

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF JAMES E. WAGNER CULTIVATION
CORPORATION, JAMES E. WAGNER CULTIVATION LTD.,
JWC 1 LTD., JWC 2 LTD., JWC SUPPLY LTD. AND
GROWTHSTORM INC.

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

MOTION RECORD

May 4, 2020

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2	Second Report of KSV Kofman Inc. dated May 4, 2020
3	Draft DIP Amendment Order

TAB 1

**ONTARIO
SUPERIOR COURT OF JUSTICE**

COMMERCIAL LIST

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GROWTHSTORM INC.

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Applicants

**NOTICE OF MOTION
(Returnable May 11, 2020)
(DIP Amendment Order)**

The Applicants will make a motion before the Honourable Justice Hainey of the Ontario Superior Court of Justice (Commercial List) on Monday, May 11, 2020, at 12:00pm or as soon after that time as the motion can be heard.

PROPOSED METHOD OF HEARING: The motion is to be heard by telephone as a result of the COVID-19 pandemic.

THE MOTION IS FOR:

1. An order (the "**DIP Amendment Order**") substantially in the form attached as Tab 3 of the motion record, *inter alia*:
 - (a) abridging the time for service of this notice of motion and the motion record and dispensing with service on any person other than those served;
 - (b) authorizing the Applicants to execute the First Amendment to the Interim Financing Term Sheet dated May 4, 2020 (the "**DIP Amendment**"), which will, among other

things, increase the maximum borrowings available under the DIP Loan (as defined below) up to \$5,500,000 (which is an increase of \$1,500,000); and

(c) authorizing an increase to the DIP Lender's Charge (as defined below) up to a maximum amount of \$5,500,000;

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

THE GROUNDS FOR THE MOTION ARE:

Background

3. On April 1, 2020, this Honourable Court granted protection to the Applicants pursuant to an order (as amended and restated, the "**Initial Order**") under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**");

4. Under the Initial Order, *inter alia*:

(a) KSV Kofman Inc. was appointed as monitor of the Applicants (in such capacity, the "**Monitor**");

(b) a stay of proceedings in favour of the Applicants was granted until and including June 26, 2020 (the "**Stay Period**");

(c) the Applicants were authorized and empowered to obtain and borrow under a credit facility (the "**DIP Loan**") from Trichome Financial Corp. ("**Trichome**" or the "**DIP Lender**") pursuant to a term sheet dated March 31, 2020 (the "**DIP Term Sheet**"), up to a maximum amount of \$4,000,000; and

(d) a charge over the Applicants' current and future assets, undertakings and properties to secure borrowings under the DIP Loan was granted in favour of the DIP Lender up to a maximum amount of \$4,000,000 (the "**DIP Lender's Charge**");

5. Pursuant to an order (the "**Bidding Procedures and Stalking Horse APA Approval Order**") dated April 9, 2020, this Honourable Court approved a sale and investor solicitation process (the "**SISP**") and the bidding procedures related thereto (the "**Bidding Procedures**");

6. The Applicants are a vertically integrated premium cannabis brand focused on the production of clean and consistent cannabis using their proprietary aeroponic platform;

7. As a result of severe liquidity issues and an inability to meet their obligations as they became due, the Applicants determined that it was in their best interest and the best interests of their stakeholders to commence these CCAA proceedings to ultimately effect a going concern sale of their business;

8. Since seeking the Initial Order the Applicants have acted, and continue to act, in good faith and with due diligence to, among other things, stabilize their business and keep it operating in the ordinary course, and conduct the SISF in accordance with the Bidding Procedures and Stalking Horse APA Approval Order;

The DIP Amendment and Increase to the DIP Loan

9. Pursuant to the Initial Order, the DIP Loan was granted up to a maximum of \$4,000,000 – the maximum amount available under the DIP Term Sheet;

10. As the Applicants' cash flow makes clear, lower than projected collections on sales has created a critical need for additional funding to ensure that the Applicants' business continues to operate while the SISF is completed. Without the increase to the DIP Loan, the Applicants' business will likely be liquidated before the SISF can be implemented;

11. Pursuant to the DIP Amendment, Trichome has agreed to provide the additional funding required by the Applicants, increasing the maximum amount available under the DIP Loan from \$4,000,000 to \$5,500,000;

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

The Increase to the DIP Lender's Charge

13. Pursuant to the Initial Order, the DIP Lender's Charge was limited to what was reasonably necessary during the Stay Period and was commensurate with the maximum available amount under the DIP Loan;

14. Absent the DIP Lender's Charge, Trichome would not have assumed the risks inherent to these CCAA proceedings;

15. Pursuant to the DIP Amendment Order, the Applicants seek to increase the quantum of the DIP Lender's Charge up to a maximum of \$5,500,000;

16. The increased quantum of the DIP Lender's Charge is based on the go-forward funding needs of the Applicants to continue to operate in the ordinary course of business while the SISP is completed. It is a condition of the DIP Amendment (and availability of funds thereunder) that the DIP Lender's Charge be increased to \$5,500,000;

17. The Monitor is supported of the increase to the DIP Lender's Charge;

OTHER GROUNDS:

18. The provisions of the CCAA and the inherent and equitable jurisdiction of this Honourable Court;

19. Rules 1.04, 1.05, 2.03, 3.02, 16, 37 and 39 of the Ontario *Rules of Civil Procedure*, R.R.O 1990, Reg. 194, as amended; and

20. Such further and other grounds as counsel may advise and this honourable Court may permit;

DOCUMENTARY EVIDENCE:

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

- (a) the Second Report of KSV Kofman Inc. dated May 4, 2020; and
- (b) such further and other evidence as counsel may advise and this Court may permit.

May 4, 2020

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AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF JAMES E. WAGNER CULTIVATION LTD., JWC 1 LTD., JWC 2 LTD., JWC SUPPLY LTD. AND GROWTHSTORM INC.

Court File No.: CV-20-00639000-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

Proceedings commenced in Toronto

NOTICE OF MOTION
(DIP Amendment Order)

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TAB 2



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

May 4, 2020

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
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**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
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WAGNER CULTIVATION LTD., JWC 1 LTD., JWC 2 LTD., JWC SUPPLY
LTD. AND GROWTHSTORM INC.**

SECOND REPORT OF KSV KOFMAN INC. AS MONITOR

MAY 4, 2020

1.0 Introduction

1. Pursuant to an order of the Ontario Superior Court of Justice (Commercial List) (the "Court") made on April 1, 2020 (as amended and restated, the "Initial Order"), James E. Wagner Cultivation Corporation ("JWC"), James E. Wagner Cultivation Ltd. ("JWCL"), JWC 1 Ltd. ("JWC1"), JWC 2 Ltd. ("JWC2"), JWC Supply Ltd. ("JWCS") and GrowthStorm Inc. ("GrowthStorm") (collectively, the "Companies") were granted protection under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA"), and KSV Kofman Inc. ("KSV") was appointed monitor (the "Monitor"). A copy of the Initial Order is attached as Appendix "A".
2. Pursuant to the terms of the Initial Order, the Court, *inter alia*, approved a debtor-in-possession loan facility (the "DIP Facility") in the maximum principal amount of \$4 million from Trichome Financial Corp. ("TFC"), pursuant to a term sheet dated March 31, 2020 (the "DIP Term Sheet") and granted a charge in favour of TFC in the maximum amount of \$4 million (the "DIP Lender's Charge").
3. The principal purpose of these restructuring proceedings is to create a stabilized environment to enable the Companies to restructure their business by conducting a "stalking horse" sale and investor solicitation process (the "SISP") while continuing operations. On April 9, 2020, the Court approved the SISP, including a stalking horse offer made by TFC. The Company retained Stoic Advisory Inc. ("Stoic") as its financial advisor to conduct the SISP, which is being conducted under the supervision of the Special Committee of the Board of JWC (the "Special Committee") and the Monitor.

1.1 Purposes of this Report

1. The purposes of this report ("Report") are to:
 - a) report on the Companies' projected to actual cash flow results for the four-week period ending April 24, 2020;

- b) report on the Companies' revised cash flow projection for the period commencing April 25, 2020 through the week ending June 26, 2020 (the "Revised Cash Flow Forecast");
- c) discuss the terms of an amendment to the DIP Term Sheet pursuant to which the maximum amount of the DIP Facility will be increased from \$4 million to \$5.5 million (the "DIP Amendment") and its effect on the amount required to be a Qualified Bid¹ in the SISP; and
- d) recommend that this Court grant an order approving the DIP Amendment and increasing the amount of the DIP Lender's Charge.

1.2 Restrictions

1. In preparing this Report, the Monitor has relied upon the unaudited financial information of the Companies, the books and records of the Companies and discussions with the Companies, the Special Committee's counsel, Bennett Jones LLP, and TFC.
2. The Monitor has not audited, or otherwise attempted to verify the accuracy or completeness of the financial information relied on to prepare this Report in a manner that complies with Canadian Auditing Standards ("CAS") pursuant to the Chartered Professional Accountants of Canada Handbook and, accordingly, the Monitor expresses no opinion or other form of assurance contemplated under the CAS in respect of such information. Any party wishing to place reliance on the financial information should perform its own diligence.
3. An examination of the Revised Cash Flow Forecast as outlined in the Chartered Professional Accountants of Canada Handbook has not been performed. Future oriented financial information relied upon in this Report is based upon the Companies' assumptions regarding future events; actual results achieved may vary from this information and these variations may be material. The Monitor expresses no opinion or other form of assurance on whether the cash flow forecast will be achieved.

1.3 Currency

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

2.0 Company Background

1. JWC produces and sells cannabis through its wholly-owned subsidiary and licence holder, JWCL. The Monitor understands that JWC1, JWC2, JWCS and GrowthStorm, do not presently conduct, and have never conducted, active business operations. The corporate chart for the Companies is provided in Appendix "B".
2. The common shares of JWC are listed on the Toronto Stock Venture Exchange and the OTCQX. Following the Initial Order, JWC's exchange listing and tier classification was downgraded from the TSX-V to the NEX.

¹ As that term is defined in the Court-approved Bidding Procedures.

3. The Companies' operations are based in Kitchener, Ontario. The Companies lease three premises as follows: (i) manufacturing facilities located at 855 Trillium Drive, Unit B, Kitchener, Ontario and 530 Manitou Drive, Kitchener Ontario; and (ii) office space located at 860 Trillium Drive, Kitchener, Ontario.
4. JWCL currently holds the following cannabis licenses:
 - a) a license which permits JWCL to cultivate, process and sell cannabis for the medical market and to sell all of the authorized classes of cannabis to provincially/territorially authorized distributors/retailers and directly to consumers with medical documents, which includes cannabis plant seeds, cannabis plants, dried cannabis, fresh cannabis, edible cannabis, cannabis topicals, cannabis extracts and cannabis oil; and
 - b) a license which permits JWCL to cultivate cannabis and sell plant seeds and cannabis plants to provincially/territorially authorized distributors/retailers.
5. The Companies have approximately 160 employees. The employees are not unionized and do not maintain a pension plan.
6. TFC is a secured lender to the Companies through a loan agreement dated February 19, 2019 which was amended and restated on November 6, 2019 (as amended by amendments dated January 9, 2020, February 19, 2020 and March 10, 2020) (collectively, the "Loan Agreement"). The current amount outstanding under the Loan Agreement is approximately \$7.6 million. Interest and costs continue to accrue.

3.0 Financial Status

3.1 Projected vs. Actual Cash Flow

1. The Companies' actual DIP financing requirement for the four-week period ending April 24, 2020 was approximately \$1.8 million compared to a forecasted DIP financing requirement of \$2.1 million, as reflected in the table below:

(unaudited; \$000s)	Actual	Projected	Difference	Difference %
Receipts				
Collections from Sales	57	69	(12)	(17%)
HST Refund	82	-	82	N/A
	139	69	70	101%
Disbursements				
Operating Costs	878	1,062	184	17%
Occupancy Costs	239	388	149	38%
Excise Taxes	-	4	4	100%
Professional Fees	574	563	(11)	(2%)
DIP Lender fees and interest	132	165	33	20%
	1,823	2,182	359	16%
Net Cash Flow	(1,684)	(2,113)	429	(20%)
DIP Reconciliation				
Opening Cash Balance	44	44	-	0%
Net Cash Flow	(1,684)	(2,113)	429	20%
DIP Financing	1,773	2,083	310	15%
Closing Cash Balance	133	14	119	850%

2. The variances are primarily the result of the following:
 - a) the Companies received an HST refund of \$82,000 that was not projected;
 - b) payroll costs were \$103,000 lower than projected as a result of employee absences due the COVID-19 pandemic;
 - c) utility costs were \$150,000 lower than projected. This is a timing difference as electricity will be paid during the week of May 4, 2020, and payment terms have been negotiated for the future supply of electricity; and
 - d) miscellaneous other variances.

3.2 Revised Cash Flow Forecast

1. The Companies' management recently advised that the Companies will require additional funding for the balance of these proceedings largely due to lower than projected retail sales as result of COVID-19 (particularly through Ontario Cannabis Stores, in Prince Edward Island and the roll-out to other provinces), as well as certain sales which were forecasted in these proceedings but are now forecasted in the latter portion of these proceedings, or subsequent to these proceedings. The Companies have also taken on various initiatives which are projected to generate sales immediately and through 2020, some of which will only generate cash proceeds after these proceedings have ended. (It should be noted that the Companies' cash burn rate during these proceedings is significantly greater than it would be outside of CCAA as a result of one-time costs, including professional costs.)
2. As a result of the foregoing, the Companies revised their cash flow forecast for the period ending June 26, 2020. The Revised Cash Flow Forecast reflects that the Companies will require an additional \$1 million in DIP financing. TFC has advised that it is prepared to increase the DIP Facility by \$1.5 million in order to allow for contingencies and variances that could arise. A copy of the DIP Amendment is attached as Appendix "C".

(unaudited; \$000s)	
Receipts	
Customers	600
Disbursements	
Payroll	1,384
Rent	469
Other	1,141
TFC	47
Restructuring costs	875
	3,916
Net Cash Flow	(3,316)
Opening Cash Balance as of April 25, 2020	133
Net Cash Flow	(3,316)
Additional DIP Financing	3,183
DIP financing to-date	1,773
Total DIP Financing Required	4,956

3. Pursuant to the terms of the DIP Amendment:
 - a) the DIP Facility will increase by \$1.5 million to \$5.5 million;
 - b) the Companies are required to seek Court-approval of an increase in the DIP Lender's Charge from \$4 million to \$5.5 million; and
 - c) TFC will earn an upfront fee equal to 3% of the increase in the amount of the DIP Facility, being \$45,000.
4. The Monitor recommends the Court issue an order approving the DIP Amendment as:
 - a) the Companies are projected to have a critical need for the additional financing prior to the conclusion of these proceedings;
 - b) the DIP Amendment and the increase in the DIP Lender's Charge is in the best interests of the Companies' stakeholders as it is required to allow the Companies to continue to operate while the SISP is completed. Absent the increase in the DIP Facility, the Companies' operations will be discontinued, likely resulting in a liquidation of the business and the loss of the opportunity to complete a going-concern sale of the business, as contemplated by the SISP; and
 - c) the upfront fee amount (3%) is the same as the one approved with the original DIP Facility.

4.0 SISP

4.1 Qualified Bid Amount

1. On April 10, 2020, the Court approved the bidding procedures in connection with the SISP (the "Bidding Procedures"). The Bidding Procedures provide that a "Qualified Bid" must be payable in cash and must be a minimum of \$11.95 million. The minimum Qualified Bid includes the amount owing to TFC under the DIP Facility. Accordingly, as a result of the DIP Amendment, a Qualified Bid will now need to be at least \$13.45 million.
2. The Companies will post a notice of the increase in the Qualified Bid amount in the data room and on the Monitor's case website (the "Website"). The notice will also be served on the service list. A copy of the notice is provided in Appendix "D".

4.2 Prior SISP Amendment

1. The Bidding Procedures approved by the Court require that bids be submitted in cash.
2. Based on feedback from several interested parties, Stoic advised the Monitor that certain offers are likely to include consideration payable in marketable securities.
3. Pursuant to the Bidding Procedures, the Monitor, with the consent of the Special Committee, has the right to adopt rules for the bidding process that in its reasonable business judgment will better promote the goals of the bidding process, provided that the adoption of any rule materially deviating from the Bidding Procedures requires the prior written consent of TFC, as stalking horse bidder, or a further Order of the Court.

4. In order to be able to consider the broadest array of offers submitted in the SISP, the Monitor, with the consent of the Special Committee, asked TFC to consent to an amendment to the Bidding Procedures to allow for consideration in the form of marketable securities. TFC provided its consent on the basis that a Qualified Bid must have cash equal to the amount of the DIP Facility plus \$1 million.
5. On April 27, 2020, the Monitor's counsel, Davies Ward Phillips & Vineberg LLP, served a notice of this change and the revised Bidding Procedures on the service list. These materials were also posted on the Website and in the data room being managed by Stoic. Copies of the notice and the revised Bidding Procedures, together with a blackline to the original Bidding Procedures, are attached as Appendix "E".

5.0 Conclusion and Recommendation

1. Based on the foregoing, the Monitor respectfully recommends that this Honourable Court make an order granting the relief detailed in Section 1.1 (1)(d) of this Report.

* * *

All of which is respectfully submitted,



**KSV KOFMAN INC.
IN ITS CAPACITY AS MONITOR OF
JAMES E. WAGNER CULTIVATION CORPORATION, JAMES E. WAGNER CULTIVATION
LTD., JWC 1 LTD., JWC 2 LTD., JWC SUPPLY LTD. AND GROWTHSTORM INC.
AND NOT IN ITS PERSONAL CAPACITY**

Appendix “A”

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE MR.

)

WEDNESDAY, THE 1st

JUSTICE HAINEY

)

DAY OF APRIL, 2020

)



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

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ARRANGEMENT OF JAMES E. WAGNER CULTIVATION
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(collectively, the "**Applicants**" and each an "**Applicant**")

INITIAL ORDER

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

ON READING the affidavits of Nathan Woodworth sworn March 31, 2020 and Aiden Nelms sworn March 31, 2020 and the Exhibits to each affidavit thereto, and on being advised that Trichome Financial Corp., Lind Global Macro Fund, LP and the other secured creditors of the Applicants who are likely to be affected by the charges created herein were given notice, and on hearing the submissions of counsel for the Applicants, KSV Kofman Inc. ("**KSV**"), the DIP Lender (as defined below) and on reading the consent of KSV to act as the Monitor,

SERVICE

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

APPLICATION

2. **THIS COURT ORDERS AND DECLARES** that the Applicants are companies to which the CCAA applies.

PLAN OF ARRANGEMENT

3. **THIS COURT ORDERS** that each Applicant 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

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 the employees, consultants, agents, experts, accountants, counsel and such other persons (collectively "**Assistants**") currently retained or employed by them, with liberty to retain such further Assistants as they deem reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

4. **THIS COURT ORDERS** that the Applicants shall be entitled to continue to utilize the central cash management system currently in place or, with the consent of the Monitor, replace it with another substantially similar central cash management system (the "**Cash Management System**") and that any present or future bank providing the Cash Management System shall 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 (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.

5. **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 any of the Applicants to any of their creditors as of this date unless such payments are contemplated under the Commitment Letter and the Definitive Documents (each as defined below) and consented to by the Monitor; (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.

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

- (a) all outstanding and future wages, salaries, employee and pension benefits, vacation pay and employee 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; and
- (b) the fees and disbursements of any Assistants retained or employed by the Applicants in respect of these proceedings, at their standard rates and charges.

7. **THIS COURT ORDERS** that, except as otherwise provided to the contrary herein, 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 following the date of this Order.

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

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

9. **THIS COURT ORDERS** that until a real property lease is disclaimed in accordance with the CCAA, the Applicants shall pay all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under the lease) or as otherwise

may be negotiated between the Applicants 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.

RESTRUCTURING

10. **THIS COURT ORDERS** that the Applicants shall, subject to such requirements as are imposed by the CCAA and such covenants as may be contained in the Definitive Documents (as defined below), have the right to:

- (a) permanently or temporarily cease, downsize or shut down any of its business or operations, and to dispose of redundant or non-material assets not exceeding \$100,000 in any one transaction or \$250,000 in the aggregate;
- (b) terminate the employment of such of its employees or temporarily lay off such of its employees as it deems appropriate; and
- (c) pursue all avenues of refinancing of their Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing,

each 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 an Applicant disclaims the lease governing such leased premises in accordance with Section 32 of the CCAA, it shall not be required to pay Rent under such lease

pending resolution of any such dispute (other than Rent payable for the notice period provided for in Section 32(5) of the CCAA), and the disclaimer of the lease shall be without prejudice to the applicable Applicant's 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 April 10, 2020, 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 the Business or the Property, except with the written consent of the Applicants and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of any of the Applicants or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

14. **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 or the Monitor or their respective employees and representatives acting in such capacities, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the Applicants and the Monitor, or leave of this Court, provided that nothing in this Order shall: (i) empower the Applicants to carry on any business which the

Applicants 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

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

CONTINUATION OF SERVICES

16. **THIS COURT ORDERS** that during the Stay Period, all Persons having oral or written agreements with any of the Applicants or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, ERP software communication and other data services, centralized banking services, security services, payroll services, insurance, transportation services, utility or other services to the Business or any of the Applicants, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by any of the Applicants, and that each of the Applicants shall be entitled to the continued use of its current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the applicable Applicant in accordance with normal payment practices of the applicable Applicant or such other practices as may be agreed upon by the supplier or service provider and each of the applicable Applicant and the Monitor, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

17. **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

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

DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

19. **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 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.

20. **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 \$450,000.00, as security for the indemnity provided in paragraph 19 of this Order. The Directors' Charge shall have the priority set out in paragraphs 39 and 41 herein.

21. **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 19 of this Order.

APPOINTMENT OF MONITOR

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

23. **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;
- (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 weekly 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;
- (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 and financial advisor on a periodic basis, but not less than weekly, or as otherwise agreed to by the DIP Lender;
- (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' 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 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.

24. **THIS COURT ORDERS** that the Monitor shall not take possession of the Property or be deemed to take possession of Property, pursuant to any provision of any federal, provincial or other law respecting, among other things, the manufacturing, possession, processing and distribution of cannabis or cannabis products including, without limitation, under the *Cannabis Act* S.C. 2018, c.16, the *Controlled Drugs and Substances Act*, S.C. 1996, c. 19, the *Excise Tax Act*, the *Ontario Cannabis Control Act*, S.O. 2017, c. 26, Sched. 1 or other such applicable federal or provincial legislation (collectively, the "**Cannabis Legislation**"), and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof, within the meaning of any Cannabis Legislation, or otherwise, and nothing in this Order shall be construed as resulting in the Monitor being an employer or successor employer within the meaning of any statute, regulation or rule of law or equity, for any purpose whatsoever.

25. **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.

26. **THIS COURT ORDERS** that, in addition to the rights and protection afforded to the DIP Lender under this Order or at law, the DIP Lender shall incur no liability or obligation as a result of carrying out of the provisions of this Order, including under any Cannabis Legislation, save and except for any gross negligence or willful misconduct on its part.

27. **THIS COURT ORDERS** that up to and including April 10, 2020, the Applicants shall not make any expenditures or disbursements without the prior knowledge or consent of the Monitor.

28. **THIS COURT ORDERS** that the Monitor shall provide any creditor of the Applicants 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, neither the Monitor nor its respective employees and representatives acting in such capacities, shall incur any liability or obligation as a result of the appointment of the Monitor or the carrying out by it of the provisions of this Order, including under any Cannabis Legislation, save and except for any gross negligence or

willful 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 related to these proceedings, in each case at their standard rates and charges, whether incurred prior to, on or subsequent to, the date of this Order by the Applicants as part of the costs of these proceedings. The Applicants are hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor, and counsel for the Applicants on a weekly basis.

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 \$500,000.00 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 39 and 41 hereof.

DIP FINANCING

33. **THIS COURT ORDERS** that the Applicants are hereby authorized and empowered to obtain and borrow under a credit facility (the "**DIP Loan**") from Trichome Financial Corp. (in such capacity, the "**DIP Lender**") in order to finance the Applicants' working capital requirements and other general corporate purposes and capital expenditures, provided that borrowings under such credit facility shall not exceed \$4,000,000.00 unless permitted by further Order of this Court.

34. **THIS COURT ORDERS THAT** such credit facility shall be on the terms and subject to the conditions set forth in the commitment letter between the Applicants and the DIP Lender dated as of March 31, 2020 (the "**Commitment Letter**"), filed.

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 (collectively, the "**Definitive Documents**"), as are contemplated by the Commitment Letter or as may be reasonably required by the DIP Lender pursuant to the terms thereof, and the Applicants are hereby authorized and directed to pay and perform all of their indebtedness, interest, fees, liabilities and obligations to the DIP Lender under and pursuant to the Commitment Letter and the Definitive Documents 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, which 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 39 and 41 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, upon 7 days' notice to the Applicants and the Monitor, may exercise any and all of its rights and remedies against the Applicants or the Property under or pursuant to the Commitment Letter, Definitive Documents and the DIP Lender's Charge, including without limitation, to cease making advances to the Applicants and set off and/or consolidate any amounts owing by the DIP Lender to the Applicants against the obligations of the Applicants to the DIP Lender under the Commitment Letter, the Definitive Documents or the DIP Lender's Charge, to make demand, accelerate payment and give other notices, or to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Applicants and for the appointment of a trustee in bankruptcy of the Applicants; and

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

38. **THIS COURT ORDERS AND DECLARES** that the DIP Lender shall be treated as unaffected in any plan of arrangement or compromise filed by the Applicants under the CCAA, or any proposal filed by the Applicants under the *Bankruptcy and Insolvency Act* of Canada (the "BIA"), with respect to any advances made under the Definitive Documents.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

39. **THIS COURT ORDERS** that the priorities of the Directors' Charge, the Administration Charge and the DIP Lender's Charge, as among them, shall be as follows:

First - Administration Charge (to the maximum amount of \$500,000.00);

Second - Directors' Charge (to the maximum amount of \$450,000.00); and

Third - DIP Lender's Charge (to the maximum amount of \$800,000.00).

40. **THIS COURT ORDERS** that the filing, registration or perfection of the Administration Charge, the DIP Lender's Charge, or the Directors' 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.

41. **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.

42. **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicants shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Charges, unless the Applicants

also obtain the prior written consent of the Monitor, the DIP Lender and the beneficiaries of the Charges, or further Order of this Court.

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

- (a) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of the Commitment Letter or the Definitive Documents shall create or be deemed to constitute a breach by the Applicants of any Agreement to which any of them are a party;
- (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the Applicants entering into the Commitment Letter, the creation of the Charges, or the execution, delivery or performance of the Definitive Documents; and
- (c) the payments made by the Applicants pursuant to this Order, the Commitment Letter 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.

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

RELIEF FROM REPORTING OBLIGATIONS

45. **THIS COURT ORDERS** that none of the directors, officers, employees, or other representatives of the Applicants, nor the Monitor (and its directors, officers, employees or representatives) shall have any personal liability for failure of the Applicants to file annual information forms, annual and quarterly management discussion and analysis, annual and quarterly financial statements (including related audits, reports and certifications) for the Stay Period, which period may be extended pursuant to further Order of the Court.

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, (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, or cause to be sent, in the prescribed manner, a notice to every known creditor who has a claim against any of the Applicants of more than \$1,000, and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder.

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 – <https://www.ksvadvisory.com/insolvency-cases/case/james-e-wagner-cultivation-corporation> (the "**Website**").

48. **THIS COURT ORDERS** that the Applicants and 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. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or judicial obligation, and notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations*, Reg. 81000-2-175 (SOR/DORS).

GENERAL

49. **THIS COURT ORDERS** that each of the Applicants or the Monitor may from time to time apply to this Court to amend, vary or supplement this Order or for advice and directions in the discharge of its powers and duties under this Order or in the interpretation or application of this Order.

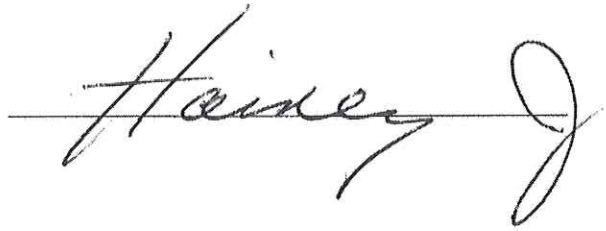
50. **THIS COURT ORDERS** that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Applicants, the Business or the Property.

51. **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.

52. **THIS COURT ORDERS** that each of the Applicants and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, 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.

53. **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.

54. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Toronto time on the date of this Order.

A handwritten signature in black ink, appearing to read "Heiney J.", written over a horizontal line.

ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO:

APR 01 2020

PER / PAR: RW

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF JAMES E. WAGNER CULTIVATION CORPORATION, JAMES E. WAGNER CULTIVATION LTD., JWC 1 LTD., JWC 2 LTD., JWC SUPPLY LTD AND GROWTHSTORM INC.

Court File No. CV-20-00639000-00CL

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

Proceedings commenced in Toronto

INITIAL ORDER

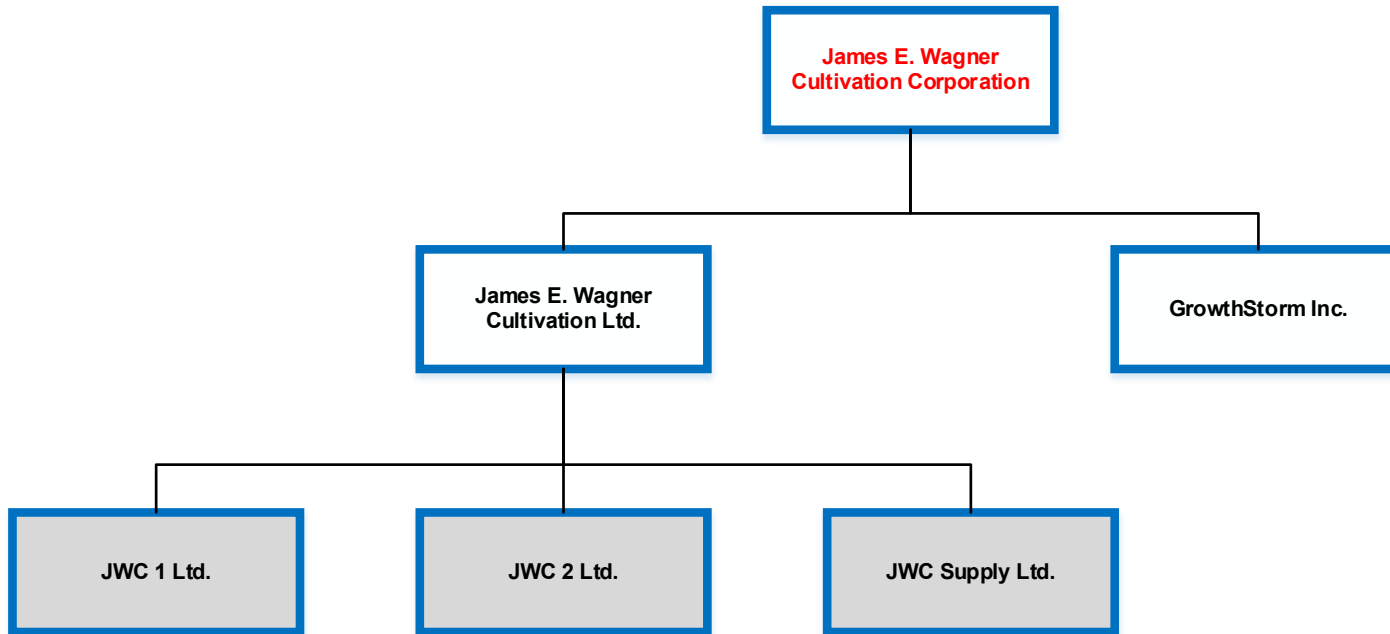
BENNETT JONES LLP
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Suite 3400, P.O. Box 130
Toronto, Ontario
M5X 1A4
Sean Zweig (LSO# 573071)
Mike Shakra (LSO# 64604K)
Aiden Nelms (LSO# 74170S)

Tel: 416-863-1200
Fax: 416-863-1716

Lawyers for the Applicants

Appendix “B”

James E. Wagner Cultivation Corporation Organizational Structure



Appendix “C”

FIRST AMENDMENT TO INTERIM FINANCING TERM SHEET

This FIRST AMENDMENT TO INTERIM FINANCING TERM SHEET (this “**Amendment**”) is made as of May 4, 2020 between James E. Wagner Cultivation Corporation, as borrower (the “**Borrower**”), James E. Wagner Cultivation Ltd., JWC 1 Ltd., JWC 2 Ltd., JWC Supply Ltd. and Growthstorm Inc., as guarantors (collectively, the “**Guarantors**”, and together with the Borrower, the “**Obligors**”), and Trichome Financial Corp., as lender (the “**Lender**”, and together with the Obligors, the “**Parties**”).

RECITALS:

A. Reference is made to the interim financing term sheet dated as of March 31, 2020 among the Borrower, the Guarantors and the Lender (as may be further amended, restated, modified, replaced or superseded from time to time, the “**Loan Agreement**”).

ARTICLE 1 INTERPRETATION

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

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

ARTICLE 2 AMENDMENTS TO THE LOAN AGREEMENT

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

2.1.1 Section 6 (*Interim Facility, Maximum Amount*) of the Loan Agreement is hereby amended by deleting “\$4,000,000” and replacing it with “\$5,500,000”.

ARTICLE 3 REPRESENTATIONS AND WARRANTIES

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

- (a) this Amendment has been duly authorized, executed and delivered by each Obligor;
- (b) this Amendment constitutes a legal, valid and binding obligation of each Obligor, enforceable in accordance with their terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other applicable laws affecting creditors’ rights generally and to general principles of equity, regardless of whether considered in a proceeding in equity or at law;
- (c) the representations and warranties set forth in the Loan Agreement and the other Interim Financing Credit Documents are true and correct in all respects on and as of the date hereof as though made on and as of such date, unless stated to be made as of a specified date; and

- (d) no Default or Event of Default has occurred and is continuing.

ARTICLE 4 CONDITIONS

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

- 4.1.1 a counterpart of this Amendment executed by each party hereto;
- 4.1.2 the CCAA Court shall have issued an order, in a form acceptable to the Lender: (i) approving this Amendment; and (ii) increasing the Interim Lender Charge from \$4 million to \$5.5 million;
- 4.1.3 the Lender shall have received from the Borrower an amendment fee of \$45,000, which fee shall be deemed to be fully earned and payable upon the execution and delivery hereof; and
- 4.1.4 the stalking horse purchase agreement dated as of March 31, 2020 between the Lender, as purchaser and the Obligors, as vendors, shall be amended by amending the term “DIP Facility” to include this Amendment.

ARTICLE 5 MISCELLANEOUS

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

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

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

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

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

- signature page follows -


BORROWER:

JAMES E. WAGNER CULTIVATION CORPORATION


By: 
Name: Philip Armstrong
Title: Director

GUARANTORS:


JAMES E. WAGNER CULTIVATION LTD.

By: 
Name: Philip Armstrong
Title: Director

JWC 1 LTD.

By: 
Name: Philip Armstrong
Title: Director

JWC 2 LTD.

By: 
Name: Philip Armstrong
Title: Director

JWC SUPPLY LTD.

By: 
Name: Philip Armstrong
Title: Director

GROWTHSTORM INC.

By: 
Name: Philip Armstrong
Title: Director

LENDER:

TRICHOME FINANCIAL CORP.

By:  type text here

Name: Michael Ruscetta
Title: Chief Financial Officer

Appendix “D”



May 4, 2020

TO: ALL INTERESTED BIDDERS

Re: James E. Wagner Cultivation Corporation, James E. Wagner Cultivation Ltd., JWC 1 Ltd., JWC 2 Ltd., JWC Supply Ltd. and Growthstorm Inc. (collectively, the "Companies")

On April 1, 2020, the Ontario Superior Court of Justice (Commercial List) ("**Court**") made an Order (the "**Initial Order**") granting the Companies protection pursuant to the *Companies' Creditors Arrangement Act*. Pursuant to the Initial Order, KSV Kofman Inc. was appointed as monitor ("**Monitor**") and a debtor-in-possession facility up to \$4,000,000 was approved (the "**DIP Facility**"). On April 9, 2020, the Court made an Order (the "**Bidding Procedures and Stalking Horse APA Approval Order**") approving, among other things, a sale and investor solicitation process (the "**SISP**") and bidding procedures related thereto (the "**Bidding Procedures**"). Capitalized terms not otherwise defined herein have the meaning ascribed to them in the Revised Bidding Procedures (as defined below) or the Bidding Procedures and Stalking Horse APA Approval Order, as applicable.

On or around April 26, 2020, with the consent of the Special Committee and the Stalking Horse Bidder, the Bidding Procedures were revised (the "**Revised Bidding Procedures**") and made available on the Monitor's website at <https://www.ksvadvisory.com/insolvency-cases/case/james-e-wagner-cultivation-corporation>.

Among other things, the Revised Bidding Procedures provide that:

- *A "Qualified Bidder" is "a bidder who submits a bid in substantially the same form as the Stalking Horse Bid, for a purchase price equal to at least CAD\$11.95 million to be satisfied in cash or, in the discretion of each of the Special Committee, the Monitor and the Stalking Horse Bidder, a combination of cash and Marketable Securities, provided that the cash portion of the purchase price is no less than the estimated outstanding amount of the DIP Facility at closing (estimated to be \$4 million) plus \$1 million, and includes the Required Bid Terms and Materials (as defined below). Any bid meeting these criteria that is received by the Monitor before the Bid Deadline is a qualified bid ("Qualified Bid"); and*
- *"All bids (other than the Stalking Horse Bid) must include, unless such requirement is waived by the Monitor after consultation with the Special Committee, the following (collectively, the "Required Bid Terms and Materials"): (i) A base purchase price equal to or greater than CAD\$11.95 million to be satisfied in cash or, in the discretion of each of the Special Committee, the Monitor and the Stalking Horse Bidder, a combination of cash and Marketable Securities, provided that the cash portion of the purchase price is no less than the estimated amount of the DIP Facility at closing (estimated to be \$4 million) plus \$1 million, being the estimated amount payable under the Stalking Horse Bid (\$7.6 million), inclusive of the Closing Cash Payment, plus the amount of the DIP Facility (estimated to be approximately \$4 million) plus the Expense Reimbursement (\$100,000) and \$250,000 bid increment (collectively, the "Base Purchase Price") [...]."*

Please be aware that a motion (the "**Motion**") is currently being scheduled to increase the Companies' authorized borrowings under the DIP Facility from \$4,000,000 to \$5,500,000. If granted, the increase to the DIP Facility will result in an increase to the Base Purchase Price required to be a Qualified Bid. Accordingly, it is expected that a "Qualified Bidder" will be "a bidder who submits a bid in substantially the same form as the Stalking Horse Bid, for a purchase price equal to at least CAD\$13.45 million to be satisfied in cash or, in the discretion of each of the Special Committee, the Monitor and the Stalking Horse Bidder, a combination of cash and Marketable Securities, provided that the cash portion of the purchase price is no less than the estimated outstanding amount of the DIP Facility at closing (estimated to be \$5.5 million) plus \$1 million, and includes the Required Bid Terms and Materials Any bid meeting these criteria that is received by the Monitor before the Bid Deadline is a qualified bid ("Qualified Bid");

A further notice will be provided following the Motion to consider the increase to the DIP Facility. Until the Motion can be heard, interested bidders should assume that the increase to the DIP Facility will be approved for the purpose of preparing a Qualified Bid.

Yours very truly,

A handwritten signature in blue ink that reads "KSV Kofman Inc". The signature is written in a cursive, flowing style.

**KSV KOFMAN INC.,
SOLELY IN ITS CAPACITY AS COURT-APPOINTED CCAA MONITOR OF
JAMES E. WAGNER CULTIVATION CORPORATION,
JAMES E. WAGNER CULTIVATION LTD., JWC 1 LTD.,
JWC 2 LTD., JWC SUPPLY LTD. AND GROWTHSTORM INC.
AND NOT IN ITS PERSONAL CAPACITY**

Appendix “E”

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

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

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF JAMES E. WAGNER CULTIVATION
CORPORATION, JAMES E. WAGNER CULTIVATION LTD., JWC 1
LTD., JWC 2 LTD., JWC SUPPLY LTD. AND GROWTHSTORM INC.**

Applicants

REVISED BIDDING PROCEDURES

Pursuant to the Bidding Procedures approved by the Court on April 10, 2020 (the “**Bidding Procedures**”), the Monitor, with the consent of the Special Committee, has the right to adopt such other rules for the Bidding Process (including rules that may depart from those set forth in the original Bidding Procedures) that in its reasonable business judgment will better promote the goals of the Bidding Process, provided, however, that the adoption of any rule that materially deviates from these Bidding Procedures shall require the prior written consent of the Stalking Horse Bidder or a further Order of the Court.

Capitalized terms used herein and not otherwise defined have the meanings ascribed to them in the Bidding Procedures.

In accordance with the foregoing, the Monitor, with the consent of the Special Committee and the prior written consent of the Stalking Horse Bidder has revised the Bidding Procedures to accommodate bids which may choose to satisfy part of the purchase price in marketable equity or debt securities. A copy of these revised Bidding Procedures is attached (the “**Revised Bidding Procedures**”) together with a comparison reflecting the changes made to the original Bidding Procedures. The Revised Bidding Procedures supersede and replace the original Bidding Procedures.

KSV KOFMAN INC.,

In its capacity as the Court appointed
Monitor of the Applicants

**IN THE MATTER OF JAMES E. WAGNER CULTIVATION COPORATION JAMES E.
WAGNER CULTIVATION LTD., JWC 1 LTD., JWC 2 LTD., JWC SUPPLY LTD. AND
GROWTHSTORM INC. (the “VENDORS”)**

Bidding Procedures

Set forth below are the bidding procedures (the “**Bidding Procedures**”) to be employed with respect to the sale (the “**Sale**”) of the Vendors’ assets pursuant to a court approved solicitation process in the CCAA Proceedings of the Vendors.

On April 9, 2020, the Court issued an order (the “**Sale Process Order**”) approving and accepting for the purpose of conducting a “stalking horse” solicitation process (the “**Stalking Horse Process**”) in accordance with these Bidding Procedures that certain asset purchase agreement dated March 31, 2020 (the “**Stalking Horse Bid**”) between the Vendors and Trichome Financial Corp. (the “**Stalking Horse Bidder**”), including, without limitation, the appointment of Stoic Advisory Inc. as M&A advisor to the Vendors (the “**M&A Advisor**”), the payment of an expense reimbursement (the “**Expense Reimbursement**”) by the Vendors to the Stalking Horse Bidder in accordance with the provisions of the Stalking Horse Bid, and approving these Bidding Procedures.

Subject to Court availability and the terms hereof, the Vendors shall bring a motion (the “**Approval and Vesting Order Motion**”) on or before June 5, 2020 (or, if there is no Auction, on or before May 29, 2020) seeking the granting of an order by the Court authorizing the Vendors to proceed with the Sale of the Vendors’ Assets to the Qualified Bidder making the Successful Bid (each as defined below) (the “**Successful Bidder**”) (such order, as approved, the “**Approval and Vesting Order**”).

In these Bid Procedures, the term Marketable Securities means publicly traded debt or equity securities that are listed for trading on a national securities exchange.

Key Dates

April 10, 2020 at 5:00 p.m. (prevailing Eastern Time) (prevailing Eastern Time)	Delivery of Teasers and Sales Packages
April 10, 2020 at 5:00 p.m. (prevailing Eastern Time)	Confidential Data-Site to be established
May 15, 2020 at 5:00 p.m. (prevailing Eastern Time)	Bid Deadline - Due Date for Bids and Deposits

May 19 at 5 p.m. (prevailing Eastern Time)	Monitor to provide the Stalking Horse Bidder and each Qualified Bidder a schedule setting forth either or both (i) the highest or otherwise best fully binding offer for all of the Debtors' Assets and (ii) the highest or otherwise best fully binding offer(s) for all or any combination of the Purchased Assets
May 22 at 10:00 a.m. (prevailing Eastern Time)	Auction (if any)
May 29 at 10:00 a.m. (prevailing Eastern Time) (pending the Court's availability), or as soon as practicable if the Auction is not required	Approval and Sale Order hearing
June 5 at 10:00 a.m. (prevailing Eastern Time) (pending the Court's availability), or as soon as practicable if there is an Auction	Approval and Sale Order hearing

Assets to Be Sold En Bloc or Piecemeal

The Vendors are offering for Sale all of the Vendors' right, title and interest in and to all of the Vendors' assets (the "**Vendors' Assets**") and the Vendors will consider (i) a bid for all of the Vendors' Assets (an "**En Bloc Bid**"); or (ii) separate bids to acquire some but not all of the Vendors' assets (a "**Piecemeal Bid**"), provided that the Vendors will only consider Piecemeal Bids if a combination of one or more Piecemeal Bids in the aggregate meet the requirements to be a Qualified Bid (as defined below). The M&A Advisor under the supervision of the Special Committee of the Board of JWC (the "**Special Committee**") and KSV Kofman Inc., in its capacity as Monitor of the Vendors (the "**Monitor**"), will be responsible for conducting the solicitation process and an auction (the "**Auction**") (if any) on behalf of the Vendors. The Auction, if any, will be conducted by the Monitor. The Vendors' preferred transaction structure is for En Bloc Bid.

Although the Vendors are seeking bids to purchase some or all of the Vendors' assets, the Vendors will also consider a bid that contemplates a Plan of Restructuring for the Vendors (a "**Plan Bid**") provided that such Plan Bid will only be a Qualified Bid if it: (i) provides for the indefeasible payment in full of the amounts owing to Trichome Financial Corp, including without limitation the secured indebtedness owing to Trichome Financial Corp. and the Expense Reimbursement amount under the Stalking Horse APA, on or before the Outside Date regardless of the timeline for such Plan Bid; (ii) has conditions that, in the

reasonable opinion of the Vendors and the Monitor, are likely to be satisfied; and (iii) includes a fully-funded commitment to provide any additional interim financing required by the Vendors to complete all steps required to implement such Plan Bid, such financing to be subordinate to the existing Administration Charge, D&O Charge and DIP Charge.

The Bidding Process

The M&A Advisor, under the supervision of the Special Committee and the Monitor, shall be responsible for the marketing and sale of the Vendors' Assets pursuant to the process described by the Monitor's Report to Court dated April 6, 2020 (the "**Bidding Process**"), which is set out below. The Monitor, with the consent of the Special Committee, shall have the right to adopt such other rules for the Bidding Process (including rules that may depart from those set forth herein) that in its reasonable business judgment will better promote the goals of the Bidding Process, *provided, however*, that the adoption of any rule that materially deviates from these Bidding Procedures shall require the prior written consent of the Stalking Horse Bidder or a further Order of the Court.

Participation Requirements

"**Qualified Bidder**" is a bidder who submits a bid in substantially the same form as the Stalking Horse Bid, for a purchase price equal to at least CAD\$11.95 million to be satisfied in cash or, in the discretion of each of the Special Committee, the Monitor and the Stalking Horse Bidder, a combination of cash and Marketable Securities, provided that the cash portion of the purchase price is no less than the estimated outstanding amount of the DIP Facility at closing (estimated to be \$4 million) plus \$1 million, and includes the Required Bid Terms and Materials (as defined below). Any bid meeting these criteria that is received by the Monitor before the Bid Deadline is a qualified bid ("**Qualified Bid**").

Bid Deadline

A Qualified Bidder that desires to make a bid shall deliver written copies of its bid and the Required Bid Terms and Materials to the Monitor no later than 5:00 p.m. (prevailing Eastern time) on May 15, 2020 (the "**Bid Deadline**"). The Monitor shall forthwith provide copies of any bids received to the Special Committee.

Bid Requirements

All bids (other than the Stalking Horse Bid) must include, unless such requirement is waived by the Monitor after consultation with the Special Committee, the following (collectively, the “**Required Bid Terms and Materials**”):

- (i) A base purchase price equal to or greater than CAD\$11.95 million to be satisfied in cash or, in the discretion of each of the Special Committee, the Monitor and the Stalking Horse Bidder, a combination of cash and Marketable Securities, provided that the cash portion of the purchase price is no less than the estimated amount of the DIP Facility at closing (estimated to be \$4 million) plus \$1 million, being the estimated amount payable under the Stalking Horse Bid (\$7.6 million), inclusive of the Closing Cash Payment, plus the amount of the DIP Facility (estimated to be approximately \$4 million) plus the Expense Reimbursement (\$100,000) and \$250,000 bid increment (collectively, the “**Base Purchase Price**”);

A provision stating that the bidder’s offer is irrevocably open for acceptance until the earlier of (i) the date that the Vendors’ Assets have been sold pursuant to the closing of the sale approved by the Court; and (ii) the Outside Date;

- (ii) If the proposed consideration includes Marketable Securities, satisfactory evidence that the Marketable Securities can be issued to the Vendors or their respective creditors and can be traded on a recognized national securities exchange without restriction or hold period;
- (iii) An executed copy of a proposed purchase agreement and a redline of the bidder’s proposed purchase agreement reflecting variations from the Stalking Horse Bid (the “**Marked Agreement**”);
- (iv) A cash deposit in the amount of not less than fifteen *per cent* (15%) of the amount of the Base Purchase Price, in the form of a wire transfer, certified cheque or such other form acceptable to the Monitor (the “**Bid Deposit**”), which shall be held in the trust account of the Monitor’s solicitors (the “**Escrow Account**”). Funds shall be disbursed from the Escrow Account only as follows: (i) if the Qualified Bidder is the Successful Bidder, its Bid Deposit will be applied without interest on Closing to the purchase price payable by it under its bid on the closing thereof; and (ii) if the Qualified Bidder is not the Successful Bidder, then its Bid Deposit shall be returned without interest to it forthwith following the expiration of its offer (which in the case of the Back-Up Bidder shall be following closing of the sale to the Successful Bidder).

For the purpose of subparagraph (i) above, if a portion of the purchase price of a bid is payable in Marketable Securities, the Monitor shall immediately notify the Stalking Horse Bidder and shall deliver any information reasonably requested by the Stalking Horse Bidder to assess the value and liquidity of the Marketable Securities. The Stalking Horse Bidder shall notify the Monitor and the Special Committee by noon (prevailing Eastern time) on May 19, 2020, in writing, whether or not the Stalking Horse Bidder, in its absolute discretion (considering value, liquidity and any other factors it determines, in its sole discretion to be relevant), will accept the Marketable

Securities as partial payment of the purchase price, which acceptance shall be irrevocable for all purposes of these Bidding Procedures, including for the purpose of any Overbid (as defined below). For greater certainty: (i) no bid which includes Marketable Securities shall be deemed to be a Qualified Bid unless such bid contains sufficient cash to pay Trichome Financial Corp. in full or the Stalking Horse Bidder agrees in writing to accept such Marketable Securities as partial payment of the purchase price; and (ii) agreement by the Stalking Horse Bidder (in accordance with the above) to a bid which includes Marketable Securities shall not obligate the Stalking Horse Bidder to accept, or shall not imply that the Stalking Horse Bidder has accepted any other bid which includes Marketable Securities, without the Stalking Horse Bidder also agreeing in writing to accept such Marketable Securities as partial payment of the purchase price in respect of such other bid. Any Overbid made by such bidder may be comprised entirely of the same class of securities so accepted by the Stalking Horse Bidder without any further consent of the Stalking Horse Bidder.

For the purposes of these Bidding Procedures, the Monitor shall provide all bidders with an estimate of the anticipated amount owing under the DIP Facility as of the Closing Date, provided however that the Successful Bidder must agree to adjust its bid (either higher or lower) to reflect the actual amount owing under the DIP Facility on Closing.

A bid received from a Qualified Bidder that includes all of the Required Bid Terms and Materials and is received by the Bid Deadline is a **“Qualified Bid”**. The Monitor shall review the Qualified Bids and shall recommend to the Special Committee which Qualified Bid is the best offer. The Special Committee, in consultation with the Monitor, reserves the right to determine the value of any Qualified Bid, and which Qualified Bid constitutes the best offer (the **“Lead Bid”**). Details of the Lead Bid will be provided by the Monitor to all Qualified Bidders after the Bid Deadline and no later than 5:00p.m. (Eastern Time) three (3) Days before the date scheduled for the Auction.

Notwithstanding the bid requirements detailed above, the Stalking Horse Bid shall be deemed to be a Qualified Bid and the Stalking Horse Bidder shall be deemed to be a Qualified Bidder.

“As Is, Where Is, With All Faults”

The Sale of the Vendors’ Assets shall be on an “as is, where is” and “with all faults” basis and without representations, warranties, or guarantees, express, implied or statutory, written or oral, of any kind, nature, or description by the Monitor or the Vendors or their agents, representatives, partners or employees, or any of the other parties participating in the sales process pursuant to these Bid Procedures, except as may otherwise be provided in a definitive purchase agreement with the Vendors. By submitting a bid, each Qualified Bidder shall be deemed to acknowledge and represent that it has had an opportunity to conduct any and all due diligence regarding the Vendors’ Assets prior to making its bid, that it has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the Vendors’ Assets in making its bid, and that it did not rely upon any written or oral statements, representations, warranties, or guarantees, express, implied, statutory or otherwise, regarding the Vendors’ Assets, the financial performance of the Vendors’ Assets or the physical condition

or location of the Vendors' Assets, or the completeness of any information provided in connection therewith or the Auction, except as expressly stated in these Bidding Procedures or as set forth in a definitive purchase agreement with the Vendors.

Free of Any and All Liens

Except as otherwise provided in the Stalking Horse Bid or another Successful Bidder's purchase agreement, and subject to any permitted encumbrances therein, all of the Vendors' right, title and interest in and to the Vendors' Assets shall be sold free and clear of all liens and encumbrances pursuant to the Approval and Vesting Order except for Permitted Encumbrances (as defined in the Stalking Horse Bid).

The Sale and Auction Process

If one or more Qualified Bids (other than that submitted by the Stalking Horse Bidder) have been received by the Monitor on or before the Bid Deadline, the Monitor shall advise all Qualified Bidders of the Lead Bid and invite all Qualified Bidders (including the Stalking Horse Bidder) to attend the Auction to be conducted by the Monitor in accordance with the **Auction Procedures** attached hereto as Appendix 1. The Auction may be conducted in person or by video conference.

If no Qualified Bid is submitted by the Bid Deadline, then the Stalking Horse Bid shall be the Successful Bid, and the Stalking Horse Bidder shall be the Successful Bidder and the Auction shall be cancelled.

Monitor and Special Committee to Determine Highest and/or Best Bid: The Monitor shall determine after each round of offers in the Auction, in its reasonable business judgment, the best bid and shall recommend this bid to the Special Committee as the Lead Bid. In making such determination, the Monitor and the Special Committee may consider, without limitation: (i) the amount and nature of the consideration, including the liquidity of and value ascribed by the Special Committee and the Monitor to any securities forming part of the consideration; (ii) the proposed assumption of liabilities, if any, and the related implied impact on recoveries for creditors; (iii) the ability of the Qualified Bidder in question to close the proposed transaction; (iv) the proposed closing date and the likelihood, extent and impact of any potential delays in closing; (v) any purchase price adjustment; (vi) the net economic effect of any changes made to the Stalking Horse Bid; and (vii) such other considerations as the Monitor or the Special Committee deems relevant in its reasonable business judgment. At the end of each round of offers, the Monitor shall advise the Qualified Bidders of the material terms of the then highest and/or best bid, and the basis for calculating the total consideration offered in such offer. If at the end of any round of bidding a Qualified Bidder has elected not to submit a further bid meeting the criteria set out herein (including the Minimum Bid Increment), then such Qualified Bidder shall not be entitled to continue to participate in the next round of offers or in any subsequent round.

If only one Qualified Bid is submitted after a round of offers then that Qualified Bid shall be the Successful Bidder. The next highest offer, as determined by the Special Committee based on the Monitor's recommendation (the "**Back-up Bid**"), shall be required to keep its offer open

and available for acceptance until the closing of the Court Approved Sale of the Vendors' Assets to the Successful Bidder.

Highest versus Best Offer

In determining the Lead Bid, the highest and/or best sale offer during each round of offers, and the Successful Bid, the Monitor and the Special Committee are not required to select the offer with the highest purchase price and may, exercising their reasonable business judgment, select another offer on the basis that it is the best offer even though not the highest purchase price. Without limiting the foregoing, the Monitor and the Special Committee may give such weight to the non-monetary considerations as it determines, exercising its reasonable business judgment, is appropriate and reasonable, including those considerations described above under "Monitor and the Special Committee to Determine Highest and/or Best Bid".

Expense Reimbursement

To provide an incentive and to compensate the Stalking Horse Bidder for performing the substantial due diligence and incurring the expenses necessary in entering into the Stalking Horse Bid with the knowledge and risk that arises from participating in the sale and subsequent bidding process, the Vendors have agreed to pay the Stalking Horse Bidder, under the conditions outlined herein and in the Stalking Horse Bid, an Expense Reimbursement on account of its reasonable and documented out of pocket fees and expenses, up to a maximum of \$100,000 inclusive of HST, in the event that the Stalking Horse Bidder is not the Successful Bidder.

The Expense Reimbursement is a material inducement for, and a condition of, the Stalking Horse Bidder's entry into the Stalking Horse Bid. The Expense Reimbursement, if payable in accordance with the Stalking Horse Bid, shall be paid in accordance with the Stalking Horse Bid and the Sale Process Order.

Acceptance of Qualified Bids

The sale of the Vendors' Assets to any Successful Bidder by the Vendors is expressly conditional upon the approval of the Successful Bid by the Court at the hearing of the Approval and Vesting Order Motion. The presentation of the Successful Bid to the Court for approval does not obligate the Vendors to close the transaction contemplated by such Successful Bid unless and until the Court approves the Successful Bid. The Vendors will be deemed to have accepted a bid only when the bid has been approved by the Court at the hearing on the Approval and Vesting Order Motion.

Approval and Vesting Order Motion Hearing

The Approval and Vesting Order Motion shall, subject to court availability, be made returnable on or before June 5, 2020 (or, if there is no Auction, on or before May 29, 2020). The Special Committee, with the consent of the Monitor, reserves its right to the extent consistent with

the Stalking Horse Bid to change the date of the hearing of Approval and Vesting Order Motion in order to achieve the maximum value for the Vendors' Assets.

Miscellaneous

The solicitation process and these Bidding Procedures are solely for the benefit of the Vendors and nothing contained in the Sale Process Order or these Bidding Procedures shall create any rights in any other person (including, without limitation, any bidder or Qualified Bidder, and any rights as third party beneficiaries or otherwise) other than the rights expressly granted to a Successful Bidder under the Sale Process Order. The bid protections incorporated in these Bidding Procedures are solely for the benefit of the Stalking Horse Bidder.

Except as provided in the Bidding Procedures Order and Bidding Procedures, the Court shall retain jurisdiction to hear and determine all matters arising from or relating to the implementation of the Sale Process Order, the Stalking Horse Process and the Bidding Procedure.

APPENDIX I

Auction Procedures

Auction

1. If the Special Committee, based on the recommendation of the Monitor, determines to conduct an Auction pursuant to the Stalking Horse Bid Procedures, the Monitor will notify the Qualified Bidders who made a Qualified Bid that an Auction will be conducted. The Auction will be convened by the Monitor and conducted either by video conference or in person at the Toronto office of Davies Ward Phillips & Vineberg LLP at 10:00 a.m. (Eastern Time) on May 22, 2020, or such other place and time as the Monitor may advise. Capitalized terms used but not defined have the meaning given to them in the Stalking Horse Bid Procedures. The Auction shall be conducted in accordance with the following procedures:
 - a) Participation at The Auction. Only a Qualified Bidder is eligible to participate in the Auction. The Monitor shall provide all Qualified Bidders with the amount of the Leading Bid by 5:00pm (Eastern Time) three (3) Days before the date scheduled for the Auction. Each Qualified Bidder must inform the Monitor whether it intends to participate in the Auction no later than 12:00 p.m. (Eastern Time) on the Business Day prior to the Auction. Only the authorized representatives of each of the Qualified Bidders, the Monitor, the Vendors and their respective counsel and other advisors shall be permitted to attend the Auction.
 - b) Bidding at the Auction. Bidding at the Auction shall be conducted in rounds. The Leading Bid shall constitute the "Opening Bid" for the first round and the highest Overbid (as defined below) at the end of each round shall constitute the "Opening Bid" for the following round. In each round, a Qualified Bidder may submit no more than one Overbid. Any Qualified Bidder who bids in a round (including the Qualified Bidder that submitted the Opening Bid for such round) shall be entitled to participate in the next round of bidding at the Auction.
 - c) Monitor Shall Conduct the Auction. The Monitor and its advisors shall direct and preside over the Auction. At the start of each round of the Auction, the Monitor shall provide the terms of the Opening Bid to all participating Qualified Bidders at the Auction. The determination of which Qualified Bid constitutes the Opening Bid for each round shall take into account any factors that the Monitor and the Special Committee reasonably deem relevant to the value of the Qualified Bid, including, among other things, the following: (i) the amount and nature of the consideration, including the liquidity of and value ascribed by the Special Committee and the Monitor to any securities forming part of the consideration; (ii) the proposed assumption of any liabilities and the related implied impact on recoveries for creditors; (iii) the Monitor's and the Special Committee's assessment of the certainty of the Qualified Bidder to close the proposed transaction on or before the Outside Date; (iv) the likelihood, extent and impact of any potential delays in closing; (v) the net economic effect of any changes from the Opening Bid of the previous round, and (vi) such other considerations as the Monitor or the

Special Committee deems relevant in its reasonable business judgment (collectively, the "Bid Assessment Criteria"). All Bids made after the Opening Bid shall be Overbids, and shall be made and received on an open basis, and all material terms of the highest and best Overbid shall be fully disclosed to all other Qualified Bidders that are participating in the Auction. The Monitor shall maintain a record of the Opening Bid and all Overbids made and announced at the Auction.

- d) Terms of Overbids. An "Overbid" is any Bid made at the Auction subsequent to the Monitor's announcement of the Opening Bid. To submit an Overbid, in any round of the Auction, a Qualified Bidder must comply with the following conditions:
- (i) *Minimum Overbid Increment:* Any Overbid shall be made in minimum Purchase Price increments of \$100,000 (in cash or, in the discretion of the Special Committee and the Monitor, in Marketable Securities) above the Opening Bid, or such increments as the Monitor, in consultation with the Special Committee, may determine in order to facilitate the Auction (the "Minimum Overbid Increment"). The amount of the cash purchase price consideration or value of any Overbid shall not be less than the cash purchase price consideration or value of the Opening Bid, plus the Minimum Overbid Increment(s) at that time, plus any additional Minimum Overbid Increments.
 - (ii) *The Bid Requirements same as for Qualified Bids:* Except as modified herein, an Overbid must comply with the Bid Requirements, provided, however, that the Bid Deadline shall not apply. Any Overbid made by a Qualified Bidder must provide that it remains irrevocable and binding on the Qualified Bidder and open for acceptance as a Back-Up Bid until the closing of the Successful Bid.
 - (iii) *Announcing Overbids:* At the end of each round of bidding, the Monitor shall announce the identity of the Qualified Bidder and the material terms of the then highest and/or best Overbid, including the nature of the transaction, the assets proposed to be acquired and the obligations proposed to be assumed, the basis for calculating the total consideration offered in such Overbid based on, among other things, the Bid Assessment Criteria.
 - (iv) *Consideration of Overbids:* The Monitor, in consultation with the Special Committee, reserves the right to make one or more adjournments in the Auction in durations set by the Monitor to, among other things: (A) allow individual Qualified Bidders to consider how they wish to proceed; (B) consider and determine the current highest and/or best Overbid at any given time during the Auction; and, (C) give Qualified Bidders the opportunity to provide the Monitor or the Special Committee with such additional evidence as it may require that the Qualified Bidder has obtained all required internal corporate approvals, has sufficient internal

resources, or has received sufficient non-contingent debt and/or equity funding commitments, to consummate the proposed transaction at the prevailing Overbid amount. The Monitor may have clarifying discussions with a Qualified Bidder, and the Monitor may allow a Qualified Bidder to make technical clarifying changes to its Overbid following such discussions. BIDDERS MUST OBTAIN ALL NECESSARY APPROVALS AND FUNDING COMMITMENTS IN ADVANCE OF THE AUCTION.

- (v) *Failure to Bid:* If at the end of any round of bidding a Qualified Bidder (other than the Qualified Bidder that submitted the then highest and/or best Overbid or Opening Bid, as applicable) fails to submit an Overbid, then such Qualified Bidder shall not be entitled to continue to participate in the next round of the Auction.

- e) Additional Procedures. The Monitor, in consultation with the Special Committee, may adopt rules for the Auction at or prior to the Auction that will better promote the goals of the Auction, including rules pertaining to the structure of the Auction, the order of bidding provided they are not inconsistent with any of the provisions of the Stalking Horse Bid Procedures and provided further that no such rules may change the requirement that all material terms of the then highest and/or best Overbid at the end of each round of bidding will be fully disclosed to all other Qualified Bidders.

- f) Closing the Auction. The Auction shall be closed after the Special Committee, after considering the Monitor's recommendation has: (i) reviewed the final Overbid of each Qualified Bidder on the basis of financial and contractual terms and the factors relevant to the sale process, including those factors affecting the speed and certainty of consummating the proposed sale; and (ii) identified the Successful Bid and the Back-Up Bid and the Monitor has advised the Qualified Bidders participating in the Auction of such determination

- g) Finalizing Documentation. Promptly following a Bid of a Qualified Bidder being declared the Successful Bid or the Back-Up Bid, the Qualified Bidder shall execute and deliver such revised and updated definitive transaction agreements as may be required to reflect and evidence the Successful Bid or Back-Up Bid. For greater certainty, every Bid made at Auction is deemed to be a signed and binding bid based on the bidder's original Qualified Bid.

IN THE MATTER OF JAMES E. WAGNER CULTIVATION COPORATION JAMES E.
WAGNER CULTIVATION LTD., JWC 1 LTD., JWC 2 LTD., JWC SUPPLY LTD. AND
GROWTHSTORM INC. (the "VENDORS")

Bidding Procedures

Set forth below are the bidding procedures (the "**Bidding Procedures**") to be employed with respect to the sale (the "**Sale**") of the Vendors' assets pursuant to a court approved solicitation process in the CCAA Proceedings of the Vendors.

On April 9, 2020, the Court issued an order (the "**Sale Process Order**") approving and accepting for the purpose of conducting a "stalking horse" solicitation process (the "**Stalking Horse Process**") in accordance with these Bidding Procedures that certain asset purchase agreement dated March 31, 2020 (the "**Stalking Horse Bid**") between the Vendors and Trichome Financial Corp. (the "**Stalking Horse Bidder**"), including, without limitation, the appointment of Stoic Advisory Inc. as M&A advisor to the Vendors (the "**M&A Advisor**"), the payment of an expense reimbursement (the "**Expense Reimbursement**") by the Vendors to the Stalking Horse Bidder in accordance with the provisions of the Stalking Horse Bid, and approving these Bidding Procedures.

Subject to Court availability and the terms hereof, the Vendors shall bring a motion (the "**Approval and Vesting Order Motion**") on or before June 5, 2020 (or, if there is no Auction, on or before May 29, 2020) seeking the granting of an order by the Court authorizing the Vendors to proceed with the Sale of the Vendors' Assets to the Qualified Bidder making the Successful Bid (each as defined below) (the "**Successful Bidder**") (such order, as approved, the "**Approval and Vesting Order**").

[In these Bid Procedures, the term Marketable Securities means publicly traded debt or equity securities that are listed for trading on a national securities exchange.](#)

Key Dates

April 10, 2020 at 5:00 p.m. (prevailing Eastern Time) (prevailing Eastern Time)	Delivery of Teasers and Sales Packages
April 10, 2020 at 5:00 p.m. (prevailing Eastern Time)	Confidential Data-Site to be established
May 15, 2020 at 5:00 p.m. (prevailing Eastern Time)	Bid Deadline - Due Date for Bids and Deposits
May 19 at 5 p.m. (prevailing Eastern Time)	Monitor to provide the Stalking Horse Bidder and each Qualified Bidder a schedule setting forth either or both (i) the highest or otherwise best fully binding offer for all of the Debtors' Assets and (ii) the highest or otherwise best fully binding offer(s) for all or any combination of the Purchased Assets
May 22 at 10:00 a.m. (prevailing Eastern Time)	Auction (if any)
May 29 at 10:00 a.m. (prevailing Eastern Time) (pending the Court's availability), or as soon as practicable if the Auction is not required	Approval and Sale Order hearing
June 5 at 10:00 a.m. (prevailing Eastern Time) (pending the Court's availability), or as soon as practicable if there is an Auction	Approval and Sale Order hearing

Assets to Be Sold En Bloc or Piecemeal

The Vendors are offering for Sale all of the Vendors' right, title and interest in and to all of the Vendors' assets (the "**Vendors' Assets**") and the Vendors will consider (i) a bid

for all of the Vendors' Assets (an "**En Bloc Bid**"); or (ii) separate bids to acquire some but not all of the Vendors' assets (a "**Piecemeal Bid**"), provided that the Vendors will only consider Piecemeal Bids if a combination of one or more Piecemeal Bids in the aggregate meet the requirements to be a Qualified Bid (as defined below). The M&A Advisor under the supervision of the Special Committee of the Board of JWC (the "**Special Committee**") and KSV Kofman Inc., in its capacity as Monitor of the Vendors (the "**Monitor**"), will be responsible for conducting the solicitation process and an auction (the "**Auction**") (if any) on behalf of the Vendors. The Auction, if any, will be conducted by the Monitor. The Vendors' preferred transaction structure is for En Bloc Bid.

Although the Vendors are seeking bids to purchase some or all of the Vendors' assets, the Vendors will also consider a bid that contemplates a Plan of Restructuring for the Vendors (a "**Plan Bid**") provided that such Plan Bid will only be a Qualified Bid if it: (i) provides for the indefeasible payment in full of the amounts owing to Trichome Financial Corp, including without limitation the secured indebtedness owing to Trichome Financial Corp. and the Expense Reimbursement amount under the Stalking Horse APA, on or before the Outside Date regardless of the timeline for such Plan Bid; (ii) has conditions that, in the reasonable opinion of the Vendors and the Monitor, are likely to be satisfied; and (iii) includes a fully-funded commitment to provide any additional interim financing required by the Vendors to complete all steps required to implement such Plan Bid, such financing to be subordinate to the existing Administration Charge, D&O Charge and DIP Charge.

The Bidding Process

The M&A Advisor, under the supervision of the Special Committee and the Monitor, shall be responsible for the marketing and sale of the Vendors' Assets pursuant to the process described by the Monitor's Report to Court dated April 6, 2020 (the "**Bidding Process**"), which is set out below. The Monitor, with the consent of the Special Committee, shall have the right to adopt such other rules for the Bidding Process (including rules that may depart from those set forth herein) that in its reasonable business judgment will better promote the goals of the Bidding Process, *provided, however*, that the adoption of any rule that materially deviates from these Bidding Procedures shall require the prior written consent of the Stalking Horse Bidder or a further Order of the Court.

Participation Requirements

“Qualified Bidder” is a bidder who submits a bid in substantially the same form as the Stalking Horse Bid, for a ~~cash~~ purchase price ~~of equal to~~ at least CAD\$11.95 million to be satisfied in cash or, in the discretion of each of the Special Committee, the Monitor and the Stalking Horse Bidder, a combination of cash and Marketable Securities, provided that the cash portion of the purchase price is no less than the estimated outstanding amount of the DIP Facility at closing (estimated to be \$4 million) plus \$1 million, and includes the Required Bid Terms and Materials (as defined below). Any bid meeting these criteria that is received by the Monitor before the Bid Deadline is a qualified bid (“Qualified Bid”).

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Bid Deadline

A Qualified Bidder that desires to make a bid shall deliver written copies of its bid and the Required Bid Terms and Materials to the Monitor no later than 5:00 p.m. (prevailing Eastern time) on May 15, 2020 (the “Bid Deadline”). The Monitor shall forthwith provide copies of any bids received to the Special Committee.

Bid Requirements

All bids (other than the Stalking Horse Bid) must include, unless such requirement is waived by the Monitor after consultation with the Special Committee, the following (collectively, the “Required Bid Terms and Materials”):

- (i) A base ~~cash~~ purchase price equal to or greater than CAD\$11.95 million to be satisfied in cash or, in the discretion of each of the Special Committee, the Monitor and the Stalking Horse Bidder, a combination of cash and Marketable Securities, provided that the cash portion of the purchase price is no less than the estimated amount of the DIP Facility at closing (estimated to be \$4 million) plus \$1 million, being the estimated amount payable under the Stalking Horse Bid (\$7.6 million), inclusive of the Closing Cash Payment, plus the amount of the DIP Facility (estimated to be approximately \$4 million) plus the Expense Reimbursement (\$100,000) and \$250,000 bid increment (collectively, the “Base Purchase Price”);

A provision stating that the bidder’s offer is irrevocably open for acceptance until the earlier of (i) the date that the Vendors’ Assets have been sold pursuant to the closing of the sale approved by the Court; and (ii) the Outside Date;

- (ii) If the proposed consideration includes Marketable Securities, satisfactory evidence that the Marketable Securities can be issued to the Vendors or their respective creditors and can be traded on a recognized national securities exchange without restriction or hold period;
- (iii) ~~(ii)~~—An executed copy of a proposed purchase agreement and a redline of the bidder’s proposed purchase agreement reflecting variations from the Stalking Horse Bid (the “**Marked Agreement**”);
- (iv) ~~(iii)~~—A cash deposit in the amount of not less than fifteen *per cent* (15%) of the amount of the Base Purchase Price, in the form of a wire transfer, certified cheque or such other form acceptable to the Monitor (the “**Bid Deposit**”), which shall be held in the trust account of the Monitor’s solicitors (the “**Escrow Account**”). Funds shall be disbursed from the Escrow Account only as follows: (i) if the Qualified Bidder is the Successful Bidder, its Bid Deposit will be applied without interest on Closing to the purchase price payable by it under its bid on the closing thereof; and (ii) if the Qualified Bidder is not the Successful Bidder, then its Bid Deposit shall be returned without interest to it forthwith following the expiration of its offer (which in the case of the Back-Up Bidder shall be following closing of the sale to the Successful Bidder).

For the purpose of subparagraph (i) above, if a portion of the purchase price of a bid is payable in Marketable Securities, the Monitor shall immediately notify the Stalking Horse Bidder and shall deliver any information reasonably requested by the Stalking Horse Bidder to assess the value and liquidity of the Marketable Securities. The Stalking Horse Bidder shall notify the Monitor and the Special Committee by noon (prevailing Eastern time) on May 19, 2020, in writing, whether or not the Stalking Horse Bidder, in its absolute discretion (considering value, liquidity and any other factors it determines, in its sole discretion to be relevant), will accept the Marketable Securities as partial payment of the purchase price, which acceptance shall be irrevocable for all purposes of these Bidding Procedures, including for the purpose of any Overbid (as defined below). For greater certainty: (i) no bid which includes Marketable Securities shall be deemed to be a Qualified Bid unless such bid contains sufficient cash to pay Trichome Financial Corp. in full or the Stalking Horse Bidder agrees in writing to accept such Marketable Securities as partial payment of the purchase price; and (ii) agreement by the Stalking Horse Bidder (in accordance with the above) to a bid which includes Marketable Securities shall not obligate the Stalking Horse Bidder to accept, or shall not imply that the Stalking Horse Bidder has accepted any other bid which includes Marketable Securities, without the Stalking Horse Bidder also agreeing in writing to accept such Marketable Securities as partial payment of the purchase price in respect of such other bid. Any Overbid made by such bidder may be comprised entirely of the same class of securities so accepted by the Stalking Horse Bidder without any further consent of the Stalking Horse Bidder.

For the purposes of these Bidding Procedures, the Monitor shall provide all bidders with an estimate of the anticipated amount owing under the DIP Facility as of the Closing Date, provided however that the Successful Bidder must agree to adjust its bid (either higher or lower) to reflect the actual amount owing under the DIP Facility on Closing.

A bid received from a Qualified Bidder that includes all of the Required Bid Terms and Materials and is received by the Bid Deadline is a **"Qualified Bid"**. The Monitor shall review the Qualified Bids and shall recommend to the Special Committee which Qualified Bid is the best offer. The Special Committee, in consultation with the Monitor, reserves the right to determine the value of any Qualified Bid, and which Qualified Bid constitutes the best offer (the **"Lead Bid"**). Details of the Lead Bid will be provided by the Monitor to all Qualified Bidders after the Bid Deadline and no later than 5:00p.m. (Eastern Time) three (3) Days before the date scheduled for the Auction.

Notwithstanding the bid requirements detailed above, the Stalking Horse Bid shall be deemed to be a Qualified Bid and the Stalking Horse Bidder shall be deemed to be a Qualified Bidder.

"As Is, Where Is, With All Faults"

The Sale of the Vendors' Assets shall be on an "as is, where is" and "with all faults" basis and without representations, warranties, or guarantees, express, implied or statutory, written or oral, of any kind, nature, or description by the Monitor or the Vendors or their agents, representatives, partners or employees, or any of the other parties participating in the sales process pursuant to these Bid Procedures, except as may otherwise be provided in a definitive purchase agreement with the Vendors. By submitting a bid, each Qualified Bidder shall be deemed to acknowledge and represent that it has had an opportunity to conduct any and all due diligence regarding the Vendors' Assets prior to making its bid, that it has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the Vendors' Assets in making its bid, and that it did not rely upon any written or oral statements, representations, warranties, or guarantees, express, implied, statutory or otherwise, regarding the Vendors' Assets, the financial performance of the Vendors' Assets or the physical condition or location of the Vendors' Assets, or the completeness of any information provided in connection therewith or the Auction, except as expressly stated in these Bidding Procedures or as set forth in a definitive purchase agreement with the Vendors.

Free of Any and All Liens

Except as otherwise provided in the Stalking Horse Bid or another Successful Bidder's purchase agreement, and subject to any permitted encumbrances therein, all of the Vendors' right, title and interest in and to the Vendors' Assets shall be sold free and clear of all liens and

encumbrances pursuant to the Approval and Vesting Order except for Permitted Encumbrances (as defined in the Stalking Horse Bid).

The Sale and Auction Process

If one or more Qualified Bids (other than that submitted by the Stalking Horse Bidder) have been received by the Monitor on or before the Bid Deadline, the Monitor shall advise all Qualified Bidders of the Lead Bid and invite all Qualified Bidders (including the Stalking Horse Bidder) to attend the Auction to be conducted by the Monitor in accordance with the **Auction Procedures** attached hereto as Appendix 1. The Auction may be conducted in person or by video conference.

If no Qualified Bid is submitted by the Bid Deadline, then the Stalking Horse Bid shall be the Successful Bid, and the Stalking Horse Bidder shall be the Successful Bidder and the Auction shall be cancelled.

Monitor and Special Committee to Determine Highest and/or Best Bid: The Monitor shall determine after each round of offers in the Auction, in its reasonable business judgment, the best bid and shall recommend this bid to the Special Committee as the Lead Bid. In making such determination, the Monitor and the Special Committee may consider, without limitation: (i) the amount and nature of the consideration, including the liquidity of and value ascribed by the Special Committee and the Monitor to any securities forming part of the consideration; (ii) the proposed assumption of liabilities, if any, and the related implied impact on recoveries for creditors; (iii) the ability of the Qualified Bidder in question to close the proposed transaction; (iv) the proposed closing date and the likelihood, extent and impact of any potential delays in closing; (v) any purchase price adjustment; (vi) the net economic effect of any changes made to the Stalking Horse Bid; and (vii) such other considerations as the Monitor or the Special Committee deems relevant in its reasonable business judgment. At the end of each round of offers, the Monitor shall advise the Qualified Bidders of the material terms of the then highest and/or best bid, and the basis for calculating the total consideration offered in such offer. If at the end of any round of bidding a Qualified Bidder has elected not to submit a further bid meeting the criteria set out herein (including the Minimum Bid Increment), then such Qualified Bidder shall not be entitled to continue to participate in the next round of offers or in any subsequent round.

If only one Qualified Bid is submitted after a round of offers then that Qualified Bid shall be the Successful Bidder. The next highest offer, as determined by the Special Committee based on the Monitor's recommendation (the "**Back-up Bid**"), shall be required to keep its offer open and available for acceptance until the closing of the Court Approved Sale of the Vendors' Assets to the Successful Bidder.

Highest versus Best Offer

In determining the Lead Bid, the highest and/or best sale offer during each round of offers, and the Successful Bid, the Monitor and the Special Committee are not required to select the offer with the highest purchase price and may, exercising their reasonable business judgment, select another offer on the basis that it is the best offer even though not the highest purchase price. Without limiting the foregoing, the Monitor and the Special Committee may give such weight to the non-monetary considerations as it determines, exercising its reasonable business judgment, is appropriate and reasonable, including those considerations described above under "Monitor and the Special Committee to Determine Highest and/or Best Bid".

Expense Reimbursement

To provide an incentive and to compensate the Stalking Horse Bidder for performing the substantial due diligence and incurring the expenses necessary in entering into the Stalking Horse Bid with the knowledge and risk that arises from participating in the sale and subsequent bidding process, the Vendors have agreed to pay the Stalking Horse Bidder, under the conditions outlined herein and in the Stalking Horse Bid, an Expense Reimbursement on account of its reasonable and documented out of pocket fees and expenses, up to a maximum of \$100,000 inclusive of HST, in the event that the Stalking Horse Bidder is not the Successful Bidder.

The Expense Reimbursement is a material inducement for, and a condition of, the Stalking Horse Bidder's entry into the Stalking Horse Bid. The Expense Reimbursement, if payable in accordance with the Stalking Horse Bid, shall be paid in accordance with the Stalking Horse Bid and the Sale Process Order.

Acceptance of Qualified Bids

The sale of the Vendors' Assets to any Successful Bidder by the Vendors is expressly conditional upon the approval of the Successful Bid by the Court at the hearing of the Approval and Vesting Order Motion. The presentation of the Successful Bid to the Court for approval does not obligate the Vendors to close the transaction contemplated by such Successful Bid unless and until the Court approves the Successful Bid. The Vendors will be deemed to have accepted a bid only when the bid has been approved by the Court at the hearing on the Approval and Vesting Order Motion.

Approval and Vesting Order Motion Hearing

The Approval and Vesting Order Motion shall, subject to court availability, be made returnable on or before June 5, 2020 (or, if there is no Auction, on or before May 29, 2020). The Special Committee, with the consent of the Monitor, reserves its right to the extent consistent

with the Stalking Horse Bid to change the date of the hearing of Approval and Vesting Order Motion in order to achieve the maximum value for the Vendors' Assets.

Miscellaneous

The solicitation process and these Bidding Procedures are solely for the benefit of the Vendors and nothing contained in the Sale Process Order or these Bidding Procedures shall create any rights in any other person (including, without limitation, any bidder or Qualified Bidder, and any rights as third party beneficiaries or otherwise) other than the rights expressly granted to a Successful Bidder under the Sale Process Order. The bid protections incorporated in these Bidding Procedures are solely for the benefit of the Stalking Horse Bidder.

Except as provided in the Bidding Procedures Order and Bidding Procedures, the Court shall retain jurisdiction to hear and determine all matters arising from or relating to the implementation of the Sale Process Order, the Stalking Horse Process and the Bidding Procedure.

APPENDIX I

Auction Procedures

Auction

1. If the Special Committee, based on the recommendation of the Monitor, determines to conduct an Auction pursuant to the Stalking Horse Bid Procedures, the Monitor will notify the Qualified Bidders who made a Qualified Bid that an Auction will be conducted. The Auction will be convened by the Monitor and conducted either by video conference or in person at the Toronto office of Davies Ward Phillips & Vineberg LLP at 10:00 a.m. (Eastern Time) on May 22, 2020, or such other place and time as the Monitor may advise. Capitalized terms used but not defined have the meaning given to them in the Stalking Horse Bid Procedures. The Auction shall be conducted in accordance with the following procedures:
 - a) Participation at The Auction. Only a Qualified Bidder is eligible to participate in the Auction. The Monitor shall provide all Qualified Bidders with the amount of the Leading Bid by 5:00pm (Eastern Time) three (3) Days before the date scheduled for the Auction. Each Qualified Bidder must inform the Monitor whether it intends to participate in the Auction no later than 12:00 p.m. (Eastern Time) on the Business Day prior to the Auction. Only the authorized representatives of each of the Qualified Bidders, the Monitor, the Vendors and their respective counsel and other advisors shall be permitted to attend the Auction.
 - b) Bidding at the Auction. Bidding at the Auction shall be conducted in rounds. The Leading Bid shall constitute the "Opening Bid" for the first round and the highest Overbid (as defined below) at the end of each round shall constitute the "Opening Bid" for the following round. In each round, a Qualified Bidder may submit no more than one Overbid. Any Qualified Bidder who bids in a round (including the Qualified Bidder that submitted the Opening Bid for such round) shall be entitled to participate in the next round of bidding at the Auction.
 - c) Monitor Shall Conduct the Auction. The Monitor and its advisors shall direct and preside over the Auction. At the start of each round of the Auction, the Monitor shall provide the terms of the Opening Bid to all participating Qualified Bidders at the Auction. The determination of which Qualified Bid constitutes the Opening Bid for each round shall take into account any factors that the Monitor and the Special Committee reasonably deem relevant to the value of the Qualified Bid, including, among other things, the following: (i) the amount and nature of the consideration, including the liquidity of and value ascribed by

the Special Committee and the Monitor to any securities forming part of the consideration; (ii) the proposed assumption of any liabilities and the related implied impact on recoveries for creditors; (iii) the Monitor's and the Special Committee's assessment of the certainty of the Qualified Bidder to close the proposed transaction on or before the Outside Date; (iv) the likelihood, extent and impact of any potential delays in closing; (v) the net economic effect of any changes from the Opening Bid of the previous round, and (vi) such other considerations as the Monitor or the Special Committee deems relevant in its reasonable business judgment (collectively, the "Bid Assessment Criteria"). All Bids made after the Opening Bid shall be Overbids, and shall be made and received on an open basis, and all material terms of the highest and best Overbid shall be fully disclosed to all other Qualified Bidders that are participating in the Auction. The Monitor shall maintain a record of the Opening Bid and all Overbids made and announced at the Auction.

- d) Terms of Overbids. An "Overbid" is any Bid made at the Auction subsequent to the Monitor's announcement of the Opening Bid. To submit an Overbid, in any round of the Auction, a Qualified Bidder must comply with the following conditions:
- (i) *Minimum Overbid Increment:* Any Overbid shall be made in minimum ~~Cash~~ Purchase Price increments of \$100,000 (in cash or, in the discretion of the Special Committee and the Monitor, in Marketable Securities) above the Opening Bid, or such increments as the Monitor, in consultation with the Special Committee, may determine in order to facilitate the Auction (the "Minimum Overbid Increment"). The amount of the cash purchase price consideration or value of any Overbid shall not be less than the cash purchase price consideration or value of the Opening Bid, plus the Minimum Overbid Increment(s) at that time, plus any additional Minimum Overbid Increments.
 - (ii) *The Bid Requirements same as for Qualified Bids:* Except as modified herein, an Overbid must comply with the Bid Requirements, provided, however, that the Bid Deadline shall not apply. Any Overbid made by a Qualified Bidder must provide that it remains irrevocable and binding on the Qualified Bidder and open for acceptance as a Back-Up Bid until the closing of the Successful Bid.
 - (iii) *Announcing Overbids:* At the end of each round of bidding, the Monitor shall announce the identity of the Qualified Bidder and the material terms of the then highest and/or best Overbid, including the nature of the transaction, the assets proposed to be acquired and the obligations proposed to be assumed, the basis for calculating the total consideration

offered in such Overbid based on, among other things, the Bid Assessment Criteria.

- (iv) *Consideration of Overbids:* The Monitor, in consultation with the Special Committee, reserves the right to make one or more adjournments in the Auction in durations set by the Monitor to, among other things: (A) allow individual Qualified Bidders to consider how they wish to proceed; (B) consider and determine the current highest and/or best Overbid at any given time during the Auction; and, (C) give Qualified Bidders the opportunity to provide the Monitor or the Special Committee with such additional evidence as it may require that the Qualified Bidder has obtained all required internal corporate approvals, has sufficient internal resources, or has received sufficient non-contingent debt and/or equity funding commitments, to consummate the proposed transaction at the prevailing Overbid amount. The Monitor may have clarifying discussions with a Qualified Bidder, and the Monitor may allow a Qualified Bidder to make technical clarifying changes to its Overbid following such discussions. **BIDDERS MUST OBTAIN ALL NECESSARY APPROVALS AND FUNDING COMMITMENTS IN ADVANCE OF THE AUCTION.**
- (v) *Failure to Bid:* If at the end of any round of bidding a Qualified Bidder (other than the Qualified Bidder that submitted the then highest and/or best Overbid or Opening Bid, as applicable) fails to submit an Overbid, then such Qualified Bidder shall not be entitled to continue to participate in the next round of the Auction.
- e) Additional Procedures. The Monitor, in consultation with the Special Committee, may adopt rules for the Auction at or prior to the Auction that will better promote the goals of the Auction, including rules pertaining to the structure of the Auction, the order of bidding provided they are not inconsistent with any of the provisions of the Stalking Horse Bid Procedures and provided further that no such rules may change the requirement that all material terms of the then highest and/or best Overbid at the end of each round of bidding will be fully disclosed to all other Qualified Bidders.
- f) Closing the Auction. The Auction shall be closed after the Special Committee, after considering the Monitor's recommendation has: (i) reviewed the final Overbid of each Qualified Bidder on the basis of financial and contractual terms and the factors relevant to the sale process, including those factors affecting the speed and certainty of consummating the proposed sale; and (ii) identified the Successful Bid and the Back-Up Bid and the Monitor has advised the Qualified Bidders participating in the Auction of such determination

- g) Finalizing Documentation. Promptly following a Bid of a Qualified Bidder being declared the Successful Bid or the Back-Up Bid, the Qualified Bidder shall execute and deliver such revised and updated definitive transaction agreements as may be required to reflect and evidence the Successful Bid or Back-Up Bid. For greater certainty, every Bid made at Auction is deemed to be a signed and binding bid based on the bidder's original Qualified Bid.

Document comparison by Workshare 9.5 on Sunday, April 26, 2020 7:46:52 PM

Input:	
Document 1 ID	file:///C:/Users/sbomhof/OneDrive - Torys LLP/Documents/Bidding.docx
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Description	#29719696v8<TorysAtWork> - Revised Bidding Procedures
Rendering set	Firm_Standard

Legend:	
<u>Insertion</u>	
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Deletions	6
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Style change	0
Format changed	0
Total changes	19

TAB 3

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.)	MONDAY, THE 11 th
)	
JUSTICE HAINEY)	DAY OF MAY, 2020

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF JAMES E. WAGNER CULTIVATION
CORPORATION, JAMES E. WAGNER CULTIVATION LTD.,
JWC 1 LTD., JWC 2 LTD., JWC SUPPLY LTD. AND
GROWTHSTORM INC.

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

DIP AMENDMENT ORDER

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

ON READING the Second Report of KSV Kofman Inc. (the "**Monitor**") dated May 4, 2020 (the "**Second Report**"), and on being advised that the secured creditors of the Applicants who are likely to be affected by the increase to the DIP Lender's Charge herein were given notice, no one appearing for any other party although duly served as appears from the affidavit of service of Michael Shakra sworn May 5, 2020, and on hearing the submissions of counsel for the Applicants, the Monitor, and the DIP Lender.

SERVICE

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

DEFINITIONS

2. **THIS COURT ORDERS** that all terms not otherwise defined herein shall have the meaning ascribed to them in the Amended and Restated Initial Order dated April 9, 2020 (the "**Amended and Restated Initial Order**").

DIP AMENDMENT

3. **THIS COURT ORDERS** that the execution by the Applicants of the First Amendment to Interim Financing Term Sheet dated May 4, 2020, a copy of which is attached to the Second Report (the "**DIP Amendment**") is hereby authorized and approved, and the Applicants are hereby authorized and empowered to borrow up to an additional \$1.5 million (\$5.5 million in the aggregate) pursuant to the Commitment Letter as amended by the DIP Amendment.

4. **THIS COURT ORDERS** that:

- (a) paragraphs 34 to 39 of the Amended and Restated Initial Order shall apply to the Commitment Letter as amended by the DIP Amendment and all references to the Commitment Letter contained in the Amended and Restated Initial Order shall be deemed to be references to the Commitment Letter as amended by the DIP Amendment;
- (b) the DIP Lender's Charge shall secure all amounts owing by the Applicants to the DIP Lender under the Commitment Letter and Definitive Documents as amended by the DIP Amendment; and
- (c) for greater certainty, paragraphs 34 and 40 of the Amended and Restated Initial Order are hereby amended to replace the references to "\$4,000,000 million" with "\$5,500,000 million".

GENERAL

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

6. **THIS COURT ORDERS** that each of the Applicants and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order.

7. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Toronto time on the date of this Order.

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF JAMES E. WAGNER CULTIVATION CORPORATION, JAMES E. WAGNER CULTIVATION LTD., JWC 1 LTD., JWC 2 LTD., JWC SUPPLY LTD AND GROWTHSTORM INC.

Court File No. CV-20-00639000-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceedings commenced in Toronto

DIP AMENDMENT ORDER

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AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF JAMES E. WAGNER CULTIVATION LTD., JWC 1 LTD., JWC 2 LTD., JWC SUPPLY LTD. AND GROWTHSTORM INC.

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MOTION RECORD

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