

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

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

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

Applicants

**RESPONDING RECORD OF THE APPLICANTS
(RE: LIFTING THE STAY OF PROCEEDINGS)
(RETURNABLE JULY 6, 2023)**

June 28, 2023

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TO: THE SERVICE LIST

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CORP., PINEAPPLE EXPRESS DELIVERY INC., and HIFYRE INC.**

Applicants

**SERVICE LIST
(as at June 26, 2023)**

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Applicants

I N D E X

TAB	DOCUMENT
1.	Affidavit of Stephane Trudel, sworn June 28, 2023
A.	Exhibit "A" - Affidavit of Stephane Trudel, sworn June 5, 2023 (without exhibits)
B.	Exhibit "B" - Exclusive Distribution Agreement, dated January 5, 2023

TAB 1

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**AFFIDAVIT OF STEPHANE TRUDEL
(Sworn June 28, 2023)**

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

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

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

3. Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in my affidavits sworn on June 5, 2023 (the “**Initial Trudel Affidavit**”), a copy of which is attached (without Exhibits) as **Exhibit “A”**. The Initial Trudel Affidavit sets out the background facts in these CCAA Proceedings.

4. This affidavit is sworn in support of the Applicants’ response to the motion brought by Turning Point Brands (Canada) Inc. (“**TPB**”) for an order lifting the Stay of Proceedings under the CCAA to permit TPB to terminate the Exclusive Distribution Agreement (as defined below) and take possession of certain Goods (as defined below).

5. All references to monetary amounts in this affidavit are in Canadian dollars unless otherwise noted.

I. EXCLUSIVE DISTRIBUTION AGREEMENT

6. On January 5, 2023, TPB, as the distributor, and FFI, as the retailer, entered into an Exclusive Distribution Agreement (the “**Exclusive Distribution Agreement**”). Pursuant to the Exclusive Distribution Agreement, among other things:

- (a) TPB was appointed as FFI’s exclusive supplier of cannabis accessories, encompassing all products used in the preparation, storage, and use of cannabis that are provided by TPB, excluding any products containing cannabis as defined in the *Cannabis Act* (Canada) (the “**Goods**”);
- (b) TPB is required to provide FFI and maintain, at all times, a representative quantity of each Good sufficient for and consistent with the needs of customers at each of the cannabis retail stores operated by FFI (the “**FFI Locations**”);
- (c) FFI is entitled to a sales commission equal to twenty-eight percent (28%) of the net revenues collected from the sale of the Goods (the “**Commission**”), exclusive of (i) any rebates, quantity, trade, and cash discounts, as well as other granted or accrued discounts; (ii) applicable goods and sales taxes related to the Goods’ sales; and (iii) shipping, insurance, and other transportation charges associated with delivering the Goods to customers;
- (d) Within fourteen (14) days following the end of each calendar month, FFI agrees to provide TPB with a sales statement. This statement will detail the monthly net

revenue derived from Goods sold at FFI Locations, broken down by Goods and FFI location. It will also include the calculation of the monthly Commission owed to FFI;

- (e) FFI will retain the Commission, while the remaining balance from the sales proceeds will be remitted to TPB each month; and
- (f) FFI is prohibited from directly or indirectly marketing, advertising, promoting, selling, or distributing products from any third-party that are substantially similar to or compete with the Goods at the FFI Locations.

7. A copy of the Exclusive Distribution Agreement is attached as **Exhibit "B"**.

II. PERFORMANCE UNDER THE EXCLUSIVE DISTRIBUTION AGREEMENT

8. FFI paid approximately \$627,006 to TPB for invoices in respect of January, February, and March 2023 under the Exclusive Distribution Agreement.

9. FFI has failed to remit sales proceeds of approximately \$229,171 for April 2023 and \$228,794 for May 2023. Accordingly, the aggregate outstanding balance owing by FFI to TPB is approximately \$457,965 (the "**Pre-Filing Indebtedness**").

10. I understand that TPB is not seeking repayment of the Pre-Filing Indebtedness in the within motion. Further, I also understand that the Initial Order granted June 5, 2023 (the "**Initial Filing Date**") pursuant to the CCAA (as amended and restated on June 15, 2023) prevents the Applicants from repaying the Pre-Filing Indebtedness.

11. FFI has been paying all amounts owing under the Exclusive Distribution Agreement incurred after the Initial Filing Date and intends to and covenants to continue paying TPB for all amounts owing under the Exclusive Distribution Agreement which are incurred after the Initial Filing Date.

III. IMPORTANCE OF EXCLUSIVE DISTRIBUTION AGREEMENT

12. For several reasons which are outlined below, I believe that if the Stay of Proceedings is lifted to permit TPB to terminate the Exclusive Distribution Agreement and take possession of the Goods, the Applicants will suffer extreme prejudice, to the detriment of the Applicants and their stakeholders.

A. Impact on Gross Profit

13. As referenced above, TPB is FFI's exclusive supplier of cannabis accessories pursuant to the Exclusive Distribution Agreement. Accordingly, FFI's revenue from cannabis accessories is derived entirely from its relationship with TPB under the Exclusive Distribution Agreement.

14. Having readily available cannabis accessories for sale at each of the FFI Locations assists with the sale of other cannabis products. For greater clarity, a customer who purchases certain cannabis products requires cannabis accessories (for example, rolling papers) for the consumption of cannabis products. Our data shows that close to 10% of customers' baskets include at least one accessory.

15. Each of the FFI Locations aims to be a 'destination cannabis store' with a variety of products offered to customers. Without having readily available cannabis accessories for sale, I believe many customers will eventually look to purchase cannabis at other retail stores which have cannabis accessories for sale in addition to their cannabis products.

16. As appears from the Cash Flow Statement, the Applicants are already suffering significant liquidity constraints. The Cash Flow Statement was prepared on the assumption that the Exclusive Distribution Agreement would continue throughout the CCAA Proceedings. If the Applicants suffer reduced gross profits as a result of the Exclusive Distribution Agreement being terminated, I believe that this may jeopardize the Applicants' restructuring.

B. TPB Cannot Practically be Replaced

17. As of the date of this affidavit, FFI currently holds approximately \$1.8 million of Goods at estimated cost and \$3.2 million of Goods at retail price.

18. If TPB is permitted to repossess all of the Goods currently being held by FFI, this will trigger a need for FFI to invest a corresponding amount of working capital to maintain having enough cannabis accessories for sale at the FFI Locations.

19. As appears from the Cash Flow Statement, the Applicants do not have sufficient working capital to replace the Goods. As referenced above, maintaining cannabis accessories for sale at each of the FFI Locations not only produces revenue in itself, but also assists with the sale of other cannabis products.

20. Additionally, I do not believe it would be practically possible for FFI to negotiate and enter into another agreement with a supplier of cannabis accessories on similar terms within the expedited timeframe contemplated by the SISF in the CCAA Proceedings. By way of example, the implementation of having TPB be the exclusive supplier of cannabis accessories was a three-month process.

21. As the Applicants do not have sufficient working capital to replace the Goods if they are repossessed, the Applicants may suffer significantly reduced gross profits. In turn, I believe this may jeopardize the Applicants' restructuring.

IV. LIMITED PREJUDICE TO TPB

22. I believe that TPB will suffer limited prejudice if the Stay of Proceedings is not lifted and the Exclusive Distribution Agreement continues.

23. I do not believe it is critical for TPB to repossess the Goods in order to satisfy its other existing clients. As noted above, FFI intends to and covenants to pay TPB for all amounts owing under the Exclusive Distribution Agreement which are incurred after the Initial Filing Date.

24. Accordingly, the only prejudice suffered by TPB is that it will not be paid the Pre-Filing Indebtedness at this point in time. I note that TPB is an unsecured creditor who, like the other unsecured creditors of the Applicants, are all suffering from the same prejudice as a result of the CCAA Proceedings.

V. CONCLUSION

25. For the reasons set out above, I believe that it is in the interests of the Applicants and their stakeholders that this Court deny TPB's motion to lift the Stay of Proceedings to permit TPB to terminate the Exclusive Distribution Agreement.

26. I swear this affidavit in support of the Applicants' response to TPB's motion and for no other or improper purpose.

SWORN remotely via videoconference, by
Stephane Trudel, stated as being located in
the City of Toronto, in the Province of Ontario,
before me at the City of Toronto, in Province
of Ontario, this day of June 28, 2023, in
accordance with O. Reg 431/20,
Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits, etc.
PHILIP YANG



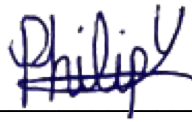
STEPHANE TRUDEL

EXHIBIT "A"

referred to in the Affidavit of

STEPHANE TRUDEL

Sworn June 28, 2023

A handwritten signature in blue ink that reads "Philip Yang". The signature is written in a cursive style with a horizontal line through the middle of the name.

Commissioner for Taking Affidavits
Philip Yang

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

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

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

Applicants

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

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

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

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

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

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

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

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

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

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

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

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

PART I – OVERVIEW¹

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

PART II – THE COMPANIES

A. Corporate Structure

(i) Parent and Holding Company

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

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

(ii) Canadian Operating Entities

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

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

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

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

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

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

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

(iii) US Entities

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

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

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

(iv) Holding Companies

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

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

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

B. The Companies’ Business and Operations

(i) Operations

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

(A) Retail Segment

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(B) Wholesale Segment

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

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

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

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

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

(C) Delivery Segment

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

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

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

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

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

(D) Digital Platform Segment

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

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

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

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

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

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

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

(ii) Cannabis Licenses

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

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

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

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

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

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

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

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

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

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

(iii) Cannabis Suppliers

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

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

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

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

(iv) Other Suppliers

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

(v) Real Property and Leased Locations

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

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

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

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

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

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

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

(vi) Intellectual Property

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

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

86. A comprehensive list of the Applicants’ trademarks is attached as **Exhibit “B”**.

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

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

(vii) Cash Management System

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

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

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

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

(viii) Employees

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

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

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

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

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

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

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

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

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

PART III – THE COMPANIES’ FINANCIAL POSITION

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

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

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

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

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

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

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

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

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

A. Assets

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

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

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

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

B. Liabilities

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

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

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

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

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

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

PART IV – THE COMPANIES' DEBT STRUCTURE

A. Secured Obligations

(i) ACT Loan Agreement

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

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

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

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

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

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

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

(ii) Other Secured Creditors

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

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

B. Unsecured Obligations

(i) Taxes/Duties

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

(iii) Debentures

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

(iv) Employee Liabilities

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

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

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

(v) Trade Payables

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

(vi) Lease Obligations

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

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

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

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

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

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

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

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

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

(vii) Contingent Liabilities

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

PART V – THE COMPANIES' FINANCIAL DIFFICULTIES

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

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

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

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

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

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

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

PART VI – RESPONSE TO FINANCIAL DIFFICULTIES

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

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

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

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

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

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

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

PART VII – NEED FOR CCAA PROTECTION

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

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

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

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

PART VIII – THE PROPOSED INITIAL ORDER & ARIO

A. Initial Order Relief

(i) Stay of Proceedings

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

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

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

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

(ii) Appointment of FTI as Monitor

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

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

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

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

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

(iii) Administration Charge

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

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

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

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

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

(iv) DIP Facility and DIP Lender's Charge

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

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

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

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

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

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

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

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

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

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

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

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

(v) D&O Charge

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

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

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

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

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

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

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

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

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

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

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

(vi) Proposed Ranking of the Court-Ordered Charges

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

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

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

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

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

B. Comeback Motion Relief

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

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

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

180. In my view, incurring the time and costs associated with preparing the Securities Filings will detract from the Applicants' successful restructuring. Further, there is no prejudice to stakeholders given that detailed financial information and other information regarding the Applicants will continue to be made publicly available through the materials filed in these CCAA Proceedings.

(ii) KERP

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

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

(iv) SISP

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

(v) Proposed Ranking of the Court-Ordered Charges

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

First – Administration Charge

Second – DIP Lender's Charge

Third – the KERP Charge

Fourth – D&O Charge

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

IX. CONCLUSION

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

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

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



Commissioner for Taking Affidavits, etc.
PHILIP YANG



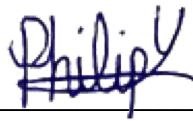
STEPHANE TRUDEL

EXHIBIT "B"

referred to in the Affidavit of

STEPHANE TRUDEL

Sworn June 28, 2023

A handwritten signature in blue ink, appearing to read "Philip Yang", written over a horizontal line.

Commissioner for Taking Affidavits
Philip Yang

Exclusive Distribution Agreement

This Exclusive Distribution Agreement (this "**Agreement**"), dated as of January 5, 2023 (the "**Effective Date**"), is entered into between Turning Point Brands (Canada) Inc., a legal person duly constituted under the Canada Business Corporations Act, having its head office at 3166 Boulevard le Corbusier, Laval (Québec) H7L 4S8 ("**Distributor**"), and Fire & Flower Inc., a legal person duly constituted under the Canada Business Corporations Act, having its head office at 5241 Calgary Trail NW, Suite 400, Edmonton (Alberta) T6H 5G8 ("**Retailer**", and together with Distributor, the "**Parties**", and each, a "**Party**").

WHEREAS, Distributor is in the business of manufacturing and selling the Goods (as defined in Schedule 1);

WHEREAS, Retailer is an adult-use cannabis retailer in the business of marketing and reselling Goods;

WHEREAS, Retailer desires to appoint Distributor as its exclusive supplier of Goods on a consignment basis for sale to customers at the F&F Locations (as defined below), and Distributor desires to accept such appointment, subject to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants, terms, and conditions set out herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

1. Appointment

1.1 Exclusive Appointment. Retailer appoints Distributor as its exclusive supplier of the Goods within all of the Distributor's network, including any current and future retail locations and online platforms owned or operated by Retailer (the "**F&F Locations**") during the Term, and Distributor accepts such appointment. Retailer shall not directly or indirectly market, advertise, promote, sell, or distribute products from any third-party, at the F&F Locations, that are substantially similar or compete with the Goods, subject to Section 1.2 and 1.3.

1.2 Exception. The Parties agree that Distributor will purchase from Retailer all third party cannabis accessories owned by Retailer, that are still inventoried at the Effective Date and are in good re-sale condition, as determined by the Parties, each acting reasonably, at the price Retailer paid for these goods. As of February 28th, 2023, Distributor will pay to Retailer 100% of the price paid by Retailer for these goods inventoried on the Effective Date. At the election of the Distributor, such price may be set-off against the Balance (as defined below) payable to the Distributor. The Parties, acting reasonably, will decide if such goods shall remain and be sold by Retailer at the F&F Locations, or removed from F&F Locations and be sold to other customers of the Distributor. Should these goods remain at the F&F Locations, they will be included in the share of revenues at Section 3.

1.3 Existing Supplier. It is acknowledged that Retailer has entered into a supply agreement with Humble & Fume Inc. relating to the supply of cannabis accessories, which is terminable by Retailer at its convenience on 3 months' notice. Retailer has provided notice of termination in respect of such contract as of the Effective Date.

1.4 No Right to Appoint Sub-Distributors. Retailer shall not, without the prior written consent of Distributor, such consent not to be unreasonably withheld or delayed, appoint any sub-distributor or other person or entity to sell or distribute the Goods.

2. Promotion and Marketing

2.1 Distributor Obligations. Distributor shall:

- (a) provide instructions to Retailer regarding the marketing, advertising and promotion of the Goods at the F&F Locations;
- (b) provide any information and support that may be reasonably requested by Retailer regarding the marketing, advertising, promotion, and sale of Goods;
- (c) provide Retailer and maintain, at all times, a representative quantity of each Good sufficient for and consistent with the needs of customers at the F&F Locations;
- (d) provide instructions regarding pricing of the Goods that will allow the Retailer to be competitive in the marketplace, which pricing is expected to (i) match the consumer selling price raised by a consumer of any other competing dispensary retailer offering the same Goods or products and (ii) remain competitive in comparison to any other major retailer with whom Distributor is doing business;
- (e) in addition to the marketing, advertising and promotion instructions provided by Distributor pursuant to this Agreement, allow Retailer to participate, at its own expense, in any marketing, advertising, promotion, and sales programs or events that Distributor may make generally available to its authorized distributors of Goods, *provided that* Distributor may alter or eliminate any program at any time;
- (f) provide, at its expense, promotional information and material for use by Retailer in accordance with this Agreement, including in-store shelf displays and other promotional materials required to carry out the instructions provided by Distributor pursuant to this Agreement.

2.2 Retailer Obligations. Retailer shall:

- (a) market, advertise, promote, and sell the Goods in the F&F Locations in conformity with Distributor's instructions, including Distributor's sales, marketing, and merchandising policies as they currently exist or as they may hereafter be changed by Distributor, provided that all such instructions, materials and policies comply with applicable laws, and in a manner that reflects favourably at all times on the Goods, brands and the good name, goodwill, and reputation of Distributor and consistent with good business practice, in each case using its best efforts to maximize the sales volume of the Goods;
- (b) make place and provide Distributor with adequate space at the primary point(s) of sale for rolling papers, lighters, 510 batteries and will work with Distributor to agree on planogramming and merchandising solutions that maintain at minimum the space granted areas to display the Goods in all F&F Locations on the Effective Date of the Agreement, and make available the Goods on Distributor's online consumer sales channels;

- (c) feature promotions, from time to time, of the Goods through Retailer's loyalty membership program, with pricing of such Goods applicable to loyalty members to be determined by mutual agreement between the Parties;
- (d) Upon request at a time mutually agreed between the Parties, provide direct access and time to engage with staff in order to have sufficient knowledge of the industry and products competitive with each Good (including specifications, features, and benefits) so as to be able to explain in detail to customers:
 - (i) the differences between the Good and competing products; and
 - (ii) information on standard protocols and features of each Good;
- (e) not make any materially misleading or untrue statements concerning Distributor or the Goods, including any product disparagement or bait-and-switch practices;
- (f) promptly notify Distributor of any complaint or adverse claim about any Good or its use of which Retailer becomes aware;
- (g) submit to Distributor the Monthly Statement (as defined below) in a computer-readable format, maintain books, records, and accounts of all transactions and permit examination thereof by Distributor in accordance with Section 13 and Section 14;
- (h) submit weekly to Distributor, sales and inventory reports relating to the Goods in each F&F Location;
- (i) not resell Goods to any federal, provincial, territorial, or municipal or foreign government or political subdivision or agency thereof, without prior written approval from Distributor;
- (j) allow Distributor's employees or sub-contractors reasonable access to the F&F Locations for verification and audit purposes of the display and sales of the Goods; and ok
- (k) conduct a full, independently verifiable, manual inventory count of all third-party cannabis accessories owned by Retailer to be purchased by Distributor in accordance with Section 1.2 within seven (7) days of the Effective Date.

3. Share of revenues

3.1 Commission. Retailer will be paid a sales commission representing twenty-eight percent (28%) of the net revenues collected by it resulting from the sale of the Goods (the "**Commission**"), exclusive of (a) any rebates, quantity, trade and cash discounts, and other discounts granted or accrued; (b) goods and sales taxes applicable to sales of the Goods; (c) shipping, insurance and other transportation charges incurred in shipping or delivering the Goods to customers. The Commission will be retained by the Retailer, and the balance (the "**Balance**") will be remitted to the Distributor in accordance with Section 3.6. For the first six (6) months of the Term, Distributor will reduce the Commission payable by fifty percent (50%) of the cost of inventory that is considered not to turn in 6 months or less through the

Distributor's locations, as mutually agreed by both Parties as of the Effective Date ("**Non turning stock**"), which total deduction of the Commission shall not exceed in the aggregate an amount of \$400,000 CAD.

3.2 Bonus. During the Term, should the calendar yearly net revenue resulting from the sale of the Goods at the F&F Locations represent five percent (5%) or more of the Retailer's total calendar year net revenues at all F&F Locations, Distributor will pay a bonus to Retailer representing 2.5% of the net revenue resulting from the sale of the Goods, in addition to the Commission.

3.3 Monthly Statement. Within fourteen (14) days of the end of each preceding calendar month, the Retailer shall provide the Distributor with a sales statement detailing the monthly net revenue derived from sales of the Goods sold at the F&F Locations, per Good and per Retailer location, in addition to the calculation of the monthly Commission due to Retailer and the Balance to be remitted to the Distributor (the "**Monthly Statement**").

3.4 Objection by Distributor. Within seven (7) days of receipt of the Monthly Statement, Distributor may object to the Monthly Statement by written notice to the Retailer, which notice (the "**Objection Notice**") shall specify in reasonable detail those items or amounts as to which the Distributor objects (the "**Disputed Amounts**") and the Parties shall be deemed to have agreed upon all other items and amounts contained in such Monthly Statement which are not impacted by the Objection Notice (the "**Undisputed Amounts**"). If no Objection Notice is made within the period and in the manner specified, or if the Distributor confirms in writing that it accepts the Monthly Statement prior to the end of such seven (7) day period, then the Monthly Statement shall be conclusive, final and binding on all the Parties without possibility of amendment or appeal and shall constitute the final Monthly Statement.

3.5 Resolution. If an Objection Notice is delivered in the manner and within the seven (7) day period contemplated above, Distributor may audit Retailer's files, books, records, and other documentation insofar as they relate to its sales, marketing, and inventory of Goods for the period relating to the applicable Monthly Statement and a Manager/Director of each of the Parties shall in good faith attempt to resolve the Disputed Amounts as promptly as practicable. If the Retailer and the Distributor are unable to resolve the Disputed Amounts within fifteen (15) days after receipt of the Objection Notice, then the matter shall be referred to executive management of each of the Parties in good faith attempt to resolve the Disputed Amounts as promptly as practicable. If the Retailer and the Distributor are unable to resolve the Disputed Amounts after referring the matter to executive management of each of the Parties, then the Disputed Amounts shall be submitted for resolution within five (5) days following such fifteen (15) day period to an independent accounting firm to be agreed between the Parties (the "**Independent Firm**"). The Independent Firm, acting as an expert and not as an arbitrator, will limit its review only to the Disputed Amounts. While the Independent Firm is making its determination, the Parties shall fully collaborate and refrain from communicating with the Independent Firm, except jointly, by conference call, joint meeting, or letter with copy to the other Party. The Independent Firm shall make the final determination in reliance upon supporting documentation provided by the Distributor and Retailer. The Parties shall use commercially reasonable efforts to cause the Independent Firm to submit its determination or opinion in a written statement delivered to the Distributor and the Retailer as promptly as practicable, but in no event later than thirty (30) days of the appointment of such Independent Firm, and such determination or opinion, together with those items accepted by the Distributor in respect of the Monthly Statement or otherwise resolved between the Distributor and the Retailer shall be conclusive, final and binding on all

the parties without possibility of amendment or appeal and shall constitute the final Monthly Statement. The Parties will bear their respective fees and expenses in auditing or reviewing the Monthly Statement, but the fees and expenses of the Independent Firm shall be allocated based on the percentage of success of each Party's position regarding the Disputed Amounts.

3.6 Payment Terms. Following determination of the final Monthly Statement, Distributor will issue to Retailer an invoice for the Balance payable to Distributor (excluding the Commission). Retailer shall pay all properly invoiced amounts due to Distributor on the first day of the subsequent month following determination of the final Monthly Statement. Retailer shall make all payments in Canadian dollars by cheque or wire transfer, in accordance with the wire instructions set out in Schedule 1. Retailer shall pay interest on all late payments, calculated daily and compounded monthly at a rate of twenty-four percent (24%) per annum or the highest rate permissible under applicable law.

4. Shipment and Delivery

4.1 Shipment and Delivery Requirements. Unless otherwise expressly agreed to by the Parties, Distributor shall deliver the Goods to the Retailer, using Distributor's or manufacturer's standard methods for packaging and shipping the Goods, at its costs.

4.2 Title and Risk of Loss. Risk of loss passes to Retailer upon delivery of the Goods to Retailer, but title of the Goods remains to Distributor until such Goods are sold by Retailer to customer.

5. Product Warranty, Recall and Unavailable Products

5.1 Warranty. Distributor warrants that, upon delivery of Goods throughout the Term: (a) Distributor shall have good and marketable title to the Goods; (b) the Goods shall be delivered by Distributor free and clear of any claims or encumbrances; (c) the Goods shall comply with all requisite standards, specifications and requirements as stipulated under the *Cannabis Act* (Canada) and all other applicable laws, regulations and ordinances; (d) the Goods shall be merchantable and fit for their intended purpose; and (e) the Goods shall not infringe or misappropriate any third party's intellectual property rights.

5.2 Recall. In the event that a government (or its regulatory agent) advises and/or orders a recall of any Good, or, where Distributor and Retailer agree that a recall of a Good is required, Distributor shall be the prime co-ordinator of such recall undertaking for all activities, including, without limitation, public communications (that are mutually agreed by Retailer and, where applicable, governmental representatives). Distributor is solely responsible for all costs associated with such recall undertaking, including those incurred by Retailer as a result of such recall, if any. Under such recall undertaking, Distributor agrees to take any and all quantities of the recalled Goods in the possession of Retailer and reimburse Retailer for all expenses related to such return and recall within thirty (30) days of receipt of Retailer's invoice in respect of same.

6. Distributor's Trademark Licence Grant Distributor hereby grants to Retailer a non-exclusive, non-transferable, and non-sublicensable licence during the Term solely on or in connection with the promotion, advertising, and resale of the Goods in accordance with the terms and conditions of this Agreement to use all Distributor's trademarks set forth in Schedule 2, whether registered or unregistered, including the listed registrations and applications and any

registrations, which may be granted pursuant to such applications. On expiration or earlier termination of this Agreement or upon Distributor's request, Retailer shall promptly discontinue the display or use of any trademark or change the manner in which it is displayed or used with regard to the Goods. Upon expiration or earlier termination of this Agreement, Retailer's rights under this Section 5 shall cease immediately. Other than the express licences granted by this Section 5, Distributor grants no right or licence to Retailer, by implication, estoppel, or otherwise, to the Goods or any intellectual property rights of Distributor or its affiliates.

7. Term; Termination

7.1 Term. The term of this Agreement commences on the Effective Date and terminates after two (2) years, on January 4, 2025, and shall thereafter renew for additional successive two (2) year terms unless and until either Party provides notice of non-renewal at least six (6) months before the end of the then-current term, or unless and until earlier terminated as provided under this Agreement or applicable law (the "**Term**"). If either Party provides timely notice of its intent not to renew this Agreement, then, unless earlier terminated in accordance with its terms, this Agreement terminates on the expiration of the then-current Term.

7.2 Termination Rights.

- (a) Either Party may terminate this Agreement upon notice to the other Party:
 - (i) except as otherwise specifically provided under this Section 7, if the other Party is in breach of this Agreement and either the breach cannot be cured or, if the breach can be cured, it is not cured within ten (10) days following the other Party's receipt of notice of such breach;
 - (ii) if either party:
 - (A) becomes insolvent or is generally unable to pay, or fails to pay, its debts as they become due;
 - (B) files or has filed against it, a petition for voluntary or involuntary bankruptcy or otherwise becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency law;
 - (C) seeks reorganization, arrangement, adjustment, winding-up, liquidation, dissolution, composition, or other relief with respect to it or its debts;
 - (D) makes or seeks to make a general assignment for the benefit of its creditors; or
 - (E) applies for or has a receiver, trustee, custodian, or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business.

Any termination under this Section 7.2(a) is effective on receipt of notice of termination.

b) Both Parties can terminate the Agreement upon mutual consent, at any time.

7.3 Early Termination Right. Notwithstanding the foregoing or anything to the contrary contained herein, following the first twelve (12) months of the Term, either Party may terminate this Agreement for any reason, upon 6 months' prior written notice to the other Party.

7.4 Effect of Expiration or Termination Upon the expiration or earlier termination of this Agreement:

- (a) Retailer shall cease to represent itself as Distributor's authorized retailer regarding the Goods, and shall otherwise desist from all conduct or representations that might lead the public to believe that Retailer is authorized by Distributor to sell the Goods.
- (b) Retailer shall promptly return or destroy (under Distributor's instructions) all:
 - (i) documents and tangible materials and any copies containing, irrespective of the medium, reflecting, incorporating, or based on the Distributor's Confidential Information; and
 - (ii) products that Distributor provided to Retailer that are not intended for resale.

7.5 Post-Term Purchase and Resale. On the expiration or earlier termination of this Agreement, Retailer will return to Distributor all Goods on hand, subject to any sell-through period mutually agreed to between the Parties at the time of such expiration or termination.

8. Confidential Information

8.1 All non-public, confidential, or proprietary information of a Party including, but not limited to, specifications, samples, products, patterns, designs, plans, drawings, other confidential intellectual property, trade secrets, documents, data, business operations and affairs, customer lists, pricing, discounts, rebates or third-party confidential information disclosed by one Party to the other, whether disclosed orally or disclosed or accessed in written, electronic, or other form or media, and whether or not marked, designated, or otherwise identified as "confidential," in connection with this Agreement is confidential, solely for the use of each Party performing its obligations under this Agreement and may not be disclosed or copied unless authorized by the disclosing Party in writing. Upon a disclosing Party's request, the receiving Party shall promptly return all documents and other materials received from disclosing Party. A Party seeking relief under this Section shall be entitled to injunctive relief for any violation of this Section. This Section shall not apply to information that is:

- (a) in the public domain;
- (b) known to the other Party at the time of disclosure (and not otherwise subject to confidentiality obligations); or
- (c) rightfully obtained by the other Party on a non-confidential basis from a third party.

8.2 For certainty, this Agreement shall constitute confidential information. Neither Party shall publish, disclose or publicly announce any information pertaining to this Agreement without the prior written consent of the other Party.

9. Representations and Warranties. Each Party represents and warrants to the other that:

9.1 It is a corporation duly incorporated and validly existing under the laws of its jurisdiction of incorporation and has all necessary power, authority and capacity to enter into and carry out its obligations under this Agreement. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized by all necessary action on the part of such Party.

9.2 This Agreement constitutes a valid and binding obligation of such Party, enforceable against it in accordance with its terms, subject to limitations with respect to bankruptcy or to the extent that equitable remedies are in the discretion of the court.

9.3 The performance of its obligations under this Agreement do not, and will not, violate or infringe in any material respect any intellectual property right or proprietary right belonging to a third party.

9.4 It is in compliance with and shall comply with all applicable federal, provincial, territorial, and local laws, regulations, and ordinances. Without limiting the generality of the foregoing, each Party has and shall, at all times, at its own expense, obtain and maintain in effect all certifications, credentials, authorizations, permissions, licences, consents, and permits necessary to conduct their respective business and to perform their respective obligations under this Agreement.

10. Indemnification

10.1 Subject to the terms and conditions of this Agreement, Retailer shall indemnify, hold harmless, and defend Distributor and its parent, officers, directors, partners, shareholders, employees, agents, affiliates, successors, and permitted assigns (collectively, "**Distributor's Indemnified Parties**") from and against any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including legal fees, disbursements and charges, fees, and the costs of enforcing any right to indemnification under this Agreement and the cost of pursuing any insurance providers relating to any claim of a third party arising out of, relating to or occurring in connection with:

- (a) Retailer's negligence, wilful misconduct, or breach of this Agreement;
- (b) Retailer's advertising or representations that warrant performance of Goods beyond that provided by Distributor's written warranty or based upon Retailer's business or trade practices, unless such advertising or representations were carried out at the instruction of Distributor in accordance with the terms of this Agreement;
- (c) any failure by Retailer or its personnel to comply with any applicable laws, unless such failure was carried out at the instruction of Distributor in accordance with the terms of this Agreement; or

- (d) allegations that Retailer breached its agreement with a third party because of or in connection with entering into, performing under, or terminating this Agreement.

10.2 Subject to the terms and conditions of this Agreement, Distributor shall indemnify, hold harmless, and defend Retailer and its parent, officers, directors, partners, shareholders, employees, agents, affiliates, successors, and permitted assigns (collectively, "**Retailer's Indemnified Parties**") from and against any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including legal fees, disbursements and charges, fees, and the costs of enforcing any right to indemnification under this Agreement and the cost of pursuing any insurance providers relating to any claim of a third party arising out of, relating to or occurring in connection with:

- (a) Distributor's negligence, wilful misconduct, or breach of this Agreement;
- (b) all product liability claims made by third parties in connection with the Goods (including, without limitation, those for death, loss or claim for bodily injury or damage to real or tangible personal property allegedly arising out of the use of any Goods) except to the extent based on Retailer's handling, alteration or change of the Goods, whether intentional or unintentional, or sale of the Goods contrary to this Agreement;
- (c) any third-party claim arising out of the use of Distributor's intellectual property licensed pursuant to Section 6, provided use of such intellectual property by Retailer is in accordance with the terms of the license granted by this Agreement;
- (d) Distributor's acts or omissions regarding marketing, pricing or commercialization of the Goods; or
- (e) Any failure by Distributor or its personnel to comply with any applicable laws.

11. Limitation of Liability

11.1 IN NO EVENT:

- (a) SHALL EITHER PARTY OR THEIR RESPECTIVE REPRESENTATIVES BE LIABLE UNDER THIS AGREEMENT TO THE OTHER PARTY OR ANY THIRD PARTY FOR CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE, OR AGGRAVATED DAMAGES, LOST PROFITS OR REVENUES, OR DIMINUTION IN VALUE, ARISING OUT OF, OR RELATING TO, AND/OR IN CONNECTION WITH ANY BREACH OF THIS AGREEMENT, REGARDLESS OF:
 - (i) WHETHER THE DAMAGES WERE FORESEEABLE;
 - (ii) WHETHER OR NOT SUCH PARTY WAS ADVISED OF THE POSSIBILITY OF THE DAMAGES; AND

(iii) THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT, OR OTHERWISE) UPON WHICH THE CLAIM IS BASED.

12. Insurance For the Term, Retailer shall, at its own expense, maintain and carry insurance in full force and effect that includes, but is not limited to, commercial general liability (including product liability) with limits no less than \$10,000,000 dollars with financially sound and reputable insurers. Upon Distributor's request, Retailer shall provide Distributor with a certificate of insurance and policy endorsements for all insurance coverage required by this Section, and shall not do anything to invalidate such insurance. The certificate of insurance shall name Distributor as an additional insured.

13. Distributor's Inspection Rights During the Term, Retailer shall, on reasonable request, make available for physical inspection by Distributor at a time mutually agreed between the Parties during regular business hours: (a) any and all Goods in Retailer's inventory; and (b) any F&F Location.

14. Inventory Counts Retailer agrees to conduct and remit to Distributor the results of independently verifiable physical inventory counts every six (6) months.

15. Entire Agreement This Agreement, including and together with any related exhibits, schedules, attachments, and appendices, constitutes the sole and entire agreement of the Parties with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, regarding such subject matter, including but not limited to the Memorandum of Understanding dated October 27th, 2022. In the event of conflict between the terms of this Agreement and the terms of any purchase order or other document submitted by one Party to the other, this Agreement shall control unless the Parties specifically otherwise agree in writing under Section 18.

16. Notices All notices, requests, consents, claims, demands, waivers, and other communications under this Agreement must be in writing and addressed to the other Party at its address set forth below (or to such other address that the receiving Party may designate from time to time in accordance with this Section). Notices sent in accordance with this Section will be deemed effectively given: (a) when received, if delivered by hand, with signed confirmation of receipt; (b) when received, if sent by a nationally recognized overnight courier, signature required; (c) when sent, if by facsimile or email (in each case, with confirmation of transmission) if sent during the addressee's normal business hours, and on the next business day if sent after the addressee's normal business hours; and (d) on the third (3rd) day after the date mailed by certified or registered mail by the Canada Post Corporation, return receipt requested, postage prepaid.

Notice to Retailer: 5241 Calgary Trail NW, Suite 400, Edmonton (Alberta) T6H 5G8

Facsimile: N/A

Email: cbolivar@fireandflower.com

Attention: Chris Bolivar

Notice to Distributor: 3166 Boulevard le Corbusier, Laval (Québec) H7L 4S8

Facsimile: N/A

Email: chris@turningpointbrands.ca

Attention: CHRIS RIDDOCH

17. Severability If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect the enforceability of any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

18. Amendments and Modifications No amendment or modification to this Agreement is effective unless it is in writing and signed by an authorized representative of each Party.

19. Waiver No waiver by any Party of any of the provisions of this Agreement shall be effective unless explicitly set forth in writing and signed by the Party so waiving. Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any rights, remedy, power, or privilege arising from this Agreement shall operate or be construed as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

20. Cumulative Remedies All rights and remedies provided in this Agreement are cumulative and not exclusive, and the exercise by either Party of any right or remedy does not preclude the exercise of any other rights or remedies that may now or subsequently be available at law, in equity, by statute, in any other agreement between the Parties or otherwise.

21. Assignment The Parties shall not assign, transfer, delegate, or subcontract any of their rights or obligations under this Agreement without the prior written consent of the other Party. Any purported assignment, transfer or delegation in violation of this Section shall be null and void. No assignment, transfer or delegation shall relieve the Party of any of its obligations hereunder.

22. Successors and Assigns This Agreement is binding on and inures to the benefit of the Parties to this Agreement and their respective permitted successors and assigns.

23. No Third-Party Beneficiaries Subject to the next paragraph, this Agreement benefits solely the Parties to this Agreement and their respective permitted successors and assigns and nothing in this Agreement, express or implied, confers on any other Person any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement.

The Parties hereby designate their respective Indemnified Parties as third-party beneficiaries of Section 10 with the right to enforce Section 10.

24. Governing Law This Agreement, including all exhibits, schedules, attachments, and appendices attached to this Agreement and thereto are governed by, and construed in accordance with, the laws of the Province of Ontario, and the federal laws of Canada applicable therein.

25. Choice of Forum Each Party irrevocably and unconditionally agrees that it will not commence any action, litigation, or proceeding of any kind whatsoever against the other Party in any way arising from or relating to this Agreement, including all exhibits, schedules, attachments, and appendices attached to this Agreement, and all contemplated transactions, in any forum other than in the courts of the Province of Ontario, and each Party irrevocably and unconditionally submits to the exclusive jurisdiction of such courts in any such action, litigation, or proceeding.

Each Party agrees that a final judgment in any such action, litigation, or proceeding is conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

26. Waiver of Jury Trial Each Party acknowledges and agrees that any controversy that may arise under this Agreement, including exhibits, schedules, attachments, and appendices attached to this Agreement, is likely to involve complicated and difficult issues and, therefore, each such Party irrevocably and unconditionally waives any right it may have to a trial by jury in respect of any legal action arising out of or relating to this Agreement, including any exhibits, schedules, attachments, or appendices attached to this Agreement, or the transactions contemplated hereby.

27. Counterparts This Agreement may be executed in counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same agreement. Notwithstanding anything to the contrary in Section 16, a signed copy of this Agreement delivered by facsimile, email, or other means of electronic transmission is deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

28. Force Majeure No Party shall be liable or responsible to the other Party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement (except for any obligations to make payments to the other Party under this Agreement), when and to the extent the failure or delay is caused by or results from acts beyond the impacted Party's (the "**Impacted Party**") control (which events may include natural disasters, epidemics, pandemics, excluding the 2019 coronavirus disease (COVID-19) pandemic, embargoes, explosions, riots, wars or acts of invasion or terrorism, requirements of law, national or regional emergency, strikes, labour stoppages or slowdowns) (each, a "**Force Majeure Event**"). A Party shall give the other Party prompt written notice of any event or circumstance that is reasonably likely to result in a Force Majeure Event, and the anticipated duration of such Force Majeure Event. An Impacted Party shall use all diligent efforts to end the Force Majeure Event, ensure that the effects of any Force Majeure Event are minimized and resume full performance under this Agreement.

29. No Franchise Agreement The Parties to this Agreement are independent contractors and nothing in this Agreement shall be deemed or construed as creating a joint venture, partnership, agency relationship, franchise, or business opportunity between Distributor and Retailer. Neither Party, by virtue of this Agreement, will have any right, power, or authority to act or create an obligation, express or implied, on behalf of the other Party. Each Party assumes responsibility for the actions of their personnel under this Agreement and will be solely responsible for their supervision, daily direction and control, wage rates, withholding income taxes, disability benefits, or the manner and means through which the work under this Agreement will be accomplished. Except as provided otherwise in this Agreement, Retailer has the sole discretion to determine Retailer's methods of operation, Retailer's accounting practices, the types and amounts of insurance Retailer carries, Retailer's personnel practices, Retailer's advertising and promotion, its customers, and Retailer's service areas and methods. The relationship created hereby between the parties is solely that of distributor and retailer. If any provision of this Agreement is deemed to create a franchise relationship between the parties, then Distributor may immediately terminate this Agreement.

[SIGNATURE PAGE FOLLOWS]

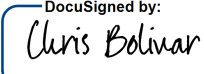
IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the date first written above by their respective officers thereunto duly authorized.

TURNING POINT BRANDS (CANADA) INC.

DocuSigned by:

By _____
46121D33BC9F4B3...
Name: Mikail Fancy
Title: Chief Operating Officer

FIRE & FLOWER INC.

DocuSigned by:

By _____
CBC0878F88D242F...
Name: Chris Bolivar
Title: Executive Vice President, Commercial
& Growth

SCHEDULE 1

Goods and Price List

- Cannabis accessories, meaning all products used in the preparation, storage and use of cannabis that are made available by the Distributor, but excluding any products containing cannabis (as defined in the *Cannabis Act* (Canada)) (the "**Goods**")
- PAYMENT TERMS - Retailer shall make all payments in Canadian dollars by cheque or wire transfer, in accordance with the following wire instructions:
 - SWIFT code: [NUMBER]
 - Account number: [NUMBER]
 - Bank address: [ADDRESS]
 - Attn: [NAME], [TITLE], [OTHER CONTACT INFORMATION].]

SCHEDULE 2

Distributor Trademarks

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

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

Applicants

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

PROCEEDING COMMENCED AT
TORONTO

**AFFIDAVIT OF STEPHANE TRUDEL
(SWORN JUNE 28, 2023)**

STIKEMAN ELLIOTT LLP
Barristers & Solicitors
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199 Bay Street
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Email: pyang@stikeman.com

Lawyers for the Applicants

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

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

Applicants

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

PROCEEDING COMMENCED AT TORONTO

**RESPONDING RECORD
OF THE APPLICANTS
(RE: LIFTING THE STAY OF PROCEEDINGS)
(RETURNABLE JULY 6, 2023)**

STIKEMAN ELLIOTT LLP

Barristers & Solicitors
5300 Commerce Court West
199 Bay Street
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