



Form 32 (Rule 8-1(4))

No. B-200195  
Estate No. 11-2636224  
Vancouver Registry

## IN THE SUPREME COURT OF BRITISH COLUMBIA

### IN THE BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF THE NOTICE OF INTENTION  
TO MAKE A PROPOSAL OF  
TRUE LEAF PET INC.

### NOTICE OF APPLICATION

**Name of Applicant:** TRUE LEAF PET INC.

To: The attached service list marked as **Schedule "A"**

TAKE NOTICE that an application will be made by the Applicant, True Leaf Pet Inc. (the "**Applicant**" or "**TLP**") to Madam Justice Fitzpatrick at the Courthouse at 800 Smithe Street, Vancouver, British Columbia (by teleconference) on May 13, 2020 at 9:30 a.m. for the Orders set out in Part 1 below.

#### PART 1: ORDER SOUGHT

1. A sales process order (the "**Sales Process Order**") substantially in the form attached hereto as **Schedule "B"**.
2. Such further and other relief as this Honourable Court may deem just.

#### PART 2: FACTUAL BASIS

##### BACKGROUND

1. TLP, True Leaf Brands Inc. ("**True Leaf**"), True Leaf Cannabis Inc. ("**TLC**") and True Leaf Investments Corp. ("**TLI**", and collectively with TLP, True Leaf and TLC, the "**Companies**") each filed a Notice of Intention to make a Proposal ("**NOI**") with the Office of the Superintendent of Bankruptcy on April 1, 2020 (the "**Filing Date**") and filed with the Superintendent of Bankruptcy on April 2, 2020

pursuant to Part III, Division I of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”).

2. FTI Consulting Canada Inc. was appointed as proposal trustee in each of the NOI proceedings (the “**Trustee**”).
3. True Leaf (formerly known as True Leaf Medicine International Ltd.) was incorporated under the Business Corporations Act on June 9, 2014. True Leaf is a publicly traded company with two primary businesses:
  - (a) TLI is a wholly owned subsidiary of True Leaf and TLC is a wholly owned subsidiary of TLI. TLC holds a federal cannabis license that was applied for in 2013 and is the registered owner of a 18,000 square foot facility in Lumby, BC.
  - (b) TLP is a wholly owned subsidiary of True Leaf, which is in the business of hemp supplements and specialty items in the pet industry in Canada, the USA and over 17 countries in Europe.
4. In February 2019, True Leaf raised \$4.5 million through the issuance of a convertible, secured note (the “**Notes**”) with Lind Asset Management (“**Lind**”), with the intention of re-branding its pet business and completing the construction of its cannabis facility. The Notes were guaranteed by TLI, TLP and TLC and secured against the property in Lumby, BC.
5. TLC’s cannabis facility was completed in late 2019, however the Companies’ sales did not meet expectation and it began to experience liquidity issues.
6. True Leaf’s first payment on the Notes was due on March 23, 2020.
7. As a result of its lack of liquidity, True Leaf was unable to make the payment and accordingly Lind threatened to call its loan if True Leaf didn’t remedy its default. As of the Filing Date, Lind is owed approximately \$5.8 million. Lind is the senior secured creditor of the Companies.
8. With the onset of the COVID-19 pandemic and its implications on global trade in conjunction with its Note default, the Companies’ management and board decided to seek a stay of proceedings to allow them the time necessary to refinance and/or restructure its debts.
9. As a result, on April 1, 2020, the Companies signed NOI’s which were filed by the Trustee with the Superintendent of Bankruptcy and accepted on April 2, 2020.
10. On May 1, 2020, this Honourable Court granted Orders in each of the Companies’ NOI proceedings:
  - (a) approving an interim financing agreement between True Leaf and Lind, as guaranteed by TLC, TLP and TLI, in the maximum amount of \$700,000

(the “**Interim Financing Agreement**”) and a priority charge in favour of the interim lender; and

- (b) extending the stay of proceedings to June 16, 2020.
11. The Order granted in TLC’s NOI proceeding also provided for a priority administration charge in favour of the Companies’ legal counsel, the Trustee and the Trustee’s legal, if any, in the maximum amount of \$150,000.
  12. The Interim Financing Agreement requires the Companies to, prior to May 14, 2020, seek the approval of this Honourable Court for a sale process providing for the separate marketing and sale of the Companies’ pet business and its land and building.
  13. The proposed Sales Process, which has been developed by the Companies, the Trustee and Lind, contemplates a bifurcated sales process as between the TPL assets and the TLC assets.
  14. Pursuant to the proposed Sales Process:
    - (a) By no later than May 15, 2020:
      - (i) the Trustee, in consultation with the Companies and Lind, will prepare a list of potential bidders;
      - (ii) the Trustee will arrange for notice of the Sales Process (the “**Notice**”) to be published in The Globe and Mail (National Edition) and such other newspapers or industry journals as the Trustee or the Companies and Lind consider appropriate, if any;
      - (iii) the Companies will issue a press release in Canada Newswire or an equivalent Newswire, regarding the Notice; and
      - (iv) the Trustee will send a teaser letter and non-disclosure agreement to each known potential bidder, or as soon as reasonably practicable after a request from a potential bidder;
    - (b) the due diligence period shall end for the TLC assets on June 15, 2020 (the “**TLC Bid Deadline**”), and for the TLP assets on June 19, 2020 (the “**TLP Bid Deadline**”);
    - (c) any potential bidder must submit its offer by the TLC Bid Deadline and/or TLP Bid Deadline, as applicable;
    - (d) the Trustee may enter into negotiations with one or more qualified bidders regarding the terms of the bidder’s proposed asset purchase agreement and may invite two or more qualified bids to participate in an open auction, provided that the highest existing qualified bid shall act as the floor bid for

purposes of the auction and each qualified bidder participating in the auction has provided an equivalent deposit to the floor bid;

- (e) the sale or sales shall be subject to the approval of the successful bids by this Honourable Court (the “**Sale Hearing**”); and
  - (f) the Trustee may terminate the Sales Process at any point prior to the Sale Hearing provided that Lind has been paid out in full or with the consent of Lind.
15. True Leaf Brands and TLC have entered into an exclusive listing agreement with Colliers Macaulay Nicolls Inc., as brokerage, and Bianca Gilbert and Alan Johnson, as designated agents, for the listing and sale of TLC’s asset, the cannabis facility in Lumby, BC (the “**Listing Agreement**”). Pursuant to the Listing Agreement, commission will be calculated as 3% of the total gross sale proceeds.
  16. The Trustee supports the Companies in seeking approval of the Sales Process.
  17. The Sales Process allows an interested party the fair opportunity to conduct due diligence and submit a bid, thereby facilitating the Companies and the Trustee to obtain the best possible price and terms of a transaction, for the benefit of all stakeholders.
  18. Further, the integrity of the process is preserved with transparent deadlines and requirements for the submission of bids.

### **PART 3: LEGAL BASIS**

1. The Companies rely on Part III, Division I of the BIA, Rule 3 of the BIA Rules, Rule 22-5(8) of the *Supreme Court Civil Rules* and the inherent jurisdiction of this Honourable Court.
2. The Court has the power to abridge the time for service pursuant to Rule 6(4).

*Bankruptcy and Insolvency General Rules, CRC, c 368, r 6(4)*
3. Pursuant to section 65.13 of the BIA, an insolvent person in respect of whom a notice of intention is filed may not sell or otherwise dispose of assets outside the ordinary course of business unless authorized to do so by the Court.
4. Pursuant to section 65.13(4), in considering 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 trustee approved the process leading to the proposed sale or disposition;
  - (c) whether the trustee 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.
5. In seeking approval of the Sales Process Order, the Applicant relies on the inherent jurisdiction of this Court.
6. A superior court retains its inherent jurisdiction in the context of proceedings under the BIA:

*Re Eagle River International Ltd*, 2001 SCC 92 at para 20; and *Re Residential Warranty Co of Canada Inc*, 2006 ABCA 293 [*Residential Warranty*] at para 21.

7. In order for a Court to exercise its inherent jurisdiction in the context of proceedings under the BIA, two preconditions must be met:
- (a) the BIA must be silent on a point or not have dealt with a matter exhaustively; and
  - (b) after balancing competing interests, the benefit of granting the relief must outweigh the relative prejudice to those affected by it.

*Residential Warranty (ibid)*.

8. There is no specific provision within the BIA governing the establishment of a sales process or bidding procedures, nor are there any provisions prohibiting the Court from exercising its authority to approve a bidding process. Courts therefore rely on their broad authority under the BIA and their inherent jurisdiction when granting sales process orders.
9. For example, orders approving sales and bidding processes having been granted in the *Shop.ca Network Inc.* and the *Harvest Mustang GP Inc. et al* proposal proceedings.

*In the Matter of the Notice of Intention to make a Proposal of Mustang GP Ltd.*, Ontario Superior Court of Justice (Commercial List), Court File No.: 35-2041153; and  
*In the Matter of the Notice of Intention to make a Proposal of Shop.ca Network Inc.* Ontario Superior Court of Justice (Commercial List), Court File No.: 31-2131992

10. The Sales Process Order provides a framework which will be taken into account when the Court is asked to approve a proposed sale in these NOI proceedings pursuant to section 65.13 of the BIA.
11. It provides interested parties with a fair and transparent process by which offers will be received, which will allow the Proposal Trustee to obtain the best price for the benefit of the Applicant's stakeholders.

#### **PART 4: MATERIAL TO BE RELIED ON**

1. The Second Report of the Trustee, to be filed; and
2. Such further and other material as counsel may advise and this Honourable Court permits.

The Applicant estimates that the application will take 30 minutes.

- This matter is within the jurisdiction of a Master.
- This matter is not within the jurisdiction of a Master. Madam Justice Fitzpatrick is seized of this proceeding.

**TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION:** If you wish to respond to this Notice of Application, you must, within 5 business days after service of this Notice of Application or, if this application is brought under Rule 9-7, within 8 business days after service of this Notice of Application:

- (a) file an Application Response in Form 33;
- (b) file the original of every Affidavit, and of every other document, that:
  - (i) you intend to refer to at the hearing of this application, and
  - (ii) has not already been filed in the proceeding; and
- (c) serve on the Applicant 2 copies of the following, and on every other party of record one copy of the following:
  - (i) a copy of filed Application Response;
  - (ii) a copy of each of the filed Affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on that person;

- (iii) if this application is brought under Rule 9-7, any notice that you are required to give under Rule 9-7(9).

Date: May 11, 2020



\_\_\_\_\_  
Signature of Lawyer for Applicant  
Lawyer: Christopher J. Ramsay /  
Katie G. Mak

This NOTICE OF APPLICATION is prepared by Christopher J. Ramsay of the firm of **Clark Wilson LLP** whose place of business is 900 – 885 West Georgia Street, Vancouver, British Columbia, V6C 3H1 (Direct #: 604.643.3176, Fax #: 604.687.6314, Email: CRamsay@cwilson.com) (File #: 49786-0001).

***To be completed by the court only:***

Order made

- in the terms requested in paragraphs \_\_\_\_\_ of Part 1 of this Notice of Application
- with the following variations and additional terms:

\_\_\_\_\_  
\_\_\_\_\_

Date: \_\_\_\_\_  
[dd/mmm/yyyy]

\_\_\_\_\_  
Signature of  Judge  Master

## APPENDIX

*[The following information is provided for data collection purposes only and is of no legal effect.]*

### **THIS APPLICATION INVOLVES THE FOLLOWING:**

- discovery: comply with demand for documents
- discovery: production of additional documents
- other matters concerning document discovery
- extend oral discovery
- other matters concerning oral discovery
- amend pleadings
- add/change parties
- summary judgment
- summary trial
- service
- mediation
- adjournments
- proceedings at trial
- case plan orders: amend
- case plan orders: other
- experts



## Schedule A

### Service List

Updated: May 11, 2020

<p>FTI Consulting Inc. 701 West Georgia Street, Suite 1450 Vancouver, BC V7Y 1B6</p> <p>Attention: Craig Munro / Mike Clark</p> <p>Tel: 604-601-5699 / 604-484-9537 Email: craig.munro@fticonsulting.com / mike.clark@fticonsulting.com</p> <p><i>Proposal Trustee</i></p>	<p>Clark Wilson LLP 900 – 885 West Georgia Street Vancouver, BC V6C 3H1</p> <p>Attention: Chris Ramsay / Katie G. Mak / Deborah Hamann-Trou (Paralegal)</p> <p>Tel: 604-687-5700 Fax: 604-687-6314 Email: CRamsay@cwilson.com; KMak@cwilson.com DHamann-Trou@cwilson.com</p> <p><i>Counsel for the Company</i></p>
<p>Stikeman Elliott LLP Suite 1700, Park Place, 666 Burrard Street, Vancouver, BC V6C 2X8</p> <p>Attention: Ashley Taylor / Victor Gerchikov</p> <p>Email: ATAYLOR@stikeman.com; VGerchikov@stikeman.com</p> <p><i>Counsel to the DIP Lender</i></p>	<p>The Lind Partners 444 Madison Ave., 41st Floor New York, NY 10022</p> <p>Attention: Sam Chun</p> <p>Tel: 646-701-7424 Email: schun@thelindpartners.com</p>
<p>Office of the Superintendent of Bankruptcy 300 Georgia Street W, Suite 2000 Vancouver, BC V6B 6E1</p> <p>Attention: Gary Sam Danny Park</p> <p>Email: gary.sam@canada.ca danny.park@canada.ca</p>	

**Schedule B**

Form 35 (Rules 8-4(1), 13-1(3), 17-1(2) and 25-9(2))

No. B200195  
Estate No. 11-2636224  
Vancouver Registry

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

**IN THE BANKRUPTCY AND INSOLVENCY**

IN THE MATTER OF THE NOTICE OF INTENTION  
TO MAKE A PROPOSAL OF  
TRUE LEAF PET INC.

**ORDER MADE AFTER APPLICATION  
(SALES PROCESS ORDER)**

BEFORE ) )  
 ) THE HONOURABLE MADAM ) May 13, 2020  
 ) JUSTICE FITZPATRICK )

ON THE APPLICATION of True Leaf Pet Inc. (the “**Applicant**”) coming on for hearing at 800 Smithe Street, Vancouver, British Columbia on May 13, 2020 and on hearing ♦, counsel for the Applicant, and those other counsel listed on **Schedule “A”** hereto; AND UPON READING the material filed, including the Second Report to the Court of FTI Consulting Canada Inc. in its capacity as proposal trustee (the “**Trustee**”) dated ♦, 2020 (the “**Trustee’s Report**”); AND PURSUANT TO the *Bankruptcy and Insolvency Act*, R.S.C. 1983 c. B-3 (the “**BIA**”) and the inherent jurisdiction of this Honourable Court;

THIS COURT ORDERS AND DECLARES that:

1. The time for service of the Notice of Application herein be and is hereby abridged such that the Notice of Application is properly returnable today and service thereof on any interested party is hereby dispensed with.
2. The sales process described in **Schedule “B”** to this Order (the “**Sales Process**”) is hereby approved and the Trustee is authorized to (i) carry out the Sales Process in accordance with its terms and this Order; and (ii) take such additional steps and execute such additional documents as it considers necessary or desirable in furtherance of this Order or in carrying out its obligations hereunder.
3. In connection with the Sales Process, pursuant to Section 7(3)(c) of the *Canada Personal information Protection and Electronic Documents Act*, Section 18(1)(i) of the *British Columbia Personal Information Protection Act* and any applicable comparable provincial legislation, the Trustee shall disclose personal information of identifiable individuals to prospective purchasers or bidders and to their advisors, but

only to the extent desirable or required to seek solicitations in respect of the Applicant's assets and business (each a "**Transaction**"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of a Transaction and, if it does not complete a Transaction, shall return all such information to the Trustee or, in the alternative, destroy all such information. Such purchaser or bidder, if successful shall be entitled to continue 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 Applicant and shall return all other personal information to the Trustee or ensure that all other personal information is destroyed.

4. This Court requests the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Applicant, the Trustee and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicant and to the Trustee, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Trustee in any foreign proceeding, or to assist the Applicant and the Trustee and their respective agents in carrying out the terms of this Order.

5. The Applicant and the Trustee be at liberty and are hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Trustee is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having this Order or these proceedings recognized in a jurisdiction outside Canada.

6. The Applicant, the Trustee or any other party that is affected by this Order is at liberty to apply for such further or other directions or relief as may be necessary or desirable to give effect to this Order.

7. Endorsement of this Order by counsel appearing on this application other than counsel for the Applicant is hereby dispensed with.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

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Signature of ♦  
Lawyer for the Applicant

BY THE COURT

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Registrar

**Schedule A**

◆	Lind Asset Management

## Schedule B

### Sale Process

#### A. OVERVIEW

On April 2, 2020 True Leaf Brands Inc. (“**TLB**”) and its subsidiaries True Leaf Investment Corp. (“**TLI**”), True Leaf Pet Inc. (“**TLP**”), and True Leaf Cannabis Inc. (“**TLC**” and together with TLB, TLI and TLP, the “**Sellers**” and each a “**Seller**”) filed Notices of Intention to Make a Proposal pursuant to s. 50.4(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended.<sup>1</sup> FTI Consulting, Inc. was appointed as the proposal trustee of the Sellers (in such capacity, the “**Trustee**”).

On May 13, 2020, the Supreme Court of British Columbia (the “**Court**”) issued an order (the “**Sale Process Approval Order**”) approving the process set forth herein by which the Sellers are authorized and directed to conduct a sale process (the “**Sale Process**”) of all the Sellers’ assets (the “**True Leaf Assets**”).

Having obtained the Sale Process Approval Order from the Court, the Sellers will now conduct the Sale Process to obtain the highest and/or otherwise best bids for all, substantially all or any part of the True Leaf Assets.

#### B. THE SELLERS’ BUSINESS

The Sellers are in the business of providing hemp, cannabis, and plant-focused wellness products that help pets and people live longer, healthier, and happier lives. The Sellers conduct their business through two subsidiaries:

- a. **Pet Division:** TLP, a wholly owned subsidiary of TLB, develops, markets, and sells natural supplements and treats primarily to the specialty pet channel; and
- b. **Cannabis Division:** TLC, a wholly owned subsidiary of TLI (which is itself a wholly owned subsidiary of TLB), is a licensed producer preparing to cultivate, process, and sell medicinal cannabis under Canada’s *Cannabis Act* from an 18,000 square foot facility located on 40 acres in Lumby, British Columbia, Canada.

Consistent with the two business divisions described above, the True Leaf Assets can be divided into two groups: the assets owned by TLP (the “**TLP Assets**”) and the assets owned by TLC (the “**TLC Assets**”). The Sales Process described herein contemplates a bifurcated sales process as between the TLP Assets and the TLC Assets.

#### C. ASSETS TO BE SOLD

The Sellers are offering for sale all of the TLP Assets and the TLC Assets. All of each Seller’s respective right, title and interest in and to the True Leaf Assets shall be, to the fullest extent permitted by law, sold free and clear of all liens, claims, interests, charges, restrictions and

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<sup>1</sup> True Leaf Brands Inc.: Court File No. B200191, Estate No. 11-2636060; True Leaf Pet Inc.: Court File No. B-200195, Estate No. 11-2636224; True Leaf Cannabis Inc.: Court File No. B-200194, Estate No. 11-2636226; True Leaf Investments Corp.: Court File No. B-200196, Estate No. 11-2636236.

encumbrances of any kind or nature thereon (collectively, the “**Liens**”), except for permitted encumbrances and assumed liabilities as may be specified in the approved purchase agreement of the Successful Bidders (as defined below), and with any such Liens to attach solely to the net proceeds of the sale of the applicable True Leaf Asset.

#### **D. SOLICITATION OF INTEREST**

The Trustee, in consultation with the Sellers, is responsible for the marketing and sale of the True Leaf Assets pursuant to the Sale Process. As soon as reasonably practical, but in any event by no later than May 15, 2020:

- a. The Trustee, in consultation with the Consultation Parties (as defined below), will prepare a list of potential bidders (the “**Known Potential Bidders**”), including (i) parties that have approached the Sellers or the Trustee indicating an interest in the True Leaf Assets, and (ii) local and international strategic and financial parties who may be interested in purchasing all or part of the True Leaf Assets;
- b. The Trustee will arrange for a notice of the Sale Process (and such other relevant information which the Trustee, in consultation with the Consultation Parties, considers appropriate) (the “**Notice**”) to be published in The Globe and Mail (National Edition) and such other newspapers or industry journals as the Trustee or the Consultation Parties consider appropriate, if any;
- c. The Sellers, in consultation with the Trustee, will issue a press release with Canada Newswire or an equivalent newswire setting out the information contained in the Notice and such other relevant information that the Trustee, in consultation with the Consultation Parties, considers appropriate, designating dissemination in Canada; and
- d. The Trustee will prepare: (i) a process summary (the “**Teaser Letter**”) describing the opportunity to purchase all or part of the True Leaf Assets, outlining the process under the Sale Process and inviting recipients of the Teaser Letter to express interest pursuant to the Sale Process; and (ii) a non-disclosure agreement (the “**NDA**”) in form and substance satisfactory to the Trustee.

The Trustee will send the Teaser Letter and NDA to each Known Potential Bidder by no later than May 15, 2020, and to any other party who requests a copy of the Teaser Letter and NDA or who is identified by the Trustee or the Consultation Parties as a potential bidder as soon as reasonably practicable after such request or identification, as applicable.

#### **E. THE BID PROCEDURES**

Each person who wishes to participate in the Sale Process (a “**Potential Bidder**”) must adhere to the bidding procedures described herein (the “**Bid Procedures**”).

## **1. Role of the Trustee**

The Trustee, with the consent of the Consultation Parties, shall have the right to adopt such other rules for the Bid Procedures (including rules that may depart from those set forth herein) that in its reasonable business judgement will better promote the goals of the Bid Procedures.

## **2. The Trustee May Seek Assistance**

The Trustee may, with the consent of the Consultation Parties, engage an independent third party to assist with the implementation of these Bid Procedures. This includes, but is not limited to, engaging a commercial real estate agency such as Colliers International to market the real property owned by TLC.

## **3. Due Diligence**

The Trustee, in coordination with the Sellers, will provide any Potential Bidder such due diligence access or additional information as the Trustee deems appropriate in its reasonable business judgement, provided, however, that neither the Trustee nor any Seller will provide such due diligence access or additional information related to the TLP Assets to a Potential Bidder unless the Potential Bidder has provided an executed NDA to the Trustee. For greater certainty, an executed NDA is not required with respect to any due diligence access or additional information related to the TLC Assets.

With respect to the TLP Assets, the due diligence period shall end on the TLP Bid Deadline (as defined below), and none of the Trustee, the Sellers, nor any of their representatives shall be obligated to furnish any due diligence information to any Potential Bidder after the TLP Bid Deadline.

With respect to the TLC Assets, the due diligence period shall end on the TLC Bid Deadline (as defined below), and none of the Trustee, the Sellers, nor any of their representatives shall be obligated to furnish any due diligence information to any Potential Bidder after the TLC Bid Deadline.

## **4. Provisions Governing Bids**

Subject to the reasonable business judgement of the Trustee or an order of the Court, in order to be considered by the Trustee, a submitted bid must comply with each of the following (each, a “**Qualified Bid**”, and each party submitting the bid, a “**Qualified Bidder**”):

- a. It discloses in detail which of the TLP Assets or the TLC Assets is covered by the bid;
- b. It fully discloses the identity of each entity that is bidding for or will be purchasing some or all of the True Leaf Assets, including any equity holders in the case of a Potential Bidder which is an entity specially formed for the purpose of effectuating the contemplated transaction, or otherwise participating in connection with such bid (including any co-bidder or team bidder). A bid must also fully disclose any



- connections or agreements with the Sellers, and/or any officer, director or equity holder of the Sellers or any other Potential Bidder;
- c. It provides a description of any anticipated regulatory or governmental approvals necessary to consummate the bid;
  - d. It includes a commitment to close the transaction within 10 days of approval by the Court of the Successful Bid;
  - e. It includes a written commitment that the bid is irrevocable unless and until the applicable Seller accepts a higher or otherwise better bid. If the bidder is a special purpose vehicle, such writing shall guarantee performance of the bidder by its parent entities, or provide such other guarantee of performance acceptable to the Trustee;
  - f. It shall be accompanied by a deposit into the trust account of the Trustee of an amount of cash equal to 10% of the purchase price (the “**Good Faith Deposit**”);
  - g. It includes confirmation that all necessary internal and shareholder approvals have been obtained prior to the bid;
  - h. It includes an executed copy of a proposed asset purchase agreement and a blackline of the proposed asset purchase agreement reflecting amendments and modifications to the draft asset purchase agreement provided by the Trustee (the “**Proposed Asset Purchase Agreement**”);
  - i. It includes written evidence of (i) sufficient cash on hand to fund the purchase price or (ii) sources of immediately available funds that are not conditioned on third-party approvals or commitments, in each case, that will allow the Trustee, in consultation with the Consultation Parties, to make a reasonable determination as to the bidder’s financial and other capabilities to consummate the transaction contemplated by the Proposed Asset Purchase Agreement;
  - j. It includes an acknowledgement and representation that the bidder: (i) has had an opportunity to conduct any and all required due diligence prior to making its offer; (ii) has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the True Leaf Assets in making its bid; (iii) did not rely upon any written or oral statements, representations, promises, warranties or guaranties whatsoever, whether express or implied (by operation of law or otherwise), regarding the True Leaf Assets or the completeness of any information provided in connection therewith, except as expressly stated in the draft asset purchase agreement provided by the Trustee; and (iv) is not entitled to any expense reimbursement, break-up fee, termination fee, or similar type of payment in connection with its bid;
  - k. It contains such other information reasonably requested by the Trustee; and
  - l. With respect to the TLC Assets, it is received by the applicable Notice Parties (as defined below) on or prior to 5:00 p.m. (Pacific Daylight Time) on June 15, 2020 (the “**TLC Bid Deadline**”), and with respect to the TLP Assets it is received by the

applicable Notice Parties (as defined below) on or prior to 5:00 p.m. (Pacific Daylight Time) on June 19, 2020 (the “**TLP Bid Deadline**”, and together with the TLC Bid Deadline, the “**Bid Deadlines**”), provided that the Bid Deadlines may be extended by the Trustee with the consent of the Consultation Parties or by order of the Court.

## 5. Notice Parties

Any Potential Bidder must submit its bid by e-mail, so as to be received on or before the TLP Bid Deadline or the TLC Bid Deadline, as applicable, to each of the following parties (the “**Notice Parties**”):

- m. the Trustee: FTI Consulting, Inc. 701 West Georgia Street, Suite 1450, PO Box 10089, Vancouver, BC V7Y 1B6 (Attn: Craig Munro, [craig.munro@fticonsulting.com](mailto:craig.munro@fticonsulting.com));
- n. counsel to the Sellers: Clark Wilson LLP, 900 – 885 West Georgia Street, Vancouver, BC V6C 3H1 (Attn: Chris Ramsay, [cramsay@cwilson.com](mailto:cramsay@cwilson.com));
- o. Lind Asset Management XV, LLC (“**Lind**”): [trueleaf@thelindpartners.com](mailto:trueleaf@thelindpartners.com); and
- p. Counsel to Lind: Stikeman Elliott LLP, 1700 – 666 Burrard Street, Vancouver, BC V6C 2X8 Canada (Attn: Victor Gerchikov, [vgerchikov@stikeman.com](mailto:vgerchikov@stikeman.com)).

## 6. Evaluation of Bids

The Trustee shall review the bids and determine which bids are Qualified Bids.

A Qualified Bid will be valued based upon several factors including, without limitation: (a) the amount of such bid (including value provided by the assumption of liabilities); (b) the risks and timing associated with consummating such bid; (c) any proposed revisions to the Proposed Asset Purchase Agreement (including any additional conditions to closing); (d) any assets included or excluded from the Qualified Bid; (e) the likelihood of the bidders’ ability to close a transaction, the conditions thereof and the timing thereof; (f) any purchase-price adjustments; (g) indemnification or similar provisions; (h) the net economic effect of any changes to the value to be received by the applicable Seller’s estate from the transaction contemplated by the bid; (h) whether the bid is a bid for all or some of the True Leaf Assets; and (i) any other factors deemed relevant by the Trustee in consultation with the Consultation Parties. The Trustee reserves the right to determine the value of any Qualified Bids.

## 7. Negotiations with Qualified Bidders

Following the TLP Bid Deadline or the TLC Bid Deadline, as applicable, the Trustee may, as it deems appropriate, in consultation with the Consultation Parties, enter into negotiations with one or more Qualified Bidders regarding the terms of the bidder’s Proposed Asset Purchase Agreement for the purpose of maximizing value for the applicable Seller’s estate. The Trustee may, in its discretion, in consultation with the Consultation Parties, regardless of whether it has entered into negotiations with one or more Qualified Bids, invite two or more Qualified Bids to participate in an open auction; provided that the highest existing Qualified Bid shall act as the

floor bid for purposes of the auction and each Qualified Bidder participating in the auction has provided an equivalent deposit to the floor bid.

## **8. Selection of Successful Bid**

The Trustee, in consultation with the Consultation Parties, will review and evaluate each applicable Qualified Bid (including any Qualified Bid that was amended as a result of negotiation or an auction) and determine which Qualified Bid is the highest or otherwise best offer for the TLP Assets and the TLC Assets (such bids, the “**Successful Bids**” and the bidders making such bid, the “**Successful Bidders**”). In determining the Successful Bids, provided that the aggregate cash consideration for the True Leaf Assets is greater than the aggregate amounts owing to Lind, including pursuant to the DIP Loan appended to the First Report of the Trustee to the Court dated April 30, 2020, the Trustee is not required to select the offers with the highest purchase price and may, exercising its reasonable business judgement and taking into consideration any factors that it deems relevant including those described above in paragraph [6], select another offer on the basis that it is the best offer even though it is not the highest purchase price. Without limiting the foregoing, the Trustee may give such weight to the non-monetary considerations as it determines, exercising its reasonable business judgement, is appropriate and reasonable. The determination of the Successful Bids by the Trustee shall be final, subject only to approval by the Court.

The applicable Sellers will sell the applicable True Leaf Assets to the applicable Successful Bidders pursuant to the terms of the applicable Successful Bids upon the approval of such Successful Bids by the Court.

## **9. Consultation Parties**

The “**Consultation Parties**” are (a) the Sellers and their counsel; and (b) Lind and its counsel. Notwithstanding anything herein to the contrary, the Trustee shall not be required to consult with any Consultation Party during the Bid Procedures to the extent such Consultation Party is bidding for all or any part of the True Leaf Assets or is a financing source for a bidder.

## **10. Good Faith Deposit**

Except as otherwise provided in this paragraph with respect to any Successful Bid, the Good Faith Deposits of all Qualified Bidders that submitted a Good Faith Deposit under the Bid Procedures shall be returned upon or within three business days after the announcement of the Successful Bids. The Good Faith Deposit of a Successful Bidder shall be held until the closing of the sale of the applicable True Leaf Assets and applied in accordance with the Successful Bid.

If a Successful Bidder fails to consummate an approved sale because of a breach or failure to perform on the part of such Successful Bidder, the applicable Sellers will not have any obligation to return the applicable Good Faith Deposit deposited by such Successful Bidder, which may be retained by the applicable Sellers as liquidated damages, in addition to any and all rights, remedies and/or causes of action that may be available to the applicable Sellers at law or in equity, and, the applicable Sellers shall be free to consummate the proposed transaction at the next highest price bid by a Qualified Bidder, without the need for an additional hearings or orders of the Court.

## **11. Sale is “As Is/Where Is”**

Any Successful Bid or any order by the Court approving any sale of the True Leaf Assets sold pursuant to these Bid Procedures shall be conveyed at the closing of the applicable purchase and sale in their then-present condition, “AS IS, WITH ALL FAULTS, AND WITHOUT ANY WARRANTY WHATSOEVER, EXPRESS OR IMPLIED.”

## **12. Termination of Sale Process**

The Trustee may terminate the Sale Process at any point prior to the Sale Hearing (as defined below) provided that (a) all amounts owing to Lind, including pursuant to the DIP Loan appended to the First Report of the Trustee to the Court dated April 30, 2020, have been paid in full, or (b) Lind consents, in its sole discretion, to such termination in writing.

### **F. SALE HEARING**

The Sellers will seek entry of an order from the Court at a hearing (the “**Sale Hearing**”) forthwith after selection of the Successful Bids to approve and authorize the sale transactions to the Successful Bidders (including without limitation the assumption and assignment to the Successful Bidders of any executory contracts to be assigned to them in accordance with the Proposed Asset Purchase Agreements, as applicable, at the Sale Hearing or such other hearing scheduled before the applicable Court) on terms and conditions determined in accordance with the Bid Procedures.

### **G. CONSENT TO JURISDICTION**

The Court shall retain jurisdiction to hear and determine all matters arising from or relating to the implementation of these Bid Procedures. All Qualified Bidders shall be deemed to have consented to the jurisdiction of the Court.

### **H. MISCELLANEOUS**

Except as expressly provided under these Bid Procedures, the Bid Procedures are solely for the benefit of the Sellers, and nothing contained in the orders approving the Bid Procedures shall create any rights in any other person or bidder (including without limitation rights as third-party beneficiaries or otherwise) other than the rights expressly granted to a Successful Bidder under the orders approving the Bid Procedures.