

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

**B E T W E E N:**

**AUXLY CANNABIS GROUP INC.**

**Applicant**

**- and -**

**2368523 ONTARIO LIMITED D/B/A CURATIVE CANNABIS**

**Respondent**

**IN THE MATTER OF AN APPLICATION UNDER SECTION 243(1) OF THE  
BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985, c. B-3, AS AMENDED,  
SECTION 67(1)(e) OF THE PERSONAL PROPERTY SECURITY ACT, R.S.O. 1990 c. P-  
10, AS AMENDED AND SECTION 101 OF THE COURTS OF JUSTICE ACT, R.S.O.  
1990, c. C.43, AS AMENDED**

**MOTION RECORD  
(Returnable November 27, 2019)**

November 22, 2019

**MILLER THOMSON LLP**  
Scotia Plaza - 40 King Street West, Suite  
5800, P.O. Box 1011  
Toronto, ON Canada M5H 3S1

**Greg Azeff - LSO#: 45324C**  
gazeff@millerthomson.com  
Tel: 416.595.2660/Fax: 416.595.8695

**Asim Iqbal – LSO#: 61884B**  
aiqbal@millerthomson.com  
Tel: 416.597.6008/Fax: 416-595-8695

**Tamie Dolny – LSO # 77958U**  
tdolny@millerthomson.com  
Tel: 416.597.6076/416.595.8695

Lawyers for the Court-appointed Receiver,  
A. Farber & Partners Inc.

# INDEX

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I N D E X

TAB	DOCUMENT
1	Notice of Motion returnable November 27, 2019
2	Report of the Receiver dated November 21, 2019
Appendices	
A	Order of J. Hainey dated September 19, 2019
B	Endorsements of J. Dietrich dated October 11, 2019 and November 18, 2019
C	Engagement Letter dated October 3, 2019
3	Draft Order

Confidential Appendix

TAB	DOCUMENT
1	Valuation Report

TAB 1

ONTARIO  
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10, AS AMENDED AND SECTION 101 OF THE COURTS OF JUSTICE ACT, R.S.O.  
1990, c. C.43, AS AMENDED**

**NOTICE OF MOTION  
(Returnable November 27, 2019)**

A. Farber & Partners Inc. (“**Farber**”), in its capacity as the court-appointed receiver (the “**Receiver**”) of all the assets, undertakings and properties of 2368523 Ontario Inc., D/B/A/ Curative Cannabis (the “**Debtor**” or “**Curative**”), will make a motion to a Judge presiding over the Commercial List on Wednesday, November 27, 2019 at 10:00 a.m. or as soon after that time as the motion can be heard at the Court house located at 330 University Avenue, 8<sup>th</sup> Floor, Toronto, Ontario M5G 1R7.

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

**THE MOTION IS FOR:**

1. An Order substantially in the form of the draft Order attached as Schedule “A” hereto, among other things:
  - (a) Approving this First Report and the activities and conduct of the Receiver and its legal counsel, Miller Thomson LLP, as disclosed herein; and

(b) Sealing the Confidential Appendix 1 pending further Order of the Court.

2. Such further and other relief as this Honourable Court may deem just.

**THE GROUNDS FOR THE MOTION ARE:**

3. Farber was appointed as the Receiver pursuant to subsection 243(1) of the *Bankruptcy and Insolvency Act* (Canada) (the “**BIA**”), section 67(1)(e) of the *Personal Property Security Act*, R.S.O. 1990, c.P-10, as amended and section 101 of the *Courts of Justice Act* (Ontario), R.S.O. 1990, c. C43, as amended, pursuant to an Order of the Honourable Justice Hainey of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) made September 19, 2019 (the “**Receivership Order**”);

4. The application for the Receivership Order was made by Auxly Cannabis Group Inc. (“**Auxly**”), which is: (i) a secured creditor of the Debtor as a result of financing arrangements entered regarding the construction of the Chatham Facility (as defined below); (ii) a shareholder of Curative Cannabis that owns or controls through related parties a 24% stake (30 out of 125 shares); and (iii) a party to a Cannabis Supply Agreement (as defined below) with Curative;

5. The Debtor is an early stage cultivation company that is in the pre-licensing and construction phase of its operations. The Debtor does not have active operations and is in the process of building a facility in Chatham, Ontario for the purpose of cultivating cannabis (the “**Chatham Facility**”);

6. Auxly and the Debtor entered into financing arrangements in connection with the construction of the Chatham Facility, pursuant to an Amended and Restated Secured Promissory Note dated April 23, 2019 in the principal amount of \$18.0 million (the “**Amended and Restated Promissory Note**”). As at October 2, 2019, Curative owed Auxly over \$17 million under the Amended and Restated Promissory Note (the “**Curative Indebtedness**”);

7. The Curative Indebtedness matured on August 5, 2019. By letters dated August 15, 2019, the Applicant demanded repayment from each of the Debtor, Mr. Shpilt (“**Shpilt**”) and Mr. Fitzgerald (“**Fitzgerald**”), the Chief Executive Officer and Chief Operating Officer respectively

of the Debtor and together therewith delivered Notices of Intention to Enforce Security pursuant to Section 244 of the BIA;

8. The Curative Indebtedness is secured by, among other things, limited recourse guarantees from both Shpilt and Fitzgerald supported by a share pledge pursuant to which they each pledged their common shares in Curative (the “**Shares**”) in favour of Auxly;

9. On August 29, 2019, Auxly issued Notices for Foreclosure in respect of the Shares to Shpilt, Fitzgerald and certain other parties (collectively, the “**Notices of Foreclosure**”). Subsequently, various objections to the Notices of Foreclosure have been received. A Court attendance was scheduled for October 11, 2019 in respect of such objections;

10. As a result, the Receiver, among other matters, has engaged its corporate finance affiliate, Farber Corporate Finance Inc. (“**Farber CFI**”), who are Certified Business Valuators, to prepare an independent report regarding the fair market value of the Shares;

11. On or about October 10, 2019, Auxly, the Debtor, Mr. Shpilt and Mr. Fitzgerald entered into a forbearance agreement (the “**Forbearance Agreement**”) under which, among other things, Auxly agreed on certain conditions to forbear from exercising its rights and remedies under the Amended and Restated Promissory Note, the PPSA, and other applicable law from October 10, 2019 until the earlier of (i) the occurrence of an Intervening Event (as defined in the Forbearance Agreement); or (ii) November 15, 2019 (the “**Forbearance Period**”);

12. Pursuant to the Forbearance Agreement, the principal amount of the Amended and Restated Promissory Note was increased to \$21 million to allow for completion of the approved construction contract for the Chatham Facility;

13. In addition, the Debtor, Mr. Shpilt and Mr. Fitzgerald irrevocably and unconditionally consented to withdrawing their objections to the Notices of Foreclosure and irrevocably and unconditionally consented to such objections being ruled ineffective following the expiry of the Forbearance Period;

14. The Forbearance Agreement was intended to provide more time for the Debtor to negotiate term sheets presented with the goal of refinancing the Debtor and paying out the Curative Indebtedness;

15. As a result of the Forbearance Period and terms under the Forbearance Agreement, effective November 21, 2019, the Debtor is indebted to Auxly for \$21,250,771.58;

16. The Debtor has defaulted on the terms of the Forbearance Agreement. The Debtor has already consented to the foreclosure by Auxly in the event that it failed to comply with the terms of the Forbearance Agreement. The Receiver understands that Auxly now wishes to proceed with the foreclosure;

17. The Valuation Report contains commercial sensitive information, the Receiver recommends that the Valuation Report remain sealed pending completion of these proceedings;

18. Rules 1, 3, and 37 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended;

19. Subsection 243(1) of the BIA;

20. Section 67(1)(e) of the *Personal Property Security Act*, R.S.O 1990, c.P-10, as amended;

21. Section 101 of the *Courts of Justice Act* (Ontario), R.S.O. 1990, c. C43, as amended;

22. The Receivership Order; and

23. Such further and other grounds as the lawyers may advise and this Honourable Court may permit.

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

1. The First Report of the Receiver dated November 22, 2019;

2. Confidential Appendix 1; and

3. Such further evidence as the lawyers may advise and this Honourable Court may permit.



November 22, 2019

**MILLER THOMSON LLP**  
Scotia Plaza - 40 King Street West, Suite 5800,  
P.O. Box 1011  
Toronto, ON Canada M5H 3S1

**Greg Azeff - LSO#: 45324C**  
gazeff@millerthomson.com  
Tel: 416.595.2660/Fax: 416.595.8695

**Asim Iqbal – LSO#: 61884B**  
aiqbal@millerthomson.com  
Tel: 416.597.6008/Fax: 416-595-8695

**Tamie Dolny – LSO # 77958U**  
tdolny@millerthomson.com  
Tel: 416.597.6076/416.595.8695

Lawyers for the Court-appointed Receiver,  
A. Farber & Partners Inc.

TO **BENNETT JONES LLP**  
One First Canadian Place  
Suite 3400, P.O. Box 130  
Toronto, Ontario M5X 1A4

**Gavin Finlayson**  
Tel.: (416) 777-5762  
Fax: (416) 863-1716  
Email: finlaysong@bennettjones.com

**Alexander Payne**  
Tel.: (416) 863-1200  
Fax: (416) 863-1716  
Email: paynea@bennettjones.com

*Lawyers for the Applicant*

AND TO: **SISKINDS LLP**  
680 Waterloo Street  
P.O. Box 2520,  
London, ON N6A 3V8

**Wade Sarasin**  
Tel: 519.660.7888  
Fax: 519.660.7889  
Email: Sarasin.team@siskinds.com

**James Judson**  
Tel: 519.660.7807  
Email: james.judson@siskinds.com

*Counsel to 2368523 Ontario Limited d/b/a Curative Cannabis*

AND TO: **A. FARBER & PARTNERS INC.**  
150 York Street, Suite 1600  
Toronto, ON M5H 3S5

**Allan Nackan**  
Tel: 416.496.3732  
Email: anackan@farbergroup.com

**Paul Denton**  
Tel: 416.496.3773  
Email: pdenton@farbergroup.com  
*Court –appointed Receiver*

AND TO: **GROPPER LAW PROFESSIONAL CORPORATION**  
2345 Yonge Street, Suite 302  
Toronto, ON M4P 2E5

**Yaakov Eizicovics**  
Tel: 416.962.3002  
Email: yaakov@gropperlaw.com

*Counsel to 689643 Ontario Inc. and Marcos Soberano*

AND TO: **ATTORNEY GENERAL OF CANADA**  
Department of Justice Canada  
Ontario Regional Office – Tax Law Section  
The Exchange Tower  
130 King Street West, Suite 3400, Box 36  
Toronto, ON M5X 1K6

**Diane Winters**  
Tel: 416.973.3172  
Fax: 416.973.0809  
Email: diane.winters@justice.gc.ca

*Lawyers for the Minister of National Revenue*

AUXLY CANNABIS GROUP INC.

-and-

2368523 ONTARIO LIMITED D/B/A CURATIVE CANNABIS

Applicant

Respondent

Court File No. CV-19-627308-00CL

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**(COMMERCIAL LIST)**  
Proceeding commenced at Toronto

**NOTICE OF MOTION**

**MILLER THOMSON LLP**

Scotia Plaza  
40 King Street West, Suite 5800  
P.O. Box 1011  
Toronto, ON Canada M5H 3S1

**Greg Azeff LSO#: 45324C**

gazeff@millerthomson.com  
Tel: 416.595.2660/Fax: 416.595.8695

**Asim Iqbal – LSO#: 61884B**

aiqbal@millerthomson.com  
Tel: 416.597.6008/Fax: 416-595-8695

**Tamie Dolny – LSO # 77958U**

tdolny@millerthomson.com  
Tel: 416.597.6076/416.595.8695

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TAB 2

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AMENDED AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c.  
C.43, AS AMENDED**

**FIRST REPORT TO THE COURT OF A. FARBER & PARTNERS INC. IN ITS  
CAPACITY AS COURT-APPOINTED RECEIVER OF 2368523 ONTARIO LIMITED  
D/B/A CURATIVE CANNABIS**

**November 22, 2019**

**I. INTRODUCTION**

1. This report (the “**First Report**”) is filed by A. Farber & Partners Inc. (“**Farber**”), in its capacity as the court-appointed receiver (the “**Receiver**”) of all the assets, undertakings and properties of 2368523 Ontario Inc., D/B/A/ Curative Cannabis (the “**Debtor**” or “**Curative**”) pursuant to subsection 243(1) of the *Bankruptcy and Insolvency Act* (Canada) (the “**BIA**”), section 67(1)(e) of the *Personal Property Security Act*, R.S.O 1990, c.P-10,

as amended and section 101 of the *Courts of Justice Act* (Ontario), R.S.O. 1990, c. C43, as amended.

2. Farber was appointed as the Receiver pursuant to an Order of the Honourable Justice Hainey of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) made September 19, 2019 (the “**Receivership Order**”). A copy of the Receivership Order and an endorsement of His Honour dated September 19, 2019 are attached together to this First Report as **Appendix “A”**.
3. The application for the Receivership Order was made by Auxly Cannabis Group Inc. (“**Auxly**”), which is: (i) a secured creditor of the Debtor as a result of financing arrangements entered regarding the construction of the Chatham Facility (as defined below); (ii) a shareholder of Curative Cannabis that owns or controls through related parties a 24% stake (30 out of 125 shares); and (iii) a party to a Cannabis Supply Agreement (as defined below) with Curative pursuant to which Curative has agreed to supply Auxly (or its affiliate) with cannabis products after it obtains a cannabis cultivation license from Health Canada.
4. Additional background in respect of Curative and Auxly is set out in the Auxly’s motion record, specifically the Affidavit of Mr. Ronald Fichter sworn September 12, 2019 (the “**Auxly Affidavit**”). Based on the Auxly Affidavit and other Information (as defined below) obtained by the Receiver, the Receiver understands that:
  - (a) The Debtor is an early stage cultivation company that is in the pre-licensing and construction phase of its operations. The Debtor does not have active operations

and is in the process of building a facility in Chatham, Ontario for the purpose of cultivating cannabis (the “**Chatham Facility**”).

- (b) The applicant Auxly is an integrated cannabis company which focuses on production, product development, branding, cultivation and financing in the legal cannabis market. Auxly operates from a head office located in Toronto.
- (c) Auxly and the Debtor entered into financing arrangements in connection with the construction of the Chatham Facility, pursuant to an Amended and Restated Secured Promissory Note dated April 23, 2019 in the principal amount of \$18.0 million (the “**Amended and Restated Promissory Note**”). As at October 2, 2019, Curative owed Auxly over \$17 million under the Amended and Restated Promissory Note (the “**Curative Indebtedness**”).
- (d) The Curative Indebtedness matured on August 5, 2019. By letters dated August 15, 2019, the Applicant demanded repayment from each of the Debtor, Mr. Shpilt (“**Shpilt**”) and Mr. Fitzgerald (“**Fitzgerald**”), the Chief Executive Officer (“**CEO**”) and Chief Operating Officer (“**COO**”) respectively of the Debtor and together therewith delivered Notices of Intention to Enforce Security (collectively, the “**BIA Notices**”) pursuant to Section 244 of the BIA.
- (e) As is further described below, the Curative Indebtedness is secured by, among other things, limited recourse guarantees from both Shpilt and Fitzgerald supported by a share pledge pursuant to which they each pledged their common shares in Curative (the “**Shares**”) in favour of Auxly.



- (f) On August 29, 2019, Auxly issued Notices for Foreclosure in respect of the Shares to Shpilt, Fitzgerald and certain other parties (collectively, the “**Notices of Foreclosure**”). Subsequently, various objections to the Notices of Foreclosure have been received. A Court attendance was scheduled for October 11, 2019 in respect of such objections.
5. As a result, the Receiver, among other matters, has engaged its corporate finance affiliate, Farber Corporate Finance Inc. (“**Farber CFI**”), who are Certified Business Valuators, to prepare an independent report regarding the fair market value of the Shares.
6. On or about October 10, 2019, Auxly, the Debtor, Mr. Shpilt and Mr. Fitzgerald entered into a forbearance agreement (the “**Forbearance Agreement**”) under which, among other things:
- (a) Auxly agreed on certain conditions to forbear from exercising its rights and remedies under the Amended and Restated Promissory Note, the PPSA, and other applicable law from October 10, 2019 until the earlier of:
- (i) the occurrence of an Intervening Event (as defined in the Forbearance Agreement); or
- (ii) November 15, 2019 (the “**Forbearance Period**”);
- (b) the principal amount of the Amended and Restated Promissory Note was increased to \$21 million to allow for completion of the approved construction contract for the Chatham Facility; and

(c) the Debtor, Mr. Shpilt and Mr. Fitzgerald irrevocably and unconditionally consented to withdrawing their objections to the Notices of Foreclosure and irrevocably and unconditionally consented to such objections being ruled ineffective following the expiry of the Forbearance Period (the “**Consent**”).

7. The Forbearance Agreement was intended to provide more time for the Debtor to negotiate term sheets presented with the goal of refinancing the Debtor and paying out the Curative Indebtedness. Given the entering into of the Forbearance Agreement, Auxly's lawyers appeared before Justice Dietrich on October 11, 2019 to request an adjournment of the hearing of this motion. The hearing of this motion was adjourned on consent and/or unopposed on two occasions to November 18, 2019 and November 27, 2019. A copy the endorsements of Justice Dietrich dated October 11, 2019 and November 18, 2019 are attached as **Appendix “B”**. Additional background in respect of Forbearance Period and efforts to finalize a term sheet and refinancing of the Debtor is set out in Auxly’s Supplementary Motion Record dated November 21, 2019, specifically the Affidavit of Mr. Ronald Fichter sworn November 21, 2019 (the “**Second Auxly Affidavit**”).

## **II. PURPOSE**

8. The purpose of this First Report of the Receiver is to provide information to this Honourable Court with respect to the following:

(a) The activities of the Receiver since its appointment;

(b) The general background of the Debtor’s proposed operations and specifically an update on: (i) the construction status of the Chatham Facility including the costs

and funding to complete same; (ii) the current balance owing under the Amended and Restated Promissory Note; and (iii) the status of Curative's cultivation license application to Health Canada;

- (c) The validity and enforceability of the Auxly Amended and Restated Promissory Note and underlying security based on review by independent legal counsel;
- (d) The current estimate of the fair market value (the "**Valuation**") of the Shares that are the subject of the Notices of Foreclosure;
- (e) The status of recent efforts by the Debtor to refinance its affairs to repay the obligations owed to Auxly;
- (f) The affairs of the Debtor during the Forbearance Period and its efforts to finalize a term sheet and refinancing; and
- (g) The Receiver's recommendation that an Order be issued sealing the Confidential Appendices 1 comprising the report on the Valuation of the Shares of Curative.

### **III. DISCLAIMER**

9. In preparing this First Report, the Receiver has relied upon the unaudited, draft and/or internal financial and other information provided by Curative, Auxly, their respective advisors, and other third-party sources (the "**Information**"). The Receiver has not independently reviewed or verified such Information. The Receiver has prepared this First Report for the sole use of the Court and of the other stakeholders in these proceedings. The Receiver assumes no responsibility or liability for loss or damage occasioned by any party as a result of the circulation, publication, re-production or use of this First Report. Any use

which any party, other than the Court, makes of this First Report or any reliance on or a decision made based upon it is the responsibility of such party.

#### IV. BACKGROUND

10. According to the records maintained by the Ontario Ministry of Government Services (the “**Corporation Profile Report**”), the Debtor was incorporated pursuant to the laws of the Province of Ontario on April 4, 2013. The Debtor’s registered head office is listed as 3513 Homewood Lane, London, Ontario N6P 1K3. Messrs. Shpilt and Fitzgerald combined hold a 76% stake in the Debtor (holding 47.5 common shares each) while Auxly holds or controls through related parties 30 common shares for a 24% stake.
11. The Chatham Facility is approaching substantial completion (see section VII below). Until such time as the construction of the Chatham Facility is completed and the cultivation license is granted by Health Canada, Curative has no operations. Curative does have eight employees, inclusive of Messrs. Shpilt and Fitzgerald, who currently work from their home offices while the Chatham Facility is being completed.
12. In addition to the loan and security arrangements between the Debtor and Auxly profiled throughout this First Report, Auxly, the Debtor and Kolab Project Inc. (“**Kolab**”), an affiliate of Auxly, are also parties to a Cannabis Supply Agreement dated May 15, 2019 (the “**Cannabis Supply Agreement**”) pursuant to which the Debtor agreed to supply Kolab (or another affiliate of Auxly) with cannabis products produced at the Chatham Facility. The Cannabis Supply Agreement is a key piece of the overall relationship between Auxly and the Debtor.

## V. THE RECEIVER'S ROLE AND ACTIVITIES

13. The Receiver is exercising a limited set of powers in this appointment, given the unique set of circumstances, and has taken neither possession nor control of the Debtor's Property. The Receiver is instead exercising its oversight and monitoring powers, with its initial mandate to, among other matters, report back to the Court in connection with a hearing for the objections received in respect of the Notices of Foreclosure.
14. Since its appointment, the Receiver has taken the following actions, *inter alia*, in connection with its obligations under the Receivership Order:
  - (a) Liaised with Fitzgerald and Tristin Hill, the Debtor's CFO, to confirm the Receiver's mandate, confirm the current state of affairs and gather further information;
  - (b) Liaised with Auxly and its legal counsel Bennett Jones LLP to gather further information including to confirm the debt obligations.
  - (c) Engaged in discussions with the Auxly Infrastructure Group to review and confirm the current status of construction of the Chatham Facility, including costs incurred to date, costs to complete and the required level of funding for same effective September 30, 2019;
  - (d) Attended the Chatham Facility on September 25, 2019 to review and inspect the facility and stage of construction with Fitzgerald and Mr. Ron Nooyem, the Site Supervisor of the general contractor Cornerstone Builders Ltd.;

- (e) Engaged and briefed Farber Corporate Finance Inc. (“**Farber CFI**”) regarding the mandate to prepare a report setting out a current estimate of the fair market value (the “**Valuation**”) of the Shares that are the subject of the Notices of Foreclosure;
- (f) Engaged independent legal counsel, Miller Thomson LLP, to assist the Receiver including to provide a legal opinion as to the validity and enforceability of the Auxly security and to provide ongoing advice generally as matters arise;
- (g) Engaged in discussions with Mr. Fitzgerald and Hill of the Debtor and senior management at Auxly involved in regulatory affairs to ascertain the status of the Debtor’s application with Health Canada to obtain a cultivation license; and
- (h) More recently during the Forbearance Period, liaised with the Debtor regarding: (i) its efforts to secure a term sheet and close a refinancing of its affairs and payout of Auxly; (ii) construction status; (iii) status of application for the Cultivation License; (iv) enquiries regarding the status of HST refunds and accounting for such funds.

## **VI. AUXLY DEBT AND SECURITY**

- 15. Auxly and the Debtor entered into financing arrangements in connection with the construction of the Chatham Facility pursuant to the Amended and Restated Promissory Note.
- 16. Under the Amended and Restated Promissory Note, and as security for its obligations to Auxly, the Debtor:

- (a) granted Auxly security over all of its personal property pursuant to, among other things, a general security agreement dated April 23, 2019 (the “**GSA**”); and
  - (b) granted mortgage security over the real property on which the Chatham Facility is being constructed (the “**Lands**”), which was registered against the Lands.
- 17. In addition to the security provided by the Debtor, the principals of the Debtor, Shpilt and Fitzgerald, provided Auxly with security in the form of:
  - (a) a limited recourse guarantee dated April 23, 2019 (the “**Guarantee**”); and
  - (b) a share pledge agreement dated April 23, 2019 (the “**Share Pledge**”).
- 18. Under the Guarantee and the Share Pledge, Shpilt and Fitzgerald pledged all of their shareholdings in the Debtor, being an aggregate of 95 common shares representing 76% of the total common shares, (the “**Shares**”) to Auxly as security for all amounts owing by the Debtor to Auxly. According to the Auxly Affidavit, Auxly is in possession of the physical certificates for the Shares.
- 19. The Receiver is in receipt of an independent legal opinion dated October 7, 2019 from its counsel, Miller Thomson LLP, with respect to the security granted by Auxly to Curative. Subject to the usual assumptions and qualifications of an opinion of such nature, the opinion concludes that the Curative Indebtedness to Auxly is secured by valid and enforceable security over the Shares.
- 20. The Debtor is in default of its obligations to Auxly. Notwithstanding the Debtor's default, Auxly has determined that is must continue to support construction of the Chatham

Facility, among other things, to preserve the value of its collateral. As such, Auxly has continued to make advances following the maturity date as part of the \$18 million secured by the Amended and Restated Promissory Note increased to \$21 million pursuant to the Forbearance Agreement.

21. Effective September 30, 2019 the Debtor was indebted to Auxly for \$17.550 million. As a result of the Forbearance Period and terms under the Forbearance Agreement, effective November 21, 2019, the Debtor is indebted to Auxly for \$ \$21,250,771.58, as summarized in the table below.

<b>Amended and Restated Promissory Note - November 21, 2019</b>	
Principal November 21, 2019	20,363,381.13
interest to November 21, 2019	543,866.36
Fees and Costs	343,524.09
<b>Total</b>	<b>21,250,771.58</b>

## **VII. CHATHAM FACILITY – CONSTRUCTION STATUS**

22. The Debtor currently owns a 33-acre site located on 10078 Longwoods Road, Chatham, Ontario on which the 31,000 square foot purpose-built Chatham Facility has been under construction and is close to completion. The Debtor indicates that this facility represents an initial phase focusing on indoor cultivation, with further phases contemplated, focusing on outdoor cultivation and ultimately construction of a larger purpose-built facility. According to the Debtor, when completed the Chatham Facility will meet a range of advanced certifications including being EU GMP ready.



23. The Amended and Restated Promissory Note in the principal amount of \$18 million increased to \$21 million pursuant to the Forbearance Agreement. was intended to be the primary source of funding to complete the project. The Receiver understands the Debtor and Auxly intended that the Debtor would secure refinancing to repay the Amended and Restated Promissory Note on or prior to August 5, 2019.
24. As set out above in paragraph 20 above, notwithstanding the Debtor's default, Auxly has determined that it must continue to support the construction of the Chatham Facility.
25. The Receiver has been in discussions with Auxly and the Debtor regarding the current status of the Chatham Facility. The Receiver understands that the Chatham Facility is substantially complete.
26. Based on consultation with the Auxly Infrastructure Group, which is overseeing construction of the Chatham Facility, set out below is a financial summary effective September 30, 2019 showing the total projected construction costs and estimated costs to complete the Chatham Facility.

<b>Chatham Facility</b>	
<b>Construction Status effective September 30, 2019</b>	
Total Projected Costs Exclusive of HST	17,895,698
Total Projected Costs Inclusive of HST	20,118,879
<b>Costs to Complete (to be funded)</b>	
Construction (Cornerstone Builders Ltd)	1,192,992
Construction holdback payable (Cornerstone Builders Ltd.)	1,288,446
Operational/ Equipment	178,183
sub total exclusive of HST	2,659,620
Plus HST	345,751
<b>Total Costs to Complete</b>	<b>3,005,371</b>

27. In summary, effective September 30, 2019 to complete the project and funding of the Chatham Facility, including payment of the holdback, it was estimated that a further \$3.0 million will be required to fund the completion. The maximum principal amount of the Amended and Restated Promissory Note is \$18 million. As a result under the Forbearance Agreement the principal amount of the Amended and Restated Promissory Note was increased to \$21 million. During the Forbearance Period further funds were advanced by Auxly to get the Chatham Facility to substantial completion.
28. Effective early October 2019 based on the Receiver's monitoring and oversight of the business, there was potential for HST refunds, which have accrued and built up through the construction period, through the year (approximately \$1.4 million at July 31, 2019) to be paid to the Debtor during the next number of months. Through ongoing liaison with the Debtor and Auxly through the Forbearance Period the Receiver understands HST refunds of around \$1 million were received by the Company. The Debtor advised the Receiver that approximately \$511,000 of these funds were used by the Debtor to pay for lights which are required for the production facility, without obtaining prior approval of Auxly. As a result of such findings the Receiver updated Auxly's legal counsel, who in turn (via the Debtor's legal counsel) requested a full accounting of the use of the HST refund proceeds. The Receiver understands that the requested accounting has not yet been provided to Auxly.

#### **VIII. LICENSE APPLICATION PROCESS**

29. On or around September 12, 2019 the Debtor submitted a cultivation license ("Cultivation License") application to Health Canada under license application number 10-MM0317 / #APP-3RCUB20T2P-2019. The Receiver is advised that license applications for processing

and sales for medical purposes licenses were also submitted with that application (collectively the “**License Applications**”). The Debtor advised that Health Canada confirmed receipt of the License Applications on September 16, 2019. All application steps have been completed but Health Canada has not yet issued a decision on the License Applications.

## **IX. RETENTION OF FARBER CFI**

29. As reported above, the Receiver engaged its corporate finance affiliate, Farber CFI, to provide an estimate of value of the Shares of Curative that are the subject of the Notices of Foreclosure. This estimate of value has been prepared to assist the parties and the Court in these proceedings. The Valuation mandate is being undertaken at the direction of Mr. Glenn Bowman FCA, CBV, CF, who is a Senior Managing Director and leader of the Corporate Finance & Valuations Practice at Farber. Over the course of his career, Mr Bowman has been involved with approximately 2,000 valuation-related engagements and has recently, or is currently engaged in four valuation and M&A engagements for both public and private companies operating within the cannabis industry.
30. Pursuant to a letter agreement (the “**Agreement**”) between and among the Receiver, Farber CFI and Auxly (as guarantor of Farber CFI’s fees and disbursements), Farber CFI was engaged to prepare and deliver to the Receiver a written report (the “**Valuation Report**”) setting out the Valuation of the Shares that are the subject of the Notices of Foreclosure. A copy of the Agreement is attached as **Appendix “C”**. A copy of the Valuation Report is attached as Confidential Appendix 1.

31. Since the Valuation Report contains commercial sensitive information, the Receiver recommends that the Valuation Report remain sealed pending completion of these proceedings.

#### **X. DEBTOR'S EFFORTS TO REFINANCE**

32. Throughout the summer of 2019 the Debtor undertook significant negotiations with a party from the United States to secure a refinancing to enable payout the Amended Promissory Note on or prior the maturity dated of August 5, 2019. However, that process did not culminate in a term sheet and successful refinancing.
33. Since that time, the Debtor reported that it had been in negotiation with multiple parties and assisting such parties with varying levels of due diligence. Such negotiations resulted in terms sheets being presented which were negotiated during the Forbearance Period.
34. During the Forbearance Period, the Debtor, Mr. Shpilt and Mr. Fitzgerald made efforts to obtain additional financing to repay the amounts outstanding to Auxly.
35. The Debtor eventually advised Auxly that it had secured additional funding and proposed a transaction under which the Debtor would, among other things, repay Auxly for the principal advanced under the Amended and Restated Promissory note plus interest and all professional costs (the Proposed Transaction). The Proposed Transaction was on terms satisfactory to Auxly.
36. Under the Proposed Transaction, the Debtor was required to provide or cause to be provided the relevant funds to Bennett Jones, in escrow, by the close of business on November 15, 2019 (the **Closing Date**).

37. Contrary to the terms of the Proposed Transaction, the funds were not provided to Bennett Jones by the Closing Date.
38. On November 18, 2019, Auxly's lawyers again appeared before Justice Dietrich to further adjourn the hearing of this motion to allow for the service of additional materials, including valuation evidence from the Corporate Finance Department of the Receiver. A copy of the endorsement of Justice Dietrich dated November 18, 2019 is attached as Appendix "B".
39. As of the date of this First Report, the Debtor has defaulted on the terms of the Forbearance Agreement. The Debtor has already consented to the foreclosure by Auxly in the event that it failed to comply with the terms of the Forbearance Agreement. The Receiver understands that Auxly now wished to proceed with the foreclosure, subject to the Court's approval, including considering the interests of the remaining objectors.

## **VII.RECOMMENDATIONS**

40. For the foregoing reasons, the Receiver respectfully recommends that this Honourable Court issue an Order:
  - (a) Approving this First Report and the activities and conduct of the Receiver and its legal counsel, Miller Thomson LLP, as disclosed herein; and
  - (b) Sealing the Confidential Appendix 1 pending further Order of the Court.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED  
THIS 22nd DAY OF NOVEMBER, 2019.**

**A. Farber & Partners Inc. in its capacity  
as Court-appointed Receiver of 2368523 Ontario Limited d/b/a Curative Cannabis  
and not in its personal or corporate capacity**

**Per:**   
\_\_\_\_\_  
Name: Paul Denton, CA (NZ), CIRP, LIT  
Title: Managing Director

# APPENDIX A

ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST

THE HONOURABLE MR. ) THURSDAY, THE 19th DAY  
JUSTICE HAINEY ) OF SEPTEMBER, 2019



AUXLY CANNABIS GROUP INC.

Applicant

- and -

2368523 ONTARIO LIMITED D/B/A CURATIVE CANNABIS

Respondent

**ORDER**  
**(appointing Receiver)**

THIS APPLICATION made by Auxly Cannabis Group Inc. (the "**Applicant**") for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "**BIA**"), section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "**CJA**") and section 67(1)(e) of the *Personal Property Security Act*, R.S.O. 1990, c.P.10, as amended (the "**PPSA**"), appointing A. Farber & Partners Inc. ("**Farber**") as receiver and manager (in such capacities, the "**Receiver**") without security, of all of the assets, undertakings and properties of 2368523 Ontario Limited d/b/a Curative Cannabis (the "**Debtor**") acquired for, or used in relation to a business carried on by the Debtor, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Application, the Affidavit of Ron Fichter sworn September 12, 2019 and the Exhibits thereto and on hearing the submissions of counsel for the Applicant,



the Receiver, counsel for the Debtor and no one else appearing although duly served as appears from the affidavit of service of Aiden Nelms sworn September 13, 2019, and on reading the consent of Farber to act as the Receiver,

### **SERVICE**

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

### **APPOINTMENT**

2. THIS COURT ORDERS that pursuant to section 243(1) of the BIA, section 401 of the CJA and section 67(1)(e) of the PPSA, Farber is hereby appointed Receiver, without security, of all of the assets, undertakings and properties of the Debtor acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (the "**Property**").

### **RECEIVER'S POWERS**

3. THIS COURT ORDERS that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

- (a) to take possession of and exercise control over all proceeds, receipts and disbursements arising out of or from the Property;
- (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;

- (c) to oversee and monitor the business of the Debtor, including the powers to enter into any agreements, incur any obligations in the ordinary course of business and cease to perform any contracts of the Debtor;
- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
- (e) to receive, monitor and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor, including, without limitation, to apply for any tax refunds owing;
- (f) to settle, extend or compromise any indebtedness owing to the Debtor;
- (g) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order;
- (h) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtor, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;
- (i) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;

- (k) upon further order or direction of the Court, to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business:
  - (i) without the approval of this Court in respect of any transaction not exceeding \$500,000, provided that the aggregate consideration for all such transactions does not exceed \$1,000,000; and
  - (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act* (the "PPSA"), or section 31 of the Ontario *Mortgages Act*, as the case may be, shall not be required;
- (j) to apply for any vesting order or other orders necessary to convey, transfer or assign the Property or any part or parts thereof to a purchaser or purchasers, free and clear of any liens or encumbrances affecting such Property;
- (k) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (l) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (m) to maintain the Property by arranging for repairs and maintenance and continued construction if and as necessary;
- (n) to secure the Property to protect it from vandalism or damage;

- (o) to submit financial and progress reports to all parties and the Court as appropriate;
- (p) to facilitate and assist with any application for permits, licences, approvals or permissions as may be required by any governmental authority, including but not limited to any such permits, licenses, approvals, permissions, and any renewals thereof required under the:
  - (i) *Cannabis Act*, S.C. 2018, c. C.16;
  - (ii) *Cannabis Control Act*, 2017, S.O. 2017, c. 26;
  - (iii) *Ontario Cannabis Retail Corporation Act*, 2017, S.O. 2017, c. 26;  
or
  - (iv) *Cannabis License Act*, 2018, S.O., 2018, c. 12,  
and any regulations in connection therewith, for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtor, and to meet with and discuss with such governmental authority and execute any agreements required in connection with or as a result of such including to act as the agent as mandatary of the Debtor as may be necessary or applicable, and upon further order or direction of the Court, to facilitate the transfer of, and/or conveyance or assignment of any aforementioned application for permits, licences, approvals or permissions as may be required by any governmental authority, including but not limited to any such permits, licenses, approvals, permissions, and any renewals thereof required;
- (q) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limiting the generality of the foregoing;
- (r) to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have; and

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

10. THIS COURT ORDERS that, notwithstanding anything contained in paragraphs 8 and 9 herein, the PPSA foreclosure process commenced by the Applicant in respect of certain shares of the Debtors (the "**Shares**") pursuant to Notices of Foreclosure dated August 29, 2019, shall not be stayed or suspended by operation of this Order and, subject to further Order of the Court, leave of the Court or consent of the Receiver shall not be required by the Applicant in order to foreclose on the Shares. For greater certainty, this paragraph affects neither the rights exercised by David Shpilt and Scott FitzGerald as shareholders of the Debtor under section 65(3) of the PPSA with respect to such Notice of Foreclosure nor the ensuing processes under the PPSA.

#### **NO INTERFERENCE WITH THE RECEIVER**

11. THIS COURT ORDERS that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Debtor, without written consent of the Receiver or leave of this Court.

#### **CONTINUATION OF SERVICES**

12. THIS COURT ORDERS that all Persons having oral or written agreements with the Debtor 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 Debtor 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 Receiver, and that the Receiver shall be entitled to the continued use of the Debtor's current 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 Receiver in accordance with normal payment practices of the Debtor or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

### **RECEIVER TO HOLD FUNDS**

13. THIS COURT ORDERS that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "**Post Receivership Accounts**") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

### **EMPLOYEES**

14. THIS COURT ORDERS that all employees of the Debtor shall remain the employees of the Debtor until such time as the Receiver, on the Debtor's behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

### **LIMITATION ON ENVIRONMENTAL LIABILITIES**

15. THIS COURT ORDERS that nothing herein contained shall require the Receiver 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

### **SERVICE AND NOTICE**

24. 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 (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>) 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 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 in accordance with the Protocol with the following URL <<https://farbergroup.com/engagements/curative-cannabis>>.

25. THIS COURT ORDERS that if the service or distribution of documents in accordance with the Protocol is not practicable, the Receiver is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Debtor's creditors or other interested parties at their respective addresses as last shown on the records of the Debtor and that any such service or distribution 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 if sent by ordinary mail, on the third business day after mailing.

### **RETENTION OF LAWYERS**

26. THIS COURT ORDERS that the Receiver may retain solicitors to represent and advise the Receiver in connection with the exercise of the Receiver's powers and duties, including without limitation, those conferred by this Order. Such solicitors may include Bennett Jones LLP, solicitors for the Applicant herein, in respect of any matter where there is no conflict of interest. The Receiver shall, however, retain independent solicitors in respect of any legal advice or services where a conflict exists, or may arise.

**GENERAL**

27. THIS COURT ORDERS that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

28. THIS COURT ORDERS that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtor.

29. 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 to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

30. THIS COURT ORDERS that the Receiver 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 Receiver 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.

31. THIS COURT ORDERS that the Applicant shall have its costs of this motion, up to and including entry and service of this Order, provided for by the terms of the Plaintiff's security or, if not so provided by the Plaintiff's security, then on a full indemnity basis to be paid by the Receiver from the Debtor's estate with such priority and at such time as this Court may determine.



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

*Hainey J*

SUPERIOR COURT OF JUSTICE  
ENTERED  
SEP 19 2019  
COUR SUPÉRIEURE DE JUSTICE  
ENTRÉ

JP

**SCHEDULE "A"**  
**RECEIVER CERTIFICATE**

CERTIFICATE NO. \_\_\_\_\_

AMOUNT \$ \_\_\_\_\_

1. THIS IS TO CERTIFY that A. Farber & Partners, the receiver (the "**Receiver**") of the assets, undertakings and properties of 2368523 Ontario Limited d/b/a Curative Cannabis (the "**Debtor**") acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (collectively, the "**Property**") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated the \_\_\_ day of September, 2019 (the "**Order**") made in an action having Court file number \_\_\_-CL-\_\_\_\_\_, has received as such Receiver from the holder of this certificate (the "Lender") the principal sum of \$\_\_\_\_\_, being part of the total principal sum of \$\_\_\_\_\_ which the Receiver is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the \_\_\_\_\_ day of each month] after the date hereof at a notional rate per annum equal to the rate of \_\_\_\_\_ per cent above the prime commercial lending rate of Bank of \_\_\_\_\_ from time to time.

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver

to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

A. Farber & Partners Inc., solely in its capacity  
as Receiver of the Property, and not in its  
personal capacity

Per: \_\_\_\_\_

Name:

Title:

**AUXLY CANNABIS GROUP INC.**  
Applicant

-and-

**2368523 ONTARIO INC. D/B/A CURATIVE CANNABIS**  
Respondent

Court File No.: CV-19-627308-00CL

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

PROCEEDING COMMENCED AT  
TORONTO

**(ORDER APPOINTING RECEIVER)**

**BENNETT JONES LLP**  
One First Canadian Place  
Suite 3400, P.O. Box 130  
Toronto, Ontario  
M5X 1A4

**Gavin Finlayson** (LSO #44126D)  
Tel.: (416) 777-5762  
Fax: (416) 863-1716

**Mike Shakra** (LSO #64604K)  
Tel.: (416) 777-6236  
Fax: (416) 863-1716

Lawyers for the Applicant, Auxly Cannabis Group Inc.



COUNSEL - SLIP

COURT FILE NO. CV-19-627308-00CC

DATE: Sept 19/2019

No. ON LIST 14  
Add-on

NAME OF PROCEEDING Auxly Cannabis Group Inc. vs 2368523 Ontario Limited d/b/a Curative Cannabis

COUNSEL FOR: Auxly  
Michael Shaker  
Bennett Jores

Phone & Fax No  
416-777-6236  
Shakom@BennettJores.com

COUNSEL FOR:  
Respondent (s)  
Applicant (s)

Phone & Fax No

September 19, 2019

This application is not opposed. I am so satisfied that it should be granted on the terms of the attached order appointing a receiver.

Hairy J.

## APPENDIX B

COUNSEL SLIP

Court File No CV-19-0062

Date: 11-OCT-2019

No. On List 6

Title of Proceeding

AUXLY GAMMOBIS GROUP INC-13- 2368523 ONTARIO LTD

Counsel for:

Plaintiff(s)   
Applicant(s)  ALEXANDER C. PAYNE  
Petitioner(s)  BENNETT JONES LLP

Phone No. 416.737.5512

Fax No. 416.863.1716

~~EMAIL:~~ PAYNEA@BENNETTJONES.COM

Counsel for:

Defendant(s)   
Respondent(s)

Phone No. \_\_\_\_\_

Fax No. \_\_\_\_\_

EMAIL:

October 11, 2019

The adjournment is consented to or unopposed.  
The hearing will take place on November 18, 2019  
for one hour.

Sintick J.

# COUNSEL SLIP

COURT FILE

NO.: CV-19-00627308-00CL

DATE: NOV 18 2019

NO. ON LIST (4)

TITLE OF  
PROCEEDING

AUXLY CANNABIS GROUP INC v. 2368523 Ontario Limited  
D/B/A CURATIVE CANNABIS

COUNSEL FOR:

PLAINTIFF(S) AUXLY CANNABIS GROUP INC.  
 APPLICANT(S) ALEXANDER C PAYNE  
 PETITIONER(S)

PHONE 416.863.1200  
FAX 416.863.1716  
EMAIL PAYNEA@BENNETTJONES.COM

COUNSEL FOR:

DEFENDANT(S)  
 RESPONDENT(S)

PHONE \_\_\_\_\_  
FAX \_\_\_\_\_  
EMAIL \_\_\_\_\_

JUDICIAL NOTES:

November 18, 2019

The debtor claims to have obtained financing but the funds that were expected to flow on Friday have not. The matter is therefore adjourned to November 27, 2019. additional materials regarding valuation and the receiver's report will be filed in advance of that hearing set for 1 hour. The report will be filed under seal given commercial sensitivities.

Dimitri J.



## APPENDIX C

**PRIVATE & CONFIDENTIAL**

October 3, 2019

**A. Farber & Partners Inc. in its capacity as Receiver of  
2368523 Ontario Limited d/b/a Curative Cannabis**  
150 York Street, Suite 1600  
Toronto, ON, M5H 3S5

Attention: Allan Nackan

**Re: Estimated Valuation of the Shares of 2368523 Ontario Limited d/b/a Curative Cannabis Inc.**

Dear Sirs:

On September 19, 2019, A. Farber & Partners Inc. ("**Farber**") was appointed as Receiver (in such capacity, the "**Receiver**") of 2368523 Ontario Limited d/b/a Curative Cannabis ("**Curative**" or the "**Company**") pursuant to an Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**"), upon an application made by Auxly Cannabis Group Inc. ("**Auxly**"). Auxly had entered into various financing arrangements with Curative in connection with the construction of a facility in Chatham, Ontario. In addition, the Company's principals, David Shpilt ("**Shpilt**") and Scott Fitzgerald ("**Fitzgerald**"), have pledged all of their shareholdings in Curative (the "**Shares**") to Auxly as security for amounts owing to Auxly.

On August 29, 2019, Auxly issued Notices for Foreclosure in respect of the Shares to Shpilt, Fitzgerald and certain other parties entitled to notice pursuant to the PPSA (collectively, the "**Notices of Foreclosure**"). Subsequently, various objections to the Notices of Foreclosure have been received, including objections as to the value of the Shares relative to the indebtedness in the Notice of Foreclosure. A Court attendance has been scheduled for October 11, 2019 to deal with such objections and the Receiver has engaged its corporate finance affiliate, Farber Corporate Finance Inc. ("**Farber CFI**"), who are Certified Business Valuators, to provide an estimate of value of the Shares of Curative that are the subject of the Notices of Foreclosure (the "**Mandate**"). This estimate of value is being prepared to assist the parties and the Court in these proceedings.

This letter agreement (the "**Agreement**") between and among the Receiver, Farber CFI and Auxly, as guarantor of the fees and disbursements of Farber CFI, sets out the terms and conditions upon which Farber CFI shall perform the Mandate.

1. **Background and Purpose.** Farber CFI will prepare and deliver to the Receiver a written report (the "**Report**") setting out a current estimate of the fair market value (the "**Valuation**") of the Shares of Curative that are the subject of the Notices of Foreclosure (i.e. 95 Shares representing 76% of total Shares). Farber CFI acknowledges that the Report will be made public and will be used by the parties and the Court including in connection with the Court attendance on October 11, 2019.
2. **Contents of Report.** In addition to the Valuation itself, the Report will disclose, among other things, the processes and methodologies applied in determining the Valuation. The Valuation and other conclusions

# FARBER

expressed in the Report will be based on methods and techniques that Farber CFI considers appropriate in the circumstances.

3. **Information.** Auxly shall provide, and it is a condition precedent to the performance of this Agreement and Farber CFI's obligation to deliver the Report that Farber CFI shall receive, all information as Farber CFI may reasonably require to perform the Mandate and otherwise complete the terms of this Agreement. In furtherance of the foregoing, Auxly shall:
- (i) disclose to Farber CFI the existence and content of all material information and documentation in the Auxly's possession that could be relevant to the Report, and to make all or any part of such information and documentation available to Farber CFI on request;
  - (ii) deliver to Farber CFI representation letters in the form attached hereto as Schedule A and dated as at the date of the Report with respect to the information provided to Farber CFI in connection with the Report; and
  - (iii) provide or arrange for reasonable access to the officers, employees, independent auditors and other consultants of Curative, as requested.

It is acknowledged that from time to time, that the Receiver may request and obtain information from the Company as opposed to Auxly which may or may not be used by Farber CFI in the Mandate.

Farber CFI shall be under no obligation to investigate the accuracy of such information. Farber CFI shall be under no obligation to investigate changes which may occur in such information subsequent to the date thereof or subsequent to the date of the Report.

To the extent allowable by law, Auxly agrees to promptly notify Farber CFI in writing of any change in circumstances or new developments affecting the Company which may reasonably be considered relevant to this engagement or of any material change, actual or contemplated, of which it becomes aware relating to the business, affairs, financial condition or prospects of the Company which: (i) would render untrue or misleading any statement of material fact made to Farber CFI or material information furnished to Farber CFI in connection with Farber CFI providing the Report; or (ii) if not disclosed, would constitute an omission to state a fact that is necessary to make any such statement or information not misleading in light of the circumstances in which it was made or furnished.

Auxly will advise Farber CFI promptly after receiving any request by any applicable regulatory authority for any material information, meeting or hearing related to the Report, and upon the issuance of any restraining order or the initiation of any meeting, hearing, proceeding, litigation or investigation by any regulatory authority with respect to the Report.

The conclusions rendered in the Report shall only represent the views of Farber CFI based upon the information furnished by Auxly, the Company via the Receiver and other sources, and said conclusions shall be considered as merely advisory in nature.

Any summary of the Report, any reference to the Report or any oral presentation with respect thereto, any submission, circulation, publication or reproduction of the Report, in whole or in part, or any reference to Farber CFI will be subject, in each instance, to Farber CFI's prior review and written approval. Neither Farber CFI's oral conclusions nor the Report will be used for any purpose other than stated in Section 1 above.

# FARBER

Farber CFI will keep all information (the "Information") prepared or supplied to it in connection with the Mandate hereunder and all notes, analysis, compilations, studies or other documents containing the Information or derived therefrom strictly confidential, will not use the Information for any purpose other than performing the Mandate and will not, without the prior written consent of the disclosing party, disclose any of the same, except: (i) as may be directed by the Court; (ii) to Farber or Farber CFI personnel who reasonably require access thereto in connection with the Mandate; (iii) as may be necessary or appropriate to be disclosed in the Report in order to complete the Mandate; or (iv) as may be required by law provided that Farber CFI will provide the disclosing party with prompt written notice of such requirement so that the disclosing party may seek an appropriate remedy. Farber CFI shall be responsible for ensuring that its directors, officers, employees and outside advisors adhere to the same confidentiality requirements with respect to the Information. At the end of the engagement, Farber shall return or destroy all Information that has been provided to it hereunder except that Farber shall be entitled to retain one file copy of Information, solely in respect of possible future litigation in respect of this Agreement.

- 4. Fees.** Auxly shall provide funding to the Receiver to in turn pay Farber CFI's fee of \$25,000 plus Harmonized Sales Tax ("HST") and reasonable out-of-pocket expenses. An amount of \$10,000 shall be due and payable upon the execution of this Agreement and \$15,000 shall be due and payable upon delivery of the Report to the Receiver.

Fees include Farber CFI's initial field investigation, required analyses, normal Report preparation charges and audit support. All out-of-pocket expenses relating to this assignment will be billed to the Receiver. These expenses will include items such as travel, printing, couriers, long distance charges, etc. We do not anticipate incurring significant out-of-pocket expenses and any significant out-of-pocket expense will only be incurred with your prior written approval.

If Farber CFI is required to provide services beyond the scope of the Report, prior to incurring such fees, Farber CFI and the Receiver and Auxly will mutually agree to additional fees to be paid by the Receiver and Auxly for such services.

No portion of the fees set forth in this section is contingent upon the conclusions reached in the Report.

- 5. Indemnification; Choice of Law; and Release.** Each of the parties hereto hereby releases, remises and forever discharges Farber CFI and its directors, officers, agents and employees, their respective successors, assigns, heirs, executors, personal representatives and administrators of and from all claims, actions, causes of action, suits or proceedings of any kind relating to this Agreement or the Report except to the extent that any such claim, action, cause of action, suit or proceeding arises from the negligence or willful misconduct of Farber CFI. Each of the parties hereto agrees that it will not settle, compromise or discharge any suit, claim, litigation, threatened litigation or threatened claim arising out of, based upon, or in any way related to the Report and in respect of which it might reasonably be assumed that Farber CFI could otherwise be exposed to liability unless and until the party has obtained a written agreement, approved by Farber CFI (which approval shall not be unreasonably withheld or delayed) and executed by each party to such proposed settlement, compromise or discharge, releasing Farber from any and all liability.

Auxly agrees to indemnify and hold Farber CFI harmless against any losses, claims, actions, suits, proceedings, damages or liabilities, or expenses to which Farber CFI may become subject in connection with services performed pursuant to this Agreement. Furthermore, Auxly agrees to reimburse, as incurred, Farber CFI for any reasonable legal or other expenses incurred by Farber CFI in connection with investigating or defending any action, proceeding, investigation or claim in connection therewith. However, Auxly shall not be

# FARBER

obligated under the foregoing indemnity agreement in respect to any loss, claim, action, suit, proceeding, damage, liability or expense resulting from action in connection therewith to the extent that such loss, claim, action, suit, proceeding, damage, liability or expense resulted from the negligence or willful misconduct of Farber CFI. The reimbursement and indemnity obligations of Auxly under this paragraph shall be in addition to any liability the Company may otherwise have; shall extend upon the same terms and conditions to the directors, officers, employees, and agents of Farber CFI; and shall be binding upon and enure to the benefit of any successors, assigns, heirs and personal representatives of Farber CFI. The foregoing provisions shall survive any termination of this Agreement.

This Agreement shall be governed by the laws of the Province of Ontario, and the parties hereto submit to the exclusive jurisdiction of the courts of the Province of Ontario.

6. **Corporate Obligation.** The obligations of Farber CFI and Auxly hereunder are solely corporate obligations, and no officer, director, employee, agent, shareholder or controlling person shall be subject to any personal liability whatsoever to any person, nor will any such claim be asserted by or on behalf of any other party to this Agreement or any person relying on the Report.
7. **Other Issues.** This Agreement shall not be assigned by Farber CFI without the prior written consent of Auxly and the Receiver.
8. **Additional Services.** Farber CFI will render such future additional services as may be necessary regarding the subject matter hereof. If such services do become necessary, or if Farber CFI (or any of its directors, officers or professional advisors) are required to testify or otherwise participate in any legal or other proceeding before any court or regulatory authority in connection with or by reason of the performance of services rendered by Farber CFI hereunder, Auxly will fund the Receiver to pay Farber CFI's then hourly rates. Farber CFI's existing charge-out rates are currently \$850 per hour (plus HST) for managing directors, \$550 per hour (plus HST) for vice presidents, \$300 per hour (plus HST) for associates, and \$200 per hour (plus HST) for analysts, based on the actual time incurred for the person(s) involved for such participation and all related meetings, conferences and preparation time for such events, plus out-of-pocket expenses including, without limitation, fees and disbursements of Farber CFI's counsel.
9. **Independence.** Farber CFI confirms that it is independent of Auxly, the Company and its shareholders. Notwithstanding that Auxly shall be providing funding for the Mandate, Auxly acknowledges and agrees that it shall not be entitled or permitted to provide instruction or direction to Farber CFI or otherwise exercise control over preparation of the Report or any other aspect of the Mandate.
10. **Enurement.** This Agreement shall enure to the benefit of, and be binding upon, the parties hereto and their respective successors and permitted assigns.
11. **Survival of Terms and Conditions.** The provisions of Section 2 entitled "Contents of Report", Section 3 entitled "Information", Section 4 entitled "Fees", Section 5 entitled "Indemnification; Choice of Law; and Release", Section 6 entitled "Corporate Obligation", Section 7 entitled "Other Issues", Section 8 entitled "Additional Services" and this Section shall survive any termination of this Agreement.

# FARBER

Farber CFI trusts that the foregoing terms and provisions are agreeable to the Auxly and the Receiver, and would appreciate receiving acknowledgement of the terms, by signing and returning the attached copy of this letter.

Sincerely,

**FARBER CORPORATE FINANCE INC.**


Per:   
Glenn Bowman, Senior Managing Director

Accepted and agreed to as of this 3<sup>rd</sup> day of October , 2019.

**A. FARBER & PARTNERS INC.,  
solely in its capacity as Receiver  
of 2368523 Ontario Limited d/b/a Curative Cannabis  
and without personal or corporate liability**

  
Per: Allan Nackan, Partner

**AUXLY CANNABIS GROUP INC.,  
as guarantor of fees and Indemnifier**

Per:   
Ron Fichter, General Counsel

## SCHEDULE A

### CERTIFICATE

#### Auxly Cannabis Group Inc.

#### TO: FARBER CORPORATE FINANCE INC.

The undersigned, Brian Schmitt in my capacity as officer of Auxly Cannabis Group Inc. ("**Auxly**"), and without personal liability hereby certify that:

- (a) I am an officer and/or director of Auxly and as such have knowledge of the matters contained herein;
- (b) this certificate is being delivered pursuant to the preparation of a written report (the "**Report**") by Farber Corporate Finance Inc. ("**Farber CFI**") and is contemplated by the engagement agreement (the "**Agreement**") between the Receiver and Farber CFI dated October 3, 2019;
- (c) capitalized terms used herein shall have the same meaning as in the Agreement, unless the context otherwise requires;
- (d) to the best of my knowledge, the information, data, opinions and other materials (collectively, the "**Information**") provided to Farber CFI by Auxly for the purposes of preparing the Report were complete and correct at the date the Information was provided to Farber CFI and did not contain any untrue statement of a material fact in respect of the Company (as defined in the Agreement) and did not omit to state a material fact in respect of the Company necessary to make the Information not misleading in light of the circumstances under which the Information was provided;
- (e) to the best of my knowledge, since the date of the Information, there has been no material change, financial or otherwise, in the Company and there has been no change of any material fact which is of a nature as to render the Information untrue or misleading in any material respect;
- (f) to the best of my knowledge, other than as disclosed in the Information, Company did not have any material contingent liabilities out of the ordinary course of business;
- (g) to the best of my knowledge, other than as disclosed in the Information, there are no actions, suits, proceedings or inquiries, pending or threatened, against or affecting, Company or any of its respective assets at law or in equity or before or by any federal, provincial, municipal or other governmental department, commission, board, bureau, agency or instrumentality which may in any way materially affect the Company;
- (h) other than as disclosed in the Information, there are no prior valuations in the possession of Auxly relating to the Company, prepared within the two years preceding the date thereof;
- (i) there have been no offers or negotiations for the purchase of Company, or for the purchase of all or a material part of the Company within the two years preceding the date hereof which have not been disclosed to Farber CFI;
- (j) except as otherwise disclosed to Farber CFI, the Information was prepared in accordance with generally accepted accounting principles consistently applied (except as to the absence of full note disclosures in non-audited financial statements) and was, in regards to other Information, complete and correct in all material respects at the date the Information was provided;

# FARBER

- (k) all information, financial material, documentation, projections, forecasts and other data concerning the Company provided to Farber CFI by Auxly is reasonable, reflect the assumptions disclosed therein and do not contain any untrue statement of a material fact or omit to state any material fact necessary to make such information, financial material, documentation forecasts or data, not misleading in light of the circumstances in which such information, financial material, documentation or other data was provided to Farber CFI; and
- (l) I am not aware of any information, knowledge or facts concerning or affecting the business or affairs of the Company which have not been disclosed to Farber and which could reasonably be considered to be material to Farber in the preparation of the Report or the conclusions reached, the assumptions used, the procedures adopted or the scope of the review undertaken by Farber CFI in connection therewith.

Accepted and agreed to as of this 3<sup>rd</sup> day of October, 2019.

**Auxly Cannabis Group Inc.**

Per:

  
\_\_\_\_\_  
Brian Schmitt  
CFO



TAB 3

*ONTARIO*  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

THE HONOURABLE  
JUSTICE ●

)  
)  
)

WEDNESDAY, THE 27<sup>th</sup> DAY  
OF NOVEMBER, 2019

AUXLY CANNABIS GROUP INC.

**Applicant**

- and -

2368523 ONTARIO LIMITED D/B/A CURATIVE CANNABIS

**Respondent**

**IN THE MATTER OF AN APPLICATION UNDER SECTION 243(1) OF THE  
BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985, C. B-3, AS AMENDED,  
SECTION 67(1)(E) OF THE PERSONAL PROPERTY SECURITY ACT, R.S.O. 1990 C.  
P-10, AS AMENDED AND SECTION 101 OF THE COURTS OF JUSTICE ACT, R.S.O.  
1990, C. C.43, AS AMENDED**

**ORDER**

**THIS MOTION**, made by A. Farber & Partners Inc., in its capacity as the court-appointed receiver (the “**Receiver**”) of all the assets, undertakings and properties of 2368523 Ontario Inc., D/B/A/ Curative Cannabis (the “**Debtor**” or “**Curative**”), was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the Frist Report of the Receiver dated November 21, 2019 (the “**First Report**”), and on hearing the submissions of counsel for the Receiver, Auxly Cannabis Group Inc., and Curative, no one appearing for any other person on the service list, although properly served as appears from the affidavit of Shallon Garrafa sworn November ●, 2019, filed,

**SERVICE**

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

**APPROVAL OF ACTIVITIES & CONDUCT**

2. THIS COURT ORDERS that the First Report and the activities and conduct of the Receiver and its counsel, Miller Thomson LLP ("**Receiver's Counsel**"), described therein be and they are hereby approved.

**SEALING OF CONFIDENTIAL APPENDIX**

3. THIS COURT ORDERS that the Confidential Appendix 1 to the First Report and the Valuation (as defined in the First Report) prepared by Farber Corporate Finance Inc. contained therein be and they are hereby sealed and shall not form part of the public record pending further Order of this Honourable Court.

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

Proceeding commenced at Toronto

**ORDER**

**MILLER THOMSON LLP**

5800 Scotia Plaza  
40 King Street West  
Toronto, ON M5H 3C2

Gregory Azeff LSO #: 45324C  
Tel: 416.595.2660  
Fax: 416.595.8695  
Email: gazeff@millerthomson.com

Lawyers for the Court Appointed Receiver,  
A. Farber & Partners Inc.

AUXLY CANNABIS GROUP INC.

-and-

2368523 ONTARIO LIMITED D/B/A CURATIVE CANNABIS

Applicant

Respondent

Court File No. CV-19-627308-00CL

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**(COMMERCIAL LIST)**  
Proceeding commenced at Toronto

**MOTION RECORD**

**MILLER THOMSON LLP**

Scotia Plaza  
40 King Street West, Suite 5800  
P.O. Box 1011  
Toronto, ON Canada M5H 3S1

**Greg Azeff LSO#: 45324C**

gazeff@millerthomson.com  
Tel: 416.595.2660/Fax: 416.595.8695

**Asim Iqbal – LSO#: 61884B**

aiqbal@millerthomson.com  
Tel: 416.597.6008/Fax: 416-595-8695

**Tamie Dolny – LSO # 77958U**

tdolny@millerthomson.com  
Tel: 416.597.6076/416.595.8695

Lawyers for Court-appointed Receiver,  
A. Farber & Partners Inc.