

**MEMBERSHIP INTEREST PURCHASE AGREEMENT**

**Among**

**JIM KUNEVICIUS and EDLIN KIM, the Members of**

**CP LOGISTICS, LLC.**

**and**

**SUNNIVA HOLDINGS CORP.**

**November 17, 2016**

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## MEMBERSHIP INTEREST PURCHASE AGREEMENT

THIS AGREEMENT made as of the 17<sup>th</sup> day of November, 2016,

AMONG:

**JIM KUNEVICIUS**, an individual with the address set forth on the signature page hereto

(“**Kunevicius**”)

AND:

**EDLIN KIM**, an individual with the address set forth on the signature page hereto

(“**Kim**” and, together with Kunevicius, the “**Vendors**”)

AND:

**SUNNIVA HOLDINGS CORPORATION**, a corporation incorporated under the laws of the Province of British Columbia (hereinafter referred to as the “**Purchaser**”)

**WHEREAS** the Vendors wish to sell to the Purchaser, and the Purchaser wishes to purchase from the Vendors, all of the outstanding membership interests of CP Logistics, LLC, on the terms hereinafter set forth.

**NOW THEREFORE** in consideration of the respective covenants, agreements, representations, warranties and indemnities herein contained and for other good and valuable consideration (the receipt and sufficiency of which are acknowledged by each Party), the Parties covenant and agree as follows:

### **ARTICLE 1 INTERPRETATION**

#### **1.1 Defined Terms.**

For the purpose of this Agreement and in the Schedules attached hereto, unless the context otherwise requires, the following terms shall have the respective meanings set out below and grammatical variations of such terms shall have corresponding meanings:

“**Agreement**” means this document, together with the Schedules attached hereto and made a part hereof, all as amended, supplemented or modified from time to time in accordance with the provisions hereof;

“**Applicable Law**” means, in relation to any Person, transaction or event, all applicable provisions of laws, statutes, rules, regulations, official directives and orders of and the terms of all judgments, orders and decrees issued by any Governmental Body by which such Person is bound or having application to the transaction or event in question;

“**Business**” means the business of CPL as currently conducted;

“**Business Day**” means any day, other than a Saturday, Sunday or statutory holiday in either the Province of British Columbia or the State of California, as reported from time to time by the Franchise Tax Board of the State of California;

“**Claim**” has the meaning set forth in Section 9.4(a);

“**Closing**” means closing of the purchase and sale of the Purchased Interests contemplated hereby;

“**Closing Transaction Expenses**” has the meaning set forth in Section 2.4(c);

“**Closing Date**” means December 15, 2016 or such other date as may be agreed to by the Parties;

“**Closing Time**” means effective 12:01 a.m. (Pacific Time) on the Closing Date or such other time on the Closing Date as may be agreed to by the Parties;

“**Contract**” means any agreement, indenture, contract, lease, deed of trust, license, option, instrument or other commitment or undertaking, whether written or oral;

“**CPL**” means CP Logistics, LLC, a limited liability company incorporated under the laws of North Carolina;

“**CPL Transaction Expenses**” means the fees and expenses payable by or on behalf of the Vendors and/or CPL to their investment bankers, attorneys, accountants and other advisors or consultants payable in connection with this Agreement or the sale of Purchased Interests

“**Cultivation License**” means a license issued by the City of Cathedral City, California pursuant to the Cathedral City Municipal Code Chapter 5.88 and a conditional use permit issued pursuant to Cathedral City Municipal Code Chapter 9.108 to a designated, specific cultivation site, as that term is defined in Cathedral City Municipal Code § 9.108.030(F), the intent of which is to allow the permitted planting, growing, harvesting, drying, curing, grading, or trimming, or any combination of these activities, of medical cannabis.

“**Deposit**” has the meaning set forth in Section 2.3;

“**Direct Claim**” has the meaning set forth in Section 9.4(a);

“**Dispensary License**” means a license issued by the City of Cathedral City, California pursuant to the Cathedral City Municipal Code Chapter 5.88 and a conditional use permit issued pursuant to Cathedral City Municipal Code Chapter 9.108 to a designated, specific dispensary, as that term is defined in Cathedral City Municipal Code § 9.108.030(G), the intent of which is to allow the permitted offering, either individually or in any combination, the retail sale of medical cannabis, medical cannabis products, or devices for the use of medical cannabis or medical cannabis products.

“**Employment Legislation**” means any and all laws in the State of California relating to employment, including employment standards, workers' compensation, employment insurance, pension, occupational health and safety, employment equity and any similar laws;

“**Encumbrance**” means any encumbrance, lien, charge, hypothecation, pledge, mortgage, title retention agreement, security interest of any nature, adverse claim, exception, reservation, easement, right of occupation, right of way, restrictive covenant, any matter capable of registration against title, option, right of pre-emption, privilege or any Contract to create any of the foregoing;

“**Financial Statements**” means the unaudited consolidated financial statements of CPL for the ten months ended October 31, 2016 prepared in accordance with GAAP (provided that year end adjustments and footnotes required by GAAP are not included therein), a copy of which has been provided to the Purchaser by the Vendors;

“**Fundamental Representations and Warranties**” means the representations and warranties of the Vendors set forth in Sections 5.1, 5.2, 5.3, 5.4, 5.7, 5.8, 5.10 and 5.26 and the representations and warranties of the Purchaser set forth in Section 6.1, 6.2, 6.3 and 6.5;

“**GAAP**” means generally accepted accounting principles in the United States of America;

“**Governmental Body**” means any United States federal, state, municipal, local or other governmental or quasi-governmental body or agency (whether administrative, legislative, executive or otherwise), which exercises or is entitled to exercise any administrative, executive, judicial, legislative, regulatory or taxing authority or power of any nature having jurisdiction over CPL;

“**Indemnified Party**” has the meaning set forth in Section 9.4(a);

“**Indemnifying Party**” has the meaning set forth in Section 9.4(a);

“**Intellectual Property**” means all material trademarks, trade names, business names, patents, inventions, patent rights, patent applications (including any reissues, divisions, continuations, continuations in part and extensions of any patents or patent applications) copyrights, service marks, brand names, industrial designs, technical processes, designs, engineering specifications, trade secrets and all other material industrial or intellectual property owned or licensed by CPL and used in carrying on the Business, and all applications therefor;

“**Interim Period**” means the period between the date of this Agreement and the Closing Date;

“**Knowledge**” means, in respect of any Party, the current actual knowledge of such Party, in each case after review by such Person of his own files and after due inquiry of such Person’s direct reports, and, the knowledge which they would have had if they had conducted a diligent inquiry into the relevant subject matter;

“**Legal Requirements**” has the meaning set forth in Section 5.14;

“**Licenses**” has the meaning set out in Section 5.14;

“**Losses**” means all claims, demands, proceedings, fines, losses, damages, liabilities, deficiencies, costs and expenses (including all reasonable legal, investigation and other professional fees and disbursements, interest, penalties, judgments and amounts paid in accordance with any applicable requirements of the Agreement as settlements, satisfactions or other compromises) arising directly or indirectly as a consequence of such matter after taking into account any net tax benefit for the Party suffering the Loss and in the case of the Purchaser, including CPL;

“**Manufacturing License**” means a license issued by the City of Cathedral City, California pursuant to the Cathedral City Municipal Code Chapter 5.88 and a conditional use permit issued pursuant to Cathedral City Municipal Code Chapter 9.108 to a designated, specific manufacturing site, as that term is defined in Cathedral City Municipal Code § 9.108.030(S), the intent of which is to allow the permitted production, preparation, propagation, or compounding of manufactured medical cannabis or medical cannabis products,

directly or indirectly, by extraction methods, independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis.

**“Material Adverse Change”** means any change in the business, operations, results of operations, assets, financial condition, licenses, permits, rights, liabilities, prospects or privileges, whether contractual or otherwise, of a Party which is materially adverse to the business of that Party;

**“Material Adverse Effect”** means, with respect to CPL, a Material Adverse Change in, or effect on, the Business, financial condition or results of operations of the Business; excepting therefrom (1) any adverse change or effect attributable to the announcement, pendency or consummation of the transactions contemplated by this Agreement (including any cancellations of or delays in customer orders, any reduction in sales, any disruption in supplier, distributor, partner or similar relationships or any loss of employees), (2) the effects of changes that are generally applicable to the industry in which the Business operates, to the global economy generally, or to the economies in any locations in which the Business operates, (3) any changes to any Applicable Law or GAAP; provided that such changes do not materially disproportionately affect CPL, as compared to other companies participating in the same industry as CPL, (4) the result of any election or ballot measure; provided that such changes do not materially disproportionately affect CPL, as compared to other companies participating in the same industry as CPL (5) any failure to meet internal or published projections, forecasts or revenue or earnings predictions for any period (provided that the underlying causes of such failures shall not be excluded), (6) actions or omissions of CPL taken with the consent, authorization, approval, involvement or knowledge of the Purchaser, or (7) any breach of this Agreement by the Purchaser;

**“Material Contract”** means, in relation to any Person, any material agreement, undertaking or other commitment to which that Person is a party or by which that Person is bound (which does not include, for the avoidance of doubt, any “Licenses”), including:

- (a) any material employment or consulting agreement, contract or commitment with an employee or individual consultant or salesperson, or consulting or sales agreement, contract, or commitment with a firm or other organization to provide employment related services to such Person;
- (b) any material agreement or plan, including any stock option plan, stock appreciation rights plan or stock purchase plan, any of the benefits of which will be increased, or the vesting of benefits of which will be accelerated, by the occurrence of any of the transactions contemplated by this Agreement or the value of any of the benefits of which will be calculated on the basis of any of the transactions contemplated by this Agreement;
- (c) any material fidelity or surety bond or completion bond or any indemnity or assumption agreement of such Person in respect of the obligations of a third Person;
- (d) any material lease or license of personal property and any lease or license for office premises or other real property;
- (e) any agreement, contract or commitment relating to capital expenditures and involving future payments in excess of \$50,000;
- (f) any material confidentiality, non-competition, area of exclusion or non-solicitation agreement;
- (g) any material agreement, contract or commitment relating to the disposition or acquisition of assets or any interest in any business enterprise outside the Ordinary Course of such Person’s business;

- (h) any material agreements with Affiliates of such Person or any of its other Representatives which such Person will be bound by following the Closing Date;
- (i) any material mortgage, indenture, guarantee, loan or credit agreement, security agreement or other agreement or instrument relating to the borrowing of money or extension of credit;
- (j) any material dealer, distribution, joint marketing, license or development agreement;
- (k) any material sales representative, original equipment manufacturer, value added, re-marketer, reseller, or other agreement for use or distribution of such Person's products, technology or services; or
- (l) any other agreement, contract or commitment that (i) involves (A) \$50,000 or more and is not cancellable without penalty within 30 days, (B) material minimum purchase commitments by such Person, or (C) material ongoing service or support obligations and that are not cancellable without penalty or refund within 30 days, or (ii) imposes any material obligation on such Person as a result of the completion of the transactions contemplated herein;

**"Member Loans"** means any indebtedness owing by CPL to either of the Vendors or any other entity for the benefit of either of the Vendors;

**"Ordinary Course"** means, with respect to an action taken by a Person, that the action is generally consistent with the past practices of the Person and is taken in the normal day-to-day operations of the Person;

**"Parties"** means the parties to this Agreement, each of whom is a **"Party"**;

**"Permitted Liens"** means (i) Encumbrances for Taxes, assessments and governmental charges or levies not yet due and payable or that are being contested in good faith and by appropriate proceedings; (ii) mechanics', carriers', workmen's, repairmen's, materialmen's or other Encumbrances or security interests that secure a liquidated amount that are being contested in good faith and by appropriate proceedings; (iii) leases, subleases and licenses (other than capital leases and leases underlying sale and leaseback transactions); (iv) Encumbrances imposed by Applicable Law; (v) required pledges or deposits to secure obligations under Employment Legislation or to secure public or statutory obligations; (vi) recorded easements, covenants and rights of way and other similar restrictions of record, and zoning, building and other similar restrictions, in each case that do not have a Material Adverse Effect; and (viii) Encumbrances unrelated to any Third Party Debt the existence of which is specifically disclosed in the Financial Statements or the notes thereto.

**"Person"** or **"Persons"** means an individual, a corporation, a limited liability company, an unlimited liability company, a partnership, an association, a trust or other entity or organization, including any Governmental Body;

**"Pre-Closing Contract Payments"** has the meaning set out in Section 8.5;

**"Promissory Notes"** means the secured convertible promissory notes issued by Sunniva (and unconditionally guaranteed by Purchaser, if Sunniva assigns its rights to acquire the Purchased Interests to a wholly-owned subsidiary pursuant to Section 10.5), in the aggregate principal amount of US\$7.0 million payable to the order of the Vendors (pro rata in accordance with the Vendors' ownership interests in CPL), which promissory note (i) shall mature and be due and payable in full, to the extent not previously converted



in accordance with the terms thereof on December 31, 2017, (ii) and shall convert into common shares of Sunniva (the “**Sunniva Shares**”) on the terms set forth therein, in the form attached hereto as Exhibit A;

“**Purchase Price**” has the meaning set out in Section 2.2;

“**Purchased Interests**” means one hundred percent (100%) of the issued and outstanding membership interests of CPL;

“**Purchaser**” means Sunniva or a wholly-owned subsidiary of Sunniva Holdings Corporation in the event that Sunniva Holdings Corporation assigns its right to acquire the Purchased Interests to such subsidiary under Section 10.6;

“**Representatives**” means, with respect to any Party, its affiliates and, if applicable, its and their respective directors, officers, employees, agents and other representatives and advisors;

“**Restated Operating Agreement**” means that certain Second Amended and Restated Operating Agreement of CPL, dated as of the date hereof, by and among CPL and the several members and managers party thereto;

“**Sunniva**” means Sunniva Holdings Corporation, a corporation existing under the laws of the Province of British Columbia;

“**Sunniva Shares**” has the meaning set forth in the definition of “Promissory Notes” above;

“**Taxes**” means any domestic or foreign federal, state, provincial, territorial, or local income, goods and services, value added, corporation, land transfer, license, payroll, excise, sales, use, capital, withholding, franchise, property, payroll or other tax of any kind whatsoever, including any interest or penalty on any of the foregoing, whether disputed or not;

“**Tax Provision Amounts**” has the meaning set forth in Section 5.18;

“**Tax Returns**” means all returns, reports, declarations, filings, forms, or statements (whether in tangible, electronic or other form) relating to Taxes, including any amendments, schedules, attachments, supplements, appendices and exhibits thereto;

“**Third Party**” has the meaning set forth in Section 9.6(c);

“**Third Party Claim**” has the meaning set forth in Section 9.4(a);

“**Third Party Debt**” means, with respect to CPL at a time, all amounts owing by CPL to any third party (other than Member Loans) other than trade payable in the ordinary course of CPL’s business and includes all CPL Transaction Expenses;

“**Vendors**” means, collectively, Kunevicius and Kim.

## 1.2 Currency.

Unless otherwise indicated, all dollar amounts referred to in this Agreement are expressed in United States dollars.

## 1.3 Sections and Headings.

The division of this Agreement into Sections and the insertion of headings are for convenience of reference only and shall not affect the interpretation of this Agreement. Unless otherwise indicated, any reference in this Agreement to a Section, subsection, clause or a Schedule refers to the specified Section, subsection or clause of or Schedule to this Agreement.

**1.4 Number, Gender and Persons.**

In this Agreement, words importing the singular number also shall include the plural and vice versa, words importing gender shall include all genders and words importing persons shall include Persons.

**1.5 Time of Essence.**

Time is of the essence of this Agreement.

**1.6 Severability.**

If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, such determination shall not impair or affect the validity, legality or enforceability of the remaining provisions hereof, and each provision is hereby declared to be separate, severable and distinct.

**1.7 Amendment and Waivers.**

No amendment or waiver of any provision of this Agreement shall be binding on any Party unless consented to in writing by such Party. No waiver of any provision of this Agreement shall constitute a waiver of any other provision, nor shall any waiver constitute a continuing waiver unless otherwise expressly provided.

**1.8 Schedules.**

The Schedules attached hereto are incorporated herein by this reference and form part of this Agreement as if set forth in full herein. Any fact or item which is disclosed on any Schedule to this Agreement in such a way as to make its relevance or applicability to information called for by another Disclosure Schedule or Disclosure Schedules to this Agreement readily apparent on the face of the disclosure (without investigation or reference to underlying documentation) shall be deemed to be disclosed on such other Disclosure Schedule or Disclosure Schedules, as the case may be, notwithstanding the omission of a reference or cross-reference thereto.

**ARTICLE 2  
PURCHASE AND SALE OF PURCHASED INTERESTS**

**2.1 Agreement to Purchase and Sell.**

Subject to the terms and conditions of this Agreement, as of the Closing Time the Vendors shall sell to the Purchaser and the Purchaser shall purchase from the Vendors, all of the Purchased Interests, constituting all of the issued and outstanding membership interests (voting and non-voting) of CPL, free and clear of all Encumbrances.

**2.2 Purchase Price and Allocation.**

Subject to the terms and conditions of this Agreement, including any price adjustments contemplated by Section 2.4, the aggregate purchase price (the "**Purchase Price**") to be paid by the Purchaser to the Vendors

for the Purchased Interests is US\$10,000,000. The Purchase Price shall be allocated among the asset classes of CPL as set forth on the allocation schedule attached hereto as Exhibit B (the “**Allocation Schedule**”), and the parties hereto acknowledge and agree to reflect the payment of the Purchase Price hereunder strictly in accordance with the Allocation Schedule on all filings and reports with any Governmental Body, including without limitation all filings with respect to Taxes and Tax Returns.

### **2.3 Payment of Purchase Price.**

(a) The Purchaser shall pay and satisfy the Purchase Price:

- (i) by payment of \$400,000 in cash (the “**Deposit**”) concurrently with execution of this Agreement; provided that as a condition to the Purchaser’s obligation to make the Deposit and the Pre-Closing Contract Payments, the Vendors shall have executed and delivered the Restated Operating Agreement in their capacities as member and/or manager of CPL, as applicable;
- (ii) by issuance of the Promissory Notes; and
- (iii) \$2,600,000 in cash (the “**Closing Cash Payment**”).

In addition, the Purchaser shall (i) pay the Pre-Closing Contract Payments as contemplated by Section 8.5 below and (ii) concurrently with the Closing pay the Closing Reimbursements as contemplated by Section 8.6 below.

### **2.4 No Debt.**

The Parties intend that CPL shall not have any Third Party Debt or Member Loans outstanding as of the Closing Time. The Vendors shall be solely responsible for and shall obtain or arrange for the discharge and release of all Encumbrances and other substantiated claims whatsoever, registered or made by any Person on or against CPL or the assets thereof (other than Permitted Liens), on or before the Closing Date.

## **ARTICLE 3 CLOSING ARRANGEMENTS**

### **3.1 Time and Place of Closing.**

Subject to the satisfaction or waiver of the conditions set out in Article 4, the Closing shall take place at the Closing Time by way of electronic closing at the offices of respective counsel to the Parties with signatures in counterpart, followed by delivery of executed original counterparts delivered via nationally recognized overnight delivery service within three (3) Business Days after the Closing Date.

### **3.2 Vendors’ Deliveries.**

At the Closing, the Vendors shall deliver or cause to be delivered to the Purchaser the following:

- (a) an assignment of the Purchased Interests to the Purchaser in a form reasonably satisfactory to the Purchaser;
- (b) the company records of CPL including, without limiting the generality of the foregoing, CPL’s articles of organization and operating agreement, and any written minutes and resolutions of CPL’s manager(s) and members;

- (c) a release by each of the Vendors of all claims they may have against CPL in their capacities as members of CPL;
- (d) written resignations of the manager(s) of CPL;
- (e) evidence satisfactory to the Purchaser of the payout and discharge of any Third Party Debt and Member Loans;
- (f) evidence satisfactory to the Purchaser that at least one of the 2 Manufacturing Licenses currently held by CPL have been transferred out of CPL on terms acceptable to the Purchaser, acting reasonably;
- (g) evidence satisfactory to the Purchaser that CPL has entered into a lease relating to a facility located at 68-956 Perez Road, Suite B, Cathedral City, California on terms acceptable to the Purchaser, acting reasonably;
- (h) evidence satisfactory to the Purchaser that a Dispensary License has been issued for a site at 69375 Ramon Road, Cathedral City, California 92234;
- (i) evidence satisfactory to the Purchaser that First Western Holdings, LLC has assigned to CPL all of its rights, title and interest in and to a purchase agreement dated September 25, 2016 relating to the acquisition of a 14.13 acre site at 69375 Ramon Road, Cathedral City, California 92234, on terms acceptable to the Purchaser, acting reasonably;
- (j) evidence satisfactory to the Purchaser that the planning department of the Cathedral City, California municipal government has confirmed in writing that the existing 4 Cultivation Licenses held by CPL in respect of the site at 69375 Ramon Road, Cathedral City, California, can be transferred and used in connection with a proposed larger facility at such site, subject to filing appropriate application documents and information in due course.

### **3.3 Purchaser's Deliveries.**

At the Closing, the Purchaser shall deliver or cause to be delivered to the Vendors, as applicable, the following:

- (a) originally signed copies of the Promissory Notes;
- (b) payment by wire transfer in immediately available funds to the account(s) designated by the Vendors of the Closing Cash Payment described in Section 2.3(a), above;
- (c) a certified copy of a resolution of the board of directors of the Purchaser authorizing the purchase of the Purchased Interests and the issuance of the Sunniva Shares and further authorizing the Purchaser to do all things and execute all such documents as contemplated herein; and
- (d) such other documentation as the Vendors may reasonably request in order to establish the completion of the transactions contemplated herein and the taking of all corporate proceedings in connection with the transactions (as to certification and otherwise), in each case in form and substance reasonably satisfactory to the Vendors.

**ARTICLE 4**  
**CLOSING CONDITIONS**

**4.1 Purchaser's Conditions.**

- (a) Notwithstanding anything herein contained, the obligation of the Purchaser to complete the purchase of the Purchased Interests hereunder is subject to the following conditions precedent:
- (i) the representations and warranties of the Vendors contained in this Agreement and in any certificate or document delivered pursuant to the provisions hereof or in connection with the transactions contemplated hereby shall be true in all material respects as of the Closing Time with the same effect as though such representations and warranties had been made as of the Closing Time;
  - (ii) all of the material covenants, agreements and deliveries of the Vendors to be performed on or before the Closing Time pursuant to the terms of the Agreement shall have been duly performed;
  - (iii) prior to the Closing Time and to the Knowledge of the Vendors, CPL or the Vendors shall not have experienced any event or condition or taken any action of any character or have been notified of any action of any character that would have a Material Adverse Effect;
  - (iv) no legal or regulatory action or proceeding shall be in progress, pending or threatened in writing by any Person to enjoin, restrict or prohibit the purchase of the Purchased Interests contemplated hereby;
  - (v) the Vendors shall have taken all steps, and delivered executed versions of all documents, required to be taken or delivered under Section 3.2;
  - (vi) all required government and regulatory approvals, orders, rulings, exemptions and consents in respect of the completion of the transactions contemplated by this Agreement or any agreement incidental hereto shall have been obtained and shall be in full force and effect, and any and all other applicable waiting periods under any completion, merger, control or similar laws, regulation or other Governmental Body having jurisdiction over the Parties or the transactions contemplated by this Agreement with respect to any such matters shall have expired or been terminated in respect of such transactions and no objection or opposition shall have been filed, initiated or made; and
  - (vii) all required applicable consents in respect of the Material Contracts with respect to a change of control of CPL (or similar provisions) shall have been provided, on terms and conditions reasonably acceptable to the Purchaser;
- (b) If any of the conditions in Section 4.1(a) shall not be satisfied or fulfilled in full at or before the Closing Time to the reasonable satisfaction of the Purchaser, the Purchaser in its sole discretion may, without limiting any rights or remedies available to the Purchaser at law or in equity, either terminate this Agreement by notice in writing to the Vendors or waive compliance with any such condition in whole or in part by notice in writing to the Vendors, except that no such waiver shall operate as a waiver of any other condition.

#### 4.2 Vendors' Conditions.

- (a) Notwithstanding anything herein contained, the obligation of the Vendors to complete the sale hereunder is subject to the following conditions:
- (i) the representations and warranties of the Purchaser contained in this Agreement and in any certificate or document delivered pursuant to the provisions hereof or in connection with the transactions contemplated hereby shall be true as of the Closing Time with the same effect as though such representations and warranties had been made as of the Closing Time;
  - (ii) the Purchaser shall have performed and complied with all covenants, agreements and conditions required by this Agreement to be performed or complied with by it at or prior to the Closing Time;
  - (iii) no legal or regulatory action or proceeding shall be pending or threatened by any Person to enjoin, restrict or prohibit the purchase of the Purchased Interests contemplated hereby;
  - (iv) the Vendors shall have taken all steps, and delivered executed versions of all documents, required to be taken or delivered under Section 3.3; and
  - (v) all required government and regulatory approvals, orders, rulings, exemptions and consents in respect of the completion of the transactions contemplated by this Agreement or any agreement incidental hereto shall have been obtained and shall be in full force and effect, and any and all other applicable waiting periods under any competition, merger, control or similar laws, regulation or other Governmental Body having jurisdiction over the Parties or the transactions contemplated by this Agreement with respect to any such matters shall have expired or been terminated in respect of such transactions and no objection or opposition shall have been filed, initiated or made.
- (b) If any of the conditions in Section 4.2(a) shall not be satisfied or fulfilled in full at or before the Closing Time to the reasonable satisfaction of the Vendors, the Vendors in his sole discretion may, without limiting any rights or remedies available to the Vendors at law or in equity, either terminate this Agreement by notice in writing to the Purchaser or waive compliance with any such condition in whole or in part by notice in writing to the Purchaser, except that no such waiver shall operate as a waiver of any other condition.

### ARTICLE 5 REPRESENTATIONS AND WARRANTIES OF THE VENDORS

The Vendors each severally but not jointly represent and warrant to the Purchaser that, except as otherwise in the schedules attached hereto (the "**Disclosure Schedules**"), the following are true and correct in all material respects as of the date hereof:

#### 5.1 Authorization and Enforceability.

This Agreement has been duly authorized, executed and delivered by each of the Vendors and is a legal, valid and binding obligation of each Vendors, enforceable against such Vendors by the Purchaser in accordance with its terms, except as enforcement may be limited by bankruptcy, insolvency and other laws affecting the rights of creditors generally and except that equitable remedies may be granted in the discretion of a court of competent jurisdiction.

## **5.2 The Purchased Interests.**

The Vendors are the registered and beneficial owners of the Purchased Interests with good and marketable title thereto, free and clear of all Encumbrances. None of the Purchased Interests is subject to any voting trust, shareholder agreement or voting agreement. The Purchased Interests constitute all of the outstanding membership interests in CPL. Upon completion of the transactions contemplated by this Agreement, all of the Purchased Interests will be owned by the Purchaser as the registered and beneficial owner, with good and marketable title thereto, free and clear of all Encumbrances.

## **5.3 No Other Agreements to Purchase.**

No Person, other than the Purchaser, has any written or oral agreement or option or any right or privilege (whether by law, pre-emptive or contractual) capable of becoming an agreement or option for the purchase or acquisition from either Vendor of any of the Purchased Interests or any other membership interest in CPL.

## **5.4 Not Insolvent.**

Neither Vendor is an insolvent Person within the meaning of applicable bankruptcy or insolvency laws or has made an assignment in favor of his creditors or is the subject of any petition in bankruptcy, and no petition for a receiver has been filed, threatened in writing or presented in respect of him. Neither Vendor has initiated proceedings with respect to a compromise or arrangement with his creditors. No receiver or interim receiver has been appointed in respect of either Vendor or any of their respective undertakings, property or assets (including the Purchased Interests) and no execution or distress has been levied on any of their undertakings, property or assets (including the Purchased Interests), nor have any proceedings been commenced in connection with any of the foregoing.

## **5.5 Consents and Approvals.**

No consent, approval, order or authorization of, registration, declaration or filing with, or permit from, any third party or Governmental Body is required by or with respect to either Vendors or CPL in connection with the execution and delivery of this Agreement or the consummation of the transactions contemplated thereby.

## **5.6 Organization of CPL.**

CPL is a limited liability company duly organized, validly existing and in good standing under the laws of North Carolina and has the power to own or lease its property, and to carry on the Business being conducted by it. CPL is duly qualified as a foreign limited liability company in the State of California, being the only jurisdiction in which the nature of the Business or the property and assets owned or leased by it makes such qualification necessary.

CPL has no subsidiaries or investments in other Persons.

## **5.7 No Options.**

No Person has any agreement or option or any right or privilege (whether by law, pre-emptive or contractual) capable of becoming an agreement, including convertible securities, warrants or convertible obligations of any nature, for the issuance of any membership interests or other securities of CPL.

## **5.8 No Conflict by CPL.**

Neither the sale of the Purchased Interests nor the entering into or performance of this Agreement will contravene, breach or offend, or result in any default or acceleration of, any obligation, or give rise to any Encumbrance in favor of third parties on the Purchased Interests under any provision of the organizational documents, operating agreement or resolutions of the managers (or any committee thereof) or members of CPL or any agreement, indenture, order, undertaking, license, authorization, Applicable Law or judgment to which CPL is a party or by which CPL is bound. No Licenses, agreements or other material instruments to which CPL is a party or by which they are bound may be modified or terminated, or by their terms require the approval of, making a filing with, or giving notice to, any third party in connection with the entering into of this Agreement or the consummation of the transactions contemplated thereby. Notwithstanding the foregoing, it is expressly acknowledged and agreed that after consummation of the transactions contemplated by this Agreement, certain equityholders and/or principals of the Purchaser may be required to be added to the Cultivation License, Distribution License and Manufacturing Licenses held by CPL. Such additions may require background checks and other obligations by such individuals and neither Vendor nor CPL makes any representation or warranty that any such individuals will be approved or added to such Licenses.

#### **5.9 Business of CPL.**

The Business is the only business that is currently or that has ever been carried on by CPL since its formation.

#### **5.10 Title to Personal and Other Property.**

The property and assets of CPL are owned legally and beneficially by CPL, with good and marketable title thereto, free and clear of all Encumbrances other than Permitted Liens. CPL does not hold legal title to, or hold as custodian, any assets, shares or other securities for the benefit of a third party.

#### **5.11 Equipment.**

All equipment owned by CPL, if any, is in operable working condition and has been maintained in accordance with industry standards (normal wear and tear excepted). To the Knowledge of the Vendors, no equipment or other property owned or leased by CPL in relation to the Business are in need of material repairs, except for ordinary routine maintenance and repairs consistent with past practice and that would not have a Material Adverse Effect on the Business.

#### **5.12 No Expropriation.**

No property or asset of CPL has, in the last two (2) years, been taken or expropriated by any Governmental Body, nor has any notice or proceeding in respect thereof been given or commenced nor is either Vendors or CPL aware of any intent or proposal to give any such notice or commence any such proceeding.

#### **5.13 Agreements and Commitments.**

Except as described in Schedule 5.13, CPL is not a party to or bound by any Material Contract. CPL is not in material violation of or in material default under (nor does there exist any condition which with the passage of time or the giving of notice or both would cause such a material violation of or material default under) any Material Contract to which it is a party or by which it or any of its properties or assets are bound. Each Material Contract is in full force and effect, and is a legal, valid and binding obligation of CPL enforceable in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, moratorium or other similar laws relating to creditor's rights and general principles of equity. No condition exists, or event has occurred, which (whether with or without notice or lapse of time or both)



would constitute a material default by CPL under any Material Contract or result in a right of termination of any Material Contract. The Vendors have provided to the Purchaser a true and complete copy, including all amendments thereto, of each Contract listed or described in Schedule 5.14. CPL's rights to purchase the properties under the applicable real estate purchase agreements to which the Pre-Closing Contract Payments relate are valid and remain in force and effect until November 30, 2016.

#### **5.14 Compliance with Laws; Licenses.**

Other than as set forth on Schedule 5.14, CPL has complied with all Applicable Laws applicable to the Business or CPL (collectively, "**Legal Requirements**") except to the extent that failure to comply would not have a Material Adverse Effect on either CPL or the Business. No event has occurred and no circumstance exists that may constitute or result in (with or without notice or lapse of time) a violation of or a failure to comply with any Legal Requirements, and neither the Vendors nor CPL has received any notice or other communication (whether oral or written) from any Governmental Body regarding any actual, alleged, possible or potential violation of, or failure to comply with any Legal Requirement. CPL has all licenses, permits, approvals, consents, certificates, registrations and authorizations (the "**Licenses**") necessary to carry on the Business as currently conducted or to own or lease any of the property or assets utilized by CPL as such property or assets are currently owned, leased or utilized. Subject to the last two sentences of Section 5.8, each License is valid, subsisting and in good standing and CPL is not in default or breach of any License and the Vendors have no Knowledge of any pending or threatened proceeding to revoke, limit or restrict the assignment of any License or of any circumstance that may reasonably result in such a revocation, limitation or restriction on assignment.

#### **5.15 Financial Statements.**

The Financial Statements have been prepared in accordance with GAAP for the period ended October 31, 2016 and as such, are correct and complete in all material respects and present fairly the assets, liabilities and financial condition of CPL as at their respective dates and the sales, earnings and results of operations of CPL for the periods covered by the Financial Statements; provided that such financial statements do not include year end adjustments or notes as required by GAAP.

#### **5.16 Undisclosed Liabilities.**

CPL has no liabilities, obligations, indebtedness or commitments, whether accrued, absolute, contingent or otherwise, and is not a party to or bound by any agreement of guarantee, support, indemnification, assumption or endorsement of, or any other similar commitment with respect to the liabilities, obligations, indebtedness or commitments (whether accrued, absolute, contingent or otherwise, and whether due or to become due) of any Person, that are not (i) disclosed in the Financial Statements; (ii) provided for in any Material Contract described in Schedule 5.16, otherwise than as a result of CPL's violation, breach or default or obligation to indemnify thereunder, or (iii) incurred in the Ordinary Course after the date of the balance sheet included in the Financial Statements (the "**Balance Sheet Date**"). In particular, as of the Closing Time, there will be no Third Party Debts or Member Loans outstanding.

#### **5.17 Absence of Change.**

As of the Closing Time, CPL will have carried on the Business and conducted its operations and affairs only in the Ordinary Course and there will not have been since the Balance Sheet Date:

- (a) any Material Adverse Change in the condition (financial or otherwise), assets, liabilities, operations, earnings, business or prospects of CPL (taken as a whole);

- (b) any damage, destruction or loss (whether or not covered by insurance) affecting the property or assets of CPL that would have a Material Adverse Effect;
- (c) any obligation or liability (whether accrued, absolute, contingent or otherwise, and whether due or to become due) incurred by CPL other than:
  - (i) those that would not have a Material Adverse Effect;
  - (ii) those incurred in the Ordinary Course of business and consistent with past practice; and
  - (iii) those incurred with respect to the legal, accounting and other professional services or advice provided to CPL and/or the Vendors leading up to the completion of the transactions contemplated by this Agreement;
- (d) any issuance or sale by CPL, or any Contract entered into by CPL for the issuance or sale, of any securities convertible into or exercisable for membership interests of CPL;
- (e) any license, sale, assignment, transfer, disposition, pledge, mortgage or granting of a security interest or other Encumbrance (other than Permitted Liens) on or over any property or assets of CPL that would have a Material Adverse Effect, other than in the ordinary and normal course of the Business;
- (f) any entry into, termination of, or receipt of notice of termination of any license, distributorship, dealer, sales representative, joint venture, credit or similar agreement that would have a Material Adverse Effect or except as disclosed in Schedule 5.16;
- (g) any amendment, termination or waiver of any Material Contract other than in the Ordinary Course or the repayment and cancellation of Third Party Debt and Member Loans;
- (h) any transfer or sale of assets, except assets disposed of to third parties in the Ordinary Course of business for fair market value (the aggregate of which did not exceed \$25,000 of book value of such assets);
- (i) any increase in compensation to employees outside the Ordinary Course;
- (j) any change in accounting practices or policies; or
- (k) the authorization of any of the foregoing.

**5.18 Taxes.**

- (a) CPL has duly and timely filed all Tax Returns required to be filed by it with the appropriate Governmental Body, and has duly, completely and correctly reported, in all material respects, all income and all other amounts and information required to be reported thereon. All Forms K-1 required to be filed and delivered with respect to such Tax Returns have been filed with the applicable Governmental Body and delivered to the Vendors.
- (b) CPL has duly and timely paid all Taxes that are due and payable by it, whether or not assessed by the appropriate Governmental Body, and, to the extent required by U.S. generally accepted accounting principles, adequate provision has been made in the Financial Statements for amounts

("Tax Provision Amounts") at least equal to the amount of Taxes not yet due and payable for all taxable periods, or portions thereof, ending on or before the date of the Financial Statements.

- (c) There are no pending appeals, actions, audits, assessments, reassessments, suits, proceedings, investigations or claims relating to Taxes of the Company, and no Governmental Body has given written notice to the Company of any intention to commence an appeal, action, audit, assessment, reassessment, suit, proceeding, investigation or claim relating to Taxes of the Company. No material deficiencies exist or have been asserted in writing by a Governmental Body with respect to Taxes of CPL.
- (d) There are no matters which are the subject of any agreement with any Governmental Body relating to Taxes of CPL nor, to the Knowledge of either Vendor, are any such matters under discussion with any such Governmental Body.
- (e) There are no agreements, waivers or other arrangements providing for an extension of time with respect to the assessment of any Tax of the Company, the filing of any Tax Returns by the Company, or the payment of any Tax by CPL.
- (f) CPL has withheld from each payment made, or deemed to be made, by it the amount of all Taxes and other deductions required to be withheld therefrom and has paid all such amounts due and payable to the proper Governmental Body within the time prescribed under Applicable Law.
- (g) CPL has provided to the Purchaser true, complete and accurate copies of all income Tax Returns of CPL for all completed taxation years of and all related communications to or from all Governmental Bodies.

#### **5.19 Litigation.**

There are no actions, suits or proceedings pending or, to the Knowledge of either Vendors, threatened against or affecting, the Purchased Interests, CPL, assets of CPL or the Business at law or in equity or before or by any Governmental Body, or by or before an arbitrator or arbitration board. The Vendors have no Knowledge of any ground on which any action, suit or proceeding might be commenced with any reasonable likelihood of success. CPL is not subject to any judgment, order or decree that would have a Material Adverse Effect on CPL or the Business.

#### **5.20 Dividends.**

There will be no distributions declared by CPL prior to the Closing that will be unpaid as of the Closing Time.

#### **5.21 Non-Arm's Length Transactions.**

As at the Closing Time, CPL will not have any loans outstanding, nor will it owe money to any officer, director, employee, equityholder or any other person not dealing at arm's length with CPL (within the meaning of applicable tax legislation).

#### **5.22 Employee Plans.**

CPL does not have any retirement, pension, bonus (including retention bonus), stock purchase, profit sharing, stock option, deferred compensation, insurance, medical, hospital, dental, vision care, drug, sick leave, disability, salary continuation, legal benefits, employment benefits, vacation, incentive or other

compensation plan or arrangement or other employee benefit which as of the Closing Date is maintained, or required to be contributed to, by CPL for the benefit of employees or former employees of CPL.

#### **5.23 Employment Agreements, Collective Agreements.**

Other than as set forth on Schedule 5.23, CPL has not have entered into any employment or consulting Contract or other Contract with any officer, employee or consultant that is not terminable on reasonable notice according to law or reasonable payment in lieu thereof without further liability to CPL. CPL has not made any Contract with any labor union or employee association or made commitments to or conducted negotiations with any labor union or employee association with respect to any future agreements and neither Vendors has Knowledge of any current attempts to organize or establish any labor union or employee association with respect to any employees of CPL nor is there any certification of any such union with regard to any employees. CPL has not experienced any work stoppages or strikes (legal or otherwise). CPL has never engaged in any unfair labor practice, neither Vendors has any Knowledge of any pending or threatened labor relations proceeding of any kind, and there have not been any such proceedings within the last two years. As of the date hereof, to the Knowledge of each Vendors there are no pending or threatened work stoppages or labor disputes, labor union organizing activity, charges of unfair labor practice or charges of violation of individual or collective rights or any pending or threatened complaints of violations under any employment related statute by any present employee or former employee of CPL.

#### **5.24 Absent Employees and Employment Legislation.**

There is no employee who has been continually absent from work for a period in excess of one month and who is in receipt of benefits pursuant to the provisions of a short or long term disability plan provided by CPL, applicable workers' compensation or other applicable workplace safety and insurance legislation in each jurisdiction where CPL carries on Business. CPL is in material compliance with all Employment Legislation and there are no complaints, claims, charges, levies, assessments or penalties outstanding, or to the Knowledge of either Vendors, anticipated, nor are there any orders, decisions, directions or convictions currently registered or outstanding by any tribunal or agency against or in respect of CPL under or in respect of any Employment Legislation. CPL is not a party to any application, complaint or other proceeding under any Applicable Law with respect to the employees or any former employee of CPL. There are no outstanding fines, penalties, pending criminal prosecutions against CPL, nor against any officers or directors of CPL in relation to the Business, under any Applicable Law or Employment Legislation. CPL is not a party to or bound by any statutorily required re-employment of any employee.

#### **5.25 Bank Accounts.**

The Vendors have provided to the Purchaser a true and complete list showing the name of each bank, trust company or similar institution in which CPL has accounts or safe deposit boxes, the number or designation of each such account and safety deposit box and the names of all Persons authorized to draw thereon or to have access thereto and showing the name of each Person holding a general or special power of attorney from CPL and a summary of the terms thereof.

#### **5.26 Real Estate.**

CPL does not own and has never since the date of its formation owned any real property.

#### **5.27 Finders' Fees.**

Neither the Vendors nor CPL has incurred any liability, contingent or otherwise, for brokers' or finders' fees with respect to the transaction contemplated hereby for which the Purchaser or CPL will have any obligation or liability after the Closing Time.

## 5.28 Securities Law Representations and Warranties

- (a) **Canadian Securities Laws:** Each of the Vendors will acquire the Sunniva Shares as principal for its own benefit and will, as of the Closing Time, be an "accredited investor" for purposes of National Instrument 45-106 of the Canadian Securities Administrators and will, on or prior to the Closing Time, deliver to the Purchaser, a written certificate (in a form to be provided by the Purchaser) which confirms the basis upon which it satisfies the requirements for being an accredited investor and all other information and documentations reasonably requested by the Purchaser to confirm such status; and
- (b) **U.S. Accredited Investor.** Vendors understands that the Promissory Notes, and the Sunniva Shares issued upon conversion thereof (collectively, the "Sunniva Securities") are being offered, and will be issued and sold, pursuant to an exemption from registration required by the Securities Act of 1933, as amended (the "Securities Act") based in part upon Vendors's representations contained in this Agreement, including, without limitation, that each Vendor is an "accredited investor" within the meaning of Regulation D under the Securities Act.
- (c) **Receipt of and Access to Information.** Subject to the representations and warranties contained in Article 5 of this Agreement, and the Disclosure Schedules in connection therewith, and without prejudice to Article 5 hereof or any rights of Purchaser in the event of any breach or inaccuracy of any representation or warranty made by the Vendors (whether such representation and warranty is made as of the date hereof or as of the Closing Date and without limiting any remedies made available to Purchaser hereunder or under any Applicable Laws), (a) each Vendor confirms that such Vendor has received or has had full access to all the information it considers necessary or appropriate to make an informed investment decision with respect to the Sunniva Securities to be purchased by it under this Agreement, and (b) each Vendor further confirms that such Vendor has had an opportunity to ask questions and receive answers from Purchaser regarding Purchaser's business, management and financial affairs.
- (d) **Vendors Bears Economic Risk.** Subject to the representations and warranties contained in Article 5 of this Agreement, and the Disclosure Schedules in connection therewith, and without prejudice to Article 5 hereof or any rights of Purchaser in the event of any breach or inaccuracy of any representation or warranty made by the Vendors (whether such representation and warranty is made as of the date hereof or as of the Closing Date and without limiting any remedies made available to Purchaser hereunder or under any Applicable Laws), Vendors are capable of bearing the economic risk of an investment in the Purchaser, including the ability to hold the Sunniva Securities for the indefinite future or to afford a complete loss of an investment in the Purchaser.
- (e) **Acquisition for Own Account.** Subject to the representations and warranties contained in Article 5 of this Agreement, and the Disclosure Schedules in connection therewith, and without prejudice to Article 5 hereof or any rights of Purchaser in the event of any breach or inaccuracy of any representation or warranty made by the Vendors (whether such representation and warranty is made as of the date hereof or as of the Closing Date and without limiting any remedies made available to Purchaser hereunder or under any

Applicable Laws), Vendors are acquiring the Sunniva Securities for Vendors' own account for investment only, and not as a nominee or agent and not with a view towards or for resale in connection with their distribution. Vendors shall not effect sales, transfers or dispositions of the Sunniva Securities in any manner that would reasonably be expected to result in Vendors being deemed to be an "underwriter" as defined in the Securities Act.

- (f) ***Vendors Can Protect Their Interests; No Advertisement.*** Subject to the representations and warranties contained in Article 5 of this Agreement, and the Disclosure Schedules in connection therewith, and without prejudice to Article 5 hereof or any rights of Purchaser in the event of any breach or inaccuracy of any representation or warranty made by the Vendors (whether such representation and warranty is made as of the date hereof or as of the Closing Date and without limiting any remedies made available to Purchaser hereunder or under any Applicable Laws), each Vendors represents that by reason of its, or of its management's, business and financial experience, and subject to Vendors's rights hereunder, each Vendor has the capacity to evaluate the merits and risks of its investment in the Purchaser and to protect its own interests in connection with the transactions contemplated by this Agreement. Further, Vendors are aware of no publication of any advertisement in connection with the transactions contemplated in this Agreement.
- (g) ***No Registration.*** Vendors understands that the Sunniva Securities have not been and will not be registered under the Securities Act by reason of a specific exemption from the registration provisions of the Securities Act, the availability of which depends upon, among other things, the bona fide nature of the investment intent and the accuracy of Vendors's representations as expressed herein or otherwise made pursuant hereto.
- (h) ***Residency.*** Vendors's principal place of business is correctly set forth on the first page hereof.
- (i) ***Disposition of the Sunniva Securities.*** Vendors understands that the Sunniva Securities are "restricted securities" under applicable securities laws and that the Securities Act and the rules of the U.S. Securities and Exchange Commission provide that Vendors may dispose of the Sunniva Securities only pursuant to an effective registration statement under the Securities Act or any exemption from such registration, if available. Vendors further understand that the Purchaser has no obligation or intention to cause to be registered on anyone's behalf or to take action so as to permit sales pursuant to the Securities Act of the Sunniva Securities. Accordingly, Vendors, absent some other arrangement with the Purchaser, may dispose of the Sunniva Securities only in certain transactions that are exempt from registration under the Securities Act, including "private placements," in which event the transferee will acquire a "restricted securities" subject to the same limitations as in the hands of Vendors. As a consequence, Vendors understand that they must bear the economic risks of the investment in the Sunniva Securities for an indefinite period of time.
- (j) ***Legends on Sunniva Shares.*** Vendors acknowledge that the certificates representing the Sunniva Shares, if any (the "Certificates"), shall bear a legend which shall be in substantially the following form until such Sunniva Shares are covered by an effective registration statement filed with the Securities and Exchange Commission:

"THE SHARES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED OR THE SECURITIES LAWS OF ANY STATE. THESE SHARES HAVE BEEN ACQUIRED

FOR INVESTMENT PURPOSES AND NOT WITH A VIEW TO DISTRIBUTION OR RESALE, AND MAY NOT BE SOLD, ASSIGNED, PLEDGED, HYPOTHECATED, OR OTHERWISE TRANSFERRED WITHOUT AN EFFECTIVE REGISTRATION STATEMENT FOR SUCH SHARES UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND APPLICABLE STATE SECURITIES LAWS OR ANY OPINION OF COUNSEL SATISFACTORY TO THE ISSUER OF THESE SHARES TO THE EFFECT THAT REGISTRATION IS NOT REQUIRED UNDER SUCH ACT AND SUCH STATE SECURITIES LAWS.”

- (i) ***Legends on Promissory Notes.*** Vendors acknowledge that the Promissory Notes shall bear a legend which shall be in substantially the following form until such Promissory Notes are covered by an effective registration statement filed with the Securities and Exchange Commission:

“THIS NOTE HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED OR THE SECURITIES LAWS OF ANY STATE. THIS NOTE HAS BEEN ACQUIRED FOR INVESTMENT PURPOSES AND NOT WITH A VIEW TO DISTRIBUTION OR RESALE, AND MAY NOT BE SOLD, ASSIGNED, PLEDGED, HYPOTHECATED, OR OTHERWISE TRANSFERRED WITHOUT AN EFFECTIVE REGISTRATION STATEMENT FOR THIS NOTE UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND APPLICABLE STATE SECURITIES LAWS OR ANY OPINION OF COUNSEL SATISFACTORY TO THE ISSUER OF THIS NOTE TO THE EFFECT THAT REGISTRATION IS NOT REQUIRED UNDER SUCH ACT AND SUCH STATE SECURITIES LAWS.”

#### **5.29 Books and Records.**

All books, records and files of CPL have been prepared, assembled and maintained in accordance with usual and customary industry policies and procedures, are in the care, custody and control of CPL, and will be delivered to Purchaser at the Closing. The corporate records of CPL are true and correct in all material respects and contain complete minutes of all meetings and resolutions of the directors and shareholders of CPL or resolutions by consent (if any) of the directors and shareholders of CPL.

### **ARTICLE 6 REPRESENTATIONS AND WARRANTIES OF THE PURCHASER**

The Purchaser represents and warrants to the Vendors as follows and acknowledges and confirms that the Vendors are relying on such representations and warranties in connection with the sale by the Vendors of the Purchased Interests:

#### **6.1 Organization of Purchaser.**

The Purchaser is a corporation duly organized, validly existing and in good standing under the laws of the Province of British Columbia and it has the corporate power to enter into and perform its obligations pursuant to this Agreement.

#### **6.2 Authorization and Enforceability.**

This Agreement has been duly authorized, executed and delivered by the Purchaser and is a legal, valid and binding obligation of the Purchaser, enforceable against the Purchaser by the Vendors in accordance with its terms, except as enforcement may be limited by bankruptcy, insolvency and other laws affecting the

enforcement of rights of creditors generally and except that equitable remedies may be granted in the discretion of a court of competent jurisdiction.

**6.3 No Conflict by Purchaser.**

The entering into and performance of this Agreement will not violate, contravene, breach or offend, or result in any default or acceleration of any obligation, under any provision of the constating documents, resolutions of the board of directors (or any committee thereof) or shareholders of the Purchaser, or any agreement, indenture, order, undertaking, license, Applicable Law or judgment to which the Purchaser is a party or by which the Purchaser or its assets may be bound. Without limiting the generality of the foregoing, no licenses, agreements or other material instruments to which the Purchaser is a party or is bound may be modified or terminated, or by their terms require the approval of, making of a filing with or giving of notice to, any third party, in connection with the entering into of this Agreement or the consummation of the transaction contemplated hereby.

**6.4 Consents and Approvals.**

There is no requirement for the Purchaser to make any filing with, give any notice to or obtain any license, permit, certificate, registration, authorization, consent or approval of, any Governmental Body, as a condition to the lawful consummation of the transactions contemplated by this Agreement.

**6.5 Sunniva Shares.**

Upon Closing, the Sunniva Shares will be reserved for issuance upon conversion of the Promissory Notes and, upon conversion thereof in accordance with the terms and conditions of the Promissory Notes, will be validly issued, fully paid and non-assessable and free of any legends restricting the transfer thereof other than as set forth herein or as may be imposed specifically by the TSX Venture Exchange.

**6.6 Finders' Fees.**

The Purchaser has not incurred any liability, contingent or otherwise, for brokers' or finders' fees with respect to the transaction contemplated hereby for which any Vendors will have any obligation or liability.

**ARTICLE 7  
SURVIVAL OF REPRESENTATIONS AND WARRANTIES**

**7.1 Survival of Representations and Warranties of the Vendors.**

The Fundamental Representations and Warranties of the Vendors shall survive the Closing and continue indefinitely, except as limited by Applicable Law (including by applicable statutes of limitation), and, notwithstanding such Closing or any investigation made by or on behalf of the Purchaser, shall continue in full force and effect for the benefit of the Purchaser during such period.

The representations and warranties of the Vendors other than the Fundamental Representations and Warranties of the Vendors, and, to the extent they have not been fully performed prior to the Closing Time, the covenants of the Vendors contained in this Agreement and any agreement, instrument, certificate or other document or undertaking executed or delivered pursuant hereto (other than those set forth at Section 5.18) shall survive the Closing for twelve (12) months from the Closing Date.



Notwithstanding the foregoing and any investigations made by or on behalf of the Purchaser, the representations and warranties of the Vendors contained in Section 5.18 shall survive the Closing, for the benefit of the Purchaser, until the expiration of the applicable limitation period under Applicable Law.

## **7.2 Survival of Representations and Warranties of the Purchaser.**

The Fundamental Representations and Warranties of the Purchaser shall survive the Closing and continue indefinitely, except as limited by Applicable Law (including by applicable statutes of limitation), and, notwithstanding such Closing or any investigation made by or on behalf of the Purchaser, shall continue in full force and effect for the benefit of the Purchaser during such period.

The representations and warranties of the Purchaser other than the Fundamental Representations and Warranties of the Purchaser, and, to the extent they have not been fully performed at or prior to the Closing Time, the covenants of the Purchaser contained in this Agreement and any agreement, instrument, certificate or in any document or undertaking executed or delivered pursuant hereto shall survive the Closing for twelve (12) months from the Closing Date.

## **ARTICLE 8 COVENANTS**

### **8.1 Exclusive Dealing.**

During the Interim Period, the Vendors shall not, and shall cause CPL not to, take any action, directly or indirectly, to encourage, initiate or engage in discussions or negotiations with, or provide any information to, any Person, other than the Purchaser and its designated and authorized Representatives, concerning any sale, transfer or assignment of any of the shares of CPL, or any portion of the Business or the assets of CPL. The Vendors shall notify the Purchaser promptly if any such discussions or negotiations are sought or if any proposal for a sale, transfer or assignment of the Purchased Interests, or any portion of the Business or the assets of CPL is received or being considered.

### **8.2 Investigation.**

- (a) During the Interim Period, the Purchaser and its authorized Representatives shall be permitted to make such investigations, inspections, surveys or tests of CPL and its assets, and of its financial and legal condition as the Purchaser reasonably deems necessary or desirable to familiarize itself with CPL and other matters related to CPL or the Purchased Interests. Without limiting the generality of the foregoing, the Purchaser shall, during normal business hours, be permitted reasonable access to (i) all documents relating to information scheduled or required to be disclosed under this Agreement, (ii) the books and records of CPL, (iii) the Intellectual Property, (iv) the Contracts of CPL, including the Material Contracts, (v) the employees, (vi) records regarding suppliers, customers and regulators of CPL, and (vii) environmental reports, surveys, inspection reports, internal audits, manifests, incident reports and any and all correspondence with any Governmental Body or third parties in respect of environmental matters of CPL, and the Vendors shall provide copies to the Purchaser of all such written information and documents as may be reasonably requested by the Purchaser.
- (b) At the reasonable request of the Purchaser, the Vendors shall execute or cause to be executed such consents, authorizations and directions as may be necessary to permit any inspection of CPL or any of the assets of CPL.

- (c) At the Purchaser's reasonable request, the Vendors shall co-operate with and assist the Purchaser in arranging any meetings as the Purchaser should reasonably request with:
  - (i) material employees;
  - (ii) material customers, suppliers, distributors or others who have or have had a business relationship with CPL; and
  - (iii) auditors, accountants, attorneys or any other Persons engaged or previously engaged to provide services to CPL who have knowledge of matters relating to CPL.
- (d) Any data or information (whether written, oral or stored in any computer or other electronic, magnetic or optical storage system) furnished to the Purchaser or its authorized Representatives, directly or indirectly, in connection with its investigations under this Section 8.2 will be kept confidential and shall not, without each of the Vendor's prior written consent, be disclosed by the Purchaser or its authorized Representatives in any manner whatsoever, in whole or in part, and shall not be used by the Purchaser or its authorized Representatives, other than in connection with the Closing. The Purchaser or its authorized Representatives shall keep a record of such information furnished to them and of the location of such information. All copies of such information will be returned to the Vendors or CPL, as applicable, in the event that the Closing does not occur or destroyed at the Vendors' request.

### **8.3 Risk of Loss.**

During the Interim Period, the Vendors shall cause CPL to maintain in force all of its policies of insurance, including liability insurance and property damage insurance under which CPL and the Business are insured. If before the Closing any of the assets of CPL are lost, damaged or destroyed and the loss, damage or destruction constitutes a Material Adverse Change, then the Purchaser at its sole discretion may terminate this Agreement in accordance with the provisions of Section 4.1(b).

### **8.4 Conduct Prior to Closing.**

Without in any way limiting any other obligations of the Vendors hereunder, during the Interim Period:

- (a) the Vendors shall cause CPL to conduct the Business and the operations and affairs of CPL only in the Ordinary Course, and CPL shall not, without the prior written consent of the Purchaser, enter into any transaction or refrain from doing any action that, if effected before the date of this Agreement, would constitute a breach of any representation, warranty, covenant or other obligation of the Vendors in this Agreement and, without limiting the generality of the foregoing, the Vendors shall cause CPL:
  - (i) not to amalgamate, merge or consolidate with or acquire or agree to acquire all or substantially all of the shares and assets of any Person, and not to acquire or lease or agree to acquire or lease any business operations or any share interest in any other Person, not to acquire or agree to acquire any legal or beneficial interest in any real property or not to occupy, lease, manage or control or agree to occupy, lease or manage or control any facility or property;
  - (ii) not to enter into any compromise or settlement of any litigation, proceeding or government investigation relating to the Business of CPL or any of the assets of CPL;

- (iii) not to make any material modification to the usual sales, human resource, accounting, software, or management practices, processes or systems;
  - (iv) not to enter into any Material Contract, other than in the Ordinary Course;
  - (v) not to incur, or commit to incur, any single capital expenditure in excess of \$50,000 without the prior written consent of the Purchaser, not to be unreasonably withheld;
  - (vi) not to transfer any assets of the Business of CPL to any other location from which CPL does not carry on the Business at the date hereof;
  - (vii) not to encumber or dispose of any assets of the Business, other than in the Ordinary Course; or
  - (viii) not to make any change to the articles of organization or operating agreement of CPL;
- (b) the Vendors shall cause CPL:
- (i) to continue to maintain in full force and effect all material insurance policies of CPL or renewals thereof currently in effect; and
  - (ii) to report all Claims or known circumstances or events which may give rise to a Claim to its insurers under the insurance policies of CPL in a due and timely manner and to provide copies of those reports to the Purchaser;
- (c) the Vendors shall use commercially reasonable efforts to preserve, and cause CPL to preserve intact, the Business, the assets, and the operations and affairs of CPL and to carry on the Business and the affairs of CPL as currently conducted, and to promote and preserve for the Purchaser the goodwill of suppliers, customers and others having business relations with CPL;
- (d) the Vendors shall cause CPL to pay and discharge the liabilities of CPL in the Ordinary Course, except those contested in good faith; and

#### **8.5 Pre-Closing Payments.**

In addition to the payment of the Purchase Price pursuant to Section 2.3, in the event that the Closing has not occurred by the respective dates listed below, Purchaser shall pay the following amounts to CPL (the “**Pre-Closing Contract Payments**”):

- (a) By the date required for closing under the real estate purchase agreement (as amended through the date hereof) for the approximately 2.2 acre parcel located at 69375 Ramon Road in Cathedral City, California 92234; US\$666,400; and
- (b) By the date required for closing under the real estate purchase agreement (as amended through the date hereof) for the approximately 2.8 acre parcel located at 69375 Ramon Road in Cathedral City, California 92234; US\$656,600.

#### **8.6 Closing Reimbursements and Payments.**

At the Closing, in addition to the payment of the Purchase Price pursuant to Section 2.3, the Purchaser shall pay and/or reimburse the following amounts (the “**Closing Reimbursements**”):

- (a) to Kunevicius, the sum of US\$13,600 as reimbursement for the deposit with respect to the real estate purchase agreement for the approximately 2.2 acre parcel located at 69375 Ramon Road in Cathedral City, California 92234;
- (b) to Kunevicius, the sum of US\$13,400 as reimbursement for the deposit with respect to the real estate purchase agreement for the approximately 2.8 acre parcel located at 69375 Ramon Road in Cathedral City, California 92234;
- (c) to Kunevicius, the sum of US\$95,375 as reimbursement for the deposit with respect to the real estate purchase agreement for the approximately 14.13 acre parcel located at 69375 Ramon Road in Cathedral City, California 92234;
- (d) to Kunevicius, the sum of US\$12,902.40 as reimbursement for the security deposit with respect to the lease for the manufacturing site located at 68-956 Perez Road, Suite B, in Cathedral City, California; and
- (e) to Kunevicius or, if not previously paid by Kunevicius or CPL, to 10 East Studios, reimbursement or direct payment, as applicable, for the architectural and engineering expenses performed by 10 East Studios with respect to the Purchaser directed site and facility design changes, as evidenced by the invoice of 10 East Studios delivered to Purchaser prior to the Closing Date.

## **ARTICLE 9 INDEMNIFICATION**

### **9.1 Indemnification by the Vendor.**

Except as otherwise limited pursuant to this Article 9 and the Vendors shall severally and not jointly be liable for and shall indemnify and save harmless the Purchaser, pro rata in accordance with the percentage Purchased Interests held by each of the Vendors prior to the Closing Date, from all Losses suffered or incurred by the Purchaser as a result of or arising directly or indirectly out of or in connection with:

- (a) the untruthfulness of any representation or warranty of the Vendors contained in this Agreement or in any agreement, certificate or other document delivered pursuant hereto; provided, however, that the Vendors shall not be required to indemnify or save harmless the Purchaser in respect of any untruthfulness of any representation or warranty unless the Purchaser shall have provided notice to the Vendors in accordance with Sections 9.4 and 11.1 on or prior to the expiration of the applicable survival period related to such representation or warranty;
- (b) any breach or non-performance by the Vendors of any covenant or obligation to be performed by them which is contained in this Agreement or in any agreement, certificate or other document delivered pursuant hereto; and
- (c) any Third Party Debt and Member Loans which remain outstanding as of the Closing Date, if any.

### **9.2 Indemnification by the Purchaser.**

The Purchaser shall be liable for and shall indemnify and save harmless the Vendors from all Losses suffered or incurred as a result of or arising directly or indirectly out of or in connection with:

- (a) the untruthfulness of any representation or warranty of the Purchaser contained in this Agreement or in any agreement, certificate or other document delivered pursuant hereto; provided, however,

that the Purchaser shall not be required to indemnify or save harmless the Vendors in respect of any untruthfulness of any representation or warranty unless the Vendors shall have provided notice to the Purchaser in accordance with Section 11.1 on or prior to the expiration of the applicable survival period related to such representation and warranty; and

- (b) any breach or non-performance by the Purchaser of any covenant or obligation to be performed by it which is contained in this Agreement or in any agreement, certificate or other document delivered pursuant hereto.

### **9.3 Limitations of Liability.**

- (a) For purposes of determining the liability and indemnity obligations under this Agreement, Losses shall be limited to actual Losses, and no Party shall be entitled to consequential, punitive, special or similar Losses, including, but not limited to, Losses for lost profit.
- (b) Regardless of the basis or cause, the Vendors shall have no liability under Section 9.1, above, unless and until the cumulative total of all Losses suffered by Purchaser equals One Hundred Thousand U.S. Dollars (\$100,000) (the “**Basket**”), after which Purchaser shall be entitled to recover under Section 9.1, above, all Losses suffered from the first dollar and not just those Losses in excess of the Basket.
- (c) In no event, regardless of the basis or cause, shall the aggregate liability of the Vendors to the Purchaser under this Agreement exceed One Million Five Hundred Thousand U.S. Dollars (\$1.5 million).

### **9.4 Notice of Claim.**

- (a) In the event that a Party (the “**Indemnified Party**”) shall be notified of any claim, proceeding or other matter (a “**Claim**”) in respect of which another Party (the “**Indemnifying Party**”) agreed to indemnify the Indemnified Party pursuant to this Agreement, the Indemnified Party shall promptly give written notice thereof to the Indemnifying Party. Such notice shall specify whether the Claim arises as a result of a claim by a Person against the Indemnified Party (a “**Third Party Claim**”) or whether the Claim does not so arise (a “**Direct Claim**”), and shall also specify with reasonable particularity (to the extent that the information is available) the factual basis for the Claim and the amount of the Claim, if known.
- (b) If, through the fault of the Indemnified Party, the Indemnifying Party does not receive notice of any Claim in time to contest effectively the determination of any liability susceptible of being contested, the Indemnifying Party shall be entitled to set off against the amount claimed by the Indemnified Party the amount of any Losses incurred by the Indemnifying Party resulting from the Indemnified Party’s failure to give such notice on a timely basis.

### **9.5 Direct Claims.**

With respect to any Direct Claim, following receipt of notice from the Indemnified Party of the Claim, the Indemnifying Party shall have 45 days to make such investigation of the Claim as is considered necessary or desirable. For the purpose of such investigation, the Indemnified Party shall make available to the Indemnifying Party the information relied upon by the Indemnified Party to substantiate the Claim, together with all such other information as the Indemnifying Party may reasonably request. If both Parties agree at or prior to the expiration of such 45 day period (or any mutually agreed upon extension thereof) to the validity and amount of such Claim, the Indemnifying Party shall immediately pay in cash to the Indemnified

Party the full agreed-upon amount of the Claim, failing which the matter shall be subject to Section 11.10, below.

#### 9.6 Third Party Claims.

- (a) The Indemnifying Party shall have the right, at its expense, to participate in or assume control of the negotiation, settlement or defence of any Third Party Claim and if the Indemnifying Party assumes control, it shall reimburse the Indemnified Party for all of the Indemnified Party's reasonable out-of-pocket expenses prior to the time the Indemnifying Party assumed control. If the Indemnifying Party elects to assume such control, the Indemnified Party shall have the right to participate in the negotiation, settlement or defense of such Third Party Claim and to retain counsel to act on its behalf, provided that the fees and disbursements of such counsel shall be paid by the Indemnified Party unless the Indemnifying Party consents to the retention of such counsel or unless the named parties to any action or proceeding include both the Indemnifying Party and the Indemnified Party and representation of both the Indemnifying Party and the Indemnified Party by the same counsel would be inappropriate due to actual or potential differing interests between them (such as the availability of different defences).
- (b) If the Indemnifying Party, having elected to assume such control, thereafter fails to defend the Third Party Claim within a reasonable time, the Indemnified Party shall be entitled to assume such control and the Indemnifying Party shall be bound by the results obtained by the Indemnified Party with respect to the Third Party Claim, subject to paragraph (d) of this Section 9.6.
- (c) If any Third Party Claim is of a nature such that the Indemnified Party is required by Applicable Law to incur losses or make a payment to any Person (a "**Third Party**") with respect to the Third Party Claim before the completion of settlement negotiations or related legal proceedings, the Indemnified Party shall promptly give the Indemnifying Party notice of the requirement with reasonable particulars then known to the Indemnified Party and thereafter may incur such Losses or make such payment and the Indemnifying Party shall, forthwith after demand by the Indemnified Party, reimburse the Indemnified Party for such payment. If the amount of any liability of the Indemnified Party under the Third Party Claim in respect of which such payment was made, as finally determined, is less than the amount that was paid by the Indemnifying Party to the Indemnified Party, the Indemnified Party shall, forthwith after the receipt of the difference from the Third Party, pay the amount of such difference, together with any interest thereon paid by the Third Party to the Indemnified Party. In addition, the Indemnifying Party shall post all security required by any court, regulatory body or other authority having jurisdiction, including without limitation, for purposes of enabling the Indemnifying Party to contest any Third Party Claim.
- (d) If the Indemnifying Party fails to assume control of the defense of any Third Party Claim or defaults in respect of any of its obligations under this Section 9.6 with respect thereto, the Indemnified Party shall have the exclusive right to contest the amount claimed and may settle and pay the same on 14 days prior written notice to the Indemnifying Party and the Indemnifying Party shall, thereupon, be deemed to have agreed that such settlement is reasonable and may be agreed to by the Indemnified Party and all other Persons liable in respect of the Third Party Claim unless within such 14 day period the Indemnifying Party notifies the Indemnified Party that it is assuming or reassuming control of such defense and thereafter assumes or reassumes such control and does not default.
- (e) The Indemnified Party and the Indemnifying Party shall co-operate fully with each other with respect to Third Party Claims, and shall keep each other fully advised with respect thereto (including supplying copies of all relevant documentation promptly as it becomes available).

#### **9.7 One Recovery.**

An Indemnified Party is not entitled to double recovery for any Claim even though they may have resulted from the breach of more than one of the representations, warranties, covenants and obligations of an Indemnifying Party in this Agreement. No Indemnifying Party has any liability or obligation with respect to any Claim for indemnification to the extent that such matter was reflected as a deduction or set off of the Purchase Price pursuant to Article 2 or an adjustment to the Purchase Price in Article 2.

#### **9.8 Insurance Proceeds and Tax Benefits.**

To the extent that the Purchaser has a Claim to which it is entitled to be indemnified by the Vendors pursuant to this Agreement, the loss recoverable from the Vendors shall be reduced to the extent that the Purchaser receives proceeds of insurance (net of any deductibles or increases of premiums associated therewith) with respect to such Claim and to the extent that the Purchaser receives a tax benefit (in the form of a tax deduction, tax credit or similar reduction in taxes otherwise due and payable) with respect to such Claim.

#### **9.9 Mitigation of Indemnity Claims.**

The Purchaser and the Vendors hereby agree that, with respect to any Claim they may have, as the case may be, they shall in good faith use commercially reasonable efforts to mitigate or minimize such Claim and to cooperate: (i) in the case of the Purchaser, with the Vendors in the Vendor' efforts to minimize any of the Purchaser's Claims, and (ii) in the case of the Vendors, with the Purchaser in the Purchaser's efforts to minimize any of the Vendor' Claims. The Purchaser agrees that the employees and consultants of CPL (including, but not limited to accountants, engineers, personnel and other staff) will be made available to the Vendors after the Closing Date, in computing, analyzing, settling or otherwise dealing with any Claims of the Purchaser.

#### **9.10 Exclusivity.**

The provisions of this Article 9 shall apply to any Claim (other than a claim for specific performance or injunctive relief) for breach of any covenant, representation, warranty or other provision of this Agreement or any agreement, certificate or other document delivered pursuant hereto so that all such Claims shall be subject to the limitations and other provisions contained in this Article 9.

#### **9.11 Payment of Indemnification Obligations.**

In the event that the Vendors become obligated to indemnify the Purchaser under this Article 9, the Purchaser may, at its discretion, and in addition any other mechanisms available at law to seek payment of such amounts from the Vendors, satisfy all or any part of such indemnification obligations through any combination of:

- (a) cancelling all or any portion of the Sunniva Shares issued to the Vendors upon conversion of the Promissory Notes, to the extent such Sunniva Shares have not previously been sold by the Vendors, at a value per Sunniva Share equal to US\$2.55 per share; or
- (b) offsetting all or any portion of such indemnification obligations against any amounts owing by the Purchaser to either of the Vendors including, without limitation, amounts owing in respect of the Promissory Notes.

### **9.12 Tax Treatment of Indemnification Payments.**

All indemnification payments made under this Agreement shall be treated by the Parties as an adjustment to the Purchase Price for Tax purposes, unless otherwise required by Applicable Law.

## **ARTICLE 10 TAX MATTERS**

### **10.1 Filing of Tax Returns.**

The Vendors shall prepare and file, or cause to be prepared and filed, all income Tax Returns of the Company for any taxable period ending on or prior to the Closing Date, including applicable state and local income Tax Returns. The Purchaser shall file, or cause to be prepared and filed, all Tax Returns of the Company that are due after the Closing Date other than those for which the Vendors are responsible under this Section 10.1; provided, however, that with respect to any Tax Return relating to a taxable period (or portion thereof) ending on or prior to the Closing Date, such Tax Return shall be prepared in a manner that is consistent with past practice of the Company, and shall be submitted to the Vendors for their approval at least thirty (30) days prior to the due date for such Tax Return, such approval not to be unreasonably withheld or delayed. With respect to income Tax Returns of the Company covering any taxable period ending on the Closing Date: (i) except as otherwise required by Applicable Law, Purchaser and the Vendors agree that such income Tax Returns shall be prepared based on a "closing of the books" as of the Closing Date with respect to the transactions contemplated by this Agreement for federal, state and local Tax purposes; and (ii) except as otherwise required by Applicable Law, Purchaser and the Vendors agree that any items of income, gain, loss, or deduction recognized by the Company as a result of the transactions contemplated by this Agreement shall be treated as having been recognized by the Company prior to the sale of the Purchased Shares.

### **10.2 Amended Tax Returns.**

With respect to any Tax Return relating to any taxable period ending on or prior to the Closing Date, and except as required by Applicable Law, Purchaser shall not make or change, or cause the Company to make or change, any Tax elections or file any amended Tax Return, to the extent such Tax election or Tax Return is reasonably expected to result in an indemnification obligation by Vendors to Purchaser pursuant to this Agreement, without the Vendors' prior written consent.

### **10.3 Tax Refunds.**

Any Tax refunds relating to Taxes of the Company that are received by Purchaser, the Company or any of their Affiliates, or that give rise to credits against Tax to which Purchaser, the Company or any of their Affiliates become entitled, that relate to Tax periods or portions thereof ending on or prior to the Closing Date shall be for the account of the Vendors, and Purchaser, the Company or any of the applicable Affiliate shall pay over to the Vendors such refund or the amount of any such credit within ten (10) days after receipt thereof or entitlement thereto.

### **10.4 Tax Cooperation.**

The Vendors and the Purchaser shall cooperate to the extent reasonably requested in connection with the preparation and filing of Tax Returns and any audit, litigation, or other proceeding involving Taxes. Cooperation shall include the retention and, upon the other Party's request, the provision of records and other information reasonably relevant to the preparation of a Tax Return or the conduct of an audit, litigation, or other proceeding.



**ARTICLE 11  
MISCELLANEOUS**

**11.1 Notices.**

(a) Any notice or other communication required or permitted to be given hereunder shall be in writing and shall be delivered in person, transmitted by email or sent by registered mail, charges prepaid, addressed as follows:

(i) if to the Vendors, or either of them:

c/o James Kunevicius

[REDACTED] {personal information}  
[REDACTED] {personal information}  
[REDACTED] {personal information}

(ii) if to the Purchaser:

Sunniva Holdings Corp.  
c/o 1200 – 200 Burrard Street  
Vancouver, B.C., Canada  
V7X 1T2  
Email: lpedersen@sunnivamedical.com

(b) Any such notice or other communication, if delivered by email, shall be deemed to have been given on the day on which it was transmitted if transmitted on a Business Day prior to 5:00 p.m. at the place of receipt or, otherwise, on the next following Business Day and, if mailed, on the third Business Day following the date of mailing; provided, however, that if at the time of mailing or within three Business Days thereafter there is or occurs a labor dispute or other event which might reasonably be expected to disrupt the delivery of documents by mail, any notice or other communication hereunder shall be delivered or transmitted by email as aforesaid.

(c) Any Party may at any time change its address for service from time to time by giving notice to the other Parties in accordance with this Section 11.1.

**11.2 Commissions, etc.**

(a) The Vendors agree to jointly and severally indemnify and save harmless the Purchaser from and against all Losses suffered or incurred by the Purchaser (directly or indirectly through its ownership of CPL on or after the Closing Date) in respect of any commission or other remuneration payable or alleged to be payable to any broker, agent or other intermediary who purports to act or have acted for or on behalf of CPL or the Vendors.

(b) The Purchaser agrees to indemnify and save harmless the Vendors from and against all Losses suffered or incurred by the Vendors in respect of any commission or other remuneration payable or alleged to be payable to any broker, agent or other intermediary who purports to act or have acted for or on behalf of the Purchaser.

### **11.3 Public Announcements and Filings.**

The Parties shall consult with and obtain the consent (not to be unreasonably withheld) of each other before issuing any press release or making any other public announcement with respect to this Agreement or the transactions contemplated hereby.

### **11.4 Fees.**

Each of the Parties hereto shall pay their respective legal and other costs and expenses incurred in connection with the preparation, execution and delivery of this Agreement and all documents and instruments executed pursuant hereto and any other costs and expenses whatsoever and howsoever incurred. For greater certainty, all CPL Transaction Expenses shall be paid solely by the Vendors prior to the Closing Date.

### **11.5 Assignment and Successors.**

Except as specifically contemplated by this Agreement, no Party hereto shall assign this Agreement or any part hereof without the prior written consent of the other Parties. Notwithstanding the foregoing, the Purchaser may assign all or any portion of its rights and obligations hereunder to a wholly-owned subsidiary of the Purchaser provided that the Purchaser will remain directly liable to the Vendors for all obligations hereunder notwithstanding such assignment.

### **11.6 Enurement and Binding Effect.**

This Agreement shall enure to the benefit of, be binding upon and enforceable by the Parties and their respective heirs, executors, administrators, legal representatives, successors and permitted assigns.

### **11.7 Entire Agreement.**

This Agreement, the Schedules and the agreements referred to herein constitute the entire agreement and understanding between the Parties relating to the subject matter hereof and thereof and supersede all prior representations, endorsements, premises, agreements, memoranda, communications, negotiations, discussions, understandings and arrangements, including the memorandum of understanding dated October 13, 2016, whether oral, written or inferred, between the Parties relating to the subject matter hereof. This Agreement may not be modified, amended, rescinded, cancelled, altered or supplemented, in whole or in part, except upon the execution and delivery of a written instrument executed by a duly authorized representative of each of the Parties.

### **11.8 Counterparts.**

This Agreement may be executed in counterparts, each of which shall constitute an original and all of which taken together shall constitute one and the same instrument.

### **11.9 Termination, Amendment and Waiver.**

- (a) This Agreement may be terminated at any time prior to the Closing (with respect to (ii) and (iii) by written notice by the terminating party to the other party): (i) by mutual agreement of the Vendors and Purchaser; (ii) by either Vendors or Purchaser if the Closing shall not have occurred before 4:59 PM, California time on December 15, 2016 (the "**End Date**"); provided, however, that the right to terminate this Agreement under this clause (ii) not be available to any party whose failure to fulfill any obligation under this Agreement has been the principal cause of or resulted in the

failure of the Closing to occur on or before such date; or (iii) by either Vendors or Purchaser if a court of competent jurisdiction or other Governmental Body shall have issued a nonappealable final order, decree or ruling or taken any other action, in each case having the effect of permanently restraining, enjoining or otherwise prohibiting the Acquisition, unless the party seeking to terminate this Agreement pursuant to this clause (iii) has materially breached its obligations under this Agreement.

- (b) It is hereby acknowledged and agreed by each party hereto, that if this Agreement is terminated or the Closing does not otherwise occur, (i) the Vendors shall be entitled to retain the Deposit, Vendors shall have no obligation to return such Deposit to the Purchaser and Purchaser shall have no rights in such Deposit and (ii) CPL shall be entitled to retain the Pre-Closing Contract Payments, CPL shall have no obligation to return such Pre-Closing Contract Payments to the Purchaser and Purchaser shall have no rights in such Pre-Closing Contract Payments.
- (c) This Agreement may be amended only by execution of an instrument in writing signed on behalf of each party hereto.
- (d) The parties hereto may, to the extent legally allowed: (a) extend the time for the performance of any of the obligations or other acts of the other parties hereto; (b) waive any inaccuracies in the representations and warranties contained herein or in any document delivered pursuant hereto; and (c) waive compliance with any of the agreements or conditions contained herein. Any agreement on the part of a party hereto to any such extension or waiver shall be valid only if set forth in a written instrument signed on behalf of such party.

#### **11.10 Governing Law; Jurisdiction and Dispute Resolution**

- (a) **Governing Law; Jurisdiction.** This Agreement will be governed by, and construed and enforced in accordance with, the laws of the State of California, without regard to the conflict of laws provisions thereof. The Parties agree that, in the event of any action or suit as to any matters of dispute between the Parties, service of any process may be made upon the other Party in the same manner as the giving of notices under Section 10.1 of this Agreement. Notwithstanding anything to the contrary contained herein, in the event that any provision of this Agreement is unenforceable under the laws of the State of California, and such provision is enforceable under the laws of any other state or jurisdiction, the Parties expressly agree that said provision shall be interpreted and construed under the laws of that state or jurisdiction.
- (b) **Dispute Resolution.** In the event of any dispute, claim, question, or disagreement arising from or relating to this Agreement or the breach thereof, the Parties hereto shall use their best efforts to settle the dispute, claim, question or disagreement. To this effect, they shall consult and negotiate with each other in good faith and, recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to both Parties. If the dispute cannot be settled through negotiation within a period of seven (7) days, the Parties agree to attempt in good faith to settle the dispute through mediation, administered by a mediator mutually agreeable to both Parties, before resorting to arbitration. If they do not reach such solution, or an agreed upon mediator cannot be identified, within a period of thirty (30) days, then, upon notice by either Party to the other, all disputes, claims, questions, or differences shall be finally settled by arbitration administered by the American Arbitration Association, in Los Angeles, California, in accordance with the provisions of that organization's Commercial Arbitration Rules. The dispute shall be heard and determined by a panel of three (3) arbitrators. In such case, each Party shall each select one (1) arbitrator. The arbitrator selected by the claimant and the arbitrator selected by respondent shall, within ten (10) days of their appointment, select a third neutral arbitrator. In the event that they are unable to do

so, or if for any reason the three (3) arbitrators are not timely empanelled, the Parties, or either of them, or their attorneys, may request that the American Arbitration Association appoint the third or any other necessary arbitrator. Prior to the commencement of hearings, each of the arbitrators appointed shall provide an oath or undertaking of impartiality. The United States Arbitration Act shall govern the interpretation, enforcement, and proceedings pursuant hereto. Notwithstanding any provision hereof, any applicable law or public policy considerations, including without limitation any possible illegality or unenforceability of this Agreement or any portion hereof due to the subject matter hereof, the arbitrators shall interpret this Agreement giving full effect to the terms and provisions hereof. All charges of the American Arbitration Association or any mediator shall be borne equally by the Parties, and each Party hereby agrees to pay all such charges promptly upon request therefor, and if any Party shall fail to do so, the other Party shall be permitted to apply towards such charges any amounts otherwise due to the non-paying Party. The Parties to the arbitration proceeding shall bear their own respective expenses incurred in connection therewith, including, but not limited to, legal fees and expenses.

*[Intentionally Blank—Signature Page Follows]*

IN WITNESS WHEREOF this Agreement has been executed by the Parties.

(SIGNED)

Witness

(SIGNED)

JIM KUNEVICIUS

[ADDRESS]

(SIGNED)

Witness

(SIGNED)

EDLIN KIM

[ADDRESS]

**SUNNIVA HOLDINGS CORPORATION**

(SIGNED)

By:

Authorized Signatory

**Exhibit A**  
**FORM OF PROMISSORY NOTE**

THIS NOTE AND THE SECURITIES ISSUABLE UPON THE CONVERSION HEREOF HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED. THEY MAY NOT BE SOLD, OFFERED FOR SALE, PLEDGED, HYPOTHECATED OR OTHERWISE TRANSFERRED EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR AN OPINION OF COUNSEL SATISFACTORY TO BORROWER THAT REGISTRATION IS NOT REQUIRED UNDER SUCH ACT OR UNLESS SOLD PURSUANT TO RULE 144 UNDER SUCH ACT.

UNLESS PERMITTED UNDER SECURITIES LEGISLATION, THE HOLDER OF THIS NOTE MUST NOT TRADE THE NOTE BEFORE THE DATE THAT IS 4 MONTHS AND A DAY AFTER THE LATER OF: (I) NOVEMBER 17, 2016, AND (II) THE DATE THE BORROWER BECOMES A REPORTING ISSUER IN ANY PROVINCE OR TERRITORY OF CANADA.

### Secured Convertible Promissory Note

US\$5,250,000.00

November 17, 2016

FOR VALUE RECEIVED, **SUNNIVA HOLDINGS CORPORATION**, a corporation incorporated under the laws of the Province of British Columbia, Canada ("**Borrower**"), hereby promises to pay to the order of **JIM KUNEVICIUS**, an individual ("**Lender**"), the principal sum of **Five Million Two Hundred Fifty Thousand U.S. Dollars (US\$5,250,000.00)** (the "**Loan**"), in lawful money of the United States of America and in immediately available funds. This convertible promissory note (the "**Note**") is issued pursuant to that certain Membership Interest Purchase Agreement, by and among the Company, the Lender and Edlin Kim dated as of the date hereof (as may be amended from time to time, the "**Purchase Agreement**"). All monetary amounts referenced in this Note are set forth in United States dollars, including without limitation the Loan, the Amount Due from time to time and the Conversion Price. To the extent any amount referenced in this Note, for purposes of a calculation, must be converted to (or from) United States dollars from (or to) Canadian dollars, the applicable exchange rate for such calculation shall be the exchange rate as published by the Wall Street Journal on the date of such calculation.

1. Maturity and Payment.

(a) Maturity. The unpaid principal balance of this Note plus accrued and unpaid interest thereon (such amount, less any payments made in connection with an Acceleration Notice, as defined below, and any reduction in accrued and unpaid interest and/or principal resulting from any and all prior partial conversion(s) of this Note pursuant to Section 3, below, the "**Amount Due**") shall be due and payable on December 31, 2017 (the "**Maturity Date**"), unless and to the extent converted prior thereto pursuant to Section 3.

(b) No Pre-Payment. This Note shall not be pre-paid, in whole or in part, prior to the Maturity Date, without the prior written consent of the Lender.

(c) Acceleration and Demand. Until January 7, 2017, Lender shall have the right and option to accelerate Borrower's obligation to pay up to Two Million Two Hundred Fifty

Thousand U.S. dollars (US\$2,250,000.00) of the then current Amount Due, and to demand payment therefor on February 7, 2017, by providing prior written notice of such acceleration and demand (the "**Acceleration Notice**"), in which case (i) Borrower shall be obligated to pay the amount demanded by Lender (up to Two Million Two Hundred Fifty Thousand U.S. dollars (US\$2,250,000.00)) on or prior to February 7, 2017; and (ii) no automatic conversion of this Note shall occur pursuant to Section 3(b) from and after delivery of an Acceleration Notice with respect to any portion of the Amount Due as to which Lender is demanding and accelerating payment pursuant to the Acceleration Notice.

2. Interest. Interest shall accrue on the unpaid principal amount of this Note at a rate per annum equal to one half of one percent (0.5%) compounded annually. Interest will be computed on the basis of a 365 or 366-day year, as applicable, and the actual number of days elapsed.

3. Conversion of the Note. This Note shall be convertible into common shares of the Borrower as set forth below.

(a) Optional Conversion. The Amount Due under this Note, or any portion thereof, shall be convertible, at the option of the Lender, at any time after the date of the issuance of this Note by delivery of written notice of such conversion to the office of the Borrower or any transfer agent of the Borrower's shares of capital stock (the "**Optional Conversion Notice**") as follows:

(i) The portion of the Amount Due that Lender elects to convert (the "**Conversion Amount**"), upon delivery of the Optional Conversion Notice, shall immediately convert into a number of fully paid and non-assessable common shares of the Borrower (rounded up to the nearest whole share) equal to (i) the Conversion Amount divided by (ii) the Conversion Price then in effect (the "**Optional Conversion Shares**").

(ii) Borrower shall issue and deliver to Lender certificates evidencing such Optional Conversion Shares within three (3) business days of receipt of the Optional Conversion Notice.

(iii) Borrower at all times will reserve from its authorized and unissued common shares a sufficient number of shares to provide for the issuance of Optional Conversion Shares upon the full conversion of this Note.

(b) Automatic Conversion.

(i) From and after such time as the Borrower's common shares are listed for trading on the TSX Venture Exchange (or, if previously approved by the Lender, another Canadian securities exchange) (the "**Exchange**") and have been trading for a period of at least thirty (30) trading days at an average price equal to or in excess of US\$2.55 per share, the then current Amount Due shall automatically convert into fully paid and non-assessable common shares of the Borrower, rounded up to the next higher whole number of shares (the "**Automatic Conversion Shares**"), at a price equal to the Conversion Price.

(ii) Borrower shall issue and deliver to Lender certificates evidencing such



Automatic Conversion Shares within three (3) business days of the date on which the Borrower's common shares are first listed on a Canadian securities exchange.

(iii) Borrower at all times will reserve from its authorized and unissued common shares a sufficient number of shares to provide for the issuance of Automatic Conversion Shares upon the full conversion of this Note.

(c) Conversion Price.

(i) *Definition and Calculation.* The "**Conversion Price**" shall be equal to US\$2.55 per share (subject to adjustment as provided below).

(ii) *Splits and Subdivisions.* If Borrower should at any time or from time to time prior to conversion in full of this Note pursuant to Section 3(a), 3(b) or 3(c) (the "**Full Conversion Date**"), if any, fix a record date for the effectuation of a split or subdivision of the outstanding common shares or the determination of the holders of common shares entitled to receive a dividend or other distribution payable in additional common shares or other securities or rights convertible into, or entitling the holder thereof to receive directly or indirectly, additional securities (hereinafter referred to as "**Common Equivalents**") without payment of any consideration by such holder for the additional common shares or Common Equivalents, then, as of such record date (or the date of such distribution, split or subdivision if no record date is fixed), the Conversion Price shall be proportionately decreased and the number of common shares into which this Note is convertible into pursuant to Section 3(a), 3(b) or 3(c) shall be appropriately increased in proportion to such increase of outstanding shares.

(iii) *Combination of Shares.* If prior to the Full Conversion Date, if any, the number of common shares outstanding at any time after the date hereof is decreased by a combination of the outstanding common shares, the Conversion Price shall be proportionately increased and the number of common shares into which this Note is convertible pursuant to Section 3(a), 3(b) or 3(c) shall be appropriately decreased in proportion to such decrease in outstanding shares.

(iv) *Merger or Consolidation.* If at any time or from time to time prior to the Full Conversion Date, if any, there shall be a capital reorganization of Borrower's equity securities (other than a subdivision, combination, reclassification or exchange of shares provided for elsewhere in this Section 3(d)) or a merger or consolidation of Borrower with or into another corporation, then as a part of such reorganization, merger or consolidation, provision shall be made so that Lender shall thereafter exclusively be entitled to receive upon full conversion of this Note in accordance with the terms hereof, the number of shares of stock or other securities or other property (including, if applicable, cash) (or any combination thereof) to which a holder of the number of common shares (or of any shares of stock or other securities or other property (including, if applicable, cash) (or any combination thereof) which may be) issuable upon full conversion of this Note pursuant to the terms hereof would have received if this Note had been converted into common shares in accordance with the terms hereof immediately prior to such reorganization, merger or consolidation.

(v) *Reclassification, Conversion or Reorganization.* If the common shares (or any shares of stock or other securities which may be) issuable upon the conversion of this Note in accordance with Section 3(a), 3(b) or 3(c) shall be changed into the same or different number of shares of any class or classes of stock, whether by capital reorganization, conversion, reclassification or otherwise (other than a subdivision or combination of shares or stock dividend provided for in clauses (ii) or (iii) above, or a reorganization, merger or consolidation provided for in clause (iv) above), then and in each such event Lender shall exclusively be entitled to receive upon the conversion of this Note pursuant to Section 3(a), 3(b) or 3(c) the kind and amount of shares of stock or other securities or other property (including, if applicable, cash) (or any combination thereof) upon such reorganization, conversion, reclassification or other change, to which a holder of the number of common shares (or of any shares of stock or other securities or other property (including, if applicable, cash) (or any combination thereof) which may be) issuable upon the conversion of this Note pursuant to Section 3(a), 3(b) or 3(c) would have received if this Note had been fully converted into common shares pursuant to the terms hereof immediately prior to such reorganization, conversion, reclassification or other change, all subject to further adjustment as provided herein.

(vi) *Notice of Adjustments and Record Dates.* Borrower shall promptly notify Lender in writing of each adjustment or readjustment of the Conversion Price hereunder and the number of common shares issuable upon the conversion of this Note pursuant to Section 3(a), 3(b) or 3(c). Such notice shall state the adjustment or readjustment and show in reasonable detail the facts on which that adjustment or readjustment is based. In the event of any taking by Borrower of a record of the holders of common shares for the purpose of determining the holders thereof who are entitled to receive any dividend or other distribution, Borrower shall notify Lender in writing of such record date at least twenty (20) days prior to the date specified therein.

(d) Method of Conversion. This Note may be converted by Lender only as described in this Section 3. Lender agrees to deliver the original of this Note (or an affidavit to the effect that this Note has been lost, stolen or destroyed and an agreement acceptable to Borrower whereby Lender agrees to indemnify Borrower from any loss incurred by it in connection with this Note) upon any full conversion of this Note pursuant to Section 3(a), 3(b) or 3(c) for cancellation.

(e) No Impairment. Borrower shall not avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by Borrower, but shall at all times in good faith assist in the carrying out of all the provisions of this Note. Without limiting the generality of the foregoing, Borrower (i) shall reserve and keep available a number of its authorized common shares, free from all preemptive rights, which shall be sufficient to permit the full conversion of this Note in accordance with Section 3(a), 3(b) or 3(c) and (ii) shall take all such action as may be necessary or appropriate in order that all common shares as may be issued pursuant to the conversion of this Note in accordance with Section 3(a), 3(b) or 3(c) shall, upon issuance, be validly issued, fully paid and nonassessable.

(f) Exchange Transfer Restrictions. The Lender acknowledges that the Exchange may impose restrictions on the ability of the Lender to dispose of some or all of the Borrower's common shares acquired hereunder for some period of time as a condition of the Borrower

listing its shares for trading (such restriction, including without limitation certificate legends, escrow arrangements, lockup agreements, and any other transfer restriction imposed by or pursuant to negotiations with the Exchange, the “*Exchange Restrictions*”). The parties agree they will use commercially reasonable efforts to minimize any Exchange Restrictions.

(g) Notice of Certain Transactions. In the event:

(i) the Borrower shall take a record of the holders of its common shares for the purpose of entitling or enabling them to receive any dividend or other distribution, or to receive any right to subscribe for or purchase any shares of stock of any class or any other securities, or to receive any other right, to subscribe for or purchase any shares of stock of any class or any other securities, or to receive any other right; or

(ii) of any capital reorganization of the Borrower, any reclassification of the capital stock of the Borrower, any consolidation or merger of the Borrower, any consolidation or merger of the Borrower with or into another corporation (other than a consolidation or merger in which the Borrower is the surviving entity), or any transfer of all or substantially all of the assets of the Borrower; or

(iii) of the voluntary or involuntary dissolution, liquidation or winding-up of the Borrower, then, and in each such case, the Borrower will mail or cause to be mailed to the Holder a notice specifying, as the case may be, (i) the date on which a record is to be taken for the purpose of such dividend, distribution or right, and stating the amount and character of such dividend, distribution or right, or (ii) the effective date on which such reorganization, reclassification, consolidation, merger, transfer, dissolution, liquidation, winding-up, redemption or conversion is to take place, and the time, if any is to be fixed, as of which the holders of record of common shares (or such other stock or securities at the time deliverable upon such reorganization, reclassification, consolidation, merger, transfer, dissolution, liquidation, winding-up, redemption or conversion) are to be determined. Such notice shall be mailed at least ten days prior to the record date or effective date for the event specified in such notice.

4. Events of Default. The occurrence of any of the following events shall constitute an “*Event of Default*”:

(a) Borrower shall fail, for any reason, to make any principal or interest payment when due under this Note;

(b) a proceeding or case shall be commenced, without the application or consent of Borrower, in any court of competent jurisdiction, seeking (i) Borrower’s reorganization, liquidation, dissolution, arrangement or winding-up, or the composition or readjustment of Borrower’s debts, (ii) the appointment of a receiver, custodian, trustee, examiner, liquidator or the like of Borrower or of all or any substantial part of Borrower’s assets, or (iii) similar relief in respect of Borrower under any law relating to bankruptcy, insolvency, reorganization, winding-up or composition or adjustment of debts, and such proceeding or case shall continue without being dismissed, or an order, judgment or decree approving or ordering any of the foregoing

shall be entered and continue without being stayed and in effect, for a period of sixty (60) or more days;

(c) an order for relief against Borrower shall be entered in an involuntary case under the U.S. Federal Bankruptcy Code of 1978, the Canadian Companies' Creditors Arrangement Act or the Canadian Bankruptcy and Insolvency Act, each as amended from time to time (collectively, the "**Bankruptcy Law**");

(d) Borrower shall (i) apply for or consent to the appointment of, or the taking of possession by, a receiver, custodian, trustee, examiner or liquidator of itself or of all or a substantial part of its assets, (ii) make a general assignment for the benefit of its creditors, (iii) commence a voluntary case under the Bankruptcy Law, (iv) file a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, liquidation, dissolution, arrangement or winding-up or composition or readjustment of debts, (v) fail to controvert in a timely and appropriate manner, or acquiesce in writing to, any petition filed against it in an involuntary case under the Bankruptcy Law or (vi) take any action for the purpose of effecting any of the foregoing;

(e) Borrower breaches any of its representations, warranties or covenants under this Note or the Purchase Agreement in any material respect and such breach is not cured within ten (10) business days after written notice thereof to Borrower.

#### 5. Remedies.

(a) Upon the occurrence and during the continuance of any Event of Default described in clauses (c), (d), or (e) of Section 4 (any such Event of Default, an "**Insolvency Event**") (i) all amounts payable by Borrower pursuant to this Note shall become immediately due and payable, without presentment, demand, notice, protest or other requirements of any kind (all of which are hereby expressly waived by Borrower) and (ii) Lender shall be entitled to exercise any and all remedies available to Lender at law or in equity.

(b) Upon the occurrence and during the continuance of any Event of Default other than an Insolvency Event, (i) Lender may, by written notice to Borrower, declare all amounts payable by Borrower pursuant to this Note to be due and payable, and all such amounts shall immediately become due and payable and (ii) Lender shall be entitled to exercise any and all remedies available to Lender at law or in equity. Written notice pursuant to this clause (b) shall be sufficient if it is addressed to Borrower and states that such an Event of Default has occurred and Lender is providing notice that all amounts due and payable pursuant to this Note are immediately due and payable in accordance with this clause (b).

6. Default Interest. Upon the occurrence and during the continuance of an "Event of Default," interest shall accrue on the unpaid principal balance of this Note at the rate of interest specified in Section 2 plus eight percent (8.0%) per annum, or such lower maximum amount of interest permitted to be charged under applicable law.

7. Security. As security for the full, prompt and complete payment when due

(whether at stated maturity, by acceleration or otherwise) of the Amount Due and all other obligations under this Note, Borrower hereby pledges, hypothecates, assigns, charges, mortgages, delivers, and transfers to Lender, and hereby grants to Lender a continuing security interest in all of Borrower's right, title and interest (whether now or hereafter existing or acquired) in and to the following (collectively, the "***Pledged Collateral***"): (a) all rights of Borrower under the articles of organization and operating agreement of CP Logistics, LLC (the "***Pledged Company***") and all equity interests in the Pledged Company (the "***Pledged Interest***") and the certificates (if any) representing such Pledged Interest, and all dividends, cash, instruments, and other property or proceeds from time to time received, receivable, or otherwise distributed in respect of or in exchange for any or all of such Pledged Interest; and (b) the rents, issues, profits, returns, income, allocations, distributions and proceeds of and from any and all of the foregoing. Concurrently with issuance of this Note, Borrower shall cause the Pledged Company to enter into an uncertificated security control agreement in the form of Exhibit A hereof. Additionally, at the request of the Lender, Borrower shall cause the Pledged Company to certificate any Pledged Interest and to deliver such certificates to Lender. Borrower further agrees that Lender may file, or cause to be filed, any financing or continuation statements under the UCC with respect to the security interests granted hereby, and that such financing or continuation statements need not contain the Borrower's signature thereon.

8. Pledged Collateral Covenants. Until the Amount Due and all other obligations under this Note are converted or paid in full:

(a) Borrower shall not sell, assign, transfer, pledge or otherwise encumber (including through any voting agreement, shareholders agreement or proxy) the Pledged Collateral in any manner (except for the pledge granted herein to the Lender and liens for taxes not yet due or the validity or amount of which is being contested in good faith proceedings).

(b) Borrower shall not cause or allow the Pledged Company to issue any additional equity interests.

(c) Borrower shall not cause or allow the Pledged Company to sell, assign or otherwise dispose of any of its assets, other than in the ordinary course of its business; provided that Pledged Company may enter into sale and leaseback arrangements reasonably approved by Lender with respect to real property of the Pledged Company so long as Pledged Company guarantees the Amount Due and provides security for such sale and leaseback arrangement reasonably acceptable to Lender.

(d) Borrower shall promptly pay any amounts distributed to Borrower with respect to the Pledged Collateral to Lender in repayment of the Amount Due.

(e) Borrower shall at any time, and from time to time, promptly execute and deliver all further instruments, and take all further action that may be necessary or desirable, as Lender may reasonably request, in order to perfect and protect any security interest granted or purported to be granted hereby or to enable Lender to exercise and enforce its rights and remedies with respect to any of the Pledged Collateral.

9. Reinstatement. This Note shall continue to be effective or be automatically reinstated, as the case may be, if at any time payment or conversion, in whole or in part, of any of the Amount Due is rescinded or must otherwise be restored or returned by Lender as a preference, fraudulent conveyance or otherwise under any bankruptcy, insolvency or similar law, all as though such payment had not been made; provided that in the event payment of all or any part of the Amount Due is rescinded or must be restored or returned, all reasonable costs and expenses (including, without limitation, reasonable attorneys' fees and disbursements) incurred by Lender in defending and enforcing such reinstatement shall be deemed to be included as a part of the Amount Due.

10. Waivers. To the extent permitted by applicable law, Borrower waives all rights and benefits of any statute of limitations, moratorium, reinstatement, marshalling, forbearance, valuation, stay, extension, redemption, appraisal and exemption now provided or which may hereafter be provided by law, both as to itself and as to all of its properties, real and personal, against the enforcement and collection of the indebtedness evidenced hereby.

11. Notices. Any notice, demand, communication or other document required, permitted, or desired to be given hereunder shall be in writing and shall be delivered personally or sent by United States or Canadian registered or certified mail, return receipt requested, postage prepaid, by Federal Express or other reputable overnight courier, or by facsimile (with confirmation of receipt), and addressed to the party at the respective numbers and/or addresses set forth below, and the same shall be deemed given and effective (i) upon receipt or refusal if delivered personally or by hand delivered messenger service, (ii) the date received or refused if sent by Federal Express or other reputable overnight courier, (iii) the date received or refused if mailed by United States or Canadian registered or certified mail, return receipt requested, postage prepaid, and (iv) the date received if sent by facsimile or electronic mail during normal business hours of the recipient and on the next business day if sent after normal business hours of the recipient. A party may change its address for receipt of notices by service of a notice of such change in accordance herewith.

If to Borrower:

Sunniva Holdings Corp.  
c/o 1200-200 Burrard Street  
Vancouver, B.C., Canada  
V7X 1T2  
Attn: Leith Pedersen  
E-mail: lpedersen@sunnivamedical.com

If to Lender:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

12. Amendment. This Note or any provision hereof may be waived, changed, modified or discharged only by agreement in writing signed by Borrower and Lender. Borrower may not assign or transfer its obligation hereunder without the prior written consent of Lender.

Lender may assign or transfer this Note or its rights hereunder without the prior written consent of Borrower.

13. Interpretation. The term "Borrower" shall include each person and entity now or hereafter liable hereunder, whether as maker, successor, assignee or endorsee, each of whom shall be jointly, severally and primarily liable for all of the obligations set forth herein.

14. Severability. If any provision of this Note shall for any reason be held invalid or unenforceable, such invalidity or unenforceability shall not affect any other provision of this Note, but this Note shall be construed as if this Note had never contained the invalid or unenforceable provision.

15. Governing Law. This Note shall be governed by and construed in accordance with the domestic laws of the State of California, without giving effect to any choice of law provision or rule.

16. Savings Clause. Nothing contained in this Note shall be deemed to establish or require the payment of a rate of interest or other charges in excess of the maximum interest rate permitted by applicable law. In the event that the rate of interest required to be paid or other charges hereunder exceed the maximum interest permitted by such law, any payments in excess of such maximum shall be credited against amounts owed by Borrower to Lender.

*[Intentionally Blank—Signature Page Follows]*

**IN WITNESS WHEREOF**, the undersigned Borrower has caused the due execution of this Note as of the day and year first herein above written.

**SUNNIVA HOLDINGS CORP.**

By: \_\_\_\_\_  
Name:  
Title:



**EXHIBIT A**

**UNCERTIFICATED SECURITY CONTROL AGREEMENT**

(See attached)

## CONTROL AGREEMENT

This CONTROL AGREEMENT (this "*Agreement*") is entered into as of [\_\_\_\_], by and among CP LOGISTICS, LLC, a North Carolina limited liability company ("*Pledged Company*"), JIM KUNEVICIUS ("*Lender*"), and SUNNIVA HOLDINGS CORPORATION, a corporation incorporated under the laws of the Province of British Columbia, Canada ("*Borrower*").

### RECITALS:

WHEREAS, pursuant to that certain Secured Convertible Promissory Note (the "*Note*") dated \_\_\_\_\_, 2016 by Borrower in favor of Lender, Borrower has promised to pay certain amounts to Lender;

WHEREAS, Borrower owns, both legally and beneficially, one hundred percent (100%) of the issued and outstanding, fully-diluted membership interests of Pledged Company;

WHEREAS, pursuant to the terms of the Note, Borrower has granted a lien on the Pledged Collateral (as defined in the Note) in favor of the Lender; and

WHEREAS, the parties hereto wish to acknowledge such security interests and Lender's control over the Pledged Collateral for purposes of perfecting the security interests of Lender in the Pledged Collateral in accordance with the provisions of Article 8 of the Uniform Commercial Code as enacted and in effect in the State of North Carolina (the "*UCC*").

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Defined Terms. All capitalized terms used but not otherwise defined herein shall have the respective meanings ascribed thereto in the Note.

2. Acknowledgment of Security Interest. Pledged Company hereby acknowledges and agrees that Lender has been granted and continues to hold a first priority security interest in and to the Pledged Collateral as collateral security for all obligations, liabilities and indebtedness of Borrower under the Note.

3. Agreement to Follow Instructions; Agreement Not to Register Transfer. Pledged Company hereby agrees to comply with any "instructions" (as defined in Section 8-102(a)(12) of the UCC) originated by or on behalf of Lender without further consent of Borrower, including, without limitation, instructions regarding the transfer, redemption or other disposition of the Pledged Collateral or the proceeds thereof, including any distributions with respect thereto; provided that Lender agrees such instructions shall only be originated by Lender after the occurrence and during the continuance of an Event of Default. Pledged Company agrees that it

shall not register any transfer of the Pledged Collateral to any Person without the prior written consent of Lender.

4. Certificating Membership Interests. Borrower and Pledged Company hereby agree that neither Person shall cause Pledged Company to issue certificates representing its membership interests or any other ownership interests in Pledged Company, or otherwise cause such membership interests or other ownership interests to be deemed “certificated securities” within the meaning of Article 8 of the UCC, in each case unless such securities are certificated and delivered to the Lender.

5. Issuance of Additional Interests. Pledged Company hereby agrees that until the Amount Due and all other obligations under the Note are converted or paid in full it shall not issue any additional equity interests.

6. Sale of Assets. Pledged Company hereby agrees that until the Amount Due and all other obligations under the Note are converted or paid in full it shall not sell, assign or otherwise dispose of any of its assets, other than in the ordinary course of its business.

7. Intent of the Parties. By executing and delivering this Agreement, the parties hereto intend to establish Lender’s control over the Pledged Collateral for purposes of the provisions of Section 8-106(c)(2) of the UCC.

8. **CHOICE OF LAW. THIS AGREEMENT SHALL BE GOVERNED BY, CONSTRUED AND INTERPRETED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA, EXCEPT AS REQUIRED BY MANDATORY PROVISIONS OF LAW.**

9. Counterparts. This Agreement may be executed in any number of separate counterparts, each of which shall collectively and separately constitute a single agreement.

10. Amendments. No amendment, waiver, termination or other modification to this Agreement shall be effective unless the same is in writing and is signed by each of the parties hereto.

[rest of page intentionally left blank; signature page follows]

**IN WITNESS WHEREOF**, the parties hereto have executed and delivered this Control Agreement as of the date first written above.

**PLEDGED COMPANY:**

**CP LOGISTICS, LLC,**  
a California limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**BORROWER:**

**SUNNIVA HOLDINGS CORPORATION,**  
a British Columbia corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**LENDER:**

**JIM KUNEVICIUS**

By: \_\_\_\_\_

THIS NOTE AND THE SECURITIES ISSUABLE UPON THE CONVERSION HEREOF HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED. THEY MAY NOT BE SOLD, OFFERED FOR SALE, PLEDGED, HYPOTHECATED OR OTHERWISE TRANSFERRED EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR AN OPINION OF COUNSEL SATISFACTORY TO BORROWER THAT REGISTRATION IS NOT REQUIRED UNDER SUCH ACT OR UNLESS SOLD PURSUANT TO RULE 144 UNDER SUCH ACT.

UNLESS PERMITTED UNDER SECURITIES LEGISLATION, THE HOLDER OF THIS NOTE MUST NOT TRADE THE NOTE BEFORE THE DATE THAT IS 4 MONTHS AND A DAY AFTER THE LATER OF: (I) NOVEMBER 17, 2016, AND (II) THE DATE THE BORROWER BECOMES A REPORTING ISSUER IN ANY PROVINCE OR TERRITORY OF CANADA.

### Secured Convertible Promissory Note

US\$1,750,000.00

November 17, 2016

FOR VALUE RECEIVED, **SUNNIVA HOLDINGS CORPORATION**, a corporation incorporated under the laws of the Province of British Columbia, Canada ("**Borrower**"), hereby promises to pay to the order of **EDLIN KIM**, an individual ("**Lender**"), the principal sum of **One Million Seven Hundred Fifty Thousand U.S. Dollars (US\$1,750,000.00)** (the "**Loan**"), in lawful money of the United States of America and in immediately available funds. This convertible promissory note (the "**Note**") is issued pursuant to that certain Membership Interest Purchase Agreement, by and among the Company, the Lender and Jim Kunevicius dated as of the date hereof (as may be amended from time to time, the "**Purchase Agreement**"). All monetary amounts referenced in this Note are set forth in United States dollars, including without limitation the Loan, the Amount Due from time to time and the Conversion Price. To the extent any amount referenced in this Note, for purposes of a calculation, must be converted to (or from) United States dollars from (or to) Canadian dollars, the applicable exchange rate for such calculation shall be the exchange rate as published by the Wall Street Journal on the date of such calculation.

#### 1. Maturity and Payment.

(a) Maturity. The unpaid principal balance of this Note plus accrued and unpaid interest thereon (such amount, less any payments made in connection with an Acceleration Notice, as defined below, and any reduction in accrued and unpaid interest and/or principal resulting from any and all prior partial conversion(s) of this Note pursuant to Section 3, below, the "**Amount Due**") shall be due and payable on December 31, 2017 (the "**Maturity Date**"), unless and to the extent converted prior thereto pursuant to Section 3.

(b) No Pre-Payment. This Note shall not be pre-paid, in whole or in part, prior to the Maturity Date, without the prior written consent of the Lender.

(c) Acceleration and Demand. Until January 7, 2017, Lender shall have the right and option to accelerate Borrower's obligation to pay up to Seven Hundred Fifty Thousand U.S.

dollars (US\$750,000.00) of the then current Amount Due, and to demand payment therefor on February 7, 2017, by providing prior written notice of such acceleration and demand (the "**Acceleration Notice**"), in which case (i) Borrower shall be obligated to pay the amount demanded by Lender (up to Seven Hundred Fifty Thousand U.S. dollars (US\$750,000.00)) on or prior to February 7, 2017; and (ii) no automatic conversion of this Note shall occur pursuant to Section 3(b) from and after delivery of an Acceleration Notice with respect to any portion of the Amount Due as to which Lender is demanding and accelerating payment pursuant to the Acceleration Notice.

2. **Interest.** Interest shall accrue on the unpaid principal amount of this Note at a rate per annum equal to one half of one percent (0.5%) compounded annually. Interest will be computed on the basis of a 365 or 366-day year, as applicable, and the actual number of days elapsed.

3. **Conversion of the Note.** This Note shall be convertible into common shares of the Borrower as set forth below.

(a) **Optional Conversion.** The Amount Due under this Note, or any portion thereof, shall be convertible, at the option of the Lender, at any time after the date of the issuance of this Note by delivery of written notice of such conversion to the office of the Borrower or any transfer agent of the Borrower's shares of capital stock (the "**Optional Conversion Notice**") as follows:

(i) The portion of the Amount Due that Lender elects to convert (the "**Conversion Amount**"), upon delivery of the Optional Conversion Notice, shall immediately convert into a number of fully paid and non-assessable common shares of the Borrower (rounded up to the nearest whole share) equal to (i) the Conversion Amount divided by (ii) the Conversion Price then in effect (the "**Optional Conversion Shares**").

(ii) Borrower shall issue and deliver to Lender certificates evidencing such Optional Conversion Shares within three (3) business days of receipt of the Optional Conversion Notice.

(iii) Borrower at all times will reserve from its authorized and unissued common shares a sufficient number of shares to provide for the issuance of Optional Conversion Shares upon the full conversion of this Note.

(b) **Automatic Conversion.**

(i) From and after such time as the Borrower's common shares are listed for trading on the TSX Venture Exchange (or, if previously approved by the Lender, another Canadian securities exchange) (the "**Exchange**") and have been trading for a period of at least thirty (30) trading days at an average price equal to or in excess of US\$2.55 per share, the then current Amount Due shall automatically convert into fully paid and non-assessable common shares of the Borrower, rounded up to the next higher whole number of shares (the "**Automatic Conversion Shares**"), at a price equal to the Conversion Price.

(ii) Borrower shall issue and deliver to Lender certificates evidencing such

Automatic Conversion Shares within three (3) business days of the date on which the Borrower's common shares are first listed on a Canadian securities exchange.

(iii) Borrower at all times will reserve from its authorized and unissued common shares a sufficient number of shares to provide for the issuance of Automatic Conversion Shares upon the full conversion of this Note.

(c) Conversion Price.

(i) *Definition and Calculation.* The "**Conversion Price**" shall be equal to US\$2.55 per share (subject to adjustment as provided below).

(ii) *Splits and Subdivisions.* If Borrower should at any time or from time to time prior to conversion in full of this Note pursuant to Section 3(a), 3(b) or 3(c) (the "**Full Conversion Date**"), if any, fix a record date for the effectuation of a split or subdivision of the outstanding common shares or the determination of the holders of common shares entitled to receive a dividend or other distribution payable in additional common shares or other securities or rights convertible into, or entitling the holder thereof to receive directly or indirectly, additional securities (hereinafter referred to as "**Common Equivalents**") without payment of any consideration by such holder for the additional common shares or Common Equivalents, then, as of such record date (or the date of such distribution, split or subdivision if no record date is fixed), the Conversion Price shall be proportionately decreased and the number of common shares into which this Note is convertible into pursuant to Section 3(a), 3(b) or 3(c) shall be appropriately increased in proportion to such increase of outstanding shares.

(iii) *Combination of Shares.* If prior to the Full Conversion Date, if any, the number of common shares outstanding at any time after the date hereof is decreased by a combination of the outstanding common shares, the Conversion Price shall be proportionately increased and the number of common shares into which this Note is convertible pursuant to Section 3(a), 3(b) or 3(c) shall be appropriately decreased in proportion to such decrease in outstanding shares.

(iv) *Merger or Consolidation.* If at any time or from time to time prior to the Full Conversion Date, if any, there shall be a capital reorganization of Borrower's equity securities (other than a subdivision, combination, reclassification or exchange of shares provided for elsewhere in this Section 3(d)) or a merger or consolidation of Borrower with or into another corporation, then as a part of such reorganization, merger or consolidation, provision shall be made so that Lender shall thereafter exclusively be entitled to receive upon full conversion of this Note in accordance with the terms hereof, the number of shares of stock or other securities or other property (including, if applicable, cash) (or any combination thereof) to which a holder of the number of common shares (or of any shares of stock or other securities or other property (including, if applicable, cash) (or any combination thereof) which may be) issuable upon full conversion of this Note pursuant to the terms hereof would have received if this Note had been converted into common shares in accordance with the terms hereof immediately prior to such reorganization, merger or consolidation.

(v) *Reclassification, Conversion or Reorganization.* If the common shares (or any shares of stock or other securities which may be) issuable upon the conversion of this Note in accordance with Section 3(a), 3(b) or 3(c) shall be changed into the same or different number of shares of any class or classes of stock, whether by capital reorganization, conversion, reclassification or otherwise (other than a subdivision or combination of shares or stock dividend provided for in clauses (ii) or (iii) above, or a reorganization, merger or consolidation provided for in clause (iv) above), then and in each such event Lender shall exclusively be entitled to receive upon the conversion of this Note pursuant to Section 3(a), 3(b) or 3(c) the kind and amount of shares of stock or other securities or other property (including, if applicable, cash) (or any combination thereof) upon such reorganization, conversion, reclassification or other change, to which a holder of the number of common shares (or of any shares of stock or other securities or other property (including, if applicable, cash) (or any combination thereof) which may be) issuable upon the conversion of this Note pursuant to Section 3(a), 3(b) or 3(c) would have received if this Note had been fully converted into common shares pursuant to the terms hereof immediately prior to such reorganization, conversion, reclassification or other change, all subject to further adjustment as provided herein.

(vi) *Notice of Adjustments and Record Dates.* Borrower shall promptly notify Lender in writing of each adjustment or readjustment of the Conversion Price hereunder and the number of common shares issuable upon the conversion of this Note pursuant to Section 3(a), 3(b) or 3(c). Such notice shall state the adjustment or readjustment and show in reasonable detail the facts on which that adjustment or readjustment is based. In the event of any taking by Borrower of a record of the holders of common shares for the purpose of determining the holders thereof who are entitled to receive any dividend or other distribution, Borrower shall notify Lender in writing of such record date at least twenty (20) days prior to the date specified therein.

(d) Method of Conversion. This Note may be converted by Lender only as described in this Section 3. Lender agrees to deliver the original of this Note (or an affidavit to the effect that this Note has been lost, stolen or destroyed and an agreement acceptable to Borrower whereby Lender agrees to indemnify Borrower from any loss incurred by it in connection with this Note) upon any full conversion of this Note pursuant to Section 3(a), 3(b) or 3(c) for cancellation.

(e) No Impairment. Borrower shall not avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by Borrower, but shall at all times in good faith assist in the carrying out of all the provisions of this Note. Without limiting the generality of the foregoing, Borrower (i) shall reserve and keep available a number of its authorized common shares, free from all preemptive rights, which shall be sufficient to permit the full conversion of this Note in accordance with Section 3(a), 3(b) or 3(c) and (ii) shall take all such action as may be necessary or appropriate in order that all common shares as may be issued pursuant to the conversion of this Note in accordance with Section 3(a), 3(b) or 3(c) shall, upon issuance, be validly issued, fully paid and nonassessable.

(f) Exchange Transfer Restrictions. The Lender acknowledges that the Exchange may impose restrictions on the ability of the Lender to dispose of some or all of the Borrower's common shares acquired hereunder for some period of time as a condition of the Borrower



listing its shares for trading (such restriction, including without limitation certificate legends, escrow arrangements, lockup agreements, and any other transfer restriction imposed by or pursuant to negotiations with the Exchange, the “*Exchange Restrictions*”). The parties agree they will use commercially reasonable efforts to minimize any Exchange Restrictions.

(g) Notice of Certain Transactions. In the event:

(i) the Borrower shall take a record of the holders of its common shares for the purpose of entitling or enabling them to receive any dividend or other distribution, or to receive any right to subscribe for or purchase any shares of stock of any class or any other securities, or to receive any other right, to subscribe for or purchase any shares of stock of any class or any other securities, or to receive any other right; or

(ii) of any capital reorganization of the Borrower, any reclassification of the capital stock of the Borrower, any consolidation or merger of the Borrower, any consolidation or merger of the Borrower with or into another corporation (other than a consolidation or merger in which the Borrower is the surviving entity), or any transfer of all or substantially all of the assets of the Borrower; or

(iii) of the voluntary or involuntary dissolution, liquidation or winding-up of the Borrower, then, and in each such case, the Borrower will mail or cause to be mailed to the Holder a notice specifying, as the case may be, (i) the date on which a record is to be taken for the purpose of such dividend, distribution or right, and stating the amount and character of such dividend, distribution or right, or (ii) the effective date on which such reorganization, reclassification, consolidation, merger, transfer, dissolution, liquidation, winding-up, redemption or conversion is to take place, and the time, if any is to be fixed, as of which the holders of record of common shares (or such other stock or securities at the time deliverable upon such reorganization, reclassification, consolidation, merger, transfer, dissolution, liquidation, winding-up, redemption or conversion) are to be determined. Such notice shall be mailed at least ten days prior to the record date or effective date for the event specified in such notice.

4. Events of Default. The occurrence of any of the following events shall constitute an “*Event of Default*”:

(a) Borrower shall fail, for any reason, to make any principal or interest payment when due under this Note;

(b) a proceeding or case shall be commenced, without the application or consent of Borrower, in any court of competent jurisdiction, seeking (i) Borrower’s reorganization, liquidation, dissolution, arrangement or winding-up, or the composition or readjustment of Borrower’s debts, (ii) the appointment of a receiver, custodian, trustee, examiner, liquidator or the like of Borrower or of all or any substantial part of Borrower’s assets, or (iii) similar relief in respect of Borrower under any law relating to bankruptcy, insolvency, reorganization, winding-up or composition or adjustment of debts, and such proceeding or case shall continue without being dismissed, or an order, judgment or decree approving or ordering any of the foregoing

shall be entered and continue without being stayed and in effect, for a period of sixty (60) or more days;

(c) an order for relief against Borrower shall be entered in an involuntary case under the U.S. Federal Bankruptcy Code of 1978, the Canadian Companies' Creditors Arrangement Act or the Canadian Bankruptcy and Insolvency Act, each as amended from time to time (collectively, the "**Bankruptcy Law**");

(d) Borrower shall (i) apply for or consent to the appointment of, or the taking of possession by, a receiver, custodian, trustee, examiner or liquidator of itself or of all or a substantial part of its assets, (ii) make a general assignment for the benefit of its creditors, (iii) commence a voluntary case under the Bankruptcy Law, (iv) file a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, liquidation, dissolution, arrangement or winding-up or composition or readjustment of debts, (v) fail to controvert in a timely and appropriate manner, or acquiesce in writing to, any petition filed against it in an involuntary case under the Bankruptcy Law or (vi) take any action for the purpose of effecting any of the foregoing;

(e) Borrower breaches any of its representations, warranties or covenants under this Note or the Purchase Agreement in any material respect and such breach is not cured within ten (10) business days after written notice thereof to Borrower.

#### 5. Remedies.

(a) Upon the occurrence and during the continuance of any Event of Default described in clauses (c), (d), or (e) of Section 4 (any such Event of Default, an "**Insolvency Event**") (i) all amounts payable by Borrower pursuant to this Note shall become immediately due and payable, without presentment, demand, notice, protest or other requirements of any kind (all of which are hereby expressly waived by Borrower) and (ii) Lender shall be entitled to exercise any and all remedies available to Lender at law or in equity.

(b) Upon the occurrence and during the continuance of any Event of Default other than an Insolvency Event, (i) Lender may, by written notice to Borrower, declare all amounts payable by Borrower pursuant to this Note to be due and payable, and all such amounts shall immediately become due and payable and (ii) Lender shall be entitled to exercise any and all remedies available to Lender at law or in equity. Written notice pursuant to this clause (b) shall be sufficient if it is addressed to Borrower and states that such an Event of Default has occurred and Lender is providing notice that all amounts due and payable pursuant to this Note are immediately due and payable in accordance with this clause (b).

6. Default Interest. Upon the occurrence and during the continuance of an "Event of Default," interest shall accrue on the unpaid principal balance of this Note at the rate of interest specified in Section 2 plus eight percent (8.0%) per annum, or such lower maximum amount of interest permitted to be charged under applicable law.

7. Security. As security for the full, prompt and complete payment when due

(whether at stated maturity, by acceleration or otherwise) of the Amount Due and all other obligations under this Note, Borrower hereby pledges, hypothecates, assigns, charges, mortgages, delivers, and transfers to Lender, and hereby grants to Lender a continuing security interest in all of Borrower's right, title and interest (whether now or hereafter existing or acquired) in and to the following (collectively, the "***Pledged Collateral***"): (a) all rights of Borrower under the articles of organization and operating agreement of CP Logistics, LLC (the "***Pledged Company***") and all equity interests in the Pledged Company (the "***Pledged Interest***") and the certificates (if any) representing such Pledged Interest, and all dividends, cash, instruments, and other property or proceeds from time to time received, receivable, or otherwise distributed in respect of or in exchange for any or all of such Pledged Interest; and (b) the rents, issues, profits, returns, income, allocations, distributions and proceeds of and from any and all of the foregoing. Concurrently with issuance of this Note, Borrower shall cause the Pledged Company to enter into an uncertificated security control agreement in the form of Exhibit A hereof. Additionally, at the request of the Lender, Borrower shall cause the Pledged Company to certificate any Pledged Interest and to deliver such certificates to Lender. Borrower further agrees that Lender may file, or cause to be filed, any financing or continuation statements under the UCC with respect to the security interests granted hereby, and that such financing or continuation statements need not contain the Borrower's signature thereon.

8. Pledged Collateral Covenants. Until the Amount Due and all other obligations under this Note are converted or paid in full:

(a) Borrower shall not sell, assign, transfer, pledge or otherwise encumber (including through any voting agreement, shareholders agreement or proxy) the Pledged Collateral in any manner (except for the pledge granted herein to the Lender and liens for taxes not yet due or the validity or amount of which is being contested in good faith proceedings).

(b) Borrower shall not cause or allow the Pledged Company to issue any additional equity interests.

(c) Borrower shall not cause or allow the Pledged Company to sell, assign or otherwise dispose of any of its assets, other than in the ordinary course of its business; provided that Pledged Company may enter into sale and leaseback arrangements reasonably approved by Lender with respect to real property of the Pledged Company so long as Pledged Company guarantees the Amount Due and provides security for such sale and leaseback arrangement reasonably acceptable to Lender.

(d) Borrower shall promptly pay any amounts distributed to Borrower with respect to the Pledged Collateral to Lender in repayment of the Amount Due.

(e) Borrower shall at any time, and from time to time, promptly execute and deliver all further instruments, and take all further action that may be necessary or desirable, as Lender may reasonably request, in order to perfect and protect any security interest granted or purported to be granted hereby or to enable Lender to exercise and enforce its rights and remedies with respect to any of the Pledged Collateral.

9. Reinstatement. This Note shall continue to be effective or be automatically reinstated, as the case may be, if at any time payment or conversion, in whole or in part, of any of the Amount Due is rescinded or must otherwise be restored or returned by Lender as a preference, fraudulent conveyance or otherwise under any bankruptcy, insolvency or similar law, all as though such payment had not been made; provided that in the event payment of all or any part of the Amount Due is rescinded or must be restored or returned, all reasonable costs and expenses (including, without limitation, reasonable attorneys' fees and disbursements) incurred by Lender in defending and enforcing such reinstatement shall be deemed to be included as a part of the Amount Due.

10. Waivers. To the extent permitted by applicable law, Borrower waives all rights and benefits of any statute of limitations, moratorium, reinstatement, marshalling, forbearance, valuation, stay, extension, redemption, appraisal and exemption now provided or which may hereafter be provided by law, both as to itself and as to all of its properties, real and personal, against the enforcement and collection of the indebtedness evidenced hereby.

11. Notices. Any notice, demand, communication or other document required, permitted, or desired to be given hereunder shall be in writing and shall be delivered personally or sent by United States or Canadian registered or certified mail, return receipt requested, postage prepaid, by Federal Express or other reputable overnight courier, or by facsimile (with confirmation of receipt), and addressed to the party at the respective numbers and/or addresses set forth below, and the same shall be deemed given and effective (i) upon receipt or refusal if delivered personally or by hand delivered messenger service, (ii) the date received or refused if sent by Federal Express or other reputable overnight courier, (iii) the date received or refused if mailed by United States or Canadian registered or certified mail, return receipt requested, postage prepaid, and (iv) the date received if sent by facsimile or electronic mail during normal business hours of the recipient and on the next business day if sent after normal business hours of the recipient. A party may change its address for receipt of notices by service of a notice of such change in accordance herewith.

If to Borrower:

Sunniva Holdings Corp.  
c/o 1200-200 Burrard Street  
Vancouver, B.C., Canada  
V7X 1T2  
Attn: Leith Pedersen  
E-mail: lpedersen@sunnivamedical.com

If to Lender:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

12. Amendment. This Note or any provision hereof may be waived, changed, modified or discharged only by agreement in writing signed by Borrower and Lender. Borrower may not assign or transfer its obligation hereunder without the prior written consent of Lender.

Lender may assign or transfer this Note or its rights hereunder without the prior written consent of Borrower.

13. Interpretation. The term "Borrower" shall include each person and entity now or hereafter liable hereunder, whether as maker, successor, assignee or endorsee, each of whom shall be jointly, severally and primarily liable for all of the obligations set forth herein.

14. Severability. If any provision of this Note shall for any reason be held invalid or unenforceable, such invalidity or unenforceability shall not affect any other provision of this Note, but this Note shall be construed as if this Note had never contained the invalid or unenforceable provision.

15. Governing Law. This Note shall be governed by and construed in accordance with the domestic laws of the State of California, without giving effect to any choice of law provision or rule.

16. Savings Clause. Nothing contained in this Note shall be deemed to establish or require the payment of a rate of interest or other charges in excess of the maximum interest rate permitted by applicable law. In the event that the rate of interest required to be paid or other charges hereunder exceed the maximum interest permitted by such law, any payments in excess of such maximum shall be credited against amounts owed by Borrower to Lender.

*[Intentionally Blank—Signature Page Follows]*

**IN WITNESS WHEREOF**, the undersigned Borrower has caused the due execution of this Note as of the day and year first herein above written.

**SUNNIVA HOLDINGS CORP.**

By: \_\_\_\_\_

Name:

Title:

**EXHIBIT A**

UNCERTIFICATED SECURITY CONTROL AGREEMENT

(See attached)

## CONTROL AGREEMENT

This CONTROL AGREEMENT (this "*Agreement*") is entered into as of [\_\_\_\_], by and among CP LOGISTICS, LLC, a North Carolina limited liability company ("*Pledged Company*"), EDLIN KIM ("*Lender*"), and SUNNIVA HOLDINGS CORPORATION, a corporation incorporated under the laws of the Province of British Columbia, Canada ("*Borrower*").

### RECITALS:

WHEREAS, pursuant to that certain Secured Convertible Promissory Note (the "*Note*") dated \_\_\_\_\_, 2016 by Borrower in favor of Lender, Borrower has promised to pay certain amounts to Lender;

WHEREAS, Borrower owns, both legally and beneficially, one hundred percent (100%) of the issued and outstanding, fully-diluted membership interests of Pledged Company;

WHEREAS, pursuant to the terms of the Note, Borrower has granted a lien on the Pledged Collateral (as defined in the Note) in favor of the Lender; and

WHEREAS, the parties hereto wish to acknowledge such security interests and Lender's control over the Pledged Collateral for purposes of perfecting the security interests of Lender in the Pledged Collateral in accordance with the provisions of Article 8 of the Uniform Commercial Code as enacted and in effect in the State of North Carolina (the "*UCC*").

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Defined Terms. All capitalized terms used but not otherwise defined herein shall have the respective meanings ascribed thereto in the Note.

2. Acknowledgment of Security Interest. Pledged Company hereby acknowledges and agrees that Lender has been granted and continues to hold a first priority security interest in and to the Pledged Collateral as collateral security for all obligations, liabilities and indebtedness of Borrower under the Note.

3. Agreement to Follow Instructions; Agreement Not to Register Transfer. Pledged Company hereby agrees to comply with any "instructions" (as defined in Section 8-102(a)(12) of the UCC) originated by or on behalf of Lender without further consent of Borrower, including, without limitation, instructions regarding the transfer, redemption or other disposition of the Pledged Collateral or the proceeds thereof, including any distributions with respect thereto; provided that Lender agrees such instructions shall only be originated by Lender after the occurrence and during the continuance of an Event of Default. Pledged Company agrees that it



shall not register any transfer of the Pledged Collateral to any Person without the prior written consent of Lender.

4. Certificating Membership Interests. Borrower and Pledged Company hereby agree that neither Person shall cause Pledged Company to issue certificates representing its membership interests or any other ownership interests in Pledged Company, or otherwise cause such membership interests or other ownership interests to be deemed “certificated securities” within the meaning of Article 8 of the UCC, in each case unless such securities are certificated and delivered to the Lender.

5. Issuance of Additional Interests. Pledged Company hereby agrees that until the Amount Due and all other obligations under the Note are converted or paid in full it shall not issue any additional equity interests.

6. Sale of Assets. Pledged Company hereby agrees that until the Amount Due and all other obligations under the Note are converted or paid in full it shall not sell, assign or otherwise dispose of any of its assets, other than in the ordinary course of its business.

7. Intent of the Parties. By executing and delivering this Agreement, the parties hereto intend to establish Lender’s control over the Pledged Collateral for purposes of the provisions of Section 8-106(c)(2) of the UCC.

8. **CHOICE OF LAW. THIS AGREEMENT SHALL BE GOVERNED BY, CONSTRUED AND INTERPRETED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA, EXCEPT AS REQUIRED BY MANDATORY PROVISIONS OF LAW.**

9. Counterparts. This Agreement may be executed in any number of separate counterparts, each of which shall collectively and separately constitute a single agreement.

10. Amendments. No amendment, waiver, termination or other modification to this Agreement shall be effective unless the same is in writing and is signed by each of the parties hereto.

[rest of page intentionally left blank; signature page follows]

**IN WITNESS WHEREOF**, the parties hereto have executed and delivered this Control Agreement as of the date first written above.

**PLEGDED COMPANY:**

**CP LOGISTICS, LLC,**  
a California limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**BORROWER:**

**SUNNIVA HOLDINGS CORPORATION,**  
a British Columbia corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**LENDER:**

**EDLIN KIM**

By: \_\_\_\_\_

**Exhibit B**  
**PURCHASE PRICE ALLOCATION**

100% of the purchase price shall be allocated to the company's licenses (3 marijuana cultivation licenses, 1 dual marijuana cultivation/dispensary license and 1 manufacturing license) and the goodwill associated therewith.

## DISCLOSURE SCHEDULE

The following is the Disclosure Schedule (the “**Disclosure Schedule**”) contemplated by the Membership Interest Purchase Agreement dated as of November 17, 2016 (the “**Agreement**”), by and among Jim Kunevicius, an individual (“**Kunevicius**”), Edlin Kim, an individual (“**Kim**” and, together with Kunevicius, the “**Vendors**”) and Sunniva Holdings Corporation, a corporation incorporated under the laws of the Province of British Columbia (the “**Purchaser**”). All capitalized terms used but not defined herein shall have the meanings as defined in the Agreement, unless otherwise provided. The section numbers below correspond to the section numbers of the representations and warranties in the Agreement; provided, however, that any information disclosed herein under any section number shall be deemed to be disclosed and incorporated into any other section number under the Agreement where such disclosure is readily apparent from the face of such disclosure.

**Purchase Price Allocation**

100% of the purchase price shall be allocated to the company's licenses (3 marijuana cultivation licenses, 1 dual marijuana cultivation/dispensary license and 1 manufacturing license) and the goodwill associated therewith.

**Agreements and Commitments**

1. Standard Offer, Agreement and Escrow Instructions for Purchase of Real Estate (Vacant Land) dated as of March 29, 2016 by and between Newport Home Loan, Inc. and CP Logistics, LLC.
2. Standard Offer, Agreement and Escrow Instructions for Purchase of Real Estate (Vacant Land) dated as of April 6, 2016 by and between Newport Home Loan, Inc. and CP Logistics, LLC.
3. Assignment and Assumption of Real Estate Purchase Agreement and Escrow Instructions dated as of November 10, 2016 by and between First Western Holdings, LLC and CP Logistics, LLC.
4. Sublease Agreement dated as of November 10, 2016 by and between First Western Holdings, LLC and CP Logistics, LLC.

**Compliance with Laws; Licenses**

1. The cultivation, manufacture, distribution and sale of marijuana/cannabis is unlawful as a Schedule I substance under the federal laws of the United States under the Controlled Substances Act of 1970 and related civil and criminal statutes (the "Applicable Federal Laws"). The United States federal law enforcement agencies have elected to refrain from the investigation and prosecution of certain activities that otherwise may violate Applicable Federal Laws under guidance provided by, among other things, that certain MEMORANDUM FOR ALL UNITED STATES ATTORNEYS from James M. Cole, Deputy Attorney General, dated August 29, 2013 and available for review online as set forth below (the "Cole Memo"). Certain of the current and/or planned activities of CPL may violate Applicable Federal Laws insofar as they relate to the cultivation, manufacture, distribution and/or sale of a controlled substance. CPL has used commercially reasonable efforts to comply with applicable laws of the State of California, including without limitation California's Medical Marijuana Regulation and Safety Act (the "Applicable State Laws") and the guidelines set forth in the Cole Memo, but the Vendors do not represent and warrant that CPL is in compliance with Applicable Federal Laws. The Vendors further note that the Cole Memo does not amend or modify Applicable Federal Laws, that certain prosecuting agencies may not be bound in certain cases to follow the guidance set forth in the Cole Memo, that certain prosecuting agencies may argue that certain activities believed by the Vendors to be in compliance with the Cole Memo are not in fact in compliance therewith, and that the Cole Memo may be modified, rescinded or superseded in the future.

<https://www.justice.gov/iso/opa/resources/3052013829132756857467.pdf>

The Vendors also note that the California Department of Consumer Affairs has announced that it is establishing a Bureau of Medical Cannabis Regulation, which is expected to promulgate regulations under Applicable State Laws beginning January 1, 2018. The Vendors do not warrant that CPL's current or planned activities will be in compliance with the regulations promulgated under Applicable State Laws if and when such regulations are in effect.

The Vendors also note that, with the recent passage of Proposition 64 on November 8, 2016, recreational use of marijuana will become legal under Applicable State Law (but not Applicable Federal Law). The Vendors do not warrant that CPL's current or planned activities are or will be in compliance with the requirements of Proposition 64 and note that implementing regulations and interpretations thereof have yet to be announced.

**Undisclosed Liabilities**

None.



**Absence of Change**

None.

**Employment Agreements, Collective Agreements**

None.