

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**”)

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 of 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 10th 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:

Date of Registration	Secured Party	Registration Number	Expiry Date
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*

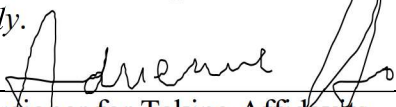
72. To summarize, the proposed ranking of the Priority Charges is as follows:

- (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