



**Third 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 25, 2020**

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

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

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

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

**THIRD REPORT OF KSV KOFMAN INC. AS MONITOR**

**MAY 25, 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 (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. was appointed monitor (the "Monitor").
2. Pursuant to the terms of the Initial Order, the Court, *inter alia*, approved a debtor-in possession loan facility (the "DIP Facility") in an interim maximum amount of \$800,000 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 this amount (the "DIP Lender's Charge").
3. At the comeback motion on April 9, 2020 (the "Comeback Motion"), the Court issued an Amended and Restated Initial Order and the bidding procedures and a sale and investment solicitation process (the "SISP") order (the "SISP Order")

The Amended and Restated Initial Order approved:

- a. the full amount of the DIP Facility, \$4 million, and a corresponding increase in the DIP Lender's Charge;
- b. an extension of the stay of proceedings from April 9, 2020 to June 26, 2020; and
- c. an agreement to retain Howard Capital LLC ("HC") as Chief Restructuring Officer (the "CRO") of the Companies.

The SISP Order approved:

- a. the SISP;
- b. an offer from TFC to serve as the stalking horse bid in the SISP; and
- c. the retention by the Company of Stoic Advisory Inc. (“Stoic”) as the Company’s financial advisor to conduct the SISP, under the supervision of JWC’s Special Committee (the “Special Committee”) and the Monitor.

A copy of the SISP Order and the Endorsement of Justice Hainey dated April 9, 2020 is attached as Appendix “A”.

4. Pursuant to an order issued by the Court on May 11, 2020, the maximum amount of the DIP Facility and the DIP Lender’s Charge were increased to \$5.5 million (the “First DIP Amendment”).
5. 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 in the context of the SISP.

## **1.1 Purposes of this Report**

1. The purposes of this report (“Report”) are to:
  - a) summarize the results of the SISP;
  - b) summarize a proposed transaction (the “Transaction”) between the Companies and TFC for the sale of substantially all of the Companies’ assets pursuant to an Asset Purchase Agreement dated March 31, 2020 between the Companies and TFC (as amended, the “APA”). In accordance with the APA, TFC will direct that title to the assets will be vested in Trichome JWC Acquisition Corp. (the “Purchaser”);
  - c) discuss the timing to close the Transaction, which is to occur after the Purchaser and its directors and certain officers obtain the licenses and clearances they require from Health Canada and the Royal Canada Mounted Police to operate the business;
  - d) discuss an amendment to the CRO Engagement Letter entered into by the Companies and the CRO following the SISP bid deadline authorizing Mr. Steinberg to participate in TFC Board meetings where the Companies are discussed (the “CRO Amendment”), which was previously prohibited by the CRO Engagement Letter;



- e) discuss the terms of an amendment to the DIP Term Sheet to: (i) permit TFC to assign the DIP Term Sheet, in whole or in part, or grant a participation in its respective rights and obligations to parties, without the consent of the Monitor, provided that TFC guarantees the funding obligations of any assignee; and (ii) require the CRO and the Special Committee to provide TFC with all reports one prepares for the other (the “Second DIP Amendment”);
- f) report on the Companies’ cash flow projection for the period commencing May 18, 2020 through the week ending June 30, 2020 (the “Cash Flow Forecast”);
- g) provide the Court with an update on the Companies’ and the Monitor’s activities during these proceedings;
- h) recommend that the Court issue orders approving:
  - the Transaction and vesting title in and to the purchased assets in the Purchaser, free and clear of all liens, claims and encumbrances, upon filing a certificate confirming, among other things, the completion of the Transaction;
  - the Second DIP Amendment;
  - the Monitor’s activities as set out in the Report; and
  - an extension of the stay of proceedings from June 26, 2020 to June 30, 2020.

## 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 Companies’ counsel 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 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.

4. In the context of the current COVID-19 pandemic, there is uncertainty related to consumer, supply chain, governmental and other macro-economic factors and how these and other factors may affect the Companies and their operations. The effect of COVID-19 on the Companies may be material. The full effect of COVID-19 is unknown and cannot be qualitatively or quantitatively assessed at this time.

### **1.3 Currency**

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

## **2.0 Background**

1. JWC's principal business is the production and sale of cannabis through its wholly-owned subsidiary and licence holder, JWCL. The Monitor understands that the other Companies, 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.
3. The Companies' operations are based in Kitchener, Ontario. JWC currently leases 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 two cannabis licenses (jointly, the "Health Canada 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 the Companies do not maintain a pension plan.

### **2.1 Secured Creditors**

#### **2.1.1 TFC**

1. 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.

2. TFC is also the lender to the Companies under the DIP Facility. As of May 26, 2020, the current amount owing under the DIP Facility is approximately \$4 million. The maximum amount that can be borrowed under the DIP Facility is \$5.5 million.

## 3.0 SISP

### 3.1 Marketing Process

1. A summary of the SISP is as follows:
  - a) following the issuance of the SISP Order, Stoic distributed an interest solicitation letter to potential purchasers and investors detailing the acquisition opportunity (“Teaser”);
  - b) the Teaser was sent to 93 prospective purchasers, comprised of Canadian and US operators, financial groups and other strategic parties;
  - c) attached to the Teaser was a form of confidentiality agreement (“CA”) that interested parties were required to sign to obtain access to an online data room that was managed by Stoic;
  - d) the data room contained historical and projected financial information and other information, including real property leases, copies of the Health Canada Licenses and all material contracts and agreements. A soft copy of the APA was also made available in the data room;
  - e) to facilitate diligence by parties who were unable to attend the Companies’ premises in person due to the COVID-19 pandemic, the Companies retained Hyde Advisory & Investments to prepare a video presentation of the critical aspects of the Companies’ facilities. A copy of the video was posted in the data room;
  - f) one party conducted an in-person tour of the Companies’ facilities;
  - g) based on feedback from several interested parties, Stoic advised the Monitor that certain offers may include consideration payable in marketable securities. The Monitor, with the consent of the Special Committee and the prior written consent of TFC (as required for any amendment to the bidding procedures), permitted parties to include non-cash consideration in the form of marketable securities as long as the cash portion of any bid equaled the amount of the DIP Facility plus \$1 million. On April 27, 2020, the Monitor’s counsel, Davies Ward Phillips & Vineberg LLP (“Davies”), served a notice of this change in the bidding procedures, as well as the revised bidding procedures, on the service list. These materials were also posted on the Monitor’s website and in the data room;
  - h) the bidding procedures also provided that a “Qualified Bid” must be a minimum of \$11.95 million. The minimum Qualified Bid amount includes the amount owing to TFC under the DIP Facility. Accordingly, as a result of the First DIP Amendment, a Qualified Bid needed to be at least \$13.45 million, which was also communicated by Davies to the service list and posted on the Monitor’s website and in the data room; and

- i) Stoic connected interested parties in need of capital with potential financial partners who needed operational expertise.

### 3.2 Bid Deadline

1. Pursuant to the SISP Order, the bid deadline was May 15, 2020 (the “Bid Deadline”).
2. In order to allow Stoic, the Special Committee and the Monitor to compare the offers submitted in the SISP, all interested parties were encouraged to submit offers in the form of the APA and to blackline any changes made to that agreement.
3. The SISP also provided that parties could submit offers in the form of a plan of arrangement provided that the bid met the criteria to be a Qualified Bid.

### 3.3 SISP Results

1. A summary of the results of the SISP is as follows:
  - a) 26 parties executed the CA and were provided access to the data room;
  - b) numerous parties conducted extensive diligence; and
  - c) no parties submitted an offer other than the APA submitted by TFC.

### 3.4 The APA<sup>1</sup>

1. A copy of the APA is attached as Appendix “C”.
2. The key terms and conditions of the APA are provided below.
  - **Purchaser:** TFC;
  - **Purchase Price:** estimated to be \$13.2 million<sup>2</sup>, including the Monetary Purchase Price plus the Assumed Obligations. The Monetary Purchase Price is the sum of: a) the Credit Bid Amount, being the amount owing by the Companies under the Loan Agreement as of the Closing Date (estimated to be \$7.6 million); and b) the Closing Cash Payment, being an amount to be determined with the Monitor which will be sufficient to pay (i) any outstanding Priority Payables, (ii) accrued amounts not paid under the DIP Facility as of the Closing Date, including amounts owing to Kitchener Wilmot Hydro for all unpaid electricity charges<sup>3</sup>, and (iii) the reasonable costs to wind-down the Companies. The Assumed Obligations include the DIP Facility which is expected to be approximately \$5.5 million, based on a closing at the end of June 2020;
  - **Purchased Assets:** all of the Companies’ Assets, other than the Excluded Assets;

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<sup>1</sup> Capitalized terms in this section have the meaning provided to them in the APA.

<sup>2</sup> Based on a Transaction closing date of June 30, 2020.

<sup>3</sup> To address a large deposit requested by Kitchener Hydro, the Monitor negotiated a letter agreement with Kitchener Hydro confirming that the Closing Cash Payment will include any unpaid electricity charges for the period from April 1, 2020 to the closing of the transaction provided for in the APA.

- **Excluded Assets**: the Companies' benefit plans;
- **Assumed Obligations**: consist of the following:
  - a) the DIP Facility;
  - b) all debts and obligations under the Contracts, including the leases for the Companies' facilities and certain customer contracts;
  - c) the obligation and liability for the Companies to pay Cure Costs in respect of the Contracts; and
  - d) all debts, liabilities and obligations arising from ownership and use of the Purchased Assets for the period from and after the Closing Time.
- **Excluded Obligations**: consist of the following:
  - a) all contracts and other agreements of the Companies that are not Contracts;
  - b) all debts, liabilities, obligations or Claims related to any Benefit Plans, Employees or any Excluded Asset;
  - c) all debts, liabilities and obligations related to any Purchased Asset arising out of or related to the period prior to the Closing Time;
  - d) all obligations and liabilities owing by the Companies to any Affiliate;
  - e) all debts, liabilities and obligations for or related to any obligation for any taxes that are not expressly assumed by TFC;
  - f) all taxes imposed on or relating to the Purchased Assets that are attributable to any pre-Closing tax period regardless of whether any such period ends on or before the Closing Date (other than any Transfer Taxes); and
  - g) all debts, liabilities and obligations of the Companies arising under the APA.
- **Representations and Warranties**: consistent with the standard terms of an insolvency transaction, i.e. on an "as is, where is" basis, with limited representations and warranties.
- **Closing**: the date that is three (3) Business Days after the date that the Approval and Vesting Order is obtained, or such other date as may be agreed by the Purchaser and the Companies, as discussed in more detail in section 3.5 below.

- **Material Conditions:**
  - (i) the Approval and Vesting Order and Sale Process Order shall have been obtained and shall not have been stayed, varied, or vacated (or any such appeal shall have been dismissed with no further appeal therefrom);
  - (ii) TFC shall have obtained a valid and binding assignment of the Health Canada Licenses or replacement licenses that are substantially similar to the Health Canada Licenses, in each case on terms satisfactory to TFC, in its sole discretion;
  - (iii) no order shall have been issued by a Governmental Authority which restrains or prohibits the completion of the Transaction; and
  - (iv) no motion, action or proceedings shall be pending by or before a Governmental Authority to restrain or prohibit the completion of the Transaction.
  
- **Termination:** the APA can be terminated:
  - (i) upon mutual written agreement of the Companies and TFC and on the consent of the Monitor;
  - (ii) if any of the conditions in favour of TFC or the Companies are not waived or satisfied; or
  - (iii) Closing has not taken place by the Outside Date, being June 30, 2020.

### **3.5 Closing of the Transaction**

1. As set out above, a condition of the Transaction is that TFC shall have obtained an assignment of the Health Canada Licenses or replacement licenses that are substantially similar to the Health Canada Licenses.
2. TFC, the Companies and the Monitor have been in communication with Health Canada regarding the licenses. The intention is for the Transaction to close once the Purchaser has obtained new licenses from Health Canada. TFC is working to obtain the licenses by June 30, 2020, the date by which the transaction is required to close under the terms of the APA. An extension of this deadline will be required if the Transaction does not close by June 30, 2020.

### **3.6 Transaction Recommendation**

1. The Monitor recommends that the Court issue an order approving the Transaction for the following reasons:
  - a) the SISP was conducted in accordance with the terms of the SISP Order, including the timelines it established, which allowed multiple parties to perform due diligence. No interested parties requested an extension to the process;
  - b) the Transaction provides for the greatest recovery available in the circumstances and will be more beneficial to creditors than a sale or disposition in a bankruptcy;

- c) the Transaction contemplates the continuation of the Companies' operations and preserves approximately 160 jobs;
- d) the market was widely canvassed by Stoic during the SISP. To address the current pandemic, a video was prepared to facilitate due diligence by parties who were unable to attend the Companies' facilities in person;
- e) Stoic, which has extensive experience in the sector and deep knowledge of the Companies, is of the view that the Transaction is the best available in the circumstances and the consideration to be received is reasonable and fair;
- f) absent the Transaction, a protracted marketing period is necessary. The ongoing professional fees and other costs will erode the recoveries with no certainty that a superior transaction could be completed; and
- g) The DIP Facility is projected to be fully drawn by the end of June 2020 and TFC is not prepared to continue to fund the Companies' business and operations, nor these proceedings, outside of approval of the Transaction.

#### **4.0 CRO**

1. Howard Steinberg is the primary person providing services for HC.
2. Mr. Steinberg is currently on the Board of Directors for TFC. To maintain independence throughout the process, the CRO Engagement Letter required that Mr. Steinberg not participate in any TFC Board of Director discussions regarding the Companies. As the SISP has now been completed and TFC is the successful bidder, this provision serves no purpose and the Special Committee provided its consent to remove this provision from the Engagement Letter. The Monitor believes that removing this provision is appropriate in the circumstances. A copy of the CRO Amendment is attached as Appendix "D".

#### **5.0 Second DIP Amendment**

1. The DIP Term Sheet provides that TFC may assign the DIP Term Sheet, in whole or in part, or grant a participation in its respective rights and obligations with the prior written consent of the Monitor. The DIP Amendment authorizes TFC to assign the DIP Term Sheet without written consent of the Monitor provided that TFC guarantees the funding obligations of any assignee. The DIP Amendment also requires the CRO and Special Committee to provide TFC all reports prepared for by one for the other, subject to any applicable privilege. The DIP Amendment is subject to Court approval. A copy of the DIP Amendment is attached as Appendix "E".
2. The Monitor recommends that the Court approve the Second DIP Amendment since TFC is guaranteeing the obligations of any assignee, TFC is the successful bidder in the SISP and the amendment provides TFC with the flexibility required to re-capitalize the Companies, which is in the best interest of the business. The Monitor does not believe any creditor will be prejudiced by the Second DIP Amendment.



## 6.0 Cash Flow Forecast

1. The Companies have prepared the Cash Flow Forecast for the period May 18, 2020 to June 30, 2020. The Cash Flow Forecast and the Companies' statutory report on the cash flow pursuant to Section 10(2)(b) of the CCAA is attached as Appendix "F".
2. The Cash Flow Forecast reflects that the Companies will have sufficient liquidity until June 30, 2020.
3. Based on the Monitor's review of the Cash Flow Forecast, the cash flow assumptions appear reasonable. The Monitor's statutory report on the Cash Flow Forecast is attached as Appendix "G".

## 7.0 Stay Extension

1. The stay of proceedings currently expires on June 26, 2020. The Companies are requesting an extension of the Stay Period until June 30, 2020 to align with the outside date of the Transaction and the maturity date of the DIP Facility.
2. The Monitor supports the request for an extension of the stay of proceedings for the following reasons:
  - a) the Companies have been acting, and continue to act, in good faith and with due diligence;
  - b) no creditor will be prejudiced by the short extension;
  - c) it will provide some additional time to complete the Transaction;
  - d) as of the date of this Report, neither the Companies nor the Monitor is aware of any party opposed to an extension; and
  - e) the Companies are projected to have sufficient liquidity to fund their operations until June 30, 2020.

## 8.0 Update on Companies' Activities

1. The Companies' activities have included:
  - a) communicating with suppliers to secure goods and services during these proceedings and to address payment terms;
  - b) considering cost-saving initiatives;
  - c) reviewing, under the guidance of HC, all aspects of the Companies' business and operations;
  - d) maintaining a rolling thirteen-week cashflow forecast;
  - e) corresponding regularly with representatives of the Monitor regarding operating and restructuring issues;



- f) corresponding with Health Canada concerning regulatory issues;
- g) reporting daily receipts and disbursements;
- h) addressing employee-related matters;
- i) reviewing and disclaiming several agreements;
- j) corresponding with TFC and providing the required reporting under the DIP Facility; and
- k) facilitating the SISP and working in this regard with Stoic.<sup>4</sup>

## 9.0 Monitor's Activities

1. The Monitor's activities from the date of its First Report to Court dated April 6, 2020 have included:
  - a) corresponding regularly with the Companies, including senior executives, the CRO and the Special Committee, regarding various matters in these proceedings;
  - b) continuing to assist the Companies with communications to suppliers, customers and other parties;
  - c) monitoring the Companies' receipts and disbursements and purchase commitments;
  - d) considering employee retention issues;
  - e) engaging in discussions with TFC, as well its legal counsel, regarding these proceedings, including the SISP;
  - f) assisting the Companies to prepare the weekly reporting required in connection with the DIP Facility;
  - g) assisting the Companies to prepare updated cashflow forecasts;
  - h) preparing the Second Report to Court dated May 4, 2020;
  - i) engaging with Davies, the Monitor's legal counsel, and Bennett Jones LLP ("Bennett Jones"), insolvency counsel to the Companies, concerning various matters in these proceedings;
  - j) corresponding with the Companies and Bennett Jones regarding the disclaimer of several contracts;

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<sup>4</sup> Pursuant to the CRO's Engagement Letter, due to his relationship with TFC, Mr. Steinberg is neither permitted to be involved in nor have updates concerning the SISP. To the Monitor's knowledge, Mr. Steinberg respected all obligations under the CRO Engagement Letter.

- k) dealing with revisions to the SISP to allow bidders to offer non-cash consideration and preparing notices to interested parties and the service list advising of these changes;
- l) dealing with the First DIP Amendment;
- m) dealing with Kitchener Hydro regarding payment terms for the supply of electricity during the CCAA proceedings and finalizing a settlement with Kitchener Hydro;
- n) corresponding with Stoic, the Companies and the Special Committee regarding the SISP;
- o) convening update meetings with the Special Committee; and
- p) reviewing materials in the data room in connection with the SISP.

## 10.0 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)(h) 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.	)	THURSDAY, THE 9 <sup>th</sup>
	)	
JUSTICE HAINEY	)	DAY OF APRIL, 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**")

**ORDER**

(Bidding Procedures and Stalking Horse APA Approval)

**THIS MOTION**, made by the Applicants, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") for an order, among other things: (i) approving the bidding procedures substantially in the form attached as Schedule "A" hereto (the "**Bidding Procedures**"); (ii) approving the Stalking Horse APA (as defined below) for purposes of acting as the stalking horse bidder; and (iii) approving the M&A Advisor Agreement (as defined below), was heard this day by telephonic conference.

**ON READING** the Notice of Motion of the Applicants, the Affidavit of Philip Armstrong sworn April 6, 2020 and the Exhibits attached thereto (the "**April 6 Affidavit**"), and the First Report (the "**First Report**") dated April 6, 2020 of KSV Kofman Inc. ("**KSV**"), in its capacity as the Court appointed Monitor (the "**Monitor**"), filed, and on hearing the submissions of counsel for the Applicants, the Monitor and the DIP Lender (as defined in the April 6 Affidavit), and counsel for those other parties appearing as indicated by the counsel sheet, no one

else appearing although properly served, as appears from the affidavits of Aiden Nelms, sworn April 6, 2020, filed:

### **SERVICE AND DEFINITIONS**

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and Motion Record in respect of this Motion is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS** that all capitalized terms used in this Order and not otherwise defined shall have the meanings ascribed to them in the Stalking Horse APA, the Bidding Procedures or the April 6 Affidavit, as applicable

### **BIDDING PROCEDURES**

3. **THIS COURT ORDERS** that that the Bidding Procedures (subject to any amendments thereto that may be made in accordance therewith) are hereby approved.
4. **THIS COURT ORDERS** that the Applicants and their respective advisors, in consultation with the Monitor and its advisors, are hereby authorized and directed to carry out the Bidding Procedures and to take such steps and execute such documentation as may be necessary or incidental to the Bidding Procedures.

### **STALKING HORSE APA**

5. **THIS COURT ORDERS** that the bid made by the Purchaser pursuant to the Asset Purchase Agreement dated as of March 31, 2020 among the Applicants, as Vendors, and Trichome Financial Corp., as Purchaser, in the form attached as Exhibit "B" to the Affidavit of Aiden Nelms sworn March 31, 2020 (the "**Stalking Horse APA**") is hereby approved as the stalking horse bid, provided that nothing herein approves the sale and the vesting of the Purchased Assets to the Purchaser pursuant to the Stalking Horse APA and that the approval of the sale and vesting of such assets shall be considered by this Court on a subsequent motion made to this Court following completion of the sale process pursuant to the terms of the Bidding Procedures if the Stalking Horse Bidder is the Successful Bidder.



6. **THIS COURT ORDERS** that the Applicants' obligation to pay the Expense Reimbursement pursuant to section 4.2 of the Stalking Horse APA is hereby approved.

#### **M&A ADVISOR**

7. **THIS COURT ORDERS** that the Letter Agreement (the "**M&A Advisor Agreement**") dated March 20, 2020 between James E. Wagner Cultivation Corporation and Stoic Advisory Inc. (the "**M&A Advisor**"), as amended by the Letter Agreement Amendment dated April 6, 2020, each attached as Appendix D to the First Report is hereby approved.

8. **THIS COURT ORDERS** that the M&A Advisor shall not share with the Stalking Horse Bidder (or any of its representatives, agents, employees or directors), in any way, any information concerning the SISP, including, without limitation, with respect to the identity or status of potential bidders and the bids received or expected to be received, unless first expressly permitted to do so by the Monitor and the Special Committee and, if so permitted, only with a representative of the Monitor being present.

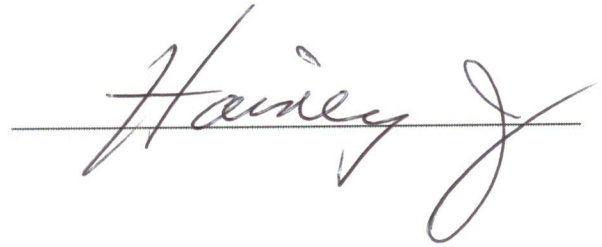
#### **PIPEDA**

9. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Applicants and the Monitor may disclose personal information of identifiable individuals to prospective purchasers or bidders for the Vendors' Assets and to their advisors, but only to the extent desirable or required to carry out the Bidding Procedures and to attempt to complete a transaction for some or all of the Vendors' Assets. Each prospective purchaser or bidder (and their respective advisors) to whom any such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information solely to its evaluation of a transaction for some or all of the Vendors' Assets, and if it does not complete such a transaction, shall return all such information to the Applicants, or in the alternative destroy all such information. The purchaser of any of the Vendors' Assets shall be entitled to continue to use the personal information provided to it, and related to such assets, in a manner that is in all material respects identical to the prior use of such information by the Applicants, and shall return all other personal information to the Applicants, or ensure that all other personal information is destroyed.

**GENERAL**

10. **THIS COURT ORDERS** that this Order shall have full force and-effect in all provinces and territories in Canada.

11. **THIS COURT ORDERS** that the Applicants and the Monitor may from time to time apply to this Court for advice and directions in the discharge of their respective powers and duties hereunder or under the Bidding Procedures.

A handwritten signature in cursive script, reading "Hainey J.", is written over a horizontal line. The signature is fluid and extends to the right of the line.

## Schedule "A"

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**").



**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 at least CAD\$11.95 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 cash purchase price equal to or greater than CAD\$11.95 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) 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**");
- (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 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; (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; (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 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.

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

**ORDER**  
(Bidding Procedures and  
Stalking Horse APA Approval)

**BENNETT JONES LLP**

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M5X 1A4

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Tel: 416-863-1200  
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Lawyers for the Applicants

Re JAMES F. WAGNER CULTIVATION

- ① This application was heard by teleconference in accordance with the change in operations of the Commercial List in light of the Covid-19 crisis and the Chief Justice's Notice to the profession dated March 15, 2020.
- ② On April 1, 2020 I granted an initial order to the Applicants which included a stay of proceedings until April 10, 2020, the appointment of KSV Kopman Inc. as Monitor, OPR Financing and other limited charges over the Applicants' property.



③ The applicants' business is a vertically integrated cannabis brand producing clean and consistent cannabis using their advanced and proprietary aeroponic platform. Before obtaining the initial order the Applicants were in a liquidity crisis and unable to meet their obligations as they became due including a \$350,000 payroll obligation on April 1, 2020.

④ The Applicants are seeking creditor relief to implement a sales process and a consensual restructuring that would see the Applicants' business emerge from these CAA proceedings as a going concern.

3

business with a deleveraged balance sheet.

5 On this comeback Motion the applicants seek the following:

(a) Extension of the stay of proceedings to June 26, 2020;

(b) The appointment of a chief restructuring officer;

(c) An increase to the charges in the Initial Order as follows:

(i) Increase in Administration Charge to \$600,000;

(ii) Increase in Directors' Charge to \$1,050,000; and

(iii) Increase in DFP Lender's Charge to \$4 Million.



(4)

⑥ The applicants also seek approval of a Stalking Horse and purchase agreement ("Stalking Horse AHA"); and a sale and investor solicitation process ("SISP") and related bidding procedures ("Bidding Procedures").

⑦ The relief sought by the Applicants on their Comeback Motion is not opposed except for the timelines provided for in the SISP that are opposed by Fund Global Macro Fund ("Fund"). Fund submits that the proposed



(5)

bid deadline of May 15, 2020 is too short and argues that the deadline should be 60-90 days rather than the 35 days provided for in the proposed SISP.

⑧ The applicants submit that the Monitor and STORC advisory firm ("Storic"), a corporate advisory firm specializing in the cannabis industry, believe that the SISP and Bidding procedures will result in a fair and equitable sales process that will fairly convert the Market in

⑥ order to maximize value for the applicants' assets resulting in the best outcome for the applicants' stakeholders. This includes the May 15, 2020 bid deadline.

⑨ This is the only expert opinion evidence before me on the SISF timelines and I accept it. I am satisfied that the May 15, 2020 bid deadline is fair and reasonable and despite Mr. Taylor's able submissions I do not find that it should be longer.

⑩ I am therefore satisfied that the SISF and the



(7)

Bidding procedures should be approved.

(11) I am satisfied that the proposed stay of proceedings to June 26, 2020 should be approved. It is necessary to permit the Applicants to implement the SISP which is in the best interests of all the Applicants' stakeholders. Further, the Applicants have acted and continue to act in good faith and with due diligence. Finally, the Monitor supports the requested extension of the stay of proceedings and the Applicants are

⑧

forecast to have sufficient liquidity throughout the stay period.

⑫ The Monitor has reported that the Applicants would benefit by augmenting the Senior management team & add stability to the business during the CCA proceedings. I am satisfied the Applicants will benefit from the proposed CEO's expertise and experience in cannabis restructuring. Further, the terms of the CEO's engagement are fair and



⑨

reasonable. The CLO's Engagement Letter contains commercially sensitive information and should be sealed,

⑬ I am satisfied that the Administration Charge should be increased to \$600,000 to provide security for professional fees, including the fees and expenses of the ERO. This is a highly regulated and complex industry and a successful restructuring will require the extensive involvement of the professionals

and the CEO. (10)

(14) The increase in the directors' charge to \$1,050,000 is appropriate. This amount reflects the estimate of the maximum potential liability of the directors and officers during the length of the CCAA proceedings. The increase is supported by The Monitor and the first-lien lender and the DIP lender.

(15) In the Initial Order I approved the DIP loan of \$4,000,000 but only \$800,000



(11) was subject to the DFP Lender's charge during the initial 10-day period. I am satisfied that 5.11.20) of the CCAA has been complied with and all secured creditors have notice of the requested increase to the DFP charge, and the charge will not secure obligations incurred prior to the CCAA proceedings. The increased DFP charge is therefore approved.

(16) I am only being asked to approve the Stalking Horse AFA for the purpose of approving it under the Bidding Procedures. The



(12)

Stalking Horse AFA is the product of extensive negotiations with the first lien lender and the DFP lender and provides a baseline price that should improve bids received in the SISP. The Monitor supports the Stalking Horse AFA and I am satisfied that it is fair and reasonable.

(17) I am satisfied that the SISP and Bidding Procedures should be approved. They provide an appropriate framework that will fairly canvass the market & obtain the best offer for the Applicant's business and will maximize

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value for the Applicants' Stakeholders.

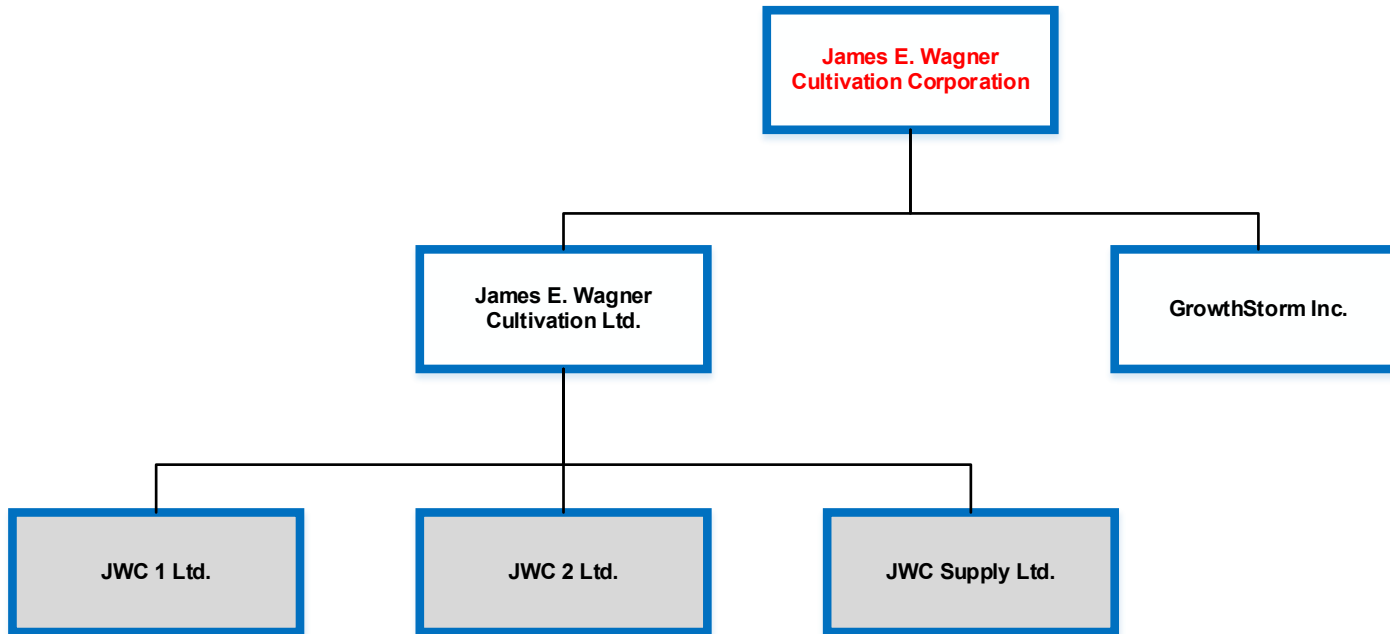
18 For these reasons The Amended and Restated Order and The Bidding Procedures and Stalking Horse APA Approval Order are to issue on the terms of the attached.

19 These orders are effective today whether or not they are approved.

Hainey J.

## **Appendix “B”**

## James E. Wagner Cultivation Corporation Organizational Structure



## **Appendix “C”**

**JAMES E. WAGNER CULTIVATION CORPORATION, JAMES E. WAGNER  
CULTIVATION LTD., JWC 1 LTD., JWC 2 LTD., JWC SUPPLY LTD. AND  
GROWTHSTORM INC.**

as Vendors

and

**TRICHOME FINANCIAL CORP.**

as Purchaser

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**ASSET PURCHASE AGREEMENT**

March 31, 2020

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## ASSET PURCHASE AGREEMENT

This asset purchase agreement is made as of March 31, 2020, between James E. Wagner Cultivation Corporation, a corporation governed by the laws of the Province of Ontario, James E. Wagner Cultivation Ltd., a corporation incorporated under the laws of Ontario, JWC 1 Ltd., a corporation incorporated under the laws of Ontario, JWC 2 Ltd., a corporation incorporated under the laws of Ontario, JWC Supply Ltd., a corporation incorporated under the laws of Ontario, and GrowthStorm Inc., a corporation incorporated under the laws of Ontario (collectively, the “**Vendors**”) and Trichome Financial Corp., a corporation governed by the laws of the Province of Ontario (the “**Purchaser**”).

### RECITALS:

- (1) The Vendors will commence the CCAA Proceedings within 1 Business Day of the date hereof and seek to obtain the Initial Order under the CCAA;
- (2) The Vendors will seek to have KSV Kofman Inc. appointed as Monitor of the Vendors pursuant to the Initial Order;
- (3) The Vendors will seek approval of the Court for the Sale Process Order pursuant to which the Vendors and the Monitor will conduct the Sale Process with this Agreement serving as the Stalking Horse Bid; and
- (4) The Vendors desire to sell all or substantially all of their assets and the Purchaser has agreed to purchase such assets subject to the terms and conditions set forth in this Agreement, the Sale Process and the applicable provisions of the CCAA.

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Vendors and the Purchaser agree as follows:



## ARTICLE 1 INTERPRETATION

### Section 1.1 Definitions

In this Agreement and the recitals above, the following terms have the following meanings:

**“Accounts Receivable”** means, on any date, all accounts receivable and tax refunds generated in the operation of the Vendors' business, together with any unpaid interest or fees accrued thereon which are outstanding on such date and the full benefit of all security or collateral for such amounts, including recoverable advances and deposits, but excluding any amounts owing to the Vendors as at the Closing Time from any of its shareholders or Affiliates, or from any other Person who does not deal at arm's length with any of the Vendors.

**“Affiliate”** has the meaning given to the term “affiliate” in the *Canada Business Corporations Act*.

**“Agreement”** means this asset purchase agreement, as amended from time to time in accordance with the terms hereof.

**“Applicable Law”** means, in respect of any Person, property, transaction or event, any domestic or foreign statute, law (including the common law), ordinance, rule, regulation, treaty, restriction, regulatory policy, standard, code or guideline, by-law or order, in each case, having the force of law, that applies in whole or in part to such Person, property, transaction or event.

**“Approval and Vesting Order”** means an order by the Court substantially in the form attached as Schedule **Error! Reference source not found.** authorizing the Transaction and vesting in the Purchaser (or as it may direct) all the right, title and interest of the Vendors in and to the Purchased Assets.

**“Assignment Order”** means an order or orders of the Court pursuant to section 11.3 of the CCAA and other applicable provisions of the CCAA, in form and substance satisfactory to the Purchaser and the Vendors, each acting reasonably, authorizing and approving (i) the assignment of any Consent Required Contract for which a consent, approval or waiver necessary for the assignment of such Consent Required Contract has not been obtained, (ii) the prevention of any counterparty to such Consent Required Contracts from exercising any right or remedy under such Consent Required Contracts by reason of any defaults arising from the CCAA Proceedings or the insolvency of the Vendors and (iii) the vesting in the Purchaser (or as it may direct) of all right, title and interest of the Vendors in such Consent Required Contracts.

**“Assumed Obligations”** has the meaning set out in Section 2.4.

**“Bidding Procedures”** means the bidding procedures substantially in the form attached hereto as Schedule “C”, with milestone dates therein to be settled on or before the date of the Sale Process Order;

**“Benefit Plans”** means all oral or written plans, arrangements, agreements, programs, policies, practices or undertakings of each Vendor with respect to some or all of the Employees and which provide for or relate to (i) bonus, profit sharing or deferred profit sharing, performance compensation, deferred or incentive compensation, supplemental retirement arrangements, share compensation, share purchase or share option, share appreciation rights, phantom stock, vacation or vacation pay, sick pay, employee loans, or any other compensation in addition to salary; or (ii) insured or self-insured benefits for or relating to income continuation or other benefits during absence from work (including short term disability, long term disability and workers compensation), hospitalization, health, welfare, legal costs or expenses, medical or dental treatments or expenses, life insurance, accident, death or survivor’s benefits, supplementary employment insurance, day care, tuition or professional commitments or expenses and prerequisites or similar employment benefits.

**“Books and Records”** means all files, documents, instruments, papers, books and records (whether stored or maintained in hard copy, digital or electronic format or otherwise), including tax and accounting books and records, used or intended for use by, and in the possession of the Vendors, in connection with the ownership, or operation of the Purchased Assets, including the Contracts, customer lists, customer information and account records, sales records, computer files, data processing records, employment and personnel records, sales literature, advertising and marketing data and records, credit records, records relating to suppliers and other data, in each case, relating to the Purchased Assets, and, for greater certainty, excluding the minute books and corporate records of the Vendors.

**“Business Day”** means a day on which banks are open for business in Toronto, Ontario but does not include a Saturday, Sunday or statutory holiday in the Province of Ontario.

**“CCAA”** means the *Companies’ Creditors Arrangement Act* (Canada);

**“CCAA Proceedings”** means the proceedings to be commenced by the Vendors under the CCAA;

**“Cash Flow Projections”** means the prescribed cash flow projections filed by the Vendors as part of the CCAA Proceedings.

**“Claims”** means any claim of any nature or kind (including any cross-claim or counterclaim), demand, investigation, chose in or cause of action, suit, default, assessment, litigation, third party action, arbitral proceeding or proceeding by or before any Person.

**“Closing”** means the successful completion of the Transaction.

**“Closing Cash Payment”** means an amount to be agreed among the Purchaser, the Vendors and the Monitor which will be sufficient to pay (i) any outstanding Priority Payables, (ii) accrued amounts not paid under the DIP Facility as of the Closing Date (including the fees and expenses of legal and other professionals) and (iii) the

reasonable costs (including the fees and expenses of legal and other professionals) relating to the period following the Closing Date, including, performing any transition services required, terminating the CCAA Proceeding and winding-down the estates of the Vendors (including the administration of a bankruptcy in respect of the Vendors).

“**Closing Date**” means the date that is three (3) Business Days after the date the Approval and Vesting Order is obtained or such other earlier or later date as may be agreed by the Parties.

“**Closing Time**” means 10:00 a.m. (Toronto time) on the Closing Date.

“**Consent Required Contract**” has the meaning set out in Section 2.2a).

“**Contracts**” means all of the contracts and other written agreements to which any Vendor is a party constituting part of the Purchased Assets identified in writing by the Purchaser on or before Closing, including, for greater certainty, all Contracts listed in Appendix I to **Schedule “A”** to this Agreement.

“**Court**” means Ontario Superior Court of Justice (Commercial List).

“**Credit Bid Amount**” means the amounts owing by the Vendors to the Purchaser as of the Closing Time pursuant to: (i) the Loan Agreement; and (iii) the Factoring Agreement;

“**Cure Costs**” means all amounts required to be paid pursuant to section 11.3 of the CCAA to effectuate, pursuant to the CCAA, the assignment by the Vendors and assumption by the Purchaser of Consent Required Contracts under the Assignment Order and to otherwise satisfy all requirements imposed by section 11.3 of the CCAA.

“**DIP Facility**” means the Interim Financing Credit Facility Term Sheet dated March 31, 2020, between the Vendors and the Purchaser.

“**Employee**” means an individual who is employed by a Vendor, whether on a full-time or a part-time basis, whether active or inactive as of the Closing Date, and includes an employee on short term or long term disability leave.

“**Encumbrances**” means any security interest, lien, claim, charge, hypothec, reservation of ownership, pledge, encumbrance, mortgage, adverse claim or right of a third party of any nature or kind whatsoever and any agreement, option or privilege (whether by law, contract or otherwise) capable of becoming any of the foregoing, (including any conditional sale or title retention agreement, or any capital or financing lease).

“**Excise Tax Act**” means the *Excise Tax Act* (Canada).

“**Excluded Assets**” means all of the Vendors' right, title and interest, in and to those assets and rights set forth in Schedule B.

**“Excluded Equipment”** means any equipment or machinery and any parts and components thereof, that are Excluded Assets.

**“Expense Reimbursement”** has the meaning set out in Section 4.2a).

**“Factoring Agreement”** means the Receivables Purchase Agreement made as of October 23, 2019 between JWC, in its capacity as seller thereunder and the Purchaser, in its capacity as purchaser thereunder, and each of the Vendors other than JWC as guarantors.

**“Governmental Authority”** means any domestic or foreign government, whether federal, provincial, state, territorial or municipal; and any governmental agency, ministry, department, court (including the Court), tribunal, commission, stock exchange, bureau, board or other instrumentality exercising or purporting to exercise legislative, judicial, regulatory or administrative functions of, or pertaining to, government or securities market regulation.

**“Health Canada Licenses”** means all authorizations related to cannabis and issued by Health Canada to any of the Vendors, including authorizations to plant, grow, cultivate, extract, produce, process, store, destroy, sell, provide, ship, deliver, transport and/or distribute cannabis under Applicable Law, including without limitation License Nos. LIC-S0SIOQZD8S-2020 and LIC-GHASXLI39D-2019-2.

**“Income Tax Act”** means the *Income Tax Act* (Canada).

**“Intellectual Property”** means all intellectual property of the Vendors used by or currently being developed for use in the business of the Vendors, and all rights of any of the Vendors therein, including all claims for past infringement, worldwide, whether registered or unregistered, including without limitation:

- a) all patents, patent applications and other patent rights, including provisional and continuation patents;
- b) all registered and unregistered trade-marks, service marks, logos, slogans, corporate names, business names and other indicia of origin, and all applications and registrations therefor;
- c) registered and unregistered copyrights and mask works, including all copyright in and to computer software programs and applications and registrations of such copyright;
- d) internet domain names, applications and reservations for internet domain names, uniform resource locators and the corresponding internet sites;
- e) industrial designs; and
- f) trade secrets and proprietary information not otherwise listed in (a) through (e) above, including, without limitation, all inventions (whether or not patentable), invention disclosures, moral and economic rights of authors and

inventors (however denominated), confidential information, technical data, customer lists, corporate and business names, trade names, trade dress, brand names, know-how, mask works, circuit topography, formulae, methods (whether or not patentable), designs, processes, procedures, technology, business methods, source codes, object codes, computer software programs (in either source code or object code form), databases, data collections and other proprietary information or material of any type, and all derivatives, improvements and refinements thereof, howsoever recorded or unrecorded.

**“Interim Lender”** means Trichome Financial Corp., in its capacity as interim lender under the DIP Facility;

**“JWC”** means James E. Wagner Cultivation Corporation;

**“Loan Agreement”** means the Loan Agreement dated February 19, 2019, as amended, between JWC, as borrower, and the Purchaser, as lender and each of the Vendors (other than JWC) as guarantors;

**“M&A Advisor”** means Stoic Advisory Inc.;

**“Monetary Purchase Price”** means the sum of the Credit Bid Amount and the Closing Cash Payment;

**“Monitor”** means the Person appointed by the Court to act as the monitor of the Vendors in the CCAA Proceedings, which is expected to be KSV Kofman Inc.

**“Monitor’s Certificate”** means the certificate of the Monitor contemplated by the Approval and Vesting Order certifying that the Monitor has received written confirmation in form and substance satisfactory to the Monitor from the Parties that all conditions of Closing have been satisfied or waived by the applicable Parties and that the Monitor has received the Closing Cash Payment.

**“Non-Assignable Interests”** means any Purchased Assets which, by their nature cannot be legally or practically sold and assigned by the Vendors to the Purchaser hereunder, including without limitation SRED Claims and any Consent Required Contracts for which an Assignment Order or counterparty consent has not been obtained;

**“Ordinary Course of Business”** means the ordinary course of business of the Vendors with respect to the Purchased Assets consistent with the conduct of such business on the date hereof and consistent with the Orders of the Court in the CCAA Proceedings.

**“Outside Date”** means June 30, 2020.

**“Party”** means the Purchaser and each of the Vendors.

**“Permitted Encumbrances”** means those Encumbrances set forth in Schedule D.

**“Person”** means any individual, partnership, limited partnership, limited liability company, joint venture, syndicate, sole proprietorship, company or corporation with or without share capital, unincorporated association, trust, trustee, executor, administrator or other legal personal representative, Governmental Authority or other entity however designated or constituted.

**“Priority Payables”** means the amounts payable by the Vendors which are secured by liens in favour of a Governmental Authority (including deemed trusts) that encumber the Purchased Assets and rank prior to the interests of the Purchaser, in its capacity as Interim Lender pursuant to the DIP Facility, arising by operation of any applicable statutory law.

**“Purchase Price”** means the Monetary Purchase Price plus the Assumed Obligations.

**“Purchased Assets”** means all of the Vendors’ right, title and interest, in and to the assets used in the business of the Vendors, including those assets set forth in Schedule A, but excluding Excluded Assets.

**“Purchaser”** has the meaning set out in the recitals hereto.

**“Representative”** means, in respect of a Party, each director, officer, employee, agent, Affiliate, manager, lender, solicitor, accountant, professional advisor, consultant, contractor and other representative of such Party or such Party’s Affiliates.

**“Sale Process Order”** means the order of the Court to be sought (i) approving the Sale Process and (ii) approving this Agreement for purposes of acting as a stalking horse bidder.

**“Sale Process”** means the Court-approved sale process pursuant to which: (i) Stoic Advisory Inc. is appointed as M&A advisor to the Vendors; and (ii) the Vendors, with the assistance and supervision of the M&A Advisor and the Monitor, shall market their assets for sale in accordance with the Bidding Procedures.

**“Sales Tax Legislation”** means Part IX of the *Excise Tax Act* and the regulations made under such legislation.

**“Sales Taxes”** means all taxes imposed under Sales Tax Legislation.

**“SRED Credits”** means all amounts claimed or claimable by the Vendors under the Government of Canada Scientific Research and Experimental Development Tax Incentive Program.

**“Stalking Horse Bid”** has the meaning set out in Section 4.1b).

“Successful Bidder” has the meaning set out in the Sales Process.

**“Tax Deduction”** has the meaning set out in Section 4.2b).



**“Transaction”** means the transaction of purchase and sale contemplated by this Agreement.

**“Transfer Taxes”** means all present and future transfer taxes, sales taxes, use taxes, production taxes, value-added taxes, goods and services taxes, land transfer taxes, registration and recording fees, and any other similar or like taxes and charges imposed by a Governmental Authority in connection with the sale, transfer or registration of the transfer of the Purchased Assets, including Sales Taxes but excluding any taxes imposed or payable under the Income Tax Act and any other applicable income tax legislation.

**“Transition Agreement”** means an agreement between the Purchaser and the Vendors (which for purposes of the Transition Agreement shall include and be binding upon a receiver or trustee in bankruptcy of any Vendor pursuant to the Approval and Vesting Order or other order of the Court acceptable to the Purchaser), pursuant to which the Vendors shall provide the Purchaser, at the Purchaser's expense, with such transition services as may reasonably be requested by the Purchaser after the Closing Date to give effect to the transaction contemplated by the Agreement, including without limitation; (i) hold any Non-Assignable Interests in trust for the Purchaser; (ii) to hold the Health Canada Licenses for the benefit of the Purchaser; (iii) administer the Non-Assignable Interests for the benefit of, and at the cost and direction of, the Purchaser; and (iv) continue the employment of any Transition Employees after the Closing Date as may be requested by the Purchaser;

**“Transition Employees”** means the Employees of the Vendors designated by the Purchaser not less than ten Business Days before the Closing Date to remain employed by the Vendors after the Closing Date, for the period(s) and on the terms set out in the Transition Agreement;

**“Vendors”** has the meaning set out in the recitals hereto.

## **Section 1.2 Interpretation Not Affected by Headings, etc.**

The division of this Agreement into sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement.

## **Section 1.3 General Construction.**

The terms “this Agreement”, “hereof”, “herein” and “hereunder” and similar expressions refer to this Agreement and not to any particular section hereof. The expression “Section” or reference to another subdivision followed by a number mean and refer to the specified Section or other subdivision of this Agreement. The language used in this Agreement is the language chosen by the Parties to express their mutual intent, and no rule of strict construction shall be applied against any Party.

#### **Section 1.4 Extended Meanings**

Words importing the singular include the plural and vice versa and words importing gender include all genders. The term “including” means “including, without limitation,” and such terms as “includes” have similar meanings.

#### **Section 1.5 Currency**

All references in this Agreement to dollars, monetary amounts or to \$ are expressed in Canadian currency unless otherwise specifically indicated.

#### **Section 1.6 Statutes**

Except as otherwise provided in this Agreement, any reference in this Agreement to a statute refers to such statute and all rules, regulations and interpretations made under it, as it or they may have been or may from time to time be modified, amended or re-enacted.

#### **Section 1.7 Schedules**

The following Schedules are incorporated in and form part of this Agreement:

- Schedule A - Purchased Assets
- Schedule B - Excluded Assets
- Schedule C - Bidding Procedures
- Schedule D - Permitted Encumbrances
- Schedule E - Form of Approval and Vesting Order
- Schedule F - Purchase Price Allocation

### **ARTICLE 2 SALE AND PURCHASE AND ASSIGNMENT**

#### **Section 2.1 Sale and Purchase of Assets**

Subject to the terms and conditions hereof, at the Closing Time, the Vendors hereby agree to sell, assign and transfer to the Purchaser and the Purchaser agrees to purchase from the Vendors, the Purchased Assets free and clear of all Encumbrances (other than Permitted Encumbrances) pursuant to the Approval and Vesting Order.

#### **Section 2.2 Assignment of Contracts**

In the event that there are any Contracts which are not assignable in whole or in part without the consent, approval or waiver of another party or parties to them and such consents, approvals or waivers have not yet been obtained as of the Closing Date, then:

- a) nothing in this Agreement will be construed as an assignment of any such Contract (each a “**Consent Required Contract**”);

- b) until the Approval and Vesting Order is granted, the Vendors shall use their commercially reasonable efforts to obtain any such consent, approval or waiver and the Purchaser shall provide its reasonable cooperation to assist the Vendors in obtaining any such consent, approval or waiver;
- c) if any consent, approval or waiver is not obtained for any Consent Required Contract prior to the service of the motion for the Approval and Vesting Order, the Purchaser may request that the Vendors bring a motion to the Court for issuance of an Assignment Order with respect to such Consent Required Contracts together with the motion for the Approval and Vesting Order;
- d) Pending obtaining consent or Assignment Order, the Vendors shall hold the Consent Required Contract as a Non-Assignable Interest to be administered in accordance with the Transition Agreement, and shall use commercially reasonable efforts to continue to perform their obligations under the Consent Required Contract, including engaging one or more of the Vendors as its agent to do so; and
- e) once the consent, approval or waiver to the assignment of a Consent Required Contract is obtained or the assignment of such Contract has been ordered by the Court, such Consent Required Contract shall be deemed to be assigned to the Purchaser on Closing.

With respect to each Consent Required Contract, subject to Closing and to either (i) the consent of the other parties thereto to the assignment thereof, or (ii) in the absence of such consent, the obtaining of an Assignment Order, in addition to its other obligations under this Agreement, the Purchaser shall pay the applicable Cure Costs related to such Consent Required Contract on Closing.

### **Section 2.3 "As is, Where is"**

The Purchaser acknowledges that the Vendors are selling the Purchased Assets on an "as is, where is" basis as they shall exist as at the Closing Time. The Purchaser further acknowledges that it has entered into this Agreement on the basis that the Vendors do not guarantee title to the Purchased Assets. No representation, warranty or condition is expressed or can be implied as to title, Encumbrances, description, fitness for purpose, merchantability, condition, quantity or quality or in respect of any other matter or thing whatsoever concerning the Purchased Assets or the right of the Vendors to sell or assign same save and except as expressly represented or warranted herein. Without limiting the generality of the foregoing, any and all conditions, warranties or representations expressed or implied pursuant to the *Sale of Goods Act* (Ontario) or similar legislation do not apply hereto and have been waived by the Purchaser. The description of the Purchased Assets contained in the Schedules is for purpose of identification only. Except as otherwise provided in Section 5.2, no representation, warranty or condition has or will be given by the Vendors concerning completeness or accuracy of such descriptions.

#### **Section 2.4 Assumed Obligations**

The Purchaser shall assume and perform, discharge and pay when due the following obligations and liabilities of the Vendors (the “**Assumed Obligations**”) after the Closing:

- a) the DIP Facility and all security with respect thereto, either, in the sole discretion of Trichome Financial Corp. in its capacity as Lender thereunder, by assumption thereof or refinancing thereof pursuant to exit financing;
- b) all debts, liabilities and obligations under the Contracts (to the extent assigned or transferred to the Purchaser on Closing) for the period from and after the Closing Time;
- c) the obligation and liability of the Vendors to pay Cure Costs in respect of any Contract; and
- d) all debts, liabilities and obligations arising from ownership and use of the Purchased Assets for the period from and after the Closing Time.

#### **Section 2.5 Excluded Obligations**

Other than the Assumed Obligations, the Purchaser shall not assume and shall not be liable, directly or indirectly, or otherwise responsible for any debts, liabilities or other obligations of the Vendors, including, without limiting the generality of the foregoing:

- a) all debts, liabilities, obligations or Claims related to any Benefit Plans, Employees or any Excluded Asset;
- b) all debts, liabilities and obligations related to any Purchased Asset arising out of or related to the period prior to the Closing Time;
- c) all obligations and liabilities owing by any Vendor to any Affiliate;
- d) all debts, liabilities and obligations for or related to any obligation for any taxes that are not expressly assumed by the Purchaser;
- e) all taxes imposed on or relating to the Purchased Assets that are attributable to any pre-Closing tax period whether or not any such period ends on or before the Closing Date (other than any Transfer Taxes); and
- f) all debts, liabilities and obligations of the Vendors arising under this Agreement.

### **ARTICLE 3 PURCHASE PRICE**

#### **Section 3.1 Purchase Price**

The aggregate purchase price (the “**Purchase Price**”) payable by the Purchaser to the Monitor on behalf of the Vendors for the Purchased Assets is the sum of: (i) the Monetary Purchase Price, and (ii) the Assumed Obligations. The Monetary Purchase Price shall be allocated on Closing amongst the Purchased Assets in accordance with the provisions of Schedule F.

#### **Section 3.2 Satisfaction of Purchase Price**

Provided that all conditions precedent to Closing have been satisfied or waived in accordance with Article 7, the Purchase Price shall be paid and satisfied on Closing as follows:

- a) as to the amount of the Credit Bid Amount, by the crediting and set off of the Credit Bid Amount against an amount of the Monetary Purchase Price equal to the amount of the Credit Bid Amount;
- b) as to the Closing Cash Payment, by wire transfer in immediately available funds paid to the Monitor or as the Monitor may direct in writing;
- c) as to the dollar value of the Assumed Obligations (other than the DIP Facility), by the assumption by the Purchaser of the Assumed Obligations; and
- d) in the case of the DIP Facility, either, in the sole discretion of Trichome Financial Corp as Lender thereunder, by the assumption thereof or by refinancing thereof by exit financing.

#### **Section 3.3 Transfer Taxes**

- (1) The Parties agree that:
  - a) the Purchase Price is exclusive of all Transfer Taxes and the Purchaser shall be liable for and shall pay any and all applicable Transfer Taxes pertaining to the Purchaser’s acquisition of the Purchased Assets;
  - b) subject to Section 3.3(c), the Purchaser shall pay any applicable Transfer Taxes on the Purchaser’s acquisition of the Purchased Assets in addition to the Purchase Price, either to the Monitor on behalf of the Vendors or directly to the appropriate governmental Authority, as required by Applicable Law;
  - c) if applicable, the Vendors and the Purchaser shall jointly elect that no Sales Taxes are payable pursuant to the Sales Tax Legislation with respect to the purchase and sale of the Purchased Assets under this Agreement and the Purchaser will file an election pursuant to section 167 of the Sales Tax Legislation, prepared by the Purchaser and made jointly by the Purchaser and the Vendors, in compliance with the requirements of the Sales Tax Legislation.

The Purchaser shall indemnify the Vendors for any Sales Tax, interest and penalties applicable to the Vendors on the sale of the Purchased Assets caused by the Purchaser's failure to file a valid election under section 167 of the Sales Tax Legislation within the prescribed time.

- (2) If requested by the Purchaser, the Vendors shall make:
- a) a joint election(s) to have the rules in section 22 of the Income Tax Act, and any equivalent or corresponding provision under applicable provincial or territorial tax legislation, apply in respect of the Accounts Receivable; and
  - b) a joint election(s) to have the rules in subsection 20(24) of the Income Tax Act, and any equivalent or corresponding provision under applicable provincial or territorial tax legislation, apply to the obligations of the Vendors in respect of undertakings which arise from the operation of the business to which the Purchased Assets related and to which paragraph 12(1)(a) of the Income Tax Act applies.

#### **ARTICLE 4 BIDDING PROCEDURES**

##### **Section 4.1 Bidding Procedures**

- a) The Vendors and the Purchaser acknowledge that this Agreement and the transactions contemplated hereby are subject to Court approval.
- b) The Vendors and the Purchaser acknowledge and agree that the Vendors shall apply to the Court by no later than April 13, 2020, or such other date as they may agree, for the Sale Process Order, inter alia, recognizing this Agreement, and in particular the Purchase Price, as a baseline or "stalking horse bid" (the "**Stalking Horse Bid**") and approving the Bidding Procedures, the payment of the Expense Reimbursement in the circumstances set out in Section 4.2, and the parties will use commercially reasonable efforts to have the Sale Process Order issued. The Purchaser acknowledges and agrees that the Bidding Procedures are in contemplation of determining whether a superior bid can be obtained for the Purchased Assets.

##### **Section 4.2 Expense Reimbursement**

- a) In consideration for the Purchaser's expenditure of time and money and agreement to act as the initial bidder through the Stalking Horse Bid, and the preparation of this Agreement, and in performing due diligence pursuant to this Agreement, and subject to Court approval, the Purchaser shall be entitled to an expense reimbursement amount not to exceed \$100,000 (inclusive of HST) (the "**Expense Reimbursement**"), payable by the Vendors to the Purchaser only in the event that a successful bid other than the Stalking Horse Bid is accepted by the Vendors, approved by the Court and completed. The payment of the foregoing amount shall be approved in the Sale Process Order and shall



be payable to the Purchaser out of the sale proceeds derived from and upon completion of the successful bid. Each of the parties hereto acknowledges and agrees that the foregoing amount represents a fair and reasonable estimate of the costs and damages that will be incurred by the Purchaser as a result of non-completion of this Agreement and is not intended to be punitive in nature nor to discourage competitive bidding for the Purchased Assets, business and Assumed Liabilities.

- b) The Expense Reimbursement shall be paid by the Vendors to the Purchaser without deduction or withholding for taxes (a "**Tax Deduction**"), unless a Tax Deduction is required by Applicable Law. In the event that the Vendors determine that a Tax Deduction is required by Applicable Law to be made in respect of the payment of the Expense Reimbursement, or any portion thereof, the Vendors shall pay such additional amount (the "**Additional Amount**") as shall be required to result in the Purchaser receiving an amount equal to the amount which it would have received if no Tax Deduction had been required.

## **ARTICLE 5 REPRESENTATIONS AND WARRANTIES**

### **Section 5.1 Purchaser's Representations**

The Purchaser represents and warrants to the Vendors as of the date hereof and acknowledges that, as of the Closing Time, the Vendors are relying on such representations and warranties in connection with entering into this Agreement and performing their obligations hereunder:

- a) the Purchaser is a corporation duly incorporated, organized and subsisting under the laws of its jurisdiction of incorporation and has the requisite power and authority to enter into this Agreement and to complete the transactions contemplated hereunder;
- b) the Purchaser has the requisite power and authority to enter into this Agreement and to complete the transactions contemplated hereunder;
- c) neither the execution of this Agreement nor the performance by the Purchaser of the Transaction will violate the Purchaser's constating documents, any agreement to which the Purchaser is bound, any judgment or order of a court of competent jurisdiction or any Governmental Authority, or any Applicable Law. The execution and delivery of this Agreement and the consummation of the Transaction have been duly authorized by all necessary corporate action on the part of the Purchaser. This Agreement is a valid and binding obligation of the Purchaser enforceable in accordance with its terms; and
- d) the Purchaser has not committed an act of bankruptcy, is not insolvent, has not proposed a compromise or arrangement to its creditors generally, has not had any application for a bankruptcy order filed against it, has not taken any

proceeding and no proceeding has been taken to have a receiver appointed over any of its assets, has not had an encumbrancer take possession of any of its property and has not had any execution or distress become enforceable or levied against any of its property.

## **Section 5.2 Vendors' Representations**

Each of the Vendors represents and warrants to the Purchaser as of the date hereof and as of the Closing Time as follows and acknowledges that the Purchaser is relying on such representations and warranties in connection with entering into this Agreement and performing its obligations hereunder:

- a) each of the Vendors is a corporation duly incorporated, organized and subsisting under the laws of its respective jurisdiction of incorporation;
- b) each the Vendors is not a non-resident of Canada for purposes of the *Income Tax Act* or the *Excise Tax Act*, as applicable;
- c) as of the date hereof, to the best of each Vendor's actual knowledge, and without investigation, no notices of termination have been received by the Vendors under any customer or vendor contracts of the Vendors; and
- d) subject to obtaining the Sale Process Order and the Approval and Vesting Order and, if applicable, the Assignment Order, the Vendors have the requisite power and authority to enter into this Agreement and to complete the Transaction contemplated hereunder.

## **Section 5.3 Limitations**

With the exception of the Vendors' representations and warranties in Section 5.2 and the Purchaser's representations and warranties in Section 5.1, none of the Vendors or the Purchaser, or their respective Representatives, nor any of their respective officers, directors or Employees make, have made or shall be deemed to have made any other representation or warranty, express or implied, at law or in equity, in respect of the Vendors, the Purchaser, or the Purchased Assets or the sale and purchase of the Purchased Assets pursuant to this Agreement.

## **ARTICLE 6 COVENANTS**

### **Section 6.1 Conduct of Business in the Ordinary Course**

- (1) The Vendors shall use commercially reasonable efforts to conduct their business in the Ordinary Course of Business except to the extent required to allow the Vendors to comply with their obligations under this Agreement, subject in all cases to any limitation imposed by being subject to CCAA Proceedings and any Court order.

- (2) Without limiting the generality of Section 6.1(1), the Vendors shall use their commercially reasonable efforts to:
- a) remain in possession of the Purchased Assets until Closing, use the Purchased Assets only in the Ordinary Course of Business and maintain, preserve and protect the Purchased Assets in the condition in which they exist on the date hereof, other than ordinary wear and tear and other than replacements, dispositions, modifications or maintenance in the Ordinary Course of Business,
  - b) keep the Health Canada Licenses in good standing,
  - c) not dispose of any of the Purchased Assets, other than Inventory in the Ordinary Course of Business or as permitted under the Initial Order;
  - d) not disclaim any contract that is material to the business of the Vendors without the prior written consent of the Purchaser; and
  - e) not enter into any material contract or other material written agreement in respect of any of the Purchased Assets other than in the Ordinary Course of Business; except, in each case, with the prior written consent of the Purchaser, such consent not to be unreasonably withheld, or an order of the Court, and provided that such consent of the Purchaser shall be deemed to have been given with respect to any request for such a consent to which the Purchaser fails to respond within two (2) Business Days after such request is made.
- (3) The Vendors, with the assistance of the Monitor, shall provide an estimate of the Closing Cash Payment amount to the Purchaser and all other interested parties one week prior to the bid deadline.

## **Section 6.2 Actions to Satisfy Closing Conditions**

- (1) The Vendors agree to take all commercially reasonable actions so as to ensure compliance with all of the conditions set forth in Section 7.1 and Section 7.3.
- (2) If the Purchaser is the Successful Bidder, the Vendors agree prior to the Closing Date to take all commercially reasonable efforts to assist the Purchaser with the transition of customer and supplier relationships from the Vendors to the Purchaser. The Purchaser agrees to take all commercially reasonable efforts so as to ensure compliance with all of the conditions set forth in Section 7.2 and Section 7.3.

## **ARTICLE 7 CONDITIONS PRECEDENT**

### **Section 7.1 Conditions Precedent in favour of the Purchaser**

- (1) The obligation of the Purchaser to complete the Transaction is subject to the following conditions being fulfilled or performed:

- a) all representations and warranties of the Vendors contained in this Agreement shall be true in all material respects as of the Closing Time with the same effect as though made on and as of that date;
  - b) the Vendors shall have performed each of their obligations under this Agreement to the extent required to be performed at or before the Closing Time, including the delivery of each of the items required pursuant to Section 8.3;
  - c) all stays of proceedings provided for in the CCAA Proceedings, including in any Court orders granted therein, shall have remained in effect as at the Closing Time except where any such stay is terminated or lifted or amended in a manner which is not materially prejudicial to the Purchaser or which does not materially adversely affect the Purchaser's rights under this Agreement or the Purchased Assets;
  - d) the Vendors shall have entered into a Transition Agreement on terms acceptable to the Purchaser, acting reasonably; and
  - e) the Purchaser shall have obtained a valid and binding assignment of the Health Canada Licenses or replacement licenses that are substantially similar to the Health Canada Licenses, in each case on terms satisfactory to the Purchaser, in its sole discretion.
- (2) The foregoing conditions are for the exclusive benefit of the Purchaser. Any condition in this Section 7.1 may be waived by the Purchaser in whole or in part, without prejudice to any of its rights of termination in the event of non-fulfillment of any other condition in whole or in part. Any such waiver shall be binding on the Purchaser only if made in writing. If any condition set out in Section 7.1 is not satisfied or performed on or prior to the Outside Date, the Purchaser may elect on written notice to the Vendors to terminate this Agreement.

## **Section 7.2 Conditions Precedent in favour of the Vendors**

- (1) The obligation of the Vendors to complete the Transaction is subject to the following conditions being fulfilled or performed:
- a) all representations and warranties of the Purchaser contained in this Agreement shall be true in all material respects as of the Closing Time with the same effect as though made on and as of that date; and
  - b) the Purchaser shall have performed in all material respects each of its obligations under this Agreement to the extent required to be performed at or before the Closing Time, including the delivery of each of the items required pursuant to Section 8.2.
- (2) The foregoing conditions are for the exclusive benefit of the Vendors. Any condition in this Section 7.2 may be waived by the Vendors in whole or in part, without

prejudice to any of its rights of termination in the event of non-fulfilment of any other condition in whole or in part. Any such waiver shall be binding on the Vendors only if made in writing. If any condition set forth in Section 7.2 is not satisfied or performed on or prior to the Outside Date, the Vendors may elect on written notice to the Purchaser to terminate the Agreement.

**Section 7.3 Conditions Precedent in favour of both the Purchaser and the Vendors**

- (1) The obligations of the Vendors and the Purchaser to complete the Transaction are subject to the following conditions being fulfilled or performed:
  - a) the Sales Process Order shall have been granted on terms satisfactory to the Purchaser and Vendors, each acting reasonably, and the Purchaser shall be the Successful Bidder;
  - b) the Approval and Vesting Order shall have been obtained and shall not have been stayed, varied, or vacated;
  - c) the Transition Agreement shall have been approved by the Court, including without limitation an order making the Transition Agreement binding on a trustee in bankruptcy of the Vendors, and/or a receiver of the Vendors' interests in any Non-Assignable Interests;
  - d) no order shall have been issued by a Governmental Authority which restrains or prohibits the completion of the Transaction; and
  - e) no motion, action or proceedings shall be pending by or before a Governmental Authority to restrain or prohibit the completion of the Transaction contemplated by this Agreement.
- (2) The Parties hereto acknowledge that the foregoing conditions are for the mutual benefit of the Vendors and the Purchaser. If the conditions set out in this Section 7.3 are not satisfied performed or mutually waived on or before the Outside Date, any Party shall have the option to terminate this Agreement upon written notice to the other Parties.

**ARTICLE 8  
CLOSING**

**Section 8.1 Closing**

Subject to the conditions set out in this Agreement, the completion of the Transaction shall take place at the Closing Time at the offices of Torys LLP, or as otherwise determined by mutual agreement of the Parties in writing and the Parties shall exercise commercially reasonable efforts to cause Closing to occur at the Closing Time and, in any event, prior to the Outside Date.

## **Section 8.2 Purchaser's Deliveries on Closing**

At or before the Closing Time, the Purchaser shall execute and deliver, or arrange for the delivery, as the case may be, to the Vendors the following, each of which shall be in form and substance satisfactory to the Vendors, acting reasonably:

- a) the Closing Cash Payment in accordance with Section 3.2b) and evidence reasonably satisfactory to the Purchaser that the Credit Bid Amount has been set off and extinguished against the Monetary Purchase Price;
- b) payment of Transfer Taxes required by Applicable Law to be collected by any Vendor, or alternatively, if applicable, the election(s) referred to in Section 3.3(1)c) executed by the Purchaser;
- c) an executed assignment and assumption agreement evidencing the assumption by the Purchaser of the Assumed Obligations;
- d) an executed assignment agreement evidencing the assumption by the Purchaser of all Intellectual Property;
- e) a certificate dated as of the Closing Date confirming that all of the representations and warranties of the Purchaser contained in this Agreement are true in all material respects as of the Closing Time, with the same effect as though made at and as of the Closing Time, and that the Purchaser has performed in all respects the covenants to be performed by it prior to the Closing Time; and
- f) such further and other documentation as is referred to in this Agreement or as the Vendors may reasonably require to give effect to this Agreement.

## **Section 8.3 Vendors' Deliveries on Closing**

At or before the Closing Time, the Vendors shall execute and deliver, or arrange for the delivery, as the case may be, to the Purchaser the following, each of which shall be in form and substance satisfactory to the Purchaser, acting reasonably:

- a) the Purchased Assets, which shall be delivered *in situ* wherever located as of the Closing;
- b) the Approval and Vesting Order;
- c) the Transition Agreement;
- d) an executed assignment and assumption agreement evidencing the assignment by the Vendors of the Assumed Obligations to the Purchaser;
- e) an executed assignment agreement evidencing the assignment by the Vendors of all Intellectual Property to the Purchaser;



- f) a true and complete copy of all Assignment Orders, if any, entered by the Court;
- g) a certificate dated as of the Closing Date confirming that all of the representations and warranties of the Vendors contained in this Agreement are true in all material respects as of the Closing Time, with the same effect as though made at and as of the Closing Time, and that the Vendors have performed in all material respects the covenants to be performed by them prior to the Closing Time;
- h) if applicable, the election(s) referred to in Section 3.3(1)c) executed by the Vendors;
- i) the executed Monitor's Certificate;
- j) a valid and binding assignment of the Health Canada Licenses on terms satisfactory to the Purchaser, acting reasonably, unless replacements therefor have been obtained; and
- k) such further and other documentation as is referred to in this Agreement or as the Purchaser may reasonably require to give effect to this Agreement.

#### **Section 8.4 Possession of Assets**

- (1) On Closing, the Purchaser shall take possession of the Purchased Assets where situate at Closing. The Purchaser acknowledges that the Vendors have no obligation to deliver physical possession of the Purchased Assets to the Purchaser. In no event shall the Purchased Assets be sold, assigned, transferred or set over to the Purchaser until the conditions set out in the Approval and Vesting Order have been satisfied or waived by the Purchaser or Vendors, as applicable, and the Purchaser has satisfied all delivery requirements outlined in Section 8.2. The Purchaser shall promptly notify the Vendors of any Excluded Assets which may come into the possession or control of the Purchaser, whether before or after Closing, and thereupon shall promptly release such Excluded Assets to the Vendors, or to such other Person as the Vendors may direct in writing and, for greater certainty, title shall not be deemed to vest to the Purchaser in respect of any Excluded Assets. The Vendors shall have no obligation to remove any Excluded Equipment from any premises that constitute part of Purchased Assets. All right, title and interest in any such Excluded Equipment which is not sold or removed from such premises after three months following Closing shall vest in the Purchaser unless the Purchaser objects to such title transfer in which case, right, title and interest shall continue to vest in the Vendors but the Purchaser shall be entitled to dispose of such Excluded Equipment at the Purchaser's expense.
- (2) The Purchased Assets shall be and remain until Closing at the risk of the Vendors. In the event of material (exceeding \$100,000) damage by fire or other hazard to the Purchased Assets or any part thereof occurring before the Closing Date, the Vendors shall immediately advise the Purchaser thereof by notice in writing.

### **Section 8.5 Dispute Resolution**

If any dispute arises with respect to any matter related to the Transaction or the interpretation or enforcement of this Agreement such dispute will be determined by the Court, or by such other Person or in such other manner as the Court may direct or as mutually agreed by the Vendors and the Purchaser.

### **Section 8.6 Termination**

- (1) This Agreement shall automatically terminate at any time prior to the Closing Time by mutual written agreement of the Vendors and the Purchaser and on consent of the Monitor.
- (2) This Agreement may be terminated at any time prior to the Closing Time upon the occurrence of any of the following:
  - a) a condition precedent has not been satisfied or waived pursuant to and in accordance with Article 7 and a Party entitled to terminate this Agreement as a result thereof has delivered written notice of termination pursuant to Article 7 (provided that the terminating Party has not failed to satisfy a closing condition under this Agreement); or
  - b) Closing shall not have occurred on or prior to the Outside Date in accordance with Section 7.3 and any of the Parties shall have delivered written notice of termination to the other Parties terminating this Agreement as a result thereof (provided that the terminating Party has not failed to satisfy a closing condition under this Agreement).

### **Section 8.7 Effects of Termination and Closing**

- (1) If this Agreement is terminated pursuant to Section 8.6, all further obligations of the Parties under or pursuant to this Agreement shall terminate without further liability of any Party to the other except for the provisions of this Section 8.7 (Effects of Termination and Closing), each of which will survive termination.
- (2) If the Transaction is not completed by the Outside Date solely as a result of the Vendors' failure to perform any of their obligations under this Agreement, then the Expense Reimbursement shall become due and payable to the Purchaser in accordance with the terms of this Agreement.
- (3) Under no circumstance shall any of the Parties, their Representatives or their respective directors, officers, employees or agents be liable for any special, punitive, exemplary, consequential or indirect damages (including loss of profits) that may be alleged to result, in connection with, arising out of, or relating to this Agreement or the transactions contemplated herein.

**ARTICLE 9  
GENERAL**

**Section 9.1 Access to Books and Records**

- (1) For a period of two years from the Closing Date or for such longer period as may be reasonably required for the Vendors (or any trustee in bankruptcy of the estate of the Vendors) to comply with Applicable Law, the Purchaser will retain all original Books and Records that are transferred to the Purchaser under this Agreement. So long as any such Books and Records are retained by the Purchaser pursuant to this Agreement, the Vendors (and any representative, agent, former director or officer or trustee in bankruptcy of the estate of the Vendors, including the Monitor) has the right to inspect and to make copies (at its own expense) of them at any time upon reasonable request during normal business hours and upon reasonable notice for any proper purpose and without undue interference to the business operations of the Purchaser.

**Section 9.2 Notice**

- (1) Any notice or other communication under this Agreement shall be in writing and may be delivered by read-receipted email, addressed:
- a) in the case of the Purchaser, as follows:

**Trichome Financial Corp.**  
150 Bay Street West, Suite 200  
Toronto, Ontario  
M5H 1J9

**Attention:** Michael Ruscetta  
**Email:** mruscetta@trichomefinancial.com

With a copy to:

**Torys LLP**  
79 Wellington Street West  
Suite 3000  
Toronto, Ontario  
M5K 1N2

**Attention:** Scott Bomhof  
**Email:** sbomhof@torys.com

- b) in the case of the Vendors, as follows:

**James E. Wagner Cultivation Corporation**  
PO Box 46015  
Kitchener, Ontario  
N2E 4J3

**Attention:** Nathan Woodworth  
Email: nathan@jwcmed.com

With a copy to:

Bennett Jones LLP  
3400 - 100 King Street West  
Toronto, Ontario  
M5X 1A4

**Attention:** Sean Zweig  
Email: zweigs@bennettjones.com

- c) in each case, with a further copy to the Monitor, as follows:

**KSV Kofman Inc.**  
150 King Street West  
Suite 2308  
Toronto, Ontario  
M5H 1J9

**Attention:** Bobby Kofman/Noah Goldstein  
Email: bkofman@ksvadvisory.com/ngoldstein@ksvadvisory.com

- (2) Any such notice or other communication, if transmitted by email before 5:00 p.m. (Toronto time) on a Business Day, will be deemed to have been given on such Business Day, and if transmitted by email after 5:00 p.m. (Toronto time) on a Business Day, will be deemed to have been given on the Business Day after the date of the transmission.
- (3) Sending a copy of a notice or other communication to a Party's legal counsel as contemplated above is for information purposes only and does not constitute delivery of the notice or other communication to that Party. The failure to send a copy of a notice or other communication to legal counsel does not invalidate delivery of that notice or other communication to a Party.

### **Section 9.3 Time**

Time shall, in all respects, be of the essence hereof, provided that the time for doing or completing any matter provided for herein may be extended or abridged by an agreement in writing signed by the Vendors and the Purchaser.

#### **Section 9.4 Survival**

The representations and warranties of the Parties contained in this Agreement shall merge on Closing and the covenants of the Parties contained herein to be performed after the Closing shall survive Closing and remain in full force and effect.

#### **Section 9.5 Personal Information**

The Purchaser hereby acknowledges that it is aware, and that it will advise its Representatives, that privacy legislation, including the *Personal Information Protection and Electronic Documents Act* (Canada), applies to certain information that may be disclosed to the Purchaser and its Representatives pursuant to this Agreement and/or the Transaction. The Purchaser agrees to comply, and cause its Representatives to comply, with such privacy legislation in connection with any such information disclosed to it or any of them.

#### **Section 9.6 Benefit of Agreement**

This Agreement shall enure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns.

#### **Section 9.7 Entire Agreement**

This Agreement, the attached Schedules hereto, constitute the entire agreement between the Parties with respect to the subject matter hereof and supersede all prior negotiations, understandings and agreements. This Agreement may not be amended or modified in any respect except by written instrument executed by all of the Parties.

#### **Section 9.8 Paramountcy**

In the event of any conflict or inconsistency between the provisions of this Agreement, and any other agreement, document or instrument executed or delivered in connection with this Transaction or this Agreement, the provisions of this Agreement shall prevail to the extent of such conflict or inconsistency.

#### **Section 9.9 Governing Law**

This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein and each of the Parties irrevocably attorns to the non-exclusive jurisdiction of the courts of the Province of Ontario.

#### **Section 9.10 Commission**

The parties acknowledge that the M&A Advisor has been retained and may be entitled to payment of fees in accordance with the SISP. The Purchaser agrees to indemnify the Vendors and its Representatives against any claim for compensation or commission by any third party or agent retained by the Purchaser in connection with, or in contemplation of, the Transaction and the Vendors shall indemnify the Purchaser and its Representatives for any third party or agent or broker fees or other commissions payable by the Vendors on the Purchase Price or otherwise in connection with the Transaction.

### **Section 9.11 Assignment by Purchaser**

This Agreement may be assigned by the Purchaser prior to the issuance of the Approval and Vesting Order, without the prior written consent of the Vendors or the Monitor, provided that such assignee is also the holder of the Purchaser's interests under the Loan Agreement, the Factoring Agreement and the DIP Facility. If the Purchaser assigns its rights under this Agreement, (i) the Purchaser shall provide prior notice of such assignment to the Vendors, and (ii) such assignee shall agree to be bound by the terms of this Agreement to the extent of the assignment; provided, however, that any such assignment shall not relieve the Purchaser of its obligations hereunder.

### **Section 9.12 Further Assurances**

Each of the Parties shall, at the request and expense of the requesting Party, take or cause to be taken such action and execute and deliver or cause to be executed and delivered to the other such conveyances, transfers, documents and further assurances as may be reasonably necessary or desirable to give effect to this Agreement.

### **Section 9.13 Counterparts**

This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which shall constitute one and the same agreement. Transmission by facsimile or by e-mail of an executed counterpart of this Agreement shall be deemed to constitute due and sufficient delivery of such counterpart.

### **Section 9.14 Severability**

Notwithstanding any provision herein, if a condition to complete the Transaction, or a covenant or an agreement herein is prohibited or unenforceable pursuant to Applicable Law, then such condition, covenant or agreement shall be ineffective to the extent of such prohibition or unenforceability without invalidating the other provisions hereof.

### **Section 9.15 Monitor's Certificate**

The Parties acknowledge and agree that the Monitor shall be entitled to deliver to the Purchaser, and file with the Court, the executed Monitor's Certificate without independent investigation, upon receiving written confirmation from both Parties (or the applicable Party's counsel) that all conditions of Closing in favour of such Party have been satisfied or waived, and the Monitor shall have no liability to the Parties in connection therewith. The Parties further acknowledge and agree that (i) upon written confirmation from both Parties that all conditions of Closing in favour of such Party have been satisfied or waived (other than the payments contemplated in Section 3.2 and the delivery of the executed Monitor's Certificate), the Monitor may deliver the executed Monitor's Certificate to the Purchaser's counsel in escrow, with the sole condition of its release from escrow being the Monitor's written confirmation that all such funds have been received, the Monitor's Certificate will be released from escrow to the Purchaser, and the Closing shall be deemed to have occurred.



**Section 9.16 Monitor's Capacity**


The Vendors and the Purchaser acknowledge and agree that the Monitor, acting in its capacity as Monitor of the Vendors, will have no liability, in its personal capacity or otherwise, in connection with this Agreement whatsoever as Monitor.

**[THE REMAINDER OF THIS PAGE HAS BEEN LEFT INTENTIONALLY BLANK]**

IN WITNESS WHEREOF, the Parties have executed this Agreement.

PURCHASER:

**TRICHOME FINANCIAL CORP.**

By:   
\_\_\_\_\_  
Name:  
Title:

VENDORS:

**JAMES E. WAGNER CULTIVATION CORPORATION**

By: \_\_\_\_\_  
Name:  
Title:

**JAMES E. WAGNER CULTIVATION LTD.**

By: \_\_\_\_\_  
Name:  
Title:

**JWC 1 LTD.**

By: \_\_\_\_\_  
Name:  
Title:

**JWC 2 LTD.**

By: \_\_\_\_\_  
Name:  
Title:

**JWC SUPPLY LTD.**

By: \_\_\_\_\_  
Name:  
Title:

IN WITNESS WHEREOF, the Parties have executed this Agreement.


PURCHASER:

**TRICHOME FINANCIAL CORP.**


By: \_\_\_\_\_  
Name:  
Title:

VENDORS:

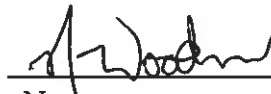
**JAMES E. WAGNER CULTIVATION CORPORATION**

By:  \_\_\_\_\_  
Name:  
Title:


**JAMES E. WAGNER CULTIVATION LTD.**

By:  \_\_\_\_\_  
Name:  
Title:

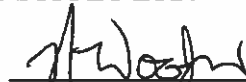
**JWC 1 LTD.**

By:  \_\_\_\_\_  
Name:  
Title:


**JWC 2 LTD.**

By:  \_\_\_\_\_  
Name:  
Title:

**JWC SUPPLY LTD.**

By:  \_\_\_\_\_  
Name:  
Title:

**GROWTHSTORM INC.**

By: 

Name:

Title:

## Schedule A - Purchased Assets

- (1) All cash and cash equivalents;
- (2) All movable property, leasehold improvements and equipment, furniture, fixtures and other fixed assets, if any (excluding those that are subject to capital leases), in addition to all computer hardware used in connection with the business;
- (3) All Books and Records;
- (4) All inventory of the Vendors used in the carrying on of its business;
- (5) The benefit of all contracts or other agreements listed in Appendix 1 to this Schedule A in each case, as amended, extended, assigned or otherwise modified, which shall include, (in this Schedule A, the “**Assumed Contracts**”);
- (6) All Accounts Receivable;
- (7) All SRED Credits;
- (8) All prepaid expenses to the extent necessary for the operation of the business form and after the Closing;
- (9) All supplies owned by the Vendors and used in connection with the business;
- (10) All Intellectual Property owned or licensed by the Vendors and used in or relating to the carrying on of the business, including Intellectual Property developed by the Vendors’ employees;
- (11) All customer guarantees, customer notes, security agreements, financing statements under applicable personal property security legislation, customer deposits or collateral, filings or property securing customer obligations (in each case, solely to the extent related to any of the Accounts Receivables and/or Assumed Contracts);
- (12) All government licenses, approvals, permits or similar used in connection with the business, to the extent they are assignable; and

- (13) All goodwill associated with the business or the Purchased Assets, including the right to carry on the business in continuation of the Vendors.



## **Appendix 1 to Schedule A - Assumed Contracts**

The following leases:

- Lease dated December 13, 2013, between Blue Top Properties (885 Trillium) Inc. and JWC Ltd. in respect of the Facility
- Lease dated February 1, 2018, between Homer Land Corp. and JWC Ltd. in respect of the Second Facility

The following customer contracts:

- Master Cannabis Supply Agreement between JWC and Ontario Cannabis Retail Corporation dated February 19, 2020
- Supply Arrangements between JWC and Prince Edward Island Cannabis Management Corporation
- Agreements related to the Private Label and Commercial Packaging agreement between JWC and Atlantic Cultivation Limited

## Schedule B - Excluded Assets

### 1. Benefit Plans

## Schedule C

### 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**").

### 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 at least CAD\$11.95 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 cash purchase price equal to or greater than CAD\$11.95 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) 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**”);
- (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 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; (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; (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 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.

Schedule D- Permitted Encumbrances

N/A

Schedule E- Form of Approval and Vesting Order

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Court File No.

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

THE HONOURABLE ) WEEKDAY, THE #  
JUSTICE ) DAY OF MONTH, 2020

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

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

**APPROVAL AND VESTING ORDER**

**THIS MOTION**, made by James E. Wagner Cultivation Corporation, James E. Wagner Cultivation Ltd., JWC 1 Ltd., JWC 2 Ltd., JWC Supply Ltd. and GrowthStorm Inc. (collectively,

the “**Vendors**”) for an order approving the sale transaction (the “**Transaction**”) contemplated by an agreement of purchase and sale (the “**Sale Agreement**”) between the Vendors and Trichome Financial Corp. (the “**Purchaser**”) dated ■ and vesting in the Purchaser all of the Vendors’ right, title and interest in and to the assets described in the Sale Agreement (the “**Purchased Assets**”), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the motion record of the Vendors, ■ Report of KSV Kofman Inc. in its capacity as Monitor (the “**Monitor**”) and on hearing the submissions of counsel for the Vendors, the Monitor and the Purchaser, no one appearing for any other person on the service list, although properly served as appears from the affidavit of [NAME] sworn [DATE] filed:

1. **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved, and the execution of the Sale Agreement by the Vendors and the Purchaser is hereby authorized and approved, with such minor amendments as the Vendors and the Purchaser, with the approval of the Monitor, may agree upon. The Vendors and the Monitor are hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchaser.

2. **THIS COURT ORDERS AND DECLARES** that upon the delivery of a Monitor’s certificate to the Purchaser substantially in the form attached as Schedule A hereto (the “**Monitor’s Certificate**”), all of the Vendors’ right, title and interest in and to the Purchased Assets described in the Sale Agreement shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the “**Claims**”) including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable ■ dated ■, 2020 and the Order of the Honourable Justice ■ dated ■, 2020; and (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system (all of which are collectively referred to as the “**Encumbrances**”

and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

3. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of the Monitor's Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

4. **THIS COURT ORDERS AND DIRECTS** the Monitor to file with the Court a copy of the Monitor's Certificate, forthwith after delivery thereof.

5. **THIS COURT ORDERS** that the Monitor may rely on written notice from the Vendors and the Purchaser regarding fulfillment of conditions to closing under the Sale Agreement and shall incur no liability with respect to the delivery of the Monitor's Certificate.

6. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Vendors and the Monitor are authorized and permitted to disclose and transfer to the Purchaser all human resources and payroll information in the Vendor's records pertaining to the Vendors' past and current employees. The Purchaser shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the Vendors.

7. **THIS COURT ORDERS** that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) (the "**BIA**") in respect of any Vendor and any bankruptcy order issued pursuant to any such applications or otherwise; and

- (c) any assignment in bankruptcy made in respect of any Vendor;

the vesting of the Purchased Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of any Vendor and shall not be void or voidable by creditors of the Vendors, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the BIA or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

8. **THIS COURT ORDERS** that for a period of not less than two years from the Closing Date, the Purchaser shall provide the Monitor and any trustee in bankruptcy of any Vendor with access to the books and records of the Vendor in the possession of the Purchaser during normal business hours upon request, and shall not thereafter alter or destroy such books and records without providing the Monitor or and any trustee in bankruptcy of any Vendor with 30 days prior written notice.

9. **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 Vendors and the Monitor and their 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 Vendors and the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Vendors and the Monitor and their agents in carrying out the terms of this Order.

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**Schedule A - Form of Monitor's Certificate**

Court File No. \_\_\_\_\_

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

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

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

**MONITOR'S CERTIFICATE**

**RECITALS**

- A. James E. Wagner Cultivation Corporation, James E. Wagner Cultivation Ltd., JWC 1 Ltd., JWC 2 Ltd., JWC Supply Ltd. and GrowthStorm Inc. (collectively, the "**Vendors**") commenced these proceedings under the *Companies' Creditors Arrangement Act* on ■, 2020 (the "**CCAA Proceedings**");
- B. KSV Kofman Inc. was appointed as Monitor (the "**Monitor**") in the CCAA Proceedings;
- C. Pursuant to an Order of the Court dated ■ (the "**Approval and Vesting Order**"), the Court approved the agreement of purchase and sale made as of ■ (the "**Sale Agreement**") between the Vendors and Trichome Financial Corp. (the "**Purchaser**") and provided for the vesting in the Purchaser of the Vendors' right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Monitor to the Purchaser of a certificate confirming: (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing as set out in Article 7 of the Sale Agreement have been satisfied or waived by the Vendors and the Purchaser (as applicable); and (iii) the Transaction has been completed to the satisfaction of the Monitor.

D. Pursuant to the Approval and Vesting Order, the Monitor may rely on written notice from the Vendors and the Purchaser regarding fulfillment of conditions to closing under the Sale Agreement.

E. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.

**THE MONITOR CERTIFIES** the following:

1. The Vendors and the Purchaser have each delivered written notice to the Monitor that all applicable conditions under the Sale Agreement have been satisfied and/or waived, as applicable;
2. The Monitor has received the Closing Cash Payment; and
3. The Transaction has been completed to the satisfaction of the Monitor.
4. This Certificate was delivered by the Monitor at \_\_\_\_\_ [TIME] on \_\_\_\_\_ [DATE].

**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**

Per: \_\_\_\_\_

Name:

Title:

## Schedule F- Purchase Price Allocation

To be determined

## **Appendix “D”**

**FIRST AMENDMENT TO  
THE ENGAGEMENT AGREEMENT**

(the "**Amending Agreement**")

BY AND BETWEEN: James E. Wagner Cultivation Corporation ("**JWC**")

AND: Howard Capital LLC ("**HC**")

**WHEREAS:**

A. Pursuant to an initial order dated April 1, 2020, granted by the Ontario Superior Court of Justice (Commercial List) (the "**Court**"), JWC and its subsidiaries (collectively, the "**JWC Group**") commenced proceedings under the Companies' Creditors Arrangement Act, R.S.C., 1985, c. C-36, as amended to effect a financial and operational restructuring as well as a Sale and Investor Solicitation Process (the "**SISP**");

B. Pursuant to an Engagement Agreement dated April 5, 2020 (the "**Engagement Agreement**"), JWC retained HC to act as Chief Restructuring Officer ("**CRO**"), perform the Services set out and defined in section 2(f) of the Engagement Agreement, and report to the special committee of the Board of JWC;

C. Pursuant to the Engagement Agreement, Howard Steinberg ("**Steinberg**") is the primary person providing the Services for HC and the term of HC's appointment as CRO commenced on the date that the Court granted an order approving the Engagement Agreement;

D. Pursuant to the Engagement Agreement, JWC and HC agreed that Steinberg would recuse himself and not participate in any discussions at Trichome Financial Corp. ("**Trichome**") Board meetings concerning the JWC Group during the term of the appointment of HC as CRO;

E. Pursuant to an amended and restated initial order dated April 9, 2020, the Court approved the appointment of HC as CRO as well as the SISP and related bidding procedures, as amended (the "**Bidding Procedures**");

F. Pursuant to the Engagement Agreement, no provision of the Engagement Agreement may be amended, modified, waived or discharged unless such amendment, modification, waiver or discharge is agreed to in writing and signed by JWC and HC;

G. The Bid Deadline set out and defined in the Bidding Procedures under the SISP has passed, and Trichome is the Successful Bidder as defined in the Bidding Procedures;

H. JWC and HC desire that Steinberg now be permitted to attend and participate in Trichome Board meetings concerning the JWC Group; and

I. JWC and HC have agreed to amend the Engagement Agreement on the terms set out herein.

**NOW THEREFORE** in consideration of the premises and the mutual covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by each of the parties hereto, JWC and HC agree as follows:

1. Capitalized terms used in this Amending Agreement which are not otherwise defined herein will have the meanings ascribed to them in the Engagement Agreement.
2. Section 2(b) of the Engagement Agreement is hereby deleted and replaced with the following:  
  
**"Appointment.** Subject to receipt of the CRO Approval Order, HC is hereby appointed CRO. HC shall cause Steinberg to devote his working time, skills and competence as circumstances require to the role of CRO and to effect the Operational Restructuring, as defined below. JWC acknowledges and agrees that HC and Steinberg may engage in other commitments and business activities (including outside directorships) during the term of this engagement, provided that such activities do not interfere with the effective performance of the Services of HC and Steinberg hereunder. Further, JWC acknowledges that Steinberg is on the Board of Trichome and has received restricted stock units associated with that role. Steinberg will resign from the Board of JWC and the Special Committee contemporaneously with becoming CRO. From and after May 19, 2020, JWC consents to Steinberg participating in Trichome Board deliberations and decisions with respect to JWC."
3. This Amending Agreement will, from the date hereof, be read and construed along with the Engagement Agreement and be treated as part thereof and the Engagement Agreement, as amended by this Amending Agreement, together will all terms and conditions thereof, will remain in full force and effect.
4. This Amending Agreement may not be assigned by the parties hereto except in accordance with the terms of the Engagement Agreement.
5. This Amending Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.
6. In the case of any conflict between the terms and conditions of the Engagement Agreement and the terms and conditions of this Amending Agreement, the terms and conditions of this Amending Agreement will prevail.
7. This Amending Agreement may be executed by the parties hereto in counterparts, each of which shall be deemed an original, but both such counterparts shall together constitute one and the same document.
8. This Amending Agreement may be executed by the parties and transmitted by fax or other electronic means and if so executed and transmitted this Amending Agreement will be for all purposes as effective as if the parties had executed and delivered an original Amending Agreement.

[Signature page follows]

**IN WITNESS WHEREOF**, the parties hereto have caused this Amending Agreement to be executed as of this 18 day of May, 2020.

**JAMES E. WAGNER CULTIVATION CORPORATION**

**HOWARD CAPITAL LLC**

By: PHILIP ARMSTRONG  
Name: Philip Armstrong  
Title: Director

By: \_\_\_\_\_  
Name: Howard Steinberg  
Title: Managing Member

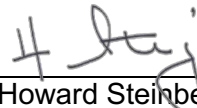


**IN WITNESS WHEREOF**, the parties hereto have caused this Amending Agreement to be executed as of this 18 day of May, 2020.

**JAMES E. WAGNER CULTIVATION CORPORATION**

**HOWARD CAPITAL LLC**

By: \_\_\_\_\_  
Name: Philip Armstrong  
Title: Director

By:  \_\_\_\_\_  
Name: Howard Steinberg  
Title: Managing Member

## **Appendix “E”**

## SECOND AMENDMENT TO INTERIM FINANCING TERM SHEET

This SECOND AMENDMENT TO INTERIM FINANCING TERM SHEET (this “**Amendment**”) is made as of May 25, 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 amended by the first amendment dated as of May 4, 2020 (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 Paragraph (d) of Section 20 (*Affirmative Covenants*) of the Loan Agreement is hereby amended by adding the following at the end of the paragraph before the “.”:

“and (viii) copies of all reports prepared by the Chief Restructuring Officer for the special committee of the Borrower (the “**Special Committee**”) and copies of all reports prepared by the Special Committee for the Chief Restructuring Officer, in each case, other than privileged information”

2.1.2 Section 29 (*Assignment*) of the Loan Agreement is hereby amended by deleting the following phrase: “(i) at any time to an affiliate; (ii) to any person acceptable to the Interim Lender in its sole and absolute discretion with the prior written consent of the Monitor (subject in all cases to providing the Monitor with reasonable evidence that such assignee has the financial capacity to fulfill the obligations of the applicable Interim Lender hereunder)” and replacing it with the following phrase: “in its sole and absolute discretion; provided that any such assignment or participation shall not relieve the Interim Lender of its obligation to make an Interim Advance hereunder if such assignee or participant fails to make such Interim Advance when required hereunder”.

2.1.3 Schedule A (*Definitions*) of the Loan Agreement is hereby amended by adding the following definition in alphabetical order:

“**Special Committee**” has the meaning given thereto in Section 20(d).”

### **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 its 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; and
- 4.1.2 the CCAA Court shall have issued an order, in a form acceptable to the Lender and the Obligors, approving 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: PHILIP ARMSTRONG  
Name:  
Title:

**GUARANTORS:**

**JAMES E. WAGNER CULTIVATION LTD.**

By: PHILIP ARMSTRONG  
Name:  
Title:

**JWC 1 LTD.**

By: PHILIP ARMSTRONG  
Name:  
Title:

**JWC 2 LTD.**

By: PHILIP ARMSTRONG  
Name:  
Title:

**JWC SUPPLY LTD.**

By: PHILIP ARMSTRONG  
Name:  
Title:

**GROWTHSTORM INC.**


By: PHILIP ARMSTRONG

Name:

Title:

**LENDER:**

**TRICHOME FINANCIAL CORP.**

By:   
\_\_\_\_\_  
Name: Michael Ruschetta  
Title: Chief Financial Officer



## **Appendix “F”**

James E. Wagner Cultivation Corporation and Related CCAA Applicants

**Projected Statement of Cash Flow**

For the Period Ending June 30, 2020

(Unaudited; \$C)

	Notes	22-May-20	29-May-20	Weeks Ending		19-Jun-20	30-Jun-20	Total
				05-Jun-20	12-Jun-20			
	1							
<i>Receipts</i>								
Cannabis Sales	2	92,908	17,250	84,387	29,652	17,250	167,036	408,483
<i>Disbursements</i>								
Operating Costs	3	261,128	334,143	91,409	315,568	119,371	335,143	1,456,762
Occupancy Costs	4	30,000	90,000	231,053	-	120,000	90,000	561,053
Excise Taxes	5	-	24,320	-	-	-	24,320	48,640
<i>Total Operating Disbursements</i>		291,128	448,463	322,462	315,568	239,371	449,463	2,066,455
<i>Net Cash Flow Before the Undernoted</i>		(198,220)	(431,213)	(238,075)	(285,916)	(222,121)	(282,427)	(1,657,972)
Restructuring Costs	6	19,813	-	48,000	330,000	-	-	397,813
DIP Interest and Fees	7	6,978	7,425	7,981	9,163	9,601	16,165	57,313
<i>Net Cash Flow</i>		(225,011)	(438,638)	(294,056)	(625,079)	(231,722)	(298,592)	(2,113,098)
Opening Cash Balance		342,372	117,361	-	-	-	-	342,372
DIP Financing	8	-	321,278	294,056	625,079	231,722	298,592	1,770,726
Closing Cash Balance		117,361	-	-	-	-	-	-
DIP Loan Balance		3,710,371	4,031,649	4,325,705	4,950,784	5,182,505	5,481,097	5,481,097

**Purpose and General Assumptions**

1. The purpose of the projection is to present a cash flow forecast of the Companies for the period from May 18, 2020 to June 30, 2020 (the "Period") in respect of their proceedings under the Companies' Creditors Arrangement Act ("CCAA").

The cash flow projection has been prepared based on hypothetical and most probable assumptions.

**Hypothetical Assumptions**

2. Represents sales of cannabis to provincial, wholesale and medical customers.

**Probable Assumptions**

3. Operating costs include payroll and production costs.
4. Occupancy costs include rent and utilities.
5. Excise tax is paid one month in arrears.
6. Includes the estimated payments to the Chief Restructuring Officer, the Monitor, its counsel and the Applicants' corporate and insolvency counsel.
7. Represents interest and fees payable on the debtor-in-possession ("DIP") facility.
8. Represents projected DIP funding to be provided by Trichome Financial Corporation pursuant to the terms of the DIP Term Sheet.

**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.**

**MANAGEMENT'S REPORT ON CASH FLOW STATEMENT**  
(paragraph 10(2)(b) of the CCAA)

The management 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") have developed the assumptions and prepared the attached statement of projected cash flow as of the 25th day of May, 2020 for the period May 18, 2020 to June 30, 2020 ("Cash Flow"). All such assumptions are disclosed in the notes to the Cash Flow.

The hypothetical assumptions are reasonable and consistent with the purpose of the Cash Flow as described in Note 1 to the Cash Flow, and the probable assumptions are suitably supported and consistent with the plans of the Applicants and provide a reasonable basis for the Cash Flow.

Since the Cash Flow is based on assumptions regarding future events, actual events will vary from the information presented and the variations may be material.

The Cash Flow has been prepared solely for the purpose outlined in Note 1 using a set of hypothetical and probable assumptions set out therein. Consequently, readers are cautioned that the Cash Flow may not be appropriate for other purposes.

Dated at Toronto, Ontario this 25th day of May, 2020.

James E. Wagner Cultivation Corporation, James E. Wagner Cultivation Ltd., JWC 1 Ltd., JWC 2 Ltd., JWC Supply Ltd. and Growthstorm Inc.

  
\_\_\_\_\_  
Howard Capital LLC, Chief Restructuring Officer

## **Appendix “G”**

**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.**

**MONITOR'S REPORT ON CASH FLOW STATEMENT  
(paragraph 23(1)(b) of the CCAA)**

The attached statement of projected cash-flow 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"), as of the 25<sup>th</sup> day May, 2020, consisting of a weekly projected cash flow statement for the period May 18, 2020 to June 30, 2020 ("Cash Flow") has been prepared by the management of the Applicants for the purpose described in Note 1, using the probable and hypothetical assumptions set out in the notes to the Cash Flow.

Our review consisted of inquiries, analytical procedures and discussions related to information supplied by the management and employees of the Applicants. Since hypothetical assumptions need not be supported, our procedures with respect to them were limited to evaluating whether they were consistent with the purpose of the Cash Flow. We have also reviewed the support provided by management for the probable assumptions and the preparation and presentation of the Cash Flow.

Based on our review, nothing has come to our attention that causes us to believe that, in all material respects:

- a) the hypothetical assumptions are not consistent with the purpose of the Cash Flow;
- b) as at the date of this report, the probable assumptions developed by management are not suitably supported and consistent with the plans of the Applicants or do not provide a reasonable basis for the Cash Flow, given the hypothetical assumptions; or
- c) the Cash Flow does not reflect the probable and hypothetical assumptions.

Since the Cash Flow is based on assumptions regarding future events, actual results will vary from the information presented even if the hypothetical assumptions occur, and the variations may be material. Accordingly, we express no assurance as to whether the Cash Flow will be achieved. We express no opinion or other form of assurance with respect to the accuracy of any financial information presented in this report, or relied upon in preparing this report.

The Cash Flow has been prepared solely for the purpose described in Note 1 and readers are cautioned that it may not be appropriate for other purposes.

Dated at Toronto, Ontario this 25<sup>th</sup> day of May, 2020.

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

**KSV KOFMAN INC.  
IN ITS CAPACITY AS PROPOSED 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**