



This is Affidavit #2 of Anthony F. Holler in this proceeding and was made on October 15, 2020.

No. S-2010103
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

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

AND

**IN THE MATTER OF THE *CANADA BUSINESS CORPORATIONS ACT*, R.S.C., 1985, c. C-44
AND THE *BUSINESS CORPORATIONS ACT*, S.B.C. 2002, Ch. 57**

AND

**IN THE MATTER OF SUNNIVA INC., SUNNIVA MEDICAL INC., 11111035 CANADA INC.
AND 1167025 B.C. LTD**

PETITIONERS

AFFIDAVIT #2 OF ANTHONY F. HOLLER

I, ANTHONY F. HOLLER, c/o of 1200 Waterfront Centre, 200 Burrard Street, Vancouver, British Columbia, V7X 1T2, HEREBY SWEAR THAT:

1. All capitalized terms used herein that are not otherwise defined are as defined in my Affidavit #1 sworn on October 8, 2020 ("**Affidavit #1**").
2. I am the Chairman, Chief Executive Officer, and founder of one of the Petitioners, Sunniva Inc. ("**Sunniva**") and the sole director of the other Petitioners. Accordingly, I have personal knowledge of the facts deposed to in this Affidavit except where stated to be based on information and belief, in which case I verily believe the information and resulting statements to be true. In preparing this Affidavit, I have also consulted with the other members of Senior Management.
3. I am authorized to make this Affidavit on behalf of the Petitioners.
4. I swear this Affidavit in support of the Petitioners' application for, among other things: (a) an order amending and restating the terms of the order granted by the Court on October 9, 2020 (the "**Initial**

Order”) under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “CCAA”) and extending the stay of proceedings granted thereunder; (b) an order establishing a claim process in respect of claims against the Petitioners; (c) an order authorizing the Petitioners to pay fees to a financial advisor in the aggregate amount of US\$45,000 (of which US\$30,000 is payable up-front).

A. EXTENSION OF STAY OF PROCEEDINGS

5. On October 9, 2020, the Honourable Madam Justice Fitzpatrick granted the Initial Order pursuant to the CCAA that, among other things, granted a stay of proceedings in favour of the Petitioners until the initial return date of October 19, 2020.

6. Since the Initial Order was granted on October 9, 2020, the Petitioners (in consultation with the Monitor) have worked diligently and taken various steps to advance the restructuring in these CCAA proceedings. These steps include, without limitation:

- (a) communicating with various stakeholders of the Petitioners regarding the status of these CCAA proceedings;
- (b) cooperating and working with the Monitor to facilitate its monitoring of the operations and payments of the Petitioners;
- (c) in consultation with the Monitor, disclaiming Sunniva’s lease agreement with respect to its office located at Suite 400 – 355 4th Avenue SW, Calgary, Alberta;
- (d) taking steps to preserve the value of the Petitioners’ US assets, including discussions with financiers or prospective strategic partners or investors for the Petitioners’ US assets, and discussions with the Financial Advisor (as defined at paragraph 23 below) in respect of various financing options to fund the completion of the California Greenhouse Facility; and
- (e) developing the claim process (as discussed further below) and taking steps to ensure the claim process, if approved by the Court, can be administered efficiently and effectively, including:
 - (i) gathering the necessary information to deliver claim notices to as many creditors as the

Petitioners' records will allow, and (ii) consulting with the Monitor on the logistics of doing same.

7. The Petitioners seek an extension of the Stay Period (as defined in paragraph 12 of the Initial Order) so that the relief granted in the Initial Order will continue until November 27, 2020 (the "**Stay Extension**"). The Petitioners require the Stay Extension to, among other things: (a) implement and conduct the claim process as described in greater details below, and (b) advance discussions with the Greenhouse Owner and (in consultation with the Financial Advisor) financiers or prospective strategic partners or investors regarding the California Greenhouse Facility, with a view to preserving the value of the Petitioners' interest in the California Greenhouse Lease.

8. I believe that the proposed Stay Extension will facilitate the claim process that is described below, and will allow the Petitioners to preserve the value of their interest in Sunniva's US assets. I further believe that, without the Stay Extension, the prospective value of the Petitioners' US assets would be lost. Accordingly, I believe that the proposed Stay Extension is in the best interests of the Petitioners and their stakeholders, including creditors.

9. In consultation with the Monitor, the Petitioners have prepared the Cash Flow Statement attached as Exhibit "F" to my Affidavit #1, showing the Petitioners' ability to meet their financial obligations through to November 27, 2020. I confirm that the Petitioners have sufficient liquidity to fund their restructuring efforts in these proceedings to November 27, 2020, and there have been no materials changes to the forecast set out in the Cash Flow Statement.

10. The Petitioners have been, and are, acting in good faith and with due diligence throughout these CCAA proceedings.

11. I am not aware of any creditor of the Petitioners intending to object to the Stay Extension. Further, I believe that there will be no material prejudice to the Petitioners' creditors as a result of the Stay Extension.

B. NEED FOR CLAIM PROCESS

12. As set out in further detail in Affidavit #1, the Petitioners have substantial unsecured liabilities of approximately CA\$58 million. While many of these unsecured liabilities relate to indebtedness owing to noteholders, debenture holders and other creditors that are past due or will become due in the near future, the Petitioners also owe approximately CA\$1.670 million to various trade creditors, which are the subject of various litigation claims initiated by contingent creditors.

13. Given the multitude of claims against the Petitioners, I believe that a court-supervised claim process is necessary to properly identify, quantify, and assess all creditor claims to which the Petitioners are subject, so that all creditor claims can be properly and expeditiously dealt with in these proceedings. In respect of the inter-company claims described in Affidavit #1, the Petitioners intend to provide the Monitor with information supporting these claims. Further, as described in my Affidavit #1, substantially all of the funds currently available to the Petitioners were generated from the sale of the OK Falls Facility, which was beneficially owned by SMI. As such, the Petitioners require a claim process to expeditiously determine and resolve creditor claims (in particular, creditor claims against SMI) to facilitate the Petitioners formulating a plan to present to creditors. I believe that the sooner this claim process can be initiated, and concluded, the better it will be for all stakeholders.

Structure of Claim Process

14. I am informed by David Weinmann – the Interim Chief Financial Officer of the Sunniva Group – that the books and records of the Petitioners accurately calculate and record the amounts the Petitioners owe to their various creditors as of October 9, 2020. In particular, the books and records of the Petitioners confirm that:

- (a) the majority of the Petitioners' creditors (both in number and value) consist of readily identifiable noteholders and debenture holders of Sunniva, various trade creditors, and PTI; and
- (b) the majority of creditors can receive their claims information packages electronically.

15. Given the good quality of the Petitioners' books and records, the Petitioners (in consultation with the Monitor) have structured a claim process so that the majority, if not all, of the Petitioners' creditors will receive a notice stating the amount owing to that creditor as set out in the Petitioners' books and records (a "**Claim Amount Notice**"). Only creditors that disagree with the determination of their claim in the Claim Amount Notice, or those who do not receive a claim amount notice, would be required to deliver claim materials by the claims bar date approved by the Court.

16. I believe that proceeding with a claim process structured in this manner, and at this time, will allow for an expeditious and efficient claim process. Based on my discussions with Mr. Weinmann and other members of Senior Management, I do not anticipate a material number of disputed claims arising from the Claim Amount Notices.

PTI Claim

17. One potential disputed claim is the claim of PTI against SMI (the "**PTI Claim**"). The PTI Claim is the subject of on-going litigation, which is currently in the "document discovery" phase, with SMI delivering its list of documents on September 15, 2020 and currently waiting for PTI's list of documents. Further details on the PTI Claim are set out at paragraph 98 of my Affidavit #1.

18. I believe that resolving the PTI Claim expeditiously through a court-supervised claim process in these CCAA proceedings would be in the best interests of the Petitioners and their stakeholders, including PTI. In that regard, the Petitioners propose to structure the claim process to allow the Notice of Civil Claim filed by PTI to stand as its proof of claim, and set a timeline for determination of the PTI Claim prior to November 27. The Petitioners have sought input from the Monitor and PTI in respect of the proposed timeline.

C. PROGRESS REGARDING US ASSETS

Update on Arbitration – Bankruptcy of Initial Developer

19. On October 14, 2020, the Petitioners received a notice from JAMS (Judicial Arbitration and Mediation Services) – the arbitration centre in respect of the Arbitration – confirming that all proceedings in connection with the Arbitration are stayed in light of the bankruptcy of the Initial Developer.

20. The Petitioners are considering (in consultation with counsel, including US counsel, and the Monitor) what steps, if any, should be taken to preserve the rights of the Petitioners under the California Greenhouse Lease. The Petitioners will take whatever steps are necessary, as permitted by the Monitor and the Court, to preserve their rights under the California Greenhouse Lease, including advancing discussions with the Greenhouse Owner and discussions with potential financiers and potential strategic partners or investors in respect of the California Greenhouse Facility.

Engagement of Financial Advisor

21. The Petitioners seek to preserve the value of their US assets. In particular, the Petitioners seek to protect the right, title and interest of CPL (as tenant) in and to the California Greenhouse Lease, through (a) discussions with the Greenhouse Owner to complete construction of the California Greenhouse Facility; and (b) discussions with financiers or prospective strategic partners or investors to replace the Greenhouse Owner as legal owner of the California Greenhouse, should discussions with the Greenhouse Owner be unsuccessful.

22. I believe that preserving and developing the Petitioners' US assets, and in particular the leasehold interest in the California Greenhouse Facility, represents the only meaningful source of potential recovery for the Petitioners' creditors. I further believe that for this potential recovery to be realized, the Petitioners require a negotiated solution to the Construction Dispute and Arbitration surrounding the California Greenhouse Lease, or alternatively, new financing or strategic partners or investors to replace the current Greenhouse Owner and complete construction of the California Greenhouse Facility.

23. To advance the Petitioners' discussions with financiers or prospective strategic partners or investors, the Petitioners require the financial expertise, assistance and participation of a financial advisor.

In that regard, I and other members of Senior Management have been in discussions with Deer Pond Capital, Ltd. (“**Deer Pond**”) and Four Points Capital Partners, LLC (“**Four Points**”, and together with Deer Pond, the “**Financial Advisor**”) to assist with identifying financiers and prospective strategic partners or investors with respect to the California Greenhouse Facility. The Financial Advisor is a boutique investment banking group based in New York City, New York, specializing in financings to insolvent entities and other “special situations” in the US market. I was introduced to the Financial Advisor by Mike Martino, the Chief Executive Office of Four Points. As of the date hereof, Four Point owns approximately 416,830 common shares in the capital of Sunniva (representing approximately 1% of the total issued and outstanding common shares). Based on my discussions with Mr. Martino, my understanding is that Deer Pond is an affiliate of Four Points, and operates its investment banking operations through Four Point’s broker-dealer license (to the extent such licensing is required).

24. Attached as **Exhibit “A”** to this Affidavit is a true and complete copy of the engagement letter between CPL and the Financial Advisor (the “**Engagement Letter**”).

25. Pursuant to the terms of the Engagement Letter, CPL must agree to pay certain Consulting Fees and Transaction Fees (each as defined in the Engagement Letter). The Consulting Fee is to be paid in-cash, in the amount of US\$15,000 per month for a minimum of three (3) months (with the first two months paid up-front), with a month-to-month extension option upon mutual agreement of the parties. Conversely, the Transaction Fees are payable only upon the completion of a debt or equity financing by way of transfer out of the flow of funds at the time of closing. Based on my experience with similar investment banking groups, I believe that the Consulting Fee and Transaction Fees are fair and reasonable in the circumstances.

26. Attached as **Exhibit “B”** to this Affidavit is a true and complete copy of information materials regarding the Financial Advisor (the “**Financial Advisor Profile**”) that were provided to me via email by Thomas F. Zipser, Managing Director of Deer Pond. The Financial Advisor Profile contains, among other things, a summary of the experience and qualifications of the Financial Advisor’s senior team members,

consisting of Mr. Zipser and Mr. Skyler Smith, both of whom would be working on the engagement with the Petitioners.

27. The Financial Advisor has been identified to me and other members of Senior Management by Mike Martino, Chief Executive Officer of Four Point, as having the necessary expertise to assist the Petitioners source sufficient financing, or identify credible strategic partners or investors, in each case to fund the completion of the California Greenhouse Facility. The Financial Advisor focuses specifically on sourcing financing and identifying strategic partners or investors for financially-distressed companies, and the Financial Advisor's key personnel (namely, Mr. Zipser and Mr. Smith) have extensive relationships and contacts with lenders and investors in the distressed asset space. I believe that these attributes make the Financial Advisor particularly well suited to assist the Petitioners overcome the unique challenges regarding the California Greenhouse Facility. Further, the Financial Advisor is capable of working with the Petitioners (through CPL) without a charge or other security for payment of the Consulting Fees or Transaction Fees. The Financial Advisor does require payment of Consulting Fees in a minimum amount of US\$45,000 (representing Consulting Fees for a minimum three-month engagement), of which US\$30,000 is required to be paid by CPL up-front. However, based on my experience with similar investment banking groups, I believe that the amount of the Consulting Fee, and the requirement that a portion thereof be paid up-front, are fair and reasonable in the circumstances.

28. CPL currently lacks the financial resources to pay the Consulting Fees. As described in further detail in my Affidavit #1 at paragraph 23, this is due in part to CPL (and the other US Subsidiaries) previously funding the expenses of the Petitioners. As such, the Petitioners seek an order approving the payment of the Consulting Fees by the Petitioners on CPL's behalf, in the aggregate amount of US\$45,000, paid in accordance with the terms of the Engagement Letter. The Petitioners are not seeking any charge or other security for the payment and performance of the Consulting Fees or Transaction Fees under the Engagement Letter.

29. I believe that engaging the Financial Advisor and paying the Consulting Fees on behalf of CPL are in the best interests of the Petitioners and their stakeholders, and will maximize the likelihood of the

Petitioners preserving the value of their US assets. Based on the information set out in the Financial Advisor Profile and my discussions with Mr. Martino and Mr. Zipser, I believe that engaging the Financial Advisor will expose the Petitioners' US assets to a much broader spectrum of potential lenders or investors than would be the case without their services, and will enable the Petitioners to advance their interests in the California Greenhouse Facility. While I and other members of Senior Management have been working with our own industry contacts to source potential financing, partners or investors for the Petitioners' US assets, and will continue to do so, I believe that it is in the best interests of the Petitioners and stakeholders to secure financing or investment to complete the construction of the California Greenhouse Facility as quickly as possible, and that this objective is best achieved with the assistance of the Financial Advisor.

30. Should payment of the Consulting Fees be approved, I am informed by the Financial Advisor that, by November 20, 2020, it anticipates reaching out to between 50 to 60 potential financiers, strategic partners or investors regarding financing for the California Greenhouse Facility, and that it will prepare a status report outlining investor responses for the Court's consideration (including, if possible, an outline of early indications of investor interest or transaction terms).

SWORN BEFORE ME at Vancouver, British Columbia, on the 15th day of October, 2020.

A commissioner for taking affidavits for British Columbia

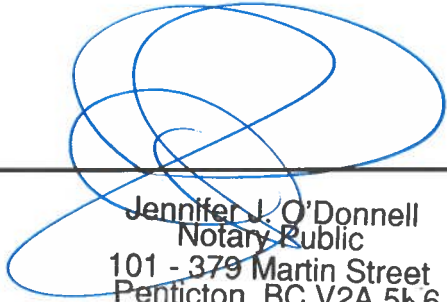
Witnessed as to Signature of
-No Advice Sought or Given

Jennifer J. O'Donnell
Notary Public
101 - 379 Martin Street
Penticton, BC V2A 5k6
Tel: (250) 492-7257



ANTHONY F HOLLER

This is **Exhibit "A"** referred to in
Affidavit #2 of Anthony F. Holler
made before me on October 15, 2020.



Jennifer J. O'Donnell
Notary Public
101 - 379 Martin Street
Penticton, BC V2A 5K6
Tel: (250) 492-7257

CONFIDENTIAL

October 15, 2020

David Weinmann
Manager, CP Logistics, LLC
1755, E Palm Canyon Drive
Ste. 110-261
Palm Springs, CA
92264

Dear Anthony:

We are pleased to set forth the terms of the exclusive agreement (the "Agreement") between Deer Pond Capital, Ltd. ("Deer Pond") and Four Points Capital Partners, LLC through which all securities are offered ("4 Points Capital" and together with Deer Pond, collectively, the "Advisor") will assist Sunniva Inc's ("Sunniva") wholly owned subsidiary CP Logistics, LLC ("CPL" and (together with Sunniva, collectively, "Company") with the evaluation of the Cathedral City cultivation facility (the "Facility") and raising up to approximately \$60 million (the "Transaction") for 1) the acquisition of the Facility and 2) capital expenditures required to complete of Phase 1a construction of the Facility by way of debt or equity investment into the Facility or CPL. The final structure of any Transaction will be determined in the context of the funding.

We are delighted to accept this engagement and look forward to working with you. Please confirm that the foregoing correctly sets forth our agreement by signing the enclosed duplicate of this letter in the space provided and returning it, whereupon this letter shall constitute a binding agreement as of the date first above written.

FOUR POINTS CAPITAL PARTNERS, LLC.

DEER POND CAPITAL, LTD.

By: 

Robert Barreca, Chief Compliance Officer

By: 

Thomas F. Zipser, Managing Director

CP LOGISTICS, LLC.

By: _____

David Weinmann, Manager

Confirmed and accepted and agreed as at October 15, 2020

CONFIDENTIAL

October 15, 2020

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Manager, CP Logistics, LLC
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FOUR POINTS CAPITAL PARTNERS, LLC. DEER POND CAPITAL, LTD.

By: _____

Robert Barreca, Chief Compliance Officer

By: _____

Thomas F. Zipser, Managing Director

CP LOGISTICS, LLC.

By:  _____

David Weinmann, Manager

Confirmed and accepted and agreed as at October 15, 2020

PROPOSED TERMS OF ENGAGEMENT

Services To Be Provided

Services will include, but will not be limited to (i) review of the Company's existing lease agreement with current Facility owners, current budget estimates and capital required to complete the facility, operating plan and projected financial performance of the Company with respect to the Facility, (ii) assistance in drafting appropriate marketing materials, (iii) compilation and organization of an online data room and other items related to investor performance of due diligence, (iv) introduce and arrange meetings with Prospect Investors which Adviser believes may be interested in investing in the Transaction (such investors to be approved as "Deer Pond Investors" by the Company prior to any outreach from the Advisor). Deer Pond Investors will be recorded on Schedule A following approval by Sunniva. Prospect Investors identified by Deer Pond Investors but not approved by Sunniva, in its sole discretion, that have not previously been included in the Sunniva Investors list will be recorded in Schedule A as "Deer Pond Identified Investors" (v) coordination of due diligence, including information requests, management discussions and site visits, and (vi) assistance with investor negotiations, deal structuring, and Transaction documentation.

Coordination of Efforts/Exclusivity

The Advisor will act as the exclusive financial advisor on the Transaction. The Company is under no obligation to use the Advisor for any other capital raising, advisory, or other investment banking services not related to the Transaction under the terms of this agreement. For clarity, the Company has existing relationships with other Canadian investment advisory firms who may be engaged to raise capital for Sunniva in the future for purposes other than this Transaction.

The Exclusivity to the Advisor will not prohibit Sunniva from periodically sourcing potential investors independently of the Advisor (the "Sunniva Investors"). Sunniva Investors will be identified and included in Schedule A for reference of the Advisor.

Consulting Fee

Upon the execution of this Agreement, a non-refundable monthly cash Consulting Fee of fifteen thousand dollars (\$15,000) (the "Consulting Fee") is due the 30th of each month by wire or on the earlier business day. This Consulting Fee is credited against the success fee. The Consulting Fee is deemed to be earned when paid. This shall continue for a minimum three (3) months, with a month to month extension option upon mutual agreement of the Advisor and the Company. The first two months of the Consulting fee to be paid upfront.

Transaction Fee

In consideration of the services rendered by Advisor to the Company pursuant to this Agreement (and in addition to the fees and expenses provided for elsewhere herein), the Company shall pay Advisor under the following terms:

Debt Investment: Three percent (3%) on the total debt raised from Deer Pond Investors (directly or indirectly) into CPL or other potential structures for the purpose of the Transaction ("Debt Placement Fee"). Total debt raised includes debt instruments, including amounts paid into escrow. Such payments shall constitute the placement fee.

Equity Investment: Six Percent (6%) of the total equity raised from Approved Investors (directly or indirectly) into CPL or other potential transaction structures for the purpose of the Transaction ("Equity Placement Fee"). Total equity raised includes direct equity investments, investments through a separate SPV, purchase or other acquisition of options, warrants, equity-linked securities, and other investments of any other description, including amounts paid into escrow.

In the event that the Advisor delivers funding commitments from Deer Pond Investors but those funds are not drawn by Sunniva and instead replaced with Sunniva Investors, the Transaction Fee payable to the Advisor will be 1.5% on the total capital raised but not drawn from the Deer Pond Investors less any cumulative Consulting Fees paid.

For funding commitments from Sunniva Investors where there is no replacement of Deer Pond Investors, the Transaction Fee payable will be 0.75% on the total capital raised from Sunniva Investors less cumulative Consulting Fees paid.

All fees shall be payable on all committed capital and due when capital is committed with lender, Investor or syndication lender, including the undrawn portion of any capital.

Payment Method: All Fees are to be paid in U.S. funds by wire transfer out of the flow of funds at the applicable closing(s) of the Transaction ("Closing") directly to 4 Points Capital. In connection therewith, the Company hereby agrees to pay, or force to be paid said fees. All fees shall be part of the flow of funds and approved by the Advisor before closing.

Term

The term of this Agreement shall run from the date of receipt by Advisor of the Company's signed acceptance of this Agreement, until the date twelve months thereafter. The Agreement shall stay in effect and be automatically renewed for terms of eight months as any negotiations or related work is ongoing ("Term"). Except as otherwise provided for herein, this Agreement may be cancelled by any party upon thirty (30) days' prior written notice to the other parties.

Tail

In the event there is no Transaction completed, for the 12 months immediately following the termination of this Engagement should the Company plan to pursue a similar transaction regarding potential acquisition of the Facility, the Company agrees that it will pay the appropriate Transaction Fee to the Advisor for any investment by any Deer Pond Investors or Deer Pond Identified Investors that were previously introduced to the Company by the Advisor.

Expense Reimbursement

The Company agrees to reimburse the Advisor within five (5) business days after receipt of an invoice from Advisor for all of its reasonable and documented fees and disbursements for Advisor's travel and out-of-pocket expenses incurred in connection with the services performed pursuant to this Agreement. Advisor will submit invoices every month if expenses exceed \$500 in that month. Advisor will seek approval for any individual expense of \$500 or more. All expenses to be incurred must be pre-approved by Company.

Other Terms

The Transaction Fee (as a general tail period concerning Deer Pond Investors), Tail and Representations and Warranty's shall survive the termination of this Agreement by twenty four (24) months. Validity of Information (other than the obligation to notify Advisor as to material changes in any data, material and other information previously made available to Advisor, which shall survive for twenty four (24) months), Notices, Assignment, and Governing Jurisdiction shall survive for twenty four (24) months.

Validity of Information

The Company acknowledges and agrees that in performing its services under this engagement, Advisor may rely upon the data, material and other information supplied by the Company and/or one or more of their Affiliates (defined collectively as "Company Parties") without independently verifying its accuracy, completeness or veracity, except to the extent Advisor has actual knowledge to the contrary. The Company (or other Company Parties) will furnish such data, material and other information as Advisor reasonably believes appropriate to its engagement hereunder and the Company represents that all such information will, to the Company's knowledge, be accurate and complete in all material respects as of the time of such delivery to Advisor and that the Company will notify Advisor promptly of any material change in any data, material and other information previously made available to Advisor by a Company Party that becomes known to the Company. Further the Company shall ensure that any Transaction (other than parts in the control of the Advisor, if any) will follow all applicable laws, rules and regulations in all material respects. Advisor shall be under no obligations to make an independent analysis of the Company or an investigation or inquiry as to any information regarding, or any representations of, any other participant in the Transaction, and shall have no liability with regard thereto. The Company shall hold harmless Advisor for any losses, claims, damages, obligations, penalties, judgments, liabilities, costs, expenses and disbursements (and any and all actions, suits, proceedings and investigations in respect thereof and any and all reasonable legal and other costs, expenses and disbursements in giving testimony or furnishing documents in response to a subpoena or otherwise), including, without limitation, the costs, expenses and disbursements, as and when occurred, of investigating, preparing or defending any such action, suit, proceeding or investigation (whether or not in connection with litigation in which Advisor is a party), as and when incurred, directly or indirectly, caused by, relating to, based upon, arising out of or in connection (collectively "Losses") arising out of violations by the Company of any of its representations, warranties or agreements contained in or incorporated into the Agreement and/or the gross negligence, or willful misconduct of the Company or any Affiliate thereof with regard to data, material and other information supplied to Advisor or any Investment Prospects by the Company or its Affiliates.

Fiduciary Duty

The Company acknowledges and agrees that Advisor is a sophisticated business enterprise and that Advisor has been retained pursuant to this Agreement to act as advisor to the Company solely with respect to the matters set forth herein.

In such capacity, Advisor shall act as an independent contractor, and any duties of Advisor arising out of its engagement pursuant to this Agreement shall be contractual in nature and shall be owed solely to the Company. Each party disclaims any intention to impose any fiduciary duty on the other.

Representations and Warranties

The Company represents and warrants to Advisor that there are no brokers, representatives or other persons who have an interest in compensation due to Advisor from any transaction contemplated herein that will deduct from or reduce the compensation to Advisor contemplated hereby.

Notices

Any notice or communication permitted or required hereunder shall be in writing and shall be deemed sufficiently given if hand-delivered or sent (i) postage prepaid by registered mail, return receipt requested or to such other address as either party may notify the other of in writing:

If to the Company, to:

c/o Sunniva Inc.

1200 Waterfront Centre
200 Burrard Street, PO Box 48600
Vancouver, British Columbia
V7X 1T2
Attn: Dr. Anthony Holler

If to Adviser, to:

Four Points Capital Partners, LLC.
232 MADISON AVE, SUITE -405
NEW YORK, NY 10016
(212) 257-5240
Michael Martino & Robert Barreca
mmartino@4pointscapital.com

With a copy to:

Deer Pond Capital, LTD
96 Rose Ln
Darien, CT 06820
(203) 504-2630
Attn: Thomas F. Zipser, Managing Director
tzipser@deerpondcapital.com

Advertising

Deer Pond shall have the right to place advertisements in email newsletters, firm materials and its own website at its own expense describing its services hereunder, provided that the Company shall approve, in writing, the form and content thereof in advance.

Assignment

This Agreement may not be assigned by either party without the prior written consent of the other. The benefits of this Agreement, shall be binding upon and inure to the benefit of the respective successors, legal representatives and permitted assigns of the parties hereto and the obligations and liabilities assumed in this Agreement by the parties hereto shall be binding upon their respective successors, legal representatives and permitted assigns.

Counterparts

This Agreement may be executed in any number of counterparts, each of which together shall constitute one and the same original document.

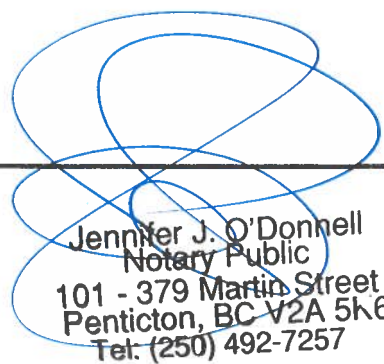
Circumvention

No provision of this Agreement may be amended, modified or waived, except in writing signed by the parties hereto. Any new equity investor shall not amend these terms or create new SPV to circumvent the Advisor.

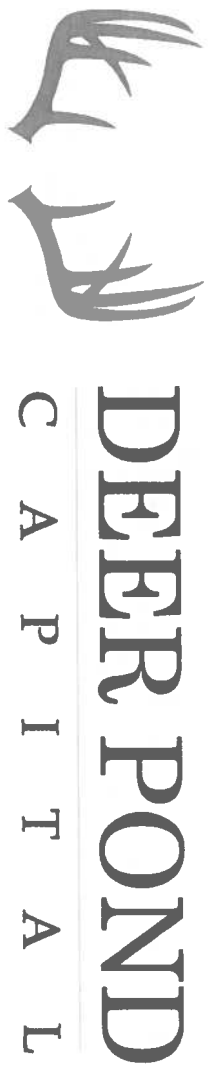
**Governing Jurisdiction
(14)**

This Agreement shall be governed by and construed in accordance with the laws of the State of New York applicable to contracts executed and to be wholly performed therein without giving effects to its conflicts of laws principles or rules. Any dispute hereunder may be brought in a court in the State of New York. Notwithstanding the above, the parties agree that any dispute, claim or cause of action required or permitted to be conducted by FINRA's rules (including the FINRA Code of Arbitration Procedure) may, at the option of any party, be arbitrated in accordance with such rules. Any such arbitration shall be before a neutral arbitrator selected under the FINRA Neutral List Selection System (or any successor system) and in a forum designated by the Director of FINRA Dispute Resolution or any member of FINRA staff who whom such Director has delegated authority, such arbitration to take place in or around New York, New York, with the Company covering all forum related fees imposed by FINRA or the selected arbitrator. Any cost to collect or force payment on any fees will be the sole responsibility of the Company. There will be a four percent (4.0%) per month compounding interest on any unpaid fees.

This is **Exhibit "B"** referred to in
Affidavit #2 of Anthony F. Holler
made before me on October 15, 2020.



Jennifer J. O'Donnell
Notary Public
101 - 379 Martin Street
Penticton, BC V2A 5K6
Tel: (250) 492-7257



Firm Overview
2020



Firm overview

Deer Pond Capital is an investment banking firm that distinguishes itself through its experience, creativity, long-term relationships and client service

- Founded in 2015 to bring a more client focused approach to investment banking
- Deer Pond Capital provides a full suite of corporate finance and financial advisory services
 - M&A Advisory
 - Capital Raising
 - Financial Advisory
 - Restructuring and Special Situations

Vast relationship network

- Unparalleled personal industry relationships
- Strong working relationships with market leaders in all layers of the capital structure

Independence

- Private firm offering conflict-free advice; no potential conflicts of interest as may arise between different parts of a large investment bank
- Not constrained by minimum fee requirements

How Deer Pond can assist your company

The Deer Pond Capital investment banking group provides comprehensive corporate finance and financial advisory solutions to help clients achieve their strategic objectives

M&A advisory

- Strategic plan development and execution
 - Buy side
 - Sell side
- Identify/source potential buyers or acquisition candidates
- Provide comprehensive transaction evaluation
 - Assist client with due diligence
 - Pro forma financial impact analysis
 - Valuation analysis
 - Pricing feasibility
 - Transaction structure review and alternatives analysis
 - Advise on asset/branch divestitures
 - Fairness opinions
- Negotiation guidance and support
 - Pricing and deal structure
 - Key deal terms

Capital formation

- Capital raising through private and public offerings
- Optimal execution through collaborative approach
 - Position the company in partnership with management
 - Develop a tailored distribution strategy
- Extensive buy-side relationships
 - Institutional
 - Financial sponsors
 - Venture capital
 - Private equity
 - Family office / high net worth investors
- Partner with other agents / underwriters as needed
- Senior credit facilities and leveraged finance solutions
- Strategic capital advisory
- Capital raising to support/avoid reorganization and bankruptcy

Case studies

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Situation

Schutt Sports is the #2 football helmet manufacturer in the US

- Schutt Sports lost a patent infringement case to Riddell
- Faced with bankruptcy Deer Pond was retained to
 - Fund the court judgment
 - Reduce the ABL line
 - Provide additional capital required by the lenders

Solution

- Deer Pond successfully delivered two term sheets and closed a structured equity round of \$18.375 million



Situation

Iron City Beer is the oldest brewery in America located in Pittsburgh

- Iron City had filed for bankruptcy and had an ailing brewery

Solution

- Deer Pond successfully
 - Raised DIP financing to emerge from bankruptcy
 - Negotiated 100 year old union agreement
 - Sold off the real estate
 - Saved 90% of the jobs and moved the company to a new facility
 - Raised capital for marketing and growth
 - Sold the company to Uni-World Capital (private equity fund)

Significant experience in special situations

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U.S. AIRWAYS

- Expert testimony and analysis

- Retained by the employees pension for US Airways
- Analyzed pension investments during last financial crisis
- Discovered investments were made with zero due diligence

GeoEnergy

GmbH



- Capital raise to avoid bankruptcy

- Retained by GeoEnergy to avoid bankruptcy in Germany
- Identified strategic partner and investor in Italy that avoided foreclosure by the banks
- Developed 27 geothermal drillings plants across Germany



- Capital raise to avoid bankruptcy

- Retained by Eco Concepts and SST to stop a lender foreclosure
- Raised equity from a strategic investor and negotiated a restructuring of the note
- Negotiated a JV Agreement with manufacturing partner to relaunch the product



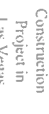

















- Capital raise to react to FDA mandate

- Retained by Verax Medical to be prepared for FDA mandate
- Unable to get debt or equity financing during a multi year FDA mandate approval
- Raised debt secured by uncalled capital to support the company for a wave of customers with no date known

Select transaction experience

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| | | | | | | | | |
|--|--|--|---|--|---|---|--|--|
|  Structured Equity \$18,375,000 |  MBO & Senior and Subordinated Debt Facility \$35,000,000 |  Construction Project in Las Vegas Debt Undisclosed |  Equity Investment Joint Venture Debt Restructuring \$16,000,000 |  Senior Debt And Equity \$6,100,000 |  Equity Investment & Board Support \$300,000,000 |  Recapitalization \$120,000,000 |  Senior and Subordinated Debt Facility \$21,000,000 |  has been acquired by SealPort Undisclosed |
|  Debt Facility \$18,000,000 |  Has been acquired by Caceis \$365,000,000 |  8 Acquisitions Series A and Subordinated Debt \$49,500,000 |  has been acquired by LINCOLN TECH Undisclosed |  Membership Interests \$50,000,000 |  has been acquired by WCA Undisclosed |  has been acquired by KURELEC Undisclosed |  Senior Debt and Equity \$197,000,000 |  52 Acquisitions Undisclosed |

Timing goals

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November 20th

- Outreach to around 50 to 60 investors or more
- Status report for the court of investor responses
- If possible early indication of interest or terms

Deer Pond's process

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Pre-Market Preparation

Weeks 1-3

- Define objectives
- Internal Due Diligence
- Develop financial model
- Analysis of industry and competition
- Prepare offering deck
- Compile investor/buyer list
- Client consultations

Marketing Phase I

Weeks 3-6

- Contact potential investors/lenders
- Distribute offering deck
- Manage all correspondence
- Maintain confidentiality throughout the process
- Receive and analyze all indications of interest
- Assemble data room

Investor Selection Phase II

Weeks 7-10

- Arrange management presentations and due diligence visits
- Conduct management presentations
- Begin extensive investor/lender due diligence
- Solicit final term sheets
- Evaluate proposals
- Select investor/lender and negotiate detailed letter of intent

Due Diligence & Documentation

Weeks 11-16

- Facilitate requests for information and further investor/lender confirmatory due diligence
- Negotiate and finalize legal documents
- Complete documentation
- Close

Potential Delays

- Holidays
- COVID logistics in diligence
- End of the year and election season

Investors targeted

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**Real Estate
Developers**

**Cannabis Real
Estate Investors**

**Real Estate
Lenders
(nonrecourse)**

**Real Estate
Investors
Seeking New
Sectors**

**Distressed Real
Estate Investors**

Senior team biographies

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Thomas F. Zipser – Managing Director



- Mr. Zipser is the Founder and Managing Partner at Deer Pond Capital. Prior to Deer Pond he was Head of the New York office at Esposito Securities for the investment banking department. Prior to Esposito, Mr. Zipser spent over eight years with G.C. Andersen Partners, a New York based merchant bank, advising companies and making principal investments for the firm. He has developed diverse transaction experience advising corporate clients across a wide range of industries, including clean-tech, cannabis, automotive and transportation, among others
- Mr. Zipser received a B.A. in Political Science from the Johns Hopkins University. Mr. Zipser also is a member of the board for Eco Concepts, a commercial cleaning products company. Mr. Zipser is a board observer for Weinstein Beverage / Weinstein Wholesale, a Pepsi Distributor and supply distribution company. **Mr. Zipser is a board member of Outspoke.io, a technology company in the cannabis sector.** Mr. Zipser is actively involved with the Allen-Stevenson School in New York City where he is Vice President of the Alumni Council and Vice Chair of the Annual Fund
- **Awards – 2009 Canadian Middle Market M&A Deal of The Year**

Skyler Smith – Director



- Mr. Smith currently serves as a Director of Investment Banking at Deer Pond Capital. Prior to Deer Pond he worked at Credit Suisse in their investment banking division advising corporate clients and private equity firms, executing more than \$20 billion in total transaction value. Mr. Smith's experience includes transactions in automotive and transportation technology, enterprise software and other industries. Prior to Credit Suisse, Mr. Smith was an early employee at a technology firm which was successfully sold for \$235 million, founded a digital media consultancy, and worked for Leonid Capital, a middle-market focused private equity fund
- Mr. Smith received his M.B.A. from the University of Southern California, and his B.A. from Tufts University

No. S2010103
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

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

AND

**IN THE MATTER OF THE CANADA BUSINESS CORPORATIONS ACT, R.S.C.
1985, c. C-44 AND THE BUSINESS CORPORATIONS ACT, S.B.C. 2002, c. 57**

AND

**IN THE MATTER OF SUNNIVA INC., SUNNIVA MEDICAL INC., 11111035
CANADA INC. AND 1167025 B.C. LTD**

PETITIONERS

AFFIDAVIT #2 OF ANTHONY F. HOLLER

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