

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

THE HONOURABLE MADAM ) TUESDAY, THE 13<sup>th</sup>  
)  
JUSTICE CONWAY ) DAY OF SEPTEMBER, 2022  
)  
)

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF **SPROUTLY, INC.** and **TORONTO  
HERBAL REMEDIES INC.**

(each an “Applicant” and collectively the “Applicants”)

**APPROVAL AND VESTING ORDER**

**THIS MOTION**, made by the Applicants, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”) for an order approving the sale transaction (the “**Asset Transaction**”) contemplated by an asset purchase agreement (the “**Asset Purchase Agreement**”) between Toronto Herbal Remedies Inc. (the “**Seller**”) and 0982244 B.C. Ltd. o/a Isle of Mann Property Group (“**IOM**”) dated September 2, 2022, appended to the Second Report of the Monitor dated September 8, 2022 (the “**Second Report**”), pursuant to which IOM has designated 1375857 B.C. LTD. (the “**Purchaser**”) as the vesting entity thereunder and (i) vesting in the Purchaser the Seller’s right, title and interest in the Purchased Assets (as defined in the Asset Purchase Agreement); and (ii) seeking certain other related relief was heard this day by judicial video conference.

**ON READING** the Second Report, the Affidavit of Craig Loverock sworn September 8, 2022, and such further materials as counsel may advise, and on hearing the submissions of counsel to the Applicants and counsel to the Monitor and counsel to those parties listed on the counsel list for today’s hearing, and no one else appearing for any other interested person, although duly served as evidenced by the Affidavit of Service of Khadija Waqqas sworn September 8, 2022, filed.

## **SERVICE**

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

## **DEFINITIONS**

2. **THIS COURT ORDERS** that capitalized terms used herein that are otherwise not defined shall have the meaning ascribed to them in the Asset Purchase Agreement and/or the Amended and Restated Initial Order of the Honourable Justice Penny dated July 4, 2022 (the “**Initial Order**”).

## **APPROVAL OF ASSET TRANSACTION**

3. **THIS COURT ORDERS AND DECLARES** that the Asset Purchase Agreement and the Asset Transaction be and are hereby approved and that the execution of the Asset Purchase Agreement by the Seller is hereby authorized, with such minor amendments as the Seller and the Purchaser, with the approval of the Monitor, may agree upon. The Seller, with the consent of the Monitor, is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Asset Transaction and for the conveyance of the Purchased Assets to the Purchaser.

4. **THIS COURT ORDERS AND DECLARES** that this Order shall constitute the only authorization required by the Seller to proceed with the Asset Transaction and that no shareholder or other approval shall be required in connection therewith.

5. **THIS COURT ORDERS** that the Seller is authorized and directed to perform its obligations under the Asset Purchase Agreement and any ancillary documents related thereto.

6. **THIS COURT ORDERS AND DECLARES** that upon the delivery of a Monitor’s certificate to the Seller (or its counsel) and to the Purchaser (or its counsel) substantially in the form attached as Schedule “A” hereto (the “**Monitor’s Certificate**”), all of the Seller’s right, title and interest in and to the Purchased Assets described in the Asset Purchase Agreement shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether

contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**") including, without limiting the generality of the foregoing (i) any encumbrances or charges created by the Initial Order or any other orders made in these CCAA proceedings; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system, including those registrations listed on **Schedule "B"** hereto; (iii) all instruments registered on title to the Real Property (as hereinafter defined), including those instruments listed on **Schedule "D"** hereto (all of which are collectively referred to as the "**Encumbrances**", which term shall not include the permitted encumbrances, easements and restrictive covenants listed on **Schedule "E"** hereto) and for greater certainty, this Court orders that all Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

7. **THIS COURT ORDERS** that upon the registration in the Land Registry Office for the Land Titles Division of Metro Toronto (LRO No. 80) of an Application for Vesting Order in the form prescribed by the *Land Titles Act* and/or the *Land Registration Reform Act*, which the Purchaser is authorized to submit for registration following delivery of the Monitor's Certificate, the Land Registrar is hereby directed to enter the Purchaser as the owner of the subject real property identified in **Schedule "C"** hereto (the "**Real Property**") in fee simple, and is hereby directed to delete and expunge from title to the Real Property all of the Claims (including without limitation all registered instruments on title to the Real Property and those instruments listed on **Schedule "D"** hereto) save and except the permitted encumbrances, easements and restrictive covenants listed on **Schedule "E"** hereto.

8. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of the Monitor's Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if

the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

9. **THIS COURT ORDERS AND DIRECTS** the Monitor to file with the Court a copy of the Monitor's Certificate, forthwith after delivery thereof to the Seller and the Purchaser, or to their respective counsel.

10. **THIS COURT ORDERS** that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) (the "BIA") in respect of the Applicants and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of the Applicants;

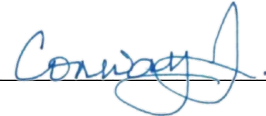
the vesting of the Purchased Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Applicants and shall not be void or voidable by creditors of the Applicants, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

#### **GENERAL**

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

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

12. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard/Daylight Time on the date of this Order without any need for filing or entry.

A handwritten signature in blue ink, appearing to read "Conway J.", is written over a horizontal line.

**Schedule “A” – Form of Monitor’s Certificate**

Court File No. CV-22-00683056-00CL

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

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF **SPROUTLY, INC.** and **TORONTO HERBAL REMEDIES INC.**

(each an “Applicant” and collectively the “Applicants”)

**MONITOR’S CERTIFICATE****RECITALS**

A. Pursuant to an Order of the Honourable Justice Penny of the Ontario Superior Court of Justice (the "**Court**") dated June 24, 2022, BDO Canada Limited was appointed as the monitor (the "**Monitor**") of the undertaking, property and assets of the Applicants.

B. Pursuant to an Order of the Court dated September 13, 2022, the Court approved the Asset Purchase Agreement (the "**APA**") by and between Toronto Herbal Remedies Inc. (the "**Seller**") and 0982244 B.C. Ltd. o/a Isle of Mann Property Group ("**IOM**") dated September 2, 2022 pursuant to which IOM has designated 1375857 B.C. LTD. (the "**Purchaser**") as the vesting entity thereunder and the sale transaction (the "**Asset Transaction**") contemplated therein and provided for the vesting in the Purchaser of the Seller’s right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Monitor to the Purchaser and the Seller (or their counsel) of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets; (ii) that the conditions

to Closing as set out in the APA have been satisfied or waived by the Seller and/or the Purchaser, as applicable; and (iii) the Asset Transaction has been completed to the satisfaction of the Monitor.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the APA.

**THE MONITOR CERTIFIES** the following:

1. The conditions to Closing under the APA have been satisfied and/or waived by the Seller and the Purchaser, as applicable.
2. The Purchaser has paid and the Seller has received the Purchase Price for the Purchased Assets, subject to applicable adjustments, for the Purchased Assets payable on the Closing Date pursuant to the APA.
3. The Asset Transaction has been completed to the satisfaction of the Monitor.
4. This Certificate was delivered by the Monitor at \_\_\_\_\_ [TIME] on \_\_\_\_\_ [DATE].

**BDO Canada Limited, in its capacity of the  
Monitor of the Applicants, and not in its  
personal or corporate capacity**

Per: \_\_\_\_\_  
Name:  
Title:

**Schedule “B” – PPSA Registrations to be Released**

<b>Date of Registration</b>	<b>Secured Party</b>	<b>File Number</b>	<b>Registration Number</b>	<b>Expiry Date</b>
February 5, 2020	Infusion Biosciences Inc.	759882717	20200205 1105 1862 8027	February 5, 2025
December 30, 2020	Her Majesty in Right of Ontario as Represented by the Minister of Finance	768919932	20201230 1818 1031 0702	December 30, 2025
November 19, 2021	Jane Bailey	778362111	20211119 1036 1590 5184	November 19, 2024
June 16, 2022	0982244 B.C. Ltd.	784044585	20220616 1423 1590 7490	June 16, 2027



**Schedule "C" – Real Property****PIN 06443-0179 (LT)**

LT 89 PL 2176 SCARBOROUGH; LT 90 PL 2176 SCARBOROUGH; LT 91 PL 2176 SCARBOROUGH; LT 101 PL 2291 SCARBOROUGH; LT 102 PL 2291 SCARBOROUGH; LT 103 PL 2291 SCARBOROUGH; LT 104 PL 2291 SCARBOROUGH; LT 105 PL 2291 SCARBOROUGH; LT 106 PL 2291 SCARBOROUGH; LT 107 PL 2291 SCARBOROUGH; LT 108 PL 2291 SCARBOROUGH; PT DAVIDSON AV PL 2176 SCARBOROUGH; PT DAVIDSON AV PL 2291 SCARBOROUGH CLOSED BY SC103893 AS IN TB625847; S/T & T/W TB625847; TORONTO , CITY OF TORONTO

Address: 64 Raleigh Ave, Toronto, Ontario

**Schedule “D” – Claims to be deleted and expunged from title to Real Property**

*Instruments on Title – PIN 06443-0179 (LT)*

Current as of September 13, 2022

<b>Reg No.</b>	<b>Registration Date</b>	<b>Type</b>	<b>Amount</b>	<b>Parties From</b>	<b>Parties To:</b>
AT3995694	August 31, 2015	Charge	\$3,250,000.00	Toronto Herbal Remedies Inc.	0982244 B.C. Ltd.
AT3995695	August 31, 2015	Notice of Assignment of Rents General		Toronto Herbal Remedies Inc.	0982244 B.C. Ltd.
AT4812828	March 1, 2018	Notice	\$2.00	Toronto Herbal Remedies Inc.	0982244 B.C. Ltd.
AT5352062	January 28, 2020	Notice	\$2.00	Toronto Herbal Remedies Inc.	0982244 B.C. Ltd.
AT5382792	March 6, 2020	Charge	\$1,000,000.00	Toronto Herbal Remedies Inc.	Infusion Biosciences Inc.
AT5748147	May 27, 2021	Lien	\$8,782.32	Her Majesty the Queen in Right of Ontario as Represented by the Minister of Finance	
AT6122507	July 4, 2022	Application to Register Court Order		Ontario Superior Court of Justice	0982244 B.C. Ltd.

**Schedule “E”****Permitted Encumbrances, Easements and Restrictive Covenants related to the Purchased Assets (unaffected by the Approval and Vesting Order)**

Any of the following encumbrances:

1. Minor Encroachments: Minor encroachments from the Real Property over neighbouring lands and/or permitted under agreements with neighbouring landowners and any fences or concrete curbs and minor encroachments over the Real Property from neighbouring land and/or permitted under agreements with neighbouring landowners and any fences and concrete curbs.
2. Crown Grant: Any subsisting restrictions, exceptions, reservations, limitation, provisos and conditions (including, with limitation, royalties, reservation of mines, mineral rights and timber rights, access to navigable waters and similar rights) expressed in any original grants from the Crown of the lands comprising the Real Property and any statutory limitations, exceptions, reservations and qualifications.
3. Restrictions, Zoning, etc.: Zoning, land use and building restrictions, by-laws, regulations and ordinances of any Governmental Authority, including municipal by-laws and regulations, airport zoning regulations, restrictive covenants and other land use limitations in favour of or imposed or reserved by any Governmental Authority.
4. Work Order: Any and all Work Orders issued by any Governmental Authority.
5. Easements: Any unregistered or registered easements required for the supply of domestic utility services to the Real Property.
6. Survey matters: Encroachments, deficiencies or other matters disclosed by any plan of survey in respect of the Real Property or any part thereof.
7. Taxes/Utilities: Encumbrances or prior claims for Real Property taxes (which term includes charges, rates and assessments) or charges or levies for electricity, power, gas, water and other services and utilities in connection with the Real Property that have accrued but are not yet due and owing or, if due and owing, are adjusted for on Closing.
8. Restrictive Covenants: Restrictive covenants, private deed restrictions, rights-of-way, facility cost sharing agreements, servicing agreements, crane swing/tie back agreements, reciprocal use agreements or other similar land use control agreements or rights in land (including, without limitation, restrictions, rights-of-way and servitudes for sewers, drains, gas and oil pipelines, gas and water mains, electric light and power and telephone or telegraph or cable television conduits, poles, wires and cables) granted to other persons or property, or reserved by other persons or the benefit of other property.
9. Applicable Laws: The provisions of all Applicable Laws, including by-laws, regulations, ordinances and similar instruments relating to development and zoning at the Real Property.

10. Land Titles Act: The exceptions and qualifications contained in Section 44 of the *Land Titles Act* (Ontario), save and except paragraph 5 thereof relating to the *Family Law Act*, paragraph 11 thereof respecting the *Planning Act* (Ontario) and escheats/forfeiture to the Crown.
11. Registered Agreements: Registered agreements with any Governmental Authorities or public utilities, including subdivision agreements, development agreements, engineering, grading or landscaping agreements and similar agreements.

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Court File No.: CV-22-00683056-00CL

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

Proceedings commenced at Toronto, Ontario

**APPROVAL AND VESTING ORDER**

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