

**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
CANTRUST HOLDINGS INC., CANTRUST INC.,
CTI HOLDINGS (OSOYOOS) INC. AND ELMCLIFFE INVESTMENTS INC.**

Applicants

SUPPLEMENTARY MOTION RECORD

March 11, 2022

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Lawyers for the Applicants

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TAB DOCUMENT

1. Affidavit of Natasha Rambaran sworn March 9, 2022
 - (a) Exhibit A: Endorsement of Justice Conway dated February 25, 2022
 - (b) Exhibit B: Confidential Exhibit

TAB 1

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AFFIDAVIT OF NATASHA RAMBARAN

I, **Natasha Rambaran**, of the City of Toronto, in the Province of Ontario, MAKE OATH
AND SAY:

1. I am an associate at McCarthy Tétrault LLP, counsel to the Applicants. As such, I have knowledge of the matters to which I depose in this affidavit. Capitalized terms used herein have the meanings given to them in the Affidavit of Greg Guyatt sworn February 18, 2022 (the "**Guyatt Affidavit**").

2. On February 25, 2022, the Applicants brought a motion before Justice Conway for, among other things, an order sealing Confidential Exhibit "1" to the Guyatt Affidavit containing pricing information related to the Transaction (the "**Confidential Exhibit**").

3. In an endorsement dated February 25, 2022, Justice Conway did not grant the sealing order sought with respect to the Confidential Exhibit “1” to the Guyatt Affidavit and required it to be “uploaded to the court file”. A copy of Justice Conway’s Endorsement dated February 25, 2022 is attached hereto as **Exhibit “A”**. A copy of Confidential Exhibit “1” to the Guyatt Affidavit is attached hereto as **Exhibit “B”**.

☐ in person ☒ by video conference

Sworn remotely by Natasha Rambaran stated as being located in the City of Toronto, before me at the Municipality of Central Elgin, on March 9, 2022 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Natasha Rambaran

A Commissioner for taking Affidavits *(or as may be)*
Trevor Courtis LSO #: 67715A

TAB A

This is Exhibit "A" referred to in the
Affidavit of **Natasha Rambaran**,
sworn before me on March 9, 2022

A handwritten signature in black ink, appearing to read 'Trevor Courtis', with a stylized, cursive script.

A Commissioner for taking Affidavits (or as may be)
Trevor Courtis LSO #: 67715A



SUPERIOR COURT OF JUSTICE

DATE: FEBRUARY 25, 2022 9:30AM ->2:00PM

COURT FILE NO: CV-20-638930-00CL

SHORT TITLE: CANNTRUST HOLDINGS INC

C O U N S E L S H E E T

HEATHER MEREDITH and NATASHA RAMBARAN- APPL CANNTRUST HOLDINGS INC.

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KENNETH KRAFT - CORTLAND CREDIT CORPORATION, DIP LENDER
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Conway J Endorsement

All terms used herein have the meanings ascribed to them in the Applicants' Motion Record dated February 18, 2022, unless otherwise defined.

The Applicants bring this motion for approval of the (i) Going-Concern Transaction and related relief and (ii) an Investor DIP of \$5.5 million to enable ongoing operations to continue until closing. The total funds to be paid from the Going-Concern Transaction and Investor DIP will be



\$16,735,000. The Transaction involves the subscription for 90% of the equity of CannTrust Equity, the entity that owns CannTrust Opco. Existing shareholders will receive the remaining 10% of the equity.

The Transaction is fully supported by the Monitor and the existing DIP Lender. The dispute with Consolidated Bottle has now been resolved through the addition of paragraph 18 to the draft order. The concerns of the Financial Advisor have been addressed on the terms set out at the end of this endorsement.

A group of investors attended at the hearing today. They say they consist of 10 shareholders holding approximately 1.1 million shares. They wish to remain anonymous. Although they did not file any materials through the regular court process, I permitted their representative to voice their concerns to the court. They asked a number of questions about the Applicants' liquidity situation and the proposed Transaction. In particular, they wanted a fairness opinion to be obtained. Ms. Meredith for the Applicants responded that, as set out in the materials filed on the motion and as discussed below, there are no other viable sources of liquidity, the Applicants are facing an imminent liquidation scenario, and the Transaction is the best offer received after the Recent Strategic Process had run its course. Moreover, the Applicants do not have the funds to pay for a fairness opinion nor is one required. The representative did confirm that the investors do not want to see the Applicants forced into a liquidation scenario.

Another investor, Mr. Koehn, spoke at the hearing and said that he and a number of other investors support the Transaction as the best outcome under the circumstances.

I am approving the Transaction for the following reasons. In so doing, I have reviewed the factors in s. 36(3) of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended, and the principles in *Soundair*, as applicable. The Recent Strategic Process resulted in a going concern transaction that will preserve the business for the various stakeholders (employees, creditors, suppliers, among others). The Recent Strategic Process built on the SISF that had run (unsuccessfully) in 2021. It focussed on those who were interested in a going concern investment in the cannabis industry. The Applicants worked with the Monitor, created a data room, communicated with interested parties, and ultimately selected the highest bidder out of three LOIs. The successful bidder was prepared to provide the DIP financing to see the company through to closing. The Transaction will preserve jobs and cover unsecured and post-filing creditors, among others. It is vastly superior to a liquidation scenario. It contains an upside for existing shareholders in the future. I note that the individual investors from CannTrust management were included in the investment only after the Transaction from the arm's length investor was accepted.

I am also approving the Investor DIP and DIP Charge. It is critical for this financing to be in place to see the Transaction through to closing. The Monitor supports the amount as appropriate and limited to what is reasonably necessary in the circumstances. The existing DIP and Exit Lender also support the Investor DIP and DIP Charge.

I am granting a stay extension to March 25, 2022 to permit the closing to occur. I am satisfied that the Applicants are acting in good faith and with due diligence and that no creditor will be prejudiced by the extension.



Finally, I am granting a sealing order but only with respect to the Confidential Appendix to the Monitor's 18th Report. I am not sealing the Confidential Exhibit to the Guyatt affidavit of February 18, 2022 as it is critical that all of the terms of the Transaction be public and transparent. It is to be uploaded to the court file. I am sealing the Confidential Appendix, however, as it has details of other bids and information that could potentially compromise the Applicants and the stakeholders pending the closing of the Transaction. I am satisfied that the *Sierra Club/Sherman Estate* test has been met for the Confidential Appendix.

The remaining related relief in the order is satisfactory to me.

Order to go as signed by me and attached to this endorsement. This order is effective from today's date and is enforceable without the need for entry and filing.

With respect to the Financial Advisor, counsel have agreed as follows: Capitalized terms used but not defined in this paragraph have the meanings given in the Amended & Restated Initial Order dated April 9, 2020 as amended by the Order of Justice McEwen dated June 10, 2021 (collectively, the "Initial Order"). The Initial Order provides that the Financial Advisor is entitled to the benefit of the Transaction Fee Charge on the Property, as security for the Transaction Fee. In full and final satisfaction of the Transaction Fee and all amounts secured by the Transaction Fee Charge, CannTrust Inc. shall pay \$1 million to the Financial Advisor on the closing of the Transaction (as defined in the affidavit of Greg Guyatt sworn February 18, 2022) concurrent with the discharge of the Transaction Fee Charge.

TAB B

This is Exhibit "**B**" referred to in the
Affidavit of **Natasha Rambaran**,
sworn before me on March 9, 2022

A handwritten signature in black ink, appearing to read 'Trevor Courtis', with a stylized, cursive script.

A Commissioner for taking Affidavits (or as may be)
Trevor Courtis LSO #: 67715A

CONFIDENTIAL EXHIBIT "1"
SUBJECT TO REQUESTED SEALING ORDER

CONFIDENTIAL EXHIBIT “1”

SUBSCRIPTION PRICE

The subscription agreements to be entered between CannTrust Equity Inc. (“**CannTrust Equity**”), as issuer, and each of Marshall Fields International B.V (the “**Investor**”) and Andrew Peppin, Daniel Koehn, Greg Guyatt and Jeffrey Zietlow (collectively, the “**Individual Investors**”), as investors (the “**Subscription Agreements**”) contemplate that the Investor and the Individual Investors will subscribe for new common equity of CannTrust Equity (the “**Shares**”) at a price per share of \$0.00882294225268384 for a total Subscription Price of \$11,235,000 on Closing as follows:

		% Ownership	Shares Issued	Cumulative Shares Outstanding
Investor	\$10,000,000	80.1%	1,133,408,756	
Andrew Peppin	\$800,000	6.4%	90,672,700	
Daniel Koehn	\$200,000	1.6%	22,668,175	
Greg Guyatt	\$200,000	1.6%	22,668,175	
Jeffrey Zietlow	\$35,000	0.3%	3,966,931	
	\$11,235,000	90.0%	1,273,384,737	1,414,871,930

Together with the contributions to the Investor DIP, the funds from the Transaction are as follows:

	Subscription Price	% Ownership	Investor DIP Financing	Total
Investor	\$10,000,000	80.1%	\$5,000,000	\$15,000,000
Andrew Peppin	\$800,000	6.4%	\$400,000	\$1,200,000
Daniel Koehn	\$200,000	1.6%	\$100,000	\$300,000
Greg Guyatt	\$200,000	1.6%	-	\$200,000
Jeffrey Zietlow	\$35,000	0.3%	-	\$35,000
	\$11,235,000	90.0%	\$5,500,000	\$16,735,000

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Proceeding commenced at Toronto

AFFIDAVIT OF
NATASHA RAMBARAN

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MTDOCS 44137934

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