Court File No. CV-20-00638930-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF CANNTRUST HOLDINGS INC., CANNTRUST INC., CTI HOLDINGS (OSOYOOS) INC. AND ELMCLIFFE INVESTMENTS INC.

Applicants

MOTION RECORD

(Re: Sale and Investment Solicitation Process Order, Claims Procedure Order and Mediation Order)

May 1, 2019

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Index Tab

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INDEX

Tab 1

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Applicants

NOTICE OF MOTION
(Re: Sale and Investment Solicitation Process Order, Claims Procedure Order and Mediation Order)
(Returnable May 8, 2020)

The Applicants will make a motion before a judge of the Ontario Superior Court of Justice (Commercial List) on May 8, 2020 at 10:00 a.m. or as soon after that time as the motion can be heard by judicial videoconference via Zoom at Toronto, Ontario due to the COVID-19 emergency. Please refer to the conference details attached as Schedule "A" hereto in order to attend the motion and advise if you intend to join the motion by emailing Trevor Courtis at tcourtis@mccarthy.ca.

PROPOSED METHOD OF HEARING: This motion is to be heard orally.

THIS MOTION IS FOR:

(a) an order (the "**Proposed SISP Order**"), substantially in the form of the draft order included at Tab 3 of the Motion Record of the Applicants (which, for ease of reference, will be referred to herein as "**CannTrust**") approving a sale and investment solicitation process for the purpose of soliciting interest in, and opportunities for, a sale of or investment in the assets and business operations of CannTrust (the “**SISP**”);

(b) an order (the “**Proposed Claims Procedure Order**”), substantially in the form of the draft order included at Tab 4 of the Motion Record of CannTrust, approving a claims procedure for the identification, quantification, and resolution of certain claims of creditors of CannTrust (the “**Claims Procedure**”);

(c) an order (the “**Proposed Mediation Order**”), substantially in the form of the draft order included at Tab 5 of the Motion Record of CannTrust, appointing a neutral third party to mediate a global settlement of certain class action and other claims that have been excluded from the Claims Procedure for the time being (the “**Mediation Process**”); and

(d) such further and other relief as counsel may request and this Court deems just.

1. All terms not otherwise defined herein have the meanings given to them in the Affidavit of Greg Guyatt, sworn May 1, 2020.

THE GROUNDS FOR THIS MOTION ARE:

Overview

2. CannTrust is a licensed produced of cannabis in Canada with production facilities in Fenwick and Vaughan, Ontario.

3. CannTrust commenced proceedings under the *Companies Creditors’ Arrangement Act*, (“**CCAA**”) and obtained an initial order on March 31, 2020 (as amended, the “**Initial**

Order”). The Initial Order appointed Ernst & Young Inc. to act as monitor (the “**Monitor**”), approved the agreement engaging FTI Consulting Canada Inc. to act as chief restructuring officer of CannTrust (the “**CRO**”), and approved the agreement engaging Greenhill & Co. Canada Ltd. to act as financial advisor to CannTrust (the “**Financial Advisor**”).

4. CannTrust has determined that it is appropriate at this time to commence court-supervised processes to identify potential sale or investment transactions (as a possible alternative to a standalone restructuring) while identifying, quantifying and resolving claims against CannTrust.

Proposed SISP Order

5. The SISP is intended to solicit interest in, and opportunities for, a sale of or investment in all or part of CannTrust’s assets and business operations.

6. The SISP includes a notification process and two phases to evaluate proposals from qualified interested bidders. The key milestones and deadlines under the SISP are:

   (a) Implementation of Notification Process: May 20, 2020;

   (b) Phase 1 Bid Deadline: June 22, 2020; and

   (c) Phase 2 Bid Deadline: To be specified in the Bid Process Letter to be provided by the Financial Advisor to Phase 2 Qualified Bidders.

7. The notification process includes, among other things:

(a) CannTrust publishing the SISP Notice in The Globe and Mail (National Edition), and any other publications considered appropriate, and issuing the SISP Press Release, in each case by May 15, 2020;

(b) the Financial Advisor sending the Teaser Letter and NDA to all Known Potential Bidders by May 20, 2020; and

(c) the Monitor posting the SISP Notice, the SISP Press Release, the Teaser Letter and the NDA on the Monitor's Website.

8. Phase 1 of the SISP includes, among other things:

(a) potential bidders expressing their interest in potentially pursuing the SISP opportunity by delivering, among other things, an executed NDA;

(b) CannTrust and the Financial Advisor identifying which potential bidders will be Phase 1 Qualified Bidders;

(c) the Financial Advisor sending a Confidential Information Package regarding the SISP opportunity to each Phase 1 Qualified Bidders; and

(d) the delivery of non-binder letters of interest by Phase 1 Qualified Bidders such that they are received by the Financial Advisor by the Phase 1 Bid Deadline which is 5:00 p.m. EST on June 22, 2020; and

(e) the letters of interest will be assessed by CannTrust and the Financial Advisor, in consultation with the Monitor, to determine whether they are Qualified LOIs and whether the bidder will be deemed a Phase 2 Qualified Bidder.

9. Phase 2 of the SISP includes, among other things:

(a) CannTrust and the Financial Advisor, in consultation with and with the approval of the Monitor, will determine the process and timing to be followed for proceeding to Phase 2 of the SISP and will prepare the Bid Process Letter for Phase 2;

(b) the Bid Process Letter will be sent by the Financial Advisor to all Phase 2 Qualified Bidders and posted by the Monitor on the Monitor's Website;

(c) the delivery of binding offers by Phase 2 Qualified Bidders such that they are received by the Financial Advisor by the Phase 2 Bid Deadline specified in the Bid Process Letter; and

(d) following the Phase 2 Bid Deadline, CannTrust and the Financial Advisor, in consultation with the Monitor, will assess the bids and designate the most competitive bids that comply with the requirements in the SISP to be Qualified Bids.

10. The Qualified Bids will be reviewed by CannTrust and the Financial Advisor, in consultation with the Monitor, and a Successful Bid for any particular Property or the Business in whole or part may be identified. CannTrust will subsequently seek the approval of this Court to consummate the transactions with the Successful Bidder contemplated by the Successful Bid.

11. The SISP was developed by CannTrust in consultation with the Financial Advisor, the Monitor and the CRO. The SISP is designed to assist in maximizing value for stakeholders in light of the variety of transactional structures which may be proposed in letters of interest or formal offers from interested parties, and to accommodate external factors such as

regulatory process timelines, market uncertainty and any other concurrent cannabis industry sales processes.

12. It is appropriate to initiate the SISP at this time as it will allow a sufficient opportunity for CannTrust to secure the best possible transaction for the benefit of CannTrust and its stakeholders.

Proposed Claims Procedure Order

13. CannTrust is seeking to commence the Claims Procedure in order to ascertain the universe of claims that may exist against CannTrust and the directors and officers of CannTrust other than certain Excluded Equity Claims which will be subject to the Proposed Mediation Order.

14. The notification process includes, among other things:

(a) A Claims Package will be sent to each of the Known Claimants within five Business Days of the date of the Claims Procedure Order;

(b) A Claims Package will be sent to each Claimant with a Restructuring Claim no later than five Business Days following the time the Monitor actually becomes aware of the effective date of a restructuring, disclaimer, resiliation or termination of any lease, contract or other agreement or obligation;

(c) The Notice to Claimants will be published for at least one Business Day in the Globe and Mail (National Edition) by May 12, 2020;

(d) The Monitor will post the Notice to Claimants, Claims Package and Claims Procedure Order on the Monitor’s Website.

15. The following are the bar dates established by the Proposed Claims Procedure Order for the various Claims:

   (a) Pre-Filing Claims: 5:00 p.m. (Eastern Time) on June 22, 2020;

   (b) D&O Claims: 5:00 p.m. (Eastern Time) on June 22, 2020;

   (c) Restructuring Claims: 5:00 p.m. (Eastern Time) on the later of: (i) the Pre-Filing Claims Bar Date; and (ii) the day which is 30 days after the Monitor sends a Claims Package with respect to a Restructuring Claim to the Claimant.

16. The Monitor and CannTrust will review the Proofs of Claim filed in accordance with the Proposed Claims Procedure Order and may, among other things, accept, revise or disallow (in whole or in part) the amount and/or Status of any Claim.

17. A Claimant that intends to dispute a Notice of Revision or Disallowance is required to deliver a Notice of Dispute to CannTrust, with a copy to the Monitor, by 5:00 p.m. (Eastern Time) on the day that is 14 days after the Claimant is deemed to have received the Notice of Revision or Disallowance.

18. A Notice of Dispute may be resolved either (i) consensually by CannTrust, the Monitor and the applicant Claimant, (ii) by referring the dispute to a Claims Officer, to be appointed by agreement between the parties or by the Court, or (iii) by the Court.

19. The Claims Procedure contemplated in the Proposed Claims Procedure Order has been developed by CannTrust with input from the Monitor and the CRO.

20. The Claims Procedure will provide sufficient notice to known and unknown potential Claimants and an adequate opportunity to prove their Claims prior to Pre-Filing Claims

Bar Date or the Restructuring Claims Bar Date, as applicable. The adjudication procedure will facilitate the fair and expeditious resolution of any disputes regarding the Status and/or amount of each Claim. and is a fair and reasonable method of determining the potential distribution rights of creditors of CannTrust.

Proposed Mediation Order

21. CannTrust is seeking the appointment of the Hon. Dennis O'Connor, Q.C. (the "**Court-Appointed Mediator**") as an officer of the Court, acting as an independent and neutral third party to mediate a global settlement of certain class action and other claims against CannTrust Holdings Inc. ("**CannTrust Holdings**").

22. CannTrust Holdings and the Other Defendants were named as defendants in the Securities Actions. As a result of the complexity and overlapping nature of the claims related to the Securities Actions, CannTrust has determined that it would be preferable to work towards a global resolution of these claims through the Mediation Process.

23. The Court-Appointed Mediator has significant experience and expertise in resolving significant and complex class action and commercial disputes.

24. The Proposed Mediation Order provides the Court-Appointed Mediator with the necessary powers to conduct the Mediation Process in the manner that he determines will best allow him to carry out his mandate of achieving a global settlement of the Mediation Claims.

25. The Proposed Mediation Order also establishes an appropriate communication and confidentiality protocol between the Court, the Court-Appointed Mediator and participants in the Mediation Process.

26. The prompt resolution of the Mediation Claims is in the best interests of CannTrust, the holders of Mediation Claims and other stakeholders of CannTrust as it will assist CannTrust in proceeding with a plan of compromise or arrangement following the completion of the SISP and the Claims Procedure.

27. CannTrust also relies on:

(a) the provisions of the CCAA and the inherent and equitable jurisdiction of this Court;

(b) Rules 2.03, 3.02, 16, 38 and 57 of the *Rules of Civil Procedure*, RRO 1990, Reg 194;

(c) such further and other grounds as counsel for the Applicants may advise and this Honourable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE WILL BE USED AT THE HEARING OF THE MOTION:

(d) The affidavit of Greg Guyatt, sworn May 1, 2020;

(e) the Second Report of the Monitor, to be filed; and

(f) such further and other materials as counsel may advise and this Court may permit.

May 1, 2020

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Lawyers for the Applicants

TO: **SERVICE LIST**

SCHEDULE "A"

Conference Details to join Motion via Zoom

Join Zoom Meeting:

https://zoom.us/j/91942308879?pwd=SmNGZ051anUxWFBENXpwQXFXTG1yUT09

Meeting ID: 919 4230 8879
Password: 998659

One tap mobile
+16473744685,,91942308879#,,1#,998659# Canada

Dial by your location

+1 587 328 1099 Canada
+1 647 374 4685 Canada
+1 647 558 0588 Canada
+1 778 907 2071 Canada
+1 438 809 7799 Canada
+1 346 248 7799 US (Houston)
+1 669 900 6833 US (San Jose)
+1 929 205 6099 US (New York)
+1 253 215 8782 US (Tacoma)
+1 301 715 8592 US (Germantown)
+1 312 626 6799 US (Chicago)

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 CANNTRUST HOLDINGS INC. ET AL.

Court File No: CV-20-00638930-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at Toronto

NOTICE OF MOTION

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Tab 2

Court File No. CV-20-00638930-00CL

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

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Applicants

AFFIDAVIT OF GREG GUYATT
(Sworn May 1, 2020)

I, Greg Guyatt, of the City of Mississauga, in the Province of Ontario, MAKE OATH AND SAY:

1. I am the Chief Executive Officer ("**CEO**") of CannTrust Holdings Inc. ("**CannTrust Holdings**"). I have served in this capacity since February 17, 2020. Prior to my appointment as CEO, I served as the Chief Financial Officer ("**CFO**") of CannTrust Holdings since joining CannTrust Holdings on or around February 19, 2019. I am a Chartered Professional Accountant and have more than 20 years of experience in the consumer packaged goods, retail, pharmaceutical and private equity sectors.

2. Through my current role as CEO, and my former role as CFO, of CannTrust Holdings, I am familiar with the operations, financial results and strategies of the Applicants. As such, I have personal knowledge of the matters to which I depose in this affidavit. Where I do not possess personal knowledge, I have stated the source of my knowledge and believe it to be true.

3. For ease of reference, the Applicants will be collectively referred to herein as "**CannTrust**". All dollar references herein are Canadian dollars unless otherwise referenced.

I. OVERVIEW

(i) Background

4. CannTrust is a licensed producer of cannabis in Canada that, prior to June 2019, operated an award-winning business that was experiencing operational growth and expanding into new markets and product segments. However, following regulatory audits of CannTrust's facilities in June and July 2019 (the "**Health Canada Audits**"), Health Canada determined that CannTrust was growing and storing cannabis contrary to applicable laws.

5. Following the Health Canada Audits, among other things, shipments of all CannTrust's cannabis products have been stopped, its cannabis licences have been partially suspended and multiple putative securities class actions and other actions have been commenced against it.

6. In the second half of 2019 and the first quarter of 2020, CannTrust undertook extensive efforts to address these challenges including, among other things, investigating the findings of the Health Canada Audits, cooperating with regulators such as Health Canada and the Ontario Securities Commission and implementing a comprehensive remediation plan at its production and processing facilities in Fenwick, Ontario (the "**Fenwick Facility**") and Vaughan, Ontario (the "**Vaughan Facility**") to address the findings of the Health Canada Audits and investigation with a view to obtaining the reinstatement of its licences.

7. However, due to uncertainty regarding the reinstatement and the timing of such reinstatement of CannTrust's licences, uncertainty regarding whether the litigation and other claims against CannTrust could be resolved within a reasonable time period and on a basis that would leave CannTrust with sufficient financial resources, and the impact of the current disruption of global capital markets and the recent downturn of the Canadian cannabis industry on CannTrust's ability to attract capital that it may require to restore its operations, CannTrust determined that it was in the best interests of it and its stakeholders to complete its efforts to address these challenges in a court-supervised restructuring process.

8. On March 31, 2020, the Honourable Mr. Justice Hainey granted CannTrust an initial order (the "**Initial Order**") pursuant to the *Companies' Creditors Arrangement Act* (Canada) (the "**CCAA**"), including a stay of proceedings until April 9, 2020 (the "**Stay Period**").

9. On April 9, 2020, the Honourable Mr. Justice Hainey granted CannTrust an order (the "**Amended and Restated Initial Order**") pursuant to the CCAA amending and restating the Initial Order to, among other things, extend the Stay Period to July 5, 2020. A copy of the Amended and Restated Initial Order is attached hereto as **Exhibit "A"**.

10. I previously swore affidavits on March 31, 2020 (the "**March 31 Affidavit**") in support of CannTrust's application for the Initial Order and on April 6, 2020 (the "**April 6 Affidavit**") in support of CannTrust's application for the Amended and Restated Initial Order. The March 31 Affidavit outlines, among other things, the business, operations and financial position of CannTrust and the challenges it has faced following the Health Canada Audits. The April 6 Affidavit outlines, among other things, CannTrust's activities immediately following the commencement of these proceedings. A copy of the March 31 Affidavit

(without exhibits), is attached hereto as **Exhibit "B"**. A copy of the April 6 Affidavit (without exhibits) is attached hereto as **Exhibit "C"**.

11. As set out further below, since the commencement of these proceedings, CannTrust has continued to address the challenges it faces by completing the remainder of its remediation activities at the Vaughan Facility. CannTrust has now sought the reinstatement of its licences at both the Fenwick Facility and the Vaughan Facility.

(ii) Relief Sought on this Motion

12. While CannTrust awaits a decision from Health Canada on the reinstatement of its licences, CannTrust has determined that it is appropriate at this time to commence court-supervised processes to identify potential sale or investment transactions (as a possible alternative to a standalone restructuring) while identifying, quantifying and resolving claims against CannTrust.

13. Accordingly, I swear this affidavit in support of CannTrust's motion for:

(a) an order (the "**Proposed SISP Order**"), substantially in the form of the draft order included at Tab 3 of the Motion Record of CannTrust, approving a sale and investment solicitation process for the purpose of soliciting interest in and opportunities for a sale of, or investment in, the assets and business operations of CannTrust (the "**SISP**") and authorizing CannTrust, Greenhill & Co. Canada Ltd. as financial advisor to CannTrust (the "**Financial Advisor**"), FTI Consulting Canada Inc. as chief restructuring officer to CannTrust (the "**CRO**") and Ernst & Young Inc. in its capacity as the court-appointed monitor of CannTrust (the "**Monitor**") to implement it;

(b) an order (the "**Proposed Claims Procedure Order**"), substantially in the form of the draft order included at Tab 4 of the Motion Record of CannTrust, approving a claims procedure for the identification, quantification, and resolution of certain claims of creditors of CannTrust (the "**Claims Procedure**"); and

(c) an order (the "**Proposed Mediation Order**"), substantially in the form of the draft order included at Tab 5 of the Motion Record of CannTrust, appointing a neutral third party to mediate a global settlement of certain class action and other claims that have been excluded from the Claims Procedure for the time being (the "**Mediation Process**").

14. The SISP, the Claims Procedure and the Mediation Process will allow CannTrust, with the assistance of its advisors including the CRO and the Financial Advisor, and in consultation with the Monitor, to identify the potential restructuring paths available to CannTrust and evaluate which path is in the best interest of CannTrust and its stakeholders. The information gleaned from these processes will also put CannTrust and its advisors in a better position to determine the best manner to proceed in restoring its operations if its licences are reinstated by Health Canada, including if CannTrust determines to pursue a standalone restructuring as an alternative to a sale transaction.

II. UPDATE ON STATUS OF REMEDIATION

15. Prior to and following the commencement of these proceedings, CannTrust has undertaken extensive remediation efforts to address, among other things, the findings of the Health Canada Audits and other potential concerns.

16. On February 14, 2020, CannTrust submitted a comprehensive package to Health Canada evidencing that it had completed the remediation plan for the Fenwick Facility and requesting the reinstatement of its partially suspended licences with respect to the Fenwick Facility. As noted in the April 6 Affidavit, on April 2, 2020, Health Canada wrote to CannTrust confirming that it had completed its review of the remediation package for the Fenwick Facility and asking three questions about the remediation package. On April 17, 2020, CannTrust provided its responses to those questions to Health Canada.

17. On April 24, 2020, CannTrust submitted a comprehensive package to Health Canada evidencing that it had completed the remediation plan for the Vaughan Facility and requested the reinstatement of its partially suspended licences with respect to the Vaughan Facility.

18. CannTrust will continue to engage proactively and cooperatively with Health Canada to provide any further information it may require and address any further concerns that it may have. The reinstatement of CannTrust's licences and the timing of such reinstatement remains uncertain at this time.

III. UPDATE ON REPORTING ISSUER STATUS

19. On March 31, 2020, following CannTrust Holdings' announcement of the terms of the

Initial Order, the Toronto Stock Exchange (the "**TSX**") and New York Stock Exchange (the "**NYSE**") advised CannTrust Holdings and announced publicly that the TSX and NYSE had suspended trading in CannTrust Holdings' common shares (the "**Common Shares**") and initiated their respective procedures for delisting.

20. On April 13, 2020, CannTrust Holdings received a cease trade order (the "**Cease Trade Order**") issued by the Ontario Securities Commission (the "**OSC**") as a result of CannTrust Holdings' failure to file certain periodic disclosure required by Ontario securities legislation.

21. The Cease Trade Order, among other things:

(a) revokes the management cease trade order issued by the OSC on August 15, 2019 in respect certain directors and officers of CannTrust Holdings, which prohibited those directors and officers from purchasing or selling any securities of CannTrust Holdings;

(b) prohibits any person or company from trading, directly or indirectly, in any security of CannTrust Holdings in the Province of Ontario, and in every other province or territory of Canada in which CannTrust Holdings is a reporting issuer and in which Multilateral Instrument 11-103 - *Failure-to-File Cease Trade Orders in Multiple Jurisdictions* applies, except for:

(i) any sale of CannTrust Holdings securities by any person who is not an insider or control person of CannTrust Holdings, provided such sale is effected through a registered Canadian investment dealer on a "foreign organized regulated market", as defined in section 1.1 of the *Universal Market Integrity Rules of the Investment Industry Regulatory Organization of Canada*; and

(ii) the exercise by the holder of any "specified put contract" (as defined in the Cease Trade Order) that existed prior to the date of the Cease Trade Order, and the sale of the underlying CannTrust Holdings shares (and the corresponding purchase of shares by the writer of the specified put contract) under the terms of such specified put contract, provided that such holder is not an insider or control person of CannTrust Holdings and the put contract was issued and will be cleared by the Canadian Derivatives Clearing Corporation.

22. On April 28, 2020, the Monitor received notice from the United States Financial Industry Regulatory Authority ("**FINRA**") that a trading symbol "CNTTQ" has been assigned to the Common Shares by FINRA's Department of Market Operations effective April 14, 2020 and that the Common Shares may be quoted and traded in the market for unlisted securities (i.e., the "over-the-counter market") in the United States.

23. As noted in the March 31 Affidavit, CannTrust Holdings has determined that it does not currently intend to devote additional time or money towards curing its public disclosure defaults by completing and resuming the filing of required reports under Canadian and United States securities laws. Upon completion of its CCAA process, and depending on the circumstances prevailing at that time, CannTrust may determine to resume devoting additional time and money towards curing its public disclosure defaults by completing and

resuming the filing of required reports under Canadian and United States securities laws. However, there can be no assurance at this time that CannTrust will do so.

IV. PROPOSED SISP ORDER

(i) Overview

24. As noted in the March 31 Affidavit, following the Health Canada Audits, the Board of Directors of CannTrust Holdings formed a special committee of independent directors (the "**Special Committee**") with a broad mandate to, among other things, consider potential strategic alternatives available to CannTrust.

25. The Special Committee retained the Financial Advisor and instructed it to initiate a confidential strategic alternatives market canvass which remains at an early stage. CannTrust is seeking the Proposed SISP Order to continue that market canvass under court supervision.

26. The SISP is intended to solicit interest in, and opportunities for, a sale of or investment in all or part of CannTrust's assets and business operations. A transaction may include one or more of a recapitalization, arrangement or other form of investment in or reorganization of the business and affairs of CannTrust as a going concern or a sale of all, substantially all or one or more components of CannTrust's assets (the "**Property**") and business operations (the "**Business**") as a going concern or otherwise.

27. The SISP includes a notification process and two phases to evaluate proposals from qualified interested bidders, which are described further below. For ease of reference, the following are the key milestones and deadlines under the SISP:

(a) Implementation of Notification Process: May 20, 2020;

(b) Phase 1 Bid Deadline[1]: June 22, 2020; and

(c) Phase 2 Bid Deadline: To be specified in the Bid Process Letter to be provided by the Financial Advisor to Phase 2 Qualified Bidders.

(ii) Notification Process

28. CannTrust and the Financial Advisor will prepare a list of Known Potential Bidders which includes (i) parties that have approached CannTrust, the Financial Advisor or the Monitor indicating an interest in the SISP opportunity, (ii) local and international strategic and financial parties, and (iii) any other parties reasonably suggested by a stakeholder as a potential bidder that may be interested in the SISP opportunity.

29. CannTrust will cause the SISP Notice to be published in The Globe and Mail (National Edition) and any other publications that CannTrust and the Financial Advisor, in consultation with the Monitor, considers appropriate by May 15, 2020.

30. CannTrust will issue the SISP Press Release for dissemination in Canada and major financial centres in the United States by May 15, 2020.

31. The Financial Advisor will send a process summary (the "**Teaser Letter**") and a non-disclosure agreement in form and substance satisfactory to CannTrust and the Financial Advisor (an "**NDA**") to all Known Potential Bidders by May 20, 2020 and to any other party

[1] All capitalized terms used but not otherwise defined in this part have the meanings given to them in the Proposed SISP Order.

who requests a copy of the Teaser Letter and NDA or who is identified to the Financial Advisor, CannTrust or the Monitor as a potential bidder as soon as reasonably practicable after such request or identification.

32. The Monitor will post the SISP Notice, the SISP Press Release, the Teaser Letter and the NDA on the case website established for these proceedings with the URL: http://www.ey.com/ca/canntrust (the "**Monitor's Website**").

(iii) Phase 1: Non-Binding Letters of Interest

33. A potential bidder will be deemed a Phase 1 Qualified Bidder if:

(a) the potential bidder has delivered to the Financial Advisor (i) an executed NDA, and (ii) a letter setting out the identity and contact information of the potential bidder and full disclosure of direct and indirect principals of the potential bidder; and

(b) CannTrust and the Financial Advisor determine, in their reasonable business judgment, that the potential bidder is likely, based on the availability of financing, experience and other considerations, to be able to consummate a sale or investment pursuant to the SISP.

34. The Financial Advisor, with the assistance of CannTrust, will prepare and send a Confidential Information Package providing additional information regarding the SISP opportunity to each Phase 1 Qualified Bidder.

35. A Phase 1 Qualified Bidder that wishes to pursue the SISP opportunity must deliver a

non-binding letter of interest such that it is received by the Financial Advisor by the Phase 1 Bid Deadline which is 5:00 p.m. EST on June 22, 2020.

36. To be considered a Qualified LOI, the letter of interest must, among other things:

(a) be submitted by a Phase 1 Qualified Bidder and received by the Financial Advisor on or before the Phase 1 Bid Deadline;

(b) indicate whether the Phase 1 Qualified Bidder is proposing a Sale Proposal or an Investment Proposal;

(c) in the case of a Sale Proposal, provide details regarding, among other things, the purchase price or price range, any liabilities to be assumed, key assumptions supporting the valuation, the Property expected to be subject to the transaction, the proposed treatment of material agreements and employees, a specific indication of financial capability and structure and financing of the transaction, conditions and approvals required, a description of any due diligence required, and any other material terms or conditions; and

(d) in the case of an Investment Proposal, provide details regarding, among other things, how the proposed investment will be structured, the aggregate amount of the equity and/or debt investment to be made, key assumptions supporting the valuation, the proposed treatment of material agreements and employees, a specific indication of the sources of capital and structure and financing of the transaction, conditions and approvals required, a description of any due diligence required, and any other material terms or conditions.

37. CannTrust and the Financial Advisor, in consultation with the Monitor, may waive compliance with the above requirements and deem the letter of interest a Qualified LOI if appropriate.

(iv) Preliminary Assessment of Phase 1 Bids and Determination of Phase 2 Bid Process

38. Following the Phase 1 Bid Deadline, CannTrust and the Financial Advisor, in consultation with the Monitor, will assess the Qualified LOIs. A Phase 1 Qualified Bidder may be deemed a Phase 2 Qualified Bidder where:

(a) the bidder has submitted a Qualified LOI;

(b) the bidder has a *bona fide* interest in completing a Sale Proposal or Investment Proposal (as the case may be); and

(c) the bidder has the financial capability (based on availability of financing, experience and other considerations) to consummate such a transaction based on the financial information provided.

39. CannTrust and the Financial Advisor, in consultation with the Monitor, may waive compliance with any of the requirements and deem the bidder a Phase 2 Qualified Bidder if appropriate.

40. CannTrust and the Financial Advisor may, in their reasonable business judgment and after consultation with and with the approval of the Monitor, limit the number of Phase 2 Qualified Bidders (and thereby eliminate some bidders from the process).

41. CannTrust and the Financial Advisor, in consultation with and with the approval of the Monitor, will determine the process and timing to be followed for proceeding to Phase 2 of the SISP and will prepare the Bid Process Letter for Phase 2. The Bid Process Letter will be sent by the Financial Advisor to all Phase 2 Qualified Bidders and posted by the Monitor on the Monitor's Website.

(v) Phase 2: Formal Offers and Identification of Qualified Bids

42. Phase 2 Qualified Bidders that wish to make a formal offer to purchase or make an investment in CannTrust or its Property and Business must submit a binding offer such that it is received by the Financial Advisor by the Phase 2 Bid Deadline specified in the Bid Process Letter.

43. To be considered a Qualified Bid, the bid must, among other things:

(a) be submitted by a Phase 2 Qualified Bidder and received by the Financial Advisor on or before the Phase 2 Bid Deadline;

(b) comply with all of the requirements in respect of Phase 1 Qualified LOIs (listed above);

(c) either individually or in combination with other bids that make up one bid, be an offer to purchase or make an investment in some or all of the Property or Business on terms and conditions reasonably acceptable to the Applicants and the Monitor;

(d) include a letter stating that the Phase 2 Qualified Bidder's offer is irrevocable until the selection of the Successful Bidder, provided that if such Phase 2 Qualified Bidder is selected as the Successful Bidder, its offer shall remain irrevocable until the closing of the transaction with the Successful Bidder;

(e) include duly authorized and executed transaction agreements and ancillary agreements, including the purchase price, investment amount and any other key economic terms expressed in Canadian dollars (the "**Purchase Price**"), together with all exhibits and schedules thereto;

(f) include written evidence of a firm, irrevocable commitment for financing or other evidence of ability to consummate the proposed transaction;

(g) not be conditioned on, among other things, obtaining financing or the outcome of unperformed due diligence by the Phase 2 Qualified Bidder;

(h) fully disclose the identity of each entity that will be entering into the transaction or the financing, or that is participating or benefiting from such bid;

(i) include a commitment to provide a non-refundable deposit in the amount of not less than 10% of the Purchase Price upon the Phase 2 Qualified Bidder being selected as the Successful Bidder; and

(j) include certain acknowledgements and representations of the Phase 2 Qualified Bidder, evidence that the submission of the transactions agreements has been duly authorized, and other information required by CannTrust, the Financial Advisor or the Monitor.

44. Following the Phase 2 Bid Deadline, CannTrust and the Financial Advisor, in consultation with the Monitor, will assess the bids and designate the most competitive bids that comply with the above requirements to be Qualified Bids.

45. CannTrust and the Financial Advisor, in consultation with the Monitor, may waive compliance with any of the above requirements and deem the bid to be a Qualified Bid if appropriate.

46. The Financial Advisor will notify each Phase 2 Qualified Bidder in writing as to whether its bid constituted a Qualified Bid within 10 business days of the Phase 2 Bid Deadline, or at such later time as CannTrust and the Financial Advisor, in consultation with the Monitor, deem appropriate.

(vi) Selection of Successful Bid

47. CannTrust and the Financial Advisor, in consultation with the Monitor, will review the Qualified Bids and may enter into negotiations with Phase 2 Qualified Bidders to improve their respective Qualified Bids. The Qualified Bids will be valued based on several factors, including:

(a) the Purchase Price and the net value provided by such bid;

(b) the claims likely to be created by such bid in relation to other bids;

(c) the identity, circumstances and ability of the Phase 2 Qualified Bidder to successfully complete such transactions;

(d) the proposed transaction documents;

(e) the effects of the bid on the stakeholders of CannTrust;

(f) factors affecting the speed, certainty and value of the transaction (including any regulatory approvals or third party contractual arrangements required to close the transactions);

(g) the assets included or excluded from the bid;

(h) any related restructuring costs; and

(i) the likelihood and timing of consummating such transactions.

48. CannTrust and the Financial Advisor, in consultation with the Monitor, will identify the Successful Bid for any particular Property or the Business in whole or part. CannTrust reserves the right to reject any or all Phase 2 Qualified Bids.

49. CannTrust will subsequently seek the approval of this Court to consummate the transactions with the Successful Bidder contemplated by the Successful Bid.

(vii) The SISP Should be Approved

50. The SISP was developed by CannTrust in consultation with the Financial Advisor, the Monitor and the CRO. The SISP is designed to facilitate the continuation in a court-supervised process of the market canvass already commenced by the Financial Advisor. The SISP is sufficiently flexible to allow CannTrust to modify the process to achieve the best outcome based on the level and nature of the interest received and the surrounding

circumstances.

51. In particular, the process and deadline for Phase 2 of the SISP will only be determined by CannTrust and the Financial Advisor, in consultation with the Monitor, following the Phase 1 Bid Deadline. This flexibility is necessary and appropriate in the circumstances due to:

(a) the Claims Procedure and Mediation Process which will be run simultaneously, as described below;

(b) uncertainty regarding the timing of any decision by Health Canada with respect to reinstatement of CannTrust's cannabis licences;

(c) uncertainty regarding the ability and interest of potential bidders to pursue the SISP opportunity as a result of the current disruption of global economies and capital markets and the general downturn in the Canadian cannabis industry;

(d) uncertainty regarding the ability of potential bidders to conduct due diligence due to COVID-19 related restrictions and the timing and form of the anticipated gradual relaxation of those restrictions in the coming months; and

(e) other sale processes that have recently been completed, are currently being run, or that may be commenced in the coming months with respect to other licensed producers of cannabis.

52. CannTrust has determined that it is not preferable to wait until it has received a decision on the reinstatement of its cannabis licences or until there is more clarity on when

COVID-19 restrictions will begin to be eased, as the timing of such events is uncertain at this time. Commencing the proposed SISP now and identifying potentially interested parties in the near team, while simultaneously maintaining the flexibility to adjust the process as appropriate, will put CannTrust in a position to respond to these circumstances in the manner that is most beneficial to CannTrust and its stakeholders.

53. In my view, the proposed SISP represents a fair and commercially efficient process which will allow a sufficient opportunity for CannTrust to secure the best possible transaction for the benefit of CannTrust and its stakeholders.

V. PROPOSED CLAIMS PROCEDURE ORDER

(i) Overview

54. CannTrust is seeking to commence the Claims Procedure in order to ascertain the universe of claims that may exist against CannTrust and the directors and officers of CannTrust other than certain Excluded Equity Claims[2] which will be subject to the Proposed Mediation Order and are described in more detail below.

55. Identifying and quantifying these claims will allow CannTrust to assess what impact they may have on potential transactions and/or restructurings that are proposed in the SISP and allow CannTrust to begin contemplating the form of a plan of compromise or arrangement.

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[2] All capitalized terms used but not otherwise defined in this part have the meanings given to them in the Proposed Claims Procedure Order.

56. For ease of reference, the following are the key milestones and deadlines under the Claims Procedure, which is described further below:

(a) Claims Package sent to Known Claimants: Within 5 Business Days following the issuance of the Proposed Claims Procedure Order;

(b) Publication of newspaper notice and press release: May 12, 2020;

(c) Pre-Filing Claims Bar Date: 5:00 p.m. (Eastern Time) on June 22, 2020; and

(d) Restructuring Claims Bar Date 5:00 p.m. (Eastern Time) on the later of: (i) the Pre-Filing Claims Bar Date; and (ii) the day which is 30 days after the Monitor sends a Claims Package with respect to a Restructuring Claim to the Claimant.

(ii) Claims and Excluded Claims

57. The proposed Claims Procedure would govern the identification, quantification and resolution of Pre-Filing Claims, Restructuring Claims and D&O Claims other than the Excluded Claims.

58. The following claims are Excluded Claims:

(a) Excluded Equity Claims, which are defined as “any Equity Claim against or in respect of CannTrust Holdings Inc. or its Directors or Officers, including for greater certainty: (i) any claim against or in respect of CannTrust Holdings Inc. or its Directors or Officers in the Pending Litigation; and (ii) any claim of a Director or Officer or any other Person for contribution or indemnity from

CannTrust Holdings Inc. in respect of the Pending Litigation or an Equity Claim";

(b) any claims secured by any of the CCAA Charges; and

(c) any investigation, action, suit, order or proceeding in respect of the Applicants or any of them by or before a regulatory body (as defined in the CCAA), unless such investigation, action, suit, order or proceeding constitutes a "claim" within the meaning of the CCAA.

(iii) Notification Process and Claims Bar Dates

59. The Proposed Claims Procedure Order requires CannTrust to provide to the Monitor a complete list of Known Claimants based on its books and records and their respective email addresses or, where CannTrust does not know the email address of any Known Claimant, the Known Claimant's mailing address.

60. The Monitor, in turn, will send a Claims Package to each of the Known Claimants by email or, where the email address of the Known Claimant is not known, by ordinary mail, in each case within five Business Days of the date of the Claims Procedure Order.

61. The Monitor will send a Claims Package to each Claimant with a Restructuring Claim no later than five Business Days following the time the Monitor actually becomes aware of the effective date of a restructuring, disclaimer, resiliation or termination of any lease, contract or other agreement or obligation.

62. The Monitor will cause the Notice to Claimants to be published for at least one

Business Day in the Globe and Mail (National Edition) by May 12, 2020.

63. In addition, the Monitor will cause the Notice to Claimants, Claims Package and Claims Procedure Order to be posted on the Monitor's Website as soon as reasonably possible following the issuance of the Claims Procedure Order.

64. As noted above, the following are the bar dates established by the Proposed Claims Procedure Order for the various Claims:

(a) Pre-Filing Claims: 5:00 p.m. (Eastern Time) on June 22, 2020;

(b) D&O Claims: 5:00 p.m. (Eastern Time) on June 22, 2020;

(c) Restructuring Claims: 5:00 p.m. (Eastern Time) on the later of: (i) the Pre-Filing Claims Bar Date; and (ii) the day which is 30 days after the Monitor sends a Claims Package with respect to a Restructuring Claim to the Claimant.

65. If a Claimant does not file a Proof of Claim prior to the applicable bar date, the Claimant will not be entitled to receive further notice with respect to the Claims Procedure or these proceedings, will not be permitted to vote at any Meeting on account of such Claim, will not be permitted to participate in any distribution under any Plan and shall be forever barred from asserting or enforcing such Claim against CannTrust and the Directors and Officers, if application, and CannTrust and the Directors and Officers, if applicable, shall not have any liability whatsoever in respect of such Claim and such Claim will be extinguished without any further act or notification by CannTrust.

(iv) Adjudication and Resolution of Claims

66. The Monitor and CannTrust will review the Proofs of Claim filed in accordance with the Proposed Claims Procedure Order and may:

(a) request additional information from a Claimant;

(b) request that a Claimant file a revised Proof of Claim;

(c) attempt to resolve and settle any issue arising in a Proof of Claim or in respect of a Claim;

(d) accept (in whole or in part), the amount and/or Status of any Claim and so notify the Claimant in writing; and/or

(e) revise or disallow (in whole or in part) the amount and/or Status of any Claim and notify the Claimant in writing.

67. A Claimant that intends to dispute a Notice of Revision or Disallowance is required to deliver a Notice of Dispute to CannTrust, with a copy to the Monitor, by 5:00 p.m. (Eastern Time) on the day that is 14 days after the Claimant is deemed to have received the Notice of Revision or Disallowance.

68. Upon receiving a Notice of Dispute, the Monitor, in consultation with CannTrust, may attempt to settle the dispute with the Claimant. If the dispute cannot be settled within a reasonable time period or in a manner satisfactory to CannTrust, the Monitor, and the applicable Claimant, the Monitor will either:

(a) refer the dispute to a Claims Officer; or

(b) on notice to the disputing Claimant, schedule an appointment with the Court for the purpose of scheduling a motion to seek a determination by the Court of the disputed Claim.

69. A Claims Officer may be appointed to adjudicate a disputed Claim either (i) upon the mutual agreement of the affected Claimant and CannTrust, in consultation with the Monitor, or (ii) by the Court. The Claims Officer will be empowered to determine the process in which evidence may be brought before him or her as well as any other procedural matters which may arise in respect of the determination of any Claim.

(v) Proposed Claims Procedure Order Should be Approved

70. The Claims Procedure contemplated in the Proposed Claims Procedure Order has been developed by CannTrust with input from the Monitor and the CRO.

71. CannTrust believes that the notification process outlined above will provide known and unknown potential Claimants with adequate notice of the Claims Procedure and an adequate opportunity to prove their Claims prior to Pre-Filing Claims Bar Date or the Restructuring Claims Bar Date, as applicable. The adjudication procedure will facilitate the fair and expeditious resolution of any disputes regarding the Status and/or amount of each Claim.

VI. PROPOSED MEDIATION ORDER

72. CannTrust is seeking the appointment of the Hon. Dennis O'Connor, Q.C. as an officer of the Court, acting as an independent and neutral third party to mediate a global settlement of the Mediation Claims.[3]

(i) Mediation Claims

73. As described more fully in the March 31 Affidavit, CannTrust is currently a defendant in the following litigation (the "**Pending Litigation**"):

(a) Five putative securities class actions commenced in Ontario against CannTrust Holdings, carriage of which has been awarded to a consortium comprised of A Dimitri Lascaris Law Professional Corporation, Strosberg Sasso Sutts LLP, Henein Hutchison LLP and Kalloghlian Professional Corporation (the "**Ontario Actions**");

(b) Three putative securities class actions commenced in British Columbia, Alberta and Quebec by Merchant Law Group (collectively with the Ontario Actions, the "**Canadian Class Actions**");

(c) Five putative securities class actions commenced in the United States (four in the Southern District of New York, one in California State Court) (the "**U.S. Class Actions**");

[3] All capitalized terms used but not otherwise defined in this part have the meanings given to them in the Proposed Mediation Order.

(d) A securities action commenced in Ontario against CannTrust Holdings by two shareholders represented by Wright Henry LLP and Siskinds LLP which overlaps with the amounts claimed in the Canadian Class Actions (the "**Zola Action**"); and

(e) An action commenced in Ontario against CannTrust Inc. by Gay Company Ltd. concerning the termination of construction contracts (the "**Construction Action**").

74. The Canadian Class Actions, U.S. Class Actions and Zola Action (the "**Securities Actions**") have also named as defendants various current and former directors, officers and employees of CannTrust Holdings, its auditors, underwriters and certain selling shareholders.

75. Pursuant to the Amended and Restated Initial Order, the Pending Litigation has been stayed against CannTrust, its directors and officers, and any other person named as a defendant or respondent (the "**Other Defendants**").

76. The Securities Actions each allege that CannTrust Holdings made misrepresentations in its disclosure to investors related to the findings of the Health Canada Audits. The Securities Actions plead claims, class descriptions and class periods that are not identical but have a great deal of overlap between one another. The Other Defendants may have claims for contribution and indemnity against CannTrust Holdings or against one another.

77. As a result of the complexity and overlapping nature of these claims, CannTrust has determined that it would be preferable to work towards a global resolution of these claims through the Mediation Process.

78. The Mediation Claims that will be subject to the Mediation Process are defined as "any right, claim or dispute arising in or in relation to the Pending Litigation (other than the Pending Litigation where CannTrust Holdings Inc. is not a defendant), including any Excluded Equity Claim and any right, claim or dispute against or in respect of CannTrust Holdings Inc., the Directors or Officers or the Other Defendants in the Pending Litigation."

79. The Construction Action is an action asserting contractual damages that is wholly unrelated to the Securities Actions. Accordingly, the Construction Action is not a Mediation Claim or an Excluded Equity Claim and may be proved as part of the Claims Procedure.

(ii) Court-Appointed Mediator

80. Mr. O'Connor sat on the Court of Appeal for Ontario from 1998 to 2012 and served as the Associate Chief Justice of Ontario from 2001 until his retirement from the Bench in 2012. He has also served as the commissioner of two major public inquiries: the Walkerton Inquiry and the Maher Arar Inquiry.

81. Since leaving the Bench at the end of 2012, Mr. O'Connor has established a renowned arbitration and mediation practice focusing on commercial, financial, valuation, contractual and estate disputes. Mr. O'Connor was recognized in the 2019 and 2020 editions of *Chambers Global* **-** *The World's Leading Lawyers for Business* in Band 1 of the most in demand arbitrators, and was recognized in the 2019 edition of *The Canadian Legal Lexpert Directory* as a leading practitioner in commercial arbitration.

82. As a lawyer, judge and mediator, Mr. O'Connor has significant experience and expertise in resolving significant and complex class action and commercial disputes.

83. Mr. O'Connor is willing to serve as the Court-Appointed Mediator and has advised that there are no legal conflicts of interest preventing him from acting and that he knows of no matter that would affect his impartiality to fully and fairly mediate the Mediation Claims.

84. Mr. O'Connor maintains his practice in association with the law firm Borden Ladner Gervais LLP ("**BLG**"). Mr. O'Connor has caused appropriate conflict searches to be conducted and has advised that BLG has no retainers related to the Pending Litigation (defined below) or to these CCAA proceedings.

85. Mr. O'Connor has advised that BLG has acted and/or is acting in unrelated matters for and/or opposite certain of the Other Defendants, including five underwriters and the auditor of CannTrust Holdings, KPMG LLP, and has acted on unrelated matters involving CannTrust. Out of an abundance of caution, Mr. O'Connor has advised that he will erect an ethical wall between himself and the BLG lawyers who have carriage of these unrelated matters.

(iii) Mediation Process

86. The Proposed Mediation Order provides the Court-Appointed Mediator with the necessary powers to conduct the Mediation Process in the manner that he determines will best allow him to carry out his mandate of achieving a global settlement of the Mediation Claims. In particular, the Court-Appointed Mediator may:

(a) adopt processes and utilize resources which, in his discretion, he considers appropriate to facilitate negotiation of a global settlement;

(b) consult with all Persons with Mediation Claims, the Monitor, CannTrust, the Other Defendants, any insurer of CannTrust or the Directors or Officers and any other Persons the Court-Appointed Mediator considers appropriate; and

(c) apply to this Court for advice and directions as, in his discretion, the Court-Appointed Mediator deems necessary.

87. The Proposed Mediation Order also establishes a communication and confidentiality protocol between the Court, the Court-Appointed Mediator and participants in the Mediation Process which is designed to (i) protect the confidentiality of the Mediation Process to facilitate the full and frank engagement of the various participants with the Mediation Process, and (ii) permit the Court and the Court-Appointed Mediator to discuss, on an ongoing basis, the conduct of the Mediation Process and the manner in which it will be coordinated with the CCAA proceedings.

88. CannTrust will pay the reasonable fees and disbursements of the Court-Appointed Mediator on a monthly basis. Each of the participants in the Mediation Process will be bear their own costs.

(iv) Proposed Mediation Order Should be Approved

89. CannTrust believes that having a highly qualified and experienced Court-Appointed Mediator will facilitate efforts to negotiate a resolution of the Mediation Claims.

90. The committed, flexible and timely participation of all relevant parties connected to the Securities Actions will be necessary in order to achieve a global resolution of the

Mediation Claims in an expeditious manner in the Mediation Process. The prompt resolution of the Mediation Claims is in the best interests of CannTrust, the holders of Mediation Claims and other stakeholders of CannTrust as it will assist CannTrust in proceeding with a plan of compromise or arrangement following the completion of the SISP and the Claims Procedure.

VII. CONCLUSION

91. For the reasons stated above, the relief requested in the Proposed SISP Order, the Proposed Claims Procedure Order and the Proposed Mediation Order is in the best interests of CannTrust and its stakeholders and appropriate in the circumstances.

SWORN AFFIRMED BEFORE ME at the City of Toronto, in the Province of Ontario on the 1st day of May, 2020. A Commissioner for taking Affidavits Name: Trevor Courtis (LSO# 67715A)	Greg Guyatt

This is **Exhibit "A"** referred to in the
affidavit of **GREG GUYATT**
sworn before me this
1st day of May, 2020

A Commissioner for taking affidavits

Tab A

Court File No. CV-20-00638930-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE	)	THURSDAY, THE 9TH
	)	
MR. JUSTICE HAINEY	)	DAY OF APRIL, 2020

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 CANNTRUST HOLDINGS INC., CANNTRUST INC., CTI HOLDINGS (OSOYOOS) INC., AND ELMCLIFFE INVESTMENTS INC.

Applicants

AMENDED AND RESTATED INITIAL ORDER

THIS APPLICATION, made by the Applicants pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") for an order amending and restating the Initial Order (the "**Initial Order**") issued on March 31, 2020 (the "**Initial Filing Date**") and extending the stay of proceedings provided for therein was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Greg Guyatt sworn March 31, 2020 and the Exhibits thereto (the "**Guyatt Affidavit**"), the affidavit of Greg Guyatt sworn April 6, 2020 and the Exhibits thereto (the "**Second Guyatt Affidavit**"), the consent of Ernst & Young Inc. ("**EYI**") to act as the Monitor (in such capacity, the "**Monitor**"), the Pre-Filing Report of EYI in its capacity as the proposed Monitor dated March 31, 2020, and the First Report of the Monitor dated April 8, 2020, and on hearing the submissions of counsel for the Applicants, the Monitor and those other parties that were present as listed on the counsel slip, no other party appearing although duly served as appears from the Affidavit of Service of Trevor Courtis sworn April 7, 2020.

AMENDING AND RESTATING INITIAL ORDER

1. **THIS COURT ORDERS** that the Initial Order, reflecting the Initial Filing Date, shall be amended and restated as provided for herein.

SERVICE

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

APPLICATION

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

PLAN OF ARRANGEMENT

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

POSSESSION OF PROPERTY AND OPERATIONS

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

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

7. **THIS COURT ORDERS** that each of the Applicants' existing depository and disbursement banks (collectively, the "**Banks**") is authorized to debit the applicable Applicant's accounts in the ordinary course of business without the need for further order of this Court for: (i) all cheques drawn on the applicable Applicant's accounts which are cashed at such Bank's counters or exchanged for cashier's cheques by the payees thereof prior to the date of this Order; (ii) all cheques or other items deposited in one of the Applicant's accounts with such Bank prior to the date of this Order which have been dishonoured or returned unpaid for any reason, together with any fees and costs in connection therewith, to the same extent an Applicant was responsible for such items prior to the date of this Order; and (iii) all undisputed pre-filing amounts outstanding as of the date hereof, if any, owed to any Bank as service charges for the maintenance of the Cash Management System.

8. **THIS COURT ORDERS** that any of the Banks may rely on the representations of the applicable Applicant with respect to whether any cheques or other payment order drawn or issued by the applicable Applicant prior to the date of this Order should be honoured pursuant to this or any other order of this Court, and such Bank shall not have any liability to any party for relying on such representations by the applicable Applicant as provided for herein.

9. **THIS COURT ORDERS** that (i) those certain existing deposit agreements between the Applicants and the Banks shall continue to govern the post-filing cash management relationship between the Applicants and the Banks, and that all of the provisions of such agreements, including, without limitation, the termination and fee provisions, shall remain in full force and effect, (ii) either any of the Applicants, with the consent of the Monitor, or the Banks may, without further Order of this Court, implement changes to the Cash Management System and procedures in the ordinary course of business pursuant to the terms of those certain existing deposit agreements, including, without limitation, the opening and closing of bank accounts, and (iii) all control agreements in existence prior to the date of this Order shall apply.

10. **THIS COURT ORDERS** that the Applicants shall be entitled but not required to pay the following expenses whether incurred prior to, on or after the Initial Filing Date:

(a) all outstanding and future wages, salaries, contract amounts, amounts payable pursuant to the CannTrust Capital Appreciation Plan (whether accrued prior to, on or after the Initial Filing Date), employee and pension benefits, vacation pay and expenses (including, without limitation, in respect of expenses charged by employees to corporate credit cards) payable on or after the Initial Filing Date to employees or contractors, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements;

(b) the fees and disbursements of any Assistants retained or employed by the Applicants, or retained by employees or officers of the Applicants that the Applicants have agreed to reimburse, in respect of these proceedings, at their standard rates and charges; and

(c) with the consent of the Monitor, amounts owing for goods or services actually supplied to the Applicants prior to the Initial Filing Date by third party suppliers if in the opinion of the Applicants the supplier is critical to the Business, ongoing operations of the Applicants, or preservation of the Property and the payment is required to ensure ongoing supply.

11. **THIS COURT ORDERS** that, except as otherwise provided to the contrary herein, the Applicants shall be entitled but not required to pay all reasonable expenses incurred by the

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

(a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors and officers insurance), maintenance and security services;

(b) expenses required to ensure compliance with any governmental or regulatory rules, orders or directions; and

(c) payment for goods or services actually supplied to the Applicants following the Initial Filing Date.

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

(a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan (iii) Quebec Pension Plan, and (iv) income taxes;

(b) all goods and services or other applicable sales taxes and all federal excise taxes and duties (collectively, "**Sales & Excise Taxes**") required to be remitted by the Applicants in connection with the sale of goods and services by the Applicants, but only where such Sales & Excise Taxes are accrued or collected after the Initial Filing Date, or where such Sales & Excise Taxes were accrued or collected prior to the Initial Filing Date but not required to be remitted until on or after the Initial Filing Date; and

(c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the Applicants.

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

14. **THIS COURT ORDERS** that, except as specifically permitted herein, the Applicants are hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Applicants to any of their creditors as of the Initial Filing Date; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of their Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

RESTRUCTURING

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

(a) permanently or temporarily cease, downsize or shut down any of their businesses or operations, and to dispose of redundant or non-material assets not exceeding $500,000 in any one transaction or $1,000,000 in the aggregate;

(b) terminate the employment of such of their employees or temporarily lay off such of their employees as it deems appropriate; and

(c) pursue all avenues of refinancing or selling their Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing or sale,

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

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

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

NO PROCEEDINGS AGAINST THE APPLICANTS OR THE PROPERTY

18. **THIS COURT ORDERS** that from the Initial Filing Date until and including July 5, 2020, or such later date as this Court may order (the "**Stay Period**"), no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**") shall be commenced or continued against or in respect of the Applicants or the Monitor, or affecting the Business or the Property (including, for greater certainty, any process or steps or other rights and remedies under or relating to any class action proceeding against any of the Applicants or in respect of the Property), except with the written consent of the Applicants and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Applicants or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

19. **THIS COURT ORDERS** that during the Stay Period, none of the Pending Litigation (as defined in the Guyatt Affidavit) or any Proceeding in relation thereto shall be commenced, continued or take place against or in respect of any Person named as a defendant or respondent in any of the Pending Litigation (such Persons, the "**Other Defendants**"), except with leave of this Court, and any and all such Proceedings currently underway or directed to take place against or in respect of any of the Other Defendants, or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

20. **THIS COURT ORDERS** that, to the extent any prescription, time or limitation period relating to any Proceeding by, against or in respect of the Applicants or any of the Other Defendants that is stayed pursuant to this Order may expire, the term of such prescription, time or limitation period shall hereby be deemed to be extended by a period equal to the Stay Period.

NO EXERCISE OF RIGHTS OR REMEDIES

21. **THIS COURT ORDERS** that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "**Persons**" and each being a "**Person**") against or in respect of the Applicants or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the Applicants and the Monitor, or leave of this Court, provided that nothing in this Order shall (i) empower the Applicants to carry on any

business which the Applicants are not lawfully entitled to carry on, (ii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

22. **THIS COURT ORDERS** that, during the Stay Period, all rights and remedies of any Person against or in respect of Cannabis Coffee and Tea Pod Company Ltd., Cannatrek Ltd., Elmcliffe Investments [No. 2] Inc. and O Cannabis We Stand on Guard For Thee Corporation (each, an "**Affected Party**", and collectively, the "**Affected Parties**") arising out of, relating to, or triggered by the insolvency of any of the Applicants, the making or filing of these proceedings or any allegation, admission or evidence in these proceedings (collectively, the "**Cross-Default Matters**"), are hereby stayed and suspended except with the written consent of the relevant Applicants, the relevant Affected Party and the Monitor, or leave of this Court, and the operation of any provision of any agreement or other arrangement between any Person and any of the Affected Parties whether written or oral that purports to accelerate, terminate, cancel, suspend or modify such agreement or arrangement or create a right to purchase, a right of first refusal or a lien with respect to any property of an Affected Party as a result of any of the Cross-Default Matters is hereby stayed and restrained pending further order of this Court.

NO INTERFERENCE WITH RIGHTS

23. **THIS COURT ORDERS** that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Applicants, except with the written consent of the Applicants and the Monitor, or leave of this Court.

CONTINUATION OF SERVICES

24. **THIS COURT ORDERS** that during the Stay Period, all Persons having oral or written agreements with the Applicants or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Business or the Applicants, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of

such goods or services as may be required by the Applicants, and that the Applicants shall be entitled to the continued use of their current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the Initial Filing Date are paid by the Applicants in accordance with normal payment practices of the Applicants or such other practices as may be agreed upon by the supplier or service provider and each of the Applicants and the Monitor, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

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

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

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

DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

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

28. **THIS COURT ORDERS** that the current and future directors and officers of the Applicants shall be entitled to the benefit of and are hereby granted a charge (the "**Directors' Charge**") on the Property, which charge shall not exceed an aggregate amount of $3.55 million, as security for the indemnity provided in paragraph 27 of this Order. The Directors' Charge shall have the priority set out in paragraphs 57 and 59 herein.

29. THIS COURT ORDERS that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) the Applicants' directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 27 of this Order.

APPOINTMENT OF MONITOR

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

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

(a) monitor the Applicants' receipts and disbursements;

(b) review and approve Intercompany Advances (as defined below);

(c) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;

(d) advise the Applicants in the preparation of the Applicants' cash flow statements, which information shall be reviewed with the Monitor;

(e) advise the Applicants in its development of the Plan and any amendments to the Plan;

(f) assist the Applicants, to the extent required by the Applicants, with the holding and administering of creditors' meetings for voting on the Plan;

(g) assist the Applicants, to the extent required by the Applicants, in connection with any sale and investment solicitation process conducted by the Applicants;

(h) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Applicants, to the extent that is necessary to adequately assess the Applicants' business and financial affairs or to perform its duties arising under this Order;

(i) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order; and

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

32. **THIS COURT ORDERS** that the Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

33. **THIS COURT ORDERS** that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of (i) any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without

limitation, the *Canadian Environmental Protection Act*, the Ontario *Environmental Protection Act*, the *Ontario Water Resources Act*, or the Ontario *Occupational Health and Safety Act* and regulations thereunder (the "**Environmental Legislation**"), or (ii) any of the Property, the administration and control of which is subject to the provisions of any federal, provincial or other law respecting, among other things, the manufacturing, possession, processing and distribution of cannabis or cannabis products including without limitation, the *Cannabis Act* (Canada), the *Cannabis Regulations* (Canada) the *Controlled Drugs and Substances Act* (Canada), the *Excise Tax Act* (Canada), the *Cannabis Control Act* (Ontario), or other such applicable federal or provincial legislation ("**Cannabis Legislation**"), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation or Cannabis Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation or the Cannabis Legislation, unless it is actually in possession.

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

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

APPROVAL OF CHIEF RESTRUCTURING OFFICER ENGAGEMENT

36. **THIS COURT ORDERS** that the agreement dated as of March 27, 2020 pursuant to which the Applicants have engaged FTI Consulting Canada Inc. ("**FTI**") to act as Chief

Restructuring Officer ("**CRO**") and provide certain financial advisory and consulting services to the Applicants, a copy of which is attached as Exhibit "G" to the Guyatt Affidavit (the "**CRO Engagement Letter**"), the execution of the CRO Engagement Letter by the Applicants, *nunc pro tunc*, and the appointment of the CRO pursuant to the terms thereof is hereby approved, including, without limitation, the payment of the fees and expenses contemplated thereby.

37. **THIS COURT ORDERS** that the CRO shall not be or be deemed to be a director, *de facto* director or employee of the Applicants.

38. **THIS COURT ORDERS** that the CRO shall not, as a result of the performance of its obligations and duties in accordance with the terms of the CRO Engagement Letter, be deemed to be in Possession of (i) any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to the Environmental Legislation, (ii) any of the Property, the administration and control of which is subject to the provisions of the Cannabis Legislation; however, if the CRO is nevertheless later found to be in Possession of any Property, then the CRO shall be entitled to the benefits and protections in relation to the Applicants and such Property as are provided to a monitor under Section 11.8(3) of the CCAA, provided however that nothing herein shall exempt the CRO from any duty to report or make disclosure imposed by applicable Environmental Legislation or Cannabis Legislation.

39. **THIS COURT ORDERS** that the CRO shall not have any liability with respect to any losses, claims, damages or liabilities, of any nature or kind, to any Person from and after the Initial Filing Date except to the extent such losses, claims, damages or liabilities result from the gross negligence or wilful misconduct on the part of the CRO.

40. **THIS COURT ORDERS** that no action or other proceeding shall be commenced directly, or by way of counterclaim, third party claim or otherwise, against or in respect of the CRO, and all rights and remedies of any Person against or in respect of them are hereby stayed and suspended, except with the written consent of the CRO or with leave of this Court on notice to the Applicant, the Monitor and the CRO. Notice of any such motion seeking leave of this Court shall be served upon the Applicants, the Monitor and the CRO at least seven (7) days prior to the return date of any such motion for leave.

41. **THIS COURT ORDERS** that the obligations of the Applicant to the CRO pursuant to the CRO Engagement Letter shall be treated as unaffected and may not be compromised in any Plan or proposal filed under *Bankruptcy and Insolvency Act* (Canada) (the "**BIA**") in respect of the Applicants.

APPROVAL OF FINANCIAL ADVISOR ENGAGEMENT

42. **THIS COURT ORDERS** that the agreement dated as of April 3, 2020 pursuant to which the Applicants have engaged Greenhill & Co. Canada Ltd. (the "**Financial Advisor**") to assist the Applicants in a review of strategic alternatives, a copy of which is attached as Exhibit "D" to the Second Guyatt Affidavit (the "**Financial Advisor Engagement Letter**"), the execution of the Financial Advisor Engagement Letter by the Applicants, *nunc pro tunc*, and the appointment of the Financial Advisor pursuant to the terms thereof is hereby approved, including, without limitation, the payment of the fees and expenses contemplated thereby.

43. **THIS COURT ORDERS** that the Financial Advisor shall not be or be deemed to be a director, *de facto* director or employee of the Applicants.

44. **THIS COURT ORDERS** that the Financial Advisor shall not have any liability with respect to any losses, claims, damages or liabilities, of any nature or kind, to any Person from and after the date of this Order except to the extent such losses, claims, damages or liabilities result from the gross negligence or wilful misconduct on the part of the Financial Advisor.

45. **THIS COURT ORDERS** that no action or other proceeding shall be commenced directly, or by way of counterclaim, third party claim or otherwise, against or in respect of the Financial Advisor, and all rights and remedies of any Person against or in respect of them are hereby stayed and suspended, except with the written consent of the Financial Advisor or with leave of this Court on notice to the Applicant, the Monitor and the Financial Advisor. Notice of any such motion seeking leave of this Court shall be served upon the Applicants, the Monitor and the Financial Advisor at least seven (7) days prior to the return date of any such motion for leave.

46. **THIS COURT ORDERS** that the obligations of the Applicant to the Financial Advisor pursuant to the Financial Advisor Engagement Letter shall be treated as unaffected and may not be compromised in any Plan or proposal filed under the BIA in respect of the Applicants.

ADMINISTRATION CHARGE

47. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor, the CRO, the Financial Advisor and counsel to the Applicants shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, and in the case of the CRO in accordance with the CRO Engagement Letter, and in the case of the Financial Advisor in accordance with the Financial Advisor Engagement Letter, by the Applicants as part of the costs of these proceedings. The Applicants are hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor, the CRO, the Financial Advisor and counsel for the Applicants on a bi-weekly basis and, in addition, the Applicants are hereby authorized to pay to the Monitor, counsel to the Monitor, the CRO and counsel to the Applicants, retainers to be held by them as security for payment of their respective fees and disbursements outstanding from time to time.

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

49. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor, the CRO and counsel to the Applicants shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on the Property, which charge shall not exceed an aggregate amount of $1.4 million, as security for their professional fees and disbursements incurred at their standard rates and charges, and in the case of the CRO in accordance with the CRO Engagement Letter, both before and after the Initial Filing Date in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 57 and 59 hereof.

TRANSACTION FEE CHARGE

50. THIS COURT ORDERS that the Financial Advisor shall be entitled to the benefit of and is hereby granted a charge (the "**Transaction Fee Charge**") on the Property, as security for the Transaction Fee (as defined the Financial Advisor Engagement Letter). The Transaction Fee Charge shall have the priority set out in paragraphs 57 and 59 hereof.

INTERCOMPANY FINANCING

51. **THIS COURT ORDERS** that CannTrust Holdings Inc. (the "**Intercompany Lender**") is authorized to loan to each of CannTrust Inc., Elmcliffe Investments Inc. and CTI Holdings (Osoyoos) Inc. (each, an "**Intercompany Borrower**"), and each Intercompany Borrower is authorized to borrow, repay and re-borrow, such amounts from time to time as the Intercompany Borrower, with the approval of the Monitor, considers necessary or desirable on a revolving basis to fund its ongoing expenditures and to pay such other amounts as are permitted by the terms of this Order (the "**Intercompany Advances**"), on terms consistent with existing arrangements or past practice or otherwise approved by the Monitor.

52. **THIS COURT ORDERS** that the Intercompany Lender shall be entitled to the benefit of and is hereby granted a charge (the "**Intercompany Charge**") on all of the Property of each Intercompany Borrower, as security for the Intercompany Advances made to such Intercompany Borrower, which Intercompany Charge shall not secure an obligation that exists before the Initial Filing Date. The Intercompany Charge shall have the priority set out in paragraphs 57 and 59 hereof.

53. **THIS COURT ORDERS AND DECLARES** that the Intercompany Lender shall be treated as unaffected and may not be compromised in any Plan or any proposal filed under the BIA in respect of the Applicants, with respect to any Intercompany Advances made on or after the Initial Filing Date.

KERP AND KERP CHARGE

54. **THIS COURT ORDERS** that the Key Employee Retention Plan (the "**KERP**"), as described and defined in the Second Guyatt Affidavit, for the benefit of the Key Employees (as defined in the Second Guyatt Affidavit) is hereby approved and the Applicants are authorized and directed to make payments in accordance with the terms and conditions of the KERP.

55. **THIS COURT ORDERS** that the Key Employees shall be entitled to the benefit of and are hereby granted a charge (the "**KERP Charge**") on the Property, which charge shall not exceed an aggregate amount of $1.4 million to secure amounts owing to the Key Employees under the KERP. The KERP Charge shall have the priority set out in paragraphs 57 and 59 hereof.

56. **THIS COURT ORDERS** that the unredacted version of the KERP, a copy of which is attached as Confidential Exhibit "B" to the Second Guyatt Affidavit, shall be and is hereby sealed, kept confidential, and shall not form part of the public record unless otherwise ordered by the Court.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

57. **THIS COURT ORDERS** that the priorities of the Administration Charge, the Directors' Charge, the KERP Charge, the Transaction Fee Charge and the Intercompany Charge (the "**Charges**"), as among them with respect to any Property to which they apply, shall be as follows:

> First – Administration Charge (to the maximum amount of $1.4 million);
>
> Second – Directors' Charge (to the maximum amount of $3.55 million);
>
> Third – KERP Charge (to the maximum amount of $1.4 million);
>
> Fourth – Transaction Fee Charge;
>
> Fifth – Intercompany Charge.

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

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

60. **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicants shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Charges, unless the Applicants

also obtains the prior written consent of the Monitor and the beneficiaries of the Charges, or further Order of this Court.

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

(a) the creation of the Charges shall not create or be deemed to constitute a breach by the Applicants of any Agreement to which it is a party;

(b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the creation of the Charges; and

(c) the payments made by the Applicants pursuant to this Order and the granting of the Charges do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

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

RELIEF FROM REPORTING OBLIGATIONS

63. **THIS COURT ORDERS** that the decision by the Applicants to incur no further expenses in relation to any filings, disclosures, core or non-core documents, restatements, amendments to existing filings, press releases or any other actions (collectively, the "**Securities**

Filings") that may be required by any federal, provincial or other law respecting securities or capital markets in Canada or the United States, or by the rules and regulations of a stock exchange, including, without limitation, the *Securities Act* (Ontario) and comparable statutes enacted by other provinces of Canada, the *Securities Act of 1933* (United States) and the *Securities Exchange Act of 1934* (United States) and comparable statutes enacted by individual states of the United States, the TSX Company Manual and other rules, regulations and policies of the Toronto Stock Exchange, and the NYSE Listed Company Manual and other rules, regulations and policies of the New York Stock Exchange (collectively, the "**Securities Provisions**"), is hereby authorized, provided that nothing in this paragraph shall prohibit any securities regulator or stock exchange from taking any action or exercising any discretion that it may have of a nature described in section 11.1(2) of the CCAA as a consequence of the Applicants failing to make any Securities Filings required by the Securities Provisions.

64. **THIS COURT ORDERS** that none of the directors, officers, employees, and other representatives of the Applicants, the Monitor (and its directors, officers, employees and representatives), nor the CRO shall have any personal liability for any failure by the Applicants to make any Securities Filings required by the Securities Provisions.

SERVICE AND NOTICE

65. **THIS COURT ORDERS** that the Monitor shall (i) without delay, publish in the Globe and Mail (National Edition) a notice containing the information prescribed under the CCAA, (ii) within five days after the date of this Order, (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, or cause to be sent, in the prescribed manner or by electronic message to the e-mail address as last shown on the records of the Applicants, a notice to every known creditor who has a claim against the Applicants of more than $1,000, and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder.

66. **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the "**Protocol**") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at https://www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-

commercial/) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL: http://www.ey.com/ca/canntrust.

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

GENERAL

68. **THIS COURT ORDERS** that the Applicants or the Monitor may from time to time apply to this Court for advice and directions in the discharge of their powers and duties hereunder.

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

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

or to assist the Applicants and the Monitor and their respective agents in carrying out the terms of this Order.

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

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

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

Hainey J.

SUPERIOR COURT OF JUSTICE
ENTERED

APR 1 5 2020 JP

COUR SUPÉRIEURE DE JUSTICE
ENTRÉ

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 CANNTRUST HOLDINGS INC. ET AL.

Court File No: CV-20-00638930-00CL

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

Proceeding commenced at Toronto

AMENDED AND RESTATED INITIAL ORDER

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DOC#: 19528138

This is **Exhibit "B"** referred to in the
affidavit of **GREG GUYATT**
sworn before me this
1st day of May, 2020

A Commissioner for taking affidavits

Tab B

Court File No.

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF CANNTRUST HOLDINGS INC., CANNTRUST INC., CTI HOLDINGS (OSOYOOS) INC. AND ELMCLIFFE INVESTMENTS INC.

Applicants

AFFIDAVIT OF GREG GUYATT
(Sworn March 31, 2020)

Court File No.

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF CANNTRUST HOLDINGS INC., CANNTRUST INC., CTI HOLDINGS (OSOYOOS) INC., AND ELMCLIFFE INVESTMENTS INC.

Applicants

AFFIDAVIT OF GREG GUYATT
(Sworn March 31, 2020)

I, Greg Guyatt, of the City of Mississauga, in the Province of Ontario, MAKE OATH AND SAY:

1. I am the Chief Executive Officer ("**CEO**") of CannTrust Holdings Inc. ("**CannTrust Holdings**"). I have served in this capacity since February 17, 2020. Prior to my appointment as CEO, I served as the Chief Financial Officer ("**CFO**") of CannTrust Holdings since joining CannTrust Holdings on or around February 19, 2019. Prior to joining CannTrust Holdings, I served as the CFO of GreenSpace Brands Inc., a Canadian-based premium natural food product company.

2. I am a Chartered Professional Accountant and have more than 20 years of experience in the consumer packaged goods, retail, pharmaceutical and private equity sectors.

3. Through my current role as CEO, and my former role as CFO, of CannTrust Holdings, I am familiar with the operations, financial results and strategies of the Applicants. As such, I have personal knowledge of the matters to which I depose in this affidavit. Where I do not possess personal knowledge, I have stated the source of my knowledge and believe it to be

true.

4. This affidavit is sworn in support of an application by the Applicants pursuant to the *Companies' Creditors Arrangement Act* (Canada) (the "**CCAA**") seeking:

(a) an order (the "**First Day Order**") substantially in the form of the draft order included at Tab 4 of the Application Record, among other things, granting relief that is reasonably necessary for the continued operations of the Applicants within an initial 10-day stay period; and

(b) an order (the "**Amended and Restated Initial Order**" and collectively with the First Day Order, the "**Initial Orders**") to be sought at a subsequent hearing to be scheduled with the supervising judge prior to the expiry of the initial 10-day stay period, substantially in the form of the draft order included at Tab 5 of the Application Record, granting broader relief that is appropriate in the circumstances.

5. For ease of reference, the Applicants will be collectively referred to herein as "**CannTrust**". All dollar references herein are Canadian dollars unless otherwise referenced.

I. INTRODUCTION

6. CannTrust is a licensed producer of cannabis in Canada, although portions of its two principal licenses are under partial suspension by Health Canada as a consequence of CannTrust's failure to comply with certain requirements of the *Cannabis Act* (Canada) and the regulations made thereunder, as further described herein.

7. CannTrust owns production and processing facilities in Fenwick and Vaughan, Ontario that support its ability to be a low-cost, high-quality producer with scale. The outstanding common shares of CannTrust Holdings (the "**Common Shares**") are posted and listed for trading on the Toronto Stock Exchange (the "**TSX**") and New York Stock Exchange (the "**NYSE**").

8. Prior to June 2019, CannTrust operated a business that was experiencing operational growth and expanding into new markets and product segments. CannTrust was named *Licensed Producer of the Year* at the 2018 Canadian Cannabis Awards.

9. However, following regulatory audits of CannTrust's facilities in June and July 2019, Health Canada determined, among other things, that CannTrust was growing and storing cannabis contrary to applicable laws.

10. In the period following Health Canada's audits:

   (a) The Board of Directors of CannTrust Holdings (the "**Board**") formed a special committee of independent directors (the "**Special Committee**") with a broad mandate to, among other things, conduct an investigation into the allegations arising from Health Canada's audits and any other potential regulatory non-compliance, make recommendations to address the findings of that investigation, and consider potential strategic alternatives available to CannTrust;

   (b) CannTrust voluntarily placed a hold on the sale and shipment of all cannabis products;

(c) The Special Committee recommended and the Board agreed to terminate the employment of the CEO of CannTrust, Peter Aceto, for cause, and demanded the resignation of the Chairman of the Board, Eric Paul, who promptly resigned;

(d) Health Canada suspended, in part, CannTrust's licences such that CannTrust was permitted to cultivate and harvest cannabis being grown at the time of suspension but is not permitted to propagate new lots or batches of cannabis or engage in the sale or distribution of cannabis until its licenses are reinstated in full;

(e) Large customers of CannTrust, such as the Ontario Cannabis Retail Corporation (the "**OCS**") and Alberta Gaming, Liquor and Cannabis Commission (the "**AGLC**"), returned CannTrust products;

(f) CannTrust determined that it needed to destroy a significant portion of its inventory and biological assets that was not authorized by CannTrust's licence because it was acquired, grown or stored inappropriately;

(g) To reduce operating costs while CannTrust's licenses remained under partial suspension, CannTrust implemented several rounds of layoffs and reduced its employee headcount from a high of approximately 800 to approximately 280 employees currently;

(h) KPMG LLP, CannTrust's auditor, withdrew its audit report on CannTrust Holdings' financial statements for the year ended December 31, 2018 and

CannTrust Holdings has not filed any further financial statements since May 2019;

(i) CannTrust Holdings and certain of its current and former officers, directors, employees and other parties were named as defendants in several putative securities class actions commenced in several provinces in Canada and at the State and Federal levels in the United States of America. These putative class actions seek estimated aggregate damages of at least $500 million; and

(j) The Royal Canadian Mounted Police ("**RCMP**") and the Joint Serious Offences Team of the Ontario Securities Commission ("**OSC**") initiated a criminal investigation and CannTrust may be subject to potential other investigations and proceedings by criminal and regulatory authorities for violations of applicable law.

11. To address these challenges, the Special Committee and CannTrust have pursued a strategy of:

(a) cooperating fully with Health Canada by proactively disclosing relevant facts uncovered by the Special Committee's investigations as they proceeded;

(b) cooperating with the RCMP and OSC investigations,

(c) designing, with the assistance of external advisers, a comprehensive remediation plan to address the issues uncovered during the Special Committee's investigation and in connection with Health Canada's previously disclosed and anticipated concerns;

(d) implementing the remediation plan and then applying to Health Canada for reinstatement of its cannabis licences; and

(e) working towards updating the financial statements and other public disclosures of CannTrust Holdings, all with a view towards returning CannTrust to functional and compliant operations and, ultimately, to profitability.

12. CannTrust recently completed the remediation work at its Fenwick Facility and has submitted a comprehensive package to Health Canada evidencing its remediation and seeking the reinstatement of its cannabis licence there. CannTrust's remediation work at its Vaughan Facility is almost complete and a remediation package is being assembled which is expected to be sent to Health Canada before the end of April 2020, subject to resource constraints associated with the current COVID-19 pandemic.

13. Despite these efforts by the Board and management, the situation facing CannTrust is still highly uncertain. Without its cannabis licences, CannTrust has had no revenue since July 2019. Recent global developments – including an oil price shock and the COVID-19 pandemic – have exacerbated what were already difficult circumstances, making it even more difficult for CannTrust to attract new financing or a strategic partner and introducing further delay in Health Canada's review of CannTrust's applications for reinstatement of its licences.

14. Although CannTrust has some existing inventory that could be sold in bulk, even if its cannabis licences are reinstated, it would take several months for CannTrust to earn revenue from cannabis plants that would need to be propagated, cultivated, processed and sold.

Meanwhile, despite various cash conservation measures, CannTrust has had to incur significant ongoing costs to complete remediation measures required and address its operational, financial, legal and other reporting obligations.

15. CannTrust has already expended significant time and resources investigating, preparing for and defending the putative class actions against it in multiple jurisdictions. Based on CannTrust's assessment of the overall litigation, the lengthy time it is taking for a lead plaintiff to be appointed in the US federal securities litigation, the uncertainty about the appointment of lead class counsel in Ontario due to a potential leave to appeal motion, the parallel litigation in Alberta, British Columbia and Quebec, and the current impact of the COVID-19 pandemic on the courts in both countries, it is not clear whether the litigation could be resolved within a reasonable time period and on a basis that would leave CannTrust with the financial resources necessary to restore operations and return to profitability.

16. If Health Canada decides to reinstate CannTrust's licences, CannTrust would require significant working capital to restore its operations and return to profitability. CannTrust faces material contingent liabilities associated with the class action litigation, as well as potential administrative, quasi-criminal and/or criminal proceedings in Canada and the United States, none of which can be reliably quantified at this stage. The current disruption of global capital markets and the recent downturn of the Canadian cannabis industry more specifically means that CannTrust's ability to attract capital is now highly doubtful.

17. In the circumstances, CannTrust is insolvent and requires CCAA protection to allow CannTrust breathing space so that it can maximize value for all affected stakeholders by, among other things:

(a) completing the remainder of its remediation plan for its Vaughan Facility and submitting the related evidence package with Health Canada;

(b) continuing to work with Health Canada to resolve any remaining *Cannabis Act* compliance issues, with a view towards obtaining reinstatement of its licences, restoring operations and returning CannTrust to profitability;

(c) exploring a CCAA plan of compromise or arrangement as a means for addressing the multiple putative class actions and other litigation brought against CannTrust in several jurisdictions, seeking to resolve all of the claims and contingent claims against CannTrust through a single forum; and

(d) facilitating the completion of the Board of Directors' review of strategic alternatives, including any potential sale of or other strategic transaction involving CannTrust, whether in addition to, or as an alternative to, a CCAA plan of compromise or arrangement.

18. The stay of proceedings would also put all creditors and contingent creditors on an equal footing. It is in the best interest of CannTrust and its stakeholders for CannTrust to have the time and breathing room required to explore a CCAA plan and other strategic alternatives in a court-supervised process.

II. BACKGROUND REGARDING THE APPLICANTS

(i) Corporate Structure

A. <u>CannTrust Holdings and OpCo</u>

19. The business of CannTrust was founded in 2013 by a group of pharmacists with the incorporation of 2384634 Ontario Inc. ("**Opco**") under the *Business Corporations Act* (Ontario) ("**OBCA**"). On June 4, 2013, Opco filed articles of amendment to change its name to Cannmedica Pharma Inc. On September 4, 2013, Opco filed articles of amendment to change its name to Cannamed Pharma Inc. On November 25, 2014, Opco filed articles of amendment to change its name to CannTrust Inc.

20. In 2015, its then-owners began steps to initiate a public offering of its shares pursuant to applicable securities legislation. CannTrust Holdings was incorporated under the OBCA and CannTrust Holdings and Opco completed a corporate reorganization resulting in Opco becoming a wholly-owned subsidiary of CannTrust Holdings.

21. The Common Shares of CannTrust Holdings began trading on the facilities of the Canadian Securities Exchange (the "**CSE**") on August 21, 2017 under the ticker symbol "TRST". On March 5, 2018, the Common Shares migrated from the CSE to the TSX and began trading on the TSX under the ticker symbol "TRST" and were voluntarily delisted from the CSE.

22. On February 25, 2019, the Common Shares also commenced trading on the NYSE under the ticker symbol "CTST", such that the Common Shares were dually listed on the TSX

and NYSE.

23. CannTrust Holdings' head and principal executive offices are located in Vaughan, Ontario. An organizational chart of CannTrust and the other entities in which CannTrust holds an equity interest, described more fully below, is attached hereto as **Exhibit "A"**.

B. Elmcliffe and CTI Holdings

24. Elmcliffe Investments Inc. ("**Elmcliffe**") is an OBCA corporation that owns the real estate, buildings and related equipment for CannTrust's Fenwick Facility (defined below). Elmcliffe acquired these assets on March 6, 2017.

25. CTI Holdings (Osoyoos) Inc. ("**CTI Holdings**") is incorporated pursuant to the *Business Corporations Act* (British Columbia). CTI Holdings owns the BC Outdoor Cultivation Lands (defined below). CTI Holdings acquired these assets in March 2019. While the registered address of CTI Holdings is at a law firm in British Columbia, I am the sole director and officer of CTI Holdings and all operational decisions with respect to CTI Holdings are made from the CannTrust head office in Vaughan, Ontario.

C. Other Equity Interests

26. In addition to the wholly-owned subsidiaries listed above that are also Applicants in these proceedings, CannTrust owns equity interests in certain other entities.

27. Elmcliffe Investments [No. 2] Inc. ("**Elmcliffe No. 2**") is an OBCA corporation and a wholly-owned subsidiary of Opco. Elmcliffe No. 2 is the beneficial owner of shares of Meta Growth Corp. (formerly National Access Cannabis Corp.) ("**Meta**") representing 3% of the

outstanding common shares of Meta. The common shares of Meta are listed on the TSX Venture exchange and had a closing price of $0.08 and a total market capitalization of approximately $19 million at the close of markets on March 20, 2020.

28. Cannabis Coffee and Tea Pod Company Ltd. ("**CCTPC**"), an OBCA corporation, is a 50-50 joint venture between CannTrust and Club Coffee L.P. ("**Club Coffee**"). CCTPC was created to launch BrewBudz, a single-use Keurig-style pod for cannabis infused coffee. CannTrust Holdings holds 50% of the outstanding shares of CCTPC directly. Club Coffee holds its 50% interest through its wholly-owned subsidiary Single Dose Solutions Inc.

29. O Cannabis We Stand On Guard For Thee Corporation ("**O'Cannabis**") is incorporated pursuant to the *Canada Business Corporations Act*. CannTrust, through Opco, holds a 50% interest in this corporation, which is a telemedicine service provider.

30. Since October 2018, CannTrust has been engaged in a strategic partnership with Australian licensed producer, Cannatrek Ltd. ("**Cannatrek**"). As part of the partnership, CannTrust made an investment for a 19.8% stake in Cannatrek, with an option to maintain this shareholding through any future share issuances up to and including Cannatrek completing an initial public offering.

31. Cannatrek, CCTPC, Elmcliffe No. 2 and O'Cannabis (the "**Affected Parties**") are not Applicants in these proceedings. However, the Applicants are seeking a limited stay of proceedings in the Initial Orders against the Affected Parties with respect to any cross-defaults arising from the insolvency of the Applicants, which is more fully described below.

(ii) The Business of the Applicants

32. CannTrust (specifically, Opco) is a licensed producer of cannabis in Canada, although its licences are currently under partial suspension by Health Canada. The business of CannTrust is focused on two distinct markets, which are described more fully below: the medical cannabis market and the adult-use recreational cannabis market.

A. Medicinal Use Market

33. The medical cannabis regime is governed by the *Cannabis Act* (Canada) and the regulations made thereunder (the "**Cannabis Legislation**"), which came into force on October 17, 2018.

34. There is a specific process which CannTrust must undertake with respect to the sale of its medical cannabis. Before selling medical cannabis to an individual, CannTrust must register the patient (a "**Registered Patient**") as a client. According to data collected and reported by Health Canada, as of September 30, 2019, there were 369,614 Registered Patients in Canada who were authorized, on average, to use 2.0 grams of dried medical cannabis per day.

35. As of March 31, 2019,[1] CannTrust had over 2,500 active physicians prescribing its products and approximately 68,000 Registered Patients in Canada. CannTrust's patient base grew by over 50% from 2017 to 2018, and by a further 17% during the three months ended March 31, 2019. During the three months ended March 31, 2019, CannTrust's revenues from

[1] The three months ended March 31, 2019 is the most recent reporting period prior to the Health Canada Audits and CannTrust encountering the challenges set out herein.

medical cannabis were $11.371 million. The total quantity of dried cannabis equivalent sold to medical patients during the three months ended March 31, 2019 was 1,820 kg.

36. For medical use, CannTrust offered dried flower formats, as well as several cannabis oil drops and encapsulated cannabis oil products. CannTrust also produced similar products in capsule form using two-piece capsules that are vegan-based and do not use animal products, such as gelatin, making them more desirable for a variety of customers and patients due to possible religious or ethical reasons.

B. Adult-Use Recreational Market

37. The sale of cannabis for adult recreational use was legalized on October 17, 2018 with the coming into force of the Cannabis Legislation. The Cannabis Legislation provides that the provinces and territories of Canada have authority to regulate certain aspects of recreational cannabis, such as sale and distribution, minimum age requirements, places where cannabis can be consumed, and a range of other matters.

38. All Canadian provinces and territories have enacted regulatory regimes for the distribution and sale of cannabis for recreational purposes within those jurisdictions. There are three general frameworks that the provinces and territories have followed: (i) private cannabis retailers licensed by the province; (ii) government-run retail stores; or (iii) a combination of both frameworks (i.e. privately licensed retail stores, while online retailers are operated by the applicable provincial government). Regardless of the framework, the recreational cannabis market is supplied by federally licensed producers.

39. During the three months ended March 31, 2019, CannTrust's revenues from cannabis

sold in the wholesale market, which reflects sales to the provinces related to the legalization of the adult-use recreational market, were $5.482 million, which represented 32.5% of its total revenues. The total quantity of dried cannabis equivalent sold in the wholesale market during the three months ended March 31, 2019 was 1,194 kg.

40. Following the legalization of recreational cannabis in 2018, CannTrust launched four adult-use brands: liiv, Synr.g, Xscape and Peak Leaf. These brands are focused on distinct consumer segments and provide the user with options for the type of experience they are seeking.

41. Prior to July 2019, CannTrust had a variety of new cannabis products at various stages of development, including oral, topical, edible and inhalable products. These products will all need to be approved by Health Canada before they can be offered for sale.

(iii) Operations of the Applicants

C. Locations

Fenwick Facility

42. Prior to the suspension of its licence, CannTrust grew cannabis in a commercial greenhouse facility of approximately 450,000 square feet in Fenwick, Ontario in the Niagara region (the "**Fenwick Facility**"). The Fenwick Facility is a state-of-the-art greenhouse with computer controlled irrigation, co-generation power supply and full supplemental lighting. The Fenwick Facility is operated with a perpetual harvest system which is capable of producing cannabis 365 days a year and allows for a continuous work cycle, creating a steady

production capacity and a stable work environment for employees.

43. CannTrust acquired the Fenwick Facility on March 6, 2017, through its wholly-owned subsidiary Elmcliffe, and commenced a redevelopment of the site that was scheduled to proceed in three phases:

(a) Phase 1 involved both renovations and retrofitting of 250,000 square feet of the Fenwick Facility with perpetual harvest technology to allow for continuous batch production. CannTrust received its Health Canada cultivation licence for the Phase 1 redevelopment on October 10, 2017.

(b) Phase II involved expanding the Fenwick Facility to 450,000 square feet which was expected to bring the capacity of the Fenwick Facility to an estimated 50,000 kg per year. On April 8, 2019, CannTrust announced that its cultivation and processing permit was amended to include its Phase 2 expansion.

(c) Phase III, which is currently on hold, would involve further expanding the Fenwick Facility and includes productivity and automation enhancements over Phases I and II. Upon completion, it was expected to add a further 50,000 kg per year of capacity.

Vaughan Facility

44. CannTrust initially conducted indoor grow and processing operations from a facility in Vaughan, Ontario (the "**Vaughan Facility**"). Following its acquisition of the Fenwick Facility, CannTrust repurposed the Vaughan Facility into an extraction, manufacturing and

packaging facility of approximately 60,000 square feet, including an in-house quality control laboratory.

BC Outdoor Cultivation Lands

45. Since March 2019, CannTrust has also owned 81 acres of land in British Columbia (the "**BC Outdoor Cultivation Lands**") where it intends to commence outdoor cannabis cultivation which it will use for its extraction-based products. CannTrust acquired the BC Outdoor Cultivation Lands through its wholly-owned subsidiary CTI Holdings.

46. CannTrust has invested in fencing, security, irrigation and other land preparation activities and applied for Health Canada approval to plant and cultivate on most of the BC Outdoor Cultivation Lands. Health Canada has not informed CannTrust of its decision regarding CannTrust's application.

47. CannTrust expects that it could produce approximately 75,000 kg of cannabis per year from the BC Outdoor Cultivation Lands, subject to obtaining the necessary regulatory approvals.

D. Employees

48. As of March 20, 2020, CannTrust had approximately 280 employees and a further 305 employees that are currently subject to temporary layoffs. In or around mid-2019, CannTrust had approximately 400 employees in the Fenwick Facility, approximately 300 employees in the Vaughan Facility, and approximately 100 employees in its head office in Vaughan. As outlined further below, during 2019, CannTrust restructured its workforce to reflect the

current requirements of its business in light of the suspension of its licences. CannTrust provides a benefits plan for its employees. It does not provide a pension plan.

CannTrust Capital Appreciation Plan

49. CannTrust created the CannTrust Capital Appreciation Plan (the "**CCAP**") effective October 1, 2019 in place of the existing stock-based incentive programs and the existing short-term incentive program because, among other things, (i) there was considerable operational uncertainty given Health Canada's suspension of its licences, (ii) the ongoing reduction of CannTrust employees through departures and layoffs was having an adverse impact on the morale of employees at large, and (iii) compensation expectations were not being achieved as the existing programs were not likely to result in any incentive payments or benefits to employees due to the regulatory issues facing CannTrust.

50. The CCAP is intended to be in effect for a period of 24 months. Currently, there are 59 employees that have been chosen to participate in the CCAP. Participants accrue salary each month until paid out in accordance with the CCAP. The percentage each employee accrues is set by management, taking into account the employee's title, base compensation and job complexity.

51. The amount accumulated in the CCAP will vest in each participant on October 1, 2020 and, if the program is extended for a second year, October 1, 2021, and be paid to the participant in a lump sum payment within 15 days of that date. In order to receive the payment, the participant must be an employee of CannTrust at the time the lump sum payment is to be made. The total estimated payments to be made at the end of the first year of

the CCAP is approximately $1.7 million.

52. As set out further below, CannTrust is seeking confirmation in the Amended and Restated Initial Order that it is authorized to pay all amounts payable pursuant to the CCAP, whether accrued prior to or after the date of the First Day Order (the "**Initial Filing Date**").

E. Licences, Permits and Authorizations

53. The Cannabis Legislation establishes different classes of licences that are required depending on the nature of the activity being undertaken such as cultivation, processing, testing and sales. A licence, once issued, identifies the specific activities that the licensee is authorized to conduct. Any licence is valid for no more than five years.

54. Health Canada has issued cannabis licences to Opco for the Fenwick Facility and Vaughan Facility (the "**Cannabis Licences**"). The Cannabis Licences allow for, among other things, the production, sale or provision, possession, shipping, transportation, delivery and destruction of dried cannabis and cannabis plants or seeds. It allows the Vaughan Facility and the Fenwick Facility to produce dried cannabis and cannabis extracts up to such amounts as permitted by Opco's storage capacity.

55. The Cannabis Licences for the Vaughan Facility and the Fenwick Facility are valid until September 13, 2020 and October 6, 2020, respectively, although they are currently suspended as noted above. Before the end of the terms of the Cannabis Licences, Opco must submit an application for renewal to Health Canada containing information prescribed by the Cannabis Legislation.

F. *Distribution*

56. With respect to the medicinal-use market, CannTrust distributed its medical cannabis products directly to its Registered Patients using secure shipping methods such as Canada Post or Purolator.

57. With respect to the adult-use recreational market, CannTrust has entered into supply agreements or arrangements with the applicable government-owned distributors in nine provinces, with a limited arrangement in Quebec under which CannTrust did not supply any product prior to suspension of its licences.

G. *Banking Arrangements*

58. CannTrust maintains 11 bank accounts with Bank of Montreal (the "**BMO Accounts**"), eight of which are held by CannTrust Holdings, two of which are held by Opco and one of which is held by Elmcliffe. During the CCAA proceedings, CannTrust intends to continue using the BMO Accounts for its business and banking requirements and has sought certain relief in the Initial Orders in order to facilitate that.

(iv) Summer 2019 Health Canada Audits

59. Health Canada conducts *ad hoc*, unscheduled site inspections of licensed producers. Prior to June 2019, Health Canada inspectors assessed the Vaughan Facility and the Fenwick Facility on an ongoing basis and provided CannTrust with follow up reports noting observed deficiencies.

A. Fenwick Audit Report

60. On July 8, 2019, CannTrust announced that it had received a compliance report from Health Canada notifying CannTrust that the Fenwick Facility was non-compliant with certain regulations (the "**Fenwick Audit Report**"). The non-compliant rating was based on observations by Health Canada regarding the growing of cannabis in five rooms before they were licensed and inaccurate information having been provided to the Health Canada representatives by CannTrust employees. The growing in unlicensed rooms took place from October 2018 to March 2019, during which time CannTrust had pending applications for the unlicensed rooms with Health Canada.

61. Health Canada placed a hold on certain CannTrust inventory which included approximately 5,200 kg of dried cannabis that was harvested in the then-unlicensed rooms at the Fenwick Facility. In addition, CannTrust placed a voluntary hold on approximately 7,500 kg of dried cannabis equivalent stored at its Vaughan Facility that was produced in the then-unlicensed rooms.

62. CannTrust accepted the non-compliance findings in the Fenwick Audit Report, without objection, and announced that it was implementing a number of remedial measures, including:

(a) Further comprehensive employee training;

(b) Retaining external advisors for an independent review of its compliance processes;

(c) Conducting a comprehensive review and update of its processes and procedures; and

(d) Voluntarily advising Health Canada of any issues that could impact compliance at the Vaughan Facility regarding product storage.

63. On July 11, 2019, CannTrust announced that it had implemented a voluntary hold on the sale and shipment of all cannabis products as a precaution while Health Canada visited and reviewed its Vaughan Facility.

B. Appointment of Special Committee and Leadership Changes

64. On July 11, 2019, CannTrust announced that the Special Committee had been established to investigate the findings of the Niagara Audit Report in their entirety.

65. On July 25, 2019, CannTrust announced certain senior leadership changes made by the Board as a result of interim findings made by the Special Committee's during its investigation, namely:

(a) the termination of the CEO of CannTrust, Peter Aceto, for cause;

(b) the resignation of the Chair of the Board, Eric Paul, following a demand made by the other directors;

(c) the appointment of Robert Marcovitch, who had been the Chair of the Special Committee, to the role of interim CEO of CannTrust Holdings; and

(d) the appointment of Mark Dawber, FCPA, as the new Chair of the Special

Committee.

C. Vaughan Audit Report

66. On August 12, 2019, CannTrust announced that it had received a compliance report from Health Canada notifying CannTrust that the Vaughan Facility was non-compliant with certain regulations (the "**Vaughan Audit Report**" and collectively with the Fenwick Audit Report, the "**Health Canada Audit Reports**"). The Vaughan Audit Report noted the following deficiencies:

(a) The conversion of five rooms from operational areas to storage areas, which had been used for storage since June 2018 without prior approval of Health Canada;

(b) The construction of two new areas without prior approval of Health Canada, one of which had been used to store cannabis since November 2018;

(c) Insufficient security controls at the manufacturing facility;

(d) Inadequate quality assurance investigations and controls;

(e) Standard operating procedures that did not to meet the requirements under regulations; and

(f) Documents or information that were not retained in a manner to enable Health Canada to complete its audit in a timely manner.

67. The Special Committee was also tasked by the Board with investigating the Vaughan

Audit Report.

D. *Product Returns*

68. On August 19, 2019, CannTrust announced that it had received a notice from the OCS that all or substantially all of CannTrust's products currently held at the OCS, valued at approximately $2.9 million in the aggregate, would be returned to CannTrust.

69. On September 19, 2019, CannTrust announced that it had received a notice from the AGLC that all or substantially all of CannTrust's products currently held at the AGLC, valued at approximately $1.3 million in the aggregate, would be returned to CannTrust.

70. CannTrust does not expect any further product returns from any additional provincial distributors, Registered Patients or consumers who purchased CannTrust products through retail stores.

E. *Licence Suspension*

71. On September 17, 2019, CannTrust announced that it had received Notices of Licence Suspension from Health Canada pursuant to section 64(1) of the *Cannabis Act* (the "**Suspension Notices**") for the Fenwick Facility and the Vaughan Facility.

72. The Suspension Notices suspended CannTrust's authority to produce cannabis (other than cultivating and harvesting its remaining existing lots or batches previously propagated), and to sell cannabis. While the suspensions remain in effect, CannTrust will be permitted to cultivate and harvest existing lots or batches previously propagated, as well as conduct ancillary activities to those lots, including drying, trimming and milling. However, during the

suspensions, CannTrust is not permitted to propagate new lots or batches of cannabis or engage in the sale or distribution of cannabis.

73. For so long as the suspensions remain in effect, CannTrust is effectively prevented from earning meaningful revenue.

74. The Suspension Notices state that Health Canada will reinstate the Cannabis Licences if the reasons for the suspension no longer exist. The Suspension Notices expressly provide that Health Canada considers that implementation of the following measures could potentially address the public health and safety risks that contributed to Health Canada’s decision to issue the Suspension Notices (the “**Identified Risks**”):

(a) Measures to ensure that cannabis will be produced and distributed only as authorized, including measures to control the movement of cannabis in and out of CannTrust's sites;

(b) Measures to recover cannabis that was not authorized by CannTrust's licence;

(c) Measures to improve key personnel's knowledge of, and compliance with the provisions of the Cannabis Legislation; and

(d) Measures for improving the manner in which records are kept, including a plan to improve the inventory tracking, and any interim measures to ensure that information provided to Health Canada can be reconciled.

75. On October 24, 2019, CannTrust announced that the Special Committee had concluded its investigation and its findings had been shared with the Board and Health

Canada.

76. CannTrust acted decisively on the findings of the Special Committee's independent investigation, by removing the individuals who directed, participated or acquiesced in the misconduct and by engaging proactively and cooperatively with Health Canada, the OSC, stock exchanges, Canadian law enforcement and other stakeholders, all with a view towards stabilizing CannTrust, remediating its compliance issues, reinstating its licences, restoring operations and achieving profitability.

F. CannTrust's Remediation Plan and Timeline for Reinstatement of Licences

77. On October 21, 2019, CannTrust submitted its detailed remediation plan to Health Canada (the "**Remediation Plan**"). CannTrust announced that it had committed to destroying approximately $77 million of inventory and biological assets that was not authorized by the Cannabis Licences because they were acquired, grown or stored in a manner that was not in compliance with its licences or applicable law. The Remediation Plan included details about an expanded comprehensive internal training program, a strengthened governance and operations framework, infrastructure enhancements, and prescribed accountabilities and timelines for a variety of specified tasks. CannTrust also committed to taking steps to recover all cannabis from distributors and retailers that had not already been sold to end consumers or returned to CannTrust.

78. On February 14, 2020, CannTrust reported to Health Canada that it had completed the Remediation Plan for the Fenwick Facility and requested the reinstatement of its licence for the Fenwick Facility. CannTrust is awaiting Health Canada's decision.

79. As of the date of this affidavit, CannTrust is continuing to implement the Remediation Plan for the Vaughan Facility. CannTrust anticipates that it will complete the Remediation Plan for the Vaughan Facility by the end of April 2020, subject to availability of resources during the COVID-19 pandemic, and thereafter will request the reinstatement of the Vaughan Facility licence.

80. There is no assurance whether or when Health Canada will reinstate any of the Cannabis Licences. Health Canada's review may be further delayed by its decision to reduce onsite field inspection activities in light of the COVID-19 pandemic. It is not clear how long such reductions may last.

81. Nevertheless, the Board believes that it remains in the best interests of CannTrust to complete all activities described in the Remediation Plan, bring CannTrust to full compliance with the Cannabis Legislation, and take all reasonable steps to obtain the timely reinstatement of its Cannabis Licences from Health Canada.

82. If the Cannabis Licences are reinstated by Health Canada, CannTrust will be able to commence propagating new lots of cannabis and, over time, to restore operations. However, it would take several months for any such initial batches to be grown, processed, shipped and sold. Accordingly, CannTrust's revenue would still likely remain marginal for several months, consisting only of bulk cannabis sales from its limited remaining inventory, following any reinstatement of the Cannabis Licences and, during that interval, CannTrust would continue to incur significant incremental operating expenses to put CannTrust in a position to re-commence its production processes. As such, any revenue generation would likely lag behind a significant increase in expenditures, putting continued and additional

pressure on CannTrust's cash liquidity.

83. An additional potential complication is that the mother plants used by CannTrust as a source of cuttings for new plants are reaching the end of their useful life since CannTrust has been unable to propagate any new plants since the suspension of its licence for the Fenwick Facility. CannTrust is working with Health Canada to address this issue and expects a resolution that will allow CannTrust to propagate new mother plants from the current mother plants, but there is no guarantee of this outcome. If the mother plants are compromised, then CannTrust would need to initiate its genetics stock from seeds, once the Cannabis Licenses are reinstated, which would add six months or more to its propagation, cultivation and processing cycle and further delay CannTrust's ability to generate revenue from operations.

G. Impact on Financial Statements

84. Due to the significant uncertainty with respect to the potential financial impact of the Health Canada Audit Reports and the nature and timing of decisions to be made by Health Canada:

(a) CannTrust announced in August 2019 that its historical financial statements, related management's discussion and analysis ("**MD&A**") and annual information form ("**AIF**") for the period ended December 31, 2018 (the "**2018 Financial Statements**") and the financial statements and MD&A for the period ended March 31, 2019 (the "**2019 Q1 Financial Statements**") may require restatement and should no longer be relied upon;

(b) CannTrust's independent auditor, KPMG LLP, withdrew its audit report on the

2018 Financial Statements;

(c) CannTrust missed its filing deadline for its quarterly financial statements and related MD&A for the periods ended June 30, 2019 and September 30, 2019; and

(d) CannTrust missed its March 29, 2020 filing deadline for its audited financial statements and related MD&A and AIF for the year ended December 31, 2019.

85. Upon application by CannTrust Holdings, the OSC issued a management cease trade order ("**MCTO**") on August 15, 2019 pursuant to National Policy 12-203 – *Management Cease Trade Orders* as a result of CannTrust Holdings' failure to satisfy its disclosure requirements under applicable provincial securities legislation. The MCTO prohibits the directors and executive officers of CannTrust Holdings from trading in securities of CannTrust Holdings until two full business days after all filings CannTrust is required to make under Ontario securities laws are made, including the filings noted in the preceding paragraph.

86. On November 26, 2019, CannTrust announced that the TSX had advised CannTrust that it intends to review CannTrust Holdings' eligibility for continued listing of the Common Shares on the TSX. The TSX advised that, if CannTrust Holdings was unable to cure its disclosure defaults by March 25, 2020, the Common Shares would be delisted 30 days following that date.

87. On March 18, 2020, the TSX advised CannTrust that, in response to CannTrust's request for an extension of the March 25, 2020 deadline, the TSX had determined to defer any

delisting decision until no later than April 16, 2020. The TSX also advised CannTrust that a meeting of its Listings Committee will be held on April 14, 2020 to consider whether to delist the Common Shares.

88. On February 13, 2020, CannTrust announced that the NYSE had granted it a continued listing and trading extension to April 15, 2020 to provide CannTrust with additional time to cure its disclosure defaults. The Common Shares may be delisted following that date, subject to the NYSE granting a further extension to the deadline.

89. On February 28, 2020, CannTrust announced that it had received written notification from the NYSE that CannTrust Holdings was no longer in compliance with the NYSE's continued listing standard rules because the per share trading price of the CannTrust Holdings' common shares had fallen below the NYSE's minimum share price rule, which requires the average closing price of a listed company's common shares to be at least US $1.00 per share over a consecutive 30 trading-day period. CannTrust has six months from the receipt of the notice to regain compliance and prevent delisting.

90. On March 2, 2020, I, along with representatives of McCarthy Tétrault LLP, CannTrust's Canadian legal counsel, met with the TSX to provide a confidential update concerning CannTrust Holdings' status and its current plans for the preparation and filing of its outstanding disclosure. CannTrust was informed by TSX Staff that if CannTrust initiated CCAA proceedings, it would be de-listed from the TSX for the duration of the CCAA proceedings.

91. I am advised by Robert J. Richardson, a partner with McCarthy Tétrault LLP,

CannTrust's Canadian legal counsel, that he met by telephone with legal counsel from the OSC's Corporate Finance Branch to provide a similar confidential update concerning CannTrust Holdings' status and its current plans for the preparation and filing of its outstanding disclosure. I am advised by Mr. Richardson and do believe that he was informed by OSC staff that, if CannTrust initiated CCAA proceedings and was delisted by the TSX, staff would likely seek an immediate cease trade order for the duration of the CCAA proceedings.

92. On March 4, 2020, I, along with CannTrust's Canadian legal counsel, met by telephone with representatives of the NYSE to provide a confidential update concerning CannTrust Holdings' status and its current plans for the preparation and filing of its outstanding disclosure. CannTrust was informed by NYSE Staff that, if CannTrust initiated CCAA proceedings, it would be de-listed from the NYSE for the duration of the CCAA proceedings.

93. Given the indications from the TSX, NYSE and OSC, as applicable, that the Common Shares will be delisted and a cease trade order will be issued as a result of CannTrust commencing CCAA proceedings, the Board has determined that devoting additional time or money towards curing its public disclosure defaults and restoring its status as a reporting issuer not in default of securities legislation is not appropriate at this juncture. As described further below, CannTrust Holdings is seeking the authorization of this Court to cease incurring any further related costs in relation to public disclosure in the Initial Orders.

H. *Cash Conservation Measures*

94. CannTrust has had no revenue since imposing a voluntary hold on all sales and shipments of product on July 11, 2019. Given the uncertainty around the timing of Health Canada's pending decisions, CannTrust's revenue outlook remains uncertain. In response to these challenges, the Board and management have taken a number of steps to reduce CannTrust's cash expenditures.

95. On September 5, 2019, CannTrust announced that it had reduced its workforce by approximately 180 people, or 20%, to reflect the current requirements of the business. The majority of the employees were in cultivation and customer service support roles. The reduction was expected to result in annualized cash savings of approximately $9 million.

96. On October 24, 2019, CannTrust announced that it would temporarily streamline its workforce by as many as 140 people, or approximately 25%, through a series of phased layoffs between late October and the conclusion of 2019, given its reduced operations. The reduction was expected to result in annualized cash savings of approximately $4.8 million.

97. Overall, CannTrust's total headcount has been reduced from approximately 800 at the end of June 2019 to approximately 280 currently.

98. In addition, CannTrust undertook a detailed review of all contracts to eliminate or defer spending where possible. CannTrust halted construction of the Phase III expansion of the Fenwick Facility, international investments in Australia, Denmark and the United States and other product innovation opportunities which were under review.

99. CannTrust also formed a Capital and Operating Expense Steering Committee effective February 2020, comprised of a number of members of senior management, which is required to approve all new capital and operating expenditures in excess of $20,000. Additionally, all consultants engaged at an expected cost in excess of $10,000 now require approval from the CFO. CannTrust also implemented new delegation of authority guidelines to add clarity on approval limits.

I. Insurance

100. Recently, CannTrust's lead primary director and officer insurer took the position that CannTrust's "Side C" insurance coverage, which is intended to cover claims against CannTrust, is void *ab initio* due to the conduct of the former CEO and former Chairman of the Board. CannTrust disagrees with this position.

101. CannTrust's director and officer insurance coverage with other insurance carriers expired on February 25, 2020. Following that, "Side C" coverage was not renewed. "Side A" and "Side B" coverage was extended for CannTrust's directors and officers until August 24, 2020. "Side A" coverage is intended to cover non-indemnified claims against the directors and officers. "Side B" coverage is intended to cover indemnified claims against the directors and officers.

102. In the past few weeks, I have had several confidential meetings with insurance carriers to seek a further renewal of Sides A, B and C coverage for CannTrust and its directors and officers. It is unclear to me if and when such coverage will be renewed.

J. Board Renewal Process

103. After the Special Committee's investigation concluded, the Board initiated a process to attract new directors to the Board. I am advised by Shawna Page, a member of the Board and Special Committee, and verily believe that over the course of several months, the Board interviewed and met with several potential director candidates who possessed expertise in operations, compliance, governance, and/or regulated industries.

104. Ultimately, the Board was unable to recruit qualified candidates in the circumstances given the considerable uncertainty concerning the Pending Litigation (described below) and insurance coverage. The Board determined to suspend its renewal process until these uncertainties are addressed.

K. Impact on Market Capitalization

105. The Health Canada Audit Reports and other announcements by CannTrust have had a serious negative impact on the market capitalization of CannTrust Holdings.

106. The price of the common shares of CannTrust Holdings on the Toronto Stock Exchange has declined from a close of \$6.46 on July 5, 2019 (the last business day prior to the announcement of the Fenwick Audit Report) to a close of \$0.70 on March 27, 2020, a decline of almost 90%. Single day declines of 22.6% and 27.8% were experienced following CannTrust announcing its receipt of the Fenwick Audit Report and the Vaughan Audit Report, respectively.

(v) Significant Downturn in the Canadian Cannabis Industry

107. The Canadian cannabis industry is in the midst of a significant and prolonged downturn that commenced in 2019 due to, among other things:

(a) softer than expected demand due to continuing consumer reliance on the black market and delays in the roll-out of legal distribution channels in certain provinces in Canada;

(b) oversupply of low to mid-potency (i.e. less than 20% THC) cannabis in the market due to various cannabis companies having added significant production capacity in anticipation of and following the legalization of cannabis in Canada in 2018;

(c) the continued lack of federal legalization in the US;

(d) concerns regarding the safety of vaping following reporting of vaping-associated lung injuries in 2019; and

(e) decreased interest in the sector on the part of retail investors making large-scale equity or debt financings difficult.

108. These industry headwinds have resulted in cannabis companies experiencing difficulty attracting capital, both through the equity and debt markets. In a March 10, 2020 article in the Financial Post, it was estimated that on Bay Street in 2019 (i) the number of cannabis deals fell 33 percent from the previous year, and (ii) the capital raised in the cannabis sector fell 45 percent from the previous year. Moreover, of the eight biggest debt and equity raises in 2019,

seven took place in the first half of the year.[2]

109. As a result of this inability to attract further capital, several cannabis companies have sought protection under the CCAA or *Bankruptcy and Insolvency Act* (Canada) or been placed into receivership since the start of 2019, including Ascent Industries Corp., DionyMed Brands Inc., AgMedica Biosciences Inc., Wayland Group Corp., Invictus MD Strategies Corp., Eureka 93 Inc. and Pure Global Cannabis Inc. Other licensed producers have implemented cash conservation measures such as:

(a) Hexo Corp. announcing on October 24, 2019 that it would be laying off approximately 200 employees;

(b) Tilray Inc. announcing on February 4, 2020 that it would be laying off approximately 10% of its workforce;

(c) Aurora Cannabis Inc. announcing on February 6, 2020 that it had eliminated close to 500 full-time employees and was undertaking a review of its capital and operating expenditures, including the sale of certain assets;

(d) Canopy Growth Corp. announcing on March 4, 2020 that it planned to close two fully licensed greenhouse facilities in British Columbia, halt plans to bring a third greenhouse online in Niagara-on-the-Lake, Ontario, and eliminate approximately 500 full-time employees; and

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[2] National Post, "Deals scarce in bruised cannabis sector as risk-off sentiment prevails", March 10, 2020: https://business.financialpost.com/cannabis/deals-scarce-in-bruised-cannabis-sector-as-risk-off-sentiment-prevails.

(e) The Flowr Corporation announcing on March 23, 2020 that it had restructured approximately 25% of its workforce globally citing, among other things, macro-economic headwinds stemming from the COVID-19 pandemic.

(vi) Significant Downturn in the Global Capital Markets

110. Recent global developments have further exacerbated these difficult circumstances facing CannTrust and the cannabis industry generally. An oil price shock caused by a dispute between Saudi Arabia and Russia combined with the global COVID-19 pandemic have resulted in significant market and economic turmoil in a very short period of time.

111. The short and long-term impact of these significant and rapidly-changing market events remains uncertain. However, the potential further reduction in liquidity across the capital markets and the increased likelihood that the Canadian and world economy may be heading towards a recession in the short term makes it even more doubtful that CannTrust will able to attract liquidity if it is required to restore or maintain operations. Furthermore, the downturn and the potential decrease in consumer disposable income would have a negative impact on patient and consumer demand and may reduce CannTrust's revenues if it is able to return to production and hinder its ability to achieve profitability.

(vii) Financial Position of the Company

112. As noted above, CannTrust has cautioned against any reliance on the 2018 Financial Statements and the 2019 Q1 Financial Statements as they require restatement in light of the pending Health Canada decisions with respect to the Fenwick Facility and Vaughan Facility.

113. In order to provide the Court with more accurate and current information regarding the financial position of CannTrust, the Applicants have prepared draft internal unaudited statements of financial position for each of the Applicants as at December 31, 2019 (the "**Draft 2019 Year-End Balance Sheets**"). The Draft 2019 Year-End Balance Sheets are not intended to be, and may not be, relied upon for any other purpose.[3]

114. The Draft 2019 Year-End Balance Sheets are preliminary and may be subject to further adjustment that could decrease certain asset values for accounting purposes and result in certain assets being re-allocated among the Applicants, either in whole or in part. Copies of the Draft 2019 Year-End Balance Sheets are attached hereto as **Exhibit "B"**.

A. Capital Structure

Common Shares

115. As noted above, the Common Shares of CannTrust Holdings trade on the Toronto Stock Exchange under the ticker symbol "TRST" and on the New York Stock Exchange under the ticker symbol "CTST". CannTrust has been a reporting issuer in Canada since August 21, 2017 and in the United States since February 25, 2019.

116. CannTrust Holdings has not, since its inception, declared or paid any dividends on its Common Shares.

117. CannTrust Holdings has completed two public equity offerings of the Common Shares

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since they were listed on the Toronto Stock Exchange in March 2018:

(a) On June 5, 2018, CannTrust Holdings closed an underwritten public offering of 11,155,000 units at a price of $9.00 per unit for aggregate gross proceeds of approximately $100 million. Each unit was comprised of one Common Share and one-half of one common share purchase warrant, which was exercisable to acquire one Common Share at an exercise price of $12.00 per share, subject to adjustment in certain events, until June 5, 2020.

(b) On May 6, 2019, CannTrust Holdings completed an underwritten public offering of 36,636,636 Common Shares at US$5.50 per Common Share, for aggregate gross proceeds of approximately US$200 million, of which CannTrust Holdings received net proceeds of approximately US$160.5 million and certain selling shareholders received net proceeds of approximately US$28.3 million. On May 14, 2019, the underwriters exercised their over-allotment option to acquire additional Common Shares, resulting in additional gross proceeds to CannTrust of approximately US$25.5 million.

118. As noted above, CannTrust has been advised by both the TSX and the NYSE that the Common Shares may be delisted in the short term if certain conditions are not satisfied (i.e. curing its disclosure defaults and, in the NYSE's case, restoring and maintaining a certain price benchmark), and will likely be delisted and cease traded in any event should the Court grant an order under the CCAA staying proceedings against CannTrust.

Stock Option Plan

119. CannTrust Holdings maintains an equity-based compensation plan (the "**Stock Option Plan**") for directors, officers, full-time employees and consultants of CannTrust, which was amended and restated on February 22, 2018 in connection with the CannTrust Holdings' listing on the TSX.

120. The maximum number of Common Shares subject to grants of options under the Stock Option Plan is limited to 10% of the number of issued Common Shares at the time of the granting of options under the Stock Option Plan. As of the date hereof, options exercisable for 1,895,355 common shares have been granted and are outstanding. The options granted under the Stock Option Plan can have a maximum term of 10 years, and the board of directors of CannTrust Holdings has the discretion to determine the vesting period and amount of the options.

B. Assets

121. Based on the Draft 2019 Year-End Balance Sheets, CannTrust had total assets with a net book value of approximately $290 million as of December 31, 2019[4] on a consolidated basis, comprised of, among other things:

(a) cash and short term investments of approximately $175 million;

(b) inventory and biological assets of approximately $17 million;

[4] The Draft 2019 Year-End Balance Sheets and the figures reported in this section include Elmcliffe No. 2 which, as noted above, holds an equity investment valued at approximately $1.8 million.

(c) accounts receivable of approximately $0.5 million;

(d) prepaid expenses of approximately $20 million;

(e) investments in its strategic partnerships of approximately $8 million;

(f) property and equipment of approximately $26 million; and

(g) right-of-use assets of approximately $39 million.

C. Liabilities

122. Based on the Draft 2019 Year-End Balance Sheets, CannTrust had total liabilities of approximately $58 million as of December 31, 2019 on a consolidated basis, comprised of, among other things:

(a) Accounts payable and accrued liabilities of approximately $16 million; and

(b) Lease obligations of approximately $41 million.

123. CannTrust (specifically, Opco) has also entered into commitments of $61,975,680 with a wholly-owned subsidiary of Envest Corp. over a 20 year term with respect to co-generation derived heat and power at the Fenwick Facility, which requires a monthly payment to Envest of $291,802.16.

124. CannTrust also has various other secured obligations primarily relating to equipment leases and purchase-money security interests. A summary of the security interests registered against the Applicants is attached hereto as **Exhibit "C"**. A copy of the parcel registers for the lands owned by the Applicants, specifically the Fenwick Facility and the BC Outdoor

Cultivation Lands, are attached hereto as **Exhibit "D"** and **Exhibit "E"**, respectively.

D. *<u>Intercompany Arrangements</u>*

125. Substantially all of the cash and short term investments of CannTrust are owned by CannTrust Holdings. CannTrust Holdings funds the operations and expenses of the other Applicants through non-interest-bearing intercompany advances from time to time. CannTrust Holdings also funded the purchase of the real property and other assets held by Elmcliffe and CTI Holdings through non-interest-bearing intercompany advances.

126. The net amounts owing by the other Applicants to CannTrust Holdings for these intercompany advances as reflected on the Draft 2019 Year-End Balance Sheets is approximately:

(a) Opco: $209.8 million

(b) Elmcliffe: $7.0 million

(c) CTI Holdings: $5.1 million

127. CannTrust Holdings and Opco entered into a general security agreement dated July 29, 2015 which has been registered against Opco under the *Personal Property Security Act* (Ontario).

E. *<u>Contingent Litigation Liabilities</u>*

128. Prior to receiving the Fenwick Audit Report, CannTrust was not a party to, nor was any of its property the subject of, any legal proceedings or regulatory actions material to it.

129. Following receipt of the Health Canada Audit Reports, eight putative class action lawsuits were commenced in Canada, and five putative class action lawsuits were commenced in the U.S., alleging that CannTrust Holdings made misrepresentations in its disclosure to investors related to the findings of the Health Canada Audit Reports.

Canadian Securities Class Actions

In Canada, five of the eight putative class action lawsuits were commenced in Ontario (the "**Ontario Class Actions**"). The Ontario Class Actions, which are brought by different plaintiffs' counsel, plead claims, class descriptions and class periods that are not identical but have a great deal of overlap between one another.

130. On January 28, 2020, the Honourable Mr. Justice Hainey issued an endorsement awarding carriage of the Ontario Class Actions to a consortium comprised of Henein Hutchison LLP, Strosberg Sasso Sutts LLP, A Dimitri Lascaris Law Professional Corporation, and Kalloghlian Professional Corporation. One of the law firms that was unsuccessful on the carriage motion is seeking leave to appeal this decision to the Divisional Court of Ontario.

131. In addition to the Ontario Class Actions, separate class action lawsuits were commenced by Merchant Law Group in British Columbia, Alberta and Quebec (collectively with the Ontario Class Actions, the "**Canadian Class Actions**"). To my knowledge, there have been no material developments in the Quebec lawsuit. In the British Columbia and Alberta lawsuits, CannTrust has consented to the relief sought in leave motions to commence a claim pursuant to the relevant securities legislation of those provinces.

132. None of the Canadian Class Actions has been certified.

Other Canadian Actions

133. An action was commenced in Ontario against CannTrust Holdings and other defendants by two shareholders, Zola Finance Holdings Ltd. and Igor Gimelshtein, relating to the drop in its share price after July 8, 2019 (the "**Zola Action**"). The total amounts claimed in this lawsuit overlaps with the Canadian Class Actions and have not been quantified at the present time.

134. An action was commenced in Ontario against Opco by Gay Company Ltd. on March 4, 2020 concerning a series of construction contracts that were terminated by Opco for the construction of greenhouses at the Fenwick Facility and various work at the Vaughan Facility (the "**Construction Action**"). The Construction Action seeks estimated aggregate damages of over $2 million.

U.S. Securities Class Actions

135. In the United States, four of the five putative securities class actions currently pending were commenced in the Southern District of New York and allege violations of the *Securities Act of 1933* (United States) and the *Securities Exchange Act of 1934* (United States) (the "**New York Class Actions**"). It is expected that an order consolidating the New York Class Actions and appointing lead plaintiff/counsel will be issued in the short term.

136. A separate case is pending in California State Court alleging claims pursuant to the State *Securities Act* (collectively with the New York Class Actions, the "**US Class Actions**").

The plaintiff's counsel in the California State Court litigation has agreed to temporarily suspend the steps in the litigation with the understanding that counsel will be engaged if and when CannTrust initiates global settlement discussions in the various putative class actions.

137. None of the US Class Actions has been certified.

138. The Canadian Class Actions, the Zola Action, the Construction Action and the US Class Actions will be referred to collectively as the "**Pending Litigation**".

F. Contingent Regulatory Liabilities

Health Canada

139. CannTrust may also be subject to administrative monetary penalties under the Cannabis Legislation and may have to incur significant expenses associated with remediation and compliance measures that may be undertaken voluntarily by CannTrust or may be imposed or required by Health Canada, in addition to those that have already been undertaken.

140. The Cannabis Legislation provides that the maximum administrative monetary penalty for a violation of the Cannabis Legislation is $1 million per violation, and that a violation that is committed or continued on more than one day constitutes a separate violation in respect of each day on which it is committed or continued.

141. There is the potential that Health Canada could impose significant administrative monetary penalties against CannTrust. The timing or extent of any penalties that Health Canada may seek to impose on CannTrust cannot be reliably ascertained at this time.

RCMP and OSC Investigation

142. The RCMP and OSC are jointly conducting a criminal investigation. The exact scope and targets of the investigation and the magnitude of any potential penalties are not apparent to me at this time. CannTrust has been cooperating with the RCMP and OSC throughout their investigation. CannTrust may be subject to potential other investigations or proceedings by criminal and regulatory authorities for violations of applicable law.

III. CCAA PROCEEDINGS

(i) Applicants are Insolvent

143. I am advised by James Gage of McCarthy Tétrault LLP and verily believe that, for the purposes of the CCAA, a company is insolvent if, among other things:

(a) the aggregate of its property is not, at a fair valuation, sufficient, or, if disposed of at a fairly conducted sale under legal process, would not be sufficient to enable payment of all its obligations, due and accruing due; or

(b) it is, for any reason, unable to meet its obligations as they generally become due.

144. In light of the present circumstances:

(a) CannTrust Holdings is insolvent because it appears that the realizable value of its assets is not sufficient to satisfy its existing liabilities and its contingent liability for the claims asserted in the Canadian Class Actions, the Zola Action and the US Class Actions, in which estimated damages claims exceed $500 million in the aggregate, and its potential regulatory liabilities.

(b) Opco is insolvent because (i) it appears that the realizable value of its assets is not sufficient to satisfy its existing liabilities such as employee obligations, trade debt and contract commitments, its liability to CannTrust Holdings for intercompany advances, its contingent liability for the claims asserted in the Construction Action and its potential regulatory liabilities, and (ii) it has no revenue and is accordingly unable to meet its obligations as they generally become due.

(c) Elmcliffe and CTI Holdings are insolvent because they have no revenue and are accordingly unable to meet their obligations (i.e. municipal taxes, etc.) as they generally become due.

A. CannTrust Holdings: Balance Sheet Insolvency

Assets

145. Based on the Draft 2019 Year-End Balance Sheets, CannTrust Holdings had assets with a net book value of approximately $174.8 million as at December 31, 2019.

146. However, the realizable value of certain categories of CannTrust Holdings' assets may be lower than the book values reported in these statements. Specifically, despite the cash conservation efforts implemented by CannTrust, its cash position continues to decline by approximately $5 million to $7 million per month primarily due to payroll, professional and

insurance expenses. As a result, it is reasonable to expect that the realizable value of the assets of CannTrust Holdings at a fairly conducted sale would be less than the above-noted book value.

Liabilities

147. Based on the Draft 2019 Year-End Balance Sheets, CannTrust Holdings had liabilities with a book value of approximately $2.4 million as at December 31, 2019. This figure does not include:

(a) CannTrust Holdings' contingent liability for the Pending Litigation, in which damages of at least $500 million are claimed in the aggregate;

(b) CannTrust Holdings' contingent liability for monetary penalties that may be imposed by regulators such as the OSC and others; and

(c) any costs associated with the realization of its assets, such as damages for breach of any contracts that CannTrust Holdings was unable to perform.

148. Accordingly, the assets of CannTrust Holdings at fair valuation are insufficient to satisfy in full its potential liabilities relating to the Pending Litigation and administrative monetary penalties, in the event that those liabilities ultimately materialize.

B. Opco: Balance Sheet Insolvency

Assets

149. Based on the Draft 2019 Year-End Balance Sheets, Opco had assets with a net book value of approximately $103.6 million as at December 31, 2019.

150. However, the realizable value of certain categories of Opco's assets may be lower than the book values reported on the Draft 2019 Year-End Balance Sheets. Specifically:

(a) Inventories and Biological Assets: Opco reported inventories of approximately $16.5 million and biological assets of approximately $0.9 million as at December 31, 2019. Due to inventory aging, the impact of the Health Canada Audit Reports and pending decisions from Health Canada on the reinstatement of the Cannabis Licences, the realizable value of these assets may be less than reported on the Draft 2019 Year-End Balance Sheets.

(b) Property, Plant and Equipment: Opco reported property and equipment of approximately $16.2 million and right-of-use assets of approximately $38.7 million as at December 31, 2019. The realizable value of these assets may be negatively impacted by the non-compliance rating that Health Canada has currently placed on the Fenwick Facility and the Vaughan Facility. Given the lack of any certainty on the content or timing of Health Canada's decisions on the Remediation Plan that has been completed at the Fenwick Facility and is nearing completion at the Vaughan Facility, the realizable value of these assets may be less than reported on the Draft 2019 Year-End Balance Sheets.

151. As a result, it is reasonable to expect that the realizable value of the assets of Opco at a fairly conducted sale would be less than the above-noted book value.

Liabilities

152. Based on the Draft 2019 Year-End Balance Sheets, Opco had liabilities with a book value of approximately $265.2 million as at December 31, 2019, including an intercompany balance of $209.8 million owing to CannTrust Holdings. This figure does not include:

(a) Opco's contingent liability for the Construction Action, in which damages of approximately $2 million are claimed;

(b) Opco's contingent liability for monetary penalties that may be imposed by regulators such as Health Canada and others; and

(c) any costs associated with the realization of its assets, such as severance and termination claims and damages for breach of any contracts that Opco was unable to perform.

153. Accordingly, the assets of Opco at fair valuation are insufficient to satisfy in full its existing liabilities, its liability to CannTrust Holdings for intercompany advances and its potential liabilities relating to the Construction Action and administrative monetary penalties, in the event that those liabilities ultimately materialize.

C. <u>Opco, Elmcliffe and CTI Holdings: Liquidity Insolvency</u>

154. As a result of the Health Canada Audits and the partial suspension of the Cannabis

Licences, Opco has had no revenue since July 2019. As noted above, Opco has continued to fund its operations since that time through non-interest-bearing intercompany advances from CannTrust Holdings, consistent with its past practice. As a result of the insolvency of CannTrust Holdings, Opco will unable to meet its obligations as they generally become due, including its employee obligations, trade debt and contract commitments.

155. Elmcliffe and CTI Holdings hold certain real property, buildings and equipment at the Fenwick Facility and the BC Outdoor Cultivations Lands, respectively. Elmcliffe and CTI Holdings do not have any revenues. As noted above, Elmcliffe and CTI Holdings are reliant on non-interest-bearing intercompany advances from CannTrust Holdings to fund their ongoing expenses. As a result of the insolvency of CannTrust Holdings, Elmcliffe and CTI Holdings will unable to meet their respective obligations as they generally become due, including municipal taxes and other corporate expenses.

(ii) Stay of Proceedings

A. Applicants

156. A stay of proceedings against CannTrust is necessary at this time to, among other things, (i) allow CannTrust breathing space so that it can focus its efforts on completing its remediation plan and continue engaging with Health Canada to address its concerns and resume operations; (ii) provide a forum to explore a CCAA plan of compromise or arrangement that would resolve the contingent claims against CannTrust and maximize recovery for creditors and other stakeholders; and (iii) facilitate the potential exploration of a sale or other strategic transaction in addition to, or as an alternative to, a CCAA plan of

compromise or arrangement.

157. The proposed Initial Orders provide for a stay of all proceedings against or in respect of the Applicants or the Monitor or affecting the Business or Property (as defined in the proposed Initial Orders).

158. The stay of proceedings would permit CannTrust to address its enforcement and litigation exposure in a collective manner and put all creditors and contingent creditors on an equal footing.

159. Absent a stay of proceedings, CannTrust will be required to conduct a defence in each of the Pending Litigation and other potential litigation that materializes, which would (i) result in CannTrust incurring significant defence costs, and (ii) cause a meaningful distraction for senior management of CannTrust from continuing their efforts to engage with Health Canada and explore potential strategic alternatives.

B. Co-Defendants

160. The Canadian Class Actions, the Zola Action and the US Class Actions (collectively, the "**Securities Class Actions**") have also named as defendants various current and former directors, officers and employees of CannTrust, its auditors, the underwriters of the 2019 Offering and certain selling shareholders that sold shares in connection with the 2019 Offering (the "**Co-Defendants**"). The Applicants are also seeking to stay the Securities Class Actions against the Co-Defendants in the proposed Initial Orders.

161. The continuation of the Securities Class Actions against the Co-Defendants could

adversely affect the rights of CannTrust in those proceedings and any finding of liability and/or award of damages against the Co-Defendants could have legal and financial consequences for CannTrust, including claims for indemnification or contribution.

162. If the Securities Class Actions were not stayed against the Co-Defendants, CannTrust and its management would still be required to devote time and effort to monitoring and participating in the proceedings to ensure that the rights and interests of CannTrust are not prejudiced, and CannTrust would be required to incur legal and other expenses in connection with these proceedings.

163. In addition, if such matters were to proceed against the Co-Defendants but are stayed as against CannTrust, there would be different inquiries at different times into the same underlying facts, creating the possibility for conflicting or inconsistent judgments and wasted judicial resources.

C. Affected Parties and Cross-Default Rights

164. In the proposed Initial Orders, the Applicants are also seeking a stay of all rights and remedies against or in respect of the Affected Parties arising out of, relating to, or triggered by the insolvency of the Applicants or the commencement of these proceedings (the "**Cross-Default Rights**"). CannTrust has material equity interests in the Affected Parties and if counterparties were able to rely on Cross-Default Rights in their contracts with the Affected Parties, it may have a material impact on the financial position of the Applicants. The counterparties affected by this stay would be entitled to rely on all other contractual rights and remedies that are not related to these proceedings commenced by the Applicants.

165. To ensure that the stay does not irreversibly affect proceedings by the mere passage of time, the proposed Initial Orders provide that, to the extent any limitation period relating to proceedings in respect of the Applicants that are stayed by the Initial Orders may expire, such period is deemed extended by the length of the Stay Period (as defined in the proposed Initial Orders).

(iii) Payments During the CCAA Proceedings

A. Employees and Assistants

166. As set out in the proposed Initial Orders, CannTrust is seeking authorization to pay certain expenses, whether incurred prior to, on or after the Initial Filing Date, in respect of:

(a) outstanding and future wages, salaries, employee and pension benefits, vacation pay and expenses payable on or after the Initial Filing Date, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements;

(b) the fees and disbursements of any Assistants (as such term is defined in the proposed Initial Orders) retained or employed by CannTrust.

167. The continued payment of these obligations is necessary for the continued operation of the Business or in connection with the CCAA proceedings and efforts to address CannTrust's current financial circumstances. CannTrust believes it is in the best interests of its stakeholders that such expenses continue to be paid in the normal course, regardless of whether such expenses were incurred prior to, on or after the Initial Filing Date.

B. *CCAP Payments*

168. In the proposed Amended and Restated Initial Order, CannTrust is also seeking authorization to pay all amounts payable pursuant to the CCAP (whether accrued prior to, on or after the Initial Filing Date). While CannTrust believes that payments under the CCAP would fall within the scope of the above relief as the CCAP is an existing compensation arrangement, CannTrust is seeking express approval to make these payments for greater certainty.

C. *Ordinary Course Expenses*

169. In the proposed Initial Orders, CannTrust is also seeking the authority to pay all reasonable expenses incurred in carrying on the Business in the ordinary course after the Initial Filing Date, including (a) expenses and capital expenditures reasonably necessary for the preservation of CannTrust's Business or property; (b) expenses required to ensure compliance with any governmental, regulatory, or other enforcement action; and (c) payment for goods and services supplied or to be supplied to CannTrust after the date of the Initial Filing Date.

D. *Securities Reporting*

170. The Board has determined that devoting additional time or money towards curing its public disclosure defaults and restoring its status as a reporting issuer not in default of securities legislation is not appropriate at this juncture. The TSX, NYSE and OSC, as applicable, have indicated that the securities of CannTrust Holdings will likely be delisted and cease traded as a result of CannTrust commencing these CCAA proceedings, regardless of

whether CannTrust Holdings cures its disclosure defaults. In the opinion of the Board, the time and resources of CannTrust are better directed towards completing its remediation efforts, attempting to resolve the Pending Litigation and completing its review of strategic alternatives.

171. In the proposed Initial Orders, CannTrust Holdings is seeking the authorization of this Court to proceed accordingly. CannTrust is not asking the Court to exempt it from its continuous disclosure obligations, or bar any securities regulators or stock exchanges from taking steps within their discretion as a result of the continued non-reporting by CannTrust. CannTrust Holdings is also asking the Court to order that none of the directors, officers, employees, and other representatives of the Applicants, the Monitor (and its directors, officers, employees and representatives), nor the CRO (as defined below) shall have any personal liability for CannTrust proceeding in this manner and not making the securities filings.

(iv) Funding of CannTrust

A. <u>Cash Flow Forecast</u>

172. As set out in the statement of projected cash flows of CannTrust attached hereto as **Exhibit "F"** (the "**Cash Flow Forecast**"), the current cash balance of CannTrust is approximately $134.7 million.[5] CannTrust's principal use of cash during these proceedings will

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[5] In a press release dated March 26, 2020, CannTrust disclosed that it had a cash balance of approximately $145 million as of March 20, 2020. The difference between this figure and the opening cash balance in the Cash Flow Forecast is attributable to (i) the figure in the press release including the amount being held pursuant to the D&O Trust (described below) and (ii) timing differences.

consist of the costs associated with the operation and remediation of the Business and ongoing payments made in the ordinary course, including employee compensation, procurement and other supplier obligations and professional fees and disbursements in connection with these CCAA proceedings and related matters.

173. As the Cash Flow Forecast indicates, the Business is projected to have sufficient cash over the forecasted period to enable CannTrust to meet its day-to-day obligations for the stay period sought in this application. Consequently, CannTrust not seeking interim financing at this juncture.

B. Intercompany Advances

174. As noted above, the operations and expenses of Opco, Elmcliffe and CTI Holdings are funded in the ordinary course through non-interest-bearing advances from CannTrust Holdings. CannTrust is seeking relief in the Initial Orders to allow it to maintain this practice during the CCAA proceedings and minimize any prejudice to the creditors of CannTrust Holdings through a priority charge on the assets of the other Applicants. Pursuant to the Initial Orders, among other things:

(a) CannTrust Holdings will be authorized to make intercompany advances to each of Opco, Elmcliffe and CTI Holdings (each, an "**Intercompany Borrower**") to fund their ongoing expenditures and other amounts permitted by the Initial Orders;

(b) any intercompany advances will be subject to Monitor review and approval;

(c) CannTrust Holdings will be entitled to a charge (the "**Intercompany Charge**") on all of the Property of each of the Intercompany Borrowers as security for the intercompany advances made to such Intercompany Borrower; and

(d) the Intercompany Charge will not secure any intercompany advances made by CannTrust Holdings to the Intercompany Borrowers before the Initial Filing Date.

175. In the First Day Order, Intercompany Advances will be limited to $4.2 million, which is the amount that is reasonably necessary for the continued operations of the Intercompany Borrowers in the ordinary course of business during the initial 10-day stay period.

(v) Approval of CRO Engagement

176. Pursuant to the engagement letter dated March 27, 2020 (the "**CRO Engagement Letter**"), CannTrust has engaged FTI Consulting Canada Inc. ("**FTI**") to act as chief restructuring officer ("**CRO**") and provide certain financial, advisory and consulting services to CannTrust. A copy of the CRO Engagement Letter is attached hereto as **Exhibit "G"**.

177. The proposed Initial Orders provide for the approval of the CRO Engagement Letter and the appointment of FTI as CRO pursuant thereto. The services to be provided by the CRO include, if and to the extent requested by CannTrust, among other things:

(a) Providing financial, strategic and restructuring advice to the Board, including in relation to the current status of CannTrust's business and licenses, the litigation against CannTrust and CannTrust's liquidity;

(b) Assisting management and the Board with such analysis as may be required, including assistance with cash flow forecasts, monitoring of actual performance against forecast cash flow and any sensitivity or scenario analysis;

(c) Assisting CannTrust with its cash conservation measures and managing its day-to-day liquidity requirements;

(d) Advising CannTrust in the planning and execution of a sales and investment solicitation process for the business and assets of CannTrust (“**SISP**”), if the Board determines that a SISP is necessary or desirable; and

(e) Advising and assisting CannTrust in any negotiations and discussions with CannTrust’s stakeholders.

178. Paul Bishop of FTI will be the person primarily responsible for performing the services of the CRO. The CRO Engagement Letter provides that the CRO will be paid a fixed monthly amount.

179. I believe that it is appropriate for the Court to approve the CRO Engagement Letter and the appointment of FTI as CRO pursuant thereto as:

(a) The CRO is very experienced in restructuring proceedings of this nature;

(b) The experience and expertise of the CRO will be beneficial to CannTrust and its stakeholders in achieving a positive outcome in these proceedings; and

(c) CannTrust and the proposed monitor have reviewed the proposed fees and disbursements set out in the CRO Engagement Letter and believe them to be fair and reasonable under the circumstances.

(vi) Appointment of Monitor

180. The Applicants are seeking the appointment of Ernst & Young Inc. ("**EYI**") as the proposed CCAA monitor in these proceedings. The consent of EYI to act as the Monitor is attached at Tab 3 of the Application Record.

(vii) Charges

C. Administration Charge

181. The proposed Initial Orders provide for a Court-ordered charge over the assets, property and undertaking of the Applicants (the "**Administration Charge**") in favour of the Monitor, the CRO, legal counsel to the Monitor and legal counsel to the Applicants in respect of their fees and disbursements incurred at their standard rates and charges, in order to ensure the active involvement and assistance of such persons during the CCAA proceedings.

182. The proposed Administration Charge is in an aggregate amount of $700,000 in the First Day Order, and in an aggregate amount of $1.5 million in the Amended and Restated Initial Order. The amount of the proposed Administration Charge has been reviewed with the proposed monitor.

D. *Directors' Charge*

183. The directors and officers of CannTrust will be actively involved in overseeing and directing, among other things, the operation of the Business during the CCAA proceedings and efforts to resolve CannTrust's current financial situation.

184. It is my understanding that, in certain circumstances, directors and officers can be held personally liable for certain of a company's obligations, including in connection with payroll remittances, workers' compensation remittances, harmonized sales taxes and goods and services taxes. Furthermore, I understand it may be possible for directors and officers of a corporation to be held personally liable for certain employment-related obligations.

185. CannTrust's insurance broker has confirmed that most of CannTrust's existing insurers are prepared to extend CannTrust's existing insurance coverage for six months, until August 25, 2020. However, to date, CannTrust's insurers have not committed to renewing CannTrust's insurance coverage, including for its directors and officers, past that date.

186. The insurance policies for the directors and officers of CannTrust is subject to a total limit of $65 million and contains exclusions and limitations to the coverage provided, there is a potential for there to be insufficient coverage in respect of the potential director and officer liabilities.

187. In an attempt to partially close this gap prior to the commencement of these proceedings, CannTrust established a trust in favour of its current and future directors and officers (the "**D&O Trust**") which is intended to cover any claims that they may become personally liable for in their capacity as a director or officer, including employee claims for

unpaid wages and other entitlements and claims for taxes. CannTrust has contributed $6 million to the D&O Trust. The D&O Trust will cover directors and officers that acted honestly and in good faith with a view to the best interests of the Applicants.

188. There is the potential that gaps may remain in the coverage of the directors and officers over the long term notwithstanding the existence of the directors and officers' insurance policy and the D&O Trust. The directors and officers of CannTrust have expressed their desire for certainty with respect to potential personal liabilities if they continue in their current capacities. CannTrust requires the active and committed involvement of its directors and senior officers to operate the Business.

189. Accordingly, the proposed Initial Orders provide for a Court-ordered charge over the assets, property and undertaking of the Applicants (the "**Directors' Charge**") to indemnify the directors and officers of the Applicants in respect of liabilities they may incur during the CCAA proceedings in their capacities as directors and officers. The proposed Directors' Charge is in an aggregate amount of $1.4 million in the First Day Order, and in an aggregate amount of $3.75 million in the Amended and Restated Initial Order. The amount of the proposed Directors' Charge has been reviewed with the proposed monitor.

E. Priorities of Charges

190. The Applicants believe that the amounts of the Administration Charge, the Directors' Charge, the KERP Charge and the Intercompany Charge (collectively, the "**Charges**") in the Initial Orders are appropriate in the circumstances.

191. It is contemplated that the priorities of the Charges will be as follows:

(a) First – the Administration Charge;

(b) Second – the Directors' Charge;

(c) Third – KERP Charge;[6] and

(d) Fourth – Intercompany Charge.

192. The Initial Orders sought by the Applicants provide for the Charges to rank in priority to all other security interests, trusts, liens, charges, encumbrances and claims of secured creditors, statutory or otherwise, (collectively, the "**Encumbrances**"), other than certain specified exceptions, such as purchase-money security interests, statutory deemed trusts for source deductions, certain pension plan amounts, municipal property tax and utility liens (each to the extent it is a super-priority). I am advised by James Gage of McCarthy Tétrault LLP and I believe that the specified exceptions are intended to represent those claims that have priority outside of CCAA proceedings. As described above, CannTrust does not have any secured debt.

(viii) Service and Notice

193. CannTrust is also seeking approval of its proposed manner of service and notice of the Initial Orders and the comeback motion authorized pursuant to the First Day Order. In particular, the Applicants propose that the Monitor shall provide notice by way of publication, by making the Initial Orders publicly available as prescribed in the CCAA, and by sending a

[6] The KERP Charge is only being sought in the proposed Amended and Restated Initial Order. In the proposed First Day Order, the Intercompany Charge would rank third. The Key Employee Retention Plan to be established by CannTrust will be set out in a subsequent court filing in advance of the comeback hearing.

notice (which shall include the date of the comeback motion) to known creditors with claims over $1000, except with respect to the Securities Class Actions, in which cases the Monitor shall only send a notice to counsel of record.

194. Given the limitations imposed on the ability of CannTrust and the Monitor to process and send notices to creditors by physical mail as a result of the COVID-19 pandemic, and the fact that many businesses may not have staff on site to open such mailings, the Applicants are seeking the Court's authorization to deliver the notices to known creditors by e-mail instead of physical mail. If the Applicants do not have e-mail addresses on file for a particular known creditor, the Monitor will send a notice by physical mail in the usual manner. In the current circumstances, the Applicants believe that the notices are more likely to come to the prompt attention of known creditors if they are sent by e-mail.

195. The proposed First Day Order also provides that CannTrust may rely on the notice provided by the Monitor (as described above) to provide notice of the comeback motion and shall only be required to serve motion materials in relation to the comeback motion on those parties who serve a Notice of Appearance in the proceeding or otherwise request service of such materials or to be added to the service list, in writing, in advance of the comeback motion.

IV. CONCLUSION

196. Prior to receiving the Fenwick Audit Report, CannTrust operated a business that was experiencing operational growth and expanding into new markets and product segments. CannTrust was not a party to any material litigation.

197. As a result of the Health Canada Audit Reports, shipments of all CannTrust's cannabis products have been stopped, the Cannabis Licences have been partially suspended, its CEO and chair have been replaced, its independent auditor withdrew its opinion on the 2018 annual statements, it has ceased making its required disclosures under securities laws, Pending Litigation seeking at least $500 million in aggregate damages have been commenced against it and its market capitalization has declined by almost 90%. Recent events in the cannabis sector and the sudden decline in the state of the global markets more generally have made CannTrust's financial situation even more precarious.

198. The Applicants seek CCAA protection at this time to protect the value of the Business. The relief requested in the proposed Initial Orders will provide CannTrust with an opportunity to address its current challenges and the Pending Litigation in a collective manner.

199. The relief requested in the proposed Initial Orders is therefore in the best interests of the Applicants and their stakeholders. The relief sought in the proposed First Day Order is limited to relief that is reasonably necessary for the continued operations of CannTrust in the ordinary course of business during the initial 10-day stay period.

SWORN AFFIRMED BEFORE ME at the City of Toronto, in the Province of Ontario on the 31st day of March, 2020. A Commissioner for taking Affidavits Name: Trevor Courtis (LSO# 67715A)	Greg Guyatt

This is **Exhibit "C"** referred to in the
affidavit of **GREG GUYATT**
sworn before me this
1st day of May, 2020

A Commissioner for taking affidavits

Tab C

Court File No. CV-20-00638930-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF CANNTRUST HOLDINGS INC., CANNTRUST INC., CTI HOLDINGS (OSOYOOS) INC. AND ELMCLIFFE INVESTMENTS INC.

Applicants

AFFIDAVIT OF GREG GUYATT
(Sworn April 6, 2020)

I, Greg Guyatt, of the City of Mississauga, in the Province of Ontario, MAKE OATH AND SAY:

1. I am the Chief Executive Officer ("**CEO**") of CannTrust Holdings Inc. ("**CannTrust Holdings**"). I have served in this capacity since February 17, 2020. Prior to my appointment as CEO, I served as the Chief Financial Officer ("**CFO**") of CannTrust Holdings since joining CannTrust Holdings on or around February 19, 2019. Prior to joining CannTrust Holdings, I served as the CFO of GreenSpace Brands Inc., a Canadian-based premium natural food product company.

2. I am a Chartered Professional Accountant and have more than 20 years of experience in the consumer packaged goods, retail, pharmaceutical and private equity sectors.

3. Through my current role as CEO, and my former role as CFO, of CannTrust Holdings, I am familiar with the operations, financial results and strategies of the Applicants. As such, I have personal knowledge of the matters to which I depose in this affidavit. Where I do not

possess personal knowledge, I have stated the source of my knowledge and believe it to be true.

4. For ease of reference, the Applicants will be collectively referred to herein as "**CannTrust**". All dollar references herein are Canadian dollars unless otherwise referenced.

(i) Overview

5. I previously swore an affidavit on March 31, 2020 (the "**March 31 Affidavit**") in support of an application by CannTrust for an initial order pursuant to the *Companies' Creditors Arrangement Act* (Canada) (the "**CCAA**"). The March 31 Affidavit is included at Tab 2 of the Application Record dated March 31, 2020. All terms used but not otherwise defined herein shall have the meanings given to them in the March 31 Affidavit.

6. On March 31, 2020, the Honourable Mr. Justice Hainey granted CannTrust an initial order (the "**Initial Order**") pursuant to the CCAA, including a stay of proceedings until April 9, 2020 (the "**Stay Period**"). A copy of the Initial Order is attached hereto as **Exhibit "A"**.

7. I swear this affidavit to provide further information to the Court in support of CannTrust's application for an order (the "**Proposed Amended and Restated Initial Order**"), substantially in the form of the draft order included at Tab 2 of the Supplementary Application Record of the Applicants, which amends and restates the Initial Order to grant certain broader relief that is appropriate in the circumstances, including the following relief which is addressed in this affidavit:

(a) extending the Stay Period to July 5, 2020;

(b) approving the KERP established by the Applicants, authorizing the payments to the Key Employees pursuant to the KERP, granting the KERP Charge and sealing the unredacted version of the KERP Summary (as each term is defined below);

(c) increasing the maximum amount of the priority Charges;

(d) approving the engagement of the Financial Advisor and granting the Transaction Fee Charge (as each term is defined below);

(e) authorizing the Applicants to, with the consent of the Monitor, pay pre-filing amounts owing to critical suppliers; and

(f) permitting, but not requiring, the Applicants to pay rent to landlords at such intervals as rent is usually paid in the ordinary course of business.

8. The Proposed Amended and Restated Initial Order also includes the following relief, which is addressed in the March 31 Affidavit:

(a) staying and suspending the commencement or continuation of the Pending Litigation or any Proceeding in relation thereto against or in respect of the Other Defendants during the Stay Period except with leave of this Court;[1] and

(b) authorizing the Applicants to pay amounts payable pursuant to the CannTrust Capital Appreciation Plan (the "**CCAP**") (whether accrued prior to, on or after

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[1] See paras. 160-163 of the March 31 Affidavit.

the Initial Filing Date) incurred in the ordinary course of business on terms consistent with existing arrangements or past practice.[2]

(ii) Stay Extension

9. In the brief period since the Initial Order was issued on March 31, 2020, CannTrust has acted in good faith and with due diligence. CannTrust has continued to carry out remediation activities at the Vaughan Facility and otherwise maintained its operations as they existed prior to commencing these proceedings.

10. Additionally, CannTrust and its representatives prepared and executed a communications plan, which included:

(a) issuing a press release on March 31, 2020 and filing that press release on the Canadian and U.S. online securities filing platforms, SEDAR and EDGAR;

(b) holding a virtual town hall for all employees on March 31, 2020 and April 2, 2020 to provide information regarding the CCAA process, reiterate CannTrust's commitment towards obtaining the reinstatement of its Cannabis Licences and resuming operations and provide information on avenues for employees to have their questions answered throughout the CCAA process;

(c) contacting suppliers, employees on temporary layoff or a leave of absence, customers (such as the various provincial government wholesale distributors), banking and other service providers, landlords, strategic partners (such as

[2] See paras. 49-52 and 168 of the March 31 Affidavit.

Cannatrek) and others;

(d) working with the Monitor to respond to inquiries from the above stakeholders and investors regarding the CCAA proceedings;

(e) assisting the Monitor in preparing and delivering notices to creditors and other stakeholders in accordance with the Initial Order;

(f) notifying Health Canada of the filing and reiterating CannTrust's continued commitment towards proceeding with its remediation activities and seeking the reinstatement of its Cannabis Licences;

(g) notifying the Ontario Securities Commission, the Toronto Stock Exchange, the New York Stock Exchange and the Royal Canadian Mounted Police of the filing and the relief that had been granted in the Initial Order with respect to securities reporting;

(h) serving a copy of the Initial Order on plaintiffs' counsel in the Pending Litigation;

(i) concluding an engagement letter with the Financial Advisor (as defined and set out further below); and

(j) preparing materials in support of the relief sought in the Proposed Amended and Restated Initial Order.

11. CannTrust has also continued to engage with Health Canada regarding the

reinstatement of its Cannabis Licences and other regulatory matters and there have been two positive developments on this front since the commencement of these proceedings:

(a) Mother Plants: As noted in the March 31 Affidavit, CannTrust had requested approval from Health Canada to propagate new mother plants from its current mother plants which, if compromised, would require CannTrust to initiate its genetic stock from seeds once its Cannabis Licences are reinstated and add six months or more to its propagation, cultivation and processing cycle.

On April 1, 2020, Health Canada advised CannTrust that it had no objections to CannTrust's request to propagate its mother plants in the manner that CannTrust had proposed.

(b) Feedback on Fenwick Licence Reinstatement Application: As noted in the March 31 Affidavit, CannTrust submitted a comprehensive package to Health Canada on February 14, 2020 evidencing its remediation of the Fenwick Facility and seeking the reinstatement of its Cannabis Licence there.

On April 3, 2020, Health Canada wrote to CannTrust confirming that it has completed reviewing the remediation package and asked questions about the remediation package which CannTrust will respond to in the ordinary course. Health Canada's response provided no further insight into the timing or likelihood of the reinstatement of the Cannabis Licence for the Fenwick Facility.

12. CannTrust seeks an extension of the Stay Period until July 5, 2020. As set out in more

detail in the March 31 Affidavit, the requested extension is necessary and appropriate in the circumstances to allow CannTrust to:

(a) complete the remainder of its remediation plan for its Vaughan Facility and submit the related evidence package to Health Canada;

(b) continue to work with Health Canada to resolve any remaining *Cannabis Act* compliance issues, with a view towards obtaining reinstatement of its licences, subject to the availability of resources as a result of the COVID-19 pandemic;

(c) engage with the plaintiffs in the Pending Litigation in order to explore a potential resolution of those claims; and

(d) continue its review of strategic alternatives with the assistance of the Monitor, the CRO and the Financial Advisor, including, among other things, exploring a potential sale and investment solicitation process and a potential CCAA plan of compromise or arrangement.

13. I understand that the Monitor will be appending a revised cash flow forecast to its first report to the Court, to be filed (the "**First Report**"), and that cash flow forecast will demonstrate that the Business is projected to have sufficient cash over the proposed extension of the Stay Period to enable CannTrust to meet its day-to-day obligations. I further understand that the Monitor supports the requested extension of the Stay Period and will provide further information in that regard in the First Report.

(iii) Key Employee Retention Plan

14. CannTrust has established a Key Employee Retention Plan (the "**KERP**") to incentivize certain key employees to remain in their employment during these CCAA proceedings. The KERP was approved by the board of directors of CannTrust Holdings.

15. The KERP includes 23 employees (the "**Key Employees**") whose continued employment is integral to the ability of CannTrust to complete its remediation plan at the Vaughan Facility, obtain the reinstatement of its Cannabis Licences, return to functional and compliant operations, pursue a strategic transaction and/or otherwise successfully restructure its business.

16. I believe that the Key Employees would consider other employment options without the KERP, and if the KERP was not secured by the KERP Charge.

17. The Key Employees occupy key roles in the areas of production, operations, finance, product development, marketing, human resources and regulatory compliance. The Key Employees could not be readily or easily replaced in the near term due to their (i) security clearances with Health Canada (for certain of the Key Employees), (ii) their institutional knowledge of the operations and processes of CannTrust and the content and status of its remediation plan, and/or (iii) key relationships with customers, suppliers and regulatory authorities. Any process to find appropriately qualified replacements would be lengthy, difficult and costly.

18. Additionally, any replacements for the Key Employees would face a steep learning curve given the nascency of the industry and the complexity of the cannabis regulatory regime

in Canada and would be challenged to develop a thorough understanding of CannTrust's business within the time required to complete the remediation plan and successfully move the restructuring forward.

19. Under the KERP, the Key Employees will be entitled to aggregate payments amounting to a certain percentage of their annual salary upon the occurrence of two specific milestones. The first milestone payment (the "**First Milestone Payment**") will be made, with respect to all Key Employees, 60 days after the expiry of the appeal period for the Proposed Amended and Restated Initial Order (which milestone is expected to be occur on or around July 1, 2020) (the "**First Milestone**"). The second milestone payment (the "**Second Milestone Payment**") will be made:

(a) for non-executive Key Employees, on the earlier of (i) January 15, 2021, or (ii) the completion date of a going concern reorganization or transaction; and

(b) for executive Key Employees, on the completion date of a going concern reorganization or transaction (collectively, the "**Second Milestone**").

20. The total amount payable upon the occurrence of the First Milestone would be $655,000, which represents approximately 33% of the total payments to be made under the KERP. The total amount payable upon the occurrence of the Second Milestone would be $1,339,000, representing approximately 67% of the total payments to be made under the KERP. The KERP has been designed to incentivize Key Employees to both:

(a) remain in their roles in the short term, which is a crucial period during which CannTrust expects to complete its remediation activities with respect to the Vaughan Facility and apply for reinstatement of its licence there; and

(b) remain in their roles over the long term in order to achieve a successful restructuring.

21. The KERP also includes a discretionary fund of $200,000 to be allocated to employees whose retention becomes essential, for similar reasons as the Key Employees, which decision will be made in consultation with and subject to the approval of the Monitor. The total amount payable under the KERP is approximately $2.2 million.

22. The following are certain other material terms of the KERP:

(a) If CannTrust's application for a reinstatement of its Cannabis Licences for the Fenwick Facility is rejected by Health Canada prior to the First Milestone, the First Milestone Payment will be made, but there will be no Second Milestone Payment for non-executive Key Employees.

(b) If CannTrust's application for a reinstatement of its Cannabis Licences for the Fenwick Facility is rejected between the First Milestone and January 15, 2021, the Second Milestone Payment for non-executive Key Employees will be paid on a pro-rated basis (for example, if the licence reinstatement application is rejected on the date that is halfway between the First Milestone and January 15, 2021, each non-executive Key Employee will receive 50% of the Second Milestone Payment).

(c) If a Key Employee leaves CannTrust or is terminated with cause prior the First Milestone they will not receive either the First Milestone Payment or the Second Milestone Payment.

(d) If a Key Employee leaves CannTrust or is terminated with cause prior to the Second Milestone (but after the First Milestone), they will not be entitled to receive the Second Milestone Payment.

(e) If a Key Employee is terminated without cause prior to the First Milestone, they will be entitled to receive the payment associated with the First Milestone.

(f) If a non-executive Key Employee is terminated without cause prior to the Second Milestone (but after the First Milestone), they will receive a pro-rated payment of the Second Milestone to the date of their termination.

(g) If an executive Key Employee is terminated without cause prior to the Second Milestone (but after the First Milestone):

(i) if a going concern outcome is achieved, the Key Employee will receive the Second Milestone Payment;

(ii) if a going concern outcome is not achieved, the Key Employee will not receive the Second Milestone Payment.

23. A summary of the KERP containing the names of the Key Employees, the incentive payments to be made to each Key Employee under the KERP and the milestones triggering those payments (the "**KERP Summary**") is attached hereto as **Confidential Exhibit "B"**.

24. In the Proposed Amended and Restated Initial Order, CannTrust is seeking approval of the KERP and the establishment of a charge (the "**KERP Charge**") on the Property of the Applicants in the maximum amount of $1.4 million to secure amounts owing to the Key Employees under the KERP. The size of the KERP Charge reflects the maximum amount payable under the KERP (i.e. the Second Milestone Payment).

25. CannTrust is of the view that the KERP and the KERP Charge are appropriate and in the best interests of CannTrust and its stakeholders generally. CannTrust consulted with the CRO, which has extensive experience with KERPs in CCAA proceedings, in designing the KERP and determining the proposed quantum of the KERP Charge. I understand that the Monitor supports the KERP and the KERP Charge and will provide further information in that regard in the First Report.

26. The KERP Summary contains commercially sensitive and personal information regarding the identity and compensation of the Key Employees, the disclosure of which could adversely affect CannTrust and the Key Employees. Accordingly, the proposed Amended and Restated Initial Order provides that the Confidential Exhibit "B" be sealed and not form part of the public record unless otherwise ordered by this Court.

(iv) Administration Charge

27. In the Initial Order, an Administration Charge was granted over the Property of the Applicants in the maximum amount of $500,000, being only the amount that was reasonably necessary for the initial stay period.

28. The Proposed Amended and Restated Initial Order provides for an Administration

Charge of $1.4 million. The proposed Administration Charge is based on a forecast of professional fees for a period of four weeks.

29. CannTrust believes that the amount of the proposed Administration Charge appropriately reflects the potential length and complexity of the CCAA proceedings and is necessary in order to ensure the active involvement and assistance of professionals during these proceedings.

30. The amount of the proposed Administration Charge has been reviewed with the Monitor, and I understand that the Monitor supports the proposed Administration Charge and will provide further information in that regard in the First Report.

(v) Directors' Charge

31. In the Initial Order, a Directors' Charge was granted over the Property of the Applicants in the maximum amount of $550,000, being only the amount that was reasonably necessary for the initial stay period.

32. The Proposed Amended and Restated Initial Order provides for a Directors' Charge of $3.55 million. The proposed Directors' Charge is based on (i) two weeks and four days of estimated future payroll following the forecasted ramp-up of operations upon the Cannabis Licences for the Fenwick Facility and Vaughan Facility being reinstated, (ii) the anticipated payments under the CCAP in October 2020, (iii) anticipated accrued vacation and (iv) anticipated unremitted source deductions. A chart setting out these estimates is attached hereto as **Exhibit "C"**.

33. CannTrust believes that the amount of the proposed Directors' Charge appropriately reflects the potential personal liabilities of the directors and officers of CannTrust during these CCAA proceedings and is necessary in order to ensure the active and committed involvement of its directors and senior officers to operate the Business during these proceedings.

34. The amount of the proposed Directors' Charge has been reviewed with the Monitor, and I understand that the Monitor supports the proposed Directors' Charge and will provide further information in that regard in the First Report.

(vi) Approval of Financial Advisor Engagement

35. CannTrust has engaged Greenhill & Co. Canada Ltd. (the "**Financial Advisor**") to act as financial advisor to CannTrust in connection with its consideration of various strategic and business alternatives. The Financial Advisor's engagement is governed by an amended and restated engagement letter dated April 3, 2020 (the "**Financial Advisor Engagement Letter**"). A copy of the Financial Advisor Engagement Letter is attached hereto as **Exhibit "D"**.

36. The Financial Advisor was originally engaged by the Special Committee in August 2019 to assist CannTrust in a review of strategic alternatives. The Board of Directors of CannTrust Holdings instructed the Financial Advisor to initiate a confidential strategic alternatives market canvas which remains at an early stage.

37. The Proposed Amended and Restated Initial Order provides for the approval of the Financial Advisor Engagement Letter and the continuation of services by the Financial Advisor pursuant thereto. The services to be provided by the Financial Advisor include, if and

to the extent requested by CannTrust, among other things:

(a) general financial advisory services;

(b) assistance in preparation of materials in connection with a full or partial sale of CannTrust;

(c) solicitation of interest from potential strategic partners;

(d) assistance in negotiations with potential strategic partners; and

(e) fairness opinions, if required.

38. The Financial Advisor Engagement Letter provides for an Engagement Fee and a Work Fee that were paid by CannTrust in advance of the filing and does not contemplate ongoing periodic fees. The Financial Advisor Engagement Letter contemplates a Transaction Fee in an amount equal to the sum of (a) $1,000,000 plus (b) 4.0% of the value the consideration payable to CannTrust Holdings, its shareholders or creditors pursuant to any Transaction (as that term is defined in the Financial Advisor Engagement Letter) to the extent that the value exceeds $45,000,000 (the "**Transaction Fee**").

39. In the Proposed Amended and Restated Initial Order, it is contemplated that the Transaction Fee will be secured by a charge (the "**Transaction Fee Charge**") on the Property of the Applicants, which will rank as follows among the other Charges:

(a) First – the Administration Charge (to a maximum amount of $1.4 million);

(b) Second – the Directors' Charge (to a maximum amount of $3.55 million);

(c) Third – KERP Charge (to a maximum amount of $1.4 million);

(d) Fourth – Transaction Fee Charge; and

(e) Fifth – Intercompany Charge.

40. I believe that it is appropriate for the Court to approve the Financial Advisor Engagement Letter and the continuation of services by the Financial Advisor pursuant thereto and grant the Transaction Fee Charge. This will allow the Financial Advisor to continue its confidential market canvas and facilitate CannTrust transitioning seamlessly into a court-approved sale and investment solicitation process if it decides to implement one in the future. The expertise and institutional knowledge of the Financial Advisor will be beneficial to CannTrust and its stakeholders in achieving a positive outcome in these proceedings. The Transaction Fee is only payable upon the completion of a Transaction involving consideration over the specified threshold which, if realized, would benefit CannTrust and its stakeholders.

41. CannTrust has consulted with the Monitor in negotiating the Financial Advisor Engagement Letter and determining the proposed quantum of the Transaction Fee. I understand that the Monitor supports the approval of the Financial Advisor Engagement Letter and the amount and priority of the Transaction Fee Charge and will provide further information in that regard in the First Report.

(vii) Critical Suppliers

42. CannTrust is also seeking authority to pay suppliers for amounts owing for goods or services actually supplied to CannTrust prior to the date of the Initial Order. Payments for

these goods and services are subject to the approval of the Monitor and will be based on a determination of whether the supplier is critical to the Business, the ongoing operations of CannTrust, or the preservation of the Property and the payment is required to ensure ongoing supply.

43. This relief is appropriate in the circumstances as it will facilitate CannTrust ensuring the continued supply of goods and services that are essential to it carrying out its remediation plan and resuming operations upon the reinstatement of its licences.

44. I understand that the Monitor supports this relief and will provide further information in that regard in the First Report.

(viii) Rent Timing

45. The Initial Order provides, consistent with the model initial order, that until a real property lease is disclaimed in accordance with the CCAA, CannTrust will pay rent twice monthly on the first and fifteenth day of each month, in advance. In the Proposed Amended and Restated Initial Order, CannTrust would be permitted, but not required, to pay rent at such intervals as rent is usually paid under the applicable lease if CannTrust determines, in consultation with the Monitor, that it would be preferable to do so.

46. CannTrust leases its Vaughan Facility at which extraction, manufacturing and packaging activities are carried out, and its head office in Vaughan, Ontario. The applicable leases at these premises normally require CannTrust to pay rent monthly in advance.

47. For the leases that CannTrust does not intend to disclaim, CannTrust will have the

optionality to pay rent monthly consistent with past practice which will reduce the administrative expense associated with twice monthly rent payments. CannTrust may still pay rent twice monthly if it determines that it would be preferable to do so. Landlords would not be prejudiced by this proposed amendment to the Initial Order as the only ones that are affected will be better off; they will receive rent monthly in advance.

(ix) Conclusion

48. For the reasons stated above and in the March 31 Affidavit, the relief requested in the Proposed Amended and Restated Initial Order is in the best interests of CannTrust and its stakeholders and appropriate in the circumstances.

SWORN AFFIRMED BEFORE ME at the City of Toronto, in the Province of Ontario on the 6th day of April, 2020. A Commissioner for taking Affidavits Name: Trevor Courtis (LSO# 67715A)	Greg Guyatt

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 CANNTRUST HOLDINGS INC. ET AL.

Court File No: CV-20-00638930-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding commenced at Toronto

AFFIDAVIT OF GREG GUYATT
(Sworn May 1, 2020)

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Tab 3

Court File No.: CV-20-00638930-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE	)	FRIDAY, THE 8TH
	)	
MR. JUSTICE HAINEY	)	DAY OF MAY, 2020

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 CANNTRUST HOLDINGS INC., CANNTRUST INC., CTI HOLDINGS (OSOYOOS) INC., AND ELMCLIFFE INVESTMENTS INC.

Applicants

SALE AND INVESTMENT SOLICITATION PROCESS ORDER

THIS MOTION, made by the Applicants pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended, for an order approving a sale and investment solicitation process, was heard this day by way of videoconference due to the COVID-19 crisis.

ON READING the affidavit of Greg Guyatt sworn May 1, 2020 and the exhibits thereto, and the Second Report of the Monitor dated ●, 2020 (the "**Second Report**"), and on hearing the submissions of counsel for the Applicants, the Monitor and those other parties that were present as listed on the counsel slip, no other party appearing although duly served as appears from the Affidavit of Service of ● sworn ●, 2020.

MARKETING PROCESS

1. **THIS COURT ORDERS** that the Applicants are authorized to implement the sale and investment solicitation process attached hereto as Schedule "A" (the "**SISP**") for the purpose of

soliciting interest in, and opportunities for, a sale of or investment in the assets and business operations of the Applicants. Capitalized terms used in this Order and not otherwise defined have the meanings given to them in the SISP.

2. **THIS COURT ORDERS** that the SISP is hereby approved and the Applicants, the Monitor and the Financial Advisor are hereby authorized and directed to perform their respective obligations thereunder and to do all things reasonably necessary to perform their obligations thereunder.

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

Schedule "A"

Sale and Investment Solicitation Process Outline

Introduction

On March 31, 2020, CannTrust Holdings Inc., CannTrust Inc., CTI Holdings (Osoyoos) Inc., and Elmcliffe Investments Inc. (collectively "**CannTrust**") obtained an initial order (as amended or amended and restated from time to time, the "**Initial Order**") under the *Companies' Creditors Arrangement Act* (the "**CCAA**") from the Ontario Superior Court of Justice, Commercial List (Toronto) (the "**Court**"). Pursuant to the Initial Order, Ernst & Young Inc. was appointed as monitor of CannTrust (in such capacity, the "**Monitor**"), and CannTrust's agreement engaging Greenhill & Co. Canada Ltd. (the "**Financial Advisor**") as financial advisor in respect of CannTrust and agreement engaging FTI Consulting Canada Inc. as chief restructuring officer to CannTrust (the "**CRO**") were each approved.

Also pursuant to the Initial Order, CannTrust was authorized to pursue all avenues of sale or refinancing of its business or property, in whole or part, subject to prior approval of the Court before any material sale or refinancing is concluded. Prior to the Initial Order, CannTrust was conducting a review of strategic alternatives with the assistance of the Financial Advisor. CannTrust intends to continue that process and has decided to implement the sale and investment solicitation process described in this outline ("**SISP**") with the approval of the Court pursuant to the Court order dated May 8, 2020 (the "**SISP Order**"). The SISP is intended to solicit interest in and opportunities for a sale of or investment in all or part of CannTrust's assets and business operations. This document (the "**SISP Process Outline**") outlines the SISP, which will include a notification process and two phases of activity for qualified interested bidders ("**Phase 1**" and "**Phase 2**", respectively).

Opportunity

1. The SISP is intended to solicit interest in and opportunities for a sale of or investment in all or part of CannTrust's assets and business operations (the "**Opportunity**"). The Opportunity may include one or more of a recapitalization, arrangement or other form of investment in or reorganization of the business and affairs of CannTrust as a going concern or a sale of all, substantially all or one or more components of CannTrust's assets (including, without limitation, the shares of CannTrust Inc.) (the "**Property**") and its business operations (the "**Business**") as a going concern or otherwise.

2. Except to the extent otherwise set forth in a definitive sale or investment agreement with a successful bidder, any sale of the Property or investment in the Business will be on an "as is, where is" basis and without surviving representations or warranties of any kind, nature, or description by CannTrust, the Monitor or any of their respective agents, advisors or estates, and, in the event of a sale, all of the right, title and interest of CannTrust in and to the Property to be acquired will be sold free and clear of all pledges, liens, security interests, encumbrances, claims, charges, options, and interests therein and thereon pursuant to Court orders, except as otherwise provided in such Court orders.

Timeline

3. The following table sets out the key milestones under the SISP:

Milestone	Deadline
Teaser Letter sent to Known Potential Bidders	May 20, 2020
Phase 1 Bid Deadline	June 22, 2020
Phase 2 Bid Deadline	To be specified in Phase 2 Bid Process Letter

Any extensions or amendments to the deadlines above will be communicated to all Known Potential Bidders or Phase 2 Potential Bidders, as applicable, in writing and such extensions or amendments shall be posted on the website the Monitor maintains in respect of this CCAA proceeding at http://www.ey.com/ca/canntrust (the "**Monitor's Website**").

Solicitation of Interest: Notice of the SISP

4. As soon as reasonably practicable, but in any event by no later than May 15, 2020:

(a) CannTrust and the Financial Advisor will prepare a list of potential bidders, including (i) parties that have approached CannTrust, the Financial Advisor or the Monitor indicating an interest in the Opportunity, (ii) local and international strategic and financial parties who CannTrust and the Financial Advisor, in consultation with the Monitor, believe may be interested in purchasing all or part of the Business and Property or investing in CannTrust pursuant to the SISP (including, without limitation, any parties with whom the Financial Advisor was in contact prior to the Initial Order as part of CannTrust's strategic review process) and (iii) any other parties reasonably suggested by a stakeholder as a potential bidder who may be interested in the Opportunity (collectively, "**Known Potential Bidders**");

(b) CannTrust will cause a notice of the SISP (and such other relevant information which CannTrust, in consultation with the Financial Advisor and Monitor, considers appropriate) (the "**Notice**") to be published in The Globe and Mail (National Edition) and any other newspapers, journals, or industry publications as CannTrust and the Financial Advisor, in consultation with the Monitor, consider appropriate, if any;

(c) CannTrust will issue a press release setting out the information contained in the Notice and such other relevant information which CannTrust and the Financial Advisor considers appropriate for dissemination in Canada and major financial centres in the United States; and

(d) the Financial Advisor and CannTrust, in consultation with the Monitor, will prepare: (i) a process summary (the "**Teaser Letter**") describing the Opportunity and inviting recipients of the Teaser Letter to express their interest pursuant to the SISP; and (ii) a non-disclosure agreement in form and substance satisfactory to CannTrust and the Financial Advisor (an "**NDA**").

5. The Financial Advisor will send the Teaser Letter and NDA to all Known Potential Bidders by no later than May 20, 2020 and to any other party who requests a copy of the Teaser Letter and NDA or who is identified to the Financial Advisor, CannTrust or the Monitor as a potential bidder as soon as reasonably practicable after such request or identification, as applicable.

PHASE 1: NON-BINDING LOIs

Qualified Bidders and Delivery of Confidential Information Package

6. Any party who wishes to participate in the SISP (a "**Potential Bidder**") must provide to the Financial Advisor an NDA executed by it and a letter setting forth the identity of the Potential Bidder, the contact information for such Potential Bidder and full disclosure of the direct and indirect principals of the Potential Bidder. If a Potential Bidder has previously delivered an NDA and letter of this nature to the Financial Adviser and the NDA remains in effect, the Potential Bidder is not required to deliver a new NDA or letter to the Financial Advisor unless otherwise requested by CannTrust.

7. A Potential Bidder (who has delivered the executed NDA and letter as set out above) will be deemed a "**Phase 1 Qualified Bidder**" if CannTrust and the Financial Advisor in their reasonable business judgment and in consultation with the Monitor determine such person is likely, based on the availability of financing, experience and other considerations, to be able to consummate a sale or investment pursuant to the SISP.

8. At any time during Phase 1 of the SISP, CannTrust and the Financial Advisor may, in their reasonable business judgment and after consultation with and the consent of the Monitor, eliminate a Phase 1 Qualified Bidder from the SISP, in which case such bidder will be eliminated from the SISP and will no longer be a "Phase 1 Qualified Bidder" for the purposes of the SISP.

9. The Financial Advisor, with the assistance of CannTrust and in consultation with the Monitor, will prepare and send to each Phase 1 Qualified Bidder a confidential information package providing additional information considered relevant to the Opportunity (the "**Confidential Information Package**"). The Financial Advisor, CannTrust, the Monitor and their respective advisors make no representation or warranty as to the information contained in the Confidential Information Package or otherwise made available pursuant to the SISP or otherwise, except to the extent expressly contemplated in any definitive sale or investment agreement with a successful bidder ultimately executed and delivered by CannTrust.

10. CannTrust, in consultation with the Financial Advisor and the Monitor, reserves the right to limit any Phase 1 Qualified Bidder's access to any confidential information (including any information in the Confidential Information Package or a data room) and to customers and suppliers of CannTrust, where, in CannTrust's opinion after consultation with the Financial Advisor and the Monitor, such access could negatively impact the SISP, the ability to maintain the confidentiality of the confidential information, the Business or the Property.

11. Potential Bidders must rely solely on their own independent review, investigation and/or inspection of all information and of the Property and Business in connection with their participation in the SISP and any transaction they enter into with CannTrust.

Non-Binding Letters of Intent from Qualified Bidders

12. A Phase 1 Qualified Bidder that wishes to pursue the Opportunity further must deliver a non-binding letter of interest (an "**LOI**") to the Financial Advisor at the addresses specified in Schedule "1" hereto (including by email or fax transmission), so as to be received by them not later than 5:00 PM (Eastern Time) on or before June 22, 2020 (the "**Phase 1 Bid Deadline**").

13. Subject to paragraph 14, an LOI so submitted will be considered a qualified LOI (a "**Qualified LOI**") only if:

    (a) it is submitted on or before the Phase 1 Bid Deadline by a Phase 1 Qualified Bidder;

    (b) it contains an indication of whether the Phase 1 Qualified Bidder is proposing:

        (i) to acquire all, substantially all or a portion of the Property (a "**Sale Proposal**"), or

        (ii) a recapitalization, arrangement or other form of investment in or reorganization of the Business/CannTrust (an "**Investment Proposal**");

    (c) in the case of a Sale Proposal, it identifies or contains the following:

        (i) the purchase price or price range in Canadian dollars, including details of any liabilities to be assumed by the Phase 1 Qualified Bidder and key assumptions supporting the valuation;

        (ii) a description of the Property that is expected to be subject to the transaction and any of the Property expected to be excluded;

        (iii) a description of the Phase 1 Qualified Bidder's proposed treatment of material agreements and employees (for example, anticipated employment offers):

        (iv) a specific indication of the financial capability of the Phase 1 Qualified Bidder and the expected structure and financing of the transaction (including, but not limited to, the sources of financing to fund the acquisition, preliminary evidence of the availability of such financing or such other form of financial disclosure and credit-quality support or enhancement that will allow CannTrust, the Financial Advisor and the Monitor and each of their respective advisors to make a reasonable business or professional judgment as to the Phase 1 Qualified Bidder's financial or other capabilities to consummate the transaction and to perform all obligations to be assumed in such transaction; and the steps necessary and associated timing to obtain financing and any related contingencies, as applicable);

(v) a description of the conditions and approvals required for the Phase 1 Qualified Bidder to be in a position to submit a final and binding offer, including any anticipated corporate, securityholder or other internal approvals and any anticipated impediments for obtaining such approvals;

(vi) an outline of any additional due diligence required to be conducted in order to submit a final and binding offer;

(vii) a description of all conditions to closing that the Phase 1 Qualified Bidder expects to include in its final and binding offer, including without limitation any regulatory approvals and any form of agreement required from a government body, stakeholder or other third party ("**Third Party Agreement"**) and an outline of the principal terms thereof; and

(viii) any other terms or conditions of the Sale Proposal that the Phase 1 Qualified Bidder believes are material to the transaction;

(d) in the case of an Investment Proposal, it identifies the following:

(i) a description of how the Phase 1 Qualified Bidder proposes to structure the proposed investment;

(ii) the aggregate amount of the equity and/or debt investment to be made in the Business/CannTrust in Canadian dollars;

(iii) key assumptions supporting the Phase 1 Qualified Bidders' valuation;

(iv) a description of the Phase 1 Qualified Bidder's proposed treatment of any liabilities, material contracts and employees;

(v) the underlying assumptions regarding the pro forma capital structure (including the form and amount of anticipated equity and/or debt levels, debt service fees, interest or dividend rates, amortization, voting rights or other protective provisions (as applicable), redemption, prepayment or repayment attributes and any other material attributes of the investment);

(vi) a specific indication of the sources of capital for the Phase 1 Qualified Bidder and the structure and financing of the transaction (including, but not limited to, the sources of capital to fund the investment, preliminary evidence of the availability of such capital or such other form of financial disclosure and credit-quality support or enhancement that will allow CannTrust, the Financial Advisor and the Monitor and each of their respective advisors to make a reasonable business or professional judgment as to the Phase 1 Qualified Bidder's financial or other capabilities to consummate the transaction, steps necessary and associated timing to obtain such capital and any related contingencies, as applicable, and a sources and uses analysis);

(vii) a description of the conditions and approvals required for the Phase 1 Qualified Bidder to be in a position to submit a final and binding offer, including any anticipated corporate, securityholder or other internal approvals and any anticipated impediments for obtaining such approvals;

(viii) an outline of any additional due diligence required to be conducted in order to submit a final and binding offer;

(ix) a description of all conditions to closing that the Phase 1 Qualified Bidder expects to include in its final and binding offer, including without limitation any regulatory approvals and any Third Party Agreement required and an outline of the principal terms thereof; and

(x) any other terms or conditions of the Investment Proposal which the Phase 1 Qualified Bidder believes are material to the transaction; and

(e) in the case of either a Sale Proposal or an Investment Proposal, it contains such other information as reasonably requested by CannTrust and/or the Financial Advisor in consultation with the Monitor.

14. CannTrust and the Financial Advisor, in consultation with the Monitor, may waive compliance with any one or more of the requirements specified above and deem such non-compliant bids to be a Qualified LOI. For the avoidance of doubt, the completion of any Sale Proposal or Investment Proposal shall be subject to the approval of the Court and the requirement of approval of the Court may not be waived.

Preliminary Assessment of Phase 1 Bids and Subsequent Process

15. Following the Phase 1 Bid Deadline, CannTrust and the Financial Advisor, in consultation with the Monitor, will assess the Qualified LOIs. If it is determined by CannTrust and the Financial Advisor, in consultation with the Monitor, that a Phase 1 Qualified Bidder that has submitted a Qualified LOI: (i) has a bona fide interest in completing a Sale Proposal or Investment Proposal (as the case may be); and (ii) has the financial capability (based on availability of financing, experience and other considerations) to consummate such a transaction based on the financial information provided, then such Phase 1 Qualified Bidder will be deemed a "**Phase 2 Qualified Bidder**", provided that CannTrust and the Financial Advisor may, in their reasonable business judgment and after consultation with and with the approval of the Monitor, limit the number of Phase 2 Qualified Bidders (and thereby eliminate some bidders from the process) taking into account the factors identified in paragraph 16 below and any material adverse impact on the operations and performance of CannTrust. Only Phase 2 Qualified Bidders shall be permitted to proceed to Phase 2 of the SISP. No Phase 1 Qualified Bidder that has submitted a Qualified LOI shall be deemed not to be a Phase 2 Qualified Bidder unless the Monitor so approves.

16. As part of the assessment of Qualified LOIs and the determination of the process subsequent thereto, CannTrust and the Financial Advisor, in consultation with the Monitor and with the approval of the Monitor, shall determine the process and timing to be followed in pursuing Qualified LOIs based on such factors and circumstances as they consider appropriate in the circumstances including, but not limited to: (i) the number of Qualified LOIs received, (ii) the extent to which the Qualified LOIs relate to the same Property or Business or involve Investment Proposals predicated on certain Property or Business, (iii) the scope of the Property or Business to which any Qualified LOIs may

relate, and (iv) whether to proceed by way of sealed bid or auction (with or without a stalking horse bidder) with respect to some or all of the Property.

17. Upon the determination by CannTrust and the Financial Advisor, in consultation with the Monitor and with the approval of the Monitor, of the manner in which to proceed to Phase 2 of the SISP, CannTrust and the Financial Advisor, in consultation with and with the approval of the Monitor, will prepare a bid process letter for Phase 2 (the "**Bid Process Letter**"), and the Bid Process Letter will be (i) sent by the Financial Advisor to all Phase 2 Qualified Bidders, and (ii) posted by the Monitor on the website the Monitor maintains in respect of this CCAA proceeding.

18. Notwithstanding the process and deadlines outlined above with respect to Phase 1 of the SISP and the process to supplement Phase 2 by way of the Bid Process Letter, CannTrust may, in consultation with the Financial Advisor, at any time bring a motion to seek approval of a stalking horse agreement in respect of some or all of the Property or Business and related bid procedures in respect of such Property or to establish further or other procedures for Phase 2.

PHASE 2: FORMAL OFFERS AND SELECTION OF SUCCESSFUL BIDDER

19. Paragraphs 20 to 30 below and the conduct of Phase 2 are subject to paragraphs 16, 17, and 18 and any adjustments made to Phase 2 in accordance with the Bid Process Letter and any further Court order regarding the SISP.

Due Diligence

20. CannTrust and the Financial Advisor, in consultation with the Monitor, shall in their reasonable business judgment and subject to competitive and other business considerations, afford each Phase 2 Qualified Bidder such access to due diligence materials and information relating to the Property and Business as they deem appropriate. Due diligence access may include management presentations, access to an electronic data room, on-site inspections, and other matters which a Phase 2 Qualified Bidder may reasonably request and as to which CannTrust and the Financial Advisor, in their reasonable business judgment and after consulting with the Monitor, may agree. The Financial Advisor will designate a representative to coordinate all reasonable requests for additional information and due diligence access from Phase 2 Qualified Bidders and the manner in which such requests must be communicated. None of CannTrust, the Financial Advisor and the Monitor will be obligated to furnish any information relating to the Property or Business to any person other than to Phase 2 Qualified Bidders. Further and for the avoidance of doubt, selected due diligence materials may be withheld from certain Phase 2 Qualified Bidders if CannTrust and the Financial Advisor, in consultation with the Monitor, determine such information to represent proprietary or sensitive competitive information.

Formal Binding Offers

21. Phase 2 Qualified Bidders that wish to make a formal offer to purchase or make an investment in CannTrust or its Property and Business shall submit a binding offer that complies with all of the following requirements prior to the date set out the Bid Process Letter (the "**Phase 2 Bid Deadline**"):

(a) the bid shall comply with all of the requirements set forth in respect of Phase 1 Qualified LOIs;

(b) the bid (either individually or in combination with other bids that make up one bid) is an offer to purchase or make an investment in some or all of the Property or Business and is consistent with any necessary terms and conditions communicated to Phase 2 Qualified Bidders;

(c) the bid includes a letter stating that the Phase 2 Qualified Bidder's offer is irrevocable until the selection of the Successful Bidder (as defined below), provided that if such Phase 2 Qualified Bidder is selected as the Successful Bidder, its offer shall remain irrevocable until the closing of the transaction with the Successful Bidder;

(d) the bid includes duly authorized and executed transaction agreements, including the purchase price, investment amount and any other key economic terms expressed in Canadian dollars (the "**Purchase Price**"), together with all exhibits and schedules thereto, all applicable ancillary agreements with all exhibits and schedules thereto (or term sheets that describe the material terms and provisions of such agreements), and proposed order to approve the sale by the Court;

(e) the bid includes written evidence of a firm, irrevocable commitment for financing or other evidence of ability to consummate the proposed transaction, that will allow CannTrust, with the assistance of the Financial Advisor, and the Monitor to make a determination as to the Phase 2 Qualified Bidder's financial and other capabilities to consummate the proposed transaction;

(f) the bid is not conditioned on (i) the outcome of unperformed due diligence by the Phase 2 Qualified Bidder, apart from, to the extent applicable, to the disclosure of due diligence materials that represent proprietary or sensitive competitive information which was withheld in Phase 2 from the Phase 2 Qualified Bidder and/or (ii) obtaining financing;

(g) the bid fully discloses the identity of each entity that will be entering into the transaction or the financing (including through the issuance of debt in connection with such bid), or that is participating or benefiting from such bid, and such disclosure shall include, without limitation: (i) in the case of a Phase 2 Qualified Bidder formed for the purposes of entering into the proposed transaction, the identity of each of the actual or proposed direct or indirect equity holders of such Phase 2 Qualified Bidder and the terms and participation percentage of such equity holder's interest in such bid; and (ii) the identity of each entity that has or will receive a benefit from such bid from or through the Phase 2 Qualified Bidder or any of its equity holders and the terms of such benefit;

(h) the bid includes a commitment by the Phase 2 Qualified Bidder to provide a non-refundable deposit in the amount of not less than 10% of the purchase price offered upon the Phase 2 Qualified Bidder being selected as the Successful Bidder and in any event, prior to service of the materials for the Sale Approval Motion;

(i) the bid includes acknowledgements and representations of the Phase 2 Qualified Bidder that: (i) the transaction is on an "as is, where is" basis; (ii) it has had an opportunity to conduct any and all due diligence regarding the Property, Business and CannTrust prior to making its offer (apart from, to the extent applicable, the disclosure of due diligence materials that represent proprietary or sensitive competitive information which were withheld in Phase 2 from the Phase 2 Qualified Bidder); (iii) it has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the Property in making its bid; (iv) it did not rely upon any written or oral statements, representations, warranties, or guarantees whatsoever, whether express, implied, statutory or otherwise, regarding the Business, Property, or CannTrust or the completeness of any information provided in connection therewith, except as expressly stated in the definitive transaction agreement(s) signed by CannTrust;

(j) the bid includes evidence, in form and substance reasonably satisfactory to CannTrust, in consultation with the Financial Advisor, and to the Monitor, of authorization and approval from the Phase 2 Qualified Bidder's board of directors (or comparable governing body) with respect to the submission, execution, delivery and closing of the transaction agreement(s) submitted by the Phase 2 Qualified Bidder;

(k) the bid contains other information required by CannTrust, the Financial Advisor or the Monitor including, without limitation, such additional information as may be required in the event Phase 2 is supplemented in accordance with paragraph 17 to contemplate that an auction of certain Property be conducted; and

(l) the bid is received by the Phase 2 Bid Deadline.

22. Following the Phase 2 Bid Deadline, CannTrust and the Financial Advisor, in consultation with the Monitor, will assess the Phase 2 bids received. CannTrust and the Financial Advisor, in consultation with the Monitor, will designate the most competitive bids that comply with the foregoing requirements to be "**Qualified Bids**". No Phase 2 bids received shall be deemed not to be Qualified Bids unless the Monitor so approves. Only Phase 2 Qualified Bidders whose bids have been designated as Qualified Bids are eligible to become the Successful Bidder(s).

23. CannTrust and the Financial Advisor, in consultation with the Monitor, may waive strict compliance with any one or more of the requirements specified above and deem such non-compliant bids to be a Qualified Bid.

24. The Financial Advisor shall notify each Phase 2 Qualified Bidder in writing as to whether its bid constituted a Qualified Bid within ten (10) business days of the Phase 2 Bid Deadline, or at such later time as CannTrust and the Financial Advisor, in consultation with the Monitor, deem appropriate.

25. If CannTrust and the Financial Advisor, in consultation with the Monitor, are not satisfied with the number or terms of the Qualified Bids, CannTrust and the Financial Advisor may, with the approval of the Monitor, extend the Phase 2 Bid Deadline, or CannTrust may seek Court approval of an amendment to the SISP.

26. CannTrust and the Financial Advisor, may, in consultation with the Monitor, aggregate separate bids from unaffiliated Phase 2 Qualified Bidders to create one "Qualified Bid".

Evaluation of Competing Bids

27. A Qualified Bid will be valued based upon several factors, including, without limitation, items such as the Purchase Price and the net value provided by such bid, the claims likely to be created by such bid in relation to other bids, the identity, circumstances and ability of the Phase 2 Qualified Bidder to successfully complete such transactions, the proposed transaction documents, the effects of the bid on the stakeholders of CannTrust, factors affecting the speed, certainty and value of the transaction (including any regulatory approvals or third party contractual arrangements required to close the transactions), the assets included or excluded from the bid, any related restructuring costs, and the likelihood and timing of consummating such transactions, each as determined by CannTrust, with the assistance of the Financial Advisor, and the Monitor.

Selection of Successful Bid

28. CannTrust and the Financial Advisor, in consultation with the Monitor, (a) will review and evaluate each Qualified Bid, provided that each Qualified Bid may be negotiated between CannTrust, in consultation with the Financial Advisor and the Monitor, and the applicable Phase 2 Qualified Bidder, and may be amended, modified or varied to improve such Phase 2 Qualified Bid as a result of such negotiations, and (b) identify the highest or otherwise best bid (the "**Successful Bid**"), and the Phase 2 Qualified Bidder making such Successful Bid, the "**Successful Bidder**") for any particular Property or the Business in whole or part. The determination of any Successful Bid by CannTrust, with the assistance of the Financial Advisor and the Monitor, shall be subject to approval by the Court.

29. CannTrust shall have no obligation to enter into a Successful Bid, and it reserves the right, after consultation with the Monitor and the Financial Advisor, to reject any or all Phase 2 Qualified Bids.

Sale Approval Motion Hearing

30. At the hearing of the motion to approve any transaction with a Successful Bidder (the "**Sale Approval Motion**"), CannTrust shall seek, among other things, approval from the Court to consummate any Successful Bid. All the Phase 2 Qualified Bids other than the Successful Bid, if any, shall be deemed rejected by CannTrust on and as of the date of approval of the Successful Bid by the Court.

Confidentiality, Stakeholder/Bidder Communication and Access to Information

31. All discussions regarding an LOI, Sale Proposal or Investment Proposal must be directed through the Financial Advisor. Under no circumstances should the management of the CannTrust or any stakeholder of CannTrust be contacted directly without the prior consent of the Financial Advisor. Any such unauthorized contact or communication could result in exclusion of the interested party from the SISP process.

32. Participants and prospective participants in the SISP shall not be permitted to receive any information that is not made generally available to all participants relating to the number or identity of Potential Bidders, Phase 1 Qualified Bidders, Phase 2 Qualified Bidders, Phase 2 Qualified Bids, the details of any bids submitted or the details of any confidential

discussions or correspondence between CannTrust, the Financial Advisor, the Monitor and such other bidders or Potential Bidders in connection with the SISP, except to the extent CannTrust and the Financial Advisor, with the approval of the Monitor and consent of the applicable participants, are seeking to combine separate bids from Phase 1 Qualified Bidders or Phase 2 Qualified Bidders.

33. The Financial Advisor, in consultation with the Monitor, may consult with the legal and financial advisers to parties with a material interest in the CCAA proceedings regarding the status of the SISP to the extent considered appropriate (subject to taking into account, among other things, whether any particular party is a Potential Bidder, Phase 1 Qualified Bidder, Phase 2 Qualified Bidder or other participant or prospective participant in the SISP or involved in a bid), provided that any such party has entered into confidentiality arrangements satisfactory to CannTrust.

Supervision of the SISP

34. The participation of CannTrust and the Financial Advisor in the SISP will be directed by the CRO, subject to ongoing direction from CannTrust's CEO and board of directors.

35. The Monitor will participate in the conduct of the SISP in the manner set out in this SISP Process Outline and the Initial Order and is entitled to receive all information in relation to the SISP.

36. This SISP does not, and will not be interpreted to create any contractual or other legal relationship between CannTrust and any Phase 1 Qualified Bidder, any Phase 2 Qualified Bidder or any other party, other than as specifically set forth in a definitive agreement that may be signed with CannTrust.

37. Participants in the SISP are responsible for all costs, expenses and liabilities incurred by them in connection with the submission of any LOI, Phase 2 bid, due diligence activities, and any further negotiations or other actions whether or not they lead to the consummation of a transaction.

38. CannTrust and the Financial Advisor shall have the right to modify the SISP (including, without limitation, pursuant to the Bid Process Letter) with the prior written approval of the Monitor if, in their reasonable business judgment, such modification will enhance the process or better achieve the objectives of the SISP; provided that the Service List in this CCAA proceeding shall be advised of any substantive modification to the procedures set forth herein.

Schedule "1"

<u>Address for Submitting LOI / Phase 2 Bid</u>

Greenhill & Co. Canada Ltd.
79 Wellington West
Suite 3403, P.O. Box 333
Toronto, ON M5K 1K7

Attn: Michael Nessim and Usman Masood
Email: michael.nessim@greenhill.com and usman.masood@greenhill.com

with copies to:

McCarthy Tétrault LLP
Suite 5300, TD Bank Tower
Box 48, 66 Wellington Street West
Toronto ON M5K 1E6

Fax: 416-868-0673

Attn: James Gage
Email: jgage@mccarthy.ca

Ernst & Young Inc.
Ernst & Young Tower, 100 Adelaide Street West
P.O. Box 1
Toronto, ON M5H 0B3

Fax: 416-943-3300

Attn: Alex Morrison and Karen Fung
Email: alex.f.morrison@ca.ey.com and karen.l.fung@ca.ey.com

Aird & Berlis
Brookfield Place, 181 Bay Street
Suite 180
Toronto, ON M5J 2T9

Fax: 416-865-4707

Attn: Steve Graff and Kathryn Esaw
Email: sgraff@airdberlis.com and kesaw@airdberlis.com

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 CANNTRUST HOLDINGS INC. ET AL.

Court File No. CV-20-00638930-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE - COMMERCIAL LIST

Proceeding commenced at Toronto

SALE AND INVESTMENT SOLICITATION PROCESS ORDER

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Lawyers for the Applicants
20323697

Tab 4

Court File No. CV-20-00638930-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE	)	FRIDAY, THE 8TH
	)	
MR. JUSTICE HAINEY	)	DAY OF MAY, 2020

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 CANNTRUST HOLDINGS INC., CANNTRUST INC., CTI HOLDINGS (OSOYOOS) INC., AND ELMCLIFFE INVESTMENTS INC.

Applicants

CLAIMS PROCEDURE ORDER

THIS MOTION, made by the Applicants pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") for an order (the "**Claims Procedure Order**") approving a procedure for the identification, quantification, and resolution of certain claims of creditors of the Applicants and their respective directors and officers, was heard this day by way of videoconference due to the COVID-19 crisis.

ON READING the affidavit of Greg Guyatt sworn May 1, 2020 and the exhibits thereto, and the Second Report of the Monitor dated ●, 2020 (the "**Second Report**"), and on hearing the submissions of counsel for the Applicants, the Monitor and those other parties that were present as listed on the counsel slip, no other party appearing although duly served as appears from the Affidavit of Service of Trevor Courtis sworn May 1, 2020.

SERVICE AND INTERPRETATION

1. **THIS COURT ORDERS** that the time for service and filing of this motion and the Second Report is hereby abridged and validated such that this motion is properly returnable today and hereby dispenses with further service thereof.

2. **THIS COURT ORDERS** that, in addition to terms defined elsewhere herein, the following terms shall have the following meanings:

(a) "**BIA**" means the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as, amended;

(b) "**Business Day**" means a day, other than a Saturday, Sunday or a statutory holiday, on which banks are generally open for business in Toronto, Ontario;

(c) "**CCAA Proceedings**" means the within proceedings in respect of the Applicants under the CCAA;

(d) "**CCAA Charges**" means the Administration Charge, the Directors' Charge, the KERP Charge, the Transaction Fee Charge and the Intercompany Charge (as each such term is defined in the Initial Order) and any other court-ordered charge over the property of the Applicants that may be granted by the Court;

(e) "**Claim**" means a Pre-Filing Claim, a Restructuring Claim and a D&O Claim, provided, however, that "Claim" shall not include an Excluded Claim;

(f) "**Claimant**" means any Person asserting a Claim and includes the transferee or assignee of a Claim, transferred and recognized in accordance with paragraphs 36 and 37 hereof or a trustee, executor, liquidator, receiver, receiver and manager, or other Person acting on behalf of or through such Person;

(g) "**Claims Officer**" means one or more individuals appointed in accordance with paragraph 32 of this Claims Procedure Order to act as a claims officer for the purposes of this Claims Procedure Order;

(h) "**Claims Package**" means the Proof of Claim form, the Notice to Claimants, the Instruction Letter, and any other documentation the Applicants, in consultation with the Monitor, may deem appropriate;

(i) "**Claims Procedure**" means the procedures outlined in this Claims Procedure Order, including the Schedules hereto;

(j) "**Court**" means the Ontario Superior Court of Justice (Commercial List);

(k) "**D&O Claim**" means, as against any Director or Officer, in his or her capacity as such, any D&O Restructuring Claim and any and all demands, claims (including claims for contribution or indemnity), actions, causes of action, counterclaims, suits, debts, sums of money, liabilities, accounts, covenants, damages, judgments, orders (including orders for injunctive relief or specific performance and compliance orders), expenses, executions, encumbrances and recoveries on account of any liability, obligation, demand or cause of action of whatever nature that any creditor or other Person has or may be entitled to assert (including for, in respect of or arising out of environmental matters, pensions or post-employment benefits or alleged wrongful or oppressive conduct, misrepresentation, fraud or breach of fiduciary duty), whether known or unknown, matured or unmatured, contingent or actual, direct, indirect or derivative, at common law, in equity or under statute, foreseen or unforeseen, existing or hereafter arising, based in whole or in part on any act, omission, transaction, duty, responsibility, indebtedness, liability, obligation, dealing, matter or occurrence that in any way relate to or arise out of or in connection with (i) any Pre-Filing Claim; (ii) the assets, obligations, business or affairs of the Applicants; or (iii) the CCAA Proceedings or any matter or transaction occurring in or in connection with the CCAA Proceedings, but "D&O Claim" does not include a claim that cannot be compromised due to the provisions of subsection 5.1(2) of the CCAA;

(l) "**D&O Restructuring Claim**" means, any right or claim of any Person against any Director or Officer, in his or her capacity as such, in connection with any indebtedness, liability or obligation of any kind whatsoever by any such Director or Officer to such Person arising out of the restructuring, disclaimer, repudiation, resiliation or termination by an Applicant on or after the Filing Date of any contract, lease, other agreement or obligation whether written or oral but "D&O Restructuring Claim" does not include a claim that cannot be compromised due to the provisions of subsection 5.1(2) of the CCAA;

(m) "**Director**" means any former or present director of any of the Applicants or any Person of similar position or any other Person who by applicable law is deemed to be or is treated similarly to a director of any of the Applicant or who currently manages or supervises the management of the business and affairs of any of the Applicants or did so in the past;

(n) "**Directors' Charge**" has the meaning given to such term in the Initial Order;

(o) "**Directors' Counsel**" means counsel to any of the Directors and/or Officers;

(p) "**Dispute Package**" means the Proof of Claim filed by a Claimant, the Notice of Revision or Disallowance delivered by the Monitor in respect of that Proof of Claim, the Notice of Dispute filed by the Claimant in respect of the Notice of Revision or Disallowance, and any ancillary documentation as determined by the Monitor;

(q) "**Equity Claim**" has the meaning set forth in Section 2(1) of the CCAA;

(r) "**Excluded Claim**" means:

(i) any Excluded Equity Claim;

(ii) any claim secured by any of the CCAA Charges; and

(iii) any investigation, action, suit, order or proceeding in respect of the Applicants or any of them by or before a regulatory body (as defined in the CCAA), unless such investigation, action, suit, order or proceeding constitutes a "claim" within the meaning of the CCAA;

(s) "**Excluded Equity Claim**" means any Equity Claim against or in respect of CannTrust Holdings Inc. or its Directors or Officers, including for greater certainty: (i) any claim against or in respect of CannTrust Holdings Inc. or its Directors or Officers in the Pending Litigation; and (ii) any claim of a Director or Officer or any other Person for contribution or indemnity from CannTrust Holdings Inc. in respect of the Pending Litigation or an Equity Claim;

(t) "**Filing Date**" means March 31, 2020;

(u) "**Initial Order**" means the Initial Order of the Honourable Mr. Justice Hainey made March 31, 2020 in these CCAA Proceedings, as amended, restated or varied from time to time;

(v) "**Instruction Letter**" means the instruction letter to Claimants, substantially in the form attached as Schedule "**B**" hereto, regarding the completion of a Proof of Claim by a Claimant and the Claims Procedure described herein;

(w) "**Meeting**" means a meeting of the creditors of the Applicants called for the purpose of considering and voting in respect of a Plan;

(x) "**Monitor**" means Ernst & Young Inc., in its capacity as the Court-appointed Monitor of the Applicants;

(y) "**Monitor's Website**" means the case website established by the Monitor with the following URL: http://www.ey.com/ca/canntrust;

(z) "**Notice to Claimants**" means the notice for publication by the Monitor as described in paragraph 15 hereof, in the form attached as Schedule "**A**";

(aa) "**Notice of Dispute**" means the notice referred to in paragraph 28 hereof substantially in the form attached as Schedule "**E**" hereto which must be delivered to the Monitor by any Claimant wishing to dispute a Notice of Revision or Disallowance, with reasons for its dispute;

(bb) "**Notice of Revision or Disallowance**" means the notice referred to in paragraph 27 hereof, substantially in the form of Schedule "**D**" advising a Claimant that the Applicants, with the consent of the Monitor, have revised or rejected all or part of such Claimant's Claim as set out in its Proof of Claim;

(cc) "**Officer**" means any former or present officer of any of the Applicants or any Person of similar position or any other Person who by applicable law is deemed to be or is treated similarly to an officer of any of the Applicants;

(dd) "**Orders**" means any and all orders issued by the Court within the CCAA Proceedings, including the Initial Order;

(ee) "**Pending Litigation**" has the meaning given to such term in the Initial Order;

(ff) "**Person**" means any individual, corporation, firm, limited or unlimited liability company, general or limited partnership, association (incorporated or unincorporated), trust, unincorporated organization, joint venture, trade union, government authority or any agency, regulatory body or officer thereof or any other entity, wherever situate or domiciled, and whether or not having legal status, and whether acting on their own or in a representative capacity;

(gg) "**Plan**" means a plan of compromise or arrangement contemplated by the Initial Order;

(hh) "**Pre-Filing Claim**" means any right of claim of any Person that may be asserted or made in whole or in part against any of the Applicants, whether or not asserted or made, in connection with any indebtedness, liability or obligation of any kind whatsoever, and any interest accrued thereon or costs payable in respect thereof, including by reason of the commission of a tort (international or unintentional), by reason of any breach of contract or other agreement (oral or written), by reason of any breach of duty (including any legal, statutory, equitable or fiduciary duty) or by reason of any right of ownership of or title to property or assets or right to a trust or deemed trust (statutory, express, implied, resulting, constructive, or otherwise), and whether or not such indebtedness, liability or obligation is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, unsecured, perfected, unperfected, present or future, known or unknown, by guarantee, surety or otherwise, and whether or not such right is executory or anticipatory in nature, including any right or ability of any Person to advance a claim for contribution or indemnity or otherwise against any of the Applicants with respect to any matter, action, cause or chose in action, whether existing at present or commenced in the future, which indebtedness, liability or obligation, and any interest accrued thereon or costs payable in respect thereof that (A) is based in whole or in part on facts existing prior to the Filing Date, (B) relates to a time period prior to the Filing Date, or (C) is a right or claim of any kind that would be claim provable in bankruptcy within the meaning of the BIA had the Applicant become bankrupt on the Filing Date, including for greater certainty any claim against any of the Applicants for indemnification by any Directors or Officers in respect of a D&O Claim other than a D&O Restructuring Claim (but excluding any such claim for indemnification that (i) is covered by the Directors' Charge, or (ii) is in respect of an Excluded Claim);

(ii) "**Pre-Filing Claims Bar Date**" means 5:00 p.m. (Eastern Time) on June 22, 2020;

(jj) "**Proof of Claim**" means the Proof of Claim referred to in paragraphs 19 to 22 hereof to be filed by Claimants, substantially in the form attached hereto as Schedule "**C**";

(kk) "**Proven Claim**" means the amount and Status of a Claim of a Claimant as finally determined in accordance with this Claims Procedure Order;

(ll) "**Restructuring Claim**" means a D&O Restructuring Claim and any right of claim of any Person against any of the Applicants in connection with any indebtedness, liability or obligation of any kind whatsoever owed by any such Applicant to such Person arising out of the restructuring, disclaimer, repudiation, resiliation or termination by such Applicant on or after the Filing Date of any contract, lease, other agreement or obligation whether written or oral, including for greater certainty any claim against any of the Applicants for indemnification by any Directors or Officers in respect of a Restructuring Claim (but excluding any such claim for indemnification that (i) is covered by the Directors' Charge, or (ii) is in respect of an Excluded Claim);

(mm) "**Restructuring Claims Bar Date**" means the later of:

(i) the Pre-Filing Claims Bar Date; and

(ii) 5:00 p.m. (Eastern Time) on the day which is thirty (30) days after the Monitor sends a Claims Package with respect to a Restructuring Claim in accordance with paragraph 14 or 18 hereof, as applicable;

(nn) "**Secured Claim**" means that portion of a Claim that is (i) secured by security validly charging or encumbering property or assets of the Applicants (including statutory and possessory liens that create security interests) taking into account the value of such collateral and the priority of such security, and (ii) duly and properly perfected in accordance with the relevant legislation in the appropriate jurisdiction as of the Filing Date; and

(oo) "**Status**" means, with respect to a Claim, whether such claim is an unsecured Claim, Secured Claim, or Equity Claim.

3. **THIS COURT ORDERS** that all references as to time herein shall mean local time in Toronto, Ontario, Canada, and any reference to an event occurring on a Business Day shall mean prior to 5:00 p.m. on such Business Day unless otherwise indicated herein.

4. **THIS COURT ORDERS** that all references to the word "including" shall mean "including without limitation".

5. **THIS COURT ORDERS** that all references to the singular herein include the plural, the plural include the singular, and any gender includes the other gender.

GENERAL PROVISIONS

6. **THIS COURT ORDERS** that the Applicants, in consultation with the Monitor, are hereby authorized (i) to use reasonable discretion as to the adequacy of compliance with respect to the manner in which forms delivered hereunder are completed and executed, and may, where they are satisfied that a Claim has been adequately proven, waive strict compliance with the requirements of this Claims Procedure Order as to completion and execution of such forms, and (ii) to request any further documentation from a Claimant that the Applicants or the Monitor may reasonably require in order to determine the validity and/or Status of a Claim.

7. **THIS COURT ORDERS** that notwithstanding any other provisions of this Claims Procedure Order, the solicitation by the Applicants or the Monitor of Claims and the filing by any Claimant of any Claims shall not, for that reason only, grant any Person standing in these proceedings.

8. **THIS COURT ORDERS** that nothing in this Claims Procedure Order shall constitute or be deemed to constitute an allocation or assignment of a Claim or an Excluded Claim into particular affected or unaffected classes for the purpose of a Plan and, for greater certainty, the treatment of Claims, Excluded Claims or any other claims are to be subject to a Plan and the class or classes of creditors for voting and distribution purposes shall be subject to the terms of any proposed Plan or further order of the Court.

9. **THIS COURT ORDERS** that all Claims filed shall be denominated in the original currency of the Claim. Where no currency is indicated, the Claim shall be presumed to be in Canadian Dollars. Any Claims denominated in a foreign currency shall be converted to Canadian Dollars based on the Bank of Canada's daily average exchange rate for that currency against the Canadian Dollar on the Filing Date.

MONITOR'S ROLE

10. **THIS COURT ORDERS** that the Monitor, in addition to its prescribed rights, duties, responsibilities and obligations under the CCAA and under the Initial Order, shall assist the Applicants in connection with the administration of the Claims Procedure, including the determination of Claims of the Claimants and the referral of a particular Claim to the Court, as

requested by the Applicants from time to time, and is hereby directed and empowered to take such other actions and fulfill such other roles as are contemplated by this Claims Procedure Order or incidental thereto.

11. **THIS COURT ORDERS** that (i) in carrying out the terms of this Claims Procedure Order, the Monitor shall have all of the protections given it by the CCAA, the Initial Order, and this Claims Procedure Order, and as an officer of this Court, including the stay of proceedings in its favour, (ii) the Monitor shall incur no liability or obligation as a result of the carrying out of the provisions of this Claims Procedure Order, except to the extent that the Monitor has acted with gross negligence or willful misconduct, (iii) the Monitor shall be entitled to rely on the books and records of the Applicants and any information provided by the Applicants, all without independent investigation, and (iv) the Monitor shall not be liable for any claims or damages resulting from any errors or omissions in such books, records or information or in any information provided by any Claimant, except to the extent that the Monitor has acted with gross negligence or willful misconduct.

NOTICE TO CLAIMANTS

12. **THIS COURT ORDERS** that the Applicants shall provide to the Monitor a complete list of known potential Claimants, listed in the books and records of the Applicants (the "**Known Claimants**" and each a "**Known Claimant**") as at the date of this Claims Procedure Order, showing for each Known Claimant, their name, address and amount owed pursuant to the Applicants' books and records.

13. **THIS COURT ORDERS** that the Monitor shall send a Claims Package to each Known Claimant by ordinary mail or email to the last known mailing address or email address of the Known Claimant within five (5) Business Days following the issuance of the Claims Procedure Order.

14. **THIS COURT ORDERS** that the Monitor shall send the Claims Package by ordinary mail or email to the last known mailing address or email address of each Claimant with a Restructuring Claim that arose prior to the date of the Claims Procedure Order no later than five

(5) Business Days following the time the Monitor actually becomes aware of the existence of the Restructuring Claim.

15. **THIS COURT ORDERS** that as soon as practicable, but no later than 5:00 p.m. on May 14, 2020, the Monitor shall cause the Notice to Claimants to be published, for at least one (1) Business Day, in the Globe and Mail (National Edition).

16. **THIS COURT ORDERS** that the Monitor shall cause the Notice to Claimants, the Claims Package and the Claims Procedure Order to be posted to the Monitor's Website as soon as reasonably possible and cause it to remain posted thereon until its discharge as Monitor of the Applicants.

17. **THIS COURT ORDERS** that upon request by a Claimant for a Claims Package or documents or information relating to the Claims Procedure prior to the Pre-Filing Claims Bar Date or Restructuring Claims Bar Date, as applicable, the Monitor shall forthwith send a Claims Package, direct such Person to the documents posted on the Monitor's Website, or otherwise respond to the request for information or documents as the Monitor considers appropriate in the circumstances.

18. **THIS COURT ORDERS** that with respect to Restructuring Claims arising from the restructuring, disclaimer, resiliation or termination of any lease, contracts, or other agreement or obligation, on or after the date of the Claims Procedure Order, the Monitor shall send to the counterparty(ies) to such lease, contract or other agreement or obligation a Claims Package by ordinary mail or email to the last known mailing address or email address of the Claimant no later than five (5) Business Days following the time the Monitor actually becomes aware of the effective date of such restructuring, disclaimer, resiliation or termination of any lease, contract or other agreement or obligation.

19. **THIS COURT ORDERS** that the form and substance of each of the Notice to Claimants, Proof of Claim form, Instruction Letter, Notice of Revision or Disallowance and Notice of Dispute, substantially in the forms attached as schedules hereto, are hereby approved. Despite the foregoing, the Monitor may, from time to time, make such minor changes to such forms as the Monitor, in consultation with the Applicants, considers necessary or desirable.

PROOFS OF CLAIMS

20. **THIS COURT ORDERS** that any Person that wishes to assert a Pre-Filing Claim must deliver to the Monitor on or before the Pre-Filing Claims Bar Date a completed Proof of Claim, including all relevant supporting documentation in respect of such Claim, in the manner set out in this Claims Procedure Order.

21. **THIS COURT ORDERS** that any Person that wishes to assert a D&O Claim other than a D&O Restructuring Claim must deliver to the Monitor on or before the Pre-Filing Claims Bar Date a completed Proof of Claim form, together with all relevant supporting documentation in respect of such Claim, in the manner set out in this Claims Procedure Order.

22. **THIS COURT ORDERS** that any Person that wishes to assert a Restructuring Claim must deliver to the Monitor on or before the Restructuring Claims Bar Date a completed Proof of Claim form, together with all relevant supporting documentation in respect of such Claim, in the manner set out in this Claims Procedure Order.

23. **THIS COURT ORDERS** that any Person wishing to assert a Claim shall include any and all Claims it asserts against an Applicant or a Director or Officer of that Applicant in a single Proof of Claim.

24. **THIS COURT ORDERS** that any Person who does not file a Proof of Claim in accordance with this Claims Procedure Order with the Monitor by the Pre-Filing Claims Bar Date or Restructuring Claims Bar Date, as applicable, shall:

(a) not be entitled to receive further notice with respect to, and shall not be entitled to participate as a Claimant or creditor in, the Claims Procedure or the CCAA Proceedings in respect of such Claim;

(b) with respect to a Pre-Filing Claim or a Restructuring Claim other than a D&O Restructuring Claim, be forever barred, estopped and enjoined from asserting or enforcing such Claim against any of the Applicants and the Applicants shall not have any liability whatsoever in respect of such Claim and such Claim shall be extinguished without any further act or notification by the Applicants or the Monitor;

(c) with respect to a D&O Claim, be forever barred, estopped and enjoined from asserting or enforcing such Claim against any of the Directors and Officers and the Directors and Officers shall not have any liability whatsoever in respect of such Claim and such Claim shall be extinguished without any further act or notification by the Applicants, the Monitor or the Directors or Officers;

(d) not be permitted to vote at any Meeting on account of such Claim; and

(e) not be permitted to participate in any distribution under any Plan related to such Claim or under these CCAA Proceedings.

ADJUDICATION OF CLAIMS

25. **THIS COURT ORDERS** that the Monitor and the Applicants (and in the case of a D&O Claim, in consultation with the applicable Director, Officer and/or Directors' Counsel, if applicable) shall review all Proofs of Claim filed in accordance with this Claims Procedure Order, and at any time may:

(a) request additional information from a Claimant;

(b) request that a Claimant file a revised Proof of Claim;

(c) attempt to resolve and settle any issue arising in a Proof of Claim or in respect of a Claim;

(d) accept (in whole or in part), the amount and/or Status of any Claim and so notify the Claimant in writing; and

(e) revise or disallow (in whole or in part) the amount and/or Status of any Claim and so notify the Claimant in writing.

26. **THIS COURT ORDERS** that where a Claim has been accepted by the Monitor in accordance with this Claims Procedure Order, such Claim shall constitute such Claimant's

Proven Claim. The acceptance of any Claim or other determination of same in accordance with this Claims Procedure Order, in full or in part, shall not constitute an admission of any fact, thing, liability, or quantum or status of any claim by any Person, save and except in the context of the CCAA Proceedings.

27. **THIS COURT ORDERS** that where a Claim is revised or disallowed (in whole or in part, and whether as to amount and/or Status), the Monitor shall deliver to the Claimant a Notice of Revision or Disallowance, attaching the form of Notice of Dispute.

28. **THIS COURT ORDERS** that any Person who intends to dispute a Notice of Revision or Disallowance sent pursuant to paragraph 27 hereof shall deliver a Notice of Dispute to the Applicants in writing, with a copy to the Monitor, by 5:00 p.m. (Eastern Time) on the day that is not later than fourteen (14) days after such Claimant is deemed to have received the Notice of Revision or Disallowance in accordance with paragraph 39 of this Claims Procedure Order or such longer period as may be agreed to by the Monitor in writing. The receipt of a Notice of Dispute by the Monitor within the fourteen (14) day period specific in this paragraph shall constitute an application to have the amount and/or Status of such claim determined pursuant to the Claims Procedure as provided in this Claims Procedure Order.

29. **THIS COURT ORDERS** that if any Person who received a Notice of Revision or Disallowance does not return a Notice of Dispute in accordance with paragraph 28 of this Claims Procedure Order, the value and Status of such Claim shall be deemed to be set out in the Notice of Revision or Disallowance for voting and distribution purposes, and the Claimant will be barred from disputing or appealing same, and the balance of such Claimant's Claim, if any, shall be forever barred and extinguished.

RESOLUTION OF CLAIMS

30. **THIS COURT ORDERS** that as soon as practicable after a Notice of Dispute is received by the Monitor in accordance with this Claims Procedure Order, the Monitor, in consultation with the Applicants, may attempt to resolve and settle the Claim with the Claimant.

31. **THIS COURT ORDERS** that in the event that a dispute raised in a Notice of Dispute is not settled within a reasonable time period or in a manner satisfactory to the Applicants, the

Monitor and the applicable Claimant, the Monitor, in consultation with the Applicants, shall either: (i) send a Dispute Package to a Claims Officer, or (ii) on notice to the disputing Claimant, schedule an appointment with the Court for the purpose of scheduling a motion to seek a determination by the Court of the disputed Claim, at which appointment directions will be sought from the Court on the process for such determination. For greater certainty, the foregoing includes any dispute arising as to whether a Claim or any portion thereof is or is not a Secured Claim or an Equity Claim.

32. **THIS COURT ORDERS** that the appointment of any Claims Officer to adjudicate a disputed Claim shall be subject to mutual agreement between the affected Claimant and the Applicants, in consultation with the Monitor and if such agreement is not possible, Court approval. Either the Applicants or the Monitor are hereby authorized to bring a motion to seek an order of the Court appointing a Claims Officer in respect of any and all disputed Claims. The Applicants shall pay the reasonable professional fees and disbursements of each Claims Officer on presentation and acceptance of invoices from time to time. Each Claims Officer shall be entitled to a reasonable retainer against his or her fees and disbursements which shall be paid upon request by the Applicants, with the consent of the Monitor.

33. **THIS COURT ORDERS** that, subject to further order of the Court, the Claims Officer shall determine the Status and/or amount of each Claim in respect of which a dispute has been referred to such Claims Officer and in doing so, the Claims Officer shall be empowered to determine the process in which evidence may be brought before him or her as well as any other procedural matters which may arise in respect of the determination of any Claim.

34. **THIS COURT ORDERS** that the Applicants or the Claimant may appeal the Claims Officer's determination to this Court by serving upon the other (with a copy to the Monitor) and filing with this Court, within ten (10) calendar days of notification of the Claims Officer's determination of such Claimant's Claim, a notice of motion returnable on a date to be fixed by this Court. If a notice of motion is not filed within such period, then the Claims Officer's determination shall be deemed to be final and binding and shall be such Claimant's Proven Claim.

EXCLUDED CLAIMS

35. **THIS COURT ORDERS** that, for greater certainty, no Person holding an Excluded Claim shall be required to file a Proof of Claim in respect of such Excluded Claim, and such Person shall be unaffected by this Claims Procedure Order in respect of such Excluded Claim. The Applicants may apply to the Court for a further order to govern the identification, quantification and resolution of Excluded Claims, whether by way of amendments to this Claims Procedure Order or a supplemental claims procedure order, if at any time the Applicants consider it necessary or desirable to do so.

NOTICE OF TRANSFEREES

36. **THIS COURT ORDERS** that neither the Monitor nor the Applicants shall be obligated to give notice or otherwise deal with the transferee or assignee of a Claim unless and until actual notice of the transfer or assignment, together with satisfactory evidence of the existence and validity of such transfer or assignment, shall have been received and acknowledged by the Applicants and the Monitor in writing. Thereafter, such transferee or assignee shall, for all purposes hereof, constitute the "Claimant" in respect of such Claim. Any such transferee or assignee of a Claim shall be bound by any notices given or steps taken in respect of such Claim in accordance with this Claims Procedure Order prior to the receipt and acknowledgment by the Applicants and the Monitor of satisfactory evidence of such transfer or assignment. A transferee or assignee of a Claim takes the Claim subject to any right of set-off to which the Applicants may be entitled with respect to such Claim. For greater certainty, a transferee or assignee of a Claim is not entitled to set off, apply, merge, consolidate or combine any Claims assigned or transferred to it against or on account or in reduction of any amounts owing by such Person to any of the Applicants.

37. **THIS COURT ORDERS** that if a Claimant or any subsequent holder of a Claim, who in any such case has previously been acknowledged by the Applicants and the Monitor as the holder of the Claim, transfers or assigns the whole of such Claim to more than one Person or part of such Claim to another Person, such transfers or assignments shall not create separate Claims and such Claims shall continue to constitute and be dealt with as a single Claim notwithstanding such transfers or assignments. The Applicants and the Monitor shall not, in each case, be

required to recognize or acknowledge any such transfers or assignments and shall be entitled to give notices to and to otherwise deal with such Claim only as a whole and then only to and with the Person last holding such Claim, provided such Claimant may, by notice in writing delivered to the Monitor, direct that subsequent dealings in respect of such Claim, but only as a whole, shall be dealt with by a specified Person and in such event, such Person shall be bound by any notices given or steps taken in respect of such Claim with such Claimant or in accordance with the provisions of this Claims Procedure Order.

SERVICE AND NOTICES

38. **THIS COURT ORDERS** that the forms of notice to be provided in accordance with this Claims Procedure Order shall constitute good and sufficient service and delivery of notice of this Claims Procedure Order, the Pre-Filing Claims Bar Date and Restructuring Claims Bar Date on all Persons who may be entitled to receive notice and who may assert a Claim and no other notice or service need be given or made and no other documents or material need be sent to or served upon any Person in respect of this Claims Procedure Order.

39. **THIS COURT ORDERS** that the Applicants and the Monitor may, unless otherwise specified by this Claims Procedure Order, serve and deliver the Claims Package, and any letters, notices or other documents to the Claimants or any other interested Person by forwarding true copies thereof by prepaid ordinary mail, registered mail, courier, personal delivery, facsimile transmission or email to such Persons at the physical or electronic address, as applicable, last shown on the books and records of the Applicants or set out in such Claimant's Proof of Claim. Any such service and delivery shall deemed to have been received: (a) if sent by ordinary mail or registered mail, on the third Business Day after mailing within Ontario, the fifth Business Day after mailing within Canada (other than within Ontario), and the tenth Business Day after mailing internationally; (b) if sent by courier or personal delivery, on the next Business Day following dispatch; and (c) if delivered by facsimile transmission or email by 5:00 p.m. on a Business Day, on such Business Day and if delivered after 5:00 p.m. or other than on a Business Day, on the following Business Day.

40. **THIS COURT ORDERS** that any notice or communication (including Proofs of Claim and Notices of Dispute) to be given under this Claims Procedure Order by any Person to the

Monitor or the Applicants shall be in writing in substantially the form, if any, provided for in this Claims Procedure Order and will be sufficiently given only if delivered by email, or if it cannot be given by email by prepaid registered mail, courier or personal delivery, addressed to:

Ernst & Young Inc.
Court-appointed Monitor of CannTrust
100 Adelaide Street West, PO Box 1
Toronto, Ontario M5H 0B3

Attention: Alex Morrison and Karen Fung

Email: canntrust.monitor@ca.ey.com
Fax: 416-943-3300
Phone: 416-943-2091

Any such notice or communication delivered by a Claimant shall be deemed to be received upon actual receipt thereof during normal business hours on a Business Day or if delivered outside of normal business hours, the next Business Day.

41. **THIS COURT ORDERS** that if during any period during which notices or other communications are being given pursuant to this Claims Procedure Order, a postal strike or postal work stoppage of general application should occur, such notices, notifications or other communications sent by ordinary or registered mail and then not received shall not, absent further order of this Court, be effective and notices and other communications given hereunder during the course of any such postal strike or work stoppage of general application shall only be effective if given by courier, personal delivery, facsimile transmission or email in accordance with this Claims Procedure Order.

42. **THIS COURT ORDERS** that in the event that this Claims Procedure Order is later amended by further order of the Court, the Monitor shall post such further order on the Monitor's Website, and such posting shall constitute adequate notice to Claimants of such amended Claims Procedure.

MISCELLANEOUS

43. **THIS COURT ORDERS** that notwithstanding the terms of this Claims Procedure Order, and without limitation to paragraph 35 of this Claims Procedure Order, the Monitor and

the Applicants may apply to this Court from time to time for directions from this Court with respect to this Claims Procedure Order, or for such further order or orders as any of them may consider necessary or desirable to amend, supplement or clarify the terms of this Claims Procedure Order.

44. **THIS COURT ORDERS** that this Claims Procedure Order shall have full force and effect in all provinces and territories in Canada, outside Canada and against all Persons against whom it may be enforceable.

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

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

SCHEDULE "A"

NOTICE TO CLAIMANTS

NOTICE TO CREDITORS
of CANNTRUST HOLDINGS INC., CANNTRUST INC.,
CTI HOLDINGS (OSOYOOS) INC., AND ELMCLIFFE INVESTMENTS INC.
(hereinafter referred to as the "**Applicants**") **or THEIR FORMER and CURRENT DIRECTORS and OFFICERS** (hereinafter referred to as the "**Directors**" and "**Officers**")

NOTICE OF CLAIMS PROCESS FOR THE APPLICANTS PURSUANT TO THE COMPANIES' CREDITORS ARRANGEMENT ACT ("CCAA")

This notice is pursuant to the Order of the Honourable Mr. Justice Hainey of the Ontario Superior Court of Justice (Commercial List) dated May 8, 2020 (the "**Claims Procedure Order**"). Any person having a claim against an Applicant or a Director or Officer arising prior to March 31, 2020 (the "**Filing Date**"), other than an Excluded Claim (as defined in the Claims Procedure Order), must send a Proof of Claim to Ernst & Young Inc., in its capacity as the court-appointed Monitor of the Applicants, to be received **by no later than 5:00 p.m. (Eastern Time) on June 22, 2020** (the "**Pre-Filing Claims Bar Date**").

Proofs of Claim for claims arising out of the restructuring, disclaimer, repudiation, resiliation or termination by any of the Applicants after the Filing Date of any contract, lease, employment agreement or other agreement or obligation of any nature whatsoever, whether oral or written, must be received **by no later than 5:00 p.m. (Eastern Time) on the later of: (a) the Pre-Filing Claims Bar Date, and (b) the day which is 30 days after the date the Monitor sends a Claims Package with respect to such Claim** (the "**Restructuring Claims Bar Date**").

A separate Proof of Claim must be filed for claims against each of the Applicants and the applicable Directors and Officers. Claimants who have not received a Proof of Claim form should contact Ernst & Young Inc., the court-appointed Monitor of the Applicants, by telephone at 1-855-224-0800 or 416-943-2091, fax at 416-943-3300 or email at CannTrust.Monitor@ca.ey.com to obtain a Proof of Claim form or visit the Monitor's website www.ey.com/ca/canntrust.

CLAIMS FOR WHICH A PROPERLY COMPLETED PROOF OF CLAIM HAS NOT BEEN RECEIVED BY THE MONITOR BY THE APPLICABLE BAR DATE SPECIFIED HEREIN WILL BE BARRED AND EXTINGUISHED FOREVER.

SCHEDULE "B"

INSTRUCTION LETTER

GUIDE TO COMPLETING THE PROOF OF CLAIM

This guide has been prepared to assist Claimants in filling out the Proof of Claim. If you have any additional questions regarding completion of the Proof of Claim, please consult the Monitor's website at www.ey.com/ca/canntrust or contact the Monitor, whose contact information is shown below.

Additional copies of the Proof of Claim form may be found at the Monitor's website address noted above.

Please note that this is a guide only and that, in the event of any inconsistency between the terms of this guide and the terms of the Claims Procedure Order made on May 8, 2020, the terms of the Claims Procedure Order will govern.

A. PARTICULARS OF CLAIMANT

- The full legal name of the Claimant must be provided.
- If the Claimant uses a different name or names, please indicate this in a separate schedule in the supporting documentation.
- All future correspondence, notices, etc. regarding the Claim will be directed to the address and contact indicated in this section.
- If you are an individual, filing for yourself, you do not have to state your position or title.

B. PARTICULARS OF ASSIGNEE(S)

- Only complete this section if the Claim has been assigned by the original Claimant to a third party.
- Assignment documentation must be provided along with the Proof of Claim form.
- If there is more than one assignee, please attach a separate sheet with the required contact information for each of the assignees.

C. PROOF OF CLAIM

- A separate Proof of Claim form must be filed by each Claimant asserting a claim against any Applicant.
- The Claimant shall include any and all Claims it asserts against any Applicant in a single Proof of Claim.
- If you have Claims against multiple Applicants, a separate Proof of Claim must be filed for each Applicant.
- If you are making a claim against the Directors or Officers of an Applicant, please list the Director(s) or Officer(s) against which you assert your claim.
- Pre-Filing Claims and D&O Claims are claims that arise prior to March 31, 2020.
- Restructuring Claims against any Applicant or any Director or Officer are claims arising out of the restructuring, disclaimer, repudiation, resiliation or termination of any contract, lease, employment agreement or other agreement or obligation by any Applicant on or after March 31, 2020.
- Claims that are contingent or unliquidated should be valued. Please provide the basis for your valuation of the Claim, if applicable.
- Note that an Equity Claim against CannTrust Holdings Inc. is an Excluded Claim and therefore no Proof of Claim for such Excluded Equity Claim should be submitted as part of this Claims Procedure.
- Indicate the amount the Applicant / Director(s) or Officer(s) was, and still is, indebted to the Claimant

in the original currency of such Claim. If the original currency is not Canadian Dollars, indicate the currency of the Claim. Note that Claims in a foreign currency will be converted to Canadian Dollars using the Bank of Canada's daily average rate on the Filing Date.

- If the Claim is denominated in multiple currencies, use a separate line to indicate the Claim amount in each such currency. If there are insufficient lines to record these amounts, attach a separate schedule providing the required information.

D. **NATURE OF CLAIM**

- The total Claim amount as indicated in section C should be separated into the portion that is unsecured and secured/priority.

Secured/Priority

- Check the Secured/Priority box ONLY if the Claim recorded on that line is secured. Do not check this box if your Claim is unsecured. NOTE: Most Claims in general are unsecured claims.
- Evidence supporting the security you hold must be submitted with the Proof of Claim form. Provide full particulars of the nature of the security, including the date on which the security was given and the value you attribute to the collateral securing your Claim.
- Attach a copy of all related security documents.
- If the value of the collateral securing your Claim is less than the amount of your Claim, enter the shortfall portion on a separate line as an unsecured claim.
- If a priority claim is being asserted, please provide details as to the priority claim being asserted, and the basis for this priority claim over secured creditors and all other unsecured creditors.

Directors and Officers

- Check this box only if the Claim you are making is also being asserted against a current or former Director or Officer of an Applicant.
- You must identify the individual Director(s) or Officer(s) against whom you are asserting the Claim.

E. **PARTICULARS OF CLAIM AND DOCUMENTATION**

- Attach to the Proof of Claim all particulars of the Claim and supporting documentation, including amount, description of transaction(s) or agreement(s) giving rise to the Claim and name of any guarantor which has guaranteed the Claim.

F. **FILING OF CLAIM**

- The person signing the Proof of Claim form should:
    - Have knowledge of all the circumstances connected with the Claim; and
    - Be the Claimant, or an Authorized Representative of the Claimant.
- By signing and submitting the Proof of Claim, the Claimant is asserting the claim against the Applicant and/or the indicated Director(s) or Officer(s).

Proofs of Claim for Pre-Filing Claims or D&O Claims must be received by the Monitor by no later than **5:00 p.m.** (Eastern Time) on **June 22, 2020** (the "**Pre-Filing Claims Bar Date**"). Proofs of Claim for Restructuring Claims must be received no later than 5:00 p.m. (Eastern Time) on the later of: (i) June 22, 2020; and (ii) 30 days after the Claimant is deemed to have received the Claims Package from the Monitor (the "**Restructuring Claims Bar Date**"). Proofs of Claim should be sent by email or, if not possible to send by email, by prepaid ordinary mail, courier, personal delivery or fax to the following address:

Ernst & Young Inc.
Court-appointed Monitor of CannTrust Inc. & others

E-mail: CannTrust.Monitor@ca.ey.com
Fax: 416-943-3300
Address: 100 Adelaide Street, West, PO Box 1, Toronto ON M5H 0B3

If you have any questions you can contact us using the information above or call us at 1-855-224-0800 or 416-943-2091.

Failure to file your Proof of Claim as directed by **5:00 p.m.** (Eastern Time) on the applicable Claims Bar Date will result in your claim being barred and in you being prevented from making or enforcing a Claim against the Applicants or any Director or Officer. In addition, you shall not be entitled to further notice in, and shall not be entitled to participate as a creditor in these proceedings.

SCHEDULE "C"

PROOF OF CLAIM FORM

PROOF OF CLAIM
relating to CANNTRUST HOLDINGS INC., CANNTRUST INC.,
CTI HOLDINGS (OSOYOOS) INC., and ELMCLIFFE INVESTMENTS INC.
(hereinafter referred to as the "**Applicants**") or THEIR FORMER and CURRENT DIRECTORS and OFFICERS (hereinafter referred to as the "**Directors**" and "**Officers**")

A. PARTICULARS OF CLAIMANT

Full Legal Name of Claimant:

____(the "**Claimant**")

(Full legal name should be the name of the Claimant of the Applicants or the Directors or Officers as of March 31, 2020 (the "**Filing Date**"), notwithstanding whether an assignment of a Claim, or a portion thereof, has occurred following that date.)

Attention (Contact Person): ____

Email Address:____

Telephone Number: ____________________ Fax Number____________________

Full Mailing Address of the Claimant (the Claimant as of March 31, 2020):

____

____

____

B. PARTICULARS OF ASSIGNEE(S) (IF ANY)

Has the Claim been sold or assigned by the Claimant to another party [check (√) one]?

Yes: □ No: □

(If Yes, you must include the details and documentation that support the assignment including if all or portion of the Claim has been assigned. If there is more than one assignee, please attach a separate sheet with the required contact information for each.)

Full Legal Name of Assignee(s) ____

Attention (Contact Person): ____

Email Address: ____

Telephone Number: ____________________ Fax Number____________________

Full Mailing Address of the Assignee:

____

C. PROOF OF CLAIM

I, ____
(name of Claimant or as a representative of the Claimant)

as ________________________________ (state position or title, if applicable)

of ________________________________ (city and province), do hereby certify:

a. that I [check (√) only if applicable]

am a Director of ☐ CannTrust Holding Inc., ☐ CannTrust Inc., ☐ CTI Holdings (OSOYOOS) Inc., and/or ☐ Elmcliffe Investment Inc. and a Claimant;

b. that I have knowledge of all the circumstances connected with the Claim referred to below;

c. the Claimant asserts its Claim against [check (√) one or both, as applicable]:

☐ ________________________________ (Name of Applicant)

☐ Director(s) or Officer(s) of ______________________(Name of Applicant)

Specifically,____

____

____

(If you are making a Claim against the Directors or Officers, please list the Director(s) or Officer(s) against which you assert your Claim); and

d. the Applicant/Director(s) was/were and still is/are indebted to the Creditor as follows:

i. PRE-FILING CLAIM arising prior to March 31, 2020:

$________________________________ (amount and currency)

ii. RESTRUCTURING CLAIM:

$________________________________ (amount and currency)

(A Restructuring Claim is a claim against any Applicant or any Director or Officer arising out of the restructuring, termination, repudiation or disclaimer of any lease, contract, or other agreement on or after the Filing Date.)

iii. TOTAL CLAIM: $__________________ (Total i. plus ii.)

D. NATURE OF CLAIM [Check (√) one and complete appropriate category]

☐ UNSECURED CLAIM OF $__________________________ (amount and currency)

That in respect of this debt, I do not hold any security or claim any priority.

☐ SECURED CLAIM OR PRIORITY CLAIM OF $______________(amount and currency)

That in respect of this debt, the Claimant holds security valued at $________________________ (amount and currency), or claims a priority over other unsecured or secured creditors in the amount of $__________________ (amount and currency), particulars of which are attached.

If a secured claim is being asserted, please give full particulars of the security, including the date on which the security was given and the value at which you assess the security, and attach a copy of the security documents. If a priority claim is being asserted, please provide details as to the priority claim being asserted, and the basis for this priority claim.

☐ CLAIM AGAINST THE DIRECTORS AND OFFICERS OF

$____ (amount and currency)

E. PARTICULARS OF CLAIM AND DOCUMENTATION

Other than as already set out herein, the particulars of the undersigned's total Claim are attached.

Provide all particulars of the Claim and supporting documentation, including amount, description of transaction(s) or agreement(s) giving rise to the Claim, name of any guarantor which has guaranteed the Claim, and amount of invoices, particulars of all credits, discounts, etc. claimed, description of the security, if any, granted by any Applicant or any Director or Officer to the Claimant and estimated value of such security, and particulars of any Restructuring Claim.

This Proof of Claim must be received by the Monitor by no later than **5:00 p.m.** (Eastern Time) on the applicable Claims Bar Date specified in the Claims Procedure Order. The Claims Bar Date applicable to Pre-Filing Claims and D&O Claims is **June 22, 2020** (the "**Pre-Filing Claims Bar Date**"). The Claims Bar Date applicable to Restructuring Claims is 5:00 p.m. (Eastern Time) on the later of (i) June 22, 2020, and (ii) the day which is 30 days after the date the Monitor sends a Claims Package with respect to such Claim (the "**Restructuring Claims Bar Date**"). Proofs of Claim should be sent by email or, if not possible to send by email, by prepaid ordinary mail, courier, personal delivery or fax to the following address:

Ernst & Young Inc.
Court-appointed Monitor of CannTrust Inc. & others

E-mail: CannTrust.Monitor@ca.ey.com
Fax: 416-943-3300
Address: 100 Adelaide Street, West, PO Box 1, Toronto ON M5H 0B3

If you have any questions you can contact us using the information above or call us at 1-855-224-0800 or 416-943-2091.

F. FILING OF CLAIM

Failure to file your proof of claim as directed by **5:00 p.m.** (Eastern Time), on the applicable Claims Bar Date will result in your claim being barred and in you being prevented from making or enforcing a Claim against the Applicants or any Director or Officer. In addition, you shall not be entitled to further notice in, and shall not be entitled to participate as a creditor in these proceedings.

Dated at_________________ this _________day of ______________, 2020.

____

Signature of Claimant /Representative of Claimant

SCHEDULE "D"

NOTICE OF REVISION OR DISALLOWANCE

NOTICE OF REVISION OR DISALLOWANCE
of CANNTRUST HOLDINGS INC., CANNTRUST INC.,
CTI HOLDINGS (OSOYOOS) INC., and ELMCLIFFE INVESTMENTS INC.
(hereinafter referred to as the "**Applicants**" or individually as the "**Applicant**") or
THEIR FORMER and CURRENT DIRECTORS and OFFICERS (hereinafter referred to as the "**Directors**" and "**Officers**")

To: [Name of Claimant] **Reference #: [ID]**

Re: Proof of Claim filed by you against [Applicant(s) and/or Director(s) or Officer(s)]

Pursuant to the order of the Honourable Mr. Justice Hainey dated May 8, 2020, Ernst & Young Inc. in its capacity as Monitor of the Applicants, hereby gives you notice that the Applicants have reviewed your Proof of Claim and has revised or disallowed all or part of your Claim as follows:

Type of Claim	Amount as Submitted ($CDN)	Amount allowed ($CDN)	Amount allowed as secured ($CDN)	Amount allowed as unsecured ($CDN)
Pre-Filing Claim				
D&O Claim				
Restructuring Claim				

Reason for the Revision or Disallowance:

Next Steps:

If you do not agree with this Notice of Revision or Disallowance please take notice of the following:

1. If you intend to dispute a Notice of Revision or Disallowance, you must, by no later than **5:00 p.m. (Eastern Time) on the day which is fourteen (14) days after the date of this Notice of Revision or Disallowance**, deliver a Notice of Dispute, in the form attached hereto, by e-mail (in PDF format) (*preferred*), registered mail, personal service, facsimile or courier to the address indicated herein. The form of Notice of Dispute is enclosed.

2. If you do not deliver a Notice of Dispute in the time specified, the value of your Pre-Filing Claim, D&O Claim or Restructuring Claim, as the case may be, shall be determined to be as set out in this Notice of Revision or Disallowance.

Address and numbers for service of Notice of Dispute:

Ernst & Young Inc.
Court-appointed Monitor of CannTrust Inc. & others
E-mail: CannTrust.Monitor@ca.ey.com

Fax: 416-943-3300
Address: 100 Adelaide Street, West, PO Box 1, Toronto ON M5H 0B3

If you have any questions you can contact us using the information above or call us at 1-855-224-0800 or 416-943-2091.

IF YOU FAIL TO TAKE ACTION WITHIN THE PRESCRIBED TIME PERIOD, THIS NOTICE OF REVISION OR DISALLOWANCE WILL BE BINDING UPON YOU.

Dated at Toronto this [DATE].

ERNST & YOUNG INC.

In its capacity as Court-Appointed Monitor of CANNTRUST HOLDINGS INC., CANNTRUST INC., CTI HOLDINGS (OSOYOOS) INC., and ELMCLIFFE INVESTMENTS INC.

Per: ______________________________

Name:
Encl.

SCHEDULE "E"

NOTICE OF DISPUTE

NOTICE OF DISPUTE
of CANNTRUST HOLDINGS INC., CANNTRUST INC.,
CTI HOLDINGS (OSOYOOS) INC., and ELMCLIFFE INVESTMENTS INC.
(hereinafter referred to as the "**Applicants**" or individually as the "**Applicant**") or
THEIR FORMER and CURRENT DIRECTORS and OFFICERS (hereinafter referred to as the "**Directors**" and "**Officers**")

Name of Creditor:

Pursuant to the order of the Honourable Mr. Justice Hainey dated May 8, 2020, I/we hereby give you notice of our intention to dispute the Notice of Revision or Disallowance bearing Reference Number **[ID]** and dated [**DATE**] issued by Ernst & Young Inc. in its capacity as Monitor of the Applicants in respect of our Claim.

Reasons for Dispute:

Include the amount you are disputing and where applicable, any dispute against the revision of your status (unsecured, secured, or priority). Attach copies of all supporting documentation and additional sheets, if necessary:

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____

____

____

Signature of Individual completed the Dispute Notice: __________________________________

(Please print name): ____

Date: ____________________ Email Address: ____________________________________

Telephone Number: _______________________Fax Number: ___________________________

Full Mailing Address:____

____

THIS FORM AND SUPPORTING DOCUMENTATION TO BE RETURNED BY REGISTERED MAIL, PERSONAL SERVICE, E-MAIL (IN PDF FORMAT), FACSIMILE OR COURIER TO THE ADDRESS INDICATED HEREIN AND TO BE RECEIVED BY NO LATER THAN 5:00 P.M. (EASTERN TIME) ON THE DAY WHICH IS FOURTEEN (14) DAYS AFTER THE DATE OF THE NOTICE OF REVISION OR DISALLOWANCE.

Address and numbers for service of Notices of Dispute:

Ernst & Young Inc.
Court-appointed Monitor of CannTrust Inc. & others

E-mail: CannTrust.Monitor@ca.ey.com
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If you have any questions you can contact us using the information above or call us at 1-855-224-0800 or 416-943-2091.

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 CANNTRUST HOLDINGS INC. ET AL.

Court File No: CV-20-00638930-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceedings commenced at Toronto

CLAIMS PROCEDURE ORDER

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Lawyers for the Applicants
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Tab 5

Court File No. CV-20-00638930-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE	)	FRIDAY, THE 8TH
	)	
MR. JUSTICE HAINEY	)	DAY OF MAY, 2020

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 CANNTRUST HOLDINGS INC., CANNTRUST INC., CTI HOLDINGS (OSOYOOS) INC., AND ELMCLIFFE INVESTMENTS INC.

Applicants

MEDIATION ORDER

THIS MOTION, made by the Applicants pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"), was heard this day by way of videoconference due to the COVID-19 crisis.

ON READING the affidavit of Greg Guyatt sworn May 1, 2020 and the exhibits thereto, and the Second Report of the Monitor dated ●, 2020 (the "**Second Report**"), and on hearing the submissions of counsel for the Applicants, the Monitor and those other parties that were present as listed on the counsel slip, no other party appearing although duly served as appears from the Affidavit of Service of ● sworn ●, 2020.

SERVICE AND INTERPRETATION

1. **THIS COURT ORDERS** that the time for service and filing of this motion and the Second Report is hereby abridged and validated such that this motion is properly returnable today and hereby dispenses with further service thereof.

2. **THIS COURT ORDERS** that for the purposes of this Order, the following terms shall have the following meanings:

(a) "**CCAA Proceedings**" means the within proceedings in respect of the Applicants under the CCAA;

(b) "**Claims Procedure Order**" means the Claims Procedure Order issued in these proceedings dated May 8, 2020, as amended, restated or varied from time to time;

(c) "**Director**" means any former or present director of CannTrust Holdings Inc. or any Person of similar position or any other Person who by applicable law is deemed to be or is treated similarly to a director of CannTrust Holdings Inc. or who currently manages or supervises the management of the business and affairs of CannTrust Holdings Inc. or did so in the past;

(d) "**Excluded Equity Claims**" has the meaning given to such term in the Claims Procedure Order;

(e) "**Initial Order**" means the Initial Order of the Honourable Mr. Justice Hainey dated March 31, 2020 in these CCAA Proceedings, as amended, restated or varied from time to time;

(f) "**Mediation Claim**" means any right, claim or dispute arising in or in relation to the Pending Litigation (other than the Pending Litigation where CannTrust Holdings Inc. is not a defendant), including any Excluded Equity Claim and any right, claim or dispute against or in respect of CannTrust Holdings Inc., the Directors or Officers or the Other Defendants in the Pending Litigation;

(g) "**Monitor**" means Ernst & Young Inc., in its capacity as the court-appointed monitor of the Applicants;

(h) "**Officer**" means any former or present officer of CannTrust Holdings Inc. or any Person of similar position or any other Person who by applicable law is deemed to be or is treated similarly to an officer of CannTrust Holdings Inc.; and

(i) "**Person**" means any individual, corporation, firm, limited or unlimited liability company, general or limited partnership, association (incorporated or unincorporated), trust, unincorporated organization, joint venture, trade union, government authority or any agency, regulatory body or officer thereof or any other entity, wherever situate or domiciled, and whether or not having legal status, and whether acting on their own or in a representative capacity.

3. **THIS COURT ORDERS** that any capitalized term used but not defined herein shall have the meaning given to such term in the Initial Order.

COURT-APPOINTED MEDIATOR

4. **THIS COURT ORDERS** that the Hon. Dennis O'Connor, Q.C. is hereby appointed as an officer of the Court and shall act as a neutral third party (the "**Court-Appointed Mediator**") to mediate a global settlement of the Mediation Claims (the "**Mediation Process**").

5. **THIS COURT ORDERS** that in carrying out his mandate, the Court-Appointed Mediator may, among other things:

(a) adopt processes and utilize resources which, in his discretion, he considers appropriate to facilitate negotiation of a global settlement;

(b) consult with all Persons with Mediation Claims, the Monitor, the Applicants, the Other Defendants, any insurer of the Applicants or the Directors or Officers and any other Persons the Court-Appointed Mediator considers appropriate; and

(c) apply to this Court for advice and directions as, in his discretion, the Court-Appointed Mediator deems necessary.

6. **THIS COURT ORDERS** that, subject to an agreement between the Applicants and the Court-Appointed Mediator, all reasonable fees and disbursements of the Court-Appointed Mediator as may have been incurred prior to the date of this Order or which shall be incurred by the Court-Appointed Mediator in relation to carrying out his mandate shall be paid by the Applicants on a monthly basis, forthwith upon the rendering of accounts to the Applicants.

7. **THIS COURT ORDERS** that the Applicants are hereby authorized to pay to the Court-Appointed Mediator a retainer to be held by the Court-Appointed Mediator as security for payment of the Court-Appointed Mediator's fees and disbursements outstanding from time to time.

8. **THIS COURT ORDERS** that the Court-Appointed Mediator is authorized to take all steps and to do all acts necessary or desirable to carry out the terms of this Order, including dealing with any Court, regulatory body or other government ministry, department or agency, and to take all such steps as are necessary or incidental thereto.

9. **THIS COURT ORDERS** that, in addition to the rights and protections afforded as an officer of this Court, the Court-Appointed Mediator shall incur no liability or obligation as a result of his appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on his part. Nothing in this Order shall derogate from the protections afforded a person pursuant to Section 142 of the *Courts of Justice Act* (Ontario).

COMMUNICATION AND CONFIDENTIALITY PROTOCOL

10. **THIS COURT ORDERS** that the following communication and confidentiality protocol between the Court, the Court-Appointed Mediator and participants in the Mediation Process be and is hereby approved:

(a) the Court and the Court-Appointed Mediator may communicate between one another directly to discuss, on an on-going basis, the conduct of the Mediation Process and the manner in which it will be coordinated with the CCAA Proceedings, including but not limited to the Mediation Claims;

(b) the Court will not disclose to the Court-Appointed Mediator how the Court will decide any matter which may come before the Court for determination;

(c) the Court-Appointed Mediator will not disclose to the Court the negotiating positions or confidential information of any of the parties in the Mediation Process;

(d) all statements, discussions, offers made and documents produced by any of the parties in the course of the Mediation Process shall not be subject to disclosure through discovery or any other process; shall be confidential; shall not be referred to in Court and shall not be admissible into evidence for any purpose, including impeaching credibility or to establish the meaning and/or validity of any settlement or alleged settlement arising from the Mediation Process; and

(e) any notes, records, statements made, discussions had and recollections of the Court-Appointed Mediator or any of his assistants in conducting the Mediation Process shall be confidential and without prejudice and protected from disclosure for all purposes in accordance with paragraph 105(b)(d) above.

GENERAL

11. **THIS COURT ORDERS** that the Monitor and the Applicants may apply to this Court from time to time for directions from this Court with respect to this Order, or for such further order or orders as any of them may consider necessary or desirable to amend, supplement or clarify the terms of this Order.

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

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

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 CANNTRUST HOLDINGS INC. ET AL.

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MEDIATION ORDER

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IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF CANNTRUST HOLDINGS INC. ET AL.

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MOTION RECORD

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