August 7, 2020

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
ONTARIO
(THE "JURISDICTION")

AND

IN THE MATTER OF
THE PROCESS FOR EXEMPTIVE RELIEF APPLICATIONS IN MULTIPLE JURISDICTIONS

AND

IN THE MATTER OF
ACREAGE HOLDINGS, INC.
(THE "FILER")

DECISION

Background

The principal regulator in the Jurisdiction has received an application (the "**Application**") from the Filer for a decision under the securities legislation of the Jurisdiction of the principal regulator (the "**Legislation**") exempting the Filer, pursuant to section 9.1 of Multilateral Instrument 61-101 *Protection of Minority Security Holders in Special Transactions* ("**MI 61-101**") from the requirements in subsection 8.1(1) of MI 61-101 to obtain minority approval for the Transaction (as defined below) from the holders of every class of affected securities of the Filer voting separately as a class, and requiring instead that minority approval be obtained from all Disinterested Shareholders (as defined below) voting together as a single class (the "**Exemption Sought**").

Under the Process for Exemptive Relief Applications in Multiple Jurisdictions (for a passport application):

(a) the Ontario Securities Commission is the principal regulator for this Application; and

(b) the Filer has provided notice that section 4.7(1) of Multilateral Instrument 11-102 *Passport System* ("**MI 11-102**") is intended to be relied upon in British Columbia, Alberta, Saskatchewan, Manitoba, New Brunswick and Nova Scotia.

Representations

This decision is based on the following facts represented by the Filer:

1. The Filer was incorporated under the *Business Corporations Act* (Ontario) on July 12, 1989 as "Applied Inventions Management Inc.". On August 29, 2014, the Filer's name was changed from Applied Inventions Management Inc. to "Applied Inventions Management Corp." ("**AIM**"). On November 14, 2018, High Street Capital Partners LLC ("**HSCP**") completed a reverse takeover of the Filer, concurrent with which the Filer continued into British Columbia as "Acreage Holdings, Inc." under the *Business Corporations Act* (British Columbia) (the "**BCBCA**") (the "**RTO**").

2. The Filer's head office is located at 11th floor, 366 Madison Avenue, New York, New York 10017, and its registered and records office is 2800 Park Place, 666 Burrard Street, Vancouver, British Columbia, V6C 27Z.

3. The Filer is a reporting issuer in all of the provinces of Canada, excluding Quebec, Prince Edward Island and Newfoundland and Labrador. The Filer is not in default of its obligations under the securities legislation in any of the jurisdictions of Canada in which it is a reporting issuer.

4. The Filer operates in the cannabis industry, with a focus on the cultivating, processing, distributing and retailing of cannabis, cannabis derivative products and branded products in the United States.

5. The authorized share capital of the Filer consists of: (i) an unlimited number of Class A subordinate voting shares, carrying one (1) vote per share (the "**Subordinate Voting Shares**"); (ii) an unlimited number of Class B proportionate voting shares, carrying forty (40) votes per share (the "**Proportionate Voting Shares**"); and (iii) an unlimited number of Class C multiple voting shares, carrying three thousand (3,000) votes per share (the "**Multiple Voting Shares**"). The Multiple Voting Shares are all held by Kevin Murphy, the Filer's Founder and director.

6. As at June 29, 2020, the outstanding share capital of the Filer (the "**Filer Shares**") consisted of: (i) 76,980,347 Subordinate Voting Shares; (ii) 556,490.3151 Proportionate Voting Shares; and (iii) 168,000 Multiple Voting Shares.

7. As at June 29, 2020, the issued and outstanding Subordinate Voting Shares, Proportionate Voting Shares and Multiple Voting Shares represented approximately 12.8%, 3.7% and 83.5%, respectively, of the aggregate voting rights attached to the Filer Shares.

8. Following the RTO, the Filer was a "Foreign Private Issuer" as defined in Rule 405 under the United States Securities Act of 1933 and Rule 3b-4 under the United States Securities Exchange Act of 1934.

9. If more than 50% of the outstanding voting securities of an issuer (as determined under Rule 405 of the United States Securities Act of 1933) are directly or indirectly held of record by residents of the United States (the "**Threshold**"), such issuer will not meet the definition of a Foreign Private Issuer, which may have adverse consequences with respect to such issuer's ability to raise capital in private placements or Canadian prospectus offerings and result in additional U.S. securities law compliance requirements.

10. In December 2016, the United States Securities and Exchange Commission issued a Compliance and Disclosure Interpretation to clarify that issuers with multiple classes of voting stock carrying different voting rights may, for the purposes of calculating compliance with the Threshold, examine either (i) the combined voting power of its share classes, or (ii) the number of voting securities, in each case held of record by U.S. residents. Based on this interpretation, each issued and outstanding Proportionate Voting Share and each issued and outstanding Multiple Voting Share is counted as one voting security and each issued and outstanding Subordinate Voting Shares is counted as one voting security for the purposes of determining the Threshold.

11. As such, the Proportionate Voting Shares were created for the sole purpose of ensuring that the Filer maintained its Foreign Private Issuer status under United States securities laws. The Filer's share structure was approved by AIM shareholders and HSCP unit holders in conjunction with the RTO to preserve the Filer's Foreign Private Issuer status.

12. Notwithstanding the foregoing, the Filer ceased to be a Foreign Private Issuer under United States securities laws effective as of January 1, 2020.

13. The holders of the Subordinate Voting Shares, Proportionate Voting Shares and Multiple Voting Shares have the same rights and obligations, and no holder of Filer Shares is entitled to any privilege, priority or preference in relation to any other such holder, subject to the following:

    (a) The Subordinate Voting Shares are listed on the Canadian Securities Exchange (the "**CSE**") under the symbol "ACRG.U", are quoted on the OTCQX® Best Market by OTC Markets Group (the "**OTCQX**") under the symbol "ACRGF" and are traded on the Open Market of the Frankfurt Stock Exchange (the "**FRA**") under the symbol "0VZ". The Proportionate Voting Shares and the Multiple Voting Shares are not listed or posted for trading on any stock exchange.

    (b) Each Proportionate Voting Share is convertible into forty (40) Subordinate Voting Shares. Each Multiple Voting Share is convertible into one (1) Subordinate Voting Share.

    (c) In the event of the liquidation, dissolution or winding-up of the Filer, whether voluntary or involuntary, or in the event of any other distribution of assets of the Filer among its shareholders for the purpose of winding up its affairs, the holders of Proportionate Voting Shares are entitled to participate pari passu with the holders of Subordinate Voting Shares and Multiple Voting Shares in an amount equal to the amount of such distribution per Subordinate Voting Share and Multiple Voting Share, multiplied by forty (40).

    (d) No dividend may be declared on the Subordinate Voting Shares unless the Filer simultaneously declares dividends on the Proportionate Voting Shares in an amount equal to the dividend declared on the Subordinate Voting Shares, multiplied by forty (40), or on the Multiple Voting Shares in the amount of the dividend declared on the Subordinate Voting Shares.

    (e) No Multiple Voting Shares are permitted to be transferred by the holder thereof without the prior written consent of the Filer's board of directors (the "**Board**").

14. By their terms, the Proportionate Voting Shares and Subordinate Voting Shares were intended to be identical, but for the rights of conversion outlined in Paragraph 13. No holder of Proportionate Voting Shares has any expectation to the contrary.

15. Canopy Growth Corporation ("**Canopy Growth**") is a corporation governed by the *Canada Business Corporations Act*.

16. Canopy Growth is a reporting issuer or the equivalent thereof in each of the provinces and territories of Canada, excluding Québec, and its common shares are listed on the Toronto Stock Exchange under the symbol "WEED", and on the New York Stock Exchange under the symbol "CGC".

17. The head office of Canopy Growth is located at 1 Hershey Drive, Smiths Falls, Ontario, Canada, K7A 0A8.

18. On April 18, 2019, the Filer entered into an arrangement agreement (the "**Arrangement Agreement**") with Canopy Growth pursuant to which the Filer agreed to complete an arrangement (the "**Existing Arrangement**") under the BCBCA.

19. Following approval by Canopy Growth and Filer shareholders on June 19, 2019, the Existing Arrangement was implemented on June 27, 2019 by way of a court-approved plan of arrangement (the "**Existing Plan of Arrangement**") which resulted in, among other things, the articles of the Filer (the "**Filer Articles**") being amended to provide that, upon the occurrence or waiver of certain conditions, Canopy Growth would acquire all of the issued and outstanding Filer Shares in exchange for the payment of 0.5818 of a common share in the capital of Canopy Growth (each whole share, a "**Canopy Share**") (with the payment to holders of Proportionate Voting Shares being adjusted as though each Proportionate Voting Share was converted into forty (40) Subordinate Voting Shares in accordance with its terms) (the "**Existing Canopy Growth Call Option**").

20. On June 24, 2020, the Filer and Canopy Growth entered into a proposal agreement (the "**Proposal Agreement**"), which sets out, among other things, the terms and conditions upon which the Filer and Canopy Growth propose to amend the Arrangement Agreement (the "**Amending Agreement**"), amend and restate the Existing Plan of Arrangement (the "**Amended Plan of Arrangement**") and implement the Amended Plan of Arrangement (the "**Amended Arrangement**") pursuant to the BCBCA (the "**Transaction**").

21. Pursuant to the Amended Plan of Arrangement, at 12:01 a.m. (Vancouver time) on the date that the Amended Plan of Arrangement becomes effective (the "**Amendment Time**"), the Filer will, among other things:

    (a) complete a capital reorganization (the "**Capital Reorganization**") whereby: (i) each Subordinate Voting Share will be exchanged for 0.7 of a Filer Class E subordinate voting share (each whole share, a "**Fixed Share**") and 0.3 of a Filer Class D subordinate voting share (each whole share, a "**Floating Share**"); (ii) each Proportionate Voting Share will be exchanged for 28 Fixed Shares and 12 Floating Shares; and (iii) each Multiple Voting Share will be exchanged for 0.7 of a new multiple voting share (each whole share, a "**Fixed Multiple Share**") and 0.3 of a Floating Share. Each Fixed Multiple Voting Share will be entitled to 4,300 votes at all meetings of the Filer's shareholders with each Fixed Share and each Floating Share being entitled to one (1) vote per share at such meetings; and

    (b) amend the Filer Articles to: (i) create the Fixed Shares, the Floating Shares and the Fixed Multiple Shares and effect the Capital Reorganization; (ii) provide that, upon the occurrence or waiver of certain conditions, Canopy Growth will acquire all of the issued and outstanding Fixed Shares in exchange for the payment of 0.3048 of a Canopy Share for each Fixed Share then outstanding (the "**Canopy Growth Fixed Call Option**"); and (iii) provide Canopy Growth with the right to concurrently acquire all of the issued and outstanding Floating Shares at a price to be determined based upon the then fair market value of the Floating Shares relative to the Canopy Shares (the "**Canopy Growth Floating Call Option**", and together with the Canopy Growth Fixed Call Option, the "**Canopy Growth Call Option**").

22. The effectiveness of the Transaction is subject to the conditions set out in the Proposal Agreement, including, among others, approval by: (i) the Supreme Court of British Columbia (the "**Court**") at a hearing upon the procedural and substantive fairness of the terms and conditions of the Amended Arrangement; and (ii) the Filer's shareholders as required by applicable corporate and securities laws.

23. Under the BCBCA, there is no entitlement to separate class votes with respect to the approval of an arrangement. The Filer Articles provide holders of each class of Filer Shares the right to vote

by separate special resolution to alter or amend the Filer Articles if same would prejudice or interfere with any rights or special rights attached to the class of Filer Shares, or affect the rights of the holders of such class of Filer Shares on a per share basis as provided in the Filer Articles. The Filer has determined that the alteration of the Filer Articles in accordance with the Amended Arrangement would not prejudice or interfere with any rights or special rights attached to the Subordinate Voting Shares or the Proportionate Voting Shares, or affect the rights of the holders of such shares on a per share basis as provided in the Articles.

24. The Transaction is a "business combination" as such term is defined in MI 61-101 and is therefore subject to the applicable requirements of MI 61-101, on the basis that it is an arrangement of the Filer as a consequence of which the interest of a holder of an equity security of the Filer may be terminated without the holder's consent and in respect of which a related party of the Filer is entitled to receive, directly or indirectly, as a consequence of the Transaction, a collateral benefit (as such term is defined in MI 61-101). Such requirements include, among other things, obtaining approval for the Transaction by a majority of votes cast by the holders of each class of Filer Shares, excluding the votes attached to Filer Shares beneficially owned, or over which control or direction is exercised, by any party specified in subsection 8.1(2) of MI 61-101 (the "**Disinterested Shareholders**"), at a shareholder meeting held by the Filer. The Disinterested Shareholders include a majority of the holders of Subordinate Voting Shares and Proportionate Voting Shares. Insiders of the Filer who may be considered interested parties, as such term is defined in MI 61-101, hold, as of June 29, 2020, 1,094,663 (1.4%) of the Subordinate Voting Shares and 118,075 (21.2%) of the Proportionate Voting Shares. The Multiple Voting Shares will be excluded from the vote of the Disinterested Shareholders, as the holder of all outstanding Multiple Voting Shares is an interested party in accordance with MI 61-101.

25. MI 61-101 was adopted to ensure the fair treatment of all security holders and the perception of such in the context of insider bids, issuer bids, business combinations and related party transactions.

26. The approval of the Transaction will be subject to a number of mechanisms to ensure that all holders of Filer Shares are treated fairly and that the collective interests of the holders of Filer Shares are protected, including the following:

    (a) the creation of a special committee composed of independent directors (the "**Special Committee**") whose mandate is, among other things, to review the terms and conditions of the Transaction. In order to properly fulfill its mandate, the Special Committee retained the services of independent legal and financial advisors;

    (b) the Filer will prepare and deliver to its shareholders an information circular (the "**Information Circular**") in accordance with applicable securities law requirements that will provide holders of Filer Shares with sufficient information to enable them to make an informed decision in respect of the Transaction;

    (c) the Special Committee has obtained a fairness opinion from Eight Capital stating that, as of the date of the opinion and subject to the assumptions, limitations, and qualifications on which such opinion was based, the consideration to be received by holders of Filer Shares pursuant to the Transaction is fair, from a financial point of view, to the holders of Filer Shares (the "**Fairness Opinion**");

    (d) the approval of the Transaction by the majority of votes cast by the Disinterested Shareholders voting together as a single class (each Subordinate Voting Share carrying one (1) vote and each Proportionate Voting Share carrying forty (40) votes);

(e) approval of the Supreme Court of British Columbia of the Amended Arrangement; and

(f) a right of dissent to the benefit of holders of Filer Shares, including Disinterested Shareholders

(the measures described in paragraphs 26(a) through 26(f), together, the "**Safeguard Measures**").

27. Pursuant to the Existing Plan of Arrangement, Canopy Growth made an aggregate cash payment of US$300,000,000 to all holders of Filer Shares and holders of certain securities exchangeable for Filer Shares as consideration for the option to acquire all of the issued and outstanding Filer Shares pursuant to the Existing Arrangement (the "**Original Option Premium**").

28. The Amended Plan of Arrangement provides for the additional aggregate cash payment of US$37,500,024 (the "**Amendment Option Payment**") to the holders of Filer Shares and holders of certain securities exchangeable for Filer Shares.

29. As a result of the Amended Arrangement, the receipt by holders of Filer Shares of their pro rata share of the Original Option Premium and Amendment Option Premium may result in differential tax treatment depending on the jurisdiction of residence of the holder. Certain Canadian and United States federal income tax considerations: (a) are more particularly disclosed in the Filer's preliminary proxy statement filed by the Filer on July 21, 2020 (the "**Preliminary Proxy Statement**"), and (b) will be disclosed in the final proxy statement to be filed by the Filer, with the U.S. Securities and Exchange Commission.

30. The holders of Subordinate Voting Shares comprise: (i) those Filer shareholders who held either Subordinate Voting Shares or Proportionate Voting Shares at the effective time of the Existing Arrangement; and (ii) holders of Subordinate Voting Shares acquired subsequent to the effective time of the Existing Arrangement. Certain holders of Subordinate Voting Shares may, therefore, not have received the Original Option Premium.

31. The holders of Proportionate Voting Shares comprise those holders of Proportionate Voting Shares who held such shares at the effective time of the Existing Arrangement and, accordingly, received their pro rata share of the Original Option Premium.

32. To the extent that there are adverse U.S. income tax consequences arising from receipt by U.S. Holders (as such term is defined in the Preliminary Proxy Statement) of the Original Option Premium or the Amendment Option Payment resulting from the Amended Arrangement, all holders of Proportionate Voting Shares will be affected whereas only certain holders of Subordinate Voting Shares will be affected. As such, the classes of shares may be differentially affected for U.S. tax purposes.

33. The differential tax treatment is not related to any terms of the Subordinate Voting Shares or Proportionate Voting Shares but, rather the residency of the holder of such Filer Shares and the income tax regime applicable to such holder.

34. Holders of the Subordinate Voting Shares and Proportionate Voting Shares will not be treated differentially pursuant to the Amended Arrangement, other than potential differential tax consequences.

35. Separate class votes by the holders of Subordinate Voting Shares and Proportionate Voting Shares would have the effect of granting disproportionate importance to one class of Filer Shares over

another. Despite the fact that Disinterested Shareholders holding Proportionate Voting Shares would represent, as of June 29, 2020, 18.8% of the total vote of Disinterested Shareholders on an aggregate basis, holders of Proportionate Voting Shares representing 9.4% of the total vote of Disinterested Shareholders could be afforded a veto right in respect of the Transaction that could be exercised against all other Disinterested Shareholders. Such an outcome would not be in accordance with the reasonable expectations of the holders of Filer Shares.

36. The Board and the Special Committee are of the view that the Safeguard Measures are the optimal mechanisms to ensure that the interests of each holder of Filer Shares, along with the public interest, will be well protected.

Decision

The principal regulator is satisfied that the decision meets the test set out in the Legislation for the principal regulator to make the decision.

The decision of the principal regulator under the Legislation is that the Exemption Sought is granted provided that the following mechanisms are implemented and remain in place:

1. a special meeting of the Filer's shareholders is held in order for the Disinterested Shareholders of the Filer to consider and, if deemed advisable, approve the Transaction, such approval to be obtained with the Disinterested Shareholders of the Filer voting together as a single class of the Filer;

2. the Information Circular is prepared and delivered by the Filer to its shareholders in accordance with applicable securities law requirements; and

3. the Fairness Opinion is included in its entirety in the Information Circular.

DATED at Toronto this 7th day of August, 2020.

"Jason Koskela"
Jason Koskela
Manager, Office of Mergers & Acquisitions
Ontario Securities Commission