

**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**”)

**MOTION RECORD  
(Comeback motion returnable on July 4, 2022 at 10:00 a.m.)**

June 29, 2022

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Lawyers for the Applicants

**TO: THIS HONOURABLE COURT  
AND TO: THE SERVICE LIST**

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SUPERIOR COURT OF JUSTICE  
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IN THE MATTER OF THE *COMPANIES' CREDITORS  
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<b>2.</b>	Affidavit of Craig Loverock sworn June 22, 2022 ( <i>without exhibits</i> )
<b>3.</b>	Draft Amended and Restated Initial Order
<b>4a.</b>	Blackline of draft Amended and Restated Initial Order to Initial Order
<b>4b.</b>	Blackline of draft Amended and Restated Initial Order to Model Initial Order
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# TAB 1

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
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IN THE MATTER OF THE *COMPANIES' CREDITORS  
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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")

**NOTICE OF MOTION**

**THE APPLICANTS** will make a motion before the Honourable Justice Michael A. Penny of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") on July 4, 2022 at 10:00 a.m., or as soon after that time as the motion may be heard by judicial videoconference via Zoom. Please advise if you intend to join the hearing by email to Adrienne Ho at [aho@tgf.ca](mailto:aho@tgf.ca).

**PROPOSED METHOD OF HEARING:** The motion is to be heard:

- In writing under subrule 37.12.1 (1) because it is (*insert one of on consent, unopposed or made without notice*);
- In writing as an opposed motion under subrule 37.12.1 (4);
- In person;
- By telephone conference;
- By video conference, via Zoom, the details of which will be provided by the Court, at Toronto, Ontario.

**THE MOTION IS FOR:**

1. an Amended and Restated Initial Order (the “**ARIO**”) substantially in the form attached to the Motion Record at Tab 3, amending and restating the Initial Order granted in these proceedings on June 24, 2022 (the “**Initial Order**”), which among other things:
  - (a) abridges the time for service of the Notice of Motion and the Motion Record herein and dispenses with further service thereof;
  - (b) orders that the Stay Period set out in paragraph 11 of the Initial Order be extended to October 3, 2022;
  - (c) authorizes the Applicants to file with the Court a plan of compromise or arrangement (the “**Plan**”);
  - (d) increases the DIP Lenders’ Charge to \$750,000; and
  - (e) permits the Applicants to pursue restructuring options.
  
2. an Order substantially in the form attached to the Motion Record at Tab 5 (the “**Sale Process Order**”), which among other things:
  - (a) approves the bidding procedures (the “**Bidding Procedures**”) substantially in the form attached as Appendix “A” to the Sale Process Order and the sales process described therein (“**Sale Process**”); and
  - (b) seals the unredacted copy of the Advisory and Success Fee Agreement dated June 29, 2022 (the “**Hyde Engagement**”) between Hyde Advisory & Investments Inc. and Toronto Herbal Remedies Inc. (“**THR**”), which is appended as Confidential

Appendix “B” to the Monitor’s First Report dated June 29, 2022 (the “**First Report**”), pending further Order of the Court; and

3. Such other relief as counsel may request and this Court may deem just.

### **THE GROUNDS FOR THE MOTION ARE:**

#### **Background of the CCAA Proceedings**

1. The Applicants are engaged in the production, processing and sale of cannabis products at a facility in Toronto, Ontario. Sproutly, Inc. has no assets other than 100% of the shares of THR;
2. THR holds the Applicants’ primary assets, which include the real property municipally known as 64-70 Raleigh Ave., Toronto, Ontario, as more specifically described in Schedule “A” hereto (the “**Real Property**”), a 15,913 square foot production facility, located on the Real Property, that was built to cultivate pharmaceutical-grade cannabis (the “**THR Facility**”), a Health Canada license permitting the processing, cultivation, and sale of cannabis in accordance with the *Cannabis Act* and the *Cannabis Regulations*, and various equipment and inventory;
3. At this time, THR is no longer growing or producing cannabis products; however, cannabis remains at the THR Facility;
4. Following the COVID-19 pandemic in March 2020, sales declined significantly. As well, some key financing opportunities also came to a halt. Ultimately, as a result of an inability

to access liquidity and the downturn in the cannabis market, THR had to cease regular operations of the THR Facility;

5. Faced with an imminent liquidity crisis, and in need of critical and immediate interim financing, without which the Applicants are unable to meet their working capital needs and conduct a sale, investment and solicitation process, the Applicants sought protection from their creditors pursuant to the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36 (the "CCAA") and, on June 24, 2022, the Court granted the relief sought and the Initial Order;
6. Pursuant to the Initial Order, among other things:
  - (a) BDO Canada Limited was appointed to act as the Applicants' monitor (the "**Monitor**") in these proceedings;
  - (b) the Court granted a stay of proceedings until and including July 4, 2022;
  - (c) the Court approved the term sheet between the Applicants and 0982244 B.C. Ltd. o/a Isle of Mann Property Group (the "**DIP Lender**") pursuant to which the DIP Lender agreed to make available to the Applicants a \$750,000 debtor-in-possession facility (the "**DIP Facility**") and authorized the Applicants to draw on the DIP Facility in the maximum principal amount of \$160,000;
  - (d) the Court granted the Administration Charge in the maximum amount of \$150,000;
  - (e) the Court authorized the Applicants to make certain payments, including amounts owing for goods or services supplied to the Applicants prior to the granting of the Initial Order to the extent such payments are necessary or desirable to avoid

disruptions to the operations of the Applicants' business during the CCAA proceedings, with the consent of the Monitor; and

- (f) the Court granted a charge in favour of the directors and officers in the amount of \$50,000;

### **Restructuring Options**

- 7. The proposed ARIO permits the Applicants to pursue restructuring options, including the termination of any employees, if necessary.

### **Extension of the Stay Period**

- 8. The Applicants seek to extend the Stay Period to October 3, 2022.
- 9. The projected cash flow forecast (the "**Cash Flow Forecast**"), as prepared by the Applicants with the assistance of the Monitor and appended to the First Report, demonstrates that, with the DIP Facility, the Applicants have sufficient liquidity to operate their businesses and meet their obligations during the proposed extension of the Stay Period;
- 10. Extending the Stay Period is required to enable the Applicants to continue to operate in the ordinary course while continuing to develop a viable Plan and conduct a Sales Process;
- 11. The Applicants have acted in good faith and with due diligence during the course of these CCAA proceedings since the date of the Initial Order;
- 12. The Monitor supports the extension of the Stay Period;



### **Increase to the DIP Lender's Charge**

13. The proposed ARIO increases the amount that the Applicants are authorized to borrow under the DIP Facility to the maximum amount available thereunder, being in the principal amount of \$750,000;
14. As set out in the Cash Flow Forecast, the Applicants require nearly \$750,000 of funding during the proposed extension of the Stay Period. To provide for flexibility in the event of variances, the Applicants are requesting authority to draw under the DIP Facility to the full amount available thereunder, if required;
15. The amounts owing to the DIP Lender under the DIP Facility will continue to be secured by the DIP Lender's Charge;

### **Proposed Sale Process Order**

16. The proposed Sale Process Order seeks Court approval of the Bidding Procedures, substantially in the form attached as Appendix "A" to the Sale Process Order, and the Sales Process described therein;
17. The purpose of the Sale Process is to solicit offers for the acquisition of the business and assets of the Applicants;
18. The proposed Sale Process will be administered by the Monitor and will identify the best opportunities in the circumstances for maximizing value for the Applicants' stakeholders;
19. In addition, the proposed Sale Process Order contains a sealing provision with respect to the unredacted copy of the Hyde Engagement appended to the First Report as Confidential Appendix "B". The sealing order is necessary to protect commercially sensitive

information, which was redacted in the publicly available copy of the First Report, pending further Order of this Court;

20. The Monitor is supportive of the Sale Process;

**Other Grounds**

21. The provisions of the CCAA and the inherent and equitable jurisdiction of this Honourable Court;
22. Rules 1.04, 1.05, 2.03, 3.02, 16, and 37, 38, 39 of the *Rules of Civil Procedure* (Ontario), R.R.O. 1990, Reg. 194; and
23. Such further and other grounds as counsel may advise and this Court may permit.

**THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of this motion:

24. The Affidavit of Craig Loverock sworn June 22, 2022;
25. The Pre-Filing Report of the Monitor dated June 22, 2022, and the First Report; and
26. Such further and other evidence as counsel may advise and this Court may permit.

June 29, 2022

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Lawyers for the Applicants

**TO: THIS HONOURABLE COURT**  
**AND TO: THE SERVICE LIST**

**Schedule "A"**

**Real Property**

PIN06443-0179 (LT) legally described as: 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

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

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

Proceedings commenced at Toronto, Ontario

**NOTICE OF MOTION**

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Lawyers for the Applicants

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(as at June 29, 2022)**

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<b>AND TO:</b>	<p><b>SPROUTLY INC.</b> 595 Howe Street, 10<sup>th</sup> floor Vancouver, BC V6C 2T5</p> <p><b>Craig Loverock</b> Email: <a href="mailto:craig.loverock@sproutly.ca">craig.loverock@sproutly.ca</a></p> <p>Applicant</p>
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(as at June 29, 2022)**

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# TAB 2

**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

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HERBAL REMEDIES INC.  
(each an “**Applicant**” and collectively, the “**Applicants**”)

**Applicants**

**AFFIDAVIT OF CRAIG LOVEROCK**  
(Sworn June 22, 2022)

I, Craig Loverock, of the Municipality of York, in the Province of Ontario, MAKE  
OATH AND SAY AS FOLLOWS:

**I. INTRODUCTION**

1. I am the Chief Financial Officer and Director of Sproutly, Inc. I am the Director, President, Chief Financial Officer and Secretary of Toronto Herbal Remedies Inc. (“**THR**”). In my executive roles with Sproutly, Inc. and THR (collectively, the “**Applicants**”), I have knowledge of the operations and structure of each of the Applicants. As such, I have knowledge of the matters hereinafter deposed to, save where I have obtained information from others and public sources. Where I have obtained information from others and public sources, I have stated the source of the information and believe it to be true.

2. This affidavit is sworn in support of an application by the Applicants for an order (the “**Initial Order**”) pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36,

as amended (the “**CCAA**”) substantially in the form of the draft order included at Tab 3 of the Application Record, approving, among other things,

- (a) the appointment of BDO Canada Limited (“**BDO**”) as the proposed Monitor of the Applicants (in such capacity, the “**Proposed Monitor**”);
  - (b) the DIP Term Sheet (as defined below), the DIP Loan (as defined below), the authority to initially borrow up to \$160,000, and an initial charge in favour of 0982244 B.C. Ltd., operating as Isle of Mann Property Group (the “**DIP Lender**”) of up to \$160,000 (the “**DIP Lender’s Charge**”);
  - (c) an administration charge of \$150,000 (the “**Administration Charge**”);
  - (d) a directors’ charge of \$50,000 (the “**Directors’ Charge**” and together with the DIP Lender’s Charge and the Administration Charge, the “**Priority Charges**”); and
  - (e) an initial stay of proceedings to July 4, 2022 (the “**Stay Period**”).
3. If the Initial Order is granted, the Applicants intend to return to Court on July 4, 2022 (the “**Comeback Hearing**”) to seek amendments to the Initial Order (the “**Amended and Restated Initial Order**”), including but not limited to extending the Stay Period and increasing the amount of the Priority Charges. At the same time, the Applicants also intend to seek a sale and investment solicitation process.
4. All monetary amounts referred to in this Affidavit are in Canadian dollars, unless otherwise noted.



## II. OVERVIEW OF THE APPLICANTS

### A. *Background*

5. THR is engaged in the production, processing and sale of cannabis products. It holds the Applicants' primary assets, which include the Real Property (as defined below), various equipment and inventory, and the Health Canada license permitting the processing, cultivation, and sale cannabis in accordance with the *Cannabis Act* and the *Cannabis Regulations* (collectively the "**Cannabis Regulations**"). Currently, THR is no longer growing or producing cannabis products; however, cannabis remains at the licenced facility.

6. Sproutly, Inc. has no assets other than 100% of the shares of THR. Sproutly, Inc. is the employer of key individuals responsible for, and required to remain involved with the business, to maintain the Health Canada license under the Cannabis Regulations.

7. The Applicants are facing a liquidity crisis and were actively marketing their assets for sale prior to filing. The Applicants require immediate interim financing and the protections afforded under the CCAA in order to stay the actions of Toronto Hydro and to commence a court ordered sales process for the benefit of its stakeholders.

### B. *Corporate Structure*

8. Sproutly Canada Inc. ("**Sproutly Canada**") is a publicly-traded corporation on the Canadian Securities Exchange under the symbol "SPR" and is quoted on certain other international exchanges, including on the Frankfurt, Berlin, Munich and Stuttgart exchanges under the symbol "38G" and on the OTCQB Venture Marketplace under the symbol "SRUTF". Sproutly Canada is not an applicant in these proceedings.

9. Sproutly Canada was incorporated as “Stone Ridge Exploration Corp.” (“**Stone Ridge**”) in 2012. In 2018, Stone Ridge effected a plan of arrangement under the *Canada Business Corporations Act* (“**CBCA**”), which included a reverse takeover of Stone Ridge by Sproutly, Inc. Stone Ridge changed its name to “Sproutly Canada, Inc.” and Sproutly, Inc. became a wholly owned subsidiary of the corporation now known as Sproutly Canada.

10. Sproutly, Inc. was incorporated on January 17, 2017 under the CBCA and maintains its registered office at 10<sup>th</sup> Floor – 595 Howe Street, Vancouver, British Columbia.

11. THR was incorporated on January 17, 2013 under the Ontario *Business Corporations Act*, and maintains its registered office at 70 Raleigh Ave, Toronto, Ontario.

12. Copies of the corporate registry searches with respect to the Applicants and Sproutly Canada are attached hereto as **Exhibit “A”**. A copy of an organizational chart for these entities is attached as **Exhibit “B”**.

### **C. *The Business***

#### **(i) Operations**

13. THR owns a 15,913 square foot production facility (the “**THR Facility**”) located at 64-70 Raleigh Avenue, Toronto, Ontario (the “**Real Property**”). The THR Facility was built to cultivate pharmaceutical grade cannabis. It has 12 grow rooms, and approximately 10,528 square feet dedicated to production support.

**(ii) Cannabis License**

14. THR holds a license, a copy of which is attached hereto as **Exhibit “C”**, under the Cannabis Regulations (the “**Cannabis License**”) in respect of the THR Facility. The Cannabis License is currently due to expire on November 26, 2026. The Cannabis License permits THR to:

- (a) possess cannabis;
- (b) obtain dried cannabis, fresh cannabis, cannabis plants or cannabis plant seeds by cultivating, propagating, and harvesting cannabis;
- (c) for the purposes of testing, obtain cannabis by altering its chemical or physical properties by any means;
- (d) produce cannabis, other than by obtaining it by cultivating, propagating or harvesting it; and
- (e) sell cannabis in accordance with the Cannabis Regulations.

15. The Cannabis License is subject to THR meeting Health Canada requirements for cannabis testing, and THR selling and distributing cannabis products to authorized license holders and distributors.

**(iii) Permit**

16. THR is also registered under the Saskatchewan Liquor and Gaming Authority to supply cannabis to the Saskatchewan market from the Real Property. THR’s Licenced Producer

Registration is up for renewal on March 16, 2023. Attached hereto as **Exhibits “D” and “E”** are copies of the permit and email advising of the renewal date.

**D. *Employees***

17. Presently, THR has 2 employees whereas Sproutly has 2 employees and 1 consultant required to maintain the Cannabis License. The employees are not unionized and do not maintain a pension plan.

18. Payroll was paid biweekly. It is anticipated that the first payment of \$30,000 will include a small catch-up portion of missed payroll for the THR employees whose salaries were postponed prior to filing.

**E. *Material Contracts***

19. THR has entered into supply agreements with six provinces: British Columbia, Saskatchewan, Manitoba, Alberta, New Brunswick and Ontario, through the applicable provincial wholesaler or liquor and gaming authorities. These agreements permit THR to supply dried flower products.

**F. *Cash Management***

20. THR primarily conducts its banking with the Royal Bank of Canada. Sproutly, Inc. primarily conducts its banking with the Bank of Montreal.

**III. FINANCIAL SITUATION OF THE APPLICANTS**

**A. *Applicants’ Financial Statements***

21. The Applicants do not produce stand alone financial statements but are consolidated into Sproutly Canada's financial statements. Full copies of Sproutly Canada's annual audited and recent quarterly unaudited financial statements are attached hereto as **Exhibits "F" and "G"**, respectively.

***B. Assets of the Applicants***

22. As outlined above, Sproutly, Inc. does not have any assets other than shares in THR.

23. THR's assets consist primarily of the THR Facility, the Real Property, equipment, and the Cannabis License.

***C. The Applicants' Secured Creditors***

24. Sproutly, Inc. has no secured creditors.

25. THR has three secured creditors: the DIP Lender, Infusion Biosciences Inc. ("**Infusion**"), and Her Majesty in Right of Ontario Represented by the Minister of Finance ("**Minister of Finance**"), and together with the DIP Lender and Infusion, the "**Secured Creditors**").

26. There was a previous secured lender, Jane Bailey ("**Bailey**"), who had an interest in specific gummy production equipment of THR. In April 2022, a purchaser acquired this specific equipment and as part of that transaction the Bailey debt was repaid and the security interests against THR were released. A copy of the release of security is attached as **Exhibit "H"**

27. A summary of the Secured Creditors, with security interests registered pursuant to the *Personal Property Security Act* (Ontario) (the "**PPSA**") for THR can be found below:

<b>Date of Registration</b>	<b>Secured Party</b>	<b>Registration Number</b>	<b>Expiry Date</b>
February 5, 2020	Infusion	20200205 1105 1862 8027	February 5, 2025
December 30, 2020	Minister of Finance	20201230 1818 1031 0702	December 30, 2025
June 16, 2022	DIP Lender	20220616 1423 1590 7490	June 16, 2027

28. The DIP Lender and Infusion entered into a subordination agreement with respect to the security interests of each party. A copy of the subordination agreement is attached as **Exhibit “I”**.

29. There are no security interests registered under the PPSA against Sproutly, Inc. as of June 16, 2022. Copies of a certified search of the Ontario Personal Property Security Registration System with respect to Sproutly, Inc. and THR are attached hereto as **Exhibits “J” and “K”** respectively. A copy of a search of the Personal Property Security Registration for British Columbia in respect of Sproutly, Inc. is attached hereto as **Exhibit “L”**.

(i) **The DIP Lender**

30. On June 18, 2015, THR entered into a loan agreement (the “**Loan Agreement**”) with the DIP Lender, as lender, and Bray Limited Partnership (“**Bray**”) in the aggregate principal amount of \$3.25 million (the “**Original Loan**”) to provide financing for the construction of the THR Facility. A copy of the Loan Agreement is attached as **Exhibit “M”**. Bray has since dissolved, evidenced by the corporate search attached hereto as **Exhibit “N”**.

31. In connection with the Original Loan, THR also provided the following:

(a) A promissory note in the same amount as the Original Loan (the “**2015 Promissory Note**”). A copy of the Promissory Note and receipt is attached hereto as Exhibit “**O**”;

(b) A charge/mortgage of land in favour of the DIP Lender in the principal amount as the Original Loan (the “**Mortgage**”). This Mortgage was registered against title to the Real Property on August 31, 2015 as Instrument Number AT3995694. A copy of instrument is attached hereto as **Exhibit “P”**. A copy of the abstract in respect of the Real Property is attached hereto as **Exhibit “Q”**;

(c) A General Assignment of Rents in favour of the DIP Lender as a condition precedent to the Mortgage. This was registered against the Real Property on August 31, 2015 as Instrument Number AT3995695. A copy of Instrument, enclosing the General Assignment of Rents, is attached hereto as **Exhibit “R”**;

(d) A general security agreement dated August 28, 2015 in favour of the DIP Lender, a copy of which is attached hereto as Exhibit “**S**”;

(e) Various security documents including an assignment of sale proceeds and assignment of material contracts; and

(f) A share purchase and loan conversion option in favour of the DIP Lender pursuant to a share purchase option and loan conversion agreement dated August 28, 2015 (the “**2015 Option Agreement**”), a copy of which is attached hereto as **Exhibit “T”**.

32. The 2015 Option Agreement was then amended, and the DIP Lender exercised its option to purchase 23% of the common shares in THR pursuant to an option amendment, exercise and loan conversion agreement dated February 28, 2018 (the “**2018 Conversion Agreement**”). A copy

of 2018 Conversion Agreement, excluding Exhibit A, is attached hereto as **Exhibit “U”**. In connection with this conversion:

(a) The principal amount of the Original Loan was reduced by \$1.5 million, and a new loan in the principal amount of \$1.5 million was issued to the DIP Lender (the “**Converted Loan**”). A promissory note, dated February 28, 2018, for the Conversion Loan is attached hereto as Exhibit “**V**” (the “**2018 Promissory Note**”);

(b) The Mortgage was amended and restated pursuant to the registration of a notice of agreement amending charge, which was registered as Instrument AT4812828 on March 1, 2018 (the “**Notice of Amendment**”). A copy of registration is attached hereto as **Exhibit “W”**; and

(c) THR signed a General Security Agreement, dated February 28, 2018, a copy of which is attached hereto as **Exhibit “X”**.

33. Following the 2018 Conversion, THR and the DIP Lender also amended the 2015 Promissory Note and the 2018 Promissory Note to change, amongst other things, the interest and maturity terms. Copies of the amendments for the 2015 Promissory Note and the 2018 Promissory Note, both dated August 7, 2018, are attached hereto as **Exhibits “Y”** and “**Z**” respectively.

34. THR and the DIP Lender agreed to increase the amount of the Mortgage to \$4.5 million. Pursuant to this increase, a Notice of Agreement Amending Charge of Land was registered on title to the Real Property as Instrument AT5352062 on January 28, 2020. A copy of this instrument is attached hereto as **Exhibit “AA”**.



35. On June 16, 2022, the DIP Lender registered a security interest pursuant to the Ontario PPSA THR against all classes of collateral except Consumer goods which registration expires on June 16, 2027. I have been advised by counsel to the Applicants that this registration was made as a renewal for a lapsed registration.

36. As of June 21, 2022, the amount outstanding on the Mortgage, as advised by counsel to the mortgagee, is \$3,596,130.60, with daily interest accruing at \$1,127.40. A copy of the email from lender's counsel, with a breakdown of amounts owed, is attached as **Exhibit "BB"**.

37. The DIP Lender is a key stakeholder of the Applicants. The DIP Lender and the Applicant have worked together prior to this filing to ensure the DIP Lender supported these proceedings. As a result, the DIP Lender has agreed to provide the DIP financing, described herein, and to support the CCAA proceeding of the Applicants.

**(ii) Infusion Loan**

38. THR, Sproutly Canada and Infusion entered into a loan agreement whereby Infusion agreed to lend \$1 million to Sproutly Canada ("**Infusion Loan**"). A copy of the loan agreement, dated January 21, 2020, is attached hereto as **Exhibit "CC"**.

39. In connection with the Infusion Loan, THR provided the following:

(a) A guarantee for the Infusion Loan (the "**Guarantee**"). A copy of the Guarantee is attached hereto as **Exhibit "DD"**;

(b) A second charge/mortgage of land in favour of Infusion over the Real Property as security for the Guarantee (the "**Infusion Mortgage**"). The Infusion Mortgage was

registered on March 6, 2020 as instrument number AT5382792. A copy of the registration is attached hereto as **Exhibit “EE”** respectively. The DIP Lender consented to THR granting the Infusion Mortgage as consideration of the principal amount of the 2018 Mortgage being increased to \$4.5 million, as described above; and

(c) A general security agreement in favour of Infusion. A copy of this agreement, dated January 21, 2020, is attached hereto as **Exhibit “FF”**.

40. On February 5, 2020, Infusion registered a security interest pursuant to the PPSA against THR against the following classes of collateral: Inventory, Equipment, Accounts, and Other which registration expires February 5, 2025.

41. The Infusion Loan was subsequently amended in August 2020. Attached hereto as **Exhibit “GG”** is a copy of the amendment.

42. Infusion agreed to lend an additional \$855,000 to Sproutly Canada, Inc. in the form of convertible debenture and obtained additional security from Infusion Biosciences Canada Inc. (another subsidiary of Sproutly Canada). A copy of this loan agreement, of which THR is party to, is attached hereto as **Exhibit “HH”**.

43. The amount outstanding on the Infusion Loan is \$1,190,596.35 as of May 31, 2022.

**(iii) Ministry of Finance**

44. The Minister of Finance registered a security interest against THR pursuant to the PPSA on December 30, 2020 against the following classes of collateral: Inventory, Equipment, Accounts, and Other which registration is set to expire on December 30, 2025.

45. The Minister of Finance also registered a lien against the Real Property on May 27, 2021 in the amount of \$8,782.32 (the “**Lien**”) for taxes and other amounts unpaid pursuant to the *Employer Health Tax Act*, R.S.O. 1990, c. E. 11, as amended pursuant to Instrument Number AT5748147. A copy of the Lien is attached as **Exhibit “II”**.

**D. Unsecured Creditors of the Applicants**

46. Based on the Applicants’ books and records, as of June 9, 2022, THR’s unsecured obligations totaled approximately \$1.202 million to various trade creditors. Of particular note, these amounts include:

- (a) \$355,810.03 for amounts owing for excise taxes associated with the Cannabis License. As a licensed cannabis producer, THR is required to pay a federal excise duty under the *Excise Act, 2002* (Canada) when the cannabis products they package are delivered to a purchaser. This excise duty payable is in addition to any HST payable;
- (b) \$161,694.56 owing pursuant to supply agreements with Alberta and New Brunswick;
- (c) \$16,598.89 in connection to WSIB premiums; and
- (d) \$60,000 in connection with a loan under the *Canada Emergency Business Account* (“**CEBA**”) program through Royal Bank of Canada.

47. Sproutly, Inc. also owes \$60,000 under the same CEBA Program through the Bank of Montreal.

***F. Litigation***

48. In May 2022, the DIP Lender commenced power of sale proceedings against THR to obtain vacant possession of the THR Facility. THR defended this action. The power of sale proceedings will be stayed by these CCAA proceedings; however, through the efforts of the Applicants, the DIP Lender now supports the commencement of these proceedings and the sales process that will be sought at the comeback hearing.

**IV. CASH FLOW FORECAST**

49. Attached hereto as **Exhibit “JJ”** is a statement of the projected 14-week cash flow forecast (the “**Cash Flow Forecast**”) of the Applicants for the week ending June 26, 2022 to the week ending September 25, 2022 (the “**Cash Flow Period**”). The Cash Flow Forecast was prepared by the Applicants with the assistance of the Proposed Monitor.

50. The Cash Flow Forecast demonstrates that if the relief requested is granted, including the approval of the DIP Term Sheet and the DIP Lender’s Charge, the Applicants will have sufficient liquidity to meet its obligations during the initial 10-day Stay Period.

**V. LIQUIDITY CRISIS & PRESSING NEED FOR RELIEF**

51. Following the COVID-19 pandemic in March 2020, the Applicant’s sales declined significantly. As well, some key financing opportunities also came to a halt. As a result of an inability to access liquidity and the downturn in the cannabis market, THR had to cease regular operations at the THR Facility.

52. As the Cash Flow Forecast indicates, the Applicants project estimated disbursements of approximately \$748,898 during the Cash Flow Period. The Applicants have a critical and

immediate need for interim financing, and without it, the Applicants are unable to conduct the close out a proposed sales process.

53. Accordingly, the Applicants have sought interim debtor-in-possession financing (“**DIP Financing**”). The Applicants were able to secure DIP Financing from the DIP Lender pursuant to a Term Sheet dated June 22, 2022 (the “**DIP Term Sheet**”), wherein the DIP Lender agreed to loan a maximum principal amount of \$750,000 to the Applicants to support working capital requirements (the “**DIP Facility**”), subject to the terms and conditions prescribed therein. A copy of the DIP Term Sheet is attached hereto as **Exhibit “KK”**.

54. The key material terms of the DIP Term Sheet are as follows:

- (a) The provision of a non-revolving demand credit facility up to a maximum amount of \$750,000;
- (b) The purpose of the DIP Facility is to:
  - (i) Fund working capital needs in accordance with cash flow projections approved by the Proposed Monitor and the DIP Lender;
  - (ii) fees and expenses (including interest) incurred by the DIP Lender, incurred in connection with the DIP Facility and the within CCAA proceedings;
  - (iii) professional fees and expenses incurred by the Applicants and the Proposed Monitor in respect of the CCAA Proceedings; and
  - (iv) such other costs and expenses of the Applicants as may be agreed to by the DIP Lender;

(c) advances under the DIP Facility (individually an “**Advance**”) are to be issued as follows:

- (i) on a weekly request by THR to the DIP Lender;
- (ii) irrespective of the amount requested, the DIP Lender is only required to fund the portion of the Advance that is consistent with the weekly funding set out in cash flow projections, plus a maximum variation of 20% (“**Maximum Advance Value**”);
- (iii) the DIP Lender has the sole discretion to fund any portion of an Advance in excess of the Maximum Advance Value;

(d) Availability of the DIP Facility is conditional upon certain terms including:

- (i) An Initial Order approving the borrowing under the DIP Facility that provides:
  - 1) Subject only to the priority of the Administration Charge, a first ranking charge in favour of the DIP Lender;
  - 2) Granting the DIP Lender the right, upon the occurrence of an Event of Default under the DIP Facility (“**Event of Default**”), to terminate the DIP Facility;
  - 3) Declaring that the DIP Charge, documents related to the DIP Facility, and payments made to the DIP Lender do not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive

conduct, or other challengeable or voidable transactions under any applicable law;

4) declaring the DIP Financing Order, including the DIP Charge, be binding upon a trustee in bankruptcy of the Applicants, the Monitor, any receiver, interim-receiver, receiver-manager or any other officer of the Court appointed in respect of the Applicants; and

5) declaring the DIP Lender to be an “unaffected creditor” under any restructuring plan that may be made by the Applicants and that the indebtedness to the DIP Lender under the DIP Facility shall not be compromised under any such restructuring plan;

(ii) The Administration Charge not exceeding \$150,000;

(iii) The D&O Charge not exceeding \$50,000;

(e) Subsequent Advances are conditional upon:

(i) The Applicants obtaining an order approving a sales process, in a form satisfactory to the DIP Lender, no later than July 4, 2022 (the “**Sales Process Order**”), and that such order cannot be amended without the DIP Lender’s consent;

(ii) That there be no Event of Default under the DIP Facility; and

(iii) The conditions in the DIP Term Sheet continue to be satisfied;

- (f) Interest at a base rate of 14% per annum shall be calculated monthly on the daily balance outstanding under the DIP Facility;
- (g) Monthly interest only payments with the balance of principal and all obligations owing under the DIP Facility on the Maturity Date, which is defined to be earlier of:
  - (i) the occurrence of an event of default under the DIP Facility
  - (ii) termination of the CCAA proceedings
  - (iii) the sale of THR's real property or substantially all of its assets and business;  
and
  - (iv) September 30, 2022 (or such other date as the DIP Lender may agree);
- (h) A facility fee of 2% of the amount of each Advance will be applied, with all fees to be accrued and repaid on the Maturity Date;
- (i) THR not incurring any expense other than as included in the Cash Flow Projections, or as reasonably required for the operation of the business up to a maximum of \$10,000, without the prior written consent of the DIP Lender;
- (j) THR is to maintain adequate insurance, with the DIP Lender named as first loss payee;
- (k) The Applicants to pay Priority Claims, which is defined in the DIP Facility to include, amongst other things, amounts that may rank prior to or *pari passu* with the DIP



Charge for amounts such as wages, vacation pay, source deductions, workers' compensation, and suppliers' claims; and

(l) The DIP Lender having the right to declare all amounts of the DIP Facility to be due and payable and seek a court order for such enforcement should an Event of Default occur. Events of Default include:

- (i) Failure to pay any principal, fees or other amounts when due;
- (ii) Failure to pay any of the Priority Claims;
- (iii) Breach of any covenant, term or condition of the DIP Term Sheet;
- (iv) The Sales Process Order or DIP Financing Order set aside, stayed, or varied in a manner adverse to the DIP Lender without its consent;
- (v) Any order made in the within proceedings that is prejudicial to the DIP Lender's interests;
- (vi) Sale of THR's business or assets except otherwise approved by the DIP Lender; and
- (vii) THR becoming bankrupt, or placed in a receivership.

55. The DIP Facility is required in order for Applicants to meet its ongoing working capital requirements and for the closing of the Transaction.

## **VI. THE PROPOSED SALES PROCESS**

56. As outlined, the DIP Lender and other key stakeholders support the initiation of these CCAA proceedings to effect a sale of the business or the facility. At the Comeback Hearing, the Applicants anticipate requesting that this Court approve the sales process.

## **VII. OBJECTIVE OF CCAA FILING**

57. As described above, the Applicants immediately require the protections afforded under the CCAA and the DIP Financing in order to maintain the *status quo* and obtain the breathing room required to run a sales process for the benefit of its stakeholders.

58. On June 6, 2022, THR received a notice from Toronto Hydro indicating that the power will be disconnected at the THR Facility between June 21, 2022 and July 4, 2022. A copy of the disconnection notice is attached as **Exhibit “LL”**. The urgent granting of a stay provided for under the CCAA is required to prevent this disconnection and to allow the business to be marketed and sold in an orderly process following the comeback hearing.

## **VIII. RELIEF BEING SOUGHT**

### **A. *The Monitor***

59. BDO has consented to act as the Court-appointed Monitor of the Applicants, subject to Court approval. A copy of BDO’s consent is attached hereto as **Exhibit “MM”**. I am advised by external counsel that BDO is a trustee within the meaning of section 2 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended, and is not subject to any of the restrictions on who may be appointed as Monitor set out in section 11.7(2) of the CCAA.

**B. *Proposed Treatment of Creditors***

60. The Applicants propose to stay their pre-filing trade obligations as part of its CCAA filing.

**C. *Administration Charge***

61. The Applicants seek an Administration Charge against the Property (as defined in the proposed form of the Initial Order) in the maximum amount of \$150,000 to secure the fees and disbursements incurred in connection with services rendered to the Applicants both before and after the commencement of the CCAA proceedings by counsel to the Applicants, the Proposed Monitor, and counsel to the Proposed Monitor.

62. It is contemplated that each of the aforementioned parties: (i) will have extensive involvement during the CCAA proceedings; (ii) have contributed and will continue to contribute to the restructuring of the Applicants; and (iii) will ensure there is no unnecessary duplication of roles among the parties.

63. I am advised by legal counsel that the Proposed Monitor believes that the proposed quantum of the Administration Charge is reasonable and appropriate in light of the Applicants' CCAA proceedings and the services provided and to be provided by the beneficiaries of the Administration Charge.

**D. *DIP Charge***

64. The Applicants' cash resources are already exhausted. The last pay period the employees were paid was for the two week period ending March 4, 2022. The Applicants seek Court approval of the DIP Term Sheet as part of its restructuring strategy.

65. The Applicant's access to the DIP Facility is conditional upon the provision of an order of this Court, among other things, approving the DIP Term Sheet and approving the DIP Charge on the Property in the initial amount of \$160,000 subject to the terms of the DIP Term Sheet.

66. The Applicants worked with the Proposed Monitor in determining the proposed quantum of the DIP Charge and believe that the DIP Charge is appropriately limited to what is reasonably necessary in the circumstances. I have been advised by counsel that the Proposed Monitor is of the view that the DIP Charge is appropriate and limited to what is reasonably necessary in the circumstances.

**E. *Directors' Charge***

67. To ensure the ongoing stability of the Applicants' business during the CCAA proceedings, the Applicants require the continued participation of their directors and officers who manage the business and commercial activities of the Applicants. The directors and officers of the Applicants have considerable institutional knowledge and valuable experience.

68. There is a concern that certain directors and officers of the Applicants may discontinue their services during this restructuring unless the Initial Order grants the Directors' Charge (as defined below) to secure the Applicants' indemnity obligations to the directors and officers that may arise post-filing in respect of potential personal statutory liabilities.

69. The Applicants do not maintain directors' and officers' liability insurance.

70. The proposed Initial Order contemplates the establishment of the Directors' Charge against the Property in the amount of \$50,000 to protect the directors and officers against obligations and liabilities they may incur as directors and officers of the Applicants after the commencement of

the CCAA proceedings, except to the extent that the obligation or liability is incurred as a result of the director's or officer's gross negligence or wilful misconduct.

71. The Applicants worked with the Proposed Monitor in determining the proposed quantum of the Directors' Charge and believe that the Directors' Charge is reasonable and appropriate in the circumstances.

**F. *Proposed Ranking of Court-Ordered Charges***

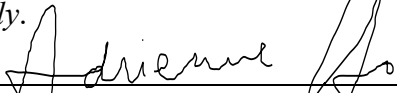
72. To summarize, the proposed ranking of the Priority Charges is as follows:

- (a) Administration Charge;
- (b) The DIP Lender's Charge; and
- (c) Directors' Charge.

**IX. CONCLUSION**

73. This affidavit is sworn in support of the Applicants' application for protection pursuant to the CCAA and for no improper purpose.

SWORN before me via videoconference with CRAIG LOVEROCK located in the City of Newmarket, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, this 22nd day of June, 2022, in accordance with O. Reg 431/20, *Administering Oath or Declaration Remotely*.

  
\_\_\_\_\_  
Commissioner for Taking Affidavits  
Adrienne Ho (LSO# 68439N)

  
\_\_\_\_\_  
CRAIG LOVEROCK

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.

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

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

Proceedings commenced at Toronto

**AFFIDAVIT OF CRAIG LOVEROCK**

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Lawyers for the Applicants

# TAB 3

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

THE HONOURABLE MR. ) MONDAY, THE 4<sup>th</sup>  
 )  
JUSTICE MICHAEL A. PENNY ) DAY OF JULY, 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”)

**AMENDED AND RESTATED INITIAL 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**”) was heard this day by videoconference.

**ON READING** the affidavit of Craig Loverock sworn June 22, 2022 and the Exhibits thereto (the “**Loverock Affidavit**”), the pre-filing report of the monitor, BDO Canada Limited (“**BDO**”) dated June 22, 2022 (the “**Pre-Filing Report**”), the first report of the Monitor dated June 29, 2022 (the “**First Report**”), and on being advised that the secured creditors who are likely to be affected by the charges created herein were given notice of this motion, and on hearing the submissions of counsel for the Applicants, counsel for BDO, and those other parties listed on the Counsel Slip, no one else appearing although duly served as appears from the Affidavits of Service of Adrienne Ho sworn June 23, 2022 and June 24, 2022, and on reading the consent of BDO to act as the monitor of the Applicants (in such capacity, the “**Monitor**”), filed.

**SERVICE & DEFINITIONS**

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



2. **THIS COURT ORDERS** that all capitalized terms not expressly defined herein are defined in the Loverock Affidavit.

#### **APPLICATION**

3. **THIS COURT ORDERS AND DECLARES** that each Applicant is insolvent and is a company to which the CCAA applies.

#### **PLAN OF ARRANGEMENT**

4. **THIS COURT ORDERS** that the Applicants shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the "**Plan**").

#### **POSSESSION OF PROPERTY AND OPERATIONS**

5. **THIS COURT ORDERS** that the Applicants shall remain in possession and control of their current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate, including all proceeds thereof (the "**Property**"), including but not limited to the Real Property (as defined below) and any Property subject to any Controlled Substances Legislation (as defined below). Subject to further Order of this Court, the Applicants shall continue to carry on business in a manner consistent with the preservation of their business (the "**Business**") and Property. The Applicants are authorized and empowered to continue to retain and employ the employees, consultants, agents, experts, accountants, counsel and such other persons (collectively "**Assistants**") currently retained or employed by them, with liberty to retain such further Assistants as they deem reasonably necessary or desirable in the ordinary course of business, to preserve the value of the Property or the Business, or for the carrying out of the terms of this Order.

6. **THIS COURT ORDERS** that the Applicants shall be entitled to continue to use the central cash management system currently in place (the "**Cash Management System**") and that any present or future bank or credit union providing the Cash Management System shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the Applicants of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any

liability in respect thereof to any Person (as defined below) other than the Applicants, pursuant to the terms of the documentation applicable to the Cash Management System.

7. **THIS COURT ORDERS** that the Applicants shall be entitled, but not required, to pay the following expenses whether incurred prior to, on or after the date of this Order:

- (a) all outstanding and future wages, salaries, employee benefits, vacation pay, and employee expenses payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements;
- (b) the fees and disbursements of any Assistants retained or employed by the Applicants in respect of these proceedings, at their standard rates and charges;
- (c) any taxes, duties, or other payments required under the Controlled Substances Legislation; and
- (d) with the consent of the Monitor, amounts owing for goods or services supplied to the Applicants prior to the granting of this Order if, in the opinion of the Applicants, such payment is necessary or desirable to avoid disruptions to the operations of the Business or the Applicants during the CCAA proceeding.

8. **THIS COURT ORDERS** that, except as otherwise provided to the contrary herein, and subject to the DIP Documents (as defined below) the Applicants shall be entitled but not required to pay all reasonable expenses incurred by the Applicants in carrying on the Business in the ordinary course after the date of this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

- (a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business, including, without limitation, payments on account of insurance, maintenance and security services; and
- (b) payment for goods or services actually supplied to the Applicants following the date of this Order or payments to obtain the release of goods or delivery of services contracted for prior to the date of this Order.

9. **THIS COURT ORDERS** that the Applicants shall remit, in accordance with legal requirements, or pay:

- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, and (iii) income taxes;
- (b) all goods, services, excise or other applicable sales taxes (collectively, “**Sales Taxes**”) required to be remitted by the Applicants in connection with the sale of goods and services by the Applicants, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order, but not required to be remitted until on or after the date of this Order; and
- (c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the Applicants, but only where such taxes are accrued during a period after the date of this Order.

10. **THIS COURT ORDERS** that, except as specifically permitted herein or in the Cash Flow Forecast, as amended, and subject to the DIP Term Sheet (as defined below) and the other DIP Documents, the Applicants are hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Applicants to any of their creditors as of the date of this Order; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of the Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

## **RESTRUCTURING**

11. **THIS COURT ORDERS** that the Applicants shall, subject to such requirements as are imposed by the CCAA and such covenants as may be contained in the DIP Term Sheet, have the right to:

- (a) permanently or temporarily cease, downsize or shut down any of their businesses or operations;
- (b) terminate the employment of such of their employees or temporarily lay off such of their employees as they deem appropriate; and
- (c) pursue all avenues of refinancing, restructuring, selling and reorganizing the Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing, restructuring, sale or reorganization

all of the foregoing to permit the Applicants to proceed with an orderly restructuring of the Business (the "**Restructuring**").

#### **NO PROCEEDINGS AGAINST THE APPLICANTS OR THE PROPERTY**

12. **THIS COURT ORDERS** that until and including Monday, October 3, 2022, or such later date as this Court may subsequently order (the "**Stay Period**"), no proceeding or enforcement process in or out of any court or tribunal (each, a "**Proceeding**") shall be commenced, continued or take place against or in respect of the Applicants or the Monitor or affecting the Business or the Property, except with the written consent of the Applicants and the Monitor, or with leave of this Court, and any and all Proceedings currently under way or directed to take place against or in respect of the Applicants or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court or the written consent of the Respondents and the Monitor.

#### **NO EXERCISE OF RIGHTS OR REMEDIES**

13. **THIS COURT ORDERS** that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "**Persons**" and each being a "**Person**") against or in respect of the Applicants or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended, except with the written consent of the Applicants and the Monitor, or leave of this Court, provided that nothing in this Order shall (i) empower the Applicants to carry on any business which the Applicants are not lawfully entitled to carry on, (ii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA, (iii)

prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

#### **NO INTERFERENCE WITH RIGHTS**

14. **THIS COURT ORDERS** that during the Stay Period, no Person shall accelerate, suspend, discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, lease, licence or permit in favour of or held by the Applicant, except with the written consent of the Applicants and the Monitor, or leave of this Court.

#### **CONTINUATION OF SERVICES**

15. **THIS COURT ORDERS** that during the Stay Period, all Persons having oral or written agreements with the Applicants or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility, or other services to the Business or the Applicants, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Applicants or exercising any other remedy provided under the agreements or arrangements, and that the Applicants shall be entitled to the continued use of their current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Applicants in accordance with normal payment practices of the Applicants or such other practices as may be agreed upon by the supplier or service provider and each of the Applicants and the Monitor, or as may be ordered by this Court.

#### **NON-DEROGATION OF RIGHTS**

16. **THIS COURT ORDERS** that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the Applicants. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

## **PROCEEDINGS AGAINST DIRECTORS AND OFFICERS**

17. **THIS COURT ORDERS** that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Applicants with respect to any claim against the directors or officers that arose before the date hereof and relates to any obligations of the Applicants whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a plan of compromise or arrangement in respect of the Applicants, if one is filed, is sanctioned by this Court or is refused by the creditors of the Applicants or this Court.

## **DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE**

18. **THIS COURT ORDERS** that the Applicants shall indemnify their directors and officers against obligations and liabilities that they may incur as directors or officers of the Applicants after the commencement of the within proceedings, except to the extent that, with respect to any officer or director, the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

19. **THIS COURT ORDERS** that the directors and officers of the Applicants shall be entitled to the benefit of and are hereby granted a charge (the "**Directors' Charge**") on the Property, which charge shall not exceed an aggregate amount of \$50,000, as security for the indemnity provided in paragraph 18 of this Order, unless permitted by further Order of this Court. The Directors' Charge shall have the priority set out in paragraphs 36 and 38 herein.

20. **THIS COURT ORDERS** that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) the Applicants' directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 18 of this Order.

## **APPOINTMENT OF MONITOR**

21. **THIS COURT ORDERS** that BDO is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Applicants

with the powers and obligations set out in the CCAA or set forth herein and that the Applicants and their shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Applicants pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

22. **THIS COURT ORDERS** that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- (a) monitor the Applicants' receipts and disbursements;
- (b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;
- (c) assist the Applicants, to the extent required by the Applicants, in their dissemination to the DIP Lender (as defined below) of financial and other information as agreed to between the Applicants and the DIP Lender, including reporting on a reasonable basis to be agreed between the Applicants and the DIP Lender;
- (d) advise the Applicants in the preparation of the Applicants' cash flow statements and any other reporting to the Court or as reasonably required by the DIP Lender;
- (e) advise the Applicants in their development of the Plan and any amendments to the Plan;
- (f) assist the Applicants, to the extent required by the Applicants, with the holding of and administering of creditors' or shareholders' meetings for voting on the Plan;
- (g) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Applicants, to the extent that is necessary to adequately assess the Applicants' business and financial affairs or to perform its duties arising under this Order;
- (h) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order;

- (i) Apply to this Court for any orders necessary or advisable in connection with these CCAA proceedings and the Respondents' restructuring efforts; and
- (j) perform such other duties as are required by this Order or by this Court from time to time.

23. **THIS COURT ORDERS** that, notwithstanding any other provision hereof, the Monitor shall not take possession of the Property and shall take no part whatsoever in the management, supervision of the management, or control of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof, including, without limitation, any Business or Property for which any permit, license or approval is issued or required in accordance with the following legislation and any other applicable federal, provincial or state legislation in connection with the cultivation, processing, sale and/or Possession of cannabis or cannabis-related products in Canada or outside of Canada and any regulations issued in connection therewith (collectively, the “**Controlled Substances Legislation**”):

- (a) *Cannabis Act*, S.C. 2018, c. 16;
- (b) *Excise Act, 2001*, S.C. 2002, c. 22;
- (c) *Cannabis Control Act*, 2017, S.O. 2017, c. 26;
- (d) *Ontario Cannabis Retail Corporation Act*, 2017, S.O. 2017, c. 26; and
- (e) *Cannabis License Act*, 2018, S.O. 2018, c. 12;

and nothing in this Order shall be construed as resulting in the Monitor being an employer or successor employer within the meaning of any statute, regulation, or rule of law or equity for any purpose whatsoever.

24. **THIS COURT ORDERS** that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, “**Possession**”) of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*,



the Ontario *Environmental Protection Act*, the *Ontario Water Resources Act*, or the Ontario *Occupational Health and Safety Act* and regulations thereunder (the “**Environmental Legislation**”), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

25. **THIS COURT ORDERS** that the Monitor shall provide any creditor of the Applicants and the DIP Lender with information provided by the Applicants in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Applicants is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicants may agree.

26. **THIS COURT ORDERS** that, in addition to the rights and protections afforded to the Monitor under the CCAA or as an officer of this Court, neither the Monitor nor any of its employees and representatives acting in such capacities shall incur any liability or obligation as a result of its appointment or the carrying out by it of the provisions of this Order, including under any Controlled Substances Legislation, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded to the Monitor by the CCAA or any applicable legislation.

27. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor and counsel to the Applicants shall be paid their reasonable fees and disbursements and applicable taxes, in each case at their standard rates and charges, by the Applicants as part of the costs of these proceedings. The Applicants are hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and counsel for the Applicants.

28. **THIS COURT ORDERS** that the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

29. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor and counsel to the Applicants shall be entitled to the benefit of and are hereby granted a charge (the “**Administration Charge**”) on the Property, which charge shall not exceed an aggregate amount of \$150,000, unless permitted by further Order of this Court, as security for their professional fees and disbursements plus applicable taxes incurred at the standard rates and charges of the Monitor and such counsel, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 36 and 38 hereof.

#### **DIP FINANCING**

30. **THIS COURT ORDERS** that the Applicants are hereby authorized and empowered to obtain and borrow under a credit facility from 0982244 B.C. Ltd. o/a Isle of Mann Property Group (the “**DIP Lender**”) in order to finance the Applicants’ working capital requirements, the costs of these proceedings, and other general corporate purposes and capital expenditures, provided that borrowings under such credit facility shall not exceed \$750,000 (the “**DIP Facility**”) unless permitted by further Order of this Court.

31. **THIS COURT ORDERS** that such DIP Facility shall be on the terms and subject to the conditions set forth in the term sheet between the Applicants and the DIP Lender dated as of June 22, 2022 (the “**DIP Term Sheet**”), attached as Exhibit “KK” to the Loverock Affidavit.

32. **THIS COURT ORDERS** that the Applicants are hereby authorized and empowered to execute and deliver such credit agreements, mortgages, charges, hypothecs and security documents, guarantees and other definitive documents (collectively, the “**DIP Documents**”), as are contemplated by the DIP Term Sheet or as may be reasonably required by the DIP Lender pursuant to the terms thereof, and the Applicants are hereby authorized and directed to pay and perform all of their indebtedness, interest, fees, liabilities and obligations to the DIP Lender under and pursuant to the DIP Term Sheet and the DIP Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

33. **THIS COURT ORDERS** that the DIP Lender shall be entitled to the benefit of and is hereby granted a charge (the “**DIP Lender’s Charge**”) on the Property, including, without limiting the foregoing, the real property identified in Schedule “A” hereto (the “**Real Property**”), which DIP Lender’s Charge shall not secure any obligation that exists between the Applicants and the

DIP Lender before this Order is made. The DIP Lender's Charge shall have the priority set out in paragraphs 36 and 38 hereof.

34. **THIS COURT ORDERS** that, notwithstanding any other provision of this Order:
- (a) the DIP Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP Lender's Charge or any of the DIP Documents;
  - (b) upon the occurrence of an event of default under the DIP Documents or the DIP Lender's Charge, the DIP Lender, upon five days' written notice to the Applicants and the Monitor, may exercise, with prior approval of this Court, any and all of its rights and remedies against the Applicants or the Property under or pursuant to the DIP Term Sheet, the DIP Documents and the DIP Lender's Charge, including, without limitation, to cease making advances to the Applicants, to make, demand, accelerate payment and give other notices, or to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against any the Applicants and for the appointment of a trustee in bankruptcy of the Applicants; and
  - (c) the foregoing rights and remedies of the DIP Lender shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Applicants or the Property.

35. **THIS COURT ORDERS AND DECLARES** that the DIP Lender shall be treated as unaffected in any plan of arrangement or compromise filed by the Applicants under the CCAA, or any proposal filed by the Applicants under the *Bankruptcy and Insolvency Act* of Canada (the "**BIA**"), with respect to any advances made under the DIP Documents.

#### **VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER**

36. **THIS COURT ORDERS** that the priorities of the Administration Charge, the Directors' Charge and the DIP Lender's Charge (collectively, the "**Charges**" and each individually, a "**Charge**"), as among them, shall be as follows:

First – Administration Charge (to the maximum amount of \$150,000);

Second – DIP Lender's Charge (to the maximum amount of \$750,000); and

Third – Directors’ Charge (to the maximum amount of \$50,000).

37. **THIS COURT ORDERS** that the filing, registration or perfection of the Charges shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

38. **THIS COURT ORDERS** that each of the Charges shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, charges, encumbrances and claims of secured creditors, statutory or otherwise (collectively, the “**Encumbrances**”) in favour of any Person in respect of such Property, save and except for any valid and existing purchase-money security interests or the equivalent security interests under various provincial legislation (that, for greater certainty, shall not include trade payables).

39. **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicants shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Charges, unless the Applicants also obtain the prior written consent of the Monitor and the beneficiaries of the Charges affected thereby (collectively, the “**Chargees**”), or further Order of this Court.

40. **THIS COURT ORDERS** that the Charges shall not be rendered invalid or unenforceable and the rights and remedies of the Chargees shall not otherwise be limited or impaired in any way by: (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) or receivership issued pursuant to the BIA, or other applicable statutes, or any bankruptcy or receivership order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an “**Agreement**”) which binds the Applicants, and notwithstanding any provision to the contrary in any Agreement:

- (a) the creation of the Charges nor the execution, delivery, perfection, registration or performance of the DIP Term Sheet or the DIP Documents shall not create or be

deemed to constitute a breach by any of the Applicants of any Agreement to which they are a party;

- (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the Applicants entering into the DIP Term Sheet, the creation of the Charges or the execution, delivery or performance of the DIP Documents; and
- (c) the payments made by the Applicants pursuant to this Order, the DIP Term Sheet or the DIP Documents and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

41. **THIS COURT ORDERS** that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the Applicants' interest in such real property, including in respect of any leases thereof.

#### **SERVICE AND NOTICE**

42. **THIS COURT ORDERS** that the Monitor shall (i) without delay, publish in *The Globe and Mail (National Edition)* a notice containing the information prescribed under the CCAA, (ii) within five days after the date of this Order or as soon as reasonably practicable thereafter, make (A) this Order publicly available in the manner prescribed under the CCAA, (B) send, in the prescribed manner, a notice to every known creditor who has a claim against any of the Applicants of more than \$1,000, and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder, provided that the Monitor shall not make the claims, names and addresses of individuals who are creditors publicly available unless otherwise ordered by the Court.

43. **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the "**Protocol**") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Guide (which can be found on the Commercial List website at: [www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial/](http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial/)) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for

substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 13 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established by the Monitor in accordance with the Protocol with the following URL: <https://www.bdo.ca/en-ca/extranets/SI-and-toronto-herbal-remedies/>.

44. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Guide is not practicable, the Applicants and the Monitor are at liberty to serve or distribute this Order, any other materials and orders as may be reasonably required in these proceedings and any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery, facsimile or other electronic transmission to the Applicants' creditors or other interested parties at their respective addresses as last shown on the records of the Applicants and that any such service or notice by courier, on the next business day following the date of forwarding thereof, (b) if delivered by personal delivery or facsimile or other electronic transmission, on the day so delivered, and (c) if sent by ordinary mail, on the third business day after mailing.

45. **THIS COURT ORDERS** that the Applicants, the Monitor and their respective counsel are at liberty to serve or distribute this Order, any other materials and orders as may be reasonably required in these proceedings, including any notices, or other correspondence, by forwarding true copies thereof by electronic mail to the Applicants' stakeholders or other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or juridical obligation, and notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations*, Reg. 8100-2-175 (SOR/DORS).

#### **GENERAL**

46. **THIS COURT ORDERS** that the Applicants or the Monitor may from time to time apply to this Court to amend, vary, supplement or replace this Order, or for advice and directions in the discharge of their respective powers and duties under this Order or the interpretation or application of this Order.

47. **THIS COURT ORDERS** that nothing in this Order shall prevent BDO from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Applicants,

the Business or the Property, provided that in each case: (i) BDO's ability to act in any of the preceding capacities is subject to the terms and provisions of any Controlled Substances Legislation pursuant to which BDO, acting in any of the preceding capacities, is prohibited by law from taking possession or control of some or all of the Business or Property; and (ii) by acting in any of the preceding capacities, BDO shall not take possession or control (nor shall it be deemed to have taken possession or control) of any Business or Property subject to any Controlled Substances Legislation.

48. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or outside of Canada, 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 and 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, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicants and the Monitor and their respective agents in carrying out the terms of this Order.

49. **THIS COURT ORDERS** that each of the Applicants and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

50. **THIS COURT ORDERS** that any interested party (including the Applicants and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

51. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Time on the date of this Order.

**REGISTRATION ON TITLE**

52. **THIS COURT ORDERS AND DIRECTS** that, as soon as practicable, the Land Registry Office for the Land Titles Division of Metro Toronto (LRO No. 80) accept this Order for registration on title to the Real Property described in Schedule “A” hereto, and **HEREBY DIRECTS** that the Land Registrar register the DIP Lender’s Charge on title to the Real Property in the form prescribed in the *Land Titles Act*.

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**Schedule "A"**

**Real Property**

Address: 64 Raleigh Av, Toronto, Ontario being PIN 06443-0179 LT legally described as 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

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")

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

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

Proceedings commenced at Toronto, Ontario

**AMENDED AND RESTATED INITIAL ORDER**

**Thornton Grout Finnigan LLP**

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Lawyers for the Applicants

# TAB 4

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

THE HONOURABLE MR. ) ~~FRIDAY~~MONDAY, THE ~~24~~24<sup>th</sup>  
JUSTICE MICHAEL A. PENNY ) DAY OF ~~JUNE~~JULY, 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”)

AMENDED AND RESTATED INITIAL ORDER

THIS ~~APPLICATION~~MOTION, made by the Applicants, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “CCAA”) was heard this day by videoconference.

ON READING the affidavit of Craig Loverock sworn June 22, 2022 and the Exhibits thereto (the “**Loverock Affidavit**”), the pre-filing report of the ~~proposed~~ monitor, BDO Canada Limited (“**BDO**”) dated June 22, 2022 (the “**Pre-Filing Report**”), the first report of the Monitor dated June 29, 2022 (the “First Report”), and on being advised that the secured creditors who are likely to be affected by the charges created herein were given notice of this ~~Application~~motion, and on hearing the submissions of counsel for the ~~Applicant~~Applicants, counsel for BDO, and those other parties listed on the Counsel Slip, no one else appearing although duly served as appears from the ~~Affidavit~~Affidavits of Service of Adrienne Ho sworn June 23, 2022 and June 24, 2022, and on reading the consent of BDO to act as the monitor of the Applicants (in such capacity, the “**Monitor**”), filed.

## SERVICE & DEFINITIONS

1. **THIS COURT ORDERS** that the time for service of the Notice of Application Motion and the Application Motion Record herein is hereby abridged and validated so that this Application motion is properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS** that all capitalized terms not expressly defined herein are defined in the Loverock Affidavit.

## APPLICATION

3. **THIS COURT ORDERS AND DECLARES** that each Applicant is insolvent and is a company to which the CCAA applies.

## PLAN OF ARRANGEMENT

4. **THIS COURT ORDERS** that the Applicants shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the "**Plan**").

## POSSESSION OF PROPERTY AND OPERATIONS

5. ~~4.~~ **THIS COURT ORDERS** that the Applicants shall remain in possession and control of their current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate, including all proceeds thereof (the "**Property**"), including but not limited to the Real Property (as defined below) and any Property subject to any Controlled Substances Legislation (as defined below). Subject to further Order of this Court, the Applicants shall continue to carry on business in a manner consistent with the preservation of their business (the "**Business**") and Property. The Applicants are authorized and empowered to continue to retain and employ the employees, consultants, agents, experts, accountants, counsel and such other persons (collectively "**Assistants**") currently retained or employed by them, with liberty to retain such further Assistants as they deem reasonably necessary or desirable in the ordinary course of business, to preserve the value of the Property or the Business, or for the carrying out of the terms of this Order.

6. ~~5.~~ **THIS COURT ORDERS** that the Applicants shall be entitled to continue to use the central cash management system currently in place (the “**Cash Management System**”) and that any present or future bank or credit union providing the Cash Management System shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the Applicants of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as defined below) other than the Applicants, pursuant to the terms of the documentation applicable to the Cash Management System.

7. ~~6.~~ **THIS COURT ORDERS** that the Applicants shall be entitled, but not required, to pay the following expenses whether incurred prior to, on or after the date of this Order:

- (a) all outstanding and future wages, salaries, employee benefits, vacation pay, and employee expenses payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements;
- (b) the fees and disbursements of any Assistants retained or employed by the Applicants in respect of these proceedings, at their standard rates and charges;
- (c) any taxes, duties, or other payments required under the Controlled Substances Legislation; and
- (d) with the consent of the Monitor, amounts owing for goods or services supplied to the Applicants prior to the granting of this Order if, in the opinion of the Applicants, such payment is necessary or desirable to avoid disruptions to the operations of the Business or the Applicants during the CCAA proceeding.

8. ~~7.~~ **THIS COURT ORDERS** that, except as otherwise provided to the contrary herein, and subject to the DIP Documents (as defined below) the Applicants shall be entitled but not required to pay all reasonable expenses incurred by the Applicants in carrying on the Business in the ordinary course after the date of this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

- (a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business, including, without limitation, payments on account of insurance, maintenance and security services; and
- (b) payment for goods or services actually supplied to the Applicants following the date of this Order or payments to obtain the release of goods or delivery of services contracted for prior to the date of this Order.

9. ~~8.~~ **THIS COURT ORDERS** that the Applicants shall remit, in accordance with legal requirements, or pay:

- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, and (iii) income taxes;
- (b) all goods, services, excise or other applicable sales taxes (collectively, “**Sales Taxes**”) required to be remitted by the Applicants in connection with the sale of goods and services by the Applicants, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order, but not required to be remitted until on or after the date of this Order; and
- (c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the Applicants, but only where such taxes are accrued during a period after the date of this Order.

10. ~~9.~~ **THIS COURT ORDERS** that, except as specifically permitted herein or in the Cash Flow Forecast, as amended, and subject to the DIP Term Sheet (as defined below) and the other DIP Documents, the Applicants are hereby directed, until further Order of this Court: (a) to make

no payments of principal, interest thereon or otherwise on account of amounts owing by the Applicants to any of their creditors as of the date of this Order; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of the Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

## RESTRUCTURING

11. ~~10.~~ **THIS COURT ORDERS** that the Applicants shall, subject to such requirements as are imposed by the CCAA and such covenants as may be contained in the DIP Term Sheet, have the right to ~~continue negotiations~~:

- (a) permanently or temporarily cease, downsize or shut down any of their businesses or operations;
- (b) terminate the employment of such of their employees or temporarily lay off such of their employees as they deem appropriate; and
- (c) pursue all avenues of refinancing, restructuring, selling and reorganizing the Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing, restructuring, sale or reorganization

all of the foregoing to permit the Applicants to proceed with ~~stakeholders in an effort to pursue an~~ orderly restructuring options of the Business (the "**Restructuring**").

## NO PROCEEDINGS AGAINST THE APPLICANTS OR THE PROPERTY

12. ~~11.~~ **THIS COURT ORDERS** that until and including ~~July 4~~ Monday, October 3, 2022, or such later date as this Court may subsequently order (the "**Stay Period**"), no proceeding or enforcement process in or out of any court or tribunal (each, a "**Proceeding**") shall be commenced, continued or take place against or in respect of the Applicants or the Monitor or affecting the Business or the Property, except with the written consent of the Applicants and the Monitor, or with leave of this Court, and any and all Proceedings currently under way or directed



to take place against or in respect of the Applicants or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court or the written consent of the Respondents and the Monitor.

#### **NO EXERCISE OF RIGHTS OR REMEDIES**

13. ~~12.~~ **THIS COURT ORDERS** that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being “**Persons**” and each being a “**Person**”) against or in respect of the Applicants or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended, except with the written consent of the Applicants and the Monitor, or leave of this Court, provided that nothing in this Order shall (i) empower the Applicants to carry on any business which the Applicants are not lawfully entitled to carry on, (ii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

#### **NO INTERFERENCE WITH RIGHTS**

14. ~~13.~~ **THIS COURT ORDERS** that during the Stay Period, no Person shall accelerate, suspend, discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, lease, licence or permit in favour of or held by the Applicant, except with the written consent of the Applicants and the Monitor, or leave of this Court.

#### **CONTINUATION OF SERVICES**

15. ~~14.~~ **THIS COURT ORDERS** that during the Stay Period, all Persons having oral or written agreements with the Applicants or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility, or other services to the Business or the Applicants, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Applicants or exercising any other remedy provided under the agreements or arrangements, and that the Applicants shall be entitled

to the continued use of their current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Applicants in accordance with normal payment practices of the Applicants or such other practices as may be agreed upon by the supplier or service provider and each of the Applicants and the Monitor, or as may be ordered by this Court.

#### **NON-DEROGATION OF RIGHTS**

16. ~~15.~~ **THIS COURT ORDERS** that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the Applicants. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

#### **PROCEEDINGS AGAINST DIRECTORS AND OFFICERS**

17. ~~16.~~ **THIS COURT ORDERS** that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Applicants with respect to any claim against the directors or officers that arose before the date hereof and relates to any obligations of the Applicants whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a plan of compromise or arrangement in respect of the Applicants, if one is filed, is sanctioned by this Court or is refused by the creditors of the Applicants or this Court.

#### **DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE**

18. ~~17.~~ **THIS COURT ORDERS** that the Applicants shall indemnify their directors and officers against obligations and liabilities that they may incur as directors or officers of the Applicants after the commencement of the within proceedings, except to the extent that, with respect to any officer or director, the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

19. ~~18.~~ **THIS COURT ORDERS** that the directors and officers of the Applicants shall be entitled to the benefit of and are hereby granted a charge (the “**Directors’ Charge**”) on the Property, which charge shall not exceed an aggregate amount of \$50,000, as security for the indemnity provided in paragraph ~~17~~18 of this Order, unless permitted by further Order of this Court. The Directors’ Charge shall have the priority set out in paragraphs ~~35~~36 and ~~37~~38 herein.

20. ~~19.~~ **THIS COURT ORDERS** that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) the Applicants’ directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph ~~17~~18 of this Order.

#### **APPOINTMENT OF MONITOR**

21. ~~20.~~ **THIS COURT ORDERS** that BDO is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Applicants with the powers and obligations set out in the CCAA or set forth herein and that the Applicants and their shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Applicants pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor’s functions.

22. ~~21.~~ **THIS COURT ORDERS** that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- (a) monitor the Applicants’ receipts and disbursements;
- (b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;
- (c) assist the Applicants, to the extent required by the Applicants, in ~~its~~their dissemination to the DIP Lender (as defined below) of financial and other

information as agreed to between the Applicants and the DIP Lender, including reporting on a reasonable basis to be agreed between the Applicants and the DIP Lender;

- (d) advise the Applicants in the preparation of the Applicants' cash flow statements and any other reporting to the Court or as reasonably required by the DIP Lender;
- (e) advise the Applicants in their development of the Plan and any amendments to the Plan;
- (f) assist the Applicants, to the extent required by the Applicants, with the holding of and administering of creditors' or shareholders' meetings for voting on the Plan;
- (g) ~~(e)~~ have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Applicants, to the extent that is necessary to adequately assess the Applicants' business and financial affairs or to perform its duties arising under this Order;
- (h) ~~(f)~~ be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order;
- (i) Apply to this Court for any orders necessary or advisable in connection with these CCAA proceedings and the Respondents' restructuring efforts; and
- (j) ~~(g)~~ perform such other duties as are required by this Order or by this Court from time to time.

23. ~~22.~~ **THIS COURT ORDERS** that, notwithstanding any other provision hereof, the Monitor shall not take possession of the Property and shall take no part whatsoever in the management, supervision of the management, or control of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof, including, without limitation, any Business or Property for which any permit, license or approval is issued or required in accordance with the following legislation and any other applicable federal, provincial or state legislation in connection with the cultivation, processing, sale and/or Possession of cannabis or

cannabis-related products in Canada or outside of Canada and any regulations issued in connection therewith (collectively, the “**Controlled Substances Legislation**”):

- (a) *Cannabis Act*, S.C. 2018, c. 16;
- (b) *Excise Act, 2001*, S.C. 2002, c. 22;
- (c) *Cannabis Control Act*, 2017, S.O. 2017, c. 26;
- (d) *Ontario Cannabis Retail Corporation Act*, 2017, S.O. 2017, c. 26; and
- (e) *Cannabis License Act*, 2018, S.O. 2018, c. 12;

and nothing in this Order shall be construed as resulting in the Monitor being an employer or successor employer within the meaning of any statute, regulation, or rule of law or equity for any purpose whatsoever.

24. ~~23.~~ **THIS COURT ORDERS** that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, “**Possession**”) of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the “**Environmental Legislation**”), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

25. ~~24.~~ **THIS COURT ORDERS** that the Monitor shall provide any creditor of the Applicants and the DIP Lender with information provided by the Applicants in response to reasonable requests for information made in writing by such creditor addressed to the Monitor.

The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Applicants is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicants may agree.

26. ~~25.~~ **THIS COURT ORDERS** that, in addition to the rights and protections afforded to the Monitor under the CCAA or as an officer of this Court, neither the Monitor nor any of its employees and representatives acting in such capacities shall incur ~~no~~any liability or obligation as a result of its appointment or the carrying out by it of the provisions of this Order, including under any Controlled Substances Legislation, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded to the Monitor by the CCAA or any applicable legislation.

27. ~~26.~~ **THIS COURT ORDERS** that the Monitor, counsel to the Monitor and counsel to the Applicants shall be paid their reasonable fees and disbursements and applicable taxes, in each case at their standard rates and charges, by the Applicants as part of the costs of these proceedings. The Applicants are hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and counsel for the Applicants.

28. ~~27.~~ **THIS COURT ORDERS** that the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

29. ~~28.~~ **THIS COURT ORDERS** that the Monitor, counsel to the Monitor and counsel to the Applicants shall be entitled to the benefit of and are hereby granted a charge (the “**Administration Charge**”) on the Property, which charge shall not exceed an aggregate amount of \$150,000, unless permitted by further Order of this Court, as security for their professional fees and disbursements plus applicable taxes incurred at the standard rates and charges of the Monitor and such counsel, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs ~~3536~~ and 3738 hereof.

**DIP FINANCING**

30. ~~29.~~ **THIS COURT ORDERS** that the Applicants ~~is~~are hereby authorized and empowered to obtain and borrow under a credit facility from 0982244 B.C. Ltd. o/a Isle of Mann Property Group (the “**DIP Lender**”) in order to finance the Applicants’ working capital requirements, the costs of these proceedings, and other general corporate purposes and capital expenditures, provided that borrowings under such credit facility shall not exceed \$750,000 (the “**DIP Facility**”) ~~and are limited to what is reasonably necessary for the continued operations of the Applicants in the ordinary course of business during the initial Stay Period,~~ unless permitted by further Order of this Court.

31. ~~30.~~ **THIS COURT ORDERS** that such DIP Facility shall be on the terms and subject to the conditions set forth in the term sheet between the Applicants and the DIP Lender dated as of June 22, 2022 (the “**DIP Term Sheet**”), ~~filed~~attached as Exhibit “KK” to the Loverock Affidavit.

32. ~~31.~~ **THIS COURT ORDERS** that the Applicants are hereby authorized and empowered to execute and deliver such credit agreements, mortgages, charges, hypothecs and security documents, guarantees and other definitive documents (collectively, the “**DIP Documents**”), as are contemplated by the DIP Term Sheet or as may be reasonably required by the DIP Lender pursuant to the terms thereof, and the Applicants are hereby authorized and directed to pay and perform all of ~~it~~their indebtedness, interest, fees, liabilities and obligations to the DIP Lender under and pursuant to the DIP Term Sheet and the DIP Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

33. ~~32.~~ **THIS COURT ORDERS** that the DIP Lender shall be entitled to the benefit of and is hereby granted a charge (the “**DIP Lender’s Charge**”) on the Property, including, without limiting the foregoing, the real property identified in Schedule “A” hereto (the “**Real Property**”), which DIP Lender’s Charge shall not secure any obligation that exists between the Applicants and the DIP Lender before this Order is made. The DIP Lender’s Charge shall have the priority set out in paragraphs ~~35~~36 and ~~37~~38 hereof.

34. ~~33.~~ **THIS COURT ORDERS** that, notwithstanding any other provision of this Order:

- (a) the DIP Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP Lender's Charge or any of the DIP Documents;
- (b) upon the occurrence of an event of default under the DIP Documents or the DIP Lender's Charge, the DIP Lender, upon five days' written notice to the Applicants and the Monitor, may exercise, with prior approval of this Court, any and all of its rights and remedies against the Applicants or the Property under or pursuant to the DIP Term Sheet, the DIP Documents and the DIP Lender's Charge, including, without limitation, to cease making advances to the Applicants, to make, demand, accelerate payment and give other notices, or to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against any the Applicants and for the appointment of a trustee in bankruptcy of the Applicants; and
- (c) the foregoing rights and remedies of the DIP Lender shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Applicants or the Property.

35. ~~34.~~ **THIS COURT ORDERS AND DECLARES** that the DIP Lender shall be treated as unaffected in any plan of arrangement or compromise filed by the Applicants under the CCAA, or any proposal filed by the Applicants under the *Bankruptcy and Insolvency Act* of Canada (the "BIA"), with respect to any advances made under the DIP Documents.

#### **VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER**

36. ~~35.~~ **THIS COURT ORDERS** that the priorities of the Administration Charge, the Directors' Charge and the DIP Lender's Charge (collectively, the "Charges" and each individually, a "Charge"), as among them, shall be as follows:

First – Administration Charge (to the maximum amount of \$150,000);

Second – DIP Lender's Charge (to the maximum amount of ~~\$160,000~~750,000);  
and

Third – Directors' Charge (to the maximum amount of \$50,000).



37. ~~36.~~ **THIS COURT ORDERS** that the filing, registration or perfection of the Charges shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

38. ~~37.~~ **THIS COURT ORDERS** that each of the Charges shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, charges, encumbrances and claims of secured creditors, statutory or otherwise (collectively, the “**Encumbrances**”) in favour of any Person in respect of such Property, save and except for any valid and existing purchase-money security interests or the equivalent security interests under various provincial legislation (that, for greater certainty, shall not include trade payables).

39. ~~38.~~ **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicants shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Charges, unless the Applicants also obtain the prior written consent of the Monitor and the beneficiaries of the Charges affected thereby (collectively, the “**Chargees**”), or further Order of this Court.

40. ~~39.~~ **THIS COURT ORDERS** that the Charges shall not be rendered invalid or unenforceable and the rights and remedies of the Chargees shall not otherwise be limited or impaired in any way by: (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) or receivership issued pursuant to the BIA, or other applicable statutes, or any bankruptcy or receivership order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an “**Agreement**”) which binds the Applicants, and notwithstanding any provision to the contrary in any Agreement:

- (a) the creation of the Charges nor the execution, delivery, perfection, registration or performance of the DIP Term Sheet or the DIP Documents shall not create or be

deemed to constitute a breach by ~~the~~ any of the Applicants of any Agreement to which they are a party;

- (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the Applicants entering into the DIP Term Sheet, the creation of the Charges or the execution, delivery or performance of the DIP Documents; and
- (c) the payments made by the Applicants pursuant to this Order, the DIP Term Sheet or the DIP Documents and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

41. ~~40.~~ **THIS COURT ORDERS** that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the Applicants' interest in such real property, including in respect of any leases thereof.

#### **SERVICE AND NOTICE**

42. ~~41.~~ **THIS COURT ORDERS** that the Monitor shall (i) without delay, publish in *The Globe and Mail (National Edition)* a notice containing the information prescribed under the CCAA, (ii) within five days after the date of this Order or as soon as reasonably practicable thereafter, make (A) this Order publicly available in the manner prescribed under the CCAA, (B) send, in the prescribed manner, a notice to every known creditor who has a claim against any of the Applicants of more than \$1,000, and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder, provided that the Monitor shall not make the claims, names and addresses of individuals who are creditors publicly available unless otherwise ordered by the Court.

43. ~~42.~~ **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the "**Protocol**") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Guide (which can be found on the Commercial List website at: [www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial/](http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial/))

shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 13 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established by the Monitor in accordance with the Protocol with the following URL: <https://www.bdo.ca/en-ca/extranets/SI-and-toronto-herbal-remedies/>.

44. ~~43.~~ **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Guide is not practicable, the Applicants and the Monitor are at liberty to serve or distribute this Order, any other materials and orders as may be reasonably required in these proceedings and any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery, facsimile or other electronic transmission to the Applicants' creditors or other interested parties at their respective addresses as last shown on the records of the Applicants and that any such service or notice by courier, on the next business day following the date of forwarding thereof, (b) if delivered by personal delivery or facsimile or other electronic transmission ~~shall be deemed to be received,~~ on the ~~date of forwarding thereof~~ day so delivered, ~~or~~ (c) if sent by ordinary mail, on the third business day after mailing.

45. ~~44.~~ **THIS COURT ORDERS** that the Applicants, the Monitor and their respective counsel are at liberty to serve or distribute this Order, any other materials and orders as may be reasonably required in these proceedings, including any notices, or other correspondence, by forwarding true copies thereof by electronic mail to the Applicants' stakeholders or other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or juridical obligation, and notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations*, Reg. 8100-2-175 (SOR/DORS).

## GENERAL

46. ~~45.~~ **THIS COURT ORDERS** that the Applicants or the Monitor may from time to time apply to this Court to amend, vary, supplement or replace this Order, or for advice and directions in the discharge of their respective powers and duties ~~hereunder~~ under this Order or the interpretation or application of this Order.

47. ~~46.~~ **THIS COURT ORDERS** that nothing in this Order shall prevent BDO from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Applicants, the Business or the Property, provided that in each case: (i) BDO's ability to act in any of the preceding capacities is subject to the terms and provisions of any Controlled Substances Legislation pursuant to which BDO, acting in any of the preceding capacities, is prohibited by law from taking possession or control of some or all of the Business or Property; and (ii) by acting in any of the preceding capacities, BDO shall not take possession or control (nor shall it be deemed to have taken possession or control) of any Business or Property subject to any Controlled Substances Legislation.

48. ~~47.~~ **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or outside of Canada, 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 and 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, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicants and the Monitor and their respective agents in carrying out the terms of this Order.

49. ~~48.~~ **THIS COURT ORDERS** that each of the Applicants and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

50. ~~49.~~ **THIS COURT ORDERS** that any interested party (including the Applicants and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

51. ~~50.~~ **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Time on the date of this Order.

**REGISTRATION ON TITLE**

52. ~~51.~~ **THIS COURT ORDERS AND DIRECTS** that, as soon as practicable, the Land Registry Office for the Land Titles Division of Metro Toronto (LRO No. 80) accept this Order for registration on title to the Real Property described in Schedule “A” hereto, and **HEREBY DIRECTS** that the Land Registrar register the DIP Lender’s Charge on title to the Real Property in the form prescribed in the *Land Titles Act*.

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**Schedule "A"**

**Real Property**

Address: 64 Raleigh Av, Toronto, Ontario being PIN 06443-0179 LT legally described as 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

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")

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

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

Proceedings commenced at Toronto, Ontario

**AMENDED AND RESTATED INITIAL ORDER**

**Thornton Grout Finnigan LLP**

100 Wellington Street West – Suite 3200  
TD West Tower, Toronto-Dominion Centre  
Toronto, ON M5K 1K7

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Lawyers for the Applicants





Document comparison by Workshare Compare on Wednesday, June 29, 2022 8:35:28 PM

Input:	
Document 1 ID	file://C:\Users\roxanam\Desktop\Sproutly comeback\Final Initial Order June 24, 2022.docx
Description	Final Initial Order June 24, 2022
Document 2 ID	file://C:\Users\roxanam\Desktop\Sproutly comeback\Draft ARIO (served).docx
Description	Draft ARIO (served)
Rendering set	Standard

Legend:	
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Inserted cell	
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Moved cell	
Split/Merged cell	
Padding cell	

Statistics:
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	Count
Insertions	126
Deletions	86
Moved from	1
Moved to	1
Style changes	0
Format changes	0
Total changes	214



Court File No. — CV-22-00683056-00CL

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST )

THE HONOURABLE — MR. ) ~~WEEKDAY~~ MONDAY, THE #4<sup>th</sup>  
JUSTICE — MICHAEL A. PENNY ) DAY OF ~~MONTH, 20YR~~ JULY, 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 ~~[APPLICANT'S NAME]~~ (the "SPROUTLY, INC. and TORONTO HERBAL REMEDIES INC.")

(each an "Applicant" and collectively, the "Applicants")

AMENDED AND RESTATED INITIAL ORDER

THIS ~~APPLICATION~~ MOTION, made by the ~~Applicant~~ Applicants, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCA") was heard this day ~~at 330 University Avenue, Toronto, Ontario~~ by videoconference.

ON READING the affidavit of ~~[NAME]~~ Craig Loverock sworn ~~[DATE]~~ June 22, 2022 and the Exhibits thereto (the "Loverock Affidavit"), the pre-filing report of the monitor, BDO Canada Limited ("BDO") dated June 22, 2022 (the "Pre-Filing Report"), the first report of the Monitor dated June 29, 2022 (the "First Report"), and on being advised that the secured creditors who are likely to be affected by the charges created herein were given notice of this motion, and on hearing the submissions of counsel for ~~[NAMES]~~ the Applicants, counsel for BDO, and those other parties listed on the Counsel Slip, no one else appearing ~~for [NAME]~~<sup>†</sup> although duly served as appears from the ~~affidavit~~ Affidavits of ~~service~~ Service of

<sup>†</sup>Include names of secured creditors or other persons who must be served before certain relief in this model Order may be granted. See, for example, CCAA Sections 11.2(1), 11.3(1), 11.4(1), 11.51(1), 11.52(1), 32(1), 32(3), 33(2) and 36(2).

~~[NAME]~~ Adrienne Ho sworn ~~[DATE]~~ June 23, 2022 and June 24, 2022, and on reading the consent of ~~[MONITOR'S NAME]~~ BDO to act as the monitor of the Applicants (in such capacity, the "Monitor"), filed.

### SERVICE & DEFINITIONS

1. **THIS COURT ORDERS** that the time for service of the Notice of ~~Application~~ Motion and the ~~Application~~ Motion Record herein is hereby abridged and validated<sup>2</sup> so that this ~~Application~~ motion is properly returnable today and hereby dispenses with further service thereof.

2. **THIS COURT ORDERS** that all capitalized terms not expressly defined herein are defined in the Loverock Affidavit.

### APPLICATION

3. ~~2.~~ **THIS COURT ORDERS AND DECLARES** that ~~the~~ each Applicant is insolvent and is a company to which the CCAA applies.

### PLAN OF ARRANGEMENT

4. ~~3.~~ **THIS COURT ORDERS** that the ~~Applicant~~ Applicants shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the "**Plan**").

### POSSESSION OF PROPERTY AND OPERATIONS

5. ~~4.~~ **THIS COURT ORDERS** that the ~~Applicant~~ Applicants shall remain in possession and control of ~~its~~ their current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate, including all proceeds thereof (the "Property"), including but not limited to the Real Property (as defined below) and any Property subject to any Controlled Substances Legislation (as defined below). Subject to further Order of this Court, the ~~Applicant~~ Applicants shall continue to carry on business in a manner consistent with the

<sup>2</sup> ~~If service is effected in a manner other than as authorized by the Ontario Rules of Civil Procedure, an order validating irregular service is required pursuant to Rule 16.08 of the Rules of Civil Procedure and may be granted in appropriate circumstances.~~

preservation of ~~its~~their business (the "Business") and Property. The ~~Applicant is~~Applicants are authorized and empowered to continue to retain and employ the employees, consultants, agents, experts, accountants, counsel and such other persons (collectively "Assistants") currently retained or employed by ~~it~~them, with liberty to retain such further Assistants as ~~it~~ deems they deem reasonably necessary or desirable in the ordinary course of business, to preserve the value of the Property or the Business, or for the carrying out of the terms of this Order.

6. ~~5.~~ **[THIS COURT ORDERS** that the ~~Applicant~~Applicants shall be entitled to continue to ~~utilize~~use the central cash management system<sup>3</sup> currently in place ~~as described in the Affidavit of [NAME] sworn [DATE] or replace it with another substantially similar central cash management system~~ (the "Cash Management System") and that any present or future bank or credit union providing the Cash Management System shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the ~~Applicant~~Applicants of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as ~~hereinafter~~ defined below) other than the ~~Applicant~~Applicants, pursuant to the terms of the documentation applicable to the Cash Management System, ~~and shall be, in its capacity as provider of the Cash Management System, an unaffected creditor under the Plan with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.]~~

7. ~~6.~~ **THIS COURT ORDERS** that the ~~Applicant~~Applicants shall be entitled, but not required, to pay the following expenses whether incurred prior to, on or after the date of this Order:

- (a) all outstanding and future wages, salaries, employee ~~and pension~~ benefits, vacation pay, and employee expenses payable on or after the date of this Order, in

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<sup>3</sup>~~This provision should only be utilized where necessary, in view of the fact that central cash management systems often operate in a manner that consolidates the cash of applicant companies. Specific attention should be paid to cross border and inter company transfers of cash.~~

each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements; ~~and~~

- (b) the fees and disbursements of any Assistants retained or employed by the ~~Applicant~~Applicants in respect of these proceedings, at their standard rates and charges;
- (c) any taxes, duties, or other payments required under the Controlled Substances Legislation; and
- (d) with the consent of the Monitor, amounts owing for goods or services supplied to the Applicants prior to the granting of this Order if, in the opinion of the Applicants, such payment is necessary or desirable to avoid disruptions to the operations of the Business or the Applicants during the CCAA proceeding.

8. ~~7.~~ **THIS COURT ORDERS** that, except as otherwise provided to the contrary herein, and subject to the ~~Applicant~~DIP Documents (as defined below) the Applicants shall be entitled but not required to pay all reasonable expenses incurred by the ~~Applicant~~Applicants in carrying on the Business in the ordinary course after the date of this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

- (a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business, including, without limitation, payments on account of insurance ~~(including directors and officers insurance)~~, maintenance and security services; and
- (b) payment for goods or services actually supplied to the ~~Applicant~~Applicants following the date of this Order or payments to obtain the release of goods or delivery of services contracted for prior to the date of this Order.

9. ~~8.~~ **THIS COURT ORDERS** that the ~~Applicant~~Applicants shall remit, in accordance with legal requirements, or pay:

- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in

respect of (i) employment insurance, (ii) Canada Pension Plan, and (iii) ~~Quebec Pension Plan, and (iv)~~ income taxes;

- (b) all goods ~~and~~, services, excise or other applicable sales taxes (collectively, "Sales Taxes") required to be remitted by the ~~Applicant~~ Applicants in connection with the sale of goods and services by the ~~Applicant~~ Applicants, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order, but not required to be remitted until on or after the date of this Order; and
- (c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the ~~Applicant~~.

~~9. THIS COURT ORDERS that until a real property lease is disclaimed [or resiliated]<sup>4</sup> in accordance with the CCAA, the Applicant shall pay all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under the lease) or as otherwise may be negotiated between the Applicant and the landlord from time to time ("Rent"), for the period commencing from and including the date of this Order, twice monthly in equal payments on the first and fifteenth day of each month, in advance (but not in arrears). On the date of the first of such payments, any Rent relating to the Applicants, but only where such taxes are accrued during a period commencing from and including after the date of this Order shall also be paid.~~

10. **THIS COURT ORDERS** that, except as specifically permitted herein, or in the ~~Applicant is~~ Cash Flow Forecast, as amended, and subject to the DIP Term Sheet (as defined

<sup>4</sup>~~The term "resiliate" should remain if there are leased premises in the Province of Quebec, but can otherwise be removed.~~



below) and the other DIP Documents, the Applicants are hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the ~~Applicant~~Applicants to any of ~~its~~their creditors as of the date of this date~~Order~~; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of ~~its~~the Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

## RESTRUCTURING

11. **THIS COURT ORDERS** that the ~~Applicant~~Applicants shall, subject to such requirements as are imposed by the CCAA and such covenants as may be contained in the ~~Definitive Documents (as hereinafter defined)~~DIP Term Sheet, have the right to:

- (a) permanently or temporarily cease, downsize or shut down any of ~~its business~~their businesses or operations, ~~{and to dispose of redundant or non-material assets not exceeding \$● in any one transaction or \$● in the aggregate}~~<sup>5</sup>;
- (b) ~~t~~erminate the employment of such of ~~its~~their employees or temporarily lay off such of ~~its~~their employees as ~~it deems~~they deem appropriate}; and
- (c) pursue all avenues of refinancing ~~of its~~, restructuring, selling and reorganizing the Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing, restructuring, sale or reorganization

all of the foregoing to permit the ~~Applicant~~Applicants to proceed with an orderly restructuring of the Business (the "**Restructuring**").

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<sup>5</sup>~~Section 36 of the amended CCAA does not seem to contemplate a pre-approved power to sell (see subsection 36(3)) and moreover requires notice (subsection 36(2)) and evidence (subsection 36(7)) that may not have occurred or be available at the initial CCAA hearing.~~

~~12.— THIS COURT ORDERS that the Applicant shall provide each of the relevant landlords with notice of the Applicant’s intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Applicant’s entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Applicant, or by further Order of this Court upon application by the Applicant on at least two (2) days notice to such landlord and any such secured creditors. If the Applicant disclaims ~~[or resiliates]~~ the lease governing such leased premises in accordance with Section 32 of the CCAA, it shall not be required to pay Rent under such lease pending resolution of any such dispute (other than Rent payable for the notice period provided for in Section 32(5) of the CCAA), and the disclaimer ~~[or resiliation]~~ of the lease shall be without prejudice to the Applicant’s claim to the fixtures in dispute.~~

~~13.— THIS COURT ORDERS that if a notice of disclaimer ~~[or resiliation]~~ is delivered pursuant to Section 32 of the CCAA, then (a) during the notice period prior to the effective time of the disclaimer ~~[or resiliation]~~, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the Applicant and the Monitor 24 hours’ prior written notice, and (b) at the effective time of the disclaimer ~~[or resiliation]~~, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the Applicant in respect of such lease or leased premises, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.~~

**NO PROCEEDINGS AGAINST THE ~~APPLICANT~~APPLICANTS OR THE PROPERTY**

~~12.~~ 14.— THIS COURT ORDERS that until and including ~~[DATE — MAX. — 30 DAYS]~~Monday, October 3, 2022, or such later date as this Court may subsequently order (the “Stay Period”), no proceeding or enforcement process in or out of any court or tribunal (each, a “Proceeding”) shall be commenced ~~or~~ continued or take place against or in respect of the ~~Applicant~~Applicants or the Monitor; or affecting the Business or the Property, except with the written consent of the ~~Applicant~~Applicants and the Monitor, or with leave of this Court, and any and all Proceedings currently under way or directed to take place against or in respect of the

~~Applicant~~Applicants or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court or the written consent of the Respondents and the Monitor.

#### **NO EXERCISE OF RIGHTS OR REMEDIES**

13. ~~15.~~ **THIS COURT ORDERS** that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "Persons") and each being a "Person") against or in respect of the ~~Applicant~~Applicants or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended, except with the written consent of the ~~Applicant~~Applicants and the Monitor, or leave of this Court, provided that nothing in this Order shall (i) empower the ~~Applicant~~Applicants to carry on any business which the ~~Applicant is~~Applicants are not lawfully entitled to carry on, (ii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

#### **NO INTERFERENCE WITH RIGHTS**

14. ~~16.~~ **THIS COURT ORDERS** that during the Stay Period, no Person shall accelerate, suspend, discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, lease, licence or permit in favour of or held by the Applicant, except with the written consent of the ~~Applicant~~Applicants and the Monitor, or leave of this Court.

#### **CONTINUATION OF SERVICES**

15. ~~17.~~ **THIS COURT ORDERS** that during the Stay Period, all Persons having oral or written agreements with the ~~Applicant~~Applicants or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility, or other services to the Business or the ~~Applicant~~Applicants, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the ~~Applicant~~Applicants or exercising any other remedy provided under the agreements or arrangements, and that the ~~Applicant~~Applicants shall be entitled to the continued use of ~~its~~their

current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the ~~Applicant~~Applicants in accordance with normal payment practices of the ~~Applicant~~Applicants or such other practices as may be agreed upon by the supplier or service provider and each of the ~~Applicant~~Applicants and the Monitor, or as may be ordered by this Court.

#### **NON-DEROGATION OF RIGHTS**

16. ~~18.~~ **THIS COURT ORDERS** that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of ~~lease~~leased or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the ~~Applicant~~Applicants. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.<sup>6</sup>

#### **PROCEEDINGS AGAINST DIRECTORS AND OFFICERS**

17. ~~19.~~ **THIS COURT ORDERS** that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the ~~Applicant~~Applicants with respect to any claim against the directors or officers that arose before the date hereof and ~~that~~ relates to any obligations of the ~~Applicant~~Applicants whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a plan of compromise or arrangement in respect of the ~~Applicant~~Applicants, if one is filed, is sanctioned by this Court or is refused by the creditors of the ~~Applicant~~Applicants or this Court.

#### **DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE**

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<sup>6</sup> ~~This non-derogation provision has acquired more significance due to the recent amendments to the CCAA, since a number of actions or steps cannot be stayed, or the stay is subject to certain limits and restrictions. See, for example, CCAA Sections 11.01, 11.04, 11.06, 11.07, 11.08, 11.1(2) and 11.5(1).~~

18. ~~20.~~ **THIS COURT ORDERS** that the ~~Applicant~~Applicants shall indemnify ~~its~~their directors and officers against obligations and liabilities that they may incur as directors or officers of the ~~Applicant~~Applicants after the commencement of the within proceedings,<sup>7</sup> except to the extent that, with respect to any officer or director, the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

19. ~~21.~~ **THIS COURT ORDERS** that the directors and officers of the ~~Applicant~~Applicants shall be entitled to the benefit of and are hereby granted a charge (the "Directors' Charge")<sup>8</sup> on the Property, which charge shall not exceed an aggregate amount of \$~~●~~50,000, as security for the indemnity provided in paragraph ~~{20}~~18 of this Order, unless permitted by further Order of this Court. The Directors' Charge shall have the priority set out in paragraphs ~~{38}~~36 and ~~{40}~~38 herein.

20. ~~22.~~ **THIS COURT ORDERS** that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) the ~~Applicant's~~Applicants' directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph ~~{20}~~18 of this Order.

#### **APPOINTMENT OF MONITOR**

21. ~~23.~~ **THIS COURT ORDERS** that ~~{MONITOR'S NAME}~~BDO is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the ~~Applicant~~Applicants with the powers and obligations set out in the CCAA or set forth herein and that the ~~Applicant~~Applicants and ~~its~~their shareholders, officers, directors,

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<sup>7</sup>~~The broad indemnity language from Section 11.51 of the CCAA has been imported into this paragraph. The granting of the indemnity (whether or not secured by a Directors' Charge), and the scope of the indemnity, are discretionary matters that should be addressed with the Court.~~

<sup>8</sup>~~Section 11.51(3) provides that the Court may not make this security/charging order if in the Court's opinion the Applicant could obtain adequate indemnification insurance for the director or officer at a reasonable cost.~~

and Assistants shall advise the Monitor of all material steps taken by the ~~Applicant~~Applicants pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

22. ~~24.~~ **THIS COURT ORDERS** that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- (a) monitor the ~~Applicant's~~Applicants' receipts and disbursements;
- (b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;
- (c) assist the ~~Applicant~~Applicants, to the extent required by the ~~Applicant~~Applicants, in ~~its~~their dissemination, to the DIP Lender ~~and its counsel on a [TIME INTERVAL] basis~~(as defined below) of financial and other information as agreed to between the ~~Applicant~~Applicants and the DIP Lender ~~which may be used in these proceedings,~~ including reporting on a reasonable basis to be agreed ~~with~~between the Applicants and the DIP Lender;
- (d) advise the ~~Applicant~~Applicants in ~~its~~the preparation of the ~~Applicant~~Applicants' cash flow statements and any other reporting to the Court or as reasonably required by the DIP Lender, ~~which information shall be reviewed with the Monitor and delivered to the DIP Lender and its counsel on a periodic basis, but not less than [TIME INTERVAL], or as otherwise agreed to by the DIP Lender;~~
- (e) advise the ~~Applicant~~Applicants in ~~its~~their development of the Plan and any amendments to the Plan;
- (f) assist the ~~Applicant~~Applicants, to the extent required by the ~~Applicant~~Applicants, with the holding of and administering of creditors' or shareholders' meetings for voting on the Plan;
- (g) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the ~~Applicant~~Applicants, to the extent that is necessary to adequately assess the

~~Applicant's~~Applicants' business and financial affairs or to perform its duties arising under this Order;

- (h) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order;
- (i) Apply to this Court for any orders necessary or advisable in connection with these CCAA proceedings and the Respondents' restructuring efforts; and
- (j) ~~(i)~~ perform such other duties as are required by this Order or by this Court from time to time.

23. ~~25.~~ **THIS COURT ORDERS** that, notwithstanding any other provision hereof, the Monitor shall not take possession of the Property and shall take no part whatsoever in the management ~~or~~ supervision of the management, or control of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof, including, without limitation, any Business or Property for which any permit, license or approval is issued or required in accordance with the following legislation and any other applicable federal, provincial or state legislation in connection with the cultivation, processing, sale and/or Possession of cannabis or cannabis-related products in Canada or outside of Canada and any regulations issued in connection therewith (collectively, the "Controlled Substances Legislation"):

- (a) Cannabis Act, S.C. 2018, c. 16;
- (b) Excise Act, 2001, S.C. 2002, c. 22;
- (c) Cannabis Control Act, 2017, S.O. 2017, c. 26;
- (d) Ontario Cannabis Retail Corporation Act, 2017, S.O. 2017, c. 26; and
- (e) Cannabis License Act, 2018, S.O. 2018, c. 12;

and nothing in this Order shall be construed as resulting in the Monitor being an employer or successor employer within the meaning of any statute, regulation, or rule of law or equity for any purpose whatsoever.

24. ~~26.~~ **THIS COURT ORDERS** that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, "Possession") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "Environmental Legislation"), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

25. ~~27.~~ **THIS COURT ORDERS** that ~~that~~ the Monitor shall provide any creditor of the ApplicantApplicants and the DIP Lender with information provided by the ApplicantApplicants in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the ApplicantApplicants is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the ApplicantApplicants may agree.

26. ~~28.~~ **THIS COURT ORDERS** that, in addition to the rights and protections afforded to the Monitor under the CCAA or as an officer of this Court, neither the Monitor nor any of its employees and representatives acting in such capacities shall incur ~~no~~any liability or obligation as a result of its appointment or the carrying out by it of the provisions of this Order, including under any Controlled Substances Legislation, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded to the Monitor by the CCAA or any applicable legislation.



27. ~~29.~~ **THIS COURT ORDERS** that the Monitor, counsel to the Monitor and counsel to the ~~Applicant~~Applicants shall be paid their reasonable fees and disbursements and applicable taxes, in each case at their standard rates and charges, by the ~~Applicant~~Applicants as part of the costs of these proceedings. The ~~Applicant is~~Applicants are hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and counsel for the ~~Applicant on a [TIME INTERVAL] basis and, in addition, the Applicant is hereby authorized to pay to the Monitor, counsel to the Monitor, and counsel to the Applicant, retainers in the amount[s] of \$● [-, respectively,] to be held by them as security for payment of their respective fees and disbursements outstanding from time to time~~Applicants.

28. ~~30.~~ **THIS COURT ORDERS** that the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

29. ~~31.~~ **THIS COURT ORDERS** that the Monitor, counsel to the Monitor, ~~if any,~~ and ~~the Applicant's~~ counsel to the Applicants shall be entitled to the benefit of and are hereby granted a charge (the "Administration Charge") on the Property, which charge shall not exceed an aggregate amount of \$●, ~~150,000, unless permitted by further Order of this Court,~~ as security for their professional fees and disbursements plus applicable taxes incurred at the standard rates and charges of the Monitor and such counsel, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs ~~38~~36 and ~~40~~38 hereof.

## DIP FINANCING

30. ~~32.~~ **THIS COURT ORDERS** that the ~~Applicant is~~Applicants are hereby authorized and empowered to obtain and borrow under a credit facility from ~~[DIP LENDER'S NAME]~~0982244 B.C. Ltd. o/a Isle of Mann Property Group (the "DIP Lender") in order to finance the ~~Applicant's~~Applicants' working capital requirements, the costs of these proceedings, and other general corporate purposes and capital expenditures, provided that borrowings under such credit facility shall not exceed \$●750,000 (the "DIP Facility") unless permitted by further Order of this Court.

31. ~~33.~~ **THIS COURT ORDERS THAT** ~~that~~ such ~~credit facility~~ DIP Facility shall be on the terms and subject to the conditions set forth in the ~~commitment letter~~ term sheet between the ~~Applicant~~ Applicants and the DIP Lender dated as of ~~[DATE]~~ June 22, 2022 (the "~~Commitment Letter~~"), ~~filed~~ "DIP Term Sheet", attached as Exhibit "KK" to the Loverock Affidavit.

32. ~~34.~~ **THIS COURT ORDERS** that the ~~Applicant is~~ Applicants are hereby authorized and empowered to execute and deliver such credit agreements, mortgages, charges, hypothecs and security documents, guarantees and other definitive documents (collectively, the "~~Definitive~~ "DIP Documents""), as are contemplated by the ~~Commitment Letter~~ DIP Term Sheet or as may be reasonably required by the DIP Lender pursuant to the terms thereof, and the ~~Applicant is~~ Applicants are hereby authorized and directed to pay and perform all of ~~its~~ their indebtedness, interest, fees, liabilities and obligations to the DIP Lender under and pursuant to the ~~Commitment Letter~~ DIP Term Sheet and the ~~Definitive~~ DIP Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

33. ~~35.~~ **THIS COURT ORDERS** that the DIP Lender shall be entitled to the benefit of and is hereby granted a charge (the "~~DIP Lender's Charge~~") on the Property, including, without limiting the foregoing, the real property identified in Schedule "A" hereto (the "Real Property"), which DIP Lender's Charge shall not secure ~~an~~ any obligation that exists between the Applicants and the DIP Lender before this Order is made. The DIP Lender's Charge shall have the priority set out in paragraphs ~~{38}~~ 36 and ~~{40}~~ 38 hereof.

34. ~~36.~~ **THIS COURT ORDERS** that, notwithstanding any other provision of this Order:

- (a) the DIP Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP Lender's Charge or any of the ~~Definitive~~ DIP Documents;
- (b) upon the occurrence of an event of default under the ~~Definitive~~ DIP Documents or the DIP Lender's Charge, the DIP Lender, upon ~~●~~ five days' written notice to the ~~Applicant~~ Applicants and the Monitor, may exercise, with prior approval of this Court, any and all of its rights and remedies against the ~~Applicant~~ Applicants or the Property under or pursuant to the ~~Commitment Letter, Definitive~~ DIP Term Sheet, the DIP Documents and the DIP Lender's Charge, including, without

limitation, to cease making advances to the ~~Applicant and set off and/or consolidate any amounts owing by the DIP Lender to the Applicant against the obligations of the Applicant to the DIP Lender under the Commitment Letter, the Definitive Documents or the DIP Lender's Charge~~Applicants, to make, demand, accelerate payment and give other notices, or to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against any the ~~Applicant~~Applicants and for the appointment of a trustee in bankruptcy of the ~~Applicant~~Applicants; and

- (c) the foregoing rights and remedies of the DIP Lender shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the ~~Applicant~~Applicants or the Property.

35. ~~37.~~ **THIS COURT ORDERS AND DECLARES** that the DIP Lender shall be treated as unaffected in any plan of arrangement or compromise filed by the ~~Applicant~~Applicants under the CCAA, or any proposal filed by the ~~Applicant~~Applicants under the *Bankruptcy and Insolvency Act* of Canada (the "BIA"), with respect to any advances made under the ~~Definitive~~DIP Documents.

#### **VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER**

36. ~~38.~~ **THIS COURT ORDERS** that the priorities of the ~~Directors' Charge, the Administration Charge, the Directors' Charge~~ and the DIP Lender's Charge (collectively, the "Charges" and each individually, a "Charge"), as among them, shall be as follows<sup>9</sup>:

First ~~—~~ Administration Charge (to the maximum amount of \$~~●~~150,000);

Second ~~—~~ DIP Lender's Charge (to the maximum amount of \$750,000); and

<sup>9</sup>~~The ranking of these Charges is for illustration purposes only, and is not meant to be determinative. This ranking may be subject to negotiation, and should be tailored to the circumstances of the case before the Court. Similarly, the quantum and caps applicable to the Charges should be considered in each case. Please also note that the CCAA now permits Charges in favour of critical suppliers and others, which should also be incorporated into this Order (and the rankings, above), where appropriate.~~

Third ~~—~~ Directors' Charge (to the maximum amount of \$~~●~~50,000).

37. ~~39.~~ **THIS COURT ORDERS** that the filing, registration or perfection of the ~~Directors' Charge, the Administration Charge or the DIP Lender's Charge (collectively, the "Charges")~~ shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

38. ~~40.~~ **THIS COURT ORDERS** that each of the ~~Directors' Charge, the Administration Charge and the DIP Lender's Charge (all as constituted and defined herein)~~ Charges shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, charges ~~and~~ encumbrances, and claims of secured creditors, statutory or otherwise (collectively, "the "Encumbrances"") in favour of any Person in respect of such Property, save and except for any valid and existing purchase-money security interests or the equivalent security interests under various provincial legislation (that, for greater certainty, shall not include trade payables).

39. ~~41.~~ **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court, the ~~Applicant~~ Applicants shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the ~~Directors' Charge, the Administration Charge or the DIP Lender's Charge~~ Charges, unless the ~~Applicant~~ Applicants also ~~obtains~~ obtain the prior written consent of the Monitor, ~~the DIP Lender~~ and the beneficiaries of the ~~Directors' Charge and the Administration Charge~~ Charges affected thereby (collectively, the "Chargees"), or further Order of this Court.

40. ~~42.~~ **THIS COURT ORDERS** that the ~~Directors' Charge, the Administration Charge, the Commitment Letter, the Definitive Documents and the DIP Lender's Charge~~ Charges shall not be rendered invalid or unenforceable and the rights and remedies of the ~~chargees entitled to the benefit of the Charges (collectively, the "Chargees") and/or the DIP Lender thereunder~~ shall not otherwise be limited or impaired in any way by: (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) or receivership issued pursuant to the BIA, or other applicable statutes, or any bankruptcy or

receivership order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "Agreement") which binds the ApplicantApplicants, and notwithstanding any provision to the contrary in any Agreement:

- (a) ~~neither~~ the creation of the Charges nor the execution, delivery, perfection, registration or performance of the ~~Commitment Letter~~ DIP Term Sheet or the ~~Definitive~~ DIP Documents shall not create or be deemed to constitute a breach by any of the ApplicantApplicants of any Agreement to which ~~it is~~ they are a party;
- (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the ApplicantApplicants entering into the ~~Commitment Letter~~ DIP Term Sheet, the creation of the Charges, or the execution, delivery or performance of the ~~Definitive~~ DIP Documents; and
- (c) the payments made by the ApplicantApplicants pursuant to this Order, the ~~Commitment Letter~~ DIP Term Sheet or the ~~Definitive~~ DIP Documents, and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

41. ~~43.~~ **THIS COURT ORDERS** that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the Applicant'sApplicants' interest in such real property, including in respect of any leases thereof.

## SERVICE AND NOTICE

42. ~~44.~~ **THIS COURT ORDERS** that the Monitor shall (i) without delay, publish in ~~[newspapers specified by the Court]~~ The Globe and Mail (National Edition) a notice containing the information prescribed under the CCAA, (ii) within five days after the date of this Order or as soon as reasonably practicable thereafter, ~~(A)~~ make (A) this Order publicly available in the

manner prescribed under the CCAA, (B) send, in the prescribed manner, a notice to every known creditor who has a claim against any of the ApplicantApplicants of more than \$~~1000~~1,000, and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder, provided that the Monitor shall not make the claims, names and addresses of individuals who are creditors publicly available unless otherwise ordered by the Court.

43. ~~45.~~ **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the “**Protocol**”) is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the ~~Protocol~~Guide (which can be found on the Commercial List website at: <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph ~~21~~13 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established by the Monitor in accordance with the Protocol with the following URL: ~~“@”~~ <https://www.bdo.ca/en-ca/extranets/SI-and-toronto-herbal-remedies/>.

44. ~~46.~~ **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the ~~Protocol~~Guide is not practicable, the ~~Applicant~~Applicants and the Monitor are at liberty to serve or distribute this Order, any other materials and orders as may be reasonably required in these proceedings, and any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery ~~or~~, facsimile or other electronic transmission to the ~~Applicant's~~Applicants' creditors or other interested parties at their respective addresses as last shown on the records of the ~~Applicant~~Applicants and that any such service or ~~distribution notice~~ by courier, ~~personal delivery or facsimile transmission shall be deemed to be received~~ on the next business day following the date of forwarding thereof, ~~or~~ (b) if delivered by personal delivery or facsimile or other electronic transmission, on the day so delivered, and (c) if sent by ordinary mail, on the third business day after mailing.

45. **THIS COURT ORDERS** that the Applicants, the Monitor and their respective counsel are at liberty to serve or distribute this Order, any other materials and orders as may be reasonably required in these proceedings, including any notices, or other correspondence, by forwarding true copies thereof by electronic mail to the Applicants' stakeholders or other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or juridical obligation, and notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations*, Reg. 8100-2-175 (SOR/DORS).

## GENERAL

46. ~~47.~~ **THIS COURT ORDERS** that the ~~Applicant~~Applicants or the Monitor may from time to time apply to this Court to amend, vary, supplement or replace this Order, or for advice and directions in the discharge of ~~its~~their respective powers and duties ~~hereunder~~under this Order or the interpretation or application of this Order.

47. ~~48.~~ **THIS COURT ORDERS** that nothing in this Order shall prevent ~~the Monitor~~BDO from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the ~~Applicant~~Applicants, the Business or the Property, provided that in each case: (i) BDO's ability to act in any of the preceding capacities is subject to the terms and provisions of any Controlled Substances Legislation pursuant to which BDO, acting in any of the preceding capacities, is prohibited by law from taking possession or control of some or all of the Business or Property; and (ii) by acting in any of the preceding capacities, BDO shall not take possession or control (nor shall it be deemed to have taken possession or control) of any Business or Property subject to any Controlled Substances Legislation.

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

status to the Monitor in any foreign proceeding, or to assist the ~~Applicant~~Applicants and the Monitor and their respective agents in carrying out the terms of this Order.

49. ~~50.~~ **THIS COURT ORDERS** that each of the ~~Applicant~~Applicants and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

50. ~~51.~~ **THIS COURT ORDERS** that any interested party (including the ~~Applicant~~Applicants and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

51. ~~52.~~ **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.

### REGISTRATION ON TITLE

52. **THIS COURT ORDERS AND DIRECTS** that, as soon as practicable, the Land Registry Office for the Land Titles Division of Metro Toronto (LRO No. 80) accept this Order for registration on title to the Real Property described in Schedule "A" hereto, and HEREBY DIRECTS that the Land Registrar register the DIP Lender's Charge on title to the Real Property in the form prescribed in the *Land Titles Act*.



**Schedule "A"**

**Real Property**

Address: 64 Raleigh Av, Toronto, Ontario being PIN 06443-0179 LT legally described as 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

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")

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

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

Proceedings commenced at Toronto, Ontario

AMENDED AND RESTATED INITIAL ORDER

**Thornton Grout Finnigan LLP**

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TD West Tower, Toronto-Dominion Centre  
Toronto, ON M5K 1K7

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Lawyers for the Applicants



Document comparison by Workshare Compare on Wednesday, June 29, 2022 8:30:47 PM

Input:	
Document 1 ID	iManage://tgf-mobility-ca.imatech.work/CLIENT/5186107/1
Description	#5186107v1<tgf-mobility-ca.imatech.work> - Model-initial-order-CCAA-EN
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Description	#5188794v7<tgf-mobility-ca.imatech.work> - Draft ARIO
Rendering set	Standard

Legend:	
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<u>Moved to</u>	
Style change	
Format change	
<del>Moved deletion</del>	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

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Deletions	373
Moved from	1
Moved to	1
Style changes	0
Format changes	0
Total changes	832

# TAB 5

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

THE HONOURABLE MR. ) MONDAY, THE 4<sup>th</sup>  
 )  
JUSTICE MICHAEL A. PENNY ) DAY OF JULY, 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”)

**ORDER**

**(Approval of the Sale Process)**

**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, among others approving a sale and investment solicitation process for the Applicants’ business and property (“**SISP**”), was heard this day by videoconference.

**ON READING** the affidavit of Craig Loverock sworn June 22, 2022 and the Exhibits thereto (the “**Loverock Affidavit**”), the First Report of BDO Canada Limited, in its capacity as court appointed monitor of the Applicants (the “**Monitor**”) dated June 29, 2022 (the “**First Report of the Monitor**”), and on hearing the submissions of counsel for the Applicants, counsel for the Monitor, and counsel for those other parties listed on the Counsel Slip, no one else appearing although duly served as appears from the Affidavit of Service of [•] sworn June [•] 2022, filed.

**SERVICE & DEFINITIONS**

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

2. **THIS COURT ORDERS** that all capitalized terms not expressly defined herein are defined in the Bidding Procedures and SISP (as defined below).

### **SALES PROCESS**

3. **THIS COURT ORDERS** that the bidding procedures, substantially in the form attached as Appendix "A" to this order ("**Bidding Procedures**") and the sales process described therein ("**SISP**") be and are hereby approved.

4. **THIS COURT ORDERS** that the Monitor, on behalf of and with the assistance of the Applicants, be and is hereby authorized and directed to proceed with the SISP substantially in accordance with the Bidding Procedures and to take such steps as it considers necessary or desirable to carry out the SISP, subject to the terms of the Bidding Procedures.

5. **THIS COURT ORDERS** that the Monitor and the Applicants are authorized to take such steps and execute such documentation as are considered necessary or desirable in carrying out the terms of the SISP and the Bidding Procedures, including but not limited to engaging such brokers and agents as deemed necessary and appropriate by the Applicants and the Monitor and as are consistent with the objectives, terms and conditions of the SISP and Bidding Procedures.

6. **THIS COURT ORDERS** that the Monitor, the Applicants and their respective assistants, affiliates, partners, directors, employees, advisors, agents and controlling persons shall have no liability with respect to any and all losses, claims, damages or liability of any nature or kind to any person in connection with or as a result of performing their duties under the SISP and Bidding Procedures, except to the extent of such losses, claims, damages or liabilities arising or resulting from the gross negligence or wilful misconduct of the Monitor or the Applicants, as applicable, as determined by this Court.

### **PIPEDA**

7. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5, the Applicants and the Monitor may disclose personal information of identifiable individuals to prospective purchasers or bidders for the Assets and to their advisors, but only to the extent desirable or required to carry out the SISP and Bidding Procedures and to attempt to complete a transaction for some or all of



the Assets. Each prospective purchaser or bidder (and their respective advisors) to whom any such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information solely to its evaluation of a transaction for some or all of the Assets, and if it does not complete such a transaction, shall return all such information to the Applicants, or in the alternative destroy all such information. The purchaser of any of the Assets shall be entitled to continue to use the personal information provided to it, and related to such assets, in a manner that is in all material respects identical to the prior use of such information by the Applicants, and shall return all other personal information to the Applicants, or ensure that all other personal information is destroyed.

### **APPROVAL OF THE FIRST REPORT**

8. **THIS COURT ORDERS** that the First Report of the Monitor and the activities described therein are hereby approved.

### **SEALING**

9. **THIS COURT ORDERS** that Appendix “B” to the First Report of the Monitor shall be sealed and kept confidential pending further order of this Court.

### **GENERAL**

10. **THIS COURT ORDERS** that the Applicants or the Monitor may from time to time apply to this Court to amend, vary, supplement or replace this Order, or for advice and directions in the discharge of their respective powers and duties under this Order or under the Sales Process, or the interpretation or application of this Order.

11. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or outside of Canada, 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 and 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, to grant representative status to the Monitor in any foreign proceeding, 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 each of the Applicants and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

13. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Time on the date of this Order.

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**APPENDIX “A”****SALE AND INVESTMENT SOLICITATION PROCESS**

**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.**

**INTRODUCTION**

1. On June 24, 2022, the Court granted an order (the “**Initial Order**”) appointing BDO Canada Limited (“**BDO**”) as Monitor of Sproutly, Inc. and Toronto Herbal Remedies Inc. (collectively, the “**Companies**”) (in such capacity, the “**Monitor**”).
2. Pursuant to the Initial Order, the Applicants were authorized to borrow funds under a credit facility from 0982244 B.C. Ltd. o/a Isle of Mann Property Group (the “**DIP Lender**”) and together with the Monitor, the “**Consultation Parties**”).
3. The assets referred to in this document (collectively, the “**Assets**”) relate to the Companies’ business and assets, including its cannabis license and/or its owned real estate (the “**Real Property**”).
4. Pursuant to this Sale and Investment Solicitation Process (“**SISP**”), the Companies with the assistance of the Monitor are engaging sales agents, Hyde Advisory & Investments Inc. (“**Hyde**”) and Avison Young, real estate broker firm (together with Hyde, the “**Sales Agents**” or each a “**Sales Agent**”) to assist with the SISP.
5. The Sales Agents will develop a list of Known Potential Bidders (as defined below), communicate and meet with interested parties, prepare and distribute marketing materials, and manage the Data Room (as defined below).

**SISP OVERVIEW**

6. The purpose of the SISP is to solicit interest in a sale or liquidation of one or the other of:
  - (a) the Companies’ business and assets, including its cannabis license and Real Property core to its license and operations; or
  - (b) the Companies’ Real Property.
7. The SISP describes the manner in which individuals, corporations, limited and unlimited liability companies, general and limited partnerships, associations, trusts, unincorporated organizations, joint ventures, governmental organizations or other entities (each, a “**Person**”) may gain access to or continue to have access to due diligence materials concerning the Assets, and how bids involving the Assets will be submitted to and dealt with by the Companies, Monitor, and Sales Agents, and how Court approval will be obtained in respect of any Transaction (as defined below).

8. As described below, the various deadlines herein may be extended by and at the discretion of the Companies, with the approval of the Consultation Parties, in the event that it is determined that such an extension will generally benefit the Companies' creditors and other stakeholders. The Companies and Monitor shall generally oversee the SISP and in particular shall oversee the Sales Agents in connection therewith. In the event that there is a disagreement as to the interpretation or application of the SISP, the Court will have jurisdiction to hear and resolve such dispute.

### "AS IS, WHERE IS" BASIS

9. Any transaction involving all or any portion of the Assets (each a "**Transaction**") will be completed with Court Approval on an "as is, where is" basis and without surviving representations, warranties, covenants or indemnities of any kind, nature, or description by the Companies, Sales Agents, the Monitor, or any of their respective agents, estates, advisors, professionals or otherwise, except to the extent expressly set forth in the relevant Final Agreement (as defined herein).
10. The key dates pursuant to the SISP are as follows (capitalized terms in the chart below have the meaning ascribed in the SISP):

<b><u>Event</u></b>	<b><u>Date (each by 5:00 p.m. EST)</u></b>
<b>Sales Agents to create list of Known Potential Bidders and distribute Teaser Letter and Confidentiality Agreements to Known Potential Bidders</b>	<b>As soon as practical and no later than July 6, 2022</b>
<b>Sales Agents to prepare and have available for Potential Bidders the CIM</b>	<b>As soon as practical and no later than July 6, 2022</b>
<b>Advertisement in the national edition of the Globe and Mail and/or another national news publication</b>	<b>July 6, 2022</b>
<b>Initial (non-binding) Offer Deadline</b>	<b>August 5, 2022</b>
<b>Binding Offer Deadline</b>	<b>By August 19, 2022</b>
<b>Selection of Winning Bid and Final Agreement</b>	<b>By August 22, 2022</b>
<b>Final Agreement</b>	<b>By August 26, 2022</b>
<b>Application to the Court for Approval Order(s)</b>	<b>As soon as reasonably practicable after the Final Agreement</b>
<b>Closing of the Transaction (the "Closing Date")</b>	<b>September 23, 2022</b>

11. Subject to paragraph 47 hereof, the Companies, or the Monitor on their behalf, shall provide: (a) weekly updates on the status and progress of the SISP to the DIP Lender; and (b) documents and information requested as part of the SISP to the DIP Lender in a prompt fashion, including a report from the Sales Agents. In furtherance of the foregoing, for the purposes of information sharing and transparency, provided the DIP Lender executes an NDA (as defined below), the DIP Lender and its advisors shall be granted access to the Data Room (as defined below).

## THE SISP PROCESS

### A. Initial Solicitation of Interest

12. The Sales Agents may contact any Persons to solicit expressions of interest in a Transaction either before or after the granting of the SISP Order.
13. As soon as reasonably practicable after the granting of the SISP Order and in any event by no later than July 6, 2022, in consultation with the Companies and Monitor, the Sales Agents will prepare a list of potential bidders (the "**Known Potential Bidders**") who may have interest in the Assets pursuant to either an asset or share transaction (an "**Asset Bid**"). Concurrently, the Sales Agents will prepare an initial offering summary (the "**Teaser Letter**") notifying Known Potential Bidders and any other interested persons of the SISP and inviting them to express interest in making an Asset Bid. The Teaser Letter shall be posted on the Monitor's Website and that of the Sales Agents.
14. On or about July 6, 2022, the Monitor will place an advertisement in the national edition of the Globe and Mail advising of the sale of the Assets.
15. By no later than July 6, 2022, the Sales Agents shall distribute to the Known Potential Bidders and any other interested Persons the Teaser Letter, as well as a form of non-disclosure agreement ("**NDA**") that shall inure to the benefit of the Person or Persons who make the Winning Bid(s) (as defined herein) pursuant to this SISP. Copies of the Teaser Letter and NDA shall be provided to any appropriate Persons who becomes known to the Sales Agents after the initial distribution of such documents.
16. Any Person (a) who executes a NDA in form and substance satisfactory to the Sales Agents, the Companies, and the Monitor, and (b) provides written confirmation of the identity of the potential bidder, including its direct and indirect principals and financial disclosure or credit quality support sufficient to allow the Sales Agents, in consultation with the Companies and Monitor, to make a reasonable determination as to its capabilities to conclude a transaction, shall be deemed to be a potential bidder (each, a "**Potential Bidder**").

### B. Due Diligence

17. The Sales Agents shall provide each Potential Bidder with information, including access to an electronic data room established by the Sales Agents by no later than July 8, 2022 (the "**Data Room**"), that either Sales Agent may, in its reasonable business judgment, determine to be necessary for the Potential Bidder to evaluate a transaction involving an

Asset Bid.

18. The Sales Agents will prepare a confidential information memorandum ("**CIM**") by no later than July 6, 2022, describing the opportunity to make a SISP Bid and shall deliver the CIM to each Potential Bidder as soon as practicable after such Person is deemed to be a Potential Bidder in accordance with this SISP.
19. The Companies, Monitor and the Sales Agents shall coordinate all reasonable requests for additional information and due diligence access from Potential Bidders. However, access to facilities will only be granted to Qualified Bidders (as defined below) after they are selected. Neither the Companies nor Monitor nor the Sales Agents will be obliged to furnish any information relating to the Assets other than to a Potential Bidder.
20. The Sales Agents, the Companies, and the Monitor and their respective advisors make no representation or warranty as to the information made available pursuant to the SISP, including any information contained in the Data Room.

### **C. Initial Offer Process**

21. Any Potential Bidder who wishes to submit an Asset Bid must deliver a written, non-binding offer (each, an "**Initial Offer**") to the Companies, Monitor, and Sales Agents at the address specified in and in accordance with Schedule "A" hereto so as to be received by the Companies, Monitor, and Sales Agent no later than **5:00 p.m. (Eastern Standard Time) on August 5, 2022**, or such other date or time as the Companies may, in consultation with and upon approval of the Consultation Parties, determine (the "**Bid Deadline**").
22. Following the Bid Deadline, all Initial Offers shall be reviewed by the Companies, the Monitor and Sales Agents.
23. An Initial Offer shall be a qualified Initial Offer (each, a "**Qualified Initial Offer**") provided that:
  - (a) it is submitted on or before the Bid Deadline by a Potential Bidder;
  - (b) a letter setting forth the identity of the Potential Bidder, the contact information for such Potential Bidder and full disclosure of the direct and indirect owners of the Potential Bidder and their principals;
  - (c) it identifies:
    - (i) the purchase price in Canadian Dollars, and if such Potential Bidder is a secured creditor of the Companies, any amount of the purchase price that represents a credit bid for any amount of such secured debt;
    - (ii) whether the Asset Bid is *en bloc*, the Assets included, any of the Assets expected to be excluded, and/or any additional assets desired to be included in the Transaction;
    - (iii) confirmation that the Potential Bidder has sufficient funds to complete the

Transaction;

- (iv) any anticipated corporate, shareholder, internal or regulatory approvals required to close the transaction and the anticipated timeframe and any anticipated impediments for obtaining such approvals;
  - (v) any anticipated due diligence to be completed by Potential Bidder prior to Closing Date;
  - (vi) must not be subject to any conditions other than approval by the Court and the Initial Offer must acknowledge that it is subject to Court approval;
  - (vii) contemplates a schedule for closing the Transaction set out therein which is on or before the Closing Date; and
  - (viii) contains such other information as reasonably requested by the Companies, Sale Agents, or Monitor from time to time.
24. Any Potential Bidder who submits a Qualified Initial Offer on or before the Bid Deadline shall be designated a qualified bidder (a "**Qualified Bidder**").
25. The Companies, in consultation with the Consultation Parties, may waive strict compliance of one or more of the requirements specified above and deem any Initial Offer to be a Qualified Initial Offer, notwithstanding any noncompliance with the terms and conditions of this SISP.
26. In the event that no Person submits an Initial Offer, or that no Initial Offer qualifies as or is deemed to qualify as a Qualified Initial Offer, or that no Qualified Initial Offer is deemed commercially reasonable to the Companies, and/or is not supported by the Consultation Parties, the Companies may, in consultation with the Consultation Parties, terminate the SISP. If no Qualified Initial Offers are received by the Bid Deadline or the SISP is terminated in accordance with the terms hereof, the Companies may, in consultation with the Consultation Parties, consider other forms of bids for the Assets. At any time during the SISP, the Companies may, in consultation with the Consultation Parties, determine that any offer is a Winning Bid and seek Approval Orders in respect of such Winning Bid(s) from the Court.
27. The Companies and Sales Agents may invite Qualified Bidders to conduct additional due diligence or otherwise make available to Qualified Bidders additional information not posted in the Data Room, arrange for inspections and site visits at the Companies' premises, as determined by the Companies and Sales Agent.

#### **D. Selection of Qualified Bidders**

28. The Companies and the Consultation Parties shall review all Qualified Initial Offers in consultation with the Sales Agents.
29. Following such review of Qualified Initial Offers and upon it being determined that SISP should continue to the binding offer phase, the Companies, in consultation with the

Consultation Parties, shall select Qualified Bidders to participate in a second round of bidding.

30. Qualified Bidders will be notified of their selection for the second round of bidding by 5:00 p.m. (Eastern Standard Time) August 8, 2022.
31. Parties not selected as Qualified Bidders will also be notified by 5:00 p.m. (Eastern Standard Time) August 8, 2022.

#### **E. Binding Offer Deadline**

32. Qualified Bidders will be expected to complete any remaining due diligence as required between August 8, 2022 and the Binding Offer Deadline of 5:00 p.m. (Eastern Standard Time), August 19, 2022.
33. A template asset purchase agreement (“**APA**”) and a template share purchase agreement (“**SPA**”) will be made available in the Data Room to Qualified Bidders for review and mark up.
34. Qualified Bidders will be expected to submit their final bids in the form of the APA or the SPA with a blackline to the template by the Binding Offer Deadline of 5:00 p.m. (Eastern Standard Time), August 19, 2022.
35. The APA or SPA submission must be accompanied by a 10% deposit payable to “BDO Canada Limited - in trust” (the “**Deposit**”) by way of wire transfer (to the instructions included in Schedule “A”), bank draft or certified cheque.

#### **F. Selection of Winning Bid**

36. The Companies and the Consultation Parties, with the assistance of the Sales Agents, shall review all final bids, APAs or SPAs received by the Binding Offer Deadline, provided any such APA or SPA complies with the requirements set out in section 22 above, and shall determine what APAs or SPA shall be “**Qualified Binding Offers**”.
37. The Companies, with the approval of the Consultation Parties, may, but shall have no obligation, to enter into a definitive agreement or agreements (each a “**Final Agreement**”) with the Person or Persons who submitted the highest, best or otherwise most favourable Binding Offer.
38. The highest Binding Offer may not necessarily be accepted by the Companies. The Companies reserve the right not to accept any Binding Offer or to otherwise terminate the SISP. The Companies further reserve the right to deal with one or more Qualified Bidder to the exclusion of other Persons, to accept a Binding Offer Bid for some or all of the Assets or to accept multiple Binding Offer Bids and enter into multiple Final Agreements.
39. In the event that the Companies enter into one or more Final Agreements, any Binding Offer Bids so selected shall be a “**Winning Bid**”. Any Qualified Bidder that makes a Winning Bid shall be a “**Successful Bidder**”.
40. This SISP shall be suspended in the event that: (a) no Qualified Bidder submits or is deemed to have submitted a Qualified Binding Offer; (b) the Companies, with the approval of the Monitor and the DIP Lender, determine that none of the Qualified Binding



Offer Bids should be accepted; or (c) a Final Agreement has not been entered into before the Final Agreement Deadline. In any such case, the Companies may, in consultation with the Consultation Parties, terminate the SISP and consider other forms of bids for the Assets.

## **G. APPROVAL ORDERS**

41. In the event that the Companies enter into a Final Agreement, the Companies shall apply as soon as reasonably practicable thereafter, for order(s) (the "**Approval Order**") from the Court, in form and substance satisfactory to the Companies and the Consultation Parties, approving the transaction contemplated by the Winning Bid(s) and any necessary related relief required to consummate the Transaction contemplated by the Winning Bid(s), subject to the terms of the Final Agreement(s).
42. An Approval Order shall become a "**Final Order**" upon satisfaction of the following conditions: (a) it is in full force and effect; (b) it has not been reversed, modified or vacated and is not subject to any stay; and (c) all applicable appeal periods have expired and any appeals therefrom have been finally disposed of, leaving the Approval Order wholly operable.

## **H. CLOSING**

43. Closing of the transactions contemplated in any Final Agreement shall occur by no later than **September 23, 2022** or as may be extended with the approval of the Companies, in consultation with the Consultation Parties.

## **I. DEPOSITS**

44. All Deposits paid pursuant to this SISP shall be held in trust by the Monitor in a non-interest bearing account. The Monitor shall hold Deposits paid by each of the Successful Bidder in accordance with the terms outlined in this SISP. In the event that a Deposit is paid pursuant to this SISP and the Companies elect not to proceed to negotiate and settle the terms and conditions of a definitive agreement with the Person that paid such Deposit, the Monitor shall return the Deposit to that Person.
45. In the event that a Successful Bidder defaults in the payment or performance of any obligations owed to the Companies pursuant to any Final Agreement, the Deposit paid by the Successful Bidder as applicable, shall be forfeited to such party as liquidated damages and not as a penalty.

## **J. CONFLICTS OF INTEREST**

46. Until such time as any secured creditor of the Companies have: (i) irrevocably declared its intention not to submit a bid; (ii) its Initial Offer has been irrevocably disqualified

under the SISP; or (iii) its Qualifying Binding Offer has been irrevocably determined not to be the Winning Bid), such secured creditor:

- shall only receive information regarding the SISP in keeping with his or her capacity as a Potential Bidder in these proceedings; and
  - shall receive no information whatsoever regarding other bids in the SISP.
47. If any secured creditor determines that it will submit a bid in the SISP, such secured creditor shall advise the Companies of such intent as soon as reasonably practicable, and no later than seven (7) days before the Bid Deadline.

**SCHEDULE “A”**

**Addresses for Deliveries  
and Wire Transfer  
Information**

Any notice or other delivery made to the Companies or Monitor pursuant to this SISP shall be made to:

**BDO Canada Limited**  
20 Wellington St E, Suite 500  
Toronto, ON M5E 1C5  
Attention: Anna Koroneos  
Tel: 647-798-1459  
Email: [akoroneos@bdo.ca](mailto:akoroneos@bdo.ca)

Any notice or delivery made to the Sales Agents pursuant to this SISP shall be made to:

**Hyde Advisory & Investments**  
c/o David Hyde  
[david@hydeadvisory.com](mailto:david@hydeadvisory.com)

or

**Avison Young**  
77 City Centre Dr. Suite 301  
Mississauga, ON, L5B 1M5  
Attention: Ben Sykes  
[Ben.sykes@avisonyoung.com](mailto:Ben.sykes@avisonyoung.com)

Deliveries pursuant to this SISP by email shall be deemed to be received when sent. In all other instances, deliveries made pursuant to this SISP shall be deemed to be received when delivered to the relevant address, as identified above.

Wire Transfer Details for the Monitor

PLEASE CONTACT MONITOR FOR WIRE INSTRUCTIONS FOR THIS ACCOUNT.

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")

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

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

Proceedings commenced at Toronto, Ontario

**ORDER**  
**(APPROVAL OF SALE PROCESS)**

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Lawyers for the Applicants

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF SPROUTLY, INC. and TORONTO HERBAL REMEDIES INC. (each an "Applicant" and collectively, the "Applicants")

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

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

Proceedings commenced at Toronto, Ontario

**MOTION RECORD**  
**(Comeback motion returnable on July 4, 2022 at 10:00 a.m.)**

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