

**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 HERITAGE CANNABIS HOLDINGS CORP., 1005477 B.C. LTD., HERITAGE
CANNABIS WEST CORPORATION, MAINSTRAIN MARKET LTD.,
HERITAGE CANNABIS EAST CORPORATION, PUREFARMA SOLUTIONS
INC., 333 JARVIS REALTY INC., 5450 REALTY INC., HERITAGE CANNABIS
EXCHANGE CORP., AND PREMIUM 5 LTD.**

Applicants

**FACTUM OF THE APPLICANTS
(Motion returnable April 11, 2024)**

April 10, 2024

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TO: THE SERVICE LIST

PART I: OVERVIEW¹

1. On April 2, 2024, Heritage Cannabis Holdings (“**Heritage**”), 1005477 B.C. Ltd., Mainstrain Market Ltd., Purefarma Solutions Inc., 333 Jarvis Realty Inc., 5450 Realty Inc., Premium 5 Ltd., Heritage Cannabis Exchange Corp., Heritage Cannabis East Corporation and Heritage Cannabis West Corporation (“**Heritage West**”), sought and obtained an order (the “**Initial Order**”) under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”). Pursuant to the Initial Order, KPMG Inc. was appointed Monitor of the Applicants (the “**Monitor**”).

2. Heritage is a reporting issuer listed on the Canadian Securities Exchange and on the OTC Pink,² operated by OTC Markets Group.³ It wholly-owns each of the other Applicants (together the “**Subsidiaries**”), and wholly-owns several other non-Applicant affiliates.⁴ Through the Subsidiaries and from facilities located in Ontario and British Columbia, Heritage focuses on extraction and creation of extract and extract-derivative brands for adult use, and cannabis-based medical solutions.⁵

3. This Factum is being filed in support of a motion by the Applicants seeking:

- (a) an amended and restated initial order (the “**ARIO**”) granting, among other things:
 - (i) an extension of the Stay of Proceedings (as defined below) to June 30, 2024; (ii) approval of the Applicants’ ability to borrow under a debtor-in-possession facility

¹ Capitalized terms not defined herein shall have the meaning ascribed to them in the Affidavit of David Schwede sworn April 2, 2024 (the “**Initial Schwede Affidavit**”) and the Affidavit of David Schwede sworn April 9, 2024 (the “**Second Schwede Affidavit**”) at Tab 2 of the Motion Record of the Applicants dated April 9, 2024 (the “**Motion Record**”).

² OTCPK means the services provided by the OTD Market Group, including, over-the-counter trading services, to companies listed as “Pink”.

³ Initial Affidavit at para 8.

⁴ Second Schwede Affidavit at para 2.

⁵ Second Schwede Affidavit at para 4.

term sheet (the “**DIP Term Sheet**”) with BJK Holdings Ltd. (“**BJK**”) as lender (in such capacity, the “**DIP Lender**”); (iii) approval of the DIP Lender’s Charge (as defined below); (iv) extension of the time limit to call and hold the annual general meeting of shareholders of Heritage (the “**AGM**”) until after the completion of the CCAA proceedings; (v) approval of the Key Employee Retention Plan (“**KERP**”); and (vi) an increase to the amount of the Administration Charge and the Directors’ Charge (each as defined below); and

- (b) an order (the “**SISP Order**”) granting, among other things: (i) authority and approval for execution of the Stalking Horse Subscription Agreement (the “**Stalking Horse Agreement**”) among Heritage and Heritage West, as sellers, and BJK and HAB Cann Holdings Ltd. (the “**Stalking Horse Purchaser**”), *nunc pro tunc*; and (ii) approval of the sale and investment solicitation process (the “**SISP**”) in which the Stalking Horse Agreement will serve as the “**Stalking Horse Bid**”.

PART II: FACTS

A. BACKGROUND

4. The facts with respect to this motion are more fully set out in the Second Schwede Affidavit and the First Report of the Monitor (the “**First Report**”).

5. Consistent with s. 11.001 of the CCAA, the Initial Order only provided for relief that was reasonably necessary for the continued operations of the Applicants during the initial 10-day period, including: (a) a stay of proceedings until April 12, 2024 (the “**Stay of Proceedings**”) and extending the benefit of the Stay of Proceedings and other aspects of the Initial Order to the Non-Applicant Stay Parties and their respective directors and officers; (b) approval of the

Administration Charge in the amount of \$250,000 and the Directors' Charge in the amount of \$900,000; (c) allowing for payment to certain suppliers who are critical to the business and operations of the Applicants for pre-filing expenses, in each case with the consent of the Monitor and BJK and in accordance with the terms of the Cash Flow Forecast (as defined in the Initial Schwede Affidavit), up to a maximum aggregate amount of \$1,500,000; (d) ordering that the status quo in respect of the Applicants' Health Canada and cannabis excise licenses shall be preserved and maintained during the pendency of the Stay of Proceedings, and to the extent any such licenses may expire during the Stay of Proceedings, the terms of such licenses shall be deemed to be extended by a period equal to the Stay of Proceedings.⁶

A. STATUS OF THE CCAA PROCEEDINGS

6. Following the issuance of the Initial Order, the Heritage Group has continued its business operations in the ordinary course.⁷

7. The Applicants' activities since the date of the Initial Order, with the assistance of its advisors and the Monitor, include:⁸

- a. communicating with, providing information to, and answering questions of, various stakeholders and employees;
- b. managing key relationships with customers and suppliers, and operating the business in accordance with the terms of the Initial Order;

⁶ Second Schwede Affidavit at para 8 and Exhibit B.

⁷ Second Schwede Affidavit at para 10.

⁸ Second Schwede Affidavit at para 11.

- c. working with the Monitor to manage their cash flows and making payments to suppliers in accordance with the Initial Order;
 - d. arranging payment, in consultation with the Monitor and BJK, to certain suppliers on account of pre-filing amounts which are critical to the Applicants' business and operations continuing as a going concern;
 - e. working with and corresponding regularly with representatives of the Monitor regarding numerous issues in the CCAA proceedings, including planned disbursements and the Updated Cash Flow Forecast (as defined below);
 - f. engaging in discussions with the DIP Lender about the Business and next steps in the CCAA proceedings;
 - g. continued discussions with the DIP Lender, the Stalking Horse Purchaser and the Monitor, towards finalizing the DIP Term Sheet and the Stalking Horse Agreement; and
 - h. engaging in discussions with the Monitor and DIP Lender regarding the development of the SISP.
8. The Heritage Group continues to work with the Monitor in good faith to respond to numerous creditor and stakeholder inquiries on a daily basis.⁹

B. The DIP Term Sheet and the DIP Lender's Charge

9. As appears from the updated cash flow forecast attached to the First Report (the "**Updated Cash Flow Forecast**"), the Applicants expect the need for interim financing in order to maintain

⁹ Second Schwede Affidavit at para 12.

operations and fund these CCAA proceedings through the proposed extension of the Stay of Proceedings.¹⁰

10. The DIP Term Sheet provides for a super-priority non-revolving loan (the “**DIP Facility**”) up to a maximum principal amount of \$1,500,000 (the “**Maximum Amount**”). Interest on the advances made to the Borrowers under the DIP Facility (“**DIP Advances**”) will bear interest at a rate of 12.5% *per annum*, calculated daily and compounded monthly.¹¹

11. The DIP Facility includes a commitment fee in the amount of \$45,000 (the “**Commitment Fee**”), representing 3% of the Maximum Amount, which will be fully earned upon Court approval of the DIP Term Sheet, and debited from the first DIP Advance. The Commitment Fee shall be secured by the DIP Lender’s Charge (as defined below).¹²

12. The DIP Facility is conditional upon, among other things: (a) the granting of a Court-ordered charge over the Property in favour of the DIP Lender to secure the amounts owing under the DIP Facility (the “**DIP Lender’s Charge**”); (b) approval of the SISP by the Court; and (c) the entering into of the Stalking Horse Agreement.¹³

13. The proposed DIP Lender’s Charge being sought is for the amount of the DIP Obligations owing at the relevant time.¹⁴ The DIP Lender’s Charge will not secure obligations incurred prior to the CCAA proceedings. The DIP Lender’s Charge is proposed to rank subordinate to the Administration Charge and the Directors’ Charge.¹⁵

¹⁰ Second Schwede Affidavit at para 19.

¹¹ Second Schwede Affidavit at para 22.

¹² Second Schwede Affidavit at para 23.

¹³ Second Schwede Affidavit at paras 25 and 28.

¹⁴ Second Schwede Affidavit at para 28.

¹⁵ Second Schwede Affidavit at para 29; Motion Record, Tab 3 at paras 35, 39 and 41.

C. The Key Employee Retention Plan

14. The Applicants have developed a KERP with input from the Monitor.¹⁶ Eleven (11) employees of the Applicants are the proposed beneficiaries of the KERP (the “**KERP Beneficiaries**”). The Applicants will not be able to maintain their operations during the SISP and through to a successful closing of a transaction without offering these employees an incentive. The KERP Beneficiaries will receive their respective KERP payments upon closing of a successful transaction within the SISP or otherwise at the termination of the KERP Beneficiary’s employment with the Applicants.¹⁷

D. The SISP

15. The SISP is intended to solicit interest in the sale of the Heritage Group’s Business and/or assets.¹⁸ A summary of the key dates pursuant to the SISP are outlined below:¹⁹

Milestone	Date
Commence solicitation of interest from parties, including delivering NDA and Teaser Letter, and upon execution of NDA (each as defined below), Confidential Information Memorandum and access to VDR	On or about April 15, 2024
Binding Offer Deadline (as defined below)	May 10, 2024 at 5:00 p.m. EST
<i>If no Qualified Bids are received other than Stalking Horse Bid</i>	
Selection of Stalking Horse Bid as Successful Bid	May 10, 2024 at 5:15 p.m. EST
Hearing of Approval Motion (as defined below)	May 27, 2024 or the earliest date available thereafter
Closing of Stalking Horse Bid	As soon as possible but no later than August 2, 2024.

¹⁶ Second Schwede Affidavit at para 34.

¹⁷ Second Schwede Affidavit at para 38.

¹⁸ Second Schwede Affidavit at para 51.

¹⁹ Second Schwede Affidavit at para 52.

Milestone	Date
<i>If Qualified Bids are received other than Stalking Horse Bid</i>	
Deadline to notify Qualified Bidders of Auction	No later than May 14, 2024
Auction, if needed	May 17, 2024
Selection of Successful Bid and Back-Up Bidder, if needed	May 18, 2024 or such later date immediately thereafter if the Auction is not completed in one day
Execution of Definitive Transaction Documentation reflecting changes to Qualified Bid arising from Auction	No later than May 21, 2024
Hearing of Approval Motion	No later than June 7, 2024
Closing of the Successful Bid	As soon as possible but no later than August 2, 2024

E. The Stalking Horse Agreement

17. The Applicants, BJK, and the Stalking Horse Purchaser, with the assistance of the Monitor, have been negotiating the Stalking Horse Agreement pursuant to which the Stalking Horse Purchaser will: (i) act as the Stalking Horse Bidder in the SISP; and (ii) become the sole owner of 100% of the issued and outstanding shares of Heritage and Heritage West by way of a reverse approval and vesting order.²⁰

18. The principal terms of the Stalking Horse Agreement are summarized below:²¹

Term	Details
<i>Seller</i>	Heritage Cannabis Holdings Corp. and Heritage Cannabis West Corporation (collectively, the “ Companies ”)
<i>Purchaser</i>	HAB Cann Holdings Ltd.
<i>Purchased Entities</i>	Heritage Cannabis Holdings Corp., Heritage Cannabis West Corporation, Heritage Cannabis East Corporation, and Purefarma Solutions Inc.

²⁰ Second Schwede Affidavit at para 71.

²¹ Second Schwede Affidavit at para 73.

<i>Transaction Structure</i>	Reverse-vesting share purchase transaction structure. At Closing of the transaction, <i>inter alia</i> : (a) the Excluded Assets (described below) and Excluded Liabilities (described below) shall be transferred from the Purchased Entities to Residual Co.; (b) the Companies will issue to the Purchaser shares in the share capital of the Companies (the “ Purchased Shares ”); and (c) all outstanding Equity Interest in the Companies shall be cancelled.
<i>Purchase Price</i>	The total aggregate consideration payable by the Purchaser for the Purchased Shares is equal to: (a) a release of all amounts outstanding and obligations payable by the Applicants under the Senior Loan Agreement and all related loan and security documents, which amount as of April 4, 2024 is \$6,871,782 (excluding legal fees and expenses); (b) release of all amounts outstanding and obligations payable by the Applicants as of the Closing date pursuant to the DIP Term Sheet and all related loan and security documentation (the amounts in (a) and (b) together, the “ Credit Bid Consideration ”); (c) the CCAA Process Expense Amount, consisting of cash in an amount of the Administrative Expense Costs (as defined in the Stalking Horse Agreement) and CCAA Charge Amount (as defined in the Stalking Horse Agreement); and (d) the Priority Payment Amount (as defined in the Stalking Horse Agreement) consisting of an amount sufficient to pay those priority payments prescribed under subsections 6(3), 6(5)(a) and 6(6) of the CCAA (the amounts in (c) and (d) together, the “ Cash Consideration ”).
<i>As Is, Where Is</i>	The Purchaser specifically acknowledges and agrees that, except for the representations and warranties of the Companies as expressly and specifically set forth in Article 4 of the Stalking Horse Agreement, the Purchaser is acquiring the Purchased Shares on an “as is, where is” basis.
<i>Employees</i>	The Purchaser will determine which employees it will assume and employ prior to Closing.
<i>Mutual Conditions to Closing</i>	The obligations of the Purchaser and the Companies to consummate the transactions contemplated by the Stalking Horse Agreement are subject to the satisfaction of, or compliance with, certain conditions which include the following: (a) no provision of any Applicable Law and no Order preventing or otherwise frustrating the consummation of the purchase of the Purchased Shares or any of the other transactions pursuant to the Stalking Horse Agreement shall be in effect; (b) each of the SISP Order and the Approval and Vesting Order shall have been issued and entered and shall be Final Orders; (c) the Stalking Horse Agreement will be the Successful Bid (as determined pursuant to the SISP); and (d) the Parties shall have received the required Transaction Regulatory Approvals, and all such Transaction Regulatory Approvals shall be in full

	force and effect, except for Transaction Regulatory Approvals that need not be in full force and effect prior to Closing.
<i>Break and Expense Reimbursement Fee</i>	In consideration for the Purchaser's expenditure of time and money (including professional fees) in connection with the preparation of the Stalking Horse Agreement, and in performing due diligence pursuant to the Stalking Horse Agreement, the Purchaser shall be entitled to a Break and Expense Reimbursement Fee of \$400,000. The Break and Expense Reimbursement Fee is subject to Court approval and shall be approved in the SISP Order and shall be payable to the Purchaser out of the sale proceeds derived from, and upon completion of, a Successful Bid other than the Stalking Horse Bid.
<i>Closing Date</i>	A date no later than five (5) Business Days after the conditions in Article 7 have been satisfied or waived; provided that the Closing Date shall be no later than the Outside Date.

PART III: ISSUES

19. The issues to be considered on this motion are whether to grant the proposed form of the Amended and Restated Initial Order and the proposed form of the SISP Approval Order. The issues addressed in this factum are accordingly whether:

- a. the Stay of Proceedings should be extended;
- b. the DIP Loan and DIP Lender's Charge should be approved;
- c. the time to hold the AGM should be extended;
- d. the KERP should be approved;
- e. an increase to the amount of the Charges should be approved;
- f. the priority of the Charges should be approved;
- g. the SISP should be approved; and
- h. the Stalking Horse Agreement should be approved for the purposes of serving as the Stalking Horse Bid under the SISP.

PART IV: LAW AND ARGUMENT

A. The Stay of Proceedings and Stay Period Should Be Extended

20. The Stay Period (as defined in the Initial Order) currently expires on April 12, 2024. The Applicants are requesting an extension of the Stay of Proceedings and Stay Period to June 30, 2024. A stay of proceedings is appropriate where it provides the debtors with breathing room while they seek to restore their solvency and emerge from their restructuring on a going concern basis.²² Subsection 11.02(2) of the CCAA expressly authorizes this Court to grant an extension of the Stay of Proceedings for “any period the court considers necessary”.²³ The extension of the Stay Period is necessary and appropriate in these circumstances to provide the Applicants with continued space while they attempt to maximize value for the benefit of their stakeholders through the CCAA proceedings and the SISP sought herein.²⁴

21. Since the granting of the Initial Order, the Applicants have acted, and are continuing to act in good faith and with due diligence.²⁵ The Monitor and the Applicants will need time in order to properly and diligently implement and carry out the SISP in accordance with its terms and the SISP Approval Order, to obtain the maximum value possible for all stakeholders.²⁶

B. The Proposed DIP Financing Should Be Approved

22. The Applicants are seeking a DIP Lender’s Charge to secure the amounts borrowed under the DIP Loan that will rank subordinate to the Administration Charge and the Directors’ Charge.

²² *Century Services Inc v Canada (AG)*, 2010 SCC 60 at para 14; *Target Canada Co (Re)*, 2015 ONSC 303 at para 8 [Target].

²³ *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36 at s. 11.02(2) [CCAA]

²⁴ Second Schwede Affidavit at paras 7-11.

²⁵ Second Schwede Affidavit at para 10.

²⁶ Second Schwede Affidavit at paras 7-11.

The DIP Lender's Charge will not secure obligations incurred before the Amended and Restated Initial Order is made.

23. When determining whether to grant a charge securing DIP financing, subsection 11.2(4) directs Courts to consider the following non-exhaustive factors: (a) the period during which the applicants are expected to be subject to the CCAA proceedings; (b) how the applicants' business and financial affairs are to be managed during the CCAA proceedings; (c) whether the applicants' management has the confidence of their major creditors; (d) whether the loan would enhance the prospects of a viable compromise or arrangement being made in respect of the applicants; (e) the nature and value of the applicants' property; (f) whether any creditor would be materially prejudiced as a result of the security or charge; and (g) the proposed monitor's report, if any.²⁷

24. Having regard to the foregoing factors and the requirements of subsection 11.2(1) of the CCAA, the following supports the approval of the DIP Facility and the granting of the DIP Lender's Charge:²⁸

- (a) the Updated Cash Flow Forecast supports the need for DIP financing to provide the Applicants with the liquidity necessary to continue ordinary course operations;
- (b) the proposed DIP Loan will preserve the value and going concern operations of the Applicants' business, which is in the best interest of the Applicants and their stakeholders;
- (c) the amount to be funded under the DIP Loan is appropriate having regard to the Updated Cash Flow Forecast;

²⁷ [CCAA](#) at s. [11.2\(4\)](#).

²⁸ Second Schwede Affidavit at paras 6(a)(ii), 19, 25, and 27.

- (d) the DIP Loan is conditional on the granting of the DIP Lender's Charge; and
- (e) the proposed Monitor is supportive of the DIP Facility and the DIP Lender's Charge and does not believe that creditors will be materially prejudiced as a result of their approval.

C. The Time To Hold The AGM Should Be Extended

25. Subsection 94(1) of the Ontario *Business Corporations Act* (the “**OBCA**”) provides that a corporation must call an annual shareholders' meeting no later than fifteen months after holding the last preceding annual meeting. Where a corporation initiates proceedings under the CCAA, it is common for the Court to extend the delay to call and hold the annual shareholders' meeting until after the CCAA proceedings have concluded.²⁹

26. In light of the present CCAA proceedings, it is not appropriate to hold the AGM at this juncture. The Applicants' resources and time are better directed towards its restructuring efforts. Further, there is no prejudice to stakeholders given that detailed financial information and other information regarding the Applicants will continue to be made publicly available through the materials filed in these CCAA proceedings and published on the Monitor's website.³⁰

²⁹ *Business Corporations Act (Ontario)*, RSO 1990, c B.16 at s. 94(1); *Re Canwest Global Communications Corp.*, 2009 CanLII 55114 (ONSC) at paras 53-54 [Canwest Global].

³⁰ Second Schwede Affidavit at para 33.

D. The Key Employee Retention Plan Should Be Approved

27. The jurisdiction to approve a KERP is grounded in the court's general power under section 11 of the CCAA to make any order it sees fit in a CCAA proceeding.³¹ The discretion of the court to approve a KERP will be exercised on a case-by-case basis.³²

28. Courts have frequently recognized the importance and utility of KERPs in restructuring proceedings.³³ A debtor company that is able to retain the critical skills and knowledge of its employees and executives has a greater chance of successfully restructuring its business for the benefit of all stakeholders.³⁴

29. The Applicants established the KERP to incentivize certain key employees to remain in their employment during these CCAA proceedings. Under the KERP, eleven (11) key employees will be entitled to aggregate payments in the approximate amount of \$76,000 pursuant to the terms and conditions of the KERP.³⁵

30. The courts have developed the following list of factors to be considered when deciding whether to approve a KERP:³⁶

- (a) whether the Monitor supports the KERP (to which great weight is attributed);
- (b) whether the employees to which the KERP applies would consider other employment options if the KERP were not secured by the KERP charge;

³¹ CCAA, s. 11; *Cinram International Inc., Re*, 2012 ONSC 3767 at para. 91 [*Cinram*].

³² *Canwest Global* at para 49

³³ *Cinram* at paras 90-93; *Grant Forest Products Inc., Re*, 2009 CanLII 42046 (ONSC) at paras 8-10 [*Grant Forest*]; *Timminco Ltd., Re*, 2012 ONSC 506 at paras 71-75 [*Timminco*]; *Target* at paras 56-59.

³⁴ *Timminco* at para 72; *Canwest Global* at paras 49-50.

³⁵ Second Schwede Affidavit at paras 38 and 39.

³⁶ *Cinram* at para 91, citing *Grant Forest* at paras 8-24; *Canwest Global* at para 50; *Aralez Pharmaceuticals Inc., Re*, 2018 ONSC 6980 at para 29.

- (c) whether the continued employment of the employees to which the KERP applies is important for the stability of the business and to enhance the effectiveness of the marketing process;
- (d) the employees' history with the debtor and any special knowledge and skills they possess;
- (e) the difficulty in finding a replacement to fulfill the responsibilities of the employees to which the KERP applies;
- (f) whether the KERP is supported or consented to by secured creditors of the debtor; and
- (g) whether the payment under the KERP are payable upon the completion of the restructuring process.

31. The following factors support approval of the KERP in this case:³⁷

- (a) the Applicants have developed the KERP with input from the Monitor;
- (b) the continued employment of the KERP Beneficiaries is integral to the ability of the Applicants to guide the business through these CCAA proceedings and preserve value for stakeholders;
- (c) the KERP Beneficiaries have significant experience and specialized expertise that cannot be replicated or replaced. There is also recognition that these employees will

³⁷ Second Schwede Affidavit at paras 34-39.

likely have other, more certain employment opportunities, and may be faced with significantly increased workload during the CCAA proceedings;

- (d) the KERP has been designed to provide the necessary incentives for identified employees to remain in their current positions throughout the intended SISP;
- (e) the KERP should ensure a level of employee continuity and stability that could otherwise be placed at risk by departure of any of the KERP Beneficiaries;
- (f) the Applicants will not be able to maintain their operations during the SISP and through to a successful closing of a transaction without offering these employees an incentive; and
- (g) the KERP amounts are built into the Cash Flow Forecast and have been approved by the Monitor and the DIP Lender.

32. The terms of the KERP are fair and reasonable in the circumstances and will provide an incentive for the key employees to continue to perform their critical roles throughout the restructuring process. Accordingly, it is appropriate for the Court to approve the KERP and the payments to the key employees contemplated thereby.

E. An Increase To The Initial Order Charges Should Be Granted

33. Pursuant to the Initial Order, the Applicants obtained an Administration Charge in the amount of \$250,000 and a Directors' Charge in the amount of \$900,000. These amounts were deemed reasonably necessary for the continued operations of the Applicants in the ordinary course of business for the initial 10-day period. The Applicants are now seeking to increase these charges for the amounts reasonably required during these CCAA proceedings.

a. Administration Charge

34. The Applicants are seeking to increase the Administration Charge from \$250,000 to \$500,000.³⁸ The jurisdiction to grant a charge for professional fees is found at section 11.52 of the CCAA.³⁹ An Administration Charge has been recognized as necessary to ensure the involvement of such professionals and achieve the best possible outcome for stakeholders.⁴⁰ In *Canwest Publishing Inc.*, Justice Pepall (as she then was) set out a non-exhaustive list of factors to be considered: a) the size and complexity of the businesses being restructured; b) the proposed role of the beneficiaries of the charge; c) whether there is an unwarranted duplication of roles; d) whether the quantum of the proposed charge appears to be fair and reasonable; e) the position of the secured creditors likely to be affected by the charge; and f) the position of the Monitor.⁴¹

35. In these circumstances, the Applicants' business is in a highly regulated and complex industry, there is no unwarranted duplication of roles, and secured creditors affected by the Charges have been provided notice. The Applicants also submit that the quantum of the proposed charge is fair and reasonable. The DIP Lender and the Monitor are also supportive of the increase to the Administration Charge.⁴²

b. Directors' Charge

36. In the Initial Order, the Applicants obtained a Directors' Charge in the amount of \$900,000 to secure the indemnity of the Directors and Officers for liabilities they may incur after the commencement of these CCAA proceedings.⁴³

³⁸ Motion Record, Tab 3 at para 31.

³⁹ [CCAA](#) at section [11.52](#).

⁴⁰ [Walter Energy \(Re\), 2016 BCSC 107](#) at para [41](#) [Walter]; [U.S. Steel Canada Inc, 2014 ONSC 6145](#) at para [22](#).

⁴¹ [Canwest Publishing Inc, 2010 ONSC 222](#) at para [54](#).

⁴² Second Schwede Affidavit at para 26.

⁴³ Second Schwede Affidavit, Exhibit B at paras 17-19.

37. The amount of the Directors' Charge was limited to the estimated exposure during the initial 10-day period. At this time, the Applicants seek to increase the Directors' Charge to \$1,900,000.⁴⁴ The Directors and Officers will only be entitled to the benefit of the Directors' Charge to the extent insurance coverage is unavailable or insufficient, and it is anticipated that payroll and sales tax liabilities will continue to be paid in the ordinary course.⁴⁵

38. In granting the Initial Order, this Court found that the requirements for the Directors' Charge were satisfied, and the amount sought was appropriate and reasonably necessary for continued business operations during the initial 10-day period.

39. The criteria which satisfied the Directors' Charge in the Initial Order remain the same. The Applicants are merely seeking an increase to an amount that reflects an estimation of the maximum potential liability the Directors and Officers could have during the entirety of the CCAA proceedings.⁴⁶ The Monitor supports the increase of the Directors' Charge.⁴⁷

F. The SISP Should Be Approved

40. It is well-recognized that a CCAA court has jurisdiction to approve a sale process in relation to a CCAA debtor's business and assets, prior to the development (or even in the absence) of a plan of compromise and arrangement.⁴⁸ This Court identified in *Nortel Networks Corp. (Re)*, (2009) ("*Nortel*") a number of factors that should be considered in determining whether to authorize a sale process, including:⁴⁹

⁴⁴ Second Schwede Affidavit at para 25.

⁴⁵ Motion Record, Tab 3 at para 22.

⁴⁶ Second Schwede Affidavit at para 43.

⁴⁷ Second Schwede Affidavit at para 44.

⁴⁸ See *Nortel Networks Corp. (Re)*, 2009 CanLII 39492 (ON SC) at para 48 [*Nortel*]; CCAA at ss. 11 and 36.

⁴⁹ *Nortel* at para 49

- (a) Is a sale transaction warranted at this time?
- (b) Will the sale benefit the whole “economic community”?
- (c) Do any of the debtors’ creditors have a bona fide reason to object to a sale of the business?
- (d) Is there a better viable alternative?

41. These criteria have also been applied recently by this Court in *Green Growth Brands, (Re), Just Energy, Fire & Flower Holdings Corp. et al. (“Fire & Flower”)* and *Aleafia Health Inc., et al., (“Aleafia”)* to support the approval of sale processes.⁵⁰ Although the *Nortel* criteria were articulated in the CCAA context prior to the 2009 amendments, this Court in *Brainhunter Inc., (Re)* confirmed that the same criteria apply under the post-2009 CCAA.⁵¹

42. This Court has noted that s. 36 of the CCAA directly applies only in the context of the approval of a sale, not of a sales process.⁵² In other words, it is not this Court’s role in approving a sale process to apply the s. 36 criteria. Such criteria will apply and be considered by the Court if eventually asked to approve the Successful Bid arising from the SISF. Nevertheless, the *Nortel* criteria should be evaluated in light of considerations that may apply when seeking approval for a concluded sale under s. 36, and the Court can consider whether the proposed SISF is likely to satisfy the requirement that the process be fair and that the best price has been obtained, whether

⁵⁰ *Green Growth Brands, (Re)*, 2020 ONSC 3565 at para 61; *Fire & Flower Holdings Corp. et al. [Fire & Flower]* (21 June 2023) Toronto, Ont Sup Ct [Commercial List] CV-23-00700581-00CL ([Endorsement](#)); *Just Energy Group Inc. et al.* (August 18, 2022) Toronto, Ont Sup Ct [Commercial List] CV-21-00658423-00CL ([Endorsement](#)); *Aleafia Health Inc. et al.* (August 23, 2023) Toronto, Ont Sup Ct [Commercial List] CV-23-00703350-00CL ([Endorsement](#)) [*Aleafia*]

⁵¹ *Brainhunter Inc., (Re)*, 2009 CanLII 72333 (ON SC) at paras 15-17 [*Brainhunter*].

⁵² *Brainhunter* at para 17.

the Monitor supports the SISP and the stalking horse transaction, as well as the extent to which creditors were consulted and other relevant factors.

43. In other CCAA cases, courts have also considered the following factors:⁵³

- (a) the fairness, transparency and integrity of the proposed process;
- (b) the commercial efficacy of the proposed process in light of the specific circumstances; and
- (c) whether the sales process will optimize the chances, in the particular circumstances, of securing the best possible price for the assets up for sale.

44. In light of the above, the Applicants submit that the *Nortel* criteria are satisfied in these circumstances, as:

- (a) **Warranted Sales Process:** The SISP was developed by the Applicants in consultation with the Monitor and BJK. It is intended to provide a fair and reasonable process to canvass the market to confirm whether the Stalking Horse Agreement delivers the best possible result for stakeholders.⁵⁴
- (b) **Benefits the Economic Community:** If the Stalking Horse Agreement is the Successful Bid, it will benefit the whole community with an economic interest by providing a going-concern solution for the Applicants, thereby potentially preserving the jobs of the Applicants' employees, as well as critical economic relationships with multiple suppliers, regulators, and other stakeholders. Moreover,

⁵³ *Walter* at paras 20-21; *CCM Master Qualified Fund v blutip Power Technologies, 2012 ONSC 1750* at para 6 [*CCM Master*]; *Fire & Flower Holdings Corp. et al.* (25 June 2023) Toronto, Ont Sup Ct [Commercial List] CV-23-00700581-00CL ([Endorsement](#)) at paras 17 and 26-29.

⁵⁴ Second Schwede Affidavit at para 48.

it is necessary and urgent for the preservation of value of the Applicants' business that the Applicants complete a going-concern solution and conclude these proceedings.⁵⁵

- (c) **No *Bona Fide* Reason to Object:** The Applicants do not believe that there is any *bona fide* reason for their creditors to object to the sale of the business or the need to undertake a SISP.
- (d) **No Better Alternative:** There is no other viable alternative to the SISP and the Stalking Horse Agreement, let alone a better one.

45. In anticipation of the criteria that may eventually have to be satisfied under s. 36 of the CCAA in approving the Stalking Horse Agreement, the Applicants submit that the proposed SISP is fair, transparent and objective. The Monitor has provided its view that the timelines and terms of the SISP are fair, reasonable and appropriate in the circumstances and provide sufficient time to allow interested parties to fully participate in the SISP.⁵⁶

46. The SISP should be approved as the Applicants are insolvent, unable to indefinitely continue operations in their current state and must restructure to preserve their business. A sale will maximize value for the Applicants' stakeholders, either through allowing the business to continue as a going-concern or through ascribing fair market value to the business and assets of the Applicants. The broad flexibility afforded by the SISP is designed to solicit the highest value available for the Property and Business, for the benefit of all stakeholders.

⁵⁵ Second Schwede Affidavit at para 50 and 75.

⁵⁶ Second Schwede Affidavit at para 53.

G. The Stalking Horse Agreement Should Be Approved

47. The Applicants are seeking approval of the Stalking Horse Agreement, solely for the purpose of approving it as the Stalking Horse Bid under the SISP.

48. Approval of stalking horse agreements and related SISPs has become a common feature in CCAA proceedings.⁵⁷ The benefits of having a stalking horse bid are well recognized by the CCAA courts, which include, among others:

- (a) facilitating sales by establishing a baseline price and deal structure for superior bids from interested parties, and accordingly, the “use of a sales process that includes a stalking horse agreement maximizes the value of a business for the benefit of its stakeholders and enhances the fairness of the sales process”;⁵⁸
- (b) establishing deal structure by providing a template for competing bidders to use for the submission of competing offers;⁵⁹ and
- (c) providing certainty that a going-concern solution for the business has already been identified.⁶⁰

49. As stated by the Honourable Justice Penny in *Cannapiece Group Inc.* “The baseline price in [a] stalking horse agreement will assist in maximizing the value of the applicants’ business by canvassing the market to obtain the best bids available.”⁶¹ In addition, this Honourable Court has

⁵⁷ *Re Harte Gold Corp.* (20 December 2021) Toronto, Ont Sup Ct [Commercial List] CV-21-00673304-00CL ([Endorsement](#)); *Re Loyalty One, Co.* [*Loyalty One*] (20 March 2023) Toronto, Ont Sup Ct [Commercial List] CV-23-00696017-00CL ([Endorsement](#)).

⁵⁸ *Danier Leather Inc. Re.* 2016 ONSC 1044 at para 20 [*Danier Leather*]; *CCM Master* at para 7.

⁵⁹ *Danier Leather* at para 20.

⁶⁰ *Cannapiece Group Inc. v Marzili*, 2022 ONSC 6379 at para 4 [*Cannapiece*].

⁶¹ *Cannapiece* at para 4.

approved numerous stalking horse agreements for the purposes of being a stalking horse bidder under a SISP,⁶² as well as in *Aleafia*,⁶³ which this SISP was modeled on.

50. As contemplated in the applicable authorities, the Stalking Horse Agreement (a) sets a “floor price” and the commercial terms for a transaction involving the shares and/or business and assets of the Applicants; (b) helps generate interest among potential purchasers; and (c) provides certainty, stability and efficiency not only by setting the baseline price and documentation for the SISP, but also assuring stakeholders that there will be a going concern sale of the Applicants’ business and a near term exit from these CCAA proceedings.⁶⁴

51. While the Applicants are optimistic that the SISP will result in a competitive bidding process in furtherance of a value maximizing transaction, the Stalking Horse Agreement benefits the entire economic community, as it assures the preservation and continuity of the Applicants’ core business as a going concern, the potential for the continued employment of the Applicants’ employees, and important relationships with the Applicants’ suppliers, customers, and other stakeholders.⁶⁵

52. The terms of the Stalking Horse Agreement were negotiated extensively between the Applicants, the Monitor and the Stalking Horse Bidder. Accordingly, the consideration provided under the Stalking Horse Agreement is both fair and reasonable in the circumstances, and reflects the product of extensive, good faith negotiations. The Monitor supports approval for the purpose of becoming the Stalking Horse Bid under the SISP.⁶⁶

⁶² *Loyalty One*, *supra* note 57; *Re Tehama Inc.* (9 February 2023) Toronto, Ont Sup Ct [Commercial List] CV-23-00010241- 00CL ([Endorsement](#)); *Greenspace Brands Inc.*, *Re* (14 April 2023) Toronto, Ont Sup Ct [Commercial List] CV-23-00697516- 00CL ([SISP Approval Order](#)); *Fire & Flower Holdings Corp.*, *supra* note 49.

⁶³ *Aleafia Health Inc.*, *supra* note 49.

⁶⁴ Second Schwede Affidavit at para 73.

⁶⁵ Second Schwede Affidavit at para 73.

⁶⁶ Second Schwede Affidavit at para 71 and 76.

PART V: RELIEF REQUESTED

53. The Applicants submit that the relief sought on the within motion is appropriate in the circumstances and consistent with prior orders of this Court,⁶⁷ and respectfully request that the proposed forms of the Amended and Restated Initial Order and SISP Order be granted.

ALL OF WHICH IS RESPECTFULLY SUBMITTED as of the date first written above.



CHAITONS LLP,
Lawyers for the Applicants

⁶⁷ *FIGR Brands, Inc. et al.* (29 January 2021), Toronto, Ont Sup Ct [Commercial List] CV-21-00655373-00CL ([Order](#)); *Superette Inc. et al.* (9 September 2022), Toronto, Ont Sup Ct [Commercial List] CV-22-00686245-00CL ([Order](#)); *MPX International Corporation et al.* (4 August 2022), Toronto, Ont Sup Ct [Commercial List] CV-22-00684542-00CL ([Order](#)); *Just Energy Group Inc., et. al* (18 August 2022), Toronto, Ont Sup Ct [Commercial List] CV-21-00658423-00CL ([SISP Approval Order](#)); *Aleafia Health Inc. et.al.* (22 August 2023), Toronto, Ont Sup Ct [Commercial List] CV-23-00703350-00CL ([Order](#)); *BZAM Ltd. et al.* (8 March 2024), Toronto, Ont Sup Ct [Commercial List] CV-24-00715773-00CL ([SISP Approval Order](#))([ARIO](#))

SCHEDULE A – LIST OF AUTHORITIES

Cases Cited

1. [*Century Services Inc v Attorney General \(Canada\)*, 2010 SCC 60](#)
2. [*Target Canada Co*, 2015 ONSC 303](#)
3. [*Re Canwest Global Communications Corp*, \[2009\] OJ No 4286 \(Ont Sup Ct\)](#)
4. [*Cinram International Inc., Re*, 2012 ONSC 3767](#)
5. [*Grant Forest Products Inc., Re*, 2009 CanLII 42046 \(ONSC\)](#)
6. [*Timminco Ltd., Re*, 2012 ONSC 506](#)
7. [*Aralez Pharmaceuticals Inc., Re*, 2018 ONSC 6980](#)
8. [*Walter Energy \(Re\)*, 2016 BCSC 107](#)
9. [*US Steel Canada Inc, Re*, 2014 ONSC 6145](#)
10. [*Canwest Publishing Inc*, 2010 ONSC 222](#)
11. [*Nortel Networks Corp. \(Re\)*, 2009 CanLII 39492 \(ON SC\); 55 C.B.R. \(5th\) 229 \(Ont. S.C.J. \[Commercial List\]\)](#)
12. [*Green Growth Brands, \(Re\)*, 2020 ONSC 3565](#)
13. *Fire & Flower Holdings Corp. et al.* (21 June 2023) Toronto, Ont Sup Ct [Commercial List] CV-23-00700581-00CL ([Endorsement](#))
14. *Just Energy Group Inc. et al* (18 August 2022) Toronto, Ont Sup Ct [Commercial List] CV-21-00658423-00CL ([Endorsement](#))
15. *Aleafia Health Inc. et al.* (23 August 2023) Toronto, Ont Sup Ct [Commercial List] CV-23-00703350-00CL ([Endorsement](#))
16. [*Brainhunter Inc., \(Re\)*, 2009 CanLII 72333 \(ON SC\)](#)
17. [*CCM Master Qualified Fund v blutip Power Technologies*, 2012 ONSC 1750](#)
18. *Fire & Flower Holdings Corp. et al.* (25 June 2023) Toronto, Ont Sup Ct [Commercial List] CV-23-00700581-00CL ([Endorsement](#))
19. *Re Harte Gold Corp.* (20 December 2021) Toronto, Ont Sup Ct [Commercial List] CV-21-00673304-00CL ([Endorsement](#))
20. *Re Loyalty One, Co.* [*Loyalty One*] (20 March 2023) Toronto, Ont Sup Ct [Commercial List] CV-23-00696017-00CL ([Endorsement](#))
21. [*Daniel Leather Inc. Re*, 2016 ONSC 1044](#)
22. [*Cannapiece Group Inc. v Marzili*, 2022 ONSC 6379](#)
23. *Re Tehama Inc.* (9 February 2023) Toronto, Ont Sup Ct [Commercial List] CV-23-00010241- 00CL ([Endorsement](#))
24. *FIGR Brands, Inc. et al.*, (29 January 2021), Toronto, Ont Sup Ct [Commercial List] CV-21-00655373-00CL ([Order](#))
25. *Superette Inc. et al.* (9 September 2022), Toronto, Ont Sup Ct [Commercial List] CV-22-00686245-00CL ([Order](#))
26. *MPX International Corporation et al.* (4 August 2022), Toronto, Ont Sup Ct [Commercial List] CV-22-00684542-00CL ([Order](#))

27. *Just Energy Group Inc., et. al* (18 August 2022), Toronto, Ont Sup Ct [Commercial List] CV-21-00658423-00CL ([SISP Approval Order](#))
28. *Aleafia Health Inc. et.al.* (22 August 2023), Toronto, Ont Sup Ct [Commercial List] CV-23-00703350-00CL ([Order](#))
29. *BZAM Ltd. et al.* (8 March 2024), Toronto, Ont Sup Ct [Commercial List] CV-24-00715773-00CL ([SISP Approval Order](#))

SCHEDULE B – STATUTES AND REGULATIONS

Companies' Creditors Arrangement Act, R.S.C. 1985, c C-36

Section 11

General Power of Court

Despite anything in the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act*, if an application is made under this Act in respect of a debtor company, the court, on the application of any person interested in the matter, may, subject to the restrictions set out in this Act, on notice to any other person or without notice as it may see fit, make any order that it considers appropriate in the circumstances.

R.S., 1985, c. C-36, s. 111992, c. 27, s. 901996, c. 6, s. 1671997, c. 12, s. 1242005, c. 47, s. 128.

Section 11.001

Relief reasonably necessary

An order made under section 11 at the same time as an order made under subsection 11.02(1) or during the period referred to in an order made under that subsection with respect to an initial application shall be limited to relief that is reasonably necessary for the continued operations of the debtor company in the ordinary course of business during that period.

2019, c. 29, s. 136

Section 11.02

Stays, etc. – initial application

(1) A court may, on an initial application in respect of a debtor company, make an order on any terms that it may impose, effective for the period that the court considers necessary, which period may not be more than 10 days,

(a) staying, until otherwise ordered by the court, all proceedings taken or that might be taken in respect of the company under the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act*;

(b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and

(c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

Stays, etc. — other than initial application

(2) A court may, on an application in respect of a debtor company other than an initial application, make an order, on any terms that it may impose,

(a) staying, until otherwise ordered by the court, for any period that the court considers necessary, all proceedings taken or that might be taken in respect of the company under an Act referred to in paragraph (1)(a);

(b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and

(c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

Burden of proof on application

(3) The court shall not make the order unless

(a) the applicant satisfies the court that circumstances exist that make the order appropriate; and

(b) in the case of an order under subsection (2), the applicant also satisfies the court that the applicant has acted, and is acting, in good faith and with due diligence.

Restriction

(4) Orders doing anything referred to in subsection (1) or (2) may only be made under this section.

2005, c. 47, s. 128, 2007, c. 36, s. 62(F)2019, c. 29, s. 137.

Section 11.2

Interim financing

(1) On application by a debtor company and on notice to the secured creditors who are likely to be affected by the security or charge, a court may make an order declaring that all or part of the company's property is subject to a security or charge — in an amount that the court considers appropriate — in favour of a person specified in the order who agrees to lend to the company an amount approved by the court as being required by the company, having regard to its cash-flow statement. The security or charge may not secure an obligation that exists before the order is made.

Priority — secured creditors

(2) The court may order that the security or charge rank in priority over the claim of any secured creditor of the company.

Priority — other orders

(3) The court may order that the security or charge rank in priority over any security or charge arising from a previous order made under subsection (1) only with the consent of the person in whose favour the previous order was made.

Factors to be considered

(4) In deciding whether to make an order, the court is to consider, among other things,

- (a) the period during which the company is expected to be subject to proceedings under this Act;
- (b) how the company's business and financial affairs are to be managed during the proceedings;
- (c) whether the company's management has the confidence of its major creditors;
- (d) whether the loan would enhance the prospects of a viable compromise or arrangement being made in respect of the company;
- (e) the nature and value of the company's property;
- (f) whether any creditor would be materially prejudiced as a result of the security or charge; and
- (g) the monitor's report referred to in paragraph 23(1)(b), if any.

Additional factor — initial application

(5) When an application is made under subsection (1) at the same time as an initial application referred to in subsection 11.02(1) or during the period referred to in an order made under that subsection, no order shall be made under subsection (1) unless the court is also satisfied that the terms of the loan are limited to what is reasonably necessary for the continued operations of the debtor company in the ordinary course of business during that period.

1997, c. 12, s. 1242005, c. 47, s. 1282007, c. 36, s. 652019, c. 29, s. 138.

Section 11.52

Court may order security or charge to cover certain costs

(1) On notice to the secured creditors who are likely to be affected by the security or charge, the court may make an order declaring that all or part of the property of a debtor company is subject to a security or charge — in an amount that the court considers appropriate — in respect of the fees and expenses of

- (a) the monitor, including the fees and expenses of any financial, legal or other experts engaged by the monitor in the performance of the monitor's duties;
- (b) any financial, legal or other experts engaged by the company for the purpose of proceedings under this Act; and
- (c) any financial, legal or other experts engaged by any other interested person if the court is satisfied that the security or charge is necessary for their effective participation in proceedings under this Act.

Priority

(2) The court may order that the security or charge rank in priority over the claim of any secured creditor of the company.

2005, c. 47, s. 1282007, c. 36, s. 6

Section 36

Restriction on disposition of business assets

36 (1) A debtor company in respect of which an order has been made under this Act may not sell or otherwise dispose of assets outside the ordinary course of business unless authorized to do so by a court. Despite any requirement for shareholder approval, including one under federal or provincial law, the court may authorize the sale or disposition even if shareholder approval was not obtained.

Notice to creditors

(2) A company that applies to the court for an authorization is to give notice of the application to the secured creditors who are likely to be affected by the proposed sale or disposition.

Factors to be considered

- (3) In deciding whether to grant the authorization, the court is to consider, among other things,
- (a) whether the process leading to the proposed sale or disposition was reasonable in the circumstances;
 - (b) whether the monitor approved the process leading to the proposed sale or disposition;
 - (c) whether the monitor filed with the court a report stating that in their opinion the sale or disposition would be more beneficial to the creditors than a sale or disposition under a bankruptcy;
 - (d) the extent to which the creditors were consulted;
 - (e) the effects of the proposed sale or disposition on the creditors and other interested parties; and
 - (f) whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.

Additional factors — related persons

(4) If the proposed sale or disposition is to a person who is related to the company, the court may, after considering the factors referred to in subsection (3), grant the authorization only if it is satisfied that

- (a) good faith efforts were made to sell or otherwise dispose of the assets to persons who are not related to the company; and

(b) the consideration to be received is superior to the consideration that would be received under any other offer made in accordance with the process leading to the proposed sale or disposition.

Related persons

(5) For the purpose of subsection (4), a person who is related to the company includes

(a) a director or officer of the company;

(b) a person who has or has had, directly or indirectly, control in fact of the company; and

(c) a person who is related to a person described in paragraph (a) or (b).

Assets may be disposed of free and clear

(6) The court may authorize a sale or disposition free and clear of any security, charge or other restriction and, if it does, it shall also order that other assets of the company or the proceeds of the sale or disposition be subject to a security, charge or other restriction in favour of the creditor whose security, charge or other restriction is to be affected by the order.

Restriction — employers

(7) The court may grant the authorization only if the court is satisfied that the company can and will make the payments that would have been required under paragraphs 6(5)(a) and (6)(a) if the court had sanctioned the compromise or arrangement.

Restriction — intellectual property

(8) If, on the day on which an order is made under this Act in respect of the company, the company is a party to an agreement that grants to another party a right to use intellectual property that is included in a sale or disposition authorized under subsection (6), that sale or disposition does not affect that other party's right to use the intellectual property — including the other party's right to enforce an exclusive use — during the term of the agreement, including any period for which the other party extends the agreement as of right, as long as the other party continues to perform its obligations under the agreement in relation to the use of the intellectual property.

2005, c. 47, s. 131; 2007, c. 36, s. 78; 2017, c. 26, s. 14; 2018, c. 27, s. 269

Business Corporations Act (Ontario), RSO 1990, c B.16

Shareholders' meetings

94(1) Subject to [subsection 104 \(1\)](#), the directors of a corporation,

(a) shall call an annual meeting of shareholders not later than eighteen months after the corporation comes into existence and subsequently not later than fifteen months after holding the last preceding annual meeting; and

(b) may at any time call a special meeting of shareholders.

R.S.O. 1990, c. B.16, s. 94.

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

Court File No.: CV-24-00717664-00CL

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF HERITAGE CANNABIS HOLDINGS CORP., 1005477 B.C. LTD., HERITAGE CANNABIS WEST CORPORATION, MAINSTRAIN MARKET LTD., HERITAGE CANNABIS EAST CORPORATION, PUREFARMA SOLUTIONS INC., 333 JARVIS REALTY INC., 5450 REALTY INC., HERITAGE CANNABIS EXCHANGE CORP., AND PREMIUM 5 LTD.

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

Proceeding commenced at Toronto

**FACTUM OF THE APPLICANTS
(Motion returnable April 11, 2024)**

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