

This is Affidavit #1 of Vani Putti
in this proceeding and was made
on November 26, 2020

No. S-2010103
Vancouver Registry

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

AND

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

AND

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

On Behalf of the Application Respondent, Matrix Venture Capital Management, Inc.

AFFIDAVIT

I, Vani Putti, Legal Assistant, c/o 2600-1066 West Hastings Street, Vancouver, British Columbia
SWEAR THAT:

1. I am a Legal Assistant with the law firm of MLT Aikins LLP, counsel for Matrix Venture Capital Management Inc. ("**Matrix**"), and, as such, have personal knowledge of the matters deposed to in this affidavit except where stated to be based upon information and belief, in which case I do verily believe the same to be true.
2. Attached hereto and marked as **Exhibit "A"** to this my affidavit is a true copy of the Notice of Motion filed on May 7, 2020 by Matrix.
3. I swear this affidavit in support of the Application Response and for no other or improper purpose.

SWORN BEFORE ME at the City of
Vancouver, in the Province of British
Columbia, this 26 day of November, 2020.


A Commissioner for Taking Affidavits in the
Province of British Columbia

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VANI PUTTI

This is **Exhibit "A"** referred to in the Affidavit of Vani Putti sworn before me at Vancouver, BC, the 26th day of November, 2020



*Commissioner for Taking Affidavits within British
Columbia*



District of British Columbia
 Division No. 3 - Vancouver
 Court ~~No.~~ File No. **VLC-S-B-200222**
 Estate No. 11-254240

**IN THE SUPREME COURT OF BRITISH COLUMBIA
 IN BANKRUPTCY AND INSOLVENCY
 IN THE MATTER OF THE BANKRUPTCY OF SUNNIVA INC.**

NOTICE OF MOTION

TAKE NOTICE that a Motion will be made by Matrix Venture Capital Management, Inc. ("**Matrix Capital**"), before a Judge at the Courthouse at 800 Smithe Street, in the City of Vancouver, in the Province of British Columbia, on June 1, 2020 for the orders set out in Part 1 below.

Part 1: ORDERS SOUGHT

1. Sunniva Inc. ("**Sunniva**"), a company registered pursuant to the laws of the Province of British Columbia, with a registered and records office located at 1200-200 Burrard Street, Vancouver, British Columbia, be adjudged bankrupt.
2. Bankruptcy Order in respect of the property of Sunniva.
3. Ernst & Young Inc., of Vancouver, in the Province of British Columbia, be appointed as trustee of the estate of Sunniva.
4. Costs of Matrix Capital be paid out of the estate of Sunniva.
5. Such further relief as the circumstances may require and as this Honourable Court deems appropriate.

Part 2: FACTUAL BASIS

Grounds for Making the Application

1. Matrix Venture Capital Management, Inc. ("**Matrix Capital**") is a Pennsylvania business corporation with a registered and records office located at 490 Norristown Road, Suite 151, Blue Bell, Pennsylvania, U.S.A.
2. Matrix Capital, for the purpose of this proceeding only, has a service address of 2600-1066 West Hastings Street, Vancouver, British Columbia.
3. Matrix Capital is primarily involved in the purchase and/or development of commercial properties, which properties are then leased.
4. Sunniva Inc. ("**Sunniva**") is an Extraprovincial federally registered publicly traded company

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with a registered and records office in British Columbia located at 1200-200 Burrard Street, Vancouver, British Columbia.

5. Sunniva's common shares are traded publicly, over the counter, under the symbol SNNVF. Sunniva, with its subsidiaries, constitute a vertically integrated cannabis company operating in Canada and in California, U.S.A.
6. Sunniva is an insolvent company within the meaning of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, and has, at some time during the six months preceding the filing of this Motion, carried on business at or near the City of Vancouver, in the Province of British Columbia, within the jurisdiction of this Honourable Court.
7. Sunniva has debts owing to its creditors, including Matrix Capital, in an amount in excess of one thousand dollars (\$1,000.00).

The Loan and the Agreement

8. On or about October 11, 2019, Matrix Capital loaned Sunniva USD \$6,000,000.00 (the "**Loan**").
9. The Loan was evidenced by:
 - (a) Letter Agreement dated October 9, 2019 (the "**Letter Agreement**");
 - (b) Subscription Agreement dated October 11, 2019 (the "**Subscription Agreement**"); and
 - (c) Promissory Note dated October 11, 2019 (the "**Promissory Note**")(collectively, the "**Agreement**").
10. Under the Letter Agreement, as a condition to Matrix Capital making the Loan, Sunniva agreed that USD \$3,000,000.00 of the Loan proceeds (the "**Change Order Proceeds**") would be used for "Change Orders" and related expenses (collectively, the "**Change Orders**") directly attributable to construction of a building located at 69375 Ramon Road, Cathedral City, California, U.S.A.
11. The original principal amount of USD \$6,000,000.00, plus 10% interest per annum from October 11, 2019, was secured by way of the Promissory Note, with principal and interest due and payable on April 11, 2021.

The Demand and the Breach

12. In breach of the Agreement, Sunniva has not, *inter alia*, used the Change Order Proceeds towards the payment of the Change Orders (the "**Breach**").
13. On November 25, 2019, U.S.A. counsel for Matrix Capital, Polsinelli PC, wrote Sunniva informing it of the Breach, and demanding it immediately pay the outstanding amounts

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owing under the Agreement, equal to the Change Order Proceeds, plus interest (the "**November Demand**").

14. On November 30, 2019, in response to the November Demand, Dr. Anthony Holler, CEO of Sunniva, wrote U.S.A. counsel for Matrix Capital, acknowledging Sunniva's commitment under the Letter Agreement, and claiming Sunniva had spent USD \$1,200,000.00 of the Change Order Proceeds on the Change Orders.
15. On December 4, 2019, U.S.A. counsel for Matrix Capital wrote Sunniva advising that, *inter alia*, Matrix Capital was agreeable to meet to discuss settlement and release terms with respect to the Breach (the "**December 4 Letter**").
16. No response to the December 4 Letter was received by U.S.A. counsel for Matrix Capital.
17. On April 7, 2019, Canadian counsel for Matrix Capital, MLT Aikins LLP, wrote Sunniva further demanding it immediately pay the outstanding amounts owing under the Agreement (the "**First Canadian Demand**").
18. By letter dated April 22, 2020, Canadian counsel for Matrix Capital made further demand for Sunniva to make payment for the outstanding amounts owing under the Agreement (the "**Second Canadian Demand**").
19. To date, Sunniva has not provided a response to the First Canadian Demand, or the Second Canadian Demand (collectively, the "**Demands**").

The Indebtedness

20. Sunniva is justly and truly indebted to Matrix Capital, as of May 1, 2020, in the amount of USD \$3,000,000.00, plus interest at 10% per annum from October 11, 2019, for failing to comply with the Demands and immediately pay the amounts outstanding under the Agreement (the "**Indebtedness**").
21. The full amount of the Indebtedness is due and owing by Sunniva.
22. Matrix Capital does not hold any security on Sunniva's property, or any part thereof, for the payment of the Indebtedness.

Acts of Bankruptcy

23. Sunniva has committed acts of bankruptcy within the six months preceding the date of the filing of the within Motion by ceasing to meet its liabilities generally as they became due.
24. In particular, Sunniva has failed to make any payment on the Indebtedness, despite repeated demands, and has not provided any indication of any ability to pay its debts, including the Indebtedness.

The IMK Action

24. IMK Management Services Inc. is a British Columbia company with a registered and records office at 280-1090 West Georgia Street, Vancouver, British Columbia ("IMK").
25. On or about December 30, 2019, IMK initiated proceeding against Sunniva in the Supreme Court of British Columbia, No. S1914702, Vancouver Registry (the "IMK Action").
26. In the IMK Action, IMK seeks judgment against Sunniva in the amount of \$472,500.00 in respect of Sunniva's alleged breach of a finder's fee agreement.

Consent of License Trustee in Bankruptcy to Act as Trustee

25. Ernst & Young Inc., of Vancouver, in the Province of British Columbia, is qualified to act as trustee of the property of Sunniva and has consented and agreed to act as such and is acceptable to Matrix Capital.

Part 3: LEGAL BASIS

1. *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, Sections 42 and 43 (the "BIA").
2. *Bankruptcy and Insolvency General Rules*, C.R.C. 1978, Rules 11, 69-72 and 74-76.
3. Where there are sufficient unsecured debts and the debtor has not made any payment to the creditor in the six months preceding the application, the Court will find an act of bankruptcy as required by s. 42(1)(j) and 42(1)(e) of the BIA.

Appleyard, Re (2006), 21 CBR (5th) 192

4. If it is shown that the debtor has failed to pay the debt due to the applicant creditor, the onus is on the debtor to prove that it is able to pay the debts and financial accounts, or statements must be submitted.

Re Chung, 2004 BCSC 1669, at paras. 17 and 19

Re Hayes (1979) 34 C.B.R. (N.S.) 280 (B.C.S.C.) at para. 2

5. A debt to a single creditor is sufficient to constitute an act of bankruptcy if there are special circumstances, specifically, *inter alia*, if repeated demands for payment have been made within the six-months preceding the filing of the motion for a bankruptcy order.

Real Time Fibre Supply Ltd., Re, 2007 BCSC 371 at paras. 40 to 45

Valente, Re, [2004] O.J. No. 635 (C.A.) at para. 8

Solid Holdings Ltd., Re, 2019 BCSC 126 paras. 31 to 35, affirmed 2019 BCCA 231

6. Cessation of meeting obligations does not have to commence in the six month period preceding the filing of the application, it is sufficient that cessation occurred at some time

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and continued during the six month period referred to in the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3.

Czepil v. J.W. Bison Ranch Ltd., (2008) Carswell 586 at para. 26

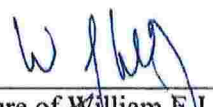
Part 4: MATERIAL TO BE RELIED ON

1. Affidavit of Norman Valz made on May 2, 2020.
2. Consent to Act, Ernst & Young Inc.

The applicant estimates that the application will take 20 minutes.

- ☐ This matter is within the jurisdiction of a registrar in bankruptcy.
- ☒ This matter is not within the jurisdiction of a registrar in bankruptcy.

Dated: May 6, 2020



 Signature of William E.J. Skelly
☐ applicant ☒ lawyer for applicant

Name and address of solicitor for Matrix
Venture Capital Management, Inc.:

MLT Aikins LLP.
 2600 – 1066 West Hastings Street
 Vancouver, BC V6E 3X1
 Telephone: 604-682-7737
 Attn: William E.J. Skelly

Digitally signed by
Kristen Day

 Registrar in Bankruptcy