

**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
FIRE & FLOWER HOLDINGS CORP., FIRE & FLOWER INC., 13318184 CANADA INC.,
11180703 CANADA INC., 10926671 CANADA LTD., FRIENDLY STRANGER HOLDINGS
CORP., PINEAPPLE EXPRESS DELIVERY INC., and HIFYRE INC.**

Applicants

**MOTION RECORD OF THE APPLICANTS
(RE: APPROVAL AND REVERSE VESTING ORDER AND CLAIMS PROCEDURE ORDER)
(RETURNABLE AUGUST 29, 2023)**

August 23, 2023

STIKEMAN ELLIOTT LLP
Barristers & Solicitors
5300 Commerce Court West
199 Bay Street
Toronto ON M5L 1B9

Maria Konyukhova (LSO #52880V)
Tel: (416) 869-5230
Email: mkonyukhova@stikeman.com

Philip Yang (LSO#: 82084O)
Tel: (416) 869-5593
Email: pyang@stikeman.com

Lawyers for the Applicants

TO: THE SERVICE LIST

**ONTARIO
SUPERIOR COURT OF JUSTICE
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CORP., PINEAPPLE EXPRESS DELIVERY INC., and HIFYRE INC.**

Applicants

**SERVICE LIST
(as at August 23, 2023)**

<p>STIKEMAN ELLIOTT LLP 5300 Commerce Court West 199 Bay Street Toronto, ON M5L 1B9</p> <p>Lawyers for the Applicants</p>	<p>Maria Konyukhova Tel: 416-869-5230 Email: mkonyukhova@stikeman.com</p> <p>Philip Yang Tel: 416-869-5593 Email: pyang@stikeman.com</p>
<p>FTI CONSULTING CANADA INC. TD Waterhouse Tower 79 Wellington Street West Suite 2010, P.O. Box 104 Toronto ON M5K 1G8</p> <p>Court-appointed Monitor of the Applicants</p>	<p>Jeffrey Rosenberg Tel: 416-649-8073 Email: jeffrey.rosenberg@fticonsulting.com</p> <p>Jodi Porepa Tel: 416-332-5743 Email: jodi.porepa@fticonsulting.com</p> <p>Adsaran Vithiyananthan Email: adsaran.vithiyananthan@fticonsulting.com</p>
<p>THORNTON GROUT FINNIGAN LLP Suite 3200, TD West Tower 100 Wellington St. West P.O. Box 329 Toronto-Dominion Centre Toronto ON M5K 1K7</p> <p>Lawyers for the Court-appointed Monitor of the Applicants</p>	<p>Leanne Williams Tel: 416-304-0060 Email: lwilliams@tgf.ca</p> <p>Rebecca Kennedy Tel: 416-304-0603 Email: rkennedy@tgf.ca</p>

<p>DAVIES WARD PHILLIPS & VINEBERG LLP 1501 McGill College Avenue 8th Floor Montreal, QC H3A 3N9</p> <p>Lawyers for 2707031 Ontario Inc. ("270 Ontario") and 270 Ontario, in its capacity as the DIP Lender</p>	<p>Christian Lachance Tel: 514-841-6576 Email: clachance@dwpv.com</p> <p>Natalie Renner Tel: 416-367-7489 Email: nrenner@dwpv.com</p>
<p>DLA PIPER (CANADA) LLP 1 First Canadian Place, Suite 6000 100 King Street West Toronto, ON M5X 1E2</p> <p>Lawyers for Tilray, Inc.</p>	<p>Edmond F.B. Lamek Tel: 416-365-4444 Email: edmond.lamek@dlapiper.com</p>
<p>LENCZNER SLAGHT LLP 130 Adelaide St. W., Suite 2600 Toronto, ON M5H 3P5</p> <p>Lawyers for Trevor Fencott</p>	<p>Brendan F. Morrison Tel: 416-865-3559 Email: bmorrison@litigate.com</p> <p>Christopher Yung Tel: 416-865-2976 Email: cyung@litigate.com</p>
<p>MILLER THOMSON LLP 40 King Street West, Suite 5800 Toronto, ON M5H 4A9</p> <p>Lawyers for Green Acre Capital LP and 2759054 Ontario Inc.</p>	<p>Larry Ellis Tel: 416-595-8639 Email: lellis@millერთhompson.com</p> <p>Gavin Finlayson Tel: 416-595-8619 Email: gfinlayson@millერთhompson.com</p> <p>Patrick Corney Tel: 416-595-8555 Email: pcorney@millერთhompson.com</p> <p>Sam Massie Tel: 416-595-8641 Email: smassie@millერთhompson.com</p>
<p>DALE & LESSMANN LLP 2100 – 181 University Ave. Toronto, ON M5H 3M7</p> <p>Lawyers for 2759054 Ontario Inc.</p>	<p>Chad Finkelstein Tel: 416-369-7883 Email: cfinkelstein@dalelessmann.com</p>

<p>GOWLING WLG (CANADA) LLP First Canadian Place 100 King St West, Suite 1600, Toronto, ON M5X 1G5</p> <p>Lawyers for Turning Point Brands (Canada) Inc.</p>	<p>Haddon Murray Tel: 416-862-3604 Email: haddon.murray@gowlingwlg.com</p>
<p>FISHER FAMILY FARM Unit 10 1902 Alberta Ave, Saskatoon, SK, S7K 1R9</p>	<p>Chelsea Fisher Tel: 306-270-2370 Email: chelsea@fisherfamily.farm</p>
<p>CHERNOS FLAHERTY SVONKIN LLP 220 Bay Street, Suite 700 Toronto, ON M5J 2W4</p> <p>Lawyers for the Creditor, Laronde Investments Ltd.</p>	<p>David Chernos Tel: 416-855-0402 Email: dchernos@cfscounsel.com</p> <p>Bryan McLeese Tel: 416-855-0414 Email: bmcleese@cfscounsel.com</p> <p>Fax: 647-725-5440</p>
<p>Auxly Cannabis Group Inc. 777 Richmond St W Unit 002 Toronto, ON M6J 0C2</p> <p>Lawyers for the XLY Parties</p>	<p>Ron Fichter Tel: 416-454-2744 Email: ron@auxly.com</p>
<p>JEFFERY AND DIANA AGUIAR</p> <p>Shareholders</p>	<p>Jeffery Aguiar Email: jeff_aguiar@msn.com</p> <p>Diana Aguiar Email: diana_dd_107@hotmail.com</p>
<p>GOWLING WLG (CANADA) LLP First Canadian Place 100 King St West, Suite 1600 Toronto, ON M5X 1G5</p> <p>Lawyers for Flower & Fire US Holdings Inc.</p>	<p>Virginie Gauthier Tel: 416-369-7256 Email: virginie.gauthier@gowlingwlg.com</p> <p>Nicholas Kluge Tel: 416-369-4610 Email: nicholas.kluge@gowlingwlg.com</p> <p>Katherine Yurkovich Tel: 416-862-4342 Email: kate.yurkovich@gowlingwlg.com</p>

<p>MCLENNAN ROSS 600 McLennan Ross Building 12220 Stony Plain Road Edmonton, AB T5N 3Y4</p> <p>Lawyers for Fire & Flower in an Alberta action</p>	<p>Eric Appelt Tel: 780-482-9302 Email: eric.appelt@mross.com</p> <p>Daniel Weber Email: daniel.weber@mross.com</p>
<p>NIMMONS LAW OFFICE 1827 14th Street SW Calgary, AB T2T 3T1</p>	<p>Christopher Souster Tel: 403-685-4224 Email: cmas@nimmonslawoffice.com</p>
<p>DELOITTE LLP 8 Adelaide Street West, Suite 200 Toronto, ON M5H 0A9</p> <p>Creditor</p>	<p>Ashley Csanadi Tel: 416-202-2836 Email: acsanadi@deloitte.com</p>
<p>DUNCAN CRAIG LLP 2800 Rice Howard Place 10060 Jasper Avenue Edmonton, AB, T5J 3V9</p>	<p>Tara Greenway Tel: 800-782-9409 Email: tgreenway@dcllp.com</p>
<p>LAURA HAYNES, P.C. P.O. Box 5157 Colorado Springs, CO 80931</p> <p>Lawyers for Hobby Farms, LLC</p>	<p>Laura Haynes Tel: 240-205-1140 Email: laura@lhaynes.com</p>
<p>LELAND KIMPINSKI LLP 336 6th Ave. North Saskatoon, SK S7K 2S5</p> <p>Lawyers for 1887575 Alberta Inc.</p>	<p>Trent N. Adamus Tel: 302-244-6686 Email: tadamus@lelandlaw.ca</p>
GOVERNMENT ENTITIES	
<p>DEPARTMENT OF JUSTICE (CANADA) Ontario Regional Office, Tax Law Section 120 Adelaide Street West, Suite 400 Toronto, ON M5H 1T1</p>	<p>Edward Park Tel: 647-292-9368 Email: edward.park@justice.gc.ca</p> <p>Kelly Smith Wayland Tel: 647-533-7183 Email: kelly.smithwayland@justice.gc.ca</p> <p>General Email Inbox Email: agc-pgc.toronto-tax-fiscal@justice.gc.ca</p>

<p>CANADA REVENUE AGENCY 1 Front Street West Toronto, ON M5J 2X6</p>	
<p>MINISTRY OF FINANCE (ONTARIO) Legal Services Branch 11-777 Bay Street Toronto, ON, M5G 2C8</p>	<p>Leslie Crawford Email: leslie.crawford@ontario.ca</p> <p>Copy to: Email: insolvency.unit@ontario.ca</p>
<p>DEPARTMENT OF JUSTICE (BRITISH COLUMBIA) Legal Services Branch, Revenue & Taxation PO Box 9280 Stn Prov Govt Victoria, BC V8W 9J7</p>	<p>Deputy Attorney General Ministry of Attorney General Email: servicebc@gov.bc.ca</p> <p>Aaron Welch Legal Counsel Email: aaron.welch@gov.bc.ca</p> <p>AGLSBRevTaxInsolvency@gov.bc.ca</p>
<p>MINISTRY OF JUSTICE AND SOLICITOR GENERAL (ALBERTA) Legal Services 2nd Floor, Peace Hills Trust Tower 10011 – 109 Street Edmonton, AB T5J 3S8</p>	<p>General Enquiries Tel: 780.427.2711 Email: ministryofjustice@gov.ab.ca</p>
<p>TAX AND REVENUE ADMINISTRATION (ALBERTA) 9811 109 St NW Edmonton, AB T5K 2L5</p>	<p>General Enquiries Email: tra.revenue@gov.ab.ca</p>
<p>DEPARTMENT OF JUSTICE (MANITOBA) Civil Legal Services 730 – 405 Broadway Winnipeg, MB R3C 3L6</p>	<p>Shelley Haner Tel: 202-792-6471 Email: shelley.haner@gov.mb.ca</p>
<p>DEPARTMENT OF FINANCE (MANITOBA) Taxation Division 101 – 401 York Avenue Manitoba, MB R3C 0P8</p>	<p>General Enquiries Tel: 204-945-6444 Email: mbtax@gov.mb.ca</p>
<p>DEPARTMENT OF JUSTICE (YUKON) Government of Yukon Box 2703 Whitehorse, YT Y1A 2C6</p>	<p>Peter Morawsky Email: peter.morawsky@yukon.ca</p>

DEPARTMENT OF FINANCE (YUKON) 2071 2 ND Avenue Whitehorse, YT Y1A 1B2	Sandy Silver Tel: 867-393-7142 Email: sandy.silver@yukon.ca General Finance Enquiries Tel: 867-667-5811 Email: fininfo@yukon.ca
MINISTRY OF FINANCE (SASKATCHEWAN) 2350 Albert Street, 11 th Floor Regina, SK S4P 4A6	Max Hendricks Tel: 306-787-6621 Email: max.hendricks@gov.sk.ca Hon. Donna Harpauer Tel: 306-787-6060 Email: fin.minister@gov.sk.ca
ONTARIO SECURITIES COMMISSION 20 Queen Street West, 20 th Floor Toronto, ON M5H 3S8	Naizam Kanji Email: nkanji@osc.gov.on.ca General Inquiries Email: inquiries@osc.gov.on.ca Cullen Price Email: cprice@osc.gov.on.ca Paloma Ellard Email: pellard@osc.gov.on.ca Katrina Janke Email: kjanke@osc.gov.on.ca
CHAITONS LLP 5000 Yonge Street, 10 th Floor, Toronto, ON M2N 7E9 Lawyers for the Ontario Securities Commission	Maya Poliak Tel: 416-218-1161 Email: maya@chaitons.com
CANNABIS REGULATORY ENTITIES	
ALCOHOL AND GAMING COMISSION OF ONTARIO 90 Sheppard Avenue East Suite 200-300 Toronto, ON M2N 0A4	Nick Fera Email: nick.fera@agco.ca Sandra Lucas Email: sandra.lucas@agco.ca Ashley An Email: ashley.an@agco.ca

ONTARIO CANNABIS RETAIL CORPORATION 1 Yonge Street, 4 th Floor Toronto, ON M5E 1E5	Deborah Morshead Email: deborah.morshead@ocs.ca Kelechi Okorafor Email: kelechi.okorafor@ocs.ca
ALBERTA GAMING, LIQUOR AND CANNABIS COMMISSION 50 Corriveau Avenue St. Albert, AB T8N 3T5	Candace Wilson Email: candace.wilson@aglc.ca Larysa Palyniak Email: larysa.palyniak@aglc.ca Neil Zurawell Email: neil.zurawell@aglc.ca
SASKATCHEWAN LIQUOR AND GAMING AUTHORITY 2500 Victoria Avenue P.O. Box 5054 Regina, SK, S4P 3M3	Joanne Gasper Cannabis Licensing and Inspections Branch Email: jgasper@slga.com
MANITOBA LIQUOR AND LOTTERIES CORPORATION 830 Empress Street Winnipeg, MB R3G 3H3	Julie Brokop Commercial Partners and Agreements Email: julie.brokop@mbll.ca Roger Dacquay Supply Chain & Commercial Partners Email: roger.dacquay@mbll.ca
LIQUOR, GAMING AND CANNABIS AUTHORITY OF MANITOBA 1055 Milt Stegall Drive Winnipeg, MB R3G 0Z6	Commercial Licensing Inbox Email: licence@lgcamb.ca
YUKON LIQUOR CORPORATION Government of Yukon Box 2703 Whitehorse, YT Y1A 2C6	Licensing and Compliance inbox Email: cannabis.licence@yukon.ca Ken Howard Email: ken.howard@yukon.ca
LIQUOR AND CANNABIS REGULATION BRANCH P.O. Box 9292 Stn Prov Govt Victoria, BC V8W 9J8	Liquor & Cannabis Regulation Branch inbox Email: lcrbliquor@gov.bc.ca
LANDLORDS	

<p>102057639 SASKATCHEWAN LTD. 84 Cardinal Cres. Regina, SK S4S 4Y5</p>	<p>Jeff Richards Tel: 403-390-2228 Email: jeffr@innovadevelopments.ca</p>
<p>RIOCAN REIT 509 Bayfield Street Barrie, ON L4M 4Z8</p>	<p>Nancy Rowell Tel: 705-734-7535 Email: nrowell@riocan.com</p>
<p>WITTEN LLP Suite 2500, Canadian Western Bank Place 10303 Jasper Avenue Edmonton, AB T5J 3N6</p> <p>Lawyers for Blackfalds Crossing Developments GP Inc., Lakeland Ridge LP Properties Inc., and 1422642 Alberta Ltd.</p>	<p>Howard J. Sniderman Tel: 780-441-3203 Email: hsniderman@wittenlaw.com</p>
<p>WITTEN LLP Suite 2500, Canadian Western Bank Place 10303 Jasper Avenue Edmonton, AB T5J 3N6</p> <p>Lawyers for Orchard Gate Commercial GP Ltd.</p>	<p>Liam Kelly Tel: 780-702-3410 Email: lkelly@wittenlaw.com</p>
<p>CAMELINO GALEESSIERE LLP 65 Queen Street West, Suite 440 Toronto, ON M5H 2M5</p> <p>Lawyers for RioCan Real Estate Investment Trust, SmartCentres Real Estate Investment Trust, Triovest Realty Advisors Inc., Centrecorp Management Services Limited, and Montez Core Income Fund Limited Partnership.</p>	<p>Linda Galessiere Tel: 416-306-3827 Email: lgalessiere@cglegal.ca</p> <p>Gustavo F. Camelino Tel: 416-306-3834 Email: gcamelino@cglegal.ca</p>
<p>DAOUST VUKOVICH LLP 20 Queen Street West, Suite 3000 Toronto, ON M5H 3R3</p> <p>Lawyers for Westwind Developments Ltd., Daniels HR Corporation, and The Canada Life Assurance Company and The Canada Life Insurance Company of Canada</p>	<p>Dina Peat Email: dpeat@dv-law.com</p> <p>Gasper Galati Email: ggalati@dv-law.com</p>

<p>BISHOP & MCKENZIE LLP #2200, 555 – 4th Ave. SW, Calgary, AB T2P 3E7</p> <p>Lawyers for Shoppes @ Giroux Inc.</p>	<p>Anthony Dekens Tel: 403-750-2247 Email: adekens@bmlp.ca</p>
<p>KATZMAN LITIGATION P.C. 393 University Avenue, Suite 2000 Toronto, ON M5G 1E6</p> <p>Lawyers for Queen and Brock Holdings Inc. and 431-441 Spadina Investments Inc.</p>	<p>Michael A. Katzman Email: mkatzman@katzmanlitigation.com</p>
<p>SCOTT PETRIE LLP 200-252 Pall Mall Street London, ON N6A 5P6</p> <p>Lawyers for Gus and Mary Mouhtouris</p>	<p>Ben Blay Email: bblay@scottpetrie.com</p>
<p>MCKERCHER LLP 374 Third Avenue South Saskatoon, SK S7K 1M5</p> <p>Lawyers for Rocom Management Ltd., Robb Holdings Ltd., Wolman Properties Ltd., Edgewater Holdings Ltd., Kullman Holdings Ltd., a Landlord located in Saskatoon, Saskatchewan, and creditors of Fire & Flower Inc.</p>	<p>Janine L. Lavoie-Harding Tel: 306-664-1265 Email: j.lavoie-harding@mckercher.ca</p>
<p>FIRST CAPITAL 85 Hanna Avenue, Suite 400 Toronto, ON M6K 3S3</p> <p>Lawyers for First Capital (Morningside) Corporation</p>	<p>Kirryn Hashmi Tel: 416-216-2083 Email: kirryn.hashmi@fcr.ca</p>
<p>PETER DUSHOP</p> <p>Representatives for Vegreville Galleria Limited Partnership</p>	<p>Peter Dushop Email: peterdushop@gmail.com</p>
<p>Youngman Law Professional Corporation 90 Eglinton Avenue East, Suite 980 Toronto, ON M4P 2Y3</p> <p>Lawyers for University Village (Guelph) Limited</p>	<p>Mark Youngman Email: myoungman@youngmanlaw.com</p>

<p>DENTONS CANADA LLP 77 King Street West, Suite 400 Toronto-Dominion Centre Toronto, ON M5K 0A1</p> <p>Lawyers for CP Reit Ontario Properties Limited, CP Reit Alberta Properties Limited, Canadian Property Holdings (Alberta) Inc., Crestpoint (Slave Lake) Ltd., Hopewell Development (Mahogany) Inc. and Ritson Division Retail GP Limited</p>	<p>Kenneth Kraft Tel: 416-863-4374 Email: kenneth.kraft@dentons.com Fax: 416-863-4592</p>
<p>MINDEN GROSS LLP 145 King St. West, Suite 2200 Toronto, ON M5H 4G2</p> <p>Lawyers for Strathallen Property Management Inc.</p>	<p>Carol Liu Tel: 416-369-4287 Email: cliu@mindengross.com Fax: 416-864-9223</p>
<p>ROBINS APPLEBY LLP Suite 2600, 120 Adelaide Street West, Toronto, ON M5H 1T1</p> <p>Lawyers for Turbo-Mac Ltd.</p>	<p>Joey Jamil Email: jjamil@robapp.com</p> <p>Ellad Gersh Email: egersh@robapp.com</p>
<p>DICKINSON WRIGHT LLP Suite 2200, 199 Bay Street Commerce Court West Toronto ON M5L 1G4</p> <p>Lawyers for 1552957 Ontario Inc. and Echelon Partners Holdings Inc.</p>	<p>John D. Leslie Tel: 416-646-3801 Email: jleslie@dickinsonwright.com</p>
<p>PPSA REGISTRANTS</p>	
<p>FORD CREDIT CANADA COMPANY The Canadian Road Oakville, ON L6J 5E4</p>	<p>Shawn Ryan Email: sryan6@ford.com</p>
<p>RECEIVABLES MANAGEMENT OFFICE – SONJA SHAW P.O. Box 9445 Stn Prov Govt Victoria, BC V8W 9V5</p>	<p>Colin Klingspohn Email: colin.klingspohn@gov.bc.ca</p>
<p>COMPUTERSHARE TRUST COMPANY OF CANADA 400-5241 Calgary Trail NW Edmonton, AB T6H 5G8</p>	

NAMASTE TECHNOLOGIES INC. 3400-100 King Street West Toronto, ON M5X 1G5	
ATB FINANCIAL 600, 585-8 Avenue SW Calgary, AB T2P 1G1	
ALTERNA SAVINGS & CREDIT UNION 319 McCrae Avenue Ottawa, ON K1Z 0B9	
WORLD CLASS EXTRACTIONS INC. 9080 University Crescent, Suite 308 Vancouver, BC V5A 0B7	

E-Service List

mkonyukhova@stikeman.com; pyang@stikeman.com; jeffrey.rosenberg@fticonsulting.com;
jodi.porepa@fticonsulting.com; adsaran.vithiyananthan@fticonsulting.com; lwilliams@tgf.ca;
rkennedy@tgf.ca; clachance@dwpv.com; nrenner@dwpv.com; edmond.lamek@dlapiper.com;
bmorrison@litigate.com; cyung@litigate.com; lellis@millerthomson.com;
gfinlayson@millerthomson.com; pcorney@millerthomson.com; smassie@millerthomson.com;
cfinkelstein@dalelessmann.com; haddon.murray@gowlingwlg.com; chelsea@fisherfamily.farm;
dchernos@cfscounsel.com; bmcleese@cfscounsel.com; ron@auxly.com;
jeff_aguiar@msn.com; diana_dd_107@hotmail.com; virginie.gauthier@gowlingwlg.com;
nicholas.kluge@gowlingwlg.com; kate.yurkovich@gowlingwlg.com; eric.appelt@mross.com;
daniel.weber@mross.com; cmas@nimmonslawoffice.com;
acsanadi@deloitte.com; tgreenway@dcllp.com; laura@lhaynes.com; tadamus@lelandlaw.ca
edward.park@justice.gc.ca; kelly.smithwayland@justice.gc.ca; agc-pgc.toronto-tax-
fiscal@justice.gc.ca; leslie.crawford@ontario.ca; insolvency.unit@ontario.ca;
servicebc@gov.bc.ca; aaron.welch@gov.bc.ca; AGLSBRRevTaxInsolvency@gov.bc;
ministryofjustice@gov.ab.ca; tra.revenue@gov.ab.ca; shelley.haner@gov.mb.ca;
mbtax@gov.mb.ca; peter.morawsky@yukon.ca; sandy.silver@yukon.ca; fininfo@yukon.ca;
max.hendricks@gov.sk.ca; fin.minister@gov.sk.ca; nkanji@osc.gov.on.ca;
inquiries@osc.gov.on.ca; cprice@osc.gov.on.ca; pellard@osc.gov.on.ca;
kjanke@osc.gov.on.ca; maya@chaitons.com; nick.fera@agco.ca; sandra.lucas@agco.ca;
ashley.an@agco.ca; deborah.morshead@ocs.ca; kelechi.okorafor@ocs.ca;
candace.wilson@aglc.ca; larysa.palyniak@aglc.ca; neil.zurawell@aglc.ca; jgasper@slga.com;
julie.brokop@mbl.ca; roger.dacquay@mbl.ca; licence@lgcamb.ca;
cannabis.licence@yukon.ca; ken.howard@yukon.ca; lcrbliquor@gov.bc.ca;
jeffr@innovadevelopments.ca; nrowell@riocan.com; hsniderman@wittenlaw.com;
lkelly@wittenlaw.com; lgalessiere@cglegal.ca; gcamelino@cglegal.ca; dpeat@dv-law.com;
ggalati@dv-law.com; adekens@bmlp.ca; mkatzman@katzmanlitigation.com;
bblay@scottpetrie.com; j.lavoie-harding@mckercher.ca; kirryn.hashmi@fcr.ca;
peterdushop@gmail.com; myoungman@youngmanlaw.com; kenneth.kraft@dentons.com;
cliu@mindengross.com; jjamil@robapp.com; egersh@robapp.com;
jleslie@dickinsonwright.com; sryan6@ford.com; colin.klingspohn@gov.bc.ca

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**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
FIRE & FLOWER HOLDINGS CORP., FIRE & FLOWER INC., 13318184 CANADA INC.,
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CORP., PINEAPPLE EXPRESS DELIVERY INC., and HIFYRE INC.**

Applicants

I N D E X

TAB	DOCUMENT
1.	Notice of Motion, returnable August 29, 2023
2.	Affidavit of Stephane Trudel, sworn August 23, 2023
A.	Exhibit "A" - Initial Order, dated June 5, 2023
B.	Exhibit "B" - Amended and Restated Initial Order, dated June 15, 2023
C.	Exhibit "C" - SISP Order (which includes the SISP as a Schedule), dated June 19, 2023
D.	Exhibit "D" – Initial Affidavit of Stephane Trudel, sworn June 5, 2023 (without exhibits)
E.	Exhibit "E" - Subscription Agreement
3.	Draft Approval and Reverse Vesting Order
4.	Draft Claims Procedure Order

TAB 1

**ONTARIO
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IN THE MATTER OF THE *COMPANIES' CREDITORS
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HOLDINGS CORP., PINEAPPLE EXPRESS DELIVERY INC., and HIFYRE INC.

Applicants

**NOTICE OF MOTION
(RE: APPROVAL AND REVERSE VESTING ORDER AND CLAIMS PROCEDURE ORDER)
(RETURNABLE AUGUST 29, 2023)**

Fire & Flower Holdings Corp. ("**FFHC**" or the "**Company**"), Fire & Flower Inc. ("**FFI**"),
13318184 Canada Inc., ("**133 Canada**"), 11180703 Canada Inc. ("**Hi-Line Ventures**"), 10926671
Canada Ltd. ("**Open Fields Distribution**"), Friendly Stranger Holdings Corp. ("**Friendly
Stranger**"), Pineapple Express Delivery Inc. ("**Pineapple Express Delivery**"), Hifyre Inc.
("**Hifyre**", and collectively, the "**Applicants**") will make a motion before Justice Osborne of the
Ontario Superior Court of Justice (Commercial List) on **Tuesday, August 29, 2023 at 10:00 a.m.**,
or as soon after that time as the Motion can be heard.

PROPOSED METHOD OF HEARING: The Motion is to be heard:

- In writing under subrule 37.12.1(1);
- In writing as an opposed motion under subrule 37.12.1(4);
- In person;
- By telephone conference;
- By video conference.

at the following location:

<https://ca01web.zoom.us/j/65979875939?pwd=VVRJZHVVRRWQ1cGdkRERtTGpRajNFUT09>

THE MOTION IS FOR¹

1. Issuance of an order (the “**Approval and Reverse Vesting Order**”), among other things:
 - (a) approving the subscription agreement dated as of August 17, 2023 between FFHC, as company, and 2759054 Ontario Inc. o/a FIKA Cannabis (“**FIKA**”), as purchaser (the “**Subscription Agreement**”), the Transactions contemplated therein, and authorizing and directing FFHC to take such additional steps and execute such additional documents as necessary or desirable for the completion of the Transactions;
 - (b) approving the amended and restated subscription agreement, to be entered into between FFHC, as company, and 2707031 Ontario Inc. (“**ACT Investor**”), as purchaser (the “**Back-Up Subscription Agreement**”), the Back-Up Transactions contemplated therein, and authorizing and directing FFHC to take such additional steps and execute such additional documents as necessary or desirable for the completion of the Back-Up Transactions, only to the extent that the Subscription Agreement and the Transactions contemplated therein do not close for any reason;
 - (c) granting releases (the “**Releases**”) in favour of:
 - (i) (A) the current directors, officers, employees, legal counsel, consultants and advisors to the Applicants; (B) the current directors, officers, employees, legal counsel and advisors to Residual Co.; and (C) the Monitor and its legal counsel and their respective current directors, officers, partners, employees, and advisors (collectively, the “**Released Parties**”) from any and all present and future liabilities arising in connection with or relating to the CCAA Proceedings, the Subscription Agreement, or the Back-Up Subscription Agreement, as the case may be, the completion of the Transactions or the Back-Up Transactions, as the case may be (collectively, the “**Released Claims**”); and
 - (ii) (A) the Applicants; (B) ACT Investor in its capacity as the DIP Lender and the Stalking Horse Bidder; and (C) FIKA (collectively, the “**Other Released**”)

¹ All capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in the affidavit of Stephane Trudel sworn August 23, 2023, contained at Tab 2 of the Motion Record of the Applicants.

Parties”) from and any all present and future liabilities based in whole or in part of any act or omission, transaction, dealing or other occurrence existing or taking place prior to the filing of the Monitor’s Closing Certificate, or undertaken or completed in connection with or pursuant to the terms of the Approval and Reverse Vesting Order and that relate in any manner whatsoever to the Subscription Agreement or Back-Up Subscription Agreement, as the case may be, the completion of the Transactions or the Back-Up Transactions, as the case may be, the closing documents, any agreement, document, instrument, matter or transaction involving the Applicants arising in connection with or pursuant to any of the foregoing, and/or the consummation of the Transactions or the Back-Up Transactions, as the case may be (collectively, the “**Other Released Claims**”).

- (d) extending the Stay Period until and including October 15, 2023; and
 - (e) sealing the Confidential Appendix to the Third Report of the Monitor, to be filed, which contains a summary of the economic terms of the bids received in the SISP.
2. Issuance of an order approving the proposed claims process (the “**Claims Process Order**”), pursuant to which claimants may file claims against the Applicants.
 3. Such further and other relief as may be requested by the Applicants and as this Honourable Court considers just.

THE GROUNDS FOR THE MOTION ARE:

Background

4. FFHC, through its wholly-owned subsidiaries, is an independent cannabis retail chain with 72 retail cannabis stores open across Canada and two (2) licensed wholesale distribution facilities. Certain subsidiaries of FFHC also carry on business as a wholesale cannabis distributor and operate digital platforms which provide various services and software products relating to cannabis products.

5. The Companies suffered severe liquidity issues due to, among other things, increased competition and operating costs, margin pressure, and regulatory restrictions experienced by the Companies and the cannabis industry generally.

6. Prior to initiating these CCAA Proceedings, the Applicants made various efforts since September 2022 to raise additional liquidity and pursue strategic alternatives. Unable to successfully restructure their operations or secure replacement financing or investment outside of formal insolvency proceedings, on June 5, 2023, the Applicants sought and were granted protection under CCAA pursuant to the Initial Order (which was amended and restated on June 15, 2023).

7. On June 19, 2023, the Applicants sought and obtained the SISP Order which, among other things, approved the SISP, authorized the Applicants and the Monitor to immediately commence the SISP, and approved the Stalking Horse Agreement solely for the purpose of constituting the Stalking Horse Bid under the SISP.

Conduct of the SISP

8. Following the commencement of the CCAA Proceedings and approval by this Court of the SISP on June 19, 2023, the Monitor conducted the SISP, in consultation with the Applicants.

9. The SISP solicited interest in and opportunities for: (a) one or more sales or partial sales of all, substantially all, or certain portions of the Property or the Business; and/or (ii) an investment in, restructuring, recapitalization, refinancing or other form of reorganization of the Applicants or their Business. Accordingly, the SISP provided the Applicants with the latitude to pursue both asset and share transactions (including through a reverse vesting structure).

10. Further, the SISP was backstopped by the Stalking Horse Agreement. Among other benefits, the Stalking Horse Agreement provided certainty that a going-concern solution for the Applicants had already been identified, set a baseline purchase price and deal structure in order to encourage superior bids from interested parties, and maximized value for the benefit of the Applicants' stakeholders.

11. The Monitor sent a Teaser Letter to 138 Known Potential Bidders. The Monitor received executed confidentiality and non-disclosure agreements from 33 potential bidders and provided each of these parties with access to the virtual data room facilitated by the Monitor for purposes of the SISP. Following the Phase 1 Bid Deadline on July 13, 2023, the Monitor, in consultation with the Applicants, as represented by their counsel and the Special Committee, determined that 12 Phase 1 Qualified Bidders were deemed Phase 2 Qualified Bidders and should proceed to Phase 2 of the SISP.

12. The Monitor received a total of eight (8) Binding Offers by the Phase 2 Bid Deadline on August 11, 2023. The Binding Offers included three (3) Sale Proposals and five (5) Partial Sale Proposals.

13. Following careful consideration of the available options, the Special Committee, in consultation with and based on the recommendation of the Monitor and Applicants' counsel, determined that it was in the Applicants' and their stakeholders' best interest to designate the Bid by FIKA and one of the other Sale Proposals to be Phase 2 Qualified Bids, and to hold the Auction with FIKA, the Unsuccessful Bidder, and the Stalking Horse Bidder participating in the Auction.

14. The Auction was held virtually via videoconference on August 15, 2023. Prior to the Auction, the Monitor, in consultation with the Applicants, as represented by their counsel and the Special Committee, identified the Binding Offer by FIKA to be the Opening Bid for the Auction as it was the highest Phase 2 Qualified Bid.

15. As a result of the Auction FIKA's Bid was declared as the Successful Bid and ACT Investor's Bid as the Back-Up Bid.

16. On August 17, 2023, the Subscription Agreement was executed by FFHC and FIKA, subject to Court approval. The execution of the Subscription Agreement represents the best possible outcome for the Applicants, its creditors, and other stakeholders in the circumstances. It also represents the culmination of extensive solicitation efforts on the part of the Applicants and the Monitor, which occurred both prior to and after the commencement of the CCAA Proceedings (as applicable).

Reverse Vesting Structure and Benefits of the Transactions

17. The Transactions contemplated in the Subscription Agreement have been structured to form a "reverse vesting" transaction whereby:

- (a) FIKA will subscribe for and purchase new shares of FFHC, who will, in turn, cancel and terminate all of its existing equity securities so that FIKA may become the sole shareholder of FFHC and ultimately, each of the subsidiaries of FFHC; and
- (b) All Excluded Contracts, Excluded Assets, and Excluded Liabilities with respect to the Applicants will be transferred and "vested out" to Residual Co., so as to allow

FIKA to indirectly acquire the Applicants' business and assets on a "free and clear" basis.

18. The benefits of a reverse vesting structure to the Applicants and their stakeholders include, among others:

- (a) allowing the Applicants, who operate in a highly regulated environment, to maintain their licenses and permits without the additional delays, costs, and uncertainty associated with getting same transferred to a third party;
- (b) maintaining various contracts with certain provincially operated cannabis distributors, licensed cannabis producers, suppliers of strategic data sources, and certain service providers whose services are required to maintain the applicable licenses and permits under applicable cannabis laws, without the uncertainty of needing consents to assign, re-establish, or enter into new arrangements; and
- (c) permitting the maintenance of the Applicants' tax attributes, which includes the Applicants' operating losses.

19. The benefits of the Transactions include the following, among others:

- (a) all of the Applicants' secured liabilities will be satisfied, leaving millions of dollars for recovery to the Applicants' unsecured creditors;
- (b) various unsecured and contingent liabilities being assumed;
- (c) the Applicants will maintain their licenses, intellectual property, and contracts with government entities and strategic suppliers, with
- (d) the Applicants will continue operations as a going concern, resulting in
 - (i) the potential for many of the Applicants' approximately 594 employees to preserve their employment;
 - (ii) a substantial number of the Applicants' landlords and suppliers of goods and services being able to maintain their business relationships with the Applicants; and

- (iii) there will be millions of dollars for distribution to the Applicants' unsecured creditors.

Releases

20. The Applicants also seek the issuance of the Releases in favour of:

- (a) the Released Parties (being the current directors, officers, employees, legal counsel, consultants and advisors to the Applicants and Residual Co.; and the Monitor and its current directors, officers, partners, employees and advisors) from the Released Claims; and
- (b) the Other Released Parties (being the Applicants, ACT Investor, in its capacity as the DIP Lender and the Stalking Horse Bidder, and FIKA) from the Other Released Claims.

21. The Releases are being sought in order to achieve certainty and finality for the Released Parties and Other Released Parties in the most efficient and appropriate manner given the circumstances.

22. The Applicants believe that the Releases sought are appropriate, given the significant and material contributions of the Released Parties and Other Released Parties in connection with the CCAA Proceedings and Transactions or Back-Up Transactions, as applicable, which will allow for the satisfaction of all the Applicants' secured liabilities, provide for millions in recovery to unsecured creditors, assumption of certain unsecured liabilities, and will allow the Applicants to continue their operations as a going concern.

23. The Applicants and the Monitor believe that the Releases are an essential component to the Transactions and Back-Up Transactions, as applicable.

Approval of the Back-Up Subscription Agreement

24. For the same reasons with respect to why the Subscription Agreement and the Transactions contemplated therein should be approved, the Back-Up Subscription Agreement and the Back-Up Transactions contemplated therein should be approved, but only to the extent that the Subscription Agreement and the Transactions contemplated therein do not close for any reason.

25. Among other benefits, the Back-Up Subscription Agreement and Back-Up Transactions also result in the Applicants continuing operations as a going concern, with all of the Applicants' secured liabilities being satisfied and millions of dollars for recovery to the Applicants' unsecured creditors.

26. Certain terms of the Back-Up Subscription Agreement are being negotiated. The Applicants will serve a supplementary affidavit containing the executed Back-Up Subscription Agreement as soon as same is available, and prior to the hearing of this Motion.

Claims Process

27. As a result of the SISP generating bids in excess of the Applicants' secured debt, the Applicants are proposing to establish a process for the identification, quantification, and resolution of unsecured claims against the Applicants (which will be transferred and vested in Residual Co.).

28. The Applicants' proposed Claims Process is embodied in the Claims Procedure Order, which has been prepared by the Applicants in consultation with the Monitor and its counsel.

29. The notification process described in the Claims Procedure Order will provide Claimants with adequate notice of the Claims Process and an adequate opportunity to prove their Claims prior to the Pre-Filing Claims Bar Date or the Restructuring Claims Bar Date, as applicable.

30. In addition, the adjudication procedure described in the Claims Procedure Order will facilitate the fair and expeditious resolution of any disputes regarding the status and/or amount of each Claim.

Extension of Stay Period

31. The Applicants are seeking to extend the Stay Period from September 1, 2023 to and including October 15, 2023. The extension of the Stay Period is necessary and appropriate in the circumstances to provide the Applicants with continued breathing space while they attempt to maximize value for the benefit of their stakeholders through the CCAA Proceedings and the Claims Process.

32. The Subscription Agreements contemplate an Outside Date of September 15, 2023 to close the Transactions or Back-Up Transactions, as the case may be. Additional time may be

required to complete the Transactions or Back-Up Transactions, as the case may be, contemplated under the Subscription Agreements.

33. Since the granting of the ARIO and the SISP Order, the Applicants have acted, and are continuing to act in good faith and with due diligence in these CCAA Proceedings.

34. The Updated Cash Flow Forecast reflects that the Applicants are expected to maintain liquidity and fund operations up to October 15, 2023. The proposed extension of the Stay Period will materially prejudice any of the Applicants' stakeholders.

35. The Monitor supports the proposed extension of the Stay Period

OTHER GROUNDS:

36. Sections 11 and 36 of the CCAA and the inherent and equitable jurisdiction of this Court.

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

38. Such further and other grounds as counsel may advise and this Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the Motion:

39. The affidavit of Stephane Trudel sworn August 23, 2023, and the Exhibits thereto.

40. The Factum of the Applicants, to be filed.

41. The Third Report of the Monitor, to be filed.

42. Such further and other evidence as counsel may advise and this Court may permit.

August 23, 2023

STIKEMAN ELLIOTT LLP

Barristers & Solicitors

5300 Commerce Court West, 199 Bay
Street

Toronto, ON M5L 1B9

Maria Konyukhova (LSO #52880V)

Tel: (416) 869-5230

Email: mkonyukhova@stikeman.com

Philip Yang (LSO #82084O)

Tel: (416) 869-5593

Email: pyang@stikeman.com

Lawyers for the Applicants

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

AND IN THE MATTER OF PLAN OF COMPROMISE OR ARRANGEMENT OF FIRE & FLOWER HOLDINGS CORP., FIRE & FLOWER INC.,
13318184 CANADA INC., 11180703 CANADA INC., 10926671 CANADA LTD., FRIENDLY STRANGER HOLDINGS CORP., PINEAPPLE
EXPRESS DELIVERY INC., and HIFYRE INC.

Applicants

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

PROCEEDING COMMENCED AT TORONTO

**NOTICE OF MOTION
(RE: APPROVAL AND REVERSE VESTING
ORDER AND CLAIMS PROCEDURE ORDER)
(RETURNABLE AUGUST 29, 2023)**

STIKEMAN ELLIOTT LLP
Barristers & Solicitors
5300 Commerce Court West
199 Bay Street
Toronto, Canada M5L 1B9

Maria Konyukhova (LSO #52880V)
Tel: (416) 869-5230
Email: mkonyukhova@stikeman.com

Philip Yang (LSO #82084O)
Tel: (416) 869-5593
Email: pyang@stikeman.com

Lawyers for the Applicants

TAB 2

Court File No. CV-23-00700581-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

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

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
FIRE & FLOWER HOLDINGS CORP., FIRE & FLOWER INC., 13318184 CANADA INC.,
11180703 CANADA INC., 10926671 CANADA LTD., FRIENDLY STRANGER HOLDINGS
CORP., PINEAPPLE EXPRESS DELIVERY INC., and HIFYRE INC.**

Applicants

**AFFIDAVIT OF STEPHANE TRUDEL
(Sworn August 23, 2023)**

I, Stephane Trudel, of the City of Toronto, in the Province of Ontario, MAKE OATH
AND SAY:

1. I am the Chief Executive Officer ("**CEO**") of Fire & Flower Holdings Corp. ("**FFHC**" or the "**Company**"), Fire & Flower Inc. ("**FFI**"), 13318184 Canada Inc., ("**133 Canada**"), 11180703 Canada Inc. ("**Hi-Line Ventures**"), 10926671 Canada Ltd. ("**Open Fields Distribution**"), Friendly Stranger Holdings Corp. ("**Friendly Stranger**"), Pineapple Express Delivery Inc. ("**Pineapple Express Delivery**"), Hifyre Inc. ("**Hifyre**", and collectively, the "**Applicants**"), Hifyre US, Inc., ("**Hifyre US**"), and PGED Corp. ("**PotGuide**", and together with Hifyre US and the Applicants, the "**Companies**") and a member of its board of directors. I have been a member of the board of directors of FFHC since June 8, 2020 and have been the CEO of the Companies and a member of the boards of directors of the Companies, other than FFHC, since June 1, 2022.

2. I am responsible for overseeing the operations of the Companies, their liquidity management and, ultimately, for assisting in their restructuring process. Because of my involvement with the Companies, I have knowledge of the matters to which I hereinafter depose, except where otherwise stated. I have also reviewed the records, press releases, and public filings of the Companies and have spoken with certain of the directors, officers and/or employees of the Companies, as necessary. Where I have relied upon such information, I do verily believe such information to be true.

3. I swear this affidavit is sworn in support of a motion by the Applicants for the issuance of:
- (a) an order (the “**Approval and Reverse Vesting Order**”), among other things:
 - (i) approving the subscription agreement dated as of August 17, 2023 between FFHC, as company, and 2759054 Ontario Inc. o/a FIKA Cannabis (“**FIKA**”), as purchaser (the “**Subscription Agreement**”), the transactions contemplated therein (the “**Transactions**”) and authorizing and directing FFHC to take such additional steps and execute such additional documents as necessary or desirable for the completion of the Transactions;
 - (ii) approving the amended and restated subscription agreement, to be entered into between FFHC, as company, and 2707031 Ontario Inc. (“**ACT Investor**”), as purchaser (the “**Back-Up Subscription Agreement**”, and together with the Subscription Agreement, the “**Subscription Agreements**”), the transactions contemplated therein (the “**Back-Up Transactions**”) and authorizing and directing FFHC to take such additional steps and execute such additional documents as necessary or desirable for the completion of the Back-Up Transactions, only to the extent that the Subscription Agreement and the Transactions contemplated therein do not close for any reason;
 - (iii) granting releases (the “**Releases**”) in favour of:
 - (A) (1) the current directors, officers, employees, legal counsel, consultants and advisors to the Applicants; (2) the current directors, officers, employees, legal counsel and advisors to Residual Co.; and (3) the Monitor and its legal counsel and their respective current directors, officers, partners, employees, and advisors (collectively, the “**Released Parties**”) from any and all present and future liabilities arising in connection with or relating to the CCAA Proceedings, the Subscription Agreement, or the Back-Up Subscription Agreement, as the case may be, the completion of the Transactions or the Back-Up Transactions, as the case may be (collectively, the “**Released Claims**”); and

- (B) (1) the Applicants; (2) ACT Investor, in its capacity as the DIP Lender and the Stalking Horse Bidder; and (3) FIKA (collectively, the “**Other Released Parties**”) from and any all present and future liabilities based in whole or in part of any act or omission, transaction, dealing or other occurrence existing or taking place prior to the filing of the Monitor’s Closing Certificate, or undertaken or completed in connection with or pursuant to the terms of the Approval and Reverse Vesting Order and that relate in any manner whatsoever to the Subscription Agreement or Back-Up Subscription Agreement, as the case may be, the completion of the Transactions or the Back-Up Transactions, as the case may be, the closing documents, any agreement, document, instrument, matter or transaction involving the Applicants arising in connection with or pursuant to any of the foregoing, and/or the consummation of the Transactions or the Back-Up Transactions, as the case may be (collectively, the “**Other Released Claims**”).
- (iv) extending the Stay Period (as defined below) until and including October 15, 2023; and
- (v) sealing the Confidential Appendix to the Third Report of the Monitor, to be filed, which contains a summary of the economic terms of the bids received in the SISP (as defined below); and
- (b) an order approving the proposed claims process (the “**Claims Procedure Order**”), pursuant to which claimants may file claims against the Applicants.
4. All references to monetary amounts in this affidavit are in Canadian dollars unless otherwise indicated.

I. **BACKGROUND**

5. FFHC, through its wholly-owned subsidiaries, is an independent cannabis retail chain with 72 retail cannabis stores open across Canada and two (2) licensed wholesale distribution facilities. Certain subsidiaries of FFHC also carry on business as a wholesale cannabis distributor

and operate digital platforms which provide various services and software products relating to cannabis products.

6. The Companies suffered severe liquidity issues due to, among other things, increased competition and operating costs, margin pressure, and regulatory restrictions experienced by the Companies and the cannabis industry generally. These factors have collectively contributed to significantly lower revenues and higher costs than what the Applicants expected their cannabis retail stores would face.

7. Unable to successfully restructure their operations or secure replacement financing or investment outside of formal insolvency proceedings, on June 5, 2023, the Applicants sought and were granted protection under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") by the Ontario Superior Court of Justice (Commercial List) (the "**Court**") pursuant to an order (the "**Initial Order**") which, among other things:

- (a) appointed FTI Consulting Canada Inc. ("**FTI**") as monitor of the Applicants (in such capacity, the "**Monitor**") of these proceedings (the "**CCAA Proceedings**");
- (b) granted an initial 10-day stay of proceedings in favour of the Applicants, their directors and officers (the "**D&Os**"), and the Monitor (the "**Initial Stay of Proceedings**");
- (c) approved the execution by the Applicants of an interim facility loan agreement (the "**DIP Facility Agreement**") entered into on June 5, 2023 with ACT Investor (in its capacity as lender under the DIP Facility Agreement, the "**DIP Lender**"), pursuant to which the DIP Lender agreed to advance to the Applicants a total amount of up to \$9.8 million (the "**DIP Facility**"), during the CCAA Proceedings, of which an initial amount of \$2.7 million was to be advanced during the Initial Stay of Proceedings (the "**Initial Advance**");
- (d) granted the following priority charges against the Applicants' assets, property, and undertakings (collectively, the "**Property**"):
 - (i) an "**Administration Charge**" against the Property in the amount of \$600,000, as security for the payment of the professional fees and disbursements incurred and to be incurred by the Proposed Monitor, counsel to the Proposed Monitor, and counsel to the Applicants;

- (ii) a “**DIP Lender’s Charge**” against the Property in the amount of the Initial Advance as security for the Applicants’ obligations under the DIP Facility Agreement; and
- (iii) a “**D&O Charge**” against the Property in the maximum amount of \$2,800,000 in favour of the D&Os of the Applicants as security for the Applicants’ obligation to indemnify such D&Os for obligations and liabilities incurred in such capacities after the commencement of the CCAA Proceedings.

8. On June 15, 2023, the Applicants sought and obtained an amended and restated Initial Order (the “**ARIO**”) which, among other things:

- (a) extended the Initial Stay of Proceedings to and including September 1, 2023 (the “**Stay Period**”);
- (b) approved the key employee retention plan (the “**KERP**”) and granted a “**KERP Charge**” in the amount of \$1.16 million against the Property as security for payments under the KERP; and
- (c) authorized the Applicants to increase the amounts which may be borrowed by the Applicants under the DIP Facility Agreement to \$9.8 million and granted a corresponding increase to the DIP Lender’s Charge.

9. On June 19, 2023, the Applicants sought and obtained an order (the “**SISP Order**”) which, among other things:

- (a) approved the sale and investment solicitation process (the “**SISP**”) and authorized the Applicants and the Monitor to immediately commence the SISP; and
- (b) approved the subscription agreement (the “**Stalking Horse Agreement**”) dated as of June 21, 2023 between FFHC and ACT Investor (in such capacity, the “**Stalking Horse Bidder**”) solely for the purpose of constituting the “**Stalking Horse Bid**” under the SISP.

10. Copies of the Initial Order, ARIO, and SISP Order (which includes the SISP as a Schedule) are attached as **Exhibit “A”, “B”, and “C”**, respectively. A copy of the affidavit sworn by me

(without Exhibits) in support of the Initial Order (the “**Initial Affidavit**”) is attached as **Exhibit “D”**. These documents, together with all other filings in the CCAA Proceedings, provide further details regarding the background to these CCAA Proceedings and are available on the Monitor’s website at: <http://cfcanada.fticonsulting.com/fireandflower/>

11. As a result of the conclusion of the SISF, the Applicants now seek the issuance of the Approval and Reverse Vesting Order and the transactions contemplated thereunder.

II. DESCRIPTION OF THE APPLICANTS’ SOLICITATION EFFORTS

A. The Pre-Filing Strategic Process

12. Prior to initiating these CCAA Proceedings, the Applicants made various efforts since September 2022 to raise additional liquidity and pursue strategic alternatives. As set out in the Initial Affidavit, in September 2022, a special committee of the board of directors of the Company (the “**Board**”) was formed to assist the Board in reviewing and negotiating matters related to the Companies’ existing strategic capital investments and financing arrangements.

13. Shortly thereafter, in October 2022, the Company entered into (a) a loan agreement with ACT Investor in respect of a \$11 million working capital loan pursuant to a secured loan facility with ACT investor, which was fully drawn down on October 21, 2022; and (b) a subscription agreement and warrant amending agreement that collectively contemplated a \$5 million equity investment by ACT Investor and amendments to certain terms of existing warrants held by ACT Investor (the “**Warrant and Share Transaction**”). The Warrant and Share Transaction was subject to shareholder approval and the shareholders ultimately did not approve the Warrant and Share Transaction. Accordingly, the Companies did not receive the additional \$5 million of working capital.

14. In April 2023, the Company once again formed a special committee of the board of directors (the “**Special Committee**”) to review and assess potential financing opportunities and strategic alternatives. The Special Committee engaged in discussions pertaining to potential financing, acquisitions and/or sale transactions with the ACT Investor, key stakeholders of the Company and other industry participants and financial institutions. Despite these efforts, the Applicants were unable to secure additional financing.

B. Conduct of the SISP¹

15. Following the commencement of the CCAA Proceedings and approval by this Court of the SISP on June 19, 2023, the Monitor conducted the SISP, in consultation with the Applicants. The SISP contemplated the following milestones, among others, each of which could be modified by the Monitor as permitted in the SISP:

Phase 1 Bid Deadline	By no later than July 13, 2023, at 5:00 p.m. (Eastern Time)
Deadline for Qualified Bidders to submit non-binding LOIs	
Phase 2 Bid Deadline & Qualified Bidders	August 11, 2023
Phase 2 Bid Deadline (for delivery of definitive offers by Phase 2 Qualified Bidders)	
Auction	August 15, 2023
Anticipated Auction (if needed)	
Selection of Successful Bid and Back-Up Bidder	By no later than August 17, 2023 at 5:00 p.m. (Eastern Time)
Deadline for selection of Successful Bid	
Definitive Documentation	By no later than August 22, 2023
Deadline for completion of definitive documentation in respect of Successful Bid	
Approval Motion – Successful Bid	Week of August 28, 2023
Deadline for filing of Approval Motion in respect of Successful Bid	
Closing – Successful Bid	September 8, 2023 or such earlier date as is achievable
Anticipated deadline for closing of Successful Bid being the Target Closing Date	
Outside Date – Closing	September 15, 2023
Outside Date by which the Successful Bid must close	

¹ All capitalized terms used in this subsection and not otherwise defined herein have the meanings given to them in the SISP.

16. The SISP solicited interest in and opportunities for: (a) one or more sales or partial sales of all, substantially all, or certain portions of the Property or the Business; and/or (ii) an investment in, restructuring, recapitalization, refinancing or other form of reorganization of the Applicants or their Business. Accordingly, the SISP provided the Applicants with the latitude to pursue both asset and share transactions (including through a reverse vesting structure).

17. Further, as noted above, the SISP was backstopped by the Stalking Horse Agreement. Among other benefits, the Stalking Horse Agreement provided certainty that a going-concern solution for the Applicants had already been identified, set a baseline purchase price and deal structure in order to encourage superior bids from interested parties, and maximized value for the benefit of the Applicants' stakeholders.

(i) Notice and Phase 1

18. In accordance with the SISP:

- (a) the Monitor published notice of the SISP in *The Globe and Mail* (National Edition) on June 21, 2023;
- (b) the Applicants issued a press release with Canada Newswire on June 21, 2023; and
- (c) the SISP Order was posted on the Monitor's website on June 21, 2023.

19. The Monitor sent a Teaser Letter to 138 Known Potential Bidders. The Monitor received executed confidentiality and non-disclosure agreements from 33 potential bidders and provided each of these parties with access to the virtual data room facilitated by the Monitor for purposes of the SISP. Following the Phase 1 Bid Deadline on July 13, 2023, the Monitor, in consultation with the Applicants, as represented by their counsel and the Special Committee, determined that 12 Phase 1 Qualified Bidders were deemed Phase 2 Qualified Bidders and should proceed to Phase 2 of the SISP.

(ii) Phase 2

20. The Monitor confirms they received a total of eight (8) Binding Offers by the Phase 2 Bid Deadline on August 11, 2023. The Binding Offers included three (3) Sale Proposals and five (5) Partial Sale Proposals.

21. Following the Phase 2 Bid Deadline, the Monitor and its counsel, in consultation with the Applicants, as represented by their counsel and the Special Committee, reviewed and discussed the Binding Offers received and, where appropriate, requested certain amendments to Phase 2 Qualified Bids in accordance with paragraph 25 of the SISP.

22. Paragraph 22 of the SISP established a set of criteria which had to be met for a Binding Offer to be considered a Phase 2 Qualified Bid. Among other things, a Binding Offer could only be considered a Phase 2 Qualified Bid if the Binding Offer, among other things:

- (a) provided for net cash proceeds that are not less than the Minimum Purchase Price (calculated by the Monitor to be \$23.17 million);
- (b) included a letter that confirmed a period of irrevocability;
- (c) was unconditional, other than upon the receipt of the Approval and Reverse Vesting Order;
- (d) was not subject to any financing condition;
- (e) did not provide for a break or termination-type fee; and
- (f) included payment of a refundable Deposit not less than ten percent (10%) of the cash purchase price payable on closing or total new investment contemplated, as the case may be.

23. On August 13, 2023, the Special Committee held a meeting with the Applicants' counsel and the Monitor to discuss the Binding Offers received. Following careful consideration of the available options, the Special Committee, in consultation with and based on the recommendation of the Monitor and Applicants' counsel, determined that it was in the Applicants' and their stakeholders' best interest to designate the Bid by FIKA and one of the other Sale Proposals received ("**Unsuccessful Bid**", with the Bidder being the "**Unsuccessful Bidder** ") to be Phase 2 Qualified Bids, and to hold the Auction with FIKA, the Unsuccessful Bidder, and the Stalking Horse Bidder (ACT Investor) participating in the Auction.

24. In making this decision, the Special Committee and the Monitor exercised their business judgment to reject the other Sale Proposal based on the proposed consideration and the Partial Sale Proposals received as, in the aggregate, they did not total the Minimum Purchase Price.

25. On August 14, 2023, FIKA and the Unsuccessful Bidder were advised by the Monitor that they were designated as Phase 2 Qualified Bidders and that they were permitted to participate in the Auction. The other parties who submitted Binding Offers were notified by the Monitor that they were not permitted to participate in the Auction.

(iii) Auction

26. The Auction was held virtually via videoconference on August 15, 2023. Prior to the Auction, the Monitor, in consultation with the Applicants, as represented by their counsel and the Special Committee, identified the Binding Offer by FIKA to be the Opening Bid for the Auction as it was the highest Phase 2 Qualified Bid.

27. As a result of the Auction FIKA's Bid was declared as the Successful Bid and ACT Investor's Bid as the Back-Up Bid.

28. At the conclusion of the Auction, FIKA and ACT Investor were notified by the Monitor that their Bids were designated as the Successful Bid and Back-Up Bid, respectively. Accordingly, (a) FFHC and FIKA entered into the Subscription Agreement; and (b) FFHC and ACT Investor immediately began negotiating the Back-Up Subscription Agreement. A copy of the Subscription Agreement is attached as **Exhibit "E"**.

29. On August 18, 2023, pursuant to section 4 of the SISP, the Monitor, in consultation with the Applicants, as represented by their counsel, and the DIP Lender, amended the terms of the SISP to contemplate that any Deposits received from Phase 2 Qualified Bidders which are not the Successful Bidder or the Back-Up Bidder would be fully refunded to the Phase 2 Qualified Bidder that paid such a Deposit as soon as practical.

30. On August 18, 2023, the Monitor returned the received Deposits to the Unsuccessful Bidder and Phase 2 Qualified Bidders who are not the Successful Bidder.

31. I understand that the Monitor will provide further details of the conduct of the SISP through the Third Report of the Monitor, to be filed. I also understand that the Monitor will be providing a confidential summary and discussion of the Bids received. As same contains commercially sensitive information, the Applicants will seek to seal same pending closing of either the Subscription Agreement or Back-Up Subscription Agreement, as applicable.

III. RELIEF SOUGHT

A. Approval of the Subscription Agreement²

(i) *Key Terms of the Subscription Agreement*

32. As set out above, the highest and best offer in respect of the Applicants' business and/or assets is the offer made by FIKA under the Subscription Agreement, which is summarized below.

Key Terms	Subscription Agreement
Purchaser	2759054 Ontario Inc. (FIKA)
Purchased Assets	The Purchased Shares, which would, on closing, represent all the issued and outstanding equity interests in the Company, and for the avoidance of doubt, every direct and indirect subsidiary of the Company. All contracts, other than the Excluded Contracts and Excluded Leases referenced in Schedule 2.2(c), will remain with the F&F Group.
Purchase Price	The Purchase Price payable by the Purchaser to the Monitor for the Purchased Shares is \$36 million, payable in cash.
Deposit	\$3.6 million.
Transaction Structure	Reverse vesting structure.
Regulatory Approvals	Any consent required in connection with the change of control of the Company under Cannabis Laws, all as may be amended, supplemented or replaced from time to time and those which regulate the sale or distribution of cannabis (in various forms), cannabinoid product or paraphernalia commonly associated with cannabis and/or related cannabinoid products.
Outside Date for Closing	September 15, 2023.

² All capitalized terms used in this subsection and not otherwise defined herein have the meanings given to them in the Subscription Agreement.

Employees	Purchaser will interview employees of the Companies and in its discretion make offers of employment ten days, but no later than five days prior to the anticipated Closing Date. In the event that no offer is made to an employee, such employee will be terminated prior to Closing.
Retained Liabilities	<ul style="list-style-type: none"> • All Post-Filing Claims. • All liabilities of the members of the F&F Group arising from and after Closing. • Tax liabilities. • Intercompany Claims. • Indemnification obligations to current and former directors and officers of the F&F Group, subject to certain conditions. • All outstanding Priority Payments, together with amounts owing in respect of obligations secured by the KERP Charge, Directors' Charge, and the Administration Charge. • An amount sufficient to satisfy the Administration Expense Costs owing and secured by the Administration Charge that are not otherwise paid by the F&F Group.
Administrative Expenses Reserve	<p>On the Closing Date, the F&F Group shall pay the Monitor the Administrative Expense Amount (cash in an amount equal to the Administrative Expense Amount and CCAA Charges).</p> <p>From time to time after the Closing Date, the Monitor may pay from the Administrative Expense Amount the Administrative Expense Costs and amounts secured by the CCAA Charges, with unused amounts (if any) being transferred by the Monitor to the Company.</p>
Key Conditions to Closing	<ul style="list-style-type: none"> • Court granting the Vesting Order, which shall be a Final Order. • All required Transaction Regulatory Approvals in full force and effect except for those that need not be in full force and effect prior to Closing.
Other	Upon Closing, Purchaser and its Affiliates shall release the Company, the Monitor, and

	<p>their respective Affiliates, directors and officers, and legal counsel from all actual or potential Released Claims relating to the Business, the Purchased Shares or the Retained Liabilities, save and except for Released Claims arising out of fraud, bad faith or illegal acts.</p> <p>Upon Closing, Company and its Affiliates shall release the Purchaser, the Monitor and their respective Affiliates, directors and officers, and legal counsel from actual or potential Released Claims relating to (i) the Purchased Shares; (ii) all other Equity Interests of the Company which remain after the application of the Vesting Order, (ii) the Retained Liabilities, (iii) the Excluded Assets or (iv) the Excluded Liabilities, save and except for Released Claims arising out of fraud, bad faith or illegal acts.</p>
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33. I understand from my discussions with the Monitor, the Special Committee, and the Applicants' counsel that the Subscription Agreement represents the best possible outcome for the Applicants, its creditors, and other stakeholders in the circumstances. The execution of the Subscription Agreement represents the culmination of extensive solicitation efforts on the part of the Applicants and the Monitor, which occurred both prior to and after the commencement of the CCAA Proceedings (as applicable).

34. I believe that the pre-filing strategic process leading up to the commencement of the CCAA Proceedings and the conduct of the Court-approved and robust SISP broadly canvassed the market of parties interested in the Applicants' business and assets. Further, the timelines under the SISP were reasonable. I am advised by the Monitor that it also believes the timelines and terms of the SISP were reasonable.

35. The benefits of the Transactions include the following, among others:

- (a) all of the Applicants' secured liabilities will be satisfied, leaving millions of dollars for recovery to the Applicants' unsecured creditors;
- (b) various unsecured and contingent liabilities being assumed; and

- (c) the Applicants will continue operations as a going concern, resulting in:
 - (i) the potential for many of the Applicants' approximately 594 employees to preserve their employment;
 - (ii) a substantial number of the Applicants' landlords and suppliers of goods and services being able to maintain their business relationships with the Applicants; and
 - (iii) continuity of supply in provinces where the Applicants have distribution operations which play a critical part in the provincial supply chain.

(ii) Reverse Vesting Structure

36. The Transactions contemplated in the Subscription Agreement have been structured to form a "reverse vesting" transaction. In essence, instead of providing for a traditional asset sale transaction where all purchased assets are purchased and transferred to the purchaser on a "free and clear" basis and all excluded assets, excluded contracts and excluded liabilities remain with the debtor company, the Transactions provide for a share transaction whereby, essentially:

- (a) FIKA will subscribe for and purchase new shares of FFHC, who will, in turn, cancel and terminate all of its existing equity securities so that FIKA may become the sole shareholder of FFHC and ultimately, each of the subsidiaries of FFHC; and
- (b) All Excluded Contracts, Excluded Assets, and Excluded Liabilities with respect to the Applicants will be transferred and "vested out" to a corporation to be incorporated by FFHC in advance of the Closing Date ("**Residual Co.**"), so as to allow FIKA to indirectly acquire the Applicants' business and assets on a "free and clear" basis.

37. More specifically, if approved by this Court, the Approval and Reverse Vesting Order provides for the following sequence to occur upon closing (the "**Closing Sequence**"):

- (a) first, all of the Applicants' right, title and interest in and to their respective Excluded Assets shall vest absolutely and exclusively in Residual Co., with all applicable Claims and Encumbrances continuing to attach to the Excluded Assets and to the Purchase Price;

- (b) second, all Excluded Contracts, Excluded Leases, and Excluded Liabilities shall be channeled to, assumed by and vest absolutely and exclusively in Residual Co. such that the Excluded Contracts, Excluded Leases and Excluded Liabilities shall become obligations of Residual Co., and shall no longer be obligations of the Applicants and all of the Applicants' respective assets, licenses, undertakings and properties of every nature and kind whatsoever and wherever situate, including property held in trust for the Applicants (the "**F&F Group's Property**"), shall be forever released and discharged from such Excluded Contracts, Excluded Leases and Excluded Liabilities and all related Claims and all Encumbrances affecting or relating to the F&F Group's Property are to be expunged and discharged as against the F&F Group's Property;
- (c) third, the Articles of Amendment shall be filed or deemed to have been filed;
- (d) fourth, in consideration for the Purchase Price, FFHC shall issue the Purchased Shares to FIKA, and all of the right, title and interest in and to the Purchased Shares shall vest absolutely in FIKA, free and clear of and from any and all Claims and Encumbrances of any kind and in favour of any party and, for greater certainty, all of the Claims and Encumbrances of any kind affecting or relating to the Purchased Shares would be expunged and discharged as against the Purchased Shares;
- (e) fifth, pursuant to the Articles of Amendment, any fractional Purchased Shares and all Equity Interests of FFHC outstanding prior to the issuance of the Purchased Shares other than the Purchased Shares, including all options, conversion privileges, equity-based awards, warrants, securities, debentures, loans, notes or other rights, agreements or commitments of any character whatsoever that are held by any Person and are convertible or exchangeable for any securities of FFHC or which require the issuance, sale or transfer by FFHC, of any shares or other securities of FFHC and/or the share capital of FFHC, or otherwise relating thereto, shall be deemed terminated and cancelled and the only Equity Interests of FFHC that shall remain shall be the Purchased Shares; and
- (f) sixth, the F&F Group shall be deemed to cease being Applicants in these CCAA Proceedings, with Residual Co. becoming the sole Applicant in these CCAA

Proceedings. The F&F Group shall be deemed to be released from the purview of the ARIO and all other Orders of this Court granted in respect of these CCAA Proceedings, save and except for the Approval and Reverse Vesting Order, the provisions of which (as they relate to the F&F Group) shall continue to apply in all respects.

38. As outlined in the Initial Affidavit, the Applicants operate in a highly regulated environment in accordance with the *Cannabis Act* (Canada) and applicable provincial and municipal legislation. Among other things, these governments establish rules regarding how cannabis can be sold, how retail stores must be operated, where such stores can be located and who is allowed to sell cannabis.

39. The Applicants currently operate seventy-two (72) cannabis retail stores pursuant to cannabis retail and operator licenses in good standing, and two (2) wholesale distribution facilities pursuant to a cannabis wholesale permit and a limited distribution license. These licenses and permits are held across British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, and the Yukon.

40. In addition to the foregoing licenses and permits, which would require re-issuance to a purchaser if an asset transfer was implemented, the Applicants would require consents to assign, re-establish or enter into new arrangements with respect to various other commercial counterparties including, but not limited to:

- (a) contracts with certain provincially operated cannabis distributors;
- (b) contracts with certain licensed cannabis producers;
- (c) contracts with certain suppliers of strategic data sources;
- (d) intellectual property which would require re-recording and registration of the names and assignment;
- (e) leases with certain landlords; and
- (f) contracts with certain premises security and other service providers, whose services are required to maintain the applicable licenses and permits under the applicable cannabis laws.

41. Under a traditional asset sale transaction structure, some of these licenses, permits, and contracts with government entities and other strategic suppliers may be difficult to transfer to a purchaser and, to the extent that such transfer is possible, the steps required to proceed with such transfer will likely result in additional delays, costs, and uncertainty.

42. Accordingly, the Subscription Agreement was structured as a reverse vesting transaction because, in part, it will permit the Applicants to maintain their licenses, intellectual property, and contracts with government entities and strategic suppliers. While certain cannabis regulatory approvals are required from the applicable government entity as it relates to a change of control, I have personally met with representatives of each the applicable provincial regulatory agencies and been advised by the Applicants' regulatory counsel and believe that such approvals will likely not have the same additional delays, costs, and uncertainty as would be required to implement an asset transfer.

43. Further, FIKA has demonstrated its ability to satisfy provincial regulators as to its fitness to operate licensed cannabis retail stores, as FIKA directly or indirectly owns and operates approximately twenty-five (25) cannabis retail stores in Ontario.

44. As the Applicants are facing significant liquidity constraints, the delays, costs, and uncertainty associated with getting their licenses, intellectual property and contracts with government entities, strategic suppliers and certain landlords transferred is not a viable option.

45. The reverse vesting structure may also permit the maintenance of the Applicants' tax attributes, which includes the Applicants' operating losses.

46. I do not believe that completing the Transactions under a reverse vesting structure will result in any material prejudice or impairment of any of the Applicants' creditors' rights that they would otherwise have under an asset sale transaction under any other alternative available to the Applicants. The Subscription Agreement maintains the rights that creditors would otherwise have in an asset sale transaction. In the case of parties with existing contracts with the Applicants, though no assignment of contracts (consensual or through an assignment order) is contemplated, the Subscription Agreement provides for all contracts, other than the Excluded Contracts, to remain with the Applicants. The contracting parties therefore have the opportunity to continue supplying goods and services to the Applicants post-emergence from the CCAA Proceedings. Contract counterparties will also be served with the Applicants' motion record to provide them with notice that their contracts may be retained or excluded as part of the Transactions.

47. In this case, the market has been thoroughly canvassed. The Monitor and the Special Committee confirm that the best going-concern option which would result in continued employment for many of the Applicants' employees, continued relationships with the Applicants' suppliers and customers, and millions of dollars for recovery to unsecured creditors, among other benefits, are the Transactions contemplated under the Subscription Agreement.

48. While a variety of liabilities will be vested out into Residual Co. in this structure, the same result would have occurred had the transaction been implemented in an asset transaction structure. The concept of Retained Liabilities in the Subscription Agreement provides a benefit for a variety of stakeholders that would not have otherwise had this benefit in a traditional asset vesting transaction structure. As referenced above, the Retained Liabilities include: (a) all Post-Filing Claims; (b) all liabilities of the Applicants arising from and after Closing; (c) tax liabilities; (d) Intercompany Claims; (e) indemnification obligations to current and former directors and officers of the Applicants, subject to certain conditions; (f) Priority Payments; and (g) Administration Expense Costs not otherwise paid by the F&F Group.

49. Finally, I believe, based on my involvement with the pre-filing strategic process leading up to commencement of the CCAA Proceedings and the SISF that:

- (a) the process leading to the proposed Transactions, which began at least as early as September 2022, was reasonable in the circumstances;
- (b) the Monitor properly conducted the SISF and consulted the Applicants through the Special Committee throughout, as required and necessary;
- (c) the Transactions, if approved by this Court, will result in the best outcome for the Applicants and their creditors and other stakeholders in the circumstances, as confirmed by the Monitor, the Special Committee, and the Applicants' counsel;
- (d) the consideration to be received for the Purchased Shares is reasonable and fair, taking into account their market value and the broad canvassing of the potentially interested parties during the pre-filing strategic process and the SISF;
- (e) the Company has now tested the market on at least two separate occasions with the benefit of experienced advisors;

- (f) the Monitor and the Applicants' secured creditor, ACT Investor are both supportive of the relief sought on this motion.

B. Releases

50. As set forth in the draft Approval and Reverse Vesting Order, the Applicants also seek the issuance of the Releases in favour of (a) the Released Parties (being the current directors, officers, employees, legal counsel, consultants and advisors to the Applicants and Residual Co.; and the Monitor and its current directors, officers, partners, employees and advisors) from the Released Claims; and (b) the Other Released Parties (being the Applicants, ACT Investor, in its capacity as the DIP Lender and the Stalking Horse Bidder, and FIKA) from the Other Released Claims.

51. As set out above:

- (a) the Released Claims covers any and all present and future claims against the Released Parties based upon any fact or matter of occurrence in respect of the CCAA Proceedings, the Subscription Agreement, or the Back-Up Subscription Agreement, as the case may be, and the completion of the Transactions or the Back-Up Transactions, as the case may be. The Released Claims do not release claims which are not permitted to be released pursuant to section 5.1(2) of the CCAA; and
- (b) the Other Released Claims covers any and all present and future claims against the Other Released Parties based upon any fact or matter of occurrence in respect of any act or omission, transaction, dealing or other occurrence existing or taking place prior to the filing of the Monitor's Closing Certificate, or undertaken or completed in connection with or pursuant to the terms of the Approval and Reverse Vesting Order and that relate in any manner whatsoever to the Subscription Agreement or Back-Up Subscription Agreement, as the case may be, the completion of the Transactions or the Back-Up Transactions, as the case may be, the closing documents, any agreement, document, instrument, matter or transaction involving the Applicants arising in connection with or pursuant to any of the foregoing, and/or the consummation of the Transactions or the Back-Up Transactions, as the case may be.

52. Notably, the Release in favour of the Released Parties only applies to the Applicants' current directors, officers, employees, legal counsel, consultants and advisors. The Approval and Reverse Vesting Order defines "current" as those individuals who remain in their applicable role(s) up to one day prior to closing of the Transactions or Back-Up Transactions, as applicable.

53. The Releases are being sought in order to achieve certainty and finality for the Released Parties and Other Released Parties in the most efficient and appropriate manner given the circumstances.

54. The Applicants believe that the Releases sought are appropriate, given the significant and material contributions of the Released Parties and Other Released Parties in connection with the CCAA Proceedings and Transactions or Back-Up Transactions, as applicable, which, as previously discussed, will allow for the satisfaction of all the Applicants' secured liabilities, provide for millions in recovery to unsecured creditors, assumption of certain unsecured liabilities, and will allow the Applicants to continue their operations as a going concern.

55. The Applicants and the Monitor believe that the Releases are an essential component to the Transactions and Back-Up Transactions, as applicable.

C. Path to Closing

56. As noted above, the Outside Date to close the Transactions contemplated in the Subscription Agreement is September 15, 2023.

57. Immediately after the conclusion of the Auction, FFHC, FIKA, and the Monitor started working on getting to a successful closing of the Transactions. Among other things, the parties reached out to the applicable regulatory entities to start the process to obtain the necessary Transaction Regulatory Approvals (as defined in the Subscription Agreement).

58. While the parties have moved as expeditiously as possible to obtain the Transaction Regulatory Approvals from the applicable regulatory authorities, I understand that there is a possibility that the Transaction Regulatory Approvals will not all be obtained prior to September 15, 2023 if certain regulatory authorities require completion of their due diligence reviews prior to completion of the Transactions and are unable to complete same prior to September 15, 2023.

59. To the extent that the Transactions cannot close by September 15, 2023, the Applicants engaged with FIKA and the DIP Lender regarding an extension to the Outside Date and additional debtor-in-possession financing and will return to this Court to seek such relief as necessary.

D. Approval of the Back-Up Subscription Agreement

60. For the same reasons set out above with respect to why the Subscription Agreement and the Transactions contemplated therein should be approved, this Court should approve the Back-Up Subscription Agreement and the Back-Up Transactions contemplated therein, but only to the extent that the Subscription Agreement and the Transactions contemplated therein do not close for any reason.

61. Among other benefits, the Back-Up Subscription Agreement and Back-Up Transactions also result in the Applicants continuing operations as a going concern, with all of the Applicants' secured liabilities being satisfied and millions of dollars for recovery to the Applicants' unsecured creditors.

62. However, the Back-Up Subscription Agreement provides for less consideration than the Subscription Agreement.

63. Certain terms of the Back-Up Subscription Agreement are being negotiated. The Applicants will serve a supplementary affidavit containing the executed Back-Up Subscription Agreement as soon as same is available, and prior to the hearing of this Motion.

E. Claims Process³

64. As a result of the SISP generating bids in excess of the Applicants' secured debt, the Applicants are proposing to establish a process for the identification, quantification, and resolution of unsecured claims against Residual Co (the "**Claims Process**").

65. A draft Claims Procedure Order will be attached to the Applicants' Motion Record and stakeholders are encouraged to consult that draft for full details of the Claims Process. However, the following is a high-level summary of certain key aspects of the Claims Process:

³ All capitalized terms used in this subsection and not otherwise defined herein have the meanings given to them in the Claims Process Order.

- (a) **Notice.** The Monitor shall send a Claims Package to each Known Claimant within five (5) Business Days following the issuance of the Claims Procedure Order;
- (b) **Pre-Filing Claims Bar Date.** The Pre-Filing Claims Bar Date to submit a Proof of Claim with respect to all Pre-Filing Claims is 5:00 p.m. (prevailing Eastern Time) on October 12, 2023;
- (c) **Restructuring Claims Bar Date.** The Restructuring Claims Bar Date to submit a Proof of Claim with respect to all Restructuring Claims is the later of:
 - (i) The Pre-Filing Claims Bar Date; and
 - (ii) 5:00 p.m. (prevailing Eastern Time) on the day which is thirty (30) days after the Monitor sends a Claims Package with respect to a Restructuring Claim in accordance with the Claims Procedure Order;
- (d) **Review of Proofs of Claim.** The Monitor, in consultation with the Applicants, shall review all Proofs of Claim and may (i) request additional information from a Claimant; (ii) request that a Claimant file a revised Proof of Claim; (iii) attempt to resolve and settle any issue arising in a Proof of Claim; (iv) accept (in whole or in part) any Claim; and (v) revise or disallow (in whole or in part) any Claim;
- (e) **Notice of Revision or Disallowance.** Where a Claim is revised or disallowed, the Monitor shall deliver to the Claimant a Notice of Revision or Disallowance, attaching the form of Notice of Dispute;
- (f) **Notice of Dispute.** Any Person who intends to dispute a Notice of Revision or Disallowance pursuant to the Claims Procedure Order shall deliver a Notice of Dispute no later than fourteen (14) days after receiving the Notice of Revision or Disallowance;
- (g) **Disputed Claims Resolution.** If a dispute raised in a Notice of Dispute is not settled within a reasonable time or in a manner satisfactory to the Applicants, the Monitor may refer the dispute to the Claims Officer for determination.

- (h) **Claims Officer.** The Claims Officer shall determine the status and/or amount of each Claim in respect of which a dispute has been referred to the Claims Officer. The Applicants propose Niels Ortved be appointed as Claims Officer.
- (i) **Appeal of Claims Officer's Determination.** The Applicants or the Claimant may appeal the Claims Officer's determination by serving and filing a notice of motion on the other party (with a copy to the Monitor) within ten (10) calendar days of notification of the Claims Officer's determination of such Claim.

66. The Applicants' proposed Claims Process is embodied in the Claims Procedure Order, which has been prepared by the Applicants in consultation with the Monitor and its counsel.

67. The Applicants believe that the notification process described in the Claims Procedure Order will provide Claimants with adequate notice of the Claims Process and an adequate opportunity to prove their Claims prior to the Pre-Filing Claims Bar Date or the Restructuring Claims Bar Date, as applicable.

68. In addition, the Applicants believe that the adjudication procedure described in the Claims Procedure Order will facilitate the fair and expeditious resolution of any disputes regarding the status and/or amount of each Claim.

F. Extension of Stay Period

69. The Applicants are seeking to extend the Stay Period from September 1, 2023 to and including October 15, 2023. The extension of the Stay Period is necessary and appropriate in the circumstances to provide the Applicants with continued breathing space while they attempt to maximize value for the benefit of their stakeholders through the CCAA Proceedings and the Claims Process.

70. The Subscription Agreements contemplate an Outside Date of September 15, 2023 to close the Transactions or Back-Up Transactions, as the case may be. Additional time may be required to complete the Transactions or Back-Up Transactions, as the case may be, contemplated under the Subscription Agreements.

71. Further, while Residual Co. (as an applicant in these CCAA Proceedings following closing of the Transactions) will likely return to this Court to seek other forms of relief prior to the proposed extended Stay Period, such as approval of distributions to ACT Investor from the purchase price

under the Subscription Agreement, the Claims Process will likely run until at least October 15, 2023.

72. Since the granting of the ARIO and the SISP Order, the Applicants have, among other things:

- (a) preserved the Applicants' liquidity and limited their cash burn during the CCAA Proceedings by:
 - (i) operating in the ordinary course of business;
 - (ii) sending disclaimer notices in respect of several contracts; and
 - (iii) obtaining returns of deposits held by various landlords who had their leases disclaimed by the Applicants;
- (b) negotiated terms of various lease amendments with landlords;
- (c) engaged with the applicable regulatory authorities to keep them apprised of the SISP and the CCAA Proceedings; and
- (d) responded to numerous creditor and stakeholder enquiries regarding these CCAA Proceedings.

73. Accordingly, the Applicants have acted, and are continuing to act in good faith and with due diligence in these CCAA Proceedings.

74. The Applicants prepared an updated cash flow forecast which will be attached to the Third Report of the Monitor (the "**Updated Cash Flow Forecast**"). The Updated Cash Flow Forecast reflects that the Applicants are expected to maintain liquidity and fund operations up to October 15, 2023.

75. I do not believe that the proposed extension of the Stay Period will materially prejudice any of the Applicants' stakeholders. Further, I understand that the Monitor supports the proposed extension of the Stay Period and will be providing further details with respect to the appropriateness of the requested extension of the Stay Period in its Third Report.

76. Finally, the Applicants are in active discussions with FIKA and the DIP Lender regarding repayment of the DIP Facility or extending the maturity date for the DIP Facility beyond September 15, 2023. The Applicants expect to finalize these discussions prior to their attendance before Court on August 29, 2023, and will either file supplementals or provide the Court with an update in respect of same.

G. FAFUS

77. As outlined in the Initial Affidavit, FFHC has an option, but not an obligation to acquire all of the shares or all or substantially all of the assets of Fire & Flower US Holdings Inc. ("**FAFUS**"), an entity unaffiliated to the Applicants.

78. The beneficiary of the secured debt instrument (the "**Secured Party**") and FAFUS also entered into a security agreement (the "**FAFUS Security Agreement**") as part of FAFUS's acquisition, pursuant to which FAFUS granted a first-ranking charge over substantially all its assets to the Secured Party.

79. Both FFHC and FAFUS received a notice on August 18, 2023 from Secured Party, wherein it was alleged that FAFUS had defaulted on its obligations under the FAFUS Security Agreement. Upon certain defaults under the FAFUS Security Agreement, the Secured Party may enforce on substantially all the assets of FAFUS (but must provide FFHC with notice of same and provide FFHC with ten (10) business days notice to purchase the FAFUS Security Agreement and secured debt instrument referenced above).

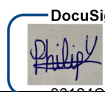
80. FAFUS responded on August 21, 2023 and denied some of the Secured Party's allegations of defaults under the Security Agreement.

81. The Company continues to evaluate its options and is in discussions with FAFUS and FIKA with respect to the foregoing.

VI. CONCLUSION


82. In light of the foregoing, I believe that the relief sought by the Applicants in connection with this Motion is reasonable and appropriate in the circumstances. I understand that the Monitor is also supportive of the relief sought by the Applicants in connection with this Motion.

SWORN remotely via videoconference, by
Stephane Trudel, stated as being located in
the City of Montreal, in the Province of
Quebec, before me at the City of Toronto, in
Province of Ontario, this day of August 23,
2023, in accordance with O. Reg 431/20,
Administering Oath or Declaration Remotely.

DocuSigned by:


0012104210DD47C...

Commissioner for Taking Affidavits, etc.
PHILIP YANG

DocuSigned by:


35990CB93F614E0...

STEPHANE TRUDEL

EXHIBIT "A"

referred to in the Affidavit of

STEPHANE TRUDEL

Sworn August 23, 2023

DocuSigned by:

A blue DocuSigned signature box containing a handwritten signature in blue ink that reads "Philip".

36124C4218DD47C...

Commissioner for Taking Affidavits
Philip Yang



Court File No. CV-23-00700581-00CL

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

THE HONOURABLE)
JUSTICE STEELE) MONDAY, THE 5TH DAY
OF JUNE, 2023

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

AND IN THE MATTER OF PLAN OF COMPROMISE OR ARRANGEMENT OF FIRE &
FLOWER HOLDINGS CORP., FIRE & FLOWER INC., 13318184 CANADA INC., 11180703
CANADA INC., 10926671 CANADA LTD., FRIENDLY STRANGER HOLDINGS CORP.,
PINEAPPLE EXPRESS DELIVERY INC., and HIFYRE INC

Applicants

INITIAL ORDER

THIS APPLICATION, made by Fire & Flower Holdings Corp., Fire & Flower Inc., 13318184 Canada Inc. ("**133 Canada**"), 11180703 Canada Inc., 10926671 Canada Ltd., Friendly Stranger Holdings Corp., Pineapple Express Delivery Inc., and Hifyre Inc. (collectively, the "**Applicants**"), for an initial order pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") was heard this day by judicial videoconference via Zoom.

ON READING the affidavit of Stephane Trudel sworn June 5, 2023 (the "**Trudel Affidavit**") and the Exhibits thereto, the pre-filing report of FTI Consulting Canada Inc. ("**FTI**"), in its capacity as proposed monitor of the Applicants (in such capacity, the "**Monitor**") dated June 5, 2023 (the "**Pre-Filing Report**"), the consent of FTI to act as the Monitor, on being advised that the secured creditors who are likely to be affected by the charges created herein were given notice, and on hearing the submissions of counsel for the Applicants, counsel for FTI, counsel for 2707031 Ontario Inc. ("**ACT Investor**") and ACT Investor in its capacity as the DIP Lender (as defined below), and such other parties as listed on the Counsel Slip, with no one else appearing although duly served as appears from the affidavit of service of Philip Yang sworn June 5, 2023,

SERVICE AND DEFINITIONS

1. **THIS COURT ORDERS** that the time for service of the Notice of Application and the Application Record is hereby abridged and validated so that this Application is properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS** that capitalized terms used but not defined in this Order shall have the meanings given to them in the Trudel Affidavit.

APPLICATION

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

POSSESSION OF PROPERTY AND OPERATIONS

4. **THIS COURT ORDERS** that the Applicants shall remain in possession and control of their current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "**Property**"). Subject to further Order of this Court, the Applicants shall continue to carry on business in a manner consistent with the preservation of their business (the "**Business**") and Property. The Applicants are authorized and empowered to continue to retain and employ their employees, consultants, agents, experts, accountants, counsel and such other persons (collectively "**Assistants**") currently retained or employed by them, with liberty to retain such further Assistants as they deem reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.
5. **THIS COURT ORDERS** that the Applicants shall be entitled to continue to utilize their existing central cash management system currently in place or replace it with another substantially similar central cash management system (the "**Cash Management System**") and that any present or future bank providing the Cash Management System shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the Applicants of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person or Persons (as hereinafter defined) other than the Applicants, pursuant to the terms of the documentation applicable to the Cash Management

System, and shall be, in its capacity as provider of the Cash Management System, an unaffected creditor under any plan of arrangement or compromise under the CCAA with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.

6. **THIS COURT ORDERS** that the Applicants shall be entitled but not required to pay the following expenses whether incurred prior to or after this Order, subject to compliance with the Updated Bi-Weekly Budget (as defined in the DIP Facility Agreement), as may be amended from time to time:

- (a) all outstanding and future wages, salaries, employee and pension benefits, vacation pay and employee and director expenses payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements; and
- (b) the fees and disbursements of any Assistants retained or employed by the Applicants in respect of these proceedings, at their standard rates and charges.

7. **THIS COURT ORDERS** that, except as otherwise provided to the contrary herein, the Applicants shall be entitled, subject to compliance with the Updated Bi-Weekly Budget, as may be amended from time to time, but not required to pay all reasonable expenses incurred by the Applicants in carrying on their Business in the ordinary course after this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

- (a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors' and officers' insurance), maintenance and security services; and
- (b) payment for goods or services actually supplied to the Applicants following the date of this Order.

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

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

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

- (b) all goods and services or other applicable sales taxes (collectively, "**Sales Taxes**") required to be remitted by the Applicants in connection with the sale of goods and services by the Applicants, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order; and
- (c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the Applicants.

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

10. **THIS COURT ORDERS** that, except as specifically permitted herein, the Applicants are hereby directed, until further Order of this Court:

- (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Applicants to any of their creditors as of this date;
- (b) to grant no security interests, trust, liens, mortgages, charges or encumbrances upon or in respect of any of the Property; and
- (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

RESTRUCTURING

11. **THIS COURT ORDERS** that the Applicants shall, subject to such requirements as are imposed by the CCAA, have the right to:

- (a) terminate the employment of such its employees or temporarily lay off such of its employees as it deems appropriate;
- (b) pursue all restructuring options for the Applicants including, without limitation, all avenues of refinancing of their Business or Property, in whole or in part, subject to prior approval of this Court being obtained before any material refinancing; and

all of the foregoing to permit the Applicants to proceed with an orderly restructuring of the Business (the “**Restructuring**”).

12. **THIS COURT ORDERS** that the relevant Applicant shall provide each of the relevant landlords with notice of the Applicant’s intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Applicant’s entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Applicant, or by further Order of this Court upon application by the Applicant on at least two (2) days notice to such landlord and any such secured creditors. If the Applicant disclaims the lease governing such leased premises in accordance with Section 32 of the CCAA, it shall not be required to pay Rent under such lease pending resolution of any such dispute (other than Rent payable for the notice period provided for in Section 32(5) of the CCAA), and the disclaimer of the lease shall be without prejudice to the Applicant’s claim to the fixtures in dispute.

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

the Applicant in respect of such lease or leased premises, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

NO PROCEEDINGS AGAINST THE APPLICANTS OR THE PROPERTY

14. **THIS COURT ORDERS** that until and including June 15, 2023, or such later date as this Court may order (the “**Stay Period**”), no proceeding or enforcement process in any court or tribunal (each, a “**Proceeding**”) shall be commenced or continued against or in respect of the Applicants or the Monitor, or affecting their Business or their Property, except with the written consent of the Applicants and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Applicants or affecting their Business or their Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

15. **THIS COURT ORDERS** that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being “**Persons**” and each being a “**Person**”) against or in respect of the Applicants or the Monitor, or affecting their Business or their Property, are hereby stayed and suspended except with the written consent of the Applicants and the Monitor, or leave of this Court, provided that nothing in this Order shall (a) empower the Applicants to carry on any business which the Applicants are not lawfully entitled to carry on, (b) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA, (c) prevent the filing of any registration to preserve or perfect a security interest, or (d) prevent the registration of a claim for lien.

NO INTERFERENCE WITH RIGHTS

16. **THIS COURT ORDERS** that during the Stay Period, no Person shall discontinue, fail to renew per the same terms and conditions, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Applicants, including but not limited to renewal rights in respect of existing insurance policies on the same terms, except with the written consent of the Applicants and the Monitor, or leave of this Court. For greater certainty, MC Cannabis Inc. and Alimentation Couche-Tard Inc. shall not discontinue, fail to honour, alter, interfere with, repudiate, terminate, or cease to perform any right, renewal right, contract, agreement, license or permit in favour of or held by 133 Canada.

CONTINUATION OF SERVICES

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

NON-DEROGATION OF RIGHTS

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

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

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

DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

20. **THIS COURT ORDERS** that the Applicants shall indemnify their directors and officers against obligations and liabilities that they may incur as directors or officers of the Applicants after the commencement of the within proceedings, except to the extent that, with respect to any officer or director, the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

21. **THIS COURT ORDERS** that the directors and officers of the Applicants shall be entitled to the benefit of and are hereby granted a charge (the "**D&O Charge**") on the Property, which charge shall not exceed an aggregate amount of \$2,800,000, as security for the indemnity provided in paragraph 20 of this Order. The D&O Charge shall have the priority as set out in paragraphs 39 and 41 herein.

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

APPOINTMENT OF MONITOR

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

24. **THIS COURT ORDERS** that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- (a) monitor the Applicants' receipts and disbursements and the Applicants' compliance with the Updated Bi-Weekly Budget;

- (b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;
- (c) assist the Applicants, to the extent required by the Applicants, in their dissemination of financial and other information to the DIP Lender and its counsel on a periodic basis of financial and other information as agreed to between the Applicants and the DIP Lender, or as may reasonably be requested by the DIP Lender;
- (d) advise the Applicants in their preparation of the Applicants' cash flow statements and reporting required by the DIP Lender, which information shall be reviewed with the Monitor and delivered to the DIP Lender and its counsel on a periodic basis, or as may reasonably be requested by the DIP Lender;
- (e) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Applicants, to the extent that is necessary to adequately assess the Applicants' business and financial affairs or to perform its duties arising under this Order;
- (f) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order; and
- (g) perform such other duties as are required by this Order or by this Court from time to time.

25. **THIS COURT ORDERS** that the Monitor shall not occupy or take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of (or be deemed to take Possession of), or exercise (or be deemed to have exercised) any rights of control over any activities in respect of, the Property, or any assets, properties or undertakings of any of the Applicants', or the direct or indirect subsidiaries or affiliates of any of the Applicants', including any joint venture entities, for which a permit or license is issued or required pursuant to any provision of any federal, provincial, or other law respecting, among other things, the manufacturing, possession, processing, and distribution of cannabis or cannabis products including, without limitation, under the *Cannabis Act*, S.C. 2018, c. 16, the *Controlled Drugs and*

Substances Act, S.C. 1996, c. 19, the *Excise Tax Act*, R.S.C. 1985, c. E. 15, *Excise Act*, 2001, S.C. 2002, c.22 the *British Columbia Cannabis Control and Licensing Act*, S.B.C. 2018, c. 29, the *British Columbia Cannabis Distribution Act*, S.B.C. 2018, c. 28, the *Ontario Cannabis Control Act*, 2017, S.O. 2017, c. 26, Sched. 1, *Ontario Cannabis Retail Corporation Act*, 2017, S.O. 2017, c. 26, the *Cannabis License Act*, 2018, S.O. 2018, c. 12, or other such applicable federal or provincial legislation, and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof, and nothing in this Order shall be construed as resulting in the Monitor being an employer or successor employer within the meaning of any statute, regulation or rule of law or equity, for any purpose whatsoever.

26. **THIS COURT ORDERS** that nothing herein contained shall require the Monitor to occupy or take Possession of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act, 1999*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, the *Ontario Mining Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the “**Environmental Legislation**”), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order, or anything done in pursuance of the Monitor’s duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

27. **THIS COURT ORDERS** that that the Monitor shall provide any creditor of the Applicants and the DIP Lender with information provided by the Applicants in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Applicants is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicants may agree.

28. **THIS COURT ORDERS** that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

29. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor and counsel to the Applicants shall be paid their reasonable fees and disbursements (including pre-filing fees and disbursements), in each case at their standard rates and charges, whether incurred prior to, on or subsequent to, the date of this Order by the Applicants as part of the costs of these proceedings. The Applicants are hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and counsel for the Applicants on a weekly basis. In addition, the Applicants are hereby authorized to pay to the Monitor and counsel to the Monitor, retainers in the amounts of \$50,000 each, to be held by them as security for payment of their respective fees and disbursements outstanding from time to time.

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

31. **THIS COURT ORDERS** that the Applicants' counsel, the Monitor and its counsel shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on the Property, which charge shall not exceed an aggregate amount of \$600,000, as security for their professional fees and disbursements incurred at the standard rates and charges of the Monitor and such counsel, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority as set out in paragraphs 39 and 41 hereof.

DIP FACILITY

32. **THIS COURT ORDERS** that the Applicants are hereby authorized and empowered to obtain and borrow under the DIP Facility from ACT Investor, in its capacity as the DIP Lender, in order to finance the Applicants' working capital requirements, and other general corporate purposes and capital expenditures.

33. **THIS COURT ORDERS** that such DIP Facility shall be on the terms and subject to the conditions set forth in the DIP Facility Loan Agreement between the Applicants and the DIP

Lender dated as of June 5, 2023, appended as **Exhibit “N”** to the Trudel Affidavit (the “**DIP Facility Agreement**”).

34. **THIS COURT ORDERS** that the Applicants are hereby authorized and empowered to borrow, in accordance with the terms and conditions of the DIP Facility Agreement, interim financing of up to \$2,700,000 during the Stay Period.

35. **THIS COURT ORDERS** that the Applicants are hereby authorized and empowered to execute and deliver such agreements, instruments, mortgages, charges, hypothecs and security documents, guarantees and other definitive documents (collectively with the DIP Facility Agreement, the “**Definitive Documents**”), as may be contemplated by the DIP Facility Agreement or as may be reasonably required by the DIP Lender pursuant to the terms thereof, and the Applicants are hereby authorized and directed to pay and perform all of its indebtedness, interest, fees, liabilities and obligations to the DIP Lender under and pursuant to the Definitive Documents (collectively, the “**DIP Obligations**”) as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

36. **THIS COURT ORDERS** that the DIP Lender shall be entitled to the benefit of and is hereby granted a charge (the “**DIP Lender’s Charge**”) on the Property as security for the DIP Obligations, which DIP Lender’s Charge shall be in the aggregate amount of the DIP Obligations outstanding at any given time under the Definitive Documents. The DIP Lender’s Charge shall not secure an obligation that exists before this Order is made. The DIP Lender’s Charge shall have the priority as set out in paragraphs 39 and 41 hereof.

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

- (a) the DIP Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP Lender’s Charge or any of the Definitive Documents;
- (b) upon the occurrence of an event of default under the Definitive Documents or the DIP Lender’s Charge, the DIP Lender, upon three business days’ notice to the Applicants and the Monitor, may exercise any and all of its rights and remedies against the Applicants or the Property under or pursuant to the Definitive Documents and the DIP Lender’s Charge, including without limitation, to cease making advances to the Applicants and set off and/or consolidate any amounts

owing by the DIP Lender to the Applicants against the obligations of the Applicants to the DIP Lender under the Definitive Documents or the DIP Lender's Charge, to make demand, accelerate payment and give other notices, or to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Applicants and for the appointment of a trustee in bankruptcy of the Applicants; and

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

38. **THIS COURT ORDERS AND DECLARES** that ACT Investor and the DIP Lender shall be treated as unaffected in any plan of arrangement or compromise under the CCAA, or any proposal filed under the BIA, with respect to any advances made by ACT Investor, as secured lender to the Applicants, and under the Definitive Documents.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

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

First - Administration Charge (to the maximum amount of \$600,000);

Second – DIP Lender's Charge (to the maximum amount of \$2,700,000; and

Third - Directors' Charge (to the maximum amount of \$2,800,000).

40. **THIS COURT ORDERS** that the filing, registration or perfection of the Charges shall not be required, and that the Charges shall be effective as against the Property and shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

41. **THIS COURT ORDERS** that the Charges shall constitute a charge on the Property and shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, "**Encumbrances**") in favour of any

Person, provided that the Charges shall rank behind Encumbrances in favor of any Persons that have not been served with notice of this application. The Applicants and beneficiaries of the Charges shall be entitled to seek priority ahead of such Encumbrances on notice to those parties.

42. **THIS COURT ORDERS** that except as otherwise expressly provided for herein, the Applicants shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Charges, unless the Applicants also obtain the prior written consent of the Monitor, the DIP Lender and the beneficiaries of the Directors' Charge and the Administration Charge, or further Order of this Court.

43. **THIS COURT ORDERS** that the Directors' Charge, the Administration Charge, the Definitive Documents and the DIP Lender's Charge shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "**Chargees**") and/or the DIP Lender thereunder shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal, provincial or other statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "**Agreement**") which binds the Applicants, and notwithstanding any provision to the contrary in any Agreement:

- (a) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of the Definitive Documents shall create or be deemed to constitute a breach by the Applicants of any Agreement to which they are a party;
- (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the Applicants entering into the DIP Facility Agreement, the creation of the Charges, or the execution, delivery or performance of the Definitive Documents; and
- (c) the payments made by the Applicants pursuant to this Order, the Definitive Documents, and the granting of the Charges, do not and will not constitute

preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

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

SERVICE AND NOTICE

45. **THIS COURT ORDERS** that the Monitor shall (a) without delay, publish in The Globe and Mail (National Edition) a notice containing the information prescribed under the CCAA, (b) within five days after the date of this Order, (i) make this Order publicly available in the manner prescribed under the CCAA, (ii) send, in the prescribed manner, a notice to every known creditor who has a claim against the Applicants of more than \$1000, and (iii) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder, provided that the Monitor shall not make the claims, names and addresses of any individual persons who are creditors available.

46. **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the "Protocol") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>) shall be valid and effective service. Subject to Rule 17.05, this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the *Rules of Civil Procedure*. Subject to Rule 3.01(d) of the *Rules of Civil Procedure* and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL: www.cfcanada.fticonsulting.com/Fire&Flower

47. **THIS COURT ORDERS** that the Applicants, the Monitor and their respective counsel are at liberty to serve or distribute this Order, and other materials and orders as may be reasonably required in these proceedings, including any notices, or other correspondence, by forwarding true copies thereof by electronic message to the Applicants' creditors or other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or judicial obligation and notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations*, Reg. 81000-2-175 (SOR/DORS).

48. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Applicants and the Monitor are at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Applicants' creditors or other interested parties at their respective addresses as last shown on the records of the Applicants and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

COMEBACK MOTION

49. **THIS COURT ORDERS** that the Comeback Motion shall be heard on June 15, 2023.

GENERAL

50. **THIS COURT ORDERS** that the Applicants, the DIP Lender, or the Monitor may from time to time apply to this Court to amend, vary or supplement this Order or for advice and directions in the discharge of their powers and duties hereunder.

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

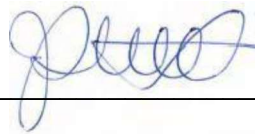
52. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Applicants, the Monitor and their respective agents in carrying out the terms of this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

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

in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

54. **THIS COURT ORDERS** that any interested party (including the Applicants and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

55. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard/Daylight Time on the date of this Order.



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

AND IN THE MATTER OF PLAN OF COMPROMISE OR ARRANGEMENT OF FIRE & FLOWER HOLDINGS CORP., FIRE & FLOWER INC.,
13318184 CANADA INC., 11180703 CANADA INC., 10926671 CANADA LTD., FRIENDLY STRANGER HOLDINGS CORP., PINEAPPLE
EXPRESS DELIVERY INC., and HIFYRE INC.

Applicants

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

PROCEEDING COMMENCED AT TORONTO

INITIAL ORDER

STIKEMAN ELLIOTT LLP

Barristers & Solicitors
5300 Commerce Court West
199 Bay Street
Toronto, Canada M5L 1B9

Maria Konyukhova (LSO #52880V)

Tel: (416) 869-5230
Email: mkonyukhova@stikeman.com

Philip Yang (LSO #82084O)

Tel: (416) 869-5593
Email: pyang@stikeman.com

Lawyers for the Applicants

EXHIBIT "B"

referred to in the Affidavit of

STEPHANE TRUDEL

Sworn August 23, 2023

DocuSigned by:



36124C4218DD47C...

Commissioner for Taking Affidavits
Philip Yang

Developments Ltd., Daniels HR Corporation, and the Canada Life Assurance Company, and such other parties as listed on the Counsel Slip, with no one else appearing although duly served as appears from the affidavits of service of Philip Yang, as filed,

SERVICE AND DEFINITIONS

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS** that capitalized terms used but not defined in this Order shall have the meanings given to them in the Initial Trudel Affidavit and the Second Trudel Affidavit.

APPLICATION

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

PLAN OF ARRANGEMENT

4. **THIS COURT ORDERS** that the Applicants shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the "**Plan**").

POSSESSION OF PROPERTY AND OPERATIONS

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

6. **THIS COURT ORDERS** that the Applicants shall be entitled to continue to utilize their existing central cash management system currently in place or replace it with another substantially similar central cash management system (the “**Cash Management System**”) and that any present or future bank providing the Cash Management System shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the Applicants of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person or Persons (as hereinafter defined) other than the Applicants, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as provider of the Cash Management System, an unaffected creditor under the Plan with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.

7. **THIS COURT ORDERS** that the Applicants shall be entitled but not required to pay the following expenses whether incurred prior to or after the Initial Filing Date, subject to compliance with the Updated Bi-Weekly Budget (as defined in the DIP Facility Agreement), as may be amended from time to time:

- (a) all outstanding and future wages, salaries, employee and pension benefits, vacation pay and employee and director expenses payable on or after the Initial Filing Date, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements;
- (b) the fees and disbursements of any Assistants retained or employed by the Applicants in respect of these proceedings, at their standard rates and charges; and
- (c) with the consent of the Monitor, amounts owing for goods or services supplied to the Applicants prior to the Initial Filing Date up to a maximum amount of \$250,000, if, in the opinion of the Applicants and the Monitor, the supplier is critical to the Restructuring (as hereinafter defined).

8. **THIS COURT ORDERS** that, except as otherwise provided to the contrary herein, the Applicants shall be entitled, subject to compliance with the Updated Bi-Weekly Budget, as may be amended from time to time, but not required to pay all reasonable expenses incurred by the

Applicants in carrying on their Business in the ordinary course after the Initial Filing Date, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

- (a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors' and officers' insurance), maintenance and security services; and
- (b) payment for goods or services actually supplied to the Applicants following the date of the Initial Filing Date.

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

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

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

realty taxes and any other amounts payable to the landlord under the lease) or as otherwise may be negotiated between the Applicant and the landlord from time to time ("**Rent**"), for the period commencing from and including the Initial Filing Date, monthly in equal payments on the first day of each month, in advance (but not in arrears). On the date of the first of such payments, any Rent relating to the period commencing from and including the Initial Filing Date shall also be paid.

11. **THIS COURT ORDERS** that, except as specifically permitted herein, the Applicants are hereby directed, until further Order of this Court:

- (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Applicants to any of their creditors as of this date;
- (b) to grant no security interests, trust, liens, mortgages, charges or encumbrances upon or in respect of any of the Property; and
- (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

RESTRUCTURING

12. **THIS COURT ORDERS** that the Applicants shall, subject to such requirements as are imposed by the CCAA, have the right to:

- (a) Permanently or temporarily cease, downsize or shut down any of their business or operations, and to dispose of redundant or non-material assets not exceeding \$250,000 in any one transaction or \$1,000,000 in the aggregate, provided that, with respect to real property leases, the Applicants may, subject to the provisions of the CCAA and paragraphs 10, 13, and 14 herein, vacate, abandon or quit the whole (but not part of) and may permanently (but not temporarily) cease, downsize, or shut down any of the Business or operations in respect of any leased premises;
- (b) terminate the employment of such its employees or temporarily lay off such of its employees as it deems appropriate; and
- (c) pursue all restructuring options for the Applicants including, without limitation, all avenues of refinancing of their Business or Property, in whole or in part, subject to prior approval of this Court being obtained before any material refinancing;

all of the foregoing to permit the Applicants to proceed with an orderly restructuring of the Business (the “**Restructuring**”).

13. **THIS COURT ORDERS** that the relevant Applicant shall provide each of the relevant landlords with notice of the Applicant’s intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Applicant’s entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Applicant, or by further Order of this Court upon application by the Applicant on at least two (2) days notice to such landlord and any such secured creditors. If the Applicant disclaims the lease governing such leased premises in accordance with Section 32 of the CCAA, it shall not be required to pay Rent under such lease pending resolution of any such dispute (other than Rent payable for the notice period provided for in Section 32(5) of the CCAA), and the disclaimer of the lease shall be without prejudice to the Applicant’s claim to the fixtures in dispute.

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

NO PROCEEDINGS AGAINST THE APPLICANTS OR THE PROPERTY

15. **THIS COURT ORDERS** that until and including September 1, 2023, or such later date as this Court may order (the “**Stay Period**”), no proceeding or enforcement process in any court or tribunal (each, a “**Proceeding**”) shall be commenced or continued against or in respect of the Applicants or the Monitor, or affecting their Business or their Property, except with the written consent of the Applicants and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Applicants or affecting their Business or their Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

16. **THIS COURT ORDERS** that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being “**Persons**” and each being a “**Person**”) against or in respect of the Applicants or the Monitor, or affecting their Business or their Property, are hereby stayed and suspended except with the written consent of the Applicants and the Monitor, or leave of this Court, provided that nothing in this Order shall (a) empower the Applicants to carry on any business which the Applicants are not lawfully entitled to carry on, (b) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA, (c) prevent the filing of any registration to preserve or perfect a security interest, or (d) prevent the registration of a claim for lien.

NO INTERFERENCE WITH RIGHTS

17. **THIS COURT ORDERS** that during the Stay Period, no Person shall discontinue, fail to renew per the same terms and conditions, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Applicants, including but not limited to renewal rights in respect of existing insurance policies on the same terms, except with the written consent of the Applicants and the Monitor, or leave of this Court. For greater certainty, MC Cannabis Inc. and Alimentation Couche-Tard Inc. shall not discontinue, fail to honour, alter, interfere with, repudiate, terminate, or cease to perform any right, renewal right, contract, agreement, license or permit in favour of or held by 133 Canada.

CONTINUATION OF SERVICES

18. **THIS COURT ORDERS** that during the Stay Period, all Persons having oral or written agreements with the Applicants or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Business or the Applicants are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Applicants and that the Applicants shall be entitled to the continued use of their current premises, telephone numbers, facsimile numbers, internet addresses, email addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the Initial Filing Date are paid by the

Applicants in accordance with normal payment practices of the Applicants or such other practices as may be agreed upon by the supplier or service provider and each of the Applicants and the Monitor, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

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

KEY EMPLOYEE RETENTION PLAN

20. **THIS COURT ORDERS** that the Key Employee Retention Plan (the “**KERP**”), as described in the Second Trudel Affidavit, an unredacted copy of which is attached as the Confidential Appendix to the First Report, is hereby approved and the Applicants are authorized to make payments contemplated thereunder in accordance with the terms and conditions of the KERP.

21. **THIS COURT ORDERS** that payments made by the Applicants pursuant to this Order do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

22. **THIS COURT ORDERS** that the key employees referred to in the KERP (the “**Key Employees**”) shall be entitled to the benefit of and are hereby granted a charge on the Property (the “**KERP Charge**”), which charge shall not exceed an aggregate amount of \$1,160,000 to secure any payments to the Key Employees under the KERP. The KERP Charge shall have the priority as set out in paragraphs 43 and 45 herein.

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

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

obligations of the Applicants whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the Applicants, if one is filed, is sanctioned by this Court or is refused by the creditors of the Applicants or this Court.

DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

24. **THIS COURT ORDERS** that the Applicants shall indemnify their directors and officers against obligations and liabilities that they may incur as directors or officers of the Applicants after the commencement of the within proceedings, except to the extent that, with respect to any officer or director, the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

25. **THIS COURT ORDERS** that the directors and officers of the Applicants shall be entitled to the benefit of and are hereby granted a charge (the "**D&O Charge**") on the Property, which charge shall not exceed an aggregate amount of \$2,800,000, as security for the indemnity provided in paragraph 24 of this Order. The D&O Charge shall have the priority as set out in paragraphs 43 and 45 herein.

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

APPOINTMENT OF MONITOR

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

28. **THIS COURT ORDERS** that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- (a) monitor the Applicants' receipts and disbursements and the Applicants' compliance with the Updated Bi-Weekly Budget;
- (b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;
- (c) assist the Applicants, to the extent required by the Applicants, in their dissemination of financial and other information to the DIP Lender and its counsel on a periodic basis of financial and other information as agreed to between the Applicants and the DIP Lender, or as may reasonably be requested by the DIP Lender;
- (d) advise the Applicants in their preparation of the Applicants' cash flow statements and reporting required by the DIP Lender, which information shall be reviewed with the Monitor and delivered to the DIP Lender and its counsel on a periodic basis, or as may reasonably be requested by the DIP Lender;
- (e) advise the Applicants in their development of the Plan and any amendments to the Plan;
- (f) assist the Applicants, to the extent required by the Applicants, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;
- (g) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Applicants, to the extent that is necessary to adequately assess the Applicants' business and financial affairs or to perform its duties arising under this Order;
- (h) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order; and

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

29. **THIS COURT ORDERS** that the Monitor shall not occupy or take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of (or be deemed to take Possession of), or exercise (or be deemed to have exercised) any rights of control over any activities in respect of, the Property, or any assets, properties or undertakings of any of the Applicants', or the direct or indirect subsidiaries or affiliates of any of the Applicants', including any joint venture entities, for which a permit or license is issued or required pursuant to any provision of any federal, provincial, or other law respecting, among other things, the manufacturing, possession, processing, and distribution of cannabis or cannabis products including, without limitation, under the *Cannabis Act*, S.C. 2018, c. 16, the *Controlled Drugs and Substances Act*, S.C. 1996, c. 19, the *Excise Tax Act*, R.S.C. 1985, c. E. 15, *Excise Act*, 2001, S.C. 2002, c.22 the *British Columbia Cannabis Control and Licensing Act*, S.B.C. 2018, c. 29, the *British Columbia Cannabis Distribution Act*, S.B.C. 2018, c. 28, the *Ontario Cannabis Control Act*, 2017, S.O. 2017, c. 26, Sched. 1, *Ontario Cannabis Retail Corporation Act*, 2017, S.O. 2017, c. 26, the *Cannabis License Act*, 2018, S.O. 2018, c. 12, or other such applicable federal or provincial legislation (the "**Cannabis Legislation**"), and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof, and nothing in this Order shall be construed as resulting in the Monitor being an employer or successor employer within the meaning of any statute, regulation or rule of law or equity, for any purpose whatsoever.

30. **THIS COURT ORDERS** that nothing herein contained shall require the Monitor to occupy or take Possession of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, 1999, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, the *Ontario Mining Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order, or anything done in

pursuance of the Monitor's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

31. **THIS COURT ORDERS** that that the Monitor shall provide any creditor of the Applicants and the DIP Lender with information provided by the Applicants in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Applicants is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicants may agree.

32. **THIS COURT ORDERS** that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

33. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor and counsel to the Applicants shall be paid their reasonable fees and disbursements (including pre-filing fees and disbursements), in each case at their standard rates and charges, whether incurred prior to, on or subsequent to, the Initial Filing Date by the Applicants as part of the costs of these proceedings. The Applicants are hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and counsel for the Applicants on a weekly basis. In addition, the Applicants are hereby authorized to pay to the Monitor and counsel to the Monitor, retainers in the amounts of \$250,000 and \$150,000, respectively, to be held by them as security for payment of their respective fees and disbursements outstanding from time to time.

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

35. **THIS COURT ORDERS** that the Applicants' counsel, the Monitor and its counsel shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on the Property, which charge shall not exceed an aggregate amount of \$600,000, as security for their professional fees and disbursements incurred at the standard rates and charges of the Monitor

and such counsel, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority as set out in paragraphs 43 and 45 hereof.

DIP FACILITY

36. **THIS COURT ORDERS** that the Applicants are hereby authorized and empowered to obtain and borrow under the DIP Facility from ACT Investor, in its capacity as the DIP Lender, in order to finance the Applicants' working capital requirements, and other general corporate purposes and capital expenditures.

37. **THIS COURT ORDERS** that such DIP Facility shall be on the terms and subject to the conditions set forth in the DIP Facility Loan Agreement between the Applicants and the DIP Lender dated as of June 5, 2023, appended as **Exhibit "N"** to the Initial Trudel Affidavit (the "**DIP Facility Agreement**").

38. **THIS COURT ORDERS** that the Applicants are hereby authorized and empowered to borrow, in accordance with the terms and conditions of the DIP Facility Agreement, interim financing of up to \$9,800,000 during the Stay Period.

39. **THIS COURT ORDERS** that the Applicants are hereby authorized and empowered to execute and deliver such agreements, instruments, mortgages, charges, hypothecs and security documents, guarantees and other definitive documents (collectively with the DIP Facility Agreement, the "**Definitive Documents**"), as may be contemplated by the DIP Facility Agreement or as may be reasonably required by the DIP Lender pursuant to the terms thereof, and the Applicants are hereby authorized and directed to pay and perform all of its indebtedness, interest, fees, liabilities and obligations to the DIP Lender under and pursuant to the Definitive Documents (collectively, the "**DIP Obligations**") as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

40. **THIS COURT ORDERS** that the DIP Lender shall be entitled to the benefit of and is hereby granted a charge (the "**DIP Lender's Charge**") on the Property as security for the DIP Obligations, which DIP Lender's Charge shall be in the aggregate amount of the DIP Obligations outstanding at any given time under the Definitive Documents. The DIP Lender's Charge shall not secure an obligation that exists before the Initial Filing Date. The DIP Lender's Charge shall have the priority as set out in paragraphs 43 and 45 hereof.

41. **THIS COURT ORDERS** that, notwithstanding any other provision of this Order:
- (a) the DIP Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP Lender's Charge or any of the Definitive Documents;
 - (b) upon the occurrence of an event of default under the Definitive Documents or the DIP Lender's Charge, the DIP Lender, upon three business days' notice to the Applicants and the Monitor, may exercise any and all of its rights and remedies against the Applicants or the Property under or pursuant to the Definitive Documents and the DIP Lender's Charge, including without limitation, to cease making advances to the Applicants and set off and/or consolidate any amounts owing by the DIP Lender to the Applicants against the obligations of the Applicants to the DIP Lender under the Definitive Documents or the DIP Lender's Charge, to make demand, accelerate payment and give other notices, or to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Applicants and for the appointment of a trustee in bankruptcy of the Applicants; and
 - (c) the foregoing rights and remedies of the DIP Lender shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Applicants or the Property.

42. **THIS COURT ORDERS AND DECLARES** that ACT Investor and the DIP Lender shall be treated as unaffected in any plan of arrangement or compromise under the CCAA, or any proposal filed under the BIA, with respect to any advances made by ACT Investor, as secured lender to the Applicants, and under the Definitive Documents.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

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

First – Administration Charge (to the maximum amount of \$600,000);

Second – DIP Lender's Charge (to the maximum amount of \$9,800,000);

Third – D&O Charge (to the maximum amount of \$2,800,000); and

Fourth – KERP Charge (to the maximum amount of \$1,160,000).

44. **THIS COURT ORDERS** that the filing, registration or perfection of the Charges shall not be required, and that the Charges shall be effective as against the Property and shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

45. **THIS COURT ORDERS** that the Charges shall constitute a charge on the Property and shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, “**Encumbrances**”) in favour of any Person.

46. **THIS COURT ORDERS** that except as otherwise expressly provided for herein, the Applicants shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Charges, unless the Applicants also obtain the prior written consent of the Monitor, the DIP Lender and the beneficiaries of the D&O Charge, the Administration Charge, and the KERP Charge, or further Order of this Court.

47. **THIS COURT ORDERS** that the D&O Charge, the Administration Charge, the KERP Charge, the Definitive Documents and the DIP Lender’s Charge shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the “**Chargees**”) and/or the DIP Lender thereunder shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal, provincial or other statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an “**Agreement**”) which binds the Applicants, and notwithstanding any provision to the contrary in any Agreement:

- (a) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of the Definitive Documents shall create or be deemed

to constitute a breach by the Applicants of any Agreement to which they are a party;

- (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the Applicants entering into the DIP Facility Agreement, the creation of the Charges, or the execution, delivery or performance of the Definitive Documents; and
- (c) the payments made by the Applicants pursuant to this Order, the Definitive Documents, and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

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

SERVICE AND NOTICE

49. **THIS COURT ORDERS** that the Monitor shall (a) without delay, publish in The Globe and Mail (National Edition) a notice containing the information prescribed under the CCAA, (b) within five days after the date of this Order, (i) make this Order publicly available in the manner prescribed under the CCAA, (ii) send, in the prescribed manner, a notice to every known creditor who has a claim against the Applicants of more than \$1000, and (iii) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder, provided that the Monitor shall not make the claims, names and addresses of any individual persons who are creditors available.

50. **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the "**Protocol**") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>) shall be valid and effective service. Subject to Rule 17.05, this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the *Rules of Civil Procedure*. Subject to Rule 3.01(d) of the *Rules of Civil Procedure* and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further

orders that a Case Website shall be established in accordance with the Protocol with the following URL: www.cfcanada.fticonsulting.com/Fire&Flower

51. **THIS COURT ORDERS** that the Applicants, the Monitor and their respective counsel are at liberty to serve or distribute this Order, and other materials and orders as may be reasonably required in these proceedings, including any notices, or other correspondence, by forwarding true copies thereof by electronic message to the Applicants' creditors or other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or judicial obligation and notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations*, Reg. 81000-2-175 (SOR/DORS).

52. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Applicants and the Monitor are at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Applicants' creditors or other interested parties at their respective addresses as last shown on the records of the Applicants and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

RELIEF FROM REPORTING OBLIGATIONS

53. **THIS COURT ORDERS** that the decision by the Applicants to incur no further expenses for the duration of the Stay Period in relation to any filings (including financial statements), disclosures, core or non-core documents, and press releases (collectively, the "**Securities Filings**") that may be required by any federal, provincial or other law respecting securities or capital markets in Canada, or by the rules and regulations of a stock exchange, including, without limitation, the *Securities Act* (Ontario), RSO 1990, c S.5 and comparable statutes enacted by other provinces of Canada, and the rules, regulations and policies of the Toronto Stock Exchange (collectively, the "**Securities Legislation**"), is hereby authorized, provided that nothing in this paragraph shall prohibit any securities regulator or stock exchange from taking any action or exercising any discretion that it may have of a nature described in section 11.1(2) of the CCAA as a consequence of the Applicants failing to make any Securities Filings required by the Securities Provisions.

54. **THIS COURT ORDERS** that none of the directors, officers, employees, and other representatives of the Applicants nor the Monitor shall have any personal liability for any failure by the Applicants to make any Securities Filings required by the Securities Provisions during the Stay Period, provided that nothing in this paragraph shall prohibit any securities regulator or stock exchange from taking any action or exercising any discretion that it may have of a nature described in section 11.1(2) of the CCAA as a consequence of such failure by the Applicants. For greater certainty, nothing in this order is intended to or shall encroach on the jurisdiction of any securities regulatory authorities (the “**Regulators**”) in the matter of regulating the conduct of market participants and to issue cease trade orders if and when required pursuant to applicable securities law. Further, nothing in this Order shall constitute or be construed as an admission by the Regulators that the court has jurisdiction over matters that are within the exclusive jurisdiction of the Regulators under the Securities Legislation

SHAREHOLDERS’ MEETING

55. **THIS COURT ORDERS** that the annual general meeting of shareholders of FFHC called for June 22, 2023 be postponed, and the time limit to call and hold such annual general meeting of shareholders is extended until after the conclusion of the CCAA Proceedings, subject to further Order of this Court.

SEALING PROVISION

56. **THIS COURT ORDERS** that the Confidential Appendix to the First Report is hereby sealed pending further Order of the Court and shall not form part of the public record.

GENERAL

57. **THIS COURT ORDERS** that the Applicants, the DIP Lender, or the Monitor may from time to time apply to this Court to amend, vary or supplement this Order or for advice and directions in the discharge of their powers and duties hereunder.

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

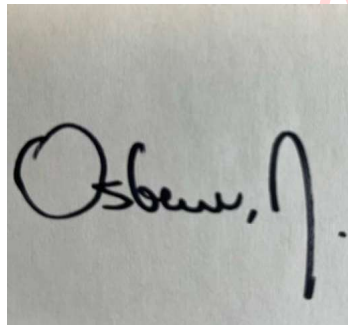
59. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give

effect to this Order and to assist the Applicants, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicants and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicants and the Monitor and their respective agents in carrying out the terms of this Order.

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

61. **THIS COURT ORDERS** that any interested party (including the Applicants and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

62. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard/Daylight Time on the date of the Initial Filing Date.



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

AND IN THE MATTER OF PLAN OF COMPROMISE OR ARRANGEMENT OF FIRE & FLOWER HOLDINGS CORP., FIRE & FLOWER INC.,
13318184 CANADA INC., 11180703 CANADA INC., 10926671 CANADA LTD., FRIENDLY STRANGER HOLDINGS CORP., PINEAPPLE
EXPRESS DELIVERY INC., and HIFYRE INC.

Applicants

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

PROCEEDING COMMENCED AT TORONTO

AMENDED AND RESTATED INITIAL ORDER

STIKEMAN ELLIOTT LLP

Barristers & Solicitors
5300 Commerce Court West
199 Bay Street
Toronto, Canada M5L 1B9

Maria Konyukhova (LSO #52880V)

Tel: (416) 869-5230
Email: mkonyukhova@stikeman.com

Philip Yang (LSO #82084O)

Tel: (416) 869-5593
Email: pyang@stikeman.com

Lawyers for the Applicants

EXHIBIT "C"

referred to in the Affidavit of

STEPHANE TRUDEL

Sworn August 23, 2023

DocuSigned by:



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Commissioner for Taking Affidavits
Philip Yang



Court File No. CV-23-00700581-00CL

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

THE HONOURABLE) MONDAY, THE 19TH
JUSTICE OSBORNE) DAY OF JUNE, 2023

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

AND IN THE MATTER OF PLAN OF COMPROMISE OR ARRANGEMENT OF FIRE & FLOWER HOLDINGS CORP., FIRE & FLOWER INC., 13318184 CANADA INC., 11180703 CANADA INC., 10926671 CANADA LTD., FRIENDLY STRANGER HOLDINGS CORP., PINEAPPLE EXPRESS DELIVERY INC., and HIFYRE INC.

Applicants

**ORDER
(Re: SISP Approval Order)**

THIS MOTION, made by Fire & Flower Holdings Corp., Fire & Flower Inc., 13318184 Canada Inc. ("**133 Canada**"), 11180703 Canada Inc., 10926671 Canada Ltd., Friendly Stranger Holdings Corp., Pineapple Express Delivery Inc., and Hifyre Inc. (collectively, the "**Applicants**"), for an Order approving, among others things, (1) the procedures for the Sale and Investment Solicitation Process in respect of the Applicants attached hereto as Schedule "A" (the "**SISP**"); and (2) approving the Stalking Horse Agreement (as defined below), was heard this day at Courtroom 8-5, 330 University Avenue, Toronto, Ontario.

ON READING the affidavits of Stephane Trudel sworn June 5, 2023 (the "**Initial Trudel Affidavit**") and June 14, 2023 (the "**Second Trudel Affidavit**") and the Exhibits thereto, the pre-filing report of FTI Consulting Canada Inc. ("**FTI**"), in its capacity as proposed monitor of the Applicants dated June 5, 2023 (the "**Pre-Filing Report**"), the first report of FTI in its capacity as monitor (in such capacity, the "**Monitor**") dated June 14, 2023 (the "**First Report**"), the supplement to the First Report dated June 14, 2023, the affidavit of Philip Yang sworn June 18, 2023, and on hearing the submissions of counsel for the Applicants, counsel for the Monitor, counsel for 2707031 Ontario Inc. ("**ACT Investor**") and ACT Investor in its capacity as the debtor-in-possession lender to the Applicants, counsel for Green Acre Capital LP, and such other parties

as listed on the Counsel Slip, with no one else appearing although duly served as appears from the affidavits of service of Philip Yang, as filed,

SERVICE AND DEFINITIONS

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

2. **THIS COURT ORDERS** that capitalized terms used in this Order and not otherwise defined herein shall have the meanings ascribed to them in the SISP or the Amended and Restated Initial Order granted by Justice Osborne, dated June 15, 2023, as applicable.

APPROVAL OF THE SALE AND INVESTMENT SOLICITATION PROCESS

3. **THIS COURT ORDERS** that the SISP (subject to any amendments thereto that may be made in accordance therewith and with this Order) is hereby approved and the Applicants and the Monitor are hereby authorized to implement the SISP pursuant to the terms thereof. The Applicants and the Monitor are hereby authorized and directed to take any and all actions as may be necessary or desirable to implement and carry out the SISP in accordance with its terms and this Order.

4. **THIS COURT ORDERS** that the Applicants and the Monitor are authorized to immediately commence the SISP to solicit interest in the opportunity for a sale of or investment in all or part of the Applicants' assets (the "**Property**") and business operations (the "**Business**").

5. **THIS COURT ORDERS** that each of the Applicants, the Monitor and their respective affiliates, partners, directors, employees agents and controlling persons shall have no liability with respect to any and all losses, claims, damages or liabilities, of any nature or kind, to any person in connection with or as a result of the SISP, except to the extent such losses, claims, damages or liabilities result from the gross negligence or wilful misconduct of the Monitor or the Applicants, as applicable, in performing their obligations under the SISP, as determined by this Court.

6. **THIS COURT ORDERS** that, pursuant to section 3(c) of the Electronic Commerce Protection Regulations, Reg. 81000-2-175 (SOR/DORS), the Monitor and the Applicants are authorized and permitted to send, or cause or permit to be sent, commercial electronic messages

to an electronic address of prospective bidders or offerors and to their advisors, but only to the extent required to provide information with respect to the SISP in these proceedings.

7. **THIS COURT ORDERS** that notwithstanding anything contained herein or in the SISP, the Monitor shall not take possession of the Property or be deemed to take possession of the Property, including pursuant to any provision of the Cannabis Legislation.

APPROVAL OF THE STALKING HORSE AGREEMENT

8. **THIS COURT ORDERS** that the Applicants are hereby authorized and empowered to enter into the stalking horse agreement (the “**Stalking Horse Agreement**”) between Fire & Flower Holdings Corp. and ACT Investor (the “**Purchaser**”) and attached as **Exhibit “E”** to the Second Trudel Affidavit, and such minor amendments as may be acceptable to each of the parties thereto, with the prior approval of the Monitor; provided that, nothing herein approves the sale and the vesting of any Property to the Purchaser (or any of its designees) pursuant to the Stalking Horse Agreement and that the approval of any sale and vesting of any such Property shall be considered by this Court on a subsequent motion made to this Court if the Stalking Horse Agreement is the Successful Bid pursuant to the SISP.

9. **THIS COURT ORDERS** that the Stalking Horse Agreement is hereby approved and accepted solely for the purposes of being the Stalking Horse Bid under the SISP and subject to further Order of the Court referred to in paragraph 8 above.

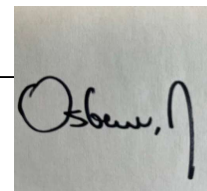
PROTECTION OF PERSONAL INFORMATION

10. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5, the Monitor, the Applicants and their respective advisors are hereby authorized and permitted to disclose and transfer to prospective SISP participants (each, a “**SISP Participant**”) and their advisors personal information of identifiable individuals (“**Personal Information**”), records pertaining to the Applicants’ past and current employees, and information on specific customers, but only to the extent desirable or required to negotiate or attempt to complete a transaction under the SISP (a “**Transaction**”). Each SISP Participant to whom any Personal Information is disclosed shall maintain and protect the privacy of such Personal Information and limit the use of such Personal Information to its evaluation of a Transaction, and if it does not complete a Transaction, shall return all such information to the Applicants or the Monitor, or in the alternative destroy all such information and

provide confirmation of its destruction if required by the Applicants or the Monitor. The Successful Bidder(s) shall maintain and protect the privacy of such information and, upon closing of the Transaction contemplated in the Successful Bid(s), shall be entitled to use the personal information provided to it that is related to the Business and/or Property acquired pursuant to the SISP in a manner that is in all material respects identical to the prior use of such information by the Applicants, and shall return all other personal information to the Applicants or the Monitor, or ensure that all other personal information is destroyed and provide confirmation of its destruction if requested by the Monitor or the Applicants.

GENERAL

11. **THIS COURT ORDERS** that the Applicants or the Monitor may from time to time apply to this Court to amend, vary or supplement this Order or for advice and directions in the discharge of their powers and duties under the SISP.
12. **THIS COURT ORDERS** that this Order shall have full force and effect in all provinces and territories in Canada.
13. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States of America, or in any other foreign jurisdiction, to give effect to this Order and to assist the Applicants, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, and regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicants and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicants and the Monitor and their respective agents in carrying out the terms of this Order.
14. **THIS COURT ORDERS** that each of the Applicants and the Monitor be at liberty and are hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order.
15. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. on the date of this Order.



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Schedule "A"

Procedures for the Sale and Investment Solicitation Process

On June 5, 2023, Fire & Flower Holdings Corp., Fire & Flower Inc., 13318184 Canada Inc. ("133 Canada"), 11180703 Canada Inc., 10926671 Canada Ltd., Friendly Stranger Holdings Corp., Pineapple Express Delivery Inc., and Hifyre Inc. (collectively, the "**F&F Entities**") commenced proceedings (the "**CCAA Proceedings**") under the *Companies' Creditors Arrangement Act* (Canada) (the "**CCAA**") before the Superior Court of Ontario (Commercial List) in the City of Toronto (the "**Court**") pursuant to an order granted by the Court on the same day (as may be amended or amended and restated from time to time, the "**Initial Order**").

Pursuant to the Initial Order, FTI Consulting Canada Inc., a licensed insolvency trustee, was appointed as monitor in the CCAA Proceedings (in such capacity, the "**Monitor**").

On June 15, 2023, the Court granted an order (the "**SISP Order**"), authorizing the F&F Entities to undertake a sale and investment solicitation process ("**SISP**") for the sale of their assets (the "**Property**") and business operations (the "**Business**"). The SISP will be conducted by the Monitor in the manner set forth herein.

Among other things, the SISP Order also: (a) approved the procedures set out in this Schedule (the "**Bidding Procedures**") for the solicitation of offers or proposals (each a "**Bid**" for the acquisition of the Business or some portion thereof, and (b) approved the form of subscription agreement to be entered into between the F&F Entities, as vendors, and 2707031 Ontario Inc. (the "**Stalking Horse Bidder**"), as purchaser (as same may be amended from time to time pursuant to its terms, the "**Stalking Horse Agreement**") as the "Stalking Horse Bid" for the purposes of the SISP, provided that the Stalking Horse Agreement and the transactions provided for therein must be submitted to the Court for consideration in a subsequent application upon completion of the SISP or upon termination thereof and the Stalking Horse Agreement being the Successful Bid (as defined below).

Defined Terms

1. Capitalized terms used in these Bidding Procedures and not otherwise defined herein have the meanings given to them in Appendix "A".

Bidding Procedures

Opportunity

2. The SISP is intended to solicit interest in, and opportunities for: (i) one or more sales or partial sales of all, substantially all, or certain portions of the Property or the Business; and/or (ii) an investment in, restructuring, recapitalization, refinancing or other form of reorganization of the F&F Entities or their Business. Bids considered pursuant to the SISP may include one or more of an investment, restructuring, recapitalization, refinancing or other form of reorganization of the business and affairs of the F&F Entities as a going concern or a sale (or partial sales) of all, substantially all, or certain of the Property or the Business, or a combination thereof (the "**Opportunity**").
3. The Stalking Horse Agreement constitutes a qualified Bid by the Stalking Horse Bidder for all purposes and at all times under this SISP and will serve as the Stalking Horse Bid for

purposes of this SISP and these Bidding Procedures. Notwithstanding the Stalking Horse Agreement and proposed transactions therein, all interested parties are encouraged to submit bids based on any form of Opportunity that they may elect to advance pursuant to the SISP, including as a Sale Proposal or an Investment Proposal. A copy of the Stalking Horse Agreement will be made available to all Phase 1 Qualified Bidders.

4. The Bidding Procedures describe the manner in which prospective bidders may gain access to due diligence materials concerning the F&F Entities and the Business, the manner in which bidders may participate in the SISP, the requirement of and the receipt and negotiation of bids received, the ultimate selection of a Successful Bidder and the requisite approvals to be sought from the Court in connection therewith.

The Monitor, in consultation with the F&F Entities and the DIP Lender (acting reasonably) may at any time and from time to time, modify, amend, vary or supplement the Bidding Procedures, without the need for obtaining an order of the Court or providing notice to Phase 1 Qualified Bidders, Phase 2 Qualified Bidders, the Successful Bidder or the Back-Up Bidder, provided that the Monitor determines that such modification, amendment, variation or supplement is expressly limited to changes that do not materially alter, amend or prejudice the rights of such bidders (including the rights of the Stalking Horse Bidder, except with the authorization of the Stalking Horse Bidder) and that are necessary or useful in order to give effect to the substance of the SISP, the Bidding Procedures and the SISP Order. Notwithstanding the foregoing and for greater certainty, any modification to the dates and time limits indicated in the table contained in paragraph 5 herein will require the authorization of the DIP Lender, acting reasonably.

The Monitor will post on the Monitor's website, as soon as practicable, any such modification, amendment, variation or supplement to the Bidding Procedures and inform the bidders impacted by such modifications.

In the event of a dispute as to the interpretation or application of the SISP Order or Bidding Procedures, the Court will have exclusive jurisdiction to hear and resolve such dispute.

5. Certain bid protections are provided for in the Stalking Horse Agreement (including a break fee (the "**Break Fee**"), subject to the conditions set forth therein. No other bidder may request or receive any form of bid protection as part of any bid made pursuant to the SISP.

A summary of the key dates pursuant to the SISP is as follows:

Event	Timing
<u>Phase 1</u>	
1. Preparation F&F Entities to assemble due diligence information and set up VDR Monitor to prepare a Teaser Letter and NDA	In advance of Court approval of the SISP Order
2. Notice	As soon as reasonably practicably following the date on which the SISP

F&F Entities to issue a press release regarding the Opportunity and the Monitor to publish a notice of the SISP on the Monitor's website and other industry trade publications, as determined appropriate.

Order is granted.

Monitor to distribute Teaser Letter and NDA to potentially interested parties

3. Phase 1

June 15, 2023 to July 13, 2023

Phase 1 Qualified Bidders provided access to a VDR

4. Phase 1 Bid Deadline

By no later than July 13, 2023, at 5:00 p.m. (Eastern Time)

Deadline for Qualified Bidders to submit non-binding LOIs in accordance with the requirement of paragraph 14 of the Bidding Procedures

5. Phase 1 Satisfactory Bid

By no later than July 14, 2023, at 5:00 p.m. (Eastern Time)

Monitor to assess non-binding LOIs using criteria outlined in the SISP to determine if a LOI is a Satisfactory Bid.

Phase 1 Satisfactory Bidders designated by the Monitor as Phase 2 Qualified Bidders invited to participate in Phase 2 if the Monitor proceeds to Phase 2

6. Approval Motion if No Other Bids

Week of July 24, 2023

Filing of Approval Motion in respect of the Stalking Horse Agreement in the event that no other Phase 1 Satisfactory Bid is received and issuance of the Vesting Order.

7. Closing – No Other Bids

August 4, 2023

Anticipated deadline for closing of the Stalking Horse Agreement in the event that no other Phase 1 Satisfactory Bid is received

Phase 2

8. Phase 2 Bid Deadline & Qualified Bidders

August 11, 2023

Phase 2 Bid Deadline (for delivery of definitive offers by Phase 2 Qualified Bidders in accordance with the requirement of paragraph 22 of the

~

Bidding Procedures)

9. Auction

August 15, 2023

Anticipated Auction (if needed)

10. Selection of Successful Bid and Back-Up Bidder

By no later than August 17, 2023 at 5:00 p.m. (Eastern Time)

Deadline for selection of Successful Bid

11. Definitive Documentation

By no later than August 22, 2023

Deadline for completion of definitive documentation in respect of Successful Bid

12. Approval Motion – Successful Bid

Week of August 28, 2023

Deadline for filing of Approval Motion in respect of Successful Bid

13. Closing – Successful Bid

September 8, 2023 or such earlier date as is achievable

Anticipated deadline for closing of Successful Bid being the Target Closing Date

14. Outside Date – Closing

September 15, 2023

Outside Date by which the Successful Bid must close

Solicitation of Interest: Notice of the SISP

6. As soon as reasonably practicable, but, in any event, by no later than five (5) days after the granting of the SISP Order:
 - a) the Monitor, in consultation with the Applicants, will prepare a list of potential bidders, including (i) parties that have approached the Applicants or the Monitor indicating an interest in the Opportunity, (ii) local and international strategic and financial parties who the Monitor, in consultation with the Applicants, believe may be interested in purchasing all or part of the Business or Property or investing in the Applicants pursuant to the SISP, and (iii) parties that showed an interest in the Applicants and/or their assets prior to the date of the SISP Order including by way of the previous, out-of-court strategic review process, in each case whether or not such party has submitted a letter of intent or similar document (collectively, the “**Known Potential Bidders**”);
 - b) a notice of the SISP and any other relevant information that the F&F Entities, in consultation with the Monitor, consider appropriate will be published by the Monitor in one or more trade industry and/or insolvency-related publications as may be considered appropriate by the Monitor;

- c) a press release setting out the notice and any other relevant information regarding the Opportunity as may be considered appropriate will be issued by the F&F Entities with Canada Newswire designating dissemination in Canada; and
 - d) the Monitor, in consultation with the Applicants, will prepare a process summary (the "**Teaser Letter**") describing the Opportunity, outlining the process under the SISP and inviting recipients of the Teaser Letter to express their interest pursuant to the SISP; and (ii) a non-disclosure agreement in form and substance satisfactory to the Monitor and Applicants and their respective counsel which shall enure to the benefit of any purchaser of the Business or Property or any part thereof (an "**NDA**").
7. The Monitor will cause the Teaser Letter and NDA to be sent to each Known Potential Bidder by no later than five (5) days from the SISP Order and to any other party who requests a copy of the Teaser Letter and NDA or who is identified to the Monitor as a potential bidder as soon as reasonably practicable after such request or identification, as applicable.

Virtual Data Room

8. A confidential virtual data room (the "**VDR**") in relation to the Opportunity will be made available by the F&F Entities or by the Monitor to Potential Bidders that have executed the NDA (as defined below) in accordance with paragraph 9 herein. The VDR will be made available as soon as practicable. Following the completion of "Phase 1", but prior to the completion of "Phase 2", additional information may be added to the VDR to enable Phase 2 Qualified Bidders to complete any confirmatory due diligence in respect of the F&F Entities and the Opportunity. The Monitor, in consultation with the F&F Entities, may establish or cause the F&F Entities to establish separate VDRs (including "clean rooms"), if the F&F Entities reasonably determine that doing so would further the F&F Entities' and any Potential Bidders' compliance with applicable antitrust and competition laws, or would prevent the distribution of commercially sensitive competitive information. The Monitor may also, in consultation with the F&F Entities, limit the access of any Potential Bidder to any confidential information in the VDR where the Monitor may also, in consultation with the F&F Entities, reasonably determine that such access could negatively impact the SISP, the ability to maintain the confidentiality of the information, the Business or its value.

PHASE 1: NON-BINDING LOIs

Phase 1 Qualified Bidders and Delivery of Confidential Information Memorandum

9. In order to participate in the SISP, and prior to the distribution of any confidential information to an interested party (including access to the VDR), such interested party must deliver to the Monitor an executed NDA, which will enure to the benefit of any Successful Bidder that closes a transaction contemplated by the Successful Bid. Pursuant to the terms of the NDA to be signed by a potential bidder (each potential bidder who has executed an NDA with the F&F Entities, a "**Potential Bidder**"), each Potential Bidder will be prohibited from communicating with any other Potential Bidder regarding the Opportunity during the term of the SISP, without the consent of the Monitor, in consultation with the F&F Entities. Prior to the F&F Entities executing an NDA with any potential bidder, any potential bidder may be required to provide evidence, reasonably satisfactory to the Monitor, in consultation with the F&F Entities, of its financial wherewithal to complete on a timely basis a transaction in respect of the Opportunity (either with existing capital or

with capital reasonably anticipated to be raised prior to closing) and/or to disclose details of their ownership and/or investors. For the avoidance of doubt, a party who has executed an NDA or a joinder with a Potential Bidder for the purpose of providing financing to a Potential Bidder in connection with the Opportunity (such party a "**Financing Party**") will not be deemed a Potential Bidder for purposes of the SISP, provided that such Financing Party undertakes to inform the F&F Entities in the event that it elects to act as a Potential Bidder. Potential Bidders must rely solely on their own independent review, investigation and/or inspection of all information and of the Property and Business in connection with their participation in the SISP and any transaction they enter into with the Applicants (or any of them).

10. A Potential Bidder that has executed an NDA and that has been provided any additional information required pursuant to paragraph 11 will be deemed a "**Phase 1 Qualified Bidder**" and will be promptly notified of such classification by the Monitor. For the avoidance of doubt, the Stalking Horse Bidder is, and will be deemed to be, a Phase 1 Qualified Bidder, notwithstanding paragraphs 13 and 14 hereof.
11. The Monitor will prepare and send to each Phase 1 Qualified Bidder (including the Stalking Horse Bidder) a Teaser Letter and provide a copy of the Stalking Horse Agreement, and any material amendment thereto, as soon as practicable. The F&F Entities, the Monitor and their respective advisors make no representation or warranty as to the information contained in the Teaser Letter or otherwise made available pursuant to the SISP.
12. The Monitor will provide any person deemed to be a Phase 1 Qualified Bidder (including the Stalking Horse Bidder) with access to the VDR. The F&F Entities and the Monitor and their respective advisors make no representation or warranty as to the information contained in the VDR.
13. If a Phase 1 Qualified Bidder (other than the Stalking Horse Bidder) wishes to submit a bid, it must deliver a non-binding letter of intent (an "**LOI**") (each such LOI, provided in accordance with paragraph 14 below, a "**Phase 1 Qualified Bid**") to the Monitor (including by email) so as to be received by the Monitor not later than 5:00 p.m. (Eastern Time) on July 13, 2023 or such other date or time as may be agreed by the Monitor, with the authorization of the Stalking Horse Bidder, acting reasonably, and in consultation with the F&F Entities (as may be extended, the "**Phase 1 Bid Deadline**").
14. An LOI submitted by a Phase 1 Qualified Bidder will only be considered a "Phase 1 Qualified Bid" if the LOI complies at a minimum with the following:
 - a) it has been duly executed by all required parties;
 - b) it is received by the Phase 1 Bid Deadline;
 - c) it provides written evidence, satisfactory to the Monitor, in consultation with the F&F Entities, of the ability to consummate the transaction within the timeframe contemplated by the SISP and to satisfy any obligations or liabilities to be assumed on closing of the transaction, including, without limitation, a specific indication of the sources of capital and, to the extent that the Phase 1 Qualified Bidder expects to finance any portion of the purchase price, the identity of the financing source;
 - d) it identifies all proposed material conditions to closing including, without limitation,

any internal, regulatory or other approvals and any form of consent, agreement or other document required from a government body, stakeholder or other third party, and an estimate of the anticipated timeframe and any anticipated impediments for obtaining such conditions, along with information sufficient for the Monitor, in consultation with the F&F Entities, to determine that these conditions are reasonable in relation to the Phase 1 Qualified Bidder,

- e) it (i) identifies the Qualified Phase 1 Bidder and representatives thereof who are authorized to appear and act on behalf of the Qualified Phase 1 Bidder for all purposes regarding the contemplated transaction, (ii) fully discloses the identity of each entity or person that will be sponsoring, participating in or benefiting from the transaction contemplated by the LOI, identifies all legal, financial, accounting and other advisors that have been or expect to be retained by the Phase 1 Qualified Bidder in connection with contemplated transaction;
- f) it identifies any additional due diligence required to be completed in order to submit a Binding Offer;
- g) it clearly indicates that:
 - i. the Phase 1 Qualified Bidder is (A) seeking to acquire all or substantially all of the Property or Business, whether through an asset purchase, a share purchase or a combination thereof (either one, a "**Sale Proposal**") or some other portion of the Business (a "**Partial Sale Proposal**"); or (B) offering to make an investment in, restructure, recapitalize or refinance the F&F Entities or the Business (an "**Investment Proposal**"); and
 - ii. if the Phase 1 Qualified Bidder is submitting a Sale Proposal or Investment Proposal, such proposal will at a minimum and on closing, provide net cash proceeds that are not less than the aggregate total of: (A) the amount of cash payable under the Stalking Horse Agreement together with the amount of all secured indebtedness, liabilities and obligations owing by the F&F Entities to 2707031 Ontario Inc., plus (B) an amount equivalent to the Break Fee and (C) a minimum overbid amount of \$250,000 (the amounts set forth in this paragraph 14.g)ii, the "**Minimum Purchase Price**"); provided, however, the F&F Entities, in consultation with the Monitor and the DIP Lender, may deem this criterion satisfied if the Sale Proposals, Partial Sale Proposals or the Investment Proposals, together with one or more other non-overlapping Sale Proposal, Partial Sale Proposal or Investment Proposal, in the aggregate, meet or exceed the Minimum Purchase Price (such bids, "**Aggregated Bids**") (the amount of the Minimum Purchase Price will be confirmed by the Monitor with Potential Bidders);
- h) it contains such other information as may be reasonably requested by the Monitor, in consultation with the F&F Entities;
- i) it does not provide for any break fee or expense reimbursement, it being understood and agreed that no bidder will be entitled to any such bid protections;
- j) in the case of a Sale Proposal, it identifies or contains the following:

- i. the purchase price or price range and key assumptions supporting the valuation and the anticipated amount of cash payable on closing of the proposed transaction;
 - ii. any contemplated purchase price adjustment;
 - iii. a description of the specific assets that are expected to be subject to the transaction and any assets expected to be excluded;
 - iv. a description of those liabilities and obligations (including operating liabilities and obligations to employees) which the Phase 1 Qualified Bidder intends to assume and which such liabilities and obligations it does not intend to assume and are to be excluded as part of the transaction;
 - v. information sufficient for the Monitor, in consultation with the F&F Entities, to determine that the Phase 1 Qualified Bidder has sufficient ability to satisfy and perform any liabilities or obligations assumed pursuant to subparagraph (iv) above;
 - vi. whether the proposed transaction is to be implemented by way of a "reverse vesting order"; and
 - vii. any other terms or conditions of the Sale Proposal that the Phase 1 Qualified Bidder believes are material to the transaction; and
- k) in the case of an Investment Proposal, it identifies the following:
- i. a description of how the Phase 1 Qualified Bidder proposes to structure the proposed investment, restructuring, recapitalization or refinancing;
 - ii. the aggregate amount of the equity and/or debt investment to be made in the F&F Entities or their Business;
 - iii. the underlying assumptions regarding the pro forma capital structure;
 - iv. a description of those liabilities and obligations (including operating liabilities, obligations to employees, and reclamation obligations) which the Phase 1 Qualified Bidder intends to assume and which such liabilities and obligations it does not intend to assume and are to be excluded as part of the transaction;
 - v. information sufficient for the Monitor, in consultation with the F&F Entities, to determine that the Phase 1 Qualified Bidder has sufficient ability to satisfy and perform any liabilities or obligations assumed pursuant to subparagraph (iv) above;
 - vi. whether the proposed transaction is to be implemented by way of a "reverse vesting order"; and
 - vii. any other terms or conditions of the Investment Proposal that the Phase 1 Qualified Bidder believes are material to the transaction.

15. The Monitor, in consultation with the F&F Entities and the DIP Lender, may waive compliance with any one or more of the requirements specified in subparagraphs 14.j) and/or 14.k) and deem any such non-compliant LOI to be a Phase 1 Qualified Bid.
16. Notwithstanding subparagraph 14.g)ii in the circumstance that a Phase 1 Qualified Bid does not provide for net cash proceeds that are at least equal to the Minimum Purchase Price, the F&F Entities and the Monitor will consult with the DIP Lender and, subject to the prior written consent of the DIP Lender, may elect that such Phase 1 Qualified Bid be nevertheless considered to be a Phase 1 Satisfactory Bid (as defined below) and that the applicable Phase 1 Qualified Bidder proceed as Phase 2 Qualified Bidder (as defined below).

Assessment of Phase 1 Qualified Bids and Subsequent Process

17. The Monitor, in consultation with the F&F Entities may, following the receipt of any LOI, seek clarification with respect to any of the terms or conditions of such LOI and/or request and negotiate one or more amendments to such LOI prior to determining if the LOI should be considered a Phase 1 Qualified Bid or a Phase 1 Satisfactory Bid (as defined below).
18. Only Phase 2 Qualified Bidders will be permitted to proceed to Phase 2 of the SISF. The Stalking Horse Agreement shall constitute a Phase 1 Qualified Bid and the Stalking Horse Bidder shall be deemed to be a Phase 2 Qualified Bidder for all purposes under the SISF, including the Auction, notwithstanding anything to the contrary contained herein.
19. Following the Phase 1 Bid Deadline, the Monitor, in consultation with the F&F Entities, will determine which Phase 1 Qualified Bid(s) shall proceed to Phase 2 of the SISF and be deemed a "**Phase 1 Satisfactory Bid(s)**" and which Phase 1 Qualified Bidder(s) accordingly will be deemed "**Phase 2 Qualified Bidder(s)**", if any. For greater certainty, there can be more than one Phase 1 Qualified Bid that may be determined as being a Phase 1 Satisfactory Bid, and more than one Phase 1 Qualified Bidder that may be determined as being a Phase 2 Qualified Bidder. The Monitor will notify each Phase 1 Qualified Bidder in writing as to whether its Phase 1 Qualified Bid constitutes a Phase 1 Satisfactory Bid - such that it is a Phase 2 Qualified Bidder - no later than one (1) Business Day following the Phase 1 Bid Deadline, or at such later time as the Monitor deems appropriate, in consultation with the F&F Entities and with the authorization of the Stalking Horse Bidder, acting reasonably.
20. In the event that no Phase 1 Satisfactory Bid is selected (other than the one from the Stalking Horse Bidder), the F&F Entities will promptly proceed to seek Court approval of the Stalking Horse Agreement and Phase 2 of the SISF will not be conducted.

PHASE 2: FORMAL OFFERS AND REMOVAL OF CONDITIONS (IF REQUIRED)

Formal Binding Offers

21. Any Phase 2 Qualified Bidder (other than the Stalking Horse Bidder) that wishes to make a formal offer with respect to its Sale Proposal or Investment Proposal must submit a binding offer (a "**Binding Offer**"): (a) in the case of a Sale Proposal, in the form of a template agreement of purchase and sale if one is provided in the VDR (if any), along with a marked version showing edits to the original form of the template provided in the VDR and otherwise with a marked version compared to the Stalking Horse Agreement; or (b)

in the case of an Investment Proposal, a plan or restructuring support agreement in form and substance satisfactory to the Monitor, in consultation with the F&F Entities (each, such Binding Offer submitted in accordance with paragraph 22 below, a "**Phase 2 Qualified Bid**") in each case to the Monitor, by August 11, 2023, or such other date or time as may be agreed by the Monitor in consultation with the F&F Entities and with the authorization of the DIP Lender, acting reasonably (as may be extended, the "**Phase 2 Bid Deadline**").

22. A Binding Offer will only be considered as a Phase 2 Qualified Bid if the Binding Offer:
- a) has been received by the Phase 2 Bid Deadline;
 - b) is a Binding Offer: (i) to purchase all, substantially all, or a portion of the Property or the Business; and/or (ii) to make an investment in, restructure, recapitalize or refinance the F&F Entities or the Business, on terms and conditions reasonably acceptable to the F&F Entities;
 - c) identifies all executory contracts of the F&F Entities that the Phase 2 Qualified Bidder will assume and clearly describes, for each contract or on an aggregate basis, how all monetary defaults and non-monetary defaults will be remedied, as applicable;
 - d) is not subject to any financing condition;
 - e) is unconditional, other than upon the receipt of the Approval Order(s) (as defined below) and satisfaction of any other conditions expressly set forth in the Binding Offer;
 - f) it contains or identifies the key terms and provisions to be included in any Approval Order, including whether such order will be a "reverse vesting order";
 - g) includes acknowledgments and representations of the Phase 2 Qualified Bidder that it: (i) has had an opportunity to conduct any and all due diligence regarding the Opportunity prior to making its Binding Offer; (ii) has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the Business in making its Binding Offer; (iii) did not rely upon any written or oral statements, representations, warranties, or guarantees whatsoever, whether express, implied, statutory or otherwise, regarding the Opportunity or the completeness of any information provided in connection therewith, other than as expressly set forth in the Binding Offer or other transaction document submitted with the Binding Offer; and (iv) promptly will commence any governmental or regulatory review of the proposed transaction by the applicable competition, antitrust or other applicable governmental authorities, including those regulating in the cannabis sector;
 - h) provides for net cash proceeds that are not less than the Minimum Purchase Price; unless it is a part of a bid that qualifies as an Aggregated Bid, as the case may be, in which case the total net cash proceeds of the Aggregated Bids will be not less than the Minimum Purchase Price;
 - i) is accompanied by a letter that confirms that the Binding Offer: (i) may be accepted by the F&F Entities by countersigning the Binding Offer, and (ii) is irrevocable and

capable of acceptance until the earlier of (A) two business days after the date of closing of the Successful Bid; and (B) the Outside Date;

- j) does not provide for any break or termination fee, expense reimbursement or similar type of payment, it being understood and agreed that no bidder will be entitled to any bid protections;
- k) in the case of a Sale Proposal, includes:
 - i. the specific purchase price in Canadian dollars and a description of any non-cash consideration, including any future royalty payments or other deferred payment, details of any liabilities to be assumed by the Phase 2 Qualified Bidder and key assumptions supporting the valuation; provided that if the purchase price involves a royalty, earn-out or other deferred payment, the Sale Proposal shall include a specific indication of the Phase 2 Qualified Bidder's proposal and/or commitments for and relating to obtaining necessary regulatory approvals and the Bidder's commercialization strategy, manufacturing capabilities, proposed sale milestones and minimum sale amounts, budget and/or commitment for capital expenditures, direct marketing and sales initiatives and support and proposed product positioning within the Potential Bidder's current product portfolio;
 - ii. a description of the Property that is expected to be subject to the transaction and any of the Property expected to be excluded;
 - iii. a specific indication of the sources of capital for the Phase 2 Qualified Bidder and the structure and financing of the transaction; and
 - iv. a description of those liabilities and obligations (including operating liabilities) which the Phase 2 Qualified Bidder intends to assume and which such liabilities and obligations it does not intend to assume and are to be excluded as part of the transaction;
- l) in the case of an Investment Proposal, includes:
 - i. a description of how the Phase 2 Qualified Bidder proposes to structure the proposed investment, restructuring, recapitalization, refinancing or reorganization, and a description of any non-cash consideration;
 - ii. the aggregate amount of the equity and/or debt investment to be made in the Business or the Applicants in Canadian dollars;
 - iii. the underlying assumptions regarding the pro forma capital structure;
 - iv. a specific indication of the sources of capital for the Phase 2 Qualified Bidder and the structure and financing of the transaction; and
 - v. a description of those liabilities and obligations (including operating liabilities) which the Phase 2 Qualified Bidder intends to assume and which liabilities and obligations it does not intend to assume and are to be

excluded as part of the transaction;

- m) is accompanied by a deposit in the amount of not less than 10% of the cash purchase price payable on closing or total new investment contemplated, as the case may be (the "**Deposit**"), along with acknowledgement that (i) if the Phase 2 Qualified Bidder is selected as the Successful Bidder, that the Deposit will be non-refundable subject to approval of the Successful Bid by the Court and the terms described in paragraph 32 below; and (ii) if the Phase 2 Qualified Bidder is selected as the Back-Up Bidder, that the Deposit will be held and dealt with as described in paragraph 32 below; and
 - n) contemplates and reasonably demonstrates a capacity to consummate a closing of the transaction set out therein on or before September 8, 2023, or such earlier date as is practical for the parties to close the contemplated transaction, following the satisfaction or waiver of the conditions to closing (the "**Target Closing Date**") and in any event no later than September 15, 2023 (the "**Outside Date**").
23. The F&F Entities may not waive compliance with any one or more of the requirements specified above (except as provided by paragraph 24 below) and may not deem any non-compliant Binding Offer to be a Phase 2 Qualified Bid.
24. Notwithstanding subparagraph 22.h) in the circumstance that a Phase 2 Qualified Bid does not provide for net cash proceeds that are at least equal to the Minimum Purchase Price, the F&F Entities and the Monitor will consult with the DIP Lender and, subject to the prior written consent of the DIP Lender, may elect that such Phase 2 Qualified Bid be nevertheless considered as a potential Successful Bid and be entitled to participate in the Auction.

Selection of Successful Bid

25. The Monitor, in consultation with the F&F Entities, may, following the receipt of any Binding Offer, seek clarification with respect to any of the terms or conditions of such Binding Offer and/or request and negotiate one or more amendments to such Binding Offer prior to determining if the Binding Offer should be considered a Phase 2 Qualified Bid.
26. The F&F Entities and the Monitor will: (a) review and evaluate each Phase 2 Qualified Bid; (b) identify the highest or otherwise best bid (the "**Successful Bid**", and the Phase 2 Qualified Bidder making such Successful Bid, the "**Successful Bidder**"); and (c) identify the next highest or otherwise second best bid (the "**Back-Up Bid**", and the Phase 2 Qualified Bidder making such Back-Up Bid, the "**Back-Up Bidder**"), in each case pursuant to the paragraphs below. Any Successful Bid and Back-Up Bid will be subject to approval by the Court.
27. In the event that no Phase 2 Qualified Bid is selected (other than the Stalking Horse Bid), the F&F Entities will promptly seek Court approval of the Stalking Horse Agreement. In the event there is at least one Phase 2 Qualified Bid in addition to the Stalking Horse Bid, the Monitor, in consultation with the F&F Entities may determine the Successful Bid or may determine that the Successful Bid will be identified through an Auction in accordance with the procedure set out below.
28. In the event that an auction (the "**Auction**") is required in accordance with the terms of

these Bidding Procedures, it will be conducted in accordance with the procedures set forth in this paragraph:

- a) The Auction will commence at a time to be designated by the Monitor, on August 15, 2023, and may, in the discretion of the Monitor, be held virtually via videoconference, teleconference or such other reasonable means as the Monitor deems appropriate. The Monitor and the F&F Entities will work in good faith with the parties entitled to attend the Auction to arrange for the Auction to be so held. The Monitor, with the consent of the F&F Entities and of the DIP Lender, may postpone the Auction.
- b) The identity of each Phase 2 Qualified Bidder participating in the Auction will be disclosed, on a confidential basis, to other Phase 2 Qualified Bidders participating in the Auction.
- c) Except as otherwise permitted in the Monitor's discretion, only the F&F Entities, the Monitor and the Phase 2 Qualified Bidders, and, in each case, their respective professionals and representatives, will be entitled to attend the Auction. Only Phase 2 Qualified Bidders (including, for greater certainty, the Stalking Horse Bidder) are eligible to participate in the Auction.
- d) Phase 2 Qualified Bidders will participate in the Auction through a duly authorized representative.
- e) Except as otherwise set forth herein, the Monitor, in consultation with the F&F Entities, may waive and/or employ and announce at the Auction additional rules, including rules to facilitate the participation of parties participating in an Aggregated Bid, that are reasonable under the circumstances for conducting the Auction, provided that such rules are: (i) not inconsistent with the Initial Order, the SISP, the Bidding Procedures, the CCAA, or any order of the Court issued in connection with the CCAA Proceedings; (ii) disclosed to each Phase 2 Qualified Bidder; and (iii) designed, in the Monitor's business judgment, to result in the highest and otherwise best offer.
- f) The Monitor may arrange for the actual bidding at the Auction to be transcribed or recorded. Each Phase 2 Qualified Bidder participating in the Auction will designate a single individual to be its spokesperson during the Auction.
- g) Each Phase 2 Qualified Bidder participating in the Auction must confirm on the record, at the commencement of the Auction and again at the conclusion of the Auction, that it has not engaged in any collusion with the F&F Entities or any other person, without the consent of the F&F Entities and the Monitor, regarding the SISP, that has not been disclosed to all other Phase 2 Qualified Bidders. For greater certainty, communications between the Stalking Horse Bidder and either the F&F Entities or the Monitor with respect to and in preparation of the Stalking Horse Agreement, the SISP, the Bidding Procedures and other ancillary matters prior to the issuance of the SISP Order and the commencement of the SISP will not represent collusion nor communications prohibited by this paragraph.
- h) Prior to the Auction, the Monitor will identify, in consultation with the F&F Entities, the highest and best of the Phase 2 Qualified Bids received and such Phase 2

Qualified Bid will constitute the opening bid for the purposes of the Auction (the "**Opening Bid**"). Subsequent bidding will continue in minimum increments valued at not less than \$250,000 cash in excess of the Opening Bid. For the purposes of facilitating bidding, the Monitor, with the consent of the F&F Entities and subject to the reimbursement in payment in full, in cash at closing, of the Purchaser, or with the prior written consent of the Purchaser, may ascribe a monetary value to non-cash considerations of each of the Phase 2 Qualified Bids, including by way of example, to different levels of conditionality to closing. Each Phase 2 Qualified Bidder (other than the Stalking Horse Bidder) will provide evidence of its financial wherewithal and ability to consummate the transaction at the increased purchase price, if so requested by the Monitor, in consultation with the F&F Entities. Further, in the event that an Aggregated Bid qualifies to participate in the Auction, modifications to the bidding requirements may be made by the Monitor, in consultation with the F&F Entities, to facilitate bidding by the participants in the Aggregated Bid.

- i) All Phase 2 Qualified Bidders will have the right, at any time, to request that the Monitor announce, subject to any potential new bids, the then-current highest and best bid and, to the extent requested by any Phase 2 Qualified Bidder, use reasonable efforts to clarify any and all questions such Phase 2 Qualified Bidder may have regarding the Monitor's announcement of the then-current highest and best bid.
 - j) Each participating Phase 2 Qualified Bidder will be given reasonable opportunity to submit an overbid at the Auction to any then-existing overbids. The Auction will continue until the bidding has concluded and there is one remaining Phase 2 Qualified Bidder. The Monitor, in consultation with the F&F Entities, shall determine which Phase 2 Qualified Bidders have submitted the (i) highest and otherwise best Phase 2 Qualified Bid of the Auction, and (ii) the next highest and otherwise second best Phase 2 Qualified Bid of the Auction, in each case, taking into account, as the case may be, the monetary value of the non-cash considerations as determined in accordance with subparagraph 28.h). At such time and upon the conclusion of the bidding, the Auction will be closed, and the final remaining Phase 2 Qualified Bidder will be the Successful Bidder and the next highest and otherwise second best Phase 2 Qualified Bidder will be the Back-Up Bidder.
 - k) Upon selection of a Successful Bidder and a Back-Up Bidder, if any, the Monitor will require the Successful Bidder and the Back-Up Bidder, if any, to each deliver, as soon as practicable, an amended and executed transaction document that reflects their final bid and any other modifications submitted and agreed to during the Auction, prior to the filing of the application material for the hearing to consider the Approval Motion.
 - l) The Monitor and the F&F Entities will not consider any bids submitted after the conclusion of the Auction.
 - m) The Monitor, in consultation with the Applicants, shall be at liberty to modify or to set additional procedural rules for the Auction as it sees fit, including to conduct the Auction by way of written submissions.
29. The Successful Bid and the Back-Up Bid will be selected by no later than 5:00 p.m.

(Eastern Time) on August 17, 2023 and the completion and execution of definitive documentation in respect of the Successful Bid and the Back-Up Bid, as applicable, must be finalized and executed no later than September 4, 2023, which definitive documentation will be conditional only upon the receipt of the Approval Order(s) and the express conditions set out therein and will provide that the Successful Bidder will use all reasonable efforts to close the proposed transaction by no later than the Target Closing Date, or such longer period as may be agreed to by the Monitor, in consultation with the F&F Entities and the Successful Bidder. In any event, the Successful Bid must be closed by no later than the Outside Date. If a Back-Up Bid is identified in accordance with this SISF, then such Back-Up Bid shall remain open until the date (the "**Back-Up Bid Outside Date**") on which the transaction contemplated by the Successful Bid is consummated or such earlier date as the Monitor, in consultation with the F&F Entities, determines. If the transactions contemplated by the Successful Bid have not closed by the Outside Date or the Successful Bid is terminated for any reason prior to the Outside Date, the F&F Entities may elect, in consultation with the Monitor, to seek to complete the transactions contemplated by the Back-Up Bid, and will promptly seek to close the transaction contemplated by the Back-Up Bid. The Back-Up Bid will be deemed to be the Successful Bid and the F&F Entities will be deemed to have accepted the Back-Up Bid only when the F&F Entities have made such election.

Approval of Successful Bid

30. The F&F Entities will apply to the Court (the "**Approval Motion**") for one or more orders: (i) approving the Successful Bid and authorizing the taking of such steps and actions and completing such transactions as are set out therein or required thereby (such order shall also approve the Back-Up Bid(s), if any, should the Successful Bid not close for any reason); and (ii) granting a vesting order and/or reverse vesting order to the extent that such relief is contemplated by the Successful Bid so as to vest title to any purchased assets in the name of the Successful Bidder and/or vesting unwanted liabilities out of one or more of the F&F Entities (collectively, the "**Approval Order(s)**"). The Approval Motion will be held on a date to be scheduled by the F&F Entities and confirmed by the Court upon application by the F&F Entities. With the consent of the Monitor and the Successful Bidder, and in consultation with the DIP Lender, the Approval Motion may be adjourned or rescheduled by the F&F Entities without further notice, by an announcement of the adjourned date at the Approval Motion or in a notice to the service list of the CCAA proceedings prior to the Approval Motion. The F&F Entities will consult with the Monitor, the DIP Lender and the Successful Bidder regarding the application material to be filed by the F&F Entities for the Approval Motion.
31. All Phase 2 Qualified Bids (other than the Successful Bid but including the Back-Up Bid) will be deemed rejected on and as of the date of the closing of the Successful Bid, with no further or continuing obligation of the F&F Entities to any unsuccessful Phase 2 Qualified Bidders.

Deposits

32. The Deposit(s):
 - a) will, upon receipt from the Phase 2 Qualified Bidder(s), be retained by the Monitor and deposited in a non-interest-bearing trust account;

- b) received from the Successful Bidder and the Back-Up Bidder, if any, will:
 - i. be applied to the purchase price to be paid by the applicable Successful Bidder or Back-Up Bidder whose Successful Bid or Back-Up Bid, as applicable, is the subject of the Approval Order(s), upon closing of the approved transaction; and
 - ii. otherwise be held and refundable in accordance with the terms of the definitive documentation in respect of any Successful Bid or Back-Up Bid, provided that (i) all such documentation will provide that the Deposit will be fully refunded to the Back-Up Bidder on the Back-Up Bid Outside Date; and (ii) all such documentation will provide that the Deposit will be retained by the F&F Entities and forfeited by the Successful Bidder, if the Successful Bid fails to close by the Outside Date, and such failure is attributable to any failure or omission of the Successful Bidder to fulfil its obligations under the terms of the Successful Bid;
 - c) received from the Phase 2 Qualified Bidder(s) that are not the Successful Bid or the Back-Up Bidder will be fully refunded, to the Phase 2 Qualified Bidder(s) that paid the Deposit(s) as soon as practical following the closing of the Successful Bid.
33. Notwithstanding anything to the contrary herein, the Stalking Horse Bidder will not be required to provide a Deposit.

"As is, Where is"

34. Any sale (or sales) of the Property or the Business will be on an "as is, where is" basis except for representations and warranties that are customarily provided in purchase agreements for a company subject to CCAA proceedings. Any such representations and warranties provided for in the definitive documents will not survive closing.

Free of Any and All Claims And Interests

35. In the event of a sale, to the extent permitted by law, all of the rights, title and interests of the F&F Entities in and to the Property or the Business to be acquired will be sold free and clear of all pledges, liens, security interests, encumbrances, claims, charges, options, and interests thereon and there against (collectively, the "**Claims and Interests**") pursuant to section 36(6) of the CCAA, such Claims and Interests to attach to the net proceeds of the sale of such Property or Business (without prejudice to any claims or causes of action regarding the priority, validity or enforceability thereof), except to the extent otherwise set forth in the relevant transaction documents with a Successful Bidder.

Credit Bidding

36. The Stalking Horse Bidder will be entitled pursuant to the Stalking Horse Agreement, including for greater certainty as part of the Auction, as the case may be, to credit bid or retain as Assumed Liabilities or Retained Liabilities all or part of the existing secured obligations owing to it, including all interest, costs and fees to which the Stalking Horse Bidder is entitled pursuant to its loan, interim financing, debenture, promissory note and security agreements with the F&F Entities.

Confidentiality

37. For greater certainty, other than as required in connection with any Auction or Approval Motion, neither the F&F Entities nor the Monitor will disclose: (i) the identity of any Potential Bidder, or Phase 1 Qualified Bidder (other than the Stalking Horse Bidder); or (ii) the terms of any bid, LOI, Phase 1 Qualified Bid, Sale Proposal, Investment Proposal or Phase 2 Qualified Bid (other than the Stalking Horse Agreement), with any other bidder (provided that disclosure may be made to the DIP Lender when contemplated, by the SISP, such as in the event that no single Phase 1 Qualified Bid or Phase 2 Qualified Bid provides for net cash proceeds that are at least equal to the Minimum Purchase Price) without the consent of such party (including by way of email), subject to applicable law.

Further Orders

38. At any time during the SISP, the F&F Entities, the DIP Lender or the Monitor may apply to the Court for advice and directions with respect to any aspect of this SISP including, but not limited to, the continuation of the SISP or with respect to the discharge of its powers and duties hereunder.

Additional Terms

39. In addition to any other requirement of the SISP:
- a) The F&F Entities and the Monitor, as applicable, will at all times prior to the selection of a Successful Bid use commercially reasonable efforts to facilitate a competitive bidding process in the SISP including, without limitation, by actively soliciting participation by all persons who would be customarily identified as high potential bidders in a process of this kind or who may be reasonably proposed by any of the F&F Entities' stakeholders as a high potential bidder.
 - b) Any consent, approval or confirmation to be provided by the Stalking Horse Bidder, the F&F Entities and/or the Monitor is ineffective unless provided in writing and any approval required pursuant to the terms hereof is in addition to, and not in substitution for, any other approvals required by the CCAA or as otherwise required at law in order to implement a Successful Bid. For the avoidance of doubt, a consent, approval or confirmation provided by email will be deemed to have been provided in writing for the purposes of this paragraph.
 - c) Prior to seeking Court approval for any transaction or bid contemplated by this SISP, the Monitor will provide a report to the Court on the SISP process, parts of which may be filed under seal, including in respect of any and all bids received.

APPENDIX A

DEFINED TERMS

"**Aggregated Bids**" has the meaning given to it in paragraph 14.g)ii.

"**Approval Motion**" has the meaning given to it in paragraph 30.

"**Approval Order(s)**" has the meaning given to it in paragraph 30

"**Auction**" has the meaning given to it in paragraph 28.

"**Back-Up Bid**" has the meaning given to it in paragraph 26.

"**Back-Up Bidder**" has the meaning given to it in paragraph 26.

"**Back-Up Bid Outside Date**" has the meaning given to it in paragraph 29.

"**Bid**" has the meaning given to it in the preamble.

"**Bidding Procedures**" has the meaning given to it in the preamble.

"**Binding Offer**" has the meaning given to it in paragraph 21.

"**Business**" has the meaning given to it in the preamble.

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

"**CCAA**" has the meaning given to it in the preamble.

"**CCAA Proceedings**" has the meaning given to it in the preamble.

"**Claims and Interests**" has the meaning given to it in paragraph 35.

"**Court**" has the meaning given to it in the preamble.

"**Deposit**" has the meaning given to it in paragraph 22.1).

"**DIP Lender**" means 2797031 Ontario Inc., and its successors and permitted assigns.

"**F&F Entities**" has the meaning given to it in the preamble.

"**Financing Party**" has the meaning given to it in paragraph 9.

"**Initial Order**" has the meaning given to it in the preamble.

"**Investment Proposal**" has the meaning given to it in paragraph 14.g)i.

"**LOI**" has the meaning given to it in paragraph 13.

"**Monitor**" has the meaning given to it in the preamble.

"Minimum Purchase Price" has the meaning given to it in paragraph 14.g)ii.

"NDA" has the meaning given to it in paragraph 6.d).

"Opening Bid" has the meaning given to it in paragraph 28.h).

"Opportunity" has the meaning given to it in paragraph 2.

"Outside Date" has the meaning given to it in paragraph 22.n).

"Partial Sale Proposal" has the meaning given to it in paragraph 14.g)i.

"Phase 1 Bid Deadline" has the meaning given to it in paragraph 13.

"Phase 1 Qualified Bid" has the meaning given to it in paragraph 13.

"Phase 1 Qualified Bidder" has the meaning given to it in paragraph 10.

"Phase 1 Satisfactory Bid" has the meaning given to it in paragraph 19.

"Phase 2 Bid Deadline" has the meaning given to it in paragraph 21.

"Phase 2 Qualified Bid" has the meaning given to it in paragraph 21.

"Phase 2 Qualified Bidder" has the meaning given to it in paragraph 19.

"Potential Bidder" has the meaning given to it in paragraph 9.

"Retained Liabilities" has the meaning given to it in the Stalking Horse Agreement.

"Sale Proposal" has the meaning given to it in paragraph 14.g)i.

"SISP" has the meaning given to it in the preamble.

"SISP Order" has the meaning given to it in the preamble.

"Stalking Horse Agreement" has the meaning given to it in the preamble.

"Stalking Horse Bidder" has the meaning given to it in the preamble.

"Successful Bid" has the meaning given to it in paragraph 26.

"Successful Bidder" has the meaning given to it in paragraph 26.

"Target Closing Date" has the meaning given to it in paragraph 22.i).

"Teaser Letter" has the meaning given to it in paragraph 11.

"VDR" has the meaning given to it in paragraph 8.

Court File No. CV-23-00700581-00CL

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

AND IN THE MATTER OF PLAN OF COMPROMISE OR ARRANGEMENT OF FIRE & FLOWER HOLDINGS CORP., FIRE & FLOWER INC.,
13318184 CANADA INC., 11180703 CANADA INC., 10926671 CANADA LTD., FRIENDLY STRANGER HOLDINGS CORP., PINEAPPLE
EXPRESS DELIVERY INC., and HIFYRE INC

Applicants

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

PROCEEDING COMMENCED AT TORONTO

**ORDER
(Re: SISP Approval Order)**

STIKEMAN ELLIOTT LLP
Barristers & Solicitors
5300 Commerce Court West
199 Bay Street
Toronto, Canada M5L 1B9

Maria Konyukhova (LSO #52880V)
Tel: (416) 869-5230
Email: mkonyukhova@stikeman.com

Philip Yang (LSO #82084O)
Tel: (416) 869-5593
Email: pyang@stikeman.com


Lawyers for the Applicants

EXHIBIT "D"

referred to in the Affidavit of

STEPHANE TRUDEL

Sworn August 23, 2023

DocuSigned by:

36124C4218DD47C...

Commissioner for Taking Affidavits
Philip Yang

Court File No. _____

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

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

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
FIRE & FLOWER HOLDINGS CORP., FIRE & FLOWER INC., 13318184 CANADA INC.,
11180703 CANADA INC., 10926671 CANADA LTD., FRIENDLY STRANGER HOLDINGS
CORP., PINEAPPLE EXPRESS DELIVERY INC., and HIFYRE INC.**

Applicants

**AFFIDAVIT OF STEPHANE TRUDEL
(Sworn June 5, 2023)**

I, Stephane Trudel, of the City of Toronto, in the Province of Ontario, MAKE OATH
AND SAY:

1. I am the Chief Executive Officer ("**CEO**") of Fire & Flower Holdings Corp. ("**FFHC**" or the "**Company**"), Fire & Flower Inc. ("**FFI**"), 13318184 Canada Inc., ("**133 Canada**"), 11180703 Canada Inc. ("**Hi-Line Ventures**"), 10926671 Canada Ltd. ("**Open Fields Distribution**"), Friendly Stranger Holdings Corp. ("**Friendly Stranger**"), Pineapple Express Delivery Inc. ("**Pineapple Express Delivery**"), Hifyre Inc. ("**Hifyre**", and collectively, the "**Applicants**"), Hifyre US, Inc., ("**Hifyre US**"), and PGED Corp. ("**PotGuide**", and together with Hifyre US and the Applicants, the "**Companies**") and a member of its board of directors. I have been a member of the board of directors of FFHC since June 8, 2020 and have been the CEO of the Companies and a member of the boards of directors of the Companies, other than FFHC, since June 1, 2022.

2. I am responsible for overseeing the operations of the Companies, their liquidity management and, ultimately, for assisting in their restructuring process. Because of my involvement with the Companies, I have knowledge of the matters to which I hereinafter depose, except where otherwise stated. I have also reviewed the records, press releases, and public filings of the Companies and have spoken with certain of the directors, officers and/or employees of the Companies, as necessary. Where I have relied upon such information, I do verily believe such information to be true.

3. This affidavit is sworn in support of an application (the “**Application**”) returnable before the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) on June 5, 2023 to commence proceedings (the “**CCAA Proceedings**”) under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”) in respect of the Applicants. The Applicants are seeking an initial order (the “**Initial Order**”) in the form contained in the Application Record, among other things:

- (a) abridging the time for service of the Application and the materials filed in support thereof, and dispensing with further service thereof;
- (b) declaring that the Applicants are each a debtor company to which the CCAA applies;
- (c) staying all proceedings and remedies taken or that might be taken against or in respect of the Applicants, any of their assets, property, and undertakings (“**Property**”) or business, or their directors and officers (the “**D&Os**”), except as otherwise set forth in the Initial Order or as otherwise permitted by law (the “**Stay of Proceedings**”), for an initial period of ten (10) days in accordance with the CCAA (the “**Stay Period**”);
- (d) appointing FTI Consulting Canada Inc. (“**FTI**” or the “**Proposed Monitor**”) as the monitor of the Applicants in these CCAA Proceedings;
- (e) approving the execution by the Applicants of an interim facility loan agreement (the “**DIP Facility Agreement**”) entered into on June 5, 2023 with 2707031 Ontario Inc. (“**ACT Investor**”, and in its capacity as lender under the DIP Facility Agreement, the “**DIP Lender**”), pursuant to which the DIP Lender has agreed to advance to the Applicants a total amount of up to \$9.8 million (the “**DIP Facility**”), which will be made available to the Applicants during these CCAA Proceedings, of which an initial amount of \$2.7 million will be advanced during the initial 10-day Stay Period (the “**Initial Advance**”);
- (f) granting the following priority charges against the Property:
 - i. an “**Administration Charge**” against the Property in the initial amount of \$600,000, as security for the payment of the professional fees and disbursements incurred and to be incurred by the Proposed Monitor,

counsel to the Proposed Monitor, and counsel to the Applicants, in connection with the CCAA Proceedings both before and after the making of the Initial Order;

- ii. a “**DIP Lender’s Charge**” against the Property in the amount of the Initial Advance as security for the Applicants’ obligations under the DIP Facility Agreement; and
- iii. a “**D&O Charge**” against the Property in the maximum amount of \$2,800,000 in favour of the D&Os of the Applicants as security for the Applicants’ obligation to indemnify such D&Os for obligations and liabilities they may incur in such capacities after the commencement of the CCAA Proceedings, including with respect to employee vacation pay which may have accrued prior to the commencement of these proceedings, but which may become due and payable after the commencement of these proceedings, except to the extent that such obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

4. I also swear this affidavit in support of a motion (the “**Comeback Motion**”), which the Applicants request to be heard on or about June 15, 2023 (subject to the Initial Order being granted by the Court) for an amended and restated Initial Order (the “**ARIO**”) granting, among other things:

- (a) an extension of the Stay Period until September 1, 2023;
- (b) authority for the Applicants to increase the amounts which may be borrowed by the Applicants under the DIP Facility Agreement to \$9.8 million;
- (c) an increase in the amounts which may be borrowed by the Applicants under the DIP Facility Agreement;
- (d) approval of the key employee retention plan (the “**KERP**”);
- (e) approval of a sale and investment solicitation process (the “**SISP**”) and authorizing the Applicants and the Monitor to immediately commence the SISP;

- (f) authority for the Applicants to incur no further expenses in relation to the Securities Filings (as defined below) and declare that none of the D&Os, employees, and other representatives of the Applicants or the Monitor (and its directors, officers, employees and representatives) shall have any personal liability for any failure by the Applicants to make the Securities Filings;
- (g) an extension of the time limit to hold the annual shareholders' meeting of FFHC scheduled for June 22, 2023 until after the conclusion of the CCAA Proceedings, subject to further order of this Court;
- (h) the following priority charges (collectively, the "**Charges**") against the Property:
 - i. the Administration Charge;
 - ii. an increased DIP Lender's Charge;
 - iii. the D&O Charge; and
 - iv. a new "**KERP Charge**" against the Property as security for payments under the KERP.

5. All references to currency in this affidavit are references to Canadian dollars, unless otherwise indicated.

PART I – OVERVIEW¹

6. FFHC, through its wholly-owned subsidiaries, is an independent cannabis retail chain with 91 retail stores open across Canada. Certain subsidiaries of FFHC also carry on business as a wholesale cannabis distributor, a logistics provider, and operate digital platforms which provide various services and software products relating to cannabis products.

7. The Companies have been operating at a loss since they began operating in 2018. Most recently, the Companies have suffered significant operating losses of approximately \$45.4 million and \$83.4 million, in the fiscal years ended January 29, 2022 and December 31, 2022,

¹ Capitalized terms used in this section and not otherwise defined have the meanings ascribed to them in the balance of this affidavit.

respectively. From December 31, 2022 to March 31, 2023, the Companies suffered operating losses of approximately \$8.7 million, with losses continuing until the date of this affidavit.

8. While the Companies' financial difficulties were driven by a variety of factors, the significant net losses suffered by the Companies have largely stemmed from their cannabis retail operations. Increased competition and operating costs, margin pressure, and regulatory restrictions experienced by the Companies and the cannabis industry generally have collectively contributed to significantly lower revenues and higher costs than what the Applicants expected their cannabis retail stores would face.

9. The Applicants' largest liabilities are in respect of its lease obligations. Without the corresponding expected revenue for each of the Applicants' leased operating locations and several "dead leases" – leases entered into in anticipation of receiving a license from the applicable regulatory authority, with the regulatory authority ultimately not issuing such license, or a decline in revenue expectations for a store due to deterioration in market conditions and/or increased competition resulting in the Applicants deciding not to invest the necessary capital to commence or continue operations, the Applicants have been operating at a significant loss.

10. Certain investments made by the Applicants have also resulted in a net drain on the Companies' resources.

11. The Applicants have been funded by outside investments for a number of years. Since February 2021, the sole source of outside investment has been the exercise of warrants and debt financing by the Company's largest shareholder, ACT Investor, a wholly-owned subsidiary of Alimentation Couche-Tard ("**ACT Parent Co.**"), a Canadian-based multinational operator of convenience stores with over 14,000 stores across several countries.

12. This Application is filed in a context wherein the Applicants have made various efforts since September 2022 to raise additional liquidity and pursue strategic alternatives.

13. In September 2022, a special committee of the board of directors of the Company was formed to assist the Board in reviewing and negotiating matters related to the Companies' existing strategic capital investments and financing arrangements (including with respect to a financing proposal received from ACT Investor) and, if necessary, present the Board with alternative strategic capital investments and financing arrangements and the special committee retained Canaccord Genuity Corp. ("**Canaccord**") as financial advisor.

14. Shortly thereafter, in October 2022, the Company entered into (i) a loan agreement with ACT Investor in respect of a \$11 million working capital loan pursuant to a secured loan facility with ACT investor, which was fully drawn down on October 21, 2022; and (ii) a subscription agreement and warrant amending agreement that collectively contemplated a \$5 million equity investment by ACT Investor and amendments to certain terms of existing warrants held by ACT Investor (the “**Warrant and Share Transaction**”). The Warrant and Share Transaction was amended on December 15, 2022 to provide that the maturity date for approximately \$2.4 million of unsecured convertible debentures held by ACT Investor would be extended from June 30, 2023 to August 31, 2024. The Warrant and Share Transaction was subject to shareholder approval (including by a majority of the minority shareholders) and in recommending that shareholders vote in favour of the Warrant and Share Transaction at a special meeting initially called for December 16, 2022 and subsequently held on December 29, 2022, the special committee relied in part on a fairness opinion from Canaccord that the Warrant and Share Transaction was fair from a financial point of view to the Companies. The shareholders voted down the Warrant and Share Transaction and the Companies did not receive the additional \$5 million of working capital or the extension of the maturity date of the unsecured convertible debentures.

15. In April 2023, the Company once again formed a special committee of the board of directors to review and assess potential financing opportunities and strategic alternatives. The special committee has engaged in discussions pertaining to potential financing, acquisitions and/or sale transactions with ACT Investor, key stakeholders of the Company and other industry participants and financial institutions. Despite these efforts, the Applicants have been unable to secure additional financing.

16. Without the protection of the CCAA and the relief available thereunder, the Applicants will be unable to meet their obligations as they become due imminently. If the Applicants are insolvent without the protection of the CCAA, the Applicants would be forced to shut down operations, which would be extremely detrimental to the Applicants’ landlords, suppliers, lenders, customers, and their 774 employees.

17. If granted the Stay of Proceedings and the protections of the CCAA, the Applicants intend to, among other things:

- (a) maintain operations, for the benefit of most of its employees and other stakeholders;

- (b) disclaim unprofitable leases and the “dead leases” referenced above;
- (c) streamline their remaining operations with a view to generating a profit; and
- (d) conduct a court-approved SISP to obtain a going concern solution to maximize value for their stakeholders.

18. The board of directors for each Applicant has authorized this Application and commencement of these CCAA Proceedings.

PART II – THE COMPANIES

A. Corporate Structure

(i) Parent and Holding Company

19. FFHC is a non-operating holding company. FFHC was incorporated under the *Business Corporations Act* (Ontario) (the “**OBCA**”) on December 12, 2017 and continued to become a company under the *Canada Business Corporations Act* (the “**CBCA**”) on February 12, 2019. FFHC’s registered and head office is located in Toronto, Ontario. Each of the other Companies are wholly owned, directly or indirectly, by FFHC.

20. FFHC is a publicly traded company whose common shares (the “**Common Shares**”) are traded on the Toronto Stock Exchange (the “**TSX**”) under the symbol “*FAF*”. As of the date of this affidavit, ACT Investor holds approximately 35.7% of the issued and outstanding Common Shares. ACT Investor also holds the right to exercise certain Common Share purchase warrants of FFHC which, if fully exercised, would result in ACT Investor holding 50.1% of the issued and outstanding Common Shares, on a fully-diluted basis.

(ii) Canadian Operating Entities

21. FFI is the main operating entity with respect to the Companies and operates under the “Retail Segment” of the Applicants. FFI owns and operates 80 licensed cannabis retail stores under the trademark banner name of “Fire and Flower” throughout Canada.

22. Friendly Stranger (together with FFI, the “**Retailers**”) is the other entity operating under the Retail Segment of the Applicants. Friendly Stranger owns and operates 11 licensed cannabis retail stores under the trademark banner name “Friendly Stranger” throughout Ontario.

23. Each of the stores owned and operated by the Retailers sells cannabis products and accessories.

24. Open Fields Distribution operates a wholesale distribution business under the “Wholesale Segment” of the Applicants. Open Fields Distribution purchases cannabis products directly from licensed producers and distributes such products to the Retailers’ stores, as well as third-party independent retailers in Saskatchewan and Manitoba.

25. Pineapple Express Delivery was acquired by FFHC and Hifyre in January 2022 to operate the delivery aspect of the Retailers’ business. Pineapple Express Delivery provided the Retailers with cannabis e-commerce and delivery services for their retail stores. Pineapple Express Delivery operated out of British Columbia, Saskatchewan, Manitoba, and Ontario. As described in greater detail below, due to changes in government regulations relating to delivery of cannabis products, the Applicants had to shift Pineapple Express Delivery’s operations to other entities within the group.

26. Hifyre operates under the “Digital Platform Segment” of the Companies. Hifyre has developed and deployed a proprietary, omni-channel digital platform to drive the Retailers’ operations and provide insight into consumer behaviours. Hifyre licenses its digital platform to third parties and operates a virtual marketplace and last-mile delivery service to support the Retailers’ operations.

27. FFHC has an option, but not an obligation, to acquire all of the shares or all or substantially all of the assets of Fire & Flower US Holdings Inc. (“**FAFUS**”), an entity unaffiliated to the Applicants. The consideration is at FFHC’s option, consisting of cash or common shares of FFHC equivalent to the fair market value of FAFUS less the value of refundable deposits provided by FFHC. As at March 31, 2023, FFHC has delivered refundable deposits valued at approximately \$7,237,000. FAFUS owns and operates one (1) cannabis retail store in California under the “Fire & Flower” brand and one (1) cannabis retail store in Colorado under an independent retail brand. FFHC also has an option to acquire a secured debt instrument that has been granted by FAFUS in the event that FAFUS fails to repay its debt as it becomes due.

(iii) US Entities

28. PotGuide is the other operating entity with respect to the Digital Platform Segment of the Companies. PotGuide operates two websites and content platforms, “Potguide.com” and

“Wikileaf.com”. In addition, these websites and content platforms also function as a directory and referral service for cannabis retailers and delivery services. PotGuide does not sell any cannabis products.

29. Hifyre US (together with PotGuide, the “**US Entities**”) is a non-operating subsidiary of Hifyre. Hifyre US has no employees or operations and holds all the issued and outstanding shares of PotGuide.

(iv) Holding Companies

30. 133 Canada is a non-operating subsidiary of FFI. 133 Canada is a signatory for certain licensing agreements but otherwise does not have any employees or operations. 133 Canada sub-licenses the “Fire and Flower” brand to certain affiliates of ACT Parent Co.

31. Hi-Line Ventures is a non-operating subsidiary of FFI. Hi-Line Ventures licenses the majority of the Applicants’ intellectual property and sub-licenses same to Fire & Flower US Holdings Corp. (“**FAFUS**”), an unrelated entity which owns and operates a cannabis retail store in each of Colorado and California. Hi-Line Ventures otherwise does not have any employees or operations.

32. Attached as **Exhibit “A”** is a chart showing the Companies’ corporate structure, including jurisdiction of incorporation and location of the head office for each entity.

B. The Companies’ Business and Operations

(i) Operations

33. FFHC, through its wholly-owned subsidiaries, is an independent cannabis retail chain with four distinct segments: (a) the “Retail Segment” which sells cannabis products and accessories under its trademark banners; (b) the “Wholesale Segment” which operates as a wholesale cannabis business; (c) the “Delivery Segment” which delivers cannabis products across Canada; and (d) the “Digital Platform Segment” which develops digital experiences and retail analytical insights.

(A) Retail Segment

34. The Applicants’ retail operations across Canada are summarized below:

Jurisdiction	Stores Operated
Alberta	34
Saskatchewan	15
Manitoba	8
Yukon Territory	1
Ontario	31
British Columbia	2
Total	91

35. FFI owns and operates 80 cannabis retail stores under the trademark banner name of “Fire and Flower” throughout Canada. FFI also conducts online sales of cannabis products and accessories in British Columbia, Saskatchewan, and Ontario.

36. Friendly Stranger owns and operates 11 cannabis retail stores under the trademark banner names of “Friendly Stranger” throughout Ontario.

37. Each of the Retailers’ stores sell cannabis products and accessories and are permitted to operate by all the relevant municipalities.

38. In addition to serving as traditional brick-and-mortar retail shops, the Retailers’ network of retail stores also serves as distribution nodes and last-mile fulfilment outposts for delivery direct to consumers.

39. The Applicants employ approximately 645 employees in their retail operations. The Retail Segment accounted for approximately seventy-five percent (75%) of the Companies’ gross revenue for the quarter ended March 31, 2023.

40. FFHC is not substantially dependent on any individual retail cannabis store.

41. The Applicants also license the Companies’ intellectual property to third parties to brand their cannabis retail stores through Hi-Line Ventures, 133 Canada, and Hifyre.

42. In particular, Hi-Line Ventures has licensed the “Fire and Flower” trademark to FAFUS which is currently operating one (1) “Fire and Flower” branded retail cannabis store licensed under California state laws.

43. Similarly, pursuant to a master licensing agreement, 133 Canada has licensed the “Fire and Flower” trademark to MC Cannabis Inc. (“**MC Cannabis**”), a wholly-owned subsidiary of ACT Parent Co. As a result, there are currently five (5) licensed cannabis retail stores being operated by MC Cannabis in Ontario next to existing Circle K locations. For each of these stores, MC Cannabis has branded its stores as “Fire and Flower” pursuant to the Master Licensing Agreement.

44. 133 Canada has also entered into master franchising agreements with MC Cannabis, pursuant to which 133 Canada licensed its trademarks to MC Cannabis for its use in Alberta, Manitoba, and Saskatchewan.

45. Hifyre also licenses its “Hifyre” digital platform to FAFUS, pursuant to which FAFUS is currently operating one (1) retail cannabis store licensed under Colorado state laws.

46. Altogether, there are seven (7) cannabis retail stores operating pursuant to licensing agreements with Hi-Line Ventures, 133 Canada, and/or Hifyre. Of these cannabis retail stores, five (5) are being operated in Ontario under the “Fire & Flower” brand and two (2) are being operated in the United States, one of which operates under the “Fire & Flower” brand.

47. As will be described in greater detail below, Hifyre also licenses certain of its trademarks and other intellectual property to FAFUS and MC Cannabis for use in their retail cannabis stores.

(B) Wholesale Segment

48. In Saskatchewan, Open Fields Distribution operates a cannabis wholesale business. Open Fields Distribution purchases cannabis products directly from licensed producers in Saskatchewan and distributes such products to FFI’s stores as well as other third-party independent retailers in Saskatchewan.

49. Open Fields Distribution is also party to a distribution agreement (the “**Distribution Agreement**”) with the Manitoba Liquor & Lotteries Corporation (the “**MBLL**”), pursuant to which Open Fields Distribution, at the direction of the MBLL, offers distribution of cannabis products from provincially authorized licensed producers to cannabis retailers in the province of Manitoba. Under the Distribution Agreement, Open Fields Distribution does not purchase or sell cannabis products but receives fees from the provincially authorized licensed producers for its distribution services.

50. Further, Open Fields Distribution also operates a cross-docking cannabis logistics and distribution facility in Manitoba pursuant to the Distribution Agreement. Cross-docking is a practice in logistics management that includes receiving incoming deliveries for loading into outbound delivery vehicles, omitting traditional warehouse logistical practices, which saves time and money.

51. Open Fields Distribution leases warehouse space in Saskatchewan and Manitoba as distribution centres.

52. The Applicants employ approximately 6 employees in their wholesale operations.

(C) Delivery Segment

53. Pineapple Express Delivery was acquired in January 2022 and operated as a delivery and logistics company servicing the Retailers' customers across Canada, as well as third party business-to-consumer ("**B2C**") and business-to-business customers. Pineapple Express Delivery provides the Retailers with a full cannabis e-commerce and delivery service, supporting the Retailers' network of retail stores and same-day delivery to customers through its trademark "Firebird Delivery".

54. Pineapple Express Delivery leases six (6) dispatch centers, across British Columbia, Saskatchewan, Manitoba, and Ontario. Pineapple Express Delivery has 4 leased cars used in connection with its delivery services.

55. In Ontario, only the government-operated Ontario Cannabis Store ("**OCS**") was permitted to offer delivery services of non-medical cannabis until private retailers were granted temporary authorization to offer delivery pursuant to pandemic emergency orders in April 2020. On March 15, 2022, new rules were adopted in Ontario to permanently authorize private retailers to offer delivery services. However, private cannabis retailers are restricted from using third party delivery services like Pineapple Express Delivery for deliveries, which required the Applicants to restructure the way that their internal delivery services were operated and prevented the Applicant's ability to offer its services to third party customers. Therefore, in November 2022, the Applicants transitioned all of Pineapple Express Delivery's non-management employees to the Retailers. In total, approximately 50 employees are employed in the delivery aspect of the Applicants' business. It is to be noted that these restrictions do not apply to the Ontario Government's OCS' own delivery service. It can continue using efficient third-party services,

directly competing with FFI's delivery service at a cost advantage, further resulting in competitive revenue and margin pressure for FFI and Pineapple Express Delivery.

56. The Applicants expect that they will be seeking to terminate all of its "Pineapple Express Delivery Segment" employees shortly after filing, as the delivery aspect of the Companies' operations has been highly unprofitable.

(D) Digital Platform Segment

57. Hifyre owns and operates the Hifyre digital platform, which is a proprietary, omni-channel digital platform to drive the Retailers' operations and provide insight into consumer behaviours. By capturing user behaviour data and applying predictive analytics, the Hifyre digital platform is able to facilitate the retail business' delivery of a highly personalized customer experience.

58. The Hifyre digital platform includes an industry-leading data platform and high-margin subscription revenue stream, "Hifyre IQ", which is subscribed to by a significant number of Canadian licensed producers, equity research analysts, and a variety of customers in business, finance, banking, and consulting.

59. As referenced above, the trademark Hifyre IQ digital platform has been licensed to both MC Cannabis and FAFUS for use in their cannabis retail operations.

60. Hifyre also launched the proprietary "Spark Perks" loyalty program across the Retailers' network. This program offers exclusive deals, access to member-only events, the "Spark Fastlane" 'click-and-collect' checkout and collects data on consumer purchase behaviours. As at the date of this affidavit, this program has over 575,000 members.

61. The Spark Perks loyalty program and Spark Fastlane 'click-and-collect' checkout have both been licensed to MC Cannabis for use in their cannabis retail operations.

62. PotGuide is based in Delaware. It operates two websites and content platforms, "Potguide.com" and "Wikileaf.com". In addition, these websites and content platforms also function as a directory and referral service for cannabis retailers and delivery services. PotGuide does not sell any cannabis products.

63. The Digital Platform Segment accounted for approximately seven percent (7%) of the Companies' revenue for the quarter ended March 31, 2023.

(ii) Cannabis Licenses

64. The Companies operate in a highly regulated environment, in accordance with the *Cannabis Act* (Canada) and applicable provincial and municipal legislation. Each province and territory is responsible for determining the regime for the sale and distribution of cannabis within its jurisdiction. Among other things, these governments establish rules regarding how cannabis can be sold, how retail stores must be operated, where such stores can be located and who is allowed to sell cannabis. Adult-use recreational cannabis products are only permitted to be sold through retailers authorized by provincial and territorial governments.

65. As set out below, each provincial/territorial government has established its own rules and criteria for obtaining and maintaining a private cannabis retail licence. In general, all provinces and territories require:

- (a) that a licence be obtained and maintained prior to the commencement of any activities with cannabis. The licensing application process considers the physical location of the proposed retail outlet, as well as the financial and personal backgrounds of key persons associated with the proposed licensed operation, including directors and officers of a corporation, investors, retail store managers and security personnel;
- (b) that a licence is required for each cannabis retail store, and that the location of all cannabis stores is subject to municipal oversight/approval;
- (c) that specified physical security measures be in place at the retail store location (including physical security requirements around locks, as well as visual monitoring and protection by way of a third-party monitored alarm system) to ensure that there is no unauthorized entry and/or unauthorized access to cannabis;
- (d) certain requirements for employees of the proposed cannabis retail store, including background and/or criminal record checks and requirements for employee training prior to beginning their employment at the store; and
- (e) that the licensee maintain and submit certain records, and be subject to inspection by the provincial or territorial regulator.

66. In British Columbia, FFI holds two (2) licenses to operate cannabis retail stores, issued by the British Columbia Liquor and Cannabis Regulation Branch.

67. In Alberta, FFI holds thirty-four (34) licenses to operate cannabis retail stores, issued by the Alberta Gaming, Liquor and Cannabis Commission.

68. In Saskatchewan, FFI holds fifteen (15) licenses to operate cannabis retail stores, issued by the Saskatchewan Liquor and Gaming Authority (the “**SLGA**”). Additionally, Open Fields Distribution holds a cannabis wholesale permit issued by the SLGA for its wholesale cannabis business.

69. In Manitoba, FFI holds eight (8) licenses to operate cannabis retail stores, issued by the Liquor, Gaming and Cannabis Authority of Manitoba (the “**LGCM**”). In addition, Open Fields Distribution holds a distribution license from the LGCM for its cross-docking cannabis logistics and distribution business.

70. In Ontario, FFI and Friendly Stranger, collectively hold two (2) operator licences and thirty-one (31) store authorizations issued by the Alcohol and Gaming Commission of Ontario.

71. In the Yukon, FFI holds one (1) license to operate cannabis retail stores, issued by the Yukon Liquor Corporation.

72. The Retailers hold all required permits and licenses to sell cannabis at all currently operated stores.

(iii) Cannabis Suppliers

73. The Retailers and Open Fields Distribution purchase their cannabis products from provincially authorized licensed suppliers in each of the provinces which they operate, with the exception of Saskatchewan.

74. The regulatory authorities in British Columbia, Alberta, Yukon, Manitoba, and Ontario mandate that all cannabis products must be purchased from a provincially-prescribed distributor of cannabis products. In Ontario, the Retailers are parties to retailer agreements with OCS, pursuant to which they are authorized to purchase cannabis from OCS for retail sale. In Manitoba, FFI is a party to Retailer Agreements with Manitoba Liquor and Lotteries Corporation (“**MBLL**”) pursuant to which it is authorized to purchase cannabis supplied by the MBLL for retail sale.

75. Conversely, in Saskatchewan, the Retailers and Open Fields Distribution are authorized to purchase cannabis products from both provincially authorized distributors and licensed producers.

76. In Manitoba, Open Fields Distribution is a party to a Limited Cannabis Distribution Agreement with MBL, pursuant to which it is authorized to distribute cannabis supplied by MBL to authorized retailers in Manitoba.

(iv) Other Suppliers

77. Under their regulatory framework, the Applicants are required to obtain and maintain certain security and other services. The Companies have and maintain ongoing relationships with all the service providers required by the applicable statutes.

(v) Real Property and Leased Locations

78. FFI owns a property located in Ottawa, Ontario, from which one of its cannabis retail stores operates. This property is valued at approximately \$2.3 million.

79. All of the Company's other retail stores are operated from leased premises. FFI has also entered into lease agreements with respect to properties for which FFI intends to pursue additional retail stores.

80. FFI also has a leased property in Edmonton, Alberta, which is used as a corporate office.

81. Open Fields Distribution leases warehouse space in Saskatchewan and Manitoba.

82. The Companies' head office is located in Toronto, Ontario. FFHC has subleased these premises. Hifyre also leases office space in Hamilton, Ontario.

83. Pineapple Express Delivery leases warehouse space in Burlington, Ottawa, Chatham, Hamilton, Kingston, and London in Ontario, as well as Richmond, British Columbia and Winnipeg, Manitoba. Each of the warehouse spaces are used for dispatch services.

84. In total, the Applicants are parties to approximately 146 leases.

(vi) Intellectual Property

85. FFI, Friendly Stranger, and Hifyre each own various trademarks used in connection with their respective business operations. As referenced above, among others, the following trademarks are associated with each of FFI, Friendly Stranger, and Hifyre:

- (a) FFI: "Fire and Flower"
- (b) Friendly Stranger: "Friendly Stranger" and "Happy Dayz"
- (c) Hifyre: "Hifyre", "Hifyre IQ", "Spark Perks", and "Spark Fastlane"

86. A comprehensive list of the Applicants' trademarks is attached as **Exhibit "B"**.

87. As noted above, Hi-Line Ventures licenses "Fire and Flower", which is being sub-licensed to FAFUS for use in its cannabis retail stores being operated in certain US States. 133 Canada also licenses "Fire and Flower" which is being sub-licensed to MC Cannabis for use in its cannabis retail stores being operated in Ontario, Alberta, Saskatchewan, and Manitoba. Hifyre directly sub-licenses its digital platforms protected by each of its marks to various third parties, including MC Cannabis and FAFUS.

88. Hi-Line Ventures licenses several of these trademarks, which are then sub-licensed to FAFUS. Hifyre also licenses its digital platform protected by the trademark "Hifyre" to a wholly-owned subsidiary of ACT Parent Co.

(vii) Cash Management System

89. In the ordinary course of business, the Companies use a cash management system (the "**Cash Management System**") to, among other things, collect funds and pay expenses associated with its operations. This Cash Management System provides the Companies with the ability to efficiently and accurately track and control corporate funds and to ensure cash availability.

90. As part of this Cash Management System, the Companies maintain twelve (12) bank accounts, which are summarily described below:

- (a) Bank of Montreal: CAD operating account for each of FFHC, 133 Canada, Open Fields Distribution, Hifyre, and Pineapple Express Delivery, and two CAD operating accounts for each of FFI and Friendly Stranger;

- (b) Bank of Montreal: USD operating account for Hifyre; and
- (c) ATB Financial: CAD operating and savings account for FFI.

(viii) Employees

91. As at June 2, 2023, the Applicants employed a total of 774 employees. Of these 774 employees, 581 were paid hourly, 6 were paid on contract, 185 were paid by salary, and two were on salary continuance.

92. As referenced above, the majority of the Applicants' employees are under the Applicants' retail operations. As at June 2, 2023, the Applicants' employees were distributed geographically as follows:

- (a) Alberta: 250;
- (b) British Columbia: 18;
- (c) Manitoba: 56;
- (d) Ontario: 328;
- (e) Saskatchewan: 110; and
- (f) Yukon: 7.

93. As referenced above, the majority of the Applicants' employees are under the Applicants' retail operations.

94. None of the Applicants' employees are subject to a collective bargaining agreement. The Applicants do not have a pension plan in place.

95. However, on or around October 18, 2022, United Food and Commercial Workers, Local No. 400 ("**UFCW**") filed an application for bargaining rights with respect to certain employees of FFI's retail stores in Saskatoon, Saskatchewan.

96. On October 26, 2022, the Saskatchewan Labour Relations Board ("**SLRB**") directed that a vote by secret ballot be conducted among all eligible employees pursuant to which votes were required to be received by the SLRB on or before November 16, 2022 (the "**Certification Vote**").

97. On November 8, 2022, UFCW filed an application with the SLRB with respect to alleged unfair labour practices by FFI in relation to the Certification Vote (the “**UFCW ULP Application**”) and, on November 16, 2022, filed an application with the SLRP with respect to alleged unfair labour practices by UFCW in relation to the Vote (the “**FFI ULP Application**”).

98. The SLRB held hearings with respect to the UFCW ULP Application and the FFI ULP Application on April 10-13, 2023 and on May 23, 2023, and further hearings are scheduled to be held on August 8-11, 2023. The results of the Certification Vote remain sealed pending the results of these hearings.

PART III – THE COMPANIES’ FINANCIAL POSITION

99. Copies of the Companies’ audited financial statements for the fiscal years ended February 2, 2019, February 1, 2020, January 30, 2021, January 29, 2022, and December 31, 2022² are attached as **Exhibit “C”**, **Exhibit “D”**, **Exhibit “E”**, **Exhibit “F”**, and **Exhibit “G”**, respectively.

100. A copy of the Companies’ unaudited interim consolidated (which includes PotGuide and Hifyre US) financial statement for the quarter ended March 31, 2023 (the “**Q1 2023 Financial Statement**”) is attached as **Exhibit “H”**.

101. The Companies have been operating at a loss since they began operating in 2018. The Companies suffered operating losses of:

- (a) over \$25.2 million for the fiscal year ended February 2, 2019;
- (b) over \$35.6 million for the fiscal year ended February 1, 2020 (“**FY 2020**”);
- (c) over \$17.5 million for the fiscal year ended January 30, 2021 (“**FY 2021**”);
- (d) approximately \$45.4 million for the fiscal year ended January 29, 2022 (“**FY January 2022**”);
- (e) approximately \$83.4 million for the fiscal year ended December 31, 2022 (“**FY December 2022**”); and

² As at December 31, 2022 the Companies’ fiscal year was changed from a 52 or 53-week period ending the Saturday closest to January 31 to a calendar 12-month period ending December 31 to enhance comparability of its periodic financial statements with those of their peers.

(f) approximately \$8.7 million for the quarter ended March 31, 2023.

102. For FY January 2022 and FY December 2022, the Companies suffered net losses of over \$63.5 million and nearly \$89.5 million, respectively.³ From December 31, 2022 to March 31, 2023, the Companies suffered a net loss of approximately \$10.1 million, with losses continuing until the date of this affidavit.

103. While the Companies experienced significantly increased revenues from \$51.1 million in FY 2020 to \$128 million in FY 2021 and \$175.5 million in FY January 2022, the Companies' operating expenses in the same time period increased at a higher rate than its revenues. The Companies operating expenses increased from \$86.8 million in FY 2020 to \$145.6 million in FY 2021 and \$220.8 million in FY January 2022. Additionally, while the Companies' revenue slightly decreased from \$175.5 million in FY January 2022 to \$156 million in FY December 2022, the Companies' operating expenses increased from \$220.8 million in FY January 2022 to \$239.4 million in FY December 2022.

104. The Companies lack working capital. Over the course of the past two years, the Companies' cash position has continually deteriorated. As at January 30, 2021, the Companies had \$30.6 million in cash. As at January 29, 2022, the Companies had \$19.8 million in cash. As at December 31, 2022, the Companies had \$12.4 million in cash. As at March 31, 2023, the Companies had \$8.2 million in cash and over \$50.8 million in current liabilities. As described below, that position only deteriorated further since then.

A. Assets

105. As appears from the Q1 2023 Financial Statement, as at March 31, 2023, the assets of the Companies had an unaudited net book value of approximately \$147,031,000 (of which \$62,513,000 consisted of non-tangible assets) and consisted of the following:

Asset Type	Value (\$)
Cash	8,185,000
Trade and other receivables	10,607,000
Merchandise inventories	13,139,000
Prepaid and other assets	2,829,000

³ Note: The Companies' auditor determined that the subtotal of loss from operations was no longer relevant to an understanding of the Companies' financial performance, and, accordingly, no subtotal for operating loss was provided in the Companies' audited financial statements for the fiscal year ended January 29, 2022.

Lease receivables	374,000
Assets Held for Sale	2,880,000
Current Assets	38,014,000
Deposits	3,175,000
Refundable deposit to acquire	7,327,000
Property and equipment, net	33,287,000
Lease receivables	2,610,000
Right-of-use assets, net	28,410,000
Intangible assets, net	28,696,000
Deferred tax assets	105,000
Goodwill	5,407,000
Non-Current Assets	109,017,000
Total Assets:	147,031,000

B. Liabilities

106. As appears from the Q1 2023 Financial Statement, as at March 31, 2023, the liabilities of the Companies had an unaudited book value of approximately \$88,601,000 and consisted of the following:

Liability Type	Value (\$)
Accounts payable and accrued liabilities	18,049,000
Income tax payable	6,707,000
Debentures and loans	13,913,000
Derivative liability	79,000
Contract Liability	250,000
Provisions	3,958,000
Lease liabilities	5,602,000
Other current liabilities	809,000
Liabilities Held for Sale	1,456,000
Current Liabilities	50,823,000
Provisions	454,000
Lease liabilities	37,216,000
Deferred tax liability	108,000

Non-Current Liabilities	37,778,000
Total Liabilities:	88,601,000

107. With respect to Companies' intangible assets, the Companies recorded an impairment charge of over \$18.9 million for FY January 2022 and an impairment charge of over \$8.4 million for FY December 2022 due to recent changes to the competitive landscape which are expected to negatively impact expected future store performance. Impairment charges continued to be recorded for intangible assets in the Q1 2023 Financial Statement and the realizable value of the Companies' intangible assets are likely to continue to decrease.

108. With respect to the Companies' goodwill, the Companies recorded an impairment charge of over \$24.9 million for FY December 2022, as the carrying amounts for its Retail Segment and Digital Platform Segment were expected to significantly exceed its value in use. As a result, the realizable value of the Companies' goodwill is likely to be lower than its book value as the Companies have not operated at a profit since they began operations.

109. Lastly and as described above, the Companies lack working capital, with \$8.2 million in cash and over \$50.8 million current liabilities as at March 31, 2023. Therefore, even assuming that the Companies are able to realize on the full book value of their current assets, being their receivables, inventories, prepaids, and assets held for sale, the Companies are still unable to satisfy their current liabilities in the immediate term.

PART IV – THE COMPANIES' DEBT STRUCTURE

A. Secured Obligations

(i) ACT Loan Agreement

110. On October 17, 2022, FFHC, as borrower, and ACT Investor, as lender, entered into a loan agreement (the "**ACT Loan Agreement**"), pursuant to which ACT Investor made a \$11 million non-revolving credit facility available to FFHC (the "**ACT Facility**"). The ACT Facility has been fully funded. A copy of the ACT Loan Agreement is attached as **Exhibit "I"**.

111. The ACT Facility bears interest a rate of eleven percent (11%) per annum, payable quarterly on March 31, June 30, September 30, and December 31 of each calendar year for the period commencing on the closing date of the ACT Facility and ending on the earlier of the maturity date and any date on which FFHC makes a full prepayment of the ACT Facility. During

the first six (6) months of the term of the ACT Facility, FFHC could and did elect to increase the principal amount of the ACT Facility by the amount of accrued interest during such period in lieu of paying such accrued interest to ACT Investor. The ACT Facility matures on December 31, 2023.

112. FFHC's obligations under the ACT Loan Agreement are guaranteed by each of the Canadian subsidiaries of FFHC (except the US Entities), being FFI, Friendly Stranger, Open Fields Distribution, Hifyre, Hi-Line Ventures, 133 Canada, and Pineapple Express Delivery (collectively, the "**Guarantors**"). On October 17, 2022, the Guarantors each executed the guarantee in favour of ACT Investor (the "**Guarantee**"). A copy of the Guarantee is attached as **Exhibit "J"**.

113. FFHC's obligations under the ACT Loan Agreement are secured by a general security dated October 17, 2022, executed by each of the Applicants (the "**GSA**"). Pursuant to the GSA, the Applicants granted a first-ranking charge on all of the Applicants' assets in favour of ACT Investor. A copy of the GSA is attached as **Exhibit "K"**.

114. An event of default occurs under the ACT Loan Agreement if FFHC defaults under any other agreement or instrument pertaining to indebtedness for borrowed money in excess of \$500,000. As referenced below, FFHC previously issued debentures to ACT Investor to raise funding. Pursuant to same, FFHC has liabilities in excess of \$2.3 million to ACT Investor, with the maturity date being June 30, 2023. Absent CCAA protection, FFHC will not be able to make this required payment, which will ultimately trigger a default under the ACT Loan Agreement.

115. As at the date of this affidavit, the outstanding principal amount under the ACT Facility is \$11,551,000, as FFHC elected to increase the principal amount of the ACT Facility in lieu of paying accrued interest on December 31, 2022 and March 31, 2023.

(ii) Other Secured Creditors

116. Attached as **Exhibit "L"** are summaries of the searches against each of the Applicants under the *Personal Property Security Act* (the "**PPSA**") in Ontario, British Columbia, Yukon, Saskatchewan, Manitoba, and Alberta, with currency dates of May 29 and 30, and June 1, 2023. As seen from the PPSA searches, in addition to ACT Investor, the following entities hold registered secured interests against certain personal property of some of the Companies:

- (a) Computershare Trust Company of Canada in respect of a secured convertible debenture which has been repaid. These security registrations should be discharged;
- (b) Namaste Technologies Inc. in respect of debt that has been repaid. These security registrations should be discharged;
- (c) ATB Financial in respect of debt that has been repaid. These security registrations should be discharged;
- (d) Alterna Savings & Credit Union Limited for a letter of credit issued to FFI in the amount of \$5 million that has been returned. These security registrations should be discharged;
- (e) Ford Credit Canada Company in respect of a motor vehicle in Ontario;
- (f) World Class Extractions Inc. in respect of a debt that has been repaid. These security registrations should be discharged; and
- (g) Receivables Management Office – Sonja Shaw.

B. Unsecured Obligations

(i) Taxes/Duties

117. As at the date of this affidavit, Hifyre owed approximately \$6.7 million in unpaid income taxes. The Applicants were also in arrears with respect to their sales tax remittances and made a payment in the approximate amount of \$1.65 million shortly before the date of this affidavit.

(iii) Debentures

118. In August 2019, FFHC issued debentures to ACT Investor (the “**ACT Unsecured Convertible Debentures**”). As at March 31, 2023, the Companies recorded a liability of \$2,362,000 for outstanding ACT Unsecured Convertible Debentures.

(iv) Employee Liabilities

119. The Companies are up to date in their payroll obligations.

120. The Companies also have approximately \$150,000 in liabilities for fees payable to its independent directors sitting on the Companies' special committee.

121. As at June 1, 2023, the Companies have accrued vacation pay of approximately \$775,000 (of which a certain amount relates to claims for prior year accruals by Pineapple Express Delivery which are disputed as being obligations of the Companies).

(v) Trade Payables

122. Approximately 20% of the Companies' aggregate total liabilities are in respect of their ordinary course unsecured trade payables. In general, the Companies have operating costs of approximately \$51.7 million in fiscal quarter ended March 31, 2023. As at May 31, 2023, the Companies had liabilities in respect of trade payables in the aggregate approximate amount of \$13.8 million.

(vi) Lease Obligations

123. As mentioned above, the Companies are tenants under 146 leases. Of the 146 leases, 101 are operating and broken down as follows:

- (a) Retail: 91
- (b) Office (FFI and Hifyre): 2
- (c) Warehouse (Open Fields Distribution): 2
- (d) Offices/Dispatch (Pineapple Express Delivery): 6

124. Of the 146 leases, 45 are non-operating and 20 are being subleased to third parties.

125. Approximately 48% of the Companies' aggregate total liabilities are in respect of their lease obligations. As at March 31, 2023, the Companies had current and non-current lease liabilities in the aggregate approximate amount of \$5.6 million and \$37.22 million, respectively.

126. The Companies have monthly lease obligations of approximately \$1,328,283 in the most recent month, broken down as follows:

- (a) FFI and Hifyre – Offices: \$90,104

- (b) Pineapple Express – Dispatch centres: \$34,844
- (c) FFI – Retail stores (operating and non-operating): \$977,937
- (d) Friendly Stranger – Retail stores (operating and non-operating): \$203,772
- (e) Open Fields – Warehouses: \$21,626

127. The Companies' monthly lease obligations in respect of its non-operating retail stores are significant and total approximately \$394,911.

128. Shortly following commencement of these proceedings, the Companies intend to disclaim the "dead" and subleased leases, as well as leases utilized in the Pineapple Express Delivery's delivery business, in order to preserve their liquidity. The Companies are also reviewing the remainder of their lease portfolio to identify any other stores operating at a significant loss and may be disclaiming some of the related leases as well

(vii) Contingent Liabilities

129. One or more of the Applicants are named as defendants in certain routine litigation matters. In the aggregate, the amounts being claimed are over \$15 million.

PART V – THE COMPANIES' FINANCIAL DIFFICULTIES

130. As referenced above, the Companies have been operating at a loss since they began operating in 2018.

131. While the Companies' financial difficulties were driven by a variety of factors, the significant net losses suffered by the Companies have largely stemmed from their Retail Segment. Increased competition, margin pressure, and regulatory uncertainty have collectively contributed to significantly lower revenues than what the Retailers had expected, and several lease liabilities for locations in which the Retailers could not ultimately operate.

132. I understand that there are several major cannabis retailers in Canada who have several "dead leases" – leases entered into by a cannabis retailer in anticipation of receiving a license from the applicable regulatory authority, with the regulatory authority ultimately not issuing such license or alternatively, leases that were entered into in respect of stores that were stores that were opened or planned to be opened but were either closed after opening or were not developed

and opened due to reduced expectations regarding their potential profitability. FFI and Friendly Stranger entered into several leases in anticipation of receiving a license from the applicable regulatory authority. Ultimately, licenses for these locations were not issued for a variety of unexpected reasons, such as proximity to a sensitive use or a decline in revenue expectations for a store due to deterioration in market conditions and/or increased competition, resulting in FFI and Friendly Stranger having several “dead leases”. FFI and Friendly Stranger have also entered into leases for stores that were licensed and subsequently closed following review of their operating results and revised expectations regarding their potential profitability.

133. The regulatory environment has also encouraged significantly increased competition amongst cannabis retailers. The Retailers were unaware that many of its retail stores would have several other cannabis retailers within close proximity. There have also been significant margin pressures from competitors, and, in certain provinces, competition from government operated physical stores, online stores and delivery sales. Retailers also have to compete with the illicit market that continues to sell cannabis products that do not comply with the strict regulations of the *Cannabis Act* (Canada). I understand that, according to the Government of Canada's 2022 Canadian Cannabis Survey, only 61% of the respondents who purchased cannabis in the last twelve (12) months reported they had made a purchase from a legal storefront.

134. As referenced above, approximately 48% of the Companies' aggregate liabilities are in respect of its lease obligations. Without the corresponding revenue that the Retailers expected for these retail locations, including from delivery sales, the Retailers have been operating at a significant loss with respect to its Retail Segment.

135. Certain investments made by the Applicants have also resulted in a net drain on the Companies' resources. For example, shortly after acquiring Pineapple Express Delivery in January 2022, regulatory changes provided that only employees of the licensed cannabis retailers could deliver cannabis directly to customers. This resulted in the Delivery Segment of the business no longer being profitable. Additionally, shortly after acquiring PotGuide in August 2021, both of its websites encountered issues with Google's search engine algorithm, which had a negative impact on web traffic and resulted in declining revenues.

PART VI – RESPONSE TO FINANCIAL DIFFICULTIES

136. In September 2022, in response to the Companies' liquidity challenges, a special committee of the board of directors of the Company was formed to assist the Board in reviewing

and negotiating matters related to the Companies' existing strategic capital investments and financing arrangements (including with respect to a financing proposal received from ACT Investor) and, if necessary, present the Board with alternative strategic capital investments and financing arrangements and the special committee retained Canaccord as financial advisor in connection with this mandate.

137. As referenced above, shortly thereafter, in October 2022, the Company entered into (i) the ACT Loan Agreement, which was fully drawn down on October 21, 2022; and (ii) the Warrant and Share Transaction. The Warrant and Share Transaction was amended on December 15, 2022 to provide that the maturity date for approximately \$2.4 million of unsecured convertible debentures held by ACT Investor would be extended from June 30, 2023 to August 31, 2024. The Warrant and Share Transaction was subject to shareholder approval (including by a majority of the minority shareholders) and in recommending that shareholders vote in favour of the Warrant and Share Transaction at a special meeting initially called for December 16, 2022 and subsequently held on December 29, 2022, the special committee relied in part on a fairness opinion from Canaccord that the Warrant and Share Transaction was fair from a financial point of view to the Companies. The shareholders voted down the Warrant and Share Transaction and the Companies did not receive the additional \$5 million of working capital or the extension of the maturity date of the unsecured convertible debentures.

138. On January 9, 2023, the Applicants implemented a restructuring of its operations resulting in a reduction in headcount of approximately 13 employees, and, on March 20, 2023, the Applicants implemented a further restructuring of its Pineapple Express Delivery business resulting in a further reduction in headcount of 23. The Applicants have pursued further opportunities for cost reduction measures through more aggressive efforts to sub-lease "dead lease" properties with lower recovery rates, a thorough review of ongoing selling, general and administrative expenses, and by shutting down unprofitable retail stores or services.

139. Also in January 2023, the Applicants sold a warehouse that it previously owned and received proceeds of approximately \$1.1 million and entered into a lease-back agreement with respect to that property.

140. In April 2023, the Company once again formed a special committee of the board of directors to review and assess potential financing opportunities and strategic alternatives. The special committee has engaged in discussions pertaining to potential financing, acquisitions

and/or sale transactions with ACT Investor, key stakeholders of the Company and other industry participants and financial institutions. Despite these efforts, the Applicants have been unable to secure additional financing or identify a transaction that, the Companies, in consultation with their legal and financial advisors, identified as being executable in the Companies' strained liquidity situation and/or would maximize recovery for their stakeholders.

PART VII – NEED FOR CCAA PROTECTION

141. As referenced above, the Applicants do not have the necessary liquidity to pay all their obligations as they become due. Accordingly, without the protection of the CCAA and the relief available thereunder, the Applicants will be unable to meet their obligations as they become due and their creditors will be in a position to exercise their remedies for payment default by the Applicants as early as mid-June.

142. If the Applicants are insolvent without the protection of the CCAA, the Applicants would be forced to shut down operations, which would be extremely detrimental to the Applicants' landlords, suppliers, lenders, customers, and 774 employees.

143. The Applicants intend to utilize the Stay of Proceedings and the protections of the CCAA to, among other things:

- (a) disclaim unprofitable leases and the "dead leases" referenced above;
- (b) restructure or wind-down unprofitable segments;
- (c) maintain operations for the benefit of many of its 774 employees and other stakeholders; and
- (d) conduct a court-approved SISF to obtain a going-concern solution for their business and operations and to maximize recovery for their stakeholders.

PART VIII – THE PROPOSED INITIAL ORDER & ARIO

A. Initial Order Relief

(i) Stay of Proceedings

144. As referenced above, the Companies will run out cash and be unable to meet their obligations as they become due in the very short term. As set out in the cash flow projection (the “**Cash Flow Statement**”) that was prepared by the Applicants and reviewed by the Proposed Monitor for the period from the date of filing to September 1, 2023, a copy of which will be provided in the Pre-Filing Report of the Proposed Monitor, with the benefit of the Stay of Proceedings, the Applicants will be able to operate until the end of the initial requested 10-day stay period.

145. As set out in the Cash Flow Statement, the Companies expect that, with the funds to be advanced under the DIP Facility Agreement referenced below, they will have sufficient cash to fund its projected operating costs during until September 1, 2023.

146. The Companies, therefore, request the Stay of Proceedings for an initial period of ten days, and, if granted by this Court, the Companies will subsequently request an extension of the Stay Period until and including September 1, 2023 at the Comeback Motion.

147. In addition to the Stay of Proceedings against the Companies and their Property, the Companies are seeking a stay of proceedings against the D&Os to ensure that they are able to focus their efforts on the Companies’ restructuring efforts and to prevent creditors and others from seeking to do indirectly what they cannot do directly by asserting claims or other relief relating to the debts and obligations of the Companies against the D&Os.

(ii) Appointment of FTI as Monitor

148. FTI has consented to act as the Court-appointed monitor of the Applicants, subject to Court approval. A copy of FTI’s consent to act is attached as **Exhibit “M”**.

149. I am advised by Jeffrey Rosenberg of FTI that FTI is a trustee within the meaning of section 2 of the *Bankruptcy and Insolvency Act* (as amended) and is not subject to any of the restrictions on who may be appointed as Monitor set out in section 11.7(2) of the CCAA.

150. I understand that FTI has extensive experience in matters of this nature and is therefore well-suited to this mandate. Further, FTI was engaged as a financial advisor pursuant to an

engagement letter dated May 26, 2023. FTI has provided no accounting or auditing advice to the Companies.

151. I am advised by Mr. Rosenberg of FTI that the Proposed Monitor is supportive of the relief being sought by the Applicants in the draft Initial Order, as described in this affidavit. Mr. Rosenberg has also advised me that the Proposed Monitor will be filing a pre-filing report of the Monitor in respect of such relief, and if appointed as Monitor, FTI will also file a report in respect of the relief to be sought at the Comeback Motion.

(iii) Administration Charge

152. The Initial Order provides for a Court-ordered Administration Charge in favour of the Monitor, counsel to the Monitor, and the Applicants' counsel over all of the Applicants' Property in order to secure payment of their respective fees and disbursements incurred in connection with services rendered in respect of the Applicants up to a maximum amount of \$600,000.

153. The Administration Charge is proposed to rank ahead of and have priority over all of the other Charges and ACT's security.

154. The Applicants require the expertise, knowledge, and continued participation of the proposed beneficiaries of the Administration Charge during these CCAA proceedings in order to complete a successful restructuring. Each of the beneficiaries of the Administration Charge will have distinct roles in the Applicants' restructuring.

155. The Applicants have worked with the Proposed Monitor to estimate the proposed quantum of the Administration Charge. The Proposed Monitor has reviewed the quantum of the Administration Charge and has advised that it believes that the Administration Charge (including its proposed quantum) is reasonable and appropriate in the circumstances, given the services to be provided by the beneficiaries of the Administration Charge and the complexities of the CCAA Proceedings.

156. At the Comeback Motion, the Companies intend to request an increase in the amount of the Administration Charge and super-priority ranking over all existing encumbrances.

(iv) DIP Facility and DIP Lender's Charge

157. As appears from the Cash Flow Forecast, the Applicants expect the need for interim financing, including during the 10-day Stay Period prior to the Comeback Motion, to fund these CCAA Proceedings.

158. As a result of needing financing to fund the operations of the Applicants during these CCAA Proceedings in very short order, the Applicants commenced negotiations with ACT Investor to provide debtor-in-possession financing. Based on both: (a) the results of the Company's previous efforts to seek additional liquidity dating back to September 2022; and (b) ACT Investor being the major secured creditor of the Applicants, the Applicants, in consultation with their legal and financial advisors, did not believe that any third party would be able to provide the financing urgently required on significantly better terms on the timeline required by the Applicants.

159. Accordingly, on June 5, 2023, the DIP Facility Agreement was entered into between FFHC, as borrower, the Guarantors, as guarantors, and ACT Investor, as the DIP Lender. A copy of the DIP Facility Agreement is attached hereto as **Exhibit "N"**.

160. The DIP Facility is subject to customary covenants, conditions precedent, and representations and warranties made by the Applicants to the DIP Lender. Among other things, the DIP Facility Agreement provides for the following:

- (a) DIP Facility: non-revolving loan up to the maximum amount of \$9.8 million, with an Initial Advance of \$2.7 million during the initial 10-day Stay Period.
- (b) Additional Tranches: two additional tranches made no earlier than every four (4) weeks from the date of the Initial Advance, in the amounts of \$3 million and \$4.1 million, respectively (each additional advance being a "**Subsequent Advances**").
- (c) Interest Rate: twelve percent (12%) per annum, compounded and calculated weekly.
- (d) Fees: exit fee of \$400,000.

161. Per the DIP Facility Agreement, the DIP Facility must be repaid in full by the date that is the earliest of: (a) the date on which the Stay of Proceedings is lifted or terminated; (b) September 15, 2023 (or such other date as may be agreed to in writing by the DIP Lender, in its sole

discretion); and (c) the date on which the DIP Lender elects to terminate the DIP Facility as a result of an event of default under the DIP Facility Agreement.

162. While the DIP Facility Agreement is also subject to customary events of default, including that the Applicants may not have a negative variance of net cash flows calculated in accordance with the methodology set out in Schedule "B" to the DIP Facility Agreement of more than ten percent (10%).

163. The proposed Initial Order contemplates that the DIP Lender's Charge will rank subordinate only to the Administration Charge.

164. The DIP Lender's Charge will secure all of the credit advanced under the DIP Facility. However, during the initial 10-day Stay Period, the Applicants are only authorized to borrow a maximum of \$2.7 million. The DIP Lender's Charge will not secure any obligations incurred prior to these CCAA Proceedings.

165. As the DIP Facility will be provided by ACT Investor, who already benefits from a first-ranking security interest over the Applicants' Property, I do not expect any material prejudice to any of the other existing secured creditors of the Applicants should the Court approve the DIP Facility Agreement and grant the DIP Lender's Charge.

166. The Proposed Monitor has advised that it is supportive of the approval of the DIP Facility Agreement and the corresponding DIP Lender's Charge. Accordingly, I believe that it is appropriate in the circumstances for this Court to approve the DIP Facility Agreement and grant the DIP Lender's Charge.

(v) D&O Charge

167. In order to continue to carry on business during these CCAA Proceedings, the Applicants require the active and committed involvement of their D&Os.

168. Since the continued assistance of the D&Os is required to ensure that these CCAA Proceedings are successfully completed, these D&Os require, in turn, that the Applicants indemnify them for liabilities which they may incur in the context of their positions with the Applicants after the filing of these CCAA Proceedings, including liabilities relating to employee vacations accrued prior to these CCAA Proceedings, but which may be crystallized after the commencement of such proceedings.

169. Although the Applicants intend to comply with all applicable laws and regulations, including with respect to the timely remittance of deductions at source and federal and provincial sales taxes, the D&Os remain nevertheless concerned about their potential personal liability, particularly in the present circumstances.

170. The Applicants maintain directors and officers' liability insurance (the "**D&O Insurance**") for the D&Os which provides up to \$40 million in coverage⁴. It is uncertain whether all claims for which the D&Os may be personally liable will be covered by the D&O Insurance given the convoluted nature of the exclusions provided for under the D&O Insurance. It is also uncertain whether the amount of coverage provided by the D&O Insurance will be sufficient to adequately protect the D&Os from liability and to incentivize the D&Os to continue their service with the Applicants.

171. Absent the approval by this Court of the D&O Charge in the amounts set out above, I have been advised that all or a significant amount of the Applicants' D&Os will resign, which would, in all likelihood, render these CCAA Proceeding much more challenging, and possibly much more costly, to the detriment of the Applicants' creditors and other stakeholders.

172. The Applicants therefore seek the D&O Charge over its Property in the amount of \$2,800,000 as part of the Initial Order to secure the above referenced indemnity of the Applicants in favour of the D&Os in connection with any claim which may be asserted against them from and after the commencement of these proceedings, including claims relating to employee vacation entitlements accrued prior to these CCAA Proceedings, but which may be crystallized after the commencement of such proceedings, to the extent that such claims are not covered or sufficiently by the D&O Insurance. The Companies intend to request an increase in the amount of the D&O Charge at the Comeback Motion.

173. The proposed Initial Order provides that the D&O Charge ranks behind the other Charges.

174. The Proposed Monitor has advised that it is supportive of the proposed D&O Charge and quantum thereof.

175. I believe that in these circumstances, the requested D&O Charge is reasonable and adequate given, notably, the complexity of their business, and the corresponding potential

⁴ The D&O Insurance policy is coming up for renewal on June 19, 2022 and the Companies have been in discussions with their insurer to finalize the terms of the renewal; however, as at the date of this affidavit, the renewal of the policy has not been finalized.

exposure of the Applicants' D&Os to personal liability, especially in the present context. The quantum of the D&O Charge contemplated in the Initial Order was specifically sized by the Applicants, in consultation with the Proposed Monitor, based upon the potential director liabilities that could be outstanding at any time during the CCAA Proceedings.

(vi) Proposed Ranking of the Court-Ordered Charges

176. The proposed ranking of the court ordered charges is as follows:

First – Administration Charge \$600,000 in the Initial Order

Second – DIP Lender's Charge \$2.7 million in the Initial Order

Third – D&O Charge \$2,800,000 in the Initial Order

177. Pursuant to the proposed Initial Order, the charges on the assets and property of the Company would rank in priority to the claims of ACT, which has received notice of this Application. The Companies intend to ask for an order declaring that the charges would rank ahead of all Encumbrances on the Comeback Motion (if the Initial Order is granted).

B. Comeback Motion Relief

(i) Authorization to Incur no Further Costs in Connection with Securities Filings

178. At the initial hearing for the commencement of these CCAA proceedings, the Applicants will not be seeking authorization to dispense with securities filing requirements.

179. If the Initial Order is granted, at the Comeback Motion, the Applicants will seek authorization to dispense with certain securities filing requirements. In particular, the Applicants seek authorization for the Applicants to incur no further expenses in relation to any filings (including financial statements), disclosures, core or non-core documents, restatements, amendments to existing filings, press releases or any other actions (collectively, the "**Securities Filings**") that may be required by any federal, provincial, or other law respecting securities or capital markets in Canada, or by the rules and regulations of a stock exchange, including without limitation, the *Securities Act* (Ontario), and comparable statutes enacted by other provinces of Canada, the Canadian Securities Exchange ("**CSE**") Policies 1-10 and other rules, regulations and policies of the CSE.

180. In my view, incurring the time and costs associated with preparing the Securities Filings will detract from the Applicants' successful restructuring. 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.

(ii) KERP

181. The Applicants have certain key employees (the "**Key Employees**"), who perform roles critical to advancing the Applicants' restructuring, including various institutional knowledge related to the Companies' business and operations. Accordingly, the Applicants have worked with their advisors to develop a key employee retention plan and a key employee incentive plan (collectively, the "**KERP**") to provide certain Key Employees if they maintain their roles through the Applicants' restructuring and to incentivize their continued participation in the operation of the Applicants and in the SISP, if the Initial Order is granted.

182. The Applicants' boards of directors, in consultation the Proposed Monitor and the Companies' legal counsel, are reviewing, commenting on and modifying the terms of the KERP in order to ensure that those employees subject to the KERP were properly incentivized to maximize the Companies' operational success and their chance at a going-concern solution for the benefit of the Companies and their stakeholders. The Applicants will provide details of their proposed KERP prior to the Comeback Hearing.

(iv) SISP

183. If the Initial Order is granted, the Applicants intend to seek approval of a SISP at the Comeback Motion. The terms of the SISP will be detailed in a supplementary affidavit, to be sworn.

(v) Proposed Ranking of the Court-Ordered Charges

184. The proposed ranking of the court ordered charges is as follows:

First – Administration Charge

Second – DIP Lender's Charge

Third – the KERP Charge

Fourth – D&O Charge

185. Pursuant to the proposed ARIO, the charges on the assets and property of the Company would rank in priority to all other security interests, trusts, liens, charges, encumbrances and claims of secured creditors, statutory or otherwise (collectively, "**Encumbrances**") in favour of any person, notwithstanding the order of perfection or attachment, on notice to those persons likely to be affected thereby.

IX. CONCLUSION

186. For the reasons set out above, I believe that it is in the interests of the Applicants and its stakeholders that the Applicants be granted protection under the CCAA in accordance with the terms of the proposed Initial Order.

187. I swear this affidavit in support of the Companies Application pursuant to the CCAA and for no other or improper purpose.

SWORN remotely via videoconference, by
Stephane Trudel, stated as being located in
the City of Toronto, in the Province of Ontario,
before me at the City of Toronto, in Province
of Ontario, this day of June 5, 2023, in
accordance with O. Reg 431/20,
Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits, etc.
PHILIP YANG




STEPHANE TRUDEL

EXHIBIT "E"

referred to in the Affidavit of

STEPHANE TRUDEL

Sworn August 23, 2023

DocuSigned by:


36124C4218DD47C...

Commissioner for Taking Affidavits
Philip Yang

SUBSCRIPTION AGREEMENT

FIRE & FLOWER HOLDINGS CORP.

as Company

- and -

2759054 ONTARIO INC.

as Purchaser

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SUBSCRIPTION AGREEMENT

THIS SUBSCRIPTION AGREEMENT is made as of the 17th day of August, 2023

BETWEEN:

FIRE & FLOWER HOLDINGS CORP.

(the “**Company**”)

-and-

2759054 ONTARIO INC.

(the “**Purchaser**”)

RECITALS:

- A. The Company, through its wholly-owned subsidiaries, is an independent cannabis retail chain, operating in accordance with the *Cannabis Act* (Canada) and applicable provincial, territorial and municipal legislation in the provinces of Alberta, British Columbia, Manitoba, Saskatchewan and Ontario, as well as the Yukon Territory (collectively, the “**Business**”).
- B. Pursuant to the Order of the Honourable Madam Justice Steele of the Ontario Superior Court of Justice (Commercial List) (the “**CCAA Court**”) issued June 5, 2023 (as amended and restated on June 15, 2023, and as may be further amended from time to time, the “**Initial Order**”), the F&F Group (as defined herein) was granted, among other things, creditor protection under the *Companies’ Creditors Arrangement Act* (the “**CCAA**”).
- C. On June 19, 2023, the CCAA Court issued an order (the “**SISP Order**”), among other things, approving a sale and investment solicitation process in respect of the property of the F&F Group, in the form appended to the SISP Order as Schedule “A” (the “**SISP**”).
- D. This Agreement has been submitted by the Purchaser in accordance with the terms of the SISP.
- E. The Purchaser has agreed to purchase from the Company, and the Company has agreed to issue and sell to the Purchaser, the Purchased Shares, subject to and in accordance with the terms and conditions set forth in this Agreement.

NOW THEREFORE, the Parties agree as follows:

ARTICLE 1 INTERPRETATION

1.1 Definitions

In this Agreement,

“**10926671**” means 10926671 Canada Ltd., a corporation duly constituted under the federal laws of Canada.

“**11180703**” means 11180703 Canada Inc., a corporation duly constituted under the federal laws of Canada.

"13318184" means 13318184 Canada Inc., a corporation duly constituted under the federal laws of Canada.

"ACT" means 2707031 Ontario Inc., a corporation duly constituted under the laws of the Province of Ontario.

"ACT Break Fee Amount" means \$550,000.

"ACT Secured Debt Amounts" means, collectively, the Bridge Loan Amount and the DIP Facility Amount.

"Administration Charge" has the meaning given to it in the Initial Order.

"Administrative Expense Amount" means cash in an amount equal to the Administrative Expense Costs and CCAA Charge Amount, to be paid by the members of the F&F Group to the Monitor on the Closing Date out of the cash and cash equivalents of the members of the F&F Group as at the Closing Date and held in trust by the Monitor for the benefit of Persons entitled to be paid the Administrative Expense Costs and CCAA Charge Amount, subject to the terms hereof.

"Administrative Expense Costs" means the reasonable and documented fees and costs of the Monitor and its professional advisors and professional advisors of the members of the F&F Group and Residual Co. in each case for services performed prior to and, other than in respect of the members of the F&F Group, after the Closing Date, in each case, relating directly or indirectly to the CCAA Proceedings, and this Agreement and including without limitation: (i) costs required to wind down and/or dissolve and/or bankrupt Residual Co.; and (ii) costs and expenses required to administer the Excluded Assets, Excluded Liabilities and Residual Co.

"Affiliate" means, with respect to any specified Person, any other Person which, directly or indirectly, through one or more intermediaries controls, or is controlled by, or is under common control with, such specified Person (for the purposes of this definition, "control" (including, with correlative meanings, the terms "controlling," "controlled by" and "under common control with"), as used with respect to any Person, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person, whether through the ownership of voting securities, by agreement or otherwise). For greater certainty, an Affiliate of a Person shall include such Person's investment funds and managed accounts and any funds managed or directed by the same investment advisor. Notwithstanding the above, Purchaser and its Affiliates on one hand, and the F&F Group and Residual Co. on the other hand, shall not be considered Affiliates of each other for the purposes of this Agreement.

"Agreement" means this subscription agreement and all attachments and Exhibits, in each case as the same may be supplemented, amended, restated or replaced from time to time, and the expressions "hereof", "herein", "hereto", "hereunder", "hereby" and similar expressions refer to this subscription agreement and all attached Exhibits, and unless otherwise indicated, references to Articles, Sections, and Exhibits are to Articles, Sections, and Exhibits in this subscription agreement.

"Applicable Law" means any transnational, domestic or foreign, federal, provincial, territorial, state, local or municipal (or any subdivision of any of them) law (including common law and civil law), statute, ordinance, rule, regulation, restriction, limit, by-law (zoning or otherwise), judgment, order, direction or any consent, exemption, Cannabis Laws,, or any other legal requirements of, or agreements with, any Governmental Authority, that applies in whole or in

part to the Transaction, the members of the F&F Group, Purchaser, the Business, or any of the Purchased Shares or the Retained Liabilities.

“Articles of Amendment” means articles of amendment in respect of the Company’s authorized and issued capital to (i) create a new class of shares of the Company, being the Class “A” Common Shares; and (ii) provide for the redemption or cancellation by the Company of all of the issued and outstanding common shares and other Equity Interests of the Company, other than the Purchased Shares, for no consideration at Closing; such articles of amendment to be in form and substance satisfactory to Purchaser, acting reasonably.

“Back-up Bid” has the meaning given to such term in the SISP.

“Bridge Loan Agreement” means that certain loan agreement dated as of October 18, 2022 between Company, as borrower, and ACT, as lender, providing for a credit facility in the aggregate principal amount of \$11,000,000, pursuant to which the Company increased the aggregate principal amount owing thereunder to \$11,151,000 on December 31, 2022 and March 31, 2022 in lieu of paying accrued interest owing pursuant thereto on the dates thereof.

“Bridge Loan Amount” has the meaning given to such term in Section 3.1(a).

“Business Day” means any day, other than a Saturday or Sunday, on which the principal commercial banks in Toronto, Ontario are open for commercial banking business during normal banking hours.

“Business” has the meaning given to such term in Recital A.

“Cannabis Laws” has the meaning given to such term in Schedule 7.1(c).

“Causes of Action” means any action, claim, cross claim, third party claim, damage, judgment, cause of action, controversy, demand, right, action, suit, obligation, liability, debt, account, defense, offset, power, privilege, license, lien, indemnity, interest, guaranty, or franchise of any kind or character whatsoever, whether known or unknown, foreseen or unforeseen, existing or hereinafter arising, contingent or non-contingent, liquidated or unliquidated, disputed or undisputed, secured or unsecured, assertable directly or derivatively, matured or unmatured, suspected or unsuspected, in contract or in tort, at law or in equity, or pursuant to any other theory of law or otherwise, of the members of the F&F Group against any Person, in each case based in whole or in part on any act or omission, transaction, dealing or other occurrence existing or taking place on or prior to the Closing Time (which Causes of Action for the avoidance of doubt shall be retained by the applicable member of the F&F Group on Closing).

“CCAA” has the meaning given to such term in Recital B.

“CCAA Charge Amount” means cash in an amount sufficient to satisfy the amounts owing in respect of obligations secured by the CCAA Charges (without duplication to amounts satisfied as Administrative Expense Costs, Employee Priority Claims or Priority Payments).

“CCAA Charges” means the Administration Charge, Directors’ Charge and KERP Charge.

“CCAA Court” has the meaning given to such term in Recital B.

“CCAA Proceedings” means the proceedings commenced under the CCAA by the F&F Group pursuant to the Initial Order.

“Claims” means any and all demands, claims, liabilities, actions, causes of action, counterclaims, expenses, costs, damages, losses, suits, debts, sums of money, refunds, accounts, indebtedness, rights of recovery, rights of set-off, rights of recoupment and liens of whatever nature (whether direct or indirect, absolute or contingent, asserted or unasserted, secured or unsecured, matured or not yet matured due or to become due, accrued or unaccrued or liquidated or unliquidated) and including all costs, fees and expenses relating thereto.

“Closing” means the closing and consummation of the Transaction.

“Closing Date” means a date no later than five (5) Business Days after the conditions set forth in Article 7 have been satisfied or waived, other than the conditions set forth in Article 7 that by their terms are to be satisfied or waived at the Closing (or such other date agreed to by the Parties in writing); provided that, if there is to be a Closing hereunder, then the Closing Date shall be no later than the Outside Date.

“Closing Documents” means all contracts, agreements, certificates and instruments required by this Agreement to be delivered at or before the Closing.

“Closing Time” means 10:00 a.m. (Toronto time) on the Closing Date or such other time on the Closing Date as the Parties agree in writing that the Closing Time shall take place.

“Company” has the meaning given to such term in the preamble to this Agreement.

“Confidential Information” means non-public, confidential, personal or proprietary information which is furnished to Purchaser or any of its Affiliates by Company or any of the members of the F&F Group’s representatives, including information about identifiable individuals, any information relating to the members of the F&F Group, or any customer or supplier of the members of the F&F Group, but does not include information that is or becomes generally available to the public other than as a result of disclosure by Purchaser or its representatives in breach of this Agreement or that is received by Purchaser from an independent third party that, to the knowledge of Purchaser, obtained it lawfully and was under no duty of confidentiality (except to the extent that applicable privacy laws do not exclude such information from the definition of personal information) or that is independently developed by Purchaser or its representatives without reference to any Confidential Information.

“DIP Facility” means the credit facility in the maximum principal amount of \$9,800,000 made available by ACT to F&F Holdings pursuant to the DIP Facility Term Sheet.

“DIP Facility Amount” has the meaning given to it in Section 3.1(b).

“DIP Facility Term Sheet” means the DIP Facility Term Sheet dated as of June 5, 2023 among F&F Holdings, (as borrower) F&F, 13318184, 11180703, 10926671, Friendly Stranger, Pineapple Express, and Hifyre (as guarantors), ACT (as lender), as such agreement may be amended, restated, supplemented and/or otherwise modified from time to time in accordance with the terms thereof.

“Deposit” has the meaning given to such term in Section 3.2(a).

“Directors Charge” has the meaning given to it in the Initial Order.

“Employee Priority Claims” means any Claim for: (i) accrued and unpaid wages and vacation pay owing to an employee of any of the members of the F&F Group whose employment was

terminated between the Filing Date and the Closing Date, including the Terminated Employees; and (ii) unpaid amounts provided for in Section 6(5)(a) of the CCAA.

“Encumbrance” means any security interest (whether contractual, statutory or otherwise), lien, prior claim, charge, hypothec, reservation of ownership, pledge, encumbrance, mortgage, trust (including any statutory, deemed or constructive trust), option or adverse claim or encumbrance of any nature or kind.

“Equity Interests” means any capital share, capital stock, partnership, membership, joint venture or other ownership or equity interest, participation or securities (whether voting or nonvoting, whether preferred, common or otherwise, and including share appreciation, contingent interest or similar rights) of a Person.

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

“Excluded Assets” has the meaning given to such term in Section 2.2.

“Excluded Contracts” means contracts of the members of the F&F Group as specified on Schedule 2.2(c).

“Excluded Leases” means those leases of the members of the F&F Group as specified in Schedule 2.2(c).

“Excluded Liabilities” has the meaning given to such term in Section 2.4.

“F&F Group” means the Company, F&F, 13318184, 11180703, 10926671, Friendly Stranger, Hifyre, and Pineapple Express.

“F&F” means Fire & Flower Inc., a corporation duly constituted under the federal laws of Canada.

“Filing Date” means June 5, 2023.

“Final Order” means with respect to any order or judgment of the CCAA Court, or any other court of competent jurisdiction, with respect to the subject matter addressed in the CCAA Proceedings or the docket of any court of competent jurisdiction, that such order or judgment has not been vacated, set aside, reversed, stayed, modified or amended, and as to which the applicable periods to appeal, or seek certiorari or move for a new trial, reargument, or rehearing has expired and no appeal, leave to appeal, or petition for certiorari or other proceedings for a new trial, reargument, or rehearing has been timely taken or filed, or as to which any appeal has been taken or any petition for certiorari or leave to appeal that has been timely filed has been withdrawn or resolved in a manner acceptable to Company and Purchaser, each acting reasonably, by the highest court to which the order or judgment was appealed or from which leave to appeal or certiorari was sought or the new trial, reargument, or rehearing shall have been denied, resulted in no modification of such order or has otherwise been dismissed with prejudice.

“Friendly Stranger” means Friendly Stranger Holdings Corp., a corporation duly constituted under the laws of the province of Ontario.

“Fundamental Representations and Warranties of Company” means the representations and warranties of Company included in Sections 4.1 [Due Authorization and Enforceability of Obligations], 4.2 [Existence and Good Standing] and 4.4 [Absence of Conflicts].

“Governmental Authority” means any government, regulatory authority, governmental department, agency, commission, bureau, official, minister, Crown corporation, court, board, tribunal or dispute settlement panel or other law, rule or regulation-making organization or entity (i) having or purporting to have jurisdiction on behalf of any nation, province, territory or state or any other geographic or political subdivision of any of them, or (ii) exercising, or entitled or purporting to exercise any administrative, executive, judicial, legislative, policy, regulatory or taxing authority or power.

“GST/HST” means all goods and services tax and harmonized sales tax imposed under Part IX of the ETA or any other statute in any jurisdiction of Canada.

“Hifyre” means Hifyre Inc. a corporation duly constituted under the laws of the province of Ontario.

“IFRS” means the International Financial Reporting Standards, at the relevant time, applied on a consistent basis.

“Implementation Steps” has the meaning given to such term in Section 2.7(c).

“Initial Order” has the meaning given to such term in Recital B.

“Intercompany Claim” means any claim that may be asserted against any of the members of the F&F Group by or on behalf of any of the members of the F&F Group or any of their Affiliates.

“KERP Charge” has the meaning given to it in the Initial Order.

“Material Adverse Effect” means any change, effect, event, occurrence, state of facts or development that has had a material adverse effect on: (i) the business, assets, liabilities, financial conditions or results of operations of the members of the F&F Group, taken as a whole; or (ii) prevents the ability of any of the members of the F&F Group to perform its obligations under, or to consummate, the Transaction, but excluding any such change, effect, event, occurrence, state of facts or development attributable to or arising from: (A) general economic or business conditions; (B) Canada, the U.S. or foreign economies, or financial, banking or securities markets in general, or other general business, banking, financial or economic conditions (including: (I) any disruption in any of the foregoing markets; (II) any change in the currency exchange rates; or (III) any decline or rise in the price of any security, commodity, contract or index); (C) acts of God or other calamities, pandemics (including COVID-19 and any Governmental Authority’s response thereto), national or international political or social conditions, including the engagement and/or escalation by the U.S. or Canada in hostilities, whether or not pursuant to the declaration of a national emergency or war, or the occurrence of any military or terrorist attack upon the U.S. or Canada or any of their territories, possessions or diplomatic or consular offices or upon any military installation, equipment or personnel of the U.S. or Canada; (D) the identity of Purchaser or its Affiliates; (E) conditions affecting generally the industry in which the members of the F&F Group participate; (F) the public announcement of, entry into or pendency of, actions required or contemplated by or performance of obligations under, this Agreement or the Transaction, or the identity of the Parties; (G) changes in Applicable Laws or the interpretation thereof; (H) any change in IFRS or other accounting requirements or principles; (I) national or international political, labor or social conditions; (J) the failure of the members of the F&F Group to meet or achieve the results set forth in any internal projections (but not the underlying facts giving rise to such failure unless such facts are otherwise excluded pursuant to the clauses contained in this definition); or (K) any change resulting from compliance with the terms of, or any actions taken (or not taken) by any Party pursuant to or in accordance with, this Agreement; provided

that the exceptions set forth in clauses (A), (B), (C), (E), (G), (H) or (I) shall not apply to the extent that such event is disproportionately adverse to the members of the F&F Group, taken as a whole, as compared to other companies in the industries in which the members of the F&F Group operate.

“Monitor” means FTI Consulting Canada Inc., as Court-appointed monitor of the members of the F&F Group in the CCAA Proceeding and not in its personal or corporate capacity.

“Monitor’s Certificate” means the certificate delivered to Purchaser and filed with the CCAA Court by the Monitor certifying that the Monitor has received written confirmation in form and substance satisfactory to the Monitor from Company and Purchaser that all conditions to Closing have been satisfied or waived by the applicable Parties and the Transaction has been completed.

“Order” means any order of the Court made in the CCAA Proceedings, or any order, directive, judgment, decree, injunction, decision, ruling, award or writ of any Governmental Authority.

“Outside Date” means September 15, 2023 or such later date as may be determined by the Parties in writing.

“Overbid Amount” means \$250,000.

“Parties” means Company and Purchaser collectively, and **“Party”** means either Company or Purchaser, as the context requires.

“Permitted Encumbrances” means the Encumbrances listed in Schedule 1.1(a).

“Person” includes an individual, partnership, firm, joint venture, venture capital fund, limited liability company, unlimited liability company, association, trust, entity, corporation, unincorporated association, or organization, syndicate, committee, court appointed representative, the government of a country or any political subdivision thereof, or any agency, board, tribunal, commission, bureau, instrumentality, or department of such government or political subdivision, or any other entity, howsoever designated or constituted, including any Taxing Authority, and the trustees, executors, administrators, or other legal representatives of an individual, and for greater certainty includes any Governmental Authority.

“Pineapple Express” means Pineapple Express Delivery Inc., a corporation duly constituted under the federal laws of Canada.

“Post-Closing Straddle Tax Period” has the meaning given to such term in Section 8.4(c).

“Post-Filing Claim” or **“Post-Filing Claims”** means any or all indebtedness, liability, or obligation of the members of the F&F Group of any kind that arises during and in respect of the period commencing on the Filing Date and ending on the day immediately preceding the Closing Date in respect of services rendered or supplies provided to the members of the F&F Group during such period; provided that, for certainty, such amounts do not constitute a Restructuring Period Claim or a Restructuring Period D&O Claim.

“Priority Payments” means those priority payments prescribed under subsections 6(3), 6(5) and 6(6) of the CCAA, and the amounts owing under the Employee Priority Claims, and including those amounts identified in the Implementation Steps.

“Purchase Price” has the meaning given to such term in Section 3.1.

“Purchased Shares” has the meaning given to such term in Section 2.1(a).

“Purchaser” has the meaning given to such term in the preamble to this Agreement.

“Released Claims” means all claims, demands, complaints, grievances, actions, applications, suits, causes of action, Orders, charges, indictments, prosecutions, informations or other similar processes, assessments or reassessments, judgments, debts, liabilities, expenses, costs, damages or losses, contingent or otherwise, whether liquidated or unliquidated, matured or unmatured, disputed or undisputed, contractual, legal or equitable, including loss of value, professional fees, including “claims” as defined in the CCAA and including fees and disbursements of legal counsel on a full indemnity basis, and all costs incurred in investigating or pursuing any of the foregoing or any proceeding relating to any of the foregoing.

“Residual Co.” means a company to be formed by Company, such entity in form satisfactory to Purchaser, acting reasonably, prior to the Closing; provided, that no such entity shall be a flow through entity for Canadian purposes unless approved by Purchaser.

“Restructuring Period Claim” means any Claim owed by any member of the F&F Group arising out of the restructuring, disclaimer, resiliation, termination or breach by such member of the F&F Group on or after the Filing Date of any contract, lease or other agreement, whether written or oral.

“Restructuring Period D&O Claim” means any Claim against one or more of the directors and/or officers of a member of the F&F Group arising after the Filing Date, whether or not such right or claim is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, unsecured, perfected, unperfected, present, future, known, or unknown, by guarantee, surety or otherwise, and whether or not such right is executory or anticipatory in nature, including any assessments and any right or ability of any Person to advance a claim for contribution, indemnity or otherwise against any of such directors and/or officers with respect to any matter, action, cause or chose in action, whether existing at present or arising or commenced in the future, for which any such director or officer is alleged to be, by statute or otherwise by law or equity, liable to pay in his or her capacity as a director or officer.

“Retained Liabilities” has the meaning given to such term in Section 2.3.

“SISP” has the meaning given to such term in Recital C.

“SISP Order” has the meaning given to such term in Recital C.

“Successful Bid(s)” has the meaning given to such term in the SISP.

“Successful Bidder(s)” has the meaning given to such term in the SISP.

“Tax” and **“Taxes”** means taxes, duties, fees, premiums, assessments, imposts, levies and other charges of any kind whatsoever (including withholding on amounts paid to or by any Person) imposed by any Taxing Authority, including all interest, penalties, fines, additions to tax or other additional amounts imposed by any Taxing Authority in respect thereof, and including those levied on, or measured by, or referred to as, income, gross receipts, profits, capital, transfer, land transfer, sales, goods and services, harmonized sales, use, value-added, excise, stamp, withholding, business, franchising, escheat, property, development, occupancy, employer health, payroll, employment, health, disability, severance, unemployment, social services, education and social security taxes, all surtaxes, all customs

duties and import and export taxes, countervail and anti-dumping, all license, franchise and registration fees and all employment insurance, health insurance and Canada, Ontario and other government pension plan premiums or contributions.

“Tax Act” means the *Income Tax Act* (Canada) and shall also include a reference to any applicable and corresponding provisions under the income tax laws of a province or territory of Canada, as applicable.

“Tax Return” means any return, declaration, report, statement, information statement, form, election, amendment, claim for refund, schedule or attachment thereto or other document filed or required to be filed with a Taxing Authority with respect to Taxes.

“Taxing Authority” means His Majesty the King in right of Canada, His Majesty the King in right of any province or territory of Canada, the Canada Revenue Agency, any similar revenue or taxing authority of Canada and each and every province or territory of Canada and any political subdivision thereof, the United States Internal Revenue Service, any similar revenue or taxing authority of the U.S. and each and every state and locality of the U.S., and any Canadian, U.S. or other Governmental Authority exercising taxing authority or power, and **“Taxing Authority”** means any one of the Taxing Authorities.

“Terminated Employees” means those individuals employed by a member of the F&F Group whose employment has or shall be terminated by the applicable member of the F&F Group prior to Closing, being those individuals deemed to be Terminated Employees pursuant to Section 8.5(c).

“Transaction” means the transactions contemplated by this Agreement, including the purchase and sale of the Purchased Shares.

“Transaction Regulatory Approvals” means any material licenses, permits or approvals required from any Governmental Authority or under any Applicable Laws relating to the business and operations of the members of the F&F Group that would be required to be obtained in order to permit the members of the F&F Group and Purchaser to complete the Transaction.

“Vesting Order” means an order of the CCAA Court in a form to be mutually agreed upon by the Purchaser and Company, each acting reasonably, which order provides for, inter alia, the approval of the Purchaser as the Successful Bidder under the SISP.

1.2 Statutes

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

1.3 Headings, Table of Contents, etc.

The provision of a table of contents, the division of this Agreement into Articles, Sections and other subdivisions and the insertion of headings are for convenient reference only and do not affect the interpretation of this Agreement. The recitals to this Agreement are an integral part of this Agreement.

1.4 Gender and Number

In this Agreement, unless the context otherwise requires, words importing the singular include the plural and vice versa, and words importing gender include all genders.

1.5 Currency

Except where otherwise expressly provided, all amounts in this Agreement are stated and shall be paid in Canadian dollars. References to "\$" are to Canadian dollars.

1.6 Certain Phrases

In this Agreement (i) the words "including", "includes" and "include" and any derivatives of such words mean "including (or includes or include) without limitation" and (ii) the words "the aggregate of", "the total of", "the sum of", or a phrase of similar meaning means "the aggregate (or total or sum), without duplication, of". The expression "Article", "Section" and other subdivision followed by a number, mean and refer to the specified Article, Section or other subdivision of this Agreement.

1.7 Invalidity of Provisions

Each of the provisions contained in this Agreement is distinct and severable and a declaration of invalidity or unenforceability of any such provision or part thereof by a court of competent jurisdiction shall not affect the validity or enforceability of any other provision hereof so long as the economic or legal substance of the Transaction is not affected in any manner materially adverse to any Party. Upon: (i) such a determination of invalidity or unenforceability; or (ii) any change in Applicable Law or other action by any Governmental Authority which materially detracts from the legal or economic rights or benefits, or materially increases the obligations, of any Party or any of its Affiliates under this Agreement, the Parties shall negotiate to modify this Agreement in good faith so as to effect the original intent of the Parties as closely as possible in an acceptable manner so that the Transaction be consummated as originally contemplated to the fullest extent possible.

1.8 Knowledge

Any reference to the knowledge of (i) Company or the members of the F&F Group, means the actual knowledge, after reasonable inquiry of Stephane Trudel, and (ii) Purchaser, means the actual knowledge, after reasonable inquiry, of Thor Richardson .

1.9 Entire Agreement

This Agreement and the agreements and other documents required to be delivered pursuant to this Agreement, constitute the entire agreement among the Parties, and set out all the covenants, promises, warranties, representations, conditions and agreements among the Parties in connection with the subject matter of this Agreement, and supersede all prior agreements, understandings, negotiations and discussions, whether oral or written, pre-contractual or otherwise. There are no covenants, promises, warranties, representations, conditions, understandings or other agreements, whether oral or written, pre-contractual or otherwise, express, implied or collateral among the Parties in connection with the subject matter of this Agreement, except as specifically set forth in this Agreement and any document required to be delivered pursuant to this Agreement.

1.10 Waiver, Amendment

Except as expressly provided in this Agreement, no amendment or waiver of this Agreement shall be binding unless executed in writing by all Parties hereto, and provided that such amendment is consented to by the Monitor. No waiver of any provision of this Agreement shall constitute a waiver of

any other provision nor shall any waiver of any provision of this Agreement constitute a continuing waiver unless otherwise expressly provided.

1.11 Governing Law; Jurisdiction and Venue

This Agreement, the rights and obligations of the Parties under this Agreement, and any Claim or controversy directly or indirectly based upon or arising out of this Agreement or the Transaction (whether based on contract, tort or any other theory), including all matters of construction, validity and performance, shall in all respects be governed by, and interpreted, construed and determined in accordance with, the laws of the Province of Ontario and the federal laws of Canada applicable therein, without regard to the conflicts of law principles thereof. The Parties consent to the jurisdiction and venue of the CCAA Court for the resolution of any such disputes arising under this Agreement. Each Party agrees that service of process on such Party as provided in Section 12.7 shall be deemed effective service of process on such Party.

1.12 Incorporation of Schedules and Exhibits

Any schedule or exhibit attached thereto, and any schedule or exhibit attached to this Agreement, is an integral part of this Agreement.

1.13 Accounting Terms

All accounting terms used in this Agreement are to be interpreted in accordance with IFRS unless otherwise specified.

1.14 Non-Business Days

Whenever payments are to be made or an action is to be taken on a day which is not a Business Day, such payment will be made or such action will be taken on or not later than the next succeeding Business Day.

1.15 Computation of Time Periods

If any action may be taken within, or any right or obligation is to expire at the end of, a period of days under this Agreement, then the first day of the period is not counted, but the day of its expiry is counted.

ARTICLE 2 PURCHASE AND SALE

2.1 Agreement to Purchase and Sell Purchased Shares

- (a) Upon and subject to the terms and conditions of this Agreement, at the Closing and effective as of the Closing Time, and subject to the completion of the Implementation Steps required to be completed prior to the Closing Time, Company shall issue to Purchaser, and Purchaser shall purchase from Company, free and clear of all Encumbrances (other than Permitted Encumbrances), 1,000,000,000 common shares in the share capital of Company from treasury (the "**Purchased Shares**").
- (b) Pursuant to the Vesting Order, in accordance with the Implementation Steps, all Equity Interests of Company outstanding prior to the issuance of the Purchased Shares other than the Purchased Shares shall be cancelled, without consideration, and the Purchased Shares shall represent 100% of the outstanding Equity Interests in Company after such cancellation and issuance.

- (c) For the avoidance of doubt, upon the Closing and after the completion of the Implementation Steps, Company and each and every direct and indirect subsidiary of Company shall be wholly owned, directly or indirectly, by Purchaser.

2.2 Excluded Assets

Notwithstanding any provision of this Agreement to the contrary, as of the Closing, the assets of the members of the F&F Group shall not include any of the following assets (collectively, the “**Excluded Assets**”):

- (a) the Tax records and returns, and books and records pertaining thereto and other documents, in each case, that primarily or solely relate to any of the Excluded Liabilities, provided that the applicable member of the F&F Group may take copies of all Tax records and books and records pertaining to such records (as redacted, if applicable) to the extent necessary or useful for the carrying on of the Business after Closing, including the filing of any Tax Return, provided, however that Residual Co. shall retain the original copies of any of the records required to be provided to the applicable member of the F&F Group hereunder (and provide the applicable member of the F&F Group with a copy thereof) to the extent Residual Co. is required to do so under Applicable Law;
- (b) the Administrative Expense Amount;
- (c) the Excluded Contracts;
- (d) the Excluded Leases;
- (e) all communications, information or records, written or oral, that are in any way related to: (i) the Transaction; (ii) the sale of the Purchased Shares; (iii) any Excluded Asset; or (iv) any Excluded Liability;
- (f) any rights which accrue to Residual Co. under this Agreement or any ancillary agreement entered into in connection with the Transaction;
- (g) those specific assets (including contracts and leases) set forth in Schedule 2.2, which may be updated by written notice from the Purchaser to the Company until the date that is two (2) Business Days before the Closing Date.

2.3 Retained Liabilities

Pursuant to this Agreement and the Vesting Order, as of the Closing Time, the obligations and liabilities of the F&F Group shall consist solely of the items explicitly listed below (collectively, the “**Retained Liabilities**”); provided, for the avoidance of doubt, that the Retained Liabilities of any member of the F&F Group pursuant to this Section 2.3 shall continue to be liabilities of the applicable member of the F&F Group (and, except as applied to Section 2.3(c) no other Person) as of the Closing; provided further that each of the members of the F&F Group shall take such steps as are necessary to ensure that any claim that could give rise to responsible person liability is satisfied if the applicable member of the F&F Group is, for any reason, unable to satisfy such claim:

- (a) all Post-Filing Claims;
- (b) all liabilities of the members of the F&F Group arising from and after Closing;

- (c) (i) Tax liabilities of the members of the F&F Group for any tax period or the portion thereof beginning on or after the Filing Date; and (ii) any other Taxes, including sales or use taxes, payable to a Taxing Authority for any period whereby the nonpayment of which by any member of the F&F Group could result in a responsible person (including for greater certainty, employees, officers or directors) associated with a member of the F&F Group being held personally liable for such nonpayment, excluding from (i), for the avoidance of doubt: (A) all income tax or similar liabilities of any member of the F&F Group for any tax period ending prior to the Filing Date, other than Taxes with respect to which any current or former employee, officer, director or other individual may be held liable under any applicable statute imposing responsible person liability for unpaid taxes, and (B) any Tax or similar liability directly and solely related to the Excluded Assets, other than Taxes with respect to which any current or former employee, officer, director or other individual may be held liable under any applicable statute imposing responsible person liability for unpaid taxes (excluding, for the avoidance of doubt, any such person serving in such capacity at Residual Co.);
- (d) Intercompany Claims between members of the F&F Group;
- (e) any and all indemnification obligations of the members of the F&F Group to current and former directors, officers and or other person employed or previously employed by the members of the F&F Group (excluding, for the avoidance of doubt, Residual Co.), provided that such indemnification both: (i) arises under the corporate by-laws of the applicable member of the F&F Group; and (ii) is covered under the director and officer insurance policies of such member of the F&F Group, and only to the extent covered by such director and officer insurance policy;
- (f) all amounts outstanding as Priority Payments, together with amounts owing in respect of the obligations secured by the KERP Charge, the Directors Charge and the Administration Charge (provided that the firms benefitting from the Administration Charge shall have invoiced the F&F Group on a weekly basis for the period beginning on June 18, 2023 and ending on the Closing Date) solely to the extent that the Purchase Price is not sufficient to satisfy such amounts in full;
- (g) an amount sufficient to satisfy the Administration Expense Costs owing and secured by the Administration Charge that are not otherwise paid by the F&F Group on or before the Closing Date and not to exceed \$100,000 in the aggregate or such greater amount approved by Purchaser in writing in its sole discretion; and
- (h) those specific Retained Liabilities set forth in Schedule 2.3.

2.4 Excluded Liabilities

Except as expressly retained pursuant to or specifically contemplated by Section 2.3, all Claims and all debts, obligations, and liabilities of the members of the F&F Group or any predecessors of the members of the F&F Group, of any kind or nature, shall be assigned and become the sole obligation of Residual Co. pursuant to the terms of the Vesting Order and this Agreement, and, as of the Closing, the members of the F&F Group shall not have any obligation, duty, or liability of any kind whatsoever, except as expressly retained pursuant to Section 2.3, whether accrued, contingent, known or unknown, express or implied, primary or secondary, direct or indirect, liquidated, unliquidated, absolute, accrued, contingent or otherwise, and whether due or to become due, and all such liabilities or obligations shall be the sole responsibility of Residual Co., including, inter alia, the non-exhaustive list of Liabilities set forth in Schedule 2.4, and any and all liability relating to any change of control provision that may arise in connection with the change of control contemplated by the Transaction and

to which the members of the F&F Group may be bound as at Closing, all liabilities relating to or under the Excluded Contracts, the Excluded Leases and Excluded Assets, liabilities for employees whose employment with Company or its Affiliates is terminated on or before Closing, including the Terminated Employees, the Restructuring Period Claims, and the Restructuring Period D&O Claims (collectively, the “**Excluded Liabilities**”). For avoidance of doubt, Excluded Liabilities shall not include any debts, obligations, liabilities or Encumbrances that are or are deemed to be an interest in land and, to the extent that any of the Excluded Liabilities listed in Schedule 2.4 hereof is determined by the Court to be an interest in land, and any interest in land shall be deemed to be Retained Liabilities hereunder. Purchaser may, with the consent of the Company, which consent shall not be unreasonably withheld, amend the clarifying items listed in Schedule 2.4 as specifically enumerated Excluded Liabilities no later than five (5) Business Days before the Closing Date.

2.5 Transfer of Excluded Liabilities to Residual Co.

On the Closing Date, pursuant to the terms of the Vesting Order, the members of the F&F Group shall assign and transfer the Excluded Liabilities to Residual Co., and Residual Co. shall assume the applicable Excluded Liabilities. All of the Excluded Liabilities shall be discharged from the members of the F&F Group at Closing, pursuant to the Vesting Order.

2.6 Transfer of Excluded Assets to Residual Co.

On the Closing Date, pursuant to the terms of the Vesting Order and, where applicable, in consideration for Residual Co. assuming the Excluded Liabilities pursuant to Section 2.5 from a member of the F&F Group, the members of the F&F Group shall assign and transfer the Excluded Assets to Residual Co. and the Excluded Assets shall be vested in Residual Co. pursuant to the Vesting Order.

2.7 Pre-Closing and Closing Reorganization

- (a) The specific mechanism for implementing the Closing, and the structure of the Transaction shall be structured in a tax efficient manner mutually agreed upon by the Parties, each acting reasonably.
- (b) The members of the F&F Group shall effect on or prior to the Closing Date all transactions reasonably requested by Purchaser to settle all or part of the Intercompany Claims.
- (c) On or prior to the Closing Date, the members of the F&F Group shall effect the transaction steps and pre-closing reorganization (collectively, the “**Implementation Steps**”) of the members of the F&F Group as set forth on a schedule to be agreed upon by Company and Purchaser, each acting reasonably, at least seven (7) days prior to the hearing of the members of the F&F Group’s motion to the CCAA Court seeking the Vesting Order; provided that in no event will the Implementation Steps described in Schedule 2.7(c) impair or delay the receipt of Transaction Regulatory Approvals or the satisfaction of all other conditions to closing set out in Article 7 or be materially prejudicial to the interests of Purchaser or the Company under the other sections of this Agreement. The Implementation Steps may include, without limitation, the formation of new entities required to implement the Transaction in a tax efficient manner, consistent with Section 2.7(a).
- (d) The Implementation Steps shall occur, and be deemed to have occurred in the order and manner to be set out in Schedule 2.7(c).

- (e) The steps to be taken and the compromises and releases to be effective on the Closing Date are deemed to occur and be effected in the steps and sequential order set forth in Schedule 2.7(c), beginning on or before the Closing Date at such time as is specified therein.
- (f) The timing and/or sequence of the Implementation Steps and the Closing on the Closing Date may be altered at the request of Purchaser acting reasonably.

ARTICLE 3 PURCHASE PRICE AND RELATED MATTERS

3.1 Purchase Price

The aggregate purchase price payable by Purchaser to the Monitor for the Purchased Shares shall be \$36,000,000 (the "**Purchase Price**") in cash, which amount, for greater certainty, is in excess of the sum of the following amounts:

- (a) all amounts outstanding and obligations payable by Company as of the Closing Date to ACT pursuant to the Bridge Loan Agreement, including the principal amount of such claims and interest accrued as of the Closing Date, plus all accrued and unpaid interest thereon through to and including the Closing Date, plus any fees and expenses associated therewith (the "**Bridge Loan Amount**"); *plus*
- (b) all amounts outstanding and obligations payable by Company as of the Closing Date to ACT pursuant to the DIP Term Sheet, including the principal amount of such claims and interest accrued as of the Closing Date, plus all accrued and unpaid interest thereon through to and including the Closing Date, plus any fees and expenses associated therewith and the DIP Term Sheet (the "**DIP Facility Amount**"); *plus*
- (c) the ACT Break Fee Amount; *plus*
- (d) the Overbid Amount.

3.2 Satisfaction of Purchase Price

Purchaser shall pay the Purchase Price to the Monitor, for the benefit of Residual Co., in accordance with the following:

- (a) The Parties acknowledge that the Purchaser has paid a deposit in the amount of \$3,600,000, representing approximately 10% of the Purchase Price, to the Monitor (the "**Deposit**"), which Deposit shall be held by the Monitor and dealt with in accordance with the SISP.
- (b) At the Closing Time, the Purchaser shall pay an amount equal to the Purchase Price less the Deposit to the Monitor by wire transfer of immediately available funds to an account to be specified by the Monitor in writing.

ARTICLE 4 REPRESENTATIONS AND WARRANTIES OF COMPANY

Company represents and warrants, on behalf of itself and all other members of the F&F Group, to Purchaser as follows, and acknowledges that Purchaser is relying upon the following representations and warranties in connection with its purchase of the Purchased Shares:

4.1 Due Authorization and Enforceability of Obligations

Subject to the granting of the Vesting Order, this Agreement has been duly authorized, executed and delivered by it, and constitutes a legal, valid and binding obligation of it, enforceable against it in accordance with its terms, except as enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium, or other similar laws relating to or limiting creditors' rights generally or by equitable principles relating to enforceability.

4.2 Existence and Good Standing

Each of the members of the F&F Group is validly existing and in good standing under the laws of the jurisdiction of its incorporation or organization, and: (i) has all requisite power and authority to execute and deliver this Agreement; and (ii) has taken all requisite corporate or other action necessary for it to execute and deliver this Agreement and to perform its obligations hereunder, including the consummation of the Transaction.

4.3 Sophisticated Parties

Each of the members of the F&F Group: (i) is a sophisticated party with sufficient knowledge and experience to evaluate properly the terms and conditions of this Agreement; (ii) has conducted its own analysis and made its own decision to enter into this Agreement and has obtained such independent advice in this regard as it deems appropriate; and (iii) has not relied on the analysis or decision of any Person other than its own independent advisors.

4.4 Absence of Conflicts

The execution and delivery of this Agreement by Company and the completion by Company of its obligations hereunder and the consummation of the Transaction do not and will not violate or conflict with any Applicable Law (subject to the receipt of any Transaction Regulatory Approvals and the granting of the Vesting Order) and will not result (with due notice or the passage of time or both) in a violation, conflict or breach of, or constitute a default under, or require any consent to be obtained under the certificate of incorporation, articles, by-laws or other constituent documents of any member of the F&F Group. Subject to the granting of the Vesting Order, the execution, delivery and performance by Company does not and will not violate any Order.

4.5 Approvals and Consents

The execution and delivery of this Agreement by Company, the completion by Company of its obligations hereunder and the consummation by Company of the Transaction, do not and will not require any consent or approval or other action, with or by, any Governmental Authority, other than the Transaction Regulatory Approvals and the entry of the Vesting Order by the CCAA Court.

4.6 No Actions

Except for as previously disclosed in writing to the Purchaser, there is not, as of the date hereof, pending or, to Company's knowledge, threatened against any member of the F&F Group or any of its properties, nor has any member of the F&F Group received any written notice in respect of, any claim, potential claim, litigation, action, suit, arbitration, investigation or other proceeding before any Governmental Authority or legislative body, other than the CCAA Court, that, would prevent Company from executing and delivering this Agreement, performing its obligations hereunder and consummating the Transaction.

4.7 Subsidiaries

Schedule 4.7 sets forth a complete and correct list of the name and jurisdiction of organization of each member of the F&F Group.

ARTICLE 5 REPRESENTATIONS AND WARRANTIES OF PURCHASER

Purchaser represents and warrants to Company as follows, and acknowledges that Company is relying upon the following representations and warranties in connection with the sale of the Purchased Shares:

5.1 Due Authorization and Enforceability of Obligations

This Agreement has been duly authorized, executed and delivered by Purchaser, and, assuming the due authorization, execution and delivery by it, this Agreement constitutes a legal, valid and binding obligation of it, enforceable against it in accordance with its terms, except as enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium, or other similar laws relating to or limiting creditors' rights generally or by equitable principles relating to enforceability.

5.2 Existence and Good Standing

Purchaser is validly existing and in good standing under the laws of the jurisdiction of its incorporation or organization and has all requisite power and authority to execute and deliver this Agreement and to perform its obligations hereunder and consummate the Transaction.

5.3 Sophisticated Party

Purchaser: (i) is a sophisticated party with sufficient knowledge and experience to evaluate properly the terms and conditions of this Agreement; (ii) has had the opportunity to conduct and has conducted its own analysis, review, investigation, inspection and due diligence with respect to the Business and the F&F Group, and has made its own decision to enter into this Agreement and has obtained such independent advice in this regard as it deems appropriate; and (iii) has not relied on the analysis, review, investigation, inspection, due diligence or decision of any Person other than its own independent advisors.

5.4 Absence of Conflicts

The execution and delivery of this Agreement by Purchaser and the completion by Purchaser of its obligations hereunder and the consummation of the Transaction do not and will not violate or conflict with any Applicable Law, or any of its properties or assets, (subject to the receipt of any Transaction Regulatory Approvals) and will not result (with due notice or the passage of time or both) in a violation, conflict or breach of, or constitute a default under, or require any consent to be obtained under its certificate of incorporation, articles, by-laws or other constituent documents.

5.5 Approvals and Consents

The execution and delivery of this Agreement by Purchaser, the completion by Purchaser of its obligations hereunder and the consummation by Purchaser of the Transaction, do not and will not require any consent or approval or other action, with or by, any Governmental Authority, other than the Transaction Regulatory Approvals and the granting of the Vesting Order by the CCAA Court.

5.6 No Actions

There is not, as of the date hereof, pending or, to Purchaser's knowledge, threatened against it or any of its properties, nor has Purchaser received notice in respect of, any claim, potential claim, litigation, action, suit, arbitration, investigation or other proceeding before any Governmental Authority or legislative body, other than the CCAA Court, that would prevent it from executing and delivering this Agreement, performing its obligations hereunder and consummating the Transaction.

5.7 Accredited Investor

Purchaser is an "accredited investor", as such term is defined in NI 45-106 and in Rule 501 of Regulation D under the United States Securities Act of 1933 (the "**Securities Act**") and it was not created or used solely to purchase or hold securities as an accredited investor as described in paragraph (m) of the definition of "accredited investor" in NI 45-106 and acknowledges that the Purchased Shares may be subject to resale restrictions under applicable securities laws. The Purchased Shares are being acquired by Purchaser for its own account, and not with a view to, or for the offer or sale in connection with, any public distribution or sale of the Purchased Shares or any interest in them.

5.8 Availability of Funds

Purchaser has sufficient unrestricted funds and financial capacity to consummate the Transaction.

5.9 Residence

Purchaser is not a non-resident of Canada within the meaning of the Tax Act.

ARTICLE 6 AS IS, WHERE IS

Purchaser acknowledges and agrees that it has conducted to its satisfaction an independent investigation and verification of the Business, the Purchased Shares, the Retained Liabilities and all related operations of the members of the F&F Group, and, based solely thereon and the advice of its financial, legal and other advisors, has determined to proceed with the Transaction. The Purchaser has relied solely on the results of its own independent investigation and verification and, except for the representations and warranties of the Company expressly set forth in Article 4, the Purchaser understands, acknowledges and agrees that all other representations, warranties, guarantees, conditions and statements of any kind or nature, expressed or implied (including any relating to the future or historical financial condition, results of operations, prospects, assets or liabilities of the members of the F&F Group or the Business, or the quality, quantity or condition of the Purchased Shares) are specifically disclaimed by the Company, the other members of F&F Group, their respective financial and legal advisors and the Monitor and its legal counsel. THE PURCHASER SPECIFICALLY ACKNOWLEDGES AND AGREES THAT, EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES OF THE COMPANY EXPRESSLY AND SPECIFICALLY SET FORTH IN Article 4: (A) THE PURCHASER IS ACQUIRING THE PURCHASED SHARES ON AN "AS IS, WHERE IS" BASIS; AND (B) NONE OF THE COMPANY, THE OTHER MEMBERS OF THE F&F GROUP, THE MONITOR OR ANY OTHER PERSON (INCLUDING ANY REPRESENTATIVE OF THE COMPANY, THE OTHER MEMBERS OF THE F&F GROUP OR THE MONITOR WHETHER IN ANY INDIVIDUAL, CORPORATE OR ANY OTHER CAPACITY) IS MAKING, AND THE PURCHASER IS NOT RELYING ON, ANY REPRESENTATIONS, WARRANTIES, GUARANTEES, CONDITIONS OR OTHER STATEMENTS OF ANY KIND WHATSOEVER, WHETHER ORAL OR WRITTEN, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, AS TO ANY MATTER CONCERNING THE MEMBERS OF THE F&F GROUP, THE BUSINESS, THE PURCHASED SHARES, THE RETAINED LIABILITIES, THE EXCLUDED ASSETS, THE EXCLUDED LIABILITIES, THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT, OR THE ACCURACY OR

COMPLETENESS OF ANY INFORMATION PROVIDED TO (OR OTHERWISE ACQUIRED BY) THE PURCHASER OR ANY OF ITS REPRESENTATIVES, INCLUDING WITH RESPECT TO MERCHANTABILITY, PHYSICAL OR FINANCIAL CONDITION, DESCRIPTION, FITNESS FOR A PARTICULAR PURPOSE, OR IN RESPECT OF ANY OTHER MATTER OR THING WHATSOEVER, INCLUDING ANY AND ALL CONDITIONS, GUARANTEES, STATEMENTS, WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, PURSUANT TO ANY APPLICABLE LAWS IN ANY JURISDICTION, WHICH THE PURCHASER CONFIRMS DO NOT APPLY TO THIS AGREEMENT, AND ARE HEREBY WAIVED IN THEIR ENTIRETY BY THE PURCHASER.

ARTICLE 7 CONDITIONS

7.1 Conditions for the Benefit of Purchaser and Company

The respective obligations of Purchaser and Company to consummate the Transaction are subject to the satisfaction of, or compliance with, at or prior to the Closing Time, each of the following conditions:

- (a) *No Law* – 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 this Agreement, including, for the avoidance of doubt, a cease trade or similar order issued by a Governmental Authority in respect of any member of the F&F Group, shall be in effect;
- (b) *Final Order* – the Vesting Order shall have been issued and entered and shall be a Final Order; and
- (c) *Successful Bid* – this Agreement shall be the Successful Bid (as determined pursuant to the SISP).

The Parties acknowledge that the foregoing conditions are for the mutual benefit of Company and Purchaser. Any condition in this Section 7.1 may be waived by Company and by Purchaser, in whole or in part, without prejudice to any of their respective rights of termination in the event of non-fulfillment of any other condition in whole or in part. Any such waiver will be binding on Company or Purchaser, as applicable, only if made in writing.

7.2 Conditions for the Benefit of Purchaser

The obligation of Purchaser to consummate the Transaction is subject to the satisfaction of, or compliance with, or waiver by Purchaser of, at or prior to the Closing Time, each of the following conditions (each of which is acknowledged to be for the exclusive benefit of Purchaser):

- (a) *Performance of Covenants* – the covenants contained in this Agreement to be performed or complied with by Company at or prior to the Closing Time shall have been performed or complied with in all material respects as at the Closing Time;
- (b) *Truth of Representations and Warranties* – (i) the Fundamental Representations and Warranties of Company shall be true and correct in all respects as of the Closing Date, as if made at and as of such date (except for *de minimus* inaccuracies); and (ii) all other representations and warranties of Company contained in Article 4 shall be true and correct in all respects as of the Closing Date, as if made at and as of such date (except for representations and warranties made as of specified date, the accuracy of which shall be determined as of such specified date) except where the failure to be so true

and correct would not, in the aggregate, have a Material Adverse Effect (and, for this purpose, any reference to “material”, “Material Adverse Effect” or other concepts of materiality in such representation and warranties shall be ignored);

- (c) *Officer’s Certificates* – Purchaser shall have received a certificate confirming the satisfaction of the conditions contained in Sections 7.2(a) (*Performance of Covenants*) and 7.2(b) (*Truth of Representations and Warranties*), signed for and on behalf of Company without personal liability by an executive officer of Company or other Persons acceptable to Purchaser, in each case in form and substance reasonably satisfactory to Purchaser;
- (d) *No Material Adverse Effect* – since the date hereof, no change effect, event, occurrence, state of facts or development shall have occurred that resulted in, or would reasonably be expected to result in, a Material Adverse Effect;
- (e) *Company’s Deliverables* – Company shall have delivered to Purchaser all of the deliverables contained in Section 11.2 in form and substance reasonably satisfactory to Purchaser;
- (f) *Implementation Steps* – the members of the F&F Group shall have completed the Implementation Steps that are required to be completed prior to Closing, in form and substance reasonably acceptable to Purchaser, acting reasonably;
- (g) *Terminated Employees* - the applicable member of the F&F Group shall have terminated the employment of the Terminated Employees, and all liabilities owing to any such Terminated Employees in respect of such terminations, including all amounts owing on account of or damages in lieu of, statutory notice, termination payments, severance, benefits, bonuses or other compensation or entitlements, shall be Excluded Liabilities which, pursuant the Vesting Order, shall be assigned and transferred from the applicable member of the F&F Group to, and assumed by, Residual Co; and
- (h) *Transaction Regulatory Approvals* – the members of the F&F Group shall have received the required Transaction Regulatory Approvals set forth in Schedule 7.2(h), if and as applicable, 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 (the “**Regulatory Approval Condition**”). Purchaser agrees to indemnify, defend and hold harmless, to the fullest extent permitted by law, any director and/or officer of the F&F Group from all losses and expenses incurred in connection with any action, suit, proceeding, claim, actual damages, demand, losses, and liabilities which arises out of or is based upon Purchaser’s waiver of the Regulatory Approval Condition.

7.3 Conditions for the Benefit of Company

The obligation of Company to consummate the Transaction is subject to the satisfaction of, or compliance with, or waiver where applicable by Company of, at or prior to the Closing Time, each of the following conditions (each of which is acknowledged to be for the exclusive benefit of Company):

- (a) *Truth of Representations and Warranties* – the representations and warranties of Purchaser contained in Article 5 will be true and correct in all respects on and as of the date of this Agreement and on and as of the Closing Date as if made on and as of

such date (except for representations and warranties made as of specified date, the accuracy of which shall be determined as of such specified date) except where the failure to be so true and correct would not reasonably be expected to have a material and adverse effect on Purchaser's ability to consummate the Transaction;

- (b) *Performance of Covenants* – the covenants contained in this Agreement to be performed by Purchaser at or prior to the Closing Time shall have been performed in all material respects as at the Closing Time;
- (c) *Officer's Certificate* – Company shall have received a certificate confirming the satisfaction of the conditions contained in Sections 7.3(a) and 7.3(b) signed for and on behalf of Purchaser without personal liability by an executive officer of Purchaser or other Persons acceptable to Company, acting in a commercially reasonable manner, in each case, in form and substance satisfactory to Company, acting in a commercially reasonable manner; and
- (d) *Purchaser Deliverables* – Purchaser shall have delivered to Company all of the deliverables contained in Section 11.3 in form and substance satisfactory to Company, acting in a commercially reasonable manner.

ARTICLE 8 ADDITIONAL AGREEMENTS OF THE PARTIES

8.1 Access to Information

- (a) Until the Closing Time, Company shall give to Purchaser's personnel engaged in the Transaction and their accountants, legal advisers, consultants, financial advisors and representatives during normal business hours reasonable access to its premises and to all of the books, records, and other information relating to the Business, the members of the F&F Group, the Retained Liabilities and the employees, and shall furnish them with all such information relating to the Business, the members of the F&F Group, the Retained Liabilities and the employees as Purchaser may reasonably request in connection with the Transaction; provided that such access shall be conducted at Purchaser's expense, in accordance with Applicable Law and under supervision of Company's personnel and in such a manner as to maintain confidentiality, and Company will not be required to provide access to or copies of any such books and records if: (i) the provision thereof would cause Company to be in contravention of any Applicable Law; or (ii) making such information available would: (A) result in the loss of any lawyer-client or other legal privilege; or (B) cause Company to be found in contravention of any Applicable Law, or contravene any fiduciary duty or agreement (including any confidentiality agreement to which Company or any of its Affiliates are a party). Notwithstanding anything in this Section 8.1 to the contrary, any such investigation shall be conducted upon reasonable advance notice and in such manner as does not materially disrupt the conduct of the Business or the possible sale thereof to any other Person.
- (b) Following the Closing, the members of the F&F Group shall make all books and records of the members of the F&F Group reasonably available to the Monitor and any trustee in bankruptcy of any of the members of the F&F Group upon at least five (5) Business Days prior notice, for a period of seven (7) years after Closing, and shall, at such party's expense, permit any of the foregoing Persons to take copies thereof as they may determine to be necessary or useful to accomplish their respective roles; provided that Purchaser shall not be obligated to make such books and records

available to the extent that doing so would: (i) violate Applicable Law; (ii) jeopardize the protection of a solicitor-client privilege; or (iii) unreasonably interfere with the ongoing business and operations of the members of the F&F Group and their Affiliates, as determined by the members of the F&F Group, acting reasonably.

8.2 Approvals and Consents

- (a) The Parties shall use commercially reasonable efforts to apply for and obtain any Transaction Regulatory Approvals as soon as reasonably practicable and no later than the time limits imposed by Applicable Laws, in accordance with Section 8.2(b), in each case at the sole cost and expense of Company.
- (b) The Parties shall use commercially reasonable efforts to apply for and obtain the Transaction Regulatory Approvals and shall co-operate with one another in connection with obtaining such approvals. Without limiting the generality of the foregoing, the Parties shall: (i) give each other reasonable advance notice of all meetings or calls with any Governmental Authority relating to the Transaction Regulatory Approvals, and provide as soon as practicable but in any case, within the required time, any additional submissions, information and/or documents requested by any Governmental Authority necessary, proper or advisable to obtain the Transaction Regulatory Approvals; (ii) not participate independently in any such meeting or call without first giving the other Party (or their outside counsel) an opportunity to attend and participate in such meeting or call, unless otherwise required or requested by such Governmental Authority; (iii) if any Governmental Authority initiates a meeting or call regarding the Transaction Regulatory Approvals, promptly notify the other Party of the substance of such communication; (iv) subject to Applicable Laws relating to the exchange of information, provide each other with a reasonable advance opportunity to review and comment upon and consider in good faith the views of the other in connection with all written communications (including any filings, notifications, submissions, analyses, presentations, memoranda, briefs, arguments, opinions and proposals) made or submitted by or on behalf of a Party with a Governmental Authority regarding the Transaction Regulatory Approvals; and (v) promptly provide each other with copies of all written communications to or from any Governmental Authority relating to the Transaction Regulatory Approvals.
- (c) Each of the Parties may, as advisable and necessary, reasonably designate any competitively or commercially sensitive material provided to the other under this Section 8.2 as “**Outside Counsel Only Material**”, provided that the disclosing Party also provides a redacted version to the receiving Party. Such materials and the information contained therein shall be given only to the outside legal counsel of the recipient and, subject to any additional agreements between the Parties, will not be disclosed by such outside legal counsel to employees, officers or directors of the recipient unless express written permission is obtained in advance from the source of the materials or its legal counsel.
- (d) The obligations of either Party to use its commercially reasonable efforts to obtain the Transaction Regulatory Approvals does not require either Party (or any Affiliate thereof) to undertake any divestiture of any business or business segment of such Party, to agree to any material operating restrictions related thereto or to incur any material expenditure(s) related therewith, unless agreed to by the Parties. In connection with obtaining the Transaction Regulatory Approvals, no member of the F&F Group shall agree to any of the foregoing items without the prior written consent of Purchaser.

8.3 Covenants Relating to this Agreement

- (a) Each of the Parties shall perform all obligations required to be performed by the applicable Party under this Agreement, co-operate with the other Party in connection therewith and do all such other acts and things as may be necessary or desirable in order to consummate and make effective, as soon as reasonably practicable, the Transaction and, without limiting the generality of the foregoing, from the date hereof until the Closing Date, each Party shall and, where appropriate, shall cause each of its Affiliates to:
 - (i) negotiate in good faith and use its commercially reasonable efforts to take or cause to be taken all actions and to do, or cause to be done, all things necessary, proper or advisable to satisfy the conditions precedent to the obligations of such Party hereunder (including, where applicable, negotiating in good faith with the applicable Governmental Authorities and/or third Persons in connection therewith), and to cause the fulfillment at the earliest practicable date of all of the conditions precedent to the other Party's obligations to consummate the Transaction; and
 - (ii) not take any action, or refrain from taking any action, or permit any action to be taken or not taken, which would reasonably be expected to prevent, materially delay or otherwise impede the consummation of the Transaction.
- (b) From the date hereof until the Closing Date, Purchaser hereby agrees, and hereby agrees to cause its representatives to, keep Company informed on a reasonably current basis, and no less frequently than on a weekly basis through teleconference or other meeting, and as reasonably requested by Company or the Monitor, as to Purchaser's progress in terms of the satisfaction of the conditions precedent contained herein.
- (c) From the date hereof until the Closing Date, Company hereby agrees, and hereby agrees to cause its representatives to, keep Purchaser informed on a reasonably current basis, and no less frequently than on a weekly basis through teleconference or other meeting, and as reasonably requested by Purchaser or the Monitor, as to Company's progress in terms of the satisfaction of the conditions precedent contained herein.
- (d) Company and Purchaser agree to execute and deliver such other documents, certificates, agreements and other writings, reasonably necessary for the consummation of the Transaction, and to take such other actions to consummate or implement as soon as reasonably practicable, the Transaction.
- (e) From the date hereof until the Closing Date, Company hereby agrees, and hereby agrees to cause its representatives to, promptly notify Purchaser of (i) any event, condition, or development that has resulted in the inaccuracy in a material respect or material breach of any representation or warranty, covenant or agreement contained in this Agreement, or (ii) any Material Adverse Effect occurring from and after the date hereof prior to the Closing Date.
- (f) Company and Purchaser agree to use commercially reasonable efforts to timely prepare and file all documentation and pursue all steps reasonably necessary to obtain any material third-party consents and approvals as may be required in connection with the Transaction.

- (g) The Company and the Purchaser shall cooperate and use commercially reasonable efforts to cause Company to cease to be a reporting issuer (or equivalent thereof) in the applicable jurisdictions of Canada as soon as reasonably practicable after the Closing Date.
- (h) If Purchaser is the Successful Bidder, at the request of Purchaser, Company shall proceed with the liquidation, winding-up, dissolution and/or amalgamation of any of the members of the F&F Group designated by Purchaser on or prior to the Closing Date.
- (i) From the date hereof until the Closing Date, the Company shall, and shall cause the other members of the F&F Group to, continue to operate and maintain the Business and operations of the Company in the ordinary course, and shall:
 - (i) operate in compliance with the cash flow projections filed in the CCAA Proceedings in all material respects;
 - (ii) take all commercially reasonable necessary actions to maintain the permits and licenses of the F&F Group in good standing in all material respects;
 - (iii) not sell or transfer any asset of the F&F Group other than in the ordinary course of Business;
 - (iv) not terminate, disclaim, modify or otherwise amend or attempt to amend any contract without the prior written consent of the Purchaser; and
 - (v) provide the Purchaser with prompt written notice any material change in or affecting the Business, affairs, operations, liabilities or capital of the F&F Group.

8.4 Tax Matters

- (a) Purchaser and Company agree to furnish or cause to be furnished to each other, as promptly as practicable, such information and assistance relating to the Purchased Shares and the Retained Liabilities as is reasonably necessary for the preparation and filing of any Tax Return, claim for refund or other required filings relating to Tax matters, for the preparation for and proof of facts during any Tax audit, for the preparation for any Tax protest, for the prosecution of any suit or other proceedings relating to Tax matters and for the answer to any governmental or regulatory inquiry relating to Tax matters. Purchaser and Company also agree to furnish or cause to be furnished to each other, as promptly as practicable, such information and assistance relating to the members of the F&F Group, the Purchased Shares and the Retained Liabilities as is reasonably necessary for Purchaser to acquire them in a tax efficient manner for both Company and the members of the F&F Group.
- (b) Purchaser and Company shall each be responsible for the preparation of their own statements required to be filed under the Tax Act, the ETA and the Code and other similar forms and returns in accordance with Applicable Law.
- (c) For all purposes under this Agreement for which it is necessary to apportion taxes in a taxable period which includes (but does not end on) the Closing Date or Filing Date, as applicable (a "**Straddle Period**"), all real property Taxes, personal property Taxes and similar ad valorem obligations shall be apportioned between the taxable period up to and including the Closing Date or Filing Date, as applicable (such portion of such

Straddle Period, the “**Pre-Closing Straddle Tax Period**”) and the taxable period after the Closing Date or Filing Date, as applicable (such portion of such Straddle Period, the “**Post-Closing Straddle Tax Period**”), on a per diem basis. Except as otherwise provided herein, with respect to the Purchased Shares, Company shall be liable for the proportionate amount of such real property Taxes, personal property Taxes and similar ad valorem obligations that are attributable to the Pre-Closing Straddle Tax Period, and Purchaser shall be liable for the proportionate amount of such real property Taxes, personal property Taxes and similar ad valorem obligations that are attributable to the Post-Closing Straddle Tax Period. For all purposes under this Agreement, in the case of any Tax based upon or related to income, receipts, sales, use, payroll, or withholding, in respect of any Straddle Period, the portion of such Tax allocable to the Pre-Closing Straddle Tax Period shall be deemed to be the amount that would be payable if the relevant Straddle Period ended on and included the Closing Date or Filing Date, as applicable. To the extent such closing of the books method is not incorporated under the law of a jurisdiction for particular types of entities, allocations of income among the periods shall be made to replicate the closing of the books method to the maximum extent possible.

- (d) Purchaser and Company shall cooperate, on a best efforts basis, to maximize the ability to utilize any Tax losses that cannot be carried forward in the taxation year ending immediately prior to Closing.

8.5 Employee Matters

- (a) Purchaser may in as many separate instances as it may require, notify Company that Purchaser wishes to interview any employees or contractors or consultants of the F&F Group, and upon receipt of a request thereof Company will use all commercially reasonable efforts to facilitate such interviews as soon as reasonably practicable. Purchaser may, but is not obligated to, in the name of the applicable member of the F&F Group, make conditional (upon Closing) continued or new (as applicable) offers of employment on such terms as it may determine in its absolute and sole discretion.
- (b) Purchaser shall make commercially reasonable efforts to make such offers in writing on or prior to the date that is ten (10) days prior to the anticipated Closing Date, provided that such offers shall be made no later than five (5) days prior to the anticipated Closing Date, and leave such offers open for acceptance up to and including one (1) day prior to the Closing Date, provided that Purchaser notifies Company, in writing, on or prior to the date that is five (5) days prior to the anticipated Closing Date, of the list of individuals to whom it has made or intends to make offers of employment. Such offers shall recognize the employee's years of service with the Company, except as would result in duplication of benefits and subject to any required consents of any applicable third-party insurer or plan administrator. Notwithstanding any other provision of this Agreement, Purchaser has no obligation to offer employment to any employee, but will make commercially reasonable efforts to make offers of employment to F&F Group employees if the job function will continue to exist after Closing.
- (c) In the event:
 - (i) no conditional offer of employment is made to such employee of the F&F Group; or

- (ii) an employee who receives an offer of employment rejects such offer in writing or fails to accept such offer of employment up to and including one (1) day prior to the Closing Date,

such employee shall be deemed to be a Terminated Employee.

8.6 Administrative Expense Amount

- (a) On the Closing Date, the F&F Group shall pay to the Monitor the portion of the Administrative Expense Amount which may be satisfied from its cash on hand, which the Monitor shall hold in trust for the benefit of Persons entitled to be paid the Administrative Expense Costs and amounts secured by the CCAA Charges.
- (b) From time to time after the Closing Date, the Monitor may pay from the Administrative Expense Amount the Administrative Expense Costs and amounts secured by the CCAA Charges at its sole discretion and without further authorization from Company or Purchaser. Any unused portion of the Administrative Expense Amount after payment or reservation for all Administrative Expense Costs, as determined by the Monitor, shall be transferred by the Monitor to Company.
- (c) Notwithstanding the foregoing or anything else contained herein or elsewhere, each of Company and Purchaser acknowledges and agrees that: (i) the Monitor's obligations hereunder are and shall remain limited to those specifically set out in this Section 8.6; and (ii) Monitor is acting solely in its capacity as the CCAA Court- appointed Monitor of the F&F Group pursuant to the Initial Order and not in its personal or corporate capacity, and the Monitor has no liability in connection with this Agreement whatsoever, in its personal or corporate capacity or otherwise, save and except for and only to the extent of the Monitor's gross negligence or intentional fault.
- (d) The Parties acknowledge that the Monitor may rely upon the provisions of this Section 8.6(c) notwithstanding that the Monitor is not a party to this Agreement. The provisions of this Section 8.6(c) shall survive the termination or non-completion of the Transaction.

8.7 Release by Purchaser

Except in connection with any obligations of Company or the Monitor contained in this Agreement and any Closing Documents, effective as of the Closing, Purchaser and its Affiliates hereby releases and forever discharges the Company, the Monitor, and their respective Affiliates, and each of their respective successors and assigns, and all present and former officers, directors, partners, members, shareholders, limited partners, employees, agents, financial and legal advisors of each of them, from any and all actual or potential Released Claims which such Person had, has or may have in the future to the extent relating to the Business, the Purchased Shares or the Retained Liabilities, save and except for Released Claims arising out of fraud, bad faith or illegal acts (unless such Person believed in good faith that its conduct was legal).

8.8 Release by Company

Except in connection with any obligations of Purchaser and the Monitor contained in this Agreement and any Closing Documents, effective as of the Closing, Company and its Affiliates hereby release and forever discharges Purchaser, the Monitor and their respective Affiliates, and each of their respective successors and assigns, and all former and present officers, directors, partners, members, shareholders, limited partners, employees, agents, financial and legal advisors of each of them, from

any and all actual or potential Released Claims which such Person had, has or may have in the future to the extent relating to: (i) the Purchased Shares; (ii) all other Equity Interests of the Company which remain after the application of the Vesting Order, (iii) the Retained Liabilities, (iv) the Excluded Assets; or (v) the Excluded Liabilities; save and except for Released Claims arising out of fraud, bad faith or illegal acts (unless such Person believed in good faith that its conduct was legal).

ARTICLE 9 INSOLVENCY PROVISIONS

9.1 Court Orders and Related Matters

- (a) From and after the date of this Agreement and until the Closing Date, Company shall deliver to Purchaser drafts of any and all pleadings, motions, notices, statements, applications, schedules, and other papers to be filed or submitted by any member of the F&F Group in connection with or related to this Agreement, including with respect to the Vesting Order, for Purchaser's prior review at least three (3) days in advance of service and filing of such materials (or where circumstances make it impracticable to allow for three (3) days' review, with as much opportunity for review and comment as is practically possible in the circumstances). Company acknowledges and agrees (i) that any such pleadings, motions, notices, statements, applications, schedules, or other papers shall be in form and substance satisfactory to Purchaser, acting reasonably, and (ii) to consult and cooperate with Purchaser regarding any discovery, examinations and hearing in respect of any of the foregoing, including the submission of any evidence, including witnesses testimony, in connection with such hearing.
- (b) Notice of the motion seeking the issuance of the Vesting Order shall be served, or be caused to be served, by Company on all Persons required to receive notice under Applicable Law and the requirements of the CCAA, the CCAA Court, and any other Person determined necessary by Company or Purchaser, acting reasonably.
- (c) As soon as practicable following the selection of this Agreement as the Successful Bid in the SISP, F&F Group shall file a motion seeking the issuance of the Vesting Order.
- (d) Notwithstanding any other provision herein, it is expressly acknowledged and agreed that in the event that the Vesting Order has not been issued and entered by the CCAA Court by September 15, 2023 (the "**Vesting Order Outside Date**") or such later date agreed to in writing by Purchaser in its sole discretion, Purchaser may terminate this Agreement, provided that if all other conditions (including receipt of Transaction Regulatory Approvals) are satisfied, the Company shall be entitled to extend the Vesting Order Outside Date by an additional ten (10) Business Days.
- (e) If the Vesting Order is appealed or a motion for leave to appeal, rehearing, reargument or reconsideration is filed with respect thereto, Company agrees (subject to the available liquidity of the Company) to take all action as may be commercially reasonable and appropriate to defend against such appeal, petition or motion.
- (f) At Closing, pursuant to this Agreement and the Vesting Order, the Purchased Shares shall be transferred to vest in Purchaser free and clear of all Encumbrances, other than Permitted Encumbrances.

ARTICLE 10 TERMINATION

10.1 Termination

This Agreement may be terminated at any time prior to Closing as follows:

- (a) by mutual written consent of Company and Purchaser;
- (b) by Purchaser or Company, if: (i) this Agreement is not the Successful Bid or the Back-Up Bid (as determined pursuant to the SISP); or (ii) this Agreement is the Back-Up Bid and the transaction contemplated by the Successful Bid is closed;
- (c) by Purchaser or Company, if Closing has not occurred on or before the **Outside Date**, provided that the terminating Party is not in breach of any representation, warranty, covenant or other agreement in this Agreement which would prevent the satisfaction of the conditions in Article 7 by the Outside Date;
- (d) by Purchaser or Company, if at any time after the date hereof any condition in Article 7 is not capable of being satisfied by the applicable date required in Article 7 of this Agreement or if not otherwise required, by the Outside Date;
- (e) by Purchaser, pursuant to Section 9.1(d);
- (f) by Purchaser, upon the appointment of a receiver, trustee in bankruptcy or similar official in respect of any member of the F&F Group or any of the property of any member of the F&F Group, other than with the prior written consent of Purchaser;
- (g) by Purchaser or Company, upon the termination, dismissal or conversion of the CCAA Proceedings;
- (h) by Purchaser or Company, upon dismissal of the motion for the Vesting Order (or if any such order is stayed, vacated or varied without the consent of Purchaser);
- (i) by Purchaser or Company, if a court of competent jurisdiction, including the CCAA Court or other Governmental Authority has issued an Order or taken any other action to restrain, enjoin or otherwise prohibit the Closing and such Order or action has become a Final Order;
- (j) by Company, if there has been a material violation or breach by Purchaser of any covenant, representation or warranty which would prevent the satisfaction of the conditions set forth in Section 7.1 or Section 7.3, as applicable, by the Outside Date and such violation or breach has not been waived by Company or cured within ten (10) Business Days after written notice thereof from Company, unless Company is in material breach of their obligations under this Agreement which would prevent the satisfaction of the conditions set forth in Section 7.1 or Section 7.2, as applicable, by the Outside Date; and
- (k) by Purchaser, if there has been a material violation or breach by Company of any covenant, representation or warranty which would prevent the satisfaction of the conditions set forth in Section 7.1 or Section 7.2, as applicable, by the Outside Date and such violation or breach has not been waived by Company or cured within ten (10) Business Days after written notice thereof from Purchaser, unless Purchaser is in

material breach of its obligations under this Agreement which would prevent the satisfaction of the conditions set forth in Section 7.1 or Section 7.3, as applicable, by the Outside Date.

The Party desiring to terminate this Agreement pursuant to this Section 10.1 (other than pursuant to Section 10.1(a)) shall give written notice of such termination to the other Party or Parties, as applicable, specifying in reasonable detail the basis for such Party's exercise of its termination rights.

10.2 Effect of Termination

In the event of termination of this Agreement pursuant to Section 10.1, this Agreement shall become void and of no further force or effect without liability of any Party to any other Party to this Agreement except that: (i), this Section 10.2, Section 12.1, Section 12.3, Section 12.5, Section 12.6, Section 12.7 and Section 12.8 shall survive; and (ii) no termination of this Agreement shall relieve any Party of any liability for any wilful breach by it of this Agreement, or impair the right of any Party to compel specific performance by any other Party of its obligations under this Agreement in accordance with Section 12.3.

ARTICLE 11 CLOSING

11.1 Location and Time of the Closing

The Closing shall take place on the Closing Date effective as of the Closing Time, electronically (or as otherwise determined by mutual agreement of the Parties in writing), by the exchange of deliverables (in counterparts or otherwise) by electronic transmission in PDF format.

11.2 Company's Deliveries at Closing

At Closing, Company shall deliver to Purchaser the following:

- (a) a true copy of the Vesting Order, which shall be final;
- (b) executed copy of the Monitor's Certificate;
- (c) a certificate of a senior officer or director of Company (in such capacity and without personal liability) in form and substance reasonably satisfactory to Purchaser : (i) certifying that the board of directors of Company, has adopted resolutions (in a form attached to such certificate) authorizing the execution, delivery and performance of this Agreement and the Transaction, as applicable, which resolutions are in full force and effect and have not been superseded, amended or modified as of the Closing Date; and (ii) certifying as to the incumbency and signatures of the officers and directors of Company;
- (d) the certificates contemplated by Section 7.2(c);
- (e) confirmation of the due incorporation and organization of Residual Co. on the terms set forth herein;
- (f) evidence of the filing of the Articles of Amendment; and
- (g) all keys, passwords, bank account authorizations, access codes and other materials related to the Business or Retained Liabilities;

- (h) all other documents reasonably requested by Purchaser in good faith.

11.3 Purchaser's Deliveries at Closing

At Closing, Purchaser shall deliver to Company:

- (a) immediately available funds in the amount of the Purchase Price, less the Deposit, in accordance with Section 3.2;
- (b) a certificate of a senior officer or director of Purchaser (in such capacity and without personal liability), in form and substance reasonably satisfactory to Company: (i) certifying that the board of directors has adopted resolutions (in a form attached to such certificate) authorizing the execution, delivery and performance of this Agreement and the Transaction, as applicable, which resolutions are in full force and effect and have not been superseded, amended or modified as of the Closing Date; and (ii) certifying as to the incumbency and signature of the authorized signatory of Purchaser executing this Agreement and the other Closing Documents contemplated herein, as applicable;
- (c) the certificate contemplated by Section 7.3(c); and
- (d) all other documents reasonably requested by Company in good faith.

11.4 Monitor

When all conditions to Closing set out in Article 7 other than delivery by the Company to the Purchaser of an executed copy of the Monitor's Certificate have been satisfied and/or waived by Company or Purchaser, as applicable, Company and Purchaser, or their respective counsel, shall each deliver to the Monitor written confirmation that all conditions to Closing other than delivery by the Company to the Purchaser of an executed copy of the Monitor's Certificate have been satisfied or waived. Upon receipt of such written confirmation, the Monitor shall: (i) issue forthwith its Monitor's Certificate in accordance with the Vesting Order; and (ii) file as soon as practicable a copy of the Monitor's Certificate with the CCAA Court (and shall provide a true copy of such filed certificate to Company and Purchaser). The Parties hereby acknowledge and agree that the Monitor will be entitled to file the Monitor's Certificate with the CCAA Court without independent investigation upon receiving written confirmation from Company and Purchaser that all conditions to Closing have been satisfied or waived, and the Monitor will have no liability to Company or Purchaser or any other Person as a result of filing the Monitor's Certificate.

11.5 Simultaneous Transactions

All actions taken and transactions consummated at the Closing shall be deemed to have occurred in the manner and sequence set forth in the Implementation Steps and the Vesting Order (subject to the terms of any escrow agreement or arrangement among the Parties relating to the Closing), and no such transaction shall be considered consummated unless all are consummated.

11.6 Further Assurances

As reasonably required by a Party in order to effectuate the Transaction, Purchaser and Company shall execute and deliver at (and after) the Closing such other documents, and shall take such other actions, as are necessary or appropriate, to implement and give effect to the Transaction.

ARTICLE 12 GENERAL MATTERS

12.1 Confidentiality

After the Closing Time, Company shall maintain the confidentiality of all Confidential Information relating to the Business and the members of the F&F Group, except any disclosure of such information and records as may be required by Applicable Law. If Company or any member of the F&F Group, or any of its or their respective representatives, becomes legally compelled by deposition, interrogatory, request for documents, subpoena, civil investigative demand, or similar judicial or administrative process, to disclose any such information, such party shall, or shall cause Company or its representative to, provide Purchaser with reasonably prompt prior oral or written notice of such requirement (including any report, statement, testimony or other submission to such Governmental Authority) to the extent legally permissible and reasonably practicable, and cooperate with Purchaser, at Purchaser's expense, to obtain a protective order or similar remedy to cause such information not to be disclosed; provided that in the event that such protective order or other similar remedy is not obtained, Company shall, or shall cause the applicable member of the F&F Group or representative to, furnish only that portion of such information that has been legally compelled, and shall, or shall cause such Affiliate or representative to, exercise its commercially reasonable efforts to obtain assurance that confidential treatment will be accorded such disclosed information. Company shall instruct each member of the F&F Group and representatives having access to such information of such obligation of confidentiality and shall be responsible for any breach of the terms of this Section 12.1 by any of the members of the F&F Group or representatives.

12.2 Public Notices

No press release or other announcement concerning the Transaction shall be made by Company or Purchaser without the prior consent of the other Party (such consent not to be unreasonably withheld, conditioned or delayed); provided, however, that subject to the last sentence of this Section 12.2, any Party may, without such consent, make such disclosure if the same is required by Applicable Law (including the CCAA Proceedings) or by any stock exchange on which any of the securities of such Party or any of its Affiliates are listed, or by any insolvency or other court or securities commission, or other similar Governmental Authority having jurisdiction over such Party or any of its Affiliates, and, if such disclosure is required, the Party making such disclosure shall use commercially reasonable efforts to give prior oral or written notice to the other Party to the extent legally permissible and reasonably practicable, and if such prior notice is not legally permissible or reasonably practicable, to give such notice reasonably promptly following the making of such disclosure. Notwithstanding the foregoing: (i) this Agreement may be filed by Company: (A) with the CCAA Court; and (B) on its profile on www.sedar.com; and (ii) the Transaction may be disclosed by Company to the CCAA Court. The Parties further agree that:

- (a) the Monitor may prepare and file reports and other documents with the CCAA Court containing references to the Transaction and the terms of the Transaction; and
- (b) Company, Purchaser and their respective professional advisors may prepare and file such motions, affidavits, materials, reports and other documents with the CCAA Court containing references to the Transaction and the terms of the Transaction as may reasonably be necessary to complete the Transaction or to comply with their obligations in connection therewith.

Purchaser shall be afforded an opportunity to review and comment on such materials prior to their filing; provided in the case of reports or other documents prepared or to be filed by the Monitor with the CCAA Court the Purchaser shall be entitled to review only factual information contained therein

relating to the terms of the Transaction. The Parties may issue a joint press release announcing the execution and delivery of this Agreement, in form and substance mutually agreed to them.

12.3 Injunctive Relief

- (a) The Parties agree that irreparable harm would occur for which money damages would not be an adequate remedy at law in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that the Parties shall be entitled to seek specific performance, injunctive and other equitable relief to prevent breaches or threatened breaches of this Agreement, and to enforce compliance with the terms of this Agreement, without any requirement for the securing or posting of any bond in connection with the obtaining of any such specific performance, injunctive or other equitable relief, this being in addition to any other remedy to which the Parties may be entitled at law or in equity.
- (b) Each Party hereby agrees not to raise any objections to the availability of the equitable remedies provided for herein and the Parties further agree that by seeking the remedies provided for in this Section 12.3, a Party shall not in any respect waive its right to seek any other form of relief that may be available to a Party under this Agreement.
- (c) Notwithstanding anything to the contrary herein, under no circumstances shall a Party be permitted or entitled to receive both monetary damages and specific performance and the election to pursue one shall be deemed to be an irrevocable waiver of the other.

12.4 Survival

None of the representations, warranties, covenants (except the covenants in Article 2, Article 3, Article 12 and Sections 8.1(b), 8.4, 8.7 and 8.8, to the extent they are to be performed after the Closing) of any of the Parties set forth in this Agreement, in any Closing Document to be executed and delivered by any of the Parties (except any covenants included in such Closing Documents, which, by their terms, survive Closing) or in any other agreement, document or certificate delivered pursuant to or in connection with this Agreement or the Transaction shall survive the Closing.

12.5 Non-Recourse

No past, present or future director, officer, employee, incorporator, member, partner, security holder, Affiliate, agent, lawyer or representative of the respective Parties, in such capacity, shall have any liability for any obligations or liabilities of Purchaser or Company, as applicable, under this Agreement, or for any Causes of Action based on, in respect of or by reason of the Transaction.

12.6 Assignment; Binding Effect

No Party may assign its right or benefits under this Agreement without the consent of each of the other Party, except that without such consent Purchaser may, upon prior notice to Company, assign this Agreement, or any or all of its rights and obligations hereunder, to one or more of its Affiliates; provided that no such assignment or direction shall relieve Purchaser of its obligations hereunder. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective permitted successors and permitted assigns. Although not Party to this Agreement, the Monitor and its respective Affiliates and advisors shall have the benefits expressed to be conferred upon them in this Agreement including in Article 6 and sections 8.7, 8.8 and 11.4 (in respect of the Monitor) hereof.

Subject to the preceding sentence, nothing in this Agreement shall create or be deemed to create any third Person beneficiary rights in any Person not a Party to this Agreement.

12.7 Notices

Any notice, request, demand or other communication required or permitted to be given to a Party pursuant to the provisions of this Agreement will be in writing and will be effective and deemed given under this Agreement on the earliest of: (i) the date of personal delivery; (ii) the date of transmission by email, with confirmed transmission and receipt (if sent during normal business hours of the recipient, if not, then on the next Business Day); (iii) two (2) days after deposit with a nationally-recognized courier or overnight service such as Federal Express; or (iv) five (5) days after mailing via certified mail, return receipt requested. All notices not delivered personally or by email will be sent with postage and other charges prepaid and properly addressed to the Party to be notified at the address set forth for such Party:

(a) If to Purchaser at:

2759054 Ontario Inc.
2 Bloor St. West, Suite 1805
Toronto, Ontario M4W 3E2

Attention: Thor Richardson
Email: thor@fikasupply.com

(b) If to Company at:

5241 Calgary Train NW, 400
Edmonton, Alberta
T6H 5G8

Attention: Stephane Trudel
Email: strudel@fireandflower.com

and to:

Stikeman Elliott LLP
Commerce Court West
5300, 199 Bay St.
Toronto, Ontario M5L 1B9

Attention: Maria Konyukhova
Philip Yang

Email: mkonyukhova@stikeman.com
pyang@stikeman.com

and to:

FTI Consulting Canada Inc.
TD Waterhouse Tower
79 Wellington Street West
Suite 2010, P.O. Box 104
Toronto Ontario M5K 1G8

Attention: Jeffrey Rosenberg
Jodi Porepa

Email: jeffrey.rosenberg@fticonsulting.com
Jodi.Porepa@fticonsulting.com

Any Party may change its address for service from time to time by notice given in accordance with the foregoing and any subsequent notice shall be sent to such Party at its changed address.

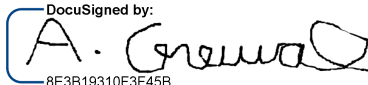
12.8 Counterparts; Electronic Signatures

This Agreement may be signed in counterparts and each of such counterparts shall constitute an original document and such counterparts, taken together, shall constitute one and the same instrument. Execution of this Agreement may be made by electronic signature which, for all purposes, shall be deemed to be an original signature.

[Signature pages to follow]

IN WITNESS WHEREOF the Parties have executed this Agreement as of the date first written above.

FIRE & FLOWER HOLDINGS CORP.

By: 
 DocuSigned by:
8E3B19310F3F45B...
Name: Avininder Grewal
Title: Director

2759054 ONTARIO INC.


By: _____
Name:
Title:

IN WITNESS WHEREOF the Parties have executed this Agreement as of the date first written above.

FIRE & FLOWER HOLDINGS CORP.

By: _____
Name:
Title:

2759054 ONTARIO INC.

By:  _____
Name: Thor Richardson
Title: President

Schedule 1.1(a)
Permitted Encumbrances

- Encumbrances securing Retained Liabilities to the extent that such Retained Liabilities are secured by Encumbrances as of the Closing Time;
- Encumbrances given to a public utility or any Governmental Authority when required by such utility or authority in connection with the operations of that person in the ordinary course of the business but only insofar as they relate to any amounts not due as at the Closing Date;
- the reservations, limitations, provisos and conditions (if any) expressed in any original grant from the Crown;
- Encumbrances for Taxes, assessments or governmental charges incurred in the ordinary course that are not yet due and payable or the validity of which is being actively and diligently contested in good faith by the F&F Group and in respect of which the F&F Group has established on its books reserves considered by it and its auditors to be adequate therefor;
- normal and customary rights of setoff or compensation upon deposits in favour of depository institutions, and liens of a collecting bank on cheques and other payment items in the course of collection;
- servitudes, easements, rights of way or similar rights in land granted to or reserved by other persons including minor title defects effecting real property such as reservations and limitations expressed in any original grant from the Crown or as a result of statutory reservations and exceptions to title;
- Encumbrances imposed by Applicable Law including, but not limited to, Encumbrances of mechanics, labourers, workmen, builders, contractors, suppliers of material or architects or other similar Encumbrances incidental to construction, maintenance or repair operations, provided such Encumbrances secure amounts which are not yet due or delinquent and have not been registered on title to any real property or written notice thereof has not been received by Company or Purchaser;
- Encumbrances associated with, and financing statements evidencing, the rights of equipment lessors under any of the personal property leases;
- undetermined or inchoate liens and charges incidental to construction or repairs or operations which have not at such time been filed pursuant to law against Company or which relate to obligations not due or delinquent; and
- the right reserved to or vested in any municipality or government, or to any statutory or public authority, by the terms of any lease, license, franchise, grant or permit acquired by Company or any statutory provision to terminate any such lease, license, franchise, grant or permit, or to require annual or other periodic payments as a condition to the continuance thereof.

Schedule 2.2
Excluded Assets

Nil

Schedule 2.2(c)
Excluded Contracts and Excluded Leases

1. All leases and contracts that will be terminated pursuant to disclaimer notice under Section 32 CCAA of the sent as of June 15, 2023 and any further leases and contracts that may be terminated prior to the Closing Date, including, for certainty, “dead” leases that did not receive licenses from requisite regulatory authorities.
2. The following agreements, only to the extent that the parties thereto are unable to renegotiate such agreements on terms satisfactory to each party:
 - a. Master Franchise Agreement (Saskatchewan) dated October 4, 2021 among 13318184, as franchisor, MC Cannabis Inc., as franchisee, and Mac’s Convenience Stores Inc., as guarantor;
 - b. Master Franchise Agreement (Alberta and Manitoba) dated October 5, 2021 among 13318184, as franchisor, MC Cannabis Inc., as franchisee, and Mac’s Convenience Stores Inc., as guarantor; and
 - c. Master License Agreement (Alberta and Manitoba), undated, among 13318184, as licensor, MC Cannabis Inc., as licensee, and Alimentation Couche-Tard Inc., as guarantor.

Schedule 2.3
Retained Liabilities

Nil

Schedule 2.4
Excluded Liabilities

All pre-filing Claims and any liabilities arising from the termination of leases or other contracts.

Schedule 2.7(c)
Implementation Steps

1. At least three (3) Business Days prior to the Closing Date, the Company shall form Residual Co. in accordance with the terms contained herein, in form satisfactory to Purchaser, acting reasonably, and the directors thereof shall not include the directors or related parties of the Purchaser, and no such entity shall be a flow through entity for Canadian or U.S. tax purposes unless approved by Purchaser.
2. On the Closing Date, all employees deemed to be Terminated Employees pursuant to Section 8.5 will be terminated by the Company, and all Employee Priority Claims shall be calculated to include such Terminated Employees and if not paid at the time of such termination by the Company, shall be included in the calculation of the Priority Payments required to be paid by the Company at Closing.
3. At Closing, the following amounts shall be paid and satisfied from the funds on hand of the F&F Group:
 - a. the Priority Payments in accordance with the Vesting Order and Section 3.2 hereof; and
 - b. the Administrative Expense Amount to the Monitor in accordance with the Vesting Order and Section 8.6(a) hereof.

Schedule 4.7
Subsidiaries

	Name	Jurisdiction of Incorporation
1.	Fire & Flower Inc.	Canada
2.	13318184 Canada Inc.	Canada
3.	11180703 Canada Inc.	Canada
4.	10926671 Canada Ltd.	Canada
5.	Friendly Stranger Holdings Corp.	Ontario
6.	Hifyre Inc.	Ontario
7.	Pineapple Express Delivery Inc.	Canada

Schedule 7.2(h)
Transaction Regulatory Approvals

Any consent required in connection with the change of control of Company under Cannabis Laws. For the purposes hereof “**Cannabis Laws**” shall mean:

1. the *Cannabis Act* (Canada) S.C. 2018, c. 16 and the regulations made thereunder;
2. the *Cannabis Licence Act*, 2018, S.O. 2018, c. 12 and the regulations made thereunder; the *Cannabis Control Act*, 2017, S.O. 2017, c.26 and the regulations made thereunder; and applicable policies and guidance from the Alcohol and Gaming Commission of Ontario, including the Registrar’s Standards for Cannabis Retail Stores.
3. the *Cannabis Control and Licensing Act* [SBC 2018] Chapter 29 and the regulations made thereunder; the *Cannabis Distribution Act* [SBC 2018] Chapter 28 and the regulations made thereunder; and applicable policies and guidance from the Liquor and Cannabis Regulation Branch, including the Cannabis Retail Store Licence Terms and Conditions Handbook.
4. the *Gaming Liquor and Cannabis Act* Chapter G-1 and the regulations made thereunder; and applicable policies and guidance from the Alberta Gaming, Liquor and Cannabis Commission including the Retail Cannabis Store Handbook.
5. the *Liquor, Gaming and Cannabis Control Act* C.C.S.M. c. L153 and the regulations made thereunder; and applicable policies and guidance from the Liquor, gaming and Cannabis Authority of Manitoba.
6. the *Cannabis Control (Saskatchewan) Act* C-2 111 and the regulations made thereunder; and applicable policies and guidance from the Saskatchewan Liquor and Gaming Authority including the Cannabis Regulatory Policy Manual.
7. the *Cannabis Control and Regulation Act* SY 2018, c.4 and the regulations made thereunder; and applicable policies and guidance from the Cannabis Licensing Board (Yukon),

all as may be amended, supplemented or replaced from time to time and those which regulate the sale or distribution of cannabis (in various forms), cannabinoid product or paraphernalia commonly associated with cannabis and/or related cannabinoid products.

Court File No. CV-23-00700581-00CL

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

AND IN THE MATTER OF PLAN OF COMPROMISE OR ARRANGEMENT OF FIRE & FLOWER HOLDINGS CORP., FIRE & FLOWER INC.,
13318184 CANADA INC., 11180703 CANADA INC., 10926671 CANADA LTD., FRIENDLY STRANGER HOLDINGS CORP., PINEAPPLE
EXPRESS DELIVERY INC., and HIFYRE INC.

Applicants

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDING COMMENCED AT TORONTO

AFFIDAVIT OF STEPHANE TRUDEL
(SWORN AUGUST 23, 2023)

STIKEMAN ELLIOTT LLP
Barristers & Solicitors
5300 Commerce Court West
199 Bay Street
Toronto, Canada M5L 1B9

Maria Konyukhova (LSO #52880V)
Tel: (416) 869-5230
Email: mkonyukhova@stikeman.com

Philip Yang (LSO #820840)
Tel: (416) 869-5593
Email: pyang@stikeman.com

Lawyers for the Applicants

TAB 3

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

THE HONOURABLE)
JUSTICE OSBORNE) TUESDAY, THE 29TH DAY
OF AUGUST, 2023

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

AND IN THE MATTER OF PLAN OF COMPROMISE OR ARRANGEMENT OF FIRE &
FLOWER HOLDINGS CORP., FIRE & FLOWER INC., 13318184 CANADA INC., 11180703
CANADA INC., 10926671 CANADA LTD., FRIENDLY STRANGER HOLDINGS CORP.,
PINEAPPLE EXPRESS DELIVERY INC., and HIFYRE INC.

Applicants

**ORDER
(Approval and Reverse Vesting Order)**

THIS MOTION, made by Fire & Flower Holdings Corp. ("**FFHC**" or the "**Company**"), Fire & Flower Inc., 13318184 Canada Inc., 11180703 Canada Inc., 10926671 Canada Ltd., Friendly Stranger Holdings Corp., Pineapple Express Delivery Inc., and Hifyre Inc. (collectively, the "**F&F Group**"), pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"), for an order, among other things: (a) approving the subscription agreement dated as of August 17, 2023 between FFHC, as company, and 2759054 Ontario Inc. ("**FIKA**"), as purchaser (the "**Subscription Agreement**") and the transactions contemplated therein (the "**Transactions**"); (b) approving the amended and restated subscription agreement dated as of August **[X]**, 2023 between FFHC, as company, and 2707031 Ontario Inc. ("**ACT Investor**"), as purchaser (the "**Back-Up Subscription Agreement**") and the transactions contemplated therein (the "**Back-Up Transactions**") only to the extent that the Subscription Agreement and the Transactions do not close for any reason; (c) adding **[X]** ("**Residual Co.**") as an applicant to these proceedings (the "**CCAA Proceedings**"); (d) transferring and vesting all of the F&F Group's right, title and interest in and to the Excluded Assets, Excluded Contracts, Excluded Leases, and Excluded Liabilities to and in Residual Co.; (e) authorizing and directing the Company to file the Articles of Amendment; (f) terminating and cancelling all the Equity Interests of FFHC for no consideration; (g) authorizing and directing the Company to issue the Purchased Shares, and vesting in FIKA, all right, title and interest in and to the Purchased Shares,

free and clear of any Encumbrances; and (h) granting certain ancillary relief, was heard this day by videoconference due to the COVID-19 pandemic.

ON READING the Motion Record of the F&F Group, including the affidavit of Stephane Trudel sworn August 23, 2023 (the "**Trudel Affidavit**") and the Exhibits thereto, the Third Report of FTI Consulting Canada Inc. ("**FTI**"), in its capacity as the Court-appointed monitor of the F&F Group (in such capacity, the "**Monitor**") dated August [X], 2023 (the "**Third Report**"), and on hearing the submissions of counsel for the F&F Group, counsel for the Monitor, counsel for FIKA, counsel for ACT Investor and ACT Investor in its capacity as the debtor-in-possession lender to the F&F Group (in such capacity, the "**DIP Lender**"), and counsel for those other parties appearing as indicated by the Participant Information Form, no one appearing for any other party, although duly served as appears from the affidavits of service of Philip Yang, as filed,

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this Motion was properly returnable on August 29, 2023, and hereby dispenses with further service thereof.

DEFINED TERMS

2. **THIS COURT ORDERS** that capitalized terms not otherwise defined herein shall have the meanings given to them in the Subscription Agreement and the Order of Justice Osborne dated June 19, 2023 (the "**SISP Approval Order**").

EXTENSION OF STAY PERIOD

3. **THIS COURT ORDERS** that the Stay Period, as defined in the Amended and Restated Initial Order granted by this Court on June 15, 2023, is hereby extended until October 15, 2023.

APPROVAL AND VESTING

4. **THIS COURT ORDERS AND DECLARES** that the Subscription Agreement and the Transactions, be and are hereby approved and that the execution of the Subscription Agreement by the Company is hereby authorized and approved, with such minor amendments as the parties thereto may deem necessary with the approval of the Monitor. The Company is hereby authorized and directed to perform its obligations under the Subscription Agreement and to take such additional steps and execute such additional documents as may be necessary or desirable for

the completion of the Transactions, including the filing of the Articles of Amendment, the cancellation of the Equity Interests and the issuance of the Purchased Shares to FIKA.

5. **THIS COURT ORDERS AND DECLARES** that the Back-Up Subscription Agreement and the Back-Up Transactions, be and are hereby approved and that the execution of the Back-Up Subscription Agreement by the Company is hereby authorized and approved, with such minor amendments as the parties thereto may deem necessary with the approval of the Monitor. The Company is hereby authorized and directed to perform its obligations under the Back-Up Subscription Agreement and to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Back-Up Transactions.

6. **THIS COURT ORDERS AND DECLARES** that this Order shall constitute the only authorization required by the Company to proceed with the Transactions and the Back-Up Transactions, and that no shareholder or other approval shall be required in connection therewith.

7. **THIS COURT ORDERS AND DECLARES** that upon the delivery of the Monitor's certificate (the "**Monitor's Closing Certificate**") to the F&F Group and FIKA (the "**Closing Time**"), substantially in the form attached as **Schedule "A"** hereto, the following shall occur and shall be deemed to have occurred at the Closing Time in the following sequence:

- (a) first, all of the F&F Group's right, title and interest in and to the Excluded Assets shall vest absolutely and exclusively in Residual Co., with all applicable Claims and Encumbrances (each as defined below) continuing to attach to the Excluded Assets and to the Purchase Price in accordance with paragraph 11 of this Order, in either case with the same nature and priority as they had immediately prior to the transfer;
- (b) second, all Excluded Contracts, Excluded Leases, and Excluded Liabilities shall be channeled to, assumed by and vested absolutely and exclusively in Residual Co. such that the Excluded Contracts, Excluded Leases and Excluded Liabilities shall become the obligations of Residual Co., and shall no longer be obligations of the F&F Group and all of the F&F Group's respective assets, licenses, undertakings and properties of every nature and kind whatsoever and wherever situate, including property held in trust for the F&F Group (the "**F&F Group's Property**"), shall be and are hereby forever released and discharged from such Excluded Contracts, Excluded Leases and

Excluded Liabilities and all related Claims and all Encumbrances affecting or relating to the F&F Group's Property are to be expunged and discharged as against the F&F Group's Property;

- (c) third, the Articles of Amendment shall be filed or deemed to have been filed;
- (d) fourth, in consideration for the Purchase Price, the Company shall issue the Purchased Shares to FIKA, and all of the right, title and interest in and to the Purchased Shares shall vest absolutely in FIKA, and the F&F Group's assets, other than the Excluded Assets, will be retained by the F&F Group, free and clear of and from any and all debts, liabilities, obligations, indebtedness, contracts, leases, agreements, and undertakings of any kind or nature whatsoever, whether direct or indirect, known or unknown, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, matured or unmatured or due or not yet due, in law or equity and whether based in statute or otherwise, including any and all encumbrances, security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**"), including without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Initial Order or any other Order of the Court in the CCAA Proceedings; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry systems; and (iii) any charges, security interests or claims evidenced by registrations pursuant to the *Land Titles Act* (Ontario), the *Registry Act* (Ontario), the *Land Registration Reform Act* (Ontario) or any other real property or real property related registry or recording system (all of which are collectively referred to as the "**Encumbrances**", which term shall not include the Permitted Encumbrances listed on **Schedule "B"** hereto with respect to the Subscription Agreement);
- (e) fifth, pursuant to the Articles of Amendment, all Equity Interests of the Company outstanding prior to the issuance of the Purchased Shares,

including all options, conversion privileges, equity-based awards, warrants, securities, debentures, loans, notes or other rights, agreements or commitments of any character whatsoever that are held by any Person (defined below) which are convertible or exchangeable for any securities of the Company or which require the issuance, sale or transfer by the Company, of any shares or other securities of the Company and/or the share capital of the Company, or otherwise relating thereto, shall be deemed terminated and cancelled without consideration and the only Equity Interests of the Company that shall remain shall be the Purchased Shares; and

- (f) sixth, the F&F Group shall be deemed to cease being Applicants in these CCAA Proceedings, and the F&F Group shall be deemed to be released from the purview of the Initial Order and all other Orders of this Court granted in respect of these CCAA proceedings, save and except for this Order, the provisions of which (as they relate to the F&F Group) shall continue to apply in all respects.

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

9. **THIS COURT ORDERS** that the Monitor may rely on written notice from the Company and FIKA regarding the satisfaction or waiver of conditions to closing under the Subscription Agreement and shall have no liability with respect to delivery of the Monitor's Closing Certificate.

10. **THIS COURT ORDERS** that upon delivery of the Monitor's Closing Certificate, and upon filing of a copy of this Order, together with any applicable registration fees, all governmental authorities and any other applicable registrar or government ministries or authorities exercising jurisdiction with respect to the F&F Group, the F&F Group's Property, or the Excluded Assets (collectively, the "**Governmental Authorities**") are hereby authorized, requested and directed to accept delivery of such Monitor's Closing Certificate and a copy of this Order as though they were originals and to register such transfers and interest authorizations as may be required to give effect to the terms of this Order and the Subscription Agreement. Presentment of this Order and the Monitor's Closing Certificate shall be the sole and sufficient authority for the Governmental Authorities to make and register transfers of interest against any of the F&F Group's Property and

the Monitor and FIKA are hereby specifically authorized to discharge the registrations on the F&F Group's Property and the Excluded Assets, as applicable.

11. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, from and after the Closing Time, subject to the funding of the Priority Payments and the Administrative Expense Amount, all Claims and Encumbrances transferred, assumed, released, expunged and discharged pursuant to paragraph 7 hereof, including against the F&F Group, the F&F Group's Property and the Purchased Shares and Equity Interests of the Company held by FIKA shall attach to the Excluded Assets with the same priority as they had with respect to the F&F Group's Property immediately prior to the Transactions as if the Transactions had not occurred.

12. **THIS COURT ORDERS** that, pursuant to clause 7(3) (c) of the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5, as amended, the F&F Group or the Monitor, as the case may be, is authorized, permitted and directed to, at the Closing Time, disclose to FIKA, all human resources and payroll information in the F&F Group's records pertaining to past and current employees of the F&F Group. FIKA shall maintain and protect the privacy of such information in accordance with applicable law and shall be entitled to use the personal information provided to it in a manner that is in all material respects identical to the prior use of such information by the F&F Group.

13. **THIS COURT ORDERS AND DECLARES** that, at the Closing Time and without limiting the provisions of paragraph 7 hereof, FIKA, the F&F Group, and the Monitor shall be deemed released from any and all claims, liabilities, (direct, indirect, absolute or contingent) or obligations with respect to any Taxes (including penalties and interest thereon) of, or that relate to the F&F Group, provided, as it relates to FIKA and the F&F Group, such release shall not apply to (a) Taxes in respect of the business and operations conducted by the F&F Group after the Closing Time; or (b) Taxes expressly assumed as Retained Liabilities pursuant to the Subscription Agreement, including without limiting the generality of the foregoing, all Taxes that could be assessed against FIKA or the F&F Group (including their affiliates and any predecessor corporations) pursuant to sections 160 and 160.01 of the *Income Tax Act*, R.S.C. 1985 c. 1 (5th Supp.), or any provincial or foreign tax equivalent, in connection with the F&F Group. For greater certainty, nothing in this paragraph shall release or discharge any Claims with respect to Taxes that are transferred to Residual Co.

14. **THIS COURT ORDERS** that except to the extent expressly contemplated by the Subscription Agreement (and, for greater certainty, excluding the Excluded Assets and Excluded Liabilities and contracts relating thereto), all contracts to which any of the F&F Group are a party at the time of delivery of the Monitor's Closing Certificate will be and remain in full force and effect upon and following delivery of the Monitor's Closing Certificate and no individual, firm, corporation, governmental body or agency, or any other entity (all of the foregoing, collectively being "**Persons**" and each being a "**Person**") who is a party to any such arrangement may accelerate, terminate, rescind, refuse to perform or otherwise repudiate its obligations thereunder, or enforce or exercise any right (including any right of set off, dilution or other remedy) or make any demand under or in respect of any such arrangement and no automatic termination will have any validity or effect, by reason of:

- (a) any event that occurred on or prior to the Closing Time and is not continuing that would have entitled such Person to enforce those rights or remedies (including defaults or events of default arising as a result of the insolvency of any of the F&F Group);
- (b) the insolvency of any F&F Group entity or the fact that the F&F Group obtained relief under the CCAA;
- (c) any compromises, releases, discharges, cancellations, transactions, arrangements, reorganizations or other steps taken or effected pursuant to the Subscription Agreement, the Transactions, the provisions of this Order, or any other Order of this Court in these CCAA proceedings; or
- (d) any transfer or assignment, or any change of control of any of the F&F Group arising from the implementation of the Subscription Agreement, the Transactions, or the provisions of this Order.

15. **THIS COURT ORDERS**, for greater certainty, that (a) nothing in paragraph 14 hereof shall waive, compromise or discharge any obligations of the F&F Group or FIKA, in respect of any Retained Liabilities, and (b) the designation of any Claim as a Retained Liability is without prejudice to any of the F&F Group's or FIKA's right to dispute the existence, validity or quantum of any such Retained Liability, and (c) nothing in this Order or the Subscription Agreements shall affect or waive the F&F Group's or FIKA's rights and defences, both legal and equitable, with

respect to any Retained Liability, including, but not limited to, all rights with respect to entitlements to set-offs or recoupments against such Retained Liability.

15. **THIS COURT ORDERS** that from and after the Closing Time, all Persons shall be deemed to have waived any and all defaults of any of the F&F Group then existing or previously committed by any of the F&F Group, or caused by any one of the F&F Group, directly or indirectly, or non-compliance with any covenant, warranty, representation, undertaking, positive or negative pledge, term, provision, condition, or obligation, expressed or implied in any contract, or lease existing between such Person and any of the F&F Group (including for certainty, those contracts, or leases constituting the F&F Group's Property) arising directly or indirectly from the filing by the F&F Group under the CCAA and implementation of the Transactions, including without limitation any of the matters or events listed in paragraph 14 hereof, and any and all notices of default and demands for payment or any step or proceeding taken or commenced in connection therewith under a contract, or a lease shall be deemed to have been rescinded and of no further force or effect, provided that nothing herein shall be deemed to excuse any of the F&F Group or FIKA from performing their obligations under the Subscription Agreement, or be a waiver of defaults by any of the F&F Group or FIKA under the Subscription Agreement and the related documents.

16. **THIS COURT ORDERS** that, from and after the Closing Time, any and all Persons shall be and are hereby forever barred, estopped, stayed and enjoined from commencing, taking, applying for or issuing or continuing any and all steps or proceedings, whether directly, derivatively or otherwise, and including without limitation, administrative hearings and orders, declarations and assessments, commenced, taken or proceeded with or that may be commenced, taken or proceeded with against the F&F Group or FIKA relating in any way to or in respect of any Excluded Assets, Excluded Liabilities, Excluded Leases, or Excluded Contracts and any other claims, obligations and other matters that are waived, released, expunged or discharged pursuant to this Order.

17. **THIS COURT ORDERS** that from and after the Closing Time:

- (a) the nature of the Retained Liabilities, as retained by the F&F Group, including, without limitation, their amount and their secured or unsecured status, shall not be affected or altered as a result of the Transactions or this Order;

- (b) the nature of the Excluded Liabilities, including, without limitation, their amount and their secured or unsecured status, shall not be affected or altered as a result of their transfer to Residual Co.;
- (c) any Person that prior to the Closing Time had a valid right or claim against the F&F Group under or in respect of any Excluded Contract, Excluded Lease, or Excluded Liability (each an “**Excluded Liability Claim**”) shall no longer have an Excluded Liability Claim against the F&F Group, but will have an equivalent Excluded Liability Claim against Residual Co. in respect of the Excluded Contract, Excluded Lease, or Excluded Liability from and after the Closing Time in its place and stead, and nothing in this Order limits, lessens or extinguishes the Excluded Liability Claim of any Person as against Residual Co.; and
- (d) any Person with an Excluded Liability Claim against Residual Co. following the Closing Time shall have the same rights, priority and entitlement as against Residual Co. as such Person, with an Excluded Liability Claim, had against the applicable F&F Group entity prior to the Closing Time.

18. **THIS COURT ORDERS AND DECLARES** that, as of the Closing Time:

- (a) Residual Co. shall be a company to which the CCAA applies; and
- (b) Residual Co. shall be added as an Applicant in these CCAA Proceedings and all references in any Order of this Court in respect of these CCAA Proceedings to (i) an “Applicant” shall refer to and include Residual Co.; and (ii) “Property” shall include the current and future assets, licenses, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof, of Residual Co. (collectively the “**Residual Co. Property**”), and, for greater certainty, each of the Charges (as defined in the Initial Order), shall constitute a charge on the Residual Co. Property.

PRIORITY PAYMENTS

19. **THIS COURT ORDERS AND DIRECTS** that the Priority Payments, as necessary and permitted by the Subscription Agreement, shall be distributed by the Company from the cash on hand on the Closing Date consistent with the Implementation Steps.

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

- (c) the pendency of these CCAA proceedings;
- (d) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act*, R.S.C 195, c. B-3, as amended (the “**BIA**”), in respect of Residual Co. and any bankruptcy order issued pursuant to any such applications; and
- (e) any assignment in bankruptcy made in respect of any of the F&F Group or Residual Co.;

the Subscription Agreement, the implementation of the Transactions (including without limitation the transfer and vesting of the Excluded Assets, Excluded Contracts, Excluded Leases and Excluded Liabilities in and to Residual Co., the transfer and vesting of the Purchased Shares in and to FIKA, the payment of the Priority Payments by the Company and any payments by or to FIKA, any of the F&F Group entities, Residual Co., or the Monitor authorized herein, or pursuant to the Subscription Agreement) shall be binding on any trustee in bankruptcy that may be appointed in respect of any of the F&F Group and/or Residual Co. and shall not be void or voidable by creditors of the F&F Group, or Residual Co., as applicable, nor shall they constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the CCAA, the BIA or any other applicable federal, provincial or foreign legislation, nor shall they constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

MONITOR

21. **THIS COURT ORDERS** that the First Report of the Monitor dated June 14, 2023, the Supplement to the First Report of the Monitor dated June 15, 2023, the Second Report of the Monitor dated July 5, 2023, the Third Report dated August **[X]**, 2023, and the activities of the

Monitor as set out therein be and are hereby approved provided, however, that only the Monitor, in its personal capacity and only with respect to its own liability, shall be entitled to rely upon or utilize in any way such approval.

22. **THIS COURT ORDERS** that nothing in this Order, including the release of the F&F Group from the purview of these CCAA Proceedings pursuant to paragraph 7(f) hereof and the addition of Residual Co. as an Applicant in these CCAA Proceedings, shall affect, vary, derogate from, limit or amend any rights, approvals and protections afforded to the Monitor in these CCAA Proceedings and FTI shall continue to have the benefit of, any and all rights and approvals and protections in favour of the Monitor at law or pursuant to the CCAA, the Initial Order, any other Orders in these CCAA proceedings or otherwise, including all approval, protections and stays of proceedings in favour of FTI in its capacity as Monitor, all of which are expressly continued and confirmed.

23. **THIS COURT ORDERS** that no action lies against the Monitor by reason of this Order or the performance of any act authorized by this Order, except with leave of the Court following a motion brought on not less than fifteen (15) days' notice to the Monitor and its legal counsel. The entities related or affiliated with the Monitor or belonging to the same group as the Monitor (including, without limitation, any agents, employees, legal counsel or other advisors retained or employed by the Monitor) shall benefit from the protection granted to the Monitor under the present paragraph.

24. **THIS COURT ORDERS** that the Monitor shall not, as a result of this Order or any matter contemplated hereby: (a) be deemed to have taken part in the management or supervision of the management of the F&F Group, or Residual Co. or to have taken or maintained possession or control of the business or property of any of the F&F Group or Residual Co., or any part thereof; or (b) be deemed to be in Possession (as defined in the Initial Order) of any property of the F&F Group or Residual Co. within the meaning of any applicable Environmental Legislation and Cannabis Legislation (both as defined in the Initial Order) or otherwise.

25. **THIS COURT ORDERS** that notwithstanding anything contained in this Order, the Monitor, its employees and representatives are not and shall not be or be deemed to be, a director, officer, or employee of Residual Co. *de facto* or otherwise, and shall incur no liability as a result of acting in accordance with this Order, other than any liability arising as a direct result of the gross negligence or wilful misconduct of the Monitor.

26. **THIS COURT ORDERS** that nothing in this Order shall constitute or be deemed to constitute the Monitor as receiver, assignee, liquidator, administrator, receiver-manager, agent of the creditors or legal representative of Residual Co.

RELEASES

27. **THIS COURT ORDERS** that effective upon the filing of the Monitor's Closing Certificate, (a) the current directors, officers, employees, consultants, legal counsel and advisors to the F&F Group; (b) the current directors, officers, employees, consultants legal counsel and advisors to Residual Co.; (c) the Monitor and its legal counsel and their respective current directors, officers, partners, employees, consultants and advisors; (the Persons listed in (a), (b), and (c) being collectively, the "**Released Parties**") shall be deemed to be forever irrevocably released and discharged from any and all present and future liabilities, claims (including, without limitation, claims for contribution or indemnity), indebtedness, demands, actions, causes of action, counterclaims, suits, damages, judgments, executions, recoupments, debts, sums of money, expenses, accounts, liens, taxes, recoveries, and obligations of any nature or kind whatsoever (whether direct or indirect, known or unknown, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, matured or unmatured or due or not yet due, in law or equity and whether based in statute or otherwise) arising in connection with or relating to the CCAA Proceedings, the Subscription Agreement, or the Back-Up Subscription Agreement, as the case may be, the completion of the Transactions or the Back-Up Transactions, as the case may be (collectively, the "**Released Claims**") which Released Claims are hereby and shall be deemed to be fully, finally, irrevocably and forever waived, discharged, released, cancelled and barred as against the Released Parties, and are not vested nor transferred to Residual Co. or to any other entity and are extinguished, provided that nothing in this paragraph shall waive, discharge, release, cancel or bar any claim for fraud or wilful misconduct or any claim that is not permitted to be released pursuant to section 5.1(2) of the CCAA. For greater certainty, "current" in this paragraph refers to individuals who remain in their respective role(s) up to one day prior to closing of the Transactions or Back-Transactions, as applicable.

28. **THIS COURT ORDERS** that effective upon the filing of the Monitor's Closing Certificate, the F&F Group, ACT Investor in its capacity as the DIP Lender and the Stalking Horse Bidder, and FIKA (the "**Other Released Parties**") shall be deemed to be forever irrevocably released and discharged from any and all present and future liabilities, claims (including, without limitation, claims for contribution or indemnity), indebtedness, demands, actions, causes of action,

counterclaims, suits, damages, judgments, executions, recoupments, debts, sums of money, expenses, accounts, liens, taxes, recoveries, and obligations of any nature or kind whatsoever (whether direct or indirect, known or unknown, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, matured or unmatured or due or not yet due, in law or equity and whether based in statute or otherwise) based in whole or in part of any act or omission, transaction, dealing or other occurrence existing or taking place prior to the filing of the Monitor's Closing Certificate, undertaken or completed in connection with or pursuant to the terms of this Order and that relate in any manner whatsoever to the Subscription Agreement or Back-Up Subscription Agreement, as the case may be, the completion of the Transactions or the Back-Up Transactions, as the case may be, the closing documents, any agreement, document, instrument, matter or transaction involving the F&F Group arising in connection with or pursuant to any of the foregoing, and/or the consummation of the Transactions or the Back-Up Transactions, as the case may be (collectively, the "**Released F&F Claims**"), which Released F&F Claims are hereby and shall be deemed to be fully, finally, irrevocably and forever waived, discharged, released, cancelled and barred as against the Other Released Parties.

29. **THIS COURT ORDERS** that notwithstanding paragraph 27 of this Order, any creditor of Residual Co. may make a Claim (as defined in the Claims Process Order dated August 29, 2023) within the ambit of the Claims Process Order.

GENERAL

30. **THIS COURT ORDERS** that, having been advised of the provisions of Multilateral Instrument 61-101 "Protection of Minority Security Holders in Special Transactions" relating to the requirement for "minority" shareholder approval in certain circumstances, no meeting of shareholders or other holders of Equity Interests in the F&F Group is required to be held in respect of the Transactions, and accordingly, there is no requirement to send any disclosure document related to the Transactions, to such shareholders or other holders of Equity Interests.

31. **THIS COURT ORDERS** that in the event of a conflict between the terms of this Order and those of the Initial Order or any other Order of this Court, the provisions of this Order shall govern.

32. **THIS COURT ORDERS** that, following the Closing Time, FIKA and the F&F Group shall be authorized to take all steps as may be necessary to affect the discharge of the Claims and Encumbrances as against the F&F Group, the Purchased Shares, those Equity Interests of the Company held by FIKA, and the F&F Group's Property.

33. **THIS COURT ORDERS** that, following the Closing Time, the title of these proceedings is hereby changed to

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

AND IN THE MATTER OF THE COMPROMISE OR
ARRANGEMENT OF [**RESIDUAL CO.**]

34. **THIS COURT ORDERS** that, notwithstanding Rule 59.05, this Order is effective from the date that it is made and is enforceable without any need for entry and filing. In accordance with Rules 77.07(6) and 1.04, no formal order need be entered and filed unless an appeal or a motion for leave to appeal is brought to an appellate court. Any party may nonetheless submit a formal order for original signing, entry and filing when the Court returns to regular operations.

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

36. **THIS COURT DECLARES** that the Monitor or the F&F Group shall be authorized to apply as they may consider necessary or desirable, with or without notice, to any other court, tribunal or administrative body whether in Canada, the United States, or elsewhere, for order which aid and complement this Order. All courts, tribunals and administrative bodies of all such jurisdictions are hereby respectfully requested to make such orders and to provide such assistance to the F&F Group and the Monitor as may be deemed necessary or appropriate for that purpose.

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

38. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Prevailing Eastern time on the date hereof; provided that, the transaction steps set out in paragraph 7 hereof shall be deemed to have occurred sequentially, on after the other, in the order set out in paragraph 7 hereof.



Schedule A – Form of Monitor’s Closing Certificate

Court File No. CV-23-00700581-00CL

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

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

AND IN THE MATTER OF PLAN OF COMPROMISE OR ARRANGEMENT OF FIRE &
FLOWER HOLDINGS CORP., FIRE & FLOWER INC., 13318184 CANADA INC., 11180703
CANADA INC., 10926671 CANADA LTD., FRIENDLY STRANGER HOLDINGS CORP.,
PINEAPPLE EXPRESS DELIVERY INC., and HIFYRE INC.

MONITOR’S CERTIFICATE

RECITALS

A. Pursuant to the Initial Order of Justice Osborne of the Ontario Superior Court of Justice (Commercial List), (the “**Court**”) dated June 5, 2023, as amended and restated on June 15, 2023, Fire & Flower Holdings Corp. (the “**Company**”), Fire & Flower Inc., 13318184 Canada Inc., 11180703 Canada Inc., 10926671 Canada Ltd., Friendly Stranger Holdings Corp., Pineapple Express Delivery Inc., and Hifyre Inc. (collectively, the “**F&F Group**”) were granted protection from their creditors pursuant to the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended, and FTI Consulting Canada Inc., was appointed as the monitor of the F&F Group (in such capacity, the “**Monitor**”).

C. Capitalized terms not otherwise defined herein shall have the meanings given to them in the Approval and Reverse Vesting Order of this Court dated August 29, 2023 (the “**ARVO**”)

B. Pursuant to the ARVO, the Court approved the Transactions contemplated by the Subscription Agreement dated August 16, 2023 between the Company and FIKA, and ordered, *inter alia*, that: (i) all of the F&F Group’s right, title and interest in and to the Excluded Assets shall vest absolutely and exclusively in Residual Co.; (ii) all of the Excluded Contracts, Excluded Leases and Excluded Liabilities shall be transferred to, assumed by and vest in Residual Co.; and (iii) all of the right, title and interest in and to the Purchased Shares shall vest absolutely and exclusively in FIKA free and clear of and from any Claims and Encumbrances, which vesting is to be effective upon the delivery by the Monitor to FIKA and the Company of a certificate confirming that the Monitor has received written confirmation in the form and substance

satisfactory to the Monitor from the Company and FIKA that all conditions to closing have been satisfied or waived by the parties to the Subscription Agreement.

THE MONITOR CERTIFIES the following:

1. The Monitor has received written confirmation from the Company, in form and substance satisfactory to the Monitor, that the Priority Payments have been paid by the Company.
2. The Monitor has received written confirmation from the Company and FIKA, in form and substance satisfactory to the Monitor, that all conditions to closing have been satisfied or waived by the parties to the Subscription Agreement.
3. This Monitor's closing certificate was delivered by the Monitor at Toronto on _____, 2023.

FTI Consulting Canada Inc., in its capacity as Monitor of the F&F Group and not in its personal or corporate capacity.

Per: _____
Name:
Title:

Schedule "B" - Permitted Encumbrances

- Encumbrances securing Retained Liabilities to the extent that such Retained Liabilities are secured by Encumbrances as of the Closing Time;
- Encumbrances given to a public utility or any Governmental Authority when required by such utility or authority in connection with the operations of that person in the ordinary course of the business but only insofar as they relate to any amounts not due as at the Closing Date;
- The reservations, limitations, provisos and conditions (if any) expressed in any original grant from the Crown;
- Encumbrances for Taxes, assessments or governmental charges incurred in the ordinary course that are not yet due and payable or the validity of which is being actively and diligently contested in good faith by the F&F Group and in respect of which the F&F Group has established on its books reserves considered by it and its auditors to be adequate therefor;
- Normal and customary rights of setoff or compensation upon deposits in favour of depository institutions, and liens of a collecting bank on cheques and other payment items in the course of collection;
- Servitudes, easements, rights of way or similar rights in land granted to or reserved by other persons including minor title defects effecting real property such as reservations and limitations expressed in any original grant from the Crown or as a result of statutory reservations and exceptions to title;
- Encumbrances imposed by Applicable Law including, but not limited to, Encumbrances of mechanics, labourers, workmen, builders, contractors, suppliers of material or architects or other similar Encumbrances incidental to construction, maintenance or repair operations, provided such Encumbrances secure amounts which are not yet due or delinquent and have not been registered on title to any real property or written notice thereof has not been received by Company or FIKA;
- Encumbrances associated with, and financing statements evidencing, the rights of equipment lessors under any of the personal property leases;
- Undetermined or inchoate liens and charges incidental to construction or repairs or operations which have not at such time been filed pursuant to law against Company or which relate to obligations not due or delinquent; and
- The right reserved to or vested in any municipality or government, or to any statutory or public authority, by the terms of any lease, license, franchise, grant or permit acquired by Company or any statutory provision to terminate any such lease, license, franchise, grant or permit, or to require annual or other periodic payments as a condition to the continuance thereof.

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

AND IN THE MATTER OF PLAN OF COMPROMISE OR ARRANGEMENT OF FIRE & FLOWER HOLDINGS CORP., FIRE & FLOWER INC.,
13318184 CANADA INC., 11180703 CANADA INC., 10926671 CANADA LTD., FRIENDLY STRANGER HOLDINGS CORP., PINEAPPLE
EXPRESS DELIVERY INC., and HIFYRE INC.

Applicants

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

PROCEEDING COMMENCED AT TORONTO

**ORDER
(APPROVAL AND REVERSE VESTING ORDER)**

STIKEMAN ELLIOTT LLP
Barristers & Solicitors
5300 Commerce Court West
199 Bay Street
Toronto, Canada M5L 1B9

Maria Konyukhova (LSO #52880V)
Tel: (416) 869-5230
Email: mkonyukhova@stikeman.com

Philip Yang (LSO #82084O)
Tel: (416) 869-5593
Email: pyang@stikeman.com

Lawyers for the Applicants

TAB 4

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

THE HONOURABLE)
JUSTICE OSBORNE)
TUESDAY, THE 29TH DAY
OF AUGUST, 2023

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

AND IN THE MATTER OF PLAN OF COMPROMISE OR ARRANGEMENT OF FIRE &
FLOWER HOLDINGS CORP., FIRE & FLOWER INC., 13318184 CANADA INC., 11180703
CANADA INC., 10926671 CANADA LTD., FRIENDLY STRANGER HOLDINGS CORP.,
PINEAPPLE EXPRESS DELIVERY INC., and HIFYRE INC.

Applicants

CLAIMS PROCEDURE ORDER

THIS MOTION, made by Fire & Flower Holdings Corp., Fire & Flower Inc., 13318184 Canada Inc., 11180703 Canada Inc., 10926671 Canada Ltd., Friendly Stranger Holdings Corp., Pineapple Express Delivery Inc., and Hifyre Inc. (collectively, the "**F&F Group**" or the "**Applicants**"), pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"), for an order (the "**Claims Procedure Order**") approving a procedure for the identification, quantification, and resolution of certain claims of creditors of the Company and their respective directors and officers, was heard this day by videoconference due to the COVID-19 pandemic.

ON READING the Motion Record of the F&F Group, including the affidavit of Stephane Trudel sworn August 23, 2023 (the "**Trudel Affidavit**") and the Exhibits thereto, the Third Report of FTI Consulting Canada Inc. ("**FTI**"), in its capacity as the Court-appointed monitor of the F&F Group (in such capacity, the "**Monitor**") dated August 25, 2023 (the "**Third Report**"), and on hearing the submissions of counsel for the F&F Group, counsel for the Monitor, counsel for FIKA, counsel for ACT Investor and ACT Investor in its capacity as the debtor-in-possession lender to the F&F Group, and counsel for those other parties appearing as indicated by the Participant Information Form, no one appearing for any other party, although duly served as appears from the affidavits of service of Philip Yang, filed.

SERVICE AND INTERPRETATION

1. **THIS COURT ORDERS** that the time for service and filing of this Motion and the Third Report is hereby abridged and validated so that this Motion is properly returnable on August 29, 2023, and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS** that for purposes of this Order the following terms shall have the following meanings:
 - (a) **"BIA"** means the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended;
 - (b) **"Business Day"** means a day, other than a Saturday, Sunday or a statutory holiday, on which banks are generally open for business in Toronto, Ontario;
 - (c) **"CCAA Proceedings"** means the within proceedings under the CCAA in respect of the Applicants;
 - (d) **"CCAA Charges"** means the Administration Charge, the DIP Lender's Charge, the D&O Charge and the KERP Charge (each as defined in the Initial Order) and any other court-ordered charge over the Property (as defined in the Initial Order) of the Applicants that may be granted by the Court;
 - (e) **"Claim"** means a Pre-Filing Claim, a Restructuring Claim and a D&O Claim;
 - (f) **"Claimant"** means any Person asserting a Claim and includes the transferee or assignee of a Claim, transferred and recognized in accordance with paragraphs 36 and 37 hereof or a trustee, executor, liquidator, receiver, receiver and manager, or other Person acting on behalf of or through such Person;
 - (g) **"Claims Officer"** means the individual appointed in accordance with paragraph 31 of this Claims Procedure Order to act as a claims officer for the purposes of this Claims Procedure Order;
 - (h) **"Claims Package"** means the Proof of Claim form, the Notice to Claimants, the Instruction Letter, and any other documentation the Applicants, in consultation with the Monitor, may deem appropriate;

- (i) **“Claims Procedure”** means the procedures outlined in this Claims Procedure Order, including the Schedules hereto;
- (j) **“Court”** means the Ontario Superior Court of Justice (Commercial List);
- (k) **“D&O Claim”** means, as against any Director or Officer, in his or her capacity as such, any and all demands, claims (including claims for contribution or indemnity), actions, causes of action, counterclaims, suits, debts, sums of money, liabilities, accounts, covenants, damages, judgments, orders (including orders for injunctive relief or specific performance and compliance orders), expenses, executions, encumbrances and recoveries on account of any liability, obligation, demand or cause of action of whatever nature that any creditor or other Person has or may be entitled to assert (including for, in respect of or arising out of environmental matters, pensions or post-employment benefits or alleged wrongful or oppressive conduct, misrepresentation, fraud or breach of fiduciary duty), whether known or unknown, matured or unmatured, contingent or actual, direct, indirect or derivative, at common law, in equity or under statute, foreseen or unforeseen, existing or hereafter arising, based in whole or in part on any act, omission, transaction, duty, responsibility, indebtedness, liability, obligation, dealing, matter or occurrence that in any way relate to or arise out of or in connection with (i) any Pre-Filing Claim; (ii) the assets, obligations, business or affairs of the Applicants, but “D&O Claim” does not include a claim that cannot be compromised due to the provisions of subsection 5.1(2) of the CCAA and for greater certainty does not include any Released Claims;
- (l) **“Director”** means any former or present director of any of the Applicants or any Person of similar position or any other Person who by applicable law is deemed to be or is treated similarly to a director of any of the Applicant or who currently manages or supervises the management of the business and affairs of any of the Applicants or did so in the past;
- (m) **“D&O Charge”** has the meaning given to such term in the Initial Order;
- (n) **“Directors’ Counsel”** means counsel to any of the Directors and/or Officers;
- (o) **“Dispute Package”** means the Proof of Claim filed by a Claimant, the Notice of Revision or Disallowance delivered by the Monitor in respect of that Proof of Claim,

the Notice of Dispute filed by the Claimant in respect of the Notice of Revision or Disallowance, and any ancillary documentation as determined by the Monitor;

- (p) **“Equity Claim”** has the meaning set forth in Section 2(1) of the CCAA;
- (q) **“Filing Date”** means June 5, 2023;
- (r) **“Initial Order”** means the Initial Order of the Honourable Justice Steele granted June 5, 2023 in these CCAA Proceedings, as amended and restated on June 15, 2023, and as may be further amended, restated or varied from time to time;
- (s) **“Instruction Letter”** means the instruction letter to Claimants, substantially in the form attached as Schedule “B” hereto, regarding the completion of a Proof of Claim by a Claimant and the Claims Procedure described herein;
- (t) **“Monitor”** means FTI Consulting Canada Inc., in its capacity as the Court-appointed Monitor of the Applicants;
- (u) **“Monitor’s Website”** means the case website established by the Monitor with the following URL: <http://cfcanada.fticonsulting.com/fireandflower/>;
- (v) **“Notice to Claimants”** means the notice for publication by the Monitor as described in paragraph 15 hereof, in the form attached as Schedule “A” hereto;
- (w) **“Notice of Dispute”** means the notice referred to in paragraph 28 hereof substantially in the form attached as Schedule “E” hereto which must be delivered to the Monitor by any Claimant wishing to dispute a Notice of Revision or Disallowance, with reasons for its dispute;
- (x) **“Notice of Revision or Disallowance”** means the notice referred to in paragraph 27 hereof, substantially in the form of Schedule “D” advising a Claimant that the Applicants, with the consent of the Monitor, have revised or rejected all or part of such Claimant’s Claim as set out in its Proof of Claim;
- (y) **“Officer”** means any former or present officer of any of the Applicants or any Person of similar position or any other Person who by applicable law is deemed to be or is treated similarly to an officer of any of the Applicants;

- (z) **“Orders”** means any and all orders issued by the Court within the CCAA Proceedings, including the Initial Order;
- (aa) **“Pending Litigation”** has the meaning given to such term in the Initial Order;
- (bb) **“Person”** means any individual, corporation, firm, limited or unlimited liability company, general or limited partnership, association (incorporated or unincorporated), trust, unincorporated organization, joint venture, trade union, government authority or any agency, regulatory body or officer thereof or any other entity, wherever situate or domiciled, and whether or not having legal status, and whether acting on their own or in a representative capacity;
- (cc) **“Pre-Filing Claim”** means any right of claim of any Person that may be asserted or made in whole or in part against any of the Applicants, whether or not asserted or made, in connection with any indebtedness, liability or obligation of any kind whatsoever, and any interest accrued thereon or costs payable in respect thereof, including by reason of the commission of a tort (international or unintentional), by reason of any breach of contract or other agreement (oral or written), by reason of any breach of duty (including any legal, statutory, equitable or fiduciary duty) or by reason of any right of ownership of or title to property or assets or right to a trust or deemed trust (statutory, express, implied, resulting, constructive, or otherwise), and whether or not such indebtedness, liability or obligation is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, unsecured, perfected, unperfected, present or future, known or unknown, by guarantee, surety or otherwise, and whether or not such right is executory or anticipatory in nature, including any right or ability of any Person to advance a claim for contribution or indemnity or otherwise against any of the Applicants with respect to any matter, action, cause or chose in action, whether existing at present or commenced in the future, which indebtedness, liability or obligation, and any interest accrued thereon or costs payable in respect thereof that (A) is based in whole or in part on facts existing prior to the Filing Date, (B) relates to a time period prior to the Filing Date, or (C) is a right or claim of any kind that would be claim provable in bankruptcy within the meaning of the BIA had the Applicant become bankrupt on the Filing Date, including for greater certainty any claim against

any of the Applicants for indemnification by any Directors or Officers in respect of a D&O Claim;

- (dd) **“Pre-Filing Claims Bar Date”** means 5:00 p.m. (Eastern Time) on October 12, 2023;
- (ee) **“Proof of Claim”** means the Proof of Claim referred to in paragraphs 20 to 24 hereof to be filed by Claimants, substantially in the form attached hereto as Schedule “C”;
- (ff) **“Proven Claim”** means the amount and Status of a Claim of a Claimant as finally determined in accordance with this Claims Procedure Order;
- (gg) **“Released Claim”** has the meaning given to it in the Approval and Reverse Vesting Order dated August 29, 2023;
- (hh) **“Residual Co.”** means **[insert name of new entity to be incorporated]**;
- (ii) **“Restructuring Claim”** means any right of claim of any Person against any of the Applicants in connection with any indebtedness, liability or obligation of any kind whatsoever owed by any such Applicant to such Person arising out of the restructuring, disclaimer, repudiation, resiliation or termination by such Applicant on or after the Filing Date of any contract, lease, other agreement or obligation whether written or oral;
- (jj) **“Restructuring Claims Bar Date”** means the later of:
 - (i) the Pre-Filing Claims Bar Date; and
 - (ii) 5:00 p.m. (Eastern Time) on the day which is thirty (30) days after the Monitor sends a Claims Package with respect to a Restructuring Claim in accordance with paragraph 14 or 18 hereof, as applicable;
- (kk) **“Secured Claim”** means that portion of a Claim that is (i) secured by security validly charging or encumbering property or assets of the Applicants (including statutory and possessory liens that create security interests) taking into account the value of such collateral and the priority of such security, and (ii) duly and properly perfected in accordance with the relevant legislation in the appropriate jurisdiction, as of the Filing Date or after the Filing Date if permitted by the Initial Order; and

(II) “**Status**” means, with respect to a Claim, whether such claim is an unsecured Claim, Secured Claim, or Equity Claim.

3. **THIS COURT ORDERS** that all references as to time herein shall mean local time in Toronto, Ontario, Canada, and any reference to an event occurring on a Business Day shall mean prior to 5:00 p.m. on such Business Day unless otherwise indicated herein.

4. **THIS COURT ORDERS** that all references to the word “including” shall mean “including without limitation”.

5. **THIS COURT ORDERS** that all references to the singular herein include the plural, the plural include the singular, and any gender includes the other gender.

GENERAL PROVISIONS

6. **THIS COURT ORDERS** that following the closing of the transactions approved by the Approval and Reverse Vesting Order dated August 29, 2023, all the Claims against the Applicants shall continue against Residual Co. and the provisions of this Order shall continue to apply *mutatis mutandis*.

7. **THIS COURT ORDERS** that the Applicants, in consultation with the Monitor, are hereby authorized (i) to use reasonable discretion as to the adequacy of compliance with respect to the manner in which forms delivered hereunder are completed and executed, and may, where they are satisfied that a Claim has been adequately proven, waive strict compliance with the requirements of this Claims Procedure Order as to completion and execution of such forms, and (ii) to request any further documentation from a Claimant that the Applicants or the Monitor may reasonably require in order to determine the validity and/or Status of a Claim.

8. **THIS COURT ORDERS** that notwithstanding any other provisions of this Claims Procedure Order, the solicitation by the Applicants or the Monitor of Claims and the filing by any Claimant of any Claims shall not, for that reason only, grant any Person standing in these proceedings.

9. **THIS COURT ORDERS** that all Claims filed shall be denominated in the original currency of the Claim. Where no currency is indicated, the Claim shall be presumed to be in Canadian Dollars. Any Claims denominated in a foreign currency shall be converted to

Canadian Dollars based on the Bank of Canada's daily average exchange rate for that currency against the Canadian Dollar on the Filing Date.

MONITOR'S ROLE

10. **THIS COURT ORDERS** that the Monitor, in addition to its prescribed rights, duties, responsibilities and obligations under the CCAA and under the Initial Order, shall assist the Applicants in connection with the administration of the Claims Procedure, including the determination of Claims of the Claimants and the referral of a particular Claim to the Court, as requested by the Applicants from time to time, and is hereby directed and empowered to take such other actions and fulfill such other roles as are contemplated by this Claims Procedure Order or incidental thereto.

11. **THIS COURT ORDERS** that (i) in carrying out the terms of this Claims Procedure Order, the Monitor shall have all of the protections given to it by the CCAA, the Initial Order, and this Claims Procedure Order, and as an officer of this Court, including the stay of proceedings in its favour, (ii) the Monitor shall incur no liability or obligation as a result of the carrying out of the provisions of this Claims Procedure Order, except to the extent that the Monitor has acted with gross negligence or willful misconduct, (iii) the Monitor shall be entitled to rely on the books and records of the Applicants and any information provided by the Applicants, all without independent investigation, and (iv) the Monitor shall not be liable for any claims or damages resulting from any errors or omissions in such books, records or information or in any information provided by any Claimant, except to the extent that the Monitor has acted with gross negligence or willful misconduct.

NOTICE TO CLAIMANTS

12. **THIS COURT ORDERS** that the Applicants shall provide to the Monitor a complete list of known potential Claimants, listed in the books and records of the Applicants (the "**Known Claimants**" and each a "**Known Claimant**") as at the date of this Claims Procedure Order, showing for each Known Claimant, their name, address and amount owed pursuant to the Applicants' books and records.

13. **THIS COURT ORDERS** that the Monitor shall send a Claims Package to each Known Claimant by ordinary mail or email to the last known mailing address or email address of the

Known Claimant within seven (7) Business Days following the issuance of the Claims Procedure Order.

14. **THIS COURT ORDERS** that the Monitor shall send the Claims Package by ordinary mail or email to the last known mailing address or email address of each Claimant with a Restructuring Claim that arose prior to the date of the Claims Procedure Order no later than five (5) Business Days following the time the Monitor actually becomes aware of the existence of the Restructuring Claim.

15. **THIS COURT ORDERS** that as soon as practicable, the Monitor shall cause the Notice to Claimants to be published, for at least one (1) Business Day, in the Globe and Mail (National Edition).

16. **THIS COURT ORDERS** that the Monitor shall cause the Notice to Claimants, the Claims Package and the Claims Procedure Order to be posted to the Monitor's Website as soon as reasonably possible and cause it to remain posted thereon until its discharge as Monitor of the Applicants.

17. **THIS COURT ORDERS** that upon request by a Claimant for a Claims Package or documents or information relating to the Claims Procedure prior to the Pre-Filing Claims Bar Date or Restructuring Claims Bar Date, as applicable, the Monitor shall forthwith send a Claims Package, direct such Person to the documents posted on the Monitor's Website, or otherwise respond to the request for information or documents as the Monitor considers appropriate in the circumstances.

18. **THIS COURT ORDERS** that with respect to Restructuring Claims arising from the restructuring, disclaimer, resiliation or termination of any lease, contracts, or other agreement or obligation, on or after the date of the Claims Procedure Order, the Monitor shall send to the counterparty(ies) to such lease, contract or other agreement or obligation a Claims Package by ordinary mail or email to the last known mailing address or email address of the Claimant no later than five (5) Business Days following the time the Monitor actually becomes aware of the effective date of such restructuring, disclaimer, resiliation or termination of any lease, contract or other agreement or obligation.

19. **THIS COURT ORDERS** that the form and substance of each of the Notice to Claimants, Proof of Claim form, Instruction Letter, Notice of Revision or Disallowance and Notice of

Dispute, substantially in the forms attached as schedules hereto, are hereby approved. Despite the foregoing, the Monitor may, from time to time, make such minor changes to such forms as the Monitor, in consultation with the Applicants, considers necessary or desirable.

PROOFS OF CLAIM

20. **THIS COURT ORDERS** that any Person that wishes to assert a Pre-Filing Claim must deliver to the Monitor on or before the Pre-Filing Claims Bar Date a completed Proof of Claim, including all relevant supporting documentation in respect of such Claim, in the manner set out in this Claims Procedure Order.

21. **THIS COURT ORDERS** that any Person that wishes to assert a D&O Claim must deliver to the Monitor on or before the Pre-Filing Claims Bar Date a completed Proof of Claim form, together with all relevant supporting documentation in respect of such Claim, in the manner set out in this Claims Procedure Order.

22. **THIS COURT ORDERS** that any Person that wishes to assert a Restructuring Claim must deliver to the Monitor on or before the Restructuring Claims Bar Date a completed Proof of Claim form, together with all relevant supporting documentation in respect of such Claim, in the manner set out in this Claims Procedure Order.

23. **THIS COURT ORDERS** that any Person wishing to assert a Claim shall include any and all Claims it asserts against an Applicant or a Director or Officer of that Applicant in a single Proof of Claim

24. **THIS COURT ORDERS** that any Person who does not file a Proof of Claim in accordance with this Claims Procedure Order with the Monitor by the Pre-Filing Claims Bar Date or Restructuring Claims Bar Date, as applicable, shall:

- (a) not be entitled to receive further notice with respect to, and shall not be entitled to participate as a Claimant or creditor in, the Claims Procedure or the CCAA Proceedings in respect of such Claim;
- (b) with respect to a Pre-Filing Claim or a Restructuring Claim, be forever barred, estopped and enjoined from asserting or enforcing such Claim against any of the Applicants and the Applicants shall not have any liability whatsoever in respect of

such Claim and such Claim shall be extinguished without any further act or notification by the Applicants or the Monitor; and

- (c) with respect to a D&O Claim, be forever barred, estopped and enjoined from asserting or enforcing such Claim against any of the Directors and Officers and the Directors and Officers shall not have any liability whatsoever in respect of such Claim and such Claim shall be extinguished without any further act or notification by the Applicants, the Monitor or the Directors or Officers.

ADJUDICATION OF CLAIMS

25. **THIS COURT ORDERS** that the Monitor and the Applicants (and in the case of a D&O Claim, in consultation with the applicable Director, Officer and/or Directors' Counsel, if applicable) shall review all Proofs of Claim filed in accordance with this Claims Procedure Order, and at any time may:

- (a) request additional information from a Claimant;
- (b) request that a Claimant file a revised Proof of Claim;
- (c) attempt to resolve and settle any issue arising in a Proof of Claim or in respect of a Claim;
- (d) accept (in whole or in part), the amount and/or Status of any Claim and so notify the Claimant in writing; and
- (e) revise or disallow (in whole or in part) the amount and/or Status of any Claim and so notify the Claimant in writing.

26. **THIS COURT ORDERS** that where a Claim has been accepted by the Monitor in accordance with this Claims Procedure Order, such Claim shall constitute such Claimant's Proven Claim. The acceptance of any Claim or other determination of same in accordance with this Claims Procedure Order, in full or in part, shall not constitute an admission of any fact, thing, liability, or quantum or status of any claim by any Person, save and except in the context of the CCAA Proceedings.

27. **THIS COURT ORDERS** that where a Claim is revised or disallowed (in whole or in part, and whether as to amount and/or Status), the Monitor shall deliver to the Claimant a Notice of Revision or Disallowance, attaching the form of Notice of Dispute.

28. **THIS COURT ORDERS** that any Person who intends to dispute a Notice of Revision or Disallowance sent pursuant to paragraph 27 hereof shall deliver a Notice of Dispute to the Applicants in writing, with a copy to the Monitor, by 5:00 p.m. (Eastern Time) on the day that is not later than fourteen (14) days after such Claimant is deemed to have received the Notice of Revision or Disallowance in accordance with paragraph 40 of this Claims Procedure Order or such longer period as may be agreed to by the Monitor in writing. The receipt of a Notice of Dispute by the Monitor within the fourteen (14) day period specific in this paragraph shall constitute an application to have the amount and/or Status of such claim determined pursuant to the Claims Procedure as provided in this Claims Procedure Order.

29. **THIS COURT ORDERS** that if any Person who received a Notice of Revision or Disallowance does not return a Notice of Dispute in accordance with paragraph 27 of this Claims Procedure Order, the value and Status of such Claim shall be deemed to be set out in the Notice of Revision or Disallowance for voting and distribution purposes, and the Claimant will be barred from disputing or appealing same, and the balance of such Claimant's Claim, if any, shall be forever barred and extinguished.

RESOLUTION OF CLAIMS

30. **THIS COURT ORDERS** that as soon as practicable after a Notice of Dispute is received by the Monitor in accordance with this Claims Procedure Order, the Monitor, in consultation with the Applicants, may attempt to resolve and settle the Claim with the Claimant.

APPOINTMENT OF CLAIMS OFFICER

31. **THIS COURT ORDERS** that Mr. Niels Ortved is hereby appointed to act as Claims Officer for the purposes of this Claims Procedure Order.

32. **THIS COURT ORDERS** that in the event that a dispute raised in a Notice of Dispute is not settled within a reasonable time period or in a manner satisfactory to the Applicants, the Monitor may refer the dispute to the Claims Officer for determination.

33. **THIS COURT ORDERS** The Applicants shall pay the reasonable professional fees and disbursements of the Claims Officer on presentation and acceptance of invoices from time to time. The Claims Officer shall be entitled to a reasonable retainer against his fees and disbursements which shall be paid upon request by the Applicants, with the consent of the Monitor.

34. **THIS COURT ORDERS** that, subject to further order of the Court, the Claims Officer shall determine the Status and/or amount of each Claim in respect of which a dispute has been referred to such Claims Officer and in doing so, the Claims Officer shall be empowered to determine the process in which evidence may be brought before him or her as well as any other procedural matters which may arise in respect of the determination of any Claim.

35. **THIS COURT ORDERS** that the Applicants or the Claimant may appeal the Claims Officer's determination to this Court by serving upon the other (with a copy to the Monitor) and filing with this Court, within ten (10) calendar days of notification of the Claims Officer's determination of such Claimant's Claim, a notice of motion returnable on a date to be fixed by this Court. If a notice of motion is not filed within such period, then the Claims Officer's determination shall be deemed to be final and binding and shall be such Claimant's Proven Claim.

NOTICE OF TRANSFEREES

36. **THIS COURT ORDERS** that neither the Monitor nor the Applicants shall be obligated to give notice or otherwise deal with the transferee or assignee of a Claim unless and until actual notice of the transfer or assignment, together with satisfactory evidence of the existence and validity of such transfer or assignment, shall have been received and acknowledged by the Applicants and the Monitor in writing. Thereafter, such transferee or assignee shall, for all purposes hereof, constitute the "Claimant" in respect of such Claim. Any such transferee or assignee of a Claim shall be bound by any notices given or steps taken in respect of such Claim in accordance with this Claims Procedure Order prior to the receipt and acknowledgment by the Applicants and the Monitor of satisfactory evidence of such transfer or assignment. A transferee or assignee of a Claim takes the Claim subject to any right of set-off to which the Applicants may be entitled with respect to such Claim. For greater certainty, a transferee or assignee of a Claim is not entitled to set off, apply, merge, consolidate or combine any Claims assigned or

transferred to it against or on account or in reduction of any amounts owing by such Person to any of the Applicants.

37. **THIS COURT ORDERS** that if a Claimant or any subsequent holder of a Claim, who in any such case has previously been acknowledged by the Applicants and the Monitor as the holder of the Claim, transfers or assigns the whole of such Claim to more than one Person or part of such Claim to another Person, such transfers or assignments shall not create separate Claims and such Claims shall continue to constitute and be dealt with as a single Claim notwithstanding such transfers or assignments. The Applicants and the Monitor shall not, in each case, be required to recognize or acknowledge any such transfers or assignments and shall be entitled to give notices to and to otherwise deal with such Claim only as a whole and then only to and with the Person last holding such Claim, provided such Claimant may, by notice in writing delivered to the Monitor, direct that subsequent dealings in respect of such Claim, but only as a whole, shall be dealt with by a specified Person and in such event, such Person shall be bound by any notices given or steps taken in respect of such Claim with such Claimant or in accordance with the provisions of this Claims Procedure Order.

SERVICE AND NOTICES

38. **THIS COURT ORDERS** that the forms of notice to be provided in accordance with this Claims Procedure Order shall constitute good and sufficient service and delivery of notice of this Claims Procedure Order, the Pre-Filing Claims Bar Date and Restructuring Claims Bar Date on all Persons who may be entitled to receive notice and who may assert a Claim and no other notice or service need be given or made and no other documents or material need be sent to or served upon any Person in respect of this Claims Procedure Order.

39. **THIS COURT ORDERS** that the Applicants and the Monitor may, unless otherwise specified by this Claims Procedure Order, serve and deliver the Claims Package, and any letters, notices or other documents to the Claimants or any other interested Person by forwarding true copies thereof by prepaid ordinary mail, registered mail, courier, personal delivery, facsimile transmission or email to such Persons at the physical or electronic address, as applicable, last shown on the books and records of the Applicants or set out in such Claimant's Proof of Claim. Any such service and delivery shall deemed to have been received: (a) if sent by ordinary mail or registered mail, on the third Business Day after mailing within Ontario, the fifth Business Day after mailing within Canada (other than within Ontario), and the

tenth Business Day after mailing internationally; (b) if sent by courier or personal delivery, on the next Business Day following dispatch; and (c) if delivered by facsimile transmission or email by 5:00 p.m. on a Business Day, on such Business Day and if delivered after 5:00 p.m. or other than on a Business Day, on the following Business Day.

40. **THIS COURT ORDERS** that any notice or communication (including Proofs of Claim and Notices of Dispute) to be given under this Claims Procedure Order by any Person to the Monitor or the Applicants shall be in writing in substantially the form, if any, provided for in this Claims Procedure Order and will be sufficiently given only if delivered by email, or if it cannot be given by email, and the Monitor provides its consent, mail, courier or personal delivery, addressed to:

FTI Consulting Canada Inc.

TD South Tower
79 Wellington Street West
Suite 2010, P.O. Box 104
Toronto, Ontario M5K 1G8

Attention: Jeff Rosenberg and Jodi Porepa

Email: fireandflower@fticonsulting.com

Any such notice or communication delivered by a Claimant shall be deemed to be received upon actual receipt thereof during normal business hours on a Business Day or if delivered outside of normal business hours, the next Business Day.

41. **THIS COURT ORDERS** that if during any period during which notices or other communications are being given pursuant to this Claims Procedure Order, a postal strike or postal work stoppage of general application should occur, such notices, notifications or other communications sent by ordinary or registered mail and then not received shall not, absent further order of this Court, be effective and notices and other communications given hereunder during the course of any such postal strike or work stoppage of general application shall only be effective if given by courier, personal delivery, facsimile transmission or email in accordance with this Claims Procedure Order.

MISCELLANEOUS

42. **THIS COURT ORDERS** that notwithstanding the terms of this Claims Procedure Order, and without limitation to paragraph 35 of this Claims Procedure Order, the Monitor and the Applicants may apply to this Court from time to time for directions from this Court with respect to

this Claims Procedure Order, or for such further order or orders as any of them may consider necessary or desirable to amend, supplement or clarify the terms of this Claims Procedure Order.

43. **THIS COURT ORDERS** that this Claims Procedure Order shall have full force and effect in all provinces and territories in Canada, outside Canada and against all Persons against whom it may be enforceable.

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

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

SCHEDULE "A"
NOTICE TO CLAIMANTS

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

**AND IN THE MATTER OF PLAN OF COMPROMISE OR ARRANGEMENT OF FIRE &
FLOWER HOLDINGS CORP., FIRE & FLOWER INC., 13318184 CANADA INC., 11180703
CANADA INC., 10926671 CANADA LTD., FRIENDLY STRANGER HOLDINGS CORP.,
PINEAPPLE EXPRESS DELIVERY INC., and HIFYRE INC.
(collectively, the "Applicants")**

NOTICE LETTER FOR THE CLAIMS PROCEDURE

**RE: NOTICE OF CLAIMS PROCEDURE, PRE-FILING CLAIMS BAR DATE &
RESTRUCTURING CLAIMS BAR DATE**

This notice is published pursuant to the Order of the Ontario Superior Court of Justice (Commercial List) dated August [29], 2023 (the "**Claims Procedure Order**"), in the Applicants' proceedings under the *Companies' Creditors Arrangement Act*, R.S.C., 1985, c. C-36, as amended. Pursuant to the Initial Order dated June 5, 2023, FTI Consulting Canada Inc. was appointed as monitor of the Applicants (in such capacity, the "**Monitor**"), and pursuant to the Claims Procedure Order will, with the assistance of the Applicants, conduct a Claims Procedure with respect to Claims against the Applicants and their present and former Directors and Officers. Additionally, the Monitor is required to send Claims Packages to the Applicants' Known Claimants. All capitalized terms used and not defined herein shall have the meanings ascribed to them in the Claims Procedure Order.

The Claims Procedure Order, the Claims Package, a Proof of Claim form, and related materials can be accessed on the Monitor's Website at <http://cfcanada.fticonsulting.com/fireandflower/>.

I. SUBMISSION OF A PROOF OF CLAIM

All persons wishing to assert a Claim against the Applicants or their Directors or Officers **MUST** file a Proof of Claim with the Monitor.

The Claims (other than Restructuring Claims) is **5:00 p.m. (EST) on October [12], 2023** (the "**Pre-Filing Claims Bar Date**"). Proofs of Claim in respect of Claims (other than Restructuring Claims) must be completed and filed with the Monitor on or before the Pre-Filing Claims Bar Date.

The Restructuring Claims Bar Date is the later of, (i) the Pre-Filing Claims Bar Date; and (ii) 5:00 p.m. (EST) on the day which is thirty (30) days after the date the Monitor sends a Claims Package with respect to such Claim (the "**Restructuring Claims Bar Date**"). Proofs of Claim in respect of Restructuring Claims must be completed and filed with the Monitor on or before the Restructuring Claims Bar Date.

Any notice or communication required to be provided or delivered, including, for greater certainty, any Proof of Claim, shall be in writing in substantially the form, if any, provided for in the Claims Procedure Order and **will be sufficiently given only if delivered by email**, or, if a

delivery by email is not possible, on the consent of the Monitor, by mail, courier, or personal delivery, addressed to:

If to the Applicants:

Stikeman Elliott LLP
5300 Commerce Court West
199 Bay Street
Toronto, Ontario M5L 1B9

Attention: Maria Konyukhova / Philip Yang

Emails: mkonyukhova@stikeman.com / pyang@stikeman.com

If to the Monitor:

FTI Consulting Canada Inc.
TD Waterhouse Tower
79 Wellington Street West
Suite 2010, P.O. Box 104
Toronto, ON M5K 1G8

Attention: Jeff Rosenberg / Jodi Porepa

Email: fireandflower@fticonsulting.com

with copies to:

Thornton Grout Finnigan LLP
Suite 3200, TD West Tower
100 Wellington St. West P.O. Box 329
Toronto-Dominion Centre
Toronto ON M5K 1K7

Attention: Leanne Williams / Rebecca Kennedy

Emails: lwilliams@tgf.ca / rkennedy@tgf.ca

Any such notice or communication delivered by a Claimant shall be deemed to be received upon actual receipt thereof before 5:00 p.m. (EST) on a Business Day or if delivered outside of normal business hours, the next Business Day.

PROOFS OF CLAIM MUST BE RECEIVED BY THE MONITOR BY THE APPLICABLE CLAIMS BAR DATE OR THE CLAIM WILL BE FOREVER BARRED AND EXTINGUISHED.

Reference should be made to the Claims Procedure Order complete definitions of “**Claim**”, “**Claims Bar Date**”, “**D&O Claims**”, “**Known Creditor**” and “**Restructuring Claim**”, to which the Claims Procedure applies.

II. MONITOR CONTACT INFORMATION

All enquiries with respect to the Claims Procedure should be addressed to the Monitor at fireandflower@fticonsulting.com or via the telephone hotline (416-649-8129 or 1-833-981-8009), provided, however, that formal notices to the Monitor must be delivered as set out above.

DATED at Toronto, Ontario this [**•th**] day of [**September**], 2023.

FTI Consulting Canada Inc.,
solely in its capacity as Monitor of the
Applicants and not in its personal
capacity.

SCHEDULE "B"
INSTRUCTION LETTER

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

**AND IN THE MATTER OF PLAN OF COMPROMISE OR ARRANGEMENT OF FIRE &
FLOWER HOLDINGS CORP., FIRE & FLOWER INC., 13318184 CANADA INC., 11180703
CANADA INC., 10926671 CANADA LTD., FRIENDLY STRANGER HOLDINGS CORP.,
PINEAPPLE EXPRESS DELIVERY INC., and HIFYRE INC.
(collectively, the "Applicants")**

INSTRUCTION LETTER FOR THE CLAIMS PROCEDURE

I. CLAIMS PROCEDURE

By Order of the Ontario Superior Court of Justice (Commercial List) dated August **[29]**, 2023 (the "**Claims Procedure Order**"), FTI Consulting Canada Inc., in its capacity as the Court-appointed monitor (in such capacity, the "**Monitor**") of the Applicants, has been authorized, with the assistance of the Applicants, to conduct a claims procedure (the "**Claims Procedure**") with respect to Claims against the Applicants and their present or former Directors and Officers. The Claims Procedure Order governs the filing and determination of all Claims against the Applicants.

Unless otherwise defined, all capitalized terms used herein shall have the meanings ascribed to them in the Claims Procedure Order.

The Claims Procedure Order, the Claims Package, a Proof of Claim form and related materials may be accessed from the Monitor's Website at <http://cfcanada.fticonsulting.com/fireandflower/>.

This letter provides instructions for responding to or completing the Proof of Claim. Reference should be made to the Claims Procedure Order for a complete description of the Claims Procedure.

The Claims Procedure is intended for any Person with any Claims, other than Excluded Claims, of any kind or nature whatsoever against the Applicants, the Directors or Officers or any of them, whether liquidated, unliquidated, contingent or otherwise. Please review the Claims Procedure Order for the complete definitions of "**Claims**", "**Claims Bar Date**", "**Claimant**", "**Known Claimant**" and "**Restructuring Claim**".

All enquiries with respect to the Claims Procedure should be addressed to the Monitor at fireandflower@fticonsulting.com or via the telephone hotline (Phone: 1-416-649-8129 or Toll Free: 1-833-981-8009), provided, however, that formal notices to the Monitor must be delivered as set out below.

II. CLAIMANTS SUBMITTING A PROOF OF CLAIM

If you believe that you have a Claim that you wish to assert against the Applicants and/or the Directors or Officers, you **MUST** file a Proof of Claim with the Monitor.

All Proofs of Claim for Pre-Filing Claims and Restructuring Claims must be received by the Monitor **before 5:00 p.m. (EST) on October [12], 2023** (the "**Pre-Filing Claims Bar Date**").

All Proofs of Claim for Restructuring Claims must be received by the Monitor by the later of, **(i) the Pre-Filing Claims Bar Date; and (ii) 5:00 p.m. (EST) on the day which is thirty (30) days after the date the Monitor sends a Claims Package with respect to such Claim** (the "**Restructuring Claims Bar Date**").

Any notice or communication required to be provided or delivered, including, for greater certainty, any Proof of Claim, shall be in writing in substantially the form, if any, provided for in the Claims Procedure Order and **will be sufficiently given only if delivered by email**, or, if a Claimant is unable to do so, and with the consent of the Monitor, by mail, courier, or personal delivery, addressed to:

If to the Applicants:

Stikeman Elliott LLP
5300 Commerce Court West
199 Bay Street
Toronto, Ontario M5L 1B9

Attention: Maria Konyukhova / Philip Yang

Emails: mkonyukhova@stikeman.com / pyang@stikeman.com

If to the Monitor:

FTI Consulting Canada Inc.
TD Waterhouse Tower
79 Wellington Street West
Suite 2010, P.O. Box 104
Toronto, ON M5K 1G8

Attention: Jeff Rosenberg / Jodi Porepa

Email: fireandflower@fticonsulting.com

with copies to:

Thornton Grout Finnigan LLP
Suite 3200, TD West Tower
100 Wellington St. West P.O. Box 329
Toronto-Dominion Centre
Toronto ON M5K 1K7

Attention: Leanne Williams / Rebecca Kennedy

Emails: lwilliams@tgf.ca / rkennedy@tgf.ca

Any such notice or communication delivered by a Claimant shall be deemed to be received upon actual receipt thereof before 5:00 p.m. (EST) on a Business Day or if delivered outside of normal business hours, the next Business Day.

PROOFS OF CLAIM MUST BE RECEIVED BY THE MONITOR BY THE APPLICABLE CLAIMS BAR DATES OR THE CLAIM WILL BE FOREVER BARRED AND EXTINGUISHED.

All Claims denominated in foreign currency shall be converted to Canadian dollars at the Bank of Canada daily average exchange rate in effect on the Filing Date of June 5, 2023.

Additional Proof of Claim forms can be obtained by contacting the Monitor at the telephone number. In addition, Proofs of Claim and related materials may be accessed from the Monitor's Website at <http://cfcanada.fticonsulting.com/fireandflower/>.

III. MONITOR CONTACT INFORMATION

All enquiries with respect to the Claims Procedure should be addressed to the Monitor at fireandflower@fticonsulting.com or via the telephone hotline (Phone: 1-416-649-8129 or Toll Free: 1-833-981-8009), provided, however, that formal notices to the Monitor must be delivered as set out above.

DATED at Toronto, Ontario this [**•th**] day of [**September**], 2023.

FTI Consulting Canada Inc.,
solely in its capacity as Monitor of
the Applicants and not in its
personal capacity.

SCHEDULE "C"
PROOF OF CLAIM FORM

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

**AND IN THE MATTER OF PLAN OF COMPROMISE OR ARRANGEMENT OF FIRE & FLOWER
HOLDINGS CORP., FIRE & FLOWER INC., 13318184 CANADA INC., 11180703 CANADA INC.,
10926671 CANADA LTD., FRIENDLY STRANGER HOLDINGS CORP., PINEAPPLE EXPRESS
DELIVERY INC., and HIFYRE INC.
(collectively, the "Applicants")**

PROOF OF CLAIM

Please carefully read the Order granted by the Ontario Superior Court of Justice (Commercial List) dated August [29], 2023 (the "**Claims Procedure Order**") and the enclosed Instruction Letter for completing this Proof of Claim. All capitalized terms used and not defined herein have the meaning ascribed to them in the Claims Procedure Order.

I. PARTICULARS OF CLAIMANT

1. Full Legal Name of Claimant:

_____ (the "**Claimant**")

(Full legal name is the name of the Claimant as of June 5, 2023 (the "**Filing Date**"), notwithstanding whether an assignment of a Claim, or a portion thereof, has occurred following such date)

2. Attention (Contact Person): _____

3. Email Address: _____

4. Telephone Number: _____

5. Fax Number: _____

6. Full Mailing Address of the Claimant:

7. Have you acquired this Claim by assignment?

Yes: No:

(If yes, attach documents evidencing assignment)

If yes, Full Legal Name of Original Claimant(s): _____

II. PROOF OF CLAIM

1. I, _____
(Name of Claimant or authorized representative of the Claimant)

_____ do hereby certify:
(City and Province)

(a) I am (select **one**):

the Claimant; **or**

_____ of
(State Position or Title, if applicable)

(Name of Claimant or authorized representative of the Claimant)

(b) I have knowledge of all the circumstances connected with the Claim referred to below;

(c) I confirm that complete documentation in support of the Claim referred to below is attached;
and

(d) the Applicants and/or one or more of the Directors or Officers of the Applicants were and still are indebted to the Claimant as follows:¹

III. PRE-FILING PROOF OF CLAIM

Debtor	Pre-Filing Claim Amount	Nature of Claim (Secured, Priority, Unsecured or Secured)	Value of Security Held (if any)
Fire & Flower Holdings Corp.	CAD\$		
Directors and Officers of Fire & Flower Holdings Corp. _____ (Insert names above)	CAD\$		
Fire & Flower Inc.	CAD\$		
Directors and Officers of Fire & Flower Inc. _____ (Insert names above)	CAD\$		

¹ All Claims denominated in foreign currency shall be converted to **[Canadian]** dollars at the Bank of Canada daily average exchange rate in effect on the Filing Date of June 5, 2023.

Debtor	Pre-Filing Claim Amount	Nature of Claim <i>(Secured, Priority, Unsecured or Secured)</i>	Value of Security Held <i>(if any)</i>
13318184 Canada Inc.	CAD\$		
Directors and Officers of 13318184 Canada Inc. _____ <i>(Insert names above)</i>	CAD\$		
11180703 Canada Inc.	CAD\$		
Directors and Officers of 11180703 Canada Inc. _____ <i>(Insert names above)</i>	CAD\$		
10926671 Canada Ltd.	CAD\$		
Directors and Officers of 10926671 Canada Ltd. _____ <i>(Insert names above)</i>	CAD\$		
Friendly Stranger Holdings Corp.	CAD\$		
Directors and Officers of Friendly Stranger Holdings Corp. _____ <i>(Insert names above)</i>	CAD\$		
Pineapple Express Delivery Inc.	CAD\$		
Directors and Officers of Pineapple Express Delivery Inc. _____ <i>(Insert names above)</i>	CAD\$		
Hifyre Inc.	CAD\$		
Directors and Officers of Hifyre Inc. _____ <i>(Insert names above)</i>	CAD\$		

IV. RESTRUCTURING PROOF OF CLAIM

Debtor	Restructuring Claim Amount	Nature of Claim <i>(Secured, Priority, Unsecured or Secured)</i>	Value of Security Held <i>(if any)</i>
Fire & Flower Holdings Corp.	CAD\$		
Directors and Officers of Fire & Flower Holdings Corp. _____ <i>(Insert names above)</i>	CAD\$		
Fire & Flower Inc.	CAD\$		
Directors and Officers of Fire & Flower Inc. _____ <i>(Insert names above)</i>	CAD\$		
13318184 Canada Inc.	CAD\$		
Directors and Officers of 13318184 Canada Inc. _____ <i>(Insert names above)</i>	CAD\$		
11180703 Canada Inc.	CAD\$		
Directors and Officers of 11180703 Canada Inc. _____ <i>(Insert names above)</i>	CAD\$		
10926671 Canada Ltd.	CAD\$		
Directors and Officers of 10926671 Canada Ltd. _____ <i>(Insert names above)</i>	CAD\$		
Friendly Stranger Holdings Corp.	CAD\$		
Directors and Officers of Friendly Stranger Holdings Corp.	CAD\$		

Debtor	Restructuring Claim Amount	Nature of Claim <i>(Secured, Priority, Unsecured or Secured)</i>	Value of Security Held <i>(if any)</i>
<i>(Insert names above)</i>			
Pineapple Express Delivery Inc.	CAD\$		
Directors and Officers of Pineapple Express Delivery Inc. _____ <i>(Insert names above)</i>	CAD\$		
Hifyre Inc.	CAD\$		
Directors and Officers of Hifyre Inc. _____ <i>(Insert names above)</i>	CAD\$		

V. PARTICULARS OF CLAIM

The particulars of the undersigned's total Claim are attached.

(Please provide full particulars of the Claim and supporting documentation, including amount, description of transaction(s) or agreement(s) or legal breach(es) giving rise to the Claim, name of any guarantor(s) which has guaranteed the Claim, particulars and copies of any security and amount of Claim allocated thereto, date and number of all invoices, particulars of all credits, discounts, etc. claimed. If a Claim is made against any Directors or Officers, specify the applicable Directors or Officers and the legal basis for the Claim against each of them)

VI. FILING OF CLAIM

For Pre-Filing Claims, this Proof of Claim MUST be received by the Monitor **before 5:00 p.m. (EST) on October [12], 2023** (the "**Pre-Filing Claims Bar Date**").

For Restructuring Claims, this Proof of Claim MUST be received by the Monitor **before the later of, (i) the Pre-Filing Claims Bar Date; and (ii) 5:00 p.m. (EST) on the date that is thirty (30) days after the date of receipt of a notice from the Debtors giving rise to the Restructuring Claim** (the "**Restructuring Claims Bar Date**").

In either case, this Proof of Claim shall be delivered in writing and ***will be sufficiently given only if delivered by email***, or, if you are unable to deliver by email, on consent of the Monitor, by mail, courier, or personal delivery, addressed to:

If to the Applicants:

Stikeman Elliott LLP

5300 Commerce Court West
199 Bay Street
Toronto, Ontario M5L 1B9

Attention: Maria Konyukhova / Philip Yang

Emails: mkonyukhova@stikeman.com / pyang@stikeman.com

If to the Monitor:

FTI Consulting Canada Inc.

TD Waterhouse Tower
79 Wellington Street West
Suite 2010, P.O. Box 104
Toronto, ON M5K 1G8

Attention: Jeff Rosenberg / Jodi Porepa

Email: fireandflower@fticonsulting.com

with copies to:

Thornton Grout Finnigan LLP

Suite 3200, TD West Tower
100 Wellington St. West P.O. Box 329
Toronto-Dominion Centre
Toronto ON M5K 1K7

Attention: Leanne Williams / Rebecca Kennedy

Emails: lwilliams@tgf.ca / rkennedy@tgf.ca

Any such notice or communication delivered by a Claimant shall be deemed to be received upon actual receipt thereof before 5:00 p.m. (EST) on a Business Day or if delivered outside of normal business hours, the next Business Day.

PROOFS OF CLAIM MUST BE RECEIVED BY THE MONITOR BY THE APPLICABLE CLAIMS BAR DATE OR YOUR CLAIM WILL BE FOREVER BARRED AND EXTINGUISHED.

DATED at _____ this _____ day of _____, 2023.

Signature of Claimant

SCHEDULE "D"

NOTICE OF REVISION OR DISALLOWANCE

Subject to further dispute by you in accordance with the provisions of the Claim Procedure Order, your Claim will be as follows:

Claim Against	Type of Claim per Proof of Claim	Amount of Claim per Proof of Claim	Type of Claim per this Notice of Revision or Disallowance	Amount of Claim per this Notice of Revision or Disallowance
[Inset name of appropriate party]	[Pre-Filing Claim/Restructuring Claim/D&O Claim] [Unsecured Claim/Unsecured Priority Claim/Secured Claim]	CA\$	[Pre-Filing Claim/Restructuring Claim/D&O Claim] [Unsecured Claim/Unsecured Priority Claim/Secured Claim]	CA\$

IF YOU INTEND TO DISPUTE THIS NOTICE OF REVISION OR DISALLOWANCE, you shall, within fourteen (14) calendar days of the date of this Notice of Revision or Disallowance, deliver a Notice of Dispute in the form attached hereto in writing to the Applicants and the Monitor *which will be sufficiently given only if delivered by email* (in PDF format), or, if you are unable to deliver by email, with the Monitor's consent, by mail, courier or personal delivery addressed to:

If to the Applicants:

Stikeman Elliott LLP
5300 Commerce Court West
199 Bay Street
Toronto, Ontario M5L 1B9

Attention: Maria Konyukhova / Philip Yang

Emails: mkonyukhova@stikeman.com / pyang@stikeman.com

If to the Monitor:

FTI Consulting Canada Inc.
TD Waterhouse Tower
79 Wellington Street West
Suite 2010, P.O. Box 104
Toronto, ON M5K 1G8

Attention: Jeff Rosenberg / Jodi Porepa

Email: fireandflower@fticonsulting.com

with copies to:

Thornton Grout Finnigan LLP
Suite 3200, TD West Tower
100 Wellington St. West P.O. Box 329
Toronto-Dominion Centre

Toronto ON M5K 1K7

Attention: Leanne Williams / Rebecca Kennedy

Emails: lwilliams@tgf.ca / rkennedy@tgf.ca

Any such notice or communication delivered by a Claimant shall be deemed to be received upon actual receipt thereof before 5:00 p.m. (EST) on a Business Day or if delivered outside of normal business hours, the next Business Day.

IF YOU FAIL TO TAKE ACTION WITHIN THE PRESCRIBED TIME PERIOD PURSUANT TO THE CLAIMS PROCEDURE ORDER, THIS NOTICE OF REVISION OR DISALLOWANCE WILL BE BINDING UPON YOU.

IF YOU AGREE WITH THIS NOTICE OF REVISION OR DISALLOWANCE, there is no need to file anything further with the Monitor.

DATED this _____ day of _____, 2023.

FTI Consulting Canada Inc.,
solely in its capacity as Monitor of the
Applicants and not in its personal capacity.

SCHEDULE "E"
NOTICE OF DISPUTE

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

**AND IN THE MATTER OF PLAN OF COMPROMISE OR ARRANGEMENT OF FIRE & FLOWER
HOLDINGS CORP., FIRE & FLOWER INC., 13318184 CANADA INC., 11180703 CANADA INC.,
10926671 CANADA LTD., FRIENDLY STRANGER HOLDINGS CORP., PINEAPPLE EXPRESS
DELIVERY INC., and HIFYRE INC.
(collectively, the "Applicants")**

NOTICE OF DISPUTE

Reference #: [ID]

Pursuant to the Order of the Superior Court of Justice (Commercial List) dated August **[29]**, 2023 (the "**Claims Procedure Order**"), I/we hereby give you notice of our intention to dispute the Notice of Revision or Disallowance dated **[DATE]** issued by FTI Consulting Canada Inc. in its capacity as Monitor of the Applicants in respect of my/our Claim.

All capitalized terms used and not defined in this Notice of Dispute shall have the meaning ascribed to them in the Claims Procedure Order.

I. PARTICULARS OF CLAIMANT

1. Full Legal Name of Claimant:

_____ (the "**Claimant**")

(Full legal name should be the name of the Claimant of the Applicants or the Directors or Officers as of June 5, 2023 (the "**Filing Date**"), notwithstanding whether an assignment of a Claim, or a portion thereof, has occurred following that date.)

2. Attention (Contact Person): _____

3. Email Address: _____

4. Telephone Number: _____

5. Fax Number: _____

6. Full Mailing Address of the Claimant:

7. Have you acquired this Claim by assignment?

Yes: No:

(If yes and not already provided, attach documents evidencing assignment)

If yes, Full Legal Name of Original Claimant(s): _____

II. REASONS FOR DISPUTE

Include the amount you are disputing any dispute against the revision of your status (unsecured, secured, or priority), if applicable. Please attach copies of all supporting documentation. You may also attach a separate schedule if more space is required.

DATED at _____ this _____ day of _____, 2023.

Signature of Claimant or its Authorized Signatory

This Notice of Dispute must be delivered in writing to the Applicants and the Monitor and will be sufficiently given only if delivered by email (in PDF format), or, if you are unable to deliver by email, with the Monitor’s consent, by mail, courier or personal delivery addressed to:

If to the Applicants:

Stikeman Elliott LLP

5300 Commerce Court West
199 Bay Street
Toronto, Ontario M5L 1B9

Attention: Maria Konyukhova / Philip Yang

Emails: mkonyukhova@stikeman.com / pyang@stikeman.com

If to the Monitor:

FTI Consulting Canada Inc.

TD Waterhouse Tower
79 Wellington Street West
Suite 2010, P.O. Box 104
Toronto, ON M5K 1G8

Attention: Jeff Rosenberg / Jodi Porepa

Email: fireandflower@fticonsulting.com

with copies to:

Thornton Grout Finnigan LLP

Suite 3200, TD West Tower
100 Wellington St. West P.O. Box 329
Toronto-Dominion Centre
Toronto ON M5K 1K7

Attention: Leanne Williams / Rebecca Kennedy

Emails: lwilliams@tgf.ca / rkennedy@tgf.ca

Any such notice or communication delivered by a Claimant shall be deemed to be received upon actual receipt thereof before 5:00 p.m. (EST) on a Business Day or if delivered outside of normal business hours, the next Business Day.

If a completed Notice of Dispute is not received by the Monitor by the dates set out in the Claims Procedure Order and described herein, YOU WILL BE FOREVER BARRED FROM DISPUTING THE CLASSIFICATION, AMOUNT OR NATURE OF YOUR CLAIM.

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

Court File No. CV-23-00700581-00CL

AND IN THE MATTER OF PLAN OF COMPROMISE OR ARRANGEMENT OF FIRE &
FLOWER HOLDINGS CORP., FIRE & FLOWER INC., 13318184 CANADA INC., 11180703
CANADA INC., 10926671 CANADA LTD., FRIENDLY STRANGER HOLDINGS CORP.,
PINEAPPLE EXPRESS DELIVERY INC., and HIFYRE INC.

Applicants

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

Proceeding commenced at [Toronto](#)

CLAIMS PROCEDURE ORDER

STIKEMAN ELLIOTT LLP
5300 Commerce Court West
199 Bay Street
Toronto, Canada M5L 1B9

Maria Konyukhova (LSO #52880V)
Tel: (416) 869-5230
mkonyukhova@stikeman.com

Natasha Rambaran (LSO#: 80200N)
Tel: (416) 869-5504
nrambaran@stikeman.com

Philip Yang (LSO #82084O)
Tel: (416) 869-5593
pyang@stikeman.com

Lawyers for the Applicants

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

AND IN THE MATTER OF PLAN OF COMPROMISE OR ARRANGEMENT OF FIRE & FLOWER HOLDINGS CORP., FIRE & FLOWER INC.,
13318184 CANADA INC., 11180703 CANADA INC., 10926671 CANADA LTD., FRIENDLY STRANGER HOLDINGS CORP., PINEAPPLE
EXPRESS DELIVERY INC., and HIFYRE INC.

Applicants

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

PROCEEDING COMMENCED AT TORONTO

**MOTION RECORD OF THE APPLICANTS
(RE: APPROVAL AND REVERSE VESTING ORDER
AND CLAIMS PROCEDURE ORDER)
(RETURNABLE AUGUST 29, 2023)**

STIKEMAN ELLIOTT LLP
Barristers & Solicitors
5300 Commerce Court West
199 Bay Street
Toronto, Canada M5L 1B9

Maria Konyukhova (LSO #52880V)
Tel: (416) 869-5230
Email: mkonyukhova@stikeman.com

Philip Yang (LSO #820840)
Tel: (416) 869-5593
Email: pyang@stikeman.com

Lawyers for the Applicants