

**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

FACTUM OF THE APPLICANTS

June 14, 2023

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TO: THE SERVICE LIST

PART I - OVERVIEW¹

1. FFHC, through its wholly owned subsidiaries, is an independent cannabis retail chain with 91 retail stores open across Canada as of June 5, 2023. 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.

2. As a result of the Applicants' financial difficulties, the Applicants sought and obtained relief under the CCAA pursuant to the Initial Order dated June 5, 2023. The Initial Order, among other things:

- (a) appointed FTI as Monitor of the Applicants;
- (b) granted a Stay of Proceedings in favour of the Applicants until and including June 15, 2023;
- (c) approved the execution of the DIP Facility Agreement, pursuant to which the Applicants were authorized to borrow up to the Initial Advance of \$2.7 million, and granted the corresponding DIP Lender's Charge in the amount of the Initial Advance; and
- (d) granted the Administration Charge in the amount of \$600,000 and the D&O Charge in the amount of \$2.8 million.

3. The Applicants are now seeking:

- (a) an Amended and Restated Initial Order (the "**ARIO**") granting, among other things:
 - (i) approval of the KERP and granting a corresponding KERP Charge against the Property as for security for payments under the KERP;
 - (ii) a sealing order in respect of the unredacted KERP;
 - (iii) authority for the Applicants to increase the amounts which may be borrowed by the Applicants under DIP Facility Agreement to \$9.8 million;

¹ Capitalized terms used herein and not otherwise defined have the meanings ascribed to them in the affidavit of Stephane Trudel sworn June 5, 2023 (the "**Initial Trudel Affidavit**") and the affidavit of Stephane Trudel sworn June 13, 2023 (the "**Second Trudel Affidavit**").

- (iv) authority for the Applicants to pay pre-filing amounts owing to Critical Suppliers, with the consent of the Monitor, in the maximum aggregate amount of \$250,000;
 - (v) authority for the Applicants to incur no further expenses in relation to the Securities Filings that may be required by the Securities Provisions and declare that none of the D&Os, employees, and other representatives of the Applicants or the Monitor in these CCAA Proceedings (and its directors, officers, employees and representatives) shall have any personal liability for any failure by the Applicants to make the Securities Filings;
 - (vi) an extension of the time limit to call and hold the AGM scheduled for June 22, 2023 until after the conclusion of the CCAA proceedings, subject to further order of this Court;
 - (vii) the following priority Charges against the Property and increasing the Charges (where applicable) granted in the Initial Order (ordered in priority):
 - (1) First – the Administration Charge in the amount of \$600,000;
 - (2) Second – an increase to the DIP Lender’s Charge to \$9.8 million;
 - (3) Third – the D&O Charge in the amount of \$2.8 million; and
 - (4) Fourth – a new KERP Charge in the amount of \$1.16 million;
- (b) the SISP Order granting, among other things:
- (i) approval of the SISP in a form substantially similar to the form attached as Schedule “A” to the SISP Order;
 - (ii) authority for the Applicants and the Monitor to immediately commence the SISP;
 - (iii) authority and direction to the Monitor, the Applicants, and their respective affiliates, partners, employees, advisors and agents (collectively, the

“Assistants”) 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 the SISP Order; and

- (iv) approving the Stalking Horse Agreement to be entered into between the Applicants and ACT Investor (in such capacity, the **“Stalking Horse Bidder”**) solely for the purpose of constituting the **“Stalking Horse Bid”** under the SISP.

4. The increase in the DIP Facility is necessary to finance the ongoing operations of the Applicants during these CCAA Proceedings and their restructuring activities, including pursuit of the SISP. In addition to approving the DIP Facility and DIP Lender’s Charge, the proposed ARIO grants other customary relief to the Applicants, extends the Stay Period through the period the SISP is to be conducted, approves a KERP designed to incentivize Key Employees to remain with the Applicants through to the closing of the transaction to be identified by the SISP, and grants a corresponding KERP Charge in favour of the Key Employees.

5. The SISP and the transaction to be identified through it represents the central focus of these CCAA Proceedings.

6. The SISP has been designed by the Applicants and the Monitor to allow the Applicants to canvass the market in an effort to identify the highest or otherwise best available transaction for the Applicants’ business.

7. Importantly, ACT Investor has agreed to serve as the Stalking Horse Bidder in the SISP such that the continuation of the Applicants’ business is assured from the outset of these proceedings. As such, the primary goal of the SISP is to determine whether there is an alternative bidder who is prepared to pay greater value for the Applicants’ business – in particular, in an amount that will satisfy the secured debt owing to ACT Investor and provide value to junior stakeholders.

8. The relief being sought is supported by the Monitor and ACT Investor (both in its capacity as the major secured creditor of the Applicants and the DIP Lender).

9. For these and additional reasons set out in greater detail below, the Applicants submit that the relief sought at the Comeback Motion is fair, reasonable, and will help advance these

CCAA Proceedings for the benefit of their stakeholders, including the primary objective of identifying the best available transaction for the Applicants' business.

PART II – FACTS

A. Background

10. Background information on the Applicants and these CCAA proceedings are more fully set out in the Initial Trudel Affidavit and the Second Trudel Affidavit.

11. FFHC, through its wholly-owned subsidiaries, is an independent cannabis retail chain with 91 retail stores open across Canada as of June 5, 2023. 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.²

12. 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, 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.³

13. 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.⁴

14. Despite efforts to address their liquidity challenges, the Companies were unable to secure additional financing.⁵

15. In light of the Companies' liquidity challenges, the Applicants commenced these CCAA Proceedings and obtained the Initial Order.

² Initial Trudel Affidavit, *supra* at para. 6.

³ *Ibid* at para. 7.

⁴ *Ibid* at para. 8.

⁵ *Ibid* at para. 15.

B. ARIO

(i) Extension of the Stay Period

16. The Stay Period currently expires on June 15, 2023.⁶ The Applicants are requesting an extension of the Stay Period to September 1, 2023. The extension of the Stay Period is necessary to maintain stability while the Applicants attempt to maximize value for the benefit of their stakeholders through the CCAA Proceedings and the SISP.⁷

17. Since the granting of the Initial Order, the Applicants have acted, and are continuing to act in good faith and with due diligence in these CCAA Proceedings.⁸

(ii) DIP Facility Increase and Increase to the DIP Lender's Charge

18. In connection with the commencement of these CCAA Proceedings, the Applicants entered into the DIP Facility Agreement with ACT Investor, as the DIP Lender, pursuant to which the DIP Lender agreed to provide the Initial Advance in the principal amount of \$2.7 million during the initial 10-day Stay Period.⁹

19. The Initial Order authorized the Applicants to borrow the Initial Advance and granted the DIP Lender's Charge to secure the obligations of the Applicants to the DIP Lender.¹⁰

20. Pursuant to the ARIO, the Applicants seek to increase the maximum amount that they can borrow under the DIP Facility Agreement to \$9.8 million and increase the amount of the DIP Lender's Charge in the same amount.¹¹

(iii) KERP and KERP Charge

21. The Applicants, with the assistance of the Monitor, have developed the KERP to facilitate and encourage the continued participation of Key Employees during these CCAA Proceedings.¹²

⁶ Second Trudel Affidavit at para. 7.

⁷ *Ibid* at para. 48.

⁸ *Ibid* at paras. 8-14 and 49-51.

⁹ *Ibid* at para. 7.

¹⁰ *Ibid*.

¹¹ *Ibid* at para. 55.

¹² *Ibid* at para. 60.

22. Pursuant to the terms of the KERP:

(a) certain Key Employees will receive a bonus payment at the earlier of

(i) the completion of the CCAA Proceedings; or

(ii) October 31, 2023;

(b) certain Key Employees will be eligible to receive an additional incentive payment if the Applicants successfully complete a transaction under the Stalking Horse Agreement;

(c) certain Key Employees will receive an additional incentive payment if the Applicants successfully complete a transaction that generates gross proceeds that exceed a certain amount; and

(d) lastly, one Key Employee will only receive an incentive payment if the Applicants successfully complete a transaction that generates gross proceeds that exceed a certain amount.¹³

23. The KERP was designed to incentivize the Key Employees to continue their employment with the Applicants and to maximize value for all stakeholders through the SISP.¹⁴

24. Employees forfeit their entitlement to their KERP payment if, among other things, they resign or their employment is terminated with just cause prior to the completion of a transaction pursuant to the SISP or the completion of the CCAA Proceedings. This does not include termination as a result of the Successful Bidder not offering them employment, in which case the Key Employee will remain entitled to receive their KERP entitlement.¹⁵

25. The maximum aggregate amount payable under the KERP is \$1,160,000. The proposed ARIO provides for the granting of the KERP Charge in the maximum amount of \$1,160,000 to secure the obligations of the Applicants to the Key Employees under the KERP.¹⁶

26. The Applicants are also seeking to seal the unredacted KERP, which will be attached as a confidential appendix to the First Report of the Monitor. The KERP contains sensitive personal

¹³ *Ibid* at para. 61.

¹⁴ *Ibid* at para. 62.

¹⁵ *Ibid* at para. 63.

¹⁶ *Ibid* at para. 67.

and compensation information which I believe may cause harm to the Key Employees in the KERP and to the Applicants if such information became public.¹⁷

(iv) Authority to Incur No Further Costs in Connection with Securities Filings and Extension of Time Limit to Hold AGM

27. The Applicants seek (a) to incur no further expenses in relation to the Securities Filings; (b) a declaration that none of the directors, officers, employees and other representatives of the Applicants or the Monitor shall have any personal liability for failure by the Applicants to make any Securities Filings that may be required by the Securities Provisions; and (c) to extend the time limit to call and hold the AGM.¹⁸

28. In the circumstances, the Applicants have determined that incurring further expenses to maintain the currency of FFHC's securities reporting going forward and holding the AGM is not appropriate at this juncture. The Applicants' resources and time are better directed towards its restructuring efforts.¹⁹

(v) Critical Suppliers

29. The Applicants are seeking authorization to make payments for pre-filing arrears to the Critical Suppliers that provide the Applicants with essential services and/or products to the maximum aggregate amount of \$250,000.²⁰

30. The cooperation of the Critical Suppliers is necessary for the Applicants to maintain their operations, and in certain circumstances, for the Applicants to be compliant with the applicable provincial and/or municipal legislation relating to cannabis.²¹

31. The proposed form of ARIO provides that Payments to Critical Suppliers will only be made with the express authorization of the Monitor, and only to Critical Suppliers that the Monitor agrees are essential to the Applicants' business and operations. This provides the necessary flexibility required to deal with the circumstances in a time-sensitive manner.²²

¹⁷ *Ibid* at para. 68.

¹⁸ *Ibid* at para. 71.

¹⁹ *Ibid* at para. 74.

²⁰ *Ibid* at para. 75.

²¹ *Ibid* at para. 76.

²² *Ibid* at para. 78.

C. SISP Order

(i) The SISP

32. The SISP has been developed by the Applicants and the Monitor as a means of seeking to maximize the value of the Applicants' business assets.²³

33. The SISP was designed to be broad and flexible. The SISP is intended to solicit 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.²⁴

34. The SISP provides for a two-staged process. Phase 1 of the SISP calls for non-binding LOIs. The Monitor, in consultation with the Applicants, will determine which Phase 1 Qualified Bidders shall proceed to Phase 2 of the SISP. In the event that no Phase 1 Satisfactory Bid is selected (other than the one from the Stalking Horse Bidder), the Applicants will promptly proceed to seek Court approval of the Stalking Horse Agreement and Phase 2 of the SISP will not be conducted.²⁵

35. Phase 2 of the SISP calls for unconditional Binding Offers which are 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, being September 15, 2023.²⁶

36. A summary of the key dates pursuant to the SISP is as follows:²⁷

Event	Timing
<u>Phase 1</u>	
1. Preparation	In advance of Court approval of the SISP Order
2. Notice	As soon as reasonably practicably following the date on which the SISP Order is granted.
3. Phase 1	June 15, 2023 to July 13, 2023

²³ *Ibid* at para. 16.

²⁴ *Ibid* at para. 20.

²⁵ *Ibid* at para. 22.

²⁶ *Ibid* at para. 23.

²⁷ *Ibid* at para. 24.

4. Phase 1 Bid Deadline	By no later than July 13, 2023, at 5:00 p.m. (Eastern Time)
5. Phase 1 Satisfactory Bid	By no later than July 14, 2023, at 5:00 p.m. (Eastern Time)
6. Approval Motion if No Other Bids	Week of July 24, 2023
7. Closing – No Other Bids	August 4, 2023

Phase 2

8. Phase 2 Bid Deadline & Qualified Bidders	August 11, 2023
9. Auction	August 15, 2023
10. Selection of Successful Bid and Back-Up Bidder	By no later than August 17, 2023 at 5:00 p.m. (Eastern Time)
11. Definitive Documentation	By no later than August 22, 2023
12. Approval Motion – Successful Bid	Week of August 28, 2023
13. Closing – Successful Bid	September 8, 2023 or such earlier date as is achievable
14. Outside Date – Closing	September 15, 2023

37. The key dates referred to in the above table are described in greater detail in the Second Trudel Affidavit.

38. The Applicants and the Monitor believe the timelines and terms of the SISP are reasonable.²⁸

(ii) The Stalking Horse Agreement

39. The Applicants have also negotiated with ACT Investor (in its capacity as both the senior secured creditor of the Applicants and the DIP Lender) regarding a potential “stalking horse bid”. These discussions have resulted in ACT Investor and the Applicants negotiating the Stalking Horse Agreement.²⁹

40. The Stalking Horse Agreement provides for, among other things:

²⁸ *Ibid* at para. 25.

²⁹ *Ibid* at para. 17.

- (a) “reverse vesting” transaction structure;
- (b) Purchase Price consisting of a credit bid being the release of the applicable members of the Applicants from all amounts outstanding and obligations owing pursuant to the ACT Loan Agreement and the DIP Facility Agreement;
- (c) Purchased Assets represent all the equity interests in FFHC, including every direct and indirect subsidiary of FFHC, with all contracts other than Excluded Contracts and Excluded Leases remaining with the Applicants; and
- (d) Break Fee of \$750,000.³⁰

41. While the Applicants are optimistic that the SISF will result in a competitive bidding process in furtherance of a value maximizing transaction, the Stalking Horse Agreement assures the preservation and continuity of the core business of the Applicants as a going concern, and the continued employment of many of the Applicants’ employees.³¹

42. The terms of the Stalking Horse Agreement were negotiated extensively between the Applicants and the Stalking Horse Bidder.³²

PART III – ISSUES

43. The issues in respect of the relief being sought under the ARIO are whether:

- (a) the Stay Period should be extended to and including September 1, 2023;
- (b) the Applicants should be permitted to draw the increased principal amount of up to \$9.8 million under the DIP Facility and this Court should grant a corresponding increase to the DIP Lender’s Charge;
- (c) this Court should approve the KERP, grant the KERP Charge, and grant a sealing order in respect of the unredacted KERP;
- (d) this Court should grant authority to the Applicants to incur no further expenses in relation to the Securities Filings and extend the time limit to hold the AGM; and

³⁰ *Ibid* at para. 44.

³¹ *Ibid* at para. 45.

³² *Ibid* at para. 46.

- (e) the Applicants should be authorized to pay pre-filing arrears owing to Critical Suppliers, subject to approval of the Monitor.

44. The issues in respect of the relief being sought under the SISP Order are whether:

- (a) the SISP should be approved; and
- (b) the Stalking Horse Agreement should be approved for the purposes of serving as the Stalking Horse Bid under the SISP.

PART IV – LAW AND ARGUMENT

A. The Stay Period Should be Extended

45. The Initial Order provided for a Stay Period up to and including June 15, 2023. The proposed ARIO seeks to extend the Stay Period to September 1, 2023.

46. Section 11.02(2) of the CCAA gives this Court the authority to grant an extension of the Stay Period for any period “it considers necessary”.³³ To do so, 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.³⁴ A stay of proceedings is appropriate to provide a debtor with breathing room while it seeks to emerge from the CCAA.³⁵

47. The Applicants have acted and are continuing to act in good faith and with due diligence. Since the granting of the Initial Order, among other things, the Applicants have reached out to several of their stakeholders, including various suppliers, the regulatory entities in each province for which the Applicants have ongoing operations, their employees, and landlords, and developed the SISP.³⁶

48. The Applicants have also terminated several employees and delivered disclaimer notices for all of the non-operating leases for which one or more of the Applicants are a party to, all with a view to preserving the Applicants’ liquidity.³⁷

³³ CCAA, s. 11.02(2).

³⁴ CCAA, s. 11.02(3).

³⁵ *Ted Leroy Trucking [Century Services] Ltd. (Re)*, 2010 SCC 60 at para. 14.

³⁶ Second Trudel Affidavit, *supra* at paras. 8-11.

³⁷ *Ibid* at para. 12.

49. The Applicants believe the extension of the Stay Period to and including September 1, 2023 is necessary and appropriate in the circumstances. The requested extension of the Stay Period will provide the Applicants with the breathing space and operational stability to continue operations while maximizing value for the benefit of their stakeholders through the CCAA Proceedings and SISP (if approved by the Court).³⁸

50. The Cash Flow Statement demonstrates that the Applicants have sufficient liquidity to operate through the proposed extension of the Stay Period to and including September 1, 2023.³⁹

51. The Monitor and the DIP Lender are both supportive of the proposed extension of the Stay Period.⁴⁰

B. This Court Should Grant Authority for the Applicants to Draw Increased Amounts Under the DIP Facility and Grant a Corresponding Increase to the DIP Lender's Charge

52. Pursuant to the Initial Order, this Court approved the Applicants' execution of the DIP Facility Agreement, authorized the Applicants to borrow the Initial Advance of \$2.7 million under the DIP Facility during the initial 10-day Stay Period, and granted a corresponding DIP Lender's Charge in the same amount.⁴¹

53. The Applicants are now seeking authority to increase the amounts which may be drawn under the DIP Facility up to the maximum principal amount of \$9.8 million.

54. Subsection 11.2(1) of the CCAA provides the Court with the statutory jurisdiction to grant an interim financing charge "on notice to the secured creditors who are likely to be affected by the security or charge – in an amount that the court considers appropriate...having regard to its cash-flow statement. The security or charge may not secure an obligation that exists before the order is made."⁴²

³⁸ *Ibid* at para. 48.

³⁹ *Ibid* at para. 52.

⁴⁰ *Ibid* at para. 54.

⁴¹ *Ibid* at para. 7.

⁴² CCAA, s. 11.2(1).

55. All secured creditors who are affected by the proposed DIP Lender's Charge, including the increase thereof, have been served with a copy of the Applicants' Motion Record.⁴³

56. The Applicants previously addressed the factors under subsection 11.2(1) and (4) that the Court must consider in deciding whether to approve a priming charge in connection with interim financing in their Factum dated June 5, 2023, submitted in support of the Initial Order (the "**Initial Order Factum**").

57. For the same reasons as set out in the Initial Order Factum, the Applicants submit that the requested increase to the maximum amount that they can borrow and/or guarantee under the DIP Facility Agreement to \$9.8 million and the increase of the DIP Lender's Charge in the same amount are fair and reasonable and that the criteria from subsections 11.2(1) and 11.2(4) support approval of same. In particular, the Cash Flow Statement shows that the Applicants require access to the full amount of the DIP Facility to provide the Applicants with necessary funding to continue their business and operations and to advance their restructuring efforts, including the implementation of the SISP.⁴⁴

58. The Monitor supports the increase to the maximum amount permitted to be drawn on the DIP Facility by the Applicants and the corresponding increase to the DIP Lender's Charge.⁴⁵

C. The KERP and KERP Charge Should be Approved

59. This Court has approved employee retention plans and charges in several proceedings. Factors generally considered by the Court include whether: (a) the Monitor approves of the KERP; (b) the beneficiaries of the KERP would consider other employment opportunities if the charge was not approved; (c) the beneficiaries of the KERP are crucial to the successful restructuring of the debtor company; (d) a replacement could be found in a timely manner; (e) the board of directors exercised their business judgment in developing the KERP; and (f) whether the KERP is supported or consented to by secured creditors of the debtor.⁴⁶

⁴³ Affidavits of Service of Philip Yang dated June 14, 2023.

⁴⁴ *Ontario Securities Commission v. Bridging Finance Inc.*, 2021 ONSC 4347 at paras. 13 and 17 [Bridging Finance]; *Just Energy Group Inc. et al.*, 2021 ONSC 7630 at paras. 7-25 [Just Energy]; and *Target Canada Co., Re*, 2015 ONSC 303 at para. 59; Second Trudel Affidavit, *supra* at para. 56.

⁴⁵ Second Trudel Affidavit, *supra* at para. 58.

⁴⁶ *Aralez Pharmaceuticals Inc. (Re)*, 2018 ONSC 6980, at para. 29 [Aralez]; *Just Energy*, *supra* at para. 7; and *Re Cinram International Inc.*, 2012 ONSC 3767 at para. 37.

60. The Court in *Aralez* reflected on the existing factors established by caselaw and set out three considerations which provide a framework for courts to consider the objective business judgment underlining a proposed KERP:

- (a) the arm's length input, including from the Monitor, into the design, scope and implementation;
- (b) the necessity on a case-by-case basis of the retention program; and
- (c) whether the program's design reasonably relates to the goals pursued, which goals must be of demonstrable benefit to the objectives of the restructuring process.⁴⁷

61. The Applicants submit that the KERP complies with the factors set out above and is consistent with KERP arrangements that have been approved by CCAA courts. In particular:

- (a) the KERP was developed by the Applicants, with the assistance of the Monitor⁴⁸;
- (b) the DIP Lender supports the approval of the KERP and the KERP Charge⁴⁹;
- (c) the Key Employees would likely consider other employment options if the KERP is not approved⁵⁰;
- (d) the Applicants require the continued participation of the Key Employees to avoid any disruptions to the Applicants' Business that could affect the SISF and ultimately any transaction resulting therefrom. Finding qualified individuals to replace them would be disruptive, difficult and time consuming, particularly given the Key Employees institutional knowledge related to the Applicants' business.⁵¹ Retaining existing employees through closing of a transaction is therefore essential to a successful restructuring outcome;
- (e) the KERP has been appropriately structured to provide an incentive for employees to remain with the Applicants even if they may not ultimately be offered employment with the Successful Bidder. Termination as a result of the Successful

⁴⁷ *Aralez*, *supra* at [para. 30](#).

⁴⁸ Second Trudel Affidavit, *supra* at para. 60.

⁴⁹ *Ibid* at para. 69.

⁵⁰ *Ibid* at para. 66.

⁵¹ *Ibid*.

Bidder not offering employment to the Key Employee does not remove the Key Employee's KERP entitlement⁵²;

(f) the KERP seeks to encourage employees to continue their employment through to the completion of a transaction by making payments under the KERP either at the end of the CCAA Proceedings or subject to and payable following the closing of a transaction resulting from the SISP⁵³; and

(g) the quantum of the KERP is appropriate in the circumstances.

D. Sealing of the Confidential Appendix

62. The Applicants request that this Court seal the Confidential Appendix to the First Report which contains a confidential summary of the proposed KERP. This Court has the discretion pursuant to section 137(2) of the *Courts of Justice Act*⁵⁴ and its inherent jurisdiction to order that any document filed in a civil proceeding be treated as confidential, sealed and not form part of the public record.

63. In *Sherman Estate v. Donovan*, the Supreme Court of Canada held that the person asking a court to exercise discretion in a way that limits the open court presumption must establish that: (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.⁵⁵

64. The Applicants respectfully submit that the foregoing test has been satisfied. The Confidential Appendix contains a confidential summary with respect to the KERP that contains individual salary information and the KERP payments for each eligible employee. Protecting the sensitive personal and compensation information of the employees is an important public interest that should be protected. Employees also have a reasonable expectation that their names and salary information will be kept confidential. Finally, as a matter of proportionality, the benefits of sealing the requested information outweigh its negative effects, including because the overall potential cost of the KERP has been disclosed to stakeholders.

⁵² *Ibid* at para. 63.

⁵³ *Ibid* at para. 61.

⁵⁴ R.S.O. 1990, c. C.43.

⁵⁵ *Sherman Estate v Donovan*, 2021 SCC 25 at [paras. 37-38](#).

65. Courts have previously granted sealing orders in respect of individual compensation arrangements relating to key employee retention plans.⁵⁶

66. The Monitor is supportive of having the unredacted KERP sealed and not form part of the public record.⁵⁷

E. This Court Should Grant Relief Relating to the Securities Filings and AGM

67. The Applicants seek (a) to incur no further expenses in relation to the Securities Filings; (b) a declaration that none of the directors, officers, employees and other representatives of the Applicants or the Monitor shall have any personal liability for failure by the Applicants to make any Securities Filings that may be required by the Securities Provisions; and (c) to extend the time limit to call and hold the AGM.

68. As at June 6, 2023, the Toronto Stock Exchange (the “**TSX**”) suspended trading in the securities of FFHC. The securities of FFHC will also likely be delisted as a result of the commencement of these CCAA Proceedings.⁵⁸

69. Subsection 133(1)(b) of the *Canada Business Corporations Act* provides that a corporation must call an annual shareholders’ meeting no later than six months after the end of its preceding financial year. Given that FFHC is incorporated under the CBCA and that its financial year ended on December 31, 2022, it is required to call and hold its annual shareholders’ meeting by June 30, 2023.⁵⁹

70. Where a corporation incorporated under the CBCA initiates proceedings under the CCAA, it is common for the Court to extend the delay to call and hold the annual shareholders’ meeting until after the CCAA Proceedings are concluded – the CBCA expressly provides that the Court can render an order extending the delay to do so.⁶⁰

71. In light of the present CCAA Proceedings, it is in the best interest of the Applicants and their stakeholders to incur no further expenses to maintain the currency of FFHC’s securities

⁵⁶ *Bridging Finance*, supra at [paras. 23-28](#); *Just Energy*, supra at [paras. 26-29](#); *Golf Town Canada Holdings Inc. (Re)*, Initial Order issued September 14, 2016 [Court File No. CV-16-11527-00CL] at para. 64; *Acerus Pharmaceuticals Corporation et. al (Re)*, [Amended and Restated Initial Order](#) issued February 3, 2023 [Court File No. CV-23-00693595-00CL].

⁵⁷ Second Trudel Affidavit, supra at para. 70.

⁵⁸ *Ibid* at para. 73.

⁵⁹ *Ibid* at para. 72.

⁶⁰ *Re Canwest Global Communications Corp.*, 2009 CanLII 55114 (Ont SCJ) at [paras. 53-54](#).

reporting going forward and holding the AGM is not appropriate at this juncture. The Applicants' resources and time are better directed towards its restructuring efforts. Further, there is no prejudice to stakeholders given that detailed financial information and other information regarding the Companies will continue to be made publicly available through the materials filed in these CCAA Proceedings.

72. Similar relief with respect to reporting obligations has been granted in other CCAA proceedings.⁶¹

F. The Pre-Filing Payments to Critical Suppliers Should be Approved

73. The Applicants are seeking authorization to make payments for pre-filing arrears to the Critical Suppliers that provide the Applicants with essential services and/or products to the maximum aggregate amount of \$250,000. For greater certainty, the Applicants are not seeking an order declaring that any of its suppliers are "critical suppliers" for the purposes of section 11.4 of the CCAA.

74. This Court has previously permitted payments to be made to unsecured creditors if certain creditors refuse to continue to supply a debtor company unless they are paid their pre-filing claims, thus imperiling the debtor company's business. In such cases, this Court has empowered the monitor to exercise its discretion in approving payments to critical unsecured creditors with respect to their pre-filing claims.⁶²

75. CCAA courts have permitted the payment of pre-filing obligations owing to suppliers where those payments would be of considerable future benefit to the debtor company and to the value of the estate as a whole.⁶³

76. The cooperation of the Critical Suppliers is necessary for the Applicants to maintain their operations, and in certain circumstances, for the Applicants to be compliant with the applicable provincial and/or municipal legislation relating to cannabis.⁶⁴

⁶¹ Inscape Corporation, Re, Amended and Restated Initial Order issued January 20, 2023 [Court File No. CV-23-00692784-00CL] at paras. 42-43 [Inscape ARIQ]; CannTrust Holdings Inc., Re, Initial Order issued March 31, 2020 [Court File No. CV-20-00638930-00CL] at paras. 46-47; Pure Global Cannabis Inc., Re, Initial Order issued March 19, 2020 [Court File No. CV-20-00638503-00CL] at para. 49; Magna Gold Corp. Re, Amended and Restated Initial Order issued May 29, 2023 [Court File No. CV-23-00696874-00CL]

⁶² Re Toys "R" Us (Canada) Ltd., 2017 ONSC 5571 at para 9; Air Canada (Re), 2003 CanLII 64280 (ONSC); Peraso Technologies Inc. Re, Order issued September 16, 2020 [Court File No. CV-20-00642010-00CL]

⁶³ EarthFirst Canada Inc., Re, 2009 ABQB 78 at para. 9; Eddie Bauer Of Canada, Inc. (Re), 2009 CanLII 32699 (ONSC) at para. 22; Clover Leaf Holdings Company, Re., 2019 ONSC 6966 at paras. 24-27.

77. The Applicants do not have any readily available means to replace the Critical Suppliers; even if they did, doing so would be time consuming and costly.⁶⁵

78. The proposed form of ARIO provides that Payments to Critical Suppliers will only be made with the express authorization of the Monitor, and only to Critical Suppliers that the Monitor agrees are essential to the Applicants' business and operations. This provides the necessary flexibility required to deal with the circumstances in a time-sensitive manner.⁶⁶

79. The Monitor and the DIP Lender both support the Applicants' request to make payments to Critical Suppliers.⁶⁷

G. The SISP Should be Approved

80. The remedial nature of the CCAA confers broad powers to facilitate restructurings, including the power to approve a sale and investment solicitation process in relation to a CCAA debtor and its business and assets, prior to or in the absence of a plan of compromise and arrangement.⁶⁸

81. In *Nortel*, the Court identified several factors to be considered in determining whether to approve a sales process, which have since been consistently applied:

- (a) Is a sale warranted at this time?
- (b) Will the sale be of benefit to the whole "economic community"?
- (c) Do any of the debtors' creditors have a bona fide reason to object to a sale of the business?
- (d) Is there a better viable alternative?⁶⁹

82. These criteria have also been applied recently by this Court in *Green Growth Brands*.⁷⁰

⁶⁴ Second Trudel Affidavit, *supra* at para. 76.

⁶⁵ *Ibid* at para. 77.

⁶⁶ *Ibid* at para. 78.

⁶⁷ *Ibid* at para. 79.

⁶⁸ *Nortel Networks Corporation (Re)*, 2009 CanLII 39492 (ONSC) at [paras 47-48](#) [*Nortel*]; CCAA at [ss. 11](#) and [36](#).

⁶⁹ *Ibid* at para. 49.

⁷⁰ *Green Growth Brands. (Re)*, 2020 ONSC 3565 at [para. 61](#). [*Green Growth*]

83. This Court has noted that Section 36 of the CCAA directly applies only in the context of the approval of a sale, not of a sales process.⁷¹ In other words, it is not this Court's role in approving a sale process to apply the Section 36 criteria. Such criteria will apply and be considered by the Court if the Court is eventually asked to approve the Successful Bid arising from the SISP.

84. Nevertheless, the *Nortel* criteria for approving a sales process should be evaluated in light of the considerations that may ultimately apply when seeking approval for a concluded sale under Section 36 of the CCAA.⁷² This Court is entitled to consider whether the proposed SISP is likely to satisfy the requirement that the process be fair and that the best price has been obtained, whether the Monitor supports the SISP, as well as the extent to which creditors were consulted and other relevant factors.

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

- (a) the fairness, transparency and integrity of the proposed process;
- (b) the commercial efficacy of the proposed process in light of the specific circumstances; and
- (c) whether the sales process will optimize the chances, in the particular circumstances, of securing the best possible price for the assets up for sale.⁷³

86. In consideration of the above criteria and factors, the SISP should be approved as:

- (a) The Applicants are insolvent, unable to indefinitely continue operations in their current state and must restructure to preserve their business. A sale will maximize value for the Applicants' stakeholders, either through allowing the business to continue as a going-concern or through ascribing fair market value to the business and assets of the Applicants⁷⁴;
- (b) The broad flexibility afforded by the SISP is designed to solicit the highest value available for the Property and Business, suggesting that the value that results

⁷¹ *Brainhunter Inc. (Re)*, 2009 CanLII 72333 (ONSC) at para. 17. [*Brainhunter*].

⁷² *Brainhunter*, *supra* at para. 16.

⁷³ *Walter Energy Canada Holdings, Inc.*, 2016 BCSC 107 at paras. 20-21; *CCM Master Qualified Fund v blutip Power Technologies*, 2012 ONSC 1750 at para. 6. [*CCM Master*]

⁷⁴ Second Trudel Affidavit, *supra* at paras. 16-17.

from any sale transaction will benefit the Applicants' stakeholders. The SISP is flexible and capable of canvassing the market for a variety of potential transaction structures including one or more of a restructuring, recapitalization, or some other form of reorganization of the business and affairs of the Applicants as a going concern or a sale of all, substantially all or one or more components of the Property and Business of the Applicants⁷⁵;

(c) The Applicants do not believe that any creditor has a reasonable basis to object to the SISP and no objection has been received since the Notice of Motion of the Applicants was served on June 10, 2023;

(d) The DIP Facility Agreement requires a sales process to be commenced⁷⁶;

(e) The SISP is the best option in the circumstances, particularly in consideration of the Applicants' liquidity constraints;

(f) The SISP was developed by the Applicants, with the assistance of the Monitor, and is intended to provide a flexible, fair, and efficient structure for canvassing the market⁷⁷;

(g) The Applicants and the Monitor believe that the milestones of the proposed SISP will provide sufficient time to canvass the market⁷⁸;

(h) The SISP will cause minimal interruption to ongoing operations; and

(i) The Monitor is supportive of the proposed SISP.⁷⁹

H. The Stalking Horse Agreement Should be Approved

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

88. As appears from a copy of the Stalking Horse Agreement filed as Exhibit "E" to the Second Trudel Affidavit, the Stalking Horse Agreement to be entered into between the

⁷⁵ *Ibid* at para. 20.

⁷⁶ Exhibit "N" to Initial Trudel Affidavit.

⁷⁷ Second Trudel Affidavit, *supra* at paras. 16, 18, and 20.

⁷⁸ *Ibid* at para. 25.

⁷⁹ *Ibid*.

Applicants and ACT Investor provides for the acquisition by ACT Investor of the Applicants' Business, by way of reverse vesting transaction whereby ACT Investor would own all of the equity of FFHC, and in turn, all of the direct and indirect subsidiaries of FFHC.⁸⁰

89. Approval of stalking horse agreements and related SISPs have become a common feature in CCAA proceedings.⁸¹ The benefits of having a stalking horse bid are well recognized by the CCAA courts, which include, among others:

- (a) facilitating sales by establishing a baseline price and deal structure for superior bids from interested parties, and accordingly, the "use of a sales process that includes a stalking horse agreement maximizes the value of a business for the benefit of its stakeholders and enhances the fairness of the sales process"⁸²;
- (b) establishing deal structure by providing a template for competing bidders to use for the submission of competing offers⁸³; and
- (c) providing certainty that a going-concern solution for the business has already been identified.⁸⁴

90. Over the course of the past six months, this Court has also recently approved numerous stalking horse agreements for the purposes of being a stalking horse bidder under a SISP.⁸⁵ Recently, in *DCL Corporation*, it was held that while it would remain to be seen whether a stalking horse agreement would be the final or best bid, same set the minimum price and thereby incentivized prospective bidders. In turn, the stalking horse agreement benefits the entire economic community, as it provides a going-concern solution, and preserves the jobs of

⁸⁰ *Ibid* at para. 44.

⁸¹ *Re Harte Gold Corp.*, Endorsement issued December 20, 2021 [Court File No. CV-21-00673304-00CL]; *Re Loyalty One, Co.*, Endorsement issued March 20, 2023 [Court File No. CV-23-00696017-00CL].

⁸² *Daniel Leather Inc. Re*, 2016 ONSC 1044 at para. 20 [*Daniel Leather*]; *CCM Master Qualified Fund Ltd. v Blutip Power Technologies Ltd.*, 2012 ONSC 1750 at para. 7.

⁸³ *Ibid*.

⁸⁴ *Cannapie Group Inc. v Marzili*, 2022 ONSC 6379 at para. 4.

⁸⁵ *Re DCL Corporation*, Endorsement issued February 27, 2023 [Court File No. CV-22-00691990-00CL] [*DCL Corporation*]; *Re Trichome Financial Corp. et al.*, Stalking Horse and SISP Approval Order issued January 9, 2023 [Court File No. CV-22-00689857-00CL]; *Re LoyaltyOne, Co.*, Endorsement issued March 20, 2023 [Court File No. CV-23-00696017-00CL]; *Re Tehama Inc.*, Endorsement issued February 9, 2023 [Court File No. CV-23-00010241-00CL]; *Greenspace Brands Inc., Re*, SISP Approval Order issued April 14, 2023 [Court File No. CV-23-00697516-00CL].

active employees and important relationships with suppliers, customers, and other stakeholders.⁸⁶

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

92. The Break Fee in the Stalking Horse Agreement is approximately 3.4% of the value of the Stalking Horse Bid. The quantum of the Break Fee is reasonable in the circumstances and well grounded in the authorities. As this Court recently noted, "... fees, in addition to compensating the Stalking Horse purchasers for the time, resources and risk taken in developing the agreement, also represent the price of stability".⁸⁷ In the Applicants' case, customer confidence, stability, and certainty are key to the protection of the Applicants' business.

93. The quantum of the Break Fee is well within the reasonable range accepted by courts. In *CCM Master*, for example, this Court held that reasonable ranges are between 1.8% and 5% of the value of the bid.⁸⁸

94. The terms of the Stalking Horse Agreement were negotiated extensively between the Applicants and the Stalking Horse Bidder. Accordingly, the consideration provided under the Stalking Horse Agreement is both fair and reasonable in the circumstances, and reflects the product of extensive, good faith negotiations.⁸⁹

95. The Monitor supports the approval of the Stalking Horse Agreement solely for the purpose of approving it as the Stalking Horse Bid under the SISP.⁹⁰

⁸⁶ *DCL Corporation, supra at paras. 28-29.*

⁸⁷ *Green Growth, supra at para. 52; Daniel Leather, supra at para. 46.*

⁸⁸ *CCM Master, supra at para. 13.*

⁸⁹ *Second Trudel Affidavit, supra at para. 46.*

⁹⁰ *Ibid at para. 47.*

PART V – ORDER SOUGHT

96. For the foregoing reasons, the Applicants respectfully submit that this Court grant the ARIO and the SISP Order in the forms requested.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 14 day of June, 2023.

A handwritten signature in cursive script, reading "Stikeman Elliott LLP", positioned above a horizontal line.

STIKEMAN ELLIOTT LLP
Counsel for the Applicants

**SCHEDULE “A”
LIST OF AUTHORITIES**

Cases

1. *Ted Leroy Trucking [Century Services] Ltd. (Re)*, 2010 SCC 60
2. *Ontario Securities Commission v. Bridging Finance Inc.*, 2021 ONSC 4347
3. *Just Energy Group Inc. et al.*, 2021 ONSC 7630
4. *Target Canada Co., Re*, 2015 ONSC 303
5. *Aralez Pharmaceuticals Inc. (Re)*, 2018 ONSC 6980
6. *Re Cinram International Inc.*, 2012 ONSC 3767
7. *Sherman Estate v Donovan*, 2021 SCC 25
8. *Re Canwest Global Communications Corp*, 2009 CanLII 55114
9. *Re Toys “R” Us (Canada) Ltd.*, 2017 ONSC 5571
10. *Air Canada (Re)*, 2003 CanLII 64280 (ONSC)
11. *EarthFirst Canada Inc., Re*, 2009 ABQB 78
12. *Eddie Bauer Of Canada, Inc. (Re)*, 2009 CanLII 32699 (ONSC)
13. *Clover Leaf Holdings Company, Re.*, 2019 ONSC 6966
14. *Nortel Networks Corporation (Re)*, 2009 CanLII 39492 (ONSC)
15. *Green Growth Brands, (Re)*, 2020 ONSC 3565
16. *Brainhunter Inc. (Re)*, 2009 CanLII 72333 (ONSC)
17. *Walter Energy Canada Holdings, Inc.*, 2016 BCSC 107
18. *CCM Master Qualified Fund v blutip Power Technologies*, 2012 ONSC 1750

SCHEDULE “B” RELEVANT LEGISLATION

Companies’ Creditors Arrangement Act, RSC 1985, c C-36

Stays, etc. — initial application

11.02 (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.

Interim financing

11.2 (1) On application by a debtor company and on notice to the secured creditors who are likely to be affected by the security or charge, a court may make an order declaring that all or part of the company’s property is subject to a security or charge — in an amount that the court considers appropriate — in favour of a person specified in the order who agrees to lend to the

company an amount approved by the court as being required by the company, having regard to its cash-flow statement. The security or charge may not secure an obligation that exists before the order is made.

Priority — secured creditors

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

Priority — other orders

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

Factors to be considered

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

Additional factor — initial application

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

Restriction on disposition of business assets

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

Notice to creditors

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

Factors to be considered

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

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

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

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

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

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

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

Additional factors — related persons

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

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

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

Related persons

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

(a) a director or officer of the company;

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

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

Assets may be disposed of free and clear

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

Restriction — employers

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

Restriction — intellectual property

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

Courts of Justice Act, R.S.O. 1990, c. C.43

Sealing documents

137(2) A court may order that any document filed in a civil proceeding before it be treated as confidential, sealed and not form part of the public record.

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

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