

**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
BZAM LTD., BZAM HOLDINGS INC, BZAM CANNABIS CORP., FOLIUM LIFE
SCIENCE INC., 102172093 SASKATCHEWAN LTD., THE GREEN ORGANIC
DUTCHMAN LTD., MEDICAN ORGANIC INC., HIGH ROAD HOLDING CORP.
FINAL BELL CORP. AND 1001028579 ONTARIO INC.**

Applicants

**FACTUM OF THE APPLICANTS
(Returnable January 13, 2025)**

January 10, 2025

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TO: THE SERVICE LIST

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PART I: OVERVIEW

1. The Applicants seek relief under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"), to, *inter alia*, implement the sale of the Edmonton Property (as defined below) and authorize the distribution of the proceeds related thereto. The Applicants also seek certain ancillary relief, including extending the stay of proceedings, sealing certain confidential information from the public record, and approving the Monitor's Reports (as defined below) and the Monitor's activities therein.

2. The sale of the Edmonton Property is proposed to be effectuated pursuant to an approval and vesting order (the "**Edmonton Property AVO**"). Among other things, the proposed Edmonton Property AVO:

- (a) approves the agreement of purchase and sale dated January 6, 2025 (the "**Purchase Agreement**") among BZAM Cannabis Corp. ("**BZAM Cannabis**"), as vendor, and 2627411 Alberta Ltd. (the "**Purchaser**"), as purchaser, *nunc pro tunc*, and the transaction contemplated thereby (the "**Edmonton Property Transaction**"), inclusive of minor amendments the Applicants and the Purchaser, with the consent of the Monitor (as defined below), may deem necessary;
- (b) authorizes and directs BZAM Cannabis to perform its obligations under the Purchase Agreement and to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Edmonton Property Transaction;
- (c) vests in the Purchaser all of BZAM Cannabis' right, title and interest in and to the assets described in the Purchase Agreement, including the lands and premises

municipally described as 8770 24th Street, Sherwood Park, Alberta and certain equipment and non-cannabis inventory located therein (collectively, the "**Edmonton Property**"), free and clear of any Encumbrances other than the Permitted Encumbrances (each as defined in the Edmonton Property AVO); and

- (d) authorizes and directs BZAM Cannabis to distribute the Proceeds (as defined below) to: (y) Avison Young Commercial Real Estate Services, LP ("**Avison Young**"), as full satisfaction of its Broker Fee under the Listing Agreement (each as defined below), and (z) Cortland, as partial repayment of the indebtedness owing by the Applicants to Cortland (together, the "**Proceeds Distributions**"), which shall be applied by Cortland to repay such indebtedness in accordance with the terms of the DIP Loan.

3. The Applicants intend to seek ancillary relief pursuant to a proposed Order (the "**Ancillary Order**"), which, among other things:

- (a) grants an extension of the Stay Period (as defined below) to and including March 31, 2025 (the "**Stay Extension**");
- (b) seals the Settlement Agreement (as defined below), the Confidential Supplement to the Second Report of the Monitor dated April 16, 2024 (the "**Confidential Supplement**"), and the Confidential Appendix to the Eighth Report (as defined below) (the "**Confidential Appendix**"); and
- (c) approving the Supplement to the Seventh Report of the Monitor dated December 2, 2024 (the "**Supplemental Report**"), the Confidential Supplement, and the Eighth Report of the Monitor dated January 9, 2025 (the "**Eighth Report**"), and together

with the Confidential Supplement and the Supplemental Report, the "**Monitor's Reports**"), and the activities of the Monitor described therein.

4. If approved, the Purchase Agreement will result in a value maximizing outcome for the Applicants and their stakeholders and will allow the contractual parties to close the Edmonton Property Transaction (if approved) without further delay. Due to the limited interest received in respect of the Edmonton Property, the proposed Edmonton Property Transaction represents the most commercially reasonable option available to the Applicants.

5. The relief sought under the proposed Edmonton Property AVO and the proposed Ancillary Order is supported by the Monitor and the DIP Lender, and is appropriate in the circumstances.

PART II: FACTS

6. The facts underlying this motion are more fully set out in the affidavit of Matthew Milich sworn January 8, 2025 (the "**Milich Affidavit**").¹ All capitalized terms used but not defined herein have the meanings ascribed to them in the Milich Affidavit.

A. Background to and Developments in these CCAA Proceedings

7. BZAM is the ultimate parent company to several companies in the cannabis industry in Canada.² Through its subsidiaries, its business and operations focus on the production and sale of various cannabis products.³

8. Facing significant liquidity issues, the Applicants were granted CCAA protection by an order of the Ontario Superior Court of Justice (Commercial List) on February 28, 2024 (the "**Initial**

¹ Affidavit of Matthew Milich sworn on January 8, 2025 [Milich Affidavit], Motion Record of the Applicants dated January 8, 2025 at Tab 2 [Motion Record].

² Milich Affidavit, *ibid* at para 6, Motion Record at Tab 2.

³ Milich Affidavit, *ibid*, Motion Record at Tab 2.

Order").⁴ The Initial Order, among other things, appointed FTI as the Monitor in these CCAA Proceedings and granted an initial stay of proceedings in favour of the Applicants, the Non-Applicant Stay Parties and their respective directors and officers until and including March 8, 2024 (the "**Stay Period**").⁵

9. On March 8, 2024, the Applicants obtained an amended and restated Initial Order, which, *inter alia*, extended the Stay Period to and including May 25, 2024.⁶

10. In an effort to identify and implement a value-maximizing transaction, the Applicants sought and, on March 8, 2024, obtained the SISP Approval Order, which, among other things, authorized and approved a sale and investment solicitation process (the "**SISP**"), in which a share subscription agreement (the "**Stalking Horse Subscription Agreement**") between BZAM and 1000816625 Ontario Inc. (the "**Stalking Horse Purchaser**") served as the Stalking Horse Bid.⁷ As discussed below, following a determination that none of the letters of intent received by the Applicants and the Monitor constituted Qualified LOIs (as defined under the SISP), the SISP was terminated and the Stalking Horse Transaction was recognized as the successful bid.⁸

11. The Applicants intended to seek approval of the Stalking Horse Subscription Agreement and the Stalking Horse Transaction following the termination of the SISP; however, they postponed seeking such approval several times due to the litigation between Final Bell Holdings International Ltd. ("**Final Bell**"), Cortland and the Applicants which has since been resolved.⁹

⁴ Milich Affidavit, *ibid* at para 7, Motion Record at Tab 2.

⁵ Milich Affidavit, *ibid* at para 8, Motion Record at Tab 2.

⁶ Milich Affidavit, *ibid* at para 9, Motion Record at Tab 2.

⁷ Milich Affidavit, *ibid* at para 10, Motion Record at Tab 2.

⁸ Milich Affidavit, *ibid* at para 19, Motion Record at Tab 2.

⁹ Milich Affidavit, *ibid* at para 32, Motion Record at Tab 2.

Accordingly, the Stay Period has been extended five times during the pendency of these CCAA Proceedings, including most recently to and including January 13, 2025.¹⁰

B. Final Bell Litigation

12. The litigation between Final Bell, Cortland and the Applicants has been consensually resolved pursuant to a settlement agreement dated December 13, 2024 (the "**Settlement Agreement**").¹¹

13. On March 18, 2024, Final Bell served a notice of motion in support of a rescission claim made in respect of a share exchange agreement entered into between BZAM, Final Bell and Final Bell Canada Inc.¹² Final Bell subsequently abandoned its rescission claim, and sought in the alternative, among other things: (i) equitable damages in lieu of rescission, and (ii) a declaration that such damages are subject to a constructive trust (the "**Amended Claim**").¹³

14. In response to the Amended Claim, Cortland brought a motion seeking a declaration that the claims of Final Bell against the Applicants in relation to the assets of the Applicants or the sale proceeds related thereto were subordinate to Cortland's secured interest in such assets and proceeds (the "**Threshold Motion**").¹⁴ On December 2, 2024, the Honourable Justice Osborne issued an Endorsement granting the Threshold Motion (the "**Endorsement**").¹⁵

15. Following the determination of the Threshold Motion, the litigation parties engaged in settlement discussions that ultimately led to the execution of the Settlement Agreement.¹⁶ Pursuant

¹⁰ Milich Affidavit, *ibid* at para 15, Motion Record at Tab 2.

¹¹ Milich Affidavit, *ibid* at para 32, Motion Record at Tab 2.

¹² Milich Affidavit, *ibid* at para 33, Motion Record at Tab 2.

¹³ Milich Affidavit, *ibid*. Motion Record at Tab 2.

¹⁴ Milich Affidavit, *ibid* at para 34, Motion Record at Tab 2.

¹⁵ Milich Affidavit, *ibid* at para 35, Motion Record at Tab 2.

¹⁶ Milich Affidavit, *ibid* at para 36, Motion Record at Tab 2.

to the terms of the Settlement Agreement, Final Bell agreed not to appeal the decision underlying the Endorsement and consented to the dismissal of the Amended Claim.¹⁷

C. Conduct and Outcome of the SISP

16. The Applicants developed the SISP, in consultation with the Monitor, to solicit interest in the sale of, or investment in, all or part of the Applicants' assets and business.¹⁸ The SISP was intended to be a flexible process to maximize value for the Applicants' many stakeholders through a broad canvassing of the market.¹⁹ To make the process more competitive and increase certainty, the SISP included a Stalking Horse Bid which set an appropriate floor for prospective bidders.²⁰

17. Pursuant to the SISP, each potential bidder that wished to submit a bid was required to deliver a letter of intent (a "**LOI**") by no later than April 8, 2024 (the "**Deadline**").²¹ JL Legacy Ltd. (a party related to the Purchaser, "**JL Legacy**") was the only interested party that submitted a letter of intent for the Edmonton Property (the "**JL LOI**").²² Notwithstanding the foregoing, the consideration contemplated under the JL LOI, by itself or coupled with the other letters of intent received, was considerably lower than the total consideration contemplated under the Stalking Horse Bid.²³ As such, the JL LOI was not considered a Qualified LOI.²⁴

18. Despite the Applicants and the Monitor's extensive marketing efforts, it was determined that no Qualified LOIs were received by the Deadline.²⁵ Accordingly, the SISP was terminated and the Stalking Horse Bid was deemed to be the successful bid.²⁶

¹⁷ Milich Affidavit, *ibid*, Motion Record at Tab 2.

¹⁸ Milich Affidavit, *ibid* at para 16, Motion Record at Tab 2.

¹⁹ Milich Affidavit, *ibid*, Motion Record at Tab 2.

²⁰ Milich Affidavit, *ibid* at para 10, Motion Record at Tab 2.

²¹ Milich Affidavit, *ibid* at para 18, Motion Record at Tab 2.

²² Milich Affidavit, *ibid*, Motion Record at Tab 2.

²³ Milich Affidavit, *ibid*, Motion Record at Tab 2.

²⁴ Milich Affidavit, *ibid*, Motion Record at Tab 2.

²⁵ Milich Affidavit, *ibid* at para 19, Motion Record at Tab 2.

²⁶ Milich Affidavit, *ibid*, Motion Record at Tab 2.

D. Purchase Agreement

19. Pursuant to the proposed Edmonton Property AVO, the Applicants are seeking, among other things, approval of the sale and purchase of the Edmonton Property.²⁷

20. Initially, the Stalking Horse Purchaser intended to sell the Edmonton Property to the Purchaser following the completion of these CCAA Proceedings.²⁸ However, due to the delays associated with seeking approval of the Stalking Horse Transaction, the Stalking Horse Purchaser and the Purchaser informed the Applicants that they wished to move forward with a separate transaction to avoid any further interruptions or delays.²⁹

21. Pursuant to the terms of the Purchase Agreement, BZAM Cannabis has agreed to sell, assign, convey and transfer to the Purchaser, and the Purchaser has agreed to purchase, the Edmonton Property, free and clear of all Encumbrances, other than the Permitted Encumbrances,³⁰ for a purchase price of \$8,550,000.³¹ The purchase price will be satisfied by: (i) the application of two deposits totaling \$3,300,000 (the "**Proceeds**"), which are currently being held in escrow by the Monitor and the Applicants, (ii) a vendor mortgage in the amount of \$250,000 granted in favour of TGOD, and (iii) the assumption of the existing mortgage (with a principal value of \$5,000,000), plus certain adjustments as contemplated in the Purchase Agreement.³²

22. The Purchaser and the Applicants intend to close the Edmonton Property Transaction, if approved, as soon as reasonably feasible. The Purchase Agreement contemplates that the Edmonton Property Transaction will close (subject to the approval of this Court) within ten

²⁷ Milich Affidavit, *ibid* at para 21, Motion Record at Tab 2.

²⁸ Milich Affidavit, *ibid* at para 23, Motion Record at Tab 2.

²⁹ Milich Affidavit, *ibid*, Motion Record at Tab 2.

³⁰ As of the date of the Milich Affidavit, all encumbrances registered against the title were included as "Permitted Encumbrances" under the Purchase Agreement.

³¹ Milich Affidavit, *ibid* at para 27, Motion Record at Tab 2.

³² Milich Affidavit, *ibid*, Motion Record at Tab 2.

business days following the issuance of the Edmonton Property AVO, unless the contracting parties otherwise agree to extend such date.³³

23. Prior to the commencement of these CCAA Proceedings, BZAM Cannabis entered into a listing agreement (the "**Listing Agreement**") with Avison Young, as its broker, to sell the Edmonton Property.³⁴ Pursuant to the terms of the Listing Agreement, Avison Young is entitled to a commission of 3.0% of the gross sale price plus tax (the "**Broker Fee**") if the Edmonton Property is sold during the Listing Agreement's term.³⁵ The Listing Agreement has automatically renewed pursuant to its terms, and Avison Young has continued to provide services, during the pendency of these CCAA Proceedings.³⁶ It is expected that the Edmonton Property Transaction will close (if approved) during the Listing Agreement's term.³⁷

E. The Stay of Proceedings

24. The Stay Period is currently set to expire on January 13, 2025.³⁸ Pursuant to the proposed Ancillary Order, the Applicants are seeking to extend the Stay Period to and including March 31, 2025.³⁹

25. The revised cash flow forecast demonstrates that the Applicants will have sufficient liquidity to fund their obligations and the costs of these CCAA Proceedings throughout the Stay Period.⁴⁰ The revised cash flow forecast is attached as Appendix "A" to the Eighth Report.⁴¹

³³ Milich Affidavit, *ibid*, Motion Record at Tab 2.

³⁴ Milich Affidavit, *ibid* at para 28, Motion Record at Tab 2.

³⁵ Milich Affidavit, *ibid*, Motion Record at Tab 2.

³⁶ Milich Affidavit, *ibid* at para 29, Motion Record at Tab 2.

³⁷ Milich Affidavit, *ibid* at para 30, Motion Record at Tab 2.

³⁸ Milich Affidavit, *ibid* at para 50, Motion Record at Tab 2.

³⁹ Milich Affidavit, *ibid*, Motion Record at Tab 2.

⁴⁰ Milich Affidavit, *ibid* at para 53, Motion Record at Tab 2; The Eighth Report of the Monitor dated January 9, 2025 at para 53 [Monitor's Report].

⁴¹ Monitor's Report, *ibid*, at Appendix "A".

PART III: ISSUES

26. The issues to be considered on this motion are whether this Court should:
- (a) approve the Purchase Agreement and the Edmonton Property Transaction, including the Proceeds Distributions;
 - (b) approve the Stay Extension;
 - (c) grant the sealing of the Confidential Supplement, Confidential Appendix and the Settlement Agreement; and
 - (d) approve the Monitor's Reports.

PART IV: LAW AND ANALYSIS

A. The Edmonton Property Transaction Should be Approved

27. Section 36 of the CCAA authorizes this Court to approve a sale of a debtor company's assets outside of the ordinary course of business.⁴² In deciding whether to authorize such sale, subsection 36(3) of the CCAA requires courts to consider the following non-exhaustive factors:

- (a) whether the process leading to the proposed sale was reasonable in the circumstances;
- (b) whether the monitor approved the process leading to the proposed sale;
- (c) whether the monitor filed a report stating that in its opinion the proposed sale would be more beneficial to creditors than a sale or disposition under a bankruptcy;
- (d) the extent to which creditors were consulted;

⁴² [Companies' Creditors Arrangement Act](#), RSC 1985, c C-36, s 36 [CCAA].

- (e) the effects of the proposed sale on the creditors and other interested parties; and
- (f) whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.⁴³

28. The section 36(3) factors set out above are generally considered concurrently with those articulated in *Royal Bank v Soundair* ("**Soundair**"):

- (a) whether sufficient effort has been made to obtain the best price and that the debtor has not acted improvidently;
- (b) the efficacy and integrity of the process by which offers have been obtained;
- (c) whether the interests of all parties have been considered; and
- (d) whether there has been unfairness in the working out of the process.⁴⁴

29. Applied here, the factors enumerated in both subsection 36(3) of the CCAA and *Soundair* support the approval of the Edmonton Property Transaction and the granting of the Edmonton Property AVO:

- (a) ***The SISP was Extensive, Reasonable and Fair*** – the Purchase Agreement and the Edmonton Property Transaction are the culmination of: (i) the SISP developed by the Applicants, in consultation with the Monitor, which provided a flexible and equitable process for canvassing the market, in which no offers for the Edmonton Property (other than the JL LOI) were received; (ii) the Monitor's extensive efforts to solicit interest in the Applicants' business and assets, including through the preparation of marketing materials and engagement with prospective non-related

⁴³ *CCAA*, *ibid* at s 36(1).; *BBB Canada Inc.*, [2023 ONSC 2308](#) at [para 10](#) [BBB].

⁴⁴ *Royal Bank v Soundair Corp.*, [1991 46 OAC 321](#) at para 16; *Target Canada Co. (Re)*, [2015 ONSC 1487](#) at paras [14-17](#); see also *Pride Group Holdings Inc et al.*, [2024 ONSC 7053](#) at paras [14, 25](#).

third-party purchasers; and (iii) extensive negotiation and discussions between the Applicants and the Purchaser, in consultation with the Monitor and the DIP Lender.⁴⁵ Notably, the Purchaser and JL Legacy are independent third parties and not related to the Applicants or the Stalking Horse Purchaser;

- (b) ***The Monitor Supported and Conducted the SISP*** – the Monitor was actively engaged in the development of the SISP, supported its approval, and conducted an extensive process to solicit interest in the Applicants' business and assets, which included the Edmonton Property.⁴⁶ The Monitor supports the Edmonton Property Transaction, and views this transaction as more beneficial than a liquidation.⁴⁷ The Monitor's views are entitled to considerable deference from this Court,⁴⁸
- (c) ***The Edmonton Property Transaction Contemplates the Highest Consideration*** – the letter of intent submitted by JL Legacy was the only demonstration of interest received by the Applicants and the Monitor in respect of the Edmonton Property.⁴⁹ As such, the consideration offered under the Purchase Agreement is the highest and best offer. The Applicants did not act improvidently, and worked alongside the Monitor, and consulted with the DIP Lender where appropriate, to ensure a fair and equitable process,⁵⁰
- (d) ***The Edmonton Property Transaction is in the Best Interests of the Applicants' Creditors*** – the Edmonton Property Transaction is supported by the DIP Lender

⁴⁵ Milich Affidavit, *supra* note 1 at paras 16, 22, Motion Record at Tab 2; See also the Confidential Supplement to the Second Report of the Monitor dated April 16, 2024.

⁴⁶ Milich Affidavit, *ibid*, Motion Record at Tab 2; Monitor's Report, *supra* note 40 at para 27.

⁴⁷ Monitor's Report, *ibid* at para 37.

⁴⁸ [BBB](#), *supra* note 43 at [para 13](#); *AbitibiBowater inc. (Arrangement relatif à)*, [2010 QCCS 1742](#) at paras [70-72](#).

⁴⁹ Milich Affidavit, *supra* note 1 at para 18, Motion Record at Tab 2.

⁵⁰ Milich Affidavit, *ibid* at para 19, Motion Record at Tab 2; Monitor's Report, *supra* note 40 at para 27.

and the Stalking Horse Purchaser, the two stakeholders with the greatest remaining economic interest in the Applicants' business and assets.⁵¹ The Purchase Agreement contemplates an "as is, where is" sale of the property, reducing closing risks and providing additional certainty for the applicable stakeholders.⁵² Additionally, the distribution to Cortland allows the Applicants to pay off a portion of the DIP Loan in advance, reducing monthly interest payments and other carrying costs;⁵³ and

- (e) ***The SISP Provided for Meaningful Creditor Consultation*** – the SISP provided for fulsome consultation with the DIP Lender and the Stalking Horse Purchaser. The decision to terminate the SISP was done on Cortland's consent.⁵⁴

30. For these reasons, the Applicants respectfully submit that the Court should grant the Edmonton Property AVO.

B. The Proceeds Distributions Should be Approved

31. If the Purchase Agreement is approved and the Edmonton Property Transaction closes, the proposed Edmonton Property AVO authorizes BZAM Cannabis to distribute the Proceeds to Avison Young and Cortland. It is well established that the broad discretion conferred under section 11 of the CCAA permits courts to approve interim or final distributions to secured or unsecured creditors absent a plan of compromise or arrangement.⁵⁵

⁵¹ Milich Affidavit, *ibid* at para 46(e), Motion Record at Tab 2; Monitor's Report, *supra* note 40 at para 27.

⁵² Milich Affidavit, *ibid*, Appendix "G", Motion Record at Tab 2(G); Monitor's Report, *ibid* at para 27.

⁵³ Milich Affidavit, *ibid* at para 46(d), Motion Record at Tab 2.

⁵⁴ Milich Affidavit, *ibid* at para 19, Motion Record at Tab 2.

⁵⁵ [CCAA](#), *supra* note 42 s 11; *Re Nortel Networks Corporation et al*, [2014 ONSC 4777](#), *ibid* at paras [54-58](#); *AbitibiBowater inc. (Arrangement relatif à)*, [2009 OCCC 6461](#) at para [71](#).

32. The Applicants submit that it is appropriate, and consistent with the CCAA's remedial objectives, for this Court to authorize the proposed Proceeds Distributions given that:

- (a) the Proceeds Distributions will be made only from the proceeds of the Edmonton Property Transaction and will not materially prejudice any other stakeholder;
- (b) Avison Young provided post-filing services to BZAM Cannabis in accordance with its obligations under the Listing Agreement, which is still in effect. As such, the distribution to Avison Young is reasonable in the circumstances;⁵⁶
- (c) the Proceeds Distribution to Cortland is effectively a partial pre-payment of the cash consideration that will be owed upon the consummation of the Stalking Horse Transaction and does not prejudice the interests of other creditors;⁵⁷
- (d) given that the Stalking Horse Transaction is structured to only repay the outstanding obligations of Cortland, the other creditors of the Applicants are no worse off by the Proceeds Distributions than they would be under a similar distribution order upon the consummation of the Stalking Horse Transaction;
- (e) the Proceeds Distributions are supported by the Monitor and the DIP Lender;⁵⁸ and
- (f) the Applicants are not aware of any opposition to the Proceeds Distributions.⁵⁹

⁵⁶ Milich Affidavit, *supra* note 1 at para 29, Motion Record at Tab 2; Monitor's Report, *supra* note 40 at para 36.

⁵⁷ Milich Affidavit, *ibid* at para 48, Motion Record at Tab 2; Monitor's Report, *ibid* at para 38.

⁵⁸ Milich Affidavit, *ibid* at para 46, Motion Record at Tab 2; Monitor's Report, *ibid* at paras 37-38.

⁵⁹ See for example: [LoyaltyOne, Re. \(July 5, 2023\) ONSC \(Commercial List\), Court File No CV-23-00696017-00CL \(Stay Extension and Distribution Order\) \(Steele, J\)](#); [Greenspace Brands Inc, Re \(June 15, 2023\) ONSC \(Commercial List\), Court File No CV-23-00697516-00CL \(Ancillary Relief Order\) \(McEwen, J\)](#); [BioSteel Sports Nutrition Inc et al. \(December 14, 2023\) ONSC \(Commercial List\), Court File No CV-23-00706033-00CL \(Distribution, Stay Extension and Expansion of Powers Order\) \(Steele, J\)](#).

33. As such, this Court has jurisdiction to approve the Proceeds Distributions and the Applicants respectfully submit that it is appropriate and in the best interests of BZAM Cannabis, the other Applicants and their stakeholders to do so in the circumstances.

C. The Stay of Proceedings Should be Extended

34. The Stay Period is currently set to expire on January 13, 2025.⁶⁰ Subsection 11.02(2) of the CCAA expressly authorizes this Court to grant an extension of the stay of proceedings for "any period that the court considers necessary."⁶¹ To grant such an extension, this Court must be satisfied that circumstances exist that make the order appropriate and that the Applicants have acted, and are acting, in good faith and with due diligence.⁶² There is no statutory limit on how long a stay of proceedings can be extended.

35. An extension of the stay of proceedings will be appropriate where it advances the purposes of the CCAA. Some of these purposes includes enabling the continuation of the applicant's business, facilitating a value maximizing restructuring, and avoiding the social and economic effects of bankruptcy.⁶³

36. In this case, the proposed Stay Extension is appropriate in the circumstances given that:

- (a) the Applicants have and continue to act in good faith and with due diligence to, among other things, stabilize their business, advance their restructuring efforts, and identify and implement value-maximizing transactions;⁶⁴

⁶⁰ Milich Affidavit, *supra* note 1 at para 50, Motion Record at Tab 2.

⁶¹ [CCAA](#), *supra* note 42, s [11.02\(2\)](#).

⁶² [CCAA](#), *ibid* s [11.02\(2\)](#); *Harte Gold Corp. (Re)*, [2022 ONSC 653](#) at [para 87](#).

⁶³ *Century Services Inc. v. Canada (Attorney General)*, [2010 SCC 60](#) at [para 15](#); *Target Canada Co. (Re)*, [2015 ONSC 303](#) at [para 8](#); *Heritage Cannabis Holdings Corp. et al.* (June 26, 2024) ONSC (Commercial List), Court File No. CV-24-00717664-00CL ([Endorsement of the Hourable Justice Osborne](#)) at para 13.

⁶⁴ Milich Affidavit, *supra* note 1 at para 52; Motion Record at Tab 2; Monitor's Report, *supra* note 40 at para 56(b).

- (b) the proposed Stay Extension will afford the Applicants the breathing space and stability required to close the Edmonton Property Transaction (if approved) and address post-closing matters related thereto;⁶⁵
- (c) the proposed Stay Extension will allow the Applicants and the Stalking Horse Purchaser to finalize the terms of the amended Stalking Horse Subscription Agreement and seek approval thereof, which the Monitor believes is the best result for the Applicants and their stakeholders;⁶⁶
- (d) the proposed Stay Extension will allow the Applicants to take steps towards terminating these CCAA Proceedings;⁶⁷ and
- (e) the Monitor, the DIP Lender and the Stalking Horse Purchaser are supportive of the proposed Stay Extension and the Monitor does not believe that any creditor will be prejudiced by such extension.⁶⁸

37. Taken together, the Applicants submit that the proposed Stay Extension is in the best interests of the Applicants and their stakeholders, is consistent with the purposes of the CCAA, and is appropriate in the circumstances.

D. Sealing the Confidential Documents Should be Approved

38. Subsection 137(2) of the *Courts of Justice Act*, R.S.O. 1990, c. C. 43 provides that a court may order that any document filed in a civil proceeding be treated as confidential, sealed and not form part of the public record.

⁶⁵ Milich Affidavit, *ibid*, Motion Record at Tab 2.

⁶⁶ Milich Affidavit, *ibid*, Motion Record at Tab 2; Monitor's Report, *supra* note 40 at para 56(c).

⁶⁷ Milich Affidavit, *ibid*, Motion Record at Tab 2; Motion Record at Tab 2.

⁶⁸ Milich Affidavit, *ibid* at para 41; Motion Record at Tab 2; Monitor's Report, *supra* note 40 at para 56(b).

39. In *Sherman Estate v. Donovan*, the Supreme Court of Canada recast the test to be used by a court when considering whether a sealing order should be granted.⁶⁹ The test requires the moving party to establish the following factors:

- (a) court openness poses a serious risk to an important public interest;
- (b) the order sought is necessary to prevent this serious risk to the identified interest because reasonably alternative measures will not prevent this risk; and
- (c) as a matter of proportionality, the benefits of the order outweigh its negative effects.⁷⁰

40. The Applicants request that the following documents be treated as confidential and sealed, and not form part of the public record: (i) the Settlement Agreement, which contains confidential settlement terms between the Applicants, Cortland and Final Bell; (ii) the Confidential Appendix, which discusses certain confidential terms of the Settlement Agreement; and (iii) the Confidential Supplement, which contains commercially sensitive information, including the economic terms of the LOIs received by the Monitor and the Applicants.⁷¹

1. The Settlement Agreement and the Confidential Appendix Should be Sealed

- (a) **Public Interest** – the Court of Appeal for Ontario has recognized the strong public interest in the settlement of disputes and the avoidance of litigation.⁷² The Settlement Agreement contains confidentiality provisions that require the terms of the agreement to be kept confidential, and such confidentiality provisions were

⁶⁹ [2021 SCC 25](#) at [para 38](#) [Sherman Estate]; *Sierra Club of Canada v. Canada (Minister of Finance)*, [2002 SCC 41](#).

⁷⁰ [Sherman Estate](#), *ibid.*

⁷¹ Milich Affidavit, *supra* note 1 at para 56; Motion Record at Tab 2.

⁷² *Crystallex International Corporation (Re)*, (January 15, 2019), Ont. S.C.J. [Commercial List], Court File No. CV-11-9532-00CL ([Endorsement of Justice Hainey](#)); *Hollinger Inc, Re*, [2011 ONCA 579](#) at [para 18](#).

relied upon by the settlement parties in executing such agreement in order to protect commercially sensitive information.⁷³ Since Cortland is the only secured creditor expected to see any material recovery in these CCAA Proceedings, the specific terms of the Settlement Agreement should be of no consequence to the Applicants' other stakeholders;

- (b) ***Lack of a Reasonable Alternative*** – there is no reasonable alternative to a sealing order in the circumstances. The parties relied upon the confidentiality provisions to enter into and negotiate the Settlement Agreement. There is no alternative which adequately protects the contractual parties' interests, or the confidential information contained within the Settlement Agreement;⁷⁴
- (c) ***Proportionality*** – CCAA courts have approved sealing orders where the information over which confidentiality is sought to be maintained is "discrete, proportional, and limited."⁷⁵ Here, the Applicants are only seeking to temporarily seal the Settlement Agreement and the Confidential Appendix, which can be lifted upon further Order of this Court. In light of the strong policy reasons that support sealing settlement agreements in the litigation context, the benefits of the sealing order here outweigh any deleterious effects.

2. The Confidential Supplement Should be Sealed

41. The Confidential Supplement contains commercially sensitive information – namely, the identities of the parties who submitted the LOIs received by the Applicants and the Monitor, and

⁷³ Milich Affidavit, *supra* note 1 at para 56; Motion Record at Tab 2; *Original Traders Energy Ltd. (Re)*, (January 30, 2023), Ont. S.C.J. [Commercial List], Court File No. CV-23- 00693758-00CL ([Endorsement of Justice Osborne](#)) at para 60 [*Original Traders*].

⁷⁴ *Original Traders*, *ibid* at para 62; *Bombardier Inc. v. Union Carbide Canada Inc.*, 2014 SCC 35 at para 49.

⁷⁵ *Original Traders*, *ibid* at para 63.

the scope, economic terms and subject of each proposal.⁷⁶ The factors set out by the Supreme Court in *Sherman Estate v Donovan* also support sealing the Confidential Supplement:

- (a) **Public Interest** – Courts have recognized that CCAA proceedings serve important public interests, including maximizing recovery in insolvency proceedings.⁷⁷ In *Danier Leather Inc.*, the Court found that the disclosure of an offer summary prior to the completion of a final transaction under a SISP "would jeopardize value-maximizing dealings with any future prospective purchasers or liquidators of the [debtors'] assets".⁷⁸ Similarly in our circumstances, the information contained in the Confidential Supplement could prejudice the Applicants' ability to secure competitive offers for its business should the Stalking Horse Transaction ultimately not be approved or close, and the Applicants then wish to subsequently sell the Company or its assets under a future sale or liquidation process;
- (b) **Lack of a Reasonable Alternative** – Courts in other CCAA proceedings have granted similar relief, finding that no reasonable alternative to a sealing order exists where declining to grant the proposed order would materially impair the maximization of asset value for the benefit of stakeholders;⁷⁹
- (c) **Proportionality** – as mentioned above, the Applicants are only seeking to temporarily seal the Confidential Supplement until a further Order of this Court.

⁷⁶ Milich Affidavit, *supra* note 1 at para 56; Motion Record at Tab 2.

⁷⁷ *Just Energy Group Inc et al v Morgan Stanley Capital Group Inc et al*, [2022 ONSC 6354](#) at para 72 [Just Energy Group]; *Danier Leather Inc. (Re)*, [2016 ONSC 1044](#) at [paras 82, 84](#) [Danier]; *Lydian International Limited (Re)*, [2020 ONSC 3850](#) at [para 28](#) [Lydian International].

⁷⁸ *Danier*, *ibid* at [para 84](#).

⁷⁹ See also: *Just Energy Group*, *supra* note 77 at para 72; *Lydian International*, *supra* note 77 at [para 28](#); *Danier*, *ibid*.

42. In addition, the proposed sealing of the Confidential Supplement, the Confidential Appendix and the Settlement Agreement is supported by the Monitor. Accordingly, the Applicants respectfully submit that the sealing order is appropriate.

E. The Monitor's Reports Should be Approved

43. It has become a usual practice in CCAA proceedings for a Court-appointed monitor (or an applicant on its behalf) to bring a motion to approve its reports.⁸⁰ This Court has recognized a number of policy and practical reasons for the Court to approve a monitor's activities, including that it:

- (a) allows the monitor to move forward with next steps in the CCAA proceedings;
- (b) brings the monitor's activities before the Court;
- (c) allows an opportunity for the concerns of the stakeholders to be addressed, and any problems to be rectified;
- (d) enables the Court to satisfy itself that the monitor's activities have been conducted in prudent and diligent manners;
- (e) provides protection for the monitor not otherwise provided by the CCAA; and
- (f) protects the creditors from the delay and distribution that would be caused by:
 - (i) re-litigation of steps taken to date, and
 - (ii) potential indemnity claims by the monitor.⁸¹

⁸⁰ *Target Canada Co. (Re)*, 2015 ONSC 7574 at paras 1-2 [Target]; *Laurentian University of Sudbury*, 2022 ONSC 2927 at paras 13-14.

⁸¹ *Target*, *ibid* at para 23.

44. In addition, this Court has advised that the benefit of any approval in respect of a monitor's report and its activities should be limited to the monitor itself and should not extend to the Applicants or other third parties.⁸²

45. The Monitor has continued to demonstrate a diligent and good faith performance of its activities in compliance with both the CCAA and the orders of this Court.⁸³ The proposed Ancillary Order includes the customary restrictions and limits the benefit of such approval to only the Monitor. Moreover, there has been no opposition, formally or otherwise, from any party with respect to the approval of the Monitor's Reports.

46. In light of the aforementioned benefits, the Applicants submit that it is appropriate in the circumstances for this Court to approve the Monitor's Reports and the activities of the Monitor described therein.

PART V: RELIEF REQUESTED

47. The Applicants submit that the relief sought on the within motion is appropriate in the circumstances and respectfully request that the proposed form of Orders be granted.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 10TH DAY OF JANUARY, 2025.

Bennett Jones LLP

BENNETT JONES LLP

⁸² *Target*, *ibid* at para 21; *Nordstrom Canada Retail, Inc.*, 2023 ONSC 4199 at para 22.

⁸³ Milich Affidavit, *supra* note 1 at para 58; Motion Record at Tab 2; Monitor's Report, *supra* note 40 at para 10.

SCHEDULE A – LIST OF AUTHORITIES

Cases Cited

1. [*AbitibiBowater inc. \(Arrangement relatif à\)*, 2009 QCCS 6461](#)
2. [*AbitibiBowater inc. \(Arrangement relatif à\)*, 2010 QCCS 1742](#)
3. [*BBB Canada Inc.*, 2023 ONSC 2308](#)
4. [*Bombardier Inc. v. Union Carbide Canada Inc.*, 2014 SCC 35](#)
5. [*Century Services Inc v Attorney General \(Canada\)*, 2010 SCC 60](#)
6. [*Danier Leather Inc. \(Re\)*, 2016 ONSC 1044](#)
7. [*Hollinger Inc. Re*, 2011 ONCA 579](#)
8. [*Just Energy Group Inc et al v Morgan Stanley Capital Group Inc et al*, 2022 ONSC 6354](#)
9. [*Laurentian University of Sudbury*, 2022 ONSC 2927](#)
10. [*Lydian International Limited \(Re\)*, 2020 ONSC 3850](#)
11. [*Nordstrom Canada Retail, Inc.*, 2023 ONSC 4199](#)
12. [*Pride Group Holdings Inc et al*, 2024 ONSC 7053](#)
13. [*Re Harte Gold Corp*, 2022 ONSC 653](#)
14. [*Re Nortel Networks Corporation et al*, 2014 ONSC 4777](#)
15. [*Royal Bank v Soundair Corp*, 1991 46 OAC 321](#)
16. [*Sherman Estate v. Donovan*, 2021 SCC 25](#)
17. [*Sierra Club of Canada v. Canada \(Minister of Finance\)*, 2002 SCC 41](#)
18. [*Target Canada Co. \(Re\)*, 2015 ONSC 1487](#)
19. [*Target Canada Co. \(Re\)*, 2015 ONSC 303](#)
20. [*Target Canada Co. \(Re\)*, 2015 ONSC 7574](#)

Endorsement and Orders Cited

1. [*BioSteel Sports Nutrition Inc et al*, \(December 14, 2023\) ONSC \(Commercial List\), Court File No CV-23-00706033-00CL \(Distribution, Stay Extension and Expansion of Powers Order\) \(Steele, J\)](#)
2. [*Crystallex International Corporation \(Re\)*, \(January 15, 2019\), Ont. S.C.J. \[Commercial List\], Court File No. CV-11-9532-00CL \(Endorsement of Justice Hainey\)](#)

3. [Greenspace Brands Inc, Re \(June 15, 2023\) ONSC \(Commercial List\), Court File No CV-23-00697516-00CL \(Ancillary Relief Order\) \(McEwen, J\)](#)
4. [Heritage Cannabis Holdings Corp. et al. \(June 26, 2024\) ONSC \(Commercial List\), Court File No. CV-24-00717664-00CL \(Endorsement of the Honourable Justice Osborne\)](#)
5. [LoyaltyOne, Re, \(July 5, 2023\) ONSC \(Commercial List\), Court File No CV-23-00696017-00CL \(Stay Extension and Distribution Order\) \(Steele, J\)](#)
6. [Original Traders Energy Ltd. \(Re\), \(January 30, 2023\), Ont. S.C.J. \[Commercial List\], Court File No. CV-23-00693758-00CL \(Endorsement of Justice Osborne\)](#)

I certify that I am satisfied as to the authenticity of every authority.

Dated: January 10, 2025



Signature

SCHEDULE B – STATUTES AND REGULATIONS RELIED ON

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

Section 11

General power of court

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

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

Section 11.02

Stays, etc. – initial application

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

- (a) staying, until otherwise ordered by the court, all proceedings taken or that might be taken in respect of the company under the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act*;
- (b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and
- (c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

Stays, etc. — other than initial application

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

- (a) staying, until otherwise ordered by the court, for any period that the court considers necessary, all proceedings taken or that might be taken in respect of the company under an Act referred to in paragraph (1)(a);
- (b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and
- (c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

Burden of proof on application

(3) The court shall not make the order unless

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

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

Restriction

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

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

Section 36

Restriction on disposition of business assets

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

Notice to creditors

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

Factors to be considered

(3) In deciding whether to grant the authorization, the court is to consider, among other things,

(a) whether the process leading to the proposed sale or disposition was reasonable in the circumstances;

(b) whether the monitor approved the process leading to the proposed sale or disposition;

(c) whether the monitor filed with the court a report stating that in their opinion the sale or disposition would be more beneficial to the creditors than a sale or disposition under a bankruptcy;

(d) the extent to which the creditors were consulted;

(e) the effects of the proposed sale or disposition on the creditors and other interested parties; and

(f) whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.

Additional factors — related persons

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

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

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

Related persons

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

(a) a director or officer of the company;

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

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

Assets may be disposed of free and clear

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

Restriction — employers

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

Restriction — intellectual property

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

**IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. Court File No.: CV-24-00715773-00CL
1985, c. C-36, AS AMENDED AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF BZAM LTD., BZAM HOLDINGS INC., BZAM CANNABIS CORP.,
FOLIUM LIFE SCIENCE INC., 102172093 SASKATCHEWAN LTD., THE GREEN
ORGANIC DUTCHMAN LTD., MEDICAN ORGANIC INC., HIGH ROAD HOLDING
CORP., FINAL BELL CORP. AND 1001028579 ONTARIO INC.**

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

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