

COURT FILE NO. 25-3002847

ESTATE NO. 25-3002847

COURT COURT OF KING'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

IN THE MATTER OF THE NOTICE OF THE  
*BANKRUPTCY AND INSOLVENCY ACT*, R.S.C.  
1985, c B-3, AS AMENDED

AND IN THE MATTER OF THE NOTICE OF INTENTION  
TO MAKE A PROPOSAL OF INFARM INDOOR URBAN  
FARMING CANADA INC.

APPLICANT INFARM INDOOR URBAN FARMING CANADA INC.

**DOCUMENT APPLICATION (NOI EXTENSION AND APPROVAL OF  
ADMINISTRATION CHARGE)**

ADDRESS FOR  
SERVICE AND  
CONTACT  
INFORMATION OF  
PARTY FILING THIS  
DOCUMENT

**McMILLAN LLP**  
1700, 421 – 7<sup>th</sup> Avenue SW  
Calgary, AB T2P 4K9

**Attention: Adam Maerov/Preet Saini**  
Telephone: 403.215.2752/ 403.531.4716  
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Email: [adam.maerov@mcmillan.ca](mailto:adam.maerov@mcmillan.ca)  
[preet.saini@mcmillan.ca](mailto:preet.saini@mcmillan.ca)  
File Number: 300427

#### **NOTICE TO RESPONDENT(S):**

This application is made against you. You are the respondent.

You have the right to state your side of this matter before the Judge.

To do so, you must be in Court when the application is heard as shown below:

Date:	November 10, 2023
Time:	3:00pm-4:00pm
Where:	Edmonton Law Courts via WebEx (see Appendix "A")
Before Whom:	The Honourable Justice Dunlop

Go to the end of this document to see what else you can do and when you must do it.

### **Remedy claimed or sought:**

1. The Applicant, Infarm Indoor Urban Farming Canada Inc. (“**Infarm Canada**”) seeks an order in the form attached hereto as Schedule “A”:
  - (a) abridging the time for service of this Application, if necessary, and declaring that this Application is properly returnable and that further service of this Application is hereby dispensed with;
  - (b) extending the time for filing of a proposal in these proceedings to January 9, 2024, forty-five (45) days from November 25, 2023 (being the expiry of 30 days from filing of the notice of intention to make a proposal); and
  - (c) granting the proposal trustee, KSV Restructuring Inc. (the “**Proposal Trustee**”), the Proposal Trustee’s Legal Counsel, Fasken Martineau DuMoulin LLP and McMillan LLP, counsel to Infarm Canada, an administrative charge in the amount of \$250,000 over the assets of Infarm Canada as security for fees and disbursements.
2. Such further relief as counsel may request and this Honourable Court may grant.

### **Grounds for making this application:**

#### **A. Background**

3. Infarm Canada is in business of vertical farming which is the practice of growing crops vertically in stacked layers. Infarm Canada sells vertical farming equipment to allow indoor and outdoor farming and sells produce prepared using its equipment. In doing so, Infarm Canada promotes sustainable and pesticide free produce using its supplies and methods.
4. Infarm Canada is an Alberta corporation continued from British Columbia.
5. Infarm Canada closed its operations in Calgary, Alberta and Vancouver, British Columbia. Infarm Canada’s only remaining operating facility is located in Hamilton, Ontario.
6. The most significant secured creditor of InFarm Canada is TriplePoint Capital (“TPC”). As of September 15, 2023, TPC was owed the principal amounts of approximately EUR 16,277,451 and USD 18,368,080.
7. Infarm Canada is indebted to TPC pursuant to a continuing guaranty and security agreement dated April 29, 2020 (“Guarantee”). As security for its obligations under the Guarantee, Infarm granted a security interest in favour of TPC in substantially all of Infarm Canada’s assets.
8. TPC made a demand for repayment and issued a notice of intention to enforce security to Infarm Canada on September 21, 2023.

**B. NOI Extension**

9. On October 26, 2023, Infarm Canada filed a Notice of Intention to Make a Proposal to its creditors (the “**NOI**”).
10. Since the filing of the NOI, Infarm Canada has diligently proceeded to formulate a Proposal to its creditors, but has not yet completed all of the tasks needed in order to formulate and present a Proposal to its creditors.
11. Infarm Canada requires an extension of time to file a proposal to its creditors including preparation of its proposal and presentation thereof to its creditors.
12. Infarm Canada has been in discussions with TPC regarding possible restructuring alternatives for an extended period of time. Infarm Canada understands from those discussions that TPC is considering making a credit bid for all of the assets of Infarm Parent and all of the assets of Infarm Canada. However, no credit bid has been received by Infarm Canada or Infarm Parent as of the date of this affidavit.
13. TPC has advised Infarm Canada that it will fund the amount of the proposed cash shortfall in the amount projected in the cash-flow statement during the proposed NOI extension period.
14. Infarm Canada has acted and is continuing to act in good faith and with due diligence in completing the preliminary work and preparation with efforts to make a proposal to its creditors.

**C. Administration Charge**

15. Infarm Canada will require expertise of the Proposal Trustee during these NOI proceedings for several financial and operational issues.
16. Infarm Canada’s counsel, the Proposal Trustee and its counsel are essential to the success of these NOI proceedings.
17. Infarm Canada therefore seeks a first ranking charge against all of its assets, property and undertaking in the maximum amount of \$250,000 to secure the fees and disbursements incurred in connection with services rendered to Infarm Canada both before and after the commencement of these NOI proceedings.

**Material or evidence to be relied on:**

18. The Affidavit of Amit Shores, sworn November 2, 2023.
19. Such further material as counsel may advise and this Honourable Court may permit.

**Applicable rules:**

20. Rules 6.47, 6.9, 9.14, 9.15, 11.27 and 13.5 of the *Alberta Rules of Court*; and

**Applicable Acts and Regulations:**

21. *Bankruptcy and Insolvency Act*, R.S.C. 1985 c. B-3, as amended s 50.4, 69;

22. This Court's equitable and inherent jurisdiction; and

23. Such further authority as counsel may advise and this Honourable Court may permit.

**Any irregularity complained of or objection relied on:**

24. None at this time.

**How the application is proposed to be heard or considered.**

25. In person before the Honourable Justice Dunlop on the Commercial List at the time, date and place referenced above by WebEx.

**WARNING**

If you do not come to Court either in person or by your lawyer, the Court may give the applicants what they want in your absence. You will be bound by any order that the Court makes. If you want to take part in this application, you or your lawyer must attend in Court on the date and at the time shown at the beginning of the form. If you intend to rely on an affidavit or other evidence when the application is heard or considered, you must reply by giving reasonable notice of the material to the applicant.

## APPENDIX “A” – WEBEX INFORMATION

**Virtual Courtroom 86** has been assigned for the above noted matter:

Virtual Courtroom Link:

<https://albertacourts.webex.com/meet/virtual.courtroom86>

Instructions for Connecting to the Meeting

1. Click on the link above or open up Chrome or Firefox and cut and paste it into your browser address bar.
2. If you do not have the Cisco Webex application already installed on your device, the site will have a button to install it. Follow installation instructions. Enter your full name and email address when prompted
3. Click on the **Open Cisco Webex Meeting**.
4. You will see a preview screen. Click on **Join Meeting**.

Key considerations for those attending:

1. Please connect to the courtroom **15 minutes prior** to the start of the hearing.
2. Please ensure that your microphone is muted and remains muted for the duration of the proceeding, unless you are speaking. Ensure that you state your name each time you speak.
3. If bandwidth becomes an issue, some participants may be asked to turn off their video and participate by audio only.
4. **Note: Recording or rebroadcasting of the video is prohibited.**
5. **Note: It is highly recommended you use headphones with a microphone or a headset when using Webex. This prevents feedback.**

For more information relating to Webex protocols and procedures, please visit:

<https://www.albertacourts.ca/qb/court-operations-schedules/webex-remote-hearings-protocol>

You can also join the meeting via the “Cisco Webex Meetings” App on your smartphone/tablet or other smart device. You can download this via the App marketplace and join via the link provided above

## **SCHEDULE “A”**

### **Form of Order**

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**DOCUMENT ORDER (NOI EXTENSION AND ADMINISTRATION  
CHARGE)**

ADDRESS FOR  
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PARTY FILING THIS  
DOCUMENT

**McMILLAN LLP**  
1700, 421 – 7<sup>th</sup> Avenue SW  
Calgary, AB T2P 4K9

**Attention: Adam Maerov/Preet Saini**  
Telephone: 403.215.2752 / 403.531.4716  
Facsimile: 403-531-4720  
Email: [adam.maerov@mcmillan.ca](mailto:adam.maerov@mcmillan.ca)  
[preet.saini@mcmillan.ca](mailto:preet.saini@mcmillan.ca)  
File Number: 300427

<b>DATE ON WHICH ORDER WAS PRONOUNCED:</b>	November 10, 2023
<b>LOCATION WHERE ORDER WAS PRONOUNCED:</b>	Edmonton Law Courts
<b>NAME OF JUSTICE WHO MADE THIS ORDER:</b>	The Honourable Justice Lema

**UPON THE APPLICATION** of Infarm Indoor Urban Farming Canada Inc. ("**Infarm Canada**") for an order extending the time for Infarm Canada to file a proposal, and the corresponding stay of proceedings, until January 9, 2024, and granting the Administration Charge (as defined herein); AND UPON reviewing the Affidavit of Amit Matthew Shoresworn on November 2, 2023; AND UPON hearing submissions by counsel for Infarm Canada, counsel for KSV Restructuring Inc. in its capacity as proposal trustee of Infarm Canada ("**Proposal Trustee**"), counsel for TriplePoint Capital LLC and any other counsel or other interested parties present;

**IT IS HEREBY ORDERED AND DECLARED THAT:**

#### **SERVICE**

1. Service of notice of this application and supporting materials is hereby declared to be good and sufficient, no other person is required to have been served with notice of this application and time for service of this application is abridged to that actually given.

## STAY EXTENSION

2. Pursuant to section 50.4(9) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c B-3, as amended (the "**BIA**"), the time for Infarm Canada to file a proposal, and the corresponding stay of proceedings provided for in section 69 of the BIA, be and is extended until and including January 9, 2024.

## ADMINISTRATION CHARGE

3. Legal counsel to Infarm Canada, McMillan LLP, and the Proposal Trustee and its legal counsel, Fasken Martineau DuMoulin LLP (collectively, the "**Professionals**"), as security for their respective professional fees and disbursements incurred both before and after the commencement of these NOI proceedings and before or after the granting of this Order, shall be entitled to the benefit of, and are hereby granted, a first ranking charge (the "**Administration Charge**") on all of Infarm Canada's present and after acquired assets, property and undertakings (the "**Property**"), which charge shall not exceed **\$250,000** as security for the Professionals' professional fees and disbursements incurred at normal rates and charges.

## PRIORITY OF THE ADMINISTRATION CHARGE

4. The filing, registration or perfection of the Administration Charge shall not be required, and the Administration Charge shall be enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Administration Charge coming into existence, notwithstanding any such failure to file, register, record or perfect.
5. The Administration Charge shall constitute a security and charge on the Property and such Administration Charge shall rank in priority to all other security interests, trusts, liens, charges, deemed trusts, encumbrances and claims of secured creditors, statutory or otherwise in favour of any person, including liens and trusts created by federal and provincial legislation (collectively, the "**Encumbrances**").
6. Except as otherwise provided herein, or as may be approved by this Honourable Court, Infarm Canada shall not grant any Encumbrances over the Property that rank in priority to, or *pari passu* with, the Administration Charge, unless Infarm Canada obtains the prior written consent of the Professionals or further order of this Court.
7. The Administration Charge shall not be rendered invalid or unenforceable and the rights and remedies of the Professionals thereunder shall not otherwise be limited or impaired in any way by:
  - (a) the pendency of these proceedings and any declarations of insolvency in these proceedings;
  - (b) any application(s) for bankruptcy order(s) issued pursuant to the BIA, or any bankruptcy order made pursuant to such applications;
  - (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA;
  - (d) the provisions of any federal or provincial statutes; or
  - (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "**Agreement**") that binds Infarm Canada, and notwithstanding



any provision to the contrary in any Agreement:

- (i) neither the creation of the Administration Charge nor the execution, delivery, perfection, registration or performance of any documents in respect thereof, shall create or be deemed to constitute a new breach by Infarm Canada of any Agreement to which they, or any one of them, is a party;
- (ii) none of the Professionals shall have any liability to any person whatsoever as a result of any breach of any Agreement caused by or resulting from the creation of the Administration Charge; and
- (iii) the payments made by Infarm Canada pursuant to this Order and the granting of the Administration Charge, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct or other challengeable or voidable transactions under any applicable law.

## **MISCELLANEOUS MATTERS**

- 8. This Court hereby requests the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in any of its provinces or territories or in any foreign jurisdiction, to act in aid of and to be complimentary to this Court in carrying out the terms of this Order, to give effect to this Order, and to assist Infarm Canada or the Proposal Trustee and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such order and to provide such assistance to Infarm Canada and the Proposal Trustee, as an officer of the Court, as may be necessary or desirable to give effect to this Order or to assist Infarm Canada or the Proposal Trustee and their respective agents in carrying out the terms of this Order.
- 9. Infarm Canada or the Proposal Trustee shall be at liberty and are 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.

## **SERVICE OF ORDER**

- 10. Service of this Order shall be deemed good and sufficient:
  - (a) by serving same on the persons who were served with notice of this Application and any other parties attending or represented at the hearing of the Application; and
  - (b) by posting a copy of this Order on the Proposal Trustee's website at <https://www.ksvadvisory.com/experience/case/infarm-urban-farming>.
- 11. Service of this Order on any other person is hereby dispensed with.
- 12. Service of this Order may be effected by facsimile, electronic mail, personal delivery or courier. Service is deemed to be effected the next business day following transmission or delivery of this Order.

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Justice of the Court of King's Bench of Alberta