

**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  
(CCAA Comeback Hearing)  
(Returnable September 6, 2024)**

September 3, 2024

**RECONSTRUCT LLP**

Richmond-Adelaide Centre  
120 Adelaide Street West, Suite 2500  
Toronto, ON M5H 1T1

**Caitlin Fell** LSO No. 60091H  
Tel: 416.613.8282  
Email: [cfell@reconllp.com](mailto:cfell@reconllp.com)

**Sharon Kour** LSO No. 58328D  
Tel: 416.613.8288  
Email: [skour@reconllp.com](mailto:skour@reconllp.com)

**Jessica Wuthmann** LSO No. 72442W  
Tel: 416.613.8288  
Email: [jwuthmann@reconllp.com](mailto:jwuthmann@reconllp.com)

Fax: 416.613.8290

**Lawyers for the Applicants**

**TO: THE SERVICE LIST**

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LABRADOR INC.**

**SERVICE LIST  
(as at September 3, 2024)**

<b>RECONSTRUCT LLP</b> Richmond-Adelaide Centre 120 Adelaide Street West, Suite 2500 Toronto, ON M5H 1T1  <b>Caitlin Fell</b> <a href="mailto:cfell@reconllp.com">cfell@reconllp.com</a> Tel: 416.613.8282  <b>Sharon Kour</b> <a href="mailto:skour@reconllp.com">skour@reconllp.com</a> Tel: 416.613.8288  <b>Jessica Wuthmann</b> <a href="mailto:jwuthmann@reconllp.com">jwuthmann@reconllp.com</a> Tel: 416.613.8283  <b>Counsel to the Applicant Companies</b>	<b>ALVAREZ &amp; MARSAL CANADA INC.</b> Royal Bank Plaza, South Tower 200 Bay Street, Suite 3501 Toronto, ON M5J 2J1  <b>Josh Nevsky</b> <a href="mailto:jnevsky@alvarezandmarsal.com">jnevsky@alvarezandmarsal.com</a> Tel: 416.847.5161  <b>Skylar Rushton</b> <a href="mailto:srushton@alvarezandmarsal.com">srushton@alvarezandmarsal.com</a> Tel: 416.436.6652  <b>Mitchell Binder</b> <a href="mailto:mbinder@alvarezandmarsal.com">mbinder@alvarezandmarsal.com</a> Tel: 416.847.5202  <b>The Monitor</b>
---	---

<p><b>STIKEMAN ELLIOTT LLP</b> 5300 Commerce Court West, 199 Bay St. Toronto, ON M5L 1B9</p> <p><b>Maria Konyukhova</b> <a href="mailto:mkonyukhova@stikeman.com">mkonyukhova@stikeman.com</a> Tel: 416.869.5230</p> <p><b>Lee Nicholson</b> <a href="mailto:leenicholson@stikeman.com">leenicholson@stikeman.com</a> Tel: 416.869.5604</p> <p><b>Rania Hammad</b> <a href="mailto:rhammad@stikeman.com">rhammad@stikeman.com</a> Tel: 416.869.5578</p> <p><b>Counsel to the Monitor</b></p>	
<b>SECURED PARTIES</b>	
<p><b>OSLER, HOSKIN &amp; HARCOURT LLP</b> 1 First Canadian Place 100 King St West, Suite 6200 P.O. Box 50 Toronto, ON M5X 1B8</p> <p><b>Mark Wasserman</b> <a href="mailto:mwasserman@osler.com">mwasserman@osler.com</a> Tel: 416.862.4908</p> <p><b>Martino Calvaruso</b> <a href="mailto:mcalvaruso@osler.com">mcalvaruso@osler.com</a> Tel: 416.862.6665</p> <p><b>Counsel to TS Investments Corp.</b></p>	<p><b>AIRD &amp; BERLIS LLP</b> Brookfield Place 181 Bay Street, Suite 1800 Toronto, ON M5J 2T9</p> <p><b>Kyle Plunkett</b> <a href="mailto:kplunkett@airdberlis.com">kplunkett@airdberlis.com</a> Tel: 416.865.3406</p> <p><b>Steven Graff</b> <a href="mailto:sgraff@airdberlis.com">sgraff@airdberlis.com</a> Tel: 416.865.7726</p> <p><b>Adrienne Ho</b> <a href="mailto:aho@airdberlis.com">aho@airdberlis.com</a> Tel: 416.637.980</p> <p><b>Lawyers for Bank of Montreal</b></p>
<p><b>DAK CAPITAL INC.</b> PO BOX 310, Edmonton Main Edmonton, AB T5J 2J6</p>	
<b>UNSECURED PARTIES</b>	
<p><b>CASSELS BROCK &amp; BLACKWELL LLP</b> Bay Adelaide Centre – North Tower 40 Temperance St, Suite 3200 Toronto, ON M5H 0B4</p> <p><b>Natalie Levine</b> <a href="mailto:nlevine@cassels.com">nlevine@cassels.com</a> Tel: 416.860.6568</p>	<p><b>CANOPY GROWTH CORPORATION</b> 1 Hershey Drive Smith Falls, ON K7A 0A8</p>

<b>Colin Pendrith</b> <a href="mailto:cpendrith@cassels.com">cpendrith@cassels.com</a> Tel: 416.860.6765  <b>Lawyers for Canopy Growth Corporation</b>	
<b>LANDLORDS</b>	
<b>CAMELINO GALESSIERE LLP</b> 65 Queen St W, Suite 440 Toronto, ON M5H 2M5  <b>Linda Galessiere</b> <a href="mailto:lgalessiere@cglegal.ca">lgalessiere@cglegal.ca</a> Tel: 416.306.3827  <b>Counsel for RioCan, SmartCentres, Morguard, and Salthill (for PTC Ownership Inc.)</b>	<b>PRIMARIS REIT</b> Brookfield Place 181 Bay St, Suite 2720 Toronto, ON M5J 2T3  <b>Elina Towie</b> <a href="mailto:etowie@primarisreit.com">etowie@primarisreit.com</a> Tel: 416.642.7819
<b>TORYS LLP</b> 79 Wellington St W, Suite 3300 Toronto, ON M5K 1N2  <b>David Bish</b> <a href="mailto:dbish@torys.com">dbish@torys.com</a> Tel: 416.865.7353  <b>Counsel for The Cadillac Fairview Corporation Limited and its affiliates</b>	<b>MILLER THOMSON LLP</b> One London Place 255 Queens Avenue, Suite 2010 London, ON N6A 5R8  <b>Tony Van Klink</b> <a href="mailto:tvanklink@millerthomson.com">tvanklink@millerthomson.com</a> Tel: 519.931.3509  <b>Counsel to Rock Developments (St. Thomas) Inc.</b>
<b>DAOUST VUKOVICH LLP</b> 20 Queen Street West, Suite 3000 Toronto, ON M5H 3R3  <b>Brian Parker</b> <a href="mailto:bparker@dv-law.com">bparker@dv-law.com</a> Tel: 416.591.3036  <b>Gasper Galati</b> <a href="mailto:ggalati@dv-law.com">ggalati@dv-law.com</a> Tel: 416.598.7050	
<b>OTHER</b>	
<b>NATIONAL CANNABIS DISTRIBUTION</b> 6th Floor 905 West Pender St Vancouver, BC V6C 1L6  <b>Kelly Abbott</b> <a href="mailto:kelly@ncdcanada.ca">kelly@ncdcanada.ca</a> Tel: 778.237.5212	

GOVERNMENT ENTITIES	
<b>HEALTH CANADA</b> Controlled Substances and Cannabis Branch 150 Tunney's Pasture Driveway Ottawa, ON K1A 0K9  <b>Licensing and Security Division</b> <a href="mailto:licensing-cannabis-licenses@hc-sc.gc.ca">licensing-cannabis-licenses@hc-sc.gc.ca</a>  <b>Collections</b> <a href="mailto:collections-recouvrement@hc-sc.gc.ca">collections-recouvrement@hc-sc.gc.ca</a>	<b>CANADA REVENUE AGENCY</b> 1 Front Street West Toronto, ON M5J 2X6  <b>Pat Confalone</b> <a href="mailto:pat.confalone@cra-arc.gc.ca">pat.confalone@cra-arc.gc.ca</a> Tel: 416.954.6514 Fax: 416.964.6411
<b>ATTORNEY GENERAL OF CANADA</b> Department of Justice Canada Ontario Regional Office, Tax Law Section 120 Adelaide Street West, Suite 400 Toronto, ON M5H 1T1  <a href="mailto:AGC-PGC.Toronto-Tax-Fiscal@justice.gc.ca">AGC-PGC.Toronto-Tax-Fiscal@justice.gc.ca</a> Fax: 416.973.0810	<b>MINISTRY OF FINANCE (ONTARIO)</b> Legal Services Branch 777 Bay Street, 11th Floor Toronto, ON M5G 2C8  <a href="mailto:insolvency.unit@ontario.ca">insolvency.unit@ontario.ca</a>
<b>ALCOHOL AND GAMING COMMISSION OF ONTARIO</b> 90 Sheppard Avenue East Suite 200-300 Toronto, ON M2N 0A4  <a href="mailto:customer.service@agco.ca">customer.service@agco.ca</a>	<b>ALBERTA MINISTRY OF JUSTICE</b> Bowker Building 2nd Floor - 9833 109 Street NW Edmonton, AB T5K 2E8  <a href="mailto:jsq.servicehmk@gov.ab.ca">jsq.servicehmk@gov.ab.ca</a> Tel: 780.427.2711
<b>GOVERNMENT OF NEWFOUNDLAND &amp; LABRADOR</b> Health and Community Services P.O. Box 8700 1st Floor, West Block, Confederation Building St. John's, NL A1B 4J6	<b>NEWFOUNLAND AND LABRADOR LIQUOR CORPORATION (NLC)</b> PO Box 8750, Station A 90 Kenmount Road St. John's, NL A1B 3V1  <a href="mailto:info@nliquor.com">info@nliquor.com</a>
<b>NEWFOUNDLAND &amp; LABRADOR DEPARTMENT OF FINANCE</b> P.O. Box 8700 Main Floor, East Block Confederation Building St. John's, NL A1B 4J6	<b>LIQUOR, GAMING &amp; CANNABIS AUTHORITY OF MANITOBA</b> 1055 Milt Stegall Drive Winnipeg, MB R3G 0Z6  <a href="mailto:audit@LGCamb.ca">audit@LGCamb.ca</a>
<b>GOVERNMENT OF MANITOBA DEPARTMENT OF FINANCE TAXATION DIVISION</b> 101 - 401 York Avenue Winnipeg, MB R3C 0P8	<b>SASKATCHEWAN LIQUOR AND GAMING AUTHORITY</b> PO Box 5054 2500 Victoria Ave. Regina, SK S4P 3M3  <a href="mailto:inquiry@slga.com">inquiry@slga.com</a>

<b>SASKATCHEWAN FINANCE</b> 2350 Albert Street Regina, SK S4P 4A6	
---	--

### Email List

[cfell@reconllp.com](mailto:cfell@reconllp.com); [skour@reconllp.com](mailto:skour@reconllp.com); [jwuthmann@reconllp.com](mailto:jwuthmann@reconllp.com);  
[jnevsky@alvarezandmarsal.com](mailto:jnevsky@alvarezandmarsal.com); [srushton@alvarezandmarsal.com](mailto:srushton@alvarezandmarsal.com);  
[mbinder@alvarezandmarsal.com](mailto:mbinder@alvarezandmarsal.com); [leenicholson@stikeman.com](mailto:leenicholson@stikeman.com); [mkonyukhova@stikeman.com](mailto:mkonyukhova@stikeman.com);  
[rhammad@stikeman.com](mailto:rhammad@stikeman.com); [mwasserman@osler.com](mailto:mwasserman@osler.com); [mcalvaruso@osler.com](mailto:mcalvaruso@osler.com);  
[kplunkett@airdberlis.com](mailto:kplunkett@airdberlis.com); [sgraff@airdberlis.com](mailto:sgraff@airdberlis.com); [aho@airdberlis.com](mailto:aho@airdberlis.com); [nlevine@cassels.com](mailto:nlevine@cassels.com);  
[cpendrith@cassels.com](mailto:cpendrith@cassels.com); [lgalessiere@cglegal.ca](mailto:lgalessiere@cglegal.ca); [etowie@primarisreit.com](mailto:etowie@primarisreit.com); [dbish@torys.com](mailto:dbish@torys.com);  
[bparker@dv-law.com](mailto:bparker@dv-law.com); [ggalati@dv-law.com](mailto:ggalati@dv-law.com); [tvanklink@millerthomson.com](mailto:tvanklink@millerthomson.com);  
[kelly@ncdcanada.ca](mailto:kelly@ncdcanada.ca); [licensing-cannabis-licenses@hc-sc.gc.ca](mailto:licensing-cannabis-licenses@hc-sc.gc.ca)  
[collections-recouvrement@hc-sc.gc.ca](mailto:collections-recouvrement@hc-sc.gc.ca);  
[pat.confalone@cra-arc.gc.ca](mailto:pat.confalone@cra-arc.gc.ca); [AGC-PGC.Toronto-Tax-Fiscal@justice.gc.ca](mailto:AGC-PGC.Toronto-Tax-Fiscal@justice.gc.ca)  
[insolvency.unit@ontario.ca](mailto:insolvency.unit@ontario.ca); [customer.service@agco.ca](mailto:customer.service@agco.ca)  
[jsg.servicehmk@gov.ab.ca](mailto:jsg.servicehmk@gov.ab.ca); [info@nliquor.com](mailto:info@nliquor.com)  
[audit@LGCAmb.ca](mailto:audit@LGCAmb.ca); [inquiry@slga.com](mailto:inquiry@slga.com)

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LABRADOR INC.**

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# TAB 1

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

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LABRADOR INC.**

**NOTICE OF MOTION  
(CCAA Comeback Hearing)**

The Applicants, 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 **Friday, September 6, 2024 at 8:30 a.m. (ET)**, or as soon after that time as the motion can be heard by judicial videoconference via Zoom at Toronto, Ontario.

**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;

☒ **By video conference.**

Zoom Link :

<https://ca01web.zoom.us/j/61804264297?pwd=MEpzRUtlUVB0UGc4eStsVGNTYmkxUT09#success>

Meeting ID : 618 0426 4297

Passcode : 057603

#### THE MOTION IS FOR:

1. an amended and restated initial order (the “**ARIO**”) pursuant to the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”), substantially in the form attached hereto as **Tab 3** to the Motion Record, which ARIO amends and restates the Initial Order made by the Court in this proceeding on August 28, 2024 (the “**Initial Order**”) and, among other things:
  - (a) abridges the time for service of the motion and dispenses with service on any other person other than those served;
  - (b) extends the period in which any proceedings and remedies that might be taken against or in respect of the Applicants and any of their assets, property, and undertakings (“**Property**”) or business, or their directors and officers (the “**D&Os**”) from September 7, 2024 to December 6, 2024 (the “**Stay Period**”);
  - (c) increases the permitted borrowings under the DIP facility term sheet dated August 27, 2024 (the “**DIP Term Sheet**”) between the Applicants and TS Investments Corp. (the “**DIP Lender**”) from the maximum principal amount of

\$3.3 million to \$8 million plus interest, costs and fees payable in accordance with the DIP Term Sheet;

- (d) increases the amount of the priority charges against the Property as follows:
  - (i) the “**Administration Charge**” - which is 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 – from \$400,000 to \$850,000;
  - (ii) the “**DIP Lender’s Charge**”, which is security for the Applicants’ obligations under the DIP Term Sheet, from the maximum principal amount of \$3.3 million to \$8 million plus interest, fees and expenses; and
  - (iii) a “**Directors’ Charge**”, which is security for the Applicants’ obligation to indemnify the D&Os from obligations and liabilities they may incur in that capacity after the granting of the Initial Order, except for gross negligence or willful misconduct, from \$2.25 million to \$3 million;
- (e) approves a Key Employee Retention Plan (the “**KERP**”) and authorizing the Applicants to make payment in accordance with the terms of the KERP;
- (f) grants a priority charge against the Property of the Applicants in favour of the proposed KERP beneficiaries as security for payments under the KERP in the aggregate amount of \$218,500 (the “**KERP Charge**”);
- (g) seals Confidential Exhibit “1” to the Affidavit of Andrew Williams sworn September 3, 2024 (the “**Williams Affidavit**”), which is Schedule ‘A’ to the KERP;
- (h) increases the maximum amount that the Applicants can pay certain critical suppliers for pre-filing amounts; and

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

## THE GROUNDS FOR THE MOTION ARE:

### Background

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” as well as maintain an online platform for direct-to-consumer cannabis sales and deliveries (“**Tokyo Smoke**” or 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 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, as well as an e-commerce platform. The majority of the retail stores are located in Ontario, with other locations in Saskatchewan, Manitoba, and Newfoundland and Labrador. The Applicants also employ 474 employees across Canada.
6. 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.

7. 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 Initial Order.
8. 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 up to September 6, 2024;
  - (c) approved the DIP Term Sheet, pursuant to which the Applicants were permitted to borrow an initial amount of \$3.3 million was advanced during the 10-day initial Stay Period (the “**Initial DIP Advance**”);
  - (d) extended the stay of proceedings to certain of the Applicants’ affiliates;
  - (e) granted the Administration Charge (to the maximum amount of \$400,000), the DIP Lender’s Charge (in the maximum principal amount of the Initial DIP Advance plus interest, fees and cost), and the Directors’ Charge (in the maximum amount of \$2.25 million);
  - (f) 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;
  - (g) authorized the Applicants to pay post-filing interest due to the Bank of Montreal (“**BMO**”); and

- (h) authorized the Applicants to continue to use the Cash Management System (as defined in the Initial Order).
9. The Applicants commenced these CCAA proceedings to, among other things, achieve a comprehensive operational and financial restructuring plan that includes the implementation of a sale and investment solicitation process (“**SISP**”), streamlining of operations, and restructuring unprofitable segments of the Business.
10. The Monitor supports the Applicants’ requested relief.

### **Extension of the Stay Period**

11. The Initial Order granted a Stay Period to and including September 6, 2024. The Applicants seek an extension of the Stay Period to and including December 6, 2024. The extension of the Stay Period is necessary and appropriate to allow the Applicants to continue implementing operational restructuring steps, to finalize and implement the SISP, and to protect the going-concern nature and value of the Business.
12. The Applicants have acted and will continue to act with good faith and with due diligence.
13. Since the granting of the Initial Order, among other things, the Applicants have reached out to various suppliers and employees and worked on preparing the SISP and negotiating a corresponding stalking horse agreement with the DIP Lender.
14. The Applicants have also sent various disclaimers for retail stores, franchise agreements, and their head office in order to preserve the Applicants’ liquidity during the CCAA proceedings and decrease operational costs in the long-term.
15. The cash flow statement prepared by the Applicants and reviewed by the Monitor (the “**Cash Flow Projection**”) demonstrates that the Applicants have sufficient liquidity to

operate through the proposed Stay Period (subject to obtaining the necessary advances under the DIP Term Sheet).

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

#### **Increased Borrowings under the DIP Term Sheet and Increased DIP Lender's Charge**

17. 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.
18. The Applicants seek to increase the permitted borrowings under the DIP Term Sheet and the quantum of the DIP Lender's Charge to \$8 million, plus interest and fees. Such increase corresponds to the forecasted interim financing needs of the Applicants over the extended Stay Period in accordance with the Cash Flow Projection.
19. 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 CCAA proceeding, all of which is in the interest of stakeholders.
20. The Monitor supports the Applicants' request for an increase of the permitted borrowings and DIP Lender's Charge to the maximum principal amount of \$8 million.

#### **Increased Amount of the Administration Charge**

21. The Applicants seek to increase the Administration Charge from \$400,000 to \$850,000, which increase corresponds to the additional work to be undertaken by the restructuring professionals during the extended Stay Period, as reflected in the Cash Flow Projection.

22. The Administration Charge will allow the Applicants to have continuous access to critical accounting and legal advice during the Stay Period, including to finalize the SISP and assist in restructuring initiatives.
23. The Monitor and the DIP Lender support the increased quantum of the Administration Charge which is fair and reasonable in the circumstances.

#### **Increased Amount of the Directors' Charge**

24. The Applicants seek to increase Director's Charge from \$2.25 million to \$3 million to reflect the potential director liabilities as sized with the assistance of the Monitor.
25. The Directors' Charge is reasonable and necessary to ensure the continued participation of the D&Os in the Business and the CCAA proceeding. The D&Os are critical to the Applicants' Business and the CCAA proceeding given their irreplaceable knowledge of the cannabis retail industry and the Applicants' Business.
26. The Monitor and the DIP Lender support the increased quantum of the Directors' Charge.

#### **KERP and KERP Charge**

27. The Applicants have developed a KERP, with input from the Monitor, to facilitate and encourage the continued participation of certain key employees ("**Key Employees**") in the Business and the restructuring for the pendency of these CCAA proceedings.
28. At this critical time, stability is paramount. The loss of any member of the Key Employees would have a material adverse effect on the Applicants' operations and the success of the restructuring process.

29. The Applicants believe that, without the KERP, there is a material risk that the Key Employees would seek alternative employment. The Key Employees have specialized management skills that cannot be easily replicated or replaced.
30. The terms of the KERP were developed in consultation with the Monitor. The KERP provides for payments up to the aggregate amount of \$218,500 to the Key Employees, conditional on, among other things, the Key Employees remaining with the Applicants until the completion of a transaction under the SISP or Court approval of a plan of arrangement and maintaining acceptable performance levels. Those terms are fair, reasonable, and efficacious in the circumstances.
31. The KERP will be paid following the earlier of: (i) the completion of a transaction under the SISP, and (ii) Court approval of a plan of arrangement in the CCAA proceeding.
32. The Applicants seek a KERP Charge up to the maximum amount of \$218,500. The Applicants request that the KERP Charge rank behind the Administration Charge, any and all amounts owed to the BMO under the BMO Credit Agreement, the DIP Lender's Charge, and the Directors' Charge.
33. The Monitor and DIP Lender are supportive of the KERP and KERP Charge.

#### **Sealing of Confidential Exhibit**

34. Schedule "A" to the KERP (Confidential Exhibit "1" to the Williams Affidavit) includes the personal information of the beneficiaries of the KERP such as their name and the amounts they will receive under the KERP. It provides no benefit to publicly disclose the employees' confidential information. In contrast, it would be prejudicial to these employees if their compensation information was made public.

35. To protect the employees' confidential information, the Applicants seek an order sealing Confidential Exhibit "1" to this affidavit for a limited time until the end of this CCAA proceeding or further order of the Court.

#### **Other Grounds**

36. The provisions of the CCAA and the inherent and equitable jurisdiction of this Honourable Court.
37. 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,
38. Section 106 and 137 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended.
39. 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:**

40. the Affidavit of Andrew Williams, sworn August 28, 2024 and the exhibits annexed thereto;
41. the Affidavit of Andrew Williams, sworn September 3, 2024 and the exhibits annexed thereto;
42. the Pre-Filing Report of the Monitor dated August 27, 2024;
43. the First Report of the Monitor, to be filed; and
44. such further and other materials as counsel may advise and as this Honourable Court may permit.

September 3, 2024

**RECONSTRUCT LLP**

120 Adelaide Street West  
Suite 2500  
Toronto, ON M5H 1T1

**Caitlin Fell LSO No. 60091H**

Tel: 416.613.8282  
Email: cfell@reconllp.com

**Sharon Kour LSO No. 58328D**

Tel: 416.613.8288  
Email: skour@reconllp.com

**Jessica Wuthmann LSO No. 72442W**

Tel: 416.613.8288  
Email: jwuthmann@reconllp.com

Fax: 416.613.8290

**Lawyers for the Applicants**

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

Court File No. CV-24-00726584-0006<sup>821</sup>

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF  
2675970 ONTARIO INC., et al.

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

Proceedings commenced at Toronto

**NOTICE OF MOTION  
(CCAA COMEBACK HEARING)  
(RETURNABLE SEPTEMBER 6, 2024)**

**RECONSTRUCT LLP**  
120 Adelaide Street West  
Suite 2500  
Toronto, ON M5H 1T1

**Caitlin Fell** LSO No. 60091H  
Tel: 416.613.8282  
Email: cfell@reconllp.com

**Sharon Kour** LSO No. 58328D  
Tel: 416.613.8288  
Email: skour@reconllp.com

**Jessica Wuthmann** LSO No. 72442W  
Tel: 416.613.8288  
Email: jwuthmann@reconllp.com

**Lawyers for the Applicants**

# 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 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](mailto: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 SISF.

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 SISF 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 SISF, 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 SISF 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 3<sup>rd</sup> day of September, 2024, )  
 in accordance with O. Reg 431/20, )  
*Administering Oath or Declaration* )  
*Remotely.* )  
 )  
 )  
 )  
 )  
 )


DocuSigned by:  
  
 3A2B52A947404F3...

A Commissioner for taking Affidavits.  
 Name: Jessica Wuthmann

DocuSigned by:  
  
 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 3RD DAY OF SEPTEMBER 2024, IN  
ACCORDANCE WITH O. REG 431/20, *ADMINISTERING OATH OR DECLARATION*  
*REMOTELY*



-----  
A COMMISSIONER FOR TAKING AFFIDAVITS  
JESSICA WUTHMANN  
LSO# 72442W

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

THE HONOURABLE	)	WEDNESDAY, THE 28 <sup>TH</sup>
	)	
JUSTICE CAVANAGH	)	DAY OF AUGUST, 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**")

**INITIAL ORDER**

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

**ON READING** the affidavit of Andrew Williams sworn August 28, 2024 and the Exhibits thereto (the "**Williams Affidavit**"), and the pre-filing report of Alvarez & Marsal Canada Inc. ("**A&M**"), in its capacity as proposed monitor of the Applicants (the "**Monitor**"), dated August 27, 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 A&M, 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 appearing for any other person although duly served as appears from the affidavit of

service of Jessica Wuthmann sworn August 28, 2024, and on reading the consent of A&M to act as the Court-appointed Monitor,

### **SERVICE**

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

### **APPLICATION**

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

### **POSSESSION OF PROPERTY AND OPERATIONS**

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

4. **THIS COURT ORDERS** that the Applicants shall be entitled to continue to utilize the central cash management system currently in place as described in the 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 any plan of arrangement or compromise under the CCAA with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.

5. **THIS COURT ORDERS** that the Applicants, 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 date of this Order:

- (a) all outstanding and future wages, salaries, employee and pension benefits, vacation pay and other employee related expenses payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements;
- (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 date of this Order up to a maximum aggregate amount of \$330,000 if, in the opinion of the Applicants following consultation with the Monitor, such payment is necessary or desirable during these proceedings.

6. **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 this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

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

- (b) payment for goods or services actually supplied to the Applicants on or following the date of this Order.

7. **THIS COURT ORDERS** that the Applicants shall remit, in accordance with legal requirements, or pay:

- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, and (iii) income taxes;
- (b) all goods and services or other applicable sales taxes (collectively, "**Sales Taxes**") required to be remitted by the Applicants in connection with the sale of goods and services by the Applicants, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order; and
- (c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the Applicants.

8. **THIS COURT ORDERS** that until a real property lease is disclaimed in accordance with the CCAA, the Applicants shall pay all amounts constituting rent or payable as rent under real property leases (including common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under the lease) or as otherwise may be negotiated between the applicable Applicant and the landlord from time to time ("**Rent**"), for the period commencing from and including the date of this Order, twice-monthly in equal payments on the first and fifteenth day of each month, in advance (but not in arrears). On the date of the first of such payments, any Rent relating to the period commencing from and including the date of this Order shall also be paid.

9. **THIS COURT ORDERS** that, except as specifically permitted herein, 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 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**

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

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

11. **THIS COURT ORDERS** that the Applicants shall provide each of the relevant landlords with notice of the Applicants' intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Applicants' entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Applicants, or by further Order of this Court upon application by the Applicants on at least two (2) days notice to such landlord and any such secured creditors. If 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.

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

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

13. **THIS COURT ORDERS** that until and including September 7, 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**

14. **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**

15. **THIS COURT ORDERS** that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "**Persons**" and each being a "**Person**") against or in respect of the Applicants, 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**

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

## **NO PRE-FILING VS POST-FILING SET-OFF**

17. **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 date hereof with any amounts that are or may become due from the Applicants in respect of obligations arising on or after the date of this Order; or (b) are or may become due from the Applicants in respect of obligations arising prior to the date hereof with any amounts that are or may become due to the Applicants in respect of obligations arising on or after the date of this Order, in each case without the consent of the Applicants and the Monitor, or leave of this Court.

## **CONTINUATION OF SERVICES**

18. **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 date of this Order 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**

19. **THIS COURT ORDERS** that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the Applicants. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

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

20. **THIS COURT ORDERS** that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of any of the Applicants with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of 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.

### **DIRECTOR'S AND OFFICER'S INDEMNIFICATION AND CHARGE**

21. **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.

22. **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 "**Director's Charge**") on the Property, which charge shall not exceed an aggregate amount of \$2.25 million, as security for the indemnity provided in paragraph 21 of this Order. The Directors' Charge shall have the priority set out in paragraphs 40 and 42 herein.

23. **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 21 of this Order.

#### **APPOINTMENT OF MONITOR**

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

25. **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) 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;
- (f) 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
- (g) perform such other duties as are required by this Order or by this Court from time to time.

26. **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.

27. **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.

28. **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.

29. **THIS COURT ORDERS** that, in addition to the rights and protections afforded to the Monitor under the CCAA or as an officer of this Court, 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.

30. **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 date of this Order. 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.

31. **THIS COURT ORDERS** that the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

32. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor, and the Applicants' counsel shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on the Property, which charge shall not exceed an aggregate amount of \$400,000, 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 40 and 42 hereof.

#### **DIP FINANCING**

33. **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 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 \$3.3 million plus interest, fees and expenses, unless permitted by further Order of this Court (the "**DIP Facility**").

34. **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.

35. **THIS COURT ORDERS** that the Applicants are hereby authorized and empowered to execute and deliver such credit agreements, mortgages, charges, hypothecs and security documents, guarantees and other definitive documents (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.

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

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

- (a) the DIP Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP Lender's Charge or any of the Definitive Documents;
- (b) upon the occurrence of an event of default under the Definitive Documents or the DIP Lender's Charge, the DIP Lender 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.

38. **THIS COURT ORDERS** that the DIP Lender and BMO shall be treated as unaffected in any plan of arrangement or compromise 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 Williams Affidavit).

39. **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.

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

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

First – Administration Charge (to the maximum amount of \$400,000);

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

Third – Director's Charge (to the maximum amount of \$2.25 million).

41. **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.

42. **THIS COURT ORDERS** that each of the Charges shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, "**Encumbrances**") in favour of any Person except that the DIP Lender's Charge and Director's Charge will rank subordinate to any and all amounts owed to the BMO under the BMO Credit Agreement (as defined in the 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, including without limitation, on the Comeback Date (as hereinafter defined), on notice to those Persons likely to be affected thereby.

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

44. **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.

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

#### **SERVICE AND NOTICE**

46. **THIS COURT ORDERS** that the Monitor shall (i) without delay, publish in *The Globe and Mail* (National Edition) a notice containing the information prescribed under the CCAA, 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.

47. **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the "**Protocol**") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List

website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL: [www.alvarezandmarsal.com/TokyoSmoke](http://www.alvarezandmarsal.com/TokyoSmoke) (the “**Monitor’s Website**”).

48. **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.

49. **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.

50. **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).

**COMEBACK MOTION**

51. **THIS COURT ORDERS** that the comeback motion shall be heard by a judge of the Ontario Superior Court of Justice (Commercial List) on September 6, 2024 at 8:30 a.m. (the “**Comeback Date**”).

**GENERAL**

52. **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.


53. **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.

54. **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.

55. **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.

56. **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.

57. **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

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF 2675970 ONTARIO INC. et al.

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

Proceedings commenced at Toronto

**INITIAL ORDER**

**RECONSTRUCT LLP**  
120 Adelaide Street West  
Suite 2500  
Toronto, ON M5H 1T1

**Caitlin Fell** LSO No. 60091H  
Tel: 416.613.8282  
Email: cfell@reconllp.com

**Sharon Kour** LSO No. 58328D  
Tel: 416.613.8288  
Email: skour@reconllp.com

**Jessica Wuthmann** LSO No. 72442W  
Tel: 416.613.8288  
Email: jwuthmann@reconllp.com

Fax: 416.613.8290

**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 3RD DAY OF SEPTEMBER 2024, IN  
ACCORDANCE WITH O. REG 431/20, *ADMINISTERING OATH OR DECLARATION*  
*REMOTELY*



-----  
A COMMISSIONER FOR TAKING AFFIDAVITS  
JESSICA WUTHMANN  
LSO# 72442W



ONTARIO SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

**COUNSEL/ENDORSEMENT SLIP**

**COURT FILE NO.: TBA**

**DATE RELEASED:**

**NO. ON LIST: 4**

**TITLE OF PROCEEDING: In the Matter of the CCAA of 2675970 Ontario Limited et al.**

**BEFORE: JUSTICE CAVANAGH**

**PARTICIPANT INFORMATION**

**For Plaintiff, Applicant, Moving Party:**

Name of Person Appearing	Name of Party	Contact Info
Sharon Kour	Counsel for Applicant	skour@reconllp.com
Caitlin Fell	Counsel for Applicant	cfell@reconllp.com

**For Defendant, Respondent, Responding Party:**

Name of Person Appearing	Name of Party	Contact Info
Kyle Plunkett Samantha Hans	Counsel BMO	kplunkett@airdberlis.com shans@airdberlis.com

**For Other, Self-Represented:**

Name of Person Appearing	Name of Party	Contact Info
Josh Nevsky	Proposed Monitor	jnevsky@alvarezandmarsal.com
Rania Hammad Lee Nicholson	Counsel for Proposed Monitor	rhammad@stikeman.com leenicholson@stikeman.com
Andrew Williams	Affiant	awilliams@tyosmoke.ca
Martino Calvaruso	Counsel for DIP Lender (TS Investments Corp.)	mcalvaruso@osler.com

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## **ENDORSEMENT**

All defined terms used in this endorsement shall, unless otherwise defined, have the meanings ascribed to them in the Factum of the Applicants.

[1] The Applicants bring this application for an initial order pursuant to the *Companies' Creditors Arrangement Act*, as amended (the "CCAA").

[2] The Applicants primary third-party lender is Bank of Montreal ("BMO"). The Applicants have consulted with BMO in respect of this application. BMO supports the relief sought by the Applicants on this motion for an Initial Order but reserves its rights with respect to the comeback hearing.

[3] The Applicants own, operate, and franchise retail dispensaries in Canada selling cannabis products and accessories directly to consumers under the brand name "Tokyo Smoke"; they also maintained an online platform for direct-to-consumer cannabis sales and deliveries (the "Business"). The Applicants have 61 corporate retail locations and 29 franchised retail locations across Canada. The Applicants employ approximately 474 employees, not including those employees employed by franchisees.

[4] The Applicants have historically relied on financing to fund their working capital needs but can no longer sustain their operations without effecting an operational restructuring to streamline operations. In their materials, the Applicants explain that their insolvency has been brought on by changes in the licensing regime that have devalued cannabis retail licenses and saturated the market, downward price pressures on retail cannabis due to lack of product differentiation between retailers and the grey market and increased operating costs due to the general inflationary environment. The Applicants explain that these factors have suppressed revenues that made it challenging for the Applicants to continue to operate the Business without restructuring.

[5] The Applicants seek *CCAA* protection to allow them to effect an operational restructuring that would right-size their operations and allow their business to continue as a viable going concern. If granted the stay of proceedings and protections of the *CCAA*, the Applicants intend to, among other things:

- a. maintain operations for the benefit of most of their employees and other stakeholders;
- b. disclaim unfavourable leases and unprofitable franchise agreements;

- c. streamline the remaining operations with a view to generating positive cash flow and achieving long-term viability of the Business; and
- d. conduct a court-approved sale and investment solicitation process (“SISP”) with a court-approved stalking horse bid in order to maximize realization for their stakeholders.

[6] The facts in support of this application are set out in the Affidavit of Andrew Williams sworn August 20, 2024 and summarized in the Applicants’ Factum.

### **Application of the CCAA**

[7] I am satisfied that the Applicants are “debtor companies” as that term is defined under the *CCAA*. Pursuant to section 2 of the *CCAA*, a “debtor company” is defined as a company that is insolvent within the meaning of the *Bankruptcy and Insolvency Act*.

[8] In this respect, I accept the submissions made on behalf of the Applicants at paragraphs 53-59 of their Factum.

### **Is the relief sought reasonably necessary?**

[9] Pursuant to section 11.001 of the *CCAA*, the relief sought on an initial application is limited to what is reasonably necessary to continue the operations in the ordinary course during the initial stay period. The Applicants advise that they have worked closely with the Proposed Monitor to determine the necessary relief, including the size of the proposed charges, and have carefully considered whether the relief is necessary to protect the Applicants’ assets and operations, as well as in the interests of its creditors and stakeholders.

[10] I am satisfied that the Applicants seek only the relief necessary to maintain the Business during the initial stay period.

### **Do the Applicants require the protection of a stay of proceedings?**

[11] Under the *CCAA*, section 11.02, a Court may grant an Order staying all proceedings in respect of a debtor company for a period of not more than 10 days if the Court is satisfied that circumstances exist that make the order appropriate.

[12] A key purpose of the *CCAA* is to maintain the *status quo* to allow the debtor company the breathing room to deal with its liquidity issues, consult with stakeholders, and develop a viable restructuring plan with a view to continuing operations for the benefit of all stakeholders. The interests to be considered include those of employees, directors, and other parties doing business with the insolvent company.

[13] I am satisfied that the Applicants require the protection of a stay of proceedings to effect an operational restructuring, maintain the profitable segments of the Business, disclaim unfavourable leases and Franchise Agreements, and to negotiate and finalize a stalking horse agreement and SISP to be conducted with the approval of the Court. Without the protection of the *CCAA*, the Applicants would have to cease operating, which would be detrimental to the Applicants' landlords, franchisees, suppliers, customers, and hundreds of employees.

### **Should the stay be extended to the Non-Applicant Entities?**

[14] This Court has the authority to extend the stay of proceedings to the Non-Applicant Entities pursuant to section 11 and 11.02 (1) of the *CCAA*.

[15] In *Re JTI-Macdonald Corp.*, 2019 ONSC 1625, Hainey J., at para. 15, set out a number of factors that courts have considered in deciding whether to extend a stay of proceedings to non-applicant third parties. These factors are set out in the Applicants' Factum at paragraph 66.

[16] Here, the Non-Applicant Entities are direct subsidiaries of ParentCo, and their shares are assets of ParentCo. They hold, among other things, intellectual property used by the Applicants and are guarantors of certain of the Applicants' obligations to its secured creditors, BMO and TS Investments. While they are not Applicants under the *CCAA* and do not need to compromise any claims or effect a restructuring pursuant to the *CCAA*, I am satisfied that it would be disruptive to the *CCAA* proceeding if any party were to take steps against the Non-Applicant Entities. I am satisfied that the stay of proceedings should be extended over the Non-Applicant Entities during the *CCAA* proceeding.

### **Should the DIP Term Sheet and the DIP Lender's Charge be approved?**

[17] The Applicants are seeking approval of the DIP Facility and a DIP Lender's Charge over the Applicants' assets, property and undertaking in favour of the DIP Lender, to secure amounts borrowed by the Applicants under the terms of the DIP Facility. The proposed DIP Lender's Charge is to rank behind the Administration Charge and the existing security held by BMO, but above other liens, charges, and encumbrances.

[18] The Applicants are seeking to secure only the amount to be advanced under the DIP Facility and the initial 10-day stay period in accordance with section 11.2 (5) of the *CCAA*, which provides that a charge may be granted to secure the amount "reasonably necessary for the continued operations of the debtor company in the ordinary course of business" during the initial 10-day stay period.

[19] I have considered the factors set out in section 11.2 (4) of the *CCAA*. I am satisfied that these factors favour approval of the DIP Facility and the DIP Lender's Charge. The Monitor supports the Applicants' request for approval of the DIP Facility and the DIP Lender's Charge. I am satisfied that the DIP Facility and the DIP Lender's Charge are reasonably necessary in the circumstances.

## **Should the Administration Charge of the Directors' Charge be approved?**

[20] The Applicants request that this Court grant a super-priority administration charge (the "Administration Charge") to a maximum of \$400,000 for the initial 10-day stay period to secure the fees and disbursements of the Proposed Monitor, its counsel, and the Applicants' counsel. If the Initial Order granted, the Applicants anticipate seeking increases in the Administration Charge to a maximum amount of \$850,000 at the comeback hearing.

[21] Section 11.52 of the *CCAA* gives this Court jurisdiction to grant a priority charge for the fees and expenses of financial, legal, and other advisors or experts. The Proposed Monitor, its counsel, and the Applicants' counsel are essential to the *CCAA* proceedings.

[22] I am satisfied that the requested Administration Charge should be approved and granted.

[23] The Applicants propose a super-priority charge in favour of the directors of \$2.25 million to secure the Applicants' indemnity of their directors and officers ("Directors' Charge"). The Directors' Charge is proposed to rank behind the Administration Charge, BMO's existing security, and the DIP Lender's Charge. The Directors' Charge is intended to encourage directors and officers to continue to occupy their positions during the restructuring and provide reassurance that the company will hold directors harmless for any personal liability that they may incur by continuing to act as a director after the insolvency filing.

[24] Pursuant to section 11.51 of the *CCAA*, the Court is authorized to grant the Directors' Charge in the amount the Court considers appropriate, provided notice is given to the secured creditors who are likely to be affected by it.

[25] The Proposed Monitor is of the view that the charge is required, and it is reasonable in the circumstances.

[26] I accept that the Directors Charge and the Administration Charge are appropriately sized to reflect the Applicants' needs during the initial stay period.

## **Payment of Pre-Filing Obligations with approval of the Monitor**

[27] The requested Initial Order authorizes the Applicant to pay, with the consent of the Monitor, amounts owing for essential goods or services supplied to the Applicants prior to the date of the Initial Order, if in the opinion of the Monitor, the payment is necessary and appropriate up to the maximum amount of \$330,000 during the initial 10-day stay period.

[28] The court is empowered to grant such relief pursuant to its general jurisdiction under section 11 of the *CCAA*.

[29] The Applicants rely heavily on a small number of suppliers and contractors who provide highly regulated and specialized services and materials. To avoid disruption to the Business, the

Applicants seek the flexibility to make pre-filing payments as necessary to maintain the Business and avoid impairing their restructuring efforts. No payments of pre-filing amounts will be made without the consent of the Monitor.

[30] I am satisfied that the requested relief in this respect should be granted.

### **Disposition**

[31] I grant the Applicants' motion for an Initial Order. Order to issue in form of Order signed by me today.

[32] The comeback hearing will be held on Friday, September 6, 2024 8:30 a.m. by Zoom.

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 3RD DAY OF SEPTEMBER 2024, IN  
ACCORDANCE WITH O. REG 431/20, *ADMINISTERING OATH OR DECLARATION*  
*REMOTELY*



-----  
A COMMISSIONER FOR TAKING AFFIDAVITS  
JESSICA WUTHMANN  
LSO# 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 funds 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.

<b>ASSET</b>	<b>2023 FS (\$)</b>	<b>2024 FS (\$)</b>
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
<b>Total Assets</b>	<b>\$160,811,821</b>	<b>\$143,230,839</b>

## **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.

<b>LIABILITY</b>	<b>2023 FS (\$)</b>	<b>2024 FS (\$)</b>
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
<b>Total Liabilities</b>	<b>\$225,656,869</b>	<b>\$237,392,048</b>

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 Rescission Claims

124. Several franchisees have delivered notices of rescission under their respective Franchise Agreements. In connection with the rescission claims, the franchisees have claimed a total of approximately \$6 million in compensation under the Franchise Agreements. The rescission 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 rescission 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.

**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 3RD DAY OF SEPTEMBER 2024, IN  
ACCORDANCE WITH O. REG 431/20, *ADMINISTERING OATH OR DECLARATION*  
*REMOTELY*



-----  
A COMMISSIONER FOR TAKING AFFIDAVITS  
JESSICA WUTHMANN  
LSO# 72442W

# Tokyo Smoke Alters Retail Footprint to Align with Current Market and Regulatory Conditions



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NEWS PROVIDED BY

**Tokyo Smoke →**

Aug 28, 2024, 16:30 ET

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- *Company closing 29 retail locations*
- *Approximately 167 locations remain open and operating in the normal course, through its various retail programs, with no changes to online business or loyalty program*
- *Tokyo Smoke to pursue exit from CCAA protection as a stronger business, with more than 500 employees across Canada*

TORONTO, Aug. 28, 2024 /CNW/ - Tokyo Smoke ("Tokyo Smoke" or "the Company"), an award-winning cannabis retailer, announced today that it has commenced a restructuring of its business and has obtained an Initial Order (the "Initial Order") under the Companies' Creditors Arrangement Act (the "CCAA") from the Ontario Superior Court of Justice.

The Company has secured financing to continue operating in the normal course while it restructures its business, which includes adjusting its total retail footprint through the closing of 29 locations, with continued operation of approximately 167 locations across Ontario, Manitoba, Saskatchewan and Newfoundland and Labrador. This encompasses the Company's various retail programs and its medical cannabis business. Retail locations unaffected by the restructuring will continue to operate in the normal course with no disruption or change to the Company's online business or to The High Roller Club loyalty program.

Following a thorough review of all available options and alternatives, Tokyo Smoke commenced the restructuring to align its operations with current market and regulatory conditions, which have significantly changed since the initial licensing regimes in the provinces where Tokyo Smoke operates were introduced. The Company will pursue an exit from CCAA protection as a stronger business, better positioned to continue providing premium products to its customers over the long-term, while continuing to provide jobs to its more than 500 dedicated employees across Canada.

Reconstruct LLP is acting as legal advisors to Tokyo Smoke and Alvarez & Marsal Canada Inc. is acting as the CCAA Monitor. Additional information regarding the CCAA proceedings will be made available on the Monitor's website at [alvarezandmarsal.com/TokyoSmoke](http://alvarezandmarsal.com/TokyoSmoke).

## **About Tokyo Smoke**

Tokyo Smoke is an award-winning cannabis retailer committed to bringing Canadians the highest quality, regulated products online and across 61 convenient retail locations. Tokyo Smoke educates and empowers customers to make well-informed decisions about safe, high-quality cannabis products—curating unique offerings and product assortments that reflect Canadians' interests, neighbourhood by neighbourhood. The group operates approximately 167 locations in total across Ontario, Manitoba, Saskatchewan and Newfoundland and Labrador through its various retail programs.

Learn more at [TokyoSmoke.com](http://TokyoSmoke.com).

SOURCE Tokyo Smoke

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*REMOTELY*



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A COMMISSIONER FOR TAKING AFFIDAVITS  
JESSICA WUTHMANN  
LSO# 72442W

## Tokyo Smoke Group of Companies

## 15-Week Cash Flow Forecast ending December 6, 2024

Unaudited \$CAD 000's

Cash Flow Week:		Week 1	Week 2	Week 3	Week 4	Week 5	Week 6	Week 7	Week 8	Week 9	Week 10	Week 11	Week 12	Week 13	Week 14	Week 15	15-Week
Week Ending:		30-Aug-24	06-Sep-24	13-Sep-24	20-Sep-24	27-Sep-24	04-Oct-24	11-Oct-24	18-Oct-24	25-Oct-24	01-Nov-24	08-Nov-24	15-Nov-24	22-Nov-24	29-Nov-24	06-Dec-24	Total
Note																	
	<b>Receipts</b>	1	1,369	1,304	1,304	1,304	1,304	1,276	1,276	1,276	1,276	1,279	1,279	1,279	1,325	1,532	19,662
	<b>Disbursements</b>																
	Merchandise Payments	2	(856)	(815)	(765)	(765)	(765)	(748)	(760)	(760)	(760)	(800)	(800)	(800)	(800)	(864)	(11,817)
	Payroll & Benefits	3	-	(1,038)	-	(597)	-	(597)	-	(571)	-	(571)	-	(571)	-	(571)	(4,517)
	Rent	4	-	(1,268)	-	(60)	-	(606)	(50)	-	(606)	-	-	-	-	(606)	(3,194)
	Non-Merchandise Payments	5	(103)	(581)	(498)	(463)	(199)	(93)	(83)	(83)	(83)	(148)	(83)	(83)	(83)	(83)	(2,747)
	Professional Fees	6	(601)	(25)	(403)	(25)	(337)	(15)	(263)	(15)	(201)	(15)	(141)	(6)	(130)	(6)	(2,314)
	Proposed KERP	7	-	-	-	-	(570)	-	-	-	-	-	-	(358)	-	-	(928)
	BMO Financing Costs	8	-	(375)	-	-	-	(375)	-	-	-	(375)	-	-	-	(375)	(1,501)
	Sales Tax Remittances		(65)	(65)	(65)	(65)	(65)	(65)	(65)	(65)	(65)	(65)	(65)	(65)	(65)	(65)	(975)
	<b>Total Disbursements</b>		<b>(1,624)</b>	<b>(4,167)</b>	<b>(1,732)</b>	<b>(1,975)</b>	<b>(1,935)</b>	<b>(2,499)</b>	<b>(1,221)</b>	<b>(1,494)</b>	<b>(1,109)</b>	<b>(2,475)</b>	<b>(1,154)</b>	<b>(1,525)</b>	<b>(1,435)</b>	<b>(1,525)</b>	<b>(27,993)</b>
	<b>Non-Applicant Net Cash Flow</b>	9	68	3	46	75	126	34	47	76	127	24	46	75	126	46	949
	<b>Net Cash Flow</b>		<b>(188)</b>	<b>(2,859)</b>	<b>(381)</b>	<b>(596)</b>	<b>(505)</b>	<b>(1,188)</b>	<b>102</b>	<b>(142)</b>	<b>294</b>	<b>(1,175)</b>	<b>171</b>	<b>(171)</b>	<b>(31)</b>	<b>(154)</b>	<b>(7,382)</b>
	Opening Cash Balance		147	3,179	320	339	343	338	250	352	310	604	330	501	330	599	445
	Net Cash Flow		(188)	(2,859)	(381)	(596)	(505)	(1,188)	102	(142)	294	(1,175)	171	(171)	(31)	(154)	(560)
	DIP Facility Advance / (Paydown)	10	3,220	-	400	600	500	1,100	-	100	-	900	-	-	300	-	300
	<b>Ending Cash Balance</b>		<b>3,179</b>	<b>320</b>	<b>339</b>	<b>343</b>	<b>338</b>	<b>250</b>	<b>352</b>	<b>310</b>	<b>604</b>	<b>330</b>	<b>501</b>	<b>330</b>	<b>599</b>	<b>445</b>	<b>185</b>

**Tokyo Smoke Group of Companies**  
**15-Week Cash Flow Forecast ending December 6, 2024**  
**Assumptions**

**Disclaimer**

*In preparing this illustrative cash flow forecast (the “Forecast”), the Applicants have relied upon unaudited financial information and have not attempted to further verify the accuracy or completeness of such information. The Forecast reflects assumptions including those discussed below with respect to the requirements and impact of a potential filing in Canada under the Companies’ Creditors Arrangement Act (“CCAA”). Since the Forecast is based on assumptions about future events and conditions that are not ascertainable, the actual results achieved will vary from the Forecast, even if the assumptions materialize, and such variations may be material. There is no representation, warranty or other assurance that any of the estimates, forecasts or projections will be realized.*

*The Forecast is presented in thousands of Canadian dollars.*

- Note 1      Receipts**  
Includes receipts from the sale of cannabis and accessories through the Applicants' retail and online store network, and the collection of franchise fees.
- Note 2      Merchandise Vendors**  
Merchandise purchases are forecast to replenish inventory levels at the Applicants' 40 store locations that are continuing operations. Inventory at closing stores is forecast to be transferred to go-forward stores after the issuance of a lease disclaimer.
- Note 3      Payroll & Benefits**  
Payroll & benefits include normal course salaries, wages, remittances and employee benefits for salaried and part-time employees across the Applicants' operating Corporate Stores and head office. Payroll & benefits for terminated salaried and part-time employees are included for the wind-down period for the respective store only.
- Note 4      Rent**  
Rent includes disbursements for 40 store locations that are continuing operations and rents to be paid during the wind-down period for the head office and stores that are intended to be disclaimed. Disbursements are inclusive of monthly rent, CAM and utilities. As described in the Proposed Monitor's Pre-Filing Report, rent payments at certain Vacant Stores have not been included in the Forecast.
- Note 5      Non-Merchandise Vendors**  
Non-merchandise vendors are forecast based on historical run-rates and include logistics, software, store level expenses, overhead expenses and other similar expenses.
- Note 6      Professional Fees**  
Includes fees paid to the Applicant's legal counsel; the Monitor and the Monitor's legal counsel; and the Lender's/DIP Lender's counsel.
- Note 7      Proposed KERP**  
Payments to key personnel retained by the Company, in accordance with a proposed Key Employee Retention Program.
- Note 8      BMO Facility Interest**  
Represents normal course monthly interest payments in accordance with the BMO Credit Agreement.
- Note 9      Non-Applicant Net Cash Flow**  
Includes receipts and disbursements from the following non-applicant entities: (i) TS Programs Ltd.; (ii) 1000451353 Ontario Inc.; and (iii) 1000451354 Ontario Inc. The non-applicant entities each have their own discrete bank accounts that are segregated from the Applicants' bank accounts.
- Note 10      DIP Facility Advance / (Paydown)**  
Represents draw on the DIP Facility based on the anticipated cash requirements of the Applicants.

THIS IS **EXHIBIT "F"** 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 3RD DAY OF SEPTEMBER 2024, IN  
ACCORDANCE WITH O. REG 431/20, *ADMINISTERING OATH OR DECLARATION*  
*REMOTELY*



-----  
A COMMISSIONER FOR TAKING AFFIDAVITS  
JESSICA WUTHMANN  
LSO# 72442W

## KEY EMPLOYEE RETENTION PLAN

This key employee retention plan (“**KERP**”) sets out the terms of the plan in respect of employees of 2161907 Alberta Ltd. (the “**Employer**”).

All capitalized terms not herein defined shall have the meaning ascribed to such terms in the Amended and Restated Initial Order granted in the *Companies’ Creditors Arrangement Act* (“**CCAA**”) proceedings.

### KERP

The primary objective of the proposed KERP is to incentivize key employees who are vital to the ongoing operations of the enterprise to continue in their current roles during the CCAA proceedings, and to aid in the preservation of enterprise value. The proposed KERP recipients are instrumental to servicing current customers, and helping to acquire and deliver on future contracts, ultimately allowing the business to continue as a going concern.

### Key Employees

A list of key employees is appended as Schedule “A” with the proposed amounts payable to each employee under the KERP (“**Retention Payments**”). Schedule “A” may be supplemented by the Employer from time to time as necessary provided that any supplement shall be approved by the monitor in the CCAA proceedings (the “**Monitor**”) and the interim lender (the “**DIP Lender**”).

The employees selected for this retention program are all management level employees with critical roles and responsibilities for the Employer, including in respect of asset protection, IT, retail operations management, and head office functions. The continued involvement of the employees is necessary to ensuring uninterrupted operations during the restructuring period.

The Employer expects that it will suffer attrition on commencement of the CCAA proceeding due, among other things, to perceived weakness in the retail cannabis industry and uncertainty of long-term employment. The Employer believes that the proposed KERP appropriately incentivizes key employees and demonstrates the Employer’s willingness to invest in its employees and to reward employees financially for their commitment.

### Retention Period and Terms of Payment

The proposed KERP provides Retention Payments based on the individual’s position and salary.

The retention period covers the period from the date of filing to the Retention Payment Date (the “**Retention Period**”). The Retention Payment Date shall be the earlier of:

1. The completion of a court-approved transaction pursuant to a court-approved sale and investment solicitation process (the “**SISP**”), including for greater clarity a transaction pursuant to a court-approved stalking horse agreement; or
2. Court approval of a plan of arrangement in the CCAA proceeding.

The Retention Payment will be made in one lump sum in the first payroll following the end of the Retention Period. The lump sum will be subject to the required tax withholdings and source deductions.

The KERP and the Retention Payment are subject to the following terms and conditions:

1. The employee must remain employed in their current position, or as otherwise assigned by the Employer, through to the end of the Retention Period, to be eligible to receive the Retention Payment;
2. The employee must continue to perform their roles and responsibilities during the Retention Period;
3. Absences other than pursuant to accrued vacation entitlements or as approved by the Employer during the Retention Period will result in a *pro rata* reduction of the Retention Payment; and
4. If, during the Retention Period, employees do not meet performance expectations, voluntarily resign or retire, or involuntarily separate for any reason, other than total disability, death or termination without cause, they will not receive any Retention Payment, prorated or otherwise.

#### **KERP Charge**

The Retention Pay contemplated herein shall be secured by a court ordered charge against all of the Property (as defined in the Amended and Restated Initial Order granted in the CCAA proceedings) of the Employer, which charge will rank behind the Administration Charge, the DIP Lender's Charge, the Director's Charge, and the pre-existing security of the Bank of Montreal. The Charge will be in an aggregate amount of \$218,500.

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

	<p><b>ONTARIO</b> <b>SUPERIOR COURT OF JUSTICE</b> <b>(COMMERCIAL LIST)</b></p> <p>Proceedings commenced at Toronto</p>
	<p><b>AFFIDAVIT OF ANDREW WILLIAMS</b> (Sworn September 3, 2024)</p>
	<p><b>RECONSTRUCT LLP</b> 120 Adelaide Street West Suite 2500 Toronto, ON M5H 1T1</p> <p><b>Caitlin Fell</b> LSO No. 60091H Tel: 416.613.8282 Email: cfell@reconllp.com</p> <p><b>Sharon Kour</b> LSO No. 58328D Tel: 416.613.8288 Email: skour@reconllp.com</p> <p><b>Jessica Wuthmann</b> LSO No. 72442W Tel: 416.613.8288 Email: jwuthmann@reconllp.com</p> <p><b>Lawyers for the Applicants</b></p>

# TAB 3

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

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

THE HONOURABLE	)	FRIDAY, THE 6 <sup>TH</sup>
	)	
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 affidavit of service of ● 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 date of 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,
- (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 the 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](http://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.

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

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF 2675970 ONTARIO INC. et al.

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

Proceedings commenced at Toronto

**AMENDED AND RESTATED INITIAL ORDER**

**RECONSTRUCT LLP**

120 Adelaide Street West  
Suite 2500  
Toronto, ON M5H 1T1

**Caitlin Fell** LSO No. 60091H

Tel: 416.613.8282  
Email: cfell@reconllp.com

**Sharon Kour** LSO No. 58328D

Tel: 416.613.8288  
Email: skour@reconllp.com

**Jessica Wuthmann** LSO No. 72442W

Tel: 416.613.8288  
Email: jwuthmann@reconllp.com

Fax: 416.613.8290

**Lawyers for the Applicants**

# TAB 4

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

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

THE HONOURABLE	)	<del>WEDNESDAY</del> <u>FRIDAY</u> , THE <del>28<sup>TH</sup></del> <u>6<sup>TH</sup></u>
	)	
JUSTICE CAVANAGH	)	DAY OF <del>AUGUST</del> <u>SEPTEMBER</u> , 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 ~~APPLICATION~~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 ~~affidavit~~affidavits of Andrew Williams sworn August 28, 2024 ~~and the Exhibits thereto~~ (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 ~~(the "Monitor")~~, dated August 27, 2024, the first report of A&M in its capacity as monitor (in such capacity, the "Monitor") dated September 3, 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 ~~A&M~~, 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 affidavit of service of ~~Jessica Wuthmann~~ sworn August 28 September 2024, ~~and on reading the consent of A&M to act as the Court-appointed Monitor~~ as filed,

## SERVICE

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

## APPLICATION

2. **THIS COURT ORDERS** 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. ~~3.~~ **THIS COURT ORDERS** that the Applicants shall remain in possession and control of their respective current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "**Property**"). Subject to further Order of this Court, the Applicants shall continue to carry on business in a manner consistent with the preservation of their business (the "**Business**") and Property. The Applicants are authorized and empowered to continue to retain and employ 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. ~~4.~~ **THIS COURT ORDERS** that the Applicants shall be entitled to continue to utilize the central cash management system currently in place as described in the 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 ~~any plan of arrangement or compromise under the CCAA~~ 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. ~~5.~~ **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 ~~date of this Order~~ 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 ~~date of this Order~~ 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 ~~date of this Order up to a maximum aggregate amount of \$330,000~~ 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. ~~6.~~ **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 ~~this Order~~ 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 date of ~~this Order~~ the Initial Filing Date.

8. ~~7.~~ **THIS COURT ORDERS** that the Applicants shall remit, in accordance with legal requirements, or pay:

- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, and (iii) income taxes;
- (b) all goods and services or other applicable sales taxes (collectively, "**Sales Taxes**") required to be remitted by the Applicants in connection with the sale of goods and services by the Applicants, but only where such Sales Taxes are accrued or collected after the ~~date of this Order~~ Initial Filing Date, or where such Sales Taxes were accrued or collected prior to the ~~date of this Order~~ Initial Filing Date but not required to be remitted until on or after the ~~date of this Order~~ 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. ~~8.~~ **THIS COURT ORDERS** that until a real property lease is disclaimed in accordance with the CCAA, the Applicants shall pay all amounts constituting rent or payable as rent under real property leases (including common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under the lease) or as otherwise may be negotiated between the applicable Applicant and the landlord from time to time ("**Rent**"), for the period commencing from and including the ~~date of this Order~~ 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 ~~date of this Order~~Initial Filing Date shall also be paid.

10. ~~9.~~ **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. ~~10.~~ **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; ~~and,~~
- (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. ~~11.~~ **THIS COURT ORDERS** that the Applicants shall provide each of the relevant landlords with notice of the Applicants' intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such

removal and, if the landlord disputes the Applicants' entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Applicants, or by further Order of this Court upon application by the Applicants on at least two (2) days notice to such landlord and any such secured creditors. If 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. ~~12.~~ **THIS COURT ORDERS** that if a notice of disclaimer is delivered pursuant to Section 32 of the CCAA, then (a) during the notice period prior to the effective time of the disclaimer, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the Applicants and the Monitor 24 hours' prior written notice, and (b) at the effective time of the disclaimer, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the Applicants in respect of such lease or leased premises, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

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

14. ~~13.~~ **THIS COURT ORDERS** that until and including ~~September 7~~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. ~~14.~~ **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. ~~15.~~ **THIS COURT ORDERS** that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being “**Persons**” and each being a “**Person**”) against or in respect of the Applicants, 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. ~~16.~~ **THIS COURT ORDERS** that during the Stay Period, no Person shall discontinue, suspend, ~~discontinue~~, fail to honour, alter, interfere with, repudiate, rescind, terminate or cease to perform any right, renewal right, contract, agreement, lease, sublease, licence, authorization or permit in favour of or held by any of the Applicants, except with the written consent of the Applicants and the Monitor, or leave of this Court.

## **NO PRE-FILING VS POST-FILING SET-OFF**

18. ~~17.~~ **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 ~~date hereof~~Initial Filing Date with any amounts that are or may become due from the Applicants in respect of obligations arising on or after the ~~date of this Order~~Initial Filing Date; or (b) are or may become due from the Applicants in respect of obligations arising prior to the ~~date hereof~~Initial Filing Date with any amounts that are or may become due to the Applicants in

respect of obligations arising on or after the ~~date of this Order~~Initial Filing Date, in each case without the consent of the Applicants and the Monitor, or leave of this Court.

### CONTINUATION OF SERVICES

19. ~~18.~~ **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 ~~date of this Order~~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. ~~19.~~ **THIS COURT ORDERS** that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided on or after the ~~date of this Order~~Initial Filing Date, nor shall any Person be under any obligation on or after the ~~date of this Order~~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. ~~20.~~ **THIS COURT ORDERS** that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of any of the Applicants with respect to any claim against the directors or officers that arose before the ~~date hereof~~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.

#### **~~DIRECTOR'S~~DIRECTORS' AND ~~OFFICER'S~~OFFICERS' INDEMNIFICATION AND CHARGE**

22. ~~21.~~ **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. ~~22.~~ **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 "~~Director's~~Directors' Charge") on the Property, which charge shall not exceed an aggregate amount of \$~~2.25~~3 million, as security for the indemnity provided in paragraph ~~21~~22 of this Order. The Directors' Charge shall have the priority set out in paragraphs ~~40~~44 and ~~42~~46 herein.

24. ~~23.~~ **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 ~~21~~22 of this Order.

#### **APPOINTMENT OF MONITOR**

25. ~~24.~~ **THIS COURT ORDERS** that A&M is ~~hereby~~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. ~~25.~~ **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) ~~(e)~~ 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) ~~(f)~~ 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) ~~(g)~~ perform such other duties as are required by this Order or by this Court from time to time.

27. ~~26.~~ **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. ~~27.~~ **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. ~~28.~~ **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. ~~29.~~ **THIS COURT ORDERS** that, in addition to the rights and protections afforded to the Monitor under the CCAA or as an officer of this Court, 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. ~~30.~~ **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 ~~date of this Order~~ 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. ~~31.~~ **THIS COURT ORDERS** that the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

33. ~~32.~~ **THIS COURT ORDERS** that the Monitor, counsel to the Monitor, and the Applicants' counsel shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on the Property, which charge shall not exceed an aggregate amount of \$~~400,000~~ 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 ~~4044~~ and ~~4246~~ hereof.

## DIP FINANCING

34. ~~33.~~ **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 \$~~3.38~~ million plus interest, fees and expenses, unless permitted by further Order of this Court (the "**DIP Facility**").

35. ~~34.~~ **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. ~~35.~~ **THIS COURT ORDERS** that the Applicants are hereby authorized and empowered to execute and deliver such credit agreements, mortgages, charges, hypothecs and security documents, guarantees and other definitive documents (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. ~~36.~~ **THIS COURT ORDERS** that the DIP Lender shall be entitled to the benefit of and is hereby granted a charge (the "**DIP Lender's Charge**") on the Property as security for any and all DIP Obligations. The DIP Lender's Charge shall not secure an obligation that exists before ~~this Order is made~~ the Initial Filing Date. The DIP Lender's Charge shall have the priority set out in paragraphs ~~4044~~ and ~~4246~~ hereof.

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

- (a) the DIP Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP Lender's Charge or any of the Definitive Documents;
- (b) upon the occurrence of an event of default under the Definitive Documents or the DIP Lender's Charge, the DIP Lender 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. ~~38.~~ **THIS COURT ORDERS** that the DIP Lender and BMO shall be treated as unaffected in any ~~plan of arrangement or compromise~~ 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. ~~39.~~ **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. ~~40.~~ THIS COURT ORDERS that the priorities of the Administration Charge, the DIP Lender’s Charge~~—and~~, 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 \$~~400,000~~850,000);

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

Third – Director’s Charge (to the maximum amount of \$~~2.25~~3 million); ~~and~~

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

45. ~~41.~~ 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. ~~42.~~ **THIS COURT ORDERS** that each of the Charges shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, "**Encumbrances**") in favour of any Person except that the DIP Lender's Charge ~~and~~ Director's Charge, and KERP Charge will rank subordinate to any and all amounts owed to the 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, ~~including without limitation, on the Comeback Date (as hereinafter defined),~~ on notice to those Persons likely to be affected thereby.

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

48. ~~44.~~ **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. ~~45.~~ **THIS COURT ORDERS** that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the applicable Applicant's interest in such real property leases.

## **SERVICE AND NOTICE**

50. ~~46.~~ **THIS COURT ORDERS** that the Monitor shall (i) without delay, publish in *The Globe and Mail* (National Edition) a notice containing the information prescribed under the CCAA, 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. ~~47.~~ **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the "**Protocol**") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that

a Case Website shall be established in accordance with the Protocol with the following URL: [www.alvarezandmarsal.com/TokyoSmoke](http://www.alvarezandmarsal.com/TokyoSmoke) (the “**Monitor’s Website**”).

52. ~~48.~~ **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. ~~49.~~ **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. ~~50.~~ **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**

#### **COMEBACK MOTION**

55. ~~51.~~ **THIS COURT ORDERS** that the ~~comeback motion shall be heard by a judge of the Ontario Superior Court of Justice (Commercial List) on September 6, 2024 at 8:30 a.m. (the “Comeback Date”).~~ 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. ~~52.~~ **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. ~~53.~~ **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. ~~54.~~ **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. ~~55.~~ **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. ~~56.~~ **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. ~~57.~~ **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

Court File No. [CV-24-00726584-00CL](#)

AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF 2675970 ONTARIO INC. et al.

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

Proceedings commenced at Toronto

**AMENDED AND RESTATED INITIAL ORDER**

**RECONSTRUCT LLP**

120 Adelaide Street West  
Suite 2500  
Toronto, ON M5H 1T1

**Caitlin Fell** LSO No. 60091H

Tel: 416.613.8282

Email: cfell@reconllp.com

**Sharon Kour** LSO No. 58328D

Tel: 416.613.8288

Email: skour@reconllp.com

**Jessica Wuthmann** LSO No. 72442W

Tel: 416.613.8288

Email: jwuthmann@reconllp.com

Fax: 416.613.8290

**Lawyers for the Applicants**

<b>Summary report:</b> <b>Litera Compare for Word 11.5.0.74 Document comparison done on</b> <b>9/3/2024 5:27:51 PM</b>	
<b>Style name:</b> Default Style	
<b>Intelligent Table Comparison:</b> Active	
<b>Original filename:</b> Draft Initial Order - Applicants - 28-AUG-2024.docx	
<b>Modified filename:</b> Draft ARI0 - Applicants - 6-SEP-2024.docx	
<b>Changes:</b>	
<u>Add</u>	154
<del>Delete</del>	121
<del>Move From</del>	0
<u>Move To</u>	0
<u>Table Insert</u>	0
<del>Table Delete</del>	0
<u>Table moves to</u>	0
<del>Table moves from</del>	0
Embedded Graphics (Visio, ChemDraw, Images etc.)	0
Embedded Excel	0
Format changes	0
<b>Total Changes:</b>	275

# TAB 5

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

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

THE HONOURABLE —	)	<del>WEEKDAY</del> <u>FRIDAY</u> , THE <u>#6<sup>TH</sup></u>
	)	
JUSTICE — <u>CAVANAGH</u>	)	DAY OF <del>MONTH</del> <u>SEPTEMBER</u> ,
		<del>20YR</del> <u>2024</u>

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF ~~{APPLICANT'S NAME}~~ (the  
"Applicant") 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 ~~APPLICATION, made by the Applicant,~~ **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 ~~at 330 University Avenue, Toronto,  
Ontario~~ by judicial videoconference.

ON READING the ~~affidavit of [NAME] sworn [DATE]~~ 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 1, 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 ~~[NAMES]~~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 ~~[NAME]~~<sup>1</sup>any other person although duly served as appears from the affidavit of service of ~~[NAME]~~<sup>1</sup> sworn ~~[DATE]~~ and on reading the consent of [MONITOR’S NAME] to act as the MonitorSeptember 1, 2024, as filed,

## SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of ~~Application~~Motion and the ~~Application~~Motion Record is hereby abridged and validated<sup>2</sup> so that this ~~Application~~Motion is properly returnable today and hereby dispenses with further service thereof.

## APPLICATION

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

## PLAN OF ARRANGEMENT

3. **THIS COURT ORDERS** that the ~~Applicant~~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"**).

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

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

## POSSESSION OF PROPERTY AND OPERATIONS

4. **THIS COURT ORDERS** that the ~~Applicant~~Applicants shall remain in possession and control of ~~its~~their respective current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "**Property**"). Subject to further Order of this Court, the ~~Applicant~~Applicants shall continue to carry on business in a manner consistent with the preservation of ~~its~~their business (the "**Business**") and Property. The ~~Applicant is~~Applicants are authorized and empowered to continue to retain and employ ~~the~~their employees, consultants, contractors, agents, experts, accountants, counsel and such other persons (collectively "**Assistants**") currently retained or employed by ~~it~~them, with liberty, subject to the terms of the Definitive Documents (as hereinafter defined), to retain such further Assistants as ~~it deems~~they deem reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

5. **[THIS COURT ORDERS** that the ~~Applicant~~Applicants shall be entitled to continue to utilize the central cash management system<sup>3</sup> currently in place as described in the Initial Williams Affidavit of [NAME] sworn [DATE] 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 ~~Applicant~~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 ~~Applicant~~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

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

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 ~~Applicant~~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 ~~this Order~~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 ~~date of this Order~~Initial Filing Date, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements; ~~and~~
- (b) the fees and disbursements of any Assistants retained or employed by the ~~Applicant~~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, ~~the Applicant~~ 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 ~~Applicant~~Applicants in carrying on the Business in the ordinary course after ~~this Order~~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 ~~Applicant~~Applicants on or following the date of ~~this Order~~the Initial Filing Date.

8. **THIS COURT ORDERS** that the ~~Applicant~~Applicants shall remit, in accordance with legal requirements, or pay:

- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be

deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, and (iii) ~~Quebec Pension Plan, and (iv)~~ income taxes;

- (b) all goods and services or other applicable sales taxes (collectively, "**Sales Taxes**") required to be remitted by the ~~Applicant~~Applicants in connection with the sale of goods and services by the ~~Applicant~~Applicants, but only where such Sales Taxes are accrued or collected after the ~~date of this Order~~Initial Filing Date, or where such Sales Taxes were accrued or collected prior to the ~~date of this Order~~Initial Filing Date but not required to be remitted until on or after the ~~date of this Order~~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 ~~Applicant~~Applicants.

9. **THIS COURT ORDERS** that until a real property lease is disclaimed ~~{or resiliated}~~<sup>4</sup>in accordance with the CCAA, the ~~Applicant~~Applicants shall pay all amounts constituting rent or payable as rent under real property leases (including, ~~for greater certainty,~~ common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under the lease) or as otherwise may be negotiated between the applicable Applicant and the landlord from time to time ("**Rent**"), for the period commencing from and including the ~~date of this Order~~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 ~~date of this Order~~Initial Filing Date shall also be paid.

10. **THIS COURT ORDERS** that, except as specifically permitted herein, the ~~Applicant~~is Applicants are hereby directed, until further Order of this Court: (a) to make no payments of

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

principal, interest thereon or otherwise on account of amounts owing by the ~~Applicant~~Applicants to any of ~~its~~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 ~~its~~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 ~~Applicant~~Applicants shall, subject to such requirements as are imposed by the CCAA, and ~~such covenants as may be contained in~~subject to the terms of the Definitive Documents ~~(as hereinafter defined)~~, have the right to:

- (a) permanently or temporarily cease, downsize or shut down any of ~~its~~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<sup>5</sup>;
- (b) ~~†~~ terminate the employment of such of ~~its~~their employees or temporarily lay off such of ~~its~~their employees as ~~it deems~~they deem appropriate~~†~~; and
- (c) pursue all avenues of ~~refinancing of its~~restructuring of their Business ~~or~~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 ~~Applicant~~Applicants to proceed with an orderly restructuring of the Business (the "Restructuring").

12. **THIS COURT ORDERS** that the ~~Applicant~~Applicants shall provide each of the relevant landlords with notice of the ~~Applicant's~~Applicants' intention to remove any fixtures from any

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

leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the ~~Applicant's~~Applicants' entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the ~~Applicant~~Applicants, or by further Order of this Court upon application by the ~~Applicant~~Applicants on at least two (2) days notice to such landlord and any such secured creditors. If the ~~Applicant disclaims~~ ~~for resiliates~~Applicants disclaim the lease governing such leased premises in accordance with Section 32 of the CCAA, ~~it~~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 ~~for resiliation~~ of the lease shall be without prejudice to the ~~Applicant's~~Applicants' claim to the fixtures in dispute.

13. **THIS COURT ORDERS** that if a notice of disclaimer ~~for resiliation~~ is delivered pursuant to Section 32 of the CCAA, then (a) during the notice period prior to the effective time of the disclaimer ~~for resiliation~~, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the ~~Applicant~~Applicants and the Monitor 24 hours' prior written notice, and (b) at the effective time of the disclaimer ~~for resiliation~~, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the ~~Applicant~~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 ~~APPLICANT~~APPLICANTS OR THE PROPERTY**

14. **THIS COURT ORDERS** that until and including ~~[DATE — MAX. 30 DAYS]~~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 ~~Applicant~~Applicants or the Monitor, or their respective employees and representatives acting in such capacities, or affecting ~~the~~their Business or ~~the~~their Property, except with the written consent of the ~~Applicant~~Applicants and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect

of the ~~Applicant~~Applicants or affecting ~~the~~their Business or ~~the~~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. ~~15.~~ **THIS COURT ORDERS** that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being “**Persons**” and each being a “**Person**”) against or in respect of the ~~Applicant or~~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 ~~Applicant~~Applicants and the Monitor, or leave of this Court, provided that nothing in this Order shall (i) empower the ~~Applicant~~Applicants and the Non-Applicant Entities to carry on any business which ~~the Applicant is~~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. ~~16.~~ **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 ~~Applicant~~Applicants, except with the written consent of the ~~Applicant~~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. ~~17.~~ **THIS COURT ORDERS** that during the Stay Period, all Persons having oral or written agreements with the ~~Applicant~~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 ~~Applicant~~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 ~~Applicant~~Applicants, and that the ~~Applicant~~Applicants shall be entitled to the continued use of ~~its~~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 ~~date of this Order~~Initial Filing Date are paid by the ~~Applicant~~Applicants in accordance with normal payment practices of the ~~Applicant~~Applicants or such other practices as may be agreed upon by the supplier or service provider and each of the ~~Applicant~~Applicants and the Monitor, or as may be ordered by this Court.

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

20. ~~18.~~ **THIS COURT ORDERS** that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of ~~lease~~leased or licensed property or other valuable consideration provided on or after the ~~date of this Order~~Initial Filing Date, nor shall any Person be under any obligation on or after the ~~date of this Order~~Initial Filing Date to advance or re-advance any monies or otherwise extend any credit to the ~~Applicant~~Applicants. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.<sup>6</sup>

## PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

21. ~~19.~~ **THIS COURT ORDERS** that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of any of the ~~Applicant~~Applicants with respect to any claim against the directors or officers that arose before the ~~date hereof~~Initial Filing Date and that relates to any obligations of the ~~Applicant~~Applicants whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, ~~until a compromise or arrangement in respect of the Applicant, if one is filed, is sanctioned by this Court or is refused by the creditors of the Applicant or this Court.~~

## DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

22. ~~20.~~ **THIS COURT ORDERS** that the ~~Applicant~~Applicants shall indemnify ~~its~~their directors and officers against obligations and liabilities that they may incur as directors or officers of any of the ~~Applicant~~Applicants after the commencement of the within proceedings,<sup>7</sup>

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

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

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. ~~21.~~ **THIS COURT ORDERS** that the directors and officers of the ~~Applicant~~Applicants shall be entitled to the benefit of and are hereby granted a charge (the "**Directors' Charge**")<sup>8</sup> on the Property, which charge shall not exceed an aggregate amount of \$~~●~~3 million, as security for the indemnity provided in paragraph ~~{20}~~22 of this Order. The Directors' Charge shall have the priority set out in paragraphs ~~{38}~~44 and ~~{40}~~46 herein.

24. ~~22.~~ **THIS COURT ORDERS** that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) the ~~Applicant's~~Applicants' directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph ~~{20}~~22 of this Order.

#### **APPOINTMENT OF MONITOR**

25. ~~23.~~ **THIS COURT ORDERS** that ~~{MONITOR'S NAME} is hereby~~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 ~~Applicant~~Applicants with the powers and obligations set out in the CCAA or set forth herein and that the ~~Applicant and its~~Applicants and their shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the ~~Applicant~~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. ~~24.~~ **THIS COURT ORDERS** that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- (a) monitor the ~~Applicant's~~Applicants' receipts and disbursements; and the Applicants' compliance with the Cash Flow Projections (as defined in the DIP

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

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 ~~Applicant~~Applicants, to the extent required by the ~~Applicant, in its~~Applicants, in their dissemination, to the DIP Lender and its counsel, on a ~~[TIME INTERVAL]~~timely basis of financial and other information as agreed to between the ~~Applicant~~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 ~~Applicant in its~~Applicants in their preparation of the ~~Applicant's~~Applicants' cash flow statements and reporting required by the DIP Lender, which information shall be reviewed with the Monitor and delivered to the DIP Lender and its counsel on a periodic basis, ~~but not less than [TIME INTERVAL], or as otherwise~~as agreed to by the DIP Lender or as required pursuant to the Definitive Documents;
- (e) advise the ~~Applicant in its~~Applicants in their development of the Plan and any amendments to the Plan;
- (f) assist the ~~Applicant~~Applicants, to the extent required by the ~~Applicant~~Applicants, with the holding and administering of creditors' ~~or shareholders'~~ meetings for voting on the Plan;
- (g) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the ~~Applicant~~Applicants, to the extent that is necessary to adequately assess the ~~Applicant's~~Applicants' business and financial affairs or to perform its duties arising under this Order;
- (h) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order; and

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

27. ~~25.~~ **THIS COURT ORDERS** that the Monitor shall not occupy, take control, care, charge, possession of the Property 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. ~~26.~~ **THIS COURT ORDERS** that nothing herein contained shall require the Monitor to ~~occupy or to take control, care, charge, possession or management (separately and/or collectively, "Possession")~~ of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release

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

29. ~~27.~~ **THIS COURT ORDERS** ~~that~~ that the Monitor shall provide any creditor of the ~~Applicant~~Applicants, including BMO, and the DIP Lender with information provided by the ~~Applicant~~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 ~~Applicant~~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 ~~Applicant~~Applicants may agree.

30. ~~28.~~ **THIS COURT ORDERS** that, in addition to the rights and protections afforded to the Monitor under the CCAA or as an officer of this Court, 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. ~~29.~~ **THIS COURT ORDERS** that the Monitor, counsel to the Monitor and counsel to the ~~Applicant~~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 ~~Applicant~~Applicants as part of the costs of these proceedings. ~~The Applicant is, 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 ~~Applicant on a [TIME INTERVAL] basis and, in addition, the Applicant is hereby authorized to pay to the Monitor, counsel to the Monitor, and counsel to the Applicant, retainers~~

~~in the amount[s] of \$●[, respectively,] to be held by them as security for payment of their respective fees and disbursements outstanding from time to time~~Applicants on a weekly basis or as otherwise agreed among the parties.

32. ~~30.~~ **THIS COURT ORDERS** that the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

33. ~~31.~~ **THIS COURT ORDERS** that the Monitor, counsel to the Monitor, ~~if any,~~ and the ~~Applicant's~~Applicants' counsel shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on the Property, which charge shall not exceed an aggregate amount of \$●850,000, as security for their professional fees and disbursements incurred at ~~the~~their standard rates and charges ~~of the Monitor and such counsel~~, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs ~~{38}~~44 and ~~{40}~~46 hereof.

## DIP FINANCING

34. ~~32.~~ **THIS COURT ORDERS** that the ~~Applicant is~~Applicants are hereby authorized and empowered to obtain and borrow ~~under a credit facility from [DIP LENDER'S NAME] (the "DIP Lender"),~~ 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 ~~Applicant's~~Applicants' working capital requirements ~~and,~~ other general corporate purposes, accrued interest, expenses, and capital expenditures, all in accordance with the Definitive Documents, provided that borrowings under ~~such credit facility~~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. ~~33.~~ **THIS COURT ORDERS** ~~THAT such credit facility~~that the DIP Facility shall be on the terms and subject to the conditions set forth in the ~~commitment letter between the Applicant and the DIP Lender dated as of [DATE] (the "Commitment Letter"),~~ filed DIP Term Sheet and the other Definitive Documents.

36. ~~34.~~ **THIS COURT ORDERS** that the ~~Applicant is~~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 ~~Commitment Letter~~DIP Term Sheet or as may be reasonably required by the DIP Lender pursuant to the terms thereof, and the ~~Applicant is~~Applicants are hereby authorized and directed to pay and perform all of ~~its~~their indebtedness, interest, fees, expenses, liabilities and obligations to the DIP Lender under and pursuant to the ~~Commitment Letter~~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. ~~35.~~ **THIS COURT ORDERS** that the DIP Lender shall be entitled to the benefit of and is hereby granted a charge (the "**DIP Lender's Charge**") on the Property, ~~which~~ as security for any and all DIP Obligations. The DIP Lender's Charge shall not secure an obligation that exists before ~~this Order is made~~the Initial Filing Date. The DIP Lender's Charge shall have the priority set out in paragraphs ~~{38}~~44 and ~~{40}~~46 hereof.

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

- (a) the DIP Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP Lender's Charge or any of the Definitive Documents;
- (b) upon the occurrence of an event of default under the Definitive Documents or the DIP Lender's Charge, the DIP Lender may cease making advances to the Applicants and may make demand, accelerate payment and give other notices, and, upon ~~five~~ five (5) days notice to the ~~Applicant~~Applicants and the Monitor, may exercise any and all of its other rights and remedies against the ~~Applicant~~Applicants or the Property under or pursuant to the ~~Commitment Letter~~, Definitive Documents and the DIP Lender's Charge, including without limitation, to ~~cease making advances to the Applicant and~~ set off and/or consolidate any amounts owing by the DIP Lender to the ~~Applicant~~Applicants against the obligations of the ~~Applicant~~Applicants to the DIP Lender under the ~~Commitment Letter, the~~ Definitive Documents or the DIP Lender's Charge, ~~to~~

~~make demand, accelerate payment and give other notices~~, or to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the ~~Applicant~~Applicants and for the appointment of a trustee in bankruptcy of the ~~Applicant~~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 ~~Applicant~~Applicants or the Property.

39. ~~37. THIS COURT ORDERS AND DECLARES~~ that the DIP Lender and BMO shall be treated as unaffected in any ~~plan of arrangement or compromise~~Plan filed by the ~~Applicant~~Applicants under the CCAA, or any proposal filed by any of the ~~Applicant~~Applicants under the *Bankruptcy and Insolvency Act of (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. ~~38.~~ **THIS COURT ORDERS** that the priorities of the ~~Directors’ Charge, the~~ Administration Charge ~~and~~, the DIP Lender’s Charge, the Directors’ Charge, and the KERP Charge (collectively, the “Charges”), as among them, shall be as follows<sup>9</sup>:

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

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

Third – ~~Directors’~~Director’s Charge (to the maximum amount of \$●3 million);  
and

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

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

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

46. ~~40.~~ **THIS COURT ORDERS** that each of the ~~Directors' Charge, the Administration Charge and the DIP Lender's Charge (all as constituted and defined herein)~~ shall 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 the 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. ~~41.~~ **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court, the ~~Applicant~~ Applicants shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the ~~Directors' Charge, the Administration Charge or the DIP Lender's Charge~~ Charges, unless the ~~Applicant~~ Applicants also ~~obtains~~ obtain the prior written consent of the Monitor, ~~the DIP Lender and the beneficiaries of the Directors' Charge and the Administration Charge~~ and the Chargees, or further Order of this Court.


48. ~~42.~~ **THIS COURT ORDERS** that the ~~Directors' Charge, the Administration Charge, the Commitment Letter, Charges and the DIP Lender's Charge~~ shall not be rendered invalid or unenforceable and the rights and remedies of the ~~chargees entitled to the benefit of the Charges (collectively, the "Chargees")~~ and/or the DIP Lender thereunder shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to 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 ~~Applicant~~ Applicants, and notwithstanding any provision to the contrary in any Agreement:

- (a) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of the ~~Commitment Letter or the~~ Definitive Documents shall create or be deemed to constitute a breach by any of the ApplicantApplicants of any Agreement to which ~~it~~ 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 ~~ApplicantApplicants~~ entering into the ~~Commitment Letter~~ Definitive Documents, the creation of the Charges, or the execution, delivery or performance of the Definitive Documents; and
- (c) the payments made by the ~~ApplicantApplicants~~ pursuant to this Order, ~~the Commitment Letter~~ or the Definitive Documents, and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

49. ~~43.~~ **THIS COURT ORDERS** that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the applicable Applicant's interest in such real property leases.

## **SERVICE AND NOTICE**

50. ~~44.~~ **THIS COURT ORDERS** that the Monitor shall (i) without delay, publish in ~~[newspapers specified by the Court]~~ The Globe and Mail (National Edition) a notice containing the information prescribed under the CCAA, and (ii) within five 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 ApplicantApplicants of more than ~~\$1000~~ 1,000, and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder; 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. ~~45.~~ **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the “**Protocol**”) is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL : [www.alvarezandmarsal.com/TokyoSmoke](http://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. ~~46.~~ **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the ~~Applicant~~Applicants and the Monitor 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 ~~Applicant’s~~Applicants’ creditors or other interested parties at their respective addresses as last shown on the records of the ~~Applicant~~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. ~~47.~~ **THIS COURT ORDERS** that the ~~Applicant or~~ 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 ~~its~~ their respective powers and duties hereunder.

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

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

59. ~~50.~~ **THIS COURT ORDERS** that each of the ~~Applicant~~ Applicants and the Monitor be at liberty and ~~is~~ are hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

60. ~~51.~~ **THIS COURT ORDERS** that any interested party (including the ~~Applicant~~ 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. ~~52.~~ **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Eastern ~~Standard/Daylight~~ Time on the date of this Order without 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

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF 2675970 ONTARIO INC. et al.

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

Proceedings commenced at Toronto

AMENDED AND RESTATED INITIAL ORDER

RECONSTRUCT LLP  
120 Adelaide Street West  
Suite 2500  
Toronto, ON M5H 1T1

Caitlin Fell LSO No. 60091H  
Tel: 416.613.8282  
Email: cfell@reconllp.com

Sharon Kour LSO No. 58328D  
Tel: 416.613.8288  
Email: skour@reconllp.com

Jessica Wuthmann LSO No. 72442W  
Tel: 416.613.8288  
Email: jwuthmann@reconllp.com

Fax: 416.613.8290

Lawyers for the Applicants

<b>Summary report:</b> <b>Litera Compare for Word 11.5.0.74 Document comparison done on</b> <b>9/3/2024 5:36:45 PM</b>	
<b>Style name:</b> Default Style	
<b>Intelligent Table Comparison:</b> Active	
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<b>Modified filename:</b> Draft ARIIO - Applicants - 6-SEP-2024.docx	
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Embedded Excel	0
Format changes	0
<b>Total Changes:</b>	695

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

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT  
OF 2675970 ONTARIO INC. et al.

Applicants

**ONTARIO  
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Proceedings commenced at Toronto

**MOTION RECORD OF THE APPLICANTS**  
(returnable September 6, 2024)

**RECONSTRUCT LLP**

Richmond-Adelaide Centre  
120 Adelaide Street West, Suite 2500  
Toronto, ON M5H 1T1

**Caitlin Fell** LSO No. 60091H

[cfell@reconllp.com](mailto:cfell@reconllp.com)

Tel: 416.613.8282

**Sharon Kour** LSO No. 58328D

[skour@reconllp.com](mailto:skour@reconllp.com)

Tel: 416.613.8283

**Jessica Wuthmann** LSO No. 72442W

[jwuthmann@reconllp.com](mailto:jwuthmann@reconllp.com)

Tel: 416.613.8288

Fax: 416.613.8290

**Lawyers for the Applicants**