuant to the terms of the Approval and Reverse Vesting Order and this Agreement, and, as of the Closing, the Purchased Entities shall not have any obligation, duty, or liability of any kind whatsoever, except for Retained Liabilities, whether accrued, contingent, known or unknown, express or implied, primary or secondary, direct or indirect, liquidated, unliquidated, absolute, accrued, contingent or otherwise, and whether due or to become due, and such liabilities or obligations shall be the sole responsibility of Residual Co., including *inter alia*, and any and all liability relating to any change of control provision that may arise in connection with the change of control contemplated by the transactions hereunder and to which the Purchased Entities may be bound as at Closing, all liabilities relating to or under the Excluded Contracts, Excluded Leases, and Excluded Assets, liabilities for all Terminated Employees and those liabilities that are added as Excluded Liabilities pursuant to Section 2.7 (collectively, the "**Excluded Liabilities**").

2.6 Transfer of Excluded Liabilities to Residual Co.

On the Closing Date, pursuant to the terms of the Approval and Reverse Vesting Order, the Purchased Entities shall assign and transfer the Excluded Liabilities to Residual Co., and Residual Co. shall assume the Excluded Liabilities in consideration of the Excluded Assets acquired by Residual Co. All of the Excluded Liabilities shall be discharged from the Purchased Entities as of the Closing, pursuant to the Approval and Reverse Vesting Order.

2.7 Right to Exclude Assets and Liabilities

At any time on or prior to the day that is five (5) days prior to the hearing date for the Approval and Reverse Vesting Order (or such later date as agreed to by the Purchaser and the Company with

the consent of the Monitor), the Purchaser may, by giving notice to the Company and the Monitor, elect to: (a) exclude any assets or properties of any Purchased Entity from the Retained Assets, and add such assets or properties to the Excluded Assets; (b) exclude any contract from the Retained Contracts, including any Leases that are not amended to the satisfaction of the Purchaser, and add such contracts to the Excluded Contracts; and (c) exclude any liability other than the liability set out in Section 2.4(d) from the Retained Liabilities and add such liability to the Excluded Liabilities. No changes to the Purchase Price shall result from the exclusion of any assets, properties, Contracts, Liabilities, Retained Contracts, Retained Liabilities or Retained Employees pursuant to this Section 2.7.

2.8 Right to Add Assets and Liabilities |

At any time on or prior to the day that is one (1) day prior to the Closing Date, the Purchaser may, by giving notice to the Company and the Monitor, elect to: (a) exclude any assets or properties of any Purchased Entity from the Excluded Assets, and add such assets or properties to the Retained Assets; (b) exclude any contract from the Excluded Contracts, including any Leases that are amended to the satisfaction of the Purchaser, and add such contracts to the Retained Contracts; (c) exclude any liability from the Excluded Liabilities and add such liability to the Retained Liabilities. No changes to the Purchase Price shall result from the addition of any assets, properties, liabilities to the Retained Assets, Retained Contracts, Retained Liabilities or Retained Employees pursuant to this Section 2.8.

2.9 Transfer of Excluded Assets to Residual Co.

On the Closing Date, pursuant to the terms of the Approval and Reverse Vesting Order and in consideration for Residual Co. assuming the Excluded Liabilities pursuant to Section 2.6 of this Agreement, the Purchased Entities shall assign and transfer the Excluded Assets to Residual Co., and the Excluded Assets shall vest in Residual Co. pursuant to the Approval and Reverse Vesting Order.

2.10 Pre-Closing Reorganization

(a) Subject to Section 2.10(b), the Company agrees that, no earlier than the Business Day immediately prior to the Closing Date and upon request of the Purchaser, the Company shall, and shall cause any of the Applicants to, with the consent of the Company, not to be unreasonably withheld, conditioned or delayed, perform such other reorganizations of its corporate structure, capital structure, business, operations and assets, settlements of Intercompany Liabilities, or such other transactions as Purchaser may request, acting reasonably (each such action, a "**Pre-Closing Reorganization**"). The Company agrees to use commercially reasonable efforts to cooperate with the Purchaser and its advisors to determine the nature of any Pre-Closing Reorganizations that might be undertaken and the manner in which they would most effectively be undertaken, including filing or causing the Company to file available elections or designations reasonably required to effect the Pre-Closing Reorganizations if such filing is reasonably proposed to be made at or prior to Closing, and to cooperate with the Purchaser and its advisors to seek to obtain consents or waivers which might be required under any Retained

Contracts or authorizations from Governmental Authorities in respect of any Pre-Closing Reorganization.

(b) Notwithstanding the foregoing, the Company will not be obligated to participate in any Pre-Closing Reorganization if the Company determines acting reasonably that such Pre-Closing Reorganization would (i) materially impair, impede, delay or prevent the satisfaction of any conditions set forth in Article 7, or the ability of the Purchaser or Company to consummate, or materially delay the consummation of, the Transaction, or (ii) (A) materially alter or impact the consideration which the Applicants and/or their applicable stakeholders will benefit from as part of the Transactions, or (B) have adverse tax consequences, or impose any Liability on, the remaining Applicants or any director of the Company in each case that is greater than the amount of such tax consequences or Liability in the absence of such action.

(c) This Agreement (including the Closing Sequence) will be amended and restated as required to give effect to a Pre-Closing Reorganization.

ARTICLE 3
PURCHASE PRICE AND RELATED MATTERS

3.1 Purchase Price

The total aggregate consideration in respect of the Purchased Shares shall be an amount equal to the aggregate of the following (the "**Purchase Price**"):

(a) the outstanding obligations payable by the Applicants as of the Closing Date pursuant the DIP Term Sheet including the principal amount of such claims and interest accrued as of the Closing Date, plus all accrued and unpaid interest thereon through to and including the Closing Date, plus any unpaid fees and expenses associated therewith (the "**DIP Credit Bid Consideration**");

(b) the outstanding indebtedness owing by the Purchased Entities under the BMO Loan Documents that has accrued as of the Closing Date;

(c) and an amount equivalent to all other Retained Liabilities (other than amounts of indebtedness owing under the BMO Loan Documents) that have accrued as of the Closing Date;

(d) the amount of $31,000,000, representing a portion of the outstanding secured obligations payable by the Applicants as of the Closing Date pursuant the TS Investments Grid Note including the principal amount of such claims and interest accrued as of the Closing Date, plus all accrued and unpaid interest thereon through to and including the Closing Date, plus any unpaid fees and expenses associated therewith (the "**Secured Credit Bid Consideration**" together with the DIP Credit Bid Consideration, the "**Credit Bid Consideration**");

(e) the Cure Costs;

(f) the Priority Payment Amount; and

(g) the Administrative Expense Amount,

(the amounts in paragraph (b), if the Purchaser elects to have the outstanding indebtedness under the BMO Loan Documents paid in cash under Section 3.2(b), (e), (f) and (g) together, the "**Cash Consideration**").

3.2 Satisfaction of Purchase Price

(a) The Credit Bid Consideration shall be paid and satisfied on the Closing Date by the Purchaser releasing the Applicants from repayment of all amounts owing in connection with the Credit Bid Consideration pursuant to the Credit Bid Releases.

(b) The outstanding indebtedness of the Purchased Entities under the BMO Loan Documents shall, at the Purchaser's election be: (a) retained or refinanced in accordance with the BMO Post-Closing Loan Documents with the consent of BMO, or (b) be paid in cash or by such other consideration acceptable to BMO.

(c) The Retained Liabilities (other than in respect of the BMO Credit Agreement) shall be retained by the applicable Purchased Entities on the Closing Date.

(d) The Cash Consideration shall be paid and satisfied on the Closing Date by the Purchaser paying the Cash Consideration to the Monitor, to be held in escrow and paid in accordance with the Closing Sequence. Any other consideration that may be acceptable to BMO shall be paid to it on the Closing Date.

ARTICLE 4
REPRESENTATIONS AND WARRANTIES OF THE COMPANY

The Company represents and warrants on behalf of itself and its subsidiaries who are Purchased Entities, to the Purchaser, as follows, and acknowledges that the Purchaser is relying upon the following representations and warranties in connection with its purchase of the Purchased Shares:

4.1 Due Authorization and Enforceability of Obligations

Subject to the granting of the Approval and Reverse Vesting Order, this Agreement has been duly authorized, executed and delivered by it, and constitutes a legal, valid and binding obligation of it, enforceable against it in accordance with its terms, except as enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium, or other similar laws relating to or limiting creditors' rights generally or by equitable principles relating to enforceability.

4.2 Existence and Good Standing

Each of the Company and the Purchased Entities is validly existing and in good standing under the laws of the jurisdiction of its incorporation or organization and (i) has all requisite power and authority to execute and deliver this Agreement and (ii) has taken all requisite corporate or other

action necessary for it to execute and deliver this Agreement and to perform its obligations hereunder and consummate the transaction contemplated hereunder.

4.3 Absence of Conflicts

The execution and delivery of this Agreement by the Company and the completion of its obligations hereunder and the consummation of the transactions contemplated herein do not and will not violate or conflict with any Applicable Law, (subject to the receipt of any Transaction Regulatory Approvals and the granting of the Approval and Reverse Vesting Order) and will not result (with due notice or the passage of time or both) in a violation, conflict or breach of, or constitute a default under, or require any consent to be obtained under the certificate of incorporation, articles, by-laws or other constituent documents of any Applicant. Subject to the granting of the Approval and Reverse Vesting Order, the execution, delivery and performance by the Company does not and will not violate any Order.

4.4 Approvals and Consents

The execution and delivery of this Agreement by the Company, the completion by the Company of its respective obligations hereunder and the consummation by each of the Company of the transactions contemplated herein, do not and will not require any consent or approval or other action, with or by, any Governmental Authority, other than as contemplated by the applicable Transaction Regulatory Approvals and the entry of the Approval and Reverse Vesting Order by the CCAA Court.

4.5 No Actions

There is not, as of the date hereof, pending or, to the Company's knowledge, threatened against any Applicant or any of its properties, nor has any Applicant received any written notice in respect of, any Claim, potential Claim, litigation, action, suit, arbitration, investigation or other proceeding before any Governmental Authority or legislative body, other than the CCAA Court, that, would prevent the Company from executing and delivering this Agreement, performing its obligations hereunder and consummating the transactions and agreements contemplated by this Agreement.

ARTICLE 5
REPRESENTATIONS AND WARRANTIES OF PURCHASER

Purchaser represents and warrants to the Company as follows, and acknowledges that the Company is relying upon the following representations and warranties in connection with the sale of the Purchased Shares:

5.1 Due Authorization and Enforceability of Obligations

This Agreement has been duly authorized, executed and delivered by the Purchaser, and, assuming the due authorization, execution and delivery by it, this Agreement constitutes a legal, valid and binding obligation of it, enforceable against it in accordance with its terms, except as enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium, or other similar laws relating to or limiting creditors' rights generally or by equitable principles relating to enforceability.

5.2 Existence and Good Standing

Purchaser is validly existing and in good standing under the laws of the jurisdiction of its incorporation or organization and has all requisite power and authority to execute and deliver this Agreement and to perform its obligations hereunder and consummate the transactions contemplated by this Agreement.

5.3 Absence of Conflicts

The execution and delivery of this Agreement by the Purchaser and the completion by the Purchaser of its obligations hereunder and the consummation of the transactions contemplated herein do not and will not violate or conflict with any Applicable Law, or any of its properties or assets, (subject to the receipt of any applicable Transaction Regulatory Approvals) and will not result (with due notice or the passage of time or both) in a violation, conflict or breach of, or constitute a default under, or require any consent to be obtained under its certificate of incorporation, articles, by-laws or other constituent documents.

5.4 Approvals and Consents

The execution and delivery of this Agreement by the Purchaser, the completion by the Purchaser of its obligations hereunder and the consummation by the Purchaser of the transactions contemplated herein, do not and will not require any consent, approval or other action, with or by, any Governmental Authority, other than as contemplated by the applicable Transaction Regulatory Approvals and the granting of the Approval and Reverse Vesting Order by the CCAA Court.

5.5 No Actions

There is not, as of the date hereof, pending or, to the Purchaser's knowledge, threatened against it or any of its properties, nor has the Purchaser received notice in respect of, any Claim, potential Claim, litigation, action, suit, arbitration, investigation or other proceeding before any Governmental Authority or legislative body, other than the CCAA Court, that, would prevent it from executing and delivering this Agreement, performing its obligations hereunder and consummating the transactions and agreements contemplated by this Agreement.

5.6 Credit Bid and Cash Consideration; Availability of Funds

(a) The Purchaser will have executed on or prior to Closing, the requisite documents to allow the Purchaser, and the Purchaser is and will be duly authorized, to, among other things, deliver the Credit Bid Consideration in connection with the consummation of the Closing hereunder, which documents shall be delivered by the Purchaser to the Company.

(b) The Purchaser will have on Closing, sufficient unrestricted funds and financial capacity to consummate the transactions contemplated by this Agreement, including payment of the Cash Consideration.

5.7 Residence

Purchaser is not a non-resident of Canada within the meaning of the Tax Act.

ARTICLE 6
AS IS, WHERE IS

The Purchaser acknowledges and agrees that it has conducted to its satisfaction an independent investigation and verification of the Business, the Purchased Shares, the Retained Liabilities and all related operations of the Purchased Entities, and, based solely thereon and the advice of its financial, legal and other advisors, has determined to proceed with the transactions contemplated by this Agreement. The Purchaser has relied solely on the results of its own independent investigation and verification and, except for the representations and warranties of the Company expressly set forth in Article 4, the Purchaser understands, acknowledges and agrees that all other representations, warranties, conditions and statements of any kind or nature, expressed or implied (including any relating to the future or historical financial condition, results of operations, prospects, assets or liabilities of the Purchased Entities or the Business, or the quality, quantity or condition of the Purchased Shares) are specifically disclaimed by each of the Company, the other Purchased Entities, their respective financial and legal advisors and the Monitor and its legal counsel. THE PURCHASER SPECIFICALLY ACKNOWLEDGES AND AGREES THAT, EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES OF THE COMPANY EXPRESSLY AND SPECIFICALLY SET FORTH IN ARTICLE 4: (A) THE PURCHASER IS ACQUIRING THE PURCHASED SHARES ON AN "AS IS, WHERE IS" BASIS; AND (B) NONE OF THE COMPANY, THE OTHER APPLICANTS, THE MONITOR OR ANY OTHER PERSON (INCLUDING ANY REPRESENTATIVE OF EITHER OF THE COMPANY, THE OTHER APPLICANTS OR THE MONITOR WHETHER IN ANY INDIVIDUAL, CORPORATE OR ANY OTHER CAPACITY) IS MAKING, AND THE PURCHASER IS NOT RELYING ON, ANY REPRESENTATIONS, WARRANTIES, CONDITIONS OR OTHER STATEMENTS OF ANY KIND WHATSOEVER, WHETHER ORAL OR WRITTEN, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, AS TO ANY MATTER CONCERNING THE PURCHASED ENTITIES, THE BUSINESS, THE PURCHASED SHARES, THE RETAINED LIABILITIES, THE EXCLUDED ASSETS, THE EXCLUDED LIABILITIES, THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED BY THE AGREEMENT, OR THE ACCURACY OR COMPLETENESS OF ANY INFORMATION PROVIDED TO (OR OTHERWISE ACQUIRED BY) THE PURCHASER OR ANY OF ITS RESPECTIVE REPRESENTATIVES, INCLUDING WITH RESPECT TO MERCHANTABILITY, PHYSICAL OR FINANCIAL CONDITION, DESCRIPTION, FITNESS FOR A PARTICULAR PURPOSE, OR IN RESPECT OF ANY OTHER MATTER OR THING WHATSOEVER, INCLUDING ANY AND ALL CONDITIONS, WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, PURSUANT TO ANY APPLICABLE LAWS IN ANY JURISDICTION, WHICH THE PURCHASER CONFIRMS DO NOT APPLY TO THIS AGREEMENT, AND ARE HEREBY WAIVED IN THEIR ENTIRETY BY THE PURCHASER.

ARTICLE 7
CONDITIONS

7.1 Conditions for the Benefit of the Purchaser and Company

The respective obligations of the Purchaser and the Company to consummate the transactions contemplated by this Agreement are subject to the satisfaction of, or compliance with, at or prior to the Closing Time, each of the following conditions:

(a) *No Law* – no provision of any Applicable Law and no Order preventing or otherwise frustrating the consummation of the purchase of the Purchased Shares or any of the other transactions pursuant to this Agreement shall be in effect;

(b) *Final Orders* – each of the SISP Order and the Approval and Reverse Vesting Order shall have been issued and entered and shall be Final Orders;

(c) *Successful Bid* – this Agreement will be the Successful Bid (as determined pursuant to the SISP); and

(d) *Transaction Regulatory Approvals* – the Parties shall have received the required Transaction Regulatory Approvals , and all such Transaction Regulatory Approvals shall be in full force and effect, except for Transaction Regulatory Approvals that need not be in full force and effect prior to Closing.

The Parties acknowledge that the foregoing conditions are for the mutual benefit of each of the Company and the Purchaser. Any condition in this Section 7.1 may be jointly waived by the Company and by the Purchaser, in whole or in part, without prejudice to any of their respective rights of termination in the event of non-fulfillment of any other condition in whole or in part. Any such waiver will be binding on the Company and the Purchaser, as applicable, only if made in writing.

7.2 Conditions for the Benefit of the Purchaser

The obligation of the Purchaser to consummate the transactions contemplated by this Agreement is subject to the satisfaction of, or compliance with, or waiver by the Purchaser of, at or prior to the Closing Time, each of the following conditions (each of which is acknowledged to be for the exclusive benefit of the Purchaser):

(a) *Performance of Covenants* – the covenants contained in this Agreement to be performed or complied with by the Company at or prior to the Closing Time shall have been performed or complied with in all material respects as at the Closing Time;

(b) *Truth of Representations and Warranties* – (i) the representations and warranties of the Company contained in Article 4 shall be true and correct in all respects as of the Closing Date, as if made at, and as of, such date (except for representations and warranties made as of specified date, the accuracy of which shall be determined as of such specified date) except where the failure to be so true and correct would not,

in the aggregate, have a Material Adverse Effect (and, for this purpose, any reference to "material", "Material Adverse Effect" or other concepts of materiality in such representation and warranties shall be ignored);

(c) *Officer's Certificates* – The Purchaser shall have received a certificate confirming the satisfaction of the conditions contained in Sections 7.2(a) (Performance of Covenants) the covenants contained in this Agreement to be performed or complied with by the Company at or prior to the Closing Time shall have been performed or complied with in all material respects as at the Closing Time and 7.2(b) (Truth of Representations and Warranties), signed for and on behalf of the Company by an executive officer of the Company or other Persons acceptable to the Purchaser, without personal liability, in each case in form and substance reasonably satisfactory to the Purchaser;

(d) *Company's Deliverables* – the Company shall have delivered to the Purchaser all of the deliverables contained in Section 11.3 in form and substance reasonably satisfactory to the Purchaser;

(e) *Terminated Employees* - the applicable Purchased Entity shall have terminated the employment of the Terminated Employees, and all liabilities owing to any such Terminated Employees in respect of such terminations, including all amounts owing on account of or damages in lieu of, statutory notice, termination payments, severance, benefits, bonuses or other compensation or entitlements, shall be Excluded Liabilities which, pursuant the Approval and Reverse Vesting Order, shall be assigned and transferred as against the applicable Purchased Entity to, and assumed by, Residual Co.

(f) *Licence Condition* **-** the Licences are in good standing and will continue in good standing, and not be suspended or terminated, following the Closing Date, which shall be satisfied upon, among other things, evidence from the applicable Governmental Authority that such Licences are in good standing and will not be suspended or terminated by such Governmental Authority as a result of any events, or amounts owing by any Applicants, relating to the period preceding the Closing Date, unless the failure for any such License or Licences being in good standing or being suspended or terminated does not, in the aggregate, have a Material Adverse Effect.

7.3 Conditions for the Benefit of the Company

The obligation of the Company to consummate the transactions contemplated by this Agreement is subject to the satisfaction of, or compliance with, or waiver where applicable by the Company of, at or prior to the Closing Time, each of the following conditions (each of which is acknowledged to be for the exclusive benefit of the Company):

(a) *Truth of Representations and Warranties* – the representations and warranties of the Purchaser contained in Article 5 will be true and correct in all respects on and as of the date of this Agreement and on and as of the Closing Date as if made on

and as of such date (except for representations and warranties made as of specified date, the accuracy of which shall be determined as of such specified date) except where the failure to be so true and correct would not reasonably be expected to have a material and adverse effect on Purchaser's ability to consummate the transactions contemplated by this Agreement;

(b) *Performance of Covenants* – the covenants contained in this Agreement to be performed by the Purchaser at or prior to the Closing Time shall have been performed in all material respects as at the Closing Time;

(c) *Officer's Certificate* – The Company shall have received a certificate confirming the satisfaction of the conditions contained in Sections 7.3(a) and 7.3(b) signed for and on behalf of the Purchaser without personal liability by an executive officer of the Purchaser or other Persons acceptable to the Company, acting in a commercially reasonable manner, in each case, in form and substance satisfactory to the Company, acting in a commercially reasonable manner; and

(d) *Purchaser Deliverables* – Purchaser shall have delivered to the Company all of the deliverables contained in Section 11.4 in form and substance satisfactory to the Company, acting in a commercially reasonable manner.

ARTICLE 8
ADDITIONAL AGREEMENTS OF THE PARTIES

8.1 Break-Up Fee

(a) Upon completion of a Successful Bid (as defined in the SISP) other than the Transaction, a fee in cash equal to, in the aggregate of 1% of the Credit Bid Consideration (such amount, the "**Break-Up Fee**") shall be payable concurrently with the consummation of such Successful Bid to the Purchaser by the Company.

(b) For the avoidance of doubt, and notwithstanding anything to the contrary set forth in this Section 8.1, (x) under no circumstances shall the Company be obligated to pay the Break-Up Fee more than once and (y) in no event shall the Company (or any other Person) be required to pay all or any portion of the Break-Up Fee to the Purchaser if the Company has terminated this Agreement other than in connection with CCAA Court approval of a Successful Bid (which is not the Transaction) in accordance with the terms of the SISP.

(c) The Company acknowledges (i) that the Purchaser has made a substantial investment of management time and incurred substantial out-of-pocket expenses in connection with the negotiation and execution of this Agreement and its effort to consummate the transactions contemplated hereby, and (ii) that the Parties' efforts have substantially benefited the Company and the bankruptcy estates of the Purchased Entities through the submission of the offer that is reflected in this Agreement, that will serve as a minimum bid on which other potential interested bidders can rely, thus increasing the likelihood that the price at which the Purchased Entities are sold will be validated. The Parties hereby acknowledge that the amounts

payable pursuant to this Section 8.1 are commercially reasonable and necessary to induce the Purchaser to enter into this Agreement and consummate the transactions contemplated hereby. For the avoidance of doubt, the covenants set forth in this Section 8.1 are continuing obligations and survive termination of this Agreement.

8.2 Access to Information and Properties

(a) Until the Closing Time, the Company, with oversight of the Monitor, shall give to the Purchaser's personnel engaged in the transactions contemplated by this Agreement and their accountants, legal advisers, consultants, financial advisors and representatives during normal business hours reasonable access to its premises and to all of the books, records, and other information relating to the Business, and shall furnish them with all such information relating to the Business, the Applicants, the Retained Liabilities and the list of Employees as Purchaser may reasonably request in connection with the transactions contemplated by this Agreement, such requests to be made to the Monitor; provided that such access shall be conducted at Purchaser's expense, in accordance with Applicable Law and under supervision of the Monitor or the Company's senior management and in such a manner as to maintain confidentiality, and the Company will not be required to provide access to or copies of any such books and records if: (i) the provision thereof would cause applicable Company to be in contravention of any Applicable Law; (ii) breach the terms of the SISP Order; or (iii) making such information available would: (1) result in the loss of any lawyer-client or other legal privilege; or (2) cause applicable Company to be found in contravention of any Applicable Law, or contravene any fiduciary duty or agreement (including any confidentiality agreement to which the Company or any of its Affiliates are a party). Notwithstanding anything in this Section 8.2 to the contrary, any such investigation shall be conducted upon reasonable advance notice and in such manner as does not materially disrupt the conduct of the Business or the possible sale thereof to any other Person.

(b) Following the Closing, the Purchaser shall make all books and records of the Applicants as of the Closing reasonably available to the Monitor and any trustee in bankruptcy of any of the Applicants upon at least five Business Days prior notice, for a period of seven years after Closing, and shall, at such Party's expense, permit the Monitor and any trustee in bankruptcy of the Applicants to take copies thereof as they may determine to be necessary or useful to accomplish their respective roles; provided that Purchaser shall not be obligated to make such books and records available to the extent that doing so would: (i) violate Applicable Law; (ii) jeopardize the protection of a solicitor-client privilege; or (iii) unreasonably interfere with the ongoing business and operations of the Purchased Entities and their Affiliates, as determined by the Applicants, acting reasonably.

(c) Following the Closing, the Applicants shall make all books and records comprising Excluded Assets reasonably available to the Monitor and any trustee in bankruptcy of any of the Applicants upon at least five Business Days prior notice, for a period of seven years after Closing, and shall, at such Party's expense, permit the Monitor and any trustee in bankruptcy of the Applicants to take copies thereof as they may

determine to be necessary or useful to accomplish their respective roles; provided that such Applicant shall not be obligated to make such books and records available to the extent that doing so would: (i) violate Applicable Law; (ii) jeopardize the protection of a solicitor-client privilege; or (iii) unreasonably interfere with the ongoing business and operations of the Applicants and their Affiliates, as determined by the Applicants, acting reasonably.

8.3 Regulatory Approvals and Consents

(a) The Parties shall use commercially reasonable efforts to apply for and obtain any Transaction Regulatory Approvals as soon as reasonably practicable and no later than the time limits imposed by Applicable Laws, in accordance with Section 8.3(b), in each case at the sole cost and expense of the Company.

(b) Without limiting the generality of the foregoing, the Parties shall: (i) give each other reasonable advance notice of all meetings or other oral communications with any Governmental Authority relating to the Transaction Regulatory Approvals, as applicable, and provide as soon as practicable but in any case, if any, within the required time, any additional submissions, information and/or documents requested by any Governmental Authority necessary, proper or advisable to obtain the Transaction Regulatory Approvals; (ii) not participate independently in any such meeting or other oral communication without first giving the other Party (or their outside counsel) an opportunity to attend and participate in such meeting or other oral communication, unless otherwise required or requested by such Governmental Authority; (iii) if any Governmental Authority initiates an oral communication regarding the Transaction Regulatory Approvals, promptly notify the other Party of the substance of such communication; (iv) subject to Applicable Laws relating to the exchange of information, provide each other with a reasonable advance opportunity to review and comment upon and consider in good faith the views of the other in connection with all written communications (including any filings, notifications, submissions, analyses, presentations, memoranda, briefs, arguments, opinions and proposals) made or submitted by or on behalf of a Party with a Governmental Authority regarding the Transaction Regulatory Approvals as applicable; and (v) promptly provide each other with copies of all written communications to or from any Governmental Authority relating to the Transaction Regulatory Approvals as applicable.

(c) Each of the Parties may, as advisable and necessary, reasonably designate any competitively or commercially sensitive material provided to the other under this Section 8.3 as "Outside Counsel Only Material", provided that the disclosing Party also provides a redacted version to the receiving Party. Such materials and the information contained therein shall be given only to the outside legal counsel of the recipient and, subject to any additional agreements between the Parties, will not be disclosed by such outside legal counsel to Employees, officers or directors of the recipient unless express written permission is obtained in advance from the source of the materials or its legal counsel.

(d) The obligations of either Party to use its commercially reasonable efforts to obtain the Transaction Regulatory Approvals does not require either Party (or any Affiliate thereof) to undertake any divestiture of any business or business segment of such Party, to agree to any material operating restrictions related thereto or to incur any material expenditure(s) related therewith, unless agreed to by the Parties. In connection with obtaining the Transaction Regulatory Approvals, no Purchased Entity shall agree to any of the foregoing items without the prior written consent of the Purchaser.

8.4 Covenants Relating to this Agreement

(a) Each of the Parties shall perform all obligations required to be performed by the applicable Party under this Agreement, co-operate with the other Parties in connection therewith and do all such other acts and things as may be necessary or desirable in order to consummate and make effective, as soon as reasonably practicable, the transactions contemplated by this Agreement and, without limiting the generality of the foregoing, from the date hereof until the Closing Date, each Party shall and, where appropriate, shall cause each of its Affiliates to:

(i) negotiate in good faith and use its commercially reasonable efforts to take or cause to be taken all actions and to do, or cause to be done, all things necessary, proper or advisable to satisfy the conditions precedent to the obligations of such Party hereunder (including, where applicable, negotiating in good faith with the applicable Governmental Authorities and/or third Persons in connection therewith), and to cause the fulfillment at the earliest practicable date of all of the conditions precedent to the other Party's obligations to consummate the transactions contemplated hereby; and

(ii) not take any action, or refrain from taking any action, or permit any action to be taken or not taken, which would reasonably be expected to prevent, materially delay or otherwise impede the consummation of the transactions contemplated by this Agreement.

(b) From the date hereof until the Closing Date, Purchaser hereby agrees, and hereby agrees to cause its representatives to, keep the Company informed on a reasonably current basis, and no less frequently than on a weekly basis through teleconference or other meeting, and as reasonably requested by each of the Company or the Monitor, as to the Purchaser's progress in terms of the satisfaction of the conditions precedent contained herein.

(c) From the date hereof until the Closing Date, the Company hereby agrees, and hereby agrees to cause its representatives to, keep Purchaser informed on a reasonably current basis, and no less frequently than on a weekly basis through teleconference or other meeting, and as reasonably requested by the Purchaser or the Monitor, as to the applicable Company's progress in terms of the satisfaction of the conditions precedent contained herein.

(d) Each of the Company and the Purchaser agree to execute and deliver such other documents, certificates, agreements and other writings, reasonably necessary for the consummation of the transactions contemplated by this Agreement, and to take such other actions to consummate or implement as soon as reasonably practicable, the transactions contemplated by this Agreement.

(e) From the date hereof until the Closing Date, the Company hereby agrees, and hereby agrees to cause their representatives to, promptly notify the Purchaser of (i) any event, condition, or development that has resulted in the inaccuracy in a material respect or material breach of any representation or warranty, covenant or agreement contained in this Agreement, or (ii) any event or matter involving a License which may be expected to result in the condition in Section 7.2(f) not being satisfied.

(f) Each of the Company and the Purchaser agree to use commercially reasonable efforts to timely prepare and file all documentation and pursue all steps reasonably necessary to obtain any material third-party consents and approvals, including without limitation the Transaction Regulatory Approvals, as may be required in connection with the transaction contemplated by this Agreement.

(g) The Company agrees to use commercially reasonable efforts to promptly provide all documentation, copies of agreements and information reasonably required by the Purchaser to complete and finalize the Schedules to this Agreement. Such information and documentation shall be provided to the Purchaser on an ongoing basis following execution of this Agreement and in any event shall be provided to the Purchaser no later than ten (10) days prior to the hearing of the Applicants' motion to the CCAA Court seeking the Approval and Reverse Vesting Order.

(h) If Purchaser is the Successful Bidder, at the request of the Purchaser, the Company shall proceed with the liquidation, winding-up, dissolution and/or amalgamation of any of the Purchased Entities designated by the Purchaser on or prior to the Closing Date.

8.5 Administrative Expense Amount

(a) On the Closing Date, the Administrative Expense Amount shall be paid to the Monitor, which the Monitor shall hold for the benefit of Persons entitled to be paid the Administrative Expense Costs.

(b) From time to time after the Closing Date, the Monitor may pay, on behalf of the Purchased Entities, the Administrative Expense Costs, from the Administrative Expense Amount, in each case to the Persons entitled to receive payment of these amounts, in its sole discretion and without further authorization from the Purchased Entities or Purchaser. Any unused portion of the Administrative Expense Amount after payment or reservation for all Administrative Expense Amount, as determined by the Monitor, in its sole discretion, shall be transferred by the Monitor to the Company, or as directed by it.

(c) Notwithstanding the foregoing or anything else contained herein or elsewhere, each of the Company and the Purchaser acknowledges and agrees that: (i) the Monitor's obligations under this Agreement are and shall remain limited to those specifically set out in this Section 8.5; and (ii) Monitor is acting solely in its capacity as the CCAA Court-appointed Monitor of the Applicants pursuant to the Initial Order and not in its personal or corporate capacity, and the Monitor has no liability in connection with this Agreement whatsoever, in its personal or corporate capacity or otherwise, save and except for and only to the extent of the Monitor's gross negligence or intentional fault.

(d) The Parties acknowledge that the Monitor may rely upon the provisions of this Section 8.5 notwithstanding that the Monitor is not a party to this Agreement.

The provisions of Sections 8.5(c) and (d) above shall survive the termination or non-completion of the transactions contemplated by this Agreement.

ARTICLE 9
INSOLVENCY PROVISIONS

9.1 Court Orders and Related Matters

(a) From and after the date of this Agreement and until the Closing Date, the Company shall deliver to the Purchaser drafts of any and all pleadings, motions, notices, statements, applications, schedules, and other papers to be filed or submitted by any of the Applicants in connection with or related to this Agreement, including with respect to the Approval and Reverse Vesting Order, for Purchaser's prior review at least two (2) days in advance of service and filing of such materials (or where circumstances make it impracticable to allow for two (2) days' review, with as much opportunity for review and comment as is practically possible in the circumstances). The Company acknowledge and agree (i) that any such pleadings, motions, notices, statements, applications, schedules, or other papers shall be in form and substance satisfactory to the Purchaser, acting reasonably, and (ii) to consult and cooperate with Purchaser regarding any discovery, examinations and hearing in respect of any of the foregoing, including the submission of any evidence, including witnesses testimony, in connection with such hearing.

(b) Notice of the motions seeking the issuance of the Approval and Reverse Vesting Order shall be served or be caused to be served by the Applicants on all Persons required to receive notice under Applicable Law and the requirements of the CCAA, the CCAA Court, and any other Person determined necessary by the Applicants or Purchaser, acting reasonably.

(c) As soon as practicable if Purchaser is selected or deemed to be the Successful Bidder in accordance with the SISP, the Applicants shall file a motion seeking the issuance of the Approval and Reverse Vesting Order.

(d) If the Approval and Reverse Vesting Order relating to this Agreement is appealed or a motion for leave to appeal, rehearing, re-argument or reconsideration is filed with respect thereto, each of the Applicants agree (subject to the available liquidity of each of the Applicants) to take all action as may be commercially reasonable and appropriate to defend against such appeal, petition or motion.

(e) The Company acknowledges and agrees, that the Approval and Reverse Vesting Order shall provide that, on the Closing Date and concurrently with the Closing, the Purchased Shares shall be transferred to the Purchaser free and clear of all Encumbrances, other than Permitted Encumbrances.

ARTICLE 10
TERMINATION

10.1 Termination

This Agreement may be terminated at any time prior to Closing as follows:

(a) by mutual written consent of each of the Company and the Purchaser;

(b) by the Purchaser or the Company, if (i) this Agreement is not the Successful Bid (as determined pursuant to the SISP) and the transaction contemplated by the Successful Bid is closed;

(c) by the Purchaser or the Company, if Closing has not occurred on or before December 6, 2024 or such later date agreed to by each of the Company and the Purchaser in writing in consultation with the Monitor (the "**Outside Date**"), provided that the terminating Party is not in breach of any representation, warranty, covenant or other agreement in this Agreement which would prevent the satisfaction of the conditions in Article 7 by the Outside Date;

(d) by the Purchaser or the Company, if at any time after the date hereof any of the conditions in Article 7 is not capable of being satisfied by the applicable dates required in Article 7 of this Agreement or if not otherwise required, by the Outside Date, provided that the terminating Party is not in breach of any representation, warranty, covenant or other agreement in this Agreement which would prevent the satisfaction of the conditions in Article 7 by the Outside Date;;

(e) by the Purchaser, upon the appointment of a receiver, trustee in bankruptcy or similar official in respect of any Applicant or any of the property of any Applicant, other than with the prior written consent of the Purchaser;

(f) by the Purchaser or the Company, upon the termination, dismissal or conversion of the CCAA Proceedings;

(g) by the Purchaser or the Company, upon dismissal of the motion for the Approval and Reverse Vesting Order (or if any such order is stayed, vacated or varied without the consent of the Purchaser);

(h) by the Purchaser or the Company, if a court of competent jurisdiction, including the CCAA Court or other Governmental Authority has issued an Order or taken any other action to restrain, enjoin or otherwise prohibit the consummation of Closing and such Order or action has become a Final Order;

(i) by the Company, if there has been a material violation or breach by the Purchaser of any covenant, representation or warranty which would prevent the satisfaction of the conditions set forth in Section 7.1 or Section 7.3, as applicable, by the Outside Date, and such violation or breach has not been waived by the Company, or cured by the Purchaser within ten (10) Business Days after written notice thereof from the Company, unless the Company is in material breach of its obligations under this Agreement which would prevent the satisfaction of the conditions set forth in Section 7.1 or Section 7.2, as applicable, by the Outside Date; and

(j) by the Purchaser, if there has been a material violation or breach by the Company of any covenant, representation or warranty which would prevent the satisfaction of the conditions set forth in Section 7.1 or Section 7.2, as applicable, by the Outside Date, and such violation or breach has not been waived by the Purchaser, or cured by the Company within ten (10) Business Days after written notice thereof from the Purchaser, unless the Purchaser is in material breach of its obligations under this Agreement which would prevent the satisfaction of the conditions set forth in Section 7.1 or Section 7.3, as applicable, by the Outside Date.

The Party desiring to terminate this Agreement pursuant to this Section 10.1 (other than pursuant to Section 10.1(a)) shall give written notice of such termination to the other Party or Parties, as applicable, specifying in reasonable detail the basis for such Party's exercise of its termination rights.

10.2 Effect of Termination

In the event of termination of this Agreement pursuant to Section 10.1, this Agreement shall become void and of no further force or effect without liability of any Party to any other Party to this Agreement except that: (i) Section 8.1, 8.5(c) and 8.5(d), this Section 10.2, Section 12.1, 12.2, 12.5, 12.6 and 12.7 shall survive; and (ii) no termination of this Agreement shall relieve any Party of any liability for any wilful breach by it of this Agreement, or impair the right of any Party to compel specific performance by any other Party of its obligations under this Agreement in accordance with Section 12.3.

ARTICLE 11
CLOSING

11.1 Location and Time of the Closing

The Closing shall take place virtually by exchange of documents in PDF format on the Closing Date, in accordance with the Closing Sequence (as defined below), and shall be subject to such escrow document release arrangements as the Parties may agree.

11.2 Closing Sequence

On the Closing Date, subject to the terms of the Approval and Reverse Vesting Order, Closing shall take place in the sequence set out in the Closing Sequence. The Purchaser may, as a result of any Pre-Closing Reorganization or otherwise with the prior consent of the Company and the Monitor, acting reasonably, amend the Closing Sequence provided that such amendment to the Closing Sequence does not materially alter or impact the Transactions or the consideration which the Company and/or its applicable stakeholders will benefit from as part of the Transactions.

11.3 Company's Deliveries at Closing

At Closing, the Company, as applicable, shall deliver to the Purchaser the following:

(a) a true copy of each of the Approval and Reverse Vesting Order and the SISP Order, each of which shall be final;

(b) the certificates contemplated by Section 7.2(c);

(c) the BMO Post-Closing Loan Documents (unless the Purchaser elects to pay the indebtedness owing under the BMO Loan Documents in cash under Section 3.2(b));

(d) confirmation of the due incorporation and organization of Residual Co. on the terms set forth herein;

(e) evidence of completion of any Pre-Closing Reorganization;

(f) evidence of the filing of the Articles of Reorganization; and

(g) all other documents as reasonably requested by the Purchaser in good faith.

11.4 Purchaser's Deliveries at Closing

At Closing, the Purchaser shall deliver to the Company or, in the case of the amount described in 11.4(b), to the Monitor:

(a) the Credit Bid Releases;

(b) the Cash Consideration;

(c) the certificate contemplated by Section 7.3(c); and

(d) all other documents required to effect to the transaction contemplated by this Agreement, as reasonably requested by the Company in good faith.

11.5 Monitor

When all conditions to Closing set out in Article 7 have been satisfied and/or waived by the Company or the Purchaser, as applicable, the Company and the Purchaser, or their respective counsel, shall each deliver to the Monitor written confirmation, in form and substance satisfactory

to the Monitor, that all conditions to Closing have been satisfied or waived, subject to the Monitor's delivery of the Monitor's Certificate to the Purchaser in accordance with the Approval and Reverse Vesting Order. Upon receipt of such written confirmation, the Monitor shall: (i) issue forthwith its Monitor's Certificate in accordance with the Approval and Reverse Vesting Order; and (ii) file as soon as practicable a copy of the Monitor's Certificate with the CCAA Court (and shall provide a true copy of such filed certificate to each of the Company and the Purchaser). The Parties hereby acknowledge and agree that the Monitor will be entitled to file the Monitor's Certificate with the CCAA Court without independent investigation upon receiving written confirmation from the Company and the Purchaser that all conditions to Closing have been satisfied or waived, and the Monitor will have no liability whatsoever to any of the Company or Purchaser or any other Person as a result of filing the Monitor's Certificate.

11.6 Simultaneous Transactions

All actions taken and transactions consummated at the Closing shall be deemed to have occurred in the manner and sequence set forth in the Closing Sequence and the Approval and Reverse Vesting Order (subject to the terms of any escrow agreement or arrangement among the Parties relating to the Closing), and no such transaction shall be considered consummated unless all are consummated.

11.7 Further Assurances

As reasonably required by a Party in order to effectuate the transactions contemplated by this Agreement, Purchaser and each of the Applicants shall execute and deliver at (and after) the Closing such other documents, and shall take such other actions, as are necessary or appropriate, to implement and make effective the transactions contemplated by this Agreement.

ARTICLE 12
GENERAL MATTERS

12.1 Confidentiality

After the Closing Time, the remaining Applicants shall maintain the confidentiality of all confidential information relating to the Business and the Purchased Entities, except any disclosure of such information and records as may be required by Applicable Law. If any remaining Applicant, or any of their respective representatives, becomes legally compelled by deposition, interrogatory, request for documents, subpoena, civil investigative demand, or similar judicial or administrative process, to disclose any such information, such party shall, or shall cause its representative to, provide the Purchaser with reasonably prompt prior oral or written notice of such requirement (including any report, statement, testimony or other submission to such Governmental Authority) to the extent legally permissible and reasonably practicable, and cooperate with Purchaser, at Purchaser's expense, to obtain a protective order or similar remedy to cause such information not to be disclosed; provided that in the event that such protective order or other similar remedy is not obtained, the applicable Applicant shall, or shall cause its representative to, furnish only that portion of such information that has been legally compelled, and shall, or shall cause such representative to, exercise its commercially reasonable efforts to obtain assurance that confidential treatment will be accorded to such disclosed information. The remaining Applicants

shall instruct their representatives having access to such information of such obligation of confidentiality and shall be responsible for any breach of the terms of this Section 12.1 by any of their representatives.

12.2 Public Notices

No press release or other announcement concerning the transactions contemplated by this Agreement shall be made by any of the Applicants or Purchaser without the prior consent of the other Party (such consent not to be unreasonably withheld, conditioned or delayed); provided, however, that subject to the last sentence of this Section 12.2, any Party may, without such consent, make such disclosure if the same is required by Applicable Law (including the CCAA Proceedings), and, if such disclosure is required, the Party making such disclosure shall use commercially reasonable efforts to give prior oral or written notice to the other Party to the extent legally permissible and reasonably practicable, and if such prior notice is not legally permissible or reasonably practicable, to give such notice reasonably promptly following the making of such disclosure. Notwithstanding the foregoing: (i) this Agreement may be filed by either Party, as applicable with the CCAA Court; and (ii) the transactions contemplated in this Agreement may be disclosed by the Company to the CCAA Court. The Parties further agree that:

(a) the Monitor may prepare and file reports and other documents with the CCAA Court containing references to the transactions contemplated by this Agreement and the terms of such transactions; and

(b) the Applicants, the Purchaser and their respective professional advisors may prepare and file such motions, affidavits, materials, reports and other documents with the CCAA Court containing references to the transactions contemplated by this Agreement and the terms of such transactions as may reasonably be necessary to complete the transactions contemplated by this Agreement or to comply with their obligations in connection therewith.

Purchaser shall be afforded an opportunity to review and comment on such materials prior to their filing; provided in the case of reports or other documents prepared or to be filed by the Monitor with the CCAA Court the Purchaser shall be entitled to review only factual information contained therein relating to the terms of the transactions contemplated in this Agreement. The Parties may issue a joint press release announcing the execution and delivery of this Agreement, in form and substance mutually agreed to them.

12.3 Injunctive Relief

(a) The Parties agree that irreparable harm would occur for which money damages would not be an adequate remedy at law in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that the Parties shall be entitled to seek specific performance, injunctive and other equitable relief to prevent breaches or threatened breaches of this Agreement, and to enforce compliance with the terms of this Agreement, without any requirement for the securing or posting of any bond in connection with the obtaining of any such specific performance, injunctive or

other equitable relief, this being in addition to any other remedy to which the Parties may be entitled at law or in equity.

(b) Each Party hereby agrees not to raise any objections to the availability of the equitable remedies provided for herein and the Parties further agree that by seeking the remedies provided for in this Section 12.3, a Party shall not in any respect waive its right to seek any other form of relief that may be available to a Party under this Agreement.

(c) Notwithstanding anything herein to the contrary herein, under no circumstances shall a Party be permitted or entitled to receive both monetary damages and specific performance and election to pursue one shall be deemed to be an irrevocable waiver of the other.

12.4 Survival

None of the representations, warranties, covenants (except the covenants in Article 2, Article 3, Article 12 and Sections 8.2(b) and 8.4, to the extent they are to be performed after the Closing) of any of the Parties set forth in this Agreement, in any Closing Document to be executed and delivered by any of the Parties (except any covenants included in such Closing Documents, which, by their terms, survive Closing) or in any other agreement, document or certificate delivered pursuant to or in connection with this Agreement or the transactions contemplated hereby shall survive the Closing.

12.5 Non-Recourse

No past, present or future director, officer, Employee, incorporator, member, partner, security holder, Affiliate (provided that for purposes of this Section 12.5 Purchaser and Company shall not be considered Affiliates of each other), agent, lawyer or representative of the respective Parties, in such capacity, shall have any liability for any obligations or liabilities of the Purchaser or the Company, as applicable, under this Agreement, or for any causes of action based on, in respect of or by reason of the transactions contemplated hereby.

12.6 Assignment; Binding Effect

No Party may assign its right or benefits under this Agreement without the consent of each of the other Parties, except that without such consent Purchaser may, upon prior notice to the Company, assign this Agreement, or any or all of its rights and obligations hereunder, to one or more of its Affiliates; provided that no such assignment or direction shall relieve Purchaser of its obligations hereunder. This Agreement shall be binding upon and enure to the benefit of the Parties and their respective permitted successors and permitted assigns. Although not Parties to this Agreement, the Monitor and its respective Affiliates and advisors shall have the benefits expressed to be conferred upon them in this Agreement, including in Article 6, and Section 12.4 (in respect of the Monitor) hereof. Subject to the preceding sentence, nothing in this Agreement shall create or be deemed to create any third Person beneficiary rights in any Person not a Party to this Agreement.

12.7 Notices

Any notice, request, demand or other communication required or permitted to be given to a Party pursuant to the provisions of this Agreement will be in writing and will be effective and deemed given under this Agreement on the earliest of: (i) the date of personal delivery; (ii) the date of transmission by email, with confirmed transmission and receipt (if sent during normal business hours of the recipient, if not, then on the next Business Day); (iii) two (2) days after deposit with a nationally-recognized courier or overnight service such as Federal Express; or (iv) five (5) days after mailing via certified mail, return receipt requested. All notices not delivered personally or by email will be sent with postage and other charges prepaid and properly addressed to the Party to be notified at the address set forth for such Party:

(a) If to the Purchaser at:

TS Investments Corp.
Suite 2700 Edmonton Tower, 10111 104 Avenue NW
Edmonton, AB T5J 0J4

Attention: Paul Marcaccio
Email: pmarcaccio@oegi.ca

and to:

Osler, Hoskin & Harcourt LLP
First Canadian Place
100 King St. W Suite 6200
Toronto, ON M5X 1B8

Attention: Marc Wasserman / Martino Calvaruso / Justin Sherman

Email: mwasserman@osler.com/mcalvaruso@osler.com/ jsherman@osler.com

If to the Company at:

2675970 Ontario Inc.
590 King St W., Suite 400
Toronto, ON M5V 1M3

Attention: Andy Williams
Email: awilliams@tokyosmoke.ca

and to:

Reconstruct LLP
Richmond-Adelaide Centre
120 Adelaide Street West, Suite 2500
Toronto, ON M5H 1T1

Attention: Caitlin Fell / Sharon Kour / Jessica Wuthmann
Email: cfell@reconllp.com / skour@reconllp.com / jwuthmann@reconllp.cm

and to:

If to the Monitor at:

Alvarez & Marsal Canada Inc.
Royal Bank Plaza, South Tower
200 Bay Street, Suite 3501
P.O. Box 22
Toronto ON M5J 2J1
Canada

Attention: Joshua Nevsky
Email: TokyoSmoke@alvarezandmarsal.com

and to:

Stikeman Elliott LLP
5300 Commerce Court West,
199 Bay St.
Toronto, ON M5L 1B9

Attention: Lee Nicholson / Maria Konyukhova

Email: leenicholson@stikeman.com / mkonyukhova@stikeman.com

Any Party may change its address for service from time to time by notice given in accordance with the foregoing and any subsequent notice shall be sent to such Party at its changed address.

12.8 Counterparts; Electronic Signatures

This Agreement may be signed in counterparts and each of such counterparts shall constitute an original document and such counterparts, taken together, shall constitute one and the same instrument. Execution of this Agreement may be made by electronic signature which, for all purposes, shall be deemed to be an original signature.

[Signature pages to follow]

IN WITNESS WHEREOF the Parties have executed this Agreement as of the date first written above.

2675970 ONTARIO INC.

By: _____
Name: Andy Williams
Title: President

TS INVESTMENTS CORP.

By: _____
Name: Jürgen Schreiber
Title: Chief Executive Officer

SCHEDULE 1.1(oo)

ENCUMBRANCES TO BE DISCHARGED

1. The DIP Lender's Charge
2. The CCAA Charges

SCHEDULE 1.1(nnn)

PERMITTED ENCUMBRANCES

1. Any Encumbrances that secure obligations under the BMO Post-Closing Loan Documents.

SCHEDULE 1.1(xxx)

RESTRUCTURED LEASES

To be updated.

SCHEDULE 1.1(zzz)

RETAINED CONTRACTS

1. BMO Post-Closing Loan Documents.

2. To be updated.

SCHEDULE 1.1(bbbb)

RETAINED LEASES

To be updated.

SCHEDULE 2.2

EXCLUDED ASSETS

To be updated.

SCHEDULE 2.4

RETAINED LIABILITIES

To be updated.

SCHEDULE 11.2

CLOSING SEQUENCE

(a) First, the Purchaser shall pay the Cash Consideration to the Monitor, to be held in escrow by the Monitor on behalf of the Purchaser and the Purchaser shall release the Credit Bid Releases to the Applicants and the Monitor, to be held in escrow by the Monitor on behalf of the Purchaser;

(b) Second, the Company shall be deemed to transfer to Residual Co. the Excluded Assets, the Excluded Contracts, the Excluded Liabilities and the Excluded Leases, pursuant to the Approval and Reverse Vesting Order;

(c) Third, the Retained Assets will be retained by the applicable Purchased Entities, in each case free and clear of and from any and all Claims and, for greater certainty, all of the Encumbrances, other than Permitted Encumbrances, affecting or relating to the Retained Assets are hereby expunged and discharged as against the Retained Assets, and the Retained Liabilities will be retained by the applicable Purchased Entities;

(d) Fourth, Equity Interests of the Applicants (other than the Existing Shares which will be cancelled in accordance with the Articles of Reorganization or otherwise retained as a Retained Asset) as well as any agreement, Contract, plan, indenture, deed, certificate, subscription rights, conversion rights, pre-emptive rights, options (including stock option or share purchase or equivalent plans), or other documents or instruments governing and/or having been created or granted in connection with the share capital of the Applicants shall be deemed terminated and cancelled for no consideration;

(e) Fifth, the following shall occur concurrently:

  (i) the Company shall issue the Purchased Shares to the Purchaser;

  (ii) the Cash Consideration and the Credit Bid Releases will be released from escrow;

  (iii) the Monitor shall retain the Administrative Expense Amount in a separate interest-bearing account from the Cash Consideration; and

  (iv) the Monitor shall release the remaining amount of the Cash Consideration to the Company and the Company shall pay the Cure Costs and the Priority Payment Amounts to the applicable payees thereof; and

(f) Sixth, the Articles of Reorganization will be filed and be effective.

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 2675970 ONTARIO INC., et al.

Court File No. CV-24-00726584-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceedings commenced at Toronto

AFFIDAVIT OF ANDREW WILLIAMS
(Sworn September 12, 2024)

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Lawyers for the Applicants

TAB 3

Court File No. CV-24-00726584-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE	)	WEDNESDAY, THE 18TH
	)	DAY OF SEPTEMBER, 2024
JUSTICE CAVANAGH	)	

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 2675970 ONTARIO INC., 2733181 ONTARIO INC., 2385816 ALBERTA LTD., 2161907 ALBERTA LTD., 2733182 ONTARIO INC., 2737503 ONTARIO INC., 2826475 ONTARIO INC., 14284585 CANADA INC., 2197130 ALBERTA LTD., 2699078 ONTARIO INC., 2708540 ONTARIO CORPORATION, 2734082 ONTARIO INC., TS WELLINGTON INC., 2742591 ONTARIO INC., 2796279 ONTARIO INC., 10006215 MANITOBA LTD., AND 80694 NEWFOUNDLAND & LABRADOR INC. (individually, an "**Applicant**" and collectively, the "**Applicants**")

SALE PROCESS APPROVAL ORDER

THIS MOTION, made by the Applicants pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"), for an order approving, among other things: (1) the procedures for the Sale and Investment Solicitation Process in respect of the Applicants attached hereto as Schedule "A" (the "**SISP**"); and (2) approving the Stalking Horse Agreement (as defined below), was heard this day by judicial videoconference.

ON READING the affidavit of Andrew Williams sworn September 12, 2024 (the "**Williams Affidavit**") and the Exhibits thereto, and the second report of Alvarez & Marsal Canada Inc., in its capacity as monitor of the Applicants (in such capacity, the "**Monitor**"), to be filed, and on hearing the submissions of counsel for the Applicants, counsel for the Monitor, counsel to Bank of Montreal ("**BMO**"), the Applicants' senior secured lender, counsel for TS Investments Corp. (the "**DIP Lender**") and such other counsel as were present, no one

no one appearing for any other person although duly served as appears from the affidavit of service of ● sworn September ● 2024, as filed,

SERVICE AND DEFINITIONS

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.

2. **THIS COURT ORDERS** that capitalized terms used in this Order and not otherwise defined herein shall have the meanings ascribed to them in the SISP or the Amended and Restated Initial Order granted by Justice Cavanagh dated September 6, 2024 (the "**ARIO**").

APPROVAL OF THE SALE AND INVESTMENT SOLICITATION PROCESS

3. **THIS COURT ORDERS** that the SISP (subject to such amendments as may be agreed to by the Monitor, the Applicants, BMO and the DIP Lender in accordance with the terms of the SISP) be and is hereby approved and the Applicants and the Monitor are hereby authorized to implement the SISP pursuant to the terms thereof.

4. **THIS COURT ORDERS** that the Monitor and Applicants are authorized and directed to take any and all actions as may be necessary or desirable to implement and carry out the SISP in accordance with its terms and this Order.

5. **THIS COURT ORDERS** that each of the Monitor, the Applicants and their respective affiliates, partners, employees, directors, representatives, and agents shall have no liability with respect to any and all losses, claims, damages or liability, of any nature or kind, to any person in connection with or as a result of performing their duties under the SISP, except to the extent such losses, claims, damages or liabilities result from the gross negligence or wilful misconduct of the Monitor or the Applicants, as applicable, in performing their obligations under the SISP, as determined by this Court.

6. **THIS COURT ORDERS** that in implementing the SISP, the Monitor shall have all of the benefits and protections granted to it under the CCAA, the ARIO, and any other order of the Court in the within proceedings.

7. **THIS COURT ORDERS** that, pursuant to section 3(c) of the *Electronic Commerce Protection Regulations*, Reg. 81000-2-175 (SOR/DORS), the Monitor, the Applicants and their

respective counsel are hereby authorized and permitted to send, or cause or permit to be sent, commercial electronic messages to an electronic address of prospective bidders or offerors (each a "**SISP Participant**") and to their advisors, or any interested party that the Monitor or the Applicants consider appropriate, but only to the extent required to provide information with respect to the SISP in these proceedings.

8. **THIS COURT ORDERS** that notwithstanding anything contained herein or in the SISP, the Monitor shall not take possession of the Property or be deemed to take possession of the Property, including pursuant to any provision of the Cannabis Legislation.

APPROVAL OF THE STALKING HORSE AGREEMENT

9. **THIS COURT ORDERS** that the Applicants are hereby authorized and empowered to enter into the stalking horse agreement between 2675970 Ontario Inc. and the DIP Lender (in such capacity, the "**Stalking Horse Bidder**") and attached as Exhibit "D" to the Williams Affidavit (the "**Stalking Horse Agreement**"), with such minor amendments as may be acceptable to each of the parties thereto, with the prior approval of the Monitor; provided that, nothing herein approves the sale and vesting of any Property to the Stalking Horse Bidder (or any of its designees) pursuant to the Stalking Horse Agreement and that the approval of any sale and vesting of any such Property shall be considered by this Court on a subsequent motion made to this Court if the Stalking Horse Agreement is the Successful Bid pursuant to the SISP.

10. **THIS COURT ORDERS** that the Break Fee, as defined in the Stalking Horse Agreement, is hereby approved and, in the event the Stalking Horse Bidder is not the Successful Bidder under the SISP, the Applicants are hereby authorized and directed to pay the Break Fee to the Stalking Horse Bidder in the manner and circumstances described in the Stalking Horse Agreement.

11. **THIS COURT ORDERS** that the Stalking Horse Agreement is hereby approved and accepted solely for the purposes of being the stalking horse bid under the SISP and subject to further order of the Court referred to in paragraph 9 above.

PROTECTION OF PERSONAL INFORMATION

12. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5, the Monitor, the Applicants and their respective advisors are hereby authorized and permitted to disclose personal information of identifiable individuals ("**Personal Information**") to a SISP Participant and to its advisors,

including human resources and payroll information, records pertaining to the Applicants' past and current employees, and information on specific customers, but only to the extent desired or required to negotiate or attempt to complete a transaction in the SISP. Each SISP Participant to whom any Personal Information is disclosed shall maintain and protect the privacy of such Personal Information with security safeguards appropriate to the sensitivity of the Personal Information and as may otherwise be required by applicable federal or provincial legislation. Each SISP Participant to whom any Personal Information is disclosed shall also limit the use of such Personal Information to its participation in the SISP.

GENERAL

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

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

15. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States of America, or in any foreign jurisdiction, 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.

16. **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.

17. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. on the date of this Order without any need for entry and filing.

_____

Schedule “A”
SISP Procedures

[*See next page.*]

Sale and Investment Solicitation Process

Introduction

On August 28, 2024, 2675970 Ontario Inc., 2733181 Ontario Inc., 2385816 Alberta Ltd., 2161907 Alberta Ltd., 2733182 Ontario Inc., 2737503 Ontario Inc., 2826475 Ontario Inc., 14284585 Canada Inc., 2197130 Alberta Ltd., 2699078 Ontario Inc., 2708540 Ontario Corporation, 2734082 Ontario Inc., TS Wellington Inc., 2742591 Ontario Inc., 2796279 Ontario Inc., 10006215 Manitoba Ltd., and 80694 Newfoundland & Labrador Inc. (collectively, the "**Companies**") obtained an initial order (as amended and restated from time to time, the "**Initial Order**") under the *Companies' Creditors Arrangement Act* (Canada) (the "**CCAA**") from the Ontario Superior Court of Justice (Commercial List) (the "**Court**"). Pursuant to the Initial Order, Alvarez & Marsal Canada Inc., a licensed insolvency trustee, was appointed as monitor in the CCAA proceedings (in such capacity, the "**Monitor**") and an interim financing facility put forward by TS Investments Corp. (in such capacity, the "**DIP Lender**") was approved.

On September 18, 2024, the Court granted an order (the "**SISP Order**") authorizing the Monitor, with the assistance of the Companies, to undertake a sale and investment solicitation process ("**SISP**"). The SISP is intended to canvass the market and solicit interest in, and opportunities for, a sale of, investment in or recapitalization of, all or part of the Companies, their assets and business operations. The SISP will be conducted by the Monitor in the manner set forth herein and in accordance with the SISP Order.

Pursuant to the SISP Order, the Court also approved a subscription agreement (the "**Stalking Horse Agreement**") between the Companies as issuers and the DIP Lender as purchaser (in such capacity, the "**Stalking Horse Bidder**"). For the avoidance of doubt, the implementation of the transactions contemplated by the Stalking Horse Agreement is conditional upon the Stalking Horse Agreement being selected as a Successful Bid (as defined below) in accordance with the Bidding Procedures and Court approval of the Stalking Horse Agreement and the transactions contemplated therein on a subsequent motion to be brought by the Companies following the completion of the SISP.

This document sets out the procedures for the conduct of the SISP, which will include two phases for qualified interested bidders and will provide the parameters for the selection of a successful bid.

Opportunity

1. The SISP is intended to solicit interest in, and opportunities for, a sale of, investment in, or recapitalization of, all or part of the Companies, their assets, and business operations (the "**Opportunity**"). The Opportunity may include one or more of: (i) a recapitalization, arrangement or other form of investment in or reorganization of the business and affairs of the Companies as a going concern, (ii) a sale of all, substantially all or one or more components of the Companies' business operations (the "**Business**") as a going concern, or (iii) a sale of all, substantially all or one or more components of the Companies' assets (including without limitation the shares of the Companies) (the "**Property**") as a going concern or otherwise.

2. The procedures set out herein (the "**Bidding Procedures**") describe the manner in which prospective bidders may gain access to due diligence materials concerning the Companies, the Property and the Business, the manner in which bidders may participate

in the SISP, requirements for bids received, the ultimate selection of a Successful Bidder(s) (as defined herein) and the requisite approvals to be sought from the Court in connection therewith.

3. Subject to Section 7 herein, the Monitor shall have the right to modify, amend, vary or supplement the Bidding Procedures (including extending the deadlines set forth herein) in order to give effect to the substance of the SISP, the Bidding Procedures or the SISP Order, without the need for obtaining an order of the Court or providing notice to Participants (as defined herein); provided that, the Monitor may not modify, amend, vary or supplement sections 13.i, 14, 19.i, and 20 of the Bidding Procedures, without the prior written consent of the Stalking Horse Bidder or Bank of Montreal ("**BMO**"), the Companies senior secured lender. In addition, the Monitor shall not make any modification, amendment or supplement to the Bidding Procedures that materially affects the rights of the Stalking Horse Bidder, except with the written consent of the Stalking Horse Bidder, which consent shall not be unreasonably withheld.

4. The Monitor will post on the Monitor's website, as soon as practicable, any such modification, amendment, variation or supplement to the Bidding Procedures and inform the bidders impacted by such modifications.

5. In the event of a dispute as to the interpretation or application of the SISP Order or Bidding Procedures, the Court will have exclusive jurisdiction to hear and resolve such dispute.

6. Certain bid protections are provided for in the Stalking Horse Agreement (including a break fee), subject to the conditions set forth therein. No other bidder may request or receive any form of bid protection as part of any bid made pursuant to the SISP.

7. The following table sets out the key milestones under the SISP, which milestones and deadlines may be extended or amended by up to two weeks by the Monitor, in consultation with the Companies, without court approval; provided that, the milestone with respect to the closing of the Successful Bid(s) can only be extended or amended, without court approval, with the prior written consent of the DIP Lender and BMO, in each case, acting reasonably:

Milestone	**Deadline**
Marketing and due diligence commences and access to the virtual data room is granted to Participants having executed NDAs as defined herein) and, if requested by the Monitor, Participants who have provided evidence reasonably satisfactory to the Monitor in consultation with the Companies, of their financial wherewithal to complete on a timely basis a transaction in respect of the Opportunity (as defined herein) (the "**Commencement Date**")	As soon as reasonably practicable but no later than September 20, 2024
Deadline to submit a non-binding Letter of Interest (the "**Phase 1 Bid Deadline**")	5:00 p.m. (Eastern Time) on October 21, 2024

Deadline to submit a Binding Offer (the "**Phase 2 Bid Deadline**")	5:00 p.m. (Eastern Time) on November 11, 2024
Selection of Successful Bid(s), including the holding of an Auction, if needed (as defined herein)	No later than 5:00 p.m. (Eastern Time) on November 13, 2024
Motion for Court Approval of Successful Bid(s)	As soon as reasonably practicable following the selection of the Successful Bid, but by no later than November 22, 2024
Closing of Successful Bid(s)	No later than December 6, 2024

Solicitation of Interest and Notice of the SISP

8. As soon as reasonably practicable, but, in any event, by no later than the Commencement Date:

   a. the Monitor, in consultation with the Companies, will prepare a list of potential bidders, including (i) parties that have approached the Companies or the Monitor indicating an interest in the Opportunity, (ii) local and international strategic and financial parties which the Monitor, in consultation with the Companies, believes may be interested in the Opportunity, and (iii) parties that have otherwise showed an interest in the Companies, the Property and/or the Business prior to the date of the SISP Order; in each case, whether or not such party has submitted a letter of intent or similar document (collectively, the "**Known Potential Bidders**");

   b. the Monitor will publish a notice of the SISP and any other relevant information that the Companies, in consultation with the Monitor, consider appropriate, on the Monitor's website, and in publications as may be considered appropriate by the Monitor;

   c. a press release setting out relevant information regarding the commencements of the SISP and the Opportunity generally will be issued by the Companies with Canada Newswire designating dissemination in Canada;

   d. the Monitor, in consultation with the Companies, will prepare (i) a process summary (the "**Teaser Letter**") describing the Opportunity, outlining the process under the SISP and inviting recipients of the Teaser Letter to express their interest pursuant to the SISP; and (ii) a non-disclosure agreement (an "**NDA**") in form and substance satisfactory to the Monitor, the Companies, and their respective counsel, which agreement shall enure to the benefit of the Successful Bidder(s); and

   e. the Monitor, in consultation with the Companies, will prepare and maintain a virtual data room (the "**VDR**") containing due diligence information and documentation in relation to the Opportunity. The VDR may be updated from time to time throughout the SISP. Participants (as defined below), must direct all due diligence questions in connection with the VDR, on a without liability or representation basis, to the Monitor.

9. As soon as reasonably practicable following the SISP Order, the Monitor will cause the Teaser Letter and NDA to be sent to each Known Potential Bidder and to any other party who requests a copy of the Teaser Letter and NDA or who is identified to the Monitor as a potential bidder as soon as reasonably practicable after such request or identification, as applicable.

Phase 1: Non-Binding Letters of Interest

10. In order to participate in the SISP, and prior to the distribution of any confidential information to an interested party (including access to the VDR), such interested party must deliver to the Monitor (a) the executed NDA, and (b) if requested by the Monitor, evidence, reasonably satisfactory to the Monitor in consultation with the Companies, of its financial wherewithal to complete on a timely basis a transaction in respect of the Opportunity.

11. Interested parties that deliver the NDA and financial information referred to in paragraph 10 (together with the Stalking Horse Bidder, the "**Participants**" and each a "**Participant**"), will be granted access to the VDR by the Monitor. The Companies, the Monitor, and their respective advisors make no representation or warranty as to the information contained in the VDR, including, without limitation, as to its accuracy, completeness, quality or fitness for purpose.

12. The Monitor may limit any Participant's access to specific confidential information and to customer and supplier names and information where, the Companies determine, following consultation with the Monitor, that such access could negatively impact the SISP, the ability to maintain the confidentiality of the confidential information, the Business, or the Property.

13. All Participants wishing to bid for the Business or Property are required to submit a non-binding letter of interest ("**LOI**") in accordance with the Bidding Procedures. An LOI submitted by a Participant will only be considered a "**Phase 1 Qualified Bid**" (and the Participant who submits a Phase 1 Qualified Bid, a "**Phase 1 Qualified Bidder**") if the LOI complies at a minimum with the following:

    a. it has been duly executed by all required parties;

    b. it is received by the Monitor on or before the Phase 1 Bid Deadline;

    c. it provides written evidence, satisfactory to the Monitor, in consultation with the Companies, of the Participant's ability to consummate the transaction within the timeframe contemplated by the SISP and to satisfy any obligations or liabilities to be assumed on closing of the transaction, including, without limitation, a specific indication of the sources of capital and, to the extent that the Participant expects to finance any portion of the purchase price, the identity of the financing source;

    d. it identifies the terms and conditions of the proposed transaction including:

        i. a description of the specific assets/shares that are expected to be subject to the transaction and any assets/shares expected to be excluded;

        ii. a description of those liabilities and obligations (including operating liabilities and obligations to employees) which the Participant intends to

assume and which liabilities and obligations it does not intend to assume and are to be excluded as part of the transaction;

iii. whether the proposed transaction is to be implemented by way of a "reverse vesting order"; and

iv. any other terms or conditions of the proposed transaction that the Phase 1 Qualified Bidder believes are material to the transaction;

e. it identifies all proposed material conditions to closing including, without limitation, any internal, regulatory or other approvals and any form of consent, agreement or other document required from a government body, stakeholder or other third party, and an estimate of the anticipated timeframe and any anticipated impediments for obtaining such conditions, along with information sufficient for the Monitor, in consultation with the Companies, to determine that these conditions are reasonable in relation to the Participant;

f. it identifies the Participant and representatives thereof who are authorized to appear and act on behalf of the Participant for all purposes regarding the contemplated transaction;

g. it fully discloses the identity of each entity or person that will be sponsoring, participating in or benefiting from the transaction contemplated by the LOI, and it identifies all legal, financial, accounting and other advisors that have been or that are expected to be retained by the Participant in connection with the contemplated transaction;

h. it identifies any additional due diligence required to be completed in order to submit a Binding Offer (as defined below);

i. it identifies the investment amount or purchase price that must, at a minimum, provide cash consideration sufficient to pay in full on closing of the transaction: (i) the amount equal to the purchase price in the Stalking Horse Agreement plus an incremental overbid amount (in the minimum amount of $250,000); (ii) an administrative reserve in an amount satisfactory to the Monitor necessary to wind-down the CCAA proceeding; and (iii) a break fee in the amount of $390,000 as contemplated in the Stalking Horse Agreement (the aggregate of these amounts, the "**Minimum Purchase Price**"). The Monitor may deem this criterion satisfied if the LOI, together with one or more other non-overlapping LOIs, have an aggregate value that meets or exceeds the Minimum Purchase Price (the "**Aggregated Bids**");

j. it confirms that the Participant will bear its own costs and expenses (including legal and advisor fees) in connection with the LOI and the proposed transaction, and by submitting its LOI is agreeing to refrain from and waive any assertion or request for reimbursement on any basis;

k. it does not provide for any break fee or expense reimbursement, it being understood and agreed that no bidder other than the Stalking Horse Bidder will be entitled to any such bid protections; and

l. it contains such other information as may be reasonably requested by the Monitor, in consultation with the Companies.

14. The Monitor, in consultation with the Companies, may waive compliance with any one or more of the requirements specified in Section 13, except for 13.i), and deem any such non-compliant LOI to be a Phase 1 Qualified Bid.

15. Notwithstanding anything to the contrary herein, including the requirements set out in sections 13 and 19, as applicable, the Stalking Horse Agreement shall constitute a Phase 1 Qualified Bid and a Phase 2 Qualified Bid, and the Stalking Horse Bidder shall constitute a Phase 1 Qualified Bidder and a Phase 2 Qualified Bidder, and the Stalking Horse Bidder shall be permitted to proceed to Phase 2 of the SISP.

Assessment of Phase 1 Qualified Bids and Subsequent Process

16. Following the receipt of any LOI, the Monitor may, in consultation with the Companies, seek clarification with respect to any of the terms or conditions of such LOI and/or request and negotiate one or more amendments to such LOI prior to determining if the LOI should be considered a Phase 1 Qualified Bid.

17. Following the Phase 1 Bid Deadline, the Monitor, in consultation with the Companies, shall assess the LOIs. If the Monitor determines that a LOI constitutes a Phase 1 Qualified Bid, then such Participant who submitted the LOI will be deemed to be qualified to participate in Phase 2 of the SISP (in that capacity a "**Phase 2 Qualified Bidder**") and the Monitor will notify in writing each Phase 2 Qualified Bidder that it has been selected as a Phase 2 Qualified Bidder within three (3) business day following the Phase 1 Bid Deadline, or at such later time as the Monitor deems appropriate, in consultation with the Companies.

18. In the event that no Phase 1 Qualified Bid is received, or the Monitor has determined in its reasonable business judgment that it would not be appropriate to select any Phase 2 Qualified Bidders, the Monitor will, as soon as reasonably possible, declare the Stalking Horse Bidder as the Successful Bidder, post a notice on its website that the SISP has been terminated and the Companies shall promptly seek from the Court the approval order contemplated in the Stalking Horse Agreement.

Phase 2: Binding Offers and Selection of Successful Bidder

19. Any Phase 2 Qualified Bidder that wishes to make a formal offer in the SISP shall submit a binding offer ("**Binding Offer**" and the Phase 2 Qualified Bidder who submits a Binding Offer, a "**Binding Bidder**") prior to the Phase 2 Bid Deadline that complies with the following terms:

    a. the Binding Offer shall be submitted to the Monitor on or before the Phase 2 Bid Deadline;

    b. it identifies all executory contracts of the Companies that the Phase 2 Qualified Bidder will assume and clearly describes, for each contract or on an aggregate basis, how all monetary defaults and non-monetary defaults will be remedied, as applicable;

    c. if the bid is structured as a "reverse vesting transaction", it includes a duly authorized and executed binding transaction agreement, including all exhibits and schedules contemplated thereby, together with a blackline against the Stalking Horse Agreement (which shall be posted in Word format in the VDR), describing the terms and conditions of the proposed transaction, including any liabilities and obligations proposed to be assumed, the purchase price, the structure and

financing of the proposed transaction, and any regulatory or other third-party approvals required;

d. if the bid is structured in a form other than a "reverse vesting transaction", it includes a duly authorized and executed, definitive transaction agreement, containing the detailed terms and conditions of the proposed transaction, including the Business or the assets proposed to be acquired, the obligations and liabilities to be assumed/excluded, the detailed structure of the transaction, the final purchase price or investment amount, and any other key economic terms expressed in Canadian dollars, together with all exhibits and schedules thereto, all applicable ancillary agreements with all exhibits and schedules thereto (or term sheets that describe the material terms and provisions of such ancillary agreements), and the proposed form of order(s) for the Court to consider in the motion to approve the transaction;

e. it is not subject to any financing condition;

f. it is unconditional, other than upon the receipt of the Approval Order(s) (as defined below) and satisfaction of any other conditions expressly set forth in the Binding Offer;

g. it contains or identifies the key terms and provisions to be included in any Approval Order, including whether such order will be a "reverse vesting order";

h. among other representations and acknowledgments that may be requested by the Monitor or the Companies, it includes acknowledgments and representations of the Phase 2 Qualified Bidder that it,

   i. has had an opportunity to conduct any and all due diligence regarding the Opportunity prior to making its Binding Offer;

   ii. has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the Business in making its Binding Offer;

   iii. did not rely upon any written or oral statements, covenants, representations, warranties, or guarantees whatsoever, whether express, implied, statutory or otherwise, regarding the Company, the business, the Property, the Opportunity, the SISP, or any information provided in connection with the SISP, including, without limitation, any information disclosed in the Teaser Letter and the VDR, or the accuracy, completeness, quality or fitness for purpose of any information provided in connection therewith, other than as expressly set forth in the Binding Offer; and

   iv. promptly will commence any governmental or regulatory review of the proposed transaction by the applicable competition, antitrust or other applicable governmental authorities, including those regulating in the cannabis sector;

i. it provides for net cash proceeds that are not less than the Minimum Purchase Price; unless it is a part of Aggregated Bids, in which case the total net cash

proceeds of the Aggregated Bids will be not less than the Minimum Purchase Price;

j. it is accompanied by a letter that confirms that:

i. the Binding Offer may be accepted by the Companies by countersigning the Binding Offer;

ii. the Binding Offer is irrevocable and capable of acceptance until the earlier of (A) two business days after the date of closing of the Successful Bid(s); and (B) December 6, 2024 (the "**Outside Date**"); and

iii. the Phase 2 Qualified Bidder will bear its own costs and expenses (including legal and advisor fees) in connection with the Binding Offer and the proposed transaction, and by submitting its bid is agreeing to refrain from and waive any assertion or request for reimbursement on any basis;

k. it does not provide for any break or termination fee, expense reimbursement or similar type of payment, it being understood and agreed that no bidder other than the Stalking Horse Bidder will be entitled to any bid protections;

l. it is accompanied by a deposit in the amount of not less than 10% of the cash purchase price payable on closing or total new investment contemplated, as the case may be (the "**Deposit**"), along with acknowledgement (i) that if the Phase 2 Participant is selected as the Successful Bidder, the Deposit will be nonrefundable subject to approval of the Successful Bid by the Court and (ii) of the terms described in paragraph 31 below; and

m. it contemplates and reasonably demonstrates a capacity to consummate a closing of the transaction set out therein on or before November 29, 2024, or such earlier date as is practical for the parties to close the contemplated transaction, following the satisfaction or waiver of the conditions to closing and in any event no later than the Outside Date.

20. The Monitor may not waive compliance with any one or more of the requirements specified above and may not deem any non-compliant Binding Offer to be a Successful Bid.

21. Notwithstanding anything to the contrary contained herein, the Stalking Horse Agreement shall constitute a Binding Offer.

Selection of Successful Bid(s)

22. The Monitor, in consultation with the Companies, may, following the receipt of any Binding Offer, seek clarification with respect to any of the terms or conditions of such Binding Offer and/or request and negotiate one or more amendments to such Binding Offer prior to determining if the Binding Offer should be considered a Successful Bid.

23. If any Binding Offers are received (other than the Stalking Horse Agreement) the Monitor will, in consultation with the Companies:

a. review and evaluate each Binding Offer based on various factors in addition to those set out at Section 19 of the SISP, as the Monitor deems appropriate in its reasonable business judgment including, without limitation,

i. the purchase price and the net value provided by such bid including the proposed form, composition, and allocation of such consideration;

ii. the identity, circumstances and ability of the Phase 2 Qualified Bidder to successfully complete such transaction,

iii. the proposed transaction documents;

iv. the effects of the bid on the stakeholders of the Companies;

v. factors affecting the speed, certainty, and value of the transaction (including any regulatory or licensing approvals or third-party contractual arrangements required to close the transactions);

vi. the assets and/or liabilities included or excluded from the bid;

vii. any related restructuring costs, and the likelihood and timing of consummating such transaction; and

viii. the likelihood of the Court to approve such Successful Bid; and

b. consult with BMO regarding the aspects of a Binding Offer related to payout or assumption of the BMO's debt, which shall include providing a summary of the terms of each Binding Offer to BMO; and

c. select the best bid(s) (the "**Successful Bid(s)**") within two (2) business days of the Phase 2 Bid Deadline and following such selection will promptly notify the Binding Bidder making such Successful Bid that it has been selected as a successful bidder (the "**Successful Bidder**").

24. Any Successful Bid will be subject to approval by the Court.

25. In the event that no Binding Offer is received (other than the Stalking Horse Agreement), the Monitor will, as soon as reasonably possible, post a notice on its website that the SISP has concluded and will promptly seek from the Court the approval and vesting order contemplated in the Stalking Horse Agreement.

26. If a Binding Offer is received other than the Stalking Horse Agreement, the Monitor, in consultation with the Companies, will direct such Binding Bidders to participate in an auction (the "**Auction**") to be conducted and administered by the Monitor in accordance with the Auction Procedures Letter (as defined below).

27. In the event that it is determined that there is to be an Auction in respect of some or all of the Property or Business, the Auction shall be governed by an auction procedures letter ("**Auction Procedures Letter**") to be prepared by the Monitor and sent to all applicable Binding Bidders setting out, among other things, (a) the date, time and location of the Auction (including whether in person or by videoconference); (b) the amount of the starting bid; and (c) the initial minimum overbid.

Approval of Successful Bid(s)

28. The Companies will make a motion to the Court (the "**Approval Motion**") for one or more orders:

    a. approving the Successful Bid(s) and authorizing the taking of such steps and actions and completing such transactions as are set out therein or required thereby; and

    b. granting a vesting order and/or reverse vesting order to the extent that such relief is contemplated by the Successful Bid(s) so as to vest title to any purchased assets in the name of the Successful Bidder(s) and/or vest unwanted liabilities out of one or more of the Companies (collectively, the "**Approval Order(s)**").

29. The Approval Motion will be held on the earliest possible date after the selection of the Successful Bid, taking into account Court availability. With the consent of the Monitor and the Successful Bidder(s), and in consultation with the DIP Lender and BMO, the Approval Motion may be adjourned or rescheduled by the Companies without further notice, by an announcement of the adjourned date at the Approval Motion or with notice to the service list of the CCAA proceedings prior to the Approval Motion. The Companies will consult with the Monitor, and the Successful Bidder(s) regarding the application material to be filed by the Companies for the Approval Motion.

30. All Binding Offers (other than the Successful Bid(s)) will be deemed rejected on and as of the date of the closing of the applicable Successful Bid(s), with no further or continuing obligation of the Companies to any unsuccessful Phase 2 Qualified Bidders.

Deposits

31. The Deposit(s):

    a. will, upon receipt from the Phase 2 Qualified Bidder(s), be retained by the Monitor and deposited in a non-interest-bearing trust account;

    b. received from the Successful Bidder(s) will:

        i. be applied to the purchase price to be paid by the applicable Successful Bidder(s) whose Successful Bid is the subject of the Approval Order(s), upon closing of the approved transaction; and

        ii. otherwise be held and refundable in accordance with the terms of the definitive documentation in respect of any Successful Bid provided that all such documentation will provide that the Deposit will be retained by the Companies and forfeited by the Successful Bidder if the Successful Bid fails to close by the Outside Date, and such failure is attributable to any failure or omission of the Successful Bidder to fulfil its obligations under the terms of the Successful Bid;

    c. received from the Phase 2 Qualified Bidder(s) that are not the Successful Bidder will be fully refunded to the Phase 2 Qualified Bidder(s) that paid the Deposit(s) as soon as practical following the closing of the Successful Bid.

32. Notwithstanding anything to the contrary herein, the Stalking Horse Bidder will not be required to provide a Deposit.

"As is, where is"

33. Any sale (or sales) of the Property or the Business will be on an "as is, where is" basis and without surviving representations or warranties of any kind, nature, or description by the Monitor, the Companies or any of their respective agents, advisors or estates, except for representations and warranties that are customarily provided in purchase agreements for a company subject to CCAA proceedings, and that may be expressly provided in the final documentation and Approval Order(s). Any such representations and warranties provided for in the definitive documents will not survive closing.

Free of Claims and Interests

34. Pursuant to the applicable Approval Order and to the extent permitted by law, all of the rights, title and interests of the Companies in and to the Property or the Business to be acquired will be sold free and clear of, *inter alia*, all pledges, liens, security interests, encumbrances, claims, charges, options, and interests therein (collectively, the "**Claims and Interests**") pursuant to the CCAA, such Claims and Interests to attach to the net proceeds of the sale of such Property or Business (without prejudice to any claims or causes of action regarding the priority, validity or enforceability thereof), except to the extent otherwise set forth in the relevant transaction documents with a Successful Bidder and the applicable Approval Order.

Confidentiality

35. For greater certainty, other than as required in connection with any Approval Motion, neither the Companies nor the Monitor will disclose: (i) the identity of any Participant (other than the Stalking Horse Bidder); or (ii) the terms of any bid, LOI, Phase 1 Qualified Bid, Phase 2 Qualified Bid, or Binding Offer (other than the Stalking Horse Agreement), with any other bidder without the consent of such party (including by way of email), subject to applicable law.

Further Orders

36. At any time during the SISP, the Monitor may apply to the Court for advice and directions with respect to any aspect of this SISP including, but not limited to, the continuation of the SISP or with respect to the discharge of their powers and duties hereunder.

Additional Terms

37. In addition to any other requirement of the SISP:

    a. The Monitor will at all times prior to the selection of a Successful Bid(s) use commercially reasonable efforts to facilitate a competitive bidding process in the SISP including, without limitation, by actively soliciting participation by all persons who would be customarily identified as high-potential bidders in a process of this kind or who may be reasonably proposed by any of the Companies' stakeholders as a high-potential bidder.

    b. Any consent, approval or confirmation to be provided by the Stalking Horse Bidder, the DIP Lender, BMO, the Companies and/or the Monitor is ineffective unless

provided in writing and any approval required pursuant to the terms hereof is in addition to, and not in substitution for, any other approvals required by the CCAA or as otherwise required at law in order to implement a Successful Bid. For the avoidance of doubt, a consent, approval or confirmation provided by email will be deemed to have been provided in writing for the purposes of this paragraph.

c. Prior to seeking Court approval for any transaction or bid contemplated by this SISP, the Monitor will provide a report to the Court on the SISP process, parts of which may be filed under seal, including in respect of any and all bids received.

38. The DIP Lender, BMO, and any other secured creditor of the Companies shall have the right (subject to compliance with the terms of this SISP) to credit bid their secured debt against the assets secured thereby up to the full face value of such secured lender's claims, including principal, interest and any other obligations owing to such secured lender; provided that any such secured lender shall be required to: (a) pay in full in cash, or assume (with the consent of the holder of the priority claim), any obligations of the Companies in priority to its secured debt; and (b) pay appropriate consideration for any assets of the Companies which are contemplated to be acquired and that are not subject to such secured lender's security.

39. Any requirement to deliver notices, bids, consents, or any other information, documentation, or other material to the Monitor pursuant to this SISP shall be satisfied by delivery via courier or electronic transmission to the Monitor at the following addresses:

To the Monitor:

ALVAREZ & MARSAL CANADA INC.
200 Bay Street
Toronto, Ontario M5J 2J1
Canada

Attention:
Josh Nevsky – jnevsky@alvarezandmarsal.com
Skylar Rushton – srushton@alvarezandmarsal.com

With a copy to counsel to the Monitor

STIKEMAN ELLIOTT LLP
5300 Commerce Court West
199 Bay Street
Toronto, Ontario M5L 1B9
Canada

Attention:
Maria Konyukhova - mkonyukhova@stikeman.com
Lee Nicholson - leenicholson@stikeman.com

40. Other than as specifically set forth in a definitive agreement between the Companies and a Successful Bidder, the SISP does not, and will not be interpreted to, create any contractual, fiduciary, or other legal relationship between the Monitor, the Companies, and any other person.

41. The Monitor, the Companies, and their advisors shall not be liable for any claim for commission, finder's fee or like payment in respect of the completion of any of the transactions completed under the SISP. Any such claim shall be the sole liability of the bidder who completes a transaction under the SISP pursuant to which the claim is being made.

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 2675970 ONTARIO INC. et al.

Court File No. CV-24-00726584-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceedings commenced at Toronto

SALE PROCESS APPROVAL ORDER

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Lawyers for the Applicants

TAB 4

Court File No. CV-24-00726584-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE	)	WEDNESDAY, THE 18TH
	)	
JUSTICE CAVANAGH	)	DAY OF SEPTEMBER, 2024

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 2675970 ONTARIO INC., 2733181 ONTARIO INC., 2385816 ALBERTA LTD., 2161907 ALBERTA LTD., 2733182 ONTARIO INC., 2737503 ONTARIO INC., 2826475 ONTARIO INC., 14284585 CANADA INC., 2197130 ALBERTA LTD., 2699078 ONTARIO INC., 2708540 ONTARIO CORPORATION, 2734082 ONTARIO INC., TS WELLINGTON INC., 2742591 ONTARIO INC., 2796279 ONTARIO INC., 10006215 MANITOBA LTD., AND 80694 NEWFOUNDLAND & LABRADOR INC. (individually, an "**Applicant**" and collectively, the "**Applicants**")

FURTHER AMENDED AND RESTATED INITIAL ORDER

THIS MOTION, made by the Applicants, for an order amending and restating the initial order of Justice Cavanagh issued on August 28, 2024 (the "**Initial Filing Date**") 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.

ON READING the affidavits of Andrew Williams sworn August 28, 2024 (the "**Initial Williams Affidavit**"), September 3, 2024 (the "**Second Williams Affidavit**") and the Exhibits thereto, and September 12, 2024 (the "**Third Williams Affidavit**") and the Exhibits thereto and the pre-filing report of Alvarez & Marsal Canada Inc. ("**A&M**"), in its capacity as proposed monitor of the Applicants, dated August 27, 2024, the first report of A&M in its capacity as monitor (in such capacity, the "**Monitor**") dated September 4, 2024 and the second report of the Monitor dated September 12, 2024 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 to Bank of Montreal ("**BMO**"), the Applicants' senior secured lender, counsel for TS Investments Corp. (the "**DIP Lender**") and such other counsel as were present as listed on the Counsel Slip, no one appearing for any other person although duly served as appears from the affidavits of service of Jared Rosenbaum sworn September 4, 2024, Julie Mah sworn September 5, 2024 and • sworn September •, 2024, as filed,

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** that each of the Applicants is a company to which the CCAA applies.

PLAN OF ARRANGEMENT

3. **THIS COURT ORDERS** that 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, 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 their employees, consultants, contractors, agents, experts, accountants, counsel and such other persons (collectively "**Assistants**") currently retained or employed by them, with liberty, subject to the terms of the Definitive Documents (as hereinafter defined), 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 Initial Williams Affidavit or, with the consent of the Monitor and the DIP Lender, replace it with another substantially similar central cash management system (the "**Cash Management System**") and that any present or future bank providing the Cash Management System shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the Applicants of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person(s) (as hereinafter defined) other than the Applicants, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as provider of the Cash Management System, an unaffected creditor under the Plan with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.

6. **THIS COURT ORDERS** that the Applicants, subject to terms of the Definitive Documents, shall be entitled but not required to pay the following expenses whether incurred prior to, on or after the Initial Filing Date:

(a) all outstanding and future wages, salaries, employee and pension benefits, vacation pay and other employee related expenses payable on or after the Initial Filing Date, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements;

(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; and

(c) with the consent of the Monitor, amounts owing for goods or services actually supplied to the Applicants prior to the Initial Filing Date if, in the opinion of the Applicants following consultation with the Monitor, such payment is necessary or desirable during these proceedings.

7. **THIS COURT ORDERS** that, except as otherwise provided to the contrary herein and subject to the terms of the Definitive Documents, 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 Initial Filing Date, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

(a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors and officers insurance), maintenance and security services; and

(b) payment for goods or services actually supplied to the Applicants on or following the Initial Filing Date.

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 Initial Filing Date, or where such Sales Taxes were accrued or collected prior to the Initial Filing Date but not required to be remitted until on or after the Initial Filing Date; 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 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 Initial Filing Date, twice-monthly in equal payments on the first and fifteenth day of each month, in advance (but not in arrears). On the date of the first of such payments, any Rent relating to the period commencing from and including the Initial Filing Date shall also be paid.

10. **THIS COURT ORDERS** that, except as specifically permitted herein, the Applicants are hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Applicants to any of their creditors as of this date other than interest and expenses due and payable to BMO under the BMO Credit Agreement (as defined in the Initial Williams Affidavit); (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of their Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business. Notwithstanding the foregoing, the Applicants shall be entitled to continue to operate the Cash Management System.

RESTRUCTURING

11. **THIS COURT ORDERS** that each of the Applicants shall, subject to such requirements as are imposed by the CCAA, and subject to the terms of the Definitive Documents, have the right to:

(a) permanently or temporarily cease, downsize or shut down any of their business or operations and to dispose of redundant or non-material assets outside of the ordinary course of business not exceeding $250,000 in any one transaction or $1,000,000 in the aggregate, provided that, with respect to any leased premises, the debtors may, subject to paragraphs 12 and 13 herein, vacate, abandon or quit the whole, but not part of any leased premises and may permanently, but not temporarily cease, downsize or shut down,

(b) terminate the employment of such of their employees or temporarily lay off such of their employees as they deem appropriate, and

(c) pursue all avenues of restructuring of their Business and 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 Applicants shall provide each of the relevant landlords with notice of the Applicants' intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Applicants' entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Applicants, or by further Order of this Court upon application by the Applicants on at least two (2) days notice to such landlord and any such secured creditors. If the Applicants disclaim the lease governing such leased premises in accordance with Section 32 of the CCAA, they shall not be required to pay Rent under such lease pending resolution of any such dispute (other than Rent payable for the notice period provided for in Section 32(5) of the CCAA), and the disclaimer of the lease shall be without prejudice to the Applicants' 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 (a) during the notice period prior to the effective time of the disclaimer, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the Applicants and the Monitor 24 hours' prior written notice, and (b) at the effective time of the disclaimer, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the Applicants in respect of such lease or leased premises, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

NO PROCEEDINGS AGAINST THE APPLICANTS OR THE PROPERTY

14. **THIS COURT ORDERS** that until and including December 6, 2024, or such later date as this Court may order (the "**Stay Period**"), no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**") shall be commenced or continued against or in respect of the Applicants or the Monitor, or their respective employees and representatives acting in such capacities, or affecting their Business or their 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 the Applicants or affecting their Business or their Property are hereby stayed and suspended pending further Order of this Court.

NO PROCEEDINGS AGAINST THE NON-APPLICANT ENTITIES

15. **THIS COURT ORDERS** that during the Stay Period, no Proceeding shall be commenced or continued against or in respect of the TS-IP Holdings Ltd., TS Programs Ltd, 1000451353 Ontario Inc., and 1000451354 Ontario Inc. (collectively, the "**Non-Applicant Entities**") or their respective employees and representatives acting in such capacities, or affecting their business or their property, except with the written consent of the Non-Applicant Entities and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Non-Applicant Entities or affecting their business or their property are hereby stayed and suspended pending further Order of this Court.

16. **THIS COURT ORDERS** that during the Stay Period, no Proceeding relating to or involving any of the Applicants or Non-Applicant Entities (any such proceeding a "**Related Proceeding**"), shall be commenced or continued against or in respect of DAK Capital Inc. (the "**Additional Stay Party**") except with the written consent of the Additional Stay Party and the Monitor, or with leave of this Court, and any Related Proceeding currently under way is hereby stayed and suspended pending further Order of this Court. For greater certainty, the arbitration proceeding commenced on March 8, 2024, by Canopy Growth, Tweed, and Tweed Leasing Corporation against Ontario Inc., 2161907 Alberta Ltd., 2733181 Ontario Inc., 14284585 Canada Inc., and the Additional Stay Party is a Related Proceeding. For further certainty, this clause does not apply to any proceeding that BMO has or may commence against the Additional Stay Party in relation to any loan or credit products that BMO has extended to the Additional Stay Party.

NO EXERCISE OF RIGHTS OR REMEDIES

17. **THIS COURT ORDERS** that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "**Persons**" and each being a "**Person**") against or in respect of the Applicants, the Monitor, or the Non-Applicant Entities, or affecting the Business or the Property,

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

NO INTERFERENCE WITH RIGHTS

18. **THIS COURT ORDERS** that during the Stay Period, no Person shall discontinue, suspend, 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.

NO PRE-FILING VS POST-FILING SET-OFF

19. **THIS COURT ORDERS** that, no Person shall be entitled to set off any amounts that: (a) are or may become due to the Applicants in respect of obligations arising prior to the Initial Filing Date with any amounts that are or may become due from the Applicants in respect of obligations arising on or after the Initial Filing Date; or (b) are or may become due from the Applicants in respect of obligations arising prior to the Initial Filing Date with any amounts that are or may become due to the Applicants in respect of obligations arising on or after the Initial Filing Date, in each case without the consent of the Applicants and the Monitor, or leave of this Court.

CONTINUATION OF SERVICES

20. **THIS COURT ORDERS** that during the Stay Period, all Persons having oral or written agreements with 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, insurance, transportation services, security services, utility or other services to the Business or 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 the Applicants, and that the Applicants shall be entitled to the continued use of their 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 Initial Filing Date are paid by the Applicants in accordance with normal payment practices of the Applicants or such other practices as may be agreed upon by the supplier or service provider and each of the Applicants and the Monitor, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

21. **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 Initial Filing Date, nor shall any Person be under any obligation on or after the Initial Filing Date to advance or re-advance any monies or otherwise extend any credit to the Applicants. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

22. **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 Initial Filing Date and that relates to any obligations 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.

DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

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

24. **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 $3 million, as security for the indemnity provided in paragraph 23 of this Order. The Directors' Charge shall have the priority set out in paragraphs 45 and 47 herein.

25. **THIS COURT ORDERS** that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) the Applicants' directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 23 of this Order.

APPOINTMENT OF MONITOR

26. **THIS COURT ORDERS** that A&M is as of the Initial Filing Date 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 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.

27. **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 and the Applicants' compliance with the Cash Flow Projections (as defined in the DIP Term Sheet (as hereinafter defined)), including the management and deployment/use of funds advanced by the DIP Lender to the Applicants under the Definitive Documents;

(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 timely basis of financial and other information as agreed to between the Applicants and the DIP Lender which may be used in these proceedings, including reporting on a basis to be agreed with the DIP Lender or as required pursuant to the Definitive Documents;

(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, as agreed to by the DIP Lender or as required pursuant to the Definitive Documents;

(e) advise the Applicants in their development of the Plan and any amendments to the Plan;

(f) assist the Applicants, to the extent required by the Applicants, with the holding and administering of creditors' meetings for voting on the Plan;

(g) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Applicants, to the extent that is necessary to adequately assess the Applicants' business and financial affairs or to perform its duties arising under this Order;

(h) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order; and

(i) perform such other duties as are required by this Order or by this Court from time to time.

28. **THIS COURT ORDERS** that the Monitor shall not occupy, take control, care, charge, possession or management (collectively, "**Possession**") of (or be deemed to take Possession of) or exercise any rights of control over any activities in respect of the Property or any assets, properties or undertakings of any of the Applicants', or the direct or indirect subsidiaries or affiliates of any of the Applicants for which a permit or license is issued or required 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 Ontario *Cannabis Licence Act*, 2018, S.O. 2018, c. 12, Sched. 2, as amended, the Ontario *Cannabis Control Act*, 2017, S.O. 2017, c. 26, Sched. 1, as amended, the Ontario *Cannabis Retail Corporation Act*, S.O.

2017, c. 26, Sched. 2, as amended, *The Cannabis Control (Saskatchewan) Act*, S.S. 2018, c. C-2.111, as amended, *The Cannabis Control (Saskatchewan) Regulations*, RRS, c. C-2.111 Reg 1, as amended, the Manitoba *The Liquor, Gaming and Cannabis Control Act*, C.C.S.M. c. L153, as amended, the Manitoba *Cannabis Regulation*, M.R. 120/2018, as amended, the Newfoundland and Labrador *Cannabis Control Act*, S.N. 2018, c. C-4.1, as amended, the Newfoundland and Labrador *Cannabis Control Regulations*, Nfld. Reg. 93/18, as amended, the Newfoundland and Labrador *Cannabis Licensing and Operations Regulations*, Nfld. Reg. 94/18.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 Property, or any part thereof within the meaning of any Cannabis Legislation or otherwise. For clarity, 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.

29. **THIS COURT ORDERS** that nothing herein contained shall require the Monitor to take Possession of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the Ontario *Environmental Protection Act*, the *Ontario Water Resources Act*, or the Ontario *Occupational Health and Safety Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in Possession.

30. **THIS COURT ORDERS** that the Monitor shall provide any creditor of the Applicants, including BMO, and the DIP Lender with information provided by the Applicants in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Applicants is confidential, the Monitor shall not provide such information to

creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicants may agree.

31. **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, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, including 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 the Monitor by the CCAA or any applicable legislation.

32. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor and counsel to the Applicants shall be paid their reasonable fees and disbursements (including pre-filing fees and disbursements), in each case at their standard rates and charges, by the Applicants as part of the costs of these proceedings, whether incurred prior to, on, or subsequent to the Initial Filing Date. The Applicants are hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and counsel for the Applicants on a weekly basis or as otherwise agreed among the parties.

33. **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.

34. **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 $850,000, as security for their professional fees and disbursements incurred at their standard rates and charges, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 45 and 47 hereof.

DIP FINANCING

35. **THIS COURT ORDERS** that the Applicants are hereby authorized and empowered to obtain and borrow, on a joint and several basis, under the DIP Facility Term Sheet dated as of August 27, 2024 and attached to the Initial Williams Affidavit as Exhibit "BB", among the Applicants as borrowers, and the DIP Lender, as lender (as may be amended, restated, supplemented and/or modified from time to time, the "**DIP Term Sheet**"), in order to finance the

Applicants' working capital requirements, other general corporate purposes, accrued interest, expenses, and capital expenditures, all in accordance with the Definitive Documents, provided that borrowings under the DIP Term Sheet shall not exceed $8 million plus interest, fees and expenses, unless permitted by further Order of this Court (the "**DIP Facility**").

36. **THIS COURT ORDERS** that the DIP Facility shall be on the terms and subject to the conditions set forth in the DIP Term Sheet and the other Definitive Documents.

37. **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 (as may be amended, restated, supplemented and/or modified from time to time, and collectively with the DIP Term Sheet, the "**Definitive Documents**"), as are contemplated by the DIP Term Sheet 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, expenses, liabilities and obligations to the DIP Lender under and pursuant to the DIP Term Sheet and the other Definitive Documents (collectively, the "**DIP Obligations**") as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

38. **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 as security for any and all DIP Obligations. The DIP Lender's Charge shall not secure an obligation that exists before the Initial Filing Date. The DIP Lender's Charge shall have the priority set out in paragraphs 45 and 47 hereof.

39. **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 may cease making advances to the Applicants and may make demand, accelerate payment and give other notices, and, upon five (5) days notice to the Applicants and the Monitor, may exercise any and all of its other rights and remedies against the Applicants or the Property under

or pursuant to the Definitive Documents and the DIP Lender's Charge, including without limitation, to 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 Definitive Documents or the DIP Lender's Charge, 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.

40. **THIS COURT ORDERS** that the DIP Lender and BMO shall be treated as unaffected in any Plan filed by the Applicants under the CCAA, or any proposal filed by any of the Applicants under the *Bankruptcy and Insolvency Act* (Canada) (the "**BIA**"), with respect to any advances made under the Definitive Documents or the BMO Credit Agreement (as defined in the Initial Williams Affidavit).

41. **THIS COURT ORDERS** that, notwithstanding anything to the contrary herein, this Order is subject to provisional execution and that if any of the provisions of this Order in connection with the Definitive Documents or the DIP Lender's Charge shall subsequently be stayed, modified, varied, amended, reversed or vacated in whole or in part (collectively, a "**Variation**"), such Variation shall not in any way impair, limit or lessen the priority, protections, rights or remedies of the DIP Lender, whether under this Order (as made prior to the Variation), under the Definitive Documents with respect to any advances made or obligations incurred prior to the DIP Lender being given notice of the Variation, and the DIP Lender shall be entitled to rely on this Order as issued (including, without limitation, the DIP Lender's Charge) for all advances so made and other obligations set out in the Definitive Documents.

KEY EMPLOYEE RETENTION PLAN

42. **THIS COURT ORDERS** that the Key Employee Retention Plan (the "**KERP**"), as described in the Second Williams Affidavit, an unredacted copy of which is attached as the Confidential Exhibit to the Second Williams Affidavit, is hereby approved and the Applicants are authorized to make payments contemplated thereunder in accordance with the terms and conditions of the KERP.

43. **THIS COURT ORDERS** that payments made by the Applicants pursuant to this Order do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

44. **THIS COURT ORDERS** that the key employees referred to in the KERP (the "**Key Employees**") shall be entitled to the benefit of and are hereby granted a charge on the Property (the "**KERP Charge**"), which charge shall not exceed an aggregate amount of $218,500 to secure any payments to the Key Employees under the KERP. The KERP Charge shall have the priority set out in paras 45 and 47 herein.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

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

First – Administration Charge (to the maximum amount of $850,000);

Second – DIP Lender's Charge (to the maximum amount of the DIP Obligations at the relevant time);

Third – Director's Charge (to the maximum amount of $3 million); and

Fourth – KERP Charge (to the maximum amounts of $218,500).

46. **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.

47. **THIS COURT ORDERS** that each of the Charges shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, "**Encumbrances**") in favour of any Person except that the DIP Lender's Charge, Director's Charge, and KERP Charge will rank subordinate to any and all amounts owed to BMO under the BMO Credit Agreement (as defined in the Initial Williams Affidavit); provided that the Charges shall rank behind Encumbrances in favour of any Person that has not been served with notice of

this Application. The Applicants and the beneficiaries of the Charges (collectively, the "**Chargees**") shall be entitled to seek priority ahead of such Encumbrances on a subsequent motion on notice to those Persons likely to be affected thereby.

48. **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 and the Chargees, or further Order of this Court.

49. **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 and/or the DIP Lender thereunder shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to the BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "**Agreement**") which binds 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 Definitive Documents shall create or be deemed to constitute a breach by any of the Applicants of any Agreement to which the applicable Applicant 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 Definitive Documents, 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 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.

50. **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

51. **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 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 or by electronic message to the e-mail addresses as last shown in the Applicants' records, a notice to every known creditor who has a claim against any of the Applicants of more than $1,000, and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder; provided that the Monitor shall not be required to make the claims, names and addresses of individual creditors publicly available unless otherwise ordered by this Court.

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

53. **THIS COURT ORDERS** that the Monitor shall create, maintain and update as necessary a list of all Persons appearing in person or by counsel in this proceeding (the "**Service List**"). The Monitor shall post the Service List, as may be updated from time to time, on the Monitor's Website, provided that the Monitor shall have no liability in respect of the accuracy of or the timeliness of making any changes to the Service List.

54. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Applicants and the Monitor 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 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 or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

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

SEALING PROVISION

56. **THIS COURT ORDERS** that the Confidential Exhibit to the Second Williams Affidavit is hereby sealed and kept confidential pending further Order of the Court and shall not form part of the public record.

GENERAL

57. **THIS COURT ORDERS** that the Applicants, the Monitor, BMO 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 their respective powers and duties hereunder.

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

59. **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.

60. **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.

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

62. **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 any need for entry and filing.

_____

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 2675970 ONTARIO INC. et al.

Court File No. CV-24-00726584-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceedings commenced at Toronto

FURTHER AMENDED AND RESTATED INITIAL ORDER

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Lawyers for the Applicants

TAB 5

Court File No. CV-24-00726584-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE	)	~~FRIDAY~~WEDNESDAY, THE ~~6TH~~18TH
	)	
JUSTICE CAVANAGH	)	DAY OF SEPTEMBER, 2024

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 2675970 ONTARIO INC., 2733181 ONTARIO INC., 2385816 ALBERTA LTD., 2161907 ALBERTA LTD., 2733182 ONTARIO INC., 2737503 ONTARIO INC., 2826475 ONTARIO INC., 14284585 CANADA INC., 2197130 ALBERTA LTD., 2699078 ONTARIO INC., 2708540 ONTARIO CORPORATION, 2734082 ONTARIO INC., TS WELLINGTON INC., 2742591 ONTARIO INC., 2796279 ONTARIO INC., 10006215 MANITOBA LTD., AND 80694 NEWFOUNDLAND & LABRADOR INC. (individually, an "**Applicant**" and collectively, the "**Applicants**")

FURTHER AMENDED AND RESTATED INITIAL ORDER

THIS MOTION, made by the Applicants, for an order amending and restating the initial order of Justice Cavanagh issued on August 28, 2024 (the "**Initial Filing Date**") 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.

ON READING the affidavits of Andrew Williams sworn August 28, 2024 (the "**Initial Williams Affidavit**")~~ and~~, September 3, 2024 (the "**Second Williams Affidavit**") and the Exhibits thereto, and September 12, 2024 (the "**Third Williams Affidavit**") and the Exhibits thereto and the pre-filing report of Alvarez & Marsal Canada Inc. ("**A&M**"), in its capacity as proposed monitor of the Applicants, dated August 27, 2024, the first report of A&M in its capacity as monitor (in such capacity, the "**Monitor**") dated September 4, 2024~~,~~ and the second report of the Monitor dated September ●, 2024 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 to Bank of Montreal ("**BMO**"), the Applicants' senior secured lender, counsel for TS Investments Corp. (the "**DIP Lender**") and such other counsel as were present as listed on the Counsel Slip, no one appearing for any other person although duly served as appears from the affidavits of service of Jared Rosenbaum sworn September 4, 2024 ~~and~~, Julie Mah sworn September 5, 2024 and ● sworn September ●, 2024, as filed,

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** that each of the Applicants is a company to which the CCAA applies.

PLAN OF ARRANGEMENT

3. **THIS COURT ORDERS** that 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, 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 their employees, consultants, contractors, agents, experts, accountants, counsel and such other persons (collectively "**Assistants**") currently retained or employed by them, with liberty, subject to the terms of the Definitive Documents (as hereinafter defined), 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 Initial Williams Affidavit or, with the consent of the Monitor and the DIP Lender, replace it with another substantially similar central cash management system (the "**Cash Management System**") and that any present or future bank providing the Cash Management System shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the Applicants of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person(s) (as hereinafter defined) other than the Applicants, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as provider of the Cash Management System, an unaffected creditor under the Plan with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.

6. **THIS COURT ORDERS** that the Applicants, subject to terms of the Definitive Documents, shall be entitled but not required to pay the following expenses whether incurred prior to, on or after the Initial Filing Date:

(a) all outstanding and future wages, salaries, employee and pension benefits, vacation pay and other employee related expenses payable on or after the Initial Filing Date, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements;

(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; and

(c) with the consent of the Monitor, amounts owing for goods or services actually supplied to the Applicants prior to the Initial Filing Date if, in the opinion of the Applicants following consultation with the Monitor, such payment is necessary or desirable during these proceedings.

7. **THIS COURT ORDERS** that, except as otherwise provided to the contrary herein and subject to the terms of the Definitive Documents, 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 Initial Filing Date, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

(a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors and officers insurance), maintenance and security services; and

(b) payment for goods or services actually supplied to the Applicants on or following the Initial Filing Date.

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 Initial Filing Date, or where such Sales Taxes were accrued or collected prior to the Initial Filing Date but not required to be remitted until on or after the Initial Filing Date; 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 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 Initial Filing Date, twice-monthly in equal payments on the first and fifteenth day of each month, in advance (but not in arrears). On the date of the first of such payments, any Rent relating to the period commencing from and including the Initial Filing Date shall also be paid.

10. **THIS COURT ORDERS** that, except as specifically permitted herein, the Applicants are hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Applicants to any of their creditors as of this date other than interest and expenses due and payable to BMO under the BMO Credit Agreement (as defined in the Initial Williams Affidavit); (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of their Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business. Notwithstanding the foregoing, the Applicants shall be entitled to continue to operate the Cash Management System.

RESTRUCTURING

11. **THIS COURT ORDERS** that each of the Applicants shall, subject to such requirements as are imposed by the CCAA, and subject to the terms of the Definitive Documents, have the right to:

(a) permanently or temporarily cease, downsize or shut down any of their business or operations and to dispose of redundant or non-material assets outside of the ordinary course of business not exceeding $250,000 in any one transaction or $1,000,000 in the aggregate, provided that, with respect to any leased premises, the debtors may, subject to paragraphs 12 and 13 herein, vacate, abandon or quit the whole, but not part of any leased premises and may permanently, but not temporarily cease, downsize or shut down,

(b) terminate the employment of such of their employees or temporarily lay off such of their employees as they deem appropriate, and

(c) pursue all avenues of restructuring of their Business and 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 Applicants shall provide each of the relevant landlords with notice of the Applicants' intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the

landlord disputes the Applicants' entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Applicants, or by further Order of this Court upon application by the Applicants on at least two (2) days notice to such landlord and any such secured creditors. If the Applicants disclaim the lease governing such leased premises in accordance with Section 32 of the CCAA, they shall not be required to pay Rent under such lease pending resolution of any such dispute (other than Rent payable for the notice period provided for in Section 32(5) of the CCAA), and the disclaimer of the lease shall be without prejudice to the Applicants' 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 (a) during the notice period prior to the effective time of the disclaimer, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the Applicants and the Monitor 24 hours' prior written notice, and (b) at the effective time of the disclaimer, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the Applicants in respect of such lease or leased premises, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

NO PROCEEDINGS AGAINST THE APPLICANTS OR THE PROPERTY

14. **THIS COURT ORDERS** that until and including December 6, 2024, or such later date as this Court may order (the "**Stay Period**"), no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**") shall be commenced or continued against or in respect of the Applicants or the Monitor, or their respective employees and representatives acting in such capacities, or affecting their Business or their 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 the Applicants or affecting their Business or their Property are hereby stayed and suspended pending further Order of this Court.

NO PROCEEDINGS AGAINST THE NON-APPLICANT ENTITIES

15. **THIS COURT ORDERS** that during the Stay Period, no Proceeding shall be commenced or continued against or in respect of the TS-IP Holdings Ltd., TS Programs Ltd, 1000451353 Ontario Inc., and 1000451354 Ontario Inc. (collectively, the "**Non-Applicant**

Entities"),~~,~~ or their respective employees and representatives acting in such capacities, or affecting their business or their property, except with the written consent of the Non-Applicant Entities and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Non-Applicant Entities or affecting their business or their property are hereby stayed and suspended pending further Order of this Court.

16. **THIS COURT ORDERS** that during the Stay Period, no Proceeding relating to or involving any of the Applicants or Non-Applicant Entities (any such proceeding a "**Related Proceeding**"), shall be commenced or continued against or in respect of DAK Capital Inc. (the "**Additional Stay Party**") except with the written consent of the Additional Stay Party and the Monitor, or with leave of this Court, and any Related Proceeding currently under way is hereby stayed and suspended pending further Order of this Court. For greater certainty, the arbitration proceeding commenced on March 8, 2024, by Canopy Growth, Tweed, and Tweed Leasing Corporation against Ontario Inc., 2161907 Alberta Ltd., 2733181 Ontario Inc., 14284585 Canada Inc., and the Additional Stay Party is a Related Proceeding. For further certainty, this clause does not apply to any proceeding that BMO has or may commence against the Additional Stay Party in relation to any loan or credit products that BMO has extended to the Additional Stay Party.

NO EXERCISE OF RIGHTS OR REMEDIES

17. ~~16.~~ **THIS COURT ORDERS** that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "**Persons**" and each being a "**Person**") against or in respect of the Applicants, the Monitor, or the Non-Applicant Entities, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the Applicants and the Monitor, or leave of this Court, provided that nothing in this Order shall (i) empower the Applicants and the Non-Applicant Entities to carry on any business which they are not lawfully entitled to carry on, (ii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH RIGHTS

18. ~~17.~~ **THIS COURT ORDERS** that during the Stay Period, no Person shall discontinue, suspend, 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.

NO PRE-FILING VS POST-FILING SET-OFF

19. ~~18.~~ **THIS COURT ORDERS** that, no Person shall be entitled to set off any amounts that: (a) are or may become due to the Applicants in respect of obligations arising prior to the Initial Filing Date with any amounts that are or may become due from the Applicants in respect of obligations arising on or after the Initial Filing Date; or (b) are or may become due from the Applicants in respect of obligations arising prior to the Initial Filing Date with any amounts that are or may become due to the Applicants in respect of obligations arising on or after the Initial Filing Date, in each case without the consent of the Applicants and the Monitor, or leave of this Court.

CONTINUATION OF SERVICES

20. ~~19.~~ **THIS COURT ORDERS** that during the Stay Period, all Persons having oral or written agreements with 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, insurance, transportation services, security services, utility or other services to the Business or 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 the Applicants, and that the Applicants shall be entitled to the continued use of their 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 Initial Filing Date are paid by the Applicants in accordance with normal payment practices of the Applicants or such other practices as may be agreed upon by the supplier or service provider and each of the Applicants and the Monitor, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

21. ~~20.~~ **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 Initial Filing Date, nor shall any Person be under any obligation on or after the Initial Filing Date to advance or re-advance any monies or otherwise extend any credit to the Applicants. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

22. ~~21.~~ **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 Initial Filing Date and that relates to any obligations 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.

DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

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

24. ~~23.~~ **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 $3 million, as security for the indemnity provided in paragraph ~~22~~23 of this Order. The Directors' Charge shall have the priority set out in paragraphs ~~44~~45 and ~~46~~47 herein.

25. ~~24.~~ **THIS COURT ORDERS** that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) the Applicants' directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage

under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph ~~22~~23 of this Order.

APPOINTMENT OF MONITOR

26. ~~25.~~ **THIS COURT ORDERS** that A&M is as of the Initial Filing Date 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 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.

27. ~~26.~~ **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 and the Applicants' compliance with the Cash Flow Projections (as defined in the DIP Term Sheet (as hereinafter defined)), including the management and deployment/use of funds advanced by the DIP Lender to the Applicants under the Definitive Documents;

(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 timely basis of financial and other information as agreed to between the Applicants and the DIP Lender which may be used in these proceedings, including reporting on a basis to be agreed with the DIP Lender or as required pursuant to the Definitive Documents;

(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, as agreed to by the DIP Lender or as required pursuant to the Definitive Documents;

(e) advise the Applicants in their development of the Plan and any amendments to the Plan;

(f) assist the Applicants, to the extent required by the Applicants, with the holding and administering of creditors' meetings for voting on the Plan;

(g) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Applicants, to the extent that is necessary to adequately assess the Applicants' business and financial affairs or to perform its duties arising under this Order;

(h) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order; and

(i) perform such other duties as are required by this Order or by this Court from time to time.

28. ~~27.~~ **THIS COURT ORDERS** that the Monitor shall not occupy, take control, care, charge, possession or management (collectively, "**Possession**") of (or be deemed to take Possession of) or exercise any rights of control over any activities in respect of the Property or any assets, properties or undertakings of any of the Applicants', or the direct or indirect subsidiaries or affiliates of any of the Applicants for which a permit or license is issued or required 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 Ontario *Cannabis Licence Act*, 2018, S.O. 2018, c. 12, Sched. 2, as amended, the Ontario *Cannabis Control Act*, 2017, S.O. 2017, c. 26, Sched. 1, as amended, the Ontario *Cannabis Retail Corporation Act*, S.O. 2017, c. 26, Sched. 2, as amended, *The Cannabis Control (Saskatchewan) Act*, S.S. 2018, c. C-2.111, as amended, *The Cannabis Control (Saskatchewan) Regulations*, RRS, c. C-2.111 Reg 1, as amended, the Manitoba *The Liquor, Gaming and Cannabis Control Act*, C.C.S.M. c. L153, as amended, the Manitoba *Cannabis Regulation*, M.R. 120/2018, as amended, the Newfoundland and Labrador *Cannabis Control Act*, S.N. 2018, c. C-4.1, as amended, the Newfoundland and Labrador *Cannabis Control Regulations*, Nfld. Reg. 93/18, as amended, the Newfoundland and Labrador *Cannabis Licensing and Operations Regulations*, Nfld. Reg. 94/18.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 Property, or any part thereof within the meaning of any Cannabis Legislation or otherwise. For clarity, 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.

29. ~~28.~~ **THIS COURT ORDERS** that nothing herein contained shall require the Monitor to take Possession of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the Ontario *Environmental Protection Act*, the *Ontario Water Resources Act*, or the Ontario *Occupational Health and Safety Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in Possession.

30. ~~29.~~ **THIS COURT ORDERS** that the Monitor shall provide any creditor of the Applicants, including BMO, and the DIP Lender with information provided by the Applicants in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Applicants is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicants may agree.

31. ~~30.~~ **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, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, including 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 the Monitor by the CCAA or any applicable legislation.

32. ~~31.~~ **THIS COURT ORDERS** that the Monitor, counsel to the Monitor and counsel to the Applicants shall be paid their reasonable fees and disbursements (including pre-filing fees and disbursements), in each case at their standard rates and charges, by the Applicants as part of the costs of these proceedings, whether incurred prior to, on, or subsequent to the Initial Filing Date. The Applicants are hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and counsel for the Applicants on a weekly basis or as otherwise agreed among the parties.

33. ~~32.~~ **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.

34. ~~33.~~ **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 $850,000, as security for their professional fees and disbursements incurred at their standard rates and charges, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs ~~44~~45 and ~~46~~47 hereof.

DIP FINANCING

35. ~~34.~~ **THIS COURT ORDERS** that the Applicants are hereby authorized and empowered to obtain and borrow, on a joint and several basis, under the DIP Facility Term Sheet dated as of August 27, 2024 and attached to the Initial Williams Affidavit as Exhibit "BB", among the Applicants as borrowers, and the DIP Lender, as lender (as may be amended, restated, supplemented and/or modified from time to time, the "**DIP Term Sheet**"), in order to finance the Applicants' working capital requirements, other general corporate purposes, accrued interest, expenses, and capital expenditures, all in accordance with the Definitive Documents, provided that borrowings under the DIP Term Sheet shall not exceed $8 million plus interest, fees and expenses, unless permitted by further Order of this Court (the "**DIP Facility**").

36. ~~35.~~ **THIS COURT ORDERS** that the DIP Facility shall be on the terms and subject to the conditions set forth in the DIP Term Sheet and the other Definitive Documents.

37. ~~36.~~ **THIS COURT ORDERS** that the Applicants are hereby authorized and empowered to execute and deliver such credit agreements, mortgages, charges, hypothecs and security documents, guarantees and other definitive documents (as may be amended, restated, supplemented and/or modified from time to time, and collectively with the DIP Term Sheet, the "**Definitive Documents**"), as are contemplated by the DIP Term Sheet 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, expenses, liabilities and obligations to the DIP Lender under and pursuant to the DIP Term Sheet and the other Definitive Documents (collectively, the "**DIP Obligations**") as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

38. ~~37.~~ **THIS COURT ORDERS** that the DIP Lender shall be entitled to the benefit of and is hereby granted a charge (the "**DIP Lender's Charge**") on the Property as security for any and all DIP Obligations. The DIP Lender's Charge shall not secure an obligation that exists before the Initial Filing Date. The DIP Lender's Charge shall have the priority set out in paragraphs ~~44~~45 and ~~46~~47 hereof.

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

(a) the DIP Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP Lender's Charge or any of the Definitive Documents;

(b) upon the occurrence of an event of default under the Definitive Documents or the DIP Lender's Charge, the DIP Lender may cease making advances to the Applicants and may make demand, accelerate payment and give other notices, and, upon five (5) days notice to the Applicants and the Monitor, may exercise any and all of its other rights and remedies against the Applicants or the Property under or pursuant to the Definitive Documents and the DIP Lender's Charge, including without limitation, to 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 Definitive Documents or the DIP Lender's Charge, 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.

40. ~~39.~~ **THIS COURT ORDERS** that the DIP Lender and BMO shall be treated as unaffected in any Plan filed by the Applicants under the CCAA, or any proposal filed by any of the Applicants under the *Bankruptcy and Insolvency Act* (Canada) (the "**BIA**"), with respect to any advances made under the Definitive Documents or the BMO Credit Agreement (as defined in the Initial Williams Affidavit).

41. ~~40.~~ **THIS COURT ORDERS** that, notwithstanding anything to the contrary herein, this Order is subject to provisional execution and that if any of the provisions of this Order in connection with the Definitive Documents or the DIP Lender's Charge shall subsequently be stayed, modified, varied, amended, reversed or vacated in whole or in part (collectively, a "**Variation**"), such Variation shall not in any way impair, limit or lessen the priority, protections, rights or remedies of the DIP Lender, whether under this Order (as made prior to the Variation), under the Definitive Documents with respect to any advances made or obligations incurred prior to the DIP Lender being given notice of the Variation, and the DIP Lender shall be entitled to rely on this Order as issued (including, without limitation, the DIP Lender's Charge) for all advances so made and other obligations set out in the Definitive Documents.

KEY EMPLOYEE RETENTION PLAN

42. ~~41.~~ **THIS COURT ORDERS** that the Key Employee Retention Plan (the "**KERP**"), as described in the Second Williams Affidavit, an unredacted copy of which is attached as the Confidential Exhibit to the Second Williams Affidavit, is hereby approved and the Applicants are authorized to make payments contemplated thereunder in accordance with the terms and conditions of the KERP.

43. ~~42.~~ **THIS COURT ORDERS** that payments made by the Applicants pursuant to this Order do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

44. ~~43.~~ **THIS COURT ORDERS** that the key employees referred to in the KERP (the "**Key Employees**") shall be entitled to the benefit of and are hereby granted a charge on the Property (the "**KERP Charge**"), which charge shall not exceed an aggregate amount of $218,500 to secure any payments to the Key Employees under the KERP. The KERP Charge shall have the priority set out in paras ~~44~~45 and ~~46~~47 herein.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

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

First – Administration Charge (to the maximum amount of $850,000);

Second – DIP Lender's Charge (to the maximum amount of the DIP Obligations at the relevant time);

Third – Director's Charge (to the maximum amount of $3 million); and

Fourth – KERP Charge (to the maximum amounts of $218,500).

46. ~~45.~~ **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.

47. ~~46.~~ **THIS COURT ORDERS** that each of the Charges shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, "**Encumbrances**") in favour of any Person except that the DIP Lender's Charge, Director's Charge, and KERP Charge will rank subordinate to any and all amounts owed to BMO under the BMO Credit Agreement (as defined in the Initial Williams Affidavit); provided that the Charges shall rank behind Encumbrances in favour of any Person that has not been served with notice of this Application. The Applicants and the beneficiaries of the Charges (collectively, the "**Chargees**") shall be entitled to seek priority ahead of such Encumbrances on a subsequent motion on notice to those Persons likely to be affected thereby.

48. ~~47.~~ **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 and the Chargees, or further Order of this Court.

49. ~~48.~~ **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 and/or the DIP Lender thereunder shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to the BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "**Agreement**") which binds 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 Definitive Documents shall create or be deemed to constitute a breach by any of the Applicants of any Agreement to which the applicable Applicant 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 Definitive Documents, 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 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.

50. ~~49.~~ **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

51. ~~50.~~ **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 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 or by electronic

message to the e-mail addresses as last shown in the Applicants' records, a notice to every known creditor who has a claim against any of the Applicants of more than $1,000, and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder; provided that the Monitor shall not be required to make the claims, names and addresses of individual creditors publicly available unless otherwise ordered by this Court.

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

53. ~~52.~~ **THIS COURT ORDERS** that the Monitor shall create, maintain and update as necessary a list of all Persons appearing in person or by counsel in this proceeding (the "**Service List**"). The Monitor shall post the Service List, as may be updated from time to time, on the Monitor's Website, provided that the Monitor shall have no liability in respect of the accuracy of or the timeliness of making any changes to the Service List.

54. ~~53.~~ **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Applicants and the Monitor 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 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 or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

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

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

SEALING PROVISION

56. ~~55.~~ **THIS COURT ORDERS** that the Confidential Exhibit to the Second Williams Affidavit is hereby sealed and kept confidential pending further Order of the Court and shall not form part of the public record.

GENERAL

57. ~~56.~~ **THIS COURT ORDERS** that the Applicants, the Monitor, BMO 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 their respective powers and duties hereunder.

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

59. ~~58.~~ **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.

60. ~~59.~~ **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.

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

62. ~~61.~~ **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 any need for entry and filing.

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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 2675970 ONTARIO INC. et al.

Court File No. CV-24-00726584-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceedings commenced at Toronto

FURTHER AMENDED AND RESTATED INITIAL ORDER

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Summary report: **Litera Compare for Word 11.5.0.74 Document comparison done on 9/12/2024 1:17:36 PM**	
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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 2675970 ONTARIO INC. et al.
Applicants

Court File No. CV-24-00726584-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceedings commenced at Toronto

MOTION RECORD OF THE APPLICANTS
(returnable September 18, 2024)

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